Basic Family Law 2017

COURSE CLASSIFICATION: BASIC LEVEL

October 20, 2017

Live Presentation:
Tampa Airport Marriot
4200 George J Bean Parkway
Tampa, FL 33607

Course No. 2564R
Are you getting the most from your Member Benefits?

Practice Resources

- AMICUS ATTORNEY
- bill4time
- CITRIX
- Clio
- CORPORATE CREATIONS
- CosmoLex
- JURIS CO.
- FloridaBarCLE
- Lawyers Advising Lawyers
- law
- LAWCOUNTABILITY
- LexisNexis
- LogikCull
- MyCase
- netdocuments
- NEXTPOINT
- PRI
- Career Center PRI
- RightSignature
- rocket matter
- RPOST
- Ruby
- ServeManager
- ShareFile
- Start Your Own Firm
- Tabs3
- THELAW.TV
Visit www.floridabar.org/memberbenefits for a complete list of member benefits
Common Questions About CLER

1. What is CLER?
   CLER, or Continuing Legal Education Requirement, was adopted by the Supreme Court of Florida in 1988 and requires all members of The Florida Bar to continue their legal education.

2. What is the requirement?
   Over a 3 year period, each member must complete 33 hours, 5 of which are in the area of ethics, professionalism, substance abuse, or mental illness awareness, and 3 hours in technology.

3. Where may I find information on CLER?
   Rule 6-10 of the Rules Regulating The Florida Bar sets out the requirement. All the rules may be found at www.floridabar.org/rules.

4. Who administers the CLER program?
   Day-to-day administration is the responsibility of the Legal Specialization and Education Department of The Florida Bar. The program is directly supervised by the Board of Legal Specialization and Education (BLSE) and all policy decisions must ultimately be approved by the Board of Governors.

5. How often and by when do I need to report compliance?
   Members are required to report CLE hours earned every three years. Each member is assigned a three year reporting cycle. You may find your reporting date by logging in to your member portal at member.floridabar.org.

6. Will I receive notice advising me that my reporting period is upcoming?
   Four months prior to the end of your reporting cycle, you will receive a CLER Reporting Affidavit, if you still lack hours.

7. What happens if I am late or do not complete the required hours?
   You run the risk of being deemed a delinquent member which prohibits you from engaging in the practice of Florida law.

8. Will I receive any other information about my reporting cycle?
   Yes, you will receive reminders prior to the end of your reporting cycle, if you have not yet completed your hours.

9. Are there any exemptions from CLER?
   Rule 6-10.3(c) lists all valid exemptions. They are:
   1) Active military service
   2) Undue hardship (upon approval by the BLSE)
   3) Nonresident membership (see rule for details)
   4) Full-time federal judiciary
   5) Justices of the Supreme Court of Florida and judges of district, circuit and county courts
   6) Inactive members of The Florida Bar
10. Other than attending approved CLE courses, how may I earn credit hours?

Credit may be earned by:

1) Lecturing at an approved CLE program
2) Serving as a workshop leader or panel member
3) Writing and publishing in a professional publication or journal
4) Teaching (graduate law or law school courses)
5) University attendance (graduate law or law school courses)

11. How do I submit various activities for credit evaluation?

Applications for credit may be found on our website, www.floridabar.org.

12. How are attendance hours posted on my CLER record?

You must post your credits online by logging in to your member portal at member.floridabar.org.

13. How long does it take for hours to be posted to my CLER record?

When you post your CLE credit online, your record will be automatically updated and you will be able to see your current CLE hours and reporting period.

14. How may I find information on programs sponsored by The Florida Bar?

You may wish to visit our website, www.floridabar.org/cle, or refer to The Florida Bar News. You may also call CLE Registrations at 850/561-5831.

15. If I accumulate more than 30 hours, may I use the excess for my next reporting cycle?

Excess hours may not be carried forward. The standing policies of the BLSE, as approved by the Supreme Court of Florida specifically state in 6.03(b):

... CLER credit may not be counted for more than one reporting period and may not be carried forward to subsequent reporting periods.

16. Will out-of-state CLE hours count toward CLER?

Courses approved by other state bars are generally acceptable for use toward satisfying CLER.

17. If I have questions, whom do I call?

You may call the Legal Specialization and Education Department of The Florida Bar at 850/561-5842.

While online checking your CLER, don’t forget to check your Basic Skills Course Requirement status.
PREFACE

The course materials in this booklet were prepared for use by the registrants attending our Continuing Legal Education course during the lectures and later in their offices.

The Florida Bar is indebted to the members of the Steering Committee, the lecturers and authors for their donations of time and talent, but does not have an official view of their work products.

**CLER CREDIT**  
(Maximum 7.0 hours)

General ........................................... 7.0 hours  
Ethics................................................ 1.0 hour

Seminar credit may be applied to satisfy both CLER and Board Certification requirements in the amounts specified above, not to exceed the maximum credit. Refer to Chapter 6, Rules Regulating The Florida Bar, see the CLE link at www.floridabar.org for more information about the CLER and Certification Requirements.

Prior to your CLER reporting date you will be sent a Reporting Affidavit (must be returned by your CLER reporting date). You are encouraged to maintain records of your CLE hours.

**CLE CREDIT IS NOT AWARDED FOR THE PURCHASE OF THE COURSE BOOK ONLY.**

**CLE COMMITTEE MISSION STATEMENT**

The mission of the Continuing Legal Education Committee is to assist the members of The Florida Bar in their continuing legal education and to facilitate the production and delivery of quality CLE programs and publications for the benefit of Bar members in coordination with the Sections, Committees and Staff of The Florida Bar and others who participate in the CLE process.

**COURSE CLASSIFICATION**

The Steering Committee for this course has determined its content to be BASIC.
SECTION
Chrystal Thornton — Program Co-Chair
Denise Mutamba — Program Co-Chair

FACULTY & STEERING COMMITTEE
Alexander Caballero, Tampa
Reuben Doupé, Naples
Kristina Feher, St. Petersburg
Amy Hickman, Boynton Beach
Vivian Cortes Hodz, Tampa
Raymond J. Rafool, Miami
Andrea Reid, Boca Raton
Philip S. Wartenberg, Tampa
Deborah Wells, Lakeland
Felicia M. Williams, Wesley Chapel

CLE COMMITTEE
Jenifer S. McCaffrey Lehner, Tampa — Chair
Terry L. Hill — Director, Programs Division

For a complete list of Member Services visit our web site at www.floridabar.org.
**LECTURE PROGRAM**

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<td>8:00 a.m. - 8:15 a.m.</td>
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| 8:30 a.m. – 9:20 a.m. | **Prospective Client Intake**<br>
**Speaker:** Felicia M. Williams, Wesley Chapel |
| 9:25 a.m. – 10:15 a.m. | **Dependency**<br>
**Deborah Wells, Lakeland** |
| 10:15 a.m. - 10:30 a.m. | **Break**                                    |
| 10:30 a.m. - 11:20 a.m. | **Paternity and Divorce (Equitable Distribution / Alimony / Child Support)**<br>
**Philip S. Wartenberg, Tampa** |
| 11:25 a.m. - 12:15 p.m. | **Domestic Violence**<br>
**Andrea Reid, Boca Raton** |
| 12:15 p.m. - 1:25 p.m. | **Lunch (on your own)**                      |
| 1:25 p.m. - 2:15 p.m. | **Adoptions (including issues facing same-sex couples)**<br>
**Amy Hickman, Boynton Beach** |
| 2:20 p.m. - 3:15 p.m. | **Alternative Dispute Resolution**<br>
**Vivian Cortes Hodz, Tampa** |
| 3:15 p.m. - 3:30 p.m. | **Break**                                    |
| 3:30 p.m. - 4:30 p.m. | **Family Law Legal Updates/Celebrity Clients/Ethics and Professionalism**<br>
**Raymond J. Rafool, Miami**<br>
**Kristina Feher, St. Petersburg**<br>
**Reuben Doupé, Naples**<br>
**Alexander Caballero, Tampa** |
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Raymond J. Rafool, Miami
Kristina Feher, St. Petersburg
Reuben Doupé, Naples
Alexander Caballero, Tampa
ALEXANDER CABALLERO is a partner with Sessums Black Caballero Ficarrotta PA. He is board certified in Marital and Family Law and a fellow of the American Academy of Matrimonial Lawyers. He practices exclusively in the area of family law. Alex is past chair of The Florida Bar Marital and Family Law Certification Committee and is the current Chair of the Judicial Nomination Committee for the 13th Judicial Circuit. He is a former Executive Council member of The Florida Bar Family Law Section and former member of the Florida Board of Bar Examiners. He is a past Chair of the Hillsborough County Bar Family Law Section. He has served two terms on a Bar Grievance Committee, becoming Chair during both terms. Alex has published and lectured regarding various family law issues. Alex received his juris doctorate with high honors from Florida State University College of Law in 1993. He graduated cum laude from the University of South Florida in 1990 with a double major in Criminology and Psychology.

REUBEN DOUPÉ is a partner at Klaus Doupé. He joined the firm in 2004 as an associate attorney, and became a shareholder in 2008. Mr. Doupé is one of only the three attorneys in Southwest Florida admitted to the American Academy of Matrimonial Lawyers, an organization whose purpose is to promote the highest degree of professionalism and excellence in family law. He is Board Certified in Marital and Family Law, a distinction granted by The Florida Bar, and a current member of the Family Law Section of the Florida Bar where he served in the leadership of the Rules and Forms Committee and on the Legislative Committee. Mr. Doupé is a member of the Collier County Bar Association, past-chair of the Family Law Section and past-president of the Young Lawyer Section. He is also past associate member of the Thomas S. Biggs Chapter of the Inns of Court. Reuben A. Doupé authored “Ruberg, Parry and the Classification of Unvested Stock Options” in the November 2007 issue of the Florida Bar Journal. He has also lectured to the Family Law Section of the Collier County Bar Association on the topics of Sealing the Court File in Family Cases as well as on the Proper Enforcement Technique’s for Equitable Distribution Awards.

KRISTINA FEHER is the managing member of Feher Law, PLLC in St. Petersburg, Florida. Kristina practices in the areas of bankruptcy, family law, and small business matters. Kristina received her B.S. in Criminology from Barry University and her law degree from Thomas M. Cooley Law School in Lansing, Michigan. Kristina is a St. Petersburg native and attended St. John Vianney Catholic School and Lakewood High School’s Center for Advanced Technologies (CAT). She currently serves as a 6th Circuit Representative (Ex-Officio) for The Florida Bar Young Lawyers’ Division Board of Governors. She is also an Adjunct Professor for St. Petersburg College’s Paralegal Studies Program.

AMY U. HICKMAN is the Florida Bar 2011 Board Certified Attorney of the Year and a 1989 graduate of the University of Florida College of Law. As a partner in Hausmann & Hickman, P.A. and a Board Certified Adoption Lawyer, Amy specializes in adoption law with an additional focus on reproductive law. Amy has placed hundreds of children for adoption, created numerous families through surrogacy and preplanned adoption arrangements and represented parties in contested adoption proceedings. Prior to founding Hausmann & Hickman, P.A., Amy was an attorney with the Juvenile Advocacy Project of the Legal Aid Society of Palm Beach County where she represented children in State and Federal Court. In 2009, the President of the Florida Bar appointed Amy to the Florida Bar’s Inaugural Adoption Certification Committee.
She is also a member of the Executive Committee of the Family Law Section of the Florida Bar and past chair of the Sections Juvenile and Adoption Committee. Through the Family Law section, Amy advocates to improve and reform Florida’s Adoption Law. Her skill and expertise in adoption law, resulted in the Family Law Section’s instrumental role in reforming Florida’s Adoption Statutes.

VIVIAN CORTES HODZ practices exclusively marital and family law in Tampa with the law firm of Cortes Hodz Family Law and Mediation, P.A. She is a Supreme Court Certified Family Law mediator. Ms. Hodz is the Immediate Past President of the Tampa Hispanic Bar Association, a board member of Bay Area Legal Services, a graduate of Class II of the Florida Bar Leadership Academy, Vice Chair of the Voluntary Bar Liaison Committee of the Florida Bar, and is a member of the Florida Bar Diversity and Inclusion Committee and of the 13th Judicial Circuit Grievance Committee “B”. Ms. Hodz received her Bachelor of Arts degree in Criminology in 1999 from Florida State University and her Juris Doctor in 2002 from Florida State University College of Law.

RAYMOND J. RAFOOL, II, a partner at Rafool, LLC, is admitted to practice before the U.S. Supreme Court, all courts in the State of Florida; the U.S. District Court, Southern District of Florida; and the U.S. District Court, Middle District of Florida. Mr. Rafool, a Board Certified Attorney in Marital and Family Law and Expert in Family Trial Law, concentrates his practice on domestic and international family law and business and commercial litigation. He is AV-rated by Martindale-Hubbell, a 2013, 2014, 2015, 2016 and 2017 Super Lawyer, rated a Florida Top Lawyer in Family Law by ALM, has a perfect 10 rating from Avvo, named amongst the Top Lawyers by South Florida Legal Guide, Top 100 Lawyers by The National Advocates and Top One Percent by The National Association of Distinguished Counsel, recognized by Florida Trend Magazine as among the 2017 Florida Legal Elite. He has represented many celebrities and individuals in complex family, same sex, and business litigation and lectures and has authored numerous publications on aforementioned practice areas. Mr. Rafool is a past Vice Chair and member of the Florida Family Law Rules Committee, the past Chair and member of the Florida Criminal Rules Committee, a past Vice Chair and member of the Florida Judicial administration, Selection and Tenure Committee and a past Representative on the Florida Rules of Judicial Administration Committee.

ANDREA REID concentrates her practice in the areas of Marital and Family Law. As an effective and successful litigator, Ms. Reid has represented over 1,000 clients throughout her career. Her prior tenure as an Associate Attorney with the Legal Aid Society of Palm Beach County has led to her vast experience in many of the most contentious aspects of family law litigation and settlement. She has championed the rights of numerous parents in achieving majority timesharing with their children and determining child support and alimony that is a fair representation of the party’s financial earnings. She has prevailed in complex financial disputes and helped her clients protect their assets and financial obligations during equitable distribution and spousal support matters. Her passion for the legal system has led her to undertake gray areas of law and unique fact scenarios that have led to unprecedented achievements for her clients.

PHILIP WARTENBERG is a shareholder with the law firm of Allen Dell. Mr. Wartenberg is Board Certified in Marital and Family Law by the Florida Board of Legal Specialization and Education. He confines his practice exclusively to Marital and Family Law matters.
DEBORAH L. WELLS graduated from the Stetson University, College of Law in 1991. Ms. Wells began her practice as an assistant public defender that same year, in Polk County. In 1995 she left for private practice and has been practicing in criminal defense and dependency areas since that time. She has represented parents, grandparents, other relatives of dependent children, foster parents, and children in dependency court. Ms. Wells takes court appointed cases, as well as private paying clients. She has been a volunteer guardian ad litem as well as an attorney ad litem. In her criminal defense practice, she practices at the trial level.

FELICIA M. WILLIAMS is the principal attorney of Fathers’ Rights Law, P.A. in Tampa Bay, Florida. Ms. Williams graduated with honors from the University of South Florida with a degree in Special Education and received her law degree from The Ohio State University Moritz College of Law. Ms. Williams practices family law, with an interest in fathers’ rights. Ms. Williams is a member of The Florida Bar, serves as a Director of Women Lawyers of Pasco, Director and Secretary of the East Pasco Bar Association, and is a Barrister of the Stann W. Givens Family Law Inn of Tampa.
Prospective Client Intake

By

Felicia M. Williams, Wesley Chapel
PROSPECTIVE CLIENT INTAKE

THE MOST IMPORTANT PROSPECTIVE CLIENT IS THE ONE YOU CHOOSE NOT TO TAKE

Any discussion about prospective clients must start with this basic premise: The Most Important Prospective Client is the One You Choose Not to Take

The foundation of the evaluating a prospective client has little to do with the Prospective Client

1. Be a Hero, but selectively Heroic
   Do your emotions or prospective client’s “story” play too great of a role in accepting new clients?

2. Have a Financially Sound Business or Business Plan
   Does the financial need of the business play a role in accepting a grade C-F prospective client?

How to Spot a Grade A or B client:
1. Reasonable expectations
2. Reasonable ability to pay for services
3. Respects the law, others
   - Can appreciate that a Court order is not a suggestion
4. Values you (and your staff) and your professional advice and recommendations
5. If you ask a direct question, you receive a reasonably direct answer
6. Accepts personal responsibility
7. Does the prospective client’s case resonate with your passion, mission, and culture?
   - Women Rights, Fathers’ Rights, LGBT Rights, QDROS, Mediations, Adoptions, Collaborative Practice

That feeling of euphoria when the telephone rings and you find you have a real, paying client, will quickly turn to despair when you find your client is:

1. Unreasonable
2. Non-paying
3. Unwilling to bend
4. Unwilling to let the case end
5. Looking for someone else (i.e. you) to blame

It is important that your intake process is set up to screen out these clients. Your life as a lawyer will be happier without the added stress these types of clients can bring.

Consider your family, your health, both physical and mental

How to spot grade C, D, and F clients:
1. More than one prior attorney
2. Complaints about your fee
3. Statements such as, “it’s the principal of the thing”
4. Eternal victimhood, eternal litigation

What if this is a client you do not want or should not take?
1. Decline to take the case
2. Quote them a larger than normal fee
Understand that if they do retain you, you will earn every cent of this fee taking calls and emails at night and on weekends; listening to complaints about the ex-spouse, the adversary, yourself and your staff; and dealing with unreasonable demands.

STARTING THE RELATIONSHIP
INTAKE CALL

CLIENT’S INITIAL PERCEPTION
The client’s perception of you begins during the first phone call, whether that call is with you or a member of your staff. Ensure that whoever takes the initial call is friendly, yet professional.

WHO TAKES THE INTAKE CALL
Some offices have one person dedicated to taking intake calls. Some offices have legal assistants dedicated to intake calls. Some offices have non-attorney sales persons.

INFORMATION GATHERING AND DATA COLLECTION

Two Sides to Information Gathering
Do not get too much information up front. Too much information can disqualify you from representing other clients. Get them in the door. Get as much information up front as you can. Inquire about household size, income and assets. Weed them out. Ensure that your intake person gets the necessary information to run a conflict check. Run the conflict check prior to the initial consultation. What if there is a conflict? Inform the prospective client that you cannot represent him/her without revealing why… Send a non-engagement letter.

Whoever takes the call should have a checklist of the information to get from the individual. (See Appendix A) Consistency ensures that you will get all the information you need every time.

Data Collection
Track referral sources, number of consultation calls, consultations scheduled, no show rates, conversion rates. Track consultation matter types: Divorce, Paternity, Adoption. Track efficiency of intake personnel. Gratitude Box Acknowledge, reciprocate and appreciate referral sources. Send thank you cards to your best referral sources. Take them to lunch, keep the relationship active.

CONSULTATION
Approach your initial consultation like a job interview. Both you and the prospective client have a need for each other and want to be certain that you are the right fit for each other.
MAKE SURE OFFICE IS INVITING
The initial consultation is the client’s first time to really see you and your office.
Neatness is key.
Not everyone can afford expensive offices or elaborate office furnishings. However, all offices should be neat and comfortable. The reception area and conference rooms should be clean and free of clutter, such as file boxes, messy stacks of publications, and dirty glasses or coffee cups.
Your potential clients are going through a very difficult period, make sure they are comfortable.
A comfortable place to sit, a quiet area where private conversations cannot be heard, as well as relaxing reading material to enjoy while waiting, should be available for clients.
Offering refreshments.
If you have adequate kitchen or storage facilities, your receptionist or other staff members should be able to offer them something to drink. You should determine whether you want to offer food. Some attorneys do, some do not. You should do what makes you feel comfortable.
Remember that this meeting sets the tone for your relationship.
Also, remember that you are advertising yourself. The client will leave this meeting knowing whether he/she wants to hire you.

MAKE SURE YOU GIVE THE CORRECT IMPRESSION
Whether you wear a suit, dress in business casual clothing or dress in street clothes is your personal choice.
What you choose to wear to the initial consultation sends a message to the client.
Some clients want an attorney in a suit, some may be discomfited dealing with a person in a suit.
The way you choose to dress, affects the type of client you will attract.
The way you choose to dress also affects your client’s expectations for the remainder of the relationship.
Don’t wear a suit to the initial consult if you will be greeting the client wearing jeans in all subsequent meetings.

PURPOSE OF THE CONSULTATION
The purpose of the consultation is to ensure that you and the client are a good fit.
The client may decide not to hire you, but you may also decide not to hire the client.
Remember Rule Number One: The most important prospective client is the one you do not take.
Listen to your gut…
Ask your office team about their interactions with the prospective client
The initial consult sets the tone of the relationship.

As previously mentioned, don’t wear a suit if that is not who you are day to day.
Don’t make yourself available for a 7:00 a.m. Saturday consult if you never intend to be available early on a Saturday morning again.
Likewise, don’t do a midnight consult if you don’t want the client calling you and expecting you to be available for meetings at midnight in the future.

The purpose of the initial consultation is to give the prospective client information.

While the prospective client may know others who have gone through divorce, this is likely a new situation for the individual.
Most people have a fear of the unknown.
This is your chance to alleviate some of those fears through education.
It is only after the client is aware of the procedural and substantive laws that the prospective client can make informed decisions on how best to proceed.

The prospective client may not know whether he/she actually wants a divorce.
Be ready to give the prospective client alternatives.
Counseling, Collaborative Law
Even if this client doesn’t hire you, if he/she leaves with a good impression, he/she will give your name to others.

The purpose of the consultation is to get information from the prospective client.

Have a checklist with you during the consultation so you can ensure you get everything you need from the client. (See Appendix B.)
Your checklist should have all the information you need to open the file.

HOW TO CONDUCT THE CONSULTATION

LOCATION/MEDIUM
You do not have to conduct the initial consultation in person, in your office.
You can do the consultation over the telephone or via Skype (or similar method). You could also choose to meet somewhere other than your office.
If you meet the person, ensure that you are meeting in a safe location.
Be aware that if you are meeting in a public location, this could affect privilege.

THIRD PARTY AT THE CONSULT
Often the prospective client will bring along a trusted friend or family member.
Be sure to advise the prospective client that this third party will remove the attorney-client privilege that protects the discussions in the consultation.
The third party could be subpoenaed to testify.

LET THE PROSPECTIVE CLIENT TALK
You want to gather information about the client. But, jumping right into “what is the value of your marital assets” is off-putting.
Remember that the prospective client’s life is in turmoil and he/she is worried about the future, including seeing his/her children, supporting himself/herself and the children, selling his/her home, moving away from family and friends, and even losing family and friends. What is his or her pain point?

Give the prospective client a chance to talk. Often they are looking for this opportunity. They may not be able to talk to family/friends about what is happening. Let yourself be the person they talk to.

This will help the person to feel comfortable with you.
This will also help you to gather information.
You will learn what the client believes is important.
You will learn what type of person the client is.

Lead the prospective client to tell you a story. “Once upon a time, you met ___________________. Tell me where, when and what happened after that.”

EDUCATE THE CLIENT

Many people are suspicious of attorneys and suspicious of the system. Many people know only what they have seen on tv shows, which is nowhere close to reality.

This means they have no basis with which to make rational decisions.
The potential client comes in thinking that he/she will be in court tomorrow, and you’ll be having drinks with the judge after the case is done.

Inform the client that each matter is individualized. The amount of time it will take to get through the system depends on the judge’s calendar, the complexity of the issues (are there custody issues, is there a family business, etc.), and whether the parties are willing to work together to solve the issues.

PEACE

ADVISE THE POTENTIAL CLIENT OF WHAT IS EXPECTED OF HIM/HER

Although you need to be professional in all of your interactions with the prospective client, you also want the client to be respectful and professional with you and your staff.

You should advise the prospective client that courteous behavior is expected of them – REMEMBER, THIS MEETING SETS THE TONE FOR YOUR RELATIONSHIP.

Also, advise the client what is expected of him/her when meeting with opposing counsel and when attending hearings.

Most clients will never have done this before. They need guidance regarding what to expect and do, and maybe even how to dress.

Giving them this information will also help them to feel more comfortable with the process.

Inform the client that he/she is expected:

To accurately and completely inform the firm of all facts related to this matter and any other matter in which the firm performs services for the client.
To read correspondence, transactional documentation, and all other communications from the Firm.
To ask questions when in doubt as to the meaning of any communication/document.
To not sign any document until the client understands the document.
To pay all bills promptly.
To arrive to court, hearings, mediations, arbitrations, meetings, etc., promptly.
To call ahead if the client is going to be late or is unable to attend.

THEN ASK, WHAT DO YOU WANT TO DO?
Make the ask: Would you like to retain our services?
If client waivers, determine why the prospective client is really there.
Free Legal Advice?
Assist in their “DIY” Process?
Have resources ready for them:
  Parenting resources
  Legal Aid
  Florida Bar Referral Service: https://www.floridabar.org/public/lrs/
  Hillsborough County Forms: https://www.hillsclerk.com/About-Us/Forms

SELLING ONESELF VS OVERSELL
Although the initial consultation is like a job interview, and this may be a job you really need, be careful not to oversell.
Be realistic with the prospective client.
Don’t promise or overpromise. There are no guaranteed litigation results.
Unmet expectations lead to ethics complaints and fee disputes.

SHOW ME THE MONEY
TO BILL OR NOT TO BILL FOR THE CONSULTATION
You may choose not to bill for the consultation, to encourage more business/potential business.
Billing for the consultation has benefits (in addition to getting paid for your time):
  The client knows he/she isn’t going to be able to use you for free legal advice.
  You may limit the number of “prospective clients” who are actually just there to conflict you out from the case.
  The prospective client will limit the amount of time he/she spends in your office and will focus on what is really important.
  This sets the tone for the relationship – you expect to get paid.

CONSULTATION BILLING OPTIONS
  Hourly rate
  Reduced hourly rate for consultation
  Flat rate for consultation
  Give ½ hour free, the client pays for the remainder
  Consultation fee will be credited toward retainer
PAYING UP FRONT VS. PAYING AFTER THE CONSULTATION

If the prospective client does not pay prior to the consultation, there is a risk that you will not get paid.

WHEN TO DISCUSS RATES AND FEES

Fee disputes probably are among the most common reasons clients file grievances against attorneys. If the fee policy is clear at the outset and you send your clients regular, itemized statements, you will minimize the number of fee disputes. Further, in those instances when a fee dispute is inevitable, the problem will surface more quickly and can be dealt with earlier and more effectively.

FEE AGREEMENT UP FRONT OR LATER

Determining when to give the client the fee agreement is a personal choice.

Do you have the client sign the agreement during the consultation? If you have the client sign the agreement in your office, what happens during a fee dispute when the client says he/she:

Was pressured to sign?
Did not understand the agreement?
Did not read the agreement?

Or can the client take it home and review it? If you let them take it home, ensure the client understands that no attorney-client relationship exists until you receive the signed agreement.

Have someone in your office assigned to follow-up with the client.

WHAT IF THE PROSPECTIVE CLIENT CANNOT PAY YOUR FEES? Or does not want to pay your fees…

Be polite

But, make sure the client understands that this is your job. Just like the client’s job, you both deserve to get paid for what you do.

Remind the client that you have to pay for the lights, air conditioning, internet.

Remind the client that the staff deserves to get paid for their work too.

Give information about:
Legal Aid
Florida Bar Attorney Referral Service
Pro se forms

Do not negotiate. Do not barter.

ATTORNEY-CLIENT RELATIONSHIP

DUTIES TO PROSPECTIVE CLIENTS

Florida Rules of Professional Responsibility 4-1.18
Lopez v. Flores, --- So.3d ---, 2017 WL 1018492 (Fla. 3d DCA Mar. 15, 2017) (holding that because confidential information was shared by the Petitioners’ lawyer to a member of the Respondent’s lawyer’s...
firm, Petitioners were prospective clients of Respondent’s lawyer and an attorney-client relationship existed).

CONFIDENTIALITY
Even if the prospective client does not hire you, he/she is still entitled to confidentiality.
Inform the client that this is a confidential meeting. Everything they say to you is privileged. The meeting itself is confidential.
“Even if I saw you in the mall, I would act like I’d never met you.”

PRIVILEGE
When does privilege attach?
Whether there is privilege “does not turn on the client actually hiring or engaging the attorney; it is enough if the client merely consulted the attorney about a legal question “with the view to employing [the attorney] professionally.” Dean v. Dean, 607 So.2d 494, 497 (FLA 4th DCA 1992) (finding attorney-client privilege existed even though the “client” never paid for services, was not entered into the firm database as a client, nor received true “legal advice”).

Pursuant to Florida Evidence Code section 90.502(1)(b), a "client" is a person "who consults a lawyer with the purpose of obtaining legal services or who is rendered legal services by a lawyer."

DISQUALIFICATION
IS THE CLIENT USING YOU THE CONSULTATION TO DISQUALIFY YOU FROM REPRESENTING HIS/HER SPOUSE?
Although many clients have never done this before and most know very little or nothing about the legal system, some are savvy. Some people will consult with every attorney in the county even though they have already chosen an attorney. They do this to disqualify the attorneys from representing their spouse.
One of the questions asked during the intake call should be whether the person has spoken to other lawyers. If yes,

Who?
How many?
Why?

Comments to Florida Rules of Professional Responsibility 4-1.18 indicate that a person who consults with you simply to disqualify you has engaged in a sham and should not be able to disqualify you.

POSSIBLE PATH TO AVOID DISQUALIFICATION
Provide “clear and reasonably understandable warnings and cautionary statements that limit [your] obligations” whenever you request information from an individual. See comments to Florida Rules of Professional Responsibility 4-1.18.
Ensure that the person taking your intake calls makes it clear that he/she is only seeking information necessary to determine that there is no conflict, and that there is no attorney-client relationship until a fee agreement is signed.
Likewise, “[a] person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a “prospective client” within the meaning of subdivision (a).” See comments to Florida Rules of Professional Responsibility 4-1.18.

Note that “[a] lawyer may condition a consultation with a prospective client on the person’s informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter.

See Notice of Waiver of Conflict on the Florida Bar Association’s Practice Resource Institute site at: https://pri.floridabar.org/forms-checklists/

COMMUNICATION
Ask the client for a secure way to communicate with him/her.
Remember, you don’t want to leave a message regarding a potential divorce on an answering machine the children (or the unknowing other spouse) will listen to.

CONFLICT CHECK
If you have represented a party in a legal matter, you cannot represent the opposing party in a substantially similar legal matter. See Rules of Professional Conduct 4-1.7 and 4-1.9.

In some circumstances a party may choose to waive the conflict…
Check for conflicts before the initial consult.
If you learn new information during the initial consult, you may need to run another conflict check.
Keep a list of every client the firm has ever represented, update it daily.
If a conflict does exist, advise the client that there is a conflict, but do not give any more information than that.

Clients often ask “why?”
You cannot tell them, you owe a duty of confidentiality to your pre-existing client.

Send a non-engagement letter.

FOLLOW-UP
NON-ENGAGEMENT LETTER
Send a non-engagement letter if:
The prospective client chooses not to hire you;
There is a conflict of interest;
You choose not to represent the prospective client; or.
A Fee Agreement has not been signed for any reason.

Sample non-engagement letters are located on the PRI website infra

“GLIDE PATH” TO ADDRESS CONCERNS
If the prospective client expressed concerns about being able to afford a lawyer, give the client information about Legal Aid, the Florida Bar Attorney Referral Service and pro se forms available on court websites. If the prospective client wants to make the marriage work, you could provide marriage counseling information.
If there are children involved, you can provide the client with parenting information and resources.
If the prospective client does not retain, schedule follow-up communications.

**STARTING REPRESENTATION**
When you have met with and agreed to represent a new client, you should have formal policies and procedures to open the file and begin the work that will be required.

**ANSWER DATE WITHIN FIVE DAYS**
If the Answer is due within five days, automatically file a Notice of Appearance and request an Extension.

**WELCOME PACKET**
Providing the client with a welcome packet is a good way to make the client feel welcome and to ensure the client has necessary information. The welcome packet might include:
- information about what documents the client needs to provide to the firm;
- answers to frequently asked questions;
- an intake form (See Appendix C);
- articles about parenting through a divorce, dealing with the stress of divorce, etc.;
- firm contact information; and
- information about the court, including what the client should wear and how the client should behave.

Tell the client to gather information and documents. You don’t want to be in the process of filing and find out that you do not have everything you need.

**Resources**
- Florida Bar Practice Resource Institute
  [https://pri.floridabar.org/forms-checklists/](https://pri.floridabar.org/forms-checklists/)
  This site has sample engagement letters, fee agreements, non-engagement letters, intake forms and more.
- Hillsborough County Forms
  [https://www.hillsclerk.com/About-Us/Forms](https://www.hillsclerk.com/About-Us/Forms)
APPENDIX A

(Intake Checklist)
APPENDIX B

(Consultation Checklist)
APPENDIX C

(Intake Form)
PROSPECTIVE CLIENT INTAKE
Felicia Mickens Williams

MOST IMPORTANT CLIENT IS THE ONE YOU CHOOSE NOT TO TAKE.

1. Reasonable expectations
2. Reasonable ability to pay for services
3. Respects the law, others (can appreciate that a Court order is not a suggestion)
4. Values you (and your staff) and your professional advice and recommendations
5. If you ask a direct question, you receive a reasonably direct answer
6. Accepts personal responsibility
7. Does the prospective client’s case resonate with your passion, mission, and culture? (Women Rights, Fathers’ Rights, LGBT Rights, QDROS, Mediations, Adoptions, Collaborative Practice)
HOW TO SPOT
GRADE C, D AND F CLIENTS

• More than one prior attorney
• Complaints about your fee
• Statements such as, “it’s the principal of the thing”
• Eternal victimhood, eternal litigation

WHAT IF THIS IS A CLIENT YOU DO NOT WANT TO TAKE OR SHOULD NOT TAKE?

• Decline to take the case
• Quote them a larger than normal fee
  • Understand that if they retain you, you will earn every cent of this fee taking calls and emails at night and on weekends; listening to complaints about the ex-spouse, the adversary, yourself and your staff; and dealing with unreasonable demands.

DO I WANT TO REPRESENT THIS PERSON

• Look for:
  • Compatibility
  • Truthfulness
  • Reasonableness
  • Unreasonable demands on you or your staff
  • Motive
  • Willingness/desire to go to trial
  • Ability to Accept the Rigors of Litigation
  • Mental Capacity
  • Financial Ability
    • Ability to pay
    • Willingness to pay
INTAKE CALL
- Prospective client’s first impression of you
- Who takes the call?
- Information to get during the call
  - Checklist
  - Get conflict information

INITIAL CONSULTATION
- This is a job interview!
- Make sure your office is inviting
  - The initial consultation is the client’s first time to really see you and your office.
  - You want the client to feel comfortable.
    - Make sure your office is inviting, presentable, warm.
    - Offer the client refreshments.
    - Determine whether to serve food to the client.

INITIAL CONSULTATION
- This meeting sets the tone of your relationship.
- Give the client the correct impression as to what to expect throughout the relationship.
PURPOSE OF THE CONSULTATION

- Ensuring you are a good fit
  - Do you want to represent this client?
  - Does this client want you to represent him/her?
  - Listen to your gut!
- Setting the tone for the rest of the relationship
- Give the client information
  - Alleviate fears
  - Determine what the client needs/wants

PURPOSE OF THE CONSULTATION

- Get information from the prospective client
  - Use a checklist to ensure you get everything you need.

WHERE TO CONDUCT THE CONSULTATION

- In your office?
- Over the telephone?
- Via Skype?
Let’s Talk: The Prospective Client Talk

- Give the prospective client a chance to talk. Often they are looking for this opportunity. They may not be able to talk to family/friends about what is happening. Let yourself be the person they talk to.
  - This will help the person to feel comfortable with you.
  - This will also help you gather information.
  - You will learn what the client believes is important.
  - You will learn what type of person the client is.
  - Lead the prospective client to tell you the story.

Tell the Story

Educate the Client

- Inform the client that each matter is individualized. The amount of time it will take to get through the system depends on the Judge's calendar, the complexity of the issues (are there custody issues, is there a family business, etc.), whether the parties are willing to work together to solve issues.

Selling Oneself vs. Oversell

- The initial consultation is a job interview.
- You probably want the job.
  - So, you need to sell yourself.
- BUT
  - DO NOT PROMISE THINGS YOU CANNOT DELIVER
CONSULTATION: TO BILL OR NOT
TO BILL

- This is a personal choice.
- There are alternatives to regular hourly billing, such as:
  - Reduced hourly rate for consultation
  - Flat rate for consultation
  - Giving a free ½ hour or hour consult and billing thereafter
  - Consultation fee will be credited toward retainer
- Determine whether to bill prior to or after the consultation

DISCUSSING RATES AND FEES

- Determine when to give the prospective client the fee agreement
- Are you going to require that the fee agreement be signed in the office?
- What if the prospective client cannot pay your fees (or doesn’t want to)?
  - Provide information regarding Legal Aid, the Florida Bar Attorney Referral Service, and pro se forms available from court websites.
THE ATTORNEY-CLIENT RELATIONSHIP

- SEE THE FLORIDA RULES OF PROFESSIONAL CONDUCT 4-1-18
- Lopez v. Flores, --- So.3d ---, 2017 WL 1018492 (Fla. 3d DCA Mar. 15, 2017) (holding that because confidential information was shared by the Petitioners' lawyer to a member of the Respondent's lawyer's firm, Petitioners were prospective clients of Respondent's lawyer and an attorney-client relationship existed).

THE ATTORNEY-CLIENT RELATIONSHIP

- CONFIDENTIALITY
  - "If I saw you in the mall, I would pretend not to know you."
- PRIVILEGE
  - Dean v. Dean, 607 So.2d 494, 497 (FLA 4th DCA 1992) (finding attorney-client privilege existed even though the "client" never paid for services, was not entered into the firm database as a client, nor received true "legal advice").

THE ATTORNEY-CLIENT RELATIONSHIP

- DISQUALIFICATION
  - Individuals may consult with you simply to disqualify you/your firm.
  - However, comments to Florida Rules of Professional Responsibility 4-1.18 indicate that a person who consults with you simply to disqualify you has engaged in a sham and should not be able to disqualify you.
  - Provide "clear and reasonably understandable warnings that limit your obligations."
COMMUNICATION
- It is important that you ask your client for the best way to communicate with him/her.
- You do not want to make telephone calls to the family phone or send emails to a shared email address.

CONFLICTS OF INTEREST
- RULES 4-1.7 and 4-1.9
- Carefully check for conflicts before setting up the initial consultation.
- Check again after the initial consultation – new information received during the consult may have changed something.

HOW TO GET CONFLICT INFORMATION
- Obtain prior names of both parties, witnesses, including any nicknames, maiden names
- Decline representation, without acknowledging the conflict
FOLLOW-UP
- NON-ENGAGEMENT LETTER
- “GLIDE PATH” TO ADDRESS CONCERNS
- STARTING REPRESENTATION
  - If the Answer is due soon
  - Consultation Form
  - Welcome Packet

RESOURCES
- Florida Bar Practice Resource Institute
  - [https://pri.floridabar.org/forms-checklists/](https://pri.floridabar.org/forms-checklists/)
    - This site has sample engagement letters, fee agreements, non-engagement letters, intake forms and more.
- Hillsborough County Forms
  - [https://www.hillsclerk.com/About-Us/Forms](https://www.hillsclerk.com/About-Us/Forms)
Intake Form (Prospective Client)

Hello, Mr./Ms. (Prospective Client Name). This is (Your Name) speaking, how are you today?

Mr./Ms. (Prospective Client Name), may I have the correct spelling of your first and last name? Have you been known by any other names? Repeat first and last name.

Name:

Mr./Ms. (Prospective Client Name) may I have your telephone number in case we get disconnected? Repeat the telephone number.

Telephone Number:

Some prospective clients like to keep the fact that they called an attorney private, is it safe to call and leave a voice mail for you at this number?

I understand that you would like to speak with an attorney. I can schedule an appointment, but first be assured that everything you share with me will be kept confidential. Do you have a few minutes so I can learn more about you & your case?

What made you reach out to an attorney? How can we help?

Case/Situation Information:

How were you referred to our office?

Referral Source:

Which Attorney?

Which Website:

(Empathize) I am sorry that happened to you. Our office MAY be able to assist you with that…

Additional Conversation/Notes:

What is your Husband/Wife/Child's Mother/Father/Significant Other's full name? Has he or she been known by any other names? Repeat.

Opposing Party:

Does he/she have an attorney?

Opposing Party’s Attorney:

Which state and county will a lawsuit be filed in? Or has one already been filed?
Case Type:

County and State of Lawsuit:

Are you married?

Married:

Do you have children?

Children:

How Many?

What is your mailing address?

Mailing Address:

What is your email address?

E-mail Address:

Do you authorize our office to contact you via email?

Send E-mails:

What are your biggest concerns?

Concerns:

We like to keep our clients and prospective clients updated with what's happening with Florida law and our firm in our monthly newsletter.

Would you like to receive a copy?

Newsletter:

Emergency appointment?

Appointment Date/Time:
PROSPECTIVE CLIENT QUESTIONNAIRE

Please complete the following prospective client questionnaire. Answer all questions truthfully and completely. Your responses are protected by attorney/client privilege and will be held in strict confidence. Until a fee agreement that outlines the terms of service is executed by you and our office, then our office does not represent you and no attorney/client relationship exists.

DATE: ______________

1. YOUR NAME: _____________________________________________________
   First Name                Middle  Last Name

2. What is your complete address? ________________________________________
   ___________________________________________________________________

3. What is the opposing party’s county of residence? _________________________

4. How long have you lived at this residence? _______________________________

5. What is your email address? ___________________________________________

6. Do we have your permission to send you an email? _________________________

7. Is it safe to do so? ___________________________________________________

8. What is your home telephone number? __________________________________

9. What is your work telephone number? ___________________________________

10. Do we have your permission to leave a voice mail message? _________________

11. Is it safe to do so? ___________________________________________________

12. Last four numbers of your social security number: _________________________

13. Your date of birth: ___________________________________________________


15. How long have you lived in Florida? ____________________________________

16. Opposing party’s name: _______________________________________________
   First       Middle  Last
17. Opposing party’s complete address:______________________________________
___________________________________________________________________

18. Opposing party’s date of birth: _________________________________________

19. How long has the Opposing Party lived in Florida? _________________________

20. Are you married? YES NO

21. If yes, date of marriage: ________________________________

    Place of marriage: ________________________________

22. If you are married, name the county and state where you and the opposing party last lived together as husband and wife:______________________________

23. If you and the opposing party were married or living together, what date did you separate:______________________________

24. Reason for separation: _______________________________________________

    ____________________________________________________________________
    ____________________________________________________________________
    ____________________________________________________________________
    ____________________________________________________________________

25. Has a dissolution of marriage, paternity action, child support enforcement action or other court action already been filed? YES NO

    If yes, in what county and state? ______________________________________

26. Have you been served with legal papers? YES NO

27. Have you hired a previous attorney for this matter? YES NO

    If yes, what is your previous’ attorney’s name: ___________________________
May we contact your previous attorney? YES NO

28. Does the opposing party have an attorney? YES NO UNKNOWN

   If known, attorney’s name:____________________________________________________

29. Are there children born or adopted during the relationship: YES NO

30. If yes, please provide the requested information in the sections that follow:

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<th>CHILDREN NAMES</th>
<th>AGE</th>
<th>SEX</th>
<th>CURRENTLY LIVING WITH MOTHER/FATHER/OTHER</th>
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31. Are you participating in mental health counseling? YES NO

   If yes, with whom? ___________________________________________________________

32. Do you have a drug or alcohol problem? YES NO

33. If yes, are you participating in Alcoholics Anonymous or Narcotics Anonymous?

34. Are the opposing party and/or children participating in mental health counseling?

   If yes, with whom? ___________________________________________________________

35. Does the opposing party have a drug or alcohol problem? YES NO
36. If yes, is the opposing party participating in Alcoholics Anonymous or Narcotics Anonymous? ______________________________________________________

37. Are you or the opposing party expecting a child? YES NO

If yes, is the expected child from this relationship? YES NO

If expected child is of a relationship outside of this relationship, who is the other biological parent? __________________________________________

38. Your place of employment: __________________________________________

39. Address of employment:______________________________________________

__________________________________________________________________

40. Your yearly income: _________________________________________________

41. Hourly or weekly income, if yearly income known: ______________________

42. Opposing party’s place of employment: ________________________________

   Address of employment:______________________________________________

   __________________________________________________________________

43. Opposing party’s yearly income: ________________________________

44. Hourly or weekly income, if yearly income unknown: ____________________
Dependency

BY

Deborah Wells, Lakeland
Chapter 39, and Florida Rules of JV procedure, part III (8.201 and following)

If opening or reopening, use your Family Law Cover sheet, Family law form 12.928

Parties: 8.210: Petitioner, the child(ren), the parent(s), the department, and the GAL (if appointed)

Participants: all others who seek it and are approved, specifically mentioned by the rule:

- Foster parents or legal custodians; identified prospective parents, grandparents entitled to notice of adoption proceedings, the State Attorney and any other whose participation may be in the best interest of the child. MAY be granted leave to be heard. NO Motion to Intervene is required.

GAL: while the rules seem to require they be appointed in many cases, reality prevents it since there are not enough volunteers nor funds to have them for all children.

Tenth Circuit typically appoints them in all cases where children are placed in foster care, plus in special cases.

AAL: appointed by the court. Sometimes paid, sometimes volunteer. Duties not defined, however I believe it is the legal duty to do what your client wants you to, within the bound of the law. Even if it means asking the child get ice cream every night after dinner.

8.225 Begin: File a petition...summons with not less than 72 hours’ notice

If you can find them, do a diligent search for them and file that (8.225(b))

Personal appearance alleviates the need for service.

Summons required to state that failure to appear constitutes consent to dependency and MAY result in a termination of parental rights

8.226 Determining parenthood...easiest with a mother....

If man is willing to sign an affidavit, paternity can be established, so long as there is not a legal father

The dependency court may conduct proceedings under chapter 742 to determine paternity

If there is no prior paternity order, a man can sign an affidavit of non-paternity, unless objected to by the mother (the rule is not clear on this)

Special needs children are entitled to appointment of counsel: statutory and R. 8.231

Discovery is liberal.... you may need a special order for release of CPT records, if there are any. Be sure to include language that covers reports, as well as video documentation. Consider a SDT

Depositions are possible, but rare. Most used for expert witnesses

Typical discovery: Case management (CM) and Child protection Investigator (CPI) notes, along with medical records, education records, etc.

8.250 (a) mental or physical exam of child....as provided by law (look at the statutes)
of a parent, legal custodian or one who is seeking to be: when such mental physical or blood group of that person is in controversy.

Requires: good cause shown, notice to person to be examined and all parties of a hearing to be held on the request/motion

The court may, on its own, order a parent or person seeking custody to undergo such evaluation, treatment, or counseling activities as authorized by law (see statutes and case law)

8.255 (a) The department must be represented by an attorney at every stage
(b) The child has a RIGHT to be present at all hearings. The court MAY excuse if the court determines it would not be in the child’s best interest to remain.

The court has an obligation to inquire as to why the child is NOT present, and find if it is in the child’s best interest to proceed without the child or continue to bring the child in.

Any party may file a motion to require or excuse the presence of the child
(c) Despite invoking the rule, and the parties being allowed to remain for testimony, they may be examined separately and apart from each other.

(d) examination of the child:
   1. The child may be called as a witness to testify in open court
      a. In camera by court: MUST be recorded unless all stipulate
      b. Motion must be filed by any party or on courts motion
      c. The court shall make written findings which may include but are not limited to: age of child; allegations; relationship between child and abuser; likelihood of emotional or mental harm; likely to be more truthful; cross-exam would adversely affect the child; and MBI

... 

(l) The court must advise parents, if it has been determined that reunification is not a viable option, and prior to the filing of the TPR petition, of the availability of private placement of the child with an adoption entity, defined in chapter 63, Florida Statutes.

8.257 Magistrates

Appointed by the court. Consent by the parties is needed, but can’t be withdrawn without good cause shown. Consent may be express or implied

Objection within 10 days of service of the referral is required

They can hear all matters the court can...in our jurisdiction is typically only Judicial Review hearings

Several rules on contempt...
8.290  Mediation: typically used to resolve matters in dependency court
8.292  Surrogate parent...unlikely in a divorce case. Used for school decisions
8.300  Taking into Custody
        Used on runaway sheltered or foster children or Picking up a child as a prelude to
8.305  Sheltering a child
        Used when the child cannot safely remain in the home and there are no services that will assist
        in the child staying in the home
        Visitation is provided for in the order, both by parents, siblings and sometimes other relatives
8.310  Dependency petition
        Filing party may dismiss voluntarily by serving notice on all parties or putting it on the
        record. The court loses jurisdiction UNLESS another party adopts the petition within 72
        hours.
8.315  Arraignment
        Admission, consent or denial.... any consent or admission is sufficient for a finding of
        dependency
        The adjudication is as to the child, not the parent
8.320  Advise parents of right to counsel. Indigent parents or others who are entitled as provided by
        law, unless appointment is waived
8.325  No answer is required. Denial is entered if parents remain silent
8.330  Adjudicatory hearings
        Court determines, utilizing rules of evidence applicable in civil cases.
        Preponderance of the evidence is the BOP
Florida Statutes: Chapter 39...covers dependency.... (751 is Temp custody by a family member requires
        CnC evidence, 63 is private adoption
39.395: detaining a child at a medical or hospital: drug positive newborns and suspicious injuries...they
        can detain. Call abuse line and report it. More than 24-hour detention requires DCF to get a
        court order
39.401  taking of children by DCF and LE: requires Judicial review within 24 hours of placement for non-
        relative placement.
        LE must turn the child over to DCF so that they can determine if shelter is required
39.402  Indicates that a court order is required prior to shelter UNLESS there is PC to believe: child has
        been abused, neglected or abandoned, or is suffering from or is in imminent danger of illness or
        injury as a result of abuse, neglect or abandonment; a parent has violated a prior court ordered
condition of placement; no parent, legal custodian or adult known to provide immediate care and supervision.

The statute provides that they must have notice and an opportunity to present evidence at the shelter hearing.

Removal is NOT allowed if the child can remain in the home with the provision of services in the home.

Shelter: ask about available relative placements; ask mother about whether she was married at conception or time of birth; or cohabitating with a male at likely time of conception; has any man acknowledge paternity; name on BC; DOR paternity finding;

At shelter, the court may grant an additional 72 hours for the Department to provide PC for removal. The child remains in shelter

Shelter order must contain findings that: shelter is necessary; Placement is in the best interest of the child; continuing the child in the home is contrary to the welfare of the child due to substantial and immediate danger to physical, mental or emotional health and safety which can’t be mitigate by the provision of services; there is PC to believe the child is dependent; DCF made reasonable efforts to prevent need for removal.

DCF reasonable efforts is met if: 1st contact is during an emergency AND investigation discloses that the home situation presents a substantial and imminent threat; AND Child can’t safely remain at the home; OR allegations sufficient for expedited TPR (39.806(1) (f-i) are alleged against the parent

Shelter order must:

contain visitation “schedule” and is supposed to occur within n72 hours of shelter unless DCF/CLS provides justification for delay.

Request consent to access to child’s medical records by parents or issue an order if needed

Request consent from parents for access to school records

A surrogate parent, for school purposes, may be appointed.

GAL may be appointed.

The child is not to be held in shelter more than 60 days without an OA, and not more than 30 days after the entry of an OA unless a disposition order has been entered

39.407 Medical, psychiatric and psychological exam and treatment of child; or person with or requesting custody of the child

For anything other than a routine screening/dental cleaning (assuming no anesthesia), the parents must consent, OR a court order must be gotten.
(3)(a)1: psychotropic meds for child: requires parental consent. Meds the child was taking at the time off the shelter can continue if they are currently prescribed and the meds are available in their original container.

BOP on a hearing on medication: Preponderance of evidence

39.4075 Provides for mediation at the request of a party. Our jurisdiction typically orders it, most cases are resolved there.

39.4085 provides that the children in the system should have the system explained to them. Court will let them know of their right to be in court, or not, as they wish and that they can change their mind at any time.

39.4091 added in 2013...foster kids can participate in normal activities...

Standard is “reasonable and prudent parent”

Part 5 Petition, arraignment, adjudication and disposition

39.501 Initiated by filing a Petition by attorney for the department or any other person who has knowledge of facts.

Petition: for the protection of the child, not punishment of parent or caregiver

Outlines what must be in the petition and what rules govern

If there is a shelter petition, the petition must be filed within 21 days of shelter, or 7 days of a party demanding an early petition filing

TPR petition may be filed at any time

39.502 absent a prior TPR, all parents must be notified of all proceedings or hearings

Personal appearance alleviates the need for service of process

Summons is issued, upon filing petition, by the clerk of court

Service pursuant to 61.509

Diligent search will suffice if personal service not able, the party must continue to search unless excused by the court

Publication is NOT required for dependency

Party with mental illness or developmental disabilities shall be informed of the availability of advocacy services available by the Department or Arc of Florida and encouraged to seek services.

Provides for the notification of foster parents and other participants of upcoming hearings, as well as relatives who request it

39.503 Procedures for unknown identity or location of parent

similar to FRJvP 8.226 as to paternity of the child
if the ID of a parent or prospective parent is made known, a diligent search is required. Must keep looking

39.504  Injunctions

If an investigation is initiated pursuant to part III of chapter 39, the court, the department, the SAO, or other responsible person may seek an injunction

39.505  No answer is required to file the petition.

39.506  Must be no later than 28 days after shelter, disposition 15 days after plea if not denied (that time frame can be waived)

Language that needs to be on the Petition/Summons pursuant to the F R Jv. P

39.507  Adjudicatory hearing; orders of adjudication

Indian Child Welfare Act

UCCJA

The Department may not place with certain persons with convictions, however the court CAN

Always remember, shelter does NOT eliminate parents right to records from school or medical providers. Some schools and medical providers are unaware of that.
Acronyms you will hear

BC - Birth certificate
BOP – Burden of Proof

CLS – Children’s legal services: responsible for filing petitions and prosecuting of chapter 29 cases, as well as the adoptions from chapter 39 TPR’s
CPT – Child protection team

DCF - Department of Children and Families
FFA – Family functioning assessment

LE - Law enforcement

OA - order of adjudication

PC – Probably cause

SDT - Subpoena duces tecum

MBI - Manifest best interests (of the child)

TPR – termination of parental rights
Paternity and Divorce (Equitable Distribution / Alimony / Child Support)

BY

Philip S. Wartenberg, Tampa
EQUITABLE DISTRIBUTION

Speaker: Philip S. Wartenberg, Esq., B.C.S. *
Allen Dell, P.A.
202 S. Rome Ave., Suite 100
Tampa, FL 33606
(813) 223-5351
Email: pwartenberg@allendell.com

* The materials were largely authored by past presenter David Manz, Esq., Marathon, FL, and have been amended to include recent case law and commentary.
I. IDENTIFYING & VALUING MARITAL ASSETS AND LIABILITIES

Florida Statute §61.075 provides that in a proceeding for dissolution of marriage the court shall set apart to each spouse that spouse’s nonmarital assets and liabilities and distribute between the parties the marital assets and liabilities.

A. Marital Assets/Liabilities:

1. Pursuant to Fla. Stat. §61.075(6)(a)1, "marital assets and liabilities" include:
   
a. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them;

   b. The enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both;

   c. Interspousal gifts during the marriage; and

   d. All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs.

2. All real property held by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. If, in any case, a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital.

3. All personal property titled jointly by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. In the event a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital.

4. The burden of proof to overcome the gift presumption shall be by clear and convincing evidence.

2. Pursuant to Fla. Stat. §61.075(8), all assets acquired and liabilities incurred during the marriage and not specifically established as nonmarital assets or liabilities are presumed to be marital assets and liabilities. The presumption can be overcome by a showing that the assets and liabilities are nonmarital.
3. When the marital character of an asset is in question, the burden of proving whether an asset is nonmarital is on the party claiming it to be so. *Alpha v. Alpha*, 885 So.2d 1023 (Fla. 5th DCA 2004).

4. Assets acquired before marriage are not marital assets and remain the property of the owner spouse in the absence of evidence of a gift or conveyance of the assets to the owner’s spouse. *Moss v. Moss*, 829 So.2d 302 (Fla. 5th DCA 2002).

5. Property acquired during the marriage through the exchange of nonmarital assets is nonmarital. *Beaty v. Gribble*, 652 So.2d 1156 (Fla. 2d DCA 1995).

6. The wife’s testimony in dissolution proceeding, that she received two burial plots during the marriage, and added husband to the deed for one of the plots, believing the parties' marriage would last, established that one of the plots was an interspousal gift to husband, and, thus, plot should not have been classified by the trial court as nonmarital property. *McKee v. Mick*, 120 So.3d 162 (Fla. 1st DCA 2013).

B. Non-marital Assets/Liabilities:

1. Pursuant to Fla. Stat. §61.075(6)(b) “Nonmarital assets and liabilities” include:

   1. Assets acquired and liabilities incurred by either party prior to the marriage, and assets acquired and liabilities incurred in exchange for such assets and liabilities;

   2. Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent, and assets acquired in exchange for such assets;

   3. All income derived from nonmarital assets during the marriage unless the income was treated, used, or relied upon by the parties as a marital asset;

   4. Assets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties, and assets acquired and liabilities incurred in exchange for such assets and liabilities; and

   5. Any liability incurred by forgery or unauthorized signature of one spouse signing the name of the other spouse. Any such liability shall be a nonmarital liability only of the party having committed the forgery or having affixed the unauthorized signature. In determining an award of attorney’s fees and costs pursuant to s. 61.16, the court may consider forgery or an unauthorized signature by a party and may make a separate award for attorney’s fees and costs occasioned by the forgery or unauthorized
signature. This subparagraph does not apply to any forged or unauthorized signature that was subsequently ratified by the other spouse.

2. The trial court was reversed after classifying the entire amount of a loan as a marital debt without making a finding as to when the debt was incurred or what the debt was used to pay. *Fortune v. Fortune*, 61 So.3d 441 (Fla. 2d DCA 2011).

3. Once an asset has been determined to be nonmarital, that asset may not be awarded to the non-owner spouse as equitable distribution unless there has been agreement to the contrary. The agreement may provide for such as part of a settlement agreement. *Abernethy v. Abernethy*, 670 So.2d 1027 (Fla. 5th DCA 1996).

4. In *Rodriguez v. Rodriguez*, 994 So.2d 1157 (Fla. 3d DCA 2008), the trial court erred in awarding to the wife the husband’s nonmarital property in the equitable distribution scheme. The trial court was concerned that the husband’s alleged lack of financial responsibility and career growth may encumber the family residence in the future and awarded the wife the nonmarital home. The district court reversed, holding that the consideration of the husband’s nonmarital assets in making a distribution of marital assets was an abuse of discretion.

5. In *Krift v. Obenour*, 152 So.3d 645 (Fla. 4th DCA 2014), the trial court determined that credit card debt in the former husband's name was nonmarital. His testimony concerning the nature and purpose of his credit card expenses sufficiently overcame the presumption that the liability was marital. The Fourth District found no error in the trial court's classification of the former husband's credit card debt as nonmarital and affirmed since all assets acquired and liabilities incurred by either spouse subsequent to the date of the marriage and not specifically established as nonmarital assets or liabilities are presumed to be marital assets and liabilities.” § 61.075(8), Fla. Stat. (2012).

6. The general rule is that an engagement ring is nonmarital property and, therefore, not subject to equitable distribution upon the parties' divorce. *Randall v. Randall*, 56 So.3d 817 (Fla. 2d DCA 2011).

C. Cut-Off Date for Identifying Marital Assets

1. Pursuant to Fla. Stat. §61.075(7), the cut-off date for determining assets and liabilities to be identified or classified as marital assets and liabilities is:

   - the earliest of the date the parties enter into a valid separation agreement,

   - such other date as may be expressly established by such agreement,
or the date of the filing of a petition for dissolution of marriage.

2. Assets acquired by one spouse after filing a petition for dissolution of marriage are ordinarily deemed to be nonmarital. *Beers v. Beers*, 724 So.2d 109 (Fla. 5th DCA 1998).

3. Liabilities acquired during the marriage are generally considered marital liabilities. In *Rogers v. Rogers*, 12 So.3d 388 (Fla. 2d DCA 2009), the trial court erred in holding that the wife was solely responsible for her student loan debt when the debt was incurred during the marriage. The husband argued that although the wife was in school during the marriage to obtain her paralegal degree, he would not receive the benefit of her education. The district court held that this is not a factor to be considered when allocating marital debt. Absent some other justification for an unequal distribution, the student loan debt was a marital liability, incurred during the marriage, to be shared equally amongst the parties.

4. The date the former wife filed her petition for dissolution of marriage, July 26, 2011, would be the cut-off date used to determine whether assets were marital or non-marital. Both parties testified that the former husband purchased a pull-behind camper the week that he moved out of the former marital residence, which was in early September 2010. Because the camper was unquestionably acquired by the former husband before the petition for dissolution was filed, the First District held that it should have been classified as a marital asset subject to equitable distribution. *Broadway v. Broadway*, 132 So. 3d 953 (Fla. 1st DCA 2014).

D. Commingling of Marital and Non-marital Property

1. Nonmarital property may become a marital asset when the nonmarital assets are commingled with marital assets. Nonmarital property loses its nonmarital character once commingled. *Pfrengle v. Pfrengle*, 976 So.2d 1134 (Fla. 2d DCA 2008)(holding that even if an account is titled in one party’s name, the fact the marital and nonmarital funds are commingled, the entire account becomes marital.)

2. In *Lakin v. Lakin*, 901 So.2d 186 (Fla. 4th DCA 2005), the district court held that funds received from the husband’s mother’s estate lost their status as nonmarital and were subject to equitable distribution, although securities purchased with funds were kept separate from the money market portion of the brokerage account when the funds were transferred from the estate to the joint banking account. The money was transferred from the joint banking account to brokerage account, and the husband and the wife treated the entirety of account as a marital asset and the account became marital.

3. In *Holden v. Holden*, 667 So.2d 867 (Fla. 1st DCA 1996), the court found that the
Evidence did not support the finding that certificates of deposit held in the wife's name and purchased with distributions on the wife's shares of stock in her family's business constituted marital assets subject to equitable distribution as the stock itself was a nonmarital asset, and the court was presented evidence that distributions were included in joint federal tax return. Also, the husband testified that he assumed that the wife's nonmarital income was source of purchase money for acquisition of property in the husband's name, and he did not establish that distributions were commingled with marital assets. The certificate of deposits remained nonmarital, not subject to equitable distribution.

4. In *Robinson v. Robinson*, 10 So.2d 196 (Fla. 1st DCA 2009), five shares of stock in a closely held corporation that the husband acquired prior to the marriage were nonmarital property and, thus, were required to be excluded from the equitable distribution plan in dissolution proceeding, regardless of the premarital value of the stock, where there was no evidence of enhancement, commingling, or gift to wife.

5. In *Sorgen v. Sorgen*, 162 So.3d 45 (Fla. 4th DCA 2014), the First District found that the wife’s one-third interest in the proceeds from the sale of inherited real property ultimately was commingled in the joint account, which created a presumption that she gifted an undivided one-half interest in the proceeds from the sale of the home to the husband. The wife presented no evidence to rebut that presumption.

6. The spouse seeking to have property declared as a nonmarital asset “has the burden of overcoming this presumption by proving that a gift was not intended.” *Robertson v. Robertson*, 593 So.2d 491, 494 (Fla.1991); see also § 61.075(6)(a) 3., Fla. Stat. (2008) (“All personal property titled jointly by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. In the event a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital.”). “The burden of proof to overcome the gift presumption [is] by clear and convincing evidence.” Fla. Stat. § 61.075(6)(a) 4.

E. Enhancement in Value and Appreciation

1. Pursuant to Fla. Stat. §61.075(6)(a)1b, a nonmarital asset may be altered into a marital asset to the extent that its value has been enhanced by marital funds or labor. *Cole v. Robert*, 661 So.2d 1156 (Fla. 2d DCA 1995). However, the appreciation must be attributable to active appreciation, instead of merely passive appreciation.

2. Active Appreciation: When one party’s actions are responsible for the increase and decrease in value of, or even the existence of, the asset in question, subsequent to the date of separation or date of petition.
3. Passive Appreciation: When the change in value is as a result of passive, or market forces, rather than the particular actions of a party.

4. In *McMullen v. McMullen*, 148 So.3d 830 (Fla. 1st DCA 2014), the First District agreed with the former husband that the trial court erred in determining that $250,000 of the distribution he received from a non-marital joint venture and transferred into his checking account was subject to equitable distribution. There was competent substantial evidence that did not support the trial court's finding that those funds were treated, used, or relied on by the parties as a marital asset. See § 61.075(6)(b) 3., Fla. Stat. (2011); *Holden v. Holden*, 667 So.2d 867, 868 (Fla. 1st DCA 1996). However, as to the remainder of the equitable distribution award, the First District disagreed with the former husband and found that there was competent substantial evidence that supported the trial court's findings that the former husband's maritl efforts and contributions enhanced the value of the non-marital joint venture. Thus, the court did not abuse its discretion in determining the amount of the enhancement to which the former wife was entitled. See § 61.075(6)(a)1.b., Fla Stat. (2011).

5. In *Kaaa v. Kaaa*, 58 So. 3d 867 (Fla. 2010), the parties resided during their marriage in the home the husband had purchased before the marriage. They used marital funds to pay down the mortgage and to renovate the carport, and the latter slightly increased the value of the home. The trial court determined that the mortgage reduction and increased value of the carport constituted an “enhancement value” that was subject to equitable distribution, but that the significant passive appreciation in the value of the home due to market forces was not. The Second District affirmed but certified conflict with this court's decision in *Stevens v. Stevens*, 651 So.2d 1306 (Fla. 1st DCA 1995). In *Stevens*, this court had concluded that both types of increased value should be equitably distributed.

Equitable distribution of marital assets should take into account the appreciated value of a non-marital asset caused by the expenditure of marital funds or labor, including the parties' management, oversight, or contribution to principal, as well as an appropriate portion of any appreciation of a non-marital asset caused by the effects of inflation and market conditions[.] *Id.* at 1307 (emphasis added).

The Florida Supreme Court in *Kaaa* agreed with this court in *Stevens* and reversed the Second District's decision in *Kaaa*. Neither the Second District nor the Florida Supreme Court in *Kaaa* disturbed the trial court's determination that the increase in equity resulting from paying down the mortgage with marital funds constitutes a marital asset subject to equitable distribution. The Florida Supreme Court therefore determined the analysis to be as follows:
1. First, the court must determine the overall current fair market value of the home.

2. Second, the court must determine whether there has been a passive appreciation in the home's value.

3. Third, the court must determine whether the passive appreciation is a marital asset under section 61.075(5)(a)(2). This step must include findings of fact by the trial court that marital funds were used to pay the mortgage and that the nonowner spouse made contributions to the property. Moreover, the trial court must determine to what extent the contributions of the nonowner spouse affected the appreciation of the property.

4. Fourth, the trial court must determine the value of the passive appreciation that accrued during the marriage and is subject to equitable distribution.

5. Fifth, after the court determines the value of the passive appreciation to be equitably distributed, the court's next step is to determine how the value is allocated.

6. In *Hodge v. Hodge*, 129 So.3d 441 (Fla. 5th DCA 2013), the husband owned significant equity in the Old Dominion property at the time of the marriage. The property was encumbered with a mortgage. Trial testimony established that the parties used marital funds to repay the mortgage and to make minor improvements. The wife testified that she expended considerable effort to show and rent the property to tenants. The Old Dominion property increased greatly in value between the time of marriage and the time of divorce. The lower court awarded the wife one-half of the total increase in value after finding that the increase was due to both wife's active efforts and passive appreciation. In addition, the trial court justified the award as a method of “equalizing the assets of the parties.” In making the award, the trial court was asked to determine and allocate the passive appreciation of the rental property. The question before the Fifth District was whether the lower court erred in calculating husband’s premarital portion of the equity in the Old Dominion property. The lower court's failure to follow the analysis listed in *Kaaa* was error. The equity the husband owned before the marriage entitles him to a nonmarital portion of any passive increase in value. The lower court could find that some portion of the increase in value is attributable to the wife’s active efforts and not merely to passive appreciation. However, the lower court's goal of “equalizing the assets of the parties” by increasing the size of the marital equity in the Old Dominion property is not permitted by law. *Weymouth v. Weymouth*, 87 So.3d 30, 36 (Fla. 4th DCA 2012). Therefore, the Fifth District determined that the lower court erred when it calculated the husband’s nonmarital portion of the appreciation on the Old Dominion property. *Hodge v. Hodge*, 129 So. 3d 441 (Fla. 5th DCA 2013).
7. In *Ballard v. Ballard*, 158 So.3d 641 (Fla. 1st DCA 2014), the First District determined that the trial court erred as a matter of law when it construed *Kaaa v. Kaaa*, 58 So.3d 867 (Fla.2010), to exclude the amounts the parties paid down on the mortgage as a marital asset. When marital assets are used during the marriage to reduce the mortgage on non-marital property, the increase in equity is a marital asset subject to equitable distribution. See, e.g., *Gaetani–Slade v. Slade*, 852 So.2d 343 (Fla. 1st DCA 2003); *Spence v. Spence*, 669 So.2d 1110 (Fla. 1st DCA 1996); *Massis v. Massis*, 551 So.2d 587 (Fla. 1st DCA 1989); *Heiny v. Heiny*, 113 So.3d 897 (Fla. 2d DCA 2013); *Dwyer v. Dwyer*, 981 So.2d 1254 (Fla. 2d DCA 2008); *Mitchell v. Mitchell*, 841 So.2d 564 (Fla. 2d DCA 2003); *Cole v. Roberts*, 661 So.2d 370 (Fla. 4th DCA 1995); *Adkins v. Adkins*, 650 So.2d 61 (Fla. 3d DCA 1994). Neither the Second District nor the Florida Supreme Court in *Kaaa* disturbed the trial court's determination that the increase in equity resulting from paying down the mortgage with marital funds constitutes a marital asset subject to equitable distribution. *Ballard v. Ballard*, 158 So.3d 641 (Fla. 1st DCA 2014).

8. Once it is proven that there was active appreciation of a nonmarital business or property, the burden then shifts to the other party to show that some, if any, portion of the enhanced value is exempt from equitable distribution. *Gaetani–Slade v. Slade*, 852 So.2d 343, 347 (Fla. 1st DCA 2003)(stating that "once a non-owner spouse establishes that marital labor or funds were used to improve [an asset] that was nonmarital, the owner-spouse has the burden to show which parts [of the enhanced value] are exempt ")(citing *Adkins v. Adkins*, 650 So.2d 61 (Fla. 3d DCA 1994); *O'Neill v. O'Neill*, 868 So.2d 3 (Fla. 4th DCA 2004)(stating that "once it is established that marital labor was used, the burden falls on the party claiming that the increase was nonmarital to establish whether any part of the increase was the result of passive market conditions and, thus, is exempt from equitable distribution"); *Young v. Young*, 606 So.2d 1267 (Fla. 1st DCA 1992)(confirming that a trial court cannot refuse to distribute the appreciated value of a nonmarital asset improved by marital labor or funds "because the [non-owner spouse] ha[s] not established how much the improvements enhanced the value of the property," and that the burden is on the owner spouse to prove whether any part of the enhanced value is exempt from distribution); *Yitzhari v. Yitzhari*, 906 So.2d 1250 (Fla. 3d DCA 2005)(despite the husband's testimony which confirmed that during the marriage he expended both marital funds and labor to manage, maintain and improve seven properties titled wholly or partially in his name, the trial court erred in refusing to award any portion of value of the properties to the wife because she failed "to carry her burden" of proving when, and how much, marital funds were expended). *Chapman v. Chapman*, 866 So.2d 118 (Fla. 4th DCA 2004).

9. In *Hahamovitch v. Hahamovitch*, No. SC14-277, 2015 WL 5254280, (Fla. Sept. 10, 2015), the wife argued that, because the prenuptial agreement made no specific reference to the enhancement in the value of nonmarital property attributable to marital labor or funds, the enhanced value was subject to equitable distribution. Similarly, she also argued that, because the prenuptial agreement did not contain a specific provision that the husband's earnings would be his separate property, they were not protected assets. However, the Florida Supreme Court
determined that the broad language in the prenuptial agreement included a waiver and release of all rights and claims to the other spouse's nonmarital property, and therefore disagreed with the wife’s argument. Section 61.079(4)(a) provides that “[p]arties to a premarital agreement may contract with respect to ... [t]he disposition of property upon ... marital dissolution.” And section 61.075, Florida Statutes, addresses the “[e]quitable distribution of marital assets and liabilities.” This section describes what constitutes marital assets and liabilities. § 61.075(6), Fla. Stat. Nonmarital assets and liabilities include those “excluded from marital assets and liabilities by valid written agreement of the parties.” § 61.075(6)(b) 4., Fla. Stat. Hahamovitch determined that any property the husband owned at the time of execution of the premarital agreement and any property the husband acquired in his name after the execution of the agreement, including any enhancement in value or appreciation of such properties, are the husband’s nonmarital assets.

F. Date of Valuation

1. Florida Statute §61.075(7) provides that the date for determining value of assets and the amount of liabilities identified or classified as marital is the date or dates as the judge determines is just and equitable under the circumstances. Different assets may be valued as of different dates, as, in the judge's discretion, the circumstances require.

2. Choosing a valuation date of assets in dissolution actions is determined on a case by case basis, depending upon the facts and circumstances thereof. There was no presumption that one date should be used as opposed to another. Perlmutter v. Perlmutter, 523 So.2d 594 (Fla. 4th DCA 1987). In determining that the trial date was the appropriate valuation date of the parties’ businesses, the court aligned itself with Wegman v. Wegman, 509 N.Y.S.2d 342 (N.Y. Ct. App. 1986).

3. Courts are faced with three different valuation dates in valuing marital property:

- the separation date,
- the petition date,
- and the trial date.

4. In choosing between those dates, courts have utilized the reasoning in Wegman and Perlmutter and have examined whether one party’s actions were responsible for the increase and decrease in value of, or even the existence of, the asset in question, subsequent to the date of separation or date of petition. In those cases, use of the separation or petition date is deemed appropriate because the change in value is a result of one party’s actions, and thus, the valuation date should be the earlier date so as to reflect that the party whose actions caused the increase or decrease in value receives the benefit of, or detriment of, his or her actions, by solely receiving
the difference in value of the subject asset between the earlier date and the trial date. Conversely, where there is a long period of time between the petition date and the trial date, and the change in value is as a result of passive, or market forces, rather than the particular actions of a party, the increase or decrease in value should be equally allocated between the parties, thus mandating use of the trial date as the valuation date.

5. In *Tucker v. Tucker*, 966 So.2d 25 (Fla. 2d DCA 2007), the trial court’s selection of the date of the final dissolution hearing as the date for determining the value of marital assets was not an abuse of discretion. The trial court selected that date since the parties had attempted reconciliation in the years since the original petition for dissolution was filed, and the former husband purchased a townhouse and a vehicle subsequent to the filing of the petition.

6. In *Parry v. Parry*, 933 So.2d 9 (Fla. 2d DCA 2006), in determining which date to use, the trial court valued stock on the dissolution petition filing date, rather than on the date of trial, since the expert testified that the appreciation in value of employer's stock was not passive but rather due in part to husband's work as a senior officer of the company. Assets should not, ordinarily, be valued as of a post-dissolution date because the subsequent change in the property's value due to nonmarital labor or efforts cannot be distributed. *Jahnke v. Jahnke*, 804 So.2d 513 (Fla. 3d DCA 2001).

7. In *Catafulmo v. Catafulmo*, 704 So.2d 1095 (Fla. 4th DCA 1997), the trial court properly selected the date of petition for dissolution, rather than date of trial, as the valuation date for equitable distribution, where the increase in the value of the husband's businesses resulted from his individual efforts after parties separated and after filing of petition, compared to merely passive appreciation.

II. DISTRIBUTION OF MARITAL ASSETS AND LIABILITIES

In distributing the marital assets and liabilities between the parties, the court must begin with the premise that the distribution should be equal, unless there is a justification for an unequal distribution based on all relevant factors. Fla. Stat. §61.075.

A. Justification for an Unequal Distribution

1. Justifications to make an unequal distribution include:

(a) The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker;

In *Russ v. Russ*, 576 So.2d 414 (Fla. 3d DCA 1991), the Third District held that an award
to the wife of 65% of proceeds on mortgage held by parties on a campground they previously sold was supported by evidence that wife made extraordinary contributions to daily operation and financial management of campground business during eight-year period while husband remained essentially idle, drinking large quantities of beer. Compare to Lanzetta v. Lanzetta, 563 So.2d 101 (Fla. 3d DCA 1990), where the court determined that the fact that the husband had performed many household chores because wife's medical ailments prevented her from doing so was not such a special circumstance to warrant an unequal distribution.

An unequal distribution of marital assets and liabilities was also supported by findings that a party suffered from emotional problems stemming mainly from marital difficulties and the husband's infidelities. Also, the wife did not work outside of the home for most of the eighteen-year marriage and instead contributed as a homemaker, child care provider, and devoted mother to allow the husband to grow a flourishing pediatric practice. Goosby v. Lawrence, 711 So.2d 577 (Fla. 3d DCA 1998).

However, disparate earning abilities does not, without more explanation, justify unequal distribution of marital assets. Dease v. Dease, 688 So.2d 454 (Fla. 5th DCA 1997).

(b) The economic circumstances of the parties;

In Bell v. Bell, 642 So.2d 1173 (Fla. 1st DCA 1994), the first district held that the former wife who held a broker's license and was awarded a real estate business was improperly awarded a greater share of marital assets on the basis of alleged inability to provide for herself if assets were distributed equally. The former wife's income would not be fixed by the property received in the distribution. Although the former wife had need to pay for property upkeep and labor, taxes, utilities, and insurance expenses on property awarded to her, former husband would have those expenses on property awarded to him.

The enhancement in value of a business that was the result of the husband's business acumen and the development of assets which belonged to him prior to marriage was justification for an unequal distribution since the husband paid all expenses during marriage, which allowed the wife to increase her personal financial status. Valdes v. Valdes, 894 So.2d 264 (Fla. 3d DCA 2004).

(c) The duration of the marriage;

In Hoffman v. Hoffman, 552 So.2d 958 (Fla. 1st DCA 1989), the first district held that since the marriage was just over a year’s duration and that there was a disparity of the spouse’s age, it was proper to give an unequal distribution.
Following a short duration of marriage and considering the wife's limited income, it was justified to award an unequal distribution of marital debt which was acquired by and benefited almost exclusively former husband or his family. *Vaughn v. Vaughn*, 714 So.2d 632 (Fla. 1st DCA 1998).

Evidence supported trial court's decision to award husband parties' $900,000 marital home which he brought into the marriage as separate property and his sole substantial asset but which had been conveyed to parties as tenants by entireties on their wedding day after dissolution of six-week marriage. *Ibanez-Vogelsang v. Vogelsang*, 601 So. 2d 1303 (Fla. 3d DCA 1992).

(d) *Any interruption of personal careers or educational opportunities of either party;*

The court will consider a spouse’s lack of ability to advance his or her career due to the interruption in employment or education.

(e) *The contribution of one spouse to the personal career or educational opportunity of the other spouse;*

In *Becker v. Becker*, 639 So.2d 1082 (Fla. 5th DCA 1994), the trial court abused its discretion in finding a 50-50 split where the wife contributed little to marriage, the parties had no children, and the husband paid great majority of wife's educational expenses. Additionally, the wife worked before the marriage and after graduation but used all but one of her paychecks for her own needs and wants while husband paid all household expenses. The marriage lasted only four years during which time parties carefully kept their assets separate.

(f) *The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party;*

As a general rule, it is improper for the trial court to leave the parties as joint owners of a closely held business. *Ross v. Bandi*, 566 So.2d 55 (Fla. 4th DCA 1990). In *Lift v. Lift*, 1 So.3d 259 (Fla. 4th DCA 2009), the parties brought a stipulation before the court. The stipulation provided that the wife would receive her veterinary business and that the husband would accept the wife’s valuation of the business. Because appropriately made stipulations entered by the parties are generally binding by the court and the parties, the trial court erred by awarding each party 50% of the veterinary business. The district court overturned this award, claiming that by forcing the husband and wife to be business partners created an “intolerable situation,” and the trial court erred when the two parties clearly stated that they did not want to continue working together after their divorce.
Similarly, in *Manolakos v. Manolakos*, 871 So.2d 258 (Fla. 4th DCA 2004), the trial court ordered that the former husband and the former wife remain equal owners in the chiropractic businesses. According to the judgment, the former husband would manage and operate these businesses for three years. During this time, he would be entitled to all the profits from the businesses. After three years, the former wife was to begin working with the former husband and upon her return, she was to begin receiving fifty percent of the net revenues. The court stated that “dissolution of marriage, being what it is, it is clearly an abuse of discretion for the trial court to order two parties who have stated they do not want to continue to work together after their divorce to do just that.” See also *Robbins v. Robbins*, 549 So.2d 1033 (Fla. 3d DCA 1989), granting a former spouse a shared interest in the stock of a closely held corporation has the effect of “requiring the former spouses to operate as business partners. Such a financial arrangement is intolerable.” Also of note, in *Menendez v. Rodriguez-Menendez* 871 So.2d 951 (Fla. 3d DCA 2004), and quoting *Robbins*, the court held that the parties must, on remand, present proper valuation evidence so that the trial court may, as the parties agree, award this asset to one of the spouses and “devise a plan of distribution which causes the least interference with the ongoing business of the corporation, yet which is practical and beneficial to both spouses.”

(g) *The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the nonmarital assets of the parties;*

The husband experienced significant periods of unemployment toward the end of the marriage. During that time, he spent time tinkering with his motor vehicle collection when he could have directed more time and energy to securing a job. He continued to spend extravagantly and to borrow money despite the lack of a meaningful search for full employment. These facts were relevant to trial court's equitable distribution of marital assets. *Boutwell v. Adams*, 920 So.2d 151 (Fla. 1st DCA 2006).

However, the mere fact that one spouse contributed more financially, in itself, is insufficient to award an unequal determination. In *Williams v. Williams*, 686 So.2d 805 (Fla. 4th DCA 1997), the district court held that the fact that the husband, who served as the primary wage earner, also made a significant contribution of marital assets does not justify the trial court's disparate treatment of the marital assets. The district court stated that affirming the unequal distribution in this case would allow a trial court in every case the discretion to unequally distribute assets solely because the primary wage earner made a premarital contribution, even in the absence of any compelling factors.

Similarly, in *Stough v. Stough*, 18 So. 3d 601 (Fla. 1st DCA 2009), the district court held that a trial court cannot base an unequal distribution on a spouse’s disproportionate financial contributions to the marriage unless there is a showing of “extraordinary services over and above
the nonmarital duties.” “Affirming the unequal distribution in this case would give a trial court in every case the discretion to unequally distribute assets solely because one spouse has made a greater financial contribution to the marriage than the other, despite the absence of compelling circumstances.

(h) The desirability of retaining the marital home as a residence for any dependent child of the marriage, or any other party, when it would be equitable to do so, it is in the best interest of the child or that party, and it is financially feasible for the parties to maintain the residence until the child is emancipated or until exclusive possession is otherwise terminated by a court of competent jurisdiction. In making this determination, the court shall first determine if it would be in the best interest of the dependent child to remain in the marital home; and, if not, whether other equities would be served by giving any other party exclusive use and possession of the marital home;

Where children are involved, the party with the children the majority of the time is entitled to exclusive possession of the marital home until the minor children reach the age of majority. See Dolch v. Dolch, 368 So.2d 618 (Fla. 2d DCA 1979). The rationale is that the award of exclusive possession of the home is an incident of child support. See Duncan v. Duncan, 379 So.2d 949 (Fla.1980). In Edgar v. Edgar, 668 So.2d 1059 (Fla. 2d DCA 1996), the total mortgage, taxes and insurance cost is $1,523.00 per month. Despite the court's apparent concern over the wife's health situation, the court could not sustain its award of exclusive possession of the home until the wife's death or remarriage. The record did not support her claim that she was unable to become more self-supporting. The effect of awarding the marital home to the wife until her death or remarriage was to force the husband from his modest economic status to a state of relative impoverishment. Edgar v. Edgar, 668 So.2d 1059 (Fla. 2d DCA 1996).

Dehler v. Dehler, 648 So.2d 819 (Fla. 4th DCA 1995), found that the general rule is that absent compelling financial reasons, the parent with primary timesharing should be awarded the exclusive use and possession of the marital home until the minor children reach majority or become emancipated, or until the former spouse remarries.

(i) The intentional dissipation, waste, depletion, or destruction of marital assets after the filing of the petition or within 2 years prior to the filing of the petition; and

The two-year time period does not bar a trial court from considering, as an “other factor,” dissipation of marital assets which occurs prior to the two-year period preceding the filing of the petition for dissolution. Beers v. Beers, 724 So.2d 109 (Fla. 5th DCA 1998), which held that the two year provision was not intended to operate as a statute of limitation.

The trial court is free to consider the dissipation of marital funds to purchase drugs or to
fund the husband's extramarital affair in determining the equitable distribution of the parties' assets. The husband acknowledged that the record demonstrates that he spent approximately $15,000 to purchase drugs and on a “fling.” See Huntley v. Huntley, 578 So.2d 890 (Fla. 1st DCA 1991) (holding that spouse was entitled to an equitable share of all marital assets, including marital resources that were “dissipated by the husband's addiction”). Guobaitis v. Sherrer, 18 So.3d 28 (Fla. 3d DCA 2009).

In Santiago v. Santiago, 51 So. 3d 637 (Fla. 2d DCA 2011), the trial court imposed the couple's federal income tax liability solely on the husband. The trial court made no finding on the value of this tax liability, but there was evidence presented that the couple owed the IRS $101,000, although the husband argued that the amount owed was much less. The trial court found that the husband depleted money from the proceeds of the sale of his business, which occurred during the marriage. However, the trial court did not make a finding as to the specific amount the husband depleted, which was a disputed issue at the final hearing. The unequal distribution of assets may have been justified by a finding that the husband intentionally depleted $100,000 in marital assets. But the trial court also imposed the tax liability on the husband, which according to the record was in the amount of $101,000, making the distribution even more disproportionate. This further unequal distribution was an abuse of discretion because it penalized the husband twice for depleting the marital funds.

In Roth v. Roth, 973 So.2d 580 (Fla. 2d DCA 2008), the trial court erred in including dissipated assets in the equitable distribution scheme. It is error to include assets in an equitable distribution scheme that have been diminished or dissipated during the dissolution proceedings. (Quoting Cooper v. Cooper, 639 So.2d 153, 155 (Fla. 4th DCA 1994). The exception to this rule is when the dissipation is the result of misconduct. See Levy v. Levy, 900 So.2d 737 (Fla. 2d DCA 2005). Further, the dissipation must have occurred during the time the marriage was “undergoing an irreconcilable breakdown”. Gentile v. Gentile, 565 So.2d 820, 823 (Fla. 4th DCA 1990); See Romano v. Romano, 632 So.2d 207 (Fla. 4th DCA 1994). In Roth, the dissipation of assets was caused by the husband providing support for his wife and children, as well as maintaining the marital home and his living accommodations during the separation. Therefore, the liquidation of his bank accounts, CDs and IRAs to pay support and there was no evidence that the husband engaged in misconduct in expending the funds, it was error for the trial court to include these funds in the equitable distribution scheme.

In Byers v. Byers, 149 So.3d 161(Fla. 1st DCA 2014), the husband challenged the valuation of certain assets and the inclusion of certain assets in the marital estate. The issues concerned the inclusion of two bonus checks of $17,000 and $29,000, respectively, which he received while he worked at Regions Bank. He essentially claimed those funds were depleted by the time of the final hearing on the divorce petition, because he used it to pay, among other things, the mortgage, child support, alimony, and so on. But his former wife was able to show
that not only did he not list the amounts on his amended financial affidavits, he also ceased making any mortgage payments on the residence at least a year before receiving those checks, and stopped making child support and alimony payments thereafter. Additionally, at the time he received those bonus checks, he was earning $143,989.88 in salary from Regions Bank, from which he could have paid his financial obligations to his family. Thus, the trial court had sufficient evidence from which to conclude that the check amounts should be included in the marital estate.

In *Ballard v. Ballard*, 158 So.3d 641 (Fla. 1st DCA 2014), the First Districted determined that the trial court abused its discretion by including within the equitable distribution scheme certain furniture that belonged to the husband before the marriage. The court also abused its discretion by including $42,012 from the Eglin Federal Credit Union account that had been significantly diminished by the time of trial, without any finding that the husband had used the assets improperly. The husband testified that he had used $20,000 from the account during the proceedings to pay his attorney, and the trial court acknowledged in the final judgment that the husband claimed there were no longer any funds in the account. Sums that have been diminished during dissolution proceedings for purposes reasonably related to the marriage, such as attorney's fees for the dissolution, should not be included in an equitable distribution scheme unless there is evidence that one spouse intentionally dissipated the asset for his or her own benefit and for a purpose unrelated to the marriage. *See, e.g., Zvida v. Zvida*, 103 So.3d 1052 (Fla. 4th DCA 2013). In that event, the trial court must make a specific finding of intentional misconduct. *Id.* at 1055. *Accord Lopez v. Lopez*, 135 So.3d 326 (Fla. 5th DCA 2013); *Bateh v. Bateh*, 98 So.3d 750 (Fla. 1st DCA 2012); *Akers v. Akers*, 582 So.2d 1212 (Fla. 1st DCA 1991); *Bush v. Bush*, 824 So.2d 293 (Fla. 4th DCA 2002).

In *Nguyen v. Huong Kim Huynh*, 147 So. 3d 639 (Fla. 1st DCA 2014), the parties owned a number of residences that produced rental income during the marriage. In the supplemental final judgment, the trial court found that (1) from the October 24, 2003, filing date of the petition to dissolve the marriage until the parties' separation on July 1, 2009, the former wife received $257,652.00 in net rental income from the parties' marital assets; and (2) since the separation, the former wife had received $244,627.00 in total net rental income from the parties' marital assets. As to both amounts, the court determined that the former wife had fraudulently conveyed, transferred, and/or hidden this income that she solely received. In the equitable distribution scheme, the court distributed the sum of these amounts ($502,279.00) to the former wife as proceeds from real property received by her. In allocating $502,279.00 in rental income assets to the former wife, the trial court did not cite any supporting evidence in the record or explain the basis for this substantial amount (or either of the two component amounts). The record does not otherwise disclose the source or reliability of this amount. The First District was therefore unable to conduct a meaningful appellate review as to whether competent substantial evidence supported the determination that the former wife received and fraudulently conveyed,
transferred, and/or hid $502,279.00 in proceeds from the rental properties. *Furbee v. Barrow*, 45 So.3d 22, 24 (Fla. 2d DCA 2010).

(j) *Any other factors necessary to do equity and justice between the parties.*

Ordinarily, the distribution of marital assets should be equal unless some relevant factors justify disparate treatment, such as payment of permanent periodic alimony or performance of extraordinary services over and above normal marital duties. *Romano v. Romano*, 632 So.2d 207 (Fla. 4th DCA 1994).

In *Watson v. Watson*, 124 So. 3d 340 (Fla. 1st DCA 2013), the former wife argued that the trial court's unequal distribution should be upheld because, under section 61.075(1)(j), the trial court may consider any factor necessary to do equity and justice when crafting a distribution of assets. According to the former wife's reasoning, awarding her all of the items in storage, resulting in an unequal distribution, was justified because she had paid the costs to store the items, and testified that their total value was less than half of the storage costs. The statute provides that an unequal distribution can be made if it is justified after “all relevant factors” have been considered, including the factors contained in section 61.075(1)(a)-(j). See *Boutwell*, 920 So.2d at 153; *see also Wagner v. Wagner*, 61 So.3d 1141, 1143 (Fla. 1st DCA 2011)(holding that trial courts must consider the ten factors listed in section 61.075(1) when crafting an unequal distribution of marital assets). In the Final Judgment, the trial court considered the factors described in subparts (a), (b), (c), and (f) of section 61.075(1). The trial court also found that the former wife expended money to preserve the items held in the storage facility, and that the value of those items was less than half the cost of storage. The Final Judgment did not address those mandatory factors listed in subparts (d), (e), (g), (h), or (i) of section 61.075(1). Due to the omission of the statutorily mandated findings, the matter was remanded to allow the trial court to make the requisite findings and craft a new equitable distribution scheme.

2. *Franklin v. Franklin*, 988 So.2d 125 (Fla. 2d DCA 2008) provides that an appellate court must reverse an unequal distribution if the trial court fails to make a specific finding of fact that justifies the unequal distribution. See also *Pavese v. Pavese*, 932 So.2d 1269 (Fla. 2d DCA 2006), which states that the failure to make specific written findings of fact that “identify, classify, value, and distribute the parties' assets and liabilities” in fashioning an equitable distribution precluded meaningful appellate review. Similarly, *Feger v. Feger*, 850 So.2d 611 (Fla. 2d DCA 2003), provides that the major deficiency in the final judgment is the court's failure to articulate a specific factual and statutory basis for the uneven equitable distribution award, rendering appellate review impossible.

**B. Partition**
1. The complaint for partition shall allege a description of the lands of which partition is demanded, the names and places of residence of the owners, joint tenants, tenants in common, coparceners, or other persons interested in the lands according to the best knowledge and belief of plaintiff, the quantity held by each, and such other matters, if any, as are necessary to enable the court to adjudicate the rights and interests of the party. If the names, residence or quantity of interest of any owner or claimant is unknown to plaintiff, this shall be stated. If the name is unknown, the action may proceed as though such unknown persons were named in the complaint. Fla. Stat. § 64.041.

2. If neither party requests a partition, the court is without authority to order the sale of property. *Watson v. Watson*, 646 So. 2d 297 (Fla. 5th DCA 1994)

3. In *Hodges v. Hodges*, 128 So. 3d 190 (Fla. 5th DCA 2013), the trial court ordered the partition of the marital home if the husband failed to pay the wife her equity in the home within six months. Neither party had requested partition. See, e.g., *Watson v. Watson*, 646 So.2d 297 (Fla. 5th DCA 1994) (trial court is without authority to order partition of property in absence of plea by either party). Accordingly, the Fifth District reversed the order to the extent that it required the sale of the property. However, the Fifth District stated that the wife may move to enforce the directive to pay her equity, in which case the trial court may order the sale of the property as a mechanism to enforce that aspect of the order, if requested in a motion. *Hodges v. Hodges*, 128 So. 3d 190 (Fla. 5th DCA 2013).

4. Trial court, in dissolution of marriage proceeding, lacked in rem jurisdiction over real property located in another state and, thus, could not order its partition and sale as part of distribution of marital property. *Polkowski v. Polkowski*, 854 So.2d 286 (Fla. 4th DCA 2003).

C. Interim Partial Distributions

1. Florida Statute §61.075(5) provides for an interim partial distribution. If the court finds good cause that there should be an interim partial distribution during the pendency of a dissolution action, the court may enter an interim order that shall identify and value the marital and nonmarital assets and liabilities made the subject of the sworn motion, set apart those nonmarital assets and liabilities, and provide for a partial distribution of those marital assets and liabilities. An interim order may be entered at any time after the date the dissolution of marriage is filed and served and before the final distribution of marital and nonmarital assets and marital and nonmarital liabilities.

   (a) Such an interim order shall be entered only upon good cause shown and upon sworn motion establishing specific factual basis for the motion. The motion may be filed by either party and shall demonstrate good cause why the matter should not be
deferred until the final hearing.

(b) The court shall specifically take into account and give appropriate credit for any partial distribution of marital assets or liabilities in its final allocation of marital assets or liabilities. Further, the court shall make specific findings in any interim order under this section that any partial distribution will not cause inequity or prejudice to either party as to either party's claims for support or attorney's fees.

(c) Any interim order partially distributing marital assets or liabilities as provided in this subsection shall be pursuant to and comport with the factors in subsections (1) and (3) as such factors pertain to the assets or liabilities made the subject of the sworn motion.

2. In *Defanti v. Russell*, 126 So.3d 377 (Fla. 4th DCA 2013), the former wife failed to establish good cause for partial distribution of marital assets after she alleged that, pursuant to a pretrial stipulation, the parties agreed to divide certain of their liquid assets equally, but after the pretrial stipulation, the former husband continued to retain the former wife's one-half share, and former wife failed to show extraordinary circumstances required the interim partial distribution. Thus, the interim partial distribution was not granted.

3. In *Austin v. Austin*, 120 So.3d 669 (Fla. 1st DCA 2013), Florida Statute §61.075 did not authorize the trial court to liquidate a portion of husband's assets on the wife's motion for emergency relief, despite court's concern that the foreclosure of the parties' home would result in the loss of substantial equity during dissolution proceedings. Not only was the wife's motion not sworn, but it did not reference the husband's assets that were ultimately made the subject of liquidation and distribution by the order. The trial court did not make any effort to identify which assets were marital and which were nonmarital.

III. **ENFORCEMENT AND MODIFICATION**

1. Property division awards may not be enforced by contempt; the only remedies available are those of a creditor against a debtor. *Hertrich v. Hertrich*, 643 So.2d 115 (Fla. 5th DCA 1994); *Veiga v. State*, 561 So.2d 1335, 1336 (Fla. 5th DCA 1990).

2. In *La Roche v. La Roche*, 662 So. 2d 1018 (Fla. 5th DCA 1995), the husband first tendered the quitclaim deed through his counsel to wife's counsel. When the wife failed to respond by executing the proffered note and mortgage, the husband filed his motion for contempt. After a hearing, the trial court entered an order, finding the wife in contempt for failing to execute the note and mortgage and for failing to pay the amount set forth in the property settlement agreement. In this same order, the court also entered a judgment for the total
amount of principal, interest, attorney's fees and costs, imposed an equitable lien on the property,
and ordered the property sold by the clerk as soon as possible after the expiration of sixty days if
the debt was not paid. The Fifth District reversed, finding that the husband had a perfect remedy
in a settlement agreement which contained an “enforcement” provision calling for specific
performance, costs and attorney's fees in the event of breach. The remedial steps taken by the
lower court in the exercise of its contempt power were improper.

3. Trial court is without jurisdiction to modify property rights after adjudication of
those rights has been made in judgment of dissolution. Taylor v. Taylor, 653 So.2d 1126 (Fla. 1st
DCA 1995).

4. In Ingram v. Ingram, 133 So. 3d 1205 (Fla. 2d DCA 2014), the former husband
filed a supplement petition, which was dismissed by the trial court for lack of jurisdiction,
reasoning that it could not modify an award of equitable distribution that had been determined in
a 1993 final judgment. The Second District concluded that the former wife mischaracterized the
supplemental petition. The former husband was not actually trying to change the final judgment;
he was trying to enforce its terms as he understood them.

5. In Byrne v. Byrne, 133 So. 3d 1082 (Fla. 4th DCA 2014), the former wife argued
that contempt cannot be used to enforce her obligation to pay certain mortgages. The Fourth
District agreed, stating that the law is well-settled that contempt does not lie to enforce a
property settlement arising out of a dissolution of marriage. See Simpson v. Simpson, 68 So.3d
958, 961 (Fla. 4th DCA 2011); Randall v. Randall, 948 So.2d 71, 74 (Fla. 3d DCA 2007); Filan
v. Filan, 549 So.2d 1105, 1106 (Fla. 4th DCA 1989); Hobbs v. Hobbs, 518 So.2d 439, 441 (Fla.
1st DCA 1988). Contrary to the former husband's contention, this was not a case where the trial
court used its contempt powers to compel performance of an act. See Riley v. Riley, 509 So.2d
1366, 1369 (Fla. 5th DCA 1987) (affirming contempt order which was based on former
husband's failure to designate former wife the primary beneficiary of a life insurance policy, as
required by the property settlement agreement); Burke v. Burke, 336 So.2d 1237, 1238 (Fla. 4th
DCA 1976) (affirming portion of order which found former husband in contempt for failing to
execute documents as provided for in a property settlement agreement). Furthermore, the former
husband lacked standing to request and receive appointment of a receiver to collect the rental
payments made by tenants living in the former marital home. A receiver may not be appointed
unless the person seeking appointment has standing “by virtue of a legal or equitable claim, such
as a claim of ownership of the property in controversy, or a lien or property right therein ....”
Warrington v. First Valley Bank, 531 So.2d 986, 987 (Fla. 4th DCA 1988) (citation omitted).
Pursuant to the final judgment of dissolution, the former husband was left with no legal interest
in the former marital home. Further, nothing in the record established that at the time of the
hearing, the former husband had an equitable interest in the former marital property, such as a
lien or other property right. Thus, the Fourth District reversed the contempt order in its entirety.
Byrne v. Byrne, 133 So. 3d 1082 (Fla. 4th DCA 2014).
ALIMONY & CHILD SUPPORT

Speaker: Philip S. Wartenberg, Esq., B.C.S. *
Allen Dell, P.A.
202 S. Rome Ave., Suite 100
Tampa, FL 33606
(813) 223-5351
Email: pwartenberg@allendell.com

* The materials were largely authored by past presenter Raymond J. Rafool, II, Esq., Miami, FL, and have been amended to include recent case law and commentary.
I. ALIMONY.

A. Definition.

1. “Alimony is an allotment of sums of money payable at regular intervals or in lump sum, as distinguished from a portion of a spouse’s estate, and it is an obligation imposed by law separate and distinct from the parties’ property rights.” Cullen v. Cullen, 413 So.2d 1196, 1198 (Fla. 1st DCA 1982).

B. Types of Alimony.

1. Under Florida law, there are five types of alimony: Temporary alimony; Bridge-the-gap alimony; Rehabilitative alimony; Durational alimony; Permanent alimony; or any combination of these forms.

C. Alimony Statute.

1. § 61.08, Fla. Stat., is the statute that controls alimony in the State of Florida.
   a. Income must be calculated for each party, which includes all sources of income. Income may also be imputed. The Court must consider all relevant factors, including those set forth in the statute at § 61.08(2)(a)-(j), Fla. Stat.

2. The type of alimony awarded depends largely on the length of the marriage: short-term, moderate-term, or long-term. In moderate-term marriages, permanent alimony may be awarded based upon clear and convincing evidence in light of the statutory factors. In long-term marriages, permanent alimony may be awarded based on the statutory factors – removing the clear and convincing evidence standard.

3. The court may also order life insurance to protect an award of alimony, or to otherwise secure such an award with a bond or assets.

D. Usefulness of Pre-2010 Alimony Case Law.

Before the 2010 amendments to section 61.08, gray area cases often involved the choice between permanent alimony and bridge-the-gap alimony. The 2010 amendments created durational alimony, an intermediate form of alimony between bridge-the-gap and permanent alimony. In evaluating the propriety of an award of durational alimony, pre–2010 cases are of limited utility, since they evaluate a different type of choice made by the trial judge.

See Nousari v. Nousari, 94 So. 3d 704, 706 ( Fla. 4th DCA 2012).

E. Fla. Stat. § 61.08 Alimony Factors.

1. In awarding alimony, the trial court must consider the statutory factors codified at § 61.08, Fla. Stat. Cissel v. Cissel, 82 So.3d 891 (Fla. 4th DCA 2011).

2. The alimony factors found in § 61.08(2), Fla. Stat. are:
   a. The standard of living established during the marriage;
b. The duration of the marriage;

c. The age and the physical and emotional condition of each party;

d. The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each;

e. The earning capacities, educational levels, vocational skills, and employability of the parties and… the time necessary for either party to acquire sufficient education and training to enable…[them] to find appropriate employment;

f. The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party;

g. The responsibilities each party will have with regard to any minor children they have in common;

h. The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment;

i. All sources of income available to either party, including income available to either party through investments of any asset held by that party; and

j. Any other factor necessary to do equity and justice between the parties.

3. These factors are only a starting point, and the Court must consider any relevant factor necessary to do equity.

**F. Temporary Alimony.**

1. “In every proceeding for dissolution of marriage, a party may claim alimony and suit money in the petition or by motion, and if the petition is well founded, the court shall allow a reasonable sum therefor. If a party in any proceeding for dissolution of marriage claims alimony or suit money in his or her answer or by motion, and the answer or motion is well founded, the court shall allow a reasonable sum therefor.” § 61.071, Fla. Stat.

2. The “just-prevent-them-from-going-to-the-poorhouse-until-the-case-is-over view of the legal principle controlling *pendente lite* awards... is thoroughly wrong.” Vickers v. Vickers, 413 So.2d 788, 789 (Fla. 3d DCA 1982). The proper standard for assessing temporary alimony relies on balancing “needs as fixed by the parties’ standard of living, on the one hand, and ability to pay, on the other.” Id.

3. “Throughout the pendency of a dissolution of marriage action, a party should not have consume a separate asset in order to support himself/herself in the same standard of living enjoyed during the marriage.” Featherston v. Featherston, 86 So. 3d 549 (Fla. 2d DCA 2012). In Byers v. Byers, 910 So.2d 336 (Fla. 4th DCA 2005), the court reasoned, in determining temporary alimony, that a former spouse “should not have to liquidate her assets to pay for her support.” Byers v. Byers, 910 So.2d 336, 342 (Fla.4th DCA 2005); see Wolfson v. Wolfson, 455 So.2d 577
Under § 61.14(11)(a), Fla. Stat., a court may modify, vacate, or set aside a temporary support order without a substantial change of circumstances. A modification under this statute can be retroactive to the date of the initial entry of temporary support, or the date of filing the initial petition for dissolution of marriage, support, paternity, or modification.

5. Temporary alimony may be awarded in certain cases after the final judgment is entered and while matter is on appeal. The trial court has discretion to award temporary alimony, where the alimony award is inextricably intertwined with an equitable distribution award and the benefits are being delayed because of appeal. See McPherson v. McPherson, 775 So. 2d 973 (Fla. 4th DCA 2000).

G. Bridge-the-gap Alimony.

1. “Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single.” § 61.08(5), Fla. Stat. Bridge-the-gap alimony is designed to help a party with identifiable short-term needs.

2. The length of the alimony award may not exceed 2 years. See § 61.08(5), Fla. Stat.; Whelpley v. Whelpley, 98 So.3d 780 (Fla. 4th DCA 2012). The alimony award terminates upon the death of either party, or upon the remarriage of the party receiving alimony. Bridge-the-gap alimony cannot be modified in amount or duration.

3. In Broemer v. Broemer, 109 So.3d 284 (Fla. 1st DCA 2013), the former wife appeals a trial court order awarding her durational rather than permanent alimony without providing any legal or evidentiary basis. At the time of dissolution, the former wife, who was the homemaker, was fifty-two years old, while the former husband, who was the primary breadwinner, was fifty-four years old. The former wife despite having some ailments, was voluntarily unemployed throughout the marriage, which required the trial court to impute income to her for purposes of calculating support. The trial court then reduced the amount of monthly bridge-the-gap alimony by more than fifty percent. The trial court erred in, and was reversed for, failing to explain why it reduced monthly amount of bridge-the-gap alimony. Broemer v. Broemer, 109 So.3d 284 (Fla. 1st DCA 2013).

H. Rehabilitative Alimony.

1. Rehabilitative alimony may be awarded to help a party in establishing their capacity for self-support, through either: the redevelopment of previous skills or credentials; or the education, training, or work experience necessary to develop appropriate employment skills or credentials. For the court to award rehabilitative alimony, there must be a specific and defined rehabilitative plan, which must be included with the order. See § 61.08(6)(b), Fla. Stat.; Lovell v. Lovell, 14 So.3d 1111 (Fla. 5th DCA 2009). Therefore, it is important to put on evidence of a rehabilitative plan which would enable a court to make such an award.

2. Rehabilitative alimony may be modified or terminated in accordance with § 61.14, Fla. Stat. if there is a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.
I. Durational Alimony.

1. “The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis.” § 61.08(7), Fla. Stat. Durational alimony ends upon the death of either party or upon the remarriage of the party receiving alimony. Durational alimony may be modified or terminated based upon a substantial change in circumstances based on § 61.14, Fla. Stat.

2. The length of durational alimony cannot be modified, without the presence of exceptional circumstances – and cannot exceed the length of the marriage. In Diaz v. Diaz, 152 So.3d 743 (Fla. 3d DCA 2014), the court reduced the length of a durational alimony award from 48 months to 40 months, because the durational alimony award cannot exceed the length of the marriage.

3. In Kelley v. Kelley, 2015 WL 5714602 (Fla. 4th DCA 2015), even though the judgment stated that the court had considered all the factors in arriving at durational alimony, the judgment failed to make specific findings; therefore, the trial court was reversed.

Although the Final Judgment stated that the court considered all of the statutory factors, it failed to identify or make findings of fact relative to the following statutory factors: (1) the standard of living established during the marriage; (2) the contributions of each party to the marriage; (3) the tax treatment and consequences of the alimony award; and (4) all sources of income available to either party. Without these findings, this Court cannot make a proper determination as to the appropriateness of durational alimony.


4. A court can award a nominal amount of permanent periodic alimony together with durational alimony. The court reasoned that combining durational and permanent periodic alimony may “minimize the need for litigation…while preserving [the spouse’s] right to support.” Purin v. Purin, 158 So.3d 752, 754 (Fla. 2d DCA 2015).

J. Permanent Alimony.

1. “Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage.” § 61.08(8), Fla. Stat. One of the purposes of permanent alimony is to allow the recipient spouse to maintain the standard of living enjoyed by the parties during the marriage. See Juchnowicz v. Juchnowicz, 157 So.3d 497 (Fla. 2d DCA 2015); Zinovoy v. Zinovoy, 50 So.3d 763 (Fla. 2d DCA 2010); State v. Jaramillo, 951 So.2d 97 (Fla. 2d DCA 2007).

2. Permanent alimony is allowed in a long-term marriage upon consideration of statutory factors; in a moderate-term marriage based upon clear and convincing evidence and consideration of statutory factors; or in a short-term marriage upon written findings of exceptional circumstances. Permanent alimony is not appropriate in short-term marriages solely to enable a
spouse to maintain their standard of living enjoyed during the marriage. See Levy v. Levy, 900 So.2d 737 (Fla. 2d DCA 2005).

3. If the court awards permanent alimony, there must be a finding that no other alimony is fair and reasonable under the circumstances. The state of permanent alimony in Florida is often controversial, and the legislature has advanced many alimony reform bills in recent years – none of which have been enacted as law.

4. To determine the need of the recipient spouse, the courts look, among other things, at the parties’ earning ability, age, health, education, the duration of the marriage, the standard of living enjoyed during the marriage, and the value of each party’s estate. The need for permanent alimony should be based upon the circumstances present at the time of the final dissolution of marriage hearing, and should not be speculative of future needs. See Sola v. Sola, 940 So.2d 1206 (Fla. 2d DCA 2006); Italiano v. Italiano, 873 So.2d 558 (Fla. 2d DCA 2004).

5. Permanent alimony ends upon the death of either party or remarriage of the party receiving alimony. Permanent alimony can be modified or terminated based upon a substantial change in circumstances or upon existence of a supportive relationship. Therefore, in a permanent alimony case where there is a need, and no ability to pay, a de minimus amount of permanent alimony should be awarded.

6. In Banks v. Banks, 168 So.3d 273, 274 (Fla. 2d DCA 2015), the trial court applied the incorrect standard of proof wherein it awarded durational alimony rather than permanent alimony, based upon wife’s failure to present clear and convincing evidence of need for permanent alimony after a 33 year marriage. This burden of proof only applies in moderate term marriages.

7. In Quinones v. Quinones, 84 So.3d 1101 (Fla. 3d DCA 2012), the trial court erred in considering “voluntary payments” made to adult children in calculating amount of permanent alimony. The court held that absent a contractual agreement between the parties, the trial court improperly considered the voluntary payments as a factor.

K. Lump Sum Alimony.

1. Lump sum alimony is not a separate form of alimony, but rather the payment of a specific sum of alimony support to a recipient spouse. It may be paid in installments. Lump sum alimony is within the discretion of the trial court. Lump sum alimony survives death, and cannot be modified or terminated based upon the remarriage of the recipient spouse – however, it may be modified or terminated based upon the agreement of both the recipient spouse and payor spouse. See Canakaris v. Canakaris, 382 So.2d 1197 (Fla. 1980). Lump sum alimony can also be awarded to ensure that property acquired throughout the marriage is equitably distributed.

L. Alimony Burden of Proof.

a. The burden of proof lies with the party requesting alimony. See Rutan v. Rutan, 2015 WL 5306147 (Fla. 2d DCA 2015). The requesting party has the burden to show the financial need, and their spouse’s ability to pay. Gilliard v. Gilliard, 162 So.3d 1147, 1153 (Fla. 5th DCA 2015).

b. The spouse requesting alimony has “the burden of presenting competent evidence to support” their request. Sheehan v. Sheehan, 853 So.2d 523 (Fla. 5th DCA 2003).
c. If the payor spouse claims that the other spouse is voluntarily unemployed, the payor spouse bears the burden of proof relative thereto. See *Green v. Green*, 126 So.3d 1112, 1114 (Fla. 4th DCA 2012); see also *Zarycki-Weig v. Weig*, 25 So.3d 573, 575 (Fla. 4th DCA 2009).

d. If the alimony was determined by agreement, the payor spouse has a heavier burden of proof when seeking modification or termination. *Ellisen v. Ellisen*, 150 So.3d 1270 (Fla. 5th DCA 2014).

M. Need and Ability to Pay.

1. A starting point for every alimony analysis is the determination of “need” and “ability to pay.” § 60.08(2), Fla. Stat. Simply, the recipient spouse must have an actual need, and the paying spouse must have the ability to pay. In *Canakaris v. Canakaris*, 382 So.2d 1197 (Fla. 1980), the Supreme Court held that both elements must be present to meet the threshold of any alimony award.

2. Need:

   a. Need should be clear – an award entered in the absence of need is erroneous. See *Roth v. Roth*, 973 So.2d 580 (Fla. 2d DCA 2008); *Italiano v. Italiano*, 873 So.2d 558 (Fla. 2d DCA 2004); *Sikora v. Sikora*, 2015 WL 4136763 (Fla. 2d DCA 2015); *Lin v. Lin*, 37 So.3d 9441 (Fla. 2d DCA 2010).

   b. In order to prove “need,” the recipient spouse must be able to demonstrate the inability to gain the income necessary to meet the same standard of living attained throughout the course of the marriage. See *Castillo v. Castillo*, 626 So.2d 1035 (Fla. 3d DCA 1993). The recipient spouse has the burden of establishing need. See *Esaw v. Esaw*, 965 So.2d 1261 (Fla. 2d DCA 2007). When the spouse receives sufficient income producing assets through equitable distribution, whereby all needs are met, then alimony is inappropriate. See *Italiano v. Italiano*, 873 So.2d 558 (Fla. 2d DCA 2004).

   c. In *Mallard v. Mallard*, 771 So.2d 1138 (Fla. 2000), the Supreme Court held that the parties’ frugality during the marriage is not to be considered when establishing need. “In awarding alimony, the court may not factor in speculative post-dissolution savings based upon a marital history of frugality.” *Id.*

   d. A recipient spouse cannot modify their mortgage, virtually doubling their monthly payments, in order to obtain or maintain a certain type, or amount, of alimony. *Wolfe v. Wolfe*, 953 So.2d 632 (Fla. 4th DCA 2007).

   e. When establishing need, courts should consider the parties’ earning ability, age, health, education, the duration of the marriage, and the standard of living during the marriage. Trial courts cannot disregard the parties’ standard of living and replace it with what it believes to be reasonable. *Quinones v. Quinones*, 84 So.3d 1101 (Fla. 3d DCA 2012).

   f. In *Vigo v. Vigo*, 15 So.3d 619 (Fla. 3d DCA 2009), the trial court abused its discretion in granting permanent periodic alimony to the wife and ignoring the wife’s ability to secure employment and earn a living.

   g. Trial courts must consider all sources of income available to either party, when determining an alimony award, including interest income from retirement accounts and
equalization payments. See Stoltzfus v. Stoltzfus, 2015 WL 4747194 (Fla. 2d DCA 2015); Adelberg v. Adelberg, 142 So.3d 895 (Fla. 4th DCA 2014).

h. In Stoltzfus v. Stoltzfus, 2015 WL 4747194 (Fla. 2d DCA 2015), the DCA held that the trial court abused its discretion for failing to consider the interest income of retirement accounts, when determining the income of the former wife for alimony.

i. In Sikora v. Sikora, No. 2D14-1073, 2015 WL 4136763 (Fla. 2d DCA 2015), the trial court erred in imputing income to wife from her retirement accounts at a 3.5% rate of return where there was no evidentiary support for applying that percentage. The parties had stipulated as to the income available from investment accounts and the stated rate of return, but no such stipulation was made as to retirement accounts. More, the trial court erred in awarding alimony in excess of wife’s established need, even where husband conceded as to her entitlement to permanent alimony and his ability to pay the amount awarded. Wife included in her “need” schedule the costs of maintaining a second home in Maryland, which had been sold at the time of trial, and that the parties had never maintained a two-home lifestyle. The trial court was also reversed for requiring husband to secure alimony award with 2 million dollar life insurance policy without findings relating to husband’s insurability and cost of policy, and without explaining how it arrived at amount of requirement.

j. In Niekamp v. Niekamp, No. 2D14-728, 2015 WL 5023119 (Fla. 2d DCA 2015), the court found that in a 22-year marriage, there is a presumption of alimony when warranted by one party’s need and the other party’s ability to pay. Husband was unemployed, and there was evidence that Husband was unable to work due to mental health issues, but had been denied social security benefits for unknown reasons. The trial court concluded that his unemployment was voluntary and denied his request for alimony. The DCA reversed and remanded for an award of alimony in a “form and amount commensurate with his need and Ms. Niekamp’s ability to pay.” Id.

3. Standard of Living:

a. Trial courts often look at the party’s standard of living – and attempt to ensure that each party’s standard of living is equalized and commensurate with that enjoyed during the marriage. The goal is to avoid a former spouse going from a comfortable situation to one where they only have enough for the bare minimum essentials of food, clothing, and shelter.

b. In Juchnowicz v. Juchnowicz, 157 So.3d 497 (Fla. 2d DCA 2015), the trial court erred in awarding permanent periodic alimony of $1,571.44 per month to wife, which was not proportionate with the parties’ standard of living. The parties had a vacation home in Costa Rica, collectable vehicles, and an airplane. The wife’s monthly income was $4,800, and the husband’s monthly income was $21,761. Trial court relied on wife’s needs based on her post-separation lifestyle, rather than that enjoyed during the marriage.

c. If a party has accustomed their spouse to a low standard of living throughout the marriage, by failing to support them in the past, that will not justify a continuation of a low standard of support in the future. See Kaufman v. Kaufman, 63 So.2d 196 (Fla. 1952). During the pendency of a dissolution of marriage action, a spouse should not need to consume a separate asset in order to maintain the standard of living of the marriage. See Featherston v. Featherson, 86 So.3d 549 (Fla. 2d DCA 2012).
d. However, the standard of living is not a super-factor that supersedes the other spouse’s ability to pay. *See Marshall–Beasley v. Beasley*, 77 So.3d 751 (Fla. 4th DCA 2011).

4. Ability to Pay:

a. Ability to pay is determined by income available to the spouse. *See Zold v. Zold*, 911 So.2d 1222 (Fla. 2005). Alimony awards cannot leave the payor of alimony with significantly less net income than the net income of the recipient. *See, e.g. Williams v. Williams*, 10 So. 3d 651, 652 (Fla. 5th DCA 2009).

b. Undistributed pass-through income that is retained by an S-corporation for non-corporate purposes (i.e. shielding a shareholder’s income), may become available as income for purposes of determining alimony, child support, and attorney’s fees. *See Zold v. Zold*, 911 So.2d 1222 (Fla. 2005). In a dispute over whether the undistributed is retained for corporate or non-corporate purposes, the burden of proof lies with shareholder-spouse. *Id*. Specifically, the court must consider the extent to which the shareholder-spouse has access to the pass-through income retained by the corporation, the limitations set forth in § 607.06401, Fla. Stat. prohibiting distributions to shareholders that would render the corporation unable to fill its corporate duties, and the purposes for which the pass-through income was retained. *Id*.

c. Non-marital assets and income-producing assets can be considered when establishing the ability to pay attorney’s fees in dissolution of marriage actions. *Chandler v. Chandler*, 624 So.2d 855 (Fla. 4th DCA 1993).

d. Contributions made by a third-party to a party’s living expenses may be considered when assessing the party’s financial circumstances relative to support issues. *Morrell v. Morrell*, 113 So.3d 857 (Fla. 2d DCA 2012).

e. In *McCall v. McCall*, 616 So.2d 607 (Fla. 2d DCA 1993), the court found:

Initially, we note that in determining a former spouse’s ability to pay domestic support, it is improper for a trial court to treat the former spouse’s roommate’s income as though it were the former spouse’s. A trial court may, however, consider a roommate’s contribution to living expenses as evidence of a former spouse’s true expenses.

*McCall v. McCall*, 616 So.2d 607 (Fla. 2d DCA 1993) (external citations omitted).

f. In a dissolution of marriage, equity must be properly distributed amongst the parties, therefore a trial court errs if they fail to address marital loans, debts, and liabilities. *See Hernandez v. Hernandez*, 109 So.3d 806 (Fla. 5th DCA 2012). In *Wagner v. Wagner*, 136 So.3d 718 (Fla. 2d DCA 2014), during the marriage, the husband charged his adult children’s college expenses to the marital credit cards. The wife argued that the husband intentionally depleted the marital assets, and that the debt should be attributable to him. Though trial courts typically consider a party’s intentional waste or depletion of marital assets in order to do equity, charging the parties’ adult children’s college tuition on credit cards was considered marital debt. *Wagner v. Wagner*, 136 So.3d 718 (Fla. 2d DCA 2014).

g. In *Green v. Green*, 126 So. 3d 1112, 1115 (Fla. 4th DCA 2012), “the trial court distributed the $30,000 marital debt unequally without considering the permanent periodic alimony that Former Husband would be responsible to pay, or in the alternative, failed to properly
consider the distribution of the $30,000 marital debt before determining the amount of permanent alimony.”

h. In Mills v. Johnson, 2014 WL 3673942, Case No. 2D13-3100 *1 (Fla. 2d DCA July 25, 2014), the Court based alimony, primarily, on the parties’ income disparity. In Mills, the former husband’s financial affidavit evidenced a monthly deficit without considering alimony or child support. Id. Further, the record showcased that the parties lived beyond their means during the marriage and incurred large debts. Id. The Second District Court of Appeal reasoned that placing the former husband at a greater deficiency in income would not solve the financial difficulties of the parties. Id.

i. The trial court abused its discretion where monthly outlay for alimony, child support and debt service exceeded former husband’s net monthly income. Crick v. Crick, 78 So.3d 696 (Fla. 2d DCA 2012); see also Hoffman v. Hoffman, 127 So.3d 863 (Fla. 2d DCA 2013)(holding that a trial court could not order a father to pay child support, temporary alimony, and temporary attorney’s fees and costs totaling more than 80% of the father’s net monthly income).

N. Alimony and Taxation.

1. True alimony may be deductible by the payor, and taxable to the recipient. However, the subject payment must fall within the Internal Revenue Code’s definition of alimony.

2. For example, alimony must be made by written agreement or written Court order. In Faylor v. Comm’r, T.C. Memo 2013-143 (T.C.2013), letters between the taxpayer’s counsel and counsel for taxpayer’s Wife did not establish the existence of a written separation agreement. Therefore, the support received was not deductible.

3. Alimony Requirements. A payment to or for a spouse under a divorce or separation instrument is alimony if the spouses do not file a joint return with each other and all the following requirements are met:

   a. The payment is in cash;

   b. The instrument does not designate the payment as not alimony;

   c. The spouses are not members of the same household at the time the payments are made. This requirement applies only if the spouses are legally separated under a decree of divorce or separate maintenance;

   d. There is no liability to make any payment (in cash or property) after the death of the recipient spouse;

   e. The payment is not treated as child support.

4. The Seven “D”s of Alimony:

   a. Dollars – received by spouse;

   b. Documents – dissolution of marriage or separation instruments;

   c. Designation – payments cannot be non-includable in income;
d. Distance – spouse cannot be member of same household;

e. Death – payment ends upon the death of payee;

f. Dependents – payment cannot be fixed on child support; and

g. Dual – separate income tax returns must be filed.

5. In *Rykiel v. Rykiel*, 838 So.2d 508 (Fla. 2003), the Supreme Court held that the courts have discretion to provide that alimony payments are to be excluded from the gross income of the payee and not deducted by the payor. The Supreme Court found that “alimony” includes monetary payments made to a spouse, unless the instrument says that the payments are not includible in gross income and are not allowable as a deduction.

6. In *McMillan v. McMillan*, 977 So.2d 655 (Fla. 5th DCA 2008), the court found that “[i]t is well settled that ‘[c]onsideration of the consequences of income tax law on the distribution of marital assets and alimony is required and failure to do so is ordinarily reversible error.’”

7. In *Pereboom v. Pereboom*, 959 So. 2d 1205, 1206 (Fla. 4th DCA 2007), the trial court incorrectly held that the wife was not responsible for 2005 tax liability after August 30, 2005, which was the date of a temporary relief order. *Id.* The trial court improperly reasoned that once the temporary relief order was entered, the parties were individually responsible for their own debts, such as credit card debt, and thus, they should each be responsible for their own tax liability. *Id.* However, all of the husband’s 2005 income was used for the parties’ support and was subject to income tax for the full calendar year. *Id.* Therefore, because the wife enjoyed the benefit of the husband’s entire 2005 income in the form of temporary support, the entire 2005 tax debt was to be distributed equally to the parties. *Id.*

O. **Defenses to Alimony.**

1. Laches (see child support section below);

2. Waiver (see child support section below);

3. Unclean hands/actions of recipient spouse;

4. Modification/termination by subsequent agreement.

P. **Alimony and Child Support Unconnected with Dissolution of Marriage.**

1. If a person with the ability to contribute to the maintenance of their spouse and/or minor child fails to do so – then the spouse not receiving support may apply for alimony and child support without seeking a dissolution of the marriage. § 61.09, Fla. Stat.

Q. **Modification of Alimony.**

1. In *Jarrad v. Jarrad*, 157 So.3d 332 (Fla. 2d DCA 2015), the court held that the ex-husband demonstrated “permanent” change in circumstances that entitled him to a reduction of permanent alimony payments, and reasoned as follows:
During the adjudicatory process, the party seeking a modification must file a pleading that adequately alleges a claim for modification. Such a claim essentially requires the party to allege and the trial court to decide that (1) there has been a substantial change in circumstances, (2) the change was not contemplated at the time of the final judgment of dissolution, and (3) the change is sufficient, material, permanent, and involuntary.

*See Jarrad v. Jarrad*, 157 So.3d 332 (Fla. 2d DCA 2015).

2. The modification of alimony is codified at § 61.14, Fla. Stat., that provides:

When the parties enter into an agreement for payments for, or instead of, support, maintenance, or alimony, whether in connection with a proceeding for dissolution or separate maintenance or with any voluntary property settlement, or when a party is required by court order to make any payments, and the circumstances or the financial ability of either party changes or the child who is a beneficiary of an agreement or court order as described herein reaches majority after the execution of the agreement or the rendition of the order, either party may apply to the circuit court of the circuit in which the parties, or either of them, resided at the date of the execution of the agreement or reside at the date of the application, or in which the agreement was executed or in which the order was rendered, for an order decreasing or increasing the amount of support, maintenance, or alimony, and the court has jurisdiction to make orders as equity requires, with due regard to the changed circumstances or the financial ability of the parties or the child, decreasing, increasing, or confirming the amount of separate support, maintenance, or alimony provided for in the agreement or order.

*See § 61.14(1)(a), Fla. Stat.*

3. “A reduction in alimony can be based either on the decreased income of one party or the decreased needs of the other party.” *Wolfe v. Wolfe*, 953 So.2d 632, 634 (Fla. 4th DCA 2007).

4. In *Aquilina v. Aquilina*, 141 So.3d 597 (Fla. 4th DCA 2014), the former husband was awarded the former marital residence and his vehicle; however, the former wife wanted to have the debt attached to said property distributed to her so that her monthly payments on the debts would not be incorporated into the former husband’s alimony award. The trial court allotted the payment of the mortgage and home equity line of credit into husband’s alimony award, and wrote in its order that: “in the event the Husband pays off his mortgage or some other significant item of expense of his no longer exists, nothing herein is a determination that such a change in circumstances is not anticipated.” The trial court erred by entering an order that has the effect of preventing the former wife from moving for modification for any future change in circumstances. *Id.*
5. In *Morrison v. Morrison*, 60 So.3d 410, 416 (Fla. 2d DCA 2011), the court held that when determining whether to modify alimony, the trial court should not consider a party’s unmet needs at the time of dissolution, but rather only the needs that reach the level of a substantial change in circumstances not previously contemplated at the time of dissolution.

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<th>Type of Alimony</th>
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<td>Temporary Alimony</td>
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<td>Bridge-the-gap Alimony</td>
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<tr>
<td>Permanent Alimony</td>
<td>Modification allowed</td>
<td>Substantial change in circumstances or upon existence of a supportive relationship</td>
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R. Modification for Supportive Relationships.

1. § 61.14, Fla. Stat., provides for reduction or termination in alimony upon the establishment of a supportive relationship between the payee and a third-party. § 61.14(1)(b) provides:

   1. The court may reduce or terminate an award of alimony upon specific written findings by the court that since the granting of a divorce and the award of alimony a supportive relationship has existed between the obligee and a person with whom the obligee resides. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists.

   2. In determining whether an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides, the court shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person:

   a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as “my husband” or “my wife,”
or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.

b. The period of time that the obligee has resided with the other person in a permanent place of abode.

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.


2. A “supportive relationship” may be grounds for reducing, or terminating, alimony altogether. Elbaum v. Elbaum, 141 So.3d 658 (Fla. 4th DCA 2014). In Overton v. Overton, the court defined a supportive relationship as “a relationship that takes the financial place of a marriage and necessarily decreases the need of the obligee.” Overton v. Overton, 34 So.3d 759, 761 (Fla. 1st DCA 2010) (external citations omitted).

3. “In establishing an award of alimony based on the former wife’s needs, the trial court must also consider any support the former wife is receiving from the third party under their live-in arrangement.” Heilman v. Heilman, 610 So.2d 60, 61 (Fla. 3d DCA 1992).

4. In Zeballos v. Zeballos, 951 So.2d 972 (Fla. 4th DCA 2007), the former husband sought termination of alimony based on impending retirement and claimed that the former wife was in a “supportive relationship.” The court found that the payee spouse was in a “supportive
relationship” with her fiancé who paid all her expenses, and that the alimony award should be reduced accordingly. Zeballos v. Zeballos, 951 So.2d 972 (Fla. 4th DCA 2007).

5. In Murphy v. Murphy, the court found that the former wife was in a supportive relationship that would allow for a reduction or termination of the former husband’s alimony obligation. Murphy v. Murphy, 2013 WL 5927542 (Fla. 3d DCA 2013). “[S]ection 61.14(1)(b) authorizes modification based on the existence of a ‘supportive relationship’ between the obligee and another person...[and] specifically provides that the court shall consider the economic support and other benefits the obligee has conferred upon the third party cohabitant.” Id. The court must consider “the economic support provided by the recipient spouse to the third party cohabitant, and other valuable non-economic services provided by either to the other.” Id.

6. The court can find the existence of a “supportive relationship” even if the payee spouse is not “completely dependent” on the third-party cohabitant. Buxton v. Buxton, 963 So.2d 950 (Fla. 2d DCA 2007). However, some courts have found that there is no “supportive relationship” even when the former wife and paramour live together, the paramour pays the mortgage, the former wife pays him rent, there is no joint ownership of property, and they do not share income or debt. Linstroth v. Dorgan, 2 So.3d 305 (Fla. 4th DCA 2008).

7. A marital settlement agreement precluded the termination of the former husband’s alimony obligation based on former wife’s supportive relationship, when the agreement provided that the obligation would be “non-modifiable” absent unforeseen circumstances involving the former husband’s health or business. Elbaum v. Elbaum, 141 So.3d 658 (Fla. 4th DCA 2014).

8. In Atkinson v. Atkinson, the marital settlement agreement provided that alimony would continue until the former wife remarried or cohabitates with another male. The former wife had another man living in her house; however, the former wife and the man slept in separate bedrooms, were never intimate, dated other people, carried on different lives, never held themselves out to be a couple, and never pooled their money or financial resources. The trial court was reversed for terminating the former husband’s alimony obligation, because there was insufficient evidence to establish “cohabitation.” Atkinson v. Atkinson, 157 So.3d 473 (Fla. 2d DCA 2015).

S. No Modification for Pre-Judgment Supportive Relationship.

1. In King v. King, the court held “that because the supportive relationship under review predated the divorce and the award of alimony, the circuit court was not authorized to reduce or terminate the Former Wife’s alimony payments under § 61.14(1)(b).” King v. King, 82 So.3d 1124 (Fla. 2d DCA 2012).

T. Enforcing Delinquent Alimony.

1. The court can hold the payor spouse in contempt for willful failure to pay spousal support. In Vandervoort v. Vandervoort, 265 So.2d 77 (Fla. 3d DCA 1972), husband withheld temporary alimony support claiming the adultery of wife as his defense; the court made a finding that the contempt order was proper.

2. In Solache v. Ibarra, 163 So.3d 539 (Fla. 3d DCA 2015), the 3d DCA affirmed civil contempt against former husband for failure to pay alimony and child support as ordered, because there was competent, substantial evidence that former husband had the ability to pay and
failed to do so. There are two types of contempt: civil and criminal – civil is to coerce compliance and a purge must be set, while criminal contempt is punitive.

U. Alimony and Charging Liens.

1. In *Tucker v. Tucker*, 165 So.3d 798, 800 (Fla. 4th DCA 2015), the trial court erred in ordering a charging lien to be impressed upon former wife’s permanent periodic alimony award in absence of findings of whether enforcement of charging lien against alimony award would deprive wife of daily sustenance or minimal necessities of life.

II. CHILD SUPPORT.

A. Definition.

1. “[C]hild support is different than alimony or equitable distribution. ‘Child support is not a requirement imposed by one parent on the other; rather it is a dual obligation imposed on the parents by the State.’ The right to child support belongs to the child, and it cannot be waived by parents.” *Quinn v. Quinn*, 169 So.3d 268 (Fla. 2d DCA 2015) (external citations omitted).

B. Income.

1. Pursuant to § 61.30, Fla. Stat., gross income is determined as follows:
   a. Salary or wages;
   b. Bonuses, commissions, allowances, overtime, tips, and other similar payments;
   c. Business income from sources – (self-employment, partnership, close corporations, and independent contracts);
   d. Business income is gross receipts minus ordinary and necessary expenses.
   e. Disability benefits;
   f. All workers’ compensation benefits and settlements;
   g. Reemployment assistance or unemployment compensation;
   h. Pension, retirement, or annuity payments;
   i. Social security benefits;
   j. Spousal support received from a previous marriage or court ordered in the current marriage;
   k. Interest and dividends;
   l. Rental income;
   m. Income from royalties, trusts or estates;
n. Reimbursed expenses or in kind payments to the extent that they reduce living expenses; and

o. Gains derived from dealings in property, unless the gain is nonrecurring.

2. In Wells v. Whitfield, the trial court had found that the father failed to establish a basis for the retained earnings in his S corporation. Wells v. Whitfield, 2015 WL 5714623 (Fla. 1st DCA 2015). The trial court was reversed for failing to include specific findings in the judgment. Specific findings, as to what portion of retained earnings were included by the court in establishing the father’s gross income, are necessary. Id.

C. Deductions.

1. § 61.30(3), Fla. Stat., provides that the net income is obtained by subtracting allowable deductions from gross income. Allowable deductions shall include:

   a. Federal, state and local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities;

   b. Federal insurance contributions or self-employment tax;

   c. Mandatory union dues;

   d. Mandatory retirement payments;

   e. Health insurance payments, excluding payments for coverage of the minor child;

   f. Court-ordered support for other children which is actually paid;

   g. Spousal support paid pursuant to a court order from a previous marriage or the marriage before the court.

D. Child Support for Other Children.

1. In Bower v. Hansman, 161 So.3d 512 (Fla. 5th DCA 2014), on appeal from a final judgment on paternity, the 5th DCA held that the trial court erred by including child support received for a child (from a prior relationship) as income for the recipient parent, for purposes of calculating child support.

2. Father is not permitted a deduction from his gross income for a prior child support order, until he actually pays his child support for his other child. Dep’t of Revenue ex rel. Walker v. Cody, 131 So. 3d 823 (Fla. 1st DCA 2014).

3. In Speed v. State, Dep’t of Revenue, the father appealed from a final judgment of paternity requiring him to pay retroactive child support. The paternity action was brought for Child 1, who was a first born child out-of-wedlock, after Child 2 and 3 were later born of father’s marriage. The father was voluntarily supporting his two later born children. The court should consider children born later of another marriage. The trial court was reversed for an abuse of discretion, because Father, required to pay for child support for child born out-of-wedlock, is
E. Imputation of Income.

1. Pursuant to § 61.30(2)(b), Fla. Stat., if one of the parent’s income is not available, or if the parent fails to participate/cooperate, or fails/refuses to supply adequate financial information, then the court may use the “median income of year-round full-time workers…published by the US Bureau of the Census.”

2. The court may impute income other than the median income as published by the U.S. Bureau of Census, only if court makes specific findings that the party seeking to impute income has met its burden of presenting competent, substantial evidence that the unemployment/underemployment is voluntary and identifies the amount and source of imputed income (through evidence of income from available employment for which party is suitably qualified).

3. Court may not impute income based upon:
   a. Income records that are more than 5 years old at time of hearing/trial; or
   b. Income at a level never earned in the past, unless recently degreed, licensed, or certified.

4. “Florida courts have consistently held that the imputation of income must be supported by factual findings as to the ‘probable and potential earnings level, source of imputed and actual income, and adjustments to income.’” Hirsch v. Hirsch, 974 So.2d 1159 (Fla. 3d DCA 2008). “These findings must relate to the current job market, the party’s most recent work history, occupational qualifications, and the prevailing earnings level in the local community are all required as supporting considerations.” Id.

5. In Hirsch v. Hirsch, the court discussed the rent-free use of a home in terms of imputation of income, and reasoned as follows:

As stated in the child support statute, gross income includes “[r]eimbursed expenses or in kind payments to the extent that they reduce living expenses,” § 61.30(2)(a)13., Fla. Stat. (2006). While by its terms section 61.30 applies only to child support, the logic is equally applicable to the imputation of income for purposes of temporary alimony…Because the rent-free use of the home had ended, it no longer amounted to an in kind payment which reduced the husband’s living expenses. That being so, the magistrate should not have imputed to the husband $7,000 per month fair rental value. We must therefore reverse the order now before us and remand for reconsideration of the temporary alimony and child support awards after elimination of the imputed $7,000 per month amount.

See Hirsch v. Hirsch, 974 So.2d 1159 (Fla. 3d DCA 2008).
F. § 61.30, Fla. Stat. – Child Support Guidelines; Retroactive child support.

1. § 61.30, Fla. Stat., establishes the amount that the trier of fact must order for child support obligations, based on the incomes of the parties and the number of children born of both parties, and after taking into account the needs of the child or children, their age, station in life, standard of living, and the financial status and ability of each parent.

2. Ervin v. Fla. Dep’t of Revenue, 152 So.3d 1261 (Fla. 1st DCA 2014): In child support cases, the trial court must begin its analysis with the child support guidelines found at § 61.30, Fla. Stat. The 1st DCA held that the trial court erred by failing to begin its analysis with the child support guidelines.

3. In Gillislee v. State, Dep’t of Revenue, 150 So.3d 294 (Fla. 1st DCA 2014), the trial court erred in calculating retroactive child support owed by the father during a 31-month period, by failing to include any child support payments made by father during said 31-month period. Gillislee v. State, Dep’t of Revenue, 150 So.3d 294 (Fla. 1st DCA 2014). See also Ditton v. Cirrelli, 888 So.2d 161 (Fla. 5th DCA 2004).


2. The child support worksheet is filed together with the financial affidavit, in all cases where child support is being requested.


1. Pursuant to § 61.30, Fla. Stat., a parent’s failure to regularly exercise the time-sharing schedule set forth in their parenting plan can lead to the modification of a child support award. See § 61.30, Fla. Stat.

2. In Department of Revenue v. Daly, 74 So.3d 165 (Fla. 1st DCA 2011), the court held that the Florida Legislature expressed its intent to authorize deviations from the child support guidelines only where there exists a written, court-authorized parenting plan.

3. In Smith v. Smith, 45 So.3d 928 (Fla. 2d DCA 2010), the court held that the motion for summary judgment was inappropriate when triable issues existed as to the parenting plan and the financial figures used in order to calculate the child support payments pursuant to Section 61.30, Fla. Stat.

I. Health Insurance Issues.

1. The cost and expense of a child’s health insurance is included in the child support worksheet formula. § 61.13, Fla. Stat., provides that “[e]ach order for support shall contain a provision for health insurance for the minor child when health insurance is reasonable in cost and accessible to the child. Health insurance is presumed to be reasonable in cost if the incremental cost of adding health insurance for the child or children does not exceed 5 percent of the gross income, as defined in s. 61.30, of the parent responsible for providing health insurance.”

1. § 61.30(11), Fla. Stat. provides that the court may adjust the total minimum child support award, or either or both parents’ share of the total minimum child support award, based upon the following deviation factors: (1) Extraordinary medical, psychological, educational, or dental expenses; (2) Independent income of the child, not to include moneys received by a child from supplemental security income; (3) The payment of support for a parent which has been regularly paid and for which there is a demonstrated need; (4) Seasonal variations in one or both parents’ incomes or expenses; (5) The age of the child, taking into account the greater needs of older children; (6) Special needs, such as costs that may be associated with the disability of a child, that have traditionally been met within the family budget even though fulfilling those needs will cause the support to exceed the presumptive amount established by the guidelines; (7) Total available assets of the obligee, obligor, and the child; (8) The impact of the IRS Child & Dependent Care Tax Credit, Earned Income Tax Credit, and dependency exemption and waiver of that exemption. The court may order a parent to execute a waiver of the IRS dependency exemption if the paying parent is current in support payments; (9) An application of the child support guidelines schedule that requires a person to pay another person more than 55 percent of his or her gross income for a child support obligation for current support resulting from a single support order; (10) The particular parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties, such as where the child spends a significant amount of time, but less than 20 percent of the overnights, with one parent, thereby reducing the financial expenditures incurred by the other parent; or the refusal of a parent to become involved in the activities of the child; and (11) Any other adjustment that is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt. Such expense or debt may include, but is not limited to, a reasonable and necessary expense or debt that the parties jointly incurred during the marriage.

2. In Gilroy v. Gilroy, 163 So. 3d 674, 678 (Fla. 2d DCA 2015), the court reasoned:

   In his argument regarding section 61.30, the Former Husband asserts that the only costs authorized to be added to the basic support calculation are child care and health care costs. See § 61.30(7), (8). However, section 61.30(11)(a)(11) provides that the court can also make ‘[a]ny other adjustment that is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt.’ And courts have long held that private school tuition may be awarded as part of child support if private schooling is part of the family’s customary standard of living.

See Gilroy v. Gilroy, 163 So. 3d 674, 678 (Fla. 2d DCA 2015).

3. In Cash v. Cash, 122 So. 3d 430 (Fla. 2d DCA 2013), the trial court improperly calculated former husband’s child support obligation – and abused its discretion by failing to consider the statutory deviation factors.

4. In Finley v. Scott, 707 So. 2d 1112 (Fla. 1998), the mother requested monthly child support in the amount of $10,011, based on the child support guidelines, because the father had a monthly gross income of $266,926. The trial court, however, determined that the day-to-day custodial needs of the child each month equated to $2,000. The trial court also found that during the course of the action the mother had improperly used temporary child support to fund her standard of living, and expenses for her other two children. Nevertheless, because it would not be equitable to award the child only the $2,000 per month necessary to meet the child’s actual standard of living, the trial court ordered the father to pay the $10,011 per month.
 custodial needs given the lifestyle of the child’s father, the trial court awarded $5,000 in monthly child support - $2,000 was to be given directly to the mother for the child’s day-to-day custodial needs, and $3,000 was to be given directly to a court-appointed legal guardian as a good fortune award. Such an award, below the guidelines but above the child’s actual needs, was equitable and within the trial court’s discretion because of the father’s high standard of living (including residence in a mansion, international travel, full-time nanny, and a luxurious lifestyle), which could never be maintained in mother’s household.

The Fifth District Court of Appeal reversed the trial court’s child support award, reasoning that the child support award exceeded the child’s day-to-day custodial needs of $2,000.00 per month.

The Florida Supreme Court quashed the Fifth District Court of Appeal decision, and held that child support guidelines are clearly rebuttable, and that deviations under § 61.30, Fla. Stat., are within the trial court’s discretion. The Supreme Court agreed with the trial court’s child support award, notwithstanding the downward departure from the child support guidelines and the upward departure from the actual custodial day-to-day costs of the child when with the mother, reasoning that the award was “consistent with the actual and bona fide needs of the minor child.”

Id. On appeal, the mother also argued that the trial court abused its discretion in ordering good fortune child support to be paid directly to a legal guardian. The Supreme Court held that the trial court’s decision was within its discretion, because a legal guardian was appointed in accordance with Chapter 744, Fla. Stat., and the probate court has jurisdiction, prior to entry of such an order. In Finley, the Supreme Court resolved a conflict between the District Courts of Appeal, by holding that an award of good fortune child support is permitted.

K. Child Support Orders.

1. § 61.13(1)(d), Fla. Stat., provides that all child support orders must provide the full name and date of birth of each minor subject to the terms of the order. All child support orders entered on or after October 1, 2010, must also provide: (1) that child support terminates on a child’s 18th birthday, unless the court make findings that § 743.07(2), Fla. Stat., applies (children with mental or physical dependencies); (2) a child support schedule stating the amount of monthly child support obligation, and the amount of child support obligation due after one or more of the children are no longer entitled to it; and (3) the month, day, and year that the reduction or termination of child support becomes effective.

2. The court that enters the initial order requiring child support payments has continuing jurisdiction to modify the amount/terms/conditions if: 1) the modification is in the best interest of the child; or 2) when the child reaches the age of majority; or 3) when a child is emancipated, married, joins the armed services, or dies.

L. Income Deduction Orders.

1. “Upon the entry of an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support, other than a temporary order, the court shall enter a separate order for income deduction if one has not been entered.” § 61.1301(1)(a), Fla. Stat. Income deduction orders are a mechanism of enforcing child support obligations that ensure collection of currently due payments. Pursuant to § 61.1301, Fla. Stat., the income deduction order directs “a payor to deduct from all income due and payable to an obligor the amount required by the court to meet the obligor’s support obligation…and forward the deducted amount pursuant to the order.” See § 61.1301(1)(b)(1), Fla. Stat.
2. Though courts may enter income deduction orders to enforce payment of currently due support payments, an income deduction order “cannot be established which would leave the obligor without sufficient funds to live.” *Diaz v. Diaz*, 66 So.3d 983, 985 (Fla. 3d DCA 2011)(quoting *Lambertini v. Lambertini*, 817 So.2d 942 (Fla. 3d DCA 2002)).

3. Pursuant to § 61.1301, Fla. Stat., income deduction orders may be used to collect attorney’s fees; however, it may be an abuse of discretion for a trial court to enter an income deduction order for the collection of all attorney fees. *See Diaz v. Diaz*, 66 So.3d 983 (Fla. 3d DCA 2011).

M. Credits and Setoffs for Child Support/Alimony.

1. Pursuant to § 61.077, Fla. Stat, “[a] party is not entitled to any credits or setoffs upon the sale of the marital home unless the parties’ settlement agreement, final judgment of dissolution of marriage, or final judgment equitably distributing assets or debts specifically provides that certain credits or setoffs are allowed or given at the time of the sale.”

2. In *Caine v. Caine*, 152 So.3d 860 (Fla. 1st DCA 2014), the 1st DCA reversed the trial court for failure to make sufficient findings of fact regarding credits and setoffs for half the rental value of parent in possession.

N. Credit for More Than Ordered Child Support.

1. The payor-parent was not entitled to credit against child support arrearages for any money spent during the children’s summer vacations and Christmas gifts. *Florida, Department of Revenue v. Jones*, 689 So.2d 1264 (Fla. 1st DCA 1997). The money payor-parent spent on gifts during the children’s summer vacations and Christmas gifts were not made on behalf of the minor children. *Id*.

2. In *Florida, Dep’t of Revenue v. Soto*, 28 So.3d 171 (Fla. 1st DCA 2010), the father was entitled to credit against retroactive child support for gifts that provided for the health and well-being of the child.

O. Withholding Children.

1. A parent cannot resort to self-help, by withholding time-sharing when the other parent fails to pay child support or alimony. When a parent refuses to honor the time-sharing schedule, the other parent must continue to pay child support. If time-sharing is withheld, the parent refusing to honor time-sharing may be responsible to pay for reasonable court costs and attorney’s fees incurred as a result of their actions. The court can also order the violating parent to do community service, or to attend a parenting course, award makeup time-sharing to the parent whose rights were violated, and/or modify the parenting plan.

P. Life Insurance.

1. Pursuant to § 61.13(1)(c), Fla. Stat., to protect an award of child support, the parent-payor may be required to purchase or maintain life insurance, or may have to secure the child support obligations with other assets.
2. In *Brennan v. Brennan*, 122 So.3d 923 (Fla. 4th DCA 2013), the DCA held that the trial court must make a specific finding as to the availability of life insurance policies, and that the amount of life insurance required cannot exceed the child support obligation.

3. It is reversible error for a court to order the payor of child support to maintain a life insurance policy, without any findings on the cost of the insurance and whether the obligor can afford it. *Velaga v. Gudapati*, 148 So.3d 550 (Fla. 2d DCA 2014).

**Q. Child Support Agreements**

1. Child support cannot be waived by agreement of the parties. “The right to child support belongs to the child, and it cannot be waived by parents.” *Quinn v. Quinn*, 169 So.3d 268 (Fla. 2d DCA 2015)(quoting *Esaw v. Esaw*, 965 So.2d 1261 (Fla. 2d DCA 2007).

2. Child support obligations become vested rights of the payee and vested obligations of the payor that are not subject to retroactive modification. *See Baird v. Baird*, 696 So.2d 844 (Fla. 2d DCA 1997).

3. When a child is emancipated, a parent is still responsible for paying the past-due child support obligations. *See State Dept. of Revenue on Behalf of State Dept. of Health and Rehabilitative Services on Behalf of Bergman v. Koons*, 662 So. 2d 1307 (Fla. 2d DCA 1995).

**R. Privacy of Children’s Information.**

1. Florida Rule of Judicial Administration 2.425 provides that no pleadings or documents filed with the court can contain anything but the initials of the minor child and year of birth; no portion of a social security number. The exceptions are as follow: (1) the birth date of a minor whenever the birth date is necessary for the court to establish or maintain subject-matter jurisdiction; (2) the name of minor in an order relating to parental responsibility, time-sharing, or child support; (3) the name of a minor in any document or order affecting the minor’s ownership of real property.

**S. Legal Father v. Biological Father.**

1. In *C.G. v. J.R.*, 130 So.3d 776 (Fla. 2d DCA 2014), the biological father filed a paternity action against the legal father. The court found that awarding custody of the child to the legal father and denying the biological father’s paternity action was supported by competent, substantial evidence. *Id.* The court also held that the DNA test results were legally insignificant for purpose of establishing parent rights, when the child was conceived as a result of an extramarital affair.

2. In *Van Weelde v. Van Weelde*, 110 So.3d 918 (Fla. 2d DCA 2013), the trial court was reversed for focusing on biology, and failing to consider whether there was a clear and compelling reason based on the best interests of the child, when it overcame the presumption of legitimacy and removed the father’s rights as the legal father of the child.
T. Defenses to Child Support.

1. Laches:
   a. The Third DCA Two-Part Test instructs the court to consider: (1) the lack of diligence by the party against whom the defense is asserted, and (2) the prejudice to the party asserting the defense. \textit{Garcia v. Guerra}, 738 So. 2d 459 (Fla. 3d DCA 1999).
   b. The First DCA and Fourth DCA Four-Part Test consider: "(1) conduct by the defendant that gives rise to the complaint; (2) the plaintiff has not filed suit, despite having knowledge of the defendant's conduct and the opportunity to file suit; (3) lack of knowledge by the defendant that the plaintiff will assert the right upon which the suit is based; and (4) injury or undue prejudice to the defendant." \textit{Department of Revenue ex rel. Dees v. Petro}, 765 So.2d 792, 793 (Fla. 1st DCA 2000); \textit{Gaines v. Gaines}, 870 So. 2d 187, 188 (Fla. 4th DCA 2004).
   c. In \textit{Stephenson v. Stephenson}, 52 So. 2d 684, 686 (Fla. 1951), the court held that “the delay required to render the defense of laches available 'must have been such as practically to preclude the court from arriving at a safe conclusion as to the truth of the matters in controversy, and thus make the doing of equity either doubtful or impossible, through loss or obscuration of evidence of the transaction in issue; or there must have occurred in the meantime a change in conditions that would render it inequitable to enforce the right asserted.'”

4. Majority age of child, emancipation, or death of child.

5. Payor parent no longer has ability to provide amount of support.

6. Recipient parent no longer has custody of the child.

U. Enforcement of Child Support Obligation

1. In \textit{Solache v. Ibarra}, 163 So.3d 539 (Fla. 3d DCA 2015), the 3d DCA affirmed civil contempt against former husband for failure to pay alimony and child support as ordered, because there was competent, substantial evidence that former husband had the ability to pay and failed to do so.

V. Child Support and Taxation.

1. Child support payments are not deductible by the payor and are not taxable to the payee.

W. Excessiveness of Award of Alimony and Child Support.

1. Alone an award of alimony and child support may not give rise to any concerns, but occasionally the cumulative effect of both awards can amount to an abuse of discretion of the trial court. \textit{See Dennison v. Dennison}, 852 So.2d 422 (Fla. 5th DCA 2003).

2. In \textit{Yeakle v. Yeakle}, 12 So.3d 884 (Fla. 4th DCA 2009), the trial court abused its discretion when it assessed amounts against the wife, cumulatively, for alimony, child support, health insurance for children, half of children’s private-school tuition, and life insurance for the husband’s benefit. The awards were clearly excessive, leaving the wife with only 35% of her net income.
3. An award for support must differentiate between child support and alimony; failure to do so, is reversible error. See Nilsen v. Nilsen, 63 So.3d 850 (Fla. 1st DCA 2011).

X. Standard of Review Conflict in Child Support Cases.

1. The standard of review in cases of child support obligations and modifications is an abuse of discretion standard. In Seward v. Fla. Dept’ of Rev., 794 So.2d 614 (Fla. 2d DCA 2001), there was a substantial change in circumstances, therefore the trial court abused its discretion in denying the petitioner to modify child support.

2. The standard of review in cases mathematical computations is de novo. See Kareff v. Kareff, 943 So.2d 890 (Fla. 4th DCA 2006); and Ervin v. Fla. Dept. of Revenue, 152 So.3d 1261 (Fla. 1st DCA 2014) – compliance with child support guidelines is reviewed de novo.

3. The standard of review in cases of imputation of income is an abuse of discretion or competent, substantial evidence. In Wood v. Wood, 162 So.3d 133 (Fla. 1st DCA 2014), the imputation of income is an abuse of discretion. In Strassner v. Strassner, 982 So.2d 1224 (Fla. 1st DCA 2008), the court held that the imputation of income to a parent for purposes of calculating child support is reviewed for abuse of discretion. In Brummer v. Brummer 39 FLW D2570 5th DCA 2014, the reversal was partly due to imputation of income not supported by competent, substantial evidence found in record. In Steele v. Love, 143 So.3d 1020 (Fla. 4th DCA 2014), the court held that the standard of review for imputation of income is competent, substantial evidence.

Y. Modification of Child Support.

1. § 61.14, Fla. Stat. controls the modification of child support. Pursuant thereto, the court has the jurisdiction and authority to decrease or increase the support.

2. Pursuant to § 61.14(4), Fla. Stat.:

If a party applies for a reduction of alimony or child support and the circumstances justify the reduction, the court may make the reduction of alimony or child support regardless of whether or not the party applying for it has fully paid the accrued obligations to the other party at the time of the application or at the time of the order of modification.


3. A substantial change in circumstances can provide the basis for a modification of an existing child support obligation; however, “the difference between the existing monthly obligation and the amount provided for under the guidelines shall be at least 15 percent or $50, whichever amount is greater, before the court may find that the guidelines provide a substantial change in circumstances.” § 61.30(1)(b), Fla. Stat.

Z. Additional Subsequent Children Not Grounds for Downward Modification.

1. In Gimeno v. Rivera, 153 So.3d 390 (Fla. 3d DCA 2014), the 3rd DCA reversed the trial court for granting downward modification of child support, based upon father having three more children. The court held that “[b]egetting a child is not an involuntary act. Absent some special circumstance, the presence of subsequent children will not justify a deviation from child support guidelines.” Gimeno v. Rivera, 153 So.3d 390 (Fla. 3d DCA 2014) (citing § 61.12(b), Fla.
AA. No Use of Time-Sharing – Modification.

1. § 61.30, Fla. Stat., provides for modification of child support upon a parent’s failure to regularly exercise the time-sharing schedule. § 61.30(11)(c) provides:

   A parent’s failure to regularly exercise the time-sharing schedule set forth in the parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties not caused by the other parent which resulted in the adjustment of the amount of child support pursuant to subparagraph (a)10. or paragraph (b) shall be deemed a substantial change of circumstances for purposes of modifying the child support award. A modification pursuant to this paragraph is retroactive to the date the noncustodial parent first failed to regularly exercise the court-ordered or agreed time-sharing schedule.

2. Missing an occasional visit is not sufficient to lead to the determination that a parent is failing to regularly exercise the time-sharing schedule. Buhler v. Buhler, 83 So.3d 790 (Fla. 5th DCA 2011). In Buhler, the court held that the mother was entitled to retroactive child support as of the date the father ceased to exercise regular visitation pursuant to the court-ordered time-sharing schedule. Buhler v. Buhler, 83 So.3d 790 (Fla. 5th DCA 2011).
Domestic Violence

By

Andrea Reid, Boca Raton
PROCEDURAL ISSUES

Venue
(Where do I file?)

Notwithstanding any provision of Chapter 47, a petition for an injunction for protection against domestic violence may be filed

a. In the circuit where the Petitioner currently or temporarily resides;
b. where the Respondent resides;
c. or where the domestic violence occurred.

There is no minimum requirement of residency to petition for an injunction for protection.

Personal Jurisdiction
(Does this Court have jurisdiction over the Non-Fla. resident respondent?)

Personal Jurisdiction can be established through long arm statute §48.193 but due process requires there be sufficient “minimum contacts” between the forum state and the non-resident defending party.

“Minimum Contacts”: “In establishing minimum contacts, the United States Supreme Court has provided a purposeful availment requirement which ensures that a defendant will not be hailed into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts. It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. The constitutional touchstone remains whether the defendant purposefully established "minimum contacts" in the forum State.”


Example of Minimum Contact

Phone calls from the Respondent to the Petitioner, whereby the Respondent did not know the Petitioner was in Florida, was not enough contact to establish personal jurisdiction over the Respondent. See Becker.
**Full Faith and Credit**

§741.315 (2) & (3) Fla. Stat.

(Is this injunction enforceable elsewhere and is this foreign injunction enforceable in Florida?)

Protection orders issued by one state or Indian tribe shall be accorded full faith and credit by the Court of another state or Indian tribe and enforced as if it were an order of that state.

Injunctions for Protection from another state are enforceable in Florida without being registered in Florida.

**Continuances**

§741.30 (5)(c) Fla. Stat.

The court may grant a continuance of the hearing before or during a hearing for good cause shown by any party, which shall include a continuance to obtain service of process.

**Examples of Cause for Continuance**

When the Notice of Final Hearing is too close in time to the actual final hearing (3 Days in Storm v. Decker, 971 So. 2d 165 (Fla. 5th DCA 2015);

When testimony regarding unpled allegations arise during Final Hearing or in an amended pleading which is served upon the respondent in close proximity to Final Hearing. Sanchez v. Marin, 138 So. 3d 1165; 1 day in Vaught v. Vaught, 189 So 3d 332 (Fla 4th DCA 2016))

When time is needed to obtain counsel and the Petitioner is not prejudiced by such extension. Leaphart v. James, 185 So 3d 683 (Fla. 2nd DCA 2016)

**Burden of Proof**

For an Order to issue an Injunction for Protection, the issuance must be supported by competent, substantial evidence.

**Example of Failure to Meet Burden of Proof**

Testimony consisting of generic references to hearsay statements and unsubstantiated statements did not amount to competent, substantial evidence to support the issuance of an injunction. Austin v. Echemendia, 198 So. 3d 1058 (Fla. 4th DCA 2016)

**Injunction Process**

1. Petitioner files a Sworn Injunction for Protection Against Domestic/Repeat/Sexual/Dating Violence or Stalking at their local clerk of Court. Along with the Petition a UCCJEA
Affidavit, Notice of Related Cases and Financial Affidavit (if financial relief is requested) must be filed.

I. An Injunction may be filed over the e-portal by an attorney by selecting the option for Emergency Filings. However, to be sure that the clerk of court receives the Petition, call the clerk directly and advise of the filing. Each circuit handles e-portal Injunction filing differently. Inquire of your local clerk.

II. If the Petitioner is seeking financial support, the Petitioner must file a Financial Affidavit.

2. After a Petition is filed (1) one of (3) three things will happen:
   I. A Temporary Injunction will issue and a date will be determined for a hearing on the Petition for Injunction.
      i. This Order will be effective for a fixed period but no more than 15 days unless a continuance is granted for good cause shown.
      ii. A date for a full hearing will be contained within the Order.
      iii. The Respondent will be served by local law enforcement.
      iv. Upon service of the Injunction, the Respondent may be arrested for any violation of the terms of the Injunction.
   II. An “Order Setting Hearing for Injunction for Protection Against….Without Issuance of an Interim Temporary Injunction” will issue. The Order will indicate that a Temporary Injunction was NOT issued but that an injunction may be entered after a hearing, depending on the findings made by the Court.
      i. The Respondent will be served with a copy of the Petition for an Injunction and the Order Setting Hearing.
      ii. The Petitioner may amend the original Petition by filing a supplemental Petition.
   III. An Order Denying the Petition for Ex-Parte Injunction will issue and will note the legal grounds for the denial.
      i. The Respondent will not be served with the Petition or the Order Denying same.
      ii. The Petitioner may amend the original Petition by filing a supplemental Petition.

3. A Hearing on the Injunction for Protection will take place.
   I. All proceedings for Injunctions for Protection are recorded by operation of statute (§741.30 Fla. Stat.)
   II. A full evidentiary hearing will be conducted on the allegations contained within the Petition. Due process requires that each party have a “reasonable opportunity to prove or disprove the allegations made in the complaint.” quoting Achurra v. Achurra, 80 So. 3d 1080, 1083 (Fla. 1st DCA 2012); Parise v. Selph, 175 So. 3d 389 (Fla. 1st DCA 2015).
   III. The Court will issue a ruling.
      i. If after the hearing, a Final Judgment of Injunction is issued:
         1. The length of the injunction will be determined by the Court.
         2. The parties will acknowledge receipt of the Final Injunction.
         3. The Injunction will immediately be in full force and effect and the Respondent will be held to all terms therein.
ii. If the Injunction is denied:
   1. An Order Denying will be issued.
   2. The Respondent will no longer be restricted by the terms of the Temporary Ex-Parte Injunction.
   3. The Court may not order any extrinsic matters such as child support, timesharing etc…

**THERE ARE FIVE DIFFERENT TYPES OF INJUNCTIONS FOR PROTECTION IN FLORIDA**

**PETITIONS FOR INJUNCTION AGAINST DOMESTIC VIOLENCE**

§741.28 (3) Fla. Stat.
(Who is eligible for a Petition for Injunction Against Domestic Violence?)

“Family or household member” means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

**Examples of Family or Household Members**

a. Spouses, Former Spouses, Parents with children in common (married, not married or never married to each other).

b. Persons related by blood or marriage who have resided together in the past:
   a. Siblings who had not resided together for over 40 years, had never-the-less resided together at some point. The Petitioner had standing to bring the action for an Injunction for Protection Against Domestic Violence. *Rosenthal v. Roth*, 816 So.2d 667 (Fla. 3d DCA 2002).
   b. Petitioner son, who had never resided with his Father, the Respondent, lacked standing to bring the action for an Injunction for Protection Against Domestic Violence. *Fleshman v. Fleshman*, 50 So. 3d 797 (Fla. 2d DCA 2011).
   c. Although the parties had a 2-year romantic relationship where overnight visits took place, they had never resided together and were unrelated. As such, the Petitioner lacked standing to bring the action for an Injunction for Protection Against Domestic Violence. *Slovenski v. Wright*, 849 So. 2d 349 (Fla. 2d DCA 2003).
   d. Nieces who had only resided with their aunt for 1-week, had standing to bring an action for an Injunction for Protection Against Domestic Violence against their aunt. The Aunt was acting as a substitute parents while residing in the same dwelling as her nieces. Further, whether a living arrangement, however temporary in nature, constitutes “residing in the same dwelling” should be decided on a case by case basis. *Kokoris v. Zipnick*, 738 So. 2d 369 (Fla. 4th DCA 1999).
e. Sister-in-law, who had never resided with her brother-in-law lacked standing to bring an action for an Injunction for Protection Against Domestic Violence against him. Sharpe v. Sharpe, 695 So. 2d 1302 (Fla. 5th DCA 1997).

f. Stepmother who had never lived in the same home as her stepson lacked standing to bring an action for an Injunction for Protection Against Domestic Violence against her stepson. Evans v. Evans, 599 So. 2d 205 (Fla. 2d DCA 1992).

Two Prong Test (Sharpe v. Sharpe, 695 So. 2d. 1302 (Fla. 5th DCA 1997)
1. The parties must have a familial relationship AND
2. Unless they have a child in common, must reside and/or have resided together in the past.

§741.28 (2) Fla. Stat.
(What is Domestic Violence?)

“Domestic violence” means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

§741.30 (1)(a) Fla. Stat.
(What must be proven to obtain an Injunction for Protection Against Domestic Violence?)

Any “family or household” member who is either the victim of domestic violence as defined in Fla. Stat. 741.28 or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence, has standing in the circuit court to file a sworn petition for an injunction for protection against domestic violence.

An “assault” is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

Aggravated Assault §784.021 Fla. Stat.
An “aggravated assault” is an assault:
(a) With a deadly weapon without intent to kill; or
(b) With an intent to commit a felony.

Battery §784.03 Fla. Stat.
The offense of “battery” occurs when a person:
(a) Actually and intentionally touches or strikes another person against the will of the other; or
(b) Intentionally causes bodily harm to another person.
**Aggravated Battery** §784.045 Fla. Stat.

A person commits aggravated battery who, in committing battery:

(a) Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or

(b) Uses a deadly weapon.

A person commits aggravated battery if the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant.

**Sexual Battery** §794.011 Fla. Stat.

“Sexual battery” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

**Stalking** §784.08(2) Fla. Stat.

A person who willfully, maliciously, and repeatedly follows, harasses, or cybersstalks another person commits the offense of stalking.

**Kidnapping** §787.01 (1)(a) &(b) Fla. Stat.

The term “kidnapping” means forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to:

(a) Hold for ransom or reward or as a shield or hostage.

(b) Commit or facilitate commission of any felony.

(c) Inflict bodily harm upon or to terrorize the victim or another person.

(d) Interfere with the performance of any governmental or political function.

(e) Confinement of a child under the age of 13 is against her or his will within the meaning of this subsection if such confinement is without the consent of her or his parent or legal guardian.

**False Imprisonment** §787.02 (1)(a) &(b) Fla. Stat.

The term “false imprisonment” means:

(a) Forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against her or his will.

(b) Confinement of a child under the age of 13 is against her or his will within the meaning of this section if such confinement is without the consent of her or his parent or legal guardian.

§741.30 (1)(a) Fla. Stat.

See 7(b) of the Sworn Petition for Injunction provided in §741.30

(What does the Court consider when determining that a person believes he or she is in imminent danger of becoming a victim of domestic violence?)
In determining the Petitioner’s reasonable cause to believe they are in imminent danger of becoming a victim of domestic violence, the court shall consider and evaluate all relevant factors alleged in the petition, including but not limited to:

1. The history between the Petitioner and the Respondent, including threats, harassment, stalking, and physical abuse.
2. Whether the Respondent has attempted to harm the Petitioner or family members or individuals closely associated with the Petitioner.
3. Whether the Respondent has threatened to conceal, kidnap, or harm the Petitioner’s child or children.
4. Whether the Respondent has intentionally injured or killed a family pet.
5. Whether the Respondent has used, or has threatened to use, against the Petitioner any weapons such as guns or knives.
6. Whether the Respondent has physically restrained the Petitioner from leaving the home or calling law enforcement.
7. Whether the Respondent has a criminal history involving violence or the threat of violence.
8. The existence of a verifiable order of protection issued previously or from another jurisdiction.
9. Whether the Respondent has destroyed personal property, including, but not limited to, telephones or other communications equipment, clothing, or other items belonging to the Petitioner.
10. Whether the Respondent engaged in any other behavior or conduct that leads the Petitioner to have reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence.

In making its determination under this paragraph, the court is not limited to those factors enumerated in subparagraphs 1.-10.

**Cases Regarding Imminent Danger**

If the Petitioner alleges only fear of imminent danger, then not only must the danger feared be imminent but the rationale for the fear must be objectively reasonable as well. Oettmeier v. Oettmeier, 960 So. 2d 902 (Fla. 2d DCA 2007) citing Gustafson v. Mauck, 743 So. 2d 614, 615 (Fla. 1st DCA 1999).

The Respondent’s actions of cursing at the Petitioner, approaching her from his car, threatening to destroy her life and make her parents cry was demonstrative of a threat of danger. Leal v. Rodriguez, 220 So. 3d 543, 2017 Fla. App. LEXIS 8323 (Fla. 3rd DCA 2017).

The Petitioner’s allegation that the Respondent would harm the Petitioner while working as a traffic aide was too vague to provide competent substantial evidence of reasonably objective fear. None of the evidence presented regarding appellant's attempts to contact appellee by phone or using the Internet established that she had engaged in conduct that was threatening or might reasonably place appellee in fear. Zapiola v. Kordecki, 210 So. 3d 249, 2017 Fla. App. LEXIS 1712 (Fla. 2nd DCA 2017).
Definition of “domestic violence” required some showing of violence or a threat of violence, and general harassment did not suffice; where nothing suggested that a father’s phone calls gave the mother reasonable cause to believe that she was in imminent danger, where the Mother did not testify that she had ever been a victim of past domestic violence at the hand of the Father, where the mother recanted her allegation that the father threatened her with a gun, but claimed that the father threatened suicide, the evidence did not present a case for an injunction, and a trial court erred when it entered an injunction. Young v. Smith, 901 So. 2d 372, 2005 Fla. App. LEXIS 6781 (Fla. 2nd DCA 2005).

Final judgment of injunction for protection against domestic violence was improper because the question was not whether the Wife was subjectively scared, but whether her fear was objectively reasonable and it was not objectively reasonable for the Wife to have a fear for her own safety going forward from the date of the hearing. Mitchell v. Mitchell, 198 So. 3d 1096, 2016 Fla. App. LEXIS 12823 (Fla. 4th DCA 2016).

Generalized threats to engage in unpleasant, but not violent behaviors are not sufficient to support the issuance of a domestic violence injunction. The Former Husband's threat that the Former Wife would be going to jail because she had violated the domestic violence injunction already in place against her by approaching the Former Husband's car was insufficient to support the issuance of an injunction. Gill v. Gill, 50 So. 3d 772 (Fla. 2d DCA 2010).

Because there was no evidence that a child was in “imminent danger” of being victimized by the Mother, the trial court erred in entering a Fla. Stat. § 741.30(1) judgment of injunction for protection against domestic violence against her. Seffernick v. Meriwether, 960 So. 2d 851, 2007 Fla. App. LEXIS 10541 (Fla. 2nd DCA 2007).

Ex-girlfriend was not entitled to a permanent injunction against domestic violence against her ex-boyfriend under Fla. Stat. § 741.30(1)(a), because the ex-girlfriend did not have reasonable cause to believe that she was in imminent danger of becoming a victim of domestic violence, as there was no history of violence and the ex-boyfriend stopped calling when he was asked. Gustafson v. Mauck, 743 So. 2d 614, 1999 Fla. App. LEXIS 13755 (Fla. 1st DCA 1999).

**PETITIONS FOR INJUNCTION AGAINST DATING, REPEAT VIOLENCE, SEXUAL VIOLENCE**

§784.046 Fla. Stat.

**DATING VIOLENCE**

§784.046(d) Fla. Stat.
(What is Dating Violence?)

“Dating violence” means violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:
(a) A dating relationship must have existed within the past 6 months;
(b) The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
(c) The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.
(d) The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.

§784.046(d) Fla. Stat.
(Who may file a Petition for Injunction Against Dating Violence?)

The following people having standing to seek a Petition for Injunction for Protection Against Dating Violence:

(a) Any person who is the victim of dating violence and has reasonable cause to believe he or she is in imminent danger of becoming the victim of another act of dating violence, or
(b) any person who has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of dating violence,
(c) or the parent or legal guardian of any minor child who is living at home and who seeks an injunction for protection against dating violence on behalf of that minor child.

Who does not have standing to seek a Dating Violence Injunction?
– Casual Acquaintances
– People engaged in ordinary fraternization in a business or social context.

Case Law regarding Dating Violence

Where a dating relationship between the Petitioner and Respondent had not existed in the 15 months prior to the filing of the Petition for Injunction Against Dating Violence, the Petitioner failed to establish that a dating relationship existed 6 months prior to the filing of her Petition. Schutt v. Alfred, 130 So. 3d 772, 2014 Fla. App. LEXIS 1021 (Fla. 3rd DCA 2014).

Although the Petitioner had been a victim of dating violence in the past with the Respondent, she did not present evidence that she had reasonable cause to believe that she was in imminent danger of dating violence taking place again in the future. Evidence presented that her keys were missing, that he had shown up at her son’s bus stop, and that her home had been burglarized was insufficient to establish reasonable fear. Alderman v. Thomas, 141 So. 3d 668 (Fla. 2d DCA 2014).
SEXUAL VIOLENCE

§784.046(c) Fla. Stat.
(What is Sexual Violence?)

“Sexual violence” means any one incident of:

(a) Sexual battery
   a. As defined in §794.011 Fla. Stat., “Sexual battery” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

(b) A lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age;
   a. As defined in §800.04 Fla. Stat., a person commits lewd or lascivious battery by:
      i. Engaging in sexual activity with a person 12 year of age or older but less than 16 years of age; or
      ii. Encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.

(c) Luring or enticing a child, as described in chapter 787;
   a. Chapter 787.025 describes luring and enticing as luring or enticing a child for a reason other than a lawful purpose.

(d) Sexual performance by a child, as described in chapter 827;
   a. As defined in §827.071(2) Fla. Stat., a person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 year of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance.

(e) Any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

§784.046(c) Fla. Stat.
(Who may file a Petition for Injunction Against Sexual Violence?)

A person who is the victim of sexual violence or the parent or legal guardian of a minor child who is living at home who is the victim of sexual violence has standing in the circuit court to file a sworn petition for an injunction for protection against sexual violence on his or her own behalf or on behalf of the minor child if:

(a) The person has reported the sexual violence to a law enforcement agency and is cooperating in any criminal proceeding against the respondent, regardless of whether criminal charges based on the sexual violence have been filed, reduced, or dismissed by the state attorney; or

(b) The Respondent who committed the sexual violence against the victim or minor child was sentenced to a term of imprisonment in state prison for the sexual violence and the respondent’s term of imprisonment has expired or is due to expire within 90 days following the date the petition is filed.
Case Law regarding Sexual Violence

After engaging in a period of consensual sex with the Respondent, the Petitioner was unable to identify with particularity any specific action or statement made by the Respondent to pressure her into having sex. The Petitioner alleged she was afraid of the Respondent because she had heard him yell at his Wife, children and other employees, yet was never violent with her. If fear alone is the reasonable cause alleged to support an injunction for protection against sexual violence, then not only must the danger feared be imminent but the rationale for the fear must be objectively reasonable as well. Morrell v. Chadick, 965 So. 2d 1277 (Fla. 2d DCA 2007).

Injunction for protection against sexual battery was proper because Fla. Stat. § 784.046(2)(a), (c), (4)(a), authorized the entry of an injunction based on a petition of type filed on behalf of the child, which set forth alleged acts of sexual violence on the child, and included statements the child made to his mother informing her of the alleged acts; Fla. Stat. § 90.803(23) was followed in dependency proceedings, personal injury proceedings, and criminal proceedings. Nevertheless, § 784.046 was a clear expression by the legislature that a parent’s sworn petition was sufficient to support an injunction for protection against sexual battery. Berthiaume v. B.S., 85 So. 3d 1117, 2012 Fla. App. LEXIS 3858 (Fla. 1st DCA 2012).

REPEAT VIOLENCE

§784.046(b) Fla. Stat.
(What is Repeat Violence?)

“Repeat violence”: means two incidents of violence or stalking committed by the Respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the Petitioner or the Petitioner’s immediate family member.

§784.046(d) Fla. Stat.
(Who may file a Petition for Injunction Against Repeat Violence?)

The following people have standing to seek a Petition for Injunction for Protection Against Repeat Violence:
(a) Any person who is the victim of repeat violence or
(b) the parent or legal guardian of any minor child who is living at home and who seeks an injunction for protection against repeat violence on behalf of the minor child

Case Law regarding Repeat Violence

Regardless of the viciousness of the first act of assault, there must be TWO acts of violence or stalking for an Injunction against repeat violence to issue.

4.12
Although the Petitioner’s daughter was violently assaulted by her school mate, the Respondent, there was no evidence supporting a second act of violence and thus an injunction for protection against repeat violence could not issue. Paris Destinee Cannon v. Thomas, 133 So. 3d 634, 2014 Fla. App. LEXIS 3609 (Fla. 1st DCA 2014).

A phone call for a legitimate purpose, a face-to-face encounter and incidents of the Respondent following the Petitioner were insufficient to prove repeat violence. The incidents were not sufficient to cause a reasonable person emotional distress and the lack of evidence to support a claim of stalking prevented the issuance of an injunction for repeat violence between a father and his child’s dance coach. Goudy v. Duquette, 112 So. 3d 716 (Fla. 2d DCA 2013).

**PETITION FOR INJUNCTION AGAINST STALKING**

§ 784.048(2) Fla. Stat.
(What is Stalking?)

Stalking is committed when a person willfully, maliciously (wrongfully, intentionally and without legal justification or cause Seese v. State 955 So. 2d 1145 (Fla. 4 th DCA), and repeatedly
(a) Follows,
(b) Harasses,
   a. As defined in §784.048 (a) Fla. Stat., “Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.
(c) or Cyberstalks another person
   a. As defined in §784.048 (d) Fla. Stat. “Cyberstalk” means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

Aggravated Stalking is committed when stalking is accompanied by use or threatened use of physical force. §784.048 (4) Fla. Stat

**Case Law regarding Stalking**

Direct or indirect contact is not required as part of the offense of stalking. Seitz v. State, 867 So. 2d 421, 2004 Fla. App. LEXIS 175 (Fla. 3rd DCA 2004).

Appellant's uncontradicted testimony that appellee showed up at both her home and place of work on separate occasions, that he called her repeatedly, sent pictures of her house, and prevented appellant from driving her car away from work by blocking her vehicle, while banging on her doors, screaming profanities, provided substantial, competent evidence that appellee was stalking appellant. Austin v. Echemendia, 198 So. 3d 1058, 2016 Fla. App. LEXIS 12451 (Fla. 4th DCA 2016).
Defendant’s conduct in making at least 40 public records requests about a party and about 40 complaints about the party to various law enforcement agencies, municipalities, and other entities, did not constitute the crime of aggravated stalking within the meaning of Fla. Stat. § 784.048(4) as a matter of law; the conduct was protected under Fla. Const. art. I, § 23 and Fla. Const. art. IV, § 1. Curry v. State, 811 So. 2d 736, 2002 Fla. App. LEXIS 2029 (Fla. 4th DCA 2002).

Trial court erred in enjoining appellant from cyberstalking appellee based on emails appellant sent to members of a trade association to which they both belonged, because the fact that the emails linked to articles written by appellant which contained false allegations or embarrassing information about appellee was not a basis for a cyberstalking injunction. Scott v. Blum, 191 So. 3d 502, 2016 Fla. App. LEXIS 6546 (Fla. 2nd DCA 2016).

Trial court erred in enjoining appellant from cyberstalking appellee because sending derogatory emails about him to members of a trade association to which they both belonged was not cyberstalking as defined by this section, because the emails were not directed to him but to third parties, and causing him embarrassment was not the same as causing him substantial emotional distress sufficient to obtain an injunction. Scott v. Blum, 191 So. 3d 502, 2016 Fla. App. LEXIS 6546 (Fla. 2nd DCA 2016).

The Petitioner/Victim proved a course of conduct constituting stalking and was entitled to an injunction as the flyer appellant sent to the victim sought to invade the privacy of the victim's home and was generated, mailed, and distributed with the intent to harass the victim because appellant generated, mailed to the victim, and distributed to her neighbors the flyer, which not only conveyed a message he knew the victim did not want to hear (and was a racial slur), but also clearly identified the victim by name and face, gave the reader her home address, and then invited the reader to dissuade the victim from assisting in abortions. Thoma v. O'Neal, 180 So. 3d 1157, 2015 Fla. App. LEXIS 18404 (Fla. 4th DCA 2015).
Adoptions (including issues facing same-sex couples)

BY

Amy Hickman, Boynton Beach
ADDITIONS
&
SAME SEX COUPLES

Amy U. Hickman
HAUSMANN & HICKMAN, P.A.
Board Certified-Adoption Law

CHAPTER 63
FLORIDA ADOPTION ACT
G.S. v. T.B., 985 So.2d 978, 982 (Fla. 2008).

• "Adoption was unknown in common law and exists solely by virtue of statute."
• "[C]ourt’s determination on adoption must be grounded in the provisions of Chapter 63."

BIFURCATED PROCEEDINGS
• Termination of Parental Rights Proceeding
  • §§63.087 – 63.089
• Adoption Proceeding
  • §§63.102 - 63.142
• Exceptions
  • Stepparent Adoption
  • Adult Adoption
  • Relative Adoption
  • §63.032 (14) – Related by blood to adoptee within the 3rd degree of consanguinity

TERMINATION OF PARENTAL RIGHTS PROCEEDING
• §63.087, Proceeding to terminate parental rights pending adoption; general provisions.
• §63.088, Proceeding to terminate parental rights pending adoption; notice and service; diligent search.
• §63.089, Proceeding to terminate parental rights pending adoption; hearing; grounds; dismissal of petition; judgment.

TERMINATION OF PARENTAL RIGHTS PROCEEDING
• All TPR Petitions Must be Supported by Consent for Adoption - §§63.087 & 63.089
• Mandatory Consents for Adoption - §63.062(1)
  • Mother - §63.062(1)(a)
  • Father - §63.062(1)(b)
  • Must Establish Standing to Consent by the Date the Petition for Termination of Parental Rights is Filed with the Court

6 Father Whose Consent Is Required
§63.062(1)(b)
• Husband at the Time of Conception or Birth
• Legal Father – Judgment of Paternity
• Listed on Birth Certificate – Affidavit of Paternity, §382.013(2)(c)
• Registered w/ Florida Putative Father Registry
• Adopted the Child

7 FLORIDA'S PUTATIVE FATHER REGISTRY
• §63.054
• Constitutional Authority
  • Lehr v. Robertson, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983);
  • Heart of Adoptions, Inc. v. J.A., 963 So.2d 189 (Fla. 2007)
• Applies to Unmarried Biological Fathers
• Definition §63.032(19)
• Presumed Knowledge of Pregnancy/Potential Adoption – §63.088(1)
• Must Register by Date Termination of Parental Rights Petition is Filed
• Applies to All Adoption/Termination of Parental Rights Proceedings – §63.054(7)

8 CONSENT FOR ADOPTION EXECUTION AND FORM
§63.082
• Timing and Form of Consent for Adoption - §63.082(4)
• Mother – 48 hours after birth or date of hospital discharge.
• Father – Any time after birth.
• 12 pt. bold face type.
• Must include statutory language unless Stepparent, Adult or Relative Adoption
• Two Witnesses Plus a Notary

9  FINALITY OF CONSENT
• Newborn to 6 months – irrevocable upon signing

• Child over 6 months – 3 day revocation period

10  ALTERNATIVES TO FATHER’S CONSENT
• Affidavit of Non-Paternity – §63.062(4)
• Notice of Intended Adoption Plan
  • §63.062(2) and (3)
  • Heart of Adoptions, Inc. v. J.A., 963 So.2d 189 (Fla. 2007)

11  NOTICE OF INTENDED ADOPTION PLAN
• Must Personally Serve any Identified Unmarried Biological who is Known and Locatable
  • Heart of Adoptions, Inc. v. J.A., 963 So.2d 189 (Fla. 2007)
  • §63.062(2)
• Must Respond within 30 days of Service - §63.062(2)
  • File with Putative Father Registry
  • Respond with Affirmation of Paternity & Parenting Plan
  • Provide Financial and Emotional Support

12  INTERVENTION IN DEPENDENCY PROCEEDING
• §63.082(6)
  • An Adoption Entity may intervene in a Dependency Proceeding when the Parent Signs a Consent for Adoption Prior to Termination of Parental Rights

13  PETITION FOR TERMINATION OF PARENTAL RIGHTS
• Pleading requirements & supporting documents - §63.087(4)(e).
  • Grounds for TPR - §63.089.
  • Address each requirement in prerequisites subsection(2).
  • Attach affidavit of parentage - §63.062(1)(a) & (b).
• If donor material include allegation and circumstances of donation – Affidavit of Parentage.
• Don’t Forget to Include Diligent Search of Florida’s Putative Father Registry, §63.062(3); §63.089(2)(a)4.
• Notice & Service requirements - §63.087(5) & §63.089(2)(b).
• Requested Relief - §63.089(6).
• Adjudicate the child’s status as available for adoption.

14 EXHIBITS TO PETITION FOR TERMINATION OF PARENTAL RIGHTS
• Mandatory Consents or Affidavit of Nonpaternity
• Receipt of Consent/Affidavit of Non-Paternity
• Certified Death Certificate of Parent – §63.082(3)(d)
• Certificate of Diligent Search of Putative Father Registry - §63.054
• Affidavit on Biological Father – §63.088(4)
• Affidavit of Diligent Search and Inquiry – §63.088(5)
• Statement pursuant to Servicemembers Civil Relief Act – 50 USC 101-704(2003)
• UCCJEA & ICWA Affidavit

15 SERVICE OF PROCESS
§63.088
• Personal Service 20 days Prior to Termination of Parental Rights Hearing
• Statutory Language - §63.088(3)
• Constructive Service
• Only on Persons Required to Consent

16 JUDGMENT TERMINATING PARENTAL RIGHTS
• Include findings and declarations pursuant to:
  • §63.088(4)
  • §63.089(3) & (6)
• Must make findings that Legal Parent/Partners rights are not terminated.
• Must make finding concerning any other parents subject to the judgment.
• Must authorize parties to proceed with second parent adoption.
Include Findings of Best interests of the Child

ADOPTION PROCEEDING

- Petition for Adoption
  - §63.042 – Who may Adopt.
  - §63.102 – Filing & Venue Requirements.
    - Do not need to seek prior approval of fees unless exceed statutory minimums.
  - §63.112 – Pleading Requirements.
    - Include strong allegations addressing Child’s best interests.
- Notice of Hearing
  - §63.122 – Notice of Hearing.
- Hearing on Petition for Adoption
  - §63.142
    - Include strong witnesses in support of best interest allegations.

PETITION FOR ADOPTION

SUPPORTING DOCUMENTS

- Preliminary home study - §63.092(3).
  - Preliminary home study provides evidence of best interests.
- Must have final home study or seek waiver - §63.125.

FINAL JUDGMENT OF ADOPTION

- §63.142
  - Include specific findings on Legal Parent/Partners waiver of rights authorizing the adoption and subsequent enforcement of the adoption.
  - Include factual findings on Best Interest of Child.
  - Include findings and rulings that Legal Parent/Partner retains rights.

Stepparent Adoption

- Waiver of Vested Child Support Arrearage
  - §63.212(1)(e)

ADOPTION BY SAME SEX COUPLES

- Obergefell V. Hodges, 135 S.Ct. 2584 (2015)
- Universal Marriage Recognition
- Gender Neutral Application of Florida Statutes
• §1.01(2)
• D.M.T. v. T.M.H., 129 So.3d 320 (Fla. 2013)

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RULING
• Laws prohibiting same sex couples from marrying or from prohibiting states from recognizing the legal marriage of a same sex couple are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

24 [ ] SIGNIFICANT DICTA TO CONSIDER
• One basis for protecting the right to marry is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education.
• "[T]he right to 'marry, establish a home and bring up children' is a central part of the liberty protected by the Due Process Clause."
• Marriage also affords the permanency and stability important to children's best interests.
• Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser.
• The marriage laws at issue here harm and humiliate the children of same-sex couples.

25 [ ] IMPACT ON FLORIDA'S ADOPTION LAW

• How Does The Decision Impact Private Adoption Placements.

• Is There Still a Need to Establish Rights to Children Conceived and Born to a Married Couple?

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27 [ ] GENDER NEUTRAL APPLICATION OF
CHAPTER 63
D.M.T. v. T.M.H., 129 So.3d 320 (Fla. 2013)

§1.01(2), Fla. Stat.

THE CONSTITUTION MANDATES THAT THE PARENTAL ESTABLISHMENT STATUTE, CHAPTER 742, IS INTERPRETED IN A GENDER NEUTRAL MANNER

§1.01 Definitions.—In construing these statutes and each and every word, phrase, or part hereof, where the context will permit:
(1) The singular includes the plural and vice versa.(2) Gender-specific language includes the other gender and neuter.

§63.032(12)
Definition of Parent
63.032 Definitions.—As used in this chapter, the term:
(12) "Parent" means a woman who gives birth to a child and who is not a gestational surrogate as defined in s. 742.13 or a man, person whose consent to the adoption of the child would be required under s. 63.062(1). If a child has been legally adopted, the term "parent" means the adoptive parent's mother or father of the child. The term does not include an individual whose parental relationship to the child has been legally terminated or an alleged or prospective parent.

§63.042(2)
Who May Adopt
63.042 Who may be adopted; who may adopt.—
(1) Any person, a minor or an adult, may be adopted.
(2) The following persons may adopt:
(a) A husband and wife legally married spouses jointly;
(b) An unmarried adult

§63.062(1)
Persons Whose Consent is Required

1) Unless supported by one or more of the grounds
enumerated under s. 63.089(3), a petition to terminate parental rights pending adoption may be granted only if written consent has been executed as provided in s. 63.082 after the birth of the minor or notice has been served under s. 63.088 to:

(a) The birth mother of the minor.
(b) The father-parent of the minor, if:
   1. The minor was conceived or born while the father-parent was married to the mother;
   2. The minor is his-the parent's child by adoption;
   3. The minor has been adjudicated by the court to be his-the parent's child before the date a petition for termination of parental rights is filed;

§63.062(1) Persons Whose Consent if Required

4. He-The Parent has filed an affidavit of paternity pursuant to s. 382.013(2)(c) or he is listed on the child's birth certificate before the date a petition for termination of parental rights is filed; or

5. In the case of an unmarried biological father, he has acknowledged in writing, signed in the presence of a competent witness, that he is the father of the minor, has filed such acknowledgment with the Office of Vital Statistics of the Department of Health within the required timeframes, and has complied with the requirements of subsection (2). The status of the father-parent shall be determined at the time of the filing of the petition to terminate parental rights and may not be modified, except as otherwise provided in s. 63.0423(9)(a), for purposes of his-the parent's obligations and rights under this chapter by acts occurring after the filing of the petition to terminate parental rights.

AFFIDAVITS OF NONPaternity
Should an affidavit of nonpaternity be available to the same sex non-biological female spouse.
Under an equal protection analysis, should the legislative reform change the affidavit of nonpaternity to an affidavit waiving parental rights.

**SHOULD AN AFFIDAVIT OF NONPaternity BE AVAILABLE TO THE SAME SEX NON-BIOLOGICAL FEMALE SPOUSE.**

- "YES"

-To Preserve the Constitutionality of prebirth relinquishment of rights, a prebirth relinquishment should be available to all non-pregnant parents or putative parents.

- *Lehr. v. Robertson*, 103 S.Ct. 2985, 2992, ftn. 16 (1983)
  - "The mother carries and bears the child, and in this sense her parental relationship is clear. The validity of a Father's parental claim must be gauged by other measures."

**AFFIDAVITS OF INQUIRY REGARDING THE FATHER**
- Review your biological father affidavits.

- Ask marriage question in a gender neutral manner.

- Notice and obtain the consent of every spouse regardless of gender.

**§382.013 Birth Certificates**

382.013 Birth registration.—A certificate for each live birth that occurs in this state shall be filed within 5 days after such birth with the local registrar of the district in which the birth occurred and shall be registered by the local registrar if the certificate has been completed and filed in accordance with this chapter and adopted rules. The information regarding registered births shall be used for comparison with information in the state case registry, as defined in chapter 61.

(2) **PARENTAGE PATERNITY**
(a) If the mother is married at the time of birth, the name of her spouse, the husband, shall be entered on the birth certificate as the parent father of the child, unless parentage paternity has been determined otherwise by a court of competent jurisdiction.

38 MARITAL PRESUMPTION

39 Does it apply to Same Sex Couples.

- Important to Consider the language of used by the USCT in Obergefell

Marriage also affords the permanency and stability important to children's best interests.

Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser.

The marriage laws at issue here thus harm and humiliate the children of same-sex couples.

40 MARRIAGE TO A SAME SEX SPOUSE DOES NOT CHANGE THE REQUIREMENT TO NOTICE THE BIOLOGICAL FATHER

- You must still provide notice to a biological father.

- Application of the §63.088(4), Inquiry may not be equally applied to same sex partners when a biological non-donor father is at issue in the adoption.

41 NOTICE THE BIOLOGICAL FATHER

- You will need to have a solid understanding of the case law supporting donation pursuant to §742.14.
- Issues arises with the known sperm donor.
- Unless the donor signed preconception donation documents and the insemination was performed in a medical clinic, secure affidavit of nonpaternity or a consent for adoption from the donor.
USE CAUTION
AS ADOPTION ENTITIES, THE DECISIONS WE MAKE IMPACT THE WELFARE AND STABILITY OF A CHILD

IS THERE STILL A NEED TO ESTABLISH RIGHT TO CHILDREN CONCEIVED AND BORN TO A MARRIED COUPLE?

IMPORTANT TO ESTABLISH RIGHTS OF BOTH PARENTS
• Avoid Subsequent Challenges to Spouses Parental Rights.
• Recognition of Parental Rights in All States.

AVOID SUBSEQUENT CHALLENGES TO SPOUSE’S PARENTAL RIGHTS
RUSSELL, V. PASIK
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RUSSELL V. PASIK

• In the Context of an Unmarried Couple, the Non-Biological Parent Did Not Have Standing to Seek Custody and Visitation With the Children.
• Only a Parent with Established Parental Rights May Seek Custody and Visitation.

RECOGNITION OF RIGHTS IN EVERY STATE

• Full Faith and Credit Applies to a Judgment and Not Necessarily Administrative Action of Recording a Parent’s Name on a Birth Certificate.
• An Adoption or Establishment Judgment Best Protects Each Parent’s Rights.

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STEPPARENT ADOPTIONS BY SAME SEX COUPLES
- Available In Every Case Where The Parents Are Married.
- Interpret the Provisions of Chapter 63 in a Gender Neutral Manner.
- Question The Parties’ Marriage History.
PETITIONS FOR SECOND PARENT ADOPTION

Important for Parents Who Are Not Married.

AUTHORITY FOR SECOND PARENT ADOPTIONS

- §63.042 – Who may be adopted; who may adopt.
  - (2) The following persons may adopt:
    - (b) An unmarried adult.
- Not prohibit two unmarried people from adopting.
- Not prohibit two same sex parents.
- If child arrived in the family through adoption, then must obtain two judgments - an initial and subsequent second parent judgment. §63.042(2)(a).

AUTHORITY FOR SECOND PARENT ADOPTIONS

- The Legal Parent and the Prospective Adoptive Parent must jointly petition - §63.172.
  - (1) A judgment of adoption, whether entered by a court of this state, another state, or of any other place, has the following effect:
    - (a) It relieves the birth parents of the adopted person, except a birth parent who is a petitioner or who is married to a petitioner, of all parental rights and responsibilities.
    - (b) It terminates all legal relationships between the adopted person and the adopted person’s relatives, including the birth parents, except a birth parent who is a petitioner or who is married to a petitioner, so that the adopted person thereafter is a stranger to his or her former relatives for all purposes, including the interpretation or construction of documents, statutes, and instruments, whether executed before or after entry of the adoption judgment, that do not expressly include the adopted person by name or by some designation not based on a parent and child or blood relationship, except that rights of inheritance shall be as provided in the Florida Probate Code.
• Section 63.172 authorizes a second parent to adopt without terminating existing parent’s rights.

• IN THE MATTER OF THE ADOPTION OF D.P.P., 158 So.3d 633 (Fla. 5th DCA 2014)

• L.J.R. v. T.T., 739 So.2d 1283 (Fla. 1st DCA 1999). (A father, not married to the mother, may adopt without diminishing a consenting mother’s parental rights.)


54 AUTHORITY FOR SECOND PARENT ADOPTIONS

• §63.022(2)(3) – Best Interest of the Child.

• Many same sex couples plan to add a child to their family, (pregnancy or adoption) and agree to raise their child together.

• Avoid the current games that couples may play with a child when a relationship dissolves.

• T.M.H. v. D.M.T., 79 So.3d. 787 (Fla. 5th DCA 2012).

55 WHAT IS THE ATTORNEY’S ROLE

• ADOPTION ENTITY: 2012 amendment to Chapter 63.

• §63.039(2) mandates that an adoption entity is involved in every adoption of a child by a person who is not a stepparent or a relative.

• Definition of Adoption Entity - §63.082(8).

• Definition of an Intermediary - §63.082(10).

56 PROCEEDINGS FOR SECOND PARENT ADOPTION

• Petition for Termination of Parental Rights - Proceedings to Terminate Parental Rights Pending Adoption

• §63.087 - §63.089, Fla. Stat.

• Petition for Adoption
•§63.042, §§63.102 - 63.122, Fla. Stat.

57 ☐ PETITION FOR TERMINATION OF PARENTAL RIGHTS
•When File?
  •A parent has rights not subject of a prior order of termination.
  •No parent with rights: i.e.: donor material - §742.14.
•Who Should File?
  •The Biological/Legal Parent & the Adoption Entity on behalf of
    Prospective Adoptive Parent
  •§63.087(4)(b).
  •§63.172 – jointly file to avoid serious issues.

58 ☐ BIRTH CERTIFICATE
•§63.152
•Use standard form.
•Vital Statistics issues Parent 1 and Parent 2 form.

59 ☐ INHERITENCE RIGHTS
•§732.108  Adopted persons and persons born out of wedlock.

•(1) For the purpose of intestate succession by or from an
    adopted person, the adopted person is a descendant of the
    adopting parent and is one of the natural kindred of all members
    of the adopting parent’s family, and is not a descendant of his or
    her natural parents, nor is he or she one of the kindred of any
    member of the natural parent’s family or any prior adoptive
    parent’s family, except that:
ADOPTIONS
& SAME SEX COUPLES

Amy U. Hickman
HAUSMANN & HICKMAN, P.A.
Board Certified-Adoption Law

CHAPTER 63
FLORIDA ADOPTION ACT

G.S. v. T.B., 985 So.2d 978, 982 (Fla. 2008).

- "Adoption was unknown in common law and exists solely by virtue of statute."
- "[C]ourt’s determination on adoption must be grounded in the provisions of Chapter 63."

BIFURCATED PROCEEDINGS

- Termination of Parental Rights Proceeding
  - §§63.087 - 63.089
- Adoption Proceeding
  - §§63.102 - 63.142
- Exceptions
  - Stepparent Adoption
  - Adult Adoption
  - Relative Adoption
    - §§63.032 (14) - Related by blood to adoptee within the 3rd degree of consanguinity
TERMINATION OF PARENTAL RIGHTS PROCEEDING

- §63.087, Proceeding to terminate parental rights pending adoption; general provisions.
- §63.088, Proceeding to terminate parental rights pending adoption; notice and service; diligent search.
- §63.089, Proceeding to terminate parental rights pending adoption; hearing; grounds; dismissal of petition; judgment.

TERMINATION OF PARENTAL RIGHTS PROCEEDING

- All TPR Petitions Must be Supported by Consent for Adoption - §§63.087 & 63.089
- Mandatory Consents for Adoption - §63.062(1)
  - Mother - §63.062(1)(a)
  - Father - §63.062(1)(b)
    - Must Establish Standing to Consent by the Date the Petition for Termination of Parental Rights is Filed with the Court

Father Whose Consent Is Required §63.062(1)(b)

- Husband at the Time of Conception or Birth
- Legal Father - Judgment of Paternity
- Listed on Birth Certificate - Affidavit of Paternity, §382.013(2)(c)
- Registered w/ Florida Putative Father Registry
- Adopted the Child

5.16
FLORIDA’S PUTATIVE FATHER REGISTRY

- §63.054
- Constitutional Authority
  - Lehr v. Robertson, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 218 (1983)
  - Heart of Adoptions, Inc. v. J.A., 963 So.2d 189 (Fla. 2007)
- Applies to Unmarried Biological Fathers
- Definition §63.032(1)
- Presumed Knowledge of Pregnancy/Potential Adoption - §63.088(1)
- Must Register by Date Termination of Parental Rights Petition is Filed
- Applies to All Adoption/Termination of Parental Rights Proceedings - §63.054(4)

CONSENT FOR ADOPTION EXECUTION AND FORM §63.082

- Timing and Form of Consent for Adoption - §63.082(4)
- Mother - 48 hours after birth or date of hospital discharge.
- Father - Any time after birth.
- 12 pt. bold face type.
- Must include statutory language unless Stepparent, Adult or Relative Adoption
- Two Witnesses Plus a Notary

FINALITY OF CONSENT

- Newborn to 6 months - irrevocable upon signing
- Child over 6 months - 3 day revocation period
ALTERNATIVES TO FATHER’S CONSENT

- Affidavit of Non-Paternity - §63.062(4)
- Notice of Intended Adoption Plan
- §63.062(2) and (3)
- Heart of Adoptions, Inc. v. J.A., 963 So.2d 189 (Fla. 2007)

NOTICE OF INTENDED ADOPTION PLAN

- Must Personally Serve any Identified Unmarried Biological who is Known and Locatable
  - Heart of Adoptions, Inc. v. J.A., 963 So.2d 189 (Fla. 2007)
  - §63.062(2)
- Must Respond within 30 days of Service - §63.062(2)
  - File with Putative Father Registry
  - Respond with Affirmation of Paternity & Parenting Plan
  - Provide Financial and Emotional Support

INTERVENTION IN DEPENDENCY PROCEEDING

- §63.082(6)
  - An Adoption Entity may intervene in a Dependency Proceeding when the Parent Signs a Consent for Adoption Prior to Termination of Parental Rights
PETITION FOR TERMINATION OF PARENTAL RIGHTS

- Pleading requirements & supporting documents - §63.087(4)(e).
- Grounds for TPR - §63.089.
- Address each requirement in prerequisites subsection(2).
- Attach affidavit of parentage - §63.082(1)(a) & (b).
- If donor material include allegation and circumstances of donation - Affidavit of Parentage.
- Don’t Forget to Include Diligent Search of Florida’s Putative Father Registry. §63.062(3); §63.089(2)(a)4.
- Notice & Service requirements - §63.087(5) & §63.089(2)(b).
- Requested Relief - §63.089(6).
- Adjudicate the child’s status as available for adoption.

EXHIBITS TO PETITION FOR TERMINATION OF PARENTAL RIGHTS

- Mandatory Consents or Affidavit of Nonpaternity
- Receipt of Consent/Affidavit of Non-Paternity
- Certified Death Certificate of Parent - §63.082(3)(d)
- Certificate of Diligent Search of Putative Father Registry - §63.054
- Affidavit on Biological Father - §63.088(4)
- Affidavit of Diligent Search and Inquiry - §63.088(5)
- Statement pursuant to Servicemembers Civil Relief Act - 50 USC 101-704(2003)
- UCCJEA & ICWA Affidavit

SERVICE OF PROCESS §63.088

- Personal Service 20 days Prior to Termination of Parental Rights Hearing
- Statutory Language - §63.088(3)
- Constructive Service
  - Only on Persons Required to Consent
JUDGMENT TERMINATING PARENTAL RIGHTS

- Include findings and declarations pursuant to:
  - §63.088(4)
  - §63.089(3) & (6)
- Must make findings that Legal Parent/Partners rights are not terminated.
- Must make finding concerning any other parents subject to the judgment.
- Must authorize parties to proceed with second parent adoption.
- Include Findings of Best Interests of the Child

ADOPTION PROCEEDING

- Petition for Adoption
  - §63.042 - Who may Adopt.
  - §63.102 - Filing & Venue Requirements.
    - Do not need to seek prior approval of fees unless exceed statutory minimums.
  - §63.112 - Pleading Requirements.
    - Include strong allegations addressing Child’s best interests.
- Notice of Hearing
  - §63.122 - Notice of Hearing.
- Hearing on Petition for Adoption
  - §63.142
  - Include strong witnesses in support of best interest allegations.

PETITION FOR ADOPTION SUPPORTING DOCUMENTS

- Preliminary home study - §63.092(3).
  - Preliminary home study provides evidence of best interests.
- Must have final home study or seek waiver - §63.125.
FINAL JUDGMENT OF ADOPTION

- §63.142
- Include specific findings on Legal Parent/Partners waiver of rights authorizing the adoption and subsequent enforcement of the adoption.
- Include factual findings on Best Interest of Child.
- Include findings and rulings that Legal Parent/Partner retains rights.

Stepparent Adoption

- Waiver of Vested Child Support Arrearage
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• §63.022(2)(3) – Best Interest of the Child.
• Many same sex couples plan to add a child to their family, (pregnancy or adoption) and agree to raise their child together.
• Avoid the current games that couples may play with a child when a relationship dissolves.
• T.M.H. v. D.M.T., 79 So.3d 787 (Fla. 5th DCA 2012).
WHAT IS THE ATTORNEY’S ROLE

- **ADOPTION ENTITY**: 2012 amendment to Chapter 63.
- §63.039(2) mandates that an adoption entity is involved in every adoption of a child by a person who is not a stepparent or a relative.
- Definition of Adoption Entity - §63.082(8).
- Definition of an Intermediary - §63.082(10).

PROCEEDINGS FOR SECOND PARENT ADOPTION

- Petition for Termination of Parental Rights - Proceedings to Terminate Parental Rights Pending Adoption
  - §63.087 - §63.089, Fla. Stat.
- Petition for Adoption
  - §63.042, §§63.102 - 63.122, Fla. Stat.

PETITION FOR TERMINATION OF PARENTAL RIGHTS

- When File?
  - A parent has rights not subject of a prior order of termination.
  - No parent with rights: i.e.: donor material - §742.14.
- Who Should File?
  - The Biological/Legal Parent & the Adoption Entity on behalf of Prospective Adoptive Parent
  - §63.087(4)(b).
  - §63.172 - jointly file to avoid serious issues.
BIRTH CERTIFICATE

- §63.152
- Use standard form.
- Vital Statistics issues Parent 1 and Parent 2 form.

INHERITENCE RIGHTS

- §732.108 Adopted persons and persons born out of wedlock.—

- (1) For the purpose of intestate succession by or from an adopted person, the adopted person is a descendant of the adopting parent and is one of the natural kindred of all members of the adopting parent’s family, and is not a descendant of his or her natural parents, nor is he or she one of the kindred of any member of the natural parent’s family or any prior adoptive parent’s family, except that:
Alternative Dispute Resolution

BY

Vivian Cortes Hodz, Tampa
ALTERNATIVE DISPUTE RESOLUTION

BY

VIVIAN CORTES HODZ
TAMPA
I. ALTERNATIVE DISPUTE RESOLUTION

A. The Definition- Alternative Dispute Resolution is defined as:

“A forum or means for resolving disputes (such as arbitration or private judging) that exists outside the state or federal judicial system”

“Procedures for settling disputes by means other than litigation”

B. The Benefits of Alternative Dispute Resolution

1. Lower Cost than Litigation
2. Self-Determination
3. Informal and Less Stressful Process
4. Confidentiality Protections
5. Predictable Outcome vs. Uncertain Outcome
6. Detailed and Creative Agreement Options
7. Shorter Time Spent and Final Conclusion Reached
8. Increased Likelihood of Compliance with Agreement vs. Court Order

II. MEDIATION

A. The Basics

1. Chapter 44 of the Florida Statutes, Mediation Alternatives to Judicial Action
2. Florida Family Law Rule of Procedure 12.740. “All contested family law matters and issues may be referred to mediation.”
3. Administrative Orders in each Judicial Circuit

B. Confidentiality

1. Rules
a. Chapter 44.401 – 44.406 Mediation Confidentiality and Privilege Act

b. “All mediation communications shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant’s counsel....If the mediation is court ordered, a violation of this section may also subject the mediation participant to sanctions by the court, including, but not limited to, costs, attorney’s fees, and mediator’s fees.”

c. All written communications in mediation proceeding, other than executed settlement agreement, are exempt from requirements of Chapter 119, which governs required disclosures of public records.

d. No confidentiality or privilege is attached to a signed written agreement reached during mediation.

e. Exceptions to confidentiality found in Chapter 44.405(4)(a) and include among others engagement in criminal activity, actions of child/elder abuse, for the investigation of professional malpractice and/or misconduct during proceeding

f. Remedies for violations of confidentiality are found in Chapter 44.406 and include equitable relief, compensatory damages, attorneys’ fees, mediators’ fees, etc. The statute of limitations is within 2 years of reasonable discovery of breach but in no event more than 4 years after the date of the breach

2. Caucuses. The Mediator may meet and consult privately with any party or parties or their counsel during the mediation session.

3. Having others present for mediation. Pros and cons.

C. Types of Mediation

1. Pre-Filing, during initial Family Law actions, Post-Judgment and even Enforcement/Contempt matters can be mediated.


   b. Seeking waiver of mandatory mediation requirement in cases with a history of domestic violence pursuant Florida Statutes Chapter 44.102(2)(c)
2. Private
   b. Can be scheduled and coordinated by agreement or Ordered by referral of Court to private mediation.
   c. Costs for private mediation governed by Florida Family Law Rule 12.740. “When appropriate, the court shall apportion mediation fees between the parties and shall state each party’s share in the order of referral.”

3. County
   a. Overview of Services
   b. Costs established per Section 44.108 Florida Statutes. Funding of mediation is statutorily required. $1 from every filing fee is levied on all proceedings in the circuit and county courts. $120 per person if combined income of parties is over $50,000.00. $60 per person if less than $50,000.00.
   c. Waiver of Fees/Affidavit of Indigence Form

D. Scheduling
   a. Is your case ready? Are financials complete?
   b. Is your client emotionally ready? If client is too angry or in denial it may be too soon.
   c. Mediation is often prerequisite to a hearing. In circumstance where temporary relief is needed urgently you may be forced to mediate even if the case is not quite ripe for settlement.
   e. Circuit specific scheduling process. Posted on websites. Hillsborough County Mediation and Diversion Services has a Family/Temporary Relief Request form
   f. Importance of confirming payment arrangements for private mediation in advance. Be sure it is on your notice.
   g. The Notice of Mediation
F. Preparation

1. Attorney Preparation
   
a. Do you have all the financial disclosures needed? Know asset values and debts. Do you need appraisals or valuations before mediation? Bring the back-up documents.
   
b. Bring child support guidelines and equitable distribution charts with copies for the mediator and the other side.
   
c. Run various scenarios, consider alternative positions, and anticipate the other side’s arguments.
   
d. Bring case law to support significant legal issues
   
e. Plan for enough time to adequately address all of the issues. Schedule enough time for you to prepare before and stay at mediation so there is no rush.
   
f. Talk/communicate with your opposing counsel before mediation. Find out what they might still need from your client to make the mediation session as productive as possible.
   
g. Send a written settlement proposal or proposed Parenting Plan in advance of mediation to opposing counsel and the mediator.
   
h. Try to narrow the issues to make the best use of time and money.

2. Client Preparation
   
a. Meet with your client before at least a week before the day of mediation. Explain the process and the mediator’s role. Be prepared with a detailed proposal and anticipate counter-proposals and your response to them.
   
b. Ensure they know where to go and what time the mediation begins.
   
c. Arrive at least 30 minutes before mediation is to begin. Bring snacks.
   
d. Inform your client about the costs and confirm payment arrangements for mediation in advance.

2. Mediator Preparation
   
a. Mediation summaries. Yes or No?
   
b. Send relevant pleadings.
   
c. Head’s up to unique issues is helpful.
d. Alert to high levels of animosity between parties or lawyers or special issues of the parties requiring sensitivity.
e. Benefit of a brief meeting of attorneys’ with mediator prior to commencement of mediation.

G. The Mediation Process

a. Mediator is in control of mediation conference at all times.
b. Opening Statements. Be clear about client’s priorities/goals but be mindful giving your client realistic expectations. Nobody is going to settle for their worst day in Court. Come prepared to compromise.
c. Time Management. Be mindful of time allotted to mediate. Allow the mediator to adequately address both sides of the case without monopolizing the session.
d. Allow your client to be heard. This is their day and they have likely been waiting for quite a while to state their “case”.
e. Allow the mediator to build trust and establish rapport with your client.
f. View the mediator as an ally to help you manage your client’s position, especially if your client’s position is unreasonable.
g. Address all issues/facts up front – Good and Bad.
h. Be clear about “deal-breaker” issues in the beginning.
i. Bring experts to mediation, if needed. In a complex financial case a forensic accountant is critical.
j. Take good notes of offers that go back and forth for tracking of positions.
k. Impasse. Florida Family Law Rule 12.740(f)(3) requires the mediator to report a lack of agreement to the court without comment or recommendation.
l. Failure to appear. The Court can impose sanctions, including an award of mediator and attorneys’ fees and other costs for failure of a party to appear at a duly noticed mediation conference without good cause pursuant to Florida Family Law Rule 12.741(b)2.

III. SETTLEMENT CONFERENCE

A. Why do one?
   B. When not to do one?
   C. To notice or not to notice?

IV. AGREEMENT

A. Full, Partial, Temporary. Any agreement is better than nothing.
B. You have any agreement. Now what? The writing.
C. Signatures and notarization.
D. Careful and thorough review and understanding by client
E. Is your client in a state of mind to enter into a contract?
F. Validity and Enforcement

V. IMPACT OF DOMESTIC VIOLENCE

VI. COLLABORATIVE FAMILY LAW PRACTICE

A. Collaborative Family Law. What it is?

“The collaborative practice model is confidential and utilizes interest-based negotiation to resolve disputes through the structured assistance of collaboratively trained professionals, including but not limited to lawyers, financial professionals, mental health professionals, mediators, and other neutral professionals.”

B. Hillsborough County Administrative Order S-2012-041
C. Florida Statutes 61.55 – 61.57, Collaborative Process Act

VII. OTHER METHODS FOR CONFLICT RESOLUTION IN FAMILY LAW CASES

A. Parent Coordination. What is it?
B. Rules and Applicable Statute.
   Florida Statute 61.125
   Florida Family Law Rule 12.742
C. Order of Referral to Parenting Coordinator

VIII. ETHICAL CONSIDERATIONS AND PROFESSIONALISM

A. ROLE. Understanding your role as the attorney and the purpose/goal of mediation is settlement. Remember the mediator’s role. Do not argue with the mediator. The mediator is not going to take a side.
B. ATTITUDE. Be open to settlement. Do not obstruct the mediation process. The mediation is not for you. It is for your client. You are there to provide counsel and legal advice not to make decisions.
C. EMOTIONS. Maintain your own emotions neutral. Manage your client’s emotions throughout the representation. Expect a roller coaster of emotions in a family law case. Be sensitive.
D. TRUST. Be sure to build trust between attorney/client, mediator/party and parties.
E. RELATIONSHIPS. Recognize the relationships and past history of all of the parties involved and how relevant past is to future planning involved in settlement.
F. IMPACT. Assist client in understanding implications of settlement vs. continued litigation. Do not take an impasse lightly. Your client should
understand what happens after an impasse both procedurally and financially and be prepared for both before calling it a day.

G. LISTEN. Listen and be patient even if your client goes off topic and brings up issues you may think are irrelevant. Mediation is their opportunity to be heard. Use mediation to prepare for further proceedings and as an additional discovery tool. You will always find out something you did not know at mediation either about the other side or about your client.

H. SOLUTIONS. Offer solutions. Do not give up on achieving a settlement too soon, however know when to call it a day

IX. MEDIATOR CERTIFICATION

A. Supreme Court Supreme Court of Florida No. AOSC08-23, Procedures Governing Certification of Mediators
B. Dispute Resolution Center Step by Step Guide to Become a Florida Supreme Court Certified Mediator
C. Dispute Resolution Center Resources
D. State Courts ADR Contact List
INDEX OF MATERIALS

Florida Statutes, Chapter 44, Mediation Alternatives to Judicial Action

Florida Family Law Rule 12.740, Family Mediation

Florida Family Law Rule 12.741, Mediation Rules

Administrative Order S-2009-107, Mediation of Family Law Cases, Hillsborough County.

Administrative Order No. 2011-006, Pasco and Pinellas Counties, Mediation

Mediation Process Instructions for Family Law Cases, 6th Judicial Circuit

Order Referring Parties to Family Mediation

Affidavit Re: Objection to Referral to Family Mediation

Instructions for Automatic Referrals from 6th Judicial Circuit

Affidavit of Income for Purposes of Establishing Mediation Fees

Application for Determination of Civil Indigent Status

Mediation & Diversion Services Family/Temporary Relief Scheduling Request Form

Family Diversion Program Intake form for Internal Use, Hillsborough County

The Mediation Process Instructions from the 6th Judicial Circuit

Notice of Court Ordered Mediation Conference, Family Diversion Program, Hillsborough County

Outcome of Family Mediation Form, Hillsborough County Family Diversion Program

Private Mediation Intake/Scheduling Sheet

Private Mediation Scheduling Letter

Private Mediation Initial Mediation Questionnaire

Private Mediation Agreement to Mediate

Private Mediation Sample Notice
44.1011 Definitions.—As used in this chapter:

1. “Arbitration” means a process whereby a neutral third person or panel, called an arbitrator or arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding as provided 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 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 problem solving, and exploring settlement alternatives. “Mediation” includes:
   a. “Appellate court mediation,” which means mediation that occurs during the pendency of an appeal of a civil case.
   b. “Circuit court mediation,” which means mediation of civil cases, other than family matters, in circuit court. If a party is represented by counsel, the counsel of record must appear unless stipulated to by the parties or otherwise ordered by the court.
   c. “County court mediation,” which means mediation of civil cases within the jurisdiction of county courts, including small claims. Negotiations in county court mediation are primarily conducted by the
parties. Counsel for each party may participate. However, presence of counsel is not required.

(d) "Family mediation" which means mediation of family matters, including married and unmarried persons, before and after judgments involving dissolution of marriage; property division; shared or sole parental responsibility; or child support, custody, and visitation involving emotional or financial considerations not usually present in other circuit civil cases. Negotiations in family mediation are primarily conducted by the parties. Counsel for each party may attend the mediation conference and privately communicate with their clients. However, presence of counsel is not required, and, in the discretion of the mediator, and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

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

History.—s. 1, ch. 87-173; s. 1, ch. 90-188; s. 43, ch. 94-164; s. 54, ch. 95-280.
Note.—Former s. 44.301.

44.102 Court-ordered mediation.—
(1) Court-ordered mediation shall be conducted according to rules of practice and procedure adopted by the Supreme Court.
(2) A court, under rules adopted by the Supreme Court:
  (a) Must, upon request of one party, refer to mediation any filed civil action for monetary damages, provided the requesting party is willing and able to pay the costs of the mediation or the costs can be equitably divided between the parties, unless:
    1. The action is a landlord and tenant dispute that does not include a claim for personal injury.
    2. The action is filed for the purpose of collecting a debt.
    3. The action is a claim of medical malpractice.
    4. The action is governed by the Florida Small Claims Rules.
    5. The court determines that the action is proper for referral to nonbinding arbitration under this chapter.
  6. The parties have agreed to binding arbitration.
  7. The parties have agreed to an expedited trial pursuant to s. 45.075.
  8. The parties have agreed to voluntary trial resolution pursuant to s. 44.104.
  (b) May refer to mediation all or any part of a filed civil action for which mediation is not required under this section.
  (c) In circuits in which a family mediation program has been established and upon a court finding of a dispute, shall refer to mediation all or part of custody, visitation, or other parental responsibility issues as defined in s. 61.13. Upon motion or request of a party, a court shall not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process.
  (d) In circuits in which a dependency or in need of services mediation program has been established, may refer to mediation all or any portion of a matter relating to dependency or to a child in need of services or a family in need of services.
  (3) All written communications in a mediation proceeding, other than an executed settlement agreement, shall be exempt from the requirements of chapter 119.
(4) The chief judge of each judicial circuit shall maintain a list of mediators who have been certified by the Supreme Court and who have registered for appointment in that circuit.

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

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

(5)(a) When an action is referred to mediation by court order, the time periods for responding to an offer of settlement pursuant to s. 45.061, or to an offer or demand for judgment pursuant to s. 768.79, respectively, shall be tolled until:

1. An impasse has been declared by the mediator; or
2. The mediator has reported to the court that no agreement was reached.

(b) Sections 45.061 and 768.79 notwithstanding, an offer of settlement or an offer or demand for judgment may be made at any time after an impasse has been declared by the mediator, or the mediator has reported that no agreement was reached. An offer is deemed rejected as of commencement of trial.

Note.—Former s. 44.302.

44.103 Court-ordered, nonbinding arbitration.—

(1) Court-ordered, nonbinding arbitration shall be conducted according to the rules of practice and procedure adopted by the Supreme Court.

(2) A court, pursuant to rules adopted by the Supreme Court, may refer any contested civil action filed in a circuit or county court to nonbinding arbitration.

(3) Arbitrators shall be selected and compensated in accordance with rules adopted by the Supreme Court. Arbitrators shall be compensated by the parties, or, upon a finding by the court that a party is indigent, an arbitrator may be partially or fully compensated from state funds according to the party's present ability to pay. At no time may an arbitrator charge more than $1,500 per diem, unless the parties agree otherwise. Prior to approving the use of state funds to reimburse an arbitrator, the court must ensure that the party reimburses the portion of the total cost that the party is immediately able to pay and that the party has agreed to a payment plan established by the clerk of the court that will fully reimburse the state for the balance of all state costs for both the arbitrator and any costs of administering the payment plan and any collection efforts that may be necessary in the future. Whenever possible, qualified individuals who have volunteered their time to serve as arbitrators shall be appointed. If an arbitration program is funded pursuant to s. 44.108, volunteer arbitrators shall be entitled to be reimbursed pursuant to s. 112.061 for all actual expenses necessitated by service as an arbitrator.

(4) An arbitrator or, in the case of a panel, the chief arbitrator, shall have such power to administer oaths or affirmations and to conduct the proceedings as the rules of court shall provide. The hearing shall be conducted informally. Presentation of testimony and evidence shall be kept to a minimum, and matters shall be presented to the arbitrators primarily through the statements and arguments of counsel. Any party to the arbitration may petition the court in the underlying action, for good cause shown, to authorize the arbitrator to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence at the arbitration and may petition the court for orders compelling such
attendance and production at the arbitration. Subpoenas shall be served and shall be enforceable in the manner provided by law.

(5) The arbitration decision shall be presented to the parties in writing. An arbitration decision shall be final if a request for a trial de novo is not filed within the time provided by rules promulgated by the Supreme Court. The decision shall not be made known to the judge who may preside over the case unless no request for trial de novo is made as herein provided or unless otherwise provided by law. If no request for trial de novo is made within the time provided, the decision shall be referred to the presiding judge in the case who shall enter such orders and judgments as are required to carry out the terms of the decision, which orders shall be enforceable by the contempt powers of the court, and for which judgments execution shall issue on request of a party.

(6) Upon motion made by either party within 30 days after entry of judgment, the court may assess costs against the party requesting a trial de novo, including arbitration costs, court costs, reasonable attorney's fees, and other reasonable costs such as investigation expenses and expenses for expert or other testimony which were incurred after the arbitration hearing and continuing through the trial of the case in accordance with the guidelines for taxation of costs as adopted by the Supreme Court. Such costs may be assessed if:

(a) The plaintiff, having filed for a trial de novo, obtains a judgment at trial which is at least 25 percent less than the arbitration award. In such instance, the costs and attorney's fees pursuant to this section shall be set off against the award. When the costs and attorney's fees pursuant to this section total more than the amount of the judgment, the court shall enter judgment for the defendant against the plaintiff for the amount of the costs and attorney's fees, less the amount of the award to the plaintiff. For purposes of a determination under this paragraph, the term "judgment" means the amount of the net judgment entered, plus all taxable costs pursuant to the guidelines for taxation of costs as adopted by the Supreme Court, plus any postarbitration collateral source payments received or due as of the date of the judgment, and plus any postarbitration settlement amounts by which the verdict was reduced; or

(b) The defendant, having filed for a trial de novo, has a judgment entered against the defendant which is at least 25 percent more than the arbitration award. For purposes of a determination under this paragraph, the term "judgment" means the amount of the net judgment entered, plus any postarbitration settlement amounts by which the verdict was reduced.

History.—s. 3, ch. 87-173; s. 3, ch. 89-31; s. 3, ch. 90-188; s. 3, ch. 93-161; s. 43, ch. 2004-265; s. 32, ch. 2005-236; s. 1, ch. 2007-206.

Note.—Former s. 44.303.

44.104 Voluntary binding arbitration and voluntary trial resolution.—

(1) Two or more opposing parties who are involved in a civil dispute may agree in writing to submit the controversy to voluntary binding arbitration, or voluntary trial resolution, in lieu of litigation of the issues involved, prior to or after a lawsuit has been filed, provided no constitutional issue is involved.

(2) If the parties have entered into an agreement which provides in voluntary binding arbitration for a method for appointing of one or more arbitrators, or which provides in voluntary trial resolution a method for appointing a member of The Florida Bar in good standing for more than 5 years to act as trial resolution judge, the court shall proceed with the appointment as prescribed. However, in voluntary binding arbitration at least one of the arbitrators, who shall serve as the chief arbitrator, shall meet the qualifications and training requirements adopted pursuant to s. 44.106. In the absence of an agreement, or if the agreement method fails or for any reason cannot be followed, the court, on application of a party, shall appoint one or more qualified arbitrators, or the trial resolution judge, as the case requires.
(3) The arbitrators or trial resolution judge shall be compensated by the parties according to their agreement.

(4) Within 10 days after the submission of the request for binding arbitration, or voluntary trial resolution, the court shall provide for the appointment of the arbitrator or arbitrators, or trial resolution judge, as the case requires. Once appointed, the arbitrators or trial resolution judge shall notify the parties of the time and place for the hearing.

(5) Application for voluntary binding arbitration or voluntary trial resolution shall be filed and fees paid to the clerk of court as if for complaints initiating civil actions. The clerk of the court shall handle and account for these matters in all respects as if they were civil actions, except that the clerk of court shall keep separate the records of the applications for voluntary binding arbitration and the records of the applications for voluntary trial resolution from all other civil actions.

(6) Filing of the application for binding arbitration or voluntary trial resolution will toll the running of the applicable statutes of limitation.

(7) The chief arbitrator or trial resolution judge may administer oaths or affirmations and conduct the proceedings as the rules of court shall provide. At the request of any party, the chief arbitrator or trial resolution judge shall issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and may apply to the court for orders compelling attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by law.

(8) A voluntary binding arbitration hearing shall be conducted by all of the arbitrators, but a majority may determine any question and render a final decision. A trial resolution judge shall conduct a voluntary trial resolution hearing. The trial resolution judge may determine any question and render a final decision.

(9) The Florida Evidence Code shall apply to all proceedings under this section.

(10) An appeal of a voluntary binding arbitration decision shall be taken to the circuit court and shall be limited to review on the record and not de novo, of:

(a) Any alleged failure of the arbitrators to comply with the applicable rules of procedure or evidence.

(b) Any alleged partiality or misconduct by an arbitrator prejudicing the rights of any party.

(c) Whether the decision reaches a result contrary to the Constitution of the United States or of the State of Florida.

(11) Any party may enforce a final decision rendered in a voluntary trial by filing a petition for final judgment in the circuit court in the circuit in which the voluntary trial took place. Upon entry of final judgment by the circuit court, any party may appeal to the appropriate appellate court. Factual findings determined in the voluntary trial are not subject to appeal.

(12) The harmless error doctrine shall apply in all appeals. No further review shall be permitted unless a constitutional issue is raised.

(13) If no appeal is taken within the time provided by rules promulgated by the Supreme Court, then the decision shall be referred to the presiding judge in the case, or if one has not been assigned, then to the chief judge of the circuit for assignment to a circuit judge, who shall enter such orders and judgments as are required to carry out the terms of the decision, which orders shall be enforceable by the contempt powers of the court and for which judgments execution shall issue on request of a party.

(14) This section shall not apply to any dispute involving child custody, visitation, or child support, or to any dispute which involves the rights of a third party not a party to the arbitration or voluntary trial resolution when the third party would be an indispensable party if the dispute were resolved in court or when the third party notifies the chief arbitrator or the trial resolution judge that the third party would be a proper party if the dispute were resolved in court, that the third party intends to intervene in the action in court, and that the third party does not agree to proceed under this section.
Standards and procedures for mediators and arbitrators; fees.—The Supreme Court shall establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training for mediators and arbitrators who are appointed pursuant to this chapter. The Supreme Court is authorized to set fees to be charged to applicants for certification and renewal of certification. The revenues generated from these fees shall be used to offset the costs of administration of the certification process. The Supreme Court may appoint or employ such personnel as are necessary to assist the court in exercising its powers and performing its duties under this chapter.

Immunity for arbitrators, mediators, and mediator trainees.—

(1) Arbitrators serving under s. 44.103 or s. 44.104, mediators serving under s. 44.102, and trainees fulfilling the mentorship requirements for certification by the Supreme Court as a mediator shall have judicial immunity in the same manner and to the same extent as a judge.

(2) A person serving as a mediator in any noncourt-ordered mediation shall have immunity from liability arising from the performance of that person’s duties while acting within the scope of the mediation function if such mediation is:

(a) Required by statute or agency rule or order;
(b) Conducted under ss. 44.401-44.406 by express agreement of the mediation parties; or
(c) Facilitated by a mediator certified by the Supreme Court, unless the mediation parties expressly agree not to be bound by ss. 44.401-44.406.

The mediator does not have immunity if he or she acts in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(3) A person serving under s. 44.106 to assist the Supreme Court in performing its disciplinary function shall have absolute immunity from liability arising from the performance of that person’s duties while acting within the scope of that person’s appointed function.

Funding of mediation and arbitration.—

(1) Mediation and arbitration should be accessible to all parties regardless of financial status. A filing fee of $1 is levied on all proceedings in the circuit or county courts to fund mediation and arbitration services which are the responsibility of the Supreme Court pursuant to the provisions of s. 44.106. The clerk of the court shall forward the moneys collected to the Department of Revenue for deposit in the State Courts Revenue Trust Fund.

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

(a) One hundred twenty dollars per person per scheduled session in family mediation when the parties’ combined income is greater than $50,000, but less than $100,000 per year;
(b) Sixty dollars per person per scheduled session in family mediation when the parties’ combined income is less than $50,000; or
(c) Sixty dollars per person per scheduled session in county court cases.
No mediation fees shall be assessed under this subsection in residential eviction cases, against a party found to be indigent, or for any small claims action. Fees collected by the clerk of court pursuant to this section shall be remitted to the Department of Revenue for deposit into the State Courts Revenue Trust Fund to fund court-ordered mediation. The clerk of court may deduct $1 per fee assessment for processing this fee. The clerk of the court shall submit to the chief judge of the circuit and to the Office of the State Courts Administrator, no later than 30 days after the end of each quarter of the fiscal year, a report specifying the amount of funds collected and remitted to the State Courts Revenue Trust Fund under this section and any other section during the previous quarter of the fiscal year. In addition to identifying the total aggregate collections and remissions from all statutory sources, the report must identify collections and remissions by each statutory source.

History.--s. 6, ch. 89-31; s. 8, ch. 90-188; s. 6, ch. 91-152; s. 8, ch. 2001-122; s. 12, ch. 2001-380; s. 66, ch. 2003-402; s. 44, ch. 2004-265; s. 33, ch. 2005-236; s. 24, ch. 2008-111; s. 12, ch. 2010-153; s. 4, ch. 2011-133.

Note.--Former s. 44.308.

44.201 Citizen Dispute Settlement Centers; establishment; operation; confidentiality.--

(1) The chief judge of a judicial circuit, after consultation with the board of county commissioners of a county or with two or more boards of county commissioners of counties within the judicial circuit, may establish a Citizen Dispute Settlement Center for such county or counties, with the approval of the Chief Justice.

(2)(a) Each Citizen Dispute Settlement Center shall be administered in accordance with rules adopted by a council composed of at least seven members. The chief judge of the judicial circuit shall serve as chair of the council and shall appoint the other members of the council. The membership of the council shall include a representative of the state attorney, each sheriff, a county court judge, and each board of county commissioners within the geographical jurisdiction of the center. In addition, council membership shall include two members of the general public who are not representatives of such officers or boards. The membership of the council also may include other interested persons.

(b) The council shall establish qualifications for and appoint a director of the center. The director shall administer the operations of the center.

(c) A council may seek and accept contributions from counties and municipalities within the geographical jurisdiction of the Citizen Dispute Settlement Center and from agencies of the Federal Government, private sources, and other available funds and may expend such funds to carry out the purposes of this section.

(3) The Citizen Dispute Settlement Center, subject to the approval of the council and the Chief Justice, shall formulate and implement a plan for creating an informal forum for the mediation and settlement of disputes. Such plan shall prescribe:

(a) Objectives and purposes of the center;

(b) Procedures for filing complaints with the center and for scheduling informal mediation sessions with the parties to a complaint;

(c) Screening procedures to ensure that each dispute mediated by the center meets the criteria of fitness for mediation as set by the council;

(d) Procedures for rejecting any dispute which does not meet the established criteria of fitness for mediation;

(e) Procedures for giving notice of the time, place, and nature of the mediation session to the parties and for conducting mediation sessions;

(f) Procedures to ensure that participation by all parties is voluntary; and
(g) Procedures by which any dispute that was referred to the center by a law enforcement agency, state attorney, court, or other agency and that fails at mediation, or that reaches settlement that is later breached, is reported to the referring agency.

(4)(a) Each mediation session conducted by a Citizen Dispute Settlement Center shall be nonjudicial and informal. No adjudication, sanction, or penalty may be made or imposed by the mediator or the center.
(b) A Citizen Dispute Settlement Center may refer the parties to judicial or nonjudicial supportive service agencies.
(5) Any information relating to a dispute obtained by any person while performing any duties for the center from the files, reports, case summaries, mediator’s notes, or other communications or materials is exempt from the provisions of s. 119.07(1).
(6) No officer, council member, employee, volunteer, or agent of a Citizen Dispute Settlement Center shall be held liable for civil damages for any act or omission in the scope of employment or function, unless such person acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of another.
(7) Any Citizen Dispute Settlement Center in operation on October 1, 1985, may continue its operations in its current form with the approval of the chief judge of the judicial circuit in which such center is located, except that paragraph (4)(b) and subsections (5) and (6) shall apply to such centers.
(8) Any utility regulated by the Florida Public Service Commission is excluded from the provisions of this act.
History.—s. 2, ch. 85-228; s. 16, ch. 90-360; s. 263, ch. 95-147; s. 19, ch. 96-406; s. 3, ch. 2004-291.

44.401 Mediation Confidentiality and Privilege Act.—Sections 44.401-44.406 may be known by the popular name the “Mediation Confidentiality and Privilege Act.”
History.—s. 4, ch. 2004-291.

44.402 Scope.—
(1) Except as otherwise provided, ss. 44.401-44.406 apply to any mediation:
(a) Required by statute, court rule, agency rule or order, oral or written case-specific court order, or court administrative order;
(b) Conducted under ss. 44.401-44.406 by express agreement of the mediation parties; or
(c) Facilitated by a mediator certified by the Supreme Court, unless the mediation parties expressly agree not to be bound by ss. 44.401-44.406.
(2) Notwithstanding any other provision, the mediation parties may agree in writing that any or all of s. 44.405(1), s. 44.405(2), or s. 44.406 will not apply to all or part of a mediation proceeding.
History.—s. 4, ch. 2004-291.

44.403 Mediation Confidentiality and Privilege Act; definitions.—As used in ss. 44.401-44.406, the term:
(1) “Mediation communication” means an oral or written statement, or nonverbal conduct intended to make an assertion, by or to a mediation participant made during the course of a mediation, or prior to mediation if made in furtherance of a mediation. The commission of a crime during a mediation is not a mediation communication.
(2) “Mediation participant” means a mediation party or a person who attends a mediation in person or by telephone, videoconference, or other electronic means.
(3) “Mediation party” or “party” means a person participating directly, or through a designated
representative, in a mediation and a person who:

(a) Is a named party;
(b) Is a real party in interest; or
(c) Would be a named party or real party in interest if an action relating to the subject matter of the mediation were brought in a court of law.

(4) “Mediator” means a neutral, impartial third person who facilitates the mediation process. The mediator’s role is to reduce obstacles to communication, assist in identifying issues, explore alternatives, and otherwise facilitate voluntary agreements to resolve disputes, without prescribing what the resolution must be.

(5) “Subsequent proceeding” means an adjudicative process that follows a mediation, including related discovery.

History.—s. 4, ch. 2004-291.

44.404 Mediation; duration.—
(1) A court-ordered mediation begins when an order is issued by the court and ends when:
(a) A partial or complete settlement agreement, intended to resolve the dispute and end the mediation, is signed by the parties and, if required by law, approved by the court;
(b) The mediator declares an impasse by reporting to the court or the parties the lack of an agreement;
(c) The mediation is terminated by court order, court rule, or applicable law; or
(d) The mediation is terminated, after party compliance with the court order to appear at mediation, by:
   1. Agreement of the parties; or
   2. One party giving written notice to all other parties in a multiparty mediation that the one party is terminating its participation in the mediation. Under this circumstance, the termination is effective only for the withdrawing party.

(2) In all other mediations, the mediation begins when the parties agree to mediate or as required by agency rule, agency order, or statute, whichever occurs earlier, and ends when:
(a) A partial or complete settlement agreement, intended to resolve the dispute and end the mediation, is signed by the parties and, if required by law, approved by the court;
(b) The mediator declares an impasse to the parties;
(c) The mediation is terminated by court order, court rule, or applicable law; or
(d) The mediation is terminated by:
   1. Agreement of the parties; or
   2. One party giving notice to all other parties in a multiparty mediation that the one party is terminating its participation in the mediation. Under this circumstance, the termination is effective only for the withdrawing party.

History.—s. 4, ch. 2004-291.

44.405 Confidentiality; privilege; exceptions.—
(1) Except as provided in this section, all mediation communications shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant’s counsel. A violation of this section may be remedied as provided by s. 44.406. If the mediation is court ordered, a violation of this section may also subject the mediation participant to sanctions by the court, including, but not limited to, costs, attorney’s fees, and mediator’s fees.
(2) A mediation party has a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding mediation communications.

(3) If, in a mediation involving more than two parties, a party gives written notice to the other parties that the party is terminating its participation in the mediation, the party giving notice shall have a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding only those mediation communications that occurred prior to the delivery of the written notice of termination of mediation to the other parties.

(4)(a) Notwithstanding subsections (1) and (2), there is no confidentiality or privilege attached to a signed written agreement reached during a mediation, unless the parties agree otherwise, or for any mediation communication:
1. For which the confidentiality or privilege against disclosure has been waived by all parties;
2. That is willfully used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence;
3. That requires a mandatory report pursuant to chapter 39 or chapter 415 solely for the purpose of making the mandatory report to the entity requiring the report;
4. Offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding;
5. Offered for the limited purpose of establishing or refuting legally recognized grounds for voiding or reforming a settlement agreement reached during a mediation; or
6. Offered to report, prove, or disprove professional misconduct occurring during the mediation, solely for the internal use of the body conducting the investigation of the conduct.

(b) A mediation communication disclosed under any provision of subparagraph (a)3., subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6. remains confidential and is not discoverable or admissible for any other purpose, unless otherwise permitted by this section.

(5) Information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery by reason of its disclosure or use in mediation.

(6) A party that discloses or makes a representation about a privileged mediation communication waives that privilege, but only to the extent necessary for the other party to respond to the disclosure or representation.

History.—s. 4, ch. 2004-291.

44.406 Confidentiality; civil remedies.—

(1) Any mediation participant who knowingly and willfully discloses a mediation communication in violation of s. 44.405 shall, upon application by any party to a court of competent jurisdiction, be subject to remedies, including:

(a) Equitable relief.
(b) Compensatory damages.
(c) Attorney’s fees, mediator’s fees, and costs incurred in the mediation proceeding.
(d) Reasonable attorney’s fees and costs incurred in the application for remedies under this section.

(2) Notwithstanding any other law, an application for relief filed under this section may not be commenced later than 2 years after the date on which the party had a reasonable opportunity to discover the breach of confidentiality, but in no case more than 4 years after the date of the breach.

(3) A mediation participant shall not be subject to a civil action under this section for lawful compliance with the provisions of s. 119.07.

History.—s. 4, ch. 2004-291.
RULE 12.740 FAMILY MEDIATION

(a) Applicability. This rule governs mediation of family matters and related issues.

(b) Referral. Except as provided by law and this rule, all contested family matters and issues may be referred to mediation. Every effort shall be made to expedite mediation of family issues.

(c) Limitation on Referral to Mediation. Unless otherwise agreed by the parties, family matters and issues may be referred to a mediator or mediation program which charges a fee only after the court has determined that the parties have the financial ability to pay such a fee. This determination may be based upon the parties' financial affidavits or other financial information available to the court. When the mediator is compensated in whole or part by the parties, the presiding judge may determine the reasonableness of the fees charged by the mediator. In the absence of a written agreement providing for the mediator's compensation, the mediator shall be compensated at the hourly rate set by the presiding judge in the referral order. When appropriate, the court shall apportion mediation fees between the parties and shall state each party's share in the order of referral. Parties may object to the rate of the mediator's compensation within 15 days of the order of referral by serving an objection on all other parties and the mediator.

(d) Appearances. Unless otherwise stipulated by the parties, a party is deemed to appear at a family mediation convened pursuant to this rule if the named party is physically present at the mediation conference. In the discretion of the mediator and with the agreement of the parties, family mediation may proceed in the absence of counsel unless otherwise ordered by the court.

(e) Completion of Mediation. Mediation shall be completed within 75 days of the first mediation conference unless otherwise ordered by the court.

(f) Report on Mediation.

(1) If agreement is reached as to any matter or issue, including legal or factual issues to be determined by the court, the agreement shall be reduced to writing, signed by the parties and their counsel, if any and if present, and submitted to the court unless the parties agree otherwise. By stipulation of the parties, the agreement may be electronically or stenographically recorded and made under oath or affirmed. In such event, an appropriately signed transcript may be filed with the court. If counsel for any party is not present when the agreement is reached, the mediator shall cause to be mailed a copy of the agreement to counsel within 5 days. Counsel shall have 10 days from service of a copy of the agreement to serve a written objection on the mediator, unrepresented parties, and counsel. Absent a timely written objection, the agreement is presumed to be approved by counsel and shall be filed with the court by the mediator.

(2) After the agreement is filed, the court shall take action as required by law. When court approval is not necessary, the agreement shall become binding upon filing. When court approval is necessary, the agreement shall become binding upon approval. In either event, the agreement shall be made part of the final judgment or order in the case.
(3) If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

Commentary

1995 Adoption. This rule is similar to former Florida Rule of Civil Procedure 1.740. All provisions concerning the compensation of the mediator have been incorporated into this rule so that all mediator compensation provisions are contained in one rule. Additionally, this rule clarifies language regarding the filing of transcripts, the mediator's responsibility for mailing a copy of the agreement to counsel, and counsel's filing of written objections to mediation agreements.
RULE 12.741 MEDIATION RULES

(a) **Discovery.** Unless stipulated by the parties or ordered by the court, the mediation process shall not suspend discovery.

(b) **General Procedures.**

(1) **Interim or Emergency Relief.** A party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such a motion is pending absent a contrary order of the court, or a decision of the mediator to adjourn pending disposition of the motion. Time for completing mediation shall be tolled during any periods when mediation is interrupted pending resolution of such a motion.

(2) **Sanctions for Failure to Appear.** If a party fails to appear at a duly noticed mediation conference without good cause, the court upon motion shall impose sanctions, including an award of mediator and attorneys' fees and other costs, against the party failing to appear.

(3) **Adjournments.** The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference. No further notification is required for parties present at the adjourned conference.

(4) **Counsel.** Counsel shall be permitted to communicate privately with their clients. The mediator shall at all times be in control of the mediation and the procedures to be followed in the mediation.

(5) **Communication with Parties.** The mediator may meet and consult privately with any party or parties or their counsel.

(6) **Appointment of the Mediator.**

(A) Within 10 days of the order of referral, the parties may agree upon a stipulation with the court designating:

(i) a certified mediator; or

(ii) a mediator who does not meet the certification requirements of these rules but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

(B) If the parties cannot agree upon a mediator within 10 days of the order of referral, the plaintiff or petitioner shall so notify the court within 10 days of the expiration of the period to agree on a mediator, and the court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending.
(C) If a mediator agreed upon by the parties or appointed by a court cannot serve, a substitute mediator can be agreed upon or appointed in the same manner as the original mediator. A mediator shall not mediate a case assigned to another mediator without the agreement of the parties or approval of the court. A substitute mediator shall have the same qualifications as the original mediator.

Commentary

1995 Adoption. This rule combines and replaces Florida Rules of Civil Procedure 1.710, 1.720, and 1.730. The rule, as combined, is substantially similar to those three previous rules, with the following exceptions. This rule deletes subdivisions (a) and (b) of rule 1.710 and subdivisions (b) and (c) of rule 1.730. This rule compliments Florida Family Law Rule of Procedure 12.740 by providing direction regarding various procedures to be followed in family law mediation proceedings.
Chapter 44, Florida Statutes, and Florida Family Law Rule of Procedure 12.740 provide for mediation of family law actions. The Family Diversion Program has been established as a court program under Mediation and Diversion Services to implement an equitable and expeditious alternative dispute resolution process for family law cases. It is necessary for the proper and efficient administration of justice in the Unified Family Court Domestic Relations / Family Law Division to update procedures for the mediation of family law cases through the Family Diversion Program.

By the power vested in the chief judge under Florida Rule of Judicial Administration 2.215(b)(2), it is therefore ORDERED:

1. **Court Referral of Family Matters to Mediation**

   All issues in marriage dissolution and post dissolution proceedings and in domestic proceedings between unmarried parents may be referred to mediation by the presiding judge unless excluded by statute or court rule. All court-ordered referrals will be made through the Family Diversion Program ("Program"). Matters referred will be handled by Florida Supreme Court certified family mediators. See Florida Rule for Certified and Court-Appointed Mediators 10.100 for certification requirements.

   An Order Referring Parties to Family Mediation will be prepared by the court. The court will forward the original order to the Clerk of the Circuit Court, Family Law Division ("clerk"). A copy of the order will be mailed by the court to each party or party’s counsel of record and a copy will be provided to the Program.

2. **Selection of Mediators and Scheduling**

   The parties or their counsel will have 10 days from the date of the Order Referring Parties to Family Mediation in which to select a mediator and notify the Program of the selection. The petitioner or petitioner’s counsel will be solely responsible for notifying the Program. If a certified private mediator is selected instead of a Program mediator, the parties should also propose a date and time for a conference. If a certified private mediator is selected, the petitioner or petitioner’s counsel should notify the Program of the mediator, proposed date and proposed time. If the parties select a Program mediator, upon notification by the petitioner or petitioner’s counsel of the mediator selected, the Program will arrange the conference date and time. If selections of a particular mediator, date and time for a conference are not made within 10 days from the date of the Order Referring Parties to Family Mediation, such decisions will be made by the Program. In any case, the Program will provide written notice to the parties of the mediator, date, time and location of the mediation conference.
3. **Deferment**

Within 15 days of the Order Referring Parties to Family Mediation, any party may file a motion to defer the mediation conference. The moving party will use best efforts to set the motion to defer for hearing prior to the scheduled date for the mediation conference. If a hearing on the motion to defer cannot be set prior to the mediation conference date, the moving party will, more than 48 hours before the originally scheduled conference, take necessary steps to reschedule the conference. Failure to comply with this time standard may result in the imposition of monetary sanctions as determined by the court. Notice of the hearing on the motion to defer will be provided to all parties, the Program, and the appointed mediator. The court will forward to the Program a copy of any order granting a deferment of the mediation conference. If a deferment has been granted, the order will include the actual period of deferral and another mediation conference will be scheduled.

4. **Mandatory Post-Judgment Mediation**

Whenever a post-judgment family law case is initiated, as a prerequisite to scheduling a hearing before the presiding judge or general magistrate, the parties will submit such issues to mediation. Such post-judgment matters are hereby automatically referred to the Program without further order of the court. The party initiating the post-judgment action will have the responsibility of initially contacting the Program to arrange for its service.

A. **Scheduling**

The Program will set a reasonable time for a mediation conference on the matter(s) in controversy. The conference will be held within the time frames outlined in Rule 12.740(e), unless the parties agree to an extension of time or the court, for good cause, extends the time. The Program will notify the parties and their respective attorneys of the time and place of the mediation conference.

B. **Discovery Not Limited**

Nothing in this administrative order will be construed as limiting the parties or their attorneys from scheduling discovery prior to the mediation conference.

C. **Non-Applicability**

This mandatory post-judgment mediation requirement will not apply when the Department of Revenue brings an action as plaintiff or pursuant to chapter 409, Florida Statutes.

5. **Waiver of Mandatory Mediation**

Notwithstanding the provisions of section 4 of this administrative order, any party may request the presiding judge to waive the requirement of mandatory mediation of post-judgment parenting plan or time-sharing disputes. The judge will waive such requirement in cases where the judge finds there has been a history of domestic violence that would compromise the mediation process. The judge may also waive the requirement if it appears mediation of the issues would not be appropriate under the circumstances of the case or because of exigent circumstances a hearing before the judge should be expedited.
6. **Mediation Conference**

   The mediator will be in control of the mediation conference at all times. If a resolution is imminent or likely, the mediator may, at his or her discretion and with the agreement of the parties, schedule another mediation conference. The mediator will then arrange a date and time for the subsequent conference with the parties and notify the Program. The Program will prepare a notice of additional mediation conference and provide a copy to each party. Upon completion of mediation, the mediator will return a completed Outcome of Service form to the Program office within 48 hours of the mediation conference.

7. **Report to the Court**

   The Program will submit to the court a report stating whether or not the parties appeared for the mediation conference, and whether or not any agreement was reached.

8. **Agreements**

   Agreements reached during mediation must be memorialized, completed and submitted in accordance with Florida Family Rule of Procedure 12.740(f).

9. **Rescheduling or Cancellation Prior to Mediation**

   The parties or their counsel must notify the Program of any rescheduling no later than 48 hours, excluding weekends and legal holidays, before the scheduled mediation conference. Petitioner, or if petitioner is represented by counsel, petitioner’s counsel, must notify the Program in writing if the mediation must be cancelled because a settlement has been reached or the case has been dismissed more than 48 hours prior to the scheduled conference.

10. **Disqualification or Withdrawal of Mediator**

    A party may move at any time to disqualify a mediator. The court will forward to the Program a copy of any order disqualifying a mediator. If a mediator has been disqualified or has withdrawn, a new mediator will be assigned by the Program. Rescheduling may be necessary to accommodate the substitute mediator.

11. **Fees**

    Fees for court-ordered mediation sessions will be assessed and collected in accordance with section 44.108. Florida Statutes. If proof of income is not provided, the fee will be as provided for in section 44.108(2)(a). If payment of any owed fees is not made by the time of the scheduled mediation session, the mediation session will not take place. Payment may be by check (payable to the “Clerk of the Circuit Court”), money order, cash or credit card (Visa / MasterCard / Discover). Credit card payments cannot be made over the telephone.

    If a party fails to appear at a scheduled mediation session, or fails to make payment by the time of the mediation session, or fails to provide at least 24 hours prior written notice to the Program of the cancellation of a mediation session, the party will be billed for the cancelled mediation session.
12. **Invoicing**
   The Program will be responsible for generating invoices for all parties participating in the mediation conference. An invoice for payment will outline each party’s portion of the mediation cost. The clerk will accept payment, on behalf of the Program, of the amount due from the parties; however, the clerk will accept payment only in the amount specified on the invoice for payment. All payments made to the clerk will be accompanied by the invoice for payment.

13. **Statistical Data**
   All parties ordered by the court to mediation will provide data as requested by the Program for statistical purposes. The data will remain confidential to the extent that any data published will contain no identifying information.

14. **Previous Administrative Orders Superseded**
   This administrative order supersedes Administrative Order S-2008-163 (*Mediation of Family Law Cases*).

15. **Effective Date**
   This administrative order is effective January 1, 2010.

   It is ORDERED in Tampa, Hillsborough County, Florida, on this 28th day of October, 2009.

   [Signature]

   Manuel Menendez, Jr., Chief Judge

   Original to: Pat Frank, Clerk of the Circuit Court
   Copies to: All Domestic Relations / Family Law Division Judges
   All Domestic Relations / Family Law Division General Magistrates
   Mediation & Diversion Services

   [Print Form]
The Sixth Judicial Circuit has provided for mediation services at least since small claims pretrial mediation services began in Pasco County in 1985 and in Pinellas County in 1986. The Court has several administrative orders governing different types of mediation, which the Court has amended and which need amendment again.

Therefore, in order to continue the existing Sixth Judicial Circuit mediation programs and provide for their efficient conduct, in accordance with Article V, section 2, Florida Constitution; Rule of Judicial Administration 2.215; section 43.26, Florida Statutes; and Florida Supreme Court Administrative Order AOSC09-I9, it is hereby

ORDERED:

A. Administration of the Sixth Judicial Circuit Arbitration and Mediation Program

The Trial Courts Administrator is directed to provide a Program of court-provided mediation in accordance with this Administrative Order for juvenile dependency cases, small claims pretrial matters, county civil cases, and family law cases. The Program will perform such duties as assigned by the Chief Judge. The administrative judges and associate administrative judges may also assign duties to the Program that are consistent with this Order, as it relates to cases referred to mediation within their respective divisions.

Parties and their attorneys are directed to continue to conduct mediation of foreclosure actions in accordance with Administrative Order 2010-025 PA/PI-CIR or subsequent Administrative Order.

In addition to the mediation of foreclosure actions, the presiding judge may order parties to mediation in other circuit civil cases. The Program may provide services for such cases as authorized by this Administrative Order. The Trial Courts Administrator will not provide a program of court-provided mediation for circuit civil cases. When ordered, the parties will conduct such mediation in accordance with the order of referral, and will directly pay the mediator for his or her service.

"Court-provided mediation" as described in this Administrative Order refers to mediation conducted by a certified mediator who is under contract with and paid by the Court. Fees may be assessed for court-provided mediation in accordance with section 44.108, Florida Statutes, and this Administrative Order.

B. Mediation Program Responsibilities

The Program responsibilities mean the duties assigned in this Order to the Alternative Dispute Resolution Manager and staff in Pinellas County and the Diversion Programs Manager and staff in Pasco County. In support of mediation within the Sixth Judicial Circuit, on a continuing basis the Program will:
1. Provide administrative support to the Court in accordance with the Rules of Civil Procedure; Rules for Certified and Court-Appointed Mediators; Family Law Rules of Procedure; Rules of Juvenile Procedure; Florida Supreme Court Administrative Order AOSC09-19; and Chapter 44, Florida Statutes;

2. Establish scheduling policies for court-ordered mediation proceedings;

3. Promulgate the necessary forms for the administration of the Program, including form Orders of Referral for use by the Court in referring cases to mediation;

4. Maintain a list of mediators who are certified by the Florida Supreme Court and who are willing to serve the Court in such capacity in this Circuit;

5. Manage cases referred to mediation;

6. Maintain required statistical information;

7. Perform other functions as described in this and other applicable administrative orders, and such other duties as may be assigned to the Program; and

8. For each case referred to court-provided mediation, assign in rotation a mediator who is under contract with the Court. For non-court-provided mediation, the Program will also assign a contracted mediator in rotation when the parties do not timely select their own mediator in accordance with Family Law Rule of Procedure 12.741(b)(6)(A) or Rule of Civil Procedure 1.720(f)(1).

C. Conduct of Mediation

1. All Mediation:

   a. Mediation must be conducted in accordance with the applicable Rule of Procedure, the Florida Rules For Certified and Court-Appointed Mediators 10.200, et seq., Chapter 44, Florida Statutes, the order of referral, and instructions of the Program regarding the mediation process. The presiding judge will hear all matters regarding mediation, including all motions.

   b. In each case of court-provided mediation, the mediator must be under contract with the Court. The mediator must also be certified in accordance with Rule 10, the Florida Rules for Certified and Court-Appointed Mediators, within his or her area of appointment. Contracted mediators are paid in accordance with the terms and rates specified in the contract with the Court. The mediator may accept only the compensation provided by the terms of the contract.

   c. Parties may opt-out of court-provided mediation. In that case, the parties must still comply with the order of referral and will pay the mediator’s fee directly to the mediator.
d. On motion or request of a party or on its own motion, a judge will not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process, or for other good cause shown.

f. Failure to appear at a duly noticed mediation conference without good cause shown may result, on motion, in the imposition of sanctions including an award of mediator and attorney fees and other costs against the party failing to appear.

g. When mediation fees are due for court-provided mediation in accordance with this Administrative Order and section 44.108, Florida Statutes, the Clerk of Circuit Court for Pasco County and the Clerk of Circuit Court for Pinellas County must collect those fees from the parties in addition to any filing fees required by section 44.108, Florida Statutes. The Clerk must not collect fees from a person who is determined indigent by the presiding judge, from a person who was determined indigent by the Clerk in the current proceeding, or a person who was determined indigent in another proceeding in the Sixth Judicial Circuit within the previous six months. Any party may pay any other party's mediation fee. A mediation fee collected from any party is refundable only when the presiding judge vacates the order of referral, or when the Clerk accepts payment in excess of the mediation fee provided in this Order.

2. Juvenile Dependency Mediation: When ordered by a judge, parties must participate in mediation of any juvenile dependency matter arising under Chapter 39, Florida Statutes. On order of referral to mediation, the Program will assign a Certified Dependency Mediator to conduct the mediation. Fees are not to be assessed for dependency mediation.

3. Small Claims Pretrial Mediation: When ordered by a judge or by a small claims hearing officer, parties must participate in court-provided mediation for the mediation of any matter referred by the judge or hearing officer. At the direction of the County Administrative Judge, the Program will assign Certified County Mediators to small claims pretrial calendars to conduct these mediations. Fees are not to be assessed for small claims mediation.

4. County Civil Mediation:
   a. When ordered by a judge, parties must participate in mediation of county civil cases.
   b. Court-provided mediation will be available in county civil cases when referred by the presiding judge and the judge has determined that a party lacks the ability to pay the mediator’s fee. On order of referral to mediation, the Program will assign a Certified County Mediator to conduct the mediation. Each party who will participate in court-provided county civil mediation will pay a fee of $60.00 per mediation session to the Clerk of Circuit Court. Parties who are eligible for court-provided mediation may opt to obtain private mediation, in which case the mediation fee will not be assessed. A husband and wife who are either both defendants or both plaintiffs in a suit are one “party” for purposes of the mediation fee. Fees are not to be assessed for eviction cases.
c. In each case referred to court-provided mediation, the Program will monitor payments of mediation fees, scheduling, and completion of mediation.

i. When the parties in a suit have been determined eligible for court-provided mediation and at least one party is either indigent or has paid the required fee, the Program will issue a “Notice of Mediation Conference” informing the parties of the scheduled mediation conference. A non-indigent party who has not paid his or her required mediation fee by the time of a mediation conference will, prior to beginning the mediation conference, execute a form agreement to pay the fee. The mediator will file the form with the report of mediation. Such forms will be supplied to all mediators under contract with the Court.

ii. When the parties have not paid the mediation fees within 20 days of the order of referral, the Program will issue a “Notice to Comply with Court-Provided Mediation” to the parties, which advises the parties to pay the fee within 10 days of the date of the Notice. If the mediation fees are not paid by at least one of the parties within that 10 days and neither party has been found indigent, the parties are deemed ineligible for court-provided mediation. At that time, the Program will select a mediator by rotation from the Program’s list of Certified County Court mediators. The parties will then compensate the mediator as if the parties had privately retained the mediator.

d. Parties eligible for court-provided mediation who opt for private mediation and parties who are not eligible for court-provided mediation will select and retain their own mediator and hold a mediation conference in accordance with the order of referral. In such cases, the parties must compensate the mediator at the rate agreed to by the mediator and the parties. If the parties do not select their own mediator in accordance with Rule of Civil Procedure 1.720(f)(1) within 10 days of the order of referral, the Program will select a mediator by rotation, who the parties will then compensate as if the parties had privately retained the mediator. Whether the parties or the Program selects the mediator, in the absence of a written agreement providing for the mediator’s compensation, the parties will pay the mediator at the rate of not more than $150.00 per hour.

e. In Pinellas County the presiding judge may refer certain county civil cases for court-provided mediation by a Certified County Mediator on a day that the Court provides small claims pretrial mediation services. The presiding judge may only refer parties to this mediation after determining that the parties lack the ability to pay the mediator’s fee. On order of referral, the parties must pay and the Clerk must collect the $60.00 fee per party per mediation session that is prescribed for other cases referred to court-provided county civil mediation. The Program will assign the parties to a mediator who is performing small claims pretrial mediation on the same day. Such
mediation will be conducted in accordance with the order of referral and in accordance with the direction of the Pinellas County Administrative Judge.

f. A "session" for court-provided mediation is one scheduled mediation. The mediator must obtain the written consent of all parties to continue mediation beyond the initial session. Such consent must contain a statement from the parties that they understand an additional mediation fee must be paid by each non-indigent party to the Clerk of the Circuit Court pursuant to section 44.108, Florida Statutes. If the mediator reports an impasse between the parties or recommends another conference, any subsequent mediation conference is another "session" and will require the parties to pay their respective fees prior to mediation.

g. After a case is referred to mediation, counsel of record and pro se litigants must prepare and present any appropriate judgment, order, or notice of dismissal or stipulation of the parties in accordance with the mediated settlement.

5. Family Mediation:

a. When ordered by the presiding judge, or when automatically referred to mediation in accordance with this Administrative Order, parties must participate in mediation of family cases.

b. Court-provided mediation will be available in family cases when referred by the presiding judge or automatically referred by this Administrative Order, and the parties combined gross income is less than $100,000. Parties in family cases whose combined gross income is $100,000 or more are not eligible for court-provided mediation, but may still be ordered to mediation, either by the presiding judge or by automatic referral. To determine eligibility for court-provided family mediation and the appropriate amount that each party must pay, each party must submit a current Florida Family Law Financial Affidavit (Family Law Forms 12.902 (b) or 12.902 (c)), an Affidavit of Income for Purposes of Establishing Mediation Fees, or a Financial Affidavit to the Program within ten (10) days of the order of referral. All of the forms may be obtained online at www.jud6.org. A party determined indigent in the present case or in another case in the Sixth Judicial Circuit within the last six months may rely on that determination by notice through letter and a copy of that determination to the Program and other parties.

c. The Program will issue a "Notice of Referral to Mediation" to the parties when court-ordered mediation has not been assigned to a mediator within 20 days of the order of referral. The written Notice will inform the parties that within 10 days of the date of the Notice, each must:

(i) file financial information with the Program to determine eligibility for court-provided mediation, and if eligible, provide the Program with evidence of payment of his or her applicable fee;
(ii) file financial information with the Program to determine eligibility for court-provided mediation and, if not eligible, agree on and select a privately retained mediator and schedule a mediation conference; or

(iii) agree on and select a privately retained mediator and schedule a mediation conference.

If one party has filed financial information with the Program that indicates he or she may be eligible for court-provided mediation, but the other party has not completed any of the above actions within 10 days of the date of the written Notice of Referral to Mediation, the Program will inform the presiding judge of the other party’s failure to cooperate. The presiding judge may set the case for a show-cause hearing or take other action as the presiding judge determines appropriate to facilitate resolution of the case. If no party completes any of the actions in this subparagraph within 10 days of the date of the Notice of Referral to Mediation, the parties will be deemed ineligible for court-provided mediation. At that time, the Program will select a mediator by rotation from the Program’s list of Certified Family mediators. The parties will then compensate the mediator as if the parties had privately retained the mediator.

d. Each party who will participate in court-provided family mediation will pay the following mediation fees:

i. $120.00 per person per session in family mediation when the parties' combined gross income is $50,000 or more, but less than $100,000 per year; or

ii. $60.00 per person per session in family mediation when the parties' combined gross income is less than $50,000 per year. Parties who are eligible for court-provided mediation may opt to obtain private mediation, in which case the mediation fees above will not be assessed.

e. In each case referred to court-provided mediation, the Program will monitor payments of mediation fees, scheduling, and completion of mediation.

i. When the parties in a suit have been determined eligible for court-provided mediation and at least one party has paid the required fee or been found indigent, the Program will issue a "Notice of Mediation Conference" informing the parties of the scheduled mediation conference. A non-indigent party who has not paid his or her required mediation fee by the time of a mediation conference will, prior to beginning the mediation conference, execute a form agreement to pay the fee. The mediator will file the form with the report of mediation. The Program will supply such forms to all mediators under contract with the Court.

ii. When parties who are eligible for court-provided mediation have not paid the mediation fees within 20 days of that determination, the Program will issue a "Notice to Comply with
Court-Provided Mediation” to the parties, which advises the parties to pay the fee within 10 days of the date of the Notice. If the mediation fees are not paid by at least one of the parties within 10 days, the parties are deemed ineligible for court-provided mediation. At that time, the Program will select a mediator by rotation from the Program’s list of Certified Family mediators. The parties will then compensate the mediator as if the parties had privately retained the mediator.

f. Parties eligible for court-provided mediation who opt for private mediation and parties who are not eligible for court-provided mediation will select and retain their own mediator and hold a mediation conference in accordance with the order of referral. In such cases, the parties must compensate the mediator at the rate agreed to by the mediator and the parties. If the parties do not select their own mediator in accordance with Family Law Rule of Procedure 12.741(b)(6)(A) within 10 days of the order of referral, the Program will select a mediator by rotation, who the parties will then compensate as if the parties had privately retained the mediator. Whether the parties or the Program selects the mediator, in the absence of a written agreement providing for the mediator's compensation, the parties will pay the mediator at the rate of not more than $150.00 per hour.

g. Automatic referral of family law cases in Pinellas County:

i. In all St. Petersburg and Clearwater family law sections, except as provided herein, all post judgment matters and temporary support matters are automatically referred to mediation. Cases excluded from automatic referral to mediation are those where the Department of Revenue is a party, and any case seeking contempt for failure to pay court-ordered or stipulated child support, or court-ordered or stipulated alimony.

ii. This Administrative Order serves as the Order of Referral for family cases automatically referred to mediation, as if an Order of Referral was entered in each individual case.

iii. Notwithstanding the mediation mandated by this Order, each judge retains the discretion to waive the mandates herein on a case-by-case basis, including those cases where on motion or request of a party or on its own motion, the presiding judge finds that there has been a history of domestic violence that would compromise the mediation process.

h. A “session” for court-provided mediation is one scheduled mediation. The mediator must obtain the written consent of all parties to continue mediation beyond the initial session. Such consent must contain a statement from the parties that they understand an additional mediation fee must be paid by each non-indigent party to the Clerk of the Circuit Court pursuant to section 44.108, Florida Statutes. If the mediator reports an impasse between the parties or recommends another conference, any subsequent mediation conference is another “session” and will require the parties to pay their respective fees prior to mediation.
i. After a case is referred to mediation, counsel of record and pro se litigants must prepare and present any appropriate judgment, order, or notice of dismissal or stipulation of the parties in accordance with the mediated settlement.


Administrative Order 2005-030 PA/Pl-CIR “Small Claims Pretrial Hearings and Mediation” is amended to reflect that the rate of compensation for small claims pretrial mediators is set by contract with the Court; the rate of compensation is no longer set by Administrative Order. All other terms and conditions of Administrative Order 2005-030 remain in full force and effect.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida, this day of March, 2011.

ORIGINAL SIGNED March 1, 2011
BY J. THOMAS MCGRADY, CHIEF JUDGE

cc: All Judges
     The Honorable Bernie McCabe, State Attorney
     The Honorable Bob Dillinger, Public Defender
     The Honorable Ken Burke, Clerk of the Circuit Court, Pinellas County
     The Honorable Paula S. O’Neil, Clerk of the Circuit Court, Pasco County
     John Hendry, Regional Counsel
     Gay Inskeep, Trial Courts Administrator
     Nichole Alvarez-Sowles, Chief Operations Officer, Pasco County Clerk’s Office
     Myriam Irizarry, Chief Deputy Director, Pinellas County Clerk’s Office
     Lillian Simon, Acting Director of Administrative Services for Pasco County
     Bar Associations, Pasco and Pinellas Counties
     Law Libraries, Pasco and Pinellas Counties
THE MEDIATION PROCESS
INSTRUCTIONS FOR FAMILY LAW CASES

**Authority:** Pursuant to §44.1011 and 44.108 Fla. Stat., and Fla. Fam. L. R. P. 12.740, et seq., judges have the authority to order all contested family matters and issues to mediation.

To help make mediation more accessible to all parties, Chapter 2004-265, Laws of Florida, amended 44.108 Florida Statutes. Through funding for the State Court System, the Sixth Judicial Circuit will implement Fl Stat 44.108 with a mediation model that provides paid family and county civil mediation services to certain parties.

**Definition:** Mediation is statutorily defined as "...[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 with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. The mediator has no decision making power. Any agreement reached will be by mutual consent of the parties. A written agreement that is signed may be filed and submitted to the court with the parties consent.

**Special Rules or Procedures:** For each case referred to family mediation, parties eligible for court provided mediation shall select either privately retained mediation or court provided mediation services. Parties not eligible for court provided mediation shall select their own mediator and hold a mediation conference in accordance with the order of referral. In accordance with Family Law Rule of Procedure 12.741 (b)(6)(A) and Rule of Civil Procedure 1.710(t)(1), eligible and non-eligible parties may choose their own mediator; however the selection must occur within ten(10) days of the order of referral.

**Court Provided Mediation Services**

**Requirements:** To determine eligibility for court provided mediation, both parties must submit a Family Law Financial Affidavit 12.902(b)-Short Form upon receipt of this notice that is no more than six months old. The form can be obtained http://www.flcourts.org/core/fileparse.php/293/urlt/902b.pdf. A general income statement, for the purpose of determining eligibility for court-provided mediation only, is available from the mediation staff or online at www.jud6.org/ContactInformation/AlternativeDisputeResolution.html.

The financial affidavits must be notarized and mailed or emailed to the Mediation Program either to our St Petersburg (for St Pete Judge cases) office 501 1st Avenue No., Room 722, St Petersburg, FL 33701 or Email to: smorrison@jud6.org, or our Clearwater office (for Clearwater Judge cases) at 315 Court St., Room 401, Clearwater, FL 33756 or Email to: jpadoll@jud6.org.

1. After you submit the financial affidavit, contact the mediation office at (727) 464-4947 for a determination of eligibility and the assignment of the mediator. The Program will select a family mediator by rotation from the court contracted list. You shall have ten days to schedule the date, time and location of the mediation conference with the mediator, and pay the clerk the required mediation fee.

2. You shall contact the Mediation Program office with the above information within the specified ten days. If you do not notify the Program within ten days, you will be given another ten days to select a private mediator at an agreed upon rate of pay that you will pay directly to the mediator. If you fail to notify the Program with this information within ten days, the Program will select a private mediator.
by rotation, set the date, time and location of the mediation without contacting the parties, at the rate of not more than $200.00 per hour.

Parties deemed otherwise eligible for court provided mediation may also opt instead to retain private mediation, in which case the mediation fees below will not apply.

**Mediation Fees**
Fees are established by statute and are as follows:
$60.00 per person per session in family mediation when the parties’ combined gross income is less than $50,000.00 per year.
$120.00 per person per session in family mediation when the parties’ combined gross income is greater than $50,000.00 but less than $100,000.00 per year.

Any party may pay any other party’s mediation fee. **A mediation fee collected from any party is nonrefundable.**

Parties must take a copy of the order of referral to one of the offices of the Clerk of Circuit Court in Pinellas County and pay the designated fee in the order within ten days of receiving the order of referral. **Important: Keep and bring receipt of payment to the mediation conference.**

Staff will also prepare notices reflecting your coordinated date and mediator that will be mailed to both parties and the mediator.

**Clerk of Circuit Court locations for payment of fees:**
545 1st Avenue North, First Floor St. Petersburg, FL 33701 (727) 464-7000
or
315 Court Street, First Floor, Clearwater, FL 33756 (727) 464-7000

**Private Mediation**
If the parties choose their own private mediator, they may select a mutually acceptable mediator from the list of certified mediators upon a stipulation with the court or by selecting a mediator who does not meet the certification requirements, but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case. Parties must select a mediator and notify the Program of this selection within ten days of receipt of the order of referral, or the Program will select a mediator for you. The parties and the mediator agree upon a fee, and the parties pay the mediator at the time of the mediation.

The parties must coordinate with the mediator a date and time of mediation and notify the Program. Staff will also prepare notices reflecting your coordinated date and mediator selection. Mediation conferences generally last three hours and are scheduled from 9:00 a.m. until 12:00 p.m. or 1:00 p.m. until 4:00 p.m., unless otherwise requested. Please see below for more detailed information regarding our scheduling policies.

**Procedures Applicable to Both Court-Provided Family Mediation and Private Family Mediation**

**Appearances:** Unless otherwise stipulated by the parties, a named party must be physically present at the mediation conference. In the discretion of the mediator, and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

**The Conference:** ATTORNEYS SHOULD SUBMIT A BRIEF WRITTEN SUMMARY OF THE FACTS/ISSUES OF THE CASE TO THE MEDIATOR AT LEAST ONE WEEK BEFORE THE SCHEDULED CONFERENCE. During the conference, counsel should be prepared to discuss the facts and legal issues involved in the case and to generally help the parties evaluate the case. The ultimate
decision making authority of whether or not to settle the case rests with the parties, with the advice of
counsel.

**IMPORTANT:** The parties shall bring a copy of their financial affidavits to the mediation. If the case
involves child support, the parties shall bring to the mediation conference a Child Support Guidelines
Worksheet in substantial conformity with Florida Family Law Form 12.902 (e). Upon motion or request of any party, the Court will not refer a case to mediation if it finds there
has been a history of domestic violence that would compromise the mediation process. The Court
on its own motion may determine that a case will not be referred to mediation because of a history
of domestic violence.

If the case involves parental responsibility and primary residence of the children, a parenting plan
proposal shall be exchanged between the parties five (5) to seven (7) days prior to the mediation
conference. The Florida Supreme Court approved parenting plans may be accessed at
www.jud6.org/ContactInformation/AlternativeDisputeResolution.html

Your mediator will be explaining the process in greater detail the day of the conference. In the meantime,
if you have any questions about these or any other court-ordered mediation procedures, you should call
the mediation program that is handling your case St. Petersburg (727) 582-7206.

**PLEASE READ CAREFULLY**

**Scheduling, rescheduling and cancellations:** The rules require that mediation be completed within 75
days of the initial mediation conference unless otherwise ordered by the court. The initial mediation
conference shall be held within sixty (60) days of the signed referral order.

The party or attorney who is requesting that a mediation session be rescheduled must obtain consent from
opposing counsel and the assigned mediator. The Program must also be notified of any rescheduling
attempts. If opposing counsel and/or the mediator do not give consent to reschedule the conference, the
attorney must apply for relief through the presiding judge prior to the scheduled conference. Cancellation
(with no attempt to reschedule) of the mediation conference will only be permitted where one or both
parties have applied for relief from the presiding judge and has had the case properly deferred or removed
from mediation. NO OTHER UNILATERAL CANCELLATION OR RESCHEDULING WILL BE
PERMITTED AND IS A VIOLATION OF THE COURT’S ORDER TO ATTEND.

**Notifying the Mediator:** The mediator must be notified at least forty-eight (48) hours in advance (not
including weekends and holidays) of any rescheduling or cancellation, for whatever reason. If the late
cancellations was due to a unilateral request through the court for a continuance or deferment, the moving
party may be assessed the entire cancellation fee. If the late rescheduling was due to a stipulation
between parties, any fee charged by the mediator (excludes cases involving a court mediator) will be
divided equally between or among them.

**Settlement Prior to Mediation:** Settlement before mediation is always encouraged but is still considered
a cancellation. Consequently, the forty-eight (48) hours notice requirement applies. It is the
responsibility of plaintiff’s counsel to notify the Program and the mediator in a timely manner of any
settlement before the initial conference. Written confirmation is required by the court order.

**Payment:** If the parties choose to utilize a court mediator, the fee of $60.00 or $120.00 per party
must be paid prior to the mediation conference. See page 1 for requirements regarding fees. If the
parties choose their own private mediator in the absence of a written fee agreement providing for the
private mediator’s compensation, the mediator shall be paid at the rate of not more than $200.00 per hour.
Payment of the agreed fee is due to the mediator on the day of the mediation conference.

01/2016
ORDER REFFERING PARTIES TO FAMILY MEDIATION

It is appearing on the pleading the above-captioned case is a contested family action appropriate for mediation; it is hereby, ORDERED that the parties are referred to mediation for resolution of this case, pursuant to Chapter 44, Florida statutes and Rule 1.700, Florida Rules of Civil Procedure. Issues to be addressed in mediation are:

The parties are referred to:  
☐ Private Mediator  ☐ Family Diversion Mediator

The court has further determined: (Check One)

☐ 1. The parties shall share in the expense of mediation.

☐ 2. The [_____________________] is/are unable to pay any portion of the mediation fee.
   (Petitioner/Respondent/parties)

☐ 3. The mediation fee and the administrative fee shall be waived due to the parties' financial status.

Attorney for Petitioner: ____________________________  Attorney for Respondent:

If not represented please provide:
Petitioner's Address ____________________________  Respondent's Address: ____________________________

Moreover, the procedures set forth on the reverse side of this order are made in part of and incorporated into this order in reference, and all parties shall be bound by them as if fully set forth herein.

Failure to comply with the terms of this Order may result in involuntary dismissal, default judgment, or other sanctions as provided by law.

All correspondence related to mediation of this case with the exception of motions to the court, shall be submitted to Mediation & Diversion Services.

It is further ORDERED AND ADJUDGED:

That any orders in conflict herewith pertaining to Family Mediation are hereby superseded by this order.

DONE AND ORDERED in Chambers in Tampa, Florida, this _____ day of __________________________ , 20__.

CIRCUIT JUDGE

Copies:  Both Parties
Mediation & Diversion Services, 800 E. Twiggs Street., Room 208, Tampa, Fl. 33602
Counsel for the parties
MOREOVER,
1. The parties shall have ten (10) days from the date of this order to select a mediator and schedule a date and time for a mediation conference. A list of mediators certified for family mediation may be obtained by contacting Mediation & Diversion Services.

Petitioner’s counsel is appointed lead counsel for purposes of notifying Mediation & Diversion services of the mediator selected and the proposed date and time of mediation. If Family Diversion is selected to mediate, petitioner’s counsel shall contact the Program office to schedule the appointment. Both parties must agree to mediate prior to scheduling Mediation & Diversion Services shall prepare and send a Notice Of Mediation Conference. If necessary, staff shall reserve a conference room.

2. (a) If Mediation and Diversion Services is not notified within ten (10) days of the date of this order the case will be closed and the outcome form will be filed the court file indicating the parties did not contact the Program office.

   (b) If it becomes necessary to reschedule a mediation conference, such rescheduling shall be initiated by the party’s counsel requesting the rescheduling with opposing counsel and the mediator. The Program must be notified by counsel initiating the rescheduling of the new date and time so that notices may be prepared.

3. Petitioner, or his counsel of record, must notify Mediation & Diversion Services, in writing, of any settlement or dismissal of this action, other than a settlement arrived at during a court-ordered mediation conference, whether the settlement or dismissal occurs before or after the mediation proceedings.

4. When Family Diversion is selected, each party shall be assessed a fee based upon the total gross annual income of the parties. The parties will furnish proof of income at the time of the mediation conference in the form of a pay check stub, the previous year’s income tax return, W-2, or family law financial affidavit. If the total gross income for the parties together is $50,000 or less, each party shall pay a mediation fee of $60.00. If the total gross income for the parties exceeds $50,000, each party shall pay a mediation fee of $120.00. If a party does not furnish proof of income, fee of $120.00 will be charged to each party. If payment is not made at the time of the mediation, the mediation will not take place. IF A PARTY FAILS TO APPEAR AT A SCHEDULED MEDIATION, OR FAILS TO MAKE PAYMENT AT THE TIME OF THE MEDIATION, OR FAILS TO GIVE AT LEAST 24 HOURS PRIOR WRITTEN NOTICE (NOT COUNTING WEEKENDS OR COURT HOLIDAYS) TO FAMILY DIVERSION OR CANCELLATION OF A MEDIATION SESSION, THE PARTY WILL BE BILLED FOR THE CANCELLED MEDIATION. When a private state certified mediator is selected each party shall pay an equal share of the cost of the mediation conference, unless determined otherwise by the court. If the mediation conference lasts one hour or less, there shall be a one-hour minimum charge assessed pro rata among the parties. Each party shall remit payment in full to the private mediator at the end of each conference.

Checks should be made payable to The Clerk of the Circuit Court.

Mediation & Diversion Services
800 E Twiggs Street, Room 208
Tampa, FL 33602
Phone 813-272-5642 Fax 813-301-3705

Upon motion or request of a party, a court shall not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process. In such circumstances, contact the Mediation & Diversion Services office at the above address.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Mediation & Diversion Services at the address shown above. If you are hearing or voice impaired, call 1-800-955-8770.
IN THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO AND PINELLAS COUNTIES, FLORIDA

__________________________________________________________

Petitioner,

and

__________________________________________________________

Case No.__________________________

UCN:__________________________

__________________________________________________________

Respondent.

AFFIDAVIT RE: OBJECTION TO REFERRAL TO FAMILY MEDIATION

I, (full legal name)__________________________________________________________, being sworn, certify that the following information is true:

1. ______ There is a history of domestic violence, repeat violence, sexual violence or dating violence that would compromise the mediation process.

2. ______ There is an injunction against domestic violence, repeat violence, sexual violence, or dating violence currently in effect. The case number is __________________________. The injunction was issued by __________________________ in __________________________ state).

3. ______ There are other reasons that this case should not proceed to mediation. They are: __________________________________________________________________________________________

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: __________________________

__________________________________________________________
Signature of Affiant

__________________________________________________________
Print Name of Affiant

You may withhold your address and phone number if you fear that disclosing it would put you in danger.

__________________________________________________________
Address of Affiant

__________________________________________________________
City, State, Zip

__________________________________________________________
Telephone Number

Fax Number

STATE OF FLORIDA
COUNTY OF PINELLAS

Sworn to or affirmed and signed before me on __________________________ by __________________________

__________________________________________________________
NOTARY PUBLIC/DEPUTY CLERK

Print or stamp commissioned name of notary

____________________
Personally known

____________________
Produced identification

6.42
Type of identification produced
IF A NONLAWYER HELPED YOU FILL OUT THIS FORM THEY MUST FILL IN THE BLANKS BELOW:

1, (name of nonlawyer) ________________________________, a nonlawyer, located at (street) ________________________________, (city) ________________________________, (state) ____________, (phone) _____________________, helped (name) ________________________________, who is the [check one only] ______petitioner or ______respondent, fill out this form.

AFFIDAVIT RE: OBJECTION TO REFERRAL TO FAMILY MEDIATION

SPECIAL INSTRUCTIONS FOR COMPLETING THIS FORM:

You must have this affidavit notarized. Return it within ten (10) days to:

Family Mediation Program
501 First Avenue North, Room 420, St. Petersburg, FL 33701
(727) 582-7206
or
315 Court Street, Room 401, Clearwater, FL 33756
(727) 464-4947

FOR AN EXPEDITED RESPONSE ON YOUR REQUEST, PLEASE RETURN THE AFFIDAVIT WITHIN SEVEN (7) DAYS.

The section judge will review the completed affidavit.

You will be notified by mail concerning the outcome of your request.

If you have withheld your address and phone, please contact the mediation office at (727) 582-7206 or (727) 464-4947 within five days of filing this affidavit concerning the outcome of your request.

10/05
THE MEDIATION PROCESS
INSTRUCTIONS FOR AUTOMATIC REFERRALS IN FAMILY LAW CASES

Authority: Pursuant to §44.1011 and 44.108 Fla. Stat., and Fla. Fam. L. R. P. 12.740, et seq., judges have the authority to order all contested family matters and issues to mediation. On March 1, 2011, Administrative Order No. 2011-006 PA/PI-CIR was adopted to implement changes to the Sixth Judicial Circuit’s mediation programs.

Pursuant to Administrative Order No. 2011-006 PA/PI-CIR and 2015-016 PA/PI-CIR, you have been ordered to Family Mediation.

Effective April 1, 2008, all post judgment and all initial hearings on temporary relief matters in original petitions shall be automatically referred to mediation prior to a hearing on the matter.

Cases excluded from automatic referral to mediation are those where the Department of Revenue is a party, and any case seeking contempt for failure to pay court-ordered or stipulated child support, or court-ordered or stipulated alimony.

Upon motion, or request of a party, a court shall have the discretion to not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process, or for good cause shown.

An affidavit is available from the mediation program for objecting to the automatic referral for a history of domestic violence or other reasons that the case should not proceed to mediation.

To help make mediation more accessible to all parties, Chapter 2004-265, Laws of Florida, amended 44.108 Florida Statutes. Through funding for the State Court System, the Sixth Judicial Circuit will implement Fl Stat 44.108 with a mediation model that provides paid family and county civil mediation services to certain parties.

Definition: Mediation is statutorily defined as “...[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 with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. The mediator has no decision making power. Any agreement reached will be by mutual consent of the parties. A written agreement that is signed may be filed and submitted to the court with the parties consent.

Special Rules or Procedures: Parties eligible for court provided mediation may select either privately retained mediation or court provided mediation services. If parties select court provided mediation, the mediator shall be chosen by rotation by Program staff. Parties not eligible for court provided mediation shall select their own mediator and hold a mediation conference. In accordance with Family Law Rule of Procedure 12.741 (b)(6)(A) and Rule of

6.44
Civil Procedure 1.710(f)(1), eligible and non-eligible parties may choose their own mediator; however the selection must occur within ten(10) days from the date of the order.

**Court Provided Mediation Services for Automatic Referrals to Mediation**

To determine eligibility for court provided mediation, both parties must submit a Family Law Financial Affidavit 12.902(b)-Short Form upon receipt of this notice that is no more than six months old. The form can be obtained online at [http://www.flcourts.org/core/fileparse.php/293/urlt/902b.pdf](http://www.flcourts.org/core/fileparse.php/293/urlt/902b.pdf). A general income statement available from the mediation staff may be submitted for the sole purpose of determining eligibility for court provided mediation.

The financial affidavits must be notarized and mailed or emailed to the Mediation Program either to our St Petersburg (for St Pete Judge cases) office 501 1st Avenue No., Room 722, St Peters burg, FL 33701 or Email to: smorrison@jud6.org, or our Clearwater office (for Clearwater Judge cases) at 315 Court St., Room 401, Clearwater, FL 33756 or Email to: jpadoll@jud6.org.

The section judge or the Mediation Program will review the completed affidavits, and make a determination of eligibility.

If you are eligible for court provided mediation, you will receive an order setting fees and the name of the assigned mediator. You shall have ten days to pay the clerk the required mediation fee, and schedule the date time and location of the mediation conference. You must contact the Program at (727) 582-7206 (St. Pete) or (727) 464-4947 (Clearwater) with this information within the specified ten days. If you do not select your own mediator timely, the Program will select one for you.

**Important: Keep and bring receipt of payment to the mediation conference.**

**Court-Provided Mediation**

Fees are established by statute and are as follows:

- $40.00 per party per session in family mediation when the parties’ combined gross income is less than $50,000.00 per year.

Any party may pay any other party’s mediation fee. A mediation fee collected from any party is nonrefundable.

Program staff will select a conference room in one of the court facilities (if needed) on a space available basis.

Staff will also prepare notices reflecting your coordinated date and assigned mediator that will be mailed to both parties and the mediator.

Mediation conferences can typically last three hours and are usually schedule from 9:00a.m. – 12:00pm or 1:00pm – 4:00 pm. unless otherwise agreed to or requested.

If you are deemed ineligible for court-provided mediation, you will be notified by mail. Information for selecting a privately retained mediator is provided below.
**Private Mediation**

If the parties choose their own mediator, they may select a mutually acceptable mediator from the list of certified mediators upon a stipulation with the court or by selecting a mediator who does not meet the certification requirements, but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case. The parties and the mediator agree upon a fee, and pay the mediator at the time of the mediation.

The parties must coordinate with the mediator a date and time of mediation and notify the Program. Program staff will select a conference room (if needed) for your use on a space available basis. Staff will also prepare notices reflecting your coordinated date and mediator selection. Mediation conferences generally last three hours and are scheduled from 9:00 a.m. until 12:00 p.m. or 1:00 p.m. until 4:00 p.m., unless otherwise agreed/requested. Please see page 3 for more detailed information regarding our scheduling policies.

**Procedures Applicable to Both Court-Provided Family Mediation and Private Family Mediation**

**Affidavit - Automatic Referral to Mediation**

A party may object to automatic referral to mediation pursuant to Administrative Order No. 2011-006 PA/PL-CIR.

To file an objection to the automatic referral to mediation, a party must complete the affidavit available from the mediation program.

The notarized affidavit must be returned to mediation program staff within ten days.

The section judge will review the completed affidavit.

The party will be notified by mail concerning the outcome of the request.

Return the affidavit to the Mediation Program for St Petersburg Judge sections to 501 First Avenue North, Room 722, St. Petersburg, FL 33701, or fax it to (727) 582-7562, Email: smorrison@jud6.org, and for Clearwater Judge sections to 315 Court Street, Room 401, Clearwater, FL 33756 or Fax to (727) 464-3100, Email: jpadoll@jud6.org.

**Appearances:** Unless otherwise stipulated by the parties, a named party must be physically present at the mediation conference. In the discretion of the mediator, and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

**The Conference:** ATTORNEYS SHOULD SUBMIT A BRIEF WRITTEN SUMMARY OF THE FACTS/ISSUES OF THE CASE TO THE MEDIATOR AT LEAST ONE WEEK BEFORE THE SCHEDULED CONFERENCE. During the conference, counsel should be prepared to discuss the facts and legal issues involved in the case and to generally help the parties evaluate the case. The ultimate decision making authority of whether or not to settle the case rests with the parties, with the advice of counsel.

**IMPORTANT:** The parties shall bring a copy of their financial affidavits to the mediation. If the case involves child support, the parties shall bring to the mediation conference a Child Support Guidelines Worksheet in substantial conformity with Florida Family Law Form 12.902 (e).

Upon motion or request of any party, the Court will not refer a case to mediation if it finds there has been a history of domestic violence that would compromise the mediation
process. The Court on its own motion may determine that a case will not be referred to mediation because of a history of domestic violence.

Your mediator will be explaining the process in greater detail the day of the conference. In the meantime, if you have any questions about these or any other court-ordered mediation procedures, you should call the mediation program at (727) 582-7206 (St Pete.) (727) 464-4947 (Clearwater).

**PLEASE READ CAREFULLY**

**Scheduling, rescheduling and cancellations:** The rules require that mediation be completed within 75 days of the initial mediation conference unless otherwise ordered by the court. The initial mediation conference shall be held within sixty (60) days of the signed referral order, unless otherwise ordered by the court.

The party or attorney who is requesting that a mediation session be *rescheduled* must obtain consent from opposing counsel and the assigned mediator. *The Program must also be notified of any rescheduling attempts.* If opposing counsel and/or the mediator do not give consent to reschedule the conference, the attorney must apply for relief through the presiding judge prior to the scheduled conference. Cancellation (with no attempt to reschedule) of the mediation conference will only be permitted where one or both parties have applied for relief from the presiding judge and has had the case properly deferred or removed from mediation. NO OTHER UNILATERAL CANCELLATION OR RESCHEDULING WILL BE PERMITTED AND IS A VIOLATION OF THE COURT’S ORDER TO ATTEND.

**Notifying the Mediator:** The mediator must be notified at least forty-eight (48) hours in advance (not including weekends and holidays) of any rescheduling or cancellation, for whatever reason. If the late cancellations was due to a unilateral request through the court for a continuance or deferment, the moving party will be assessed the entire cancellation fee. If the late rescheduling was due to a stipulation between parties, any fee charged by the mediator (excludes cases involving a court mediator) will be divided equally between or among them.

**Settlement Prior to Mediation:** Settlement before mediation is always encouraged but is still considered a cancellation. Consequently, the forty-eight (48) hours notice requirement applies. It is the responsibility of plaintiff’s counsel to notify the Program and the mediator in a timely manner of any settlement before the initial conference. Written confirmation is required by the court order.

**Payment:** If the parties are utilizing court provided mediation, the required fee must be paid no less than 48 hours prior to the mediation conference at an Office of the Clerk of Circuit Court. Please obtain a receipt to bring to the mediation conference.

**Locations:**
545 First Avenue North, First Floor, St. Petersburg, FL 33701 and 315 Court Street, First Floor, Clearwater, FL 33756.
Mediation program staff cannot accept any fees.

If the parties choose their own private mediator, in the absence of a written fee agreement providing for the private mediator’s compensation, the mediator shall be paid at the rate of not more than $200.00 per hour. Payment of the agreed fee is due to the mediator on the day of the mediation conference.

01/2016
INSTRUCTIONS FOR SIXTH CIRCUIT LOCAL FAMILY LAW FORM
AFFIDAVIT OF INCOME FOR PURPOSES OF ESTABLISHING MEDIATION FEES

When should this form be used?

You should use this form when ALL of the following statements are true:

• The other person in your case has been served, whether by personal service or constructive service.
• Your case has been referred to mediation.
• You are requesting court provided mediation services, which will require a fee of either $60.00 or $120.00 from each party.
• Both parties in your case have not filed a Financial Affidavit.
• You are requesting that the court determine the amount of mediation fees owed by each party.
• You know what the other person's income is so that you can make a truthful statement, to the best of your knowledge, about the combined gross annual income of both parties.
• To the best of your knowledge, the combined gross income of both parties in this case does not exceed $100,000 per year.

This form should be typed or printed in black ink. After completing this form, you should sign the form before a notary public or deputy clerk. You must file the original of this form with the clerk of the circuit court and send a copy to the other party and a copy to the Family Mediation Program at 501 First Avenue North, St. Petersburg, Florida 33701, Room 420. You should keep a copy for your records.

Special notes...

Remember, a person who is NOT an attorney is called a nonlawyer. If a nonlawyer helps you fill out these forms, that person must give you a copy of Disclosure from Nonlawyer, ☐ Florida Family Law Rules of Procedure Form 12.900 (a), before he or she helps you. A nonlawyer helping you fill out these forms also must put his or her name, address, and telephone number on the bottom of the last page of every form he or she helps you complete.
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA

Case No.: ____________________________
Division: ____________________________

__________________________,
Petitioner,

and

__________________________,
Respondent.

AFFIDAVIT OF INCOME FOR PURPOSES OF ESTABLISHING MEDIATION FEES

I, {full legal name}______________________________, being sworn, certify that the following information is true:
[ √ appropriate response]

1. This case has been referred to mediation.

2. To the best of my knowledge, the combined gross income of both parties in this case currently is:
   _____ Less than $50,000 per year OR
   _____ $50,000 per year, but not more than $100,000 per year.

I certify that a copy of this affidavit was: ( )mailed, ( ) faxed and mailed, or ( ) hand delivered to the person (s) listed below on (date) ____________________________.

Other party or his/her attorney:
Name: ________________________________
Address: ________________________________________
City, State, Zip: ________________________________
Fax Number: ________________________________
I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

DATED: ___________________________  
Signature of Petitioner or Respondent
Printed Name: ___________________________
Address: _______________________________
City, State, Zip: __________________________
Telephone Number: _______________________
Fax Number: ____________________________

STATE OF FLORIDA  
COUNTY OF __________________________
Sworn to or affirmed and signed before me on __________________________ by __________________________.

Notary Public or Deputy Clerk

__ Personally known  
__ Produced identification
Type of identification produced

IF A NONLAWYER HELPED YOU FILL OUT THIS FORM, HE/SHE MUST FILL IN THE BLANKS BELOW: [As fill in all blanks]
I, [full legal name and trade name of nonlawyer] ___________________________________________, a nonlawyer, located at [street] ______________________, [city] ______________________, [state] __________, [phone] __________, helped [name] __________________________, who is the [check one only] ____petitioner or ____respondent, fill out this form.
APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS

Notice to Applicant: If you qualify for civil indigence you must enroll in the clerk's office payment plan and pay a one-time administrative fee of $25.00. This fee shall not be charged for Dependency or Chapter 39 Termination of Parental Rights actions.

1. I have _____ dependents. (Include only those persons you list on your U.S. Income tax return.)
   - Are you Married? Yes No
   - Does your Spouse Work? Yes No
   - Annual Spouse Income? $________

2. I have a net income of $________ paid weekly every two weeks semi-monthly monthly yearly other.
   (Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court-ordered payments such as child support.)

3. I have other income paid weekly every two weeks semi-monthly monthly yearly other.
   (Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No").

4. I have other assets: (Circle "Yes" and fill in the value of the property, otherwise circle "No").
   - Cash: $________
   - Bank account(s): $________
   - Certificates of deposit or money market accounts: $________
   - Boats*: $________
   - Real Property*: $________
   - Retirement/pensions: $________
   - Trusts*: $________
   - Stocks/bonds: $________
   - Real estate*: $________
   - Other: $________

*show loans on these assets in paragraph 5.

Check one: I DO DO NOT expect to receive more assets in the near future. The asset is...

5. I have total liabilities and debts of $________ as follows:
   - Motor Vehicle $________
   - Home $________
   - Other Real Property $________
   - Child Support paid direct $________
   - Credit Cards $________
   - Medical Bills $________
   - Cost of medicines (monthly) $________
   - Other $________

6. I have a private lawyer in this case... Yes No

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s.775.082, F.S. or s. 775.083, F.S. I attest that the information I have provided on this application is true and accurate to the best of my knowledge.

Signed this ______ day of ____________, 20____.

Date of Birth ____________ Driver's License or ID Number __________________________

Address: P O Address, Street, City, State, Zip Code

Signature of Applicant for Indigent Status __________________________

Print Full Legal Name __________________________

Phone Number: __________________________

6.51
CLERK'S DETERMINATION

Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent, according to s. 57.082, F.S.

Dated this __________ day of _______________ 20 __.

Clerk of the Circuit Court by ____________________________

This form was completed with the assistance of: ____________________________

Clerk/Deputy Clerk/Other authorized person.

APPLICANTS FOUND NOT TO BE INDIGENT MAY SEEK REVIEW BY A JUDGE BY ASKING FOR A HEARING TIME.

THERE IS NO FEE FOR THIS REVIEW.

Sign here if you want the judge to review the clerk's decision ____________________________
MEDIATION & DIVERSION SERVICES
FAMILY/TEMPORARY RELIEF REQUEST FORM
800 East Twiggs Street, Room 208, Tampa, FL 33602-4024
Phone (813) 272-5642 Fax (813) 301-3705 E-Mail: mediation@fljud13.org

*PLEASE NOTE* TO PROCESS YOUR REQUEST YOU MUST SUPPLY OUR OFFICE WITH A COPY OF THE PETITION, LAST COURT ORDER OR FINAL JUDGMENT.

YOUR NAME: __________________________ DATE: __________________________ CASE #: __________________________

CASE STYLE (Title of Case when first filed): __________________________

Petitioner vs __________________________

Respondent

CASE #___________ DIVISION: ___________ #MINOR CHILDREN: ___________

Type: ☐ Dissolution of Marriage ☐ Paternity

☐ Department of Revenue (DOR)

Status: (choose one):

☐ Pre-Judgment - new case; not finalized; no order or judgment

☐ Post-Judgment - old case; judgment already entered

PETITIONER's name: __________________________ Address: _______________

City: __________________________ State: __________________________ Zipcode: __________________________

E-Mail: __________________________

ATTORNEY's name: __________________________ Address: __________________________

City: __________________________ State: __________________________ Zipcode: __________________________

E-Mail: __________________________

MEDIATION ISSUES ☐ Child Support ☐ Visitation ☐ Medical ☐ Paternity ☐ Marital Home ☐ Primary Residence/Custody

☐ Alimony/Spousal Support ☐ Attorney's Fees & Costs ☐ Equitable Distribution (debits & assets) ☐ Other ☐ All Issues

RESPONDENT’s name: __________________________ Address: __________________________

City: __________________________ State: __________________________ Zipcode: __________________________

E-Mail: __________________________

ATTORNEY’s name: __________________________ Address: __________________________

City: __________________________ State: __________________________ Zipcode: __________________________

E-Mail: __________________________

CIRCLE ALL THAT APPLY:

IS SECURITY NEEDED? ☐ Yes ☐ No

Is there a history of domestic violence? ☐ Yes ☐ No

If yes, will this interfere with your ability to mediate? ☐ Yes ☐ No

Is there a juvenile dependency case pending involving these parties? ☐ Yes ☐ No

Does either party have an Order for Indigence or mediation fees waived? ☐ Yes* ☐ No

*If yes, circle party(ies) involved and attach copy of the order:

father/husband ☐ mother/wife ☐

SCHEDULING INFORMATION - ATTORNEYS ONLY:

Check the type of mediation below; coordinate with opposing side & choose any business day at 9:00 am, 11:30 am, or 2:30 pm.

*Non-Court ordered requests: If both parties are not represented by counsel our office must first send a 10 day request letter to the pro se party.

☐ Temporary Relief ☐ Court Order/Date: __________________________

☐ Non-Court Ordered

(Provide copy of order)

date 1st CHOICE time date 2nd CHOICE time date 3rd CHOICE time date 4th CHOICE time

Limited Availability for PLANT CITY (Division R cases only) - Mondays - 9:00, 11:30 am & 2:30pm; Thursdays - 9:00, 11:30 am & 2:30pm

CONTACT PERSON: __________________________ Phone: __________________________ Date: __________________________

Upon receipt of this completed form a Court Program Specialist will contact your office for confirmation.

Revised 9/24/2013
FAMILY DIVERSION PROGRAM

PRE-CONFERENCE QUESTIONNAIRE

Circuit Court Case No.: __________________________ Date: __________________________

Division: _____ Judge: __________________________ Attorney: __________________________

Is the D.O.R. (Department of Revenue) involved in this case or any other case between the parties for child support? _____ Yes _____ No

Name: __________________________ Phone No: __________________________

Address: __________________________ Phone No: __________________________

(Street) Phone No: __________________________

City State Zip Phone No: __________________________

(Home) (Work)

E-Mail Address: __________________________

Your Date of Birth: __________ Place of Birth: __________ Race: __________

Highest Education Level: ______ Degree? ______

Employed by: __________________________

(Street) (City) (State) (Zip)

Children of the Parties: Primary Residence with

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<th>NAME</th>
<th>Age</th>
<th>D.O.B.</th>
<th>Sex</th>
<th>Mother or Father</th>
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Other Party's Name: __________________________ Phone No: __________________________

- Date of marriage to Other Party: __________ Length of Marriage: __________

- Are you separated? _____ Yes _____ No If so, how long? __________

- Are you divorced from other party? _____ Yes _____ No If so, how long? __________

SEE OTHER SIDE
PRE-CONFERENCE QUESTIONNAIRE CONTINUED

Is there a history of Domestic Violence?  Yes ___  No ___

If so, will this interfere with your ability to mediate? Yes ___  No ___

Comments: ________________________________________________

______________________________

Briefly list the conflicts to be mediated and need to be resolved:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Each party accepts the services of the Family Diversion Program with the following understandings:

1. Mediation is a process where parties may come together and communicate freely in an effort to resolve the dispute between them.

2. Statements made during mediation will be considered confidential pursuant to Sections 44.401 and 44.405, Florida Statutes.

3. The parties in the case know more than anyone else about their family's needs; therefore, they are the best qualified to plan for their family's future.

4. The Mediator will leave decisions up to the parties, but will maintain control of the process and assist parties in discussing matters in a constructive manner.

5. All verbal or written communications in mediation proceedings shall be confidential and inadmissible as evidence in any subsequent legal proceedings, unless both parties agree otherwise.

By signing below, I agree to keep all negotiations in mediation confidential within the limits of the law.

SIGN
HERE:

______________________________

Revised: 05/20/14

6.55
THE MEDIATION PROCESS
INSTRUCTIONS FOR FAMILY LAW CASES

Authority: Pursuant to §44.1011 and 44.108 Fla. Stat., and Fla. Fam. L. R. P. 12.740, et seq., judges have the authority to order all contested family matters and issues to mediation.

To help make mediation more accessible to all parties, Chapter 2004-265, Laws of Florida, amended 44.108 Florida Statutes. Through funding for the State Court System, the Sixth Judicial Circuit will implement Fla Stat 44.108 with a mediation model that provides paid family and county civil mediation services to certain parties.

Definition: Mediation is statutorily defined as “...[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 with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. The mediator has no decision making power. Any agreement reached will be by mutual consent of the parties. A written agreement that is signed may be filed and submitted to the court with the parties consent.

Special Rules or Procedures: For each case referred to family mediation, parties eligible for court provided mediation shall select either privately retained mediation or court provided mediation services. Parties not eligible for court provided mediation shall select their own mediator and hold a mediation conference in accordance with the order of referral. In accordance with Family Law Rule of Procedure 12.741 (b)(6)(A) and Rule of Civil Procedure 1.710(f)(1), eligible and non-eligible parties may choose their own mediator; however the selection must occur within ten(10) days of the order of referral.

Court Provided Mediation Services

Requirements: To determine eligibility for court provided mediation, both parties must submit a Family Law Financial Affidavit 12.902(b)-Short Form upon receipt of this notice that is no more than six months old. The form can be obtained http://www.flcourts.org/core/fileparse.php/293/urlt/902b.pdf
A general income statement, for the purpose of determining eligibility for court-provided mediation only, is available from the mediation staff or online at www.jud6.org/ContactInformation/AlternativeDisputeResolution.html

The financial affidavits must be notarized and mailed or emailed to the Mediation Program either to our St Petersburg (for St Pete Judge cases) office 501 1st Avenue No., Room 722, St Petersburg, FL 33701 or Email to: smorrison@jud6.org, or our Clearwater office (for Clearwater Judge cases) at 315 Court St., Room 401, Clearwater, FL 33756 or Email to: jpadoll@jud6.org.

1. After you submit the financial affidavit, contact the mediation office at (727) 464-4947 for a determination of eligibility and the assignment of the mediator. The Program will select a family mediator by rotation from the court contracted list. You shall have ten days to schedule the date, time and location of the mediation conference with the mediator, and pay the clerk the required mediation fee.

2. You shall contact the Mediation Program office with the above information within the specified ten days. If you do not notify the Program within ten days, you will be given another ten days to select a private mediator at an agreed upon rate of pay that you will pay directly to the mediator. If you fail to notify the Program with this information within ten days, the Program will select a private mediator...
by rotation, set the date, time and location of the mediation without contacting the parties, at the rate of not more than $200.00 per hour.

Parties deemed otherwise eligible for court provided mediation may also opt instead to retain private mediation, in which case the mediation fees below will not apply.

**Mediation Fees**

Fees are established by statute and are as follows:
- $60.00 per person per session in family mediation when the parties’ combined gross income is less than $50,000.00 per year.
- $120.00 per person per session in family mediation when the parties’ combined gross income is greater than $50,000.00 but less than $100,000.00 per year.

Any party may pay any other party’s mediation fee. **A mediation fee collected from any party is nonrefundable.**

Parties must take a copy of the order of referral to one of the offices of the Clerk of Circuit Court in Pinellas County and pay the designated fee in the order within ten days of receiving the order of referral. **Important: Keep and bring receipt of payment to the mediation conference.**

Staff will also prepare notices reflecting your coordinated date and mediator that will be mailed to both parties and the mediator.

**Clerk of Circuit Court locations for payment of fees:**

545 1st Avenue North, First Floor St. Petersburg, FL 33701 (727) 464-7000
or
315 Court Street, First Floor, Clearwater, FL 33756 (727) 464-7000

**Private Mediation**

If the parties choose their own private mediator, they may select a mutually acceptable mediator from the list of certified mediators upon a stipulation with the court or by selecting a mediator who does not meet the certification requirements, but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case. Parties must select a mediator and notify the Program of this selection within ten days of receipt of the order of referral, or the Program will select a mediator for you. The parties and the mediator agree upon a fee, and the parties pay the mediator at the time of the mediation.

The parties must coordinate with the mediator a date and time of mediation and notify the Program. Staff will also prepare notices reflecting your coordinated date and mediator selection. Mediation conferences generally last three hours and are scheduled from 9:00 a.m. until 12:00 p.m. or 1:00 p.m. until 4:00 p.m., unless otherwise requested. Please see below for more detailed information regarding our scheduling policies.

**Procedures Applicable to Both Court-Provided Family Mediation and Private Family Mediation**

**Appearances:** Unless otherwise stipulated by the parties, a named party must be physically present at the mediation conference. In the discretion of the mediator, and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

**The Conference:** ATTORNEYS SHOULD SUBMIT A BRIEF WRITTEN SUMMARY OF THE FACTS/ISSUES OF THE CASE TO THE MEDIATOR AT LEAST ONE WEEK BEFORE THE SCHEDULED CONFERENCE. During the conference, counsel should be prepared to discuss the facts and legal issues involved in the case and to generally help the parties evaluate the case. The ultimate
decision making authority of whether or not to settle the case rests with the parties, with the advice of counsel.

**IMPORTANT:** The parties shall bring a copy of their financial affidavits to the mediation. If the case involves child support, the parties shall bring to the mediation conference a Child Support Guidelines Worksheet in substantial conformity with Florida Family Law Form 12.902 (e).

Upon motion or request of any party, the Court will not refer a case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process. The Court on its own motion may determine that a case will not be referred to mediation because of a history of domestic violence.

If the case involves parental responsibility and primary residence of the children, a parenting plan proposal shall be exchanged between the parties five (5) to seven (7) days prior to the mediation conference. The Florida Supreme Court approved parenting plans may be accessed at www.jud6.org/ContactInformation/AlternativeDisputeResolution.html

Your mediator will be explaining the process in greater detail the day of the conference. In the meantime, if you have any questions about these or any other court-ordered mediation procedures, you should call the mediation program that is handling your case St. Petersburg (727) 582-7206.

**PLEASE READ CAREFULLY**

**Scheduling, rescheduling and cancellations:** The rules require that mediation be completed within 75 days of the initial mediation conference unless otherwise ordered by the court. The initial mediation conference shall be held within sixty (60) days of the signed referral order.

The party or attorney who is requesting that a mediation session be rescheduled must obtain consent from opposing counsel and the assigned mediator. The Program must also be notified of any rescheduling attempts. If opposing counsel and/or the mediator do not give consent to reschedule the conference, the attorney must apply for relief through the presiding judge prior to the scheduled conference. Cancellation (with no attempt to reschedule) of the mediation conference will only be permitted where one or both parties have applied for relief from the presiding judge and has had the case properly deferred or removed from mediation. NO OTHER UNILATERAL CANCELLATION OR RESCHEDULING WILL BE PERMITTED AND IS A VIOLATION OF THE COURT’S ORDER TO ATTEND.

**Notifying the Mediator:** The mediator must be notified at least forty-eight (48) hours in advance (not including weekends and holidays) of any rescheduling or cancellation, for whatever reason. If the late cancellations was due to a unilateral request through the court for a continuance or deferment, the moving party may be assessed the entire cancellation fee. If the late rescheduling was due to a stipulation between parties, any fee charged by the mediator (excludes cases involving a court mediator) will be divided equally between or among them.

**Settlement Prior to Mediation:** Settlement before mediation is always encouraged but is still considered a cancellation. Consequently, the forty-eight (48) hours notice requirement applies. It is the responsibility of plaintiff’s counsel to notify the Program and the mediator in a timely manner of any settlement before the initial conference. Written confirmation is required by the court order.

**Payment:** If the parties choose to utilize a court mediator, the fee of $60.00 or $120.00 per party must be paid prior to the mediation conference. See page 1 for requirements regarding fees. If the parties choose their own private mediator in the absence of a written fee agreement providing for the private mediator’s compensation, the mediator shall be paid at the rate of not more than $200.00 per hour. Payment of the agreed fee is due to the mediator on the day of the mediation conference.

01/2016

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3
IN THE THIRTEENTH JUDICIAL CIRCUIT COURT FOR
HILLSBOROUGH COUNTY, FLORIDA
CIRCUIT DIVISION
FAMILY DIVERSION PROGRAM

IN RE: THE PATERNITY OF A MINOR:

Petitioner,

vs

Respondent.

Case No:
Division:

NOTICE OF COURT ORDERED MEDIATION CONFERENCE

DATE: Monday , 2015
PARTIES' ARRIVAL TIME: 2:00PM
MEDIATION TO BEGIN AT: 2:30PM
LOCATION: Mediation & Diversion Services
George Edgecomb Courthouse, Room 208
800 East Twiggs Street
Tampa, FL 33602
P 813-272-5642 F 301-3705

Each participant in family mediation will be charged a fee based upon the JOINT gross income of the parties. If the parties' JOINTLY gross $50,000 or less annually, the fee will be $60 per party. If the parties JOINTLY gross more than $50,000 annually, the fee will be $120 per party. You must bring proof of the most recent income documentation to mediation in the form of a current pay check stub, last year's tax return, W-2, or family law financial affidavit. If proof of income is not provided, the fee will be $120 per party. Payment may be made by check or money order (payable to the "Clerk of the Circuit Court"), cash, or credit card (VISA/Master Card/Discover). Checks without imprinted name and address will not be accepted. Credit card payments cannot be accepted by telephone and are assessed a $5.00 processing fee. If payment is not received at the time of mediation, the mediation will not take place. If a party fails to make payment at the time of the mediation or fails to appear at a scheduled mediation, the party will be billed $120.00.

IF YOU DO NOT SPEAK ENGLISH, YOU MUST PROVIDE YOUR OWN INTERPRETER.
SI USTED NO HABLA INGLES, POR FAVOR TRAIGA A UN INTERPRETE.

ATTENDANCE IS REQUIRED: You must call if you will be more than 10 minutes late. All parties must arrive promptly at the arrival time to complete payment and pre-mediation
paperwork. Please bring your child(ren)'s Social Security number(s), the completed Child Support Guidelines Worksheet, and/or proof of your most recent income if your mediation involves child support issues.

**Only the parties to the dispute are allowed in the mediation room.** Counsel for each party may attend the mediation conference and shall at times be permitted to privately communicate with their clients. The presence of counsel is not required. Please make arrangements for the care of your child(ren) during the mediation.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Mediation & Diversion Services at the address shown above, (813) 272-5644, within two (2) working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-955-8770.

**RESCHEDULING/CANCELLATION**

Notice of rescheduling or cancellation of a scheduled mediation must be received in writing to Mediation & Diversion Services; it should not be left on our voice mail system. If a party fails to provide at least twenty-four (24) hours prior written notice (not counting weekends or court holidays), the party will be billed $120.00. You may submit the written request in person, via e-mail, or fax to the information provided below.

All provisions set forth in the Order Referring Parties to Mediation, dated June 4, 2015, must be complied with. We have attempted to accommodate all parties in scheduling this conference, but due to our case load, sometimes inconvenience to one or both parties is unavoidable.

FAMILY DIVERSION PROGRAM
800 East Twiggs St, Room 208
Tampa, FL 33602
Phone: (813) 272-5642
Fax: (813) 301-3705
E-mail: mediation@fljud13.org

Original: Clerk of the Circuit Court - Law File
cc: copies sent by US Mail on August 17, 2015
Petitioner:

Vivian Cortes Hodz, Esq.,

FAMED 2015-7060 Ink
IN THE THIRTEENTH JUDICIAL CIRCUIT COURT FOR
HILLSBOROUGH COUNTY, FLORIDA
FAMILY DIVISION
FAMILY DIVERSION PROGRAM

OUTCOME OF FAMILY MEDIATION

__________________________________________  Case No: _______________________
Petitioner

vs

__________________________________________  Division: _______________________

DATE: _______________________

__________________________________________  Respondent

Parties Present: (Statistics)
___ Attorney Representation for Male only  ___ Children  ___ Grandparents
___ Attorney Representation for Female only  ___ Department of Revenue Representative
___ Attorney for both parties  ___ Guardian ad Litem

___ Petitioner
___ Respondent

Outcome:
Cancelled due to failure to appear  ( ) Petitioner  ( ) Respondent  ( ) Both parties
Cancelled due to failure to pay  ( ) Petitioner  ( ) Respondent  ( ) Both parties
Cancelled: appeared, but refused to mediate  ( ) Petitioner  ( ) Respondent  ( ) Both parties

( ) Conflict partially resolved
( ) Conflict totally resolved  ( ) Conflict resolved before Hearing

( ) Have reached impasse requiring Court resolution.

( ) Additional mediation conference to be scheduled.
  Date: ___________ Time: ___________ a.m./p.m. (If no outcome is indicated above, parties
will have 60 calendar days from ___________ to schedule an additional conference or to provide
proof of final outcome; otherwise, an impasse will be entered in the Law File.)

__________________________________________
FAMILY DIVERSION

Original: Circuit Court File
CC:
  ( ) Circuit Judge:
  ( ) Attorney for Petitioner:
  ( ) Attorney for Respondent:
  ( ) Petitioner:
  ( ) Respondent:
  ( ) Statistics

FAMED: _______________
Mediation Intake Sheet

Mediation Date and time:

[ ] Full Day [ ] Half Day

Case Name: ___________ Case Number: ___________

Case Style: ___________________________ Related Cases: __________

Petitioner's Name:
Attorney for Petitioner:
Attorney Address:  
Attorney Phone Number:
Attorney E-mail Address:

Respondent's Name
Attorney for Respondent:
Attorney Address:  
Attorney Phone Number:
Attorney E-mail Address:
August 30, 2017

Re:
17-DR-
Family Law Mediation

Dear

This letter is to confirm that I have been chosen to conduct a family law mediation in the above referenced case. The mediation has been scheduled for Thursday, September 28th, 2017, beginning at 9:00 a.m., to be held at our office address 501 E Kennedy Blvd. Suite 1260, Tampa, Florida 33602. One half day (1/2) has been reserved. The parties will be charged a two hour minimum in the event that a cancellation occurs and notification is not provided to me at least twenty (24) hours in advance. Any change in the scheduling of this matter must be coordinated through this office.

I would appreciate the parties and/or their attorneys presenting to me a brief written summary of the facts and issues prior to the Mediation Conference, if possible. As it is now required to submit a Parenting Plan to the Court when there is a child/children involved in the case, please bring with you to the Mediation Conference your client’s proposed Parenting Plan, if there is a child or children at issue.

The purpose of the mediation is to provide individuals with the opportunity to resolve their disputed issues in a positive manner. With the help of a trained mediator in family law, the parties will have the opportunity as individuals, to make plans for themselves now and in the future and to make decisions in various aspects of their case.

Proceedings at mediation conferences are confidential and may not be used in subsequent court hearings, pursuant to Florida Statutes. The mediator is required by law, however, to report child abuse, abandonment or neglect, and elder and disabled person abuse, neglect or exploitation. All discussions, representations, and statements made at the Mediation Conference, as well as the letter I am asking you to provide to me, shall be privileged as settlement negotiations and nothing related to the conference shall be admitted at trial or subject to discovery.
The mediation fees shall be based upon the combined gross income of the parties:

Less than $80,000.00 per year - $150.00 per hour  
Between $80,000.00 - $150,000.00 per year - $200.00 per hour  
Above $150,000.00 per year - $250.00 per hour.

The fee shall be due and payable at the conclusion of the mediation conference and can be made by check, cash or credit card. Please provide proof of gross income at mediation to determine the rate for my services.

Thank you for allowing me the opportunity to assist you in reaching an amicable resolution of your client’s pending issues. I look forward to working with you and your clients.

Sincerely,

Vivian Cornes Hodz, Esquire

VCH/ sc
INITIAL MEDIATION QUESTIONNAIRE

Client: 
Full name: ________________
Birthdate: ________________
Soc. Sec. No.: ________________
Home address (including zip): ________________________________
Home phone: ________________
Cell phone: ________________
Employer: ________________
Address: ________________________________
Work phone: ________________
Occupation: ________________
Annual income: ________________
E-mail address: ________________

Spouse/Opposing party: 
Full name: ________________
Birthdate: ________________
Soc. Sec. No.: ________________
Home address (including zip): ________________________________
Home phone: ________________
Cell phone: ________________
Employer: ________________
Address: ________________________________
Work phone: ________________
Occupation: ________________
Annual income: ________________
E-mail address: ________________

Attorney for Spouse/Opposing Party: 
Address: ________________________________

MARRIAGE INFORMATION
Marriage date: ________________
Separation date: ________________________________
Place of marriage (including county): ________________________________
County where last lived together: ________________________________

MODIFICATION INFORMATION
Date of Former Marriage: ________________________________
Date of Separation from Former Marriage: ________________________________
Final judgment date: ________________________________
Location of Final Judgment(County/State): ________________________________
CHILDREN’S INFORMATION

Full names: ___________________________ Birthdate: ___________________________

____________________________________

____________________________________

TYPE OF CASE AND ISSUES TO BE DISCUSSED DURING MEDIATION

____________________________________

____________________________________

____________________________________

____________________________________

WHO CAN WE THANK FOR REFERRING YOU TO OUR FIRM

____________________________________

MEDIATION FEES SHALL BE BILLED UPON THE CONCLUSION OF YOUR MEDICATION. PAYMENT WILL BE DUE ON THE DAY OF YOUR MEDIATION. PAYMENTS ACCEPTED: CASH, CHECK, VISA OR MASTERCARD ONLY. MEDIATION RATE IS $150.00 PER HOUR WITH A TWO HOUR MINIMUM. ANY TIME OVER TWO HOURS SHALL BE BILLED IN 1/4 HOUR INCREMENTS.
AGREEMENT TO MEDIATE

We agree to participate in mediation with Vivian Cortes Hodz, Esquire according to the terms of this Agreement to Mediate.

1. Mediator’s Role: The mediator will be impartial and neutral and will encourage us to identify what issues need to be resolved, exchange information, explore options or alternative solutions, and fairly negotiate and problem solve with one another. The mediator will not make any decisions about our divorce and will not provide any psychological or legal services or provide other services outside the scope of the mediator’s role.

2. Confidentiality: We agree that 1) all communications in mediation are confidential and inadmissible in a judicial proceeding except where disclosure is permitted or required by law, mutually agreed to by all mediation parties, or otherwise provided in this agreement to mediate, 2) any mediation communications concerning child abuse and neglect; abuse, may be disclosed to the appropriate authorities or potential victim, if any, and 3) a signed mediation agreement is not confidential and is admissible in a judicial proceeding. We understand that Vivian Cortes Hodz, Esquire is a Florida Supreme Court certified family mediator and that the Florida Mediation Confidentiality and Privilege Act (F.S.44.401-44.406) applies to a mediation conducted by a Florida Supreme Court certified mediator unless the parties to the mediation expressly agree otherwise.

We will not call the mediator as a witness in any litigation or legal proceeding nor request or use any of the mediator’s records or documents for the purpose of litigation. Should anyone signing this agreement to mediate seek to compel the mediator to provide information in a court proceeding or elsewhere, we agree that person will compensate the mediator, at the below agreed upon hourly rate, for any and all time expended in response to the request for release of information plus the costs of all legal services which the mediator employs to defend the confidentiality of this mediation. When mediation is ordered by the Court, we authorize the mediator to report to the Court who attended mediation and whether an agreement was reached.

3. Voluntary Participation: We will let the mediator know of any dissatisfaction with the mediation process as soon as it may arise, and we understand we may discontinue our participation in mediation at any time.
4. **Independent Legal Counsel**: We understand that we have the option of each retaining separate attorneys of our own choice to separately advise us of our legal rights and responsibilities prior to signing a mediated settlement agreement. We understand that if we do so we can talk freely with our attorneys throughout the entire mediation process and we are free to have our attorneys assist us during the mediation sessions. We understand that the mediator will not provide legal advice or other legal services.

5. **Separate Sessions**: During mediation, we may request to meet separately with the mediator. Our mediation communications in separate sessions will be considered confidential by the mediator (to the extent provided in this agreement and by any applicable laws and rules), and the mediator will not disclose confidential mediation communications to other mediation participants who are absent from the separate session without the permission of the party or parties present during the separate session.

6. **Safety**: If there has been any violence or abuse in our relationship which would limit our ability to effectively participate in mediation or raise any safety concerns, we will advise the mediator. We understand that we may inform the mediator either directly during a mediation session, or confidentially in a private session or by telephone. If this issue arises, we will then discuss whether mediation can proceed and develop an appropriate plan of action. We will also notify our respective attorneys of any concerns we may have in this regard.

7. **Full Disclosure**: We pledge to fully disclose all relevant information. If we have any reason to doubt the honesty or accuracy of the other’s disclosure of any relevant information, we will inform the mediator and our attorney as soon as this concern arises.

8. **Guidelines**: For cases involving child support, we understand that Florida law provides specific guidelines for determining child support obligations. As there can be some variation in calculating these amounts, we each agree to verify these calculations with our respective attorneys. If either of us learns that these calculations are not correct, we agree to notify the mediator and each other.

9. **Written Summary**: We will be the decision-makers in this matter and will determine what we believe is a fair and satisfactory outcome. If we reach an agreement, we understand that the mediator can prepare a summary of our agreement. Any final negotiated settlement will only be agreed to voluntarily by each of us after consulting with our attorneys, and the mediator will not be held liable in any way for the terms of any final agreement. We are not bound to agree with any options or alternatives which may arise in mediation, and the mediator has no decision-making authority to decide any aspect of our agreement.
10. **Fees:** The mediation fees shall be $300.00 for the first two hours, with a two hour minimum, and $150.00 for each hour thereafter. Any portion of an hour after the first two hours shall be billed by the ¼ hour. This rate shall apply to the mediator’s time involved in preparation, conferences, writing memorandums, consulting with attorneys, responding to requests for release of information or any other time including travel spent on our behalf. We agree to pay Vivian Cortes Hodz, Esquire at the end of each session for all amounts currently due and for any anticipated work, such as writing up our agreement, which the mediator will perform prior to a subsequent mediation session or at the end of mediation. The mediator’s minimum fee for the actual time reserved will be charged for all sessions which are not canceled or postponed at least twenty-four (24) hours in advance and for sessions that end in less than the minimum time. We agree to share in the payment for mediation according to the following percentages:

<table>
<thead>
<tr>
<th>Name</th>
<th>Percentage</th>
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Total: 100%

By signing our names below, we affirm that we understand and agree to the terms of this Agreement to Mediate.

Signature ___________________________ Date __________________

Signature ___________________________ Date __________________
IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
FAMILY LAW DIVISION

IN RE: THE MARRIAGE OF:

JOHN JAMES DOE, Case No.: XX-DR-XXXX
   Petitioner/Husband,

and

JANE SALLY DOE, Division: X
   Respondent/Wife.

 NOTICE OF MEDIATION

Notice is hereby given that mediation in this matter shall be held on Wednesday, July 22, 2017 at 01:00 p.m. at the office of Cortes Hodz Family Law & Mediation, P.A., 501 E. Kennedy Blvd., Suite 1260, Tampa, Florida 33602. Vivian Cortes Hodz, Esquire will act as mediator. Parties will each be responsible for one-half (1/2) of the cost of mediation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded via email to ____________________________ on this _______ day of June 2017.

VIVIAN CORTES HODZ, ESQUIRE
Florida Bar No. 574643
Cortes Hodz Family Law & Mediation, P.A
501 E. Kennedy Blvd., Suite 1206
Tampa, Florida 33602
(813) 514-0909 ~ Telephone
(813) 514-0998 ~ Facsimile
vivian@corteshodzlaw.com
Counsel for Respondent/Husband
IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
FAMILY LAW DIVISION

IN RE: THE MARRIAGE OF:

JOHN JAMES DOE,
   Petitioner/Husband,

and

JANE SALLY DOE,
   Respondent/Wife.

Case No.: XX-DR-XXXX
Division: X

NOTICE OF OUTCOME OF MEDIATION

COMES NOW the undersigned and files this Notice of Outcome of Mediation held on July 8, 2015. The parties, JOHN JAMES DOE and JANE SALLY DOE, have reached an impasse requiring Court resolution.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing has been furnished via email to counsels for the parties on this ________ day of July, 2015.

VIVIAN CORTES HODZ, ESQUIRE
Florida Bar No. 574643
Cortes Hodz Family Law & Mediation, P.A
501 E. Kennedy Blvd., Suite 1206
Tampa, Florida 33602
(813) 514-0909 ~ Telephone
(813) 514-0998 ~ Facsimile
vivian@corteshodzlaw.com
Counsel for Respondent/Husband
IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
FAMILY LAW DIVISION

IN RE: THE MARRIAGE OF:

JOHN JAMES DOE, 
Petitioner/Husband,

Case No.: XX-DR-XXXX
Division: X

and

JANE SALLY DOE,
Respondent/Wife.

STATEMENT FOR MEDIATION SERVICES

Pre-mediation time spent on this matter: ___________ hours.

Attendance at mediation: ___________ 4.0 ___________ hours.

Mediation billing rate is ___________ $150.00 ___________ per hour.

Total Due: ___________ 600.00 ___________

Your portion of this fee is ___________ $300.00 ___________

Less: Retainer paid ___________

Amount due today ___________

THANK YOU FOR YOUR PROMPT PAYMENT OF THIS BALANCE.

Date Paid ___________

Amount Paid $ ___________

Cash or Check# ___________

Please make check payable to Cortes Hodz, P.A. and remit payment to: 
Cortes Hodz Family Law & Mediation, P.A.
505 E. Jackson Street, Suite 306
Tampa, Florida 33602

6.72
IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
FAMILY LAW DIVISION

IN RE: THE MARRIAGE OF:

JOHN JAMES DOE, 
Petitioner/Husband, 

Case No.: XX-DR-XXXX 
Division: X

and 

and 

JANE SALLY DOE, 
Respondent/Wife. 

PETITIONER’S NOTICE OF INFORMAL SETTLEMENT CONFERENCE

Notice is hereby given that an informal settlement conference in this matter shall be held on Wednesday, November 11, 2015 at 1:00 p.m. at the office of Vivian Cortes Hodz, Esquire, 505 E. Jackson Street, Suite 306, Tampa, Florida 33602.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded via email to ________________ on this ______ day of September 2015.

VIVIAN CORTES HODZ, ESQUIRE
Florida Bar No. 574643
Cortes Hodz Family Law & Mediation, P.A.
505 East Jackson Street, Suite 306
Tampa, Florida 33602
(813) 514-0909 ~ Telephone
(813) 514-0998 ~ Facsimile
vivian@corteshodzlaw.com
Counsel for Petitioner/Husband
IN THE THIRTEENTH JUDICIAL CIRCUIT
HILLSBOROUGH COUNTY, FLORIDA

ADMINISTRATIVE ORDER S-2012-041

COLLABORATIVE FAMILY LAW PRACTICE

In the 1990s the collaborative family law practice model was adopted in jurisdictions both in the United States and abroad by common law and by statute. In Florida, the creation of family law divisions and necessary support services in the 1990s and the adoption of the Model Family Court in 2001 reflected the recognition of the Florida Supreme Court and Florida Legislature that families in conflict needed a non-litigation forum to restructure family relationships. The Florida Supreme Court recognized that family cases needed “a system that provided nonadversarial alternatives and flexibility of alternatives; a system that preserved rather than destroyed family relationships; . . . and a system that facilitated the process chosen by the parties.” In re Report of the Family Law Steering Committee, 794 So. 2d 518, 523 (Fla. 2001).

The Florida Supreme Court’s acceptance of recommendations for a model family court is consistent with the principles of the collaborative practice model because the collaborative process empowers parties to make their own decisions guided and assisted by counsel in a setting outside of court. The Thirteenth Judicial Circuit supports the philosophy that the interdisciplinary collaborative practice model may be a suitable alternative to full scale adversarial litigation in family law cases if the parties agree to such a model.

By the power vested in the chief judge under article V, section 2(d), Florida Constitution; section 43.26, Florida Statutes; and Florida Rule of Judicial Administration 2.215(b)(2), it is therefore ORDERED:

1. **Collaborative Practice Model**
   The collaborative practice model is confidential and utilizes interest-based negotiation to resolve disputes through the structured assistance of collaboratively trained professionals, including but not limited to lawyers, financial professionals, mental health professionals, mediators, and other neutral professionals. The collaborative practice model is authorized in the Thirteenth Judicial Circuit of Florida to resolve dissolution of marriage cases and other family law matters according to the following procedures.

2. **Role of Collaborative Professionals**
   A. **Collaborative Lawyers**
      The collaborative lawyers advise and counsel their respective clients, facilitate negotiation, and create written agreements.

   B. **Neutral Mental Health Professionals/Neutral Facilitators**
      The neutral mental health professional, mediator, or other neutral facilitator is available to both parties and may work to:
      i. Prioritize parties’ concerns;
      ii. Help develop conflict resolution skills;

6.74
iii. Develop co-parenting skills:
iv. Help the parties focus on the needs of the children;
v. Enhance communication skills;
vi. Reduce misunderstandings;
vii. Assist in focus on working toward resolution; and
viii. Perform any other activity agreed upon by the team.

C. Neutral Financial Professional

The neutral financial professional is available to both parties and may assist in the following activities:

i. Provide the parties with necessary financial scenarios and analyses regarding the division of assets, liabilities, and support, both child and spousal;
ii. Provide analysis of the nature and composition of specific marital assets (e.g., retirement, capital gain consideration, tax implication, etc.);
iii. Take responsibility for gathering all relevant financial information;
iv. Assist development of and understanding of any valuation processes;
v. Assist with estate planning issues; and
vi. Perform any other activity agreed upon by the team.

3. Participation Agreement

If the parties and professionals desire to use the collaborative practice model, they must enter into a contractual commitment (Participation Agreement) to negotiate a settlement without using the court system to decide any issues of the parties. The lawyers and other retained professionals or consultants, who are entitled to be paid for their services in the collaborative process, will be paid by the parties in accordance with the terms of their Participation Agreement. The Participation Agreement must provide that if a full settlement of all issues is not reached then the collaborative attorneys must withdraw. The Participation Agreement should also contain a provision on the extent of maintaining confidentiality of oral or written communication exchanged during the collaborative process. This confidentiality provision must comply with Florida law and rules of court. As a resource for Participation Agreements and other documents, practitioners and parties may review the website of the International Academy of Collaborative Professionals, which is accessible at the following link: http://www.collaborativepractice.com.

4. Timing of Process

The parties may participate in the collaborative practice model either before or after a petition for dissolution of marriage or any other family law matter is filed.

A. Pre-Filing Collaborative Cases

If the collaborative process is utilized prior to filing a petition for dissolution or other family law matter, the parties must file the Participation Agreement with the Clerk of the Circuit Court (Clerk) as a separate document at the same time as the petition. If the parties have come to a full settlement of all issues prior to filing, then the parties may jointly petition for an uncontested family law action and set this matter for an uncontested final hearing. In such a case, the 20-day waiting period will be deemed waived by the parties.
B. Post-Filing Collaborative Cases

If the collaborative process is to be utilized after an initial pleading has already been filed with the Clerk, then the parties must file the Participation Agreement with the Clerk and notify the presiding judge. Upon notice to the presiding judge, the court will abate the court proceedings. A collaborative status conference will be held within six months of the abatement. The proceeding will remain abated until either an uncontested dissolution of marriage or a motion to withdraw by counsel is heard by the court. Periodic status conferences may be scheduled at the presiding judge’s discretion.

5. Collaborative Status Conference

Upon the filing of a Participation Agreement, an Order Setting First Collaborative Status Conference will be entered. The Collaborative Status Conference Order will be signed by the presiding judge. The Clerk will provide the filing attorney with two copies of the Collaborative Status Conference Order, and the filing attorney must distribute a copy of the Collaborative Status Conference Order to the other engaged collaborative professionals, including the other attorney.

A. Continuance

A collaborative status conference may only be rescheduled by order of the court. Either party may move the court for entry of an order continuing the initial collaborative status conference to a later date by sending to the judge’s chambers a jointly-signed stipulation and proposed order ratifying the stipulation. The stipulation must state that the new date and time of the collaborative status conference has been provided by the judicial assistant and cleared by both parties, which new date is within 60 days of the originally-scheduled date.

B. Cancellation

A collaborative status conference may only be cancelled if (i) the parties have reached a full settlement prior to the date of the conference and the parties have scheduled an uncontested final hearing prior to the date of the status conference; (ii) the presiding judge authorizes the cancellation; or (iii) the parties file and serve upon the presiding judge a joint stipulated notice to dismiss the matter.

6. Exchange of Information

During the collaborative process, no formal discovery procedures will be used, unless agreed upon by the parties. The parties will make a full and candid exchange of information so that a proper resolution of the case can occur, which will include a full disclosure of the nature and extent of all assets and liabilities, income of the parties, and all relevant information concerning the parties’ children. Any material change in the information provided must be promptly updated and exchanged.

7. Case Management

During the collaborative process, the court will not set a hearing or trial in the case, except for periodic status conferences, or impose discovery deadlines. The court will not adjudicate any dispute between the parties. If a party seeks affirmative relief by petition or motion, the collaborative process will cease. If a full settlement has been reached, the
collaborative lawyers will ask the court to approve the settlement agreement. If an agreement has not been reached, the collaborative attorneys must withdraw from representation.

During the collaborative process, the parties may, from time to time, resolve temporary issues in an executed writing. If agreed upon by the parties, the court may ratify and approve any such temporary agreements by reference or otherwise. If the collaborative process breaks down, the parties agree to abide by the terms of all court-ratified temporary agreements once litigation ensues.

8. **Termination of the Collaborative Process**
   If the collaborative process breaks down or a full settlement is not reached, then
   A. Counsel for the parties must withdraw;
   B. All engaged professionals are disqualified from testifying as witnesses, experts, or otherwise, regarding the case, unless the parties mutually agree in writing; and
   C. The professionals' work product created or exchanged during the collaborative process cannot be used in any judicial proceedings unless the parties otherwise mutually agree in writing.

9. **Effective Date**
   This administrative order is effective August 1, 2012.

   It is ORDERED in Tampa, Hillsborough County, Florida, on this 31st day of July, 2012.

   [Signature]
   \[Manuel Menendez, Jr.\]

   Original to: Pat Frank, Clerk of the Circuit Court
   Copies to: All Family Law Division Judges
   Hillsborough County Bar Association – Marital and Family Law Section
PART III
COLLABORATIVE LAW PROCESS ACT
61.55 Purpose.
61.56 Definitions.
61.57 Beginning, concluding, and terminating a collaborative law process.
61.58 Confidentiality of a collaborative law communication.

61.55 Purpose.—The purpose of this part is to create a uniform system of practice for the collaborative law process in this state. It is the policy of this state to encourage the peaceful resolution of disputes and the early resolution of pending litigation through a voluntary settlement process. The collaborative law process is a unique nonadversarial process that preserves a working relationship between the parties and reduces the emotional and financial toll of litigation.

History.—s. 4, ch. 2016-93.

61.56 Definitions.—As used in this part, the term:
(1) "Collaborative attorney" means an attorney who represents a party in a collaborative law process.
(2) "Collaborative law communication" means an oral or written statement, including a statement made in a record, or nonverbal conduct that:
  (a) Is made in the course of or in the course of participating in, continuing, or reconvening for a collaborative law process; and
  (b) Occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded or terminated.
(3) "Collaborative law participation agreement" means an agreement between persons to participate in a collaborative law process.
(4) "Collaborative law process" means a process intended to resolve a collaborative matter without intervention by a tribunal and in which persons sign a collaborative law participation agreement and are represented by collaborative attorneys.
(5) "Collaborative matter" means a dispute, a transaction, a claim, a problem, or an issue for resolution, including a dispute, a claim, or an issue in a proceeding which is described in a collaborative law participation agreement and arises under chapter 61 or chapter 742, including, but not limited to:
  (a) Marriage, divorce, dissolution, annulment, and marital property distribution.
  (b) Child custody, visitation, parenting plan, and parenting time.
  (c) Alimony, maintenance, and child support.
  (d) Parental relocation with a child.
  (e) Parentage and paternity.
  (f) Premarital, marital, and postmarital agreements.
(6) "Law firm" means:
  (a) One or more attorneys who practice law in a partnership, professional corporation, sole proprietorship, limited liability company, or association; or
  (b) One or more attorneys employed in a legal services organization, the legal department of a corporation or other organization, or the legal department of a governmental entity, subdivision, agency, or instrumentality.
(7) "Nonparty participant" means a person, other than a party and the party's collaborative attorney, who participates in a collaborative law process.
(8) "Party" means a person who signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.
(9) "Person" means an individual; a corporation; a business trust; an estate; a trust; a partnership; a limited liability company; an association; a joint venture; a public corporation; a government or governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.
"Proceeding" means a judicial, an administrative, an arbitral, or any other adjudicative process before a tribunal, including related prehearing and posthearing motions, conferences, and discovery.

"Prospective party" means a person who discusses with a prospective collaborative attorney the possibility of signing a collaborative law participation agreement.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Related to a collaborative matter" means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

"Sign" means, with present intent to authenticate or adopt a record, to:
(a) Execute or adopt a tangible symbol; or
(b) Attach to or logically associate with the record an electronic symbol, sound, or process.

"Tribunal" means a court, an arbitrator, an administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter.

History.—s. 5, ch. 2016-93.
61.57 Beginning, concluding, and terminating a collaborative law process.—
(1) The collaborative law process begins, regardless of whether a legal proceeding is pending, when the parties enter into a collaborative law participation agreement.
(2) A tribunal may not order a party to participate in a collaborative law process over that party's objection.
(3) A collaborative law process is concluded by any of the following:
(a) Resolution of a collaborative matter as evidenced by a signed record;
(b) Resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the collaborative matter will not be resolved in the collaborative law process; or
(c) Termination of the collaborative law process.
(4) A collaborative law process terminates when a party:
(a) Gives notice to the other parties in a record that the collaborative law process is concluded;
(b) Begins a proceeding related to a collaborative matter without the consent of all parties;
(c) Initiates a pleading, a motion, an order to show cause, or a request for a conference with a tribunal in a pending proceeding related to a collaborative matter;
(d) Requests that the proceeding be put on the tribunal's active calendar in a pending proceeding related to a collaborative matter;
(e) Takes similar action requiring notice to be sent to the parties in a pending proceeding related to a collaborative matter; or
(f) Discharges a collaborative attorney or a collaborative attorney withdraws from further representation of a party, except as otherwise provided in subsection (7).
(5) A party's collaborative attorney shall give prompt notice to all other parties in a record of a discharge or withdrawal.
(6) A party may terminate a collaborative law process with or without cause.
(7) Notwithstanding the discharge or withdrawal of a collaborative attorney, the collaborative law process continues if, not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative attorney required by subsection (5) is sent to the parties:
(a) The unrepresented party engages a successor collaborative attorney;
(b) The parties consent to continue the collaborative law process by reaffirming the collaborative law participation agreement in a signed record;
(c) The collaborative law participation agreement is amended to identify the successor collaborative attorney in a signed record; and
(d) The successor collaborative attorney confirms his or her representation of a party in the collaborative law participation agreement in a signed record.
(8) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of a collaborative matter or any part thereof as evidenced by a signed record.

(9) A collaborative law participation agreement may provide additional methods for concluding a collaborative law process.

History.--s. 6, ch. 2016-93.

61.58 Confidentiality of a collaborative law communication.—Except as provided in this section, a collaborative law communication is confidential to the extent agreed by the parties in a signed record or as otherwise provided by law.

(1) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY.—
(a) Subject to subsections (2) and (3), a collaborative law communication is privileged as provided under paragraph (b), is not subject to discovery, and is not admissible into evidence.
(b) In a proceeding, the following privileges apply:
1. A party may refuse to disclose, and may prevent another person from disclosing, a collaborative law communication.
2. A nonparty participant may refuse to disclose, and may prevent another person from disclosing, a collaborative law communication of a nonparty participant.
(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.

(2) WAIVER AND PRECLUSION OF PRIVILEGE.—
(a) A privilege under subsection (1) may be waived orally or in a record during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, if it is expressly waived by the nonparty participant.
(b) A person who makes a disclosure or representation about a collaborative law communication that prejudices another person in a proceeding may not assert a privilege under subsection (1). This preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

(3) LIMITS OF PRIVILEGE.—
(a) A privilege under subsection (1) does not apply to a collaborative law communication that is:
1. Available to the public under chapter 119 or made during a session of a collaborative law process that is open, or is required by law to be open, to the public;
2. A threat, or statement of a plan, to inflict bodily injury or commit a crime of violence;
3. Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or
4. In an agreement resulting from the collaborative law process, as evidenced by a record signed by all parties to the agreement.
(b) The privilege under subsection (1) for a collaborative law communication does not apply to the extent that such collaborative law communication is:
1. Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or relating to a collaborative law process; or
2. Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or an adult unless the Department of Children and Families is a party to or otherwise participates in the process.
(c) A privilege under subsection (1) does not apply if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in:
1. A proceeding involving a felony; or
2. A proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense is asserted to avoid liability on the contract.

(d) If a collaborative law communication is subject to an exception under paragraph (b) or paragraph (c), only the part of the collaborative law communication necessary for the application of the exception may be disclosed or admitted.

(e) Disclosure or admission of evidence excepted from the privilege under paragraph (b) or paragraph (c) does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privilege under subsection (1) does not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This paragraph does not apply to a collaborative law communication made by a person who did not receive actual notice of the collaborative law participation agreement before the communication was made.
SAMPLE
PARTICIPATION AGREEMENT FOR
COLLABORATIVE FAMILY LAW PROCESS

I. COLLABORATIVE TEAM PARTICIPANTS

This Collaborative Participation Agreement (the “Agreement”) is signed to resolve the following matter(s) without resort to contested court proceedings: __________________________

Collaborative lawyer. ______________ is represented by ______________ Esquire.

______________ is represented by ______________ Esquire (The parties are collectively referred to as the “Clients”). Each collaborative lawyer is individually retained and advises only his or her client in the Process, no matter which party actually paid the lawyer’s retainers. A collaborative lawyer may be substituted for another collaborative lawyer. If this happens, an addendum will be added to the Agreement to indicate who the new attorney is and who they are representing.

Neutral Facilitator. ______________ is the Neutral Facilitator, a jointly retained team member who will assist everyone with communication and problem solving. The Neutral Facilitator is responsible for:

1. Helping the Clients identify their goals, interests and concerns;
2. Teaching or assisting the Clients in negotiation and problem-solving skills;
3. Teaching effective communication skills;
4. Helping the Collaborative Team members meet their responsibilities;
5. Assisting the Clients in recognizing and coordinating their parenting styles to enhance their future co-parenting relationship;
6. Assisting the Clients in making decisions that are based on their expressed goals, interests, and concerns, including decisions which address the best interests of their adult children.

Neutral Financial Professional. ______________ is the Neutral Financial Professional, a jointly retained team member. The objective of a Neutral Financial Professional (the “Neutral FP”) is to help gather financial information and help solve problems. A Neutral FP’s may:

1. Help Clients identify their goals, interests and concerns;
2. Help Clients gather and organize financial information;
3. Prepare a draft of an inventory of assets and liabilities;
4. Assist Clients with developing budgets;
5. Assist Clients to better understand their financial issues;
6. Assist the Collaborative Lawyers and Clients to address separate property and reimbursement claim issues;
7. Assist Clients with understanding options for property valuation; and

6.82
8. Assist Clients with developing, evaluating and negotiating options for financial settlement.

**Collaborative Assistant(s)** ______________ is/are the Collaborative Assistant(s). Collaborative Assistants are unpaid professionals or interns who aid the Collaborative Process. A Collaborative Assistant’s responsibilities may involve the following:

1. Taking minutes during meetings and phone calls;
2. Helping to coordinate the Clients’ and Collaborative Team’s schedules; and
3. Making copies and doing other administrative tasks during meetings.

**Others.** Other consultants or experts may be jointly retained as agreed upon by the Clients and their lawyers.

**II. GOAL**

We understand that "Collaborative Law" is the shared belief by participants that it is in the best interests of Clients in typical Family Law matters to commit themselves to avoiding litigation. We, therefore, agree to the Collaborative Law conflict resolution process, which relies on an atmosphere of honesty, cooperation, integrity and professionalism, geared toward ensuring the future well-being of the participants, rather than relying on a court-imposed resolution.

Our goal is to avoid the negative economic, social, and emotional consequences to the participants of protracted litigation.

We commit ourselves to the Collaborative Law Process and agree to use this process to resolve our differences fairly and equitably.

**III. PROCESS**

We will make every reasonable effort to settle our case without court intervention.

We agree to give full, prompt, honest and open disclosure of all information pertinent to our case, whether requested or not, in a timely manner.

We agree to engage in discussions, conferences, and negotiations with the goal of settling all issues.

**IV. PRESERVATION OF STATUS QUO**

We agree that starting immediately, neither Client will borrow against, cancel, transfer, dispose of, or change the beneficiaries of any pension, retirement plan or insurance policy or permit any existing coverage to change or lapse, including life, health, automobile and/or disability held for the benefit of either Client (or the child(ren)), without the prior written consent of the other Client.
We agree that starting immediately, neither Client will change any provisions of any existing trust or will or execute a new trust or will without the prior written consent of the other Client.

We agree that starting immediately, neither Client will sell, transfer, encumber, conceal, assign, remove or in any way dispose of any property, real or personal, belonging to or acquired by either Client, without the prior written consent of the other Client, except in the usual course of business or investing, payment of reasonable attorneys’ fees and costs, or for the necessities of life.

We agree that neither Client will incur any further debts that would burden the credit of the other, including but not limited to borrowing against any credit line secured by the marital residence, unreasonably using credit cards or cash advances against credit or bank cards or incurring any liabilities for which the other may be responsible, other than in the ordinary course of business or for the necessities of life, without the prior written consent of the other.

V. CAUTIONS

We understand that there is no guarantee that the process will be successful in resolving our case.

We understand that the process cannot eliminate concerns about the irreconcilable differences that have led to the current conflict.

We understand that we are each still expected to assert our own interests and that our respective attorneys will help each of us to do so.

We recognize that, while the attorneys share a commitment to the process described in this Agreement, (a) each of the lawyers has an attorney-client relationship solely with, and a professional duty to diligently represent, his or her client and not the other Client; (b) each of us must rely solely on the advice of our own lawyers and not the other Client’s lawyer; (c) each of the lawyers may have confidential and privileged communications with his/her client; and (d) such communications are not inconsistent with the collaborative process.

We understand that there are advantages as well as disadvantages to the Collaborative Law Process. Among the disadvantages are that (a) if the process breaks down and litigation ensues, the Clients will likely incur additional expense because of the need to hire new counsel; (b) by agreeing not to go to court, the Clients cannot use formal discovery procedures and therefore must trust in each other’s good faith about exchanging relevant documents and information; and (c) without the ability to use the authority of the court to prevent the transfer or dissipation of marital assets, the Clients must trust in each other’s honesty with regard to those assets.

VI. PROFESSIONALS’ FEES AND COSTS
We agree that both Clients' attorneys and the other professionals are entitled to be paid for their services, and an initial task in a collaborative matter is to ensure payment to each of them. We agree to make funds available from their marital or separate property, as needed, to pay these fees. We understand that, if necessary, one client may be asked to pay all fees (including fees of the other client's lawyer) from marital property managed solely by him or her or from separate funds. We agree that, to the extent possible, all fees and expenses incurred by both clients shall be paid in full prior to entry of a final judgment. Nonpayment of fees is cause for withdrawal by a Collaborative Team member, but not for a termination of the collaborative process.

VII. PARTICIPATION WITH INTEGRITY

We will work to protect the privacy and dignity of all involved, including Clients, children, attorneys and consultants.

We shall provide all documents requested, and we shall not destroy, remove, conceal, falsify, or otherwise impede access to requested documents. Further, we shall volunteer the existence of pertinent documents, even if not requested, and aid in the production of such documents.

We shall maintain a high standard of integrity and, specifically, shall not take advantage of each other or of the miscalculations or inadvertent mistakes of others, but shall acknowledge and correct them.

VIII. NEGOTIATION IN GOOD FAITH

The Clients acknowledge that each of our attorneys is independent from the other and represents only one Client in the Collaborative Law process.

We understand that the process, even with full and honest disclosure of all information pertinent to the resolution of our case, will involve vigorous good-faith negotiation.

We will take a reasoned position on all disputes. We will use our best efforts to create proposals that meet the fundamental needs of both of the Clients. We recognize that compromise may be needed in order to reach a settlement of all issues.

Although we may discuss the likely outcome of a litigated result, none of us will use the threat of litigation as a way of forcing settlement.

IX. THE CHILD/CHILDREN (If Applicable)

The Clients agree to make every effort to reach amicable solutions about sharing the enjoyment of and responsibility for the child/children that promote the child’s/children's best interests. The Clients agree to act quickly to mediate and resolve differences related to
the child/children to promote a caring, loving, and involved relationship between the child/children and both parents.

The Clients acknowledge that inappropriate communications regarding their divorce can be harmful to their child/children. They agree that settlement issues will not be discussed in the presence of their child/children, or that communication with the child/children regarding these issues will occur only if it is appropriate and done by mutual agreement, or with the assistance of the neutral facilitator or a child specialist. The Clients agree not to make any changes to the residence of the child/children without first obtaining the written agreement of the other Client.

X. IDENTIFICATION AND VALUATION DATE (If Applicable)

In recognition of the fact that the Parties are by agreement delaying the date of the filing of a Petition for Dissolution of Marriage, the Parties acknowledge and agree, with the intent to bind themselves and their attorneys now and in the future, that __________(DATE), shall be used by them, their attorneys, and the Court in lieu of the actual date of filing of a Petition for Dissolution of Marriage. Accordingly, this date will be used for the identification of their marital assets and liabilities; for the valuation of those marital assets and liabilities unless another date for the valuation of a particular asset or liability is agreed upon by the parties; or for any other purpose set forth in Chapter 61 and the case law interpreting same.

XI. CONFIDENTIALITY

The Clients agree that the entire Collaborative Law process, including all written submissions and communications, is confidential and without prejudice, and shall be treated as a compromise negotiation for the purposes of the rules of evidence and other relevant provisions of state and federal law. The Clients and Counsel will not disclose any information including offers, promises, conduct, statements or settlement terms whether oral or written, made by any of the Clients, their attorneys or any experts in connection with the Collaborative Law process, except where disclosure is required by law or court rule, and all such information shall be inadmissible at trial, provided however that no such information which is independently obtained and admissible shall be rendered confidential or inadmissible because it is referred to in the Collaborative Law process. The Clients and their counsel or the other jointly retained professionals may, however, disclose to appropriate authorities information obtained in the course of the Collaborative Law process concerning (a) child or elder abuse or neglect, (b) the risk of serious harm to an individual, or (c) the planned commission of a crime. The confidentiality provided for in this section of the Agreement also shall not apply to evidence relating to the liability of the attorneys or other team members in a subsequent suit against them or disciplinary proceedings against them; information which all Clients to the Collaborative Law process agree in writing, after the conclusion of the case, may be disclosed; and information about payment and payment arrangements for the Collaborative Law engagement. Further, this Participation Agreement is not confidential and may ultimately be filed with the Court.
The Clients agree that professional observers or collaborative assistants may be present during the Process for the purpose of training or aiding the process and will be held to the same confidentiality standards as the Collaborative Team. The Clients also agree that details of the case may be used for research, education, or training (or any combination of these), but only if information which might identify the family has been removed.

If subsequent litigation occurs, the Clients mutually agree that (a) neither Client will introduce as evidence in Court information disclosed during the Collaborative Law Process, offers or proposals for settlement, or other statements by any of the Clients to the Process or their attorneys, except this Agreement or documents that are otherwise discoverable; (b) neither Client will offer as evidence the testimony of either collaborative attorney, observer, or collaborative assistant, nor will they subpoena either of the lawyers, observers, or collaborative assistants to testify, in connection with this matter; and (c) neither Client will subpoena the production at any Court proceedings of any notes, records, or documents in the lawyer's possession; and (d) subpoena the production at any Court proceedings of any notes, records, or documents in the possession of the Neutral Financial Professional, Neutral Facilitator, or any other expert or consultant retained, unless the Clients otherwise agree in writing.

XII. VOLUNTARY TERMINATION OF COLLABORATIVE PROCESS

Either Client may unilaterally and without cause terminate the Collaborative Law Process by giving written notice of such election to his or her attorney the other Client, and other Team members.

Either attorney may withdraw unilaterally from the Collaborative Law Process by giving thirty (30) days written notice to his or her client and the other attorney. Notice of withdrawal of an attorney does not necessarily terminate the Collaborative Law Process; to continue the process, the Client whose attorney withdraws will seek to retain a new attorney who will agree in writing to be bound by this Agreement.

However, the Process may be ended by one of the collaborative lawyers if a client engages in any of the following behaviors and persists in doing so after counseling by the client's collaborative lawyer:

1. Refuses to disclose information, including the existence of documents, which in the collaborative lawyer's judgment must be provided to the other client or the Collaborative Team;
2. Answers dishonestly to any inquiry made by a client or member of the Collaborative Team;
3. Takes an action that results in compromising the integrity of the Process; or
4. Fails or refuses to take an action which failure or refusal compromises the integrity of the Process.

If the other client is aware of the behaviors or the refusal to disclose and requests continuing the Process, the lawyer may consider continuing the Process.
Upon termination of the collaborative process or withdrawal of either counsel, the withdrawing attorney will promptly cooperate to facilitate the transfer of the client’s file and any information needed for continued representation of the client to successor counsel.

Any termination of the process, whether by the clients or a professional, will have a 30 day “cool down” period to give the parties and professionals an opportunity to cure any problems and reengage in the collaborative process before either client files a contested pleading or contested court document. However, this cool down period will not be required in the event of an emergency or where emergency injunctive relief is required to preserve assets.

XIII. ABUSE OF THE COLLABORATIVE PROCESS

We enter the Collaborative Law Process with the expectation of honesty and full disclosure in all dealings by all individuals involved in the spirit of the collaborative process.

Each Client understands that his/her Collaborative Law attorney will withdraw from our case and terminate the process as soon as possible upon learning that his or her client has failed to uphold this Agreement or acted so as to undermine or take unfair advantage of the Collaborative Law Process. Such failure or abuse of the process would include the withholding or misrepresentation of information, the secret disposition of marital property, and the failure to disclose the existence or the true nature of assets, income, and/or obligations, or otherwise acting to undermine or take unfair advantage of the Collaborative Law Process.

XIV. DISQUALIFICATION BY COURT INTERVENTION

We understand that neither of our attorneys, nor other attorneys from the same firm, can ever represent us in court in a contested proceeding against the other spouse in connection with this matter.

In the event that a court filing is unavoidable prior to settlement, both attorneys will be disqualified from representing either client, except for filing and assenting to uncontested motions, stipulations, or petitions to which both Clients agree.

Any resort to litigation prior to settlement shall result in the automatic termination of the Collaborative Law Process on the date that either Client or his or her attorney unilaterally seeks court intervention, provided however that the provisions of this Agreement relating to confidentiality and disqualification/withdrawal of counsel shall remain in effect and subject to the 30 day cool down period.

In the event that the Collaborative Law Process terminates, all Neutral FPs, Neutral Facilitators, consultants, and experts will be disqualified as witnesses, and their work product will be inadmissible as evidence, unless the Clients agree otherwise in writing.
We acknowledge that, following settlement, our attorneys may represent us as counsel of record for purposes of filing a joint petition for an uncontested final judgment or uncontested temporary relief and at an uncontested hearing on our matter.

The disqualification clause survives execution of a settlement agreement and entry of a final judgment and is non-waivable.

Each term in this Agreement is separable. Accordingly, should any term(s) be found to be unenforceable, all other terms shall remain enforceable.

XV. PLEDGE

BOTH CLIENTS PLEDGE TO COMPLY WITH AND TO PROMOTE THE SPIRIT AND LETTER OF THIS AGREEMENT, UNLESS MODIFIED BY WRITTEN AGREEMENT SIGNED BY BOTH CLIENTS AND THEIR ATTORNEYS.

Date:       Date:

[Professionals' Acknowledgments Appear on the Following Page]
The following professionals acknowledge that they will participate in the collaborative process:

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Parenting coordination.—

(1) PURPOSE.—The purpose of parenting coordination is to provide a child-focused alternative dispute resolution process whereby a parenting coordinator assists the parents in creating or implementing a parenting plan by facilitating the resolution of disputes between the parents by providing education, making recommendations, and, with the prior approval of the parents and the court, making limited decisions within the scope of the court's order of referral.

(2) REFERRAL.—In any action in which a judgment or order has been sought or entered adopting, establishing, or modifying a parenting plan, except for a domestic violence proceeding under chapter 741, and upon agreement of the parties, the court’s own motion, or the motion of a party, the court may appoint a parenting coordinator and refer the parties to parenting coordination to assist in the resolution of disputes concerning their parenting plan.

(3) DOMESTIC VIOLENCE ISSUES.—
   (a) If there has been a history of domestic violence, the court may not refer the parties to parenting coordination unless both parents consent. The court shall offer each party an opportunity to consult with an attorney or domestic violence advocate before accepting the party’s consent. The court must determine whether each party’s consent has been given freely and voluntarily.
   (b) In determining whether there has been a history of domestic violence, the court shall consider whether a party has committed an act of domestic violence as defined s. 741.28, or child abuse as defined in s. 39.01, against the other party or any member of the other party’s family; engaged in a pattern of behaviors that exert power and control over the other party and that may compromise the other party’s ability to negotiate a fair result; or engaged in behavior that leads the other party to have reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence. The court shall consider and evaluate all relevant factors, including, but not limited to, the factors listed in s. 741.30(6)(b).
   (c) If there is a history of domestic violence, the court shall order safeguards to protect the safety of the participants, including, but not limited to, adherence to all provisions of an injunction for protection or conditions of bail, probation, or a sentence arising from criminal proceedings.

(4) QUALIFICATIONS OF A PARENTING COORDINATOR.—A parenting coordinator is an impartial third person whose role is to assist the parents in successfully creating or implementing a parenting plan. Unless there is a written agreement between the parties, the court may appoint only a qualified parenting coordinator.
   (a) To be qualified, a parenting coordinator must:
      1. Meet one of the following professional requirements:
         a. Be licensed as a mental health professional under chapter 490 or chapter 491.
b. Be licensed as a physician under chapter 458, with certification by the American Board of Psychiatry and Neurology.

c. Be certified by the Florida Supreme Court as a family law mediator, with at least a master’s degree in a mental health field.

d. Be a member in good standing of The Florida Bar.

2. Complete all of the following:
   a. Three years of postlicensure or postcertification practice.
   b. A family mediation training program certified by the Florida Supreme Court.
   c. A minimum of 24 hours of parenting coordination training in parenting coordination concepts and ethics, family systems theory and application, family dynamics in separation and divorce, child and adolescent development, the parenting coordination process, parenting coordination techniques, and Florida family law and procedure, and a minimum of 4 hours of training in domestic violence and child abuse which is related to parenting coordination.

   (b) The court may require additional qualifications to address issues specific to the parties.

   (c) A qualified parenting coordinator must be in good standing, or in clear and active status, with his or her respective licensing authority, certification board, or both, as applicable.

5) DISQUALIFICATIONS OF PARENTING COORDINATOR.—

   (a) The court may not appoint a person to serve as parenting coordinator who, in any jurisdiction:

   1. Has been convicted or had adjudication withheld on a charge of child abuse, child neglect, domestic violence, parental kidnapping, or interference with custody;

   2. Has been found by a court in a child protection hearing to have abused, neglected, or abandoned a child;

   3. Has consented to an adjudication or a withholding of adjudication on a petition for dependency; or

   4. Is or has been a respondent in a final order or injunction of protection against domestic violence.

   (b) A parenting coordinator must discontinue service as a parenting coordinator and immediately report to the court and the parties if any of the disqualifying circumstances described in paragraph (a) occur, or if he or she no longer meets the minimum qualifications in subsection (4), and the court may appoint another parenting coordinator.

6) FEES FOR PARENTING COORDINATION.—The court shall determine the allocation of fees and costs for parenting coordination between the parties. The court may not order the parties to parenting coordination without their consent unless it determines that the parties have the financial ability to pay the parenting coordination fees and costs.

   (a) In determining if a nonindigent party has the financial ability to pay the parenting coordination fees and costs, the court shall consider the party’s financial circumstances, including income, assets, liabilities, financial obligations, resources, and whether paying the fees and costs would create a substantial hardship.

   (b) If a party is found to be indigent based upon the factors in s. 57.082, the court may not order the party to parenting coordination unless public funds are available to pay the indigent party’s allocated portion of the fees and costs or the nonindigent party consents to paying all of the fees and costs.

7) CONFIDENTIALITY.—Except as otherwise provided in this section, all communications made by, between, or among the parties and the parenting coordinator during parenting coordination sessions are confidential. The parenting coordinator and each party designated in the order appointing the coordinator may not testify or offer evidence about communications made by, between, or among the parties and the parenting coordinator during parenting coordination sessions, except if:

   (a) Necessary to identify, authenticate, confirm, or deny a written agreement entered into by the
parties during parenting coordination;
(b) The testimony or evidence is necessary to identify an issue for resolution by the court without otherwise disclosing communications made by any party or the parenting coordinator;
(c) The testimony or evidence is limited to the subject of a party's compliance with the order of referral to parenting coordination, orders for psychological evaluation, counseling ordered by the court or recommended by a health care provider, or for substance abuse testing or treatment;
(d) The parenting coordinator reports that the case is no longer appropriate for parenting coordination;
(e) The parenting coordinator is reporting that he or she is unable or unwilling to continue to serve and that a successor parenting coordinator should be appointed;
(f) The testimony or evidence is necessary pursuant to paragraph (5)(b) or subsection (8);
(g) The parenting coordinator is not qualified to address or resolve certain issues in the case and a more qualified coordinator should be appointed;
(h) The parties agree that the testimony or evidence be permitted; or
(i) The testimony or evidence is necessary to protect any person from future acts that would constitute domestic violence under chapter 741; child abuse, neglect, or abandonment under chapter 39; or abuse, neglect, or exploitation of an elderly or disabled adult under chapter 825.

(8) REPORT OF EMERGENCY TO COURT.—
(a) A parenting coordinator must immediately inform the court by affidavit or verified report without notice to the parties of an emergency situation if:
1. There is a reasonable cause to suspect that a child will suffer or is suffering abuse, neglect, or abandonment as provided under chapter 39;
2. There is a reasonable cause to suspect a vulnerable adult has been or is being abused, neglected, or exploited as provided under chapter 415;
3. A party, or someone acting on a party's behalf, is expected to wrongfully remove or is wrongfully removing the child from the jurisdiction of the court without prior court approval or compliance with the requirements of s. 61.13001. If the parenting coordinator suspects that the parent has relocated within the state to avoid domestic violence, the coordinator may not disclose the location of the parent and child unless required by court order.
(b) Upon such information and belief, a parenting coordinator shall immediately inform the court by affidavit or verified report and serve a copy on each party of an emergency in which a party obtains a final order or injunction of protection against domestic violence or is arrested for an act of domestic violence as provided under chapter 741.

(9) LIMITATION ON LIABILITY.—A parenting coordinator appointed by the court is not liable for civil damages for any act or omission in the scope of his or her duties pursuant to an order of referral unless such person acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for the rights, safety, or property of the parties.

History.—s. 2, ch. 2009-180.
## Rules for Qualified and Court-Appointed Parenting Coordinators

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- RULE 15.050. ADVICE, RECOMMENDATIONS, AND INFORMATION
  
- RULE 15.060. IMPARTIALITY
  
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**PART II. DISCIPLINE**

- RULE 15.210. PROCEDURE

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July 7, 2014 Rules for Qualified and Court-Appointed Parenting Coordinators
CITATIONS TO OPINIONS ADOPTING OR AMENDING RULES

ORIGINAL ADOPTION, effective 7-3-14: 39 FLW S470.

OTHER OPINIONS:
NOTE TO USERS: Rules are current through 39 FLW S470. Subsequent amendments, if any, can be found at www.floridasupremecourt.org/decisions/rules.shtml.
Part I. STANDARDS

RULE 15.000. APPLICABILITY OF STANDARDS

These standards apply to all qualified parenting coordinators and court-appointed parenting coordinators. A qualified parenting coordinator is anyone who is qualified to serve as a parenting coordinator pursuant to the parenting coordination section of Chapter 61, Florida Statutes, and has been approved by the court to serve as a qualified parenting coordinator or to be on a qualified parenting coordination panel for any circuit.

RULE 15.010. PARENTING COORDINATION DEFINED

Parenting coordination is a child-focused alternative dispute resolution process whereby a parenting coordinator assists the parents in creating or implementing a parenting plan by facilitating the resolution of disputes between the parents by providing education, making recommendations, and, with the prior approval of the parents and the court, making limited decisions within the scope of the court’s order of referral. For the purposes of these standards, “parent” refers to the child’s mother, father, legal guardian, or other person who is acting as a parent and guardian.

RULE 15.020. PARENTING COORDINATION CONCEPTS

Parenting coordination is a child-focused alternative dispute resolution process that emphasizes the needs and interests of children, parents and families. It is based on the concepts of communication, education, negotiation, facilitation, and problem-solving. The role of a parenting coordinator includes the integration of skills and core knowledge drawn primarily from the areas of mental health, law, and conflict resolution.

RULE 15.030. COMPETENCE

(a) Professional Competence. Parenting coordinators shall acquire and maintain professional competence in parenting coordination. A parenting coordinator shall regularly participate in educational activities promoting professional growth.
(b) **Circumstances Affecting Role.** Parenting coordinators shall withdraw from the parenting coordination role if circumstances arise which impair the parenting coordinators’ competency.

(c) **Skill and Experience.** A parenting coordinator shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the parenting coordinator’s skill or experience.

(d) **Knowledge.** A parenting coordinator shall maintain knowledge of all current statutes, court rules, local court rules, and court and administrative orders relevant to the parenting coordination process.

**RULE 15.040. INTEGRITY**

(a) **Avoiding Dual Relationships.** A parenting coordinator shall not accept the role of parenting coordinator if there has been a prior personal, professional or business relationship with the parties or their family members. A parenting coordinator shall not enter into a personal, professional or business relationship with the parties or their family members during the parenting coordination process or for a reasonable time after the parenting coordination process has concluded.

(b) **Respect for Diversity.** Parenting coordinators shall not allow their personal values, morals, or religious beliefs to undermine or influence the parenting coordination process or their efforts to assist the parents and children. If the parenting coordinator has personal, moral, or religious beliefs that will interfere with the process or the parenting coordinator’s respect for persons involved in the parenting coordination process, the parenting coordinator shall decline the appointment or withdraw from the process.

(c) **Inappropriate Activity.** Parenting coordinators shall not engage in any form of harassment or exploitation of parents, children, students, trainees, supervisees, employees, or colleagues.

(d) **Misrepresentation.** A parenting coordinator shall not intentionally or knowingly misrepresent any material fact or circumstance in the course of conducting a parenting coordination process.

(e) **Demeanor.** A parenting coordinator shall be patient, dignified, and courteous during the parenting coordination process.
(f) **Maintaining Integrity.** A parenting coordinator shall not accept any engagement, provide any service, or perform any act that would compromise the parenting coordinator's integrity.

(g) **Avoiding Coercion.** A parenting coordinator shall not unfairly influence the parties as a means to achieve a desired result.

**Committee Notes**

Any sexual relationship between a parenting coordinator and a party or a party's family member is a form of exploitation and creates a dual relationship and therefore would be considered a violation of these standards.

A parenting coordinator may at times direct a party's conduct. An example is when a parenting coordinator encourages compliance with a parenting plan by pointing out possible consequences of a party's course of action. However, the means to direct behavior should not include unfairly influencing the parties. Examples of unfairly influencing the parties include lying to the parties or exaggerating the parenting coordinator's power to influence the court.

**RULE 15.050. ADVICE, RECOMMENDATIONS, AND INFORMATION**

(a) **Informing Parties of Risks.** Prior to a parenting coordinator making substantive recommendations to the parties regarding timesharing and parental responsibilities, the parenting coordinator should inform the parties of the inherent risk of making substantive recommendations without adequate data.

(b) **Right to Independent Counsel.** When a parenting coordinator believes a party does not understand or appreciate the party's legal rights or obligations, the parenting coordinator shall advise the party of the right to seek independent legal counsel.

**RULE 15.060. IMPARTIALITY**

(a) **Freedom from Favoritism and Bias.** A parenting coordinator shall conduct the parenting coordination process in an impartial manner. Impartiality means freedom from favoritism or bias in word, action, and appearance.

(b) **Disclosure.** A parenting coordinator shall advise all parties of circumstances which may impact impartiality including but not limited to potential conflicts of interest bearing on possible bias, prejudice, or impartiality.

(c) **Influence.** A parenting coordinator shall not be influenced by outside pressure, bias, fear of criticism, or self-interest.
(d) **Gifts.** A parenting coordinator shall not give, accept or request a gift, favor, loan, or other item of value to or from a party, attorney, or any other person involved in and arising from any parenting coordination process.

(e) **Prohibited Relationships.** After accepting appointment, and for a reasonable period of time after the parenting coordination process has concluded, a parenting coordinator shall avoid entering into family, business, or personal relationships which could affect impartiality or give the appearance of partiality, bias, or influence.

(f) **Withdrawal.** A parenting coordinator shall withdraw from a parenting coordination process if the parenting coordinator can no longer be impartial.

**RULE 15.070. CONFLICTS OF INTEREST**

(a) **Generally.** A parenting coordinator shall not serve as a parenting coordinator in a matter that presents a clear or undisclosed conflict of interest. A conflict of interest arises when any relationship between the parenting coordinator and the parenting coordination participants or the subject matter of the dispute compromises or appears to compromise the parenting coordinator’s impartiality.

(b) **Disclosure.** The burden of disclosure rests on the parenting coordinator. All such disclosures shall be made as soon as practical after the parenting coordinator becomes aware of the interest or relationship. After appropriate disclosure, the parenting coordinator may serve if all parties agree. However, if a conflict of interest clearly impairs a parenting coordinator’s impartiality, the parenting coordinator shall withdraw regardless of the express agreement of the parties.

(c) **Solicitation Prohibited.** A parenting coordinator shall not use the parenting coordination process to solicit, encourage, or otherwise incur future professional services with any party.

**Committee Notes**

The parenting coordination process may take place over a long period of time. Therefore, the parenting coordinator may initially accept an appointment where a potential conflict does not exist, but arises during the course of the parenting coordination process.

The disclosure requirements in this subdivision do not abrogate subdivision 15.040 (a) which prohibits a parenting coordinator from accepting the role of parenting coordinator if there has been a prior personal, professional or business relationship with the parties’ or their family members. It is intended to address situations in
which the conflict arises after the acceptance of appointment and encourage the timely disclosure to the parties.

RULE 15.080. SCHEDULING THE PARENTING COORDINATION PROCESS

A parenting coordinator shall schedule parenting coordination sessions in a manner that provides adequate time for the process. A parenting coordinator shall perform parenting coordination services in a timely fashion, avoiding delays whenever possible.

RULE 15.090. COMPLIANCE WITH AUTHORITY

A parenting coordinator shall comply with all statutes, court rules, local court rules, and court and administrative orders relevant to the parenting coordination process.

RULE 15.100. IMPROPER INFLUENCE

A parenting coordinator shall refrain from any activity that has the appearance of improperly influencing a court to secure an appointment to a case.

RULE 15.110. MARKETING PRACTICES

(a) False or Misleading Marketing Practices. A parenting coordinator shall not engage in any marketing practice, including advertising, which contains false or misleading information. A parenting coordinator shall ensure that any marketing of the parenting coordinator’s qualifications, services to be rendered, or the parenting coordination process is accurate and honest.

(b) Qualification. Any marketing practice in which a parenting coordinator indicates that such parenting coordinator is “qualified” is misleading unless the parenting coordinator indicates the Florida judicial circuits in which the parenting coordinator has been qualified.

(c) Prior Adjudicative Experience. Any marketing practice is misleading if the parenting coordinator states or implies that prior adjudicative experience, including, but not limited to, service as a judge, magistrate, or administrative hearing officer, makes one a better or more qualified parenting coordinator.
(d) **Prohibited Claims or Promises.** A parenting coordinator shall not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

(e) **Additional Prohibited Marketing Practices.** A parenting coordinator shall not engage in any marketing practice that diminishes the importance of a party’s right to self-determination or the impartiality of the parenting coordinator, or that demeans the dignity of the parenting coordination process or the judicial system.

**Committee Note**

The roles of a parenting coordinator and an adjudicator are fundamentally distinct. The integrity of the judicial system may be impugned when the prestige of the judicial office is used for commercial purposes. When engaging in any parenting coordinator marketing practice, a former adjudicative officer should not lend the prestige of the judicial office to advance private interests in a manner inconsistent with this rule. For example, the depiction of a parenting coordinator in judicial robes or use of the word “judge” with or without modifiers to the parenting coordinator’s name would be inappropriate. However, an accurate representation of the parenting coordinator’s judicial experience would not be inappropriate.

**RULE 15.120. CONCURRENT STANDARDS**

Other ethical standards to which a parenting coordinator may be professionally bound are not abrogated by these rules. In the course of performing parenting coordination services, however, these rules prevail over any conflicting ethical standards to which a parenting coordinator may otherwise be bound.

**RULE 15.130. RELATIONSHIP WITH OTHER PROFESSIONALS**

A parenting coordinator shall respect the role of other professional disciplines in the parenting coordination process and shall promote cooperation between parenting coordinators and other professionals.

**RULE 15.140. CONFIDENTIALITY**

(a) **Preservation of Confidentiality.** A parenting coordinator shall maintain confidentiality of all communications made by, between, or among the parties and the parenting coordinator except when disclosure is required or permitted by law or court order. The parenting coordinator shall maintain confidentiality of all records developed or obtained during the parenting coordination process in accordance with law or court order.
(b) Use of Materials for Educational Purposes. A parenting coordinator shall not disclose the identity of the parents, children, or other persons involved in the parenting coordination process when information is used in teaching, writing, consulting, research, and public presentations.

(c) Record Keeping. A parenting coordinator shall maintain privacy in the storage and disposal of records and shall not disclose any identifying information when materials are used for research, training, or statistical compilations.

RULE 15.150. NOTICE AND INITIAL SESSION

(a) Notice of Fees. Prior to an initial meeting with the parties in a parenting coordination session, the parenting coordinator shall provide written notice of all fees, costs, methods of payment and collection.

(b) Initial Session. At the initial session a parenting coordinator shall, in person, describe the terms of the Order of Referral, if any, and inform the participants in writing of the following:

   (1) the parenting coordination process, the role of the parenting coordinator and the prohibition against dual roles;
   
   (2) parenting coordination is an alternative dispute resolution process wherein a parenting coordinator assists parents in creating or implementing a parenting plan;
   
   (3) the parenting coordinator may provide education and make recommendations to the parties, and, with prior approval of the parents and the court, make non-substantive decisions;
   
   (4) communications made during the parenting coordination session are confidential, except where disclosure is required or permitted by law;
   
   (5) all fees, costs, methods of payment, and collections related to the parenting coordination process;
   
   (6) the court’s role in overseeing the parenting coordination process, including a party’s right to seek court intervention;
   
   (7) the party’s right to seek legal advice; and
(8) the extent to which parties are required to participate in the parenting coordination process.

RULE 15.160. FEES AND COSTS

A parenting coordinator holds a position of trust. Fees shall be reasonable and be guided by the following general principles:

(a) Changes in Fees, Costs, or Payments. Once services have begun, parenting coordinators shall provide advance written notice of any changes in fees or other charges.

(b) Maintenance of Financial Records. Parenting coordinators shall maintain the records necessary to support charges for services and expenses, and, upon request, shall make an accounting to the parents, their counsel, or the court.

(c) Equitable Service. Parenting coordinators shall provide the same quality of service to all parties regardless of the amount of each party’s financial contribution.

(d) Basis for Charges. Charges for parenting coordination services based on time shall not exceed actual time spent or allocated.

(e) Costs. Charges for costs shall be for those actually incurred.

(f) Expenses. When time or expenses involve two or more parenting coordination processes on the same day or trip, the time and expense charges shall be prorated appropriately.

(g) Written Explanation of Fees. A parenting coordinator shall give the parties and their counsel a written explanation of any fees and costs prior to the parenting coordination process. The explanation shall include the:

1. basis for and amount of any charges for services to be rendered, including minimum fees and travel time;

2. amount charged for the postponement or cancellation of parenting coordination sessions and the circumstances under which such charges will be assessed or waived;

3. basis and amount of charges for any other items; and
(4) parties' pro rata share of the parenting coordinator’s fees and costs if previously determined by the court or agreed to by the parties.

(h) Maintenance of Records. A parenting coordinator shall maintain records necessary to support charges for services and expenses and, upon request, shall make an accounting to the parties, their counsel, or the court.

(i) Remuneration for Referrals. No commissions, rebates, or similar remuneration shall be given or received by a parenting coordinator for a parenting coordination referral.

(j) Contingency Fees Prohibited. A parenting coordinator shall not charge a contingent fee or base a fee on the outcome of the process.

RULE 15.170. RECORDS

(a) Documentation of Parenting Coordination Process. Parenting coordinators shall maintain all information and documents related to the parenting coordination process.

(b) Record Retention. Parenting coordinators shall maintain confidentiality and comply with applicable law when storing and disposing of parenting coordination records.

(c) Relocation or Closing the Parenting Coordination Practice. A parenting coordinator shall provide public notice of intent to relocate or close his or her practice. The notification shall include instructions on how parties’ may obtain a copy of their records or arrange for their records to be transferred.

RULE 15.180. SAFETY, CAPACITY, AND PROTECTION

(a) Monitoring. Parenting coordinators shall monitor the process for domestic violence, substance abuse, or mental health issues and take appropriate action to address any safety concerns.

(b) Injunctions for Protection. Parenting coordinators shall honor the terms of all active injunctions for protection and shall not seek to modify the terms of an injunction.
(c) **Terminating Process Based on Safety Concerns.** Parenting coordinators shall suspend the process and notify the court when the parenting coordinator determines it is unsafe to continue.

(d) **Adjournment or Termination.** A parenting coordinator shall adjourn or terminate a parenting coordination process if any party is incapable of participating meaningfully in the process.

**RULE 15.190. EDUCATION AND TRAINING**

Parenting coordinators shall comply with any statutory, rule or court requirements relative to qualifications, training, and education.

**RULE 15.200. RESPONSIBILITY TO THE COURTS**

(a) **Candid with Referring Court.** Parenting coordinators shall be candid, accurate, and responsive to the court concerning the parenting coordinators’ qualifications, availability and other administrative matters.

(b) **Providing Information to the Court.** When parenting coordinators provide information to the court, parenting coordinators shall do so in a manner that is consistent with court rules and statutes. Parenting coordinators shall notify the referring court when the court orders conflict with the parenting coordinator’s professional ethical responsibilities. Parenting coordinators shall notify the court when it is appropriate to terminate the process. A parenting coordinator shall be candid, accurate, and fully responsive to the court concerning the parenting coordinator’s qualifications, availability, and other administrative matters.

**Part II. DISCIPLINE**

**RULE 15.210. PROCEDURE**

Any complaint alleging violations of the Rules For Qualified And Court-Appointed Parenting Coordinators, Part I: STANDARDS, shall be filed with the Dispute Resolution Center which shall be responsible for enforcing these Standards.
ORDER OF REFERRAL TO PARENTING COORDINATOR

The Court considered the ( ) motion of the court, ( ) joint motion of the parties, ( ) motion of a party, reviewed the court file, and considered the testimony presented. Based upon this information, the court FINDS that:

A. Appropriateness of Process. This matter is appropriate for parenting coordination and it is in the best interest of the child(ren).

B. Parenting Coordination Process. Parenting coordination is a child-focused alternative dispute resolution process whereby a parenting coordinator assists the parents in creating or implementing their parenting plan by facilitating the resolution of disputes, providing education and making recommendations to the parents; and, with the prior consent of the parents and approval of the court, making limited decisions within the scope of this order of referral.

C. Parenting Coordinator. A parenting coordinator is an impartial third person whose role is to assist the parents in successfully creating or implementing a parenting plan.

D. Selection of Parenting Coordinator. The parenting coordinator was selected by:

[Choose only one]

_____ parties' agreement.

_____ the court.

E. History of Domestic Violence. Based on testimony and evidence presented and a review of related court records, the court has determined:

[Choose all that apply]

_____ There is no history of domestic violence.

_____ There has been a history of domestic violence, and:

1. _____ Each party has had an opportunity to consult with an attorney or domestic violence advocate before this court has accepted the parties' consent; and
2. Each party has consented to this referral and the consent has been given freely and voluntarily.

It is therefore, ORDERED:

1. **Parenting Coordinator.** The parties are referred to the following parenting coordinator for an initial period of _______ months:

   Name: ____________________________
   Address: ____________________________
   Telephone: __________________________
   Fax Number: __________________________
   Email: __________________________

   a. The parenting coordinator shall file a response to this Order within 30 days either accepting or declining the appointment. The response to the appointment must be in substantial compliance with Florida Family Law Rules of Procedure Form 12.984(b).

   b. The parties or their attorneys must provide to the parenting coordinator copies of all pleadings and orders related to domestic violence and any other pleadings and orders requested by the parenting coordinator related to parenting coordination.

2. **Meetings.** Unless prohibited herein as a domestic violence safeguard or by another court order, the parenting coordinator may meet with the parties and/or child(ren) together or separately, in person or by any electronic means.

3. **Domestic Violence Safeguards.** The parties shall adhere to all provisions of any injunction for protection or conditions of bail, probation, or a sentence arising from criminal proceedings. In addition to any safety measures the parenting coordinator deems necessary, the following domestic violence safeguards must be implemented:

   [Choose all that apply]
   ______ None are necessary.
   ______ No joint meetings
   ______ No direct negotiations
   ______ No direct communications
   ______ Other: ____________________________

4. **Role, Responsibility, and Authority of Parenting Coordinator.** The parenting coordinator shall have the following role, responsibility, and authority:

   a. Assisting the parents in creating and implementing a parenting plan.

   b. Facilitating the resolution of disputes regarding the creation or implementation of the Parenting Plan.
c. Recommending to the parents strategies for creating or implementing the Parenting Plan. Such recommendations may include that one or both parents avail themselves of accessible and appropriate community resources, including, but not limited to, random drug screens, parenting classes, and individual psychotherapy or family counseling, if there is a history or evidence that such referrals are appropriate.

d. Recommending to the parents changes to the Parenting Plan.

e. Educating the parties to effectively:
   i. Parent in a manner that minimizes conflicts;
   ii. Communicate and negotiate with each other and their child(ren);
   iii. Develop and apply appropriate parenting skills;
   iv. Understand principles of child development and issues facing child(ren) when their parents no longer live together;
   v. Disengage from the other parent when engagement leads to conflicts and non-cooperation;
   vi. Identify the sources of their conflict with each other and work jointly to minimize conflict and lessen its deleterious effects on the child(ren); and,
   vii. Allow the child(ren) to grow up free from the threat of being caught in the middle of their parents' disputes.

f. Reporting or communicating with the court concerning nonconfidential matters as provided in paragraph 6 of this Order. In the event the parenting coordinator is unable to adequately perform the duties in accordance with the court's direction, the parenting coordinator shall file a written request for a status conference and the court shall set a timely status hearing. The request for status conference must be in substantial compliance with Florida Family Law Rules of Procedure Form 12.984(d). A report to the court of an emergency pursuant to section 61.125(8), Florida Statutes, must be in substantial compliance with Florida Family Law Rules of Procedure Form 12.984(c).

g. Communicating with the parties and their child(ren), separately or together, in person or by telephone, unless otherwise prohibited by court order or applicable law.

5. Fees and Costs for Parenting Coordination.
[Choose all that apply]

a. _____ The parties have consented to this referral to parenting coordination.
   _____ This order is without the consent of the parties, but the court has determined that the parties have the financial ability to pay the parenting coordination fees and costs.

b. _____ The court allocates payment of fees and costs for parenting coordination as follows:
   Hourly rate of compensation shall not exceed $__________, unless the parties otherwise agree.
   _____ % shall be paid by the Father.
   _____ % shall be paid by the Mother.
   _____ Other: ____________________________

6.108
Florida Family Law Rules of Procedure Form 12.984(a), Order of Referral to Parenting Coordinator (07/14)
If a party causes the parenting coordinator to expend an unreasonable and unnecessary amount of time, that party may be held solely responsible for payment of the parenting coordinator's fees and costs for such time expended, and the court reserves jurisdiction to reallocate the payment of fees and costs in that event. Failure to pay the parenting coordinator's fees and costs in a timely manner may subject the party to sanctions for contempt of court.

6. **Confidentiality.** All communications made by, between, or among the parties and the parenting coordinator during parenting coordination sessions are confidential. The parenting coordinator and each party may not testify or offer evidence about communications made by a party or the parenting coordinator during the parenting coordination sessions, except if:

a. Necessary to identify, authenticate, confirm, or deny a written agreement entered into by the parties during parenting coordination.

b. The testimony or evidence is necessary to identify an issue for resolution by the court without otherwise disclosing communications made by any party or the parenting coordinator.

c. The testimony or evidence is limited to the subject of a party's compliance with this Order of Referral to Parenting Coordinator, orders for psychological evaluation, counseling ordered by the court or recommended by a health care provider, or for substance abuse testing or treatment.

d. The parenting coordinator reports that the case is no longer appropriate for parenting coordination.

e. The parenting coordinator reports that he or she is unable or unwilling to continue to serve and that a successor parenting coordinator should be appointed.

f. The testimony or evidence is necessary pursuant to section 61.125(5)(b) or section 61.125(8), Florida Statutes.

g. The parenting coordinator is not qualified to address or resolve certain issues in the case and a more qualified coordinator should be appointed.

h. The parties agree that the testimony or evidence be permitted.

i. The testimony or evidence is necessary to protect any person from future acts that would constitute domestic violence under Chapter 741, Florida Statutes; child abuse, neglect, or abandonment under Chapter 39, Florida Statutes; or abuse, neglect, or exploitation of an elderly or disabled adult under Chapter 825, Florida Statutes.

7. **Agreement on Nonconfidentiality.** The parties can agree to waive confidentiality of a specific communication or all communications. The waiver must be in writing, signed by the parties and their respective counsel. The waiver shall be filed with the court and a copy served on the parenting coordinator. Either party may revoke their waiver of confidentiality by providing written notice signed by that party. The revocation shall be filed with the court and a copy served on the other party and the parenting coordinator.
8. **Scheduling.** Each party shall contact the parenting coordinator within 10 days of the date of this Order to schedule the first appointment. The parenting coordinator shall determine the schedule for subsequent appointments.

9. **Stipulation.** Any written stipulation of parties to utilize the parenting coordination process filed with this court is incorporated into this Order.

ORDERED ON {date} ________________________.

_____________________________________
CIRCUIT JUDGE

Copies to:

_____ Petitioner

_____ Attorney for Petitioner

_____ Respondent

_____ Attorney for Respondent

_____ Other: ______________________________
IN RE: PROCEDURES GOVERNING CERTIFICATION OF MEDIATORS

ADMINISTRATIVE ORDER

Chapter 44, Florida Statutes, places in the Supreme Court of Florida the responsibility for certifying all persons who are eligible to receive court referrals for mediation. Pursuant to Article V, section 2(a) of the Florida Constitution, and Chapter 44, Florida Statutes, the Court adopted rules 10.100, 10.105 and 10.110, Florida Rules for Certified and Court-Appointed Mediators, specifying the requirements for such mediators.

This administrative order is adopted to update In Re: Procedures Governing Certification of Mediators, No. AOSC08-23 (Fla. June 30, 2008), which governs the certification process for mediators, and to incorporate the provisions of In Re: Amendments to the Florida Rules of Appellate Procedure and The Florida Rules for Certified and Court-Appointed Mediators, 41 So. 3d 161 (Fla. July 1, 2010), which provides for appellate mediation certification. The provisions of this order supersede all previous orders on this subject.
I. Initial Certification

A. Application

The certification application provided by the Dispute Resolution Center (hereinafter “Center”) shall be completed by all individuals seeking certification, in accordance with the following procedures:

The Center shall provide, to all individuals who have successfully completed a certified mediation training program, an application and information on the certification requirements.

An application shall be complete upon filing. However, if incomplete upon filing, such incomplete application may not remain pending for a period longer than one year. Any application pending more than one year from the date of original filing shall be denied and returned to the applicant. The one-year period shall be tolled during any review by the Center or Mediator Qualifications Board.

Any material misrepresentation by the applicant in the application process shall be automatically referred to the Mediator Qualifications Board.

B. Certification Requirements

To obtain certification, applicants for county, family, circuit, and dependency mediator certification shall meet all certification requirements in rules 10.100, 10.105 and 10.110, Florida Rules for Certified and Court-Appointed
Mediators, and this order. Applicants for appellate mediator certification shall meet all certification requirements in rules 10.100 and 10.110, Florida Rules for Certified and Court-Appointed Mediators, and this order.

**Point Categories**

**Mediation Training.** Applicants must complete a Florida Supreme Court certified training program for the type of mediation for which they are seeking certification. To qualify as a Florida Supreme Court certified training program, a training program must satisfy all of the requirements of *In Re: Mediation Training Standards and Procedures*, No. AOSC10-51 (Fla. Sept. 17, 2010), or any successor order.

Applicants shall have completed the requisite certified mediation training program within two years immediately preceding the date of application.

An exception to the requirement that certified appellate mediation training be completed in the two years immediately preceding application will be given to applicants who completed an appellate mediation training program conducted by the Fifth District Court of Appeal in the 10 years preceding the adoption of this order; who were certified in circuit, family, or dependency mediation at the time of training and have been continuously certified in any of the three underlying certifications since that time; and who apply for appellate mediator certification on or before December 31, 2012.
**Education/Mediation Experience.** Any applicant relying on an educational degree shall provide evidence of such degree in the form of a formal transcript mailed directly from the educational institution to the Center. Such applicant must also enclose a copy of the diploma evidencing the completion of the course of study and the degree. In the event that such documentation is unavailable, the applicant must submit another form of appropriate documentation, such as a sworn affidavit.

Any applicant relying on years of mediation experience shall include an affidavit attesting to such experience.

**Mentorship.** Mentorship shall include observing mediations conducted by certified mediators and conducting mediations under the supervision and observation of certified mediators. The mentorship requirements for those seeking certification shall be performed in a manner consistent with the following requirements:

The responsibility of structuring a mentorship rests with each trainee. The trainee shall not receive any fees for any case which the trainee utilizes to complete the required mentorship.

All duly certified mediators are required to allow, upon request, a minimum of two mediation observations or supervised mediations per year. The certified mediator shall not charge the trainee any fees to observe...
mediation conducted by the certified mediator, but may charge a reasonable fee for observing and supervising a trainee while the trainee conducts mediation. In addition, the certified mediator shall be entitled to any compensation paid for the mediation.

The certified mediator shall remain in control of the case.

For an applicant to be awarded mentorship points the applicant must work with at least two different certified mediators and the mediations involved must be of the type for which certification is sought.

The confidentiality and privileges provided in the Mediation Confidentiality and Privilege Act, sections 44.401-44.406, Florida Statutes, shall apply when a trainee serves as a mediator, co-mediator, or observer.

State-funded trial court mediation programs shall assist trainees in completing their mentorship requirements.

Applicants shall provide original signatures of all mentors in relation to all mentorship activity claimed.

A trainee shall not fulfill any of the mentorship requirements before beginning the certified mediation training program which will be used for the pending application. The observation requirement may be completed prior to the conclusion of the certified mediation training program; however, in no case shall an observation which is part of the training be used to fulfill -5-
the observation requirements for certification. A supervised mediation shall only be conducted by a trainee after the completion of a certified mediation training program.

Mediation Observations

For each observation required for certification, the trainee must observe an entire session of the type of mediation for which certification is sought, conducted by a certified mediator in the same category for which certification is sought. The observation requirement shall not be satisfied by any individual who is a party, participant, or representative in the mediation. An appellate or pre-suit mediation may be utilized for observation purposes if (1) it is or would have been the type of mediation for which certification is sought if it had been filed in a trial court and (2) if it is conducted by a certified mediator of the type for which certification is sought. A federal court mediation conducted by a certified circuit court mediator may be utilized to fulfill a circuit court mentorship. Administrative agency mediations conducted under rules and procedures other than those of the state trial courts may not be utilized to fulfill the mentorship requirements. Because appellate certification requires an underlying certification in family, circuit, or dependency mediation, there is no additional mentorship requirement for appellate certification.
Supervised Mediations

A supervised mediation is defined as one in which the trainee conducts a mediation under the supervision and observation of a certified mediator or the trainee co-mediates with a certified mediator. At the conclusion of the mediation, the mentor shall determine if the trainee made a substantial contribution to the mediation. If so, the case may qualify as a "supervised" mediation. If not, the case will qualify only as an observation.

For purposes of conducting supervised mediations, mediation is defined as a complete case, which may consist of multiple sessions. The entire mediation shall be co-mediated or observed by a certified mediator of the type for which certification is sought. In the event the trainee is only able to participate in a single session of a multi-session mediation, such participation qualifies as an observation regardless of the trainee's level of participation. An appellate or pre-suit mediation may be utilized for the requirements to conduct mediations under supervision and observation if (1) it is or would have been the type of mediation for which certification is sought if it had been filed in a trial court and (2) it is conducted by a certified mediator of the type for which certification is sought. A federal court mediation conducted by a certified circuit court mediator may be utilized to fulfill a circuit court mentorship. Administrative agency mediation
conducted under rules and procedures other than those of the state trial courts may not be utilized to fulfill the mentorship requirements.

**Miscellaneous Points.** Any applicant requesting certification points on the basis of licensure in a profession shall provide all applicable information necessary for the Center to verify such licensure.

Any applicant requesting certification on the basis of specific experience shall provide a resume detailing the experience and any other information necessary for the Center to verify such experience.

### Fees

Fees in effect prior to the adoption of this order shall be accepted for all certification and renewal applicants for six months after the adoption of this order. Thereafter, the application, certification, and renewal fees shall be as follows:

<table>
<thead>
<tr>
<th>Application Fee</th>
<th>$20.00 (nonrefundable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certification and Renewal Fees</td>
<td></td>
</tr>
<tr>
<td>County</td>
<td>$40.00$^1$</td>
</tr>
<tr>
<td>Family</td>
<td>$150.00</td>
</tr>
<tr>
<td>Circuit</td>
<td>$150.00</td>
</tr>
<tr>
<td>Dependency</td>
<td>$100.00</td>
</tr>
<tr>
<td>Appellate</td>
<td>$100.00</td>
</tr>
</tbody>
</table>

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1. County fees ($40) are not reduced and must be added to any of the combination fees.
<table>
<thead>
<tr>
<th>Category</th>
<th>Fee</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family/Circuit</td>
<td>$275.00</td>
<td>(filed simultaneously)</td>
</tr>
<tr>
<td>Family/Dependency</td>
<td>$225.00</td>
<td>(filed simultaneously)</td>
</tr>
<tr>
<td>Circuit/Dependency</td>
<td>$225.00</td>
<td>(filed simultaneously)</td>
</tr>
<tr>
<td>Family/Appellate</td>
<td>$225.00</td>
<td>(filed simultaneously)</td>
</tr>
<tr>
<td>Circuit/Appellate</td>
<td>$225.00</td>
<td>(filed simultaneously)</td>
</tr>
<tr>
<td>Dependency/Appellate</td>
<td>$225.00</td>
<td>(filed simultaneously)</td>
</tr>
<tr>
<td>Family/Dependency/Circuit</td>
<td>$375.00</td>
<td>(filed simultaneously)</td>
</tr>
<tr>
<td>Family/Circuit/Appellate</td>
<td>$375.00</td>
<td>(filed simultaneously)</td>
</tr>
<tr>
<td>Family/Circuit/Appellate</td>
<td>$325.00</td>
<td>(filed simultaneously)</td>
</tr>
<tr>
<td>Circuit/Dependency/Appellate</td>
<td>$325.00</td>
<td>(filed simultaneously)</td>
</tr>
<tr>
<td>Family/Dependency/Circuit/Appellate</td>
<td>$450.00</td>
<td>(filed simultaneously)</td>
</tr>
</tbody>
</table>

The $20 application fee is nonrefundable. Certification and renewal fees shall be returned to applicants who, upon review of their applications, are deemed ineligible to be certified. Applicants who are denied certification may reapply upon compliance with the qualifications for certification.

Applicants who meet the requirements for mediator certification shall be certified for a two-year period and shall be provided with a certificate from the Supreme Court of Florida evidencing such certification.

**Review Process**

An applicant who disagrees with a finding of ineligibility may object in writing within 30 days of the initial determination of ineligibility as indicated in a certificate of mailing. Any such response shall be reviewed by a three-person subcommittee of the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy appointed to review such matters, which shall make a
recommendation to the full Supreme Court Committee on Alternative Dispute Resolution Rules and Policy. The decision of the full committee shall be final.

II. Certification Renewal

A. Application for Renewal

Mediators seeking continued certification shall be required to file an application for renewal and a completed Continuing Mediator Education Reporting Form accompanied by renewal payment fees. Mediators seeking renewal of appellate mediator certification shall also be required to maintain no less than one of their previous certifications in family, dependency, or circuit mediation.

Any material misrepresentation by a mediator in the renewal process shall be automatically referred to the Mediator Qualifications Board.

B. Continuing Mediator Education

The purpose of Continuing Mediator Education (hereinafter “CME”) shall be to enhance the participant's professional competence as a mediator. The requirement for CME and the reporting thereof shall apply to all certified mediators seeking renewal and shall be fulfilled in accordance with the following procedures.
General Requirement

To qualify as CME, a course or activity shall have significant, current intellectual or practical content and shall constitute an organized program of learning directly related to the practice of mediation. CME shall be conducted by an individual or group qualified by practical or academic experience.

All certified mediators must complete a minimum of:

1. Generally: Sixteen (16) hours of CME, which shall include a minimum of four hours of mediator ethics, a minimum of two hours of domestic violence education, and a minimum of one hour of diversity/cultural awareness education in each two year renewal cycle, inclusive of the two years following initial certification.

2. Family and Dependency: Family and dependency mediators must complete an additional two hours of the required 16 hours in domestic violence education per each renewal cycle, for a total of four hours.

3. Appellate: Appellate mediators must complete no less than four hours of appellate-specific mediation education. This may be part of or in addition to the required 16 hours per each renewal cycle of the underlying certification.

Mediators who are certified in more than one area must complete 16 hours of CME applicable to each of their areas of certification. Hours completed may be

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utilized toward more than one area of certification if the subject matter is relevant to each field of certification. For example, courses on such topics as mediator ethics, domestic violence, and general mediation skills may be credited to any or all of the areas of certification.

At a minimum, 50 percent of the required CME hours must be satisfied by attendance, not as a lecturer or presenter, at a live lecture, live seminar, or an audio/video playback of a seminar attended by a group that discussed the materials presented. Interactive Internet presentations may be counted as attendance at a live lecture. Non-interactive Internet presentations shall be applied toward the audio-visual category. A maximum of four hours of CME may be earned through mentoring as defined above. Mentoring activities cannot be applied toward the required ethics, diversity/cultural awareness, or domestic violence CME components.

Continuing education completed for another profession's continuing education requirement may be used as CME if the material bears directly on the mediator's mediation practice and complies with the CME guidelines set forth in this order.

Mediator certification shall not be renewed until all CME requirements are completed.
**Definition**

A CME hour is defined as 50 minutes. CME may be completed during the mediator’s renewal cycle in any of the following formats:

a) attending a live lecture or seminar;

b) listening to or viewing an audio or video presentation of a lecture or seminar with a group, and participating in a discussion of the materials presented;

c) listening to or viewing audio or video presentations;

d) serving as a mentor pursuant to rule 10.100, Florida Rules for Certified and Court-Appointed Mediators;

e) participating in Internet presentations;

f) lecturing or teaching CME courses;

g) authoring or editing written materials submitted for publication that have significant intellectual or practical content directly related to the practice of mediation; and

h) successfully completing a self-directed program that is qualified for continuing education credit by a governmental licensing board.

**Reporting Requirements**

Mediators must maintain proof of attendance at CME programs or other appropriate documentation and must report their CME at the end of each two-year period.
renewal cycle on the Center's renewal form. The mediator shall be responsible for maintaining all records relating to CME, which records shall be subject to audit. In addition, the mediator must certify that he or she has read the current Florida mediation rules; Chapter 44, Florida Statutes; and other relevant statutes.

Any CME hours completed may be utilized for only one renewal cycle. Hours in excess of the minimum requirement shall not be carried forward to the next renewal cycle.

Attending and lecturing or teaching at the same CME presentation will not entitle a mediator to additional credit. This prohibition against repeat attendance shall not apply to annual conferences and yearly updates.

If all other qualifications for renewal are satisfied and all fees paid or waived, but a mediator is deficient in CME credits, the mediator shall be notified in writing and certification shall be continued for 90 days from the notice of noncompliance. During those 90 days, the mediator shall complete all remaining CME requirements in order to be eligible for renewal.

**Review Process**

A mediator who disagrees with a finding of deficiency may object in writing within 30 days of the initial determination of deficiency as indicated in a certificate of mailing. Any such response shall be reviewed by a three-person subcommittee of the Supreme Court Committee on Alternative Dispute Resolution Rules and
Policy appointed to review such matters, which shall make a recommendation to the full Supreme Court Committee on Alternative Dispute Resolution Rules and Policy. The decision of the full committee shall be final.

C. Fees

Renewal fees shall be at the same levels as for initial certification. All mediators seeking renewal shall be responsible for these fees. However, for renewals that are filed timely, the $40 county mediator renewal fee will be waived upon written confirmation from the ADR Program Director (or designee) that the mediator served as a volunteer in the county court mediation program a minimum of six times during the prior certification period.

Mediators whose certification has lapsed may renew certification up to 180 days from the lapse date upon payment of a late fee in an amount equal to the mediator’s renewal fee. Mediators who apply for renewal within 365 days after the lapse date will be required to pay a late fee equal to five times the mediator’s renewal fee, up to a maximum of $750. Mediators who apply for certification after day 365 will be required to meet the requirements for certification as a new mediator, including satisfactory completion of a certified mediation training program and fulfillment of the mentorship requirements. For purposes of this paragraph, the lapse date reverts to the initial renewal date, notwithstanding any extensions.
A mediator may request from the Center an extension of the renewal requirements and a waiver of any penalties for an extraordinary hardship. If such request is denied, a request for review may be taken to the three-person subcommittee of the Alternative Dispute Resolution Rules and Policy Committee appointed to review such matters, which shall make a recommendation to the full Alternative Dispute Resolution Rules and Policy Committee. The decision of the full committee shall be final.

III. Administrative Responsibility

Administrative responsibility for implementation of the provisions of Chapter 44, Florida Statutes; rules 10.100, 10.105 and 10.110, Florida Rules for Certified and Court-Appointed Mediators; and this administrative order shall be with the Dispute Resolution Center of the Office of the State Courts Administrator.

All certification, application, renewal, and late fees shall be deposited in the Supreme Court's Mediation and Arbitration Trust Fund to be used to provide support for implementing the applicable statutes, rules, and the provisions of this administrative order.
DONE AND ORDERED at Tallahassee, Florida, on January 10, 2011.

ATTEST:

Chief Justice Charles T. Canady

Thomas D. Hall, Clerk of Court
How to Become A Florida Supreme Court Certified Mediator

Step By Step Guide

In order to assist applicants, the Dispute Resolution Center has created the following guide which outlines the mediator certification qualifications and application process.

Revised March 2017
Attachment A - Mediator Qualifications
Florida Rules for Certified and Court-Appointed Mediators

Rule 10.100. Certification Requirements

(a) General. For certification as a county court, family, circuit court, dependency, or appellate mediator, a mediator must be at least 21 years of age and be of good moral character. For certification as a county court, family, circuit court, or dependency mediator, one must have the required number of points for the type of certification sought as specifically required in rule 10.105.

(b) County Court Mediators. For initial certification as a mediator of county court matters, an applicant must have at least a high school diploma or a General Equivalency Diploma (GED) and 100 points, which shall include:

(1) 30 points for successful completion of a Florida Supreme Court certified county court mediation training program;

(2) 10 points for education; and

(3) 60 points for mentorship.

(c) Family Mediators. For initial certification as a mediator of family and dissolution of marriage issues, an applicant must have at least a bachelor’s degree and 100 points, which shall include, at a minimum:

(1) 30 points for successful completion of a Florida Supreme Court certified family mediation training program;

(2) 25 points for education/mediation experience; and

(3) 30 points for mentorship.

Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

(d) Circuit Court Mediators. For initial certification as a mediator of circuit court matters, other than family matters, an applicant must have at least a bachelor’s degree and 100 points, which shall include, at a minimum:

(1) 30 points for successful completion of a Florida Supreme Court certified circuit mediation training program;

(2) 25 points for education/mediation experience; and

(3) 30 points for mentorship.
Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

(e) Dependency Mediators. For initial certification as a mediator of dependency matters, as defined in Florida Rule of Juvenile Procedure 8.290, an applicant must have at least a bachelor's degree and 100 points, which shall include, at a minimum:

1. 30 points for successful completion of a Florida Supreme Court certified dependency mediation training program;

2. 25 points for education/mediation experience; and

3. 40 points for mentorship.

Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

(f) Appellate Mediators. For initial certification as a mediator of appellate matters, an applicant must be a Florida Supreme Court certified circuit, family or dependency mediator and successfully complete a Florida Supreme Court certified appellate mediation training program1.

(g) Senior Judges Serving As Mediators. A senior judge may serve as a mediator in a court-ordered mediation only if certified by the Florida Supreme Court as a mediator for that type of mediation.

(h) Referral for Discipline. If the certification or licensure necessary for any person to be certified as a family or circuit mediator is suspended or revoked, or if the mediator holding such certification or licensure is in any other manner disciplined, such matter shall be referred to the Mediator Qualifications Board for appropriate action pursuant to rule 10.800.

(i) Special Conditions. Mediators who are certified prior to August 1, 2006, shall not be subject to the point requirements for any category of certification in relation to which continuing certification is maintained.

1 Rule 9.730, Florida Rules of Appellate Procedure, regarding appointment of mediators

(a) Appointment by Agreement. Within 10 days of the court order of referral, the parties may file a stipulation with the court designating a mediator certified as an appellate mediator pursuant to rule 10.100(f), Florida Rules for Certified and Court-Appointed Mediators. Unless otherwise agreed to by the parties, the mediator shall be licensed to practice law in any United States jurisdiction. (b) Appointment by Court. If the parties cannot agree upon a mediator within 10 days of the order of referral, the appellant shall notify the court immediately and the court shall appoint a certified appellate mediator selected by such procedure as is designated by administrative order. The court shall appoint a certified appellate mediator who is licensed to practice law in any United States jurisdiction, unless otherwise requested upon agreement of the parties.
Rule 10.105. Point System Categories

(a) Education. Points shall be awarded in accordance with the following schedule (points are only awarded for the highest level of education completed and honorary degrees are not included):

<table>
<thead>
<tr>
<th>Degree</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>High School Diploma/GED</td>
<td>10</td>
</tr>
<tr>
<td>Associate’s Degree</td>
<td>15</td>
</tr>
<tr>
<td>Bachelor’s Degree</td>
<td>20</td>
</tr>
<tr>
<td>Master’s Degree</td>
<td>25</td>
</tr>
<tr>
<td>Master’s Degree in Conflict Resolution</td>
<td>30</td>
</tr>
<tr>
<td>Doctorate (e.g., Ph.D., J.D., M.D., Ed.D., LL.M)</td>
<td>30</td>
</tr>
<tr>
<td>Ph.D. from Accredited Conflict Resolution Program</td>
<td>40</td>
</tr>
</tbody>
</table>

An additional five points will be awarded for completion of a graduate level conflict resolution certificate program in an institution which has been accredited by Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, the Western Association of Schools and Colleges, the American Bar Association, or an entity of equal status.

(b) Mediation Experience. One point per year will be awarded to a Florida Supreme Court certified mediator for each year that mediator has mediated at least 15 cases of any type. In the alternative, a maximum of five points will be awarded to any mediator, regardless of Florida Supreme Court certification, who has conducted a minimum of 100 mediations over a consecutive five-year period.

(c) Mentorship. Ten points will be awarded for each supervised mediation completed of the type for which certification is sought and five points will be awarded for each mediation session of the type for which certification is sought which is observed.

(d) Miscellaneous Points.

(1) Five points shall be awarded to applicants currently licensed or certified in any United States jurisdiction in psychology, accounting, social work, mental health, health care, education, or the practice of law or mediation. Such award shall not exceed a total of five points regardless of the number of licenses or certifications obtained.

(2) Five points shall be awarded for possessing conversational ability in a foreign language as demonstrated by certification by the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Test, qualification as a court interpreter, accreditation by the American Translators Association, or approval as a sign language interpreter by the Registry of Interpreters for the Deaf. Such award shall not exceed a total of five points regardless of the number of languages in which the applicant is proficient.
(3) Five points shall be awarded for the successful completion of a mediation training program (minimum 30 hours in length) which is certified or approved by a jurisdiction other than Florida and which may not be the required Florida Supreme Court certified mediation training program. Such award shall not exceed five points regardless of the number of training programs completed.

(4) Five points shall be awarded for certification as a mediator by the Florida Supreme Court. Such award shall not exceed five points per category regardless of the number of training programs completed or certifications obtained.

Committee Notes

The following table is intended to illustrate the point system established in this rule. Any discrepancy between the table and the written certification requirements shall be resolved in favor of the latter.

<table>
<thead>
<tr>
<th>Points Needed Per Area of Certification</th>
<th>Minimum Points Required in Each Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>County</td>
<td>100 30 certified county mediation training; 10 education (minimum HS Diploma/GED); 60 mentorship</td>
</tr>
<tr>
<td>Family</td>
<td>100 30 certified family mediation training; 25 education/mediation experience (minimum Bachelor's Degree); 30 mentorship [and requires 15 additional points]</td>
</tr>
<tr>
<td>Dependency</td>
<td>100 30 certified dependency mediation training; 25 education/mediation experience (minimum Bachelor's Degree); 40 mentorship [and requires 3 additional points]</td>
</tr>
<tr>
<td>Circuit</td>
<td>100 30 certified circuit mediation training, 25 education/mediation experience (minimum Bachelor's Degree); 30 mentorship; [and requires 15 additional points]</td>
</tr>
<tr>
<td>Appellate</td>
<td>For initial certification as a mediator of appellate matters, an applicant must be a Florida Supreme Court certified circuit, family or dependency mediator and successfully complete a Florida Supreme Court certified appellate mediation training program.</td>
</tr>
</tbody>
</table>

2 In order to amass the 25 education/mediation experience point minimum for family, dependency or circuit court certification, one must have either: A) a Master's Degree or higher; OR B) a Bachelor's Degree (20 points) and have substantial mediation experience (yielding at least 5 points) or have earned a graduate certificate in Conflict Resolution (5 points).

3 See #2 above

4 See #2 above

A) a Master's Degree or higher; OR B) a Bachelor's Degree (20 points) and have substantial mediation experience (yielding at least 5 points) or have earned a graduate certificate in Conflict Resolution (5 points).

5 Rule 9.730, Florida Rules of Appellate Procedure, regarding appointment of mediators who are licensed to practice law (a) Appointment by Agreement. Within 10 days of the court order of referral, the parties may file a stipulation with the court designating a mediator certified as an appellate mediator pursuant to rule 10.100(O), Florida Rules for Certified and Court-Appointed Mediators. Unless otherwise agreed to by the parties, the mediator shall be licensed to practice law in any United States jurisdiction. (b) Appointment by Court. If the parties cannot agree upon a mediator within 10 days of the order of referral, the appellant shall notify the court immediately and the court shall appoint a certified appellate mediator selected by such procedure as is designated by administrative order. The court shall appoint a certified appellate mediator who is licensed to practice law in any United States jurisdiction, unless otherwise requested upon agreement of the parties.
### Education/Mediation Experience (points awarded for highest level of education received)

<table>
<thead>
<tr>
<th>Level of Education</th>
<th>Points</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>HS Diploma/GED</td>
<td>10</td>
<td>Master's Degree in Conflict Resolution</td>
</tr>
<tr>
<td>Associate's Degree</td>
<td>15</td>
<td>Doctorate (e.g., JD, MD, PhD, EdD, LLM)</td>
</tr>
<tr>
<td>Bachelor's Degree</td>
<td>20</td>
<td>Ph.D. from accredited CR Program</td>
</tr>
<tr>
<td>Master's Degree</td>
<td>25</td>
<td>Graduate Certificate CR Program</td>
</tr>
</tbody>
</table>

Florida certified mediator: 1 point per year in which mediated at least 15 mediations (any type)
OR any mediator: 5 points for minimum of 100 mediations (any type) over a 5 year period

### Mentorship: must work with at least 2 different certified mediators and must be completed for the type of certification sought

<table>
<thead>
<tr>
<th>Mentorship</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Observation</td>
<td>5 points each session</td>
</tr>
<tr>
<td>Supervised Mediation</td>
<td>10 points each complete mediation</td>
</tr>
</tbody>
</table>

### Miscellaneous Points

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Points (total)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensed to practice law, psychology, accounting, social work, mental health, health care, education or mediation in any US jurisdiction</td>
<td>5 points (total)</td>
</tr>
<tr>
<td>Florida Certified Mediator</td>
<td>5 points (total)</td>
</tr>
<tr>
<td>Foreign Language Conversational Ability as demonstrated by certification by ACTFL Oral Proficiency Test; qualified as a court interpreter; or accredited by the American Translators Association; Sign Language Interpreter as demonstrated by approval by the Registry of Interpreters for the Deaf</td>
<td>5 points (total)</td>
</tr>
<tr>
<td>Completion of additional mediation training program (minimum 30 hours in length) certified/approved by a state or court other than Florida</td>
<td>5 points (total)</td>
</tr>
</tbody>
</table>
The mediation training programs listed below have been certified by the Supreme Court of Florida. Once you have completed a certified mediation training program, an application for certification will be provided to you. Contact training providers directly for their schedules. Direct links to trainer websites are located at www.flcourts.org - select Dispute Resolution

### Appellate Mediation Training

<table>
<thead>
<tr>
<th>Training Provider</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dunlap Mediation</td>
<td>Eric D. Dunlap, Esquire  <a href="http://www.dunlapmediation.com">www.dunlapmediation.com</a> (321) 230-3088</td>
</tr>
<tr>
<td>Mediation Training Group, Inc.</td>
<td>Susan Dubow &amp; Elinor Robin, Ph.D. <a href="http://www.mediationgroup.com">www.mediationgroup.com</a> (561) 852-1633</td>
</tr>
<tr>
<td>USF Conflict Resolution Collaborative</td>
<td>Gregory Firestone, Ph.D <a href="http://www.crc.usf.edu">www.crc.usf.edu</a> (800) 832-5362</td>
</tr>
<tr>
<td>Nancy Neal Yeend</td>
<td>Nancy Neal Yeend, Portland, OR (650) 857-9197</td>
</tr>
</tbody>
</table>

### County Mediation Training

<table>
<thead>
<tr>
<th>Training Provider</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matthew L. Cersine, Esquire</td>
<td>Matthew L. Cersine, Esquire  <a href="http://www.altdispute.com">www.altdispute.com</a> (407) 592-7326</td>
</tr>
<tr>
<td>Dunlap Mediation</td>
<td>Eric D. Dunlap, Esquire  <a href="http://www.dunlapmediation.com">www.dunlapmediation.com</a> (321) 230-3088</td>
</tr>
<tr>
<td>Empowering Solutions</td>
<td>Toby Isaacson, Esquire  <a href="http://www.empoweringsolutions.org">www.empoweringsolutions.org</a> (413) 862-9669</td>
</tr>
<tr>
<td>Florida Mediation Training</td>
<td>Kevin Lunsford, Esquire  <a href="http://www.floridamediationtraining.org">www.floridamediationtraining.org</a> (386) 269-0942</td>
</tr>
<tr>
<td>Institute of Conflict Resolution &amp; Communication</td>
<td>Alexia Georgakopoulos, Ph.D <a href="http://www.icrc.com">www.icrc.com</a> (561) 480-0155</td>
</tr>
<tr>
<td>Mediation Training Group, Inc.</td>
<td>Susan Dubow &amp; Elinor Robin, Ph.D. <a href="http://www.mediationgroup.com">www.mediationgroup.com</a> (561) 852-1633</td>
</tr>
<tr>
<td>Shulman ADR Law, P.A.</td>
<td>Christopher M. Shulman, Esquire <a href="http://www.shulmanadrlaw.com">www.shulmanadrlaw.com</a> (813) 935-9922</td>
</tr>
<tr>
<td>Arve Wikstrom, J.D.</td>
<td>Arve Wikstrom, J.D.  <a href="http://www.altdispute.com">www.altdispute.com</a> (407) 538-5509</td>
</tr>
<tr>
<td>Your Solution Group</td>
<td>Ailyn Gonzalez (321) 442-5185</td>
</tr>
</tbody>
</table>

### Circuit Mediation Training

<table>
<thead>
<tr>
<th>Training Provider</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADR Training Collaborative, LLC</td>
<td>MeahTell &amp; Stanley Zamor  <a href="http://www.adctraining.com">www.adctraining.com</a> (954) 733-5000</td>
</tr>
<tr>
<td>Charles N. Castagna Mediation Inc.</td>
<td>Charles N. Castagna, Esquire  <a href="http://www.castagnamediation.com">www.castagnamediation.com</a> (727) 446-4221</td>
</tr>
<tr>
<td>Davis Mediation Firm</td>
<td>Donovan D. Davis, Esquire  (407) 448-3665</td>
</tr>
<tr>
<td>Dunlap Mediation</td>
<td>Eric D. Dunlap, Esquire  <a href="http://www.dunlapmediation.com">www.dunlapmediation.com</a> (321) 230-3088</td>
</tr>
<tr>
<td>Florida Mediation Training</td>
<td>Kevin Lunsford, Esquire  <a href="http://www.floridamediationtraining.org">www.floridamediationtraining.org</a> (386) 269-0942</td>
</tr>
<tr>
<td>Florida Mediation Training Center</td>
<td>Barbara Peterson &amp; Jessica Geller, Esq. (954) 351-7474</td>
</tr>
<tr>
<td>Mediation Education, LLC</td>
<td>Hal Wotitzky &amp; Stephen Widmeyer (941) 575-9666</td>
</tr>
<tr>
<td>Mediation Training Group, Inc.</td>
<td>Susan Dubow &amp; Elinor Robin, Ph.D. <a href="http://www.mediationgroup.com">www.mediationgroup.com</a> (561) 852-1633</td>
</tr>
<tr>
<td>My Florida Mediator</td>
<td>Gregory Firestone, Ph.D <a href="http://www.myfloridamediator.com">www.myfloridamediator.com</a> (813) 494-7655</td>
</tr>
<tr>
<td>Shulman ADR Law, P.A.</td>
<td>Christopher M. Shulman, Esquire <a href="http://www.shulmanadrlaw.com">www.shulmanadrlaw.com</a> (813) 935-9922</td>
</tr>
<tr>
<td>Nancy Neal Yeend</td>
<td>Nancy Neal Yeend, Portland, OR (650) 857-9197</td>
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### Dependency Mediation Training

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<td>My Florida Mediator</td>
<td>Gregory Firestone, Ph.D <a href="http://www.myfloridamediator.com">www.myfloridamediator.com</a> (813) 494-7655</td>
</tr>
<tr>
<td>David Wolfson, Esquire</td>
<td>David Wolfson, Esquire  <a href="http://www.davidwolfson.com">www.davidwolfson.com</a> (850) 329 0755</td>
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### Family Mediation Training

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<tr>
<td>Family Mediation Training</td>
<td>Geraldine Waxman &amp; Mesh Tell (954) 741-1311</td>
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<tr>
<td>Florida Mediation Training</td>
<td>Kevin Lunsford, Esquire  <a href="http://www.floridamediationtraining.org">www.floridamediationtraining.org</a> (386) 269-0942</td>
</tr>
<tr>
<td>Florida Mediation Training Center</td>
<td>Jessica Geller, Esq. &amp; Barbara Peterson (954) 634-1786</td>
</tr>
<tr>
<td>Institute of Conflict Resolution &amp; Communication</td>
<td>Alexia Georgakopoulos, Ph.D <a href="http://www.icrc.com">www.icrc.com</a> (561) 480-0155</td>
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<td>Mediation Training Group, Inc.</td>
<td>Susan Dubow &amp; Elinor Robin, Ph.D. <a href="http://www.mediationgroup.com">www.mediationgroup.com</a> (561) 852-1633</td>
</tr>
<tr>
<td>My Florida Mediator</td>
<td>Gregory Firestone, Ph.D <a href="http://www.myfloridamediator.com">www.myfloridamediator.com</a> (813) 494-7655</td>
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<tr>
<td>Wikstrom Peterson</td>
<td>Arve Wikstrom &amp; Barbara Peterson <a href="http://www.altdispute.com">www.altdispute.com</a> (407) 538-5509</td>
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As of March 2017
Attachment C
Mentorship Requirements

Mentorship shall include observing mediations conducted by certified mediators and conducting mediations under the supervision and observation of certified mediators. The mentorship requirements for those seeking certification shall be performed in a manner consistent with the following requirements:

The responsibility of structuring a mentorship rests with each trainee. The trainee shall not receive any fees for any case which the trainee utilizes to complete the required mentorship.

All duly certified mediators are required to allow, upon request, a minimum of two mediation observations or supervised mediations per year. The certified mediator shall not charge the trainee any fees to observe a mediation conducted by the certified mediator, but may charge a reasonable fee for observing and supervising a trainee while the trainee conducts a mediation. In addition, the certified mediator shall be entitled to any compensation paid for the mediation.

The certified mediator shall remain in control of the case.

In order for an applicant to be awarded mentorship points, the applicant must work with at least two different certified mediators and the mediations involved must be of the type for which certification is sought.

The confidentiality and privileges provided in the Mediation Confidentiality and Privilege Act, shall apply when a trainee serves as a mediator, comediator, or observer.

Ten points will be awarded for each completed supervised mediation and five points for each mediation session observed.

State-funded trial court mediation programs shall assist trainees in completing their mentorship requirements.

Applicants shall provide original signatures of all mentors in relation to all mentorship activity claimed.

Mediation Observations

For each observation required for certification, the trainee must observe an entire session of the type of mediation for which certification is sought, conducted by a certified mediator of the type for which certification is sought. The observation requirement shall not be satisfied by any individual who is a party, participant, or representative in the mediation. A trainee may not fulfill the observation
requirements before beginning a certified mediation training program. The observation requirement may be completed prior to the conclusion of the certified mediation training program. An appellate or pre-suit mediation which is or would have been the type of mediation for which certification is sought if it had been filed in a trial court and if conducted by a certified mediator of the type for which certification is sought may be utilized for observation purposes. A federal court mediation conducted by a certified circuit mediator may be utilized to fulfill a circuit mentorship. Administrative agency mediation conducted under rules and procedures other than that of the state trial courts may not be utilized to fulfill the mentorship requirements.

*Supervised Mediations*

The requirement that the trainee conduct a mediation under the supervision and observation of a certified mediator may be fulfilled by the trainee co-mediating with a certified mediator, only if, in the opinion of the certified mediator, the trainee had a significant impact on the outcome of or made a substantial contribution to the mediation. At the conclusion of the mediation, the mentor shall determine if the trainee had a significant impact on the outcome of or made a substantial contribution to the mediation. If so, it may qualify as a "supervised" mediation. If not, it will qualify only as an observation.

For purposes of the requirement to conduct mediations, mediation is defined as a complete case, which may consist of multiple sessions. The entire mediation shall be comediated or observed by a certified mediator of the type for which certification is sought. In the event the trainee is only able to participate in a single session of a multi-session mediation, such participation qualifies as an observation regardless of the trainee’s level of participation. An appellate or pre-suit mediation which is or would have been the type of mediation for which certification is sought if it had been filed in a trial court and if conducted by a certified mediator of the type for which certification is sought may be utilized for the requirements to conduct mediations under observation and supervision. A federal court mediation conducted by a certified circuit mediator may be utilized to fulfill a circuit mentorship. Administrative agency mediation conducted under rules and procedures other than that of the state trial courts may not be utilized to fulfill the mentorship requirements.
Attachment D
CME Requirements for Certified Mediators
AOSC11-1

Continuing Mediator Education

The purpose of continuing mediator education (CME) shall be to enhance the participant's professional competence as a mediator. The requirement of CME and the reporting thereof shall apply to all certified mediators seeking renewal and shall be fulfilled in accordance with the following procedures.

General Requirement

To qualify as Continuing Mediation Education (CME), a course or activity shall have significant, current intellectual or practical content and shall constitute an organized program of learning directly related to the practice of mediation. CME shall be conducted by an individual or group qualified by practical or academic experience.

All certified mediators (mediators) must complete a minimum of:

1. Generally: Sixteen hours of CME, which shall include a minimum of four hours of mediator ethics, a minimum of two hours of domestic violence education, and a minimum of one hour of diversity/cultural awareness education in each two year renewal cycle, including the two years following initial certification.

2. Family and Dependency: Family and dependency mediators must complete an additional two hours of the required 16 hours in domestic violence education per each renewal cycle, for a total of four hours.

3. Appellate: Appellate mediators must complete no less than four hours of appellate mediation specific education. This may be part of or in addition to the required 16 hours per each renewal cycle of the underlying certification.

Mediators who are certified in more than one area must complete sixteen hours of CME applicable to each of their areas of certification. Hours completed may be utilized toward more than one area of certification if the subject matter is relevant to each field of certification. For example, courses on such topics as mediator ethics, domestic violence, and general mediation skills may be credited to any or all of the areas of certification.

At a minimum, fifty percent of the required CME hours must be satisfied by attendance, not as a lecturer or presenter, at a live lecture, live seminar, or an audio/video playback of a seminar attended by a group that discussed the materials presented. Interactive Internet presentations may be counted as attendance at a live lecture. Non-interactive Internet presentations shall be applied toward the audio-visual category. A maximum of four hours of CME may be earned through mentoring as defined above.
Mentoring activities cannot be applied toward the required ethics, diversity/cultural awareness, or domestic violence CME components.

Continuing education completed for another profession's continuing education requirement may be used as CME if the material bears directly on the mediator's mediation practice and complies with the CME guidelines set forth in this order.

Mediator certification shall not be renewed until all CME requirements are completed.

Definition

A CME hour is defined as fifty minutes. CME may be completed during the mediator's renewal cycle in any of the following formats:

1. attending a live lecture or seminar;
2. listening to or viewing an audio or video presentation of a lecture or seminar with a group, and participating in a discussion of the materials presented;
3. listening to or viewing audio or video presentations;
4. serving as a mentor pursuant to rule 10.100, Florida Rules for Certified and Court-Appointed Mediators;
5. participating in Internet presentations;
6. lecturing or teaching in CME courses;
7. authoring or editing written materials submitted for publication that have significant intellectual or practical content directly related to the practice of mediation; and
8. successfully completing a self-directed program that is qualified for continuing education credit by a governmental licensing board.

Reporting Requirements

Mediators must maintain proof of attendance at CME programs or other appropriate documentation and must report their CME at the end of each two-year renewal cycle on the Center's renewal form. The mediator shall be responsible for maintaining all records relating to CME, which records shall be subject to audit. In addition, the mediator must certify that he or she has read the current Florida mediation rules; Chapter 44, Florida Statutes; and other relevant statutes.
Any CME hours completed may be utilized for only one renewal cycle. Hours in excess of the minimum requirement shall not be carried forward to the next renewal cycle.

Attending and lecturing or teaching at the same CME presentation will not entitle a mediator to additional credit. This prohibition against repeat attendance shall not apply to annual conferences and yearly updates.

If all other qualifications for renewal are satisfied and all fees paid or waived, but a mediator is deficient in CME credits, the mediator shall be notified in writing and certification shall be continued for ninety days from the notice of noncompliance. During those ninety days, the mediator shall complete all remaining CME requirements to be eligible for renewal.
Alternative Dispute Resolution

Alternative dispute resolution (ADR) has been utilized by the Florida Court System to resolve disputes for over 30 years, starting with the creation of the first citizen dispute settlement (CDS) center in Dade County in 1975. ADR processes offer litigants court-connected opportunities to resolve their disputes without judicial intervention.

News from the Field

PASSION, PURPOSE & PEACEMAKING

The Florida Dispute Resolution Center held its 25th Annual Conference for Mediators and ADR Professionals: "Passion, Purpose & Peacemaking" at the JW Marriott Grande Lakes in Orlando, Florida. The Florida Bar approval reference number is 1704003N for 13.0 General, 3.0 Bias Elimination, and 6.0 Legal Ethics credits. Certification Credits: Civil Trial & Marital and Family Law 13.0 hours each. Conference CME: Up to 13.2 hours with a minimum of 1.5 hours of mediator ethics and 2.1 hours of interpersonal violence. Click here for workshop materials.

Questions
Contact AK Consulting Group
(850) 523-4200

The Florida Supreme Court adopted proposed amendments to the Florida Rules for Certified and Court-Appointed Mediators in re: Amendments to the Florida Rules for Certified and Court-Appointed Mediators, SC15-875 (Fla. 2016). The amendments to the rules change the title of Part III to “Mediation Certification Applications and Discipline” to clarify that this part of the rules pertains to the qualification of applicants as well as discipline. The amended rules have separate tracks for grievances alleging issues of good moral character in applicants and grievances alleging violations of the rules by certified and court-appointed mediators. The Mediator Qualifications Board is renamed the Mediator Qualifications and Discipline Review Board. A fourth division is added to the Board and the divisions are reorganized. Among the amendments are new rule 10.850 Suspension, Decertification, Denial of Application, and Removal which includes instances requiring the automatic decertification of a mediator or denial of an
application without the need for a hearing. Notably, in rule 10.890, there are now limitations on the time in which a complaint against a mediator can be filed.

The Court revised proposed rule 10.810(d)(1) to allow the complainant only one opportunity to refile a complaint to establish the facial sufficiency of the complaint, and rule 10.840(b)(7) to limit the suspension of a mediator for a period of up to one year. The amended rules went into effect January 1, 2017.

CME Documentation Study Ends

Dear Florida Supreme Court Certified Mediators,

The Supreme Court Committee on ADR Rules and Policy has rescinded the requirement that the reporting of all CME activities be accompanied by backup documentation for the hours claimed beginning with renewal applications due on February 1, 2017. The DRC is returning to the practice of random audits in which a select group of renewal applicants are notified in advance of their renewal submission date that documentation is needed. Therefore, unless you are notified that you are under audit when you receive your next renewal notice, you may submit just the one page CME form to document your CME activities.

We hope this is welcome news. Susan C. Marvin, Acting Chief of ADR

The Florida Supreme Court has added to its inventory of public outreach programs by placing its own page on Facebook, with its address on the web at: https://www.facebook.com/floridasupremecourt/. “This addition to our outreach efforts is a product of the new statewide Court Communication Plan approved by the full Court in December,” said Florida Chief Justice Jorge Labarga. “It is yet another way we will tell our story to the public.” The Facebook page joins existing Supreme Court pages on Twitter, LinkedIn, Instagram, and Google+. The Court also uses YouTube but embeds videos within its own webpages to minimize distractions to viewers.

The Court primarily will use its Facebook page to tell the public news about the Supreme Court family such as people winning awards, personnel recognized for lengthy service, and other soft news. This will contrast with Twitter, which the Court has used since 2009 mainly to distribute hard news such as filings in high-profile cases.

Disciplinary Proceedings and Sanctions

The Dispute Resolution Center (DRC) has put a Sanctions page in place. You can access the Sanctions page from the menu on the left by selecting Rules/Discipline/Sanctions.

Contact the DRC

Call 850-921-2910 or send us an email at DRCMail@flcourts.org
## State Courts ADR Contacts

### 1st Judicial Circuit - www.firstjudicialcircuit.org
**Counties:** Escambia, Santa Rosa, Okaloosa, Walton

**Trial Court Administrator:** Robin Wright  
190 Governmental Center, 5th Floor  
Pensacola, FL 32501  
(850) 595-4400, fax (850) 595-0360  
robin.wright@flcourts1.gov

**ADR Director:** Eugene Presley, Jr.  
MC Blanchard Judicial Building  
190 Governmental Center  
Pensacola, Florida 32502  
(850) 595-4415, fax (850) 595-3246  
eugene.presley@flcourts1.gov

### 2nd Judicial Circuit - www.2ndcircuit.leon.fl.us
**Counties:** Gadsden, Leon, Jefferson, Liberty, Wakulla, Franklin

**Trial Court Administrator:** Grant Slayden  
301 South Monroe Street, Room 315  
Tallahassee, FL 32301  
(850) 577-4420, fax (850) 487-7947  
slaydeng@leoncountyfl.gov

**ADR Director:** Jennifer Hodges  
301 S. Monroe Street  
Tallahassee, Florida 32301  
(850) 577-4434, fax (850) 487-7947  
hodgesj@leoncountyfl.gov

### 3rd Judicial Circuit - www.jud3.flcourts.org
**Counties:** Madison, Hamilton, Columbia, Taylor, Lafayette, Suwannee, Dixie

**Trial Court Administrator:** Sondra Lanier  
POB 1569  
Lake City, FL 32056  
(386) 758-2163, fax (386) 758-2162  
lanier.sondra@jud3.flcourts.org

**Mediation Services Coordinator:** Jana Sullivan  
173 NE Hernando Avenue, Room 408  
Lake City, Florida 32055  
(386) 438-5620  
sullivan.jana@jud3.flcourts.org

### 4th Judicial Circuit - www.coj.net
**Counties:** Nassau, Duval, Clay

**Trial Court Administrator:** Joe Stelma  
501 West Adams Street  
Jacksonville, FL 32202  
jstelma@coj.net

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*October 30, 2015*
## State Courts ADR Contacts

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<tr>
<th>Circuit</th>
<th>Website</th>
<th>Counties</th>
<th>ADR Director/MSC</th>
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</table>
| 5th Judicial | [www.circuit5.org](http://www.circuit5.org) | Marion, Citrus, Sumter, Hernando, Lake | ADR Director: James Gardner  
501 West Adams Street, Room 2169  
Jacksonville, FL 32202  
(904) 255-1097  
Jgardner@coj.net |
| 6th Judicial | [www.jud6.org](http://www.jud6.org) | Pasco, Pinellas | Trial Court Administrator: Jon Lin  
110 NW First Avenue  
Ocala, Florida 34475  
(352) 401-6701, fax (352) 401-7883  
jlin@circuit5.org |
315 Court Street, Room 401  
Clearwater, Florida 33756  
(727) 464-4943, fax (727) 464-3100  
lblanar@jud6.org |
501 First Avenue North, Room 645  
St. Petersburg, FL 33701  
(727) 582-7477, fax (727) 582-7479  
ginskeep@jud6.org |
| 7th Judicial | [www.circuit7.org](http://www.circuit7.org) | St. Johns, Putnam, Flagler, Volusia | ADR Director: None  
Volusia County Mediation Services:  
Executive Director: Marie Joy  
250 North Beach Street, Ste. 104A  
Daytona Beach, FL 32114  
(386) 239-7826, fax (386) 239-7824  
vcmediation4@msn.com |
# State Courts ADR Contacts

## 8th Judicial Circuit- [www.circuit8.org](http://www.circuit8.org)
*Counties: Alachua, Baker, Bradford, Gilchrist, Levy, Union*

- **Trial Court Administrator**: Paul Silverman  
  201 East University Avenue, Room 410  
  Gainesville, FL 32601  
  (352) 374-3638, fax (352) 338-3218  
  silvermanp@circuit8.org

- **ADR Director**: Beverly Graper  
  201 East University Avenue, Ste. 303  
  Gainesville, Florida 32601  
  (352) 491-4417, fax (352) 381-0109  
  graperb@circuit8.org

*Counties: Orange, Osceola*

- **Trial Court Administrator**: Matthew Benefiel  
  425 North Orange Avenue, Suite 2130  
  Orlando, FL 32801  
  (407) 836-2051, fax (407) 835-5014  
  ctadmb1@ocnjcc.org

- **ADR Director**: Genie Williams  
  425 N. Orange Avenue, Room 120  
  Orlando, Florida 32801  
  (407) 836-2004, fax (407) 836-2367  
  ctadgw2@ocnjcc.org

## 10th Judicial Circuit- [www.jud10.org](http://www.jud10.org)
*Counties: Polk, Hardee, Highlands*

- **Trial Court Administrator**: Nick Sudzina  
  POB 9000, Drawer J-102  
  Bartow, FL 33831-9000  
  (863) 534-4686, fax (863) 534-4699  
  nsudniza@jud10.flcourts.org

- **ADR Director**: Mr. J. Forrest Young  
  POB 9000, Drawer J112  
  Bartow, Florida 33831  
  (863) 534-4698, fax (863) 534-4073  
  Email – TBA

## 11th Judicial Circuit- [www.jud11.flcourts.org](http://www.jud11.flcourts.org)
*County: Miami-Dade*

- **Trial Court Administrator**: Sandra Lonergan  
  73 West Flagler Street  
  Miami, FL 33130  
  (305) 349-7001, fax (305) 349-7003  
  slonergan@jud11.flcourts.org

- **ADR Director**: Vivian Perez  
  73 West Flagler Street, Ste. 1801
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<td><a href="mailto:wfsmith@jud12.flcourts.org">wfsmith@jud12.flcourts.org</a></td>
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<td>Hillsborough</td>
<td>Mike Bridenback</td>
<td>Kim Diaz</td>
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<td></td>
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<td>800 E. Twiggs Street, Room 604, Tampa, FL 33602</td>
<td>800 E. Twiggs Street, Room 208, Tampa, Florida 33602</td>
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<td></td>
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<td>(813) 272-5894, fax (813) 301-3800</td>
<td><a href="mailto:diazrk@fljud13.org">diazrk@fljud13.org</a></td>
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<tr>
<td></td>
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<td>POB 1089, Panama City, FL 32402</td>
<td>Post Office Box 826, Marianna, Florida 32402</td>
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<td>(850) 747-5370, fax (850) 747-5717</td>
<td>(850) 718-0059, fax (850) 718-0521</td>
</tr>
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<td><a href="mailto:shadburnj@jud14.flcourts.org">shadburnj@jud14.flcourts.org</a></td>
<td>duna <a href="mailto:waye@jud14.flcourts.org">waye@jud14.flcourts.org</a></td>
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<td><a href="http://www.co.palm-beach.fl.us/ctadmin">www.co.palm-beach.fl.us/ctadmin</a></td>
<td>Palm Beach</td>
<td>Barbara Dawicki</td>
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<td></td>
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<td>205 North Dixie Highway, Room 52500</td>
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October 30, 2015
## State Courts ADR Contacts

### West Palm Beach, FL
33401
(561) 355-1872, fax (561) 355-6711
bdawicke@pbcgov.org

**ADR Director:** Bill Moreno
205 North Dixie Highway, Ste. 6.2100
West Palm Beach, Florida 33401
(561) 355-4513, fax (561) 355-2159
bmoreno@pbcgov.org

### 16th Judicial Circuit-www.keyscourts.net
**County:** Monroe

**Trial Court Administrator:** Holly Elomina
302 Fleming Street
Key West, FL 33040
(305) 295-3644, fax (305) 292-3435
holly.elomina@keyscourts.net

**Mediation Services Coordinator:** Lourdes Leal
Plantation Key Courthouse
88820 Overseas Highway
Tavernier, Florida 33070
(305) 853-7386, fax (305) 853-7388
lourdes.leal@keyscourts.net

### 17th Judicial Circuit-www.17th.flcourts.org
**County:** Broward

**Trial Court Administrator:** Kathleen Pugh
201 SE Sixth Street, Room 880
Fort Lauderdale, FL 33301
(954) 831-7740, fax (954) 831-5572
kpugh@17th.flcourts.org

**ADR Director:** Jeanne Potthoff
201 Southeast 6th Street, Rm 565
Fort Lauderdale, Florida 33301
(954) 831-6075, fax (954) 831-6079
jpotthof@17th.flcourts.org

### 18th Judicial Circuit-www.flcourts18.org
**Counties:** Brevard, Seminole

**Trial Court Administrator:** Mark Van Bever
2825 Judge Fran Jamieson Way
Viera, FL 32940
(321) 633-2171, fax (321) 633-2172
mark.vanbever@flcourts18.org

**ADR Director:** Deborah Haataja-Deratany
2825 Judge Fran Jamieson Way 2nd Floor
Viera, Florida 32940
Deborah.haataja-deratany@flcourts18.org

### 19th Judicial Circuit-www.circuit19.org

October 30, 2015
## State Courts ADR Contacts

### Counties: Indian River, Martin, Okeechobee, St. Lucie

<table>
<thead>
<tr>
<th>Trial Court Administrator: Tom Genung</th>
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<tbody>
<tr>
<td>218 South Second Street, Room 229</td>
</tr>
<tr>
<td>Fort Pierce, Florida 34950</td>
</tr>
<tr>
<td>(772) 807-4370, fax (772) 807-4377</td>
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<tr>
<td><a href="mailto:genungt@circuit19.org">genungt@circuit19.org</a></td>
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<tr>
<th>ADR Director: Kara Lawson</th>
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<tr>
<td>250 NW Country Club Drive</td>
</tr>
<tr>
<td>Port St. Lucie, FL 34986</td>
</tr>
<tr>
<td>(772) 807-4375, fax (772) 871-5304</td>
</tr>
<tr>
<td><a href="mailto:lawsonk@circuit19.org">lawsonk@circuit19.org</a></td>
</tr>
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**Counties: Charlotte, Collier, Glades, Hendry, Lee**

<table>
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<th>Trial Court Administrator: Scott Wilsker</th>
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<tbody>
<tr>
<td>1700 Monroe Street, Suite 1213</td>
</tr>
<tr>
<td>Fort Myers, FL 33901</td>
</tr>
<tr>
<td>(239) 533-1712, fax (239) 533-1701</td>
</tr>
<tr>
<td><a href="mailto:swilsker@ca.cjis20.org">swilsker@ca.cjis20.org</a></td>
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<tr>
<th>ADR Director: Jack Hughes</th>
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<tr>
<td>1700 Monroe Street</td>
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<tr>
<td>Fort Myers, Florida 33901</td>
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<td><a href="mailto:jhughes@ca.cjis20.org">jhughes@ca.cjis20.org</a></td>
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Family Law Legal Updates/Celebrity Clients/Ethics and Professionalism

(No Materials)

By

Kristina Feher, St. Petersburg
Rayond J. Rafool, Miami
Reuben Doupé, Naples
Alexander Caballero, Tampa