

By the Committee on Judiciary; and Senator Campbell

590-1977-06

1 A bill to be entitled

2 An act relating to alternative dispute

3 resolution; amending s. 44.1011, F.S.;

4 revising, creating, and deleting definitions;

5 creating s. 44.1015, F.S.; providing standards

6 for conduct of mediation; providing for the

7 role of the mediator and counsel in specified

8 mediations; amending s. 44.102, F.S.; requiring

9 referral of certain cases to mediation;

10 prohibiting certain cases from being referred

11 to mediation; requiring the Supreme Court to

12 maintain a list of certified mediators;

13 amending s. 44.104, F.S.; deleting all

14 references to voluntary trial resolution;

15 creating s. 44.1041, F.S.; providing for

16 voluntary trial resolution upon agreement of

17 the parties to a civil dispute; providing for

18 the appointment and compensation of a

19 trial-resolution judge; providing guidelines

20 for conducting a voluntary trial-resolution

21 hearing; providing for enforcement and appeal;

22 amending s. 44.108, F.S.; providing that no

23 mediation fee is required in certain cases;

24 amending s. 61.183, F.S.; requiring the court

25 in certain family law cases to make mediation

26 referrals in accordance with the statute

27 governing court-ordered mediation; providing an

28 effective date.

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

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1 Section 1. Subsection (2) of section 44.1011, Florida
2 Statutes, is amended to read:

3 44.1011 Definitions.--As used in this chapter:

4 (2) "Mediation" means a process whereby a neutral
5 third person called a mediator acts to encourage and
6 facilitate the resolution of a dispute between two or more
7 parties. It is an informal and nonadversarial process in which
8 decisionmaking authority rests with the parties with the
9 objective of helping the disputing parties reach a mutually
10 acceptable and voluntary agreement. ~~In mediation,~~
11 ~~decisionmaking authority rests with the parties. The role of~~
12 ~~the mediator includes, but is not limited to, assisting the~~
13 ~~parties in identifying issues, fostering joint problem~~
14 ~~solving, and exploring settlement alternatives.~~ "Mediation"
15 includes:

16 (a) "Appellate court mediation," which means mediation
17 that occurs during the pendency of an appeal of a civil case.

18 (b) "Circuit court mediation," which means mediation
19 of civil cases, other than unified family court matters, in
20 circuit court. ~~If a party is represented by counsel, the~~
21 ~~counsel of record must appear unless stipulated to by the~~
22 ~~parties or otherwise ordered by the court.~~

23 (c) "County court mediation," which means mediation of
24 civil cases within the jurisdiction of county courts,
25 including small claims. ~~Negotiations in county court mediation~~
26 ~~are primarily conducted by the parties. Counsel for each party~~
27 ~~may participate. However, presence of counsel is not required.~~

28 (d) "Unified family court mediation," which means
29 mediation of any of the following circuit matters or any
30 combination thereof:

31 1. Dissolution of marriage.

- 1 2. Division and distribution of property arising out
2 of a dissolution of marriage.
3 3. Annulment.
4 4. Support unconnected with dissolution of marriage.
5 5. Paternity.
6 6. Child support.
7 7. The Uniform Reciprocal Enforcement of Support Act
8 and the Uniform Interstate Family Support Act.
9 8. Custodial care of and access to children.
10 9. Adoption.
11 10. Name changes.
12 11. Declaratory judgment actions related to
13 premarital, marital, or postmarital agreements.
14 12. Civil domestic, repeat, sexual, or dating violence
15 injunctions.
16 13. Child dependency.
17 14. Termination of parental rights.
18 15. Juvenile delinquency.
19 16. Emancipation of a minor.
20 17. Children in need of services.
21 18. Families in need of services.
22 19. Truancy.
23 20. Modification and enforcement of orders entered in
24 matters listed in this paragraph.
25 ~~(d) "Family mediation" which means mediation of family~~
26 ~~matters, including married and unmarried persons, before and~~
27 ~~after judgments involving dissolution of marriage; property~~
28 ~~division; shared or sole parental responsibility; or child~~
29 ~~support, custody, and visitation involving emotional or~~
30 ~~financial considerations not usually present in other circuit~~
31 ~~civil cases. Negotiations in family mediation are primarily~~

1 ~~conducted by the parties. Counsel for each party may attend~~
2 ~~the mediation conference and privately communicate with their~~
3 ~~clients. However, presence of counsel is not required, and, in~~
4 ~~the discretion of the mediator, and with the agreement of the~~
5 ~~parties, mediation may proceed in the absence of counsel~~
6 ~~unless otherwise ordered by the court.~~

7 ~~(c) "Dependency or in need of services mediation,"~~
8 ~~which means mediation of dependency, child in need of~~
9 ~~services, or family in need of services matters. Negotiations~~
10 ~~in dependency or in need of services mediation are primarily~~
11 ~~conducted by the parties. Counsel for each party may attend~~
12 ~~the mediation conference and privately communicate with their~~
13 ~~clients. However, presence of counsel is not required and, in~~
14 ~~the discretion of the mediator and with the agreement of the~~
15 ~~parties, mediation may proceed in the absence of counsel~~
16 ~~unless otherwise ordered by the court.~~

17 Section 2. Section 44.1015, Florida Statutes, is
18 created to read:

19 44.1015 Conduct of mediation.--

20 (1) The role of the mediator includes, but is not
21 limited to, assisting the parties in identifying issues,
22 fostering joint problem solving, and exploring settlement
23 alternatives.

24 (2) Legal counsel may be involved in mediation as
25 follows:

26 (a) In circuit court mediation, if a party is
27 represented by counsel, the counsel of record must appear
28 unless stipulated to by the parties or otherwise ordered by
29 the court.

30 (b) In unified family court mediation, negotiations
31 are primarily conducted by the parties. Counsel for each party

1 may attend the mediation conference and privately communicate
2 with his or her clients. However, in the discretion of the
3 mediator, and with the agreement of the parties, mediation may
4 proceed in the absence of counsel unless otherwise ordered by
5 the court.

6 (c) In county court mediation, negotiations are
7 primarily conducted by the parties. If a party is represented
8 by counsel, the counsel of record must appear unless
9 stipulated to by the parties or otherwise ordered by the
10 court. However, presence of counsel is not required in
11 mediations where the action is governed by the Florida Small
12 Claims Rules.

13 Section 3. Subsections (2) and (4) of section 44.102,
14 Florida Statutes, are amended to read:

15 44.102 Court-ordered mediation.--

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

17 (a) Shall ~~Must~~, upon request of one party, refer to
18 mediation any filed civil action for monetary damages,
19 provided the requesting party is willing and able to pay the
20 costs of the mediation or the costs can be equitably divided
21 between the parties, unless:

22 1. The action is a landlord and tenant dispute that
23 does not include a claim for personal injury.

24 2. The action is filed for the purpose of collecting a
25 debt.

26 3. The action is a claim of medical malpractice.

27 4. The action is governed by the Florida Small Claims
28 Rules.

29 5. The court determines that the action is proper for
30 referral to nonbinding arbitration under this chapter.

31 6. The parties have agreed to binding arbitration.

1 7. The parties have agreed to an expedited trial
2 pursuant to s. 45.075.

3 8. The parties have agreed to voluntary trial
4 resolution pursuant to s. 44.104.

5 (b) Shall, in circuits in which a mediation program
6 has been established, refer to mediation all or part of
7 disputed custody, visitation, or other parental responsibility
8 issues.

9 ~~(c)(b)~~ May refer to mediation all or ~~any~~ part of ~~any~~ a
10 filed case ~~civil action~~ for which mediation is not required
11 under this section.

12 (d) Shall not refer to mediation, regardless of any
13 other law requiring mediation:

14 1. Any case regarding issuance of domestic, repeat,
15 dating, or sexual violence injunctions, except to the extent
16 authorized by rules adopted by the Supreme Court; or

17 2. Any case in which the court finds, upon motion or
18 request of a party, there has been a history of violence,
19 including, but not limited to, domestic violence, that would
20 compromise the mediation process or endanger any person's
21 safety.

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

30 ~~(d) In circuits in which a dependency or in need of~~
31 ~~services mediation program has been established, may refer to~~

1 ~~mediation all or any portion of a matter relating to~~
2 ~~dependency or to a child in need of services or a family in~~
3 ~~need of services.~~

4 (4) The Supreme Court ~~chief judge of each judicial~~
5 ~~circuit~~ shall maintain a list of certified mediators ~~who have~~
6 ~~been certified by the Supreme Court and who have registered~~
7 ~~for appointment in that circuit.~~

8 (a) Whenever possible, qualified individuals who have
9 volunteered their time to serve as mediators shall be
10 appointed. If a mediation program is funded pursuant to s.
11 44.108, volunteer mediators shall be entitled to reimbursement
12 pursuant to s. 112.061 for all actual expenses necessitated by
13 service as a mediator.

14 (b) Nonvolunteer mediators shall be compensated
15 according to rules adopted by the Supreme Court. If a
16 mediation program is funded pursuant to s. 44.108, a mediator
17 may be compensated by the state, the county, or ~~by~~ the
18 parties.

19 Section 4. Section 44.104, Florida Statutes, is
20 amended to read:

21 44.104 Voluntary binding arbitration ~~and voluntary~~
22 ~~trial resolution.~~--

23 (1) Two or more ~~opposing~~ parties who are involved in a
24 civil dispute may agree in writing to submit the controversy
25 to voluntary binding arbitration, ~~or voluntary trial~~
26 ~~resolution,~~ in lieu of litigation of the issues involved,
27 prior to or after a lawsuit has been filed, provided no
28 constitutional issue is involved.

29 (2) If the parties have entered into an agreement
30 which provides ~~in voluntary binding arbitration~~ for a method
31 for appointing of one or more arbitrators, ~~or which provides~~

1 ~~in voluntary trial resolution a method for appointing a member~~
2 ~~of The Florida Bar in good standing for more than 5 years to~~
3 ~~act as trial resolution judge,~~ the court shall proceed with
4 the appointment as prescribed. However, ~~in voluntary binding~~
5 ~~arbitration~~ at least one of the arbitrators, who shall serve
6 as the chief arbitrator, shall meet the qualifications and
7 training requirements adopted pursuant to s. 44.106. In the
8 absence of an agreement, or if the agreement method fails or
9 for any reason cannot be followed, the court, on application
10 of a party, shall appoint one or more qualified arbitrators,
11 ~~or the trial resolution judge, as the case requires.~~

12 (3) The arbitrators ~~or trial resolution judge~~ shall be
13 compensated by the parties according to their agreement.

14 (4) Within 10 days after the submission of the request
15 for binding arbitration, ~~or voluntary trial resolution,~~ the
16 court shall provide for the appointment of the arbitrator or
17 arbitrators, ~~or trial resolution judge, as the case requires.~~
18 Once appointed, the arbitrators ~~or trial resolution judge~~
19 shall notify the parties of the time and place for the
20 hearing.

21 (5) Application for voluntary binding arbitration ~~or~~
22 ~~voluntary trial resolution~~ shall be filed and fees paid to the
23 clerk of the court as if for complaints initiating civil
24 actions. The clerk of the court shall handle and account for
25 these matters in all respects as if they were civil actions,
26 except that the clerk of court shall keep separate the records
27 of the applications for voluntary binding arbitration ~~and the~~
28 ~~records of the applications for voluntary trial resolution~~
29 from all other civil actions.

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1 (6) Filing of the application for binding arbitration
2 ~~or voluntary trial resolution~~ will toll the running of the
3 applicable statutes of limitation.

4 (7) The chief arbitrator ~~or trial resolution judge~~ may
5 administer oaths or affirmations and conduct the proceedings
6 as the rules of court shall provide. At the request of any
7 party, the chief arbitrator ~~or trial resolution judge~~ shall
8 issue subpoenas for the attendance of witnesses and for the
9 production of books, records, documents, and other evidence
10 and may apply to the court for orders compelling attendance
11 and production. Subpoenas shall be served and shall be
12 enforceable in the manner provided by law.

13 (8) The ~~A voluntary binding arbitration~~ hearing shall
14 be conducted by all of the arbitrators, but a majority may
15 determine any question and render a final decision. ~~A trial~~
16 ~~resolution judge shall conduct a voluntary trial resolution~~
17 ~~hearing. The trial resolution judge may determine any question~~
18 ~~and render a final decision.~~

19 (9) The Florida Evidence Code shall apply to all
20 proceedings under this section.

21 (10) An appeal of a voluntary binding arbitration
22 decision shall be taken to the circuit court and shall be
23 limited to review on the record and not de novo, of:

24 (a) Any alleged failure of the arbitrators to comply
25 with the applicable rules of procedure or evidence.

26 (b) Any alleged partiality or misconduct by an
27 arbitrator prejudicing the rights of any party.

28 (c) Whether the decision reaches a result contrary to
29 the Constitution of the United States or of the State of
30 Florida.

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1 (11) ~~Any party may enforce a final decision rendered~~
2 ~~in a voluntary trial by filing a petition for final judgment~~
3 ~~in the circuit court in the circuit in which the voluntary~~
4 ~~trial took place. Upon entry of final judgment by the circuit~~
5 ~~court, any party may appeal to the appropriate appellate~~
6 ~~court. Factual findings determined in the voluntary trial are~~
7 ~~not subject to appeal.~~

8 ~~(12)~~ The harmless error doctrine shall apply in all
9 appeals. No further review shall be permitted unless a
10 constitutional issue is raised.

11 (12)~~(13)~~ If no appeal is taken within the time
12 provided by rules promulgated by the Supreme Court, then the
13 decision shall be referred to the presiding judge in the case,
14 or if one has not been assigned, then to the chief judge of
15 the circuit for assignment to a circuit judge, who shall enter
16 such orders and judgments as are required to carry out the
17 terms of the decision, which orders shall be enforceable by
18 the contempt powers of the court and for which judgments
19 execution shall issue on request of a party.

20 (13)~~(14)~~ This section shall not apply to any dispute
21 involving child custody, visitation, or child support, or to
22 any dispute which involves the rights of a third party not a
23 party to the arbitration ~~or voluntary trial resolution~~ when
24 the third party would be an indispensable party if the dispute
25 were resolved in court or when the third party notifies the
26 chief arbitrator ~~or the trial resolution judge~~ that the third
27 party would be a proper party if the dispute were resolved in
28 court, that the third party intends to intervene in the action
29 in court, and that the third party does not agree to proceed
30 under this section.

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1 Section 5. Section 44.1041, Florida Statutes, is
2 created to read:

3 44.1041 Voluntary trial resolution.--

4 (1) Two or more opposing parties who are involved in a
5 civil dispute may agree in writing to submit the controversy
6 to voluntary trial resolution in lieu of litigation of the
7 issues involved, before or after a lawsuit has been filed, if
8 no constitutional issue is involved.

9 (2) If application for voluntary trial resolution is
10 made before a lawsuit is filed, such application shall be
11 filed and fees paid to the clerk of the court as if for
12 complaints initiating civil actions. The clerk of the court
13 shall handle and account for these matters in all respects as
14 if they were civil actions, except that the clerk of the court
15 shall keep separate the records of the applications for
16 voluntary trial resolution from all other civil actions. If
17 application for voluntary trial resolution is made after a
18 lawsuit has been filed, such application shall be filed in the
19 corresponding civil action.

20 (3) The filing of a presuit application for voluntary
21 trial resolution tolls the running of the applicable statutes
22 of limitation.

23 (4) If the parties have entered into an agreement that
24 provides a method for appointing a member of The Florida Bar
25 in good standing for more than 5 years to act as
26 trial-resolution judge, the court shall proceed with the
27 appointment as prescribed. In the absence of an agreement, or
28 if the agreement method fails or for any reason cannot be
29 followed, the court, on application of a party, shall appoint
30 the trial-resolution judge.

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1 (5) The trial-resolution judge shall be compensated by
2 the parties according to their agreement.

3 (6) Once appointed, the trial-resolution judge shall
4 notify the parties of the time and place for any hearings.

5 (7) The trial-resolution judge may administer oaths or
6 affirmations and conduct the proceedings as the rules of court
7 provides. At the request of any party, the trial-resolution
8 judge shall issue subpoenas for the attendance of witnesses
9 and for the production of books, records, documents, and other
10 evidence and may apply to the court for orders compelling
11 attendance and production. Subpoenas are served and are
12 enforceable in the manner provided by law.

13 (8) A trial-resolution judge shall conduct the
14 voluntary trial-resolution hearing. The trial-resolution judge
15 may determine any question and render a final decision.

16 (9) The Florida Evidence Code applies to all
17 proceedings under this section.

18 (10) Any party may enforce a final decision rendered
19 in a voluntary trial by filing a petition for final judgment
20 in the circuit court in the circuit in which the voluntary
21 trial took place. Upon entry of final judgment by the circuit
22 court, any party may appeal to the appropriate appellate court
23 any factual findings and rulings on questions of law made by
24 the trial-resolution judge.

25 (11) The harmless-error doctrine applies in all
26 appeals.

27 (12) If a final decision rendered in a voluntary trial
28 has not been incorporated into a final judgment, the decision
29 shall be referred to the presiding judge in the case, or if
30 one has not been assigned, the decision shall be referred to
31 the chief judge of the circuit for assignment to a circuit

1 judge who shall enter such orders and judgments as are
2 required to carry out the terms of the decision. Any orders
3 issued are enforceable by the contempt powers of the court and
4 for which judgments of execution shall issue upon the request
5 of a party.

6 (13) This section does not apply to any dispute
7 involving child custody, visitation, or child support, or to
8 any dispute that involves the rights of a third party who is
9 not a party to the voluntary trial resolution when the third
10 party would be an indispensable party if the dispute were
11 resolved in court, or if the third party notifies the
12 trial-resolution judge that the third party would be a proper
13 party if the dispute were resolved in court, that the third
14 party intends to intervene in the action in court, and that
15 the third party does not agree to proceed under this section.

16 Section 6. Subsection (2) of section 44.108, Florida
17 Statutes, is amended to read:

18 44.108 Funding of mediation and arbitration.--

19 (2) When court-ordered mediation services are provided
20 by a circuit court's mediation program, the following fees,
21 unless otherwise established in the General Appropriations
22 Act, shall be collected by the clerk of court:

23 (a) Eighty dollars per party ~~person~~ per scheduled
24 session in unified family court mediation when the parties'
25 combined income is greater than \$50,000, but less than
26 \$100,000 per year;

27 (b) Forty dollars per party ~~person~~ per scheduled
28 session in unified family court mediation when the parties'
29 combined income is less than \$50,000; or

30 (c) Forty dollars per party ~~person~~ per scheduled
31 session in county court cases.

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2 No mediation fees shall be assessed under this subsection in
3 residential eviction cases, against a party found to be
4 indigent, or for any small claims action. No mediation fees
5 shall be assessed under this subsection in unified family
6 court cases that are limited to one or more of the following
7 issues: child dependency, children in need of services,
8 families in need of services, juvenile delinquency, or issues
9 arising out of judicial findings in relation to injunctions
10 for protection against domestic violence. Fees collected by
11 the clerk of court pursuant to this section shall be remitted
12 to the Department of Revenue for deposit into the state
13 courts' Mediation and Arbitration Trust Fund to fund
14 court-ordered mediation. The clerk of court may deduct \$1 per
15 fee assessment for processing this fee. The clerk of the court
16 shall submit to the chief judge of the circuit, no later than
17 30 days after the end of each quarter, a report specifying the
18 amount of funds collected under this section during each
19 quarter of the fiscal year.

20 Section 7. Subsection (1) of section 61.183, Florida
21 Statutes, is amended to read:

22 61.183 Mediation of certain contested issues.--

23 (1) In any proceeding in which the issues of parental
24 responsibility, primary residence, visitation, or support of a
25 child are contested, the court shall make referrals ~~may refer~~
26 ~~the parties~~ to mediation in accordance with s. 44.102 ~~rules~~
27 ~~promulgated by the Supreme Court.~~ In Title IV-D cases, any
28 costs, including filing fees, recording fees, mediation costs,
29 service of process fees, and other expenses incurred by the
30 clerk of the circuit court, shall be assessed only against the
31 nonprevailing obligor after the court makes a determination of

1 the nonprevailing obligor's ability to pay such costs and
2 fees.

3 Section 8. This act shall take effect July 1, 2006.

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5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 Senate Bill 2188

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8 Deletes all references to voluntary trial resolution from
9 current law on voluntary binding arbitration and voluntary
10 trial resolution.

10 Creates new section of Florida Statutes with essentially
11 equivalent voluntary trial resolution provisions that were
12 deleted from current law on voluntary binding arbitration and
13 voluntary trial resolution, with addition of provision
14 providing that factual findings made by the trial-resolution
15 judge may be appealed.

16 Provides for change in title to reflect that bill as amended
17 relates to the broader topic of "alternative dispute
18 resolution."
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