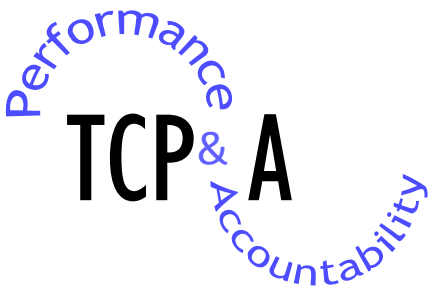


Recommendations for Alternative Dispute Resolution Services in Florida's Trial Courts

August 2008

Respectfully submitted:

The Honorable Robert B. Bennett, Jr., Chair, Circuit Judge, Twelfth Judicial Circuit
Mike Bridenback, Court Administrator, Thirteenth Judicial Circuit
The Honorable Brian J. Davis, Circuit Judge, Fourth Judicial Circuit
Gay Inskeep, Court Administrator, Sixth Judicial Circuit
The Honorable Thomas M. Jaworski, County Judge, Alachua County
The Honorable Kathleen J. Kroll, Chief Judge, Fifteenth Judicial Circuit
The Honorable Peter R. Lopez, Circuit Judge, Eleventh Judicial Circuit
The Honorable Peter F. Marshall, County Judge, Volusia County
The Honorable Ellen Sly Masters, Circuit Judge, Tenth Judicial Circuit
Carol Lee Ortman, Court Administrator, Seventeenth Judicial Circuit
The Honorable Jonathan Sjostrom, Circuit Judge, Second Judicial Circuit
The Honorable Terry D. Terrell, Circuit Judge, First Judicial Circuit
The Honorable William L. Wright, Circuit Judge, Fourteenth Judicial Circuit

Liaisons:
Justice Kenneth B. Bell, Supreme Court of Florida
The Honorable Lisa Davidson, Circuit Judge, Eighteenth Judicial Circuit

Alternative Dispute Resolution Performance and Accountability Workgroup

Mike Bridenback, Chair, Court Administrator, Thirteenth Judicial Circuit
Richard Callanan, Court Administrator, Twentieth Judicial Circuit
Robin Davis, ADR Director, Eighth Judicial Circuit
Kathy Reuter, ADR Director, Ninth Judicial Circuit
The Honorable Ron Rothschild, Circuit Judge, Seventeenth Judicial Circuit
The Honorable Lynn Tepper, Circuit Judge, Sixth Judicial Circuit
Mary Vanden Brook, Court Administrator, Sixteenth Judicial Circuit

Staff support provided by:
Office of State Courts Administrator
Dispute Resolution Center and Court Services Unit
500 South Duval Street
Tallahassee, Florida 32399
www.flcourts.org

Table of Contents

Executive Summary **4**

Introduction to Court-Connected Alternative Dispute Resolution in Florida **13**

Mediation Process Overview **17**

State Funded Small Claims Mediation 17

State Funded County Civil, Family & Dependency Mediation 18

Proposed Standards of Operation, Best Practices & Discussion **22**

Funding 22

Allocation and Appropriate Use of State Funding 22

Mediation Session Fees and Session Length 27

Fee Collection Process 30

Operations 34

Court Application of ADR/Mediation & Case Referrals 34

Court ADR Staffing and Functions 38

Mediation Service Delivery 41

Contract Compensation 46

County Court Mediation 48

Appendices **52**

Attachment A- Alternative Dispute Resolution Funding A-1

Attachment B- Mediation Sessions Length A-2

Attachment C- Fee Collection Expected Revenue V. Cost Recovery Collections A-3

Attachment D- County Court Mediation Referrals and Sessions Held A-4

Attachment E- Family Mediation Referrals and Sessions Held A-5

Attachment F- Dependency Mediation Referrals and Sessions Held A-6

Attachment G- Screening Instrument A-7

Attachment H- Mediation Position Survey A-10

Attachment I- ADR Program Caseload A-18

Attachment J- Mediation Service Delivery Methods A-19

Attachment K- Contract Compensation A-23

Attachment L- Section 44.108, Florida Statutes (as amended during the 2008 Legislative Session) A-24

Executive Summary

Commission on Trial Court Performance and Accountability

The Commission on Trial Court Performance and Accountability (TCP&A) was established by the Supreme Court in July 2002 for the purpose of proposing policies and procedures on matters related to the efficient and effective resource management, performance measurement and accountability of Florida's trial courts. In July 2007, the TCP&A authorized a workgroup, drawn from the Supreme Court's Alternative Dispute Resolution (ADR) Rules and Policy Committee, to undertake an examination of performance and accountability of state-funded court-connected ADR/Mediation programs and propose recommendations to the TCP&A for improvements and enhancements to this core element of the Florida court system.

Article V, Revision 7, Florida State Constitution

On July 1, 2004, as part of a constitutional revision to Article V, the State of Florida assumed responsibility for funding and service delivery of court-connected ADR/mediation programs. Prior to 2004, mediation services were funded by the counties resulting in great disparity regarding availability and accessibility of court-connected mediation services. With the advent of state funding, a "Mediation Model" was adopted that envisioned equitable and fair access to mediation services across the state.

ADR Performance and Accountability Workgroup

Mike Bridenback, Court Administrator, Thirteenth Judicial Circuit, was selected to chair the ADR P&A Workgroup. The Workgroup was specifically charged with proposing standards of operation and best practices for mediation services in the trial courts including, if needed, any statutory and rule revisions to the TCP&A.

In addition to Mr. Bridenback, the Workgroup members are as follows:

- Richard Callanan, Court Administrator, Twentieth Judicial Circuit
- Robin Davis, ADR Director, Eighth Judicial Circuit[1]
- Kathy Reuter, ADR Director, Ninth Judicial Circuit
- The Honorable Ron Rothschild, Seventeenth Judicial Circuit
- The Honorable Lynn Tepper, Sixth Judicial Circuit
- Mary Vanden Brook, Court Administrator[2], Sixteenth Judicial Circuit

The Workgroup met from October 2007 through June 2008 via a series of conference calls, video and live meetings. In May, the Workgroup solicited feedback from the trial courts on the proposed standards and best practices and modified the recommendations accordingly. The Workgroup report was then forwarded to the TCP&A for review and final approval.

[1] Ms. Davis resigned from the Eighth Judicial Circuit on June 20, 2008 to become a Professor at the University of Florida's Levin College of Law.
[2] Ms. Vanden Brook resigned as Court Administrator on April 14, 2008 to run for the circuit bench.

Recommendations

When the Workgroup began its work, it intended to address the issues concerning the court programs broadly and creatively. Included in the discussion and recommendations were changes to the eligibility requirements for court-program family mediation (either expand or reduce); changing the eligibility criteria from income to assets; and assessing fees based on per person income (or assets) rather than per family and others. Unfortunately, a budget crisis forced the Workgroup to redirect some of their attention to developing a sustainable method for funding the ADR programs. In order to do so, forecasts had to be drawn based on known data. As a result, the Workgroup removed from consideration any of the ideas which would have impacted forecasts and therefore render the revenue projections non-reliable. The TCP&A recommends, at such time as it is feasible, that these other ideas be pursued and that the recommendations contained in this report be accepted as part one in the project.

For this report, the recommendations are divided into two primary sections: funding and operations. The goal of addressing these areas is to provide recommendations that will bring about equity and uniformity to court-connected mediation programs while recognizing the important role that local variances play in a state as diverse as Florida.

In the funding section, the recommendations include: revising the manner in which mediation funds are allotted by the Trial Court Budget Commission, defining the length of a mediation session and delineating methods by which filing fees are assessed and collected by the clerks of court. The recommendations also include increases to the mediation session fees. The increases were developed as part of this project and put on a fast track for implementation during the 2008 Legislative Session *(CS for SB 1790)* in an effort to preserve the ADR programs. The service fee increases were adopted along with additional filing fees allowing for the transfer of the ADR programs from general revenue funding to trust funding.

The operations section includes a focus on the court's application of ADR and case referrals to court-connected mediation programs, court ADR staffing and responsibilities, service delivery, contract compensation, and county mediation.

The proposed standards of operation and best practices are summarized in the following table. A "standard of operation" is intended to be a *mandatory* practice which must be implemented. A "best practice" is a suggested practice that is intended to improve operations, but due to local conditions beyond the court's control, is not required. In the absence of either a standard of operation or best practice, courts have discretion to implement processes that promote efficiency and provide for appropriate process controls in their ADR programs.

Summary of Standards of Operation & Best Practices

Funding	**Standards of Operation** A. The ADR/Mediation element shall be funded based on a formula approved by the Trial Court Budget Commission. B. The funding formula for the ADR/Mediation element shall be based on the following principles: 1. The formula shall result in the total number of dollars required to provide ADR/Mediation services. 2. The formula shall be based on the actual median cost of a mediation session, by case type, applied to projected event data from the Uniform Data Reporting System. 3. The formula shall incorporate a modifier for non-direct service functions; 4. The formula shall incorporate a modifier for multi-county circuits; and 5. The formula shall incorporate a modifier for the use of volunteers and pro bono service providers regardless of whether a circuit uses these resources. C. Funds collected for ADR/Mediation services shall be pooled into one statewide trust account for allocation by the Trial Court Budget Commission. D. Funding allocations shall take the total need for funding into consideration in order to bring uniformity and equity to the level of services provided across the trial courts and should not be based solely on the individual collections of each circuit. E. Additional resources requested by the circuits during the Legislative Budget Request process shall be requested to optimize coverage for all counties in a circuit and coverage of all appropriate case types under the Mediation Model. F. Additional resources requested by the circuits during the Legislative Budget Request process shall be prioritized for those ADR/Mediation functions permitted under the Mediation Model. G. Positions allotted to the ADR/Mediation element shall primarily perform Mediation Model functions; however, these positions shall not be prohibited from performing other ADR functions (except service delivery) to their primary responsibilities. H. Expenditures from the ADR/Mediation element shall be limited to expenses associated with the ADR/Mediation element.
Mediation Session Fees and Session Length	**Standards of Operation** A. Mediation session fees for county cases above small claims and family cases shall be set by Florida Statute. 1. Mediation fees in county cases above small claims shall be $60 per party per session. 2. Mediation fees in family cases shall be: ●$120 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; ●$60 per person per scheduled session in family mediation when the parties combined income is less than $50,000 ●There shall be no mediation session fees charged to parties for dependency mediation services. ●Indigent parties shall be provided services at no cost. B. County mediations shall be scheduled for any amount of time between 60 and 90 minutes at the discretion of the ADR director, but under no circumstances shall the parties be assessed additional fees until after the expiration of 90 minutes. C. Family mediations shall be scheduled for any amount of time between two and three hours at the discretion of the ADR director, but under no circumstances shall the parties be assessed additional fees

	until after the expiration of three hours. D. For purposes of assessing fees pursuant to section 44.108(2), Florida Statutes, data collection and funding calculations mediation sessions shall be defined as follows: 1. a county mediation (above small claims) session is no more than 90 minutes and 2. a family mediation session is no more than 3 hours. E. For purposes of data collection and funding calculations mediation sessions shall be defined as follows: 1. a small claims mediation session is 60 minutes and 2. a dependency mediation session is no more than three hours.
	Best Practices a. In county cases above small claims and family mediations, only one session should be initially scheduled per case unless both parties agree otherwise.
Fee Collection Process	**Standards of Operation** A. When court mediation services are ordered, mediation parties shall pay the statutorily authorized fees to the clerk of the court. B. In accordance with section 44.108, Florida Statutes, 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' Mediation and Arbitration Trust Fund 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.
	Best Practices a. The ADR director should exercise due diligence and determine the per party fee assessment prior to the Mediation Notice and/or Order being sent to the party. b. The trial court administrator should work with the clerk of court to develop a procedure for tracking mediation service fees from assessment to collection. c. The fee amount owed should be provided to the parties with the mediation notice and referral to mediation. d. Pursuant to statute, once mediation is scheduled and noticed, assessed fees should be due and owed whether or not parties appear for scheduled mediation. e. If one party fails to appear at a scheduled mediation session, the party who appears should pay the assessed fee, and the party who fails to appear should be assessed for the missed session and should also be assessed both parties' mediation fees if another session is ordered by the court or agreed to by the parties. f. If a party fails to pay an assessed mediation fee, the initial mediation should still be conducted. g. At the discretion of the ADR director, no subsequent mediation session should be scheduled or conducted until all prior assessed mediation fees are paid in full. h. If a party fails to pay the assessed mediation fee, non-payment should be reported to the court by the trial court administrator or designee, and the court shall issue an Order to Show Cause within ten days. i. The court should review mediation service fees paid by the parties at the final hearing and should reapportion the fees as equitable.

	j. If the court orders a refund; authorization should be transmitted by the ADR director for processing and issuance to the OSCA Finance and Accounting Office. k. The trial court administrators should coordinate with the clerks of court so that collections by statutory source can be reviewed on a monthly basis in the same manner as the quarterly report required under section 44.108, Florida Statutes. l. The ADR director should reconcile the monthly or quarterly report with cases mediated during the month or quarter to determine if the clerk is collecting and remitting fees correctly.
Court Application of ADR/ Mediation & Case Referrals	**Standards of Operation** A. Referrals to mediation and non-binding arbitration shall be consistent with chapter 44, Florida Statutes, state court procedural rules and other policies or reports that may be adopted. B. The issuance of a Domestic Violence (DV) Injunction shall not be mediated. C. Mediation of the ancillary issues of DV Injunction cases after judicial determinations may be mediated, but shall only be conducted by an experienced certified family mediator with an understanding of domestic violence dynamics. D. Written mediation agreements reached in DV injunction cases shall be reviewed by the court, and if approved, incorporated into the final judgment. E. Orders of Referrals to family mediation shall contain, in a prominent place, the statutory language that "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" along with information as to who a party should contact in such circumstances. F. All Orders of Referrals to mediation shall contain, in a prominent place, a Notice to Persons with Disabilities in accordance with rule 2.540, Florida Rules of Judicial Administration. Rule 2.540 requires that all notices of court proceedings held in a public facility and all process compelling appearance at such proceedings include the following statement: 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 [identify applicable court personnel by name, address, and telephone number] within 2 working days of your receipt of this [describe notice]; if you are hearing or voice impaired, call 711.
	Best Practices a. If warranted by caseload, all contested small claims and county civil cases should be referred to mediation automatically by administrative order. 1. The Notice of Pre-Trial Conference should contain standard pre-printed information on mediation case referral. 2. Referrals to mediation in eviction cases should be conducted within ten days of referral to mediation. 3. Referrals to mediation for county court cases above small claims should be made at the status hearing, if possible, and no later than at pretrial conference. A standard scheduling order should be used which sets forth the time frame for discovery (30 days), mediation (45 days), and the trial date (60-90 days). The court should have available mediation dates to choose from in order to minimize delay and scheduling difficulties. b. Referrals to family mediation should be made as soon as possible after an answer has been filed and/or financial affidavits have been filed and/or exchanged, and prior to the filing of the 30 day notice of trial. 1. Prior to family mediation, the case should be screened for appropriateness for mediation. 2. If either party seeks emergency or temporary relief, the court should determine if the case should be expedited. If so, mediation should be available within one week of referral or the case

	should be heard by the court. 3. If Case Management Conferences are held, the judge should review the file to determine whether the case is ready for mediation and whether domestic violence issues exclude the case from mediation. Available mediation dates should be provided by the ADR program to the court in order to minimize delay and scheduling difficulties for cases appropriate for mediation. 4. Cases that are re-opened via a Supplemental Petition or Motion for Modification should be referred as soon as possible after service is obtained. c. All dependency cases, including Termination of Parental Rights, should be screened by the court and ordered to mediation as appropriate. 1. Mediation referrals made at the shelter or arraignment hearing should be held within seven to ten days. Available mediation dates should be provided by the ADR program to the court in order to minimize delay and scheduling difficulties. 2. In Termination of Parental Rights cases, mediation referrals should be made at the Advisory Hearing and the mediation conference should be held within 30 days. Available mediation dates should be provided by the ADR program to the court in order to minimize delay and scheduling difficulties. d. The chief judge, or designee, of each circuit shall maintain a list of qualified arbitrators for use in court-ordered non-binding arbitrations.
Court ADR Staffing and Functions	**Standards of Operation** A. At a minimum, each judicial circuit shall be staffed with an Alternative Dispute Resolution (ADR) Director, at least one mediation services coordinator and an administrative support position. B. ADR staff shall perform ADR functions across all counties. C. The ADR director shall be responsible for all circuit-wide court-connected ADR activities and shall supervise all court mediation staff within the circuit. D. The ADR director shall be responsible for monitoring existing circuit-wide ADR/Mediation programs and recommending to the trial court administrator and chief judge of the circuit innovations for new and existing programs. E. The ADR director shall be a Florida Supreme Court certified county and family mediator who is available to mediate these types of cases for the court as needed. F. All mediation services coordinators shall be Florida Supreme Court certified mediators in a minimum of one area of mediation certification. G. The ADR director shall be present or designate someone to be present throughout all pre-trial conferences while small claims mediations are being referred and mediated in order to handle issues which may arise. H. The ADR director shall ensure that the appropriate number of mediation rooms is available at the court facility for all program mediations on each day that cases are mediated. I. The ADR director shall provide coordination, scheduling and administrative support functions for all county (including small claims), family and dependency mediations referred to the court ADR program regardless of whether these cases are mediated by staff, contract or volunteer mediators. J. The ADR director shall provide mentorship assistance to mediator trainees seeking certification who reside or are employed within the circuit. K. The ADR director and mediation service coordinator(s) shall respond to requests from the OSCA/Dispute Resolution Center.

	L. The ADR director shall submit fiscal year mediation program statistics to the OSCA/Dispute Resolution Center, as requested.
	Best Practices a. The ADR director should rotate cases among their program mediators on an equitable basis that allows similar opportunities for all mediators to serve. b. The ADR director should provide opportunities for program mediators to earn a minimum of eight hours of continuing mediator education (CME) per fiscal year. c. The ADR director should be a Florida Supreme Court certified dependency mediator.
Mediation Service Delivery	**Standard of Operation** A. Each circuit shall implement a mediation service delivery model that maximizes the number of cases mediated within the constraints of the funding formula established by the Trial Court Budget Commission (TCBC).
	Best Practices a. The use of employee mediators should be based on the following factors: 1. Sufficient caseload requiring an employee mediator to mediate a minimum of 6 hours a day 2. Availability of qualified individuals willing to accept employee positions 3. More cost-efficient than contractual model 4. Complexity of cases b. The use of contractual mediators should be based on the following factors: 1. Compensation rates are within TCBC guidelines 2. Availability of sufficient pool of qualified mediators willing to accept referrals at the contract rate 3. Sufficient caseload referred to the court program where parties are required to pay the subsidized mediation fees (not only indigent cases referred to court program) 4. Availability of coordination, scheduling and fiscal staff 5. Complexity of cases c. The use of volunteer mediators should be based on the following factors: 1. Availability of qualified individuals willing to volunteer as mediators 2. Historical success in using volunteers 3. Lack of adequate funding to hire or contract with mediators 4. Complexity of cases d. Agreements (or contracts) should be entered into annually for all mediators providing service through the court program, whether they are paid via contract or serve as volunteers. e. Each court program should conduct an orientation session with contract and volunteer mediators prior to their assignment of cases to review: 1. the mediators' rights and obligations 2. procedures for accepting assignments 3. ethical standards of conduct expected 4. criteria for performance review 5. compensation rates (if applicable) 6. scheduling procedures 7. methods and procedures for payment and reimbursement for expenses (if applicable) f. Each court program should schedule volunteer mediators in a manner so that the scheduled mediators will have sufficient cases to mediate. g. Each court program should establish a process for evaluating the performance of contract and volunteer mediators on an annual basis. The process should include criteria for determining whether the agreement or contract with the mediator should be renewed. Factors to consider include: 1. reliability (did the mediator fulfill all obligations)

	2. party satisfaction (were there any formal or informal complaints) 3. willingness to assist with mentorships 4. clarity of written agreements 5. skill level 6. maintenance of all requirements for continued certification h. Program mediations should be held at court facilities whenever possible. In the event that mediation is scheduled off-site, the facility must be ADA compliant.
Contract **Compensation**	**Standards of Operation** A. Contract mediators shall be paid at a rate not to exceed the following: Case Type — Hourly Small Claims — $30 per hour County Civil — $50 per hour Family — $100 per hour Dependency — $100 per hour B. All mediation service contracts shall contain standardized template language developed by OSCA for the procurement of mediation services.
County Court Mediation	**Standards of Operation** A. Each county mediation program shall maintain a roster of Florida Supreme Court certified county mediators who will be available to mediate small claims cases for the court program. This roster shall represent the diversity of the community. B. County mediators shall be selected for placement on the roster through a process similar to the hiring process for employees. Specifically, the policies and procedures for employment shall be utilized to the extent applicable including advertising vacancies as needed. Background checks and references shall be completed on applicants prior to sponsorship into training or, if already certified, inclusion on the program roster. C. The ADR director shall notify small claims mediators of their assigned schedule no later than 14 days prior to the date of the mediation/pre-trial conference. D. Every mediation shall be conducted in an individual private room.
	Best Practices a. Each county mediation program should maintain a roster of Florida Supreme Court certified county mediators who are interested in providing county mediation (above small claims) services in that county. b. If the mediator roster(s) or applicant pool does not reflect the diversity of the community, more proactive outreach methods should be used to encourage diversity. c. A panel, consisting of the ADR director or designee, a judge and a court administration designee should be used to fill county mediation roster vacancies. d. With the exception of rural counties and areas with historical needs, any mediator who has not mediated for the court program in the previous 60 days should be removed from the roster. e. Although programs have discretion on mediator assignments, the programs should schedule and assign cases to their roster mediators on an equitable basis. f. County civil cases (above small claims) should be referred to mediators based upon the competencies of the mediator and issues brought forth in the case. Volunteers with sufficient skill level may be used. g. Under no circumstances should any program schedule more mediators than mediation rooms available.

	h. The OSCA Dispute Resolution Center should sponsor a maximum of three statewide county training programs per fiscal year, to be held at a neutral, non-courthouse, facility. Each "large" circuit would be invited to send three trainees; each "medium" circuit to send two trainees; and each "small" circuit to send one trainee per training. Circuits would be allowed to utilize up to two unused training slots per year from other circuits or training slots unused for that year, if space permits. i. At the discretion of the OSCA Dispute Resolution Center, additional trainings should be scheduled for counties establishing new county mediation trainings.

Introduction to Court-Connected Alternative Dispute Resolution in Florida

Over the past 30 years, the Florida State Court System's dedication to alternative dispute resolution (ADR) and offering litigants court-connected opportunities to resolve their disputes without judicial intervention has resulted in one of the most comprehensive court-connected mediation programs in the country. The first citizen dispute settlement (CDS) centers were created in the 1970's to address community and neighbor disputes. In the mid 1980's, the Florida Legislature created a study commission on the use of alternative dispute resolution in Florida's courts. On January 1, 1988, comprehensive revisions to Chapter 44, Florida Statutes, entitled "Mediation Alternatives to Judicial Action," were implemented. That legislation granted civil trial judges the statutory authority to refer cases to mediation or arbitration, subject to rules and procedures established by the Supreme Court of Florida. Twenty years after this landmark legislation, court-connected mediation and arbitration have flourished in many jurisdictions to the extent that there is a presumption among judges, attorneys and litigants that civil cases will be referred to mediation and/or arbitration prior to the scheduling of a trial date.

The ADR processes of mediation and arbitration are defined in section 44.1011, Florida Statutes as noted below:

"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, 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. "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.

"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.

To facilitate the mediation of these cases the Supreme Court has established requirements for the certification of mediators in county, family, dependency and circuit civil cases. As of February 2008, there were a total of 5,465 individuals certified as mediators in one, or a combination of, the following areas:

- certified county mediators – 3,248
- certified family mediators – 1,965
- certified circuit mediators – 2,449
- certified dependency mediators – 187

From 1988 through June 2004, court-connected mediation and arbitration programs were developed and staffed with mediation services made available to litigants through funds of respective counties. Each Board of County Commissioners in Florida's 67 counties had the statutory authority to institute a local mediation filing fee in civil and family cases and charge a sliding scale fee to litigants for mediation services. In some counties, dedicated county funds

along with filing and services fees were sufficient to adequately fund mediation and arbitration services. However, in other counties, the lack of a high volume of cases and resulting filing fees and/or the lack of county funds prohibited the establishment of mediation and arbitration programs. In multi-county circuits, it was not uncommon for one or two counties to have established mediation and arbitration programs while more remote counties in the circuit did not have these services available to their litigants.

Given the success of mediation in allowing litigants to resolve their disputes in a more peaceful, confidential manner and the saving of judicial resources if the litigants resolve their own disputes, it was deemed in the best interest of the court system to establish and refer cases to court-connected mediation programs. Thus, in preparation for the transition from a county to a state funded court system through Revision 7, Article V of the Constitution, the court system identified court-connected mediation and arbitration as a core element of the court system worthy of state funding. In 2003, the court was successful in achieving legislative support for court-connected mediation and arbitration and Chapter 29.004 Florida Statutes was amended to provide:

> For purposes of implementing s.14 Article V of the State Constitution, the elements of the state court system to be provided from state revenues appropriated by general laws as are as follows…
>
> Mediation and arbitration, limited to trial court referral of a pending judicial case to a mediator or a court-related mediation program, or to an arbitrator or a court-related arbitration program, for the limited purpose of encouraging and assisting the litigants in partially or completely settling the case prior to adjudication on the merits by the court. This does not include citizen dispute settlement centers under s. 44.201 and community arbitration programs under s. 985.16.

During this same period, the Office of the State Courts Administrator (OSCA) contracted with consultants to assist court staff with developing a comprehensive model for mediation services. In August 2003 the consultants released, *A Report and Recommendations,* which formed the groundwork for developing a comprehensive, statewide model for the delivery of court-connected county, family and dependency mediation services. From 2003 to 2004, court leaders further developed and refined what many refer to today as the "Mediation Model". As it currently stands, the Model specifically sets forth mediation services to be offered by the courts as follows:

- Small Claims Mediation (civil cases less than $5,000);
- County Cases above Small Claims (civil cases from $5,000 - $15,000);

- Family Cases, wherein the parties combined income does not exceed $100,000; and
- Dependency Cases

To assist in funding the coordination and services above, the Mediation Model incorporated standardized mediation session fees (see section 44.108, Florida Statutes) as follows:

- $40 per person per session in county court cases;
- $40 per person per session in family mediation when the parties' combined income is less than $50,000; and
- $80 per person per session when the parties' combined income is greater than $50,000, but less than $100,000;

Parties involved in small claims mediation, dependency mediation, residential eviction cases or those who are indigent are not assessed mediation session fees.

While the focus of the August 2003 report spotlighted state funded court-connected county, family and dependency mediation, Florida Statutes and the court system also authorize the referral of cases to circuit civil mediation, appellate mediation and non-binding arbitration. These alternatives remain vital components of the court system and court-connected ADR programs are encouraged to assist trial judges and litigants with referrals to these processes, even though dedicated state funds are not available for direct service delivery.

Mediation Process Overview

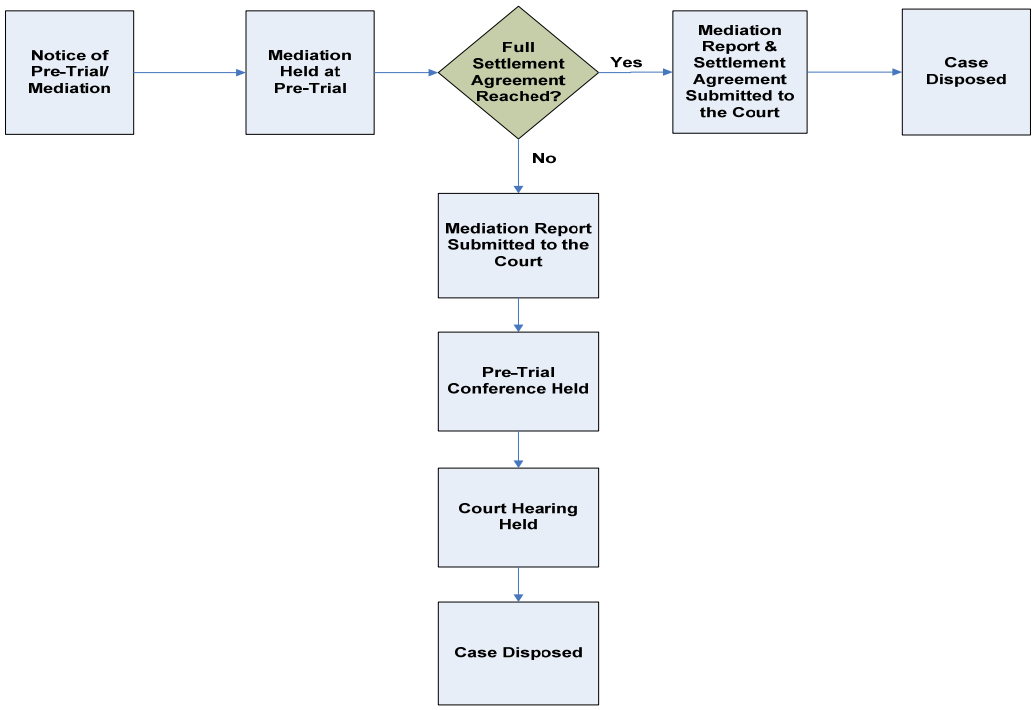
The following section provides an overview of court-connected mediation in small claims, county above small claims, family (up to parties combined income of $100K) and dependency cases. This synopsis provides descriptive narratives and flowcharts for the case types referenced above when mediated within the confines of statewide court-connected ADR programs.

According to the Uniform Data Reporting System, 103,494 cases were referred to court-connected ADR programs in fiscal year 2006-2007 including:

- Small Claims Cases – 62,394
- County Civil Cases – 9,571
- Family Cases – 27,224
- Dependency Cases – 4,305

The Uniform Data Reporting System information above and the following descriptive narratives and flowcharts do not include or reflect information on county above small claims, dependency and family cases wherein the parties select a private mediator for their case. Nor does it include those cases beyond the scope of state funding such as family cases wherein the parties have a combined income above $100,000, circuit civil, and appellate mediations.

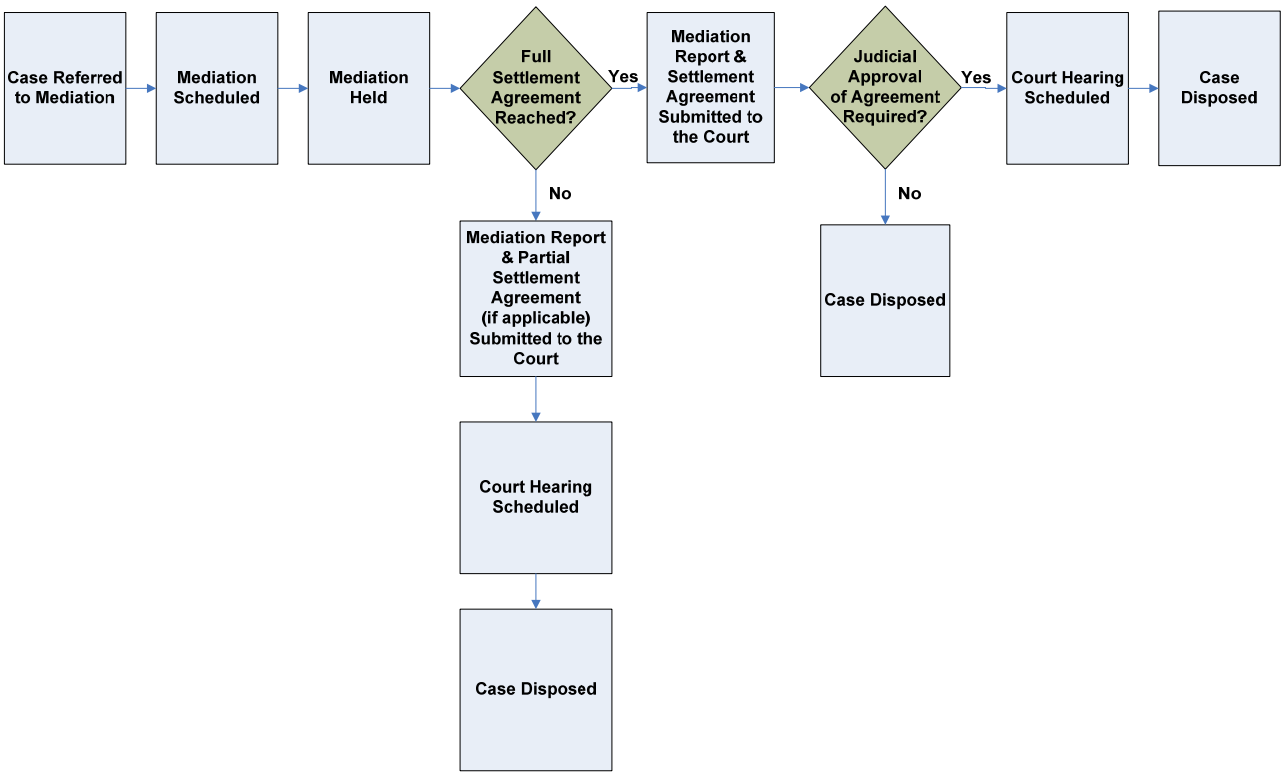
State Funded Small Claims Mediation



Small claims cases are civil cases with a jurisdiction up to $5,000. Small claims cases are typically mediated at the time of the pre-trial conference. The mediators for these cases are Florida Supreme Court certified county mediators and many serve as volunteers. Some mediators have state contracts and receive an hourly stipend for services. Mediations are conducted at a court facility and, if a mediated agreement is reached, it is reduced to writing by the mediator and immediately filed with the court. Small claims mediation case types vary and include, but are not limited to, contract disputes, landlord/tenant cases, auto repair and consumer debts. Small claims cases are typically conducted in a single session and last one hour.

There are dedicated Rules of Civil Procedure for small claims mediation. These procedures are designed for efficiency for both the litigants and the court. Generally, the parties mediate without attorneys, but the rules allow for attorneys to appear without their clients. Small claims mediation services are free to parties pursuant to section 44.180(2), Florida Statutes.

State Funded County Civil (above small claims), Family & Dependency Mediation



Other County Civil Mediation

In addition to small claims cases, other county civil cases, with a jurisdiction between $5,000 and $15,000, are referred to mediation. County court cases are generally referred to mediation either automatically by standing Administrative Order or on a case-by-case basis at the discretion of the presiding judge. Litigants referred to county mediation may elect to use court-connected mediators, if available, or they must select, agree and compensate a private mediator. If the parties select the court mediation program, they are assessed $40 per person for county mediation services except in residential eviction cases in which the parties are not assessed mediation session fees pursuant to section 44.180(2), Florida Statutes.

If a court offers county mediation services, the mediators are Florida Supreme Court certified county mediators, who are compensated by contract or as staff mediators. Contract compensation ranges from $15 to $100 per hour. There are a few circuits that use volunteer mediators in county cases above small claims. Mediations may be conducted at a court facility, the mediator's office or an attorney's office. Typically, mediations last a single session of 90 minutes to two hours.

Parties in county mediation have attorney representation more often than in small claims cases. The general mediation procedural rules apply in county cases above small claims including rule 1.720(b), Florida Rules of Civil Procedure, which requires that the following persons physically appear at mediation:

(1) the party or its representative having full authority to settle without further consultation.
(2) The party's counsel of record, if any.
(3) The representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle up to the amount of the plaintiff's last demand or policy limits, whichever is less, without further consultation.

If an agreement is reached in mediation, the mediator is responsible for seeing that the agreement is memorialized but is not required to personally draft the mediated settlement agreement (rule 10.420(c), Florida Rules for Certified and Court-appointed Mediators). At the conclusion of mediation, the mediator submits a report to the court regarding the outcome of the case, agreement or no agreement, but is prohibited from making any comment or recommendation regarding the case in accordance with rule 1.730(a), Florida Rules of Civil Procedure.

Family Mediation

Family mediation refers to mediation of domestic relations matters in general and dissolution of marriage and child-related cases in particular. Section 44.1011, Florida Statutes, defines family mediation to include cases involving modification, equitable distribution, spousal

support, child custody, visitation, paternity and child support. Section 44.102(c) prohibits the referral of family cases to mediation, upon motion or request of a party, if there has been a history of domestic violence which could compromise the mediation process.

Family mediation cases are typically referred to mediation either by Administrative Order, a family case manager or the presiding judge prior to the court setting a trial date. Pursuant to section 44.180(2), Florida Statutes, parties with combined incomes under $100,000 are eligible to receive subsidized family mediation services from the court for a set fee. Parties who have a combined income below $50,000 are assessed a $40 per person mediation fee and parties who have a combined income above $50,000 and below $100,000 are assessed an $80 per person mediation fee.[3] Parties with a combined income higher than $100,000 are not eligible to utilize the subsidized family mediation services and must utilize a private mediator whom they compensate. In addition, indigent parties are eligible to receive mediation services at no charge.

Mediators in court-connected family mediation programs are Florida Supreme Court certified family mediators who are either compensated by contract or as staff. Mediators for these cases are compensated by the case, by the hour or by session. Typically, family mediations are conducted in a single session and last two to three hours. These mediations are conducted at a court facility, the mediator's office or an attorney's office.

Unlike the Florida Rules of Civil Procedure, rule 12.740(d) of the Florida Family Law Rules of Procedure does not require the attendance of a party's attorney at family mediation unless ordered by the court. In addition, rule 12.740(f), Florida Family Law Rules of Procedure stipulates that if an agreement is reached in family mediation, it is signed by the parties and their counsel and submitted to the court unless the parties agree otherwise. If counsel for either party is not present when the agreement is reached, the mediator has specified duties to notify counsel and the court of an agreement and counsel has time specified duties to accept or reject the agreement.

Dependency Mediation

Dependency mediation programs receive referrals of child abuse and neglect cases from judges, attorneys and the Department of Children and Families. These cases may be referred at any stage of a dependency action. Referral may occur as early as the filing of a petition alleging that a child is dependent and in need of the court's intervention for protection, or much later in a case where a child may be in foster care and termination of parental rights is being pursued.

When parties are referred to dependency mediation, they have the option of selecting a court-connected mediator who is a Florida Supreme Court certified dependency mediator, if

[3] Effective July 1, 2008, section 44.108, Florida Statutes, was amended to increase mediation session fees from $40 to $60 and from $80 to $120.

available, or they may agree to select and compensate a private mediator. Pursuant to section 44.108, Florida Statutes, parties are not charged for court-connected dependency mediation services. The vast majority of parties referred to dependency mediation elect to have a Florida Supreme Court certified dependency mediator who is a court-connected mediator. These mediators are either staff or contract providers. If staff, they likely also mediate family cases for the court. Contract mediators are compensated by the courts and are typically paid $200-$300 for each case as compared to an hourly rate. Dependency mediations are unique in that multiple stakeholders may be involved in the mediation process (e.g., parents, legal guardians, foster parents, grandparents, representatives and attorneys from both the Department of Children and Families and Guardian ad Litem). Mediated agreements in dependency mediation, unlike other areas of mediation, are required by court rule to be reviewed and approved by a judge (i.e., rule 8.290(o)(1), Florida Rules of Juvenile Procedure).

Proposed Standards of Operation, Best Practices & Discussion

As applied below, a "standard of operation" is intended to be a *mandatory* practice which must be implemented. A "best practice" is a *suggested* practice intended to improve operations, but due to local conditions beyond the court's control, is not required. These standards and best practices are proposed for implementation in all judicial circuits.

Funding

I. Allocation and Appropriate Use of State Funding

Issue:

Currently, the allocation of state funding to each circuit for the ADR/Mediation element is based on a formula that has been difficult to defend when requesting funds from the Legislature. This difficulty has contributed to a less than full appropriation for ADR/Mediation services over the last four years. Further, this lack of funding has had a significant impact on how funds are used across the trial courts, causing considerable variation in service delivery. Currently, most circuits are not providing services across all counties and across all case types as delineated in the Mediation Model.

Issue Discussion:

Since Revision 7, the ADR/Mediation element has been funded with general revenue and trust fund dollars collected from mediation session fees. Every year, the Trial Court Budget Commission (TCBC) determines how funding will be allocated to each circuit for mediation services. The TCBC uses a *ceiling* for funding based on the concept that mediation services should be uniformly available statewide for small claims, residential/commercial evictions, other county civil, dependency and family (combined income less than $100K) cases. As most circuits do not currently provide mediation services for all counties and all applicable case types, the *ceiling* is meant to allow for further growth in services until all circuits have uniform availability statewide.

The *ceiling* calculation was developed in anticipation of the revision to state funding by examining the expenditures of those few circuits providing full mediation services as defined under the Mediation Model. As illustrated in the following table, the *ceiling* is calculated based on 1) circuit size for coordination duties and 2) the number of filings (for the applicable case types noted above) multiplied by $4 for direct services. The total allocation for a circuit is not permitted to be in excess of the *ceiling* calculation. For instance, Circuit A is classified as a small circuit and has a total of 5,000 applicable filings in the most recent fiscal year. Therefore, Circuit A would be permitted to spend up to $270,000 (5,000 filings multiplied by $4 added to $250,000).

	Coordination	Direct Services
Small	$250,000	$4 per Eligible Filing
Medium	$375,000	
Large	$475,000	
Very Large	$600,000	

However, because the trial courts have not received enough funding to cover the statewide need as calculated under the above formula, most circuits have not been allocated funding up to the *ceiling* (see Attachment A for fiscal year 2007-08 funding allocations). Therefore, the actual allocations approved by the TCBC have been largely based on each circuit's historical spending and fee collection trends as long as the allocations do not exceed the *ceiling*. The lack of full funding has contributed to the wide variation in service delivery levels that still exist across the trial courts.

Since Revision 7 became effective, the TCBC has also developed certain budgetary policies aimed at achieving uniformity across the trial courts and providing guidance to the circuits on the appropriate use of funds allocated for ADR/Mediation element. These policies address the need to request additional funding in order to provide ADR/Mediation services for all counties and all appropriate case types while maximizing the use of trust fund dollars (collected through session fees). Further, mediation services are given a higher priority as compared to arbitration services, although positions in the ADR/Mediation element are not prohibited from performing arbitration functions. Lastly, expenditures in the ADR/Mediation element are restricted to the procurement of services identified in the Mediation Model.

Recommendations

Standards of Operation:

A. The ADR/Mediation element shall be funded based on a formula approved by the Trial Court Budget Commission.

B. The funding formula for the ADR/Mediation element shall be based on the following principles:

1. **The formula shall result in the total number of dollars required to provide ADR/Mediation services.**
2. **The formula shall be based on the actual median cost of a mediation session, by case type, applied to projected event data from the Uniform Data Reporting System;**
3. **The formula shall incorporate a modifier for non-direct service functions;**

4. **The formula shall incorporate a modifier for multi-county circuits; and**
5. **The formula shall incorporate a modifier for the use of volunteers and pro bono service providers regardless of whether a circuit uses these resources.**

C. **Funds collected for ADR/Mediation services shall be pooled into one statewide trust account for allocation by the Trial Court Budget Commission.**

D. **Funding allocations shall take the total need for funding into consideration in order to bring uniformity and equity to the level of services provided across the trial courts and should not be based solely on the individual collections of each circuit.**

E. **Additional resources requested by the circuits during the Legislative Budget Request process shall be requested to optimize coverage for all counties in a circuit and coverage of all appropriate case types under the Mediation Model.**

F. **Additional resources requested by the circuits during the Legislative Budget Request process shall be prioritized for those ADR/Mediation functions permitted under the Mediation Model.**

G. **Positions allotted to the ADR/Mediation element shall primarily perform Mediation Model functions; however, these positions shall not be prohibited from performing other ADR functions (except service delivery) in addition to their primary responsibilities.**

H. **Expenditures from the ADR/Mediation element shall be limited to expenses associated with the ADR/Mediation element.**

Rationale for Recommendations

After a comprehensive examination of the existing ADR/Mediation funding formula calculation, it was determined there may be a more meaningful methodology for establishing a *ceiling* cost for services. Thus, a new formula is proposed as a standard of operation which factors in actual workload and the actual cost of providing services while also encouraging growth in services up to that permitted under the Mediation Model. The following formula is offered for consideration by the Trial Court Budget Commission.

Step One- Calculate, for each applicable case type, the total dollars needed for direct mediation services.

MEDIAN COST OF A MEDIATION SESSION **X**
PROJECTED NUMBER OF MEDIATION SESSIONS HELD **X**
AVERAGE NUMBER OF HOURS PER SESSION =
TOTAL DOLLARS REQUIRED TO PROVIDE DIRECT MEDIATION SERVICES

(Note: Median cost and average hours per session for each case type are defined as: small claims- $20 at 1 hr; other county civil- $25 at 1.5 hrs; family- $100 at 3 hrs; dependency- $100 at 3 hrs.)

Step Two- Apply modifiers to the TOTAL DOLLARS REQUIRED TO PROVIDE DIRECT MEDIATION SERVICES to arrive at the ceiling for funding.

ADD 50% NON- DIRECT SERVICE MODIFIER
ADD 10% OR 15% MULTI-COUNTY MODIFIER
SUBTRACT 20% VOLUNTEER/PRO BONO MODIFIER =
CEILING FOR FUNDING ALLOCATION

(Note: The 10% multi-county modifier is applied for circuits with 2-3 counties and the 15% multi-county modifier is applied for circuits with 4 or more counties and the 16th Circuit.)

When requesting funding from the Legislature, this formula will allow the court system to equate the additional requested funding to a specific increase in mediation sessions held. Therefore, the Legislature will be able to better identify a direct relationship between the additional dollars requested and an increase in services provided. The court system will also be able to provide the specific average cost per mediation session to bring greater accountability to how funds are expended.

The proposed formula also recommends a modifier to increase funding for all of the required duties, besides direct service delivery, including: coordination and scheduling of mediation cases, supervision of mediators, provision of information to the public and to the court, preparation and processing of documents, quality assessment, and development of new programs and services. Further, a multi-county modifier is recommended to increase funding for the additional workload involved in coordinating mediations across numerous counties. Finally, a modifier is recommended to decrease funding for all circuits due to the use of volunteers and pro bono mediators. This recommendation recognizes the fiscal efficiency achieved by using volunteers and is meant to encourage their use and bring equity across the state as not all circuits are currently implementing this practice.

As approved during the 2008 Legislative Session, funding of the ADR/Mediation element will now be entirely covered through trust fund dollars collected from mediation session fees, mediator certification fees and certain filing fees beginning July 1, 2008. A standard of operation is proposed pertaining to channeling these dollars into one fund at the state level so that centralized monitoring of collections may occur and allocations may be equitably determined. A standard of operation is also recommended for giving consideration to the

funding *ceiling* when determining allocations. The concept that mediation services should be uniformly available statewide for all counties and all applicable case types requires that a funding *ceiling* exist in order to allow for growth in services until all circuits have uniform availability statewide. The *ceiling* also provides flexibility to the circuits in how they choose to staff their programs (using volunteers, employees, or contractors) but sets in place a spending limit for those circuits currently providing full services under the Mediation Model. This provides for long-term equity in how resources are expended statewide.

Lastly, consistent with existing policies already formulated by the TCBC, standards of operation are offered to address optimizing coverage across all counties within a circuit and all applicable case types; prioritizing those ADR/Mediation functions permitted under the Mediation Model without completely prohibiting other ADR functions; and prohibiting the use of ADR/Mediation funds for any other use except the procurement of ADR/mediation services.

II. Mediation Session Fees and Session Length

Issue:

Pursuant to section 44.108, Florida Statutes, sessions fees for mediation provided by state-funded court programs have been $40 per person per session in county cases (above small claims and commercial evictions) and either $40 or $80 per person per session, depending on party combined income, in family cases. There presently are no fees for residential eviction cases, small claims cases, dependency cases and indigent parties in any case. Since their adoption in 2004, there was a minor change to the statutory fees in 2005 to clarify that commercial eviction cases are subject to session fees, while residential eviction cases are not. Additionally, the amount of time for a mediation session has not been standardized nor defined in statute or court rule. Without a standardized definition, practices vary in how fees are assessed for each mediation session resulting in an inequity for mediation participants across the state.

Issue Discussion:

The mediation session fees noted above partially fund the ADR/Mediation element. Because the session fees are assessed on a per person and per session basis, the scheduling practices of the programs impact greatly on how much money is actually collected from session fees. Without a standardized time for mediation sessions, each circuit has complete discretion to develop their own definitions or not predefine the length of sessions. For many circuits, a predefined time for mediation sessions does not exist. For those circuits that do predefine the length of a session, significant variation exists not only by circuit, but also by case type. As exhibited in Attachment B in the Appendix, the defined length of a session for small claims cases ranges statewide from 30 to 90 minutes. For other county civil cases, the range statewide is from one to two hours. The most significant variation exists in family and dependency cases, where the range statewide is anywhere from one to four hours. This disparity in the length of sessions causes extreme variation in how much parties pay for mediation services across the circuits. For example, if one circuit defines a family mediation session as four hours and another circuit defines this same type of session as one hour, a party living in the first circuit would pay $40 for four hours of mediation while a party in the latter circuit would pay $40 for one hour, or $160 for four hour-long sessions.

Recommendations

Standards of Operation:

A. Mediation session fees for county cases above small claims and family cases shall be set by Florida Statute.

1. **Mediation fees in county cases above small claims shall be $60 per party per session.**
2. **Mediation fees in family cases shall be:**

- **$120 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;**
- **$60 per person per scheduled session in family mediation when the parties combined income is less than $50,000**
- **There shall be no mediation session fees charged to parties for dependency mediation services.**
- **Indigent parties shall be provided services at no cost.**

B. County mediations shall be scheduled for any amount of time between 60 and 90 minutes at the discretion of the ADR director, but under no circumstances shall the parties be assessed additional fees until after the expiration of 90 minutes.

C. Family mediations shall be scheduled for any amount of time between two and three hours at the discretion of the ADR director, but under no circumstances shall the parties be assessed additional fees until after the expiration of three hours.

D. For purposes of assessing fees pursuant to section 44.108(2), Florida Statutes, data collection and funding calculations, mediation sessions shall be defined as follows:

1. **A county mediation (above small claims) session is no more than 90 minutes and**
2. **A family mediation session is no more than 3 hours.**

E. For purposes of data collection and funding calculations, mediation sessions shall be defined as follows:

1. **A small claims mediation session is 60 minutes and**
2. **A dependency mediation session is no more than three hours.**

Best Practice:

a. In county cases above small claims and family mediations, only one session should be initially scheduled per case unless both parties agree otherwise.

Rationale for Recommendations

Under Revision 7, the intent was for county, family and dependency mediation services to be accessible to all income levels across all counties. The session fees were set at a rate which would provide subsidized mediation to parties who could not afford market rates. The fees were not intended to fully fund the program, but were intended to offset some of the expense of providing the service. At the time of adoption, there was an understanding that the amount of these fees would need to be revisited after some experience with implementation.

The current service fee model was based on several assumptions, including:

- Litigants in family cases with joint income over $100,000 and litigants in circuit civil cases can afford to pay market rate for mediation services and thus are not eligible for subsidized services through the court programs
- Dependency mediation should be provided at no charge to the parties given the nature of the parties (a substantial number are state entities, e.g. Department of Children and Families and Guardian ad Litem) and the value of mediation to the court system and the parties
- Mediation of small claims cases should be provided at no charge to the litigants given the amount in controversy, the required filing fees to access the court program, and the number of volunteer mediator programs
- The litigants in commercial eviction cases are significantly different than those in residential eviction cases, and commercial litigants can afford to pay the mediation fee.

The recommended standards of operation call for an increase in the per person session fees of 50% across the board which is consistent with the statutory increases adopted during the 2008 Legislative Session. Having now had four years of experience, it is clear that the initial subsidization was too great and the new fee schedule will provide accessibility while yielding greater revenue for the continuation of the court programs. Further, a critical part of the recommendations is a definition of the previously undefined "session" in order to provide for greater uniformity across the state. The defined session length was determined based on a review of actual practice, but it should be noted that the session length definition is for the purpose of session fee collections – not necessarily scheduling, so programs may set longer or shorter sessions depending on local practice, but the program would be restricted from collecting additional fees until the defined session length concluded. In addition, programs are not constrained by this definition from scheduling additional sessions if cases warrant, but best practice would suggest that only one session initially be scheduled.

Further, the accuracy of event data collected through the Uniform Reporting Data (i.e., number of mediation sessions held) is dependent on each circuit using the same definition of a mediation session. The above recommendations will improve the accuracy of this data which may in turn improve the accuracy in which the funding needs of each circuit are calculated.

III. Fee Collection Process

Issue:

The fee collection process refers to the procedures for payment of court-connected mediation session fees including assessment, collection and transmittal of funds. Currently, the fee collection process and the level of collections vary significantly by circuit and county.

Issue Discussion:

Pursuant to section 44.108, Florida Statutes, mediation session fees are to be collected by the clerk of court in each county and remitted to the Department of Revenue for deposit into the state court system's Mediation and Arbitration Trust Fund. This statute also permits the clerk to deduct $1 per assessment for processing this fee. The clerk is mandated to submit a quarterly report to the chief judge of the circuit specifying the amount of funds collected.

At this time, responsibility for determination of fees is not clearly delineated. In some jurisdictions, either the clerk or a case manager determines the parties' income/eligibility and/or what fee is assessed. In other jurisdictions, the court ADR program is responsible for these duties. There is also great variation regarding when the fees are collected and what happens when one or both parties do not pay the fee. In some circuits, the program will not mediate unless the fees have already been paid. In other circuits, mediation takes place and the court will enter an order to show cause regarding the nonpayment or the parties are asked to pay the clerk, but there are no repercussions if payment is not made. As a result of this lack of standardization, fiscal reports do not accurately correspond with circuit mediation activity. As shown in Attachment C in the Appendix, when comparing fiscal year 2006-07 actual fee collections to expected collections (based on the number of mediation sessions held), the actual collections vary from 188% to 48% of the expected amount.

Recommendations

Standards of Operation:

A. When court mediation services are ordered, mediation parties shall pay the statutorily authorized fees to the clerk of the court.

B. In accordance with section 44.108, Florida Statutes, 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' Mediation and Arbitration Trust Fund 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.

Best Practices:

a. **The ADR director should exercise due diligence and determine the per party fee assessment prior to the Mediation Notice and/or Order being sent to the party.**

b. **The trial court administrator should work with the clerk of court to develop a procedure for tracking mediation service fees from assessment to collection.**

c. **The fee amount owed should be provided to the parties with the mediation notice and referral to mediation.**

d. **Pursuant to statute, once mediation is scheduled and noticed, assessed fees should be due and owed whether or not parties appear for scheduled mediation.**

e. **If one party fails to appear at a scheduled mediation session, the party who appears should pay the assessed fee, and the party who fails to appear should be assessed for the missed session and should also be assessed both parties' mediation fees if another session is ordered by the court or agreed to by the parties.**

f. **If a party fails to pay an assessed mediation fee, the initial mediation should still be conducted.**

g. **At the discretion of the ADR director, no subsequent mediation session should be scheduled or conducted until all prior assessed mediation fees are paid in full.**

h. **If a party fails to pay the assessed mediation fee, non-payment should be reported to the court by the trial court administrator or designee, and the court shall issue an Order to Show Cause within ten days.**

i. **The court should review mediation service fees paid by the parties at the final hearing and should reapportion the fees as equitable.**

j. **If the court orders a refund, authorization should be transmitted by the ADR director for processing and issuance to the OSCA Finance and Accounting Office.**

k. **The trial court administrators should coordinate with the clerks of court so that collections by statutory source can be reviewed on a monthly basis in the same manner as the quarterly report required under section 44.108, Florida Statutes.**

l. **The ADR director should reconcile the monthly or quarterly report with cases mediated during the month or quarter to determine if the clerk is collecting and remitting fees correctly.**

Rationale for Recommendations

As all funding for the mediation element will be generated through fee collections, it is critically important that there be a standardized method for assessing and collecting fees and that proper quality control measures be adopted to verify accurate assessments and

collections. This will also assist with avoiding delay in payments and increase the level of collections.

The above standards of operation are consistent with section 44.108, Florida Statutes which states that each clerk of court is required to submit a report to the chief judge and the OSCA no later than 30 days after the end of each quarter of the fiscal year regarding funds collected and remitted during the previous quarter of the fiscal year. However, *monthly* reports, as opposed to the statutorily required *quarterly* reports, are recommended as a best practice due to the need for a more regular review of collections. These recommendations are complemented by a best practice for the ADR director to reconcile monthly or quarterly reports to ensure the accuracy of service fee collections.

Additional best practices are proposed to address specific fee collection procedures. It is recommended that the ADR program be responsible for determining party income/eligibility and that this be calculated and sent to the parties with the mediation notice and order of referral. Since only couples with joint income less than $100,000 are eligible for the court program, the program must already review the referrals for eligibility. Thus, it makes sense that, at the same time, the program could determine the fee to be paid and inform the clerk (for input into the collection system) and the parties. The TCP&A recognizes that the financial information necessary for determining the fees is not always available from both parties at the time mediation is set. Therefore, a best practice is proposed for the ADR director to exercise due diligence in obtaining the financial information and then making the determination. In the event that the fee is set incorrectly, either too high or too low, adjustments can be made on the day of mediation. If the parties are deemed to be ineligible for the court mediation program as a result of providing their financial information (i.e., their joint income is more than $100,000) the ADR program should require them to use a private mediator instead of the court subsidized program.

It is also recommended that the trial court administrator work with the clerk to set up an efficient, effective way to track mediation session fees from assessment to collection. The TCP&A also noted that collections would increase if there were easy options for parties to pay the session fees including via internet applications and by credit card.

Pursuant to section 44.108(2), Florida Statutes, fees are assessed "per person per *scheduled* session" and therefore, they are due and owed once the mediation is scheduled and noticed. The best practices do not address the situation in which a party requests, well in advance, that the mediation be re-scheduled. If one party appears for mediation, the recommended best practice calls for the appearing party to pay his/her mediation session fee. The party who fails to appear at the scheduled mediation must pay for the mediation at which s/he did not appear and pay both shares for the re-scheduled mediation. This provision is intended to make sure that the parties take the referral to mediation seriously and to ensure full payment of fees for the program while not requiring the party who appeared to pay for two sessions.

The best practices suggest that if both parties appear, the mediation should proceed regardless of whether the session fees have been paid. The reason for this recommendation is that in family cases, there often is one party who is not interested in advancing the dissolution or changing the status quo of the custody/visitation schedule. Canceling the mediation, if such

a party does not pay the service fee, is beneficial to that party – and only that party. Instead, the best practices suggest a mechanism for enforcing payment through motions to show cause. Some circuits have had success using general magistrates who set monthly time blocks for Order to Show Cause cases. Where resources permit, judges could rotate this task. In the alternative, judges supervising cases with delinquent parties could issue the orders to show cause. These recommendations have the benefits of increasing collections and also moving cases.

Rule 12.740(c), Florida Family Law Rules of Procedure, allows the court, "when appropriate" to apportion mediation fees between the parties. The intent of this rule is to address those situations where one party has all of the assets and therefore, should pay a disproportionate share of the mediation service fees. If the parties mediate with the court program, statutorily, the parties are each assessed a "per party, per session" fee based on their joint income. Consistent with the spirit of rule 12.740, best practice dictates that the court re-apportions the fees already paid for mediation services where one party has a disproportionate share of the income and assets. This provision would also allow a party who paid for a mediation session for which the other party did not appear to seek relief from the court for the non-appearing party to reimburse the appearing party for his/her initial mediation fee.

Section 44.108, Florida Statutes, prohibits a court from charging a mediation service fee for a party deemed to be indigent. However, indigent parties are responsible, in the same manner as paying parties, to appear for mediation and hence may be assessed sanctions for failure to appear.

Operations

IV. Court Application of ADR/Mediation & Case Referrals

Issue:

Pursuant to Section 44.102(2)(b), Florida Statutes, all or any part of a civil case, including small claims and dependency actions, may be referred to mediation or non-binding arbitration at the discretion of trial court judge. In accordance with section 44.102(2)(a), Florida Statutes, civil actions for monetary damages must be referred to mediation upon the request of any party, "providing the requesting party is willing and able to pay the costs of the mediation or the costs can be equitably divided between the parties." There are some exceptions to this requirement per section 44.102(2)(a)4, Florida Statutes, including "actions governed by the Florida Small Claims Rules."

Further, section 44.102(2)(c), Florida Statutes, states that family cases involving custody, visitation, or other parental responsibility issues shall be referred to mediation "in circuits in which a family mediation program has been established and upon a court finding of a dispute" unless "upon motion or request of a party, a court finds there has been a history of domestic violence that would compromise the mediation process." In order to support the legislative intent of these statutory provisions, as well as the implementation of Revision 7 to Article V, additional guidance is needed regarding the timing and procedures of referrals to ADR.

If a trial judge refers a case to mediation, Florida court rules dictate the timeframes in which certain events must take place within the mediation process. (See rules 1.700 – 1.820, Florida Rules of Civil Procedure; rules 12.740 – 12.741, Florida Family Law Rules of Procedure; and rule 8.290, Florida Rules of Juvenile Procedure)

Issue Discussion:

While there are no standardized statewide policies, most civil trial judges in Florida refer at least some portion of their caseload to mediation or non-binding arbitration. In Attachments D, E and F, the case referral practices in each circuit are shown in comparison to the number of cases which could be referred, the number that were referred and the corresponding percentages they represent.

In small claims cases, most referrals to mediation occur at the time of Pre-Trial Conference and mediations are conducted at the court facility at that time. In county cases (above small claims), family cases and dependency cases, the parties have ten days from the order of referral to mediation to agree on the selection of a mediator. If they cannot agree on a mediator, the court will appoint one by rotation or some other procedure as adopted by administrative order of the chief judge. Mediation of circuit civil (non-family) cases and county court (above small claims) cases must be completed within 45 days from the first mediation unless extended by the court or by stipulation of the parties per rule 1.710(a), Florida Rules of Civil Procedure. Family mediations must be completed within 75 days of the first mediation conference unless otherwise ordered by the court per rule 12.740(e), Florida Family Law Rules of Procedure. Dependency mediations must be conducted in compliance with the statutory time requirements for dependency matters per rule 8.290, Florida Rules of Juvenile Procedure.

In addition to mediation and non-binding arbitration, courts may utilize other ADR processes, such as Summary Jury Trials and parent coordination. Parties may also wish to voluntarily submit their disputes to binding arbitration, voluntary trial resolution or a host of other ADR processes. The use of these processes is beyond the scope of this report given that currently, the funding model for ADR does not include service delivery for any process other than court-ordered mediation. However, nothing in this report should be interpreted to limit the use of these alternatives so long as state funds are not utilized for direct services.

Recommendations

Standards of Operation:

A. **Referrals to mediation and non-binding arbitration shall be consistent with chapter 44, Florida Statutes, state court procedural rules and other policies or reports that may be adopted.**

B. **The issuance of a Domestic Violence (DV) Injunction shall not be mediated.**

C. **Mediation of the ancillary issues of DV Injunction cases after judicial determinations may be mediated, but shall only be conducted by an experienced certified family mediator with an understanding of domestic violence dynamics.**

D. **Written mediation agreements reached in DV injunction cases shall be reviewed by the court, and if approved, incorporated into the final judgment.**

E. **Orders of Referral to family mediation shall contain, in a prominent place, the statutory language that "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" along with information as to who a party should contact in such circumstances.**

F. **All Orders of Referrals to mediation shall contain, in a prominent place, a Notice to Persons with Disabilities in accordance with rule 2.540, Florida Rules of Judicial Administration. Rule 2.540 requires that all notices of court proceedings held in a public facility and all process compelling appearance at such proceedings include the following statement:**

> **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 [identify applicable court personnel by name, address, and telephone number] within 2 working days of your receipt of this [describe notice]; if you are hearing or voice impaired, call 711.**

Best Practices:

a. **If warranted by caseload, all contested small claims and county civil cases should be referred to mediation automatically by administrative order.**

   1. **The Notice of Pre-Trial Conference should contain standard pre-printed information on mediation case referral.**
   2. **Referrals to mediation in eviction cases should be conducted within ten days of referral to mediation.**
   3. **Referrals to mediation for county court cases above small claims should be made at the status hearing, if possible, and no later than at pretrial conference. A standard scheduling order should be used which sets forth the time frame for discovery (30 days), mediation (45 days), and the trial date (60-90 days). The court should have available mediation dates to choose from in order to minimize delay and scheduling difficulties.**

b. **Referrals to family mediation should be made as soon as possible after an answer has been filed and/or financial affidavits have been filed and/or exchanged, and prior to the filing of the 30 day notice of trial.**

   1. **Prior to family mediation, the case should be screened for appropriateness for mediation.**
   2. **If either party seeks emergency or temporary relief, the court should determine if the case should be expedited. If so, mediation should be available within one week of referral or the case should be heard by the court.**
   3. **If Case Management Conferences are held, the judge should review the file to determine whether the case is ready for mediation and whether domestic violence issues exclude the case from mediation. Available mediation dates should be provided by the ADR program to the court in order to minimize delay and scheduling difficulties for cases appropriate for mediation.**
   4. **Cases that are re-opened via a Supplemental Petition or Motion for Modification should be referred as soon as possible after service is obtained.**

c. **All dependency cases, including Termination of Parental Rights, should be screened by the court and ordered to mediation as appropriate.**

   1. **Mediation referrals made at the shelter or arraignment hearing for mediation should be held within seven to ten days. Available mediation dates should be provided by the ADR program to the court in order to minimize delay and scheduling difficulties.**
   2. **In Termination of Parental Rights cases, mediation referrals should be made at the Advisory Hearing and the mediation conference should be held within 30 days. Available mediation dates should be provided by the ADR program to the court in order to minimize delay and scheduling difficulties.**

d. **The chief judge, or designee, of each circuit shall maintain a list of qualified arbitrators for use in court-ordered non-binding arbitrations.**

Rationale for Recommendations

Given the likelihood of positive outcomes for parties via mediation, most of the best practices are intended to provide for easier and quicker referrals to mediation. Rural counties in circuits designated as "small" or "medium" may have some difficulty implementing "automatic referrals" to mediation and greater judicial involvement may be warranted. In each subject matter area, the best practice is for the court to have available from the court ADR program, a calendar of available mediation dates so the judge may set the mediation at the time of the status hearing or pre-trial conference. This will ensure that the mediation takes place expeditiously.

In small claims cases, the proposed best practice is prefaced with "if warranted by caseload," because in some of the smallest counties, the county judge can handle the caseload expeditiously and the addition of mediation would only serve to delay case adjudication. In all other circumstances, the default position should be that the county case will be referred to mediation unless there are extenuating circumstances which would dictate that the case immediately proceed to the judge. Since the vast majority of small claims cases will be mediated before the Pre-Trial Conference, the Notice of Pre-Trial Conference should contain information about mediation so that parties understand what to expect from the court.

Dependency cases generally require a level of attention by the court not necessitated in other types of cases. The significant issues involved pose risks that require effective case management and informed decisions regarding mediation referrals. For family cases, particularly in circuits which have instituted automatic referrals to family mediation pursuant to administrative order, it is important that there be a review of the case prior to mediation. While it would be preferable if this review was performed by case managers, given the current budget situation, it is unlikely that the personnel exist to undertake this function. Therefore, it is important for the mediator to undertake some review measures prior to mediation. One option is for the mediation program to utilize the screening instrument and protocol which was developed by the ADR Rules and Policy Committee (see Attachment G in the Appendix). Regardless of whether initial screening is completed, mediators are obligated, pursuant to the ethical standards for mediators to continually monitor each case to determine if the mediation should be postponed or terminated based on a party's ability to meaningfully participate in the mediation and exercise self-determination (see rules 10.310 and 10.420, Florida Rules for Certified and Court-Appointed Mediators).

Pursuant to rule 12.610(c)(1)(C), Florida Family Law Rules of Procedure, mediation in domestic violence (DV) injunction hearings may be appropriate after the judge determines if the DV injunction will issue and rules on all of the following: whether the respondent may have any contact with the petitioner, and if so, under what conditions; exclusive use of the parties' shared residence; temporary custody of minor children; whether temporary visitation will occur and whether it will be supervised; whether temporary child support will be ordered; whether spousal support will be ordered; and such other relief as the court deems necessary for the protection of the petitioner. Given the inherent power imbalance present in DV injunction cases, it is critical that mediation only be conducted by Florida Supreme Court certified family mediators who are particularly qualified and aware of DV dynamics and that any agreement reached is reviewed by the judge to determine appropriateness.

V. Court ADR Staffing and Functions

Issue:

Court ADR programs lack standardization and equality in staff positions and functionalities across circuits and within circuits across counties.

Issue Discussion:

Due to a lack of full funding for the ADR element and circuit flexibility in staffing their ADR programs, uniformity in ADR staffing positions and functionalities has not materialized on a statewide basis. This lack of standardization has led to challenges in implementing the Mediation Model as court ADR programs lack the human resources to perform ADR functions. In addition, there are instances in which circuits have a full complement of ADR staff to perform Mediation Model functions, but there is no clear directive on the key ADR functions that must be performed by court ADR programs, specifically ADR directors.

Recommendations

Standards of Operation:

A. **At a minimum, each judicial circuit shall be staffed with an Alternative Dispute Resolution (ADR) Director, at least one mediation services coordinator and an administrative support position.**

B. **ADR staff shall perform ADR functions across all counties.**

C. **The ADR director shall be responsible for all circuit-wide court-connected ADR activities and shall supervise all court mediation staff within the circuit.**

D. **The ADR director shall be responsible for monitoring existing circuit-wide ADR/mediation programs and recommending to the trial court administrator and chief judge of the circuit innovations for new and existing programs.**

E. **The ADR director shall be a Florida Supreme Court certified county and family mediator who is available to mediate these types of cases for the court as needed.**

F. **All mediation services coordinators shall be Florida Supreme Court certified mediators in a minimum of one area of mediation certification.**

G. **The ADR director shall be present or designate someone to be present throughout all pre-trial conferences while small claims mediations are being referred and mediated in order to handle issues which may arise.**

H. **The ADR director shall ensure that the appropriate number of mediation rooms is available at the court facility for all program mediations on each day that cases are mediated.**

I. **The ADR director shall provide coordination, scheduling and administrative support functions for all county (including small claims), family, and dependency mediations referred to the court ADR program regardless of whether these cases are mediated by staff, contract or volunteer mediators.**

J. **The ADR director shall provide mentorship assistance to mediator trainees seeking certification who reside or are employed within the circuit.**

K. **The ADR director and mediation service coordinator(s) shall respond to requests from the OSCA/Dispute Resolution Center.**

L. **The ADR director shall submit fiscal year mediation program statistics to the OSCA/Dispute Resolution Center, as requested.**

Best Practices:

a. **The ADR director should rotate cases among their program mediators on an equitable basis that allows similar opportunities for all mediators to serve.**

b. **The ADR director should provide opportunities for program mediators to earn a minimum of eight hours of continuing mediator education (CME) per fiscal year.**

c. **The ADR director should be a Florida Supreme Court certified dependency mediator.**

Rationale for Recommendations

In preparation for the transition to state funding under Revision 7, the 2003 *Report and Recommendations* included a model for mediation programs that emphasized the needs for increased uniformity and accountability in circuits throughout the state while acknowledging that local courts must have the flexibility to meet the specific nuances of their jurisdictions. The *Report and Recommendations* focused on three key areas of a statewide ADR program: 1) program management/coordination, 2) providing mediation services, and 3) fees/cost recovery.

Standards of operation A-E are consistent with recommendations in the August 2003 report for core ADR program staffing. At present time, there are five circuits which do not have ADR directors. The lack of a director for circuit-wide ADR activities impinges on the ability for services to be provided and presents administrative challenges for ADR program operations, especially in multi-county circuits. In some of these circuits, mediation service coordinators are fulfilling ADR director functions resulting in inequity across the state in terms of workload and compensation. Further, the recommendations seek to address the disparity in the functions performed by ADR directors. There are a few circuits that have ADR directors, who perform functions in one program in one county in a multi-county circuit rather than fulfilling ADR director functions across all programs in all counties. There are also ADR directors who do not directly supervise all ADR staff within their circuit and this lack of hierarchy causes challenges in program implementation, maintenance and oversight.

In addition to the disparity in ADR staffing positions, there is no clear directive to ADR programs on the manner in which key ADR functions are to be performed and by whom. The absence of a clear mandate has resulted in some functions being underperformed or not performed at all. Thus, standards of operation G-L are recommended to directly address key functions performed by ADR directors. It should be noted that the ADR director is ultimately responsible for all ADR programs in the same way that a trial court administrator bears ultimate responsibility for the trial courts. Therefore, the standards of operation and best practices throughout this report assign responsibility to the ADR director. It is understood that this responsibility may be delegated as appropriate.

As reflected in Attachment H, *Mediation Position Survey*, ADR staff performs a number of discrete ADR functions across the circuits. It is recommended and expected that the programs will continue to perform all of these functions. The standard of operation and best practice recommendations above are intended to support and complement the identified functions by recommending targeted tasks and designating the ADR staff member responsible for the task. The recommendations are not intended to be a comprehensive list of all functions undertaken by ADR programs but rather an identification of key functions that enhance performance and accountability in the areas reflected in the survey.

For example, the survey indicates that coordinating mediations is a current function of ADR programs but it does not define "coordination" or the methods which should be used to accomplish this function. Standards of operation B, G and H incorporate recommendations for the completion of specific tasks by a designated staff member with specific information on how the function should be performed. Standards of operation E and F expand upon the function of mediating cases by specifying the level of staff responsible to do so, listing the types of certification staff shall maintain and identifying the types of cases that shall be mediated. Standards of operation A, C, D and I refer to management responsibilities of ADR directors and mediation service coordinators who support the functions of supervising and managing staff, contract and volunteer mediators identified in the survey. These management responsibilities are required regardless of whether the program utilizes staff mediators, contract mediators or volunteers. The TCP&A does not condone abrogating scheduling, coordination and administrative support to contract mediators.

Standard of operation J charges the ADR director with the task of assisting mediator trainees seeking certification who reside or are employed within their circuit. This recommendation is consistent with Supreme Court Administrative Order AOSC07-57, Procedures Governing Certification of Mediators, which requires state funded mediation programs to assist trainees in completing their mentorship requirements. Providing assistance to trainees should not be interpreted to mean that the program is required to provide every trainee with all of the mentorship activities required for certification. However, ADR directors are encouraged to develop internal policies for providing mentorship opportunities to trainees as stated in best practice b and referring them to the OSCA/DRC website *Mediator Search* for a listing of certified mediators to contact for mentorship assistance.

VI. Mediation Service Delivery

Issue:

Court-connected mediation services may be offered via employees, volunteers, contract mediators or some combination of the above. There are benefits and drawbacks associated with each method.

Issue Discussion:

Under the funding model, mediation services are provided in small claims, residential/ commercial evictions, other county civil, dependency and family (combined income less than $100K) cases. Attachment I shows the current caseload, by circuit, for each court mediation program. In the county mediation area, 13 circuits utilize volunteers, six utilize contract mediators and one circuit utilizes staff mediators. In the family and dependency mediation areas, nine circuits employ staff mediators, nine circuits use contract mediators and two circuits draw on a hybrid combination of staff and contract mediators. See Attachment J for a full listing of staffing models by circuit and county.

Recommendations

Standard of Operation:

A. Each circuit shall implement a mediation service delivery model that maximizes the number of cases mediated within the constraints of the funding formula established by the Trial Court Budget Commission (TCBC).

Best Practices:

a. The use of employee mediators should be based on the following factors:

1. **Sufficient caseload requiring an employee mediator to mediate a minimum of six hours a day**
2. **Availability of qualified individuals willing to accept employee positions**
3. **More cost-efficient than contractual model**
4. **Complexity of cases**

b. The use of contractual mediators should be based on the following factors:

1. **Compensation rates are within TCBC guidelines**
2. **Availability of sufficient pool of qualified mediators willing to accept referrals at the contract rate**
3. **Sufficient caseload referred to the court program where parties are required to pay the subsidized mediation fees (not only indigent cases referred to the court program)**
4. **Availability of coordination, scheduling and fiscal staff**
5. **Complexity of cases**

c. The use of volunteer mediators should be based on the following factors:

1. **Availability of qualified individuals willing to volunteer as mediators**
2. **Historical success in using volunteers**
3. **Lack of adequate funding to hire or contract with mediators**
4. **Complexity of cases**

d. Agreements (or contracts) should be entered into annually for all mediators providing service through the court program, whether they are paid via contract or serve as volunteers.

e. Each court program should conduct an orientation session with contract and volunteer mediators prior to their assignment of cases to review:

1. **The mediators' rights and obligations**
2. **Procedures for accepting assignments**
3. **Ethical standards of conduct expected**
4. **Criteria for performance review**
5. **Compensation rates (if applicable)**
6. **Scheduling procedures**
7. **Methods and procedures for payment and reimbursement for expenses (if applicable)**

f. Each court program should schedule volunteer mediators in a manner so that the scheduled mediators will have sufficient cases to mediate.

g. Each court program should establish a process for evaluating the performance of contract and volunteer mediators on an annual basis. The process should include criteria for determining whether the agreement or contract with the mediator should be renewed. Factors to consider include:

1. **Reliability (did the mediator fulfill all obligations)**
2. **Party satisfaction (were there any formal or informal complaints)**
3. **Willingness to assist with mentorships**
4. **Clarity of written agreements**
5. **Skill level**
6. **Maintenance of all requirements for continued certification**

h. Program mediations should be held at court facilities whenever possible. In the event that mediation is scheduled off-site, the facility must be ADA compliant.

Rationale for Recommendations

Traditionally, the service delivery models for ADR programs have varied based on local practice and custom. The *2003 Report and Recommendations* recognized that, "local courts must have the flexibility to meet the specific nuances of their jurisdiction, given the presence of single as well as multiple county circuits; rural, suburban, and urban counties; great differences in case volume and mix; and the demographic diversity of Florida circuits." The intent of the recommendations is to continue to allow for the programs to maintain flexibility in service delivery, so long as the delivery can be provided within the budget allocated for the programs. The best practices suggest factors to be considered for each of the service delivery models consistent with the 2003 report which included charts containing benefits and drawbacks for each of the service delivery methods. They are summarized below:

Staff Mediators

Benefits	***Drawbacks***
-Ability to use mediators in multiple areas, as needed	-Expense – salary and benefits
-Direct supervision will promote quality control	-Payment required even if mediation cancels and for "down time"
-When not mediating, can assist with other activities of the office	-May be harder to dismiss the mediator, even if not performing well
-Increases quick access and availability to provide greater flexibility	-Scheduling limitations; may not be able to provide mediation during "non-court hours"
-Greater experience given number of mediations conducted	-Given salary constraints, may not be the most qualified mediators
-Mediations conducted in secure/controlled environment	-Potential for burnout due to high volume of mediations
-Greater control over schedules	-Requires space and equipment provided by court
-Increase diversity of mediators	-Limits party choice in mediators
-Provide consistency in quality of mediation services	-May require staff to travel to multiple counties or courthouses

Contract Mediators

Benefits

-Work on an as needed basis; can be scheduled as needed; only pay for services performed

-Less expensive – no benefits provided and less fixed overhead

-Opportunity for specialization

-Less burnout

-Some supervisory control and ability to not use a contract mediator who is under performing

-More variety

-Can attract highly experienced mediators who do not want to work full time for the court

-Potential to have a larger, diverse mediation pool

Drawbacks

-Cost, depending on contract fees, may pay more than collect per mediation

-Difficulty in supervising lots of mediators

-Increase in clerical work – e.g., scheduling

-Potential difficulties on work distribution and selection for contracts

-Administrative work in preparing contracts and signing invoices

-Potential for increased conflicts of interest

Volunteers

Benefits

-Low cost

-Potential for large diverse pool

-Tend to be very committed/motivated

-Less burnout

-Less likely to have conflict of interest problems

-Can match parties with mediator specialties

Drawbacks

-Turnover

-Local culture may not yield a qualified pool of volunteers

-Requires staff to coordinate volunteer schedules

-Recruitment and retention potential difficulties

-May not be familiar with procedures if do not mediate often

In the family law area (family and dependency mediation), it is generally accepted that given the length and complexity of these cases, that staff or contract mediators be utilized rather than relying on volunteers. However, a program is not prohibited from utilizing qualified pro bono/volunteer mediators, as appropriate. Staff mediators work particularly well in handling domestic violence injunction mediations, on-site mediation sessions, and are typically available to mediate on an as-needed basis. Thus, the 2003 report suggested that "every circuit should have at least one court staff member who is certified and able to mediate family and dependency matters..."

For county court cases, the 2003 report suggested that volunteer mediators may be appropriate for small claims cases, but court staff or contract mediators should be utilized for county cases above small claims.

Regardless of whether a program opts to utilize contract mediators or volunteers, a best practice is for the program to enter into annual agreements with the mediators. For contract mediators, the state template should be used. For volunteer mediators, the template can be modified locally for use. The formality of an agreement will lead to increased understanding of the rights and obligations of each mediator. In addition, the TCP&A suggests that each program conduct an orientation session for volunteer and contract mediators to review obligations, procedures, criteria for performance evaluation, and other program information.

Finally, the program should establish a process for evaluating the performance of contract and volunteer mediators on an annual basis. This best practice is recommended to increase accountability and productivity of contractors and volunteers. Contracts and agreements should be renewed for those mediators who performed well. Factors to consider include objective criteria, such as reliability and maintenance of all requirements for continued certification, along with subjective criteria such as party satisfaction, compliance with ethical and procedural rules, and mediation expertise.

VII. Contract Compensation

Issue:

Payment for mediators under contract with the state should be paid similarly for similar functions.

Issue Discussion:

Currently there is a state template for mediator contracts, but individual circuits may include additional or different provisions. Further, each circuit, and in some circumstances each county, establishes its own level of compensation for contract mediators resulting in great variation across the state. Attachment K provides the various contract compensation provisions by circuit. For example, small claims contract mediators are paid between $15 to $75 per hour; county court (above small claims) mediators are paid between $15 to $100 per hour and from $25 to $100 per session; family mediators are paid between $34 to $150 per hour and from $50 to $200 per session; dependency mediators are paid between $90 to $125 per hour and $50 to $300 per session. It should be noted that it is not possible to do a true comparison in contract fees because of the current lack of consistency in the definition of the length of a session.

Recommendations

Standards of Operation:

A. Contract mediators shall be paid at a rate not to exceed the following:

- **Small Claims** **$30 per hour**
- **County Civil** **$50 per hour**
- **Family** **$100 per hour**
- **Dependency** **$100 per hour**

B. All mediation service contracts shall contain standardized template language developed by OSCA for the procurement of mediation services.

Rationale for Recommendations

The maximum contract rates recommended consider fiscal prudence, statewide equity, differences in types of cases, and recognition of cost of living differences. While there are some circuits that are currently above or below the maximum contract rate, most will be able to continue to pay at their current contractual rate. Consistency in hourly rates should be easier to accomplish if the recommendations regarding session length and session fees are also adopted. It is important to note that mediators are not required to be compensated for their services. ADR programs, especially in small claims cases, are encouraged to utilize volunteer or pro bono mediation services consistent with Section VI, Mediation Service Delivery.

The compensation of contract mediators is formalized through a Mediation Services Agreement (MSA) with the circuit. The MSA contains both standardized template language for all contracts and alternatives that require local determination. Section 4 of the MSA, Compensation, offers two choices for mediator compensation, either per mediation conducted or per hour, and includes an optional provision for mediator compensation for the time expended in waiting for the party or parties that do not appear for mediation. While the TCP&A recommends an hourly rate for mediation services, this does not preclude the court from contracting and compensating on a per session or per mediation basis as long as the unit cost for services can be translated to an hourly rate which does not exceed the thresholds established by the TCBC. The TCP&A supports courts including in their MSAs a minimum guaranteed fee for mediation services and/or compensation for "no-shows."

The amount of mediator compensation and whether the compensation should be contracted at a per hour, per session, or per mediation basis will require careful consideration in conjunction with the funding formula articulated in Section I, Allocation and Appropriate Use of State Funding. For example, under the proposed funding formula, ADR programs will receive funding for the median cost of mediation services for county cases above small claims, family and dependency based upon an hourly rate multiplied by a defined session length. For family mediation services, the ADR program will receive $100 per hour for a three hour family mediation session. ADR programs may offer a mediator a MSA that compensates at $300 per three hour session or at $100 per hour up to three hours per session. In addition, the court has the discretion to offer a MSA compensation rate lower than the maximum rate allowable for funding purposes. It is also worthy to note that compensation per hour may result in additional cost savings if the mediation lasted less than the standard three hours allocated per session. These variables allow for circuit flexibility while serving the larger interest of standardization and should be implemented in a manner that is consistent with Section VI, Mediation Service Delivery.

VIII. County Court Mediation

Issue:

County court mediation has its own unique set of issues relating to selection, retention, appointment, and procedures due to many factors, including: court programs are the primary (if not exclusive) provider of mediation services; services are provided almost exclusively by large numbers of volunteers or contract mediators; there is a very large number of cases referred to mediation; and mediations are conducted at the time of referral.

Issue Discussion:

County mediation encompasses small claims cases and civil cases from $5000 to $15,000. Nearly every county offers mediation of small claims cases, most via volunteer mediators. Sixteen circuits mediate county cases above small claims in their court program. Mediators for these cases can be volunteers but most circuits offer compensation from $15 - $100 per hour. Given the wide variation in caseload, procedures in county court mediation differ greatly across the state. For example, in the larger more urban counties, small claims mediations take place every day of the month; while in smaller, rural counties, small claims mediations may only be held once a month.

Issues related to referral of cases were covered in the section entitled Court Application of ADR & Case Referrals. In this section, the focus will be on program practices related to the selection and retention of mediators and their conducting of mediations.

Recommendations

Standards of Operation:

A. **Each county mediation program shall maintain a roster of Florida Supreme Court certified county mediators who will be available to mediate small claims cases for the court program. This roster shall represent the diversity of the community.**

B. **County mediators shall be selected for placement on the roster through a process similar to the hiring process for employees. Specifically, the policies and procedures for employment shall be utilized to the extent applicable including advertising vacancies as needed. Background checks and references shall be completed on applicants prior to sponsorship into training or, if already certified, inclusion on the program roster.**

C. **The ADR director shall notify small claims mediators of their assigned schedule no later than 14 days prior to the date of the mediation/pre-trial conference.**

D. **Every mediation shall be conducted in an individual private room.**

Best Practices:

a. **Each county mediation program should maintain a roster of Florida Supreme Court certified county mediators who are interested in providing county mediation (above small claims) services in that county.**

b. **If the mediator roster(s) or applicant pool does not reflect the diversity of the community, more proactive outreach methods should be used to encourage diversity.**

c. **A panel, consisting of the ADR director or designee, a judge and a court administration designee should be used to fill county mediation roster vacancies.**

d. **With the exception of rural counties and areas with historical needs, any mediator who has not mediated for the court program in the previous 60 days should be removed from the roster.**

e. **Although programs have discretion on mediator assignments, the programs should schedule and assign cases to their roster mediators on an equitable basis.**

f. **County civil cases (above small claims) should be referred to mediators based upon the competencies of the mediator and issues brought forth in the case. Volunteers with sufficient skill level may be used.**

g. **Under no circumstances should any program schedule more mediators than mediation rooms available.**

h. **The OSCA Dispute Resolution Center should sponsor a maximum of three statewide county training programs per fiscal year, to be held at a neutral, non-courthouse, facility. Each "large" circuit would be invited to send three trainees; each "medium" circuit to send two trainees; and each "small" circuit to send one trainee per training. Circuits would be allowed to utilize up to two unused training slots per year from other circuits or training slots unused for that year, if space permits.**

i. **At the discretion of the OSCA Dispute Resolution Center, additional trainings should be scheduled for counties establishing new county mediation trainings.**

Rationale for Recommendations

Many of the standards of operation and best practices relate to selection, training, and retention of mediators and must be read as a "county mediation" supplement to the general best practices d – g in the Mediation Service Delivery section. Also, the recommendations in this section are premised on the notion that county court mediation programs will maintain a reasonably sized "roster" of small claims mediators so that the mediators are able to mediate often enough to maintain their skills. In addition, the TCP&A recommends that programs maintain a roster of mediators eligible and willing to mediate county cases above small claims. These recommendations are made in recognition of rules 1.720(f) and 1.750(c), Florida Rules of

Civil Procedure, which state that in small claims cases, the parties have 10 days to agree upon a mediator, the mediator is appointed by the court, and the parties are not provided an opportunity to select a mediator by agreement.

The county court mediation program should create a roster of mediators which reflects diversity in terms of age, gender, ethnicity, race, religion, etc. There are several recommendations on how the program can accomplish this including outreach (not just adding people who are friends of the current mediator pool) and advertising. The standards of operation suggest that selection of county mediators for the roster be treated in a fashion similar to the hiring process, even if the mediators are working as volunteers. In order to emphasize the importance of this service, the best practice recommendation is for a panel to be used to conduct these interviews consisting of a judge, a designee from court administration (as high up in status as possible), and the ADR director. Background and references should be checked prior to the interview process to ensure that the applicants will be appropriate mediators for use in the court.

It should be noted that the OSCA Dispute Resolution Center (DRC) is not the exclusive provider of Supreme Court certified county mediation training. Thus, there are and will continue to be individuals who complete private Supreme Court certified county mediation training, complete their mentorship requirements and become certified by the Florida Supreme Court as county court mediators. These individuals may even have requested to be on the "rotation" list in a particular circuit. The recommendations however, differentiate between a circuit's rotation list which is created by the OSCA DRC based on mediator certification applications and the "roster" maintained by the county court mediation program. Anyone who meets the qualifications for certification will be certified by the Florida Supreme Court, will appear on the list of Supreme Court certified county mediators, and may mediate county court cases above small claims if selected by the parties. Small claims mediators should be appointed from the roster maintained by the court program. For county cases above small claims, the program may wish to create a roster, or may wish to use the rotation list prepared by the OSCA DRC based on the application requests of certified county mediators.

Currently the OSCA DRC conducts county mediation training on an "as needed basis." The training is offered free of charge to the participants; however, one can only attend this training if a court program has "sponsored" the individual into the training. Sponsorship currently requires that the trainee has been interviewed and selected by a court program, has observed a court mediation and understands the certification fees and continuing education requirements. Since the DRC trainings are conducted at no cost to the program or the trainee, some programs sponsor more mediators than they actually need. In order to be more fiscally prudent, it is recommended that the OSCA DRC limit its county mediation trainings to a maximum of three per year. However, mediation programs are permitted to utilize applicants

who have been trained by other qualified providers. Further, the OSCA DRC may add additional trainings as appropriate if, for example, a new program becomes operational.

In addition to the recommendations limiting the number of mediators on the roster, which will result in more regular work for roster mediators, the TCP&A has provided additional recommendations for mediator retention. First, the ADR director shall notify the small claims mediators at least 14 days in advance of the pre-trials for which they are scheduled to mediate. The schedule should be made from the roster (paying attention to diversity) and should include only those mediators needed. The TCP&A recognizes that due to emergency or unforeseen circumstance, a program may need to add to or decrease the number of mediators scheduled with less than 14 days notice. Such changes should not be viewed as inconsistent with the standard of operation.

The standards of operation call for mediations to be conducted in private rooms (not hallways or public areas). Thus, the program should only schedule the number of mediators for which there are rooms available for mediation. Once scheduled, appointments should be made on an equitable basis.

Generally, mediators who have not mediated a small claims case in the previous 60 days should be removed from the roster. The TCP&A recognizes that different timeframes may be appropriate; for example, in rural areas which only mediate once a month or communities with seasonal needs.

For county cases above small claims, if the parties have not agreed upon a mediator, the court program should appoint one on an equitable basis. The best practices recognize that the complexity of county court cases above small claims may vary, thus there may be a need to refer cases based on mediator competency rather than on a straight rotation basis. In any event, programs should develop some objective criteria for referrals so that there is no concern of perceived, if not actual, favoritism and cronyism.

Appendices

Attachment A

Alternative Dispute Resolution
Fiscal Year 2007-2008 Funding

Circuit	General Revenue FTE	General Revenue Salaries, Benefits, and Expenses	General Revenue Contractual (in dollars)	Total General Revenue Budget (in dollars)	Trust Fund FTE	Trust Fund Salaries, Benefits, and Expenses (in dollars)	Trust Fund Contractual (in dollars)	Total Trust Fund Authority (in dollars)
1	2.0	102,170	122,646	224,816	1.0	42,111	71,148	113,259
2	4.0	271,542	13,474	285,016	0.0	0	38,440	38,440
3	3.0	169,938	25,995	195,933	0.0	0	20,809	20,809
4	8.0	461,695	15,811	477,506	1.0	59,118	56,703	115,821
5	4.0	239,913	150,000	389,913	0.0	16,800	37,585	54,385
6	7.5	420,674	248,259	668,933	0.0	0	160,414	160,414
7	3.0	162,050	66,846	228,896	0.0	0	26,356	26,356
8	4.0	258,500	39,651	298,151	0.0	0	62,730	62,730
9	9.5	546,635	153,061	699,696	0.0	0	351,187	351,187
10	5.0	290,925	0	290,925	1.0	42,475	76,177	118,652
11	11.0	778,126	0	778,126	0.0	5,700	92,818	98,518
12	6.0	356,795	0	356,795	0.0	24,318	37,650	61,968
13	11.0	579,666	83,650	663,316	0.0	11,976	325,620	337,596
14	4.0	244,515	0	244,515	0.0	0	3,899	3,899
15	7.5	449,543	0	449,543	3.0	212,932	253,651	466,583
16	3.0	160,587	18,265	178,852	0.0	6,800	6,717	13,517
17	11.0	672,349	5,400	677,749	1.0	72,287	135,925	208,212
18	6.5	350,757	0	350,757	0.0	19,800	173,250	193,050
19	5.0	268,530	0	268,530	0.0	17,916	39,375	57,291
20	8.0	388,281	101,885	490,166	0.0	0	274,838	274,838
Total	**123.0**	**7,173,191**	**1,044,943**	**8,218,134**	**7.0**	**532,233**	**2,245,292**	**2,777,525**

Source: Trial Court Budget Allocation Fiscal Year 2007-2008 After Special Session C.

Attachment B

Mediation Sessions Length
As of February 2008

Circuit	Small Claims	County Civil (Includes Residential Evictions, Commercial Evictions, and Other County Civil)	Family (Includes Joint Income is Indigent, Joint Income is Indigent to $50K, and Joint Income is $50K to $100K)	Family - Dependency
1	No Set Time	No Set Time	90 Minutes	No Set Time
2	No Set Time	Not Applicable	4 Hours	2 to 4 Hours
3	No Set Time	Unknown	3 to 4 Hours	3 Hours/As Needed
4	No Set Time	No Set Time	2 Hours	2 Hours
5	No Set Time	No Set Time	As Determined by Review	1 Hour/As Determined by Review
6	No Set Time	No Set Time	3 Hours	3 Hours
7	No Set Time	No Set Time	2 to 3 Hours	1 to 2 Hours
8	No Set Time	No Set Time/2 Hours	No Set Time	2 Hours
9	No Set Time	No Set Time	2.5 Hours	2 Hours
10	No Set Time	No Set Time	2 Hours	2 Hours
11	1 Hour	1 Hour	2 Hours	3 Hours
12	No Set Time/ Set in Office	1 Hour/Unless Additional Time Needed	90 Minutes	No Set Time
13	90 Minutes	90 Minutes	2 Hours	Not Applicable
14	No Set Time	No Set Time	2 Hours	90 Minutes
15	No Set Time	1.5 to 2 Hours	1.5 to 2 Hours	2 Hours
16	No Set Time	No Set Time	No Set Time	No Set Time
17	90 Minutes	90 Minutes	90 Minutes	90 Minutes
18	No Set Time	No Set Time	2 to 3 Hours	No Set Time (Seminole) 3 Hours (Brevard)
19	No Set Time	No Set Time	2 Hours	Not Applicable
20	No Set Time/ 30 Minutes	No Set Time/2 Hours	No Set Time/1 to 3 Hours	No Set Time

Source: Trial Court Circuit Profiles, Mediation Services, February 2008

Attachment C

Fee Collection Expected Revenue v. Cost Recovery Collections
Fiscal Year 2006-2007

Circuit	Commercial Evictions Sessions Held	Commercial Evictions Expected Revenue* (in dollars)	Other County Civil Sessions Held	Other County Civil Expected Revenue* (in dollars)	Family Indigent to $50K Sessions Held	Family Indigent to $50K Expected Revenue* (in dollars)	Family $50K to $100K Sessions Held	Family $50K to $100K Expected Revenue* (in dollars)	Total Expected Revenue (in dollars)	Cost Recovery Collections** (in dollars)
1	0	0	1	80	444	35,520	3	480	36,080	67,660
2	0	0	0	0	249	19,920	116	18,560	38,480	31,639
3	0	0	0	0	169	13,520	48	7,680	21,200	20,446
4	0	0	74	5,920	431	34,480	315	50,400	90,800	54,433
5	12	960	57	4,560	121	9,680	134	21,440	36,640	39,127
6	0	0	0	0	882	70,560	556	88,960	159,520	194,473
7	0	0	74	5,920	251	20,080	56	8,960	34,960	18,752
8	0	0	38	3,040	409	32,720	233	37,280	73,040	62,291
9	1	80	576	46,080	1,964	157,120	913	146,080	349,360	331,196
10	0	0	0	0	338	27,040	297	47,520	74,560	73,187
11	117	9,360	165	13,200	749	59,920	211	33,760	116,240	87,945
12	11	880	100	8,000	324	25,920	158	25,280	60,080	-4,793
13	14	1,120	231	18,480	1,436	114,880	1,156	184,960	319,440	308,491
14	0	0	20	1,600	17	1,360	10	1,600	4,560	3,300
15	18	1,440	88	7,040	1,335	106,800	870	139,200	254,480	221,883
16	3	240	15	1,200	83	6,640	38	6,080	14,160	6,837
17	48	3,840	988	79,040	713	57,040	213	34,080	174,000	124,220
18	9	720	57	4,560	790	63,200	749	119,840	188,320	177,757
19	14	1,120	96	7,680	260	20,800	95	15,200	44,800	35,661
20	0	0	173	13,840	577	46,160	796	127,360	187,360	259,821
Total	**247**	**19,760**	**2,753**	**220,240**	**11,542**	**923,360**	**6,967**	**1,114,720**	**2,278,080**	**2,114,324**

Source: Sessions Held data obtained from the Uniform Data Reporting System

* Expected Revenue for commerical evictions, other county civil, and family when the parties' combined income is less than $50,000 is $40 per session with a minimum of 2 sessions. Expected Revenue for family when the parties' combined income is greater than $50,000 but less than $100,000 is $80 per session with a minimum of 2 sessions.

** Cost recovery collections data as of August, 2007.

Attachment D

County Court Mediation Referrals and Sessions Held
As of February 2008

Circuit	Circuit Size	Number of Counties	Target Cases*	Mediation Referrals**	Sessions Held	Percent Mediation Referrals	Percent Sessions Held	Direct Services Staffing Model	Case Referral Practices
4	Large	3	10,833	1,319	1,319	12.2%	12.2%	Employee\Volunteer	Contested
6	Large	2	11,605	3,826	3,824	33.0%	33.0%	Contract	Indiv. By Judge\HO
9	Large	2	7,912	24,258	7,765	306.6%	98.1%	Volunteer	AO\Contested
11	Large	1	28,422	5,091	3,635	17.9%	12.8%	Employee\Contract	Indiv. By Judge
13	Large	1	9,736	3,364	2,384	34.6%	24.5%	Employee\Contract	Contested
15	Large	1	13,449	4,217	4,152	31.4%	30.9%	Employee\Volunteer	Contested\Indiv. By Judge
17	Large	1	24,695	7,357	7,812	29.8%	31.6%	Contract	Contested\Indiv. By Judge
Subtotal - Large		**11**	**106,653**	**49,432**	**30,891**	**46.3%**	**29.0%**		
1	Medium	4	5,122	1,600	1,101	31.2%	21.5%	Employee\Volunteer	AO\Upon Request\Motion\Indiv. By Judge
5	Medium	5	8,049	2,599	2,599	32.3%	32.3%	Volunteer	Contested\Indiv. By Judge
7	Medium	4	6,598	1,245	1,208	18.9%	18.3%	Contract\Volunteer	Indiv. By Judge
10	Medium	3	5,638	844	843	15.0%	15.0%	Contract\Volunteer	Indiv. By Judge
12	Medium	3	5,545	1,805	1,702	32.6%	30.7%	Employee\Contract\Volunteer	AO\Contested\Indiv. By Judge
18	Medium	2	4,375	2,015	1,957	46.1%	44.7%	Employee\Contract\Volunteer	AO\Contested\Indiv. By Judge\Clerk
20	Medium	5	6,544	6,479	3,716	99.0%	56.8%	Employee\Contract\Volunteer	AO\Indiv. By Judge
Subtotal - Medium		**26**	**41,870**	**16,587**	**13,126**	**39.6%**	**31.3%**		
2	Small	6	6,036	1,405	1,381	23.3%	22.9%	Employee\Contract\Volunteer	Contested\Indiv. By Judge
3	Small	7	1,832	536	536	29.3%	29.3%	Contract\Volunteer	Indiv. By Judge
8	Small	6	2,693	811	766	30.1%	28.4%	Employee\Contract\Volunteer	Contested
14	Small	6	2,832	1,778	863	62.8%	30.5%	Employee\Volunteer	Contested\Indiv. By Judge
16	Small	1	391	211	196	53.9%	50.1%	Employee\Contract\Volunteer	Contested\Indiv. By Judge
19	Small	4	4,650	1,205	1,186	25.9%	25.5%	Contract	AO\Indiv. By Judge
Subtotal - Small		**30**	**18,434**	**5,946**	**4,928**	**32.3%**	**26.7%**		
Total		**67**	**166,956**	**71,965**	**48,945**	**43.1%**	**29.3%**		

Source: Target Cases data obtained from Summary Reporting System. Mediation Referrals and Sessions Held data obtained from the Uniform Data Reporting System. Direct Services Staffing Model and Case Referral Practices data obtained from the Trial Court Circuit Profiles, Mediation Services, February 2008

* Include fiscal year 2006-2007 filings (excluding filings estimated to be disposed by dismissal or default) for small claims (up to $5,000), civil ($5,001 to $15,000), replevins, and evictions.

** Does not include other mediation orders or arbitration orders.

Attachment E

Family Mediation Referrals and Sessions Held
As of February 2008

Circuit	Circuit Size	Number of Counties	Target Cases*	Mediation Referrals**	Sessions Held	Percent Mediation Referrals	Percent Sessions Held	Direct Services Staffing Model	Case Referral Practices
4	Large	3	12,079	782	781	6.5%	6.5%	Employee	Indiv. By Judge
6	Large	2	10,629	1,347	1,442	12.7%	13.6%	Contract	AO\Upon Request\Motion\Post Jud.\Temp. Relief\ Indiv. By Judge\GM
9	Large	2	13,085	4,041	2,925	30.9%	22.4%	Employee\Contract	AO
11	Large	1	22,856	NR	1,298	NA	5.7%	Employee\Contract	Indiv. By Judge
13	Large	1	12,608	4,475	2,625	35.5%	20.8%	Employee\Contract	AO\Upon Request\Motion\Post Jud.\Temp. Relief\ Indiv. By Judge
15	Large	1	10,130	3,554	2,381	35.1%	23.5%	Employee	AO\Upon Request\Motion\Indiv. By Judge
17	Large	1	16,203	1,403	1,239	8.7%	7.6%	Employee\Contract	Indiv. By Judge
Subtotal - Large		**11**	**97,590**	**15,602**	**12,691**	**16.0%**	**13.0%**		
1	Medium	4	8,472	557	475	6.6%	5.6%	Contract	AO\Upon Request\Motion\Indiv. By Judge
5	Medium	5	9,552	537	323	5.6%	3.4%	Employee\Contract	Upon Request\Motion\Case Mgt\Indiv. By Judge
7	Medium	4	7,766	450	379	5.8%	4.9%	Employee	Upon Request\Motion\Indiv. By Judge
10	Medium	3	7,610	703	635	9.2%	8.3%	Employee	Upon Request\Motion\Indiv. By Judge
12	Medium	3	5,627	151	511	2.7%	9.1%	Employee\Contract	Upon Request\Motion\Indiv. By Judge
18	Medium	2	7,576	1,675	1,596	22.1%	21.1%	Employee\Contract	AO\Upon Request\Motion\Indiv. By Judge
20	Medium	5	8,935	1,606	1,395	18.0%	15.6%	Employee\Contract	AO\Upon Request\Motion\Case Mgt\Indiv. By Judge
Subtotal - Medium		**26**	**55,538**	**5,679**	**5,314**	**10.2%**	**9.6%**		
2	Small	6	3,242	528	381	16.3%	11.8%	Employee\Contract	AO
3	Small	7	2,127	283	225	13.3%	10.6%	Employee\Contract	Contested
8	Small	6	3,609	945	715	26.2%	19.8%	Employee\Contract	AO
14	Small	6	3,238	86	30	2.7%	0.9%	Employee\Contract	AO
16	Small	1	800	153	128	19.1%	16.0%	Employee\Contract	AO\Contested\Upon Request\ Motion\Indiv. By Judge
19	Small	4	4,943	408	377	8.3%	7.6%	Employee\Contract	Indiv. By Judge
Subtotal - Small		**30**	**17,959**	**2,403**	**1,856**	**13.4%**	**10.3%**		
Total		**67**	**171,087**	**23,684**	**19,861**	**13.8%**	**11.6%**		

Source: Target Cases data obtained from Summary Reporting System. Mediation Referrals and Sessions Held data obtained from the Uniform Data Reporting System. Direct Services Staffing Model and Case Referral Practices data obtained from the Trial Court Circuit Profiles, Mediation Services, February 2008

NR = Data Not Reported

* Include fiscal year 2006-2007 filings for simplified dissolution, dissolution, child support, UIFSA, and other domestic relations.

** Does not include other mediation orders or arbitration orders

Attachment F

Dependency Mediation Referrals and Sessions Held
As of February 2008

Circuit	Circuit Size	Number of Counties	Target Cases*	Mediation Referrals**	Sessions Held	Percent Mediation Referrals	Percent Sessions Held	Direct Services Staffing Model	Case Referral Practices
4	Large	3	1,059	99	99	9.3%	9.3%	Employee	Indiv. By Judge
6	Large	2	852	166	168	19.5%	19.7%	Contract	Upon Request\Motion\Indiv. By Judge\GM
9	Large	2	800	178	137	22.3%	17.1%	Contract	Upon Request\Motion\Indiv. By Judge\Other
11	Large	1	895	NR	172	NA	19.2%	Employee	Indiv. By Judge
13	Large	1	955	2	2	0.2%	0.2%	Employee\Contract	Indiv. By Judge
15	Large	1	765	217	155	28.4%	20.3%	Employee	Upon Request\Motion\Indiv. By Judge
17	Large	1	621	816	901	131.4%	145.1%	Employee\Contract	Indiv. By Judge
Subtotal - Large		**11**	**5,947**	**1,478**	**1,634**	**24.9%**	**27.5%**		
1	Medium	4	888	200	185	22.5%	20.8%	Volunteer	Upon Request\Motion\Indiv. By Judge
5	Medium	5	1,058	1,125	999	106.3%	94.4%	Employee\Contract	Indiv. By Judge
7	Medium	4	570	151	134	26.5%	23.5%	Employee	Upon Request\Motion\Indiv. By Judge
10	Medium	3	970	384	205	39.6%	21.1%	Employee	Upon Request\Motion\Indiv. By Judge
12	Medium	3	388	10	7	2.6%	1.8%	Employee\Contract	Upon Request\Motion\Indiv. By Judge
18	Medium	2	657	6	9	0.9%	1.4%	Employee\Contract	Upon Request\Motion\Indiv. By Judge
20	Medium	5	816	52	50	6.4%	6.1%	Employee\Contract	AO\Upon Request\Motion\Other
Subtotal - Medium		**26**	**5,347**	**1,928**	**1,589**	**36.1%**	**29.7%**		
2	Small	6	196	282	255	143.9%	130.1%	Employee\Contract	Indiv. By Judge
3	Small	7	184	164	158	89.1%	85.9%	Employee	As ordered by the court
8	Small	6	478	433	384	90.6%	80.3%	Employee\Contract	Upon Request\Motion
14	Small	6	363	0	0	0.0%	0.0%	Employee\Contract	Indiv. By Judge
16	Small	1	92	20	18	21.7%	19.6%	Employee\Contract	AO\Contested\Upon Request\Motion\Indiv. By Judge
19	Small	4	603	0	0	0.0%	0.0%	Not Applicable	Not Applicable
Subtotal - Small		**30**	**1,916**	**899**	**815**	**46.9%**	**42.5%**		
Total		**67**	**13,210**	**4,305**	**4,038**	**32.6%**	**30.6%**		

Source: Target Cases data obtained from Summary Reporting System. Mediation Referrals and Sessions Held data obtained from the Uniform Data Reporting System. Direct Services Staffing Model and Case Referral Practices data obtained from the Trial Court Circuit Profiles, Mediation Services, February 2008

NR = Data Not Reported

* Include fiscal year 2006-2007 filings for dependency.

** Does not include other mediation orders or arbitration orders.

Attachment G
Screening Instrument

Case Number: _____

MEDIATION QUESTIONNAIRE

Please complete this Questionnaire before your mediation session.

This form and any other communications with the mediator are confidential and privileged to the extent provided by sections 44.401- 44.406, Florida Statutes.

Mediation is a process in which two people work together with a neutral third person (the mediator) to discuss the issues in their case to try to work them out. Mediation often occurs with both people in the same room.

The following questions relate to you and the other person in this case.

1. Are you afraid of the other person? □ Yes □ No

2. Is contact between you and the other person limited by a court order (such as an injunction, a no contact order in a criminal case, etc.)? □ Yes □ No

3. Do you believe you can express your needs and concerns in the presence of the other person and the mediator? □ Yes □ No

4. If you have children, do you believe you can express the needs and concerns of your children in the presence of the other person and the mediator? □ Yes □ No □ No children

5. If you answered no to question 3 or question 4, would you be able to express your needs and concerns and those of your children with the mediator only? □ Yes □ No

6. Do you believe that during mediation you would be intimidated by the other person into accepting an unfair result? □ Yes □ No

OTHER COMMENTS:

IF YOU HAVE ANY CONCERNS ABOUT YOUR PHYSICAL SAFETY DURING MEDIATION, PLEASE CALL THE MEDIATION OFFICE AT _____ TO DISCUSS WITH THE MEDIATOR PRIOR TO THE MEDIATION.

According to Florida Statute 44.102(2)(c): ". . . 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."

_____ Your Signature

_____ Date

ISSUES TO CONSIDER FOR USE OF MEDIATION QUESTIONNAIRE

Distribution

1. **In order to minimize the possibility of intimidation, parties should receive individual copies separately. The parties should be encouraged to complete and return the questionnaire to the mediator in advance of the mediation.**
   If parties are represented, the notice and questionnaire should be sent to their attorneys for **the parties** to complete and sign.
   The mediation program should send a copy of the mediation questionnaire to the petitioner and the respondent, with the notice of mediation. The program should provide information to describe the mediation process. Even if parties are still living together, the notice and questionnaire should be sent individually to each party. An envelope addressed to the program should be included with each Questionnaire.

2. If questionnaires are not returned in advance of the mediation, unless domestic violence concerns suggest otherwise, parties should be instructed to arrive at mediation a sufficient time prior to the scheduled mediation to complete questionnaires and address any noted concerns.

Review

3. **Questionnaires should be reviewed prior to the scheduled mediation if possible in order to address safety concerns in advance.**
   If someone other than the mediator conducts this review, the mediator should be notified in advance of the mediation regarding any concerns which were raised.
   A specific individual should be designated, in advance, by the program to handle calls from parties who raise concerns.

4. If concerns have been raised or noted prior to the mediation (either via questionnaire or call from the participants), the mediator or program designee should consider the following options:

   - Determine whether the party is represented by an attorney and if the attorney will be present. *Note,* even if represented at the mediation, the mediator must remain mindful of the mediator's ongoing responsibility to postpone or cancel a mediation "if, for any reason, a party is unable to freely exercise self-determination…" Rule 10.310, Florida Rules for Certified and Court-Appointed Mediators.
   - Determine whether an advocate or support person will be present.
   - Conduct mediation in such a manner that the parties do not come in contact with each other (i.e., entirely in caucus mode)
   - Conduct mediation in secure facility and alert (court) security in advance
   - Designate that the parties arrive and depart at different times (typically, ask victim to arrive last and depart first)
   - Develop a signal for party to use to terminate mediation
   - Cancel the mediation; If mediation cancelled, notify the court of the cancellation without breaching confidentiality

Day of Mediation

5. Upon the parties' arrival at mediation, the mediator or mediation staff should verify that the questionnaire has been completed and received. If already reviewed, the mediator or staff should inquire of each party separately to determine if there have been any changes to the

responses, and parties should be given an opportunity to update the questionnaire. If the questionnaire has not been completed or received, the party should be given another copy and asked to complete it prior to beginning mediation. Parties should not be permitted to sit together when completing questionnaires in the mediation office.

6. Prior to calling the parties into mediation, the assigned mediator should review the questionnaires. Any answer which indicates the potential of fear or power and control issues, should alert the mediator to meet privately prior to beginning the mediation with each party. If concerns have not been addressed prior to the mediation or additional concerns are raised, the mediator should consider taking action consistent with point four above.

7. Information packets from the local domestic violence shelter should be available in the office.

Draft Revised 4/18/08

Attachment H

Mediation Position Survey
Conducted December 2007

Section 1: Providing Information

Question	ADR Director (n=15)	Mediation Services Coordinator (n=23)	Mediator (n=35)	Court Program Specialist (n=26)	Program Assistant (n=4)	Administrative Support (n=33)
1. Communicate with public seeking advice and refer to other agencies.	100.0%	73.9%	22.9%	38.5%	25.0%	48.5%
2 Additional Responses(# of circuits): Family Case Manager - Pro Se (1); Task also performed by non-mediator funded Court Program Specialist and Administrative Assistant (1)						
2. Respond to phone calls and written inquiries from parties and others.	93.3%	69.6%	20.0%	34.6%	75.0%	57.6%
2 Additional Responses(# of circuits): Family Case Manager - Pro Se (1); Task also performed by non-mediator funded Family Case Manager and Court Program Specialist (1)						
3. Interview clients.	33.3%	52.2%	20.0%	26.9%	50.0%	42.4%
3 Additional Responses(# of circuits): Not sure what this question means (1); We do not interview clients (1); Job task not specifically assigned (1)						
4. Verify or obtain information necessary to schedule mediation.	20.0%	60.9%	8.6%	34.6%	50.0%	51.5%
2 Additional Responses(# of circuits): Family Case Manager - Pro Se (1); Task also performed by non-mediator funded Court Program Specialist and Judges (1)						
5. Request financial information necessary to determine mediation fee.	33.3%	47.8%	11.4%	26.9%	50.0%	42.4%
5 Additional Responses(# of circuits): Clerk of Court (2); Judges (1); Task also performed by non-mediator funded Court Program Specialist and Judges (1); Job task not specifically assigned (1)						
6. Calculate mediation fee based upon financial information produced.	40.0%	52.2%	8.6%	30.8%	50.0%	39.4%
8 Additional Responses(# of circuits): Clerk of Court (3); Judges/Magistrates (4); Job task not specifically assigned (1)						
7. Greet all mediation attendees and furnish same with pre-conference documents.	26.7%	52.2%	17.1%	26.9%	50.0%	57.6%
1 Additional Response: Job task not specifically assigned						
8. Attend periodic judges meetings and communicate with judges.	100.0%	56.5%	11.4%	26.9%	0.0%	12.1%
2 Additional Responses(# of circuits): Family Court Manager (1); …or designated employee (1)						

Section 2: Coordinating Mediators

	Question	ADR Director (n=15)	Mediation Services Coordinator (n=23)	Mediator (n=35)	Court Program Specialist (n=26)	Program Assistant (n=4)	Administrative Support (n=33)
9.	Monitor dockets daily and prepare docket assignments.	46.7%	60.9%	2.9%	26.9%	0.0%	45.5%
10.	Receive and review requests for mediation and court order for mediation.	26.7%	69.6%	2.9%	30.8%	25.0%	51.5%
11.	Schedule mediation dates and times or contact parties to schedule.	20.0%	60.9%	8.6%	30.8%	25.0%	57.6%
	1 Additional Response: Tasks assigned to non-mediator funded Court Program Specialist						
12.	Cancel, add or shift mediators as necessary for coverage.	73.3%	69.6%	2.9%	26.9%	50.0%	45.5%
	1 Additional Response: Family Court Manager						
13.	Reschedule and cancel mediations.	40.0%	60.9%	14.3%	26.9%	25.0%	51.5%
	1 Additional Response: Job task not specifically assigned						
14.	Coordinate special requests such as ADA requests or security concerns.	73.3%	52.2%	8.6%	34.6%	0.0%	45.5%
	5 Additional Responses(# of circuits): ADA Coordinator (1); ADA Office and Security Office (1); Administrative Services Manager (1); Task assigned to non-mediator funded Court Administration staff (1); Job task not specifically assigned (1)						
15.	Open cases in office computer.	20.0%	47.8%	8.6%	30.8%	50.0%	51.5%
	2 Additional Responses(# of circuits): Not Applicable (1); Job task not specifically assigned (1)						
16.	Order court files and accurately track until returned to Clerk of Court.	20.0%	52.2%	5.7%	26.9%	25.0%	51.5%
	1 Additional Response: Case managers						

Section 3: Mediating Cases

Question	ADR Director (n=15)	Mediation Services Coordinator (n=23)	Mediator (n=35)	Court Program Specialist (n=26)	Program Assistant (n=4)	Administrative Support (n=33)
17. Mediate county cases.	53.3%	65.2%	37.1%	11.5%	0.0%	15.2%
3 Additional Responses(# of circuits): Community Paid Mediators (1); Volunteers and Contractors (1); Job task not specifically assigned (1)						
18. Mediate dependency cases.	60.0%	26.1%	37.1%	0.0%	0.0%	0.0%
2 Additional Responses(# of circuits): Job task not specifically assigned (2)						
19. Mediate family cases.	66.7%	34.8%	42.9%	0.0%	0.0%	0.0%
3 Additional Responses(# of circuits): Contractors (1); Job task not specifically assigned (2)						

Section 4: Preparing and Processing Document

Question	ADR Director (n=15)	Mediation Services Coordinator (n=23)	Mediator (n=35)	Court Program Specialist (n=26)	Program Assistant (n=4)	Administrative Support (n=33)
20. Prepare mediation notices to be mailed to parties.	13.3%	30.4%	8.6%	34.6%	50.0%	51.5%
3 Additional Responses(# of circuits): Clerk of Court/Contract Mediator (1); Task assigned to non-mediator funded Court Program Specialist (1); Job task not specifically assigned (1)						
21. Prepare rules to show cause for non-attendance at mediation.	13.3%	13.0%	14.3%	26.9%	0.0%	9.1%
9 Additional Responses(# of circuits): Not done in this department (1); Job task not specifically assigned (8)						
22. Prepare invoices and complete payment process.	20.0%	30.4%	2.9%	30.8%	50.0%	45.5%
8 Additional Responses(# of circuits): Clerk of Court (5); Fiscal staff (1); In some instances task performed by Judicial Assistant (1); Job task not specifically assigned (1)						
23. Prepare mediation agreements.	46.7%	43.5%	42.9%	11.5%	0.0%	6.1%
4 Additional Responses(# of circuits): Contracted/Volunteer Mediators (2); The specialists do it in county cases when they mediate (1); Job task not specifically assigned (1)						
24. Prepare proposed orders and other post-mediation follow up.	40.0%	43.5%	20.0%	23.1%	0.0%	30.3%
3 Additional Responses(# of circuits): Contractors (1); Judge and Clerk of Court staff (1); Parties/Attorney (1)						

Section 4: Preparing and Processing Documents (continued)

Question	ADR Director (n=15)	Mediation Services Coordinator (n=23)	Mediator (n=35)	Court Program Specialist (n=26)	Program Assistant (n=4)	Administrative Support (n=33)
25. Prepare disposition forms.	33.3%	34.8%	25.7%	23.1%	0.0%	18.2%
4 Additional Responses(# of circuits): Not done in this department (1); Job task not specifically assigned (3)						
26. Copy, staple and mail mediation documents and correspondence.	26.7%	39.1%	22.9%	30.8%	25.0%	54.5%
1 Additional Response: Clerk of Court staff/Contract Mediators						
27. Process requests for refunds of mediation fees.	40.0%	21.7%	2.9%	15.4%	0.0%	15.2%
8 Additional Responses(# of circuits): Clerk of Court staff (3); Job task not specifically assigned (5)						

Section 5: Supervising

Question	ADR Director (n=15)	Mediation Services Coordinator (n=23)	Mediator (n=35)	Court Program Specialist (n=26)	Program Assistant (n=4)	Administrative Support (n=33)
28. Assign work to court program specialists on a daily basis.	40.0%	43.5%	2.9%	0.0%	0.0%	3.0%
5 Additional Responses(# of circuits): Task assigned to non-mediator funded Family Court Manager (1); Job task not specifically assigned (4)						
29. Coordinate with specialists about intra-office employee matters.	73.3%	47.8%	0.0%	3.8%	0.0%	0.0%
5 Additional Responses(# of circuits): Family Court Manager (1); Task assigned to non-mediator funded Family Court Manager (1); Job task not specifically assigned (3)						
30. Oversee and coordinate administrative staff's daily work flow.	93.3%	56.5%	2.9%	7.7%	0.0%	3.0%
1 Additional Response: Task assigned to non-mediator funded Family Court Manager						
31. Counsel and assist staff.	100.0%	56.5%	5.7%	11.5%	0.0%	0.0%
3 Additional Responses(# of circuits): Chief Deputy Court Administrator (1); Family Court Manager (1); Task assigned to non-mediator funded Family Court Manager (1)						
32. Prepare annual evaluations of staff.	93.3%	43.5%	0.0%	0.0%	0.0%	0.0%
3 Additional Responses(# of circuits): Family Court Manager (1); Task assigned to non-mediator funded Family Court Manager (1); Job task not specifically assigned (1)						

Section 6: Resource Development

Question	ADR Director (n=15)	Mediation Services Coordinator (n=23)	Mediator (n=35)	Court Program Specialist (n=26)	Program Assistant (n=4)	Administrative Support (n=33)
33. Select and train mediators.	93.3%	69.6%	2.9%	0.0%	0.0%	0.0%
2 Additional Responses(# of circuits): Judges (1); Human Relations Department (1)						
34. Interview and hire staff members.	100.0%	52.2%	5.7%	0.0%	0.0%	0.0%
7 Additional Responses(# of circuits): Administrative Services Manager (1); Court Administrator, Family Court Manager and Human Relations Department (1); Family Court Manager(1); Human Relations Department (1); Interview Panels, Court Administration, Chief Judge (1); Other Court Administration personnel assist (1); Job task not specifically assigned (3)						
35. Train administrative team members.	93.3%	52.2%	2.9%	7.7%	0.0%	3.0%
2 Additional Responses(# of circuits): Human Relations Department (1); Job task not specifically assigned (1)						
36. Design and develop new programs.	100.0%	43.5%	5.7%	3.8%	0.0%	0.0%
5 Additional Responses(# of circuits): Administrative Services Manager (1); Chief Deputy, Trial Court Administrator (1); Court Administrator, Family Court Manager (1); Family Court Manager (1); Trial Court Administrator (1)						
37. Prepare grant requests.	40.0%	13.0%	0.0%	3.8%	0.0%	0.0%
14 Additional Responses(# of circuits): Administrative Services Manager (1); Chief Deputy (1); Grants Person (1); Trial Court Administrator (1); Job task not specifically assigned (10)						

Section 7: Assessing Quality

Question	ADR Director (n=15)	Mediation Services Coordinator (n=23)	Mediator (n=35)	Court Program Specialist (n=26)	Program Assistant (n=4)	Administrative Support (n=33)
38. Review complaints from public, parties or attorneys about mediators or staff.	100.0%	52.2%	0.0%	11.5%	0.0%	0.0%
3 Additional Responses(# of circuits): Family Court Manager (1); Chief Deputy (1); Court Administrator and Family Court Manager (1)						
39. Review mediation agreements and troubleshoot, resolve errors/issues.	86.7%	56.5%	11.4%	15.4%	25.0%	0.0%
3 Additional Responses(# of circuits): Family Court Manager (1); Court Counsel staff (1); Parties/Attorney/Judge (1)						
40. Review all outgoing documents prepared by specialists.	40.0%	30.4%	2.9%	3.8%	0.0%	6.1%
10 Additional Responses(# of circuits): Not "all" are reviewed (1); Job task not specifically assigned (9)						

Section 7: Assessing Quality (continued)

Question	ADR Director (n=15)	Mediation Services Coordinator (n=23)	Mediator (n=35)	Court Program Specialist (n=26)	Program Assistant (n=4)	Administrative Support (n=33)
41. Audit computer entries of case data.	33.3%	30.4%	2.9%	0.0%	25.0%	15.2%
5 Additional Responses(# of circuits): Family Court Manager (1); Not Applicable (1); Job task not specifically assigned (3)						
42. Analysis and decision-making concerning case-related issues.	100.0%	56.5%	17.1%	19.2%	0.0%	3.0%
1 Additional Response: Administrative Services Manager						
43. Prepare and review statistics.	86.7%	65.2%	2.9%	23.1%	25.0%	18.2%
4 Additional Responses(# of circuits): Family Court Manager (2); Administrative Services manager (1); Chief Deputy (1)						
44. Policy interpretation and applications.	100.0%	56.5%	0.0%	7.7%	0.0%	0.0%
4 Additional Responses(# of circuits): Administrative Services Manager, Trial Court Administrator (1); Chief Deputy (1); Trial Court Administrator and Family Court Manager (1); Family Court Manager (1)						
45. Oversee existing programs and modify as necessary.	100.0%	65.2%	0.0%	3.8%	0.0%	0.0%
4 Additional Responses(# of circuits): Family Court Manager (2); Administrative Services manager (1); Chief Deputy (1)						

Section 8: Other Mediation Tasks

46. Describe other mediation tasks not covered in survey and position assigned to them.

- ADR Director drafts training matters to educate community partners on new programs. ADR Director drafts program specific brochures for the community.
- Broad coverage probably includes most tasks
- Monitor fee payments to ensure either paid or mediation cancelled. Follow-up with phone calls, reminders if not paid, send letters, etc. Court Program Specialists
- Note-All Administrative tasks assigned to non-mediator funded Family Court Manager
- Our office also oversees parenting coordination, small claims arbitration, circuit arbitration and social investigation. We also prepare defaults, dismissals, order releasing funds etc. for county civil cases. We compute clerks fee for evictions. Small claims pretrial parties all appear at our office - we have no judicial involvement until after the mediation if it needs to be set for trial. We schedule mediators to speak at public schools. We make appearances and set up displays at volunteer functions such as fairs, colleges, etc. We conduct mock mediations for programs for the public and for new employees. We assist in designing software for our computer programs. The ADR Director assists the DRC in training new mediators throughout the state.

Section 8: Other Mediation Tasks (continued)

46. Describe other mediation tasks not covered in survey and position assigned to them. (continued)

- Prepare and present continuing mediator education: ADR Director; Mediation Services Coordinator. Publish newsletter for county contract and volunteer mediators: Mediation Services Coordinator. Supervise and provide assistance to county Citizen Dispute Settlement Program Directors when needed, encompassing all pre-filing mediation programs: ADR Director; Mediation Services Coordinator. Provide small claims coverage for judges when needed: Mediation Services Coordinator.
- Secretary and admin. assistant are one-in- the same. Mediations coordinator handles county cases and supervises a group of trained volunteers.

Section 9: Mediation Challenges

47. Please indicate the challenges that you face in staffing your circuit in a multi-county circuit.

Challenge	Number	Percent
Lack of designated facility space for mediations	14	32.6%
Extensive distance between counties	9	20.9%
Differences in processes and procedures among the counties	7	16.3%
Not a multi-county circuit	4	9.3%
Insufficient mediators to cover all counties	2	4.7%
Other (see below)	7	16.3%
Total	**43**	**100.0%**

Other Responses (7):

Circuit works well together
Clerk does not screen for indigence. Anyone can claim indigence.
Insufficient contract budget for mediators
Need more administrative help
Only in Hardee and Highlands
Small Staff
Some counties will not participate or limit participation in mediation services

Section 10: Mediation Challenges

48. Please provide any additional comments.

- Although we are one county there is a large geographical area between our three courthouses. Each of the three courthouses processes paperwork differently.
- As a multi-county circuit, I find that supervising personnel in the other two counties is the most challenging. Otherwise, we are well situated and located in an annex facility that is convenient for both attorneys and litigants.
- Implemented cost containment measures. Still short on contract dollars. Beginning to limit cases able to be referred for model mediation due to insufficient contract funding.
- None
- Other problems: Differences in judicial procedures within a county in addition to differences within a circuit. Changes to ADR policies, programs etc. at the beginning of each judicial rotation.
- Statutory fees, $40 & $80, needs to be increased due to inflation. Difficult to bring in enough revenue to pay mediators what they deserve.
- The ADR program in our circuit is less than a year old. With a full time staff of four(ADR Director; Program assistant and two mediation services coordinators) we have created a circuit-wide (6 county area) family mediation program; county mediation in four counties and dependency mediation in four counties, all with very little spending authority. We have accumulated quite a bit of money yet our spending authority remains quite low. This situation leaves the majority of the family and dependency mediations to be conducted by the ADR Director, leaving a small amount of time to administer the programs. A higher spending authority that can fluctuate on a more regular basis with the actual income level would be a tremendous help.
- The First Judicial Circuit mediation program has few staff and rely on assistance from county clerk staff and contracted/volunteer mediators to assist with many aspects of delivering mediation services in the four county region.
- The Twelfth Judicial Circuit does not have "Court Program Specialist" designated staff in Mediation Services. Therefore any references to this position in the "Supervising" and "Assessing Quality" sections of this survey are not applicable.

Attachment I

ADR Program Caseload - Large, Medium and Small
Fiscal Year 2006-2007

Circuit	Circuit Size	County Court Court Ordered Cases	Family Court Ordered Cases	Dependency Court Ordered Cases	Total Court Ordered Cases	County Court Sessions Held	Family Sessions Held	Dependency Sessions Held	Total Sessions Held
4	Large	1,319	782	99	2,200	1,319	781	99	2,199
6	Large	3,826	1,347	166	5,339	3,824	1,442	168	5,434
9	Large	24,258	4,041	178	28,477	7,765	2,925	137	10,827
11	Large	5,091	NR	NR	5,091	3,635	1,298	172	5,105
13	Large	3,364	4,475	2	7,841	2,384	2,625	2	5,011
15	Large	4,217	3,554	217	7,988	4,152	2,381	155	6,688
17	Large	7,357	1,403	816	9,576	7,812	1,239	901	9,952
Subtotal - Large		**49,432**	**15,602**	**1,478**	**66,512**	**30,891**	**12,691**	**1,634**	**45,216**
1	Medium	1,600	557	200	2,357	1,101	475	185	1,761
5	Medium	2,599	537	1,125	4,261	2,599	323	999	3,921
7	Medium	1,245	450	151	1,846	1,208	379	134	1,721
10	Medium	844	703	384	1,931	843	635	205	1,683
12	Medium	1,805	151	10	1,966	1,702	511	7	2,220
18	Medium	2,015	1,675	6	3,696	1,957	1,596	9	3,562
20	Medium	6,479	1,606	52	8,137	3,716	1,395	50	5,161
Subtotal - Medium		**16,587**	**5,679**	**1,928**	**24,194**	**13,126**	**5,314**	**1,589**	**20,029**
2	Small	1,405	528	282	2,215	1,381	381	255	2,017
3	Small	536	283	164	983	536	225	158	919
8	Small	811	945	433	2,189	766	715	384	1,865
14	Small	1,778	86	0	1,864	863	30	0	893
16	Small	211	153	20	384	196	128	18	342
19	Small	1,205	408	0	1,613	1,186	377	0	1,563
Subtotal - Small		**5,946**	**2,403**	**899**	**9,248**	**4,928**	**1,856**	**815**	**7,599**
Total		**71,965**	**23,684**	**4,305**	**99,954**	**48,945**	**19,861**	**4,038**	**72,844**

Source: Uniform Data Reporting System

NR = Data Not Reported

Attachment J

Mediation Service Delivery Methods
Staffing Model
As of February 2008

Circuit	County	County Small Claims	Residential Evictions	Commercial Evictions	Other County Civil	Family Indigent	Family Indigent to $50K	Family $50K to $100K	Family Court Dependency
1	Escambia	Volunteer	Employee	NA	Employee	Contract	Contract	Contract	Contract
	Okaloosa	Volunteer	Volunteer	NA	Volunteer	Contract	Contract	Contract	Contract
	Santa Rosa	Volunteer	NA	NA	NA	Contract	Contract	Contract	Contract
	Walton	NA	NA	NA	NA	Contract	Contract	Contract	NA
	Circuit-Wide	**Volunteer**	**Employee\ Volunteer**	**NA**	**Employee\ Volunteer**	**Contract**	**Contract**	**Contract**	**Contract**
2	Franklin	NA	NA	NA	Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Gadsden	Employee\ Volunteer	NA	NA	Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Jefferson	NA	NA	NA	NA	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Leon	Employee\ Volunteer	NA	NA	Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Liberty	NA	NA	NA	NA	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Wakulla	Employee\ Volunteer	NA	NA	Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Circuit-Wide	**Employee\ Volunteer**	**NA**	**NA**	**Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**
3	Columbia	Contract	NA	NA	NA	Employee \ Contract	Employee \ Contract	Employee \ Contract	Employee
	Dixie	Contract	NA	NA	NA	Employee \ Contract	Employee \ Contract	Employee \ Contract	Employee
	Hamilton	Contract	NA	NA	NA	Employee \ Contract	Employee \ Contract	Employee \ Contract	Employee
	Lafayette	NA	NA	NA	NA	Employee \ Contract	Employee \ Contract	Employee \ Contract	Employee
	Madison	Contract	NA	NA	NA	Employee \ Contract	Employee \ Contract	Employee \ Contract	Employee
	Suwannee	Contract\ Volunteer	NA	NA	NA	Employee \ Contract	Employee \ Contract	Employee \ Contract	Employee
	Taylor	NA	NA	NA	NA	Employee \ Contract	Employee \ Contract	Employee \ Contract	Employee
	Circuit-Wide	**Contract\ Volunteer**	**NA**	**NA**	**NA**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee**

Circuit	County	County Small Claims	Residential Evictions	Commercial Evictions	Other County Civil	Family Indigent	Family Indigent to $50K	Family $50K to $100K	Family Court Dependency
4	Clay	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee	Employee	Employee	Employee
	Duval	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee	Employee	Employee	Employee
	Nassau	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee	Employee	Employee	Employee
	Circuit-Wide	**Employee\ Volunteer**	**Employee\ Volunteer**	**Employee\ Volunteer**	**Employee\ Volunteer**	**Employee**	**Employee**	**Employee**	**Employee**
5	Citrus	Volunteer	Volunteer	Volunteer	Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Hernando	Volunteer	Volunteer	Volunteer	Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Lake	Volunteer	Volunteer	Volunteer	Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Marion	Volunteer	Volunteer	Volunteer	Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Sumter	NA	NA	NA	NA	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Circuit-Wide	**Volunteer**	**Volunteer**	**Volunteer**	**Volunteer**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**
6	Pasco	Contract	Contract	Contract	Contract	Contract	Contract	Contract	Contract
	Pinellas	Contract	Contract	Contract	Contract	Contract	Contract	Contract	Contract
	Circuit-Wide	**Contract**	**Contract**	**Contract**	**Contract**	**Contract**	**Contract**	**Contract**	**Contract**
7	Flagler	Volunteer	Volunteer	Volunteer	Volunteer	Employee	Employee	Employee	Employee
	Putnam	Volunteer	Volunteer	Volunteer	Volunteer	Employee	Employee	Employee	Employee
	St. Johns	Volunteer	Volunteer	Volunteer	Volunteer	Employee	Employee	Employee	Employee
	Volusia	Volunteer	Contract\ Volunteer	Contract\ Volunteer	Contract\ Volunteer	Employee	Employee	Employee	Employee
	Circuit-Wide	**Volunteer**	**Contract\ Volunteer**	**Contract\ Volunteer**	**Contract\ Volunteer**	**Employee**	**Employee**	**Employee**	**Employee**
8	Alachua	Employee\ Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Baker	Employee\ Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Bradford	Employee\ Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Gilchrist	Employee\ Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Levy	Employee\ Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Union	Employee\ Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Circuit-Wide	**Employee\ Volunteer**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**

Circuit	County	County Small Claims	Residential Evictions	Commercial Evictions	Other County Civil	Family Indigent	Family Indigent to $50K	Family $50K to $100K	Family Court Dependency
9	Orange	Volunteer	Volunteer	Volunteer	Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Contract
	Osceola	Volunteer	Volunteer	Volunteer	Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Contract
	Circuit-Wide	**Volunteer**	**Volunteer**	**Volunteer**	**Volunteer**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Contract**
10	Hardee	NA	NA	NA	NA	NA	NA	NA	NA
	Highlands	Volunteer	Volunteer	Volunteer	Volunteer	NA	NA	NA	NA
	Polk	Contract\ Volunteer	Contract\ Volunteer	Contract\ Volunteer	Contract\ Volunteer	Employee	Employee	Employee	Employee
	Circuit-Wide	**Contract\ Volunteer**	**Contract\ Volunteer**	**Contract\ Volunteer**	**Contract\ Volunteer**	**Employee**	**Employee**	**Employee**	**Employee**
11	Miami-Dade	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee
	Circuit-Wide	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee**
12	Desoto	Employee\ Contract\ Volunteer	Contract\ Volunteer	Contract\ Volunteer	Contract\ Volunteer	Employee	Employee	Employee	Employee\ Contract
	Manatee	Contract\ Volunteer	Contract\ Volunteer	Contract\ Volunteer	Contract\ Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Sarasota	Contract\ Volunteer	Contract\ Volunteer	Contract\ Volunteer	Contract\ Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Circuit-Wide	**Employee\ Contract\ Volunteer**	**Contract\ Volunteer**	**Contract\ Volunteer**	**Contract\ Volunteer**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**
13	Hillsborough	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Circuit-Wide	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**
14	Bay	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	NA
	Calhoun	NA	NA	NA	NA	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Gulf	NA	NA	NA	NA	Employee\ Contract	Employee\ Contract	Employee\ Contract	NA
	Holmes	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Jackson	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Washington	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Circuit-Wide	**Employee\ Volunteer**	**Employee\ Volunteer**	**Employee\ Volunteer**	**Employee\ Volunteer**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**
15	Palm Beach	Volunteer	Volunteer	Volunteer	Employee	Employee	Employee	Employee	Employee
	Circuit-Wide	**Volunteer**	**Volunteer**	**Volunteer**	**Employee**	**Employee**	**Employee**	**Employee**	**Employee**

Circuit	County	County Small Claims	Residential Evictions	Commercial Evictions	Other County Civil	Family Indigent	Family Indigent to $50K	Family $50K to $100K	Family Court Dependency
16	Monroe	Employee\ Contract\ Volunteer	Employee\ Contract\ Volunteer	Employee\ Contract\ Volunteer	Employee\ Contract\ Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Circuit-Wide	**Employee\ Contract\ Volunteer**	**Employee\ Contract\ Volunteer**	**Employee\ Contract\ Volunteer**	**Employee\ Contract\ Volunteer**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**
17	Broward	Contract	Contract	Contract	Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract
	Circuit-Wide	**Contract**	**Contract**	**Contract**	**Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**
18	Brevard	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	Employee
	Seminole	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Employee\ Volunteer	Contract	Contract	Contract	Contract
	Circuit-Wide	**Employee\ Volunteer**	**Employee\ Volunteer**	**Employee\ Volunteer**	**Employee\ Contract\ Volunteer**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**
19	Indian River	Contract	Contract	Contract	Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	NA
	Martin	Contract	Contract	Contract	Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	NA
	Okeechobee	Contract	Contract	Contract	Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	NA
	St. Lucie	Contract	Contract	Contract	Contract	Employee\ Contract	Employee\ Contract	Employee\ Contract	NA
	Circuit-Wide	**Contract**	**Contract**	**Contract**	**Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**NA**
20	Charlotte	Volunteer	NA	NA	Contract	Contract	Contract	Contract	Contract
	Collier	Volunteer	NA	NA	Employee	Employee	Employee	Employee	Employee
	Glades	NA	NA	NA	NA	Contract	Contract	Contract	NA
	Hendry	NA	NA	NA	Contract	Contract	Contract	Contract	NA
	Lee	Volunteer	NA	NA	Contract	Contract	Contract	Contract	Contract
	Circuit-Wide	**Volunteer**	**NA**	**NA**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**	**Employee\ Contract**

Source: Trial Court Circuit Profiles, Mediation Services, February 2008

Attachment K

Contract Compensation
As of February 2008

Circuit	Family Mediation Per Hour Fee	Family Mediation Per Session Fee	Family Mediation Per Case Fee	County Court Mediation Per Hour Fee	County Court Mediation Per Session Fee	County Court Mediation Per Case Fee
1		$140				
2			$200			$100
3	$75			$25		
4						
5	$125					
6		$200		$22 to $50		
7				Unknown	Unknown	Unknown
8		$200			$100	
9		$200				
10				$15		
11	$34			$32		
12	$60				$25	$25
13		$145		$20		
14		$150				
15						
16	$100			$75		
17		$50			$50	
18		$150 (Brevard)	$125 (Seminole)			$70 (Brevard)
19		$150				$20 to $50
20	$150					

Source: Trial Court Circuit Profiles, Mediation Services, February 2008

Attachment L

2008 Legislature - CS for SB 1790, 1st Engrossed

Section 44.108, Florida Statutes, is amended to read:

44.108 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' Mediation and Arbitration 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 ~~Eighty~~ 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 ~~Forty~~ dollars per person per scheduled session in family mediation when the parties' combined income is less than $50,000; or

(c) Sixty ~~Forty~~ 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' Mediation and Arbitration 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, beginning July 1, 2008, a report specifying the amount of funds collected and remitted to the state courts' Mediation and Arbitration Trust Fund under this section and any other section during the previous ~~each~~ 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.