

Dissecting the Standard Mediation Order

By Blane G. McCarthy

Published in the 8/15/05 issue of the Daily Record

True or False – mattress tags are not to be removed? I ask the question to prove the point that many of us think we know the content of writings when, in reality, we don't. When was the last time you actually read every word in the Mediation Orders you receive from the Court? If you are like most of us, it was no more recently than when you last read every word of the Order Setting Trial; a long time ago, if ever.

In August of 2004, Administrative Order No. 2004-6 adopted the Standard Mediation Order which your assistants have been placing in your files ever since. Just in case you have not read the entire document, here is a dissection of each paragraph:

Introductory paragraph: There are citations to Statute Section 44.302 and Rule 1.700, both of which carry sanction provisions with which counsel should be familiar.

1. LOCATION: The next paragraph delineates the time, date and place of the Mediation Conference, and vests the Mediator with the sole authority to determine how long the conference shall last.
2. ATTENDANCE: As I have previously written, "attendance" is critical in terms of the effectiveness of a Mediation conference and the avoidance of statutory sanctions. This section delineates what constitutes "appearance".
3. MEDIATION PROCESS: A primer for the process, this paragraph describes the nature of Mediation and advises of the limited role the Mediator plays.
4. MEDIATION STATEMENTS AND SUMMARIES: "No less than 72 hours prior to the Mediation Conference, each party shall furnish to the Mediator, **with a copy to all counsel involved**, a statement outlining the parties' positions..."(emphasis original). From my experience as a Mediator, most counsel fail to comply with this provision.
5. COMPENSATION: The Order references Exhibit A, which is the individual Mediator's compensation terms, including any cancellation fee provisions.
6. SANCTIONS: Failure "to comply with the terms of this Order" will result in one or more of the enumerated sanctions.
7. SETTLEMENT: Plaintiff's counsel is to advise the court **and the mediator** (emphasis added) when the case settles.

Please do not use this article as a substitute for reading the Order, but rather as an inspiration to read the Order. As you will see, there are many requirements imposed on the parties for which sanctions apply.

And speaking of sanctions, the answer to the initial question is “False.” The ultimate consumer is free to tear that tag off without any fear of repercussion from the mattress police.

This article is one in a series of periodic articles concerning mediation topics such as use, legal developments, and negotiation tactics. Blane G. McCarthy is a Jacksonville civil trial lawyer and certified circuit civil mediator. For questions, comments, or suggestions on future articles, please call (904) 391-0091 or email at bgmccarthy@sprintmail.com.