

A bill to be entitled

An act relating to mediation; amending s. 44.1011, F.S.;
 revising, creating, and deleting definitions; creating s.
 44.1015, F.S.; providing standards for conduct of
 mediation; providing for the role of the mediator and
 counsel in specified mediations; amending s. 44.102, F.S.;
 requiring referral of certain cases to mediation;
 prohibiting certain cases from being referred to
 mediation; requiring the Supreme Court to maintain a list
 of certified mediators; amending s. 44.108, F.S.;
 providing that no mediation fee is required in certain
 cases; amending s. 61.183, F.S.; requiring mediation in
 certain family law cases; providing an effective date.

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

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

44.1011 Definitions.--As used in this chapter:

(2) "Mediation" means a process whereby a neutral third
 person called a mediator acts to encourage and facilitate the
 resolution of a dispute between two or more parties. It is an
 informal and nonadversarial process in which decisionmaking
 authority rests with the parties with the objective of helping
 the disputing parties reach a mutually acceptable and voluntary
 agreement. ~~In mediation, decisionmaking authority rests with the
 parties. The role of the mediator includes, but is not limited
 to, assisting the parties in identifying issues, fostering joint~~

29 ~~problem solving, and exploring settlement alternatives.~~

30 "Mediation" includes:

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

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

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

43 (d) "Unified family court mediation," which means
44 mediation of any of the following circuit matters or any
45 combination thereof:

46 1. Dissolution of marriage.

47 2. Division and distribution of property arising out of a
48 dissolution of marriage.

49 3. Annulment.

50 4. Support unconnected with dissolution of marriage.

51 5. Paternity.

52 6. Child support.

53 7. The Uniform Reciprocal Enforcement of Support Act and
54 the Uniform Interstate Family Support Act.

55 8. Custodial care of and access to children.

56 9. Adoption.

- 57 10. Name changes.
- 58 11. Declaratory judgment actions related to premarital,
- 59 marital, or postmarital agreements.
- 60 12. Civil domestic, repeat, sexual, or dating violence
- 61 injunctions.
- 62 13. Child dependency.
- 63 14. Termination of parental rights.
- 64 15. Juvenile delinquency.
- 65 16. Emancipation of a minor.
- 66 17. Children in need of services.
- 67 18. Families in need of services.
- 68 19. Truancy.
- 69 20. Modification and enforcement of orders entered in
- 70 matters listed in this paragraph.

71 ~~(d) "Family mediation" which means mediation of family~~

72 ~~matters, including married and unmarried persons, before and~~

73 ~~after judgments involving dissolution of marriage; property~~

74 ~~division; shared or sole parental responsibility; or child~~

75 ~~support, custody, and visitation involving emotional or~~

76 ~~financial considerations not usually present in other circuit~~

77 ~~civil cases. Negotiations in family mediation are primarily~~

78 ~~conducted by the parties. Counsel for each party may attend the~~

79 ~~mediation conference and privately communicate with their~~

80 ~~clients. However, presence of counsel is not required, and, in~~

81 ~~the discretion of the mediator, and with the agreement of the~~

82 ~~parties, mediation may proceed in the absence of counsel unless~~

83 ~~otherwise ordered by the court.~~

84 ~~(c) "Dependency or in need of services mediation," which~~
 85 ~~means mediation of dependency, child in need of services, or~~
 86 ~~family in need of services matters. Negotiations in dependency~~
 87 ~~or in need of services mediation are primarily conducted by the~~
 88 ~~parties. Counsel for each party may attend the mediation~~
 89 ~~conference and privately communicate with their clients.~~
 90 ~~However, presence of counsel is not required and, in the~~
 91 ~~discretion of the mediator and with the agreement of the~~
 92 ~~parties, mediation may proceed in the absence of counsel unless~~
 93 ~~otherwise ordered by the court.~~

94 Section 2. Section 44.1015, Florida Statutes, is created
 95 to read:

96 44.1015 Conduct of mediation.--

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

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

101 (a) In circuit court mediation, if a party is represented
 102 by counsel, the counsel of record must appear unless stipulated
 103 to by the parties or otherwise ordered by the court.

104 (b) In unified family court mediation, negotiations are
 105 primarily conducted by the parties. Counsel for each party may
 106 attend the mediation conference and privately communicate with
 107 his or her clients. However, in the discretion of the mediator,
 108 and with the agreement of the parties, mediation may proceed in
 109 the absence of counsel unless otherwise ordered by the court.

110 (c) In county court mediation, negotiations are primarily
 111 conducted by the parties. Counsel for each party may

112 participate. However, presence of counsel is not required in
 113 actions under the Florida Small Claims Rules.

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

116 44.102 Court-ordered mediation.--

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

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

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

125 2. The action is filed for the purpose of collecting a
 126 debt.

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

128 4. The action is governed by the Florida Small Claims
 129 Rules.

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

132 6. The parties have agreed to binding arbitration.

133 7. The parties have agreed to an expedited trial pursuant
 134 to s. 45.075.

135 8. The parties have agreed to voluntary trial resolution
 136 pursuant to s. 44.104.

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

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

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

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

148 2. Any case in which the court finds, upon motion or
 149 request of a party, there has been a history of violence,
 150 including, but not limited to, domestic violence, that would
 151 compromise the mediation process or endanger any person's
 152 safety.

153 ~~(c) In circuits in which a family mediation program has~~
 154 ~~been established and upon a court finding of a dispute, shall~~
 155 ~~refer to mediation all or part of custody, visitation, or other~~
 156 ~~parental responsibility issues as defined in s. 61.13. Upon~~
 157 ~~motion or request of a party, a court shall not refer any case~~
 158 ~~to mediation if it finds there has been a history of domestic~~
 159 ~~violence that would compromise the mediation process.~~

160 ~~(d) In circuits in which a dependency or in need of~~
 161 ~~services mediation program has been established, may refer to~~
 162 ~~mediation all or any portion of a matter relating to dependency~~
 163 ~~or to a child in need of services or a family in need of~~
 164 ~~services.~~

165 (4) The Supreme Court ~~chief judge of each judicial circuit~~
 166 shall maintain a list for each circuit of mediators whom it has

167 ~~who have been certified by the Supreme Court~~ and who have
 168 registered for appointment in that circuit.

169 (a) Whenever possible, qualified individuals who have
 170 volunteered their time to serve as mediators shall be appointed.
 171 If a mediation program is funded pursuant to s. 44.108,
 172 volunteer mediators shall be entitled to reimbursement pursuant
 173 to s. 112.061 for all actual expenses necessitated by service as
 174 a mediator.

175 (b) Nonvolunteer mediators shall be compensated according
 176 to rules adopted by the Supreme Court. If a mediation program is
 177 funded pursuant to s. 44.108, a mediator may be compensated by
 178 the state, the county, or ~~by~~ the parties.

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

181 44.108 Funding of mediation and arbitration.--

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

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

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

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

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195 No mediation fees shall be assessed under this subsection in
 196 residential eviction cases, against a party found to be
 197 indigent, or for any small claims action. No mediation fees
 198 shall be assessed under this subsection in unified family court
 199 cases that are limited to one or more of the following issues:
 200 child dependency, children in need of services, families in need
 201 of services, juvenile delinquency, or issues arising out of
 202 judicial findings in relation to injunctions for protection
 203 against domestic violence. Fees collected by the clerk of court
 204 pursuant to this section shall be remitted to the Department of
 205 Revenue for deposit into the state courts' Mediation and
 206 Arbitration Trust Fund to fund court-ordered mediation. The
 207 clerk of court may deduct \$1 per fee assessment for processing
 208 this fee. The clerk of the court shall submit to the chief judge
 209 of the circuit, no later than 30 days after the end of each
 210 quarter, a report specifying the amount of funds collected under
 211 this section during each quarter of the fiscal year.

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

214 61.183 Mediation of certain contested issues.--

215 (1) In any proceeding in which the issues of parental
 216 responsibility, primary residence, visitation, or support of a
 217 child are contested, the court shall ~~may~~ refer the parties to
 218 mediation in accordance with s. 44.102 ~~rules promulgated by the~~
 219 ~~Supreme Court~~. In Title IV-D cases, any costs, including filing
 220 fees, recording fees, mediation costs, service of process fees,
 221 and other expenses incurred by the clerk of the circuit court,
 222 shall be assessed only against the nonprevailing obligor after

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223 | the court makes a determination of the nonprevailing obligor's
224 | ability to pay such costs and fees.

225 | Section 6. This act shall take effect July 1, 2006.