

CHAMBER ACTION

1 The Judiciary Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to mediation; amending s. 44.1011, F.S.;
7 revising, creating, and deleting definitions; creating s.
8 44.1015, F.S.; providing standards for conduct of
9 mediation; providing for the role of the mediator and
10 counsel in specified mediations; amending s. 44.102, F.S.;
11 requiring referral of certain cases to mediation;
12 prohibiting certain cases from being referred to
13 mediation; requiring the Supreme Court to maintain a list
14 of certified mediators; amending s. 44.108, F.S.;
15 exempting certain parties from mediation fees in certain
16 cases; amending s. 61.183, F.S.; requiring mediation in
17 certain family law cases; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsection (2) of section 44.1011, Florida
22 Statutes, is amended to read:

23 44.1011 Definitions.--As used in this chapter:

HB 7019

2006
CS

24 (2) "Mediation" means a process whereby a neutral third
25 person called a mediator acts to encourage and facilitate the
26 resolution of a dispute between two or more parties. It is an
27 informal and nonadversarial process in which decisionmaking
28 authority rests with the parties with the objective of helping
29 the disputing parties reach a mutually acceptable and voluntary
30 agreement. ~~In mediation, decisionmaking authority rests with the~~
31 ~~parties. The role of the mediator includes, but is not limited~~
32 ~~to, assisting the parties in identifying issues, fostering joint~~
33 ~~problem solving, and exploring settlement alternatives.~~
34 "Mediation" includes:

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

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

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

47 (d) "Unified family court mediation," which means
48 mediation of any of the following circuit matters or any
49 combination thereof:

50 1. Dissolution of marriage.

HB 7019

2006
CS

51 2. Division and distribution of property arising out of a
52 dissolution of marriage.

53 3. Annulment.

54 4. Support unconnected with dissolution of marriage.

55 5. Paternity.

56 6. Child support.

57 7. The Uniform Reciprocal Enforcement of Support Act and
58 the Uniform Interstate Family Support Act.

59 8. Custodial care of and access to children.

60 9. Adoption.

61 10. Name changes.

62 11. Declaratory judgment actions related to premarital,
63 marital, or postmarital agreements.

64 12. Civil domestic, repeat, sexual, or dating violence
65 injunctions.

66 13. Child dependency.

67 14. Termination of parental rights.

68 15. Juvenile delinquency.

69 16. Emancipation of a minor.

70 17. Children in need of services.

71 18. Families in need of services.

72 19. Truancy.

73 20. Modification and enforcement of orders entered in
74 matters listed in this paragraph.

75 ~~(d) "Family mediation" which means mediation of family~~
76 ~~matters, including married and unmarried persons, before and~~
77 ~~after judgments involving dissolution of marriage; property~~
78 ~~division; shared or sole parental responsibility; or child~~

HB 7019

2006
CS

79 ~~support, custody, and visitation involving emotional or~~
 80 ~~financial considerations not usually present in other circuit~~
 81 ~~civil cases. Negotiations in family mediation are primarily~~
 82 ~~conducted by the parties. Counsel for each party may attend the~~
 83 ~~mediation conference and privately communicate with their~~
 84 ~~clients. However, presence of counsel is not required, and, in~~
 85 ~~the discretion of the mediator, and with the agreement of the~~
 86 ~~parties, mediation may proceed in the absence of counsel unless~~
 87 ~~otherwise ordered by the court.~~

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

98 Section 2. Section 44.1015, Florida Statutes, is created
 99 to read:

100 44.1015 Conduct of mediation.--

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

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

HB 7019

2006
CS

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

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

114 (c) In county court mediation, negotiations are primarily
 115 conducted by the parties. Counsel for each party may
 116 participate. However, presence of counsel is not required in
 117 actions under the Florida Small Claims Rules.

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

120 44.102 Court-ordered mediation.--

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

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

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

129 2. The action is filed for the purpose of collecting a
 130 debt.

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

HB 7019

2006
CS

132 4. The action is governed by the Florida Small Claims
133 Rules.

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

136 6. The parties have agreed to binding arbitration.

137 7. The parties have agreed to an expedited trial pursuant
138 to s. 45.075.

139 8. The parties have agreed to voluntary trial resolution
140 pursuant to s. 44.104.

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

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

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

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

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

157 ~~(c) In circuits in which a family mediation program has~~
158 ~~been established and upon a court finding of a dispute, shall~~
159 ~~refer to mediation all or part of custody, visitation, or other~~

HB 7019

2006
CS

160 ~~parental responsibility issues as defined in s. 61.13. Upon~~
161 ~~motion or request of a party, a court shall not refer any case~~
162 ~~to mediation if it finds there has been a history of domestic~~
163 ~~violence that would compromise the mediation process.~~

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

169 (4) The Supreme Court ~~chief judge of each judicial circuit~~
170 ~~shall maintain a list for each circuit of mediators whom it has~~
171 ~~who have been certified by the Supreme Court and who have~~
172 ~~registered for appointment in that circuit.~~

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

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

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

185 44.108 Funding of mediation and arbitration.--

186 (2) When court-ordered mediation services are provided by
187 a circuit court's mediation program, the following fees, unless

HB 7019

2006
CS

188 otherwise established in the General Appropriations Act, shall
189 be collected by the clerk of court:

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

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

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

198

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

HB 7019

2006
CS

215 specifying the amount of funds collected under this section
216 during each quarter of the fiscal year.

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

219 61.183 Mediation of certain contested issues.--

220 (1) In any proceeding in which the issues of parental
221 responsibility, primary residence, visitation, or support of a
222 child are contested, the court shall ~~may~~ refer the parties to
223 mediation in accordance with s. 44.102 ~~rules promulgated by the~~
224 ~~Supreme Court~~. In Title IV-D cases, any costs, including filing
225 fees, recording fees, mediation costs, service of process fees,
226 and other expenses incurred by the clerk of the circuit court,
227 shall be assessed only against the nonprevailing obligor after
228 the court makes a determination of the nonprevailing obligor's
229 ability to pay such costs and fees.

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