

IN THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

Administrative Order No. 2018-33-PRC

**ADMINISTRATIVE ORDER EXTENDING PILOT MEDIATION
PROGRAM FOR INCAPACITY AND GUARDIANSHIP PROCEEDINGS**

(a) Pursuant to Article V, section 2(d) of the Florida Constitution, and section 43.26, Florida Statutes, the Chief Judge of each judicial circuit is charged with the authority and the power to do everything necessary to promote the prompt and efficient administration of justice.

(b) Florida Rule of Judicial Administration 2.215(b)(3) states the chief judge “shall, considering available resources, ensure the efficient and proper administration of all courts within [this] circuit.”

(c) Pursuant to Administrative Order 2016-54-PRC, a pilot mediation program for incapacity and guardianship proceedings was established for the period of time December 1, 2017 to December 31, 2017 to determine if the legal fees and costs for such proceedings could be reduced by use of this alternate dispute resolution as well as determine if judicial efficiency is improved.

(d) In accordance with the authority vested in the chief judge by Florida Rule of Judicial Administration 2.215, it is hereby **ORDERED**:

(1) The pilot mediation program established pursuant to Administrative Order 2016-54-PRC for incapacity and guardianship proceedings governed by Chapter 744, Florida Statutes, is extended for the period of time January 1, 2018 to December 31, 2019. This does not include minor guardianships, VA guardianships, or guardianships initiated from Chapter 415 proceedings. Chapter 44, Florida Statutes, and Florida Rule of Civil Procedure 1.720 shall govern the program, except as modified by the order of referral to address the specific time restraints associated with incapacity and guardianship proceedings.

(2) The petitioner or interested persons may request the incapacity or guardianship proceedings be referred to mediation. In appropriate cases the General Magistrate will also be authorized to suggest to the petitioner and interested persons that they consider mediation. The mediator must be Supreme Court certified as a family or civil mediator with a primary office located in Broward County, Florida.

An Order of Referral to Mediation shall be entered only if the petitioner and respondent agree.

(3) If the petitioner or respondent determine that mediation is appropriate for a case a motion shall be filed with the court. A motion for mediation shall be set before the General Magistrate assigned to the case for hearing. This Administrative Order shall be an order of referral to the General Magistrate as required by Florida Probate Rule 5.095, if the petitioner and respondent consent. If there is no consent by petitioner or respondent or if an interested person objects, the motion for mediation shall be set for hearing before the assigned judge.

(4) The Court will select a mediator from a list it maintains. The Administrative Judge for the Probate Division shall determine the mediators on the list, and the mediators shall be selected by strict rotation.

(5) The petitioner shall provide a copy of the examining committee reports to the appointed mediator.

(6) The examining committee reports shall not be deemed stale during the period from the entry of the order of referral to mediation to an incapacity hearing if the hearing is not held as required by Chapter 744, Florida Statutes. If the petitioner, respondent, or interested person thinks there is a change in circumstances from the initial evaluations and the date of any incapacity hearing then a motion shall be filed with the court requesting re-evaluations of the respondent.

(7) The election to mediate will toll all time requirements imposed by Chapter 744, Florida Statutes, pertaining to incapacity and/or guardianship proceedings for adults.

(8) The order of referral attached hereto as Attachment "A" shall be used during the pilot mediation program.

(9) This Administrative Order vacates Administrative Order 2016-54-PRC.

DONE AND ORDERED in Chambers, Fort Lauderdale, Broward County, Florida on this 26th day of April, 2018, *nunc pro tunc* to January 1, 2018.

/s/ Jack Tuter
Jack Tuter, Chief Judge

Attachment "A"

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

Case Number:
Division:

IN RE:

ORDER REFERRING CASE TO MEDIATION

THE COURT hereby refers the above-captioned matter to mediation as authorized by Chapter 44, Florida Statutes, the Florida Rules of Civil Procedure, and as modified herein. It is hereby ORDERED as follows:

1. The court appoints as mediator:

Name _____
Address _____
Telephone Number _____

2. If the mediator appointed by the court cannot serve, the court shall be notified so that a substitute mediator can be appointed.
3. The petitioner shall provide the examining committee reports to the mediator at least five (5) business days prior to the mediation session.
4. The mediator shall be entitled to compensation at the rate of \$350.00 per hour. The respondent shall have no obligation to pay mediation fees unless ordered by the court after the mediation session. If the petitioner or an interested person objects to the mediator's fee, an objection shall be filed and set for hearing prior to the mediation session. If the petitioner or interested persons do not object to the mediator's fees, the petitioner or interested persons who have filed competing petitions and attend the mediation session shall pay the total fee at the close of the mediation, unless otherwise agreed to by the petitioner and interested persons at the mediation session, or ordered by the court. The mediator shall be entitled to an initial fee of \$350.00 to be paid by petitioner at least five (5) business days prior to the mediation session. The payment of the initial fee shall be credited against the total mediator fees for the session. If the petitioner or interested persons at the mediation session do not pay the balance of the mediator's fees and the mediator is required to institute collection proceedings, the mediator shall be entitled to fees of \$350.00 per hour for enforcement.

5. The first mediation conference shall be held in Broward County, Florida within twenty (20) days from the entry of this Order.
6. Petitioner's counsel is responsible for coordinating the date, time, and place of the mediation conference within five (5) days of this Order. Petitioner's counsel shall provide written notice to the respondent and interested persons of the date, time, and place of the mediation conference. Petitioner's counsel is responsible for providing a copy of this Order to the mediator.
7. The petitioner, respondent, guardian, and counsel for petitioner, respondent, and guardian must attend mediation in person. Interested persons shall attend if he or she will contest any mediated agreement. The provisions of Florida Rule of Civil Procedure 1.720(c) do not apply to incapacity or guardianship proceeding mediation.
8. The court may impose sanctions for failure to appear at a duly noticed mediation conference as authorized by the Florida Rules of Civil Procedure.
9. The Mediation Confidentiality and Privilege Act govern the conference pursuant to this Order.
10. Mediations as ordered for referral herein are governed by the Florida Rules of Civil Procedure and Chapter 44, Florida Statutes, as now in effect or as may be amended from time to time.

DONE AND ORDERED in Chambers, Fort Lauderdale, Broward County, Florida on _____, 20____.

Circuit Judge

Copies furnished:
Counsel of Record
Petitioner
Respondent
Interested Persons

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 _____ at least 7 days before the mediation conference or immediately upon receiving notification of the date for mediation if the time before the scheduled conference is less than 7 days; if you are hearing or voice impaired, call 711.