

ADMINISTRATIVE ORDER
NO. 2004-14-02

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT, IN AND FOR ORANGE
AND OSCEOLA COUNTIES, FLORIDA

**AMENDED ADMINISTRATIVE ORDER RE: FAMILY MEDIATION PROVIDING FOR
MANDATORY REFERRAL OF ALL CONTESTED FAMILY LAW CASES TO MEDIATION**

WHEREAS, pursuant to Article V, Section 2(d) of the Florida Constitution and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and the power to do everything necessary to promote the prompt and efficient administration of justice; and

WHEREAS, certain domestic disputes that include matters of shared parental responsibility, paternity, child support and costs, distribution of property, payment of alimony, parental time sharing, 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;

NOW, THEREFORE, I, Belvin Perry, Jr., pursuant to the authority vested in me as Chief Judge of the Ninth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.215, hereby order that, effective **immediately** for cases as described herein, ordered to mediation on or after the date of this Order:

1. MEDIATION PROGRAM:

DISPUTE RESOLUTION SERVICES (“DRS”) serves as an adjunct to the Domestic Relations Division of the Circuit Court for the purpose of mediating matters referred to in Paragraph 2.A. below, including motions and pleas for temporary relief appearing on the court docket. This program shall be conducted under the direction of the Office of the Court Administrator and the Chief Judge of the Ninth Judicial Circuit.

2. AUTHORITY & REQUIREMENT FOR MEDIATION:

A. 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 civil case to mediation for the purpose of mediating family matters including married and unmarried parties before and after judgments involving dissolution of marriage, shared or sole parental responsibility, parental time sharing, child support, payment of alimony, or distribution of property or debts, or any other domestic dispute involving emotional or financial considerations not usually present in other circuit civil matters. However, any case in which the Department of Revenue (“DOR”) is a party, the action shall not be subject to the requirement of mandatory referral to mediation as contemplated by this Order. Any case with DOR as a party shall continue to be referred to the Office of the Child Support Hearing Officers.

B. TEMPORARY, PRE-JUDGMENT AND POST-JUDGMENT FAMILY LAW

MATTERS: Any party who seeks to schedule a temporary or final hearing for any matter referred to in Paragraph 2.A. above shall first participate in a mediation conference through DRS as established herein.

3. LIST OF MEDIATORS:

A list of staff and contract certified Family Mediators shall be maintained by the Family Mediation Unit of DRS at:

Orange County: Telephone number (407) 836-2004 located at 425 N. Orange Avenue, Room 120, Orlando, FL 32801;

Osceola County: Telephone number (407) 742-2451 located at 2 Courthouse Square, Kissimmee, FL 34741.

4. APPOINTMENT OF MEDIATORS:

The parties have 10 days from the filing of an answer or responsive pleading to select a mediator. If they choose a DRS Mediator, they shall notify DRS of the selection within the 10 day period. If the parties have a combined income under \$100,000 and they have not agreed on a mediator, DRS shall appoint a DRS contract or staff Mediator. If the parties have a combined income of over \$100,000 per year and have been unable to agree on a mediator, DRS shall appoint a DRS Contract Mediator by rotation.

5. HISTORY OF DOMESTIC VIOLENCE:

Pursuant to section 44.102 (2)(c), Florida Statutes, upon motion or request of a person, 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. WAIVERS:

A. Automatic Waivers: A person may file Form 51 (Cover Sheet - Case at Issue, attached hereto) with a Notice for Trial and dispense with mediation if it has not been scheduled and if:

1. A mediation was scheduled and the other person failed to appear;
2. A default has been entered; or

3. A person is unavailable for mediation either in person or by telephone because he/she:
 - a. is not subject to the jurisdiction of this Court and has refused to participate; or
 - b. currently resides in another country; or
 - c. is imprisoned out of state.

No Notice for Trial shall be accepted without a Form 51.

B. Waivers on Motion: If a mediation has been scheduled, a party may motion the Court to dispense with 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. Motions to Dispense with mediation of temporary matters may be heard on short notice during ex parte time.

The Court may waive such a requirement if it appears (a) that mediation of the issues 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. If mediation has already been scheduled, and the mediation is canceled by the Court, both parties shall notify DRS, in writing, of the waiver at least 10 calendar days prior to the scheduled mediation to cancel the mediation. If the parties do provide appropriate notice of cancellation, there shall be no fee. If both parties do not give proper notification of the judicial waiver or cancellation, neither party will be refunded, or if not paid, shall be required to pay a full session fee for the canceled mediation session which shall be paid to the Clerk of the Court.

7. PROCEDURE:

A. Temporary Matters: After obtaining service of process and prior to scheduling a hearing for temporary matters, if the parties have not agreed on a private mediator, the parties shall complete a Form 50 (attached hereto) and submit the form by fax or mail to the county in which the case was filed:

Orange County: Dispute Resolution Services, 425 N. Orange Avenue, Room 120, Orlando, Florida 32801, telephone number: (407) 836-2004; fax number: (407) 836-2367;

Osceola County: Dispute Resolution Services, 2 Courthouse Square, Kissimmee, FL 34741, telephone number: (407) 742-2451; fax number: (407) 742-2401; and schedule and attend a mediation session with a Supreme Court certified mediator unless otherwise waived by the Court. If mediation is unsuccessful, either person may immediately request a hearing on an expedited basis.

B. Pre and Post Judgment: At any time after service and prior to filing a notice of trial, a party may submit a completed Form 50 (attached hereto) to request the scheduling of a mediation session in the county in which the case was filed.

C. Other Mediation Scheduling Procedures: Scheduling procedures for each county in the Ninth Circuit are available on the website www.ninthcircuit.org. Anytime after an answer has been filed with the Court, DRS may schedule the mediation session prior to contacting either party. Mediation sessions shall be scheduled and conducted in accordance with Florida Family Court Rules of Procedure 12.740 through 12.741, unless otherwise ordered.

D. Documents for Mediation: Each party shall bring to the initial mediation conference a current financial affidavit and the most current pay stub vouchers or letter from an employer stating current earnings. If self-employed, the party must bring a copy of the most recent Form 1040 filed with the Internal Revenue Service (IRS) or other verification of income.

8. MEDIATION SESSION COSTS THROUGH DISPUTE RESOLUTION SERVICES:

A. Fees: If a state-funded court-connected mediation session is coordinated by DRS, the initial mediation session shall not exceed 180 minutes unless agreed to by the parties and the mediator. The fee for up to 180 minutes shall be as follows:

\$60.00 per party if the sum of the gross annual earnings of both parties is under \$50,000; and

\$120.00 per party if the sum of the gross annual earnings of both parties is over \$50,000 but under \$100,000.

Fee waived for an indigent party.

If subsequent sessions are scheduled, or if the session is extended for more than 180 minutes, the parties will be required to pay an additional session fee at the same rate for each subsequent session of up to 180 minutes.

B. Payment of Mediation Session Fees: If a case is scheduled with a DRS mediator, payment shall be made prior to the mediation session. All mediation session fees for cases with combined incomes of less than \$100,000 are to be paid to the Clerk of Court in the county in which the case was filed:

Orange County Clerk of the Court, Domestic Division, 425 N. Orange Avenue, Orlando, FL 32801;

Osceola County Clerk of the Court, Domestic Division, 2 Courthouse Square, Kissimmee, FL 34741.

Payments are to be made in cash, money order, certified check or attorney check only.

C. Failure to Pay Mediation Session Fee: If a party fails to pay his/her mediation session fee as ordered in the Order of Referral, an Order to Show Cause may be issued by the Court ordering any non-paying party to appear for a hearing to show cause why the party should not be held in contempt of court and have a judgment entered against them for the fees due and any assessed additional attorney fees and costs. These fees shall not be credited to any future session fees.

9. CANCELLATIONS AND RESETS BY THE PARTIES:

A mediation session may be reset or canceled if both parties and DRS agree in writing to said reset or cancellation. Cancellation and reset fees will be indicated on the Notice or Order of Referral to Mediation. If the parties and DRS cannot agree to resetting or cancelling a mediation, then the party who is requesting the reset or cancellation may apply to the Court for a reset or cancellation. The

process for reset or cancellation must be completed and DRS must receive a stipulation prepared by DRS and signed by each party or his/her attorney or a judge's order allowing the reset or cancellation at least 10 calendar days prior to the scheduled mediation session to avoid cancellation and reset fees for the first reset or cancellation. The party requesting the reset or cancellation is responsible for assuring that DRS has received signed stipulations from both parties.

10. SESSION FEES FOR CONTINUANCES AND CANCELLATIONS BY THE PARTIES:

A. First reset/cancellation with 10 or more calendar days' notice. If a stipulation to reset or cancel the mediation prepared by DRS and signed by both parties is received by DRS 10 calendar days prior to the mediation session, no fee will be due for the initial cancellation or reset. Any fees paid will be applied to the next mediation session. No fee will be refunded.

B. Less than 10 calendar days' notice and subsequent resets or cancellations. If the DRS stipulation to reset or cancel is received less than 10 calendar days prior to the mediation session, or for subsequent resets or cancellations, a session fee of \$60.00 will be charged to the party requesting the cancellation or reset. This fee shall not be applied to future mediation sessions. No fee will be refunded.

C. If any session is cancelled or reset with less than one full business day's notice, each party shall owe their regular session fee (\$60.00 or \$120.00 based on income).

D. No mediation shall be conducted until all prior unpaid fees due are remitted. If any fee is not paid as indicated in the above paragraphs, a rule to show cause may be issued on the day of the mediation, or any day thereafter, ordering any non-paying party to appear for a hearing to show cause as to why the party should not be held in contempt of court or have a judgment entered against the party. If the entire payment is made prior to the date and time of the show cause hearing, said hearing shall be cancelled.

D. Telephone calls or other written notice to reset or cancel a scheduled mediation shall be considered insufficient. Only orders of the Court or notices prepared by DRS and signed by both parties will be accepted as notice to reset or cancel mediation. All cancellation and reset fees for cases with combined incomes of less than \$100,000 shall be paid to the Clerk of the Court in the County in which the case was filed:

Orange County Courthouse, Domestic Division, 425 N. Orange Avenue, Orlando, FL 32801;

Osceola County Courthouse, Domestic Division, 2 Courthouse Square, Kissimmee, FL 34741.

No additional mediation sessions may be conducted until all fees have been paid or waived by the Court.

11. EXCEPTIONS TO SESSION FEES FOR CANCELLATION FEES:

A. Court Waiver. Any party may apply to the Court for a waiver of a fee for good cause.

B. Attorney Trial Conflict. If an attorney is notified or called to a trial before a court at a time which conflicts with a scheduled mediation session, the attorney must immediately call the other party and DRS and fax or hand deliver a notification of the case number and court of the conflicting trial setting and the time and date they were notified of the trial, in order to reschedule the mediation session. If such notice is received in writing and by 3 business hours (between 8:00am – 5:00pm) preceding the mediation session, only one fee of \$60.00 will be due. If this notice is not received 3 business hours preceding the mediation session, a fee of \$120.00 will be due by the party requesting the cancellation and will not be applied to the next mediation session. If the fee has been paid by the other party, it will be applied to the next mediation session and the party requesting the cancellation will reimburse that party or pay both session fees for the following mediation.

12. ATTENDANCE:

Each party shall appear at any scheduled mediation session. A party is deemed to appear at a convened family mediation session if the named party is physically present (or appears by telephone if previously approved) at the commencement of the mediation session. Each party is still responsible for paying the Clerk of the Court (for those cases under \$100,000) the fee regardless of whether the other party appears. Parties may be required to appear one hour prior to the scheduled mediation time to complete proposed parenting plan questionnaires if time sharing or parental responsibility is an issue. In those cases, attorneys and the mediator may appear at the regular scheduled time.

A. If both parties fail to appear, each party shall owe the entire session fee for the scheduled mediation. These fees shall not be applied to any future mediations.

B. If one party fails to appear, the fee for the party who appears will be due on the day of the mediation. The non-appearing party shall be charged both fees and shall reimburse the party who appeared for the session, or if another mediation is scheduled, shall pay the entire session fee for the next session in addition to the fee for the original session. These fees will not apply to any future mediation sessions. If an indigent party fails to appear, sanctions may include the cost of both session fees.

13. ATTENDANCE OF COUNSEL:

In the discretion of the mediator and with the agreement of the parties, the mediation session may proceed in the absence of counsel unless otherwise ordered by the Court. If counsel is not present within 15 minutes after the scheduled mediation session time, and his/her client does not wish to proceed in the attorney's absence, the mediation session may be canceled. If the mediation is so canceled, the party who will not proceed shall receive no refund for the session, and if the fee has not paid, shall be charged for the session. In addition, the party who will not proceed will reimburse the

opposing party his/her mediation fee.

14. APPEARANCE BY TELEPHONE:

In the case of an emergency or when a party resides over 100 miles away, said party may request an appearance by telephone. In these cases, telephonic appearance is allowed by stipulation of the opposing party or attorney in writing to the Court prior to the mediation session, or by order of the Court. The person appearing by telephone must have access to a fax machine. All mediation session fees from the party appearing by telephone must be received 5 business days prior to the mediation session.

15. RECORD KEEPING:

DRS shall keep a record of the case name, number, assigning judge, mediator, the attorneys and the outcome of the mediation session in all cases referred to DRS.

16. RESULTS OF MEDIATION:

A. No Agreement: If an agreement is not reached through mediation, the mediator shall report the lack of agreement to DRS who shall report to the Court.

B. Full Pre-Judgment Agreements: If an agreement on all the issues is reached, the mediation report form shall note the full settlement and the parties may then proceed on the uncontested hearing calendar to request that the agreement be incorporated into the final judgment.

C. Full Post-Judgment Agreements:

(1) An Order Approving Modification Agreement incorporating the Agreement shall be prepared by the party, by the mediator, or by a party's attorney.

(2) The Order of Approval of a Modification Agreement and the executed Agreement shall be forwarded to the judge for consideration by DRS.

D. Partial Agreements: If a partial agreement is reached, the mediation report form shall note

that the case has remaining issues and said form and the partial agreement shall be filed with the Court. At that time either party may file a Form 51 together with a Notice for Trial on the remaining unresolved issues.

17. 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 which are required to be filed in the public 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.

Administrative Order No. 2004-14-01 is vacated and set aside and has been incorporated and/or amended herein.

DONE AND ORDERED at Orlando, Florida, this 22nd day of December, 2008.

_____/s/_____
Belvin Perry, Jr.
Chief Judge

Copies to:

Clerk of Courts, Orange County
Clerk of Courts, Osceola County
General E-Mail Distribution List
<http://www.ninthcircuit.org>

INFORMATION FOR SCHEDULING MEDIATION PRIOR TO TRIAL SETTING

Date: _____ Case No: _____ Div. No.: _____

TYPE OF CASE: DIVORCE _____ PATERNITY _____ MODIFICATION _____ TEMPORARY _____

OTHER (SPECIFY)_____. IS EITHER PARTY CERTIFIED AS INDIGENT? _____

PETITIONER: _____
(Please circle) Mr. Mrs. Ms.

RESPONDENT: _____
(Please circle) Mr. Mrs. Ms.

YOUR **ANNUAL GROSS** INCOME; \$ _____

YOUR **ANNUAL GROSS** INCOME; \$ _____

Your Address or attorney's if you have an attorney

Your Address or attorney's if you have an attorney

ADDRESS: _____

ADDRESS: _____

DAYTIME TELEPHONE # _____

DAYTIME TELEPHONE # _____

FAX NUMBER _____

FAX NUMBER _____

EMAIL: _____

EMAIL _____

ATTORNEY: _____

ATTORNEY: _____

G.A.L. (IF ANY): _____

GAL TELEPHONE NO: _____

GAL ADDRESS: _____

Please check issues: Parental responsibilities _____; time-sharing _____; child support _____; equitable distribution (assets/debts) _____; possession of home _____; attorney fees _____; alimony/spousal support _____; other _____

Has either party ever received any public assistance ___ Receiving it now? ___ Type: _____

Have you ever been involved with any other family case (DIFFERENT CASE#) with this party? _____

State or County of Origin _____ If Orange County case, what is the case number _____

The mediation must be conducted within 30 days unless extended by agreement of parties. You may call the mediation office at **(407)836-2004** to obtain a date and time for mediation (with the other side conferenced in, if possible). You may also check the website for *Available Dates* at **NinthCircuit.org – Dispute Resolution Services**.

By signing this form I am declaring that to the best of my knowledge there is no significant violence or substance abuse which would impede the mediation process. (If you feel that you will not be able to make decisions without being intimidated by the other party, please call us at (407) 836-2004). FAX this Information Form to **(407) 836-2367** or mail to **425 N. Orange Avenue, Room 120, Orlando, FL 32801**

SIGNATURE

cc: ___ Respondent (or Att'y) ___ Petitioner (or Att'y) cc: ___ Domestic Clerk Rev. Form 50 (9/12/08)

***This Form 50 may expire in 30 days at which time it may be discarded. After that you may need to refile.**

Petitioner/Plaintiff,

and

Respondent/Defendant.

COVER SHEET-CASE AT ISSUE

(TO BE FILED AFTER MEDIATION AND WITH NOTICE FOR TRIAL)

Please set this case for trial for the following reason(s):

_____ This case has been to a full mediation (not mediation of temporary matters) of all issues on _____.

The Certified Mediator who conducted the mediation was _____, and an impasse was declared on () **all** issues, or on () **some** issues.

_____ A Default was entered on _____.

_____ The Court has found that there has been a history of domestic violence that would impede the mediation process.

_____ A mediation was scheduled but the (_____) Petitioner or (_____) Respondent failed to appear, and the other party has chosen not to reschedule another session.

_____ A party is unavailable for mediation either in person or by telephone because he/she:

_____ is not subject to the jurisdiction of this court and has refused to participate,

_____ currently resides in another country; or,

_____ is imprisoned out of state.

_____ A Motion to Dispense With Mediation was granted by court order dated _____ because the Court determined that:

_____ Mediation of the issues would not be appropriate under the circumstances of the case.

_____ Due to exigent circumstances a hearing before the Court should be expedited.

_____ Other reasons: _____

Signature

Date _____

Print Name and Title