

# Supreme Court of Florida

AOSC09-19

IN RE: ALTERNATIVE DISPUTE RESOLUTION SERVICES IN  
FLORIDA'S TRIAL COURTS

## ADMINISTRATIVE ORDER

The Commission on Trial Court Performance and Accountability was established by the Supreme Court 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 In Re: Commission on Trial Court Performance and Accountability, No. AOSC08-32 (Fla. Aug. 15, 2008), the Commission was directed to continue with the development and implementation of standards of operation and best practices for the major elements of Florida's trial courts, including alternative dispute resolution services.

A workgroup was authorized by the Commission, including members drawn from the Committee on Alternative Dispute Resolution Rules and Policy and other persons representative of the various programs across the trial courts, which undertook an examination of state-funded, court-connected alternative dispute

resolution programs. After an extensive interactive review process with the trial courts, the Commission submitted a report to the Supreme Court entitled Recommendations for Alternative Dispute Resolution Services in Florida's Trial Courts.<sup>1</sup> The Commission Report focuses on two primary areas: funding and operations. The goal in examining these two specific areas was to provide recommendations that promote equity and uniformity in court-connected alternative dispute resolution/mediation programs. The recommendations are provided in the form of either a "standard of operation," which is intended to be a *mandatory* practice, or a "best practice," which is intended to be a *suggested* practice to improve operations, but, due to the possibility of local conditions beyond the court's control, is not required.

The attached standards of operation and best practices, which were proposed in the Commission Report, are hereby adopted as a means to ensure the effective, efficient, timely, and uniform provision of court-connected alternative dispute resolution services. The entities responsible for compliance with specific standards of operation and best practices are identified on the attachment.

The Office of the State Courts Administrator is charged, time and resources permitting, with assisting the trial courts in implementing the standards and best practices including: establishing performance goals, developing or revising data

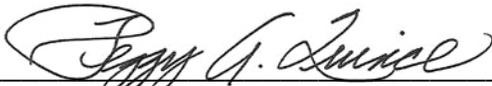
---

<sup>1</sup> Commission on Trial Court Performance and Accountability, Recommendations for Alternative Dispute Resolution Services in Florida's Trial Courts, (August 2008) (available online at [http://www.flcourts.org/gen\\_public/pubs/bin/ADRMediationReport08-2008.pdf](http://www.flcourts.org/gen_public/pubs/bin/ADRMediationReport08-2008.pdf)) [hereinafter Commission Report].

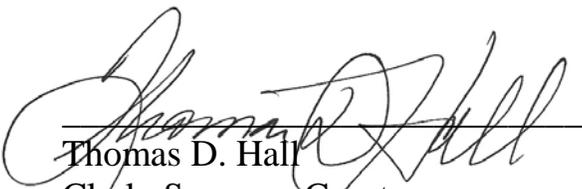
collection systems to monitor performance, providing educational opportunities and resource materials, and providing other technical assistance as needed. The Trial Court Budget Commission is charged with monitoring fee collections and trust authority associated with the operation of alternative dispute resolution/ mediation programs to ensure that all trial courts have the appropriate level of resources to implement and adhere to the standards of operation and best practices.

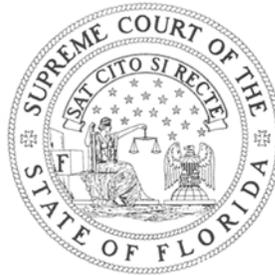
The attached standards of operation and best practices are incorporated herein by reference and shall be effective upon the signing of this order.

DONE AND ORDERED at Tallahassee, Florida, on May 6, 2009.

  
\_\_\_\_\_  
Chief Justice Peggy A. Quince

ATTEST:

  
\_\_\_\_\_  
Thomas D. Hall  
Clerk, Supreme Court



# Standards of Operation and Best Practices for Alternative Dispute Resolution Services in Florida's Trial Courts

*[Entities responsible for implementation of the standards and practices are identified in brackets]*

## I. Funding

### A. Standards of Operation

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

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

- a. The formula shall result in the total number of dollars required to provide ADR/Mediation services.
- b. 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.
- c. The formula shall incorporate a modifier for non-direct service functions;
- d. The formula shall incorporate a modifier for multi-county circuits; and
- e. The formula shall incorporate a modifier for the use of volunteers and pro bono service providers regardless of whether a circuit uses these resources.

*[Trial Court Budget Commission]*

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

4. 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. *[Trial Court Budget Commission]*

5. During the Legislative Budget Request process, additional resources requested by the circuits shall optimize coverage for all counties in a circuit and coverage of all appropriate case types under the Mediation Model. *[Trial Court Budget Commission and all trial courts]*

6. 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. *[Trial Court Budget Commission and all trial courts]*

7. 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. *[Trial Court Budget Commission and all trial courts]*

8. Expenditures from the ADR/Mediation element shall be limited to expenses associated with the ADR/Mediation element. *[Trial Court Budget Commission and all trial courts]*

## **II. Mediation Session Fees and Session Length**

### **A. Standards of Operation**

1. Mediation session fees for county cases above small claims and family cases shall be set by Florida Statute. *[All trial courts]*

2. Mediation fees in county cases above small claims shall be \$60 per party per session. *[All trial courts]*

3. Mediation fees in family cases shall be:

a. \$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;

b. \$60 per person per scheduled session in family mediation when the parties combined income is less than \$50,000.

c. There shall be no mediation session fees charged to parties for dependency mediation services.

d. Indigent parties shall be provided services at no cost.

*[All trial courts]*

4. 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. *[All trial courts]*

5. 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. *[All trial courts]*

6. 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:

- a. a county mediation (above small claims) session is no more than 90 minutes and
- b. a family mediation session is no more than 3 hours.

*[Trial Court Budget Commission, Office of the State Courts Administrator, and all trial courts]*

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

- a. a small claims mediation session is 60 minutes and
- b. a dependency mediation session is no more than three hours.

*[Trial Court Budget Commission, Office of the State Courts Administrator, and all trial courts]*

## **B. Best Practice**

1. In county cases above small claims and family mediations, only one session should be initially scheduled per case unless both parties agree otherwise. *[All trial courts]*

## **III. Fee Collection Process**

### **A. Standards of Operation**

1. When court mediation services are ordered, mediation parties shall pay the statutorily authorized fees to the clerk of the court. *[Trial Court Clerks of Court]*

2. 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. *[Trial Court Clerks of Court]*

### **B. Best Practices**

1. 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. *[All trial courts]*

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

3. The fee amount owed should be provided to the parties with the mediation notice and referral to mediation. *[All trial courts]*
4. Pursuant to statute, once mediation is scheduled and noticed, assessed fees should be due and owed whether or not parties appear for scheduled mediation. *[All trial courts]*
5. 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. *[All trial courts]*
6. If a party fails to pay an assessed mediation fee, the initial mediation should still be conducted. *[All trial courts]*
7. 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. *[All trial courts]*
8. 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. *[All trial courts]*
9. The court should review mediation service fees paid by the parties at the final hearing and should reapportion the fees as equitable. *[All trial courts]*
10. 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. *[All trial courts]*
11. 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. *[All trial courts]*
12. 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. *[All trial courts]*

## **IV. Court Application of ADR/Mediation & Case Referrals**

### **A. Standards of Operation**

1. 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. *[All trial courts]*
2. The issuance of a Domestic Violence (DV) Injunction shall not be mediated. *[All trial courts]*
3. 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. *[All trial courts]*
4. Written mediation agreements reached in DV injunction cases shall be reviewed by the court, and if approved, incorporated into the final judgment. *[All trial courts]*
5. 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. *[All trial courts]*
6. 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.

*[All trial courts]*

### **B. Best Practices**

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

- a. The Notice of Pre-Trial Conference should contain standard pre-printed information on mediation case referral.
- b. Referrals to mediation in eviction cases should be conducted within ten days of referral to mediation.
- c. 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.

***[All trial courts]***

2. 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.
  - a. Prior to family mediation, the case should be screened for appropriateness for mediation.
  - b. 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.
  - c. 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.
  - d. Cases that are re-opened via a Supplemental Petition or Motion for Modification should be referred as soon as possible after service is obtained.

***[All trial courts]***

3. All dependency cases, including Termination of Parental Rights, should be screened by the court and ordered to mediation as appropriate.
  - a. 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.
  - b. 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.

*[All trial courts]*

4. The chief judge, or designee, of each circuit shall maintain a list of qualified arbitrators for use in court-ordered non-binding arbitrations. *[All trial courts]*

## **V. Court ADR Staffing and Functions**

### **A. Standards of Operation**

1. 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. *[Trial Court Budget Commission and all trial courts]*

2. ADR staff shall perform ADR functions across all counties. *[All trial courts]*

3. The ADR director shall be responsible for all circuit-wide court-connected ADR activities and shall supervise all court mediation staff within the circuit. *[All trial courts]*

4. 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. *[All trial courts]*

5. 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. *[All trial courts]*

6. All mediation services coordinators shall be Florida Supreme Court certified mediators in a minimum of one area of mediation certification. *[All trial courts]*

7. 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. *[All trial courts]*

8. 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. *[All trial courts]*

9. 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. *[All trial courts]*

10. The ADR director shall provide mentorship assistance to mediator trainees seeking certification who reside or are employed within the circuit. *[All trial courts]*

11. The ADR director and mediation service coordinator(s) shall respond to requests from the OSCA/Dispute Resolution Center. *[All trial courts]*

12. The ADR director shall submit fiscal year mediation program statistics to the OSCA/Dispute Resolution Center, as requested. *[All trial courts]*

## **B. Best Practices**

1. The ADR director should rotate cases among their program mediators on an equitable basis that allows similar opportunities for all mediators to serve. *[All trial courts]*

2. The ADR director should provide opportunities for program mediators to earn a minimum of eight hours of continuing mediator education (CME) per fiscal year. *[All trial courts]*

3. The ADR director should be a Florida Supreme Court certified dependency mediator. *[All trial courts]*

## **VI. Mediation Service Delivery**

### **A. Standard of Operation**

1. 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). *[All trial courts]*

### **B. Best Practices**

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

- a. Sufficient caseload requiring an employee mediator to mediate a minimum of 6 hours a day
- b. Availability of qualified individuals willing to accept employee positions
- c. More cost-efficient than contractual model
- d. Complexity of cases

*[All trial courts]*

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

- a. Compensation rates are within TCBC guidelines

- b. Availability of sufficient pool of qualified mediators willing to accept referrals at the contract rate
- c. 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)
- d. Availability of coordination, scheduling and fiscal staff
- e. Complexity of cases

***[All trial courts]***

3. The use of volunteer mediators should be based on the following factors:
- a. Availability of qualified individuals willing to volunteer as mediators
  - b. Historical success in using volunteers
  - c. Lack of adequate funding to hire or contract with mediators
  - d. Complexity of cases

***[All trial courts]***

4. 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. ***[All trial courts]***

5. Each court program should conduct an orientation session with contract and volunteer mediators prior to their assignment of cases to review:
- a. the mediators' rights and obligations
  - b. procedures for accepting assignments
  - c. ethical standards of conduct expected
  - d. criteria for performance review
  - e. compensation rates (if applicable)
  - f. scheduling procedures
  - g. methods and procedures for payment and reimbursement for expenses (if applicable)

***[All trial courts]***

6. Each court program should schedule volunteer mediators in a manner so that the scheduled mediators will have sufficient cases to mediate. ***[All trial courts]***

7. 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:
- a. reliability (did the mediator fulfill all obligations)
  - b. party satisfaction (were there any formal or informal complaints)
  - c. willingness to assist with mentorships
  - d. clarity of written agreements
  - e. skill level

f. maintenance of all requirements for continued certification  
*[All trial courts]*

8. 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. *[All trial courts]*

## **VII. Contract Compensation**

### **A. Standards of Operation**

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

<u>Case Type</u>	<u>Hourly</u>
Small Claims	\$30 per hour
County Civil	\$50 per hour
Family	\$100 per hour
Dependency	\$100 per hour

*[All trial courts]*

2. All mediation service contracts shall contain standardized template language developed by OSCA for the procurement of mediation services. *[Office of the State Courts Administrator and all trial courts]*

## **VIII. County Court Mediation**

### **A. Standards of Operation**

1. 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. *[All trial courts]*

2. 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. *[All trial courts]*

3. 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. *[All trial courts]*

4. Every mediation shall be conducted in an individual private room. *[All trial courts]*

## **B. Best Practices**

1. 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. *[All trial courts]*
2. 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. *[All trial courts]*
3. 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. *[All trial courts]*
4. 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. *[All trial courts]*
5. Although programs have discretion on mediator assignments, the programs should schedule and assign cases to their roster mediators on an equitable basis. *[All trial courts]*
6. 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. *[All trial courts]*
7. Under no circumstances should any program schedule more mediators than mediation rooms available. *[All trial courts]*
8. 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. *[Office of the State Courts Administrator]*
9. At the discretion of the OSCA Dispute Resolution Center, additional trainings should be scheduled for counties establishing new county mediation trainings. *[Office of the State Courts Administrator]*