
FAMILY/DEPENDENCY AND COUNTY COURT MEDIATION PROGRAMS

Report and Recommendations August 27, 2003

INTRODUCTION

Over the past few decades, responsibility for, and the costs of, providing circuit court family and dependency mediation and county court small claims and civil mediation in Florida, have been shared by a variety of entities. They have included county governments, state and private foundations through grants, and litigants. As a result, a variety of mediation approaches have emerged in circuits across the state. In particular, currently, the scope of mediation services, types of mediators used, and types and roles of administrators and staff involved in establishing, directing, and maintaining mediation services, varies widely from circuit to circuit.

For example, in some circuits, comprehensive family and civil case mediation services are available throughout the circuit. Some circuits offer some but not all types of family, dependency, or county civil mediation services. In other circuits, comprehensive services are available in some but not all counties within the jurisdiction. Similarly, diversity across circuits is also apparent in the types of mediators providing services. Some circuits rely heavily on contract or volunteer mediators while other jurisdictions, for the most part, use staff mediators. Some circuits use a combination of contract, staff, and volunteer mediators. Moreover, the types of administrators assigned to manage mediation programs, along with the scope of administrative responsibility, differ significantly from circuit to circuit. Some circuits have full-time mediation program administrators, while court administrators in neighboring circuits might be responsible for a variety of programs and court operations, as well as mediation services.

The sizeable mediation service level disparities across the state that have resulted from largely county funded mediation services, present formidable challenges to Florida courts as they begin the transition to primarily state funded mediation services as contemplated in Revision 7 of Article V of the Florida Constitution and House Bill 0113A. The new legislation indicates that effective July 1, 2004, the cost of providing court referred or court ordered mediation cases will be borne by the state. It also implies the continued use of private mediators in Circuit civil cases. Further, the new legislation says that the state will not fund pre-suit mediation, voluntary mediation, and community and citizen dispute resolution centers. Specifically, HB 0113A of the 2003 Session of the Florida State Legislature amends chapter 29.004, Florida Statutes to provide:

- 29.004 State courts system – For purposes on implementing s. 14 Art.V of the State Constitution, the elements of the state courts system to be provided from state revenues appropriated by general law are as follows: ...

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- (11) Mediation and arbitration, limited to trial court referral of 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 purposes 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 44.201 and community arbitration programs under s. 985.304.

Also, effective July 1, 2003, chapter 30.4075, Florida Statutes, was amended to provide:

- 39.4075 Referral of a dependency case to mediation.

(3) The department shall advise the parties that they are responsible for contributing to the cost of the dependency mediation.

As one consequence, given the diversity in mediation service delivery present today, the transition to state funding within less than one-year will both require flexibility to accommodate the needs of diverse circuits and the populations they serve, and encourage greater service level uniformity and increased program accountability. Moving to a statewide Florida court system then necessitates developing and implementing mediation programs that provide greater uniformity and equality in access, fees, and mediation services within circuits and across the state.

To begin to position circuits throughout Florida to meet the challenges posed by a changing mediation service landscape, OSCAs Dispute Resolution Center and the Strategic Planning Unit, with the assistance of court consultants Drs. Brenda Wagenknecht-Ivey and John Martin, facilitated a process for developing a comprehensive model of mediation services, and recommending the characteristics of family, dependency, and civil case mediation services that should be funded by the state in every circuit. In particular, the model development and recommendation process included:

1. detailed review of the lessons learned from mediation programs nationally;
2. a two-day workshop for participants from a wide-range of mediation programs throughout Florida – conducted July 1 and 2 – focused on family and dependency mediation programs and service delivery model; and
3. a second two-day county court, civil mediation programs and service delivery models workshop held on July 30 and 31.

Included among the topics addressed at both seminars were the: (1) types of cases mediated; (2) amount of mediation services available; (3) organization and staffing of program management and coordination; (4) manner in which services are offered, such as use of volunteer, staff, and contract mediators; and (5) policies regard costing recovery, including amounts charged to parties.

This document summarizes the results of the assessment and workshops. It includes:

1. a summary of background information about mediation in Florida, such as the purpose of mediation and ADR, service definitions, key performance areas, and program goals;
2. recommended service delivery models for court-ordered family, dependency, and county court civil mediation; and
3. a preliminary inventory of both the many opportunities and the formidable transition issues likely to confront many circuits as they move from existing mediation service delivery models to a new model over the next year.

In addition, a summary of the benefits and drawbacks of service delivery model characteristics is provided in Attachment A.

MEDIATION IN FLORIDA

Purpose and Scope. The Alternative Dispute Resolution (ADR) Rules & Policy Committee has stressed that the purpose of ADR in Florida is to assist the judicial branch in carrying out its constitutional duties by (1) providing more efficient, cost effective options to adversarial litigation; and (2) offering the parties with a choice of dispute resolution options.

Mediation has been identified as the predominant ADR process and deemed an essential element of courts. Mediation optimizes parties' participation in the process and enhances efficient and effective resolution of disputes and therefore supports more effective use of judge time and other judicial resources. Moreover, in Florida as in the rest of the nation, mediation is seen as a process where a neutral, third party acts to encourage and facilitate the resolution of a dispute between two or more parties. Mediation is defined as an informal and non-adversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. Further, in Florida today:

- family mediation refers to the mediation of family matters, including those of married and unmarried persons, before and after judgements, involving dissolution of marriage, property division, shared or sole parental responsibility, or child support, custody, or visitation;
- dependency or in need of services mediation refers to mediation of dependency, child in need of services, or family in need of services matters; and
- county court mediation refers to mediation of civil cases within the jurisdiction of county courts including small claims disputes.

Finally, a review of the national research literature and the comments of workshop participants stressed that, as the Florida courts revise existing mediation models, goals from five key performance areas need to be addressed. As show in Figure 1 these five key performance areas are:

- court accessibility and timely case resolutions;
- effective and appropriate dispute resolution forums;
- cost effectiveness;
- fairness; and
- responsive to the needs of litigants and court personnel.

**Figure 1:
Mediation Program Key Results and Goals**

Key Result Areas	Program Goals
1. Accessibility & Timely Case Disposition	<ol style="list-style-type: none"> 1. To reduce case disposition time 2. To reduce backlog of older cases 3. To increase "pre-event" dispositions 4. To expedite partial, temporary, and full agreements/dispositions 5. To expedite/streamline litigation 6. To enhance access to courts/justice
2. Effectiveness & Quality of Mediation Program & Appropriateness of the Mediation Forum	<ol style="list-style-type: none"> 1. To find the best forum for litigants to resolve their disputes 2. To provide culturally responsive and appropriate mediation programs 3. To produce better outcomes for the parties 4. To produce a greater likelihood of compliance with agreements 5. To reduce the need for further court actions/activity
3. Cost Effectiveness – for Litigants (less costly than trial), Courts (savings to courts), & Communities	<ol style="list-style-type: none"> 1. To reduce/conservе litigant costs 2. To save/conservе judicial resources
4. Fairness	<ol style="list-style-type: none"> 1. To achieve high litigant satisfaction with the process 2. To achieve high attorney satisfaction with process 3. To empower litigants/citizens to resolve their own disputes (i.e., self determination)
5. Responsiveness	<ol style="list-style-type: none"> 1. To achieve high litigant satisfaction 2. To achieve high attorney satisfaction 3. To achieve high judicial satisfaction 4. To achieve high mediator satisfaction

RECOMMENDED SERVICE DELIVERY MODELS

Both the review of information about mediation programs around the nation and the comments of workshop participants indicated that flexibility in the provision of mediation services was a key element of any attempt at developing a model approach for Florida's diverse circuits. 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. Consequently, the recommendations for mediation program features presented here allow for flexibility in the types of mediators and staff functions, but also emphasize the need for increased uniformity and accountability in circuits throughout the state. In addition, the mediation model features recommended here are the minimum features workshop participants, buttressed by the research and practitioner evaluation findings, indicated are needed for a viable mediation program that also meets the restrictions imposed by recent state legislation. It is anticipated that county funding might be available in some jurisdictions to expand service. Moreover, it is likely that depending on numbers of filings and referrals, population, geography, and case mix, in some jurisdictions staffing in addition to the minimums described below will be needed.

Figure 2 summarizes the consensus among participants at the two workshops about the primary features that should be included in a mediation model to be implemented in each circuit as a result of Revision 7 of Article 5.

Family and Dependency Mediation

Features of the recommended mediation model for family and dependency disputes:

- court staff or contract mediators should conduct the mediation sessions;
- every circuit should have at least one court staff member who is certified and able to mediate family and dependency matters, and this person might also serve other mediation staff and administrative functions;
- every circuit should have one person who is responsible for the **director/oversight function** which includes overseeing and managing all mediation services provided by that circuit. Depending on the workload and size of the circuit, this function may be a full or part time assignment, and the person might also function as a mediator, assume some coordination responsibilities, and/or have other court administration duties not related to mediation;
- every circuit should have a person who is responsible either part or full time for the **coordination function** for family and dependency mediation services, which includes scheduling, notifying parties and mediators, and other coordination duties;
- every circuit should have a person who is responsible either part or full time for the **administrative/clerical support function**, which includes responsibilities to the ADR program such as answering the phones, copying, filing, answering general questions, and providing information to parties and mediators;
- parties who are certified as indigent by the clerk should receive mediation services free of charge;

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- family members are eligible to use the court's mediation services if the parties have a combined income of under \$100,000, but judges should be able to order all parties to mediation;
 - parties to a dispute with combined incomes of greater than \$100,000 per year should use private, rather than court-attached, mediation services;
 - parties with incomes less than \$50,000 per year should pay \$30-40 each per mediation session, which may be apportioned proportionally by the court based on an individual's income level; and
 - parties with incomes between \$50,000 and \$100,000 per year should pay \$80.00 each per mediation session, which may be apportioned proportionally by the court based on an individual's income level.

County Civil and Small Claims Mediation

Features of the recommended mediation model for county civil and small claims cases are:

- volunteer certified mediators should conduct county court small claims mediations;
- court staff or contract mediators should conduct county court civil case mediations;
- the part or full time director function, as outlined above in the family/dependency model, should include oversight of all ADR services, functions, and programs;
- the part or full time coordinator and administrative/clerical functions outlined above should serve family, dependency, and county civil mediation programs;
- parties should not be charged for small claims mediations;
- in other county court civil cases, parties who are certified as indigent by the clerk should receive mediation services free of charge; and
- non-indigent parties in county court civil cases should pay \$50 per party per mediation session.

Figure 2: Proposed Mediation Framework

Program Management and Coordination	Management/Oversight:	Coordination (Volunteers, Contracts, Referrals):	Administrative/Clerical:
	<p>Each circuit should have one person whose function is to provide oversight and management for all mediation services provided by that circuit. This person might also function as a mediator and assume some coordination responsibilities, depending on the mediation workload of the circuit. In smaller circuits, this person may have other court administration duties not related to mediation.</p>	<p>Each circuit would have someone who would be responsible for providing the coordination function for each of the various mediation services offered by the circuit. In the larger circuits there may be a need for multiple staff to handle this function to accommodate the workload of the different mediation programs or the workload in the counties. In the smaller circuits this function may be performed as one of the duties and responsibilities of a court staff person.</p>	<p>Each circuit should have a staff person who can assume the clerical and administrative responsibilities of each of the mediation programs for the circuit. In smaller circuits, this may be the same person who performs the coordination function.</p>
Providing Mediation Services	<p>Family*</p> <p>Each circuit should have at least one person on staff, plus contract dollars to provide mediation services for family cases, including dependency. (This person may also support the coordination function.) For family cases, the mediators should be funded by the state with cost recovery based on a fee schedule based on the income of the parties. Parties whose joint income is over \$100,000 must use private mediation services and not those provided by the court.</p>	<p>County Small Claims</p> <p>Each circuit should use volunteer certified mediators to handle small claims cases.</p>	<p>Other County Civil</p> <p>Each circuit should have staff or contract mediators to provide mediation services for county civil. The mediators should be funded by the state with cost recovery based on a fee schedule based on the income of the parties.</p>
Fee/Cost Recovery Per Session	<p>\$0 - Parties who are indigent (with clerk certificate of indigence) should receive mediation services free of charge \$30-\$40 each party/session - Parties whose combined income is above the indigence level but less than \$50,000 per year. (Based on family law short financial affidavit form). \$80 each party/session - Parties whose joint income is between \$50,000 and \$100,000.</p>	<p>\$0 - There should be no charge to the parties.</p>	<p>\$0 - Parties with clerk certificate of indigence \$50 party/session - Parties with income above the indigence level</p>

*The workgroup did not develop specific suggestions for the state responsibility to fund mediators for dependency cases or for the cost recovery from fees.

JULY 2004 TRANSITION

Transition Issues. Workshop participants identified numerous transition issues that circuits will need to address to successfully implement largely state funded mediation programs on the foundations provided by the currently largely county funded programs.

1. Structure, organization, and work process issues are:

- establishing new work processes to meet legislative guidelines;
- establishing performance measures and measurement systems;
- developing processes for fee assessment and collection; and
- preparing new forms that conform to state requirements.

2. Organizational boundary and responsibility issues are:

- clarifying the role of the clerks office in indigency determination and fee and cost recovery;
- clarifying optimal organizational and management structure(s) tailored to the particular needs of circuits;
- determining what types of mediation services excluded from state funding may be of interest to county or other local funding sources; and
- establishing budgets and budget monitoring systems that can distinguish between state and non-state funded mediation services where they are used.

3. Human resources and personnel issues are:

- retraining administrative, clerical staff, and mediators to perform additional or different duties;
- preparing new job descriptions and classifications;
- establishing benefits programs;
- having the Dispute Resolution Center train mediators for counties and circuits with insufficient numbers of mediators today;
- establishing staffing formulas and service levels;
- establishing standards and procedures for evaluating mediators;
- establishing employee assistance programs; and
- developing model contracts.

4. Other transition issues include:

- establishing transition implementation guidelines; and
- establishing quality assurance standards.

Transition Strategy. Important elements that should be included in a transition strategy for revising circuit mediation programs in light of Revision 7 are:

- the Dispute Resolution Center, working with mediation and court staff, should identify and document Revision 7 compliant best mediation program practices, especially business and clerical practices;
- performance measures should be identified and performance data collection processes established;
- OSCA with the assistance of judges and court administrative staff should prepare a transition plan template that can be used in circuits across the state;
- OSCA personnel should prepare court system descriptions that clarify roles and responsibilities among state and county government, and the courts and other justice service providers such as the clerk's office;
- each circuit should prepare a transition plan that includes discussion of staff redeployment; and
- alternatives to existing organizational structures and programs for mediation as well as other court services should be presented and reviewed at education and training programs scheduled between now and July 2004.

CONCLUSION

The mediation programs and services provided across Florida are essential to assisting the judicial branch in carrying out its constitutional duties. They provide more efficient and cost effective options to adversarial litigation and the parties with a choice of dispute resolution options. Consequently, the Florida Court System remains committed to continuing to provide high quality mediation services throughout the state. As Florida's courts transition to statewide funding, for some circuits this means expanding the scope of mediation services. For others, it means providing mediation services differently and more cost effectively. For all circuits, it means adapting mediation programs and services to provide more uniform levels of service including access and increasing program accountability.

All circuits throughout Florida will be affected by the proposed changes to family, dependency, and county civil mediation programs. No circuit currently has a family/dependency or county court mediation program in place that matches the features of the recommended models. Nonetheless, the recommended models, which were developed with the assistance of many

mediation practitioners across the state, will preserve the integrity of mediation as an alternative method of resolving disputes in Florida and provide more uniform mediation services across the state.

Moving from existing mediation practices to the recommended future models will require considerable planning and careful implementation by many judicial and court leaders and mediation practitioners across the state as there are many transition issues to be addressed and resolved prior to July 1, 2004. Thus, transition planning should begin immediately. The Dispute Resolution Center and other appropriate OSCA units and staff should begin working with circuit leadership and mediation staff now to develop several plausible transition and contingency plans. Doing so will set the stage for a smoother transition once the Legislature acts in early 2004.

ATTACHMENT A:

Staff Mediators	
Benefits	Drawbacks
<ol style="list-style-type: none"> 1. Can use mediators in family and dependency, and other subject areas – cross training 2. Quality control & direct supervision and monitoring 3. Can do other administrative tasks/work when not mediating 4. Increases/quick access & availability; improves flexibility 5. High level of experience; mediate lots of matters 6. Secure/controlled environment 7. Staff mediators do not have conflicts with other jobs 8. Can serve indigent community (service is provided by the court) 9. More control over schedules 10. Increase in the diversity of mediators 11. Consistency in quality of mediation services/location 12. Career ladder for staff 13. Credibility with judges 	<ol style="list-style-type: none"> 1. Expensive—salary and benefits 2. Down time – what to do with mediators when not mediating 3. Harder to let go if mediator is not performing well 4. Judge may not refer parties to a mediator he/she perceives to be performing poorly 5. If staff mediator is busy, can't provide immediate service; may not have people available 6. Less flexibility; scheduling limitations, diversity needs, providing mediation services during non-court hours 7. Pool to draw from may not be the best mediators/willing to work for a court 8. Burn out 9. Too much potential for close association/ties with judges 10. Space – have to provide space to provide services 11. Limitation in the choice of mediators 12. Staff have to drive to other counties

Contract Mediators

Benefits	Drawbacks
<ol style="list-style-type: none"> 1. Work on an as needed basis; schedule as needed 2. Pay on services delivered 3. Don't have to pay for benefits 4. Increase in flexibility to the court 5. Opportunities to specialize 6. Less burnout 7. Have control over contract mediator pool; can get rid of people 8. Don't have to provide space/supplies (less fixed/overhead costs) 9. More variety and quality 10. Quality control (vs. volunteer) 11. High level of experience 12. Parties have a limited choice of mediators 13. Security if provided when in the courthouse 14. Potential to have a larger, diverse mediation pool 	<ol style="list-style-type: none"> 1. Cost -- not consistent across Circuits; unequal amounts and how paid varies 2. Contract structure is not uniform 3. Access -- who is eligible for services 4. Supervising lots of mediators 5. Creates more clerical work - scheduling, calling mediators 6. Political interference on who gets on the list, work distribution, how you select or keep (or eliminate) people on the list 7. Limited choice -- off a contractor list 8. Conflict -- doing other private mediations; soliciting other business 9. Red tape/record keeping/statistics

Volunteer	
Benefits	Drawbacks
<ol style="list-style-type: none"> 1. Cost – salary, fees, benefits 2. Increase in perks 3. Large pool 4. Easier to control 5. Really committed/motivated to be there 6. No conflicts with parties (vs. staff mediators) 7. Can match parties with specialists based on unique case needs 8. More flexibility – after hour services 	<ol style="list-style-type: none"> 1. Turnover 2. Lack of diversity 3. May not like mediator 4. Limited by population of volunteers & other constraints 5. Difficult to motivate volunteers 6. High maintenance – cancellations and difficult to schedule 7. Less quality/needy volunteers 8. Expect different treatment 9. Less control over person/quality 10. Requires different management skills 11. Recruitment and retention issues 12. May leave volunteer program to be a private mediator 13. Not familiar with procedures

Fee Structures	Benefits	Drawbacks
Per Case	<ul style="list-style-type: none"> • Predicable • Easy Accounting • Encourages quick resolution 	<ul style="list-style-type: none"> • Difficult to balance work load • Unfair on complex cases
Per Hour	<ul style="list-style-type: none"> • Paid for time/hours worked • Removes ethical dilemma • Quality Mediation 	<ul style="list-style-type: none"> • Could drag out case • Unpredictable • Complex to administer • Changes incentives to settle • Extra bureaucracy to ask permission to continued
Per Session	<ul style="list-style-type: none"> • Same as per case • Another day; another charge • What is a session 	<ul style="list-style-type: none"> • Scheduling/length of sessions
Flat Contract Rate	<ul style="list-style-type: none"> • Predictability of budget 	

Fee Structures	Benefits	Drawbacks
Free/Pro Bono	<ul style="list-style-type: none"> • Saves costs • Community service/good image/public relations • Very Committed • See volunteer list 	<ul style="list-style-type: none"> • Parties don't invest

Party Pay Structures	Benefits	Drawbacks
Flat Rate per Party (per session/fee)	<ul style="list-style-type: none"> • Easier • Know what have to pay – predictable • \$ up front 	<ul style="list-style-type: none"> • Inequitable • Difficult to determine who will pay • Dependency cases - difficult to determine the parties
Sliding Scale	<ul style="list-style-type: none"> • More equitable • More accessible 	<ul style="list-style-type: none"> • Time consuming • Inequitable • Difficult to administer - staff/people must determine income • Easy to manipulate
Hourly Rate	<ul style="list-style-type: none"> • Know what paying for 	<ul style="list-style-type: none"> • Underestimate time • Not predictable • May impact Mediation • Collection more difficult
Free (with combination after 1-2 hours)	<ul style="list-style-type: none"> • Less staff • Easy to administer • Increases access for poor 	<ul style="list-style-type: none"> • Going too long • Lack of value - no investment • No commitment
Free to specific income level	<ul style="list-style-type: none"> • More equitable • Better use of court resources • Increases access • Market determines rate 	<ul style="list-style-type: none"> • Competing with/antagonistic to private sector • Devalues profession • Easier to Justify with money

Essential Elements: Mediation

Pre-Revision 7 Model

Post-Revision 7 Model

General

Court-based mediation operates at the county level, resulting in a disparity of service availability and user costs within and among the circuits.

Court-based mediation will be part of a state system and will operate within parameters designed to ensure that, statewide, similarly situated litigants are provided with a similar level of service.

Coordination

Coordination of alternative dispute resolution, including court-based mediation and arbitration, is based on local resources and needs. Coordination activities range from "little-to-none" to extensive efforts that are quite resource intensive.

Coordination of mediation and arbitration efforts will have a standard complement of mediation coordination support, based on circuit size, but circuits will retain some flexibility in how the coordination services are delivered.

Service Delivery

Court-based mediation services are provided for a variety of case types within highly varying income-eligibility ranges.

Court-based mediation will be available statewide for family, dependency, county civil and small claims, within consistent income-eligibility ranges.

Mediation services provided through a combination of volunteers, paid staff mediators and contract mediators.

Mediation services will be provided through a combination of volunteers, paid staff mediators and contract mediators.

Contract mediator fees are market-driven and may be hourly, per session, or per case.

Contract mediator fees will remain market-driven and may be hourly, per session, or per case.

Mediation service providers are subject to professional certification and qualifications set forth in statute and court rule.

In addition to the requirements set forth in statutes and rules, coordination staff and mediators will be subject to common classifications and qualifications.

Cost Recovery

- Disparity in cost recovery
 - \$0 for small claims mediation
 - \$0 to \$20 for indigent family and dependency parties
 - \$0 to \$150 for non-indigent family mediation (Income eligibility varies widely)
 - \$0 to \$200 for non-indigent dependency

Uniform cost recovery

- \$0 for small claims mediation
- \$0 for indigent family and dependency parties
- \$40 - \$80/party per session for family mediation (for family with income less than \$100,000)
- \$50/party for county civil mediation

Accountability

Local court-based programs were subject to applicable local accountability mechanisms, as established by the chief judge.

Court-based programs will be subject to performance measures applicable to state-funded court programs.