

CHAPTER 44

MEDIATION ALTERNATIVES TO JUDICIAL ACTION

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44.1011 Definitions.—As used in this chapter:

(1) "Arbitration" means a process whereby a neutral third person or panel, called an arbitrator or arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding as provided in this chapter.

(2) "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decisionmaking authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. "Mediation" includes:

(a) "Appellate court mediation," which means mediation that occurs during the pendency of an appeal of a civil case.

(b) "Circuit court mediation," which means mediation of civil cases, other than family matters, in circuit court. If a party is represented by counsel, the counsel of record must appear unless stipulated to by the parties or otherwise ordered by the court.

(c) "County court mediation," which means mediation of civil cases within the jurisdiction of county courts, including small claims. Negotiations in county court mediation are primarily conducted by the parties. Counsel for each party may participate. However, presence of counsel is not required.

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

(e) "Dependency or in need of services mediation," which means mediation of dependency, child in need of

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

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

Note.—Former s. 44.301.

44.102 Court-ordered mediation.—

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

(2) A court, under rules adopted by the Supreme Court:

(a) May refer to mediation all or any part of a filed civil action.

(b) In circuits in which a family mediation program has been established and upon a court finding of a dispute, shall refer to mediation all or part of custody, visitation, or other parental responsibility issues as defined in s. 61.13. A court shall not refer any case to mediation if it finds there has been a significant history of domestic abuse that would compromise the mediation process.

(c) In circuits in which a dependency or in need of services mediation program has been established, may refer to mediation all or any portion of a matter relating to dependency or to a child in need of services or a family in need of services.

(3) Each party involved in a court-ordered mediation proceeding has a privilege to refuse to disclose, and to prevent any person present at the proceeding from disclosing, communications made during such proceeding. Notwithstanding the provisions of ²s. 119.14, all oral or written communications in a mediation proceeding, other than an executed settlement agreement, shall be exempt from the requirements of chapter 119 and shall be confidential and inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise. This exemption is subject to the Open Government Sunset Review Act in accordance with ³s. 119.14.

(4) There shall be no privilege and no restriction on any disclosure of communications made confidential in subsection (3) in relation to disciplinary proceedings filed against mediators pursuant to s. 44.106 and court rules, to the extent the communication is used for the purposes of such proceedings. In such cases, the disclosure of an otherwise privileged communication shall be used only for the internal use of the body conducting the investigation. Prior to the release of any disciplinary files to the public, all references to otherwise privileged communications shall be deleted from the record. When an otherwise confidential communication is used in a mediator disciplinary proceeding, such communication shall be inadmissible as evidence in any subsequent legal proceeding. "Subsequent legal proceeding" means any legal proceeding between the

parties to the mediation which follows the court-ordered mediation.

(5) The chief judge of each judicial circuit shall maintain a list of mediators who have been certified by the Supreme Court and who have registered for appointment in that circuit.

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

(b) Nonvolunteer mediators shall be compensated according to rules adopted by the Supreme Court. If a mediation program is funded pursuant to s. 44.108, a mediator may be compensated by the county or by the parties. When a party has been declared indigent or insolvent, that party's pro rata share of a mediator's compensation shall be paid by the county at the rate set by administrative order of the chief judge of the circuit.

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

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

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

History.—s. 2, ch. 87-173; s. 2, ch. 89-31; s. 2, ch. 90-188; s. 2, ch. 93-161; s. 10, ch. 94-134; s. 10, ch. 94-135; s. 44, ch. 94-164.

***Note.**—Section 36, ch. 94-134, and s. 36, ch. 94-135, provide for applicability to offenses committed on or after July 1, 1994.

***Note.**—Repealed by s. 1, ch. 95-217.

***Note.**—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."

Note.—Former s. 44.302.

44.103 Court-ordered, nonbinding arbitration.—

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

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

(3) Arbitrators shall be selected and compensated in accordance with rules adopted by the Supreme Court. Arbitrators may be compensated by the county or by the parties. Compensation for arbitrators shall not exceed \$200 per day, unless otherwise agreed by the parties and approved by the court. Whenever possible, qualified individuals who have volunteered their time to serve as arbitrators shall be appointed. If an arbitration program is funded pursuant to s. 44.108, volunteer arbitrators shall be entitled to be reimbursed pursuant to s.

112.061 for all actual expenses necessitated by service as an arbitrator.

(4) An arbitrator or, in the case of a panel, the chief arbitrator, shall have such power to administer oaths or affirmation and to conduct the proceedings as the rules of court shall provide. At the request of any party to the arbitration, such arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by law.

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

(6) The party having filed for a trial de novo may be assessed the arbitration costs, court costs, and other reasonable costs of the party, including attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision.

History.—s. 3, ch. 87-173; s. 3, ch. 89-31; s. 3, ch. 90-188; s. 3, ch. 93-161.

Note.—Former s. 44.303.

44.104 Voluntary binding arbitration.—

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

(2) If the parties have entered into an agreement which provides for a method for the appointment of one or more arbitrators, the court shall proceed with the appointment as prescribed, except that at least one of the arbitrators, who shall serve as the chief arbitrator, shall meet the qualifications and training requirements adopted pursuant to s. 44.106. In the absence of an agreement, or if the agreement method fails or for any reason cannot be followed, the court, on application of a party, shall appoint one or more qualified arbitrators.

(3) The arbitrators shall be compensated by the parties according to their agreement, but not at an amount less than \$75 per day.

(4) Within 10 days of the submission of the request for binding arbitration, the court shall provide for the appointment of the arbitrator or arbitrators. Once appointed, the arbitrators shall notify the parties of the time and place for the hearing.

(5) Application for voluntary binding arbitration shall be filed and fees paid to the clerk of court as if for complaints initiating civil actions. The clerk of the court shall

handle and account for these matters in all respects as if they were civil actions, except that the clerk of court shall keep separate the records of the applications for voluntary binding arbitration from all other civil actions.

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

(7) The chief arbitrator shall have such power to administer oaths or affirmation and to conduct the proceedings as the rules of court shall provide. At the request of any party, the chief arbitrator shall issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and may apply to the court for orders compelling attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by law.

(8) The hearing shall be conducted by all of the arbitrators, but a majority may determine any question and render a final decision.

(9) The Florida Evidence Code shall apply to all proceedings under this section.

(10) An appeal shall be taken to the circuit court and shall be limited to review on the record and not de novo, of:

(a) Any alleged failure of the arbitrators to comply with the applicable rules of procedure or evidence.

(b) Any alleged partiality or misconduct by an arbitrator prejudicing the rights of any party.

(c) Whether the decision reaches a result contrary to the Constitution of the United States or of the State of Florida.

The harmless error doctrine shall apply in all appeals. No further review shall be permitted unless a constitutional issue is raised.

(11) If no appeal is taken within the time provided by rules promulgated by the Supreme Court, then the decision shall be referred to the presiding judge in the case, or if one has not been assigned, then to the chief judge of the circuit for assignment to a circuit judge, who shall enter such orders and judgments as are required to carry out the terms of the decision, which orders shall be enforceable by the contempt powers of the court and for which judgments execution shall issue on request of a party.

(12) This section shall not apply to any dispute involving child custody, visitation, or child support, or to any dispute which involves the rights of a third party not a party to the arbitration.

History.—s. 4, ch. 87-173; s. 4, ch. 89-31; s. 4, ch. 90-188.
Note.—Former s. 44.304.

44.106 Standards for mediator and arbitrator qualifications; procedures; rules of professional conduct, discipline, and training; fees.—The Supreme Court shall establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training for mediators and arbitrators who are appointed pursuant to this chapter. The Supreme Court is authorized to set fees to be charged to applicants for certification and renewal of certification. The revenues generated from these fees shall be used to offset the costs of administration of the certification process. The Supreme Court may appoint or employ such personnel

as are necessary to assist the court in exercising its powers and performing its duties under this chapter.

History.—s. 6, ch. 87-173; s. 6, ch. 90-188.
Note.—Former s. 44.306.

44.107 Immunity for arbitrators and mediators.—

An arbitrator appointed under s. 44.103 or s. 44.104 or a mediator appointed under s. 44.102 shall have judicial immunity in the same manner and to the same extent as a judge. A person appointed under s. 44.106 to assist the Supreme Court in performing its disciplinary function shall have absolute immunity from liability arising from the performance of that person's duties while acting within the scope of that person's appointed function.

History.—s. 5, ch. 89-31; s. 7, ch. 90-188; s. 1, ch. 95-421.
Note.—Former s. 44.307.

44.108 Funding of mediation and arbitration.—

Mediation should be accessible to all parties regardless of financial status. Each board of county commissioners may support mediation and arbitration services by appropriating moneys from county revenues and by:

(1) Levying, in addition to other service charges levied by law, a service charge of no more than \$5 on any circuit court proceeding, which shall be deposited in the court's mediation-arbitration account fund under the supervision of the chief judge of the circuit in which the county is located; and

(2) Levying, in addition to other service charges levied by law, a service charge of no more than \$5 on any county court proceeding, which shall be deposited in the county's mediation-arbitration account fund to be used to fund county civil mediation services under the supervision of the chief judge of the circuit in which the county is located.

(3) Levying, in addition to other service charges levied by law, a service charge of no more than \$45 on any petition for a modification of a final judgment of dissolution, which shall be deposited in the court's family mediation account fund to be used to fund family mediation services under the supervision of the chief judge of the circuit in which the county is located.

(4) If a board of county commissioners levies the service charge authorized in subsection (1), subsection (2), or subsection (3), the clerk of the court shall forward \$1 of each charge to the Office of the State Courts Administrator. That office shall deposit the funds in a state mediation and arbitration trust fund which is hereby established. Such fund shall be used by the Supreme Court to carry out its responsibilities set forth in s. 44.106.

History.—s. 6, ch. 89-31; s. 8, ch. 90-188; s. 6, ch. 91-152.
Note.—Former s. 44.308.

44.201 Citizen Dispute Settlement Centers; establishment; operation; confidentiality.—

(1) The chief judge of a judicial circuit, after consultation with the board of county commissioners of a county or with two or more boards of county commissioners of counties within the judicial circuit, may establish a Citizen Dispute Settlement Center for such county or counties, with the approval of the Chief Justice.

(2)(a) Each Citizen Dispute Settlement Center shall be administered in accordance with rules adopted by a council composed of at least seven members. The chief judge of the judicial circuit shall serve as chair of the

council and shall appoint the other members of the council. The membership of the council shall include a representative of the state attorney, each sheriff, a county court judge, and each board of county commissioners within the geographical jurisdiction of the center. In addition, council membership shall include two members of the general public who are not representatives of such officers or boards. The membership of the council also may include other interested persons.

(b) The council shall establish qualifications for and appoint a director of the center. The director shall administer the operations of the center.

(c) A council may seek and accept contributions from counties and municipalities within the geographical jurisdiction of the Citizen Dispute Settlement Center and from agencies of the Federal Government, private sources, and other available funds and may expend such funds to carry out the purposes of this section.

(3) The Citizen Dispute Settlement Center, subject to the approval of the council and the Chief Justice, shall formulate and implement a plan for creating an informal forum for the mediation and settlement of disputes. Such plan shall prescribe:

(a) Objectives and purposes of the center;

(b) Procedures for filing complaints with the center and for scheduling informal mediation sessions with the parties to a complaint;

(c) Screening procedures to ensure that each dispute mediated by the center meets the criteria of fitness for mediation as set by the council;

(d) Procedures for rejecting any dispute which does not meet the established criteria of fitness for mediation;

(e) Procedures for giving notice of the time, place, and nature of the mediation session to the parties and for conducting mediation sessions;

(f) Procedures to ensure that participation by all parties is voluntary; and

(g) Procedures by which any dispute that was referred to the center by a law enforcement agency, state attorney, court, or other agency and that fails at mediation, or that reaches settlement that is later breached, is reported to the referring agency.

(4)(a) Each mediation session conducted by a Citizen Dispute Settlement Center shall be nonjudicial and informal. No adjudication, sanction, or penalty may be made or imposed by the mediator or the center.

(b) A Citizen Dispute Settlement Center may refer

the parties to judicial or nonjudicial supportive service agencies.

(5) Any information relating to a dispute obtained by any person while performing any duties for the center from the files, reports, case summaries, mediator's notes, or other communications or materials, oral or written, is confidential and exempt from the provisions of s. 119.07(1) and shall not be publicly disclosed without the written consent of all parties to the dispute. Any research or evaluation effort directed at assessing program activities or performance shall protect the confidentiality of such information. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. Each party to a Citizen Dispute Settlement Center proceeding has a privilege during and after those proceedings to refuse to disclose and to prevent another from disclosing communications made during such proceedings, whether or not the dispute was successfully resolved. This subsection shall not be construed to prevent or inhibit the discovery or admissibility of any information which is otherwise subject to discovery or which is admissible under applicable law or rules of court, except that any conduct or statements made during such mediation sessions or in negotiations concerning such sessions shall be inadmissible in any judicial proceeding.

(6) No officer, council member, employee, volunteer, or agent of a Citizen Dispute Settlement Center shall be held liable for civil damages for any act or omission in the scope of employment or function, unless such person acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of another.

(7) Any Citizen Dispute Settlement Center in operation on October 1, 1985, may continue its operations in its current form with the approval of the chief judge of the judicial circuit in which such center is located, except that paragraph (4)(b) and subsections (5) and (6) shall apply to such centers.

(8) Any utility regulated by the Florida Public Service Commission is excluded from the provisions of this act.

History.—s. 2, ch. 85-228; s. 16, ch. 90-360; s. 263, ch. 95-147.

Note.—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."