

1                                   A bill to be entitled  
 2           An act relating to mediation; amending s. 44.1011, F.S.;  
 3           revising, creating, and deleting definitions; creating s.  
 4           44.1015, F.S.; providing standards for conduct of  
 5           mediation; providing for the role of the mediator and  
 6           counsel in specified mediations; amending s. 44.102, F.S.;  
 7           requiring referral of certain cases to mediation;  
 8           prohibiting certain cases from being referred to  
 9           mediation; requiring the Supreme Court to maintain a list  
 10          of certified mediators; amending s. 44.108, F.S.; revising  
 11          how mediation fees are assessed; amending s. 61.183, F.S.;  
 12          requiring mediation in certain family law cases; providing  
 13          an effective date.

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

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

19           44.1011 Definitions.--As used in this chapter:

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

28 ~~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. Alimony.
- 70 |       21. Modification and enforcement of orders entered in
- 71 | matters listed in this paragraph.

72 |       ~~(d) "Family mediation" which means mediation of family~~

73 | ~~matters, including married and unmarried persons, before and~~

74 | ~~after judgments involving dissolution of marriage; property~~

75 | ~~division; shared or sole parental responsibility; or child~~

76 | ~~support, custody, and visitation involving emotional or~~

77 | ~~financial considerations not usually present in other circuit~~

78 | ~~civil cases. Negotiations in family mediation are primarily~~

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

80 | ~~mediation conference and privately communicate with their~~

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

82 ~~the discretion of the mediator, and with the agreement of the~~  
83 ~~parties, mediation may proceed in the absence of counsel unless~~  
84 ~~otherwise ordered by the court.~~

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

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

97 44.1015 Conduct of mediation.--

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

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

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

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

109 | and with the agreement of the parties, mediation may proceed in  
 110 | the absence of counsel unless otherwise ordered by the court.

111 | (c) In county court mediation, negotiations are primarily  
 112 | conducted by the parties. If a party is represented by counsel,  
 113 | the counsel of record must appear unless stipulated to by the  
 114 | parties or otherwise ordered by the court. However, presence of  
 115 | counsel is not required in mediation where the action comes  
 116 | under the Florida Small Claims Rules.

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

119 | 44.102 Court-ordered mediation.--

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

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

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

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

130 | 3. The action is a claim of medical malpractice.

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

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

135 | 6. The parties have agreed to binding arbitration.

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

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

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

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

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

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

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

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

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

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

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

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

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

184 44.108 Funding of mediation and arbitration.--

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

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

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

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

197

198 No mediation fees shall be assessed under this subsection in  
 199 residential eviction cases, against a party found to be  
 200 indigent, or for any small claims action. Fees collected by the  
 201 clerk of court pursuant to this section shall be remitted to the  
 202 Department of Revenue for deposit into the state courts'  
 203 Mediation and Arbitration Trust Fund to fund court-ordered  
 204 mediation. The clerk of court may deduct \$1 per fee assessment  
 205 for processing this fee. The clerk of the court shall submit to  
 206 the chief judge of the circuit, no later than 30 days after the  
 207 end of each quarter, a report specifying the amount of funds  
 208 collected under this section during each quarter of the fiscal  
 209 year.

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

212 61.183 Mediation of certain contested issues.--

213 (1) In any proceeding in which the issues of parental  
 214 responsibility, primary residence, visitation, or support of a  
 215 child are contested, the court shall make referrals ~~may refer~~



216 | ~~the parties~~ to mediation in accordance with s. 44.102 ~~rules~~  
217 | ~~promulgated by the Supreme Court~~. In Title IV-D cases, any  
218 | costs, including filing fees, recording fees, mediation costs,  
219 | service of process fees, and other expenses incurred by the  
220 | clerk of the circuit court, shall be assessed only against the  
221 | nonprevailing obligor after the court makes a determination of  
222 | the nonprevailing obligor's ability to pay such costs and fees.

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