

ARTICLE 15: FAMILY DIVISION

15.00 RESERVED

15.01 DEFINITION

(a) The Local Rules set forth in this Article 15 are promulgated in accordance with the authority conferred in section 802 of the Illinois Marriage and Dissolution of Marriage Act [750 ILCS 5/802] and the Code of Civil Procedure [735 ILCS 5/1 et seq.].

(b) For purposes of the Local Rules under this Article 15, a Family Division case is defined as any proceeding arising under the provisions of 750 ILCS, which seeks an order or judgment relating to dissolution of marriage, declaration of invalidity of marriage or legal separation, including proceedings relating to matters of temporary support and maintenance, child custody, visitation, Orders of Ne Exeat, or applicable petitions for orders of protection.

(c) The Local Rules as set forth under this Article 15 shall not be interpreted in a manner that is inconsistent with any Illinois Statute or Illinois Supreme Court Rule. If there is any conflict between any requirement under these Local Rules and any Illinois Statute or Illinois Supreme Court Rule, then the Statute or Supreme Court Rule is controlling.

Gen. Order 07-13, eff. April 12, 2007

15.02 MARRIAGE

(a) A petition for an order directing the Kane County Clerk to issue a marriage license as provided in 750 ILCS 5/201 et seq. shall be on one of the forms provided by the Clerk, or in a format substantially similar to it.

(b) An order granting such petition may be entered on the form provided by the Clerk, or in a format substantially similar to it.

(c) The issuance of a marriage license by the Kane County Clerk shall be prima facie evidence of compliance with the statute and may be relied upon by any Judge assigned to perform a marriage ceremony.

Gen. Order 07-13, eff. April 12, 2007

15.03 PERIODIC MEETINGS

(a) The Chief Judge, the Presiding Judge of the Family Division, and the Chairman of the Family Law Committee of the Kane County Bar Association, or their designees, shall meet periodically.

Gen. Order 07-13, eff. April 12, 2007

15.04 NOTICE

(a) Service of Notice of Motion or Petition shall be in accordance with Supreme Court Rules 11 and 12.

Supersedes §15.03; §15.04 created by Gen. Order 07-13, eff. April 12, 2007

15.05 SETTING OF CASES ON COURT CALLS

(a) All pre-decree motions, including temporary support motions, shall be heard by the Judge assigned to the case, except for “emergency matters”, as defined by Rule 15.06. All post-decree actions shall be heard by the Judge originally assigned to the case. If the Judge originally assigned to the case is not then serving in the Family Division, then the matter shall be transferred automatically to the Judge currently assigned to hear the originally assigned Judge’s call.

(b) Pretrial and trial dates must be obtained from the assigned Judge. All other dates shall be obtained from the Family Division scheduler (in Room 149) subject to approval of the assigned Judge.

(c) The scheduling of court dates involving a petition where custody is in dispute shall be subject to Local Rule 15.21.

(d) Motion calls shall be held at such times as may be established and published by the Presiding Judge of the Family Division. Separate calls shall be held for pre-decree and post-decree matters.

(e) All pending pre-decree cases, and all post-decree cases where the modification of custody is at issue, must be given future court dates.

(f) The Presiding Judge of the Family Division may reassign matters among the Judges assigned to that division in order to accomplish the expeditious handling of cases.

Supersedes §15.10 Gen. Order 06-05, eff. January 10, 2006; §15.05 created by Gen. Order 07-13, eff. April 12, 2007

15.06 EMERGENCY MATTERS

(a) Designation of a matter as an “emergency” is determined to be an extraordinary measure and shall be heard at the discretion of the Court.

(b) Emergency motions will be heard by the Judge assigned to the case. If the assigned Judge is unavailable, then the emergency motions shall be heard by the Presiding Judge or his or her designee.

(c) The proponent of an alleged “emergency” matter shall have the initial burden of proving the emergency which burden shall include, at a minimum, the following:

(1) Inability to obtain an assignment on the regularly scheduled call within a reasonable time given the circumstances for which or from which relief is sought;

(2) Notice to the opposing party pursuant to Local Rule 15.04; and

(3) That immediate and irreparable injury, loss or damage will result if the relief is not granted and that there exists no adequate remedy at law.

(d) Upon a determination by the Court that a matter does not meet the criteria for “emergency” matters, an order so finding shall be entered and the matter may be set on a regular call. A party or their attorney who responds to a motion propounded as, but found not to be, an “emergency” shall be entitled to reimbursement from the movant for actual expenses, fees and costs incurred in responding to the motion.

Supersedes §15.12; §15.06 created by Gen. Order 07-13, eff. April 12, 2007

15.07 ORDERS OF PROTECTION PURSUANT TO THE DOMESTIC VIOLENCE ACT

(a) Petitions for Emergency Orders of Protection shall be heard by any available Family Division Judge or such other Judge as may be designated by the Presiding Judge. Petitions for Emergency Orders of Protection shall be heard promptly and need not be scheduled on the motion call.

(b) All independent civil actions, not brought as part of a dissolution or criminal proceeding, and requests for interim or plenary orders, shall be heard by the Judge assigned by the Presiding Judge. Domestic violence issues relating to pending dissolution cases shall be heard by the Judge assigned to the dissolution case except where the relief sought is an Emergency Order of Protection, in which case (a) above shall apply.

(c) All Petitions, Findings and Orders of Protection shall be made on approved forms. If there is not sufficient space on the forms, an attachment shall be used as a rider to the approved forms.

(d) Hearings on petitions to dissolve or modify Emergency Orders of Protection shall be given priority.

Supersedes §15.15 Amend. Gen. Order 03-07, eff. March 7, 2003; §15.07 created by Gen. Order 07-13, eff. April 12, 2007

15.08 RULE TO SHOW CAUSE

(a) No Rule to Show Cause shall issue except upon proper notice and motion except for good cause shown by verified pleading. Petitions for Rule to Show Cause shall be handled as uncontested, non-scheduled matters, and there shall be no evidentiary hearing at the time of issuance. Accordingly, the burden of proof shall not shift to the respondent upon the issuance of the rule.

(b) Rules shall be returnable not less than 14 days nor more than 30 days from the date of issuance.

(c) Service shall be in accordance with Supreme Court Rules as in service of summons.

Supersedes §15.04; §15.08 created by Gen. Order 07-13, eff. April 12, 2007

15.09 AFFIDAVITS RELATING TO INCOME AND EXPENSES

- (a) Every pleading seeking to establish or otherwise affect issues of support or maintenance, whether temporary or permanent in nature shall be accompanied by an Affidavit as to Income and Expenses on a form which is available from the Circuit Court Clerk, or in a format substantially similar to it.
- (b) Said affidavit shall be attached to and filed with the initial and responsive pleadings. No affidavit prepared more than 60 days before the date of hearing or pretrial shall be considered valid for purposes of that proceeding unless accompanied by a new affidavit stating that the party offering it represents there has been no substantial change in any of the information since the last affidavit.
- (c) References in any pleading or order to an “Expense Affidavit” or “Income Affidavit” shall be presumed to refer to the document described herein.
- (d) Failure by either party to submit the affidavit required hereunder shall be cause for sanctions as the court may deem appropriate including but not limited to the striking of the pleadings of the party not in compliance.
- (e) Prior to the date of the hearing on any pleading filed under paragraph (a), the party filing the affidavit shall supplement the affidavit by attaching the affiant’s 4 most recent pay stubs, or other written evidence of recent earnings from all sources for a period of not less than 2 months preceding the date of the hearing.

Supersedes §15.05 amend. Gen. Order 96-8, eff. Feb. 21, 1996; §15.09 created by Gen. Order 07-13, eff. April 12th, 2007

15.10 PROVE-UPS

- (a) After default on personal service, four-days written notice of intent to appear for prove-up shall be given to the respondent at the address where the respondent was served with summons or at the last known residence or place of employment of the respondent and certificate of such service shall be filed at or prior to the prove-up.
- (b) Whenever it shall appear from the record or the testimony that there has been some communication and/or agreement between the parties concerning support, custody, or other material issues, then in such event both parties should appear in open court at the time of the prove-up to acknowledge their agreement. The Court may excuse the presence of respondent for good cause shown. If the non-moving party fails to appear at the prove-up, the movant or his or her attorney shall serve a copy of the judgment on such party by mail within 10 days from the entry of said judgment and shall file a proof of service with the Circuit Court Clerk.
- (c) No Family Division case will be heard upon its merits earlier than the summons return date or 30 days from the date of filing of a response and/or appearance without issuance and service of summons. The parties may waive in open court or in writing the 30-day waiting period.

(d) It shall be the responsibility of the person seeking to affect the marital status, or his or her attorney, to present to the prove-up Judge, in a single package, prior to the commencement of testimony, the documents described in Rule 15.11(a).

(e) Court reporter fees shall be paid in full at the time of hearing, as required by Rule 15.11(c), unless waived by the Court. An arrangement for the payment of said fees is the responsibility of the attorney representing the party seeking dissolution. Failure to make prompt payment may result in sanctions against said attorney or party. Within 30 days of the date of the prove-up transcripts of the proceeding shall be prepared unless waived by order of court and submitted to the prove-up Judge for approval and filed with the Circuit Court Clerk by the assigned court reporter.

(f) Matters which are not on the regularly scheduled “prove-up” call, but which are settled and treated as a “prove-up” (such as following a settlement conference or pretrial conference) shall be subject to all of the foregoing rules except as they may be modified by Local Rule 15.11.

(g) All pro se litigants must complete a “Certificate of Readiness and Order,” which is available from the Circuit Court Clerk, to obtain a prove-up date and time from the Family Division scheduler (Room 149). The form may be presented to any of the Family Division Judges for signature and filing.

Supersedes §15.06; §15.10 created by Gen. Order 07-13, eff. April 12, 2007

15.11 JUDGMENTS FOR DISSOLUTION OF MARRIAGE, LEGAL SEPARATION OR DECLARATION OF INVALIDITY

(a) It shall be the responsibility of the person seeking to affect the marital status, or his or her attorney, to present to the trial Judge, in a single package the following:

(1) Judgment order;

(2) Fully completed Certificate of Dissolution, Declaration of Invalidity or Legal Separation which is available from the Circuit Court Clerk;

(3) Fully completed Support Order unless there is no support or maintenance obligation [750 ILCS 5/706.1 et seq];

(4) Joint Parenting Agreement and Joint Parenting Order containing appropriate findings pursuant to 750 ILCS 5/602.1 where joint custody of the child(ren) has been approved by the Court; and

(5) Signed original of any written agreement of the parties that has been testified to, received into evidence and is to be incorporated in the Judgment or Declaration.

(b) Documents required hereunder shall be presented no later than 30 days after prove-up, or on or before such date as the Court may order.

(c) Court reporter fees shall be paid in full at the time of hearing, or if the cost is not then known, upon receipt of invoice, unless waived by the Court. An arrangement for the payment of said fees is the responsibility of the attorney representing the party seeking dissolution. Failure to make prompt payment may result in sanctions against said attorney or party.

(d) Failure to comply with the foregoing paragraphs may result in the case being dismissed without prejudice.

(e) Reinstatement of a Petition for Dissolution of Marriage may be had within one year from the date of dismissal, if the petitioner files an appropriate notice and motion and pays a reinstatement fee of \$50.00. The reinstatement fee may be waived by the Court upon a showing of good cause.

(f) Unless otherwise ordered by the Court, court reporters shall, within 30 days of the taking of proofs, forward the transcript to the Court.

Attached to the transcript shall be a statement containing the following:

STATE OF ILLINOIS)
) SS:
COUNTY OF KANE)

I hereby certify that I reported in shorthand all of the proceedings had at the hearing in the above-entitled cause, and that the above and foregoing is a true, correct, and complete transcript of my shorthand notes so taken at the time and place hereinbefore set forth.

Signature and License Number

The court reporter shall submit a statement containing the following to be signed by the Judge presiding over the reported proceedings:

STATE OF ILLINOIS)
) SS:
COUNTY OF KANE)

IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT KANE COUNTY, ILLINOIS

I, the HONORABLE _____, Judge of the Circuit Court of Kane County, Presiding Judge at the hearing of the aforementioned cause, do hereby certify that the above and foregoing is a true and correct Report of Proceedings had at the said hearing.

AND FORASMUCH, THEREFORE, as the matters and things set forth above do not fully appear of record in said cause, the Petitioner tenders to the Court this Report of Proceedings, and prays that the same may be certified under the hand and seal of the Judge of this Court, and thereby made a part of the record in said cause.

Dated this _____ day of _____, _____.

Judge, 16th Judicial Circuit of Illinois

Supersedes §15.07 Amend. Gen. Order 06-05, eff. Jan. 10, 2006; §15.11 created by Gen. Order 07-13, eff. April 12th, 2007

15.12 MAINTENANCE OR SUPPORT PAYMENTS

(a) Maintenance or support payments shall be made pursuant to a Support Order using the form available from the Circuit Court Clerk.

(b) Support Orders shall be reviewed and approved as to form by the courtroom clerk before presentation to a Judge.

Supersedes §15.19; §15.12 created by Gen. Order 07-13, eff. April 12, 2007

15.13 DISCOVERY RULES IN FAMILY LAW CASES

(a) Local Rule 15.13 shall apply to dissolution of marriage proceedings and legal separation proceedings unless compliance is excused by order of Court on its own motion or on motion of a party for good cause shown. The Rules may further apply to actions to establish or declare parentage and to post-decree proceedings for modification or termination of maintenance; modification of child support; education contributions; contribution to medical, dental or psychological expenses; insurance expenses or reimbursement; and all other pleadings raising financial issues; but the Rule shall apply in these cases only upon order of court on motion of either party or on the Court's own motion. These discovery rules do not apply to Joint Simplified Dissolution [750 ILCS 5/451 et seq.] or to precipae for summons.

(b) Within 30 days of the filing of the defendant's general appearance or responsive pleading in any family law case, each party shall serve upon all parties entitled to notice the completed Comprehensive Financial Statement in the form established by these Rules and each party shall file with the Circuit Court Clerk within 7 days thereafter proof of service, certifying that the Comprehensive Financial Statement has been completed and setting forth the date on which the completed Comprehensive Financial Statement was served upon the opposing party. The Comprehensive Financial Statement shall not be filed with the Circuit Court Clerk.

(c) If a party is unable to complete any portion of the required Comprehensive Financial Statement, he shall indicate his inability to do so by indicating an "Unknown" as to each specific item and shall so certify on the last page of the Comprehensive Financial Statement pursuant to 735 ILCS 5/1-109. The parties are required to make every reasonable effort to obtain the information required and, to that end, neither party shall withhold records in his control relating to the information sought.

(d) All statements of income, assets and debts set forth in the Comprehensive Financial Statement shall be corroborated by written documents to be attached to and made part of the Comprehensive Financial Statement, whenever a party has such documentation, or whenever a party can obtain such documentation upon reasonable effort from other sources.

(e) It is the duty of each party and each party's attorney to seasonably supplement the Comprehensive Financial Statement.

(f) No party shall be entitled to serve any requests for discovery on a party until that party has filed the Comprehensive Financial Statement with all corroborating documents.

Supersedes §15.24 Amend. Gen. Order 96-33, eff. Sept. 10, 1996; §15.13 created by Gen. Order 07-13, eff. April 12, 2007

15.14 SETTLEMENT CONFERENCES

(a) No case shall be set for trial until a minimum of one (1) settlement conference has been conducted.

(b) Cases settled at a settlement conference may proceed to prove-up based on an oral agreement and subject to subsequent filing of a judgment incorporating all the terms of the Agreement unless otherwise ordered for good cause shown.

(c) A Settlement Conference Memorandum* shall be submitted by each party. The Settlement Conference Memorandum, supplemented by a current Affidavit of Income and Expenses, as required by Rule 15.09, and the additional current information required by Rule 15.15(d), shall be served upon opposing counsel, or party, and a courtesy copy sent to the assigned Judge, no later than 5 days prior to the scheduled settlement conference.

(d) If either party or his attorney fails to appear at a settlement conference, the Court may impose reasonable sanctions.

Gen. Order 07-13, eff. April 12, 2007

**there is no set format at this time for the Settlement Conference Memorandum [Jan. 2008]*

15.15 SETTING OF PRETRIAL CONFERENCES AND TRIALS

(a) All cases, including post-decree cases, shall be set for pretrial conference before being set for trial. Any Order setting the matter for trial shall include a schedule for any further discovery as well as for compliance with Supreme Court Rule 213.

(b) Cases settled at pretrial conference may proceed to prove-up based on an oral agreement and subject to subsequent filing of a judgment incorporating all the terms of the Agreement unless otherwise ordered for good cause shown.

(c) Cases set for trial shall not be continued except for statutory cause shown, pursuant to notice, written motion, affidavit, and order of the trial Judge.

(d) Counsel shall file with the Court, at the time of pretrial and upon commencement of trial, with copies to opposing counsel, the following information:

- (1) Affidavit of Income and Expenses;

(2) Statements of balances due on all indebtedness of every kind including the name of the creditor, purpose of the debt, schedule and amount of periodic payments, whether current and, if not, total balance, including fees, penalties, interest and/or other charges;

(3) A list of anticipated exhibits and witnesses; and

(4) A statement of contested issues;

(e) If a prove-up date has been set or a trial date has been set and the petitioner or his attorney fails to appear, the cause may be dismissed for want of prosecution.

(f) If a case set for trial or pretrial is proved-up prior to the date set, Petitioner, or Petitioner's attorney, shall promptly notify the Court.

Supersedes §15.16 ; §15.15 created by Gen. Order 07-13, eff. April 12, 2007

15.16 SEEKING ATTORNEY'S FEES FROM A CLIENT

(a) An attorney may seek an award of attorneys fees against his client upon the filing of a verified petition for attorney's fees and an itemization of the billing including the hourly rate, the time spent on the case, and a summary of the tasks performed.

(b) An attorney filing a verified petition for attorney's fees against his client shall provide notice in substantial compliance with the following:

You are hereby notified that on _____, the day of _____, at or as soon thereafter as counsel may be heard, the undersigned shall appear before the Hon. Judge _____, in Court Room _____, at the Kane County Judicial Center, 37W777 Rt. 38, St. Charles, Illinois, and then and there present a Petition for Attorney's Fees pursuant to Section 508 of the IMDMA. [750 ILCS 5/508] The law requires that you be advised of your right to a copy of the Petition, an itemized copy of the bill, and any attachments to the Petition. You have the right to a hearing on the Petition, and the right to be represented at your expense at that hearing by an attorney other than one associated with the undersigned. If you do not appear, a judgment may be entered in accordance with the Petition.

(c) An agreed order for attorney fees on behalf of an attorney against his client, or consent judgment, shall not be entered unless the requirements of subparagraph (a) have been met and the client is present in open court and knowingly waives his/her right to a hearing and separate representation, or the client has signed a written waiver of these rights.

Supersedes §15.09 Amend. Gen. Order 89-18, eff. Aug. 15th, 1989; §15.16 created by Gen. Order 07-13, eff. April 12th 2007

15.17 FORM CUSTODY AND VISITATION ORDERS

(a) Rules regarding custody and visitation, as published by the Court, shall be incorporated into every Custody Order or Judgment.

Supersedes §15.14; §15.17 created by Gen. Order 07-13, eff. April 12, 2007

15.18 FAMILY MEDIATION PROGRAM

(a) Definitions.

(1) “Mediation” is a cooperative process for resolving conflict with the assistance of a trained, neutral third party, whose role is to facilitate communication, to assist the parties in identifying issues needing to be resolved, exploring options, negotiating acceptable solutions, and reaching agreement on the issues. Fundamental to the mediation process described herein are principles of cooperation, informality, privacy, confidentiality, self determination, and full disclosure by the parties of relevant information. Mediation under this rule is a means for parties to maintain control of parenting decisions, by resolving themselves the issues of custody, visitation, removal, and other non-financial children’s issues. Parties are encouraged to participate in the mediation process by attempting good faith negotiation and resolution of the issues brought to mediation. Mediation under this rule is not to be considered a substitute for independent legal advice. Instead, it is to work in partnership with the attorneys and the legal process, by giving the parties the ability to be fully informed of options for resolution of their issues, which would include obtaining legal advice before, during, and after the mediation process.

(2) “Impediment to mediation” means any condition, including but not limited to domestic violence or intimidation, substance abuse, child abuse, mental illness or a cognitive impairment, which hinders the ability of a party to negotiate safely, competently, and in good faith. Pursuant to these rules, the identification of impediments in a case is necessary to determine if mediation should be required, and to insure that only parties having a present, undiminished ability to negotiate are directed by the Court under this rule to mediate.

(b) Subject Matter of Mediation. Court referred mediation will be limited to disputes involving child custody, visitation, removal, or other non-economic issues relating to the child(ren), either prior to dissolution of a marriage or post-judgment. Mediation may be ordered by the Court for resolving family law issues other than child custody, visitation, removal, or non-economic issues relating to the child(ren) only if the parties and their attorneys agree. For mediation of these other issues, the Court shall take into account the qualifications and professional background of the individual mediator appointed.

(c) Prerequisite to Mediation. For any county having an established parent education program, the parties referred to mediation by the Court shall complete the parent education program prior to starting mediation or as soon after starting mediation as the parent education program’s schedule allows. The mediator shall screen for the identification of cases that may be deemed as inappropriate for mediation under this rule, in that these cases contain some type of impairment as defined under paragraph (a).

(d) Qualifications and Requirements of Dissolution Mediators.

(1) Any person who meets the following criteria is eligible to serve as a mediator for the purposes of this rule:

(a) Satisfactory completion of 40 hour divorce mediation training program, approved by the Court. In addition, the applicant must have completed training specific to domestic violence, child abuse, substance abuse, and mental illness, which gives the applicant an understanding of the issues related to these impairments and one's ability to negotiate effectively when impacted by one or more of these impairments.

(b) The applicant has been awarded a degree in law or a graduate degree in a field that includes the study of psychiatry, psychology, social work, human development, family counseling, or other behavioral science substantially related to marriage and family interpersonal relationships, or a related field otherwise approved by a Presiding Judge of the Family Division, or his/her designee.

(c) Member in good standing in the professional organizations of his/her respective disciplines.

(d) Proof of professional liability insurance which covers the mediation process.

(e) Minimum of two years of work experience in their discipline or profession, or otherwise supervised by a qualified mediator.

(f) Maintain an office in the respective county where the Court is located, unless otherwise allowed by the Presiding Judge of Family Court or his/her designee.

(g) Prior to the passage of the rule, all persons approved to act as mediators under any existing Court mediation program in the Circuit, shall continue to do so without further approval.

(2) All persons meeting the requirements above who are interested in acting as a Court appointed mediator shall provide proof by way of affidavit which is supported by documentation of the aforesaid requirements to the Presiding Judges of the Family Division or the Presiding Judge of Kendall or DeKalb Counties, or the person designated to receive such material in each county.

(3) A periodic list shall be prepared by the Presiding Judges of the Family Division or the Presiding Judge of Kendall or DeKalb Counties, or the person designated to keep such list in each county.

(4) A mediator shall participate in 6 hours of continuing education every two years from programs approved by the Court, relating to family law and/or mediation, and be personally responsible for ongoing professional growth. A mediator is encouraged to join with other mediators and members of related professions to promote mutual professional development.

(5) The Court mediators may be required from time to time to attend specific training offered or sponsored by the Family Mediation Program, the Bar Associations or other individuals or organizations.

(6) A mediator shall mediate two low income cases, as identified by the Court, per year at a reduced fee.

(e) Referral Procedure.

(1) Kane County. Upon the Court's Order or the parties' agreement to participate in mediation, the case shall be assigned a mediator. The mediator may be chosen per agreement of the parties. In absence of any agreement, the Court shall assign a mediator from a list of qualified mediators prepared and kept by the Presiding Judge of the Family Division. A Mediation Order shall be issued and signed by the Court. A mediation status date will be set for no later than 60 days from the date the Mediation Order was issued.

(2) Other Counties. Upon the Court's Order for the parties to participate in mediation, a mediator shall be assigned in accordance with the procedures established in that county from the list of qualified mediators prepared by the Presiding Judge of Family Division or the person designated to prepare said list, and a 60 day hearing date shall be set for the status of the mediation process.

(3) Judges assigned cases with child custody and/or visitation issues may make the necessary findings to order mediation. The Court may also designate in its order what percentage of the mediation fee should be paid by each party and/or whether the case should be considered a low income case.

(4) Parties are not obligated to participate in the mediation process until ordered by the Court or agreed to by the parties. The attorneys shall encourage their clients to mediate in good faith, and the parties shall participate in mediation in good faith. After entry of a mediation order the Court, the absence of a party at a mediation session or the lack of a party's participation in the mediation process may result in sanctions, including reasonable costs to the other party for mediation and attorney's fees.

(5) If the mediator appointed has any conflict of interest, another mediator shall be appointed by the court from the list. If the mediator appointed on a designated low income case has already met his/her annual requirement for mediating low-income cases and cannot or does not wish to take another, and informs the Court, the Court shall appoint another mediator that has not reached the required quota or is willing to take low income cases in excess of two cases per year. The Presiding Judge of Family Division of every county or the person designated shall keep a record of low income cases assigned to each mediator, to ensure fair distribution of these cases to all mediators.

(6) By the status date, the mediator shall submit a report to the Court and the parties' legal counsel, in the form of a Mediator Report, notifying the Court and the legal counsel of information listed in this rule under section (k).

(f) Conflict of Interest

(1) Generally. In order to avoid the appearance of impropriety, a mediator who has represented or has had a professional relationship with either party prior to the mediation may not mediate the dispute unless the prior relationship is fully disclosed to both parties and each party consents in writing to the participation of the mediator notwithstanding the prior relationship. A mediator who is a mental health professional shall not provide counseling or therapy to the parties during the mediation process. An attorney-mediator may not represent either party in any matter during the mediation process or in a dispute between the parties after the mediation process.

(2) Imputed Disqualifications. No mediator associated with a law firm or a counseling agency shall mediate a dispute when the mediator knows or reasonably should know that another attorney or counselor associated with that firm or agency would be prohibited from undertaking the mediation.

(3) Exception. A therapist-mediator, who would otherwise be disqualified from mediation as a result of imputed disqualification, may undertake the mediation only under the following circumstances:

(a) There has been full disclosure to both parties about the conflict of interest and the imputed disqualification of the mediator, including the extent to which information is shared by personnel within the agency; and

(b) Both parties consent to the mediation in writing.

(g) Exclusionary Rule. The mediator shall be barred from testimony as to confidential mediation issues, and mediation records shall not be subpoenaed in any proceeding except by leave of the Court for good cause shown.

(h) Orientation Schedule. At the orientation session, a mediator shall inform the parties of the following:

(1) Neither therapy nor marriage counseling are part of the mediator's function.

(2) No legal advice will be given by the mediator

(3) An attorney-mediator will not act as an attorney for either or both parties and no attorney-client relationship nor attorney-client privilege will apply.

(4) The rules pertaining to confidentiality, as outlined in paragraph (g).

(5) The basis for termination of mediation, as outlined in paragraph (j).

(6) The proposed resolution of the mediated issues will be documented in a written summary. This summary will form the basis of the formal mediated agreement presented to the Court for approval.

(7) Each party shall be strongly encouraged to obtain independent legal counsel to assist and advise him/her throughout the mediation.

(8) Legal counsel for either party will not be present at any mediation session without the agreement of the parties and the mediator.

(i) **The Mediation Process.** At the initial session the mediator shall provide the parties with a written agreement outlining the guidelines under which mediation shall occur and the expectations of the parties and mediator. This initial agreement shall include at a minimum, all of the foregoing information in paragraph (h). Either or both of the parties shall be permitted to consult their respective legal counsel before executing this agreement. The mediator shall assess the ability and willingness of the parties to mediate at the orientation session and throughout the process, and shall advise the parties in the event the case is inappropriate for mediation.

(j) **Termination of Mediation.** The parties shall attend mediation until such time as they shall reach an agreement on the issues or the mediator or the Court suspends or terminates mediation. The mediator shall immediately advise the Court in writing if he/she suspends or terminates mediation or in the event that either or both parties fail to comply with the terms of this paragraph.

(k) **Mediation Report.**

(1) The report to the Court shall state the following:

(a) Whether an agreement has been reached by the parties and a summary of that agreement;

(b) The number and duration of sessions conducted to date;

(c) The fee charged, whether that fee has been paid in full, and if not, the outstanding amount owed. For an outstanding amount owed, the Court may direct the parties to pay said amount and establish what percentage should be paid by such party;

(d) Whether the parties have reviewed the summary of agreement;

(e) Whether any additional mediation sessions are recommended based on the likelihood of success; and

(f) Other relevant information not considered confidential under this Rule.

(2) In the event an agreement is reached on any of the issues, the mediator shall supply a written summary of the agreement to counsel and the Court and the same shall be included in any order or judgment disposing of the dispute.

(3) In the event an agreement is not reached on all issues, the mediator shall identify to the Court and counsel the issues remaining unresolved.

(4) The mediator shall advise the Court as to the time necessary for the completion of the mediation process. It shall be within the Court's discretion to extend mediation after the 60 day status date.

(l) Discovery. Only written discovery shall be allowed until mediation is terminated by order of the Court.

(m) Payment of Fees. The mediator shall charge an hourly fee to the parties no higher than \$175 per hour to be shared equally by the parties, unless the Court directs otherwise in an order or otherwise agreed by the parties. This hourly fee shall be paid to the mediator at the time of each session for the time spent in mediation at the session. Along with the hourly fee, the mediator may request an advance deposit of \$350.00 to be paid at the first session. Such deposit may be applied to services rendered by the mediator outside of the mediation session, such as telephone conferences, correspondence, consultation with attorneys or other individuals, preparation of the Mediator Report, and any other work performed by the mediator on behalf of the parties. Any additional fees that exceed the deposit or the fees collected at the time of sessions for services rendered by the mediator shall be paid as required by the mediator. In the event payments are not made as required under this rule, or otherwise agreed to by the mediator and the parties, the mediation process may be suspended by the mediator pending compliance.

(n) Statistics. In Kane County, the Family Division Administrative Assistant will be responsible for all statistical data. Data shall include the number of cases referred to mediation, the number of low-income cases referred, the number and duration of sessions per case and the final outcome of each case. These statistics shall be forwarded annually to the Chief Judge of the 16th Judicial Circuit and the Presiding Judge of the Family Division. The Chief Judge of the 16th Judicial Circuit shall report annually to the Supreme Court of Illinois on this mediation program, including a count of the number of cases assigned to Court Ordered Mediation and the results achieved.

Supersedes §15.22 Amend. Gen. Order 94-13, eff. Sept. 1, 1994; Gen. Order 95-9, eff. April 27, 1995; Gen. Order 01-12, eff. June 20, 2001; Gen. Order 02-09, eff. April 30, 2002; §15.18 created by Gen. Order 07-13, eff. April 12, 2007

15.19 "KIDS IN A DIVORCING SOCIETY" (KIDS) MANDATORY PARENT EDUCATION PROGRAM

(a) There is in the 16th Judicial Circuit, Kane County, Illinois, a parent education program known as "Kids In a Divorcing Society" (KIDS) Mandatory Parent Education Program, hereafter referred to as "KIDS Program".

(b) In all cases involving custody or visitation of minor children in the Family Division the parties shall be required to attend the KIDS Program no later than 60 days after the initial case management conference and prior to entry of a final judgment disposing of the case.

(c) Each party's attendance and completion of the KIDS Program is mandatory and the Court shall not excuse attendance unless the reason is documented in the record and a finding is made that excusing one or both parents from attendance is in the best interests of the children.

(d) The Judge shall order one or both of the parties to pay the fees attendant thereto. The program fees for attendance by the parties shall be set by the Presiding Judge of the Family Division.

(e) If a party fails to attend and complete the KIDS Program within 60 days after the initial case management conference, that party's attendance fee shall automatically double.

(f) The Court may impose sanctions on any party willfully failing to complete the KIDS Program.

Supersedes §15.23 Amend. Gen. Order 92-10, eff. April 7, 1992; Gen. Order 93-3, eff. April 1, 1993; Gen. Order 94-4, eff. Jan. 19, 1994; §15.19 created by Gen. Order 07-13, eff. April 12, 2007

15.20 GUARDIANS AD LITEM, ATTORNEYS FOR CHILDREN AND CHILD'S REPRESENTATIVES

(a) The Presiding Judge of the Family Division for the Kane County Circuit Court shall maintain a list of approved attorneys qualified to be appointed in child custody and visitation matters covered under Section IX of the Supreme Court Rules as Guardians *ad Litem*, Child Representatives, or Attorneys for Children.

(b) In order to qualify for the approved list, each applicant for the list shall meet the following minimum requirements:

(1) Each attorney shall be licensed and in good standing with the Illinois Supreme Court.

(2) Each attorney shall have attended the education program created by the Illinois State Bar Association for education of attorneys appointed in child custody cases or equivalent education programs consisting of a minimum of 10 hours of continuing legal education credit within the 2 years prior to the date the attorney qualifies to be appointed.

(3) To remain on the approved list, each attorney shall attend continuing legal education courses consisting of at least 10 hours every 2 year period and submit verification of attendance to the Office of the Chief Circuit Judge at the time of attendance or upon request. The 10 hours should include courses in child development; ethics in child custody cases; relevant substantive law in custody, guardianship and visitation issues; domestic violence; family dynamics including substance abuse and mental health issues; and education on the roles and responsibilities of Guardian *ad Litem*, Child Representatives, and Attorneys for Children. Attendance at programs approved by the circuit may be included as a portion of this continuing education requirement.

(4) Each attorney must complete the Guardian *ad litem*/Child Representative Application provided by the 16th Judicial Circuit and return it with a certification of attendance at continuing education.

(5) Each attorney must be a licensed attorney for a minimum of 3 years (or an associate with a firm which has a qualified attorney practice), must be experienced in the practice of Family Law, must maintain professional liability insurance coverage and must be trained in the representation of children.

(6) Each attorney must adhere to the minimum duties and responsibilities of attorneys for minor children as delineated in Supreme Court Rule 907.

(c) An attorney who wishes to be considered for appointment as Attorney, Guardian *ad Litem*, or Child's Representative for a child in a custody, visitation or removal proceeding in the Family Division shall make application to the Presiding Judge of the Family Division. The Presiding Judge shall send a notice to renew on or before April 1 of each year. An attorney's renewal shall be made on or before May 30 of each year.

(d) In the event that the Court deems it is in the best interests of the child or children to have a Guardian *ad Litem*, Child's Representative or an Attorney for the Children appointed in a proceeding under Section IX of the Supreme Court Rules, but finds that the parties are both indigent, the court may appoint an attorney from the approved list to serve pro bono. The Presiding Judge of the Family Division, and the Presiding Judges of Kendall County and DeKalb County, shall rotate the appointment of pro bono representation from attorneys on the approved list. Each attorney on the approved list shall be required to accept one pro bono appointment each calendar year.

(e) In appointing an Attorney, Guardian *ad Litem* or Child's Representative for a child, the Court shall consider the experience of the attorney, the complexity and factual circumstances of the case, the recommendations or agreements of the parties, and the geographic location of the child's residence, the parties' residences, and the office location of the Attorney for the Child, the Guardian *ad Litem* or Child's Representative.

(f) An Attorney for a Child, Guardian *ad Litem* or Child's Representative shall not be appointed as a mediator in the same case. A Guardian *ad Litem* shall not serve as the Attorney for the child in the same case. The Child's Representative shall not serve as the Attorney for the child or the Guardian *ad Litem* in the same case.

(g) Whenever a Court appoints a Child's Representative or a Guardian *ad Litem*, the appointment order shall specify the tasks expected of the Child's Representative or Guardian *ad Litem*. The designated counsel for the parties shall forward a copy of the appointment order within 5 days of entry thereof to the Attorney for the Child, the Guardian *ad Litem* and/or the Child's Representative.

(h) All Attorney for the Child, Guardian *ad Litem* and Child's Representative appointments shall be made pursuant to the standardized appointment order. In the appointment order, the Court shall order the parties to pay retainer amounts to the Attorney for the Child, Guardian *ad Litem* or the Child's Representative by a date certain. The Attorney for the Child, Guardian *ad Litem* or the Child's Representative shall submit statements to litigants for services rendered within 90 days of his or her appointment, and every subsequent 90 day period thereafter during the course of his or her appointment. Unless otherwise determined by the Court upon good cause show, both parties shall be jointly and severally liable for the fees and costs of the Attorney for the Child, Guardian *ad Litem* and/or the Child's Representative.

(i) The Attorney for the Child, Guardian *ad Litem* or Child's Representative shall, upon retention, file an appearance. The Attorney for the Child, Guardian *ad Litem* or Child's Representative shall be provided copies of all court orders and pleadings. The Attorney for the Child, Guardian *ad*

Litem or Child's Representative shall be notified of all court appearances and conferences with the Judge and appear unless excused by the Court or by agreement of the parties including the Attorney for the Child, Guardian *ad Litem*, or Child's Representative. Failure to give proper notice to the Attorney for the Child, Guardian *ad Litem* or Child's Representative may result in sanctions including, but not limited to, the vacating of any resulting court order or judgment. There will be no fee for the filing of an Appearance as a court-appointed Attorney for the Child, Guardian *ad Litem* or Child's Representative.

(j) The parties' attorneys shall not interview the child(ren) without the consent of the Attorney for the Child, and/or Guardian *ad Litem* and/or Child's Representative. Either the Attorney for the Child, Guardian *ad Litem* or Child's Representative, or any of them, shall have the right to be present during any such interview.

(k) The Attorney for the Child and/or Guardian *ad Litem* and/or Child's Representative should take measures to protect the child from harm that may be incurred as a result of the litigation by striving to expedite the proceedings and encouraging settlement in order to reduce trauma that can be caused by litigation.

(l) Unless previously discharged, the Court shall discharge the Attorney for the Child, the Guardian *ad Litem* and the Child's Representative at the conclusion of the performance of his duties as ordered pursuant to paragraph (f) above. Unless previously discharged, the final order disposing of the issues resulting in the appointment shall act as a discharge of the court-appointed Attorney for the Child, Guardian *ad Litem* and Child's Representative.

(m) At a trial or hearing, the Guardian *ad Litem* shall make the Court aware of all facts which the Court should consider. At the discretion of the Court, the Guardian *ad Litem* shall submit a written or oral report(s) by a date certain designated by the Court. If the Guardian *ad Litem* submits a written report, it shall be impounded by the Circuit Clerk and shall not be open to viewing by the public. The Guardian *ad Litem* may be duly sworn as a witness and be subject to examination by all parties. At the discretion of the Court, the Guardian *ad Litem* may be allowed to call and examine witnesses at trial.

(n) The attorney for the child shall at all times act as the advocate for the child.

(o) Standards relating to Guardians *ad Litem*

(1) During the pretrial stage of a case, the Guardian *ad Litem* should use appropriate procedures to elicit facts which the Court should consider in deciding the case. The Guardian *ad Litem* shall obtain leave of Court to instigate depositions and, enforcement and/or fees to file pleadings.

(2) At a trial or hearing, the Guardian *ad Litem* shall make the Court aware of all facts which the Court should consider.

(3) At the discretion of the Court, the Guardian *ad Litem* shall submit a written or oral report(s) by a date certain designated by the Court.

(4) The Guardian *ad Litem* may be duly sworn as a witness and be subject to examination by all parties.

(5) At the discretion of the Court, the Guardian *ad Litem* may be allowed to call and examine witnesses at trial.

(p) The Child's Representative shall at all times act in accordance with 750 ILCS 5/506 et seq.

Supersedes §15.25 Amend. Gen. Order 98-1, eff. Jan. 13, 1998; Gen. Order 00-4, eff. Feb. 1, 2000; Gen. Order 01-13, eff. June 26, 2001; §15.20 created by Gen. Order 07-13, eff. April 12, 2007

15.21 PETITIONS FOR CUSTODY DETERMINATION

(a) The goal of this Court is to have all child custody proceedings set for trial within 12 months after the filing of a Petition involving an action affecting child custody or visitation (a "child custody proceeding"). Therefore, in all child custody proceedings, the procedure shall be:

(1) File Petition for Custody Determination. Discovery shall be subject to Local Rule 15.13

(2) 90-day Initial Case Management Conference After Filing.

(a) Any agreed order regarding custody and an agreed parenting plan between the parties shall be tendered to the Court in a written disclosure and proof of compliance with Local Rule 15.19 should be tendered at this time.

(b) If at the time of the initial case management conference the Court finds that the parties have not reached an agreement as to custody, the court, shall order the parties to participate in mediation under Local Rule 15.18.

(c) A pretrial conference shall be scheduled that is no later than 60 days after mediation has been completed.

(3) Initial Pretrial Conference to be held no later than 120 Days from the Initial Case Management Conference.

(a) Any custody mediation agreement between the parties and the mediator's written report must be tendered to the Court;

(b) If no mediation agreement was achieved between the parties:

(1) The parties shall present to the Court a memorandum indicating whether they are requesting a Guardian *ad Litem*, an Attorney for the Child or a Child's Representative, and; whether a 750 ILCS 5/604(b) evaluation is being requested, including names of proposed evaluators as provided by Local Rule 15.22. The memorandum shall include proposed dates for deposition and completion of written discovery, the estimated length of the trial, and when it is reasonably anticipated that parties will be ready for trial.

(2) At the initial pretrial conference the Court shall consider, and may appoint, in the Court's discretion, an Attorney for the Child, a Guardian *ad Litem* and/or 750 ILCS 5/604(b) evaluators, and allocate costs for the same. In addition, the Court may order appropriate discovery cutoff dates, and a second custody case management conference date shall be set within 90 days thereafter.

(4) Second Pretrial Conference.

(a) A second pretrial conference shall be set 90 days after the initial pretrial conference. All reports, including the GAL's shall be reduced to writing and tendered to the Court and counsel no less than three days before the conference. All Supreme Court Rule 213(f)(1) and 213(f)(2)-opinion witnesses and their opinions shall be disclosed by this date. At this time the anticipated length of trial, in light of all disclosed witnesses, will be determined.

(b) The Court shall enter any appropriate orders regarding a discovery and Supreme Court Rule 213(f)(3) disclosure schedule, including cut-offs, and set a trial date. A final pretrial conference shall be set one week prior to trial.

(5) Final Pre-Trial Conference. The final pretrial conference shall be conducted the week prior to trial, at which time the parties shall present all proposed exhibits pre-marked, any motions in limine, a disclosure of witnesses testifying and the order of proofs, and a trial memorandum.

(6) Trial.

(a) All custody trials shall commence within 12 months after the filing of the Petition for Dissolution of Marriage, unless good cause is shown.

(b) Each custody trial should be held on consecutive days if possible.

(c) All custody trials shall have a record. It shall be the responsibility of the parties to provide a Court reporter for the proceedings unless otherwise ordered by the court. Court rulings shall conform to Local Rule 15.21(b) and other rules and statutes, where applicable.

(b) Ruling by the Court.

(1) At the conclusion of the trial or hearing, if the matter is taken under advisement by the Court, the Court shall render its decision as soon as possible but no later than 60 days after the completion of the trial or hearing.

(2) If there are other property issues that the Court has yet to resolve, a bifurcated ruling may be made, with the Court indicating its final custody ruling in advance of its complete decision being rendered. The bifurcated ruling shall be implemented immediately by final custody order pending the Court's full decision being released.

Supersedes §15.26 Amend. Gen. Order 06-05, eff. January 10, 2006; §15.21 created by Gen. Order 07-13, eff. April 12, 2007

15.22 CHILD CUSTODY EVALUATION

- (a) Authorization. Pursuant to the Court's inherent powers to protect and act in the best interests of the children under the Illinois Marriage and Dissolution Act, the Court may order an evaluation of the parties in any pre or post-decree contested issue of parental responsibility, custody, visitation, removal or any other non-economic issue of contested custody involvement. Such Court ordered evaluations are authorized under the following provisions:
- (1) 750 ILCS 5/604(b);
 - (2) 750 ILCS 5/605;
 - (3) 750 ILCS 5/602.1;
 - (4) 750 ILCS 5/607.1, and any other statutes as may be added or amended in time.
- (b) Establishment of 604(b) Witness Certification. The 16th Judicial Circuit may establish a 604(b) Witness List of certified custody evaluators, each of whom may be appointed from time to time to serve in the Court ordered 604(b) witness program, under the direction and at the discretion of the Chief Judge and the Presiding Judge of the Family Division. All 604(b) evaluators shall be subject to the following rules.
- (1) Applicants. Applicants for the program must file the required application with supporting documentation and meet the following minimum criteria:
 - (a) Academic. Applicants must possess one of the following degrees or licenses in current good standing: Ph.d; Psy.d; LCSW; LCPC; MD; Master's Degree in a mental health field; and possess the requisite active practice licenses required by the State of Illinois;
 - (b) Professional. Applicants must have completed 5 years of post licensure practice. Practice must include education or training in the following areas of child welfare: child development, domestic violence, physical/sexual abuse, and substance abuse;
 - (c) Applicants must have the availability to conduct evaluations within a reasonable distance of Kane County;
 - (d) Experience. Post licensure practice must include no less than two years experience in two or more of the following areas: families in distress, child or family experience and domestic violence;
 - (e) Each applicant must sign a statement agreeing to comply with the ethical rules established by the 16th Judicial Circuit in regards to custody evaluation;

(f) Each applicant must successfully complete an orientation program to become familiar with the local rules and reporting requirements and expectations; and

(g) Applicants must be available to accept one pro bono assignment annually.

(2) Certification.

(a) The roster of 604(b) evaluators shall be maintained by the Kane County Diagnostic Center, with a copy of the roster provided to the Presiding Judge of the Family Division. The Director of the Diagnostic Center or his designee shall review each application to determine if the applicants possess the required educational background and experience to qualify as a Child Custody Evaluator.

(b) After review of the application, the Diagnostic Center shall forward its recommendation to the Chief Judge and the Presiding Judge of the Family Division for approval.

(c) The Kane County Diagnostic Center shall maintain the roster. Each approved Custody Evaluator must send proof of current licensure, current professional liability insurance and any change of address in a timely fashion to the Kane County Diagnostic Center, no less than annually.

(d) An approved Custody Evaluator has the affirmative duty to inform the Kane County Diagnostic Center of any change in their licensure or any formal discipline. Upon receipt of this information the Kane County Diagnostic Center shall inform the Chief Judge and the Presiding Judge of the Family Division, along with any appropriate recommendations. Continued certification as a Child Custody Evaluator is at the discretion of the Chief Judge, which may include but is not limited to a review of compliance with rules for custody evaluations as well as timeliness of reports.

(e) The Kane County Diagnostic Center may review each evaluator's performance for quality assurance, and shall report any non-compliance to the Chief Judge.

(f) The Chief Judge has the discretion to remove a Custody Evaluator from the approved list at any time.

(3) Procedure. The 16th Judicial Circuit shall develop and maintain the following:

(a) A 604(b) Witness Appointment Order. Said order shall specify the issues or question upon which the expert opinion is sought; and shall address the statutory factors set forth in Section 602; and contain a section directing the evaluator to perform specific acts, including (or excluding) but not limited to: tests, collateral interviews, certain investigative actions (interviewing school officials, reviewing court records) and the like.

(b) A 604(b) Witness Report Form. To be used by the witnesses in submitting their reports to the Court. Said form shall consist of a summary sheet, to give the Court a

summary of the witness's recommendations and findings; and a narrative report, which shall include a section in which the witness addresses the statutory factors set forth in Section 602, to be included in the witness's report and recommendations (if requested by the Court).

Supersedes §15.27 Amend. Gen. Order 06-05, eff. January 10, 2006; §15.22 created by Gen. Order 07-13, eff. April 12, 2007