

PART 20.00 CIVIL DIVISION MEDIATION PROGRAM RULES

- 20.00 Purpose of the Mediation Process
 - 20.01 Actions Eligible for Court-Annexed Mediation
 - 20.02 Scheduling of Mediation
 - 20.03 Mediation Rules and Procedures
 - 20.04 Mediator Qualifications
 - 20.05 Duties of *Presiding Judge* for Mediation
 - 20.06 Small Claims Mediation Program
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20.00 PURPOSE OF THE MEDIATION PROCESS

Mediation under these rules involves a confidential process whereby a neutral mediator, selected by the parties or appointed by the court, assists the litigants in reaching a mutually acceptable agreement. It is an informal and non-adversarial process. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, exploring settlement alternatives, and reaching an agreement. Parties and their representatives are required to mediate in good faith.

20.01 ACTIONS ELIGIBLE FOR COURT-ANNEXED MEDIATION

Referral by judge or stipulation. Except as hereinafter provided, the judge to whom a matter is assigned may order any contested civil matter asserting a claim having a value, irrespective of defenses or set-offs, in an amount in excess of eligibility for Mandatory Arbitration in this circuit, referred to mediation. In addition, the parties to any such matter may file a written stipulation to mediate any issue between them at any time. Such stipulation shall be incorporated into order of referral.

20.02 SCHEDULING OF MEDIATION

(a) **Conference or Hearing Date.** Unless otherwise ordered by the court, the first mediation conference shall be held within eight (8) weeks of the Order of Referral.

At least ten (10) days before the conference or as otherwise required by the mediator, each side shall present to the mediator a brief, written summary of the case containing a list of issues as to each party. If the attorney filing the summary wishes its contents to remain confidential, she/he should advise the mediator in writing at the same time the summary is filed. The summary shall include the facts of the occurrence, opinions on liability, all damages and injury information, and any offers or demands regarding settlement. Names of all participants in the mediation shall be disclosed to the mediator in the summary prior to the session.

(b) **Notice of Date, Time and Place.** Within 28 days after the Order of Referral, the mediator shall notify the parties in writing of the date, location, and time of the mediation conference.

(c) **Motion to Dispense with Mediation.** A party may move, within 14 days after the Order of Referral, to dispense with mediation if:

1. The issue to be considered has been previously mediated between the same parties pursuant to General Order of the 22nd Judicial Circuit;

2. The issue presents a question of law only;
3. The order violates subparagraph 20.01 of this General Order;
4. Other good cause is shown.

(d) **Motion to Defer Mediation.** Within 14 days of the Order of Referral, any party may file a motion with the court to defer the mediation. The movant shall set the motion to defer the mediation proceeding prior to the scheduled date for mediation. Notice of the hearing shall be provided to all interested parties, including any mediator who has been appointed. The motion shall set forth, in detail, the facts and circumstances supporting the motion. Mediation shall be tolled until disposition of the motion.

20.03 MEDIATION RULES AND PROCEDURES

(a) Appointment of the Mediator.

1. Within 14 days of the Order of Referral, the parties may agree upon a stipulation with the court designating:
 - (i) A mediator on the Court's list of approved mediators; or
 - (ii) A mediator who does not meet the certification requirements of these rules but who, in the opinion of the parties and upon review by and approval of the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.
2. If the parties cannot agree upon a mediator within 14 days of the Order of Referral, the plaintiff's attorney (or another attorney agreed upon by all attorneys) shall so notify the court within the next 7 days, and the court shall appoint a mediator from the Court's list of approved mediators.

(b) Compensation of the Mediator

1. When the mediator is selected by the parties, the mediator's compensation shall be paid by the parties as agreed upon between the parties and the mediator.
- ~~2.~~ When the parties cannot agree on a mediator, the Court shall appoint a mediator from the list of mediators as provided in 20.04 (a) of these rules. The compensation for a mediator so appointed shall be shared proportionately by all parties participating in the mediation conference at a rate consistent with the usual and customary fees charged by approved mediators. Once a mediator has been appointed, the mediator shall be entitled to a minimum of one hour's compensation.
3. If any party has been granted leave to sue or defend as a poor person pursuant to Supreme Court Rule 298, the Court shall appoint a mediator who shall serve pro bono without compensation from any party to the action.
4. The fee of an appointed mediator shall be subject to appropriate order or judgment for enforcement.

(c) **Disqualification of a Mediator.** Any party may move to enter an order disqualifying a mediator for good cause. If the court rules that mediator is disqualified from hearing a case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(d) **Interim or Emergency Relief.** A party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such a motion is pending absent a contrary order of the court or a decision of the mediator to adjourn pending disposition of the motion.

(e) **Attendance at a Mediation Conference**

1. All parties, attorneys, representatives with settlement authority, and other individuals necessary to facilitate settlement of the dispute shall be present at each mediation conference unless excused by court order.

A party is deemed to appear at a mediation conference if the following persons are physically present:

(i) The party or its representative having full authority to settle without further consultation, and in all instances, the plaintiff must appear at the mediation conference; and

(ii) The party's counsel of record, if any; and

(iii) A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to negotiate and recommend settlements to the limits of the policy or the most recent demand, whichever is lower without further consultation.

2. Upon motion, the Court may impose sanctions against any party, or attorney, who fails to comply with this rule, including, but not limited to, mediation costs and reasonable attorney fees relating to the mediation process.

(f) **Adjournments.** The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference. No further notification is required for parties present at the adjourned conference.

(g) **Counsel.** The mediator shall at all times be in control of the mediation and the procedures to be followed in mediation. Counsel shall be permitted to communicate privately with their clients.

(h) **Communication with Parties.** The mediator may meet and consult privately with either party and his/her representative during the mediation process.

(i) **Termination of Mediation.**

1. Mediation shall be completed within seven (7) weeks of the first mediation conference unless extended by the order of the court or by stipulation ~~on~~ **of** the parties.
2. Mediation shall terminate prior to the end of seven weeks in the following circumstances:

(i.) All issues referred for mediation have been resolved.

(ii) The parties have reached an impasse, as determined by the mediator.

(iii.) The mediator concludes that the willingness or ability of any party to participate meaningfully is so lacking that an agreement on voluntary terms is unlikely to be reached by prolonging the negotiations.

(j) **Report of Mediator.** Within 14 days after the termination of mediation for any reason, the mediator shall file with the court a report in a form prescribed by the Chief Judge as to whether or not an agreement was reached by the parties. The report shall be signed by the mediator and shall designate, "full agreement", "partial agreement" or "no agreement".

(k) **Imposition of Sanctions.** In the event of any breach or failure to perform under the agreement, the court upon motion may impose sanctions, including costs, attorney fees, or other appropriate remedies including entry of judgment on the agreement.

(l) **Discovery.** Whenever possible, the parties are encouraged to limit discovery (prior to completing the mediation process) to the development of the information necessary to facilitate a meaningful mediation conference. Discovery may continue throughout mediation.

(m) **Confidentiality of Communications.** All oral or written communications in a mediation conference, other than executed settlement agreements, shall be exempt from discovery and shall be confidential and inadmissible as evidence in the underlying cause of action unless all parties agree otherwise. Evidence with respect to alleged settlement agreements shall be admissible in proceedings to enforce the settlement. Subject to the foregoing, unless authorized by the parties, the mediator may not disclose any information obtained during the mediation process.

(n) **Forms.** The following forms shall be used in conjunction with court-annexed mediation:

1. **20.03(n)1.**--Order of Referral to Court-Annexed Mediation
2. **20.03(n)2.**--Confidentiality Agreement and Non-Representation Acknowledgement
3. **20.03(n)3.**--Mediation Held/No Agreement Resulted

(o) **Immunity.** Mediators shall be entitled to such immunity as provided by Illinois Supreme Court Rule 99.

(p) **Mechanism for Reporting.** The Arbitration Administrator shall keep and maintain compiled statistics and records on all cases referred to mediation and shall file reports with the Administrative Office of the Illinois Courts as directed by the Chief Judge.

20.04 MEDIATOR QUALIFICATIONS

(a) **Circuit Court Mediators.** The Chief Judge shall maintain a list of mediators who have been certified by the court and who have registered for appointment.

For certification a mediator of circuit court civil matters in an amount in excess of eligibility for Mandatory Arbitration in this circuit must:

1. Complete a mediation training program approved by the Chief Judge of the 22nd Judicial Circuit; and
2. Be a member in good standing of the Illinois Bar with at least eight years of practice or be a retired judge; and
3. Be of good moral character; and
4. Submit an application that is approved by the Chief Judge or his designee.
5. Make available a copy of his/her current fee schedule as requested by the Chief Judge.

(b) **Mediator General Standards.** In each case, the mediator shall comply with such general standards as may, from time to time, be established and promulgated in writing by the Chief Judge of the 22nd Judicial Circuit.

(c) **Decertification of Mediators.** The eligibility of each mediator to retain the status of a certified mediator shall be periodically reviewed by the Chief Judge. Failure to adhere to the rules governing mediation may result in the decertification of the mediator, by the Chief Judge or his designee.

20.05 DUTIES OF PRESIDING JUDGE FOR MEDIATION.

The duties of the presiding judge for any case referred to mediation shall include the following:

1. Approve or appoint the Mediator.
2. Hear motions to interpret all Mediation rules.
3. Hear motions to advance, postpone or defer hearings.
4. Hear motions to disqualify a Mediator.
5. Hear all post-mediation Motions, including motions for entry of judgment, or other dispositive motions, prior to reassignment.

Rule 20.06 Small Claims Mediation Program

In keeping with the spirit of the Civil Division Mediation Program, when all parties appear pro-se (representing themselves) in small claims cases, they will be offered the opportunity to voluntarily meet with a court appointed mediator on the return date to attempt possible settlement of their dispute without the necessity of a trial. The mediator shall be appointed by the Judge presiding over the small claims call from an approved list of volunteer mediators from the membership of the

McHenry County Bar Association. The mediation process shall be conducted in accordance with local rule 7.08.