

By the Committees on Justice Appropriations; Judiciary; and
Senator Campbell

604-2160-06

1 A bill to be entitled

2 An act relating to mediation; amending s.

3 44.1011, F.S.; revising, creating, and deleting

4 definitions; creating s. 44.1015, F.S.;

5 providing standards for conduct of mediation;

6 providing for the role of the mediator and

7 counsel in specified mediations; amending s.

8 44.102, F.S.; requiring referral of certain

9 cases to mediation; prohibiting certain cases

10 from being referred to mediation; requiring the

11 Supreme Court to maintain a list of certified

12 mediators; amending s. 44.108, F.S.; providing

13 that no mediation fee is required in certain

14 cases; amending s. 61.183, F.S.; requiring the

15 court in certain family law cases to make

16 mediation referrals in accordance with the

17 statute governing court-ordered mediation;

18 providing an effective date.

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

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22 Section 1. Subsection (2) of section 44.1011, Florida

23 Statutes, is amended to read:

24 44.1011 Definitions.--As used in this chapter:

25 (2) "Mediation" means a process whereby a neutral

26 third person called a mediator acts to encourage and

27 facilitate the resolution of a dispute between two or more

28 parties. It is an informal and nonadversarial process in which

29 decisionmaking authority rests with the parties with the

30 objective of helping the disputing parties reach a mutually

31 acceptable and voluntary agreement. ~~In mediation,~~

1 ~~decisionmaking authority rests with the parties. The role of~~
2 ~~the mediator includes, but is not limited to, assisting the~~
3 ~~parties in identifying issues, fostering joint problem~~
4 ~~solving, and exploring settlement alternatives. "Mediation"~~
5 includes:

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

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

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

18 (d) "Unified family court mediation," which means
19 mediation of any of the following circuit matters or any
20 combination thereof:

- 21 1. Dissolution of marriage.
- 22 2. Division and distribution of property arising out
23 of a dissolution of marriage.
- 24 3. Annulment.
- 25 4. Support unconnected with dissolution of marriage.
- 26 5. Paternity.
- 27 6. Child support.
- 28 7. The Uniform Reciprocal Enforcement of Support Act
29 and the Uniform Interstate Family Support Act.
- 30 8. Custodial care of and access to children.
- 31 9. Adoption.

- 1 10. Name changes.
- 2 11. Declaratory judgment actions related to
3 premarital, marital, or postmarital agreements.
- 4 12. Civil domestic, repeat, sexual, or dating violence
5 injunctions.
- 6 13. Child dependency.
- 7 14. Termination of parental rights.
- 8 15. Juvenile delinquency.
- 9 16. Emancipation of a minor.
- 10 17. Children in need of services.
- 11 18. Families in need of services.
- 12 19. Truancy.
- 13 20. Modification and enforcement of orders entered in
14 matters listed in this paragraph.
- 15 ~~(d) "Family mediation" which means mediation of family~~
16 ~~matters, including married and unmarried persons, before and~~
17 ~~after judgments involving dissolution of marriage; property~~
18 ~~division; shared or sole parental responsibility; or child~~
19 ~~support, custody, and visitation involving emotional or~~
20 ~~financial considerations not usually present in other circuit~~
21 ~~civil cases. Negotiations in family mediation are primarily~~
22 ~~conducted by the parties. Counsel for each party may attend~~
23 ~~the mediation conference and privately communicate with their~~
24 ~~clients. However, presence of counsel is not required, and, in~~
25 ~~the discretion of the mediator, and with the agreement of the~~
26 ~~parties, mediation may proceed in the absence of counsel~~
27 ~~unless otherwise ordered by the court.~~
- 28 ~~(e) "Dependency or in need of services mediation,"~~
29 ~~which means mediation of dependency, child in need of~~
30 ~~services, or family in need of services matters. Negotiations~~
31 ~~in dependency or in need of services 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 Section 2. Section 44.1015, Florida Statutes, is
8 created to read:

9 44.1015 Conduct of mediation.--

10 (1) The role of the mediator includes, but is not
11 limited to, assisting the parties in identifying issues,
12 fostering joint problem solving, and exploring settlement
13 alternatives.

14 (2) Legal counsel may be involved in mediation as
15 follows:

16 (a) In circuit court mediation, if a party is
17 represented by counsel, the counsel of record must appear
18 unless stipulated to by the parties or otherwise ordered by
19 the court.

20 (b) In unified family court mediation, negotiations
21 are primarily conducted by the parties. Counsel for each party
22 may attend the mediation conference and privately communicate
23 with his or her clients. However, in the discretion of the
24 mediator, and with the agreement of the parties, mediation may
25 proceed in the absence of counsel unless otherwise ordered by
26 the court.

27 (c) In county court mediation, negotiations are
28 primarily conducted by the parties. If a party is represented
29 by counsel, the counsel of record must appear unless
30 stipulated to by the parties or otherwise ordered by the
31 court. However, presence of counsel is not required in

1 mediations where the action is governed by the Florida Small
2 Claims Rules.

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

5 44.102 Court-ordered mediation.--

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

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

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

14 2. The action is filed for the purpose of collecting a
15 debt.

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

17 4. The action is governed by the Florida Small Claims
18 Rules.

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

21 6. The parties have agreed to binding arbitration.

22 7. The parties have agreed to an expedited trial
23 pursuant to s. 45.075.

24 8. The parties have agreed to voluntary trial
25 resolution pursuant to s. 44.104.

26 (b) Shall, in circuits in which a mediation program
27 has been established, refer to mediation all or part of
28 disputed custody, visitation, or other parental responsibility
29 issues.

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

4 ~~(d)~~ Shall not refer to mediation, regardless of any
5 other law requiring mediation:

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

9 2. Any case in which the court finds, upon motion or
10 request of a party, there has been a history of violence,
11 including, but not limited to, domestic violence, that would
12 compromise the mediation process or endanger any person's
13 safety.

14 ~~(c)~~ ~~In circuits in which a family mediation program~~
15 ~~has been established and upon a court finding of a dispute,~~
16 ~~shall refer to mediation all or part of custody, visitation,~~
17 ~~or other parental responsibility issues as defined in s.~~
18 ~~61.13. Upon motion or request of a party, a court shall not~~
19 ~~refer any case to mediation if it finds there has been a~~
20 ~~history of domestic violence that would compromise the~~
21 ~~mediation process.~~

22 ~~(d)~~ ~~In circuits in which a dependency or in need of~~
23 ~~services mediation program has been established, may refer to~~
24 ~~mediation all or any portion of a matter relating to~~
25 ~~dependency or to a child in need of services or a family in~~
26 ~~need of services.~~

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

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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 state, the county, or ~~by~~ the
11 parties.

12 Section 4. Subsection (2) of section 44.108, Florida
13 Statutes, is amended to read:

14 44.108 Funding of mediation and arbitration.--

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

19 (a) Eighty dollars per party ~~person~~ per scheduled
20 session in unified family court mediation when the parties'
21 combined income is greater than \$50,000, but less than
22 \$100,000 per year;

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

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

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29 No mediation fees shall be assessed under this subsection in
30 residential eviction cases, against a party found to be
31 indigent, or for any small claims action. No mediation fees

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

16 Section 5. Subsection (1) of section 61.183, Florida
17 Statutes, is amended to read:

18 61.183 Mediation of certain contested issues.--

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

30 Section 6. This act shall take effect July 1, 2006.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS for Senate Bill 2188

Title is changed to reflect mediation as the subject of the bill.

Removes provisions to delete references to voluntary trial resolution.

Removes the creation of statute relating to voluntary trial resolution that would allow factual rulings to be appealed.