

**IN THE TENTH JUDICIAL CIRCUIT COURT
IN AND FOR HARDEE, HIGHLANDS AND POLK COUNTIES, FLORIDA**

ADMINISTRATIVE ORDER NO. 5-33.3

**IN RE: ESTABLISHMENT OF TENTH CIRCUIT MEDIATION SERVICES
AND PROVIDING FOR MANDATORY REFERRAL OF ALL
CONTESTED FAMILY LAW CASES TO MEDIATION**

WHEREAS, certain domestic disputes that include matters of shared parental responsibility, child residency, paternity, child support and costs, distribution of property, payment of alimony, child visitation and modifications thereof, can be amicably and expeditiously resolved through mediation prior to hearing by the Court; and

WHEREAS, mediation is a process whereby a neutral third person acts to encourage the resolution of disputes through a non-adversarial process and assists the parties in reaching a mutually acceptable agreement; and

WHEREAS, the mediation process can result in cost efficiencies to the parties; and

WHEREAS, mandatory mediation for certain matters increases the availability of judicial resources; and

WHEREAS, it is necessary for the prompt and efficient administration of justice in this Court; it is THEREFORE

ORDERED that:

1. **MEDIATION SERVICES:** Mediation Services serves as an adjunct to the Family Division of the Circuit Court for the purpose of mediating issues on matters of shared parental responsibility, child residency, child support, payment of alimony, paternity, child visitation, distribution of property, and any other domestic dispute, including motions and pleas for temporary relief appearing on the court docket. This program is conducted under the direction of the Office of the Court Administrator and the Chief Judge of the Tenth Judicial Circuit.
2. **MEDIATORS:** If the parties meet income requirements, they may utilize the services of Mediation Services to comply with court ordered mediation. If, however, the parties do not meet income requirements, the parties have ten days from the date of the Order Directing Mediation or Order of Referral to Family Mediation to select a private mediator and notify Mediation Services of that selection.
3. **AUTHORITY TO REFER TO MEDIATION:** Pursuant to Chapter 44, Florida Statutes, and Florida Family Law Rules of Procedure 12.740 and 12.741, the Court on its own motion may refer all or any part of a family case to mediation

for the purpose of mediating family matters (including married and unmarried persons) before and after judgments involving dissolution of marriage, shared or sole parental responsibility, child residency, child support, payments of alimony, child visitation, or distribution of property, involving emotional or financial considerations not usually present in other circuit civil matters.

4. **REFERRAL OF PRE-JUDGMENT AND POST-JUDGMENT FAMILY LAW MATTERS:** Unless otherwise waived by the Court:
 - a. Any party who seeks to schedule a final hearing for either a pre-judgment family law case or a modification of a post dissolution decree or a post-judgment domestic decree between unmarried parents on matters of shared or sole parental responsibility, child residency, child support, payment of alimony, child visitation, distribution of property or on any other domestic dispute shall first participate in a mediation conference through Mediation Services herein established or in a mediation conference with a private mediator.
 - b. Each party shall provide to Mediation Services a current financial affidavit and the most current pay stub available or a letter from an employer stating current earnings. If self-employed, the party must bring a copy of the most recent 1040 form filed with the Internal Revenue Service (IRS).
5. **EXCEPTION: HISTORY OF DOMESTIC VIOLENCE:** Pursuant to Section 44.102(2)(c), Florida Statutes, upon motion or request of a party, the Court shall not refer any case to mediation if it finds there has been a significant history of domestic violence that would compromise the mediation process.
6. **FEES RESULTING FROM WAIVERS ON MOTION:** If a mediation has been scheduled, a party may motion the Court to waive mediation. Any party may apply to the Court by written motion for good cause, to waive the mandatory mediation required by this Order prior to filing a notice for trial. The Court may waive the requirement if it appears (a) that mediation of the issue(s) would not be appropriate under the circumstances of that case or (b) that due to exigent circumstances a hearing before the Court should be expedited. Refunds of any fees paid to Mediation Services will be as provided in “Tenth Circuit Mediation Services: Policies and Procedures”. (See Attachment A.)
7. **POLICIES AND PROCEDURES:** Matters concerning the mediation process with Mediation Services, the associated fees, cancellations and continuances and attendance at mediation sessions will be as provided in “Tenth Circuit Mediation Services: Policies and Procedures”. (See Attachment A.)
8. **RECORD KEEPING:** Mediation Services shall keep a record of the case name, case number, section number, mediator, and the outcome of the mediation session in all cases referred to Mediation Services.

9. **IF AN AGREEMENT IS REACHED DURING THE MEDIATION SESSION:**
- a. If an agreement of all the issues is reached during the mediation session, the mediation report form shall note the full settlement and parties may then proceed to final hearing, requesting that the agreement be incorporated into the final judgment. If a partial agreement is reached, the mediation report form shall note the case has remaining issues and said form shall be filed with the Court.
 - b. For Post-Judgment Matters:
 - i. An Order Approving Modification Agreement, incorporating the agreement, shall be prepared at the mediation session or by a party's attorney.
 - ii. The Order of Approval of a Modification Agreement and the executed agreement shall be forwarded to the judge for consideration.
10. **COMMUNICATIONS DURING THE MEDIATION SESSION:** Pursuant to the Mediation Confidentiality and Privilege Act, with the exception of the parties' signed financial affidavits and any other documents that are required to be filed in the record, all communications, verbal or written, between the parties and from the parties made during the mediation session, shall be confidential and inadmissible as evidence in any subsequent legal proceeding, unless both parties agree otherwise. If an agreement is reached regarding child support, the signed agreement, with the Child Support Guidelines worksheet, shall be filed with the Court.
11. Effective immediately, Administrative Order No. 5-33.2, entered on September 3, 2015, is hereby VACATED AND SUPERCEDED BY THIS ORDER.

DONE and ORDERED on this 30th day of September, 2015.

DONALD G. JACOBSEN
Chief Judge

**TENTH CIRCUIT MEDIATION SERVICES:
POLICIES AND PROCEDURES**

- I. **Authority to Refer Mediation:** Chapter 44, Florida Statutes, and Rules 12.740 and 12.741, Florida Family Law Rules of Procedure, provide that the Court, on its own motion, may refer all or any part of a civil case to mediation for the purpose of mediating family matters between married and unmarried persons, before and after judgments involving:
1. dissolution of marriage,
 2. shared or sole parental responsibility,
 3. child residency,
 4. child support,
 5. payment of alimony,
 6. child visitation,
 7. distribution of property, or
 8. division of liabilities.
- II. **Mediation - The Process:** The following procedures will be followed for services provided by Mediation Services:
1. Within five days of receiving the Order to Mediation, each party must provide a current address, a financial affidavit, a current pay stub voucher or letter from an employer stating current earnings, and a statement (to the best of their knowledge) as to the earnings of the other party to Mediation Services at P.O. Box 9000, Drawer J112, Bartow, Florida 33831-9000. If self-employed, the party must submit a copy of their most recent tax return. If neither party has supplied the necessary information within the designated time, each party will be assessed the full session fee of \$120.00.
 2. Once Mediation Services has received the above information, a letter will be mailed to each party indicating their fee for mediation services. The letter will also instruct each party to call Mediation Services at 863/534-4698 within three days of receipt of the letter to schedule their mediation session. Each session will be scheduled for 150 minutes.
- III. **Fees:**
1. The fee for each session will be assessed as follows:
 - A. Any person may apply to the Clerk of Court for a deferral of the mediation session fee.
 - B. No fee for dependency mediations.
 - C. **\$60.00** per party if the parties combined gross earnings is under \$50,000.
 - D. **\$120.00** per party if the parties combined gross earnings is equal to or over \$50,000, but equal to or under \$100,000.

- E. If the parties combined gross earnings are over \$100,000, the parties do not qualify for the mediation services offered by Mediation Services and must seek private mediation services.
- 2. If subsequent mediation sessions are scheduled, or if the mediation session is extended for more than 120 minutes, the parties will be required to pay an additional session fee at the previously determined rate.
- 3. The mediation session fee may be paid at any time prior to the scheduled mediation. All mediation session fees shall be paid to the Clerk of Court in the county that has jurisdiction over the case. The parties must bring a receipt for the payment or a certified certificate of indigent status from the Clerk of Court to Mediation Services.
- 4. Failure to pay mediation session fee: The mediation will be conducted if one party fails to pay their mediation session fee, but the other pays their assessed fee. However, the Court may issue an order to appear and show cause requiring the non-paying party to appear before the Court at a hearing to show good cause why they should not be held in civil contempt for failing to pay the assessed mediation fees. The Court may assess additional fees and costs against the non-paying party. Any additional fees and costs assessed by the Court shall not be credited toward future mediation sessions, nor may the party seek a refund from the State of Florida for any paid mediation session fees. The other party will not be penalized.

IV. Cancellations and Continuances: A mediation session may be continued or cancelled at the discretion of the mediator, by written joint consent of the parties, or by order of the Court.

- 1. If the mediation session is continued at the discretion of the mediator or by the Court, any paid fees will be credited toward future mediation sessions. If the mediation session is cancelled at the discretion of the mediator or by the Court, the parties may seek a refund from the State of Florida for any paid mediation session fees.
- 2. Cancellation and Continuances by the Parties:
 - A. It is the responsibility of the requesting party to provide Mediation Services with documentation that the mediation is to be continued or cancelled.
 - B. If the notice of the continuance or cancellation is provided at least 5 business days prior to the scheduled mediation session, any paid fees will be credited toward future mediation sessions.
 - C. If notice of the continuance or cancellation is provided less than 5 business days prior to the scheduled mediation session, unless there is a major medical emergency or death in the immediate family, the full payment of the mediation fee will be charged to the requesting party for the scheduled session. The fees will not be credited toward a future mediation session, nor may the party seek a refund from the State of Florida for any paid mediation session fees. The other party will not be penalized.
 - D. In the event that the parties reach a full and complete settlement that is submitted to the Court for approval, and a signed copy is provided to

Mediation Services prior to the mediation session, no session fee will be charged. If any mediation session fees have been paid, the parties may apply to the State of Florida for a refund.

V. Attendance at Mediation Session:

1. General: Each party shall appear at any scheduled mediation session. Each party is responsible for paying the Clerk of Court the fee regardless of whether the other party appears. The Court, on its own motion, having received notification by Mediation Services that a party failed to appear for a scheduled mediation session, or upon motion of the appearing party, may issue an order to appear and show cause why the non-appearing party should not be held in civil contempt. Pursuant to Rule 12.741(b)(2), Florida Family Law Rules of Procedure, the Court may “impose sanctions, including an award of mediator and attorneys’ fees and other costs, against the party failing to appear.” Any additional fees and costs assessed by the Court shall not be credited toward future mediation sessions, nor may the party seek a refund from the State of Florida for any paid mediation session fees.
2. Appearance by telephone: In the case of an emergency or when a party resides over 100 miles away from the mediation session location, the parties may agree by stipulation to the affected party appearing by telephone. Any such agreement must be provided to Mediation Services prior to the mediation session. Any party attempting to appear by telephone without an agreement by the parties will be considered a non-appearing party. Any party may seek an order from the Court to appear for the mediation session by telephone.