

By Senator McKay

rb99-5

1                   A reviser's bill to be entitled  
2           An act relating to the Florida Statutes;  
3           amending s. 44.102, Florida Statutes, and  
4           repealing ss. 794.03 and 838.15, Florida  
5           Statutes, to conform to judicial decisions  
6           holding said provisions or parts thereof  
7           unconstitutional.

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9   Be It Enacted by the Legislature of the State of Florida:

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11           Section 1. Section 44.102, Florida Statutes, is  
12   amended to read:

13           44.102 Court-ordered mediation.--

14           (1) Court-ordered mediation shall be conducted  
15   according to rules of practice and procedure adopted by the  
16   Supreme Court.

17           (2) A court, under rules adopted by the Supreme Court:

18           (a) May refer to mediation all or any part of a filed  
19   civil action.

20           (b) In circuits in which a family mediation program  
21   has been established and upon a court finding of a dispute,  
22   shall refer to mediation all or part of custody, visitation,  
23   or other parental responsibility issues as defined in s.  
24   61.13. Upon motion or request of a party, a court shall not  
25   refer any case to mediation if it finds there has been a  
26   history of domestic violence that would compromise the  
27   mediation process.

28           (c) In circuits in which a dependency or in need of  
29   services mediation program has been established, may refer to  
30   mediation all or any portion of a matter relating to

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1 dependency or to a child in need of services or a family in  
2 need of services.

3 (3) Each party involved in a court-ordered mediation  
4 proceeding has a privilege to refuse to disclose, and to  
5 prevent any person present at the proceeding from disclosing,  
6 communications made during such proceeding. All oral or  
7 written communications in a mediation proceeding, other than  
8 an executed settlement agreement, shall be exempt from the  
9 requirements of chapter 119 and shall be confidential and  
10 inadmissible as evidence in any subsequent legal proceeding,  
11 unless all parties agree otherwise.

12 (4) There shall be no privilege and no restriction on  
13 any disclosure of communications made confidential in  
14 subsection (3) in relation to disciplinary proceedings filed  
15 against mediators pursuant to s. 44.106 and court rules, to  
16 the extent the communication is used for the purposes of such  
17 proceedings. In such cases, the disclosure of an otherwise  
18 privileged communication shall be used only for the internal  
19 use of the body conducting the investigation. Prior to the  
20 release of any disciplinary files to the public, all  
21 references to otherwise privileged communications shall be  
22 deleted from the record. When an otherwise confidential  
23 communication is used in a mediator disciplinary proceeding,  
24 such communication shall be inadmissible as evidence in any  
25 subsequent legal proceeding. "Subsequent legal proceeding"  
26 means any legal proceeding between the parties to the  
27 mediation which follows the court-ordered mediation.

28 (5) The chief judge of each judicial circuit shall  
29 maintain a list of mediators who have been certified by the  
30 Supreme Court and who have registered for appointment in that  
31 circuit.

1 (a) Whenever possible, qualified individuals who have  
2 volunteered their time to serve as mediators shall be  
3 appointed. If a mediation program is funded pursuant to s.  
4 44.108, volunteer mediators shall be entitled to reimbursement  
5 pursuant to s. 112.061 for all actual expenses necessitated by  
6 service as a mediator.

7 (b) Nonvolunteer mediators shall be compensated  
8 according to rules adopted by the Supreme Court. If a  
9 mediation program is funded pursuant to s. 44.108, a mediator  
10 may be compensated by the county or by the parties. When a  
11 party has been declared indigent or insolvent, that party's  
12 pro rata share of a mediator's compensation shall be paid by  
13 the county at the rate set by administrative order of the  
14 chief judge of the circuit.

15 ~~(6)(a) When an action is referred to mediation by~~  
16 ~~court order, the time periods for responding to an offer of~~  
17 ~~settlement pursuant to s. 45.061, or to an offer or demand for~~  
18 ~~judgment pursuant to s. 768.79, respectively, shall be tolled~~  
19 ~~until:~~

20 1. ~~An impasse has been declared by the mediator; or~~  
21 2. ~~The mediator has reported to the court that no~~  
22 ~~agreement was reached.~~

23 ~~(b) Sections 45.061 and 768.79 notwithstanding, an~~  
24 ~~offer of settlement or an offer or demand for judgment may be~~  
25 ~~made at any time after an impasse has been declared by the~~  
26 ~~mediator, or the mediator has reported that no agreement was~~  
27 ~~reached. An offer is deemed rejected as of commencement of~~  
28 ~~trial.~~

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30 Reviser's note.--The Florida Supreme Court in  
31 Knealing v. Puleo, 675 So.2d 593 (Fla. 1996),

1 held the time requirements set forth in s.  
2 44.102(6) unconstitutional as an intrusion upon  
3 the rule-making authority of the Supreme Court.  
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5 Section 2. Section 794.03, Florida Statutes, is  
6 repealed.

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8 Reviser's note.--The Florida Supreme Court in  
9 State v. Globe Communications Corporation, 648  
10 So.2d 110 (Fla. 1994), affirmed the district  
11 court's decision holding s. 794.03 facially  
12 invalid under the free speech and free press  
13 provisions of both the United States and  
14 Florida Constitutions.

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16 Section 3. Section 838.15, Florida Statutes, is  
17 repealed.

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19 Reviser's note.--The Florida Supreme Court in  
20 Roque v. State, 664 So.2d 928 (Fla. 1995), held  
21 s. 838.15 to be invalid as impermissibly vague  
22 and subject to arbitrary application.  
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