

Kane County Local Rule

ARTICLE 10: CIVIL CASE MEDIATION PROGRAM

10.00 APPLICABILITY OF RULES

- (a) This Article 10 is intended to govern mediation in civil matters, except where a more specific rule applies. Unless otherwise addressed in these rules, the provisions of the Uniform Mediation Act ([710 ILCS 35/1 et. seq.](#)) shall apply.
- (b) Cases referred to mediation under the rules in Article 10 shall continue to be subject to Article 6 and other applicable Local Rules.

10.01 PURPOSE OF THE MEDIATION PROGRAM

Mediation under these rules involves a confidential process in which a neutral mediator, selected by the parties, or appointed by the Court, assists the parties in reaching a mutually acceptable agreement. Mediation is intended to be a more informal and non-adversarial process than litigation and court proceedings. The mediator will assist 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.

10.02 ACTIONS ELIGIBLE FOR COURT ORDERED MEDIATION

- (a) **Referral by Judge or Stipulation.** Except as hereinafter provided, the Judge to whom a matter is assigned may refer to mediation any contested civil matter where the value of the claim exceeds \$50,000, or such cases in Chancery, Probate, or Miscellaneous Remedies which may benefit from mediation by entering an order of referral. An order of referral may be entered by the Court on its own motion or upon motion by one or more parties when the Court has reasonable grounds to believe that the parties may reach a mutually acceptable agreement with the assistance of a mediator, or for other good cause shown. In addition, the parties may file a written stipulation to mediate any issue between them at any time. Such stipulation shall be incorporated into the order of referral.
- (b) **Exclusion from Mediation.** The following are not eligible for the Civil Case Mediation Program:
 - (1) Small Claims (SC) cases;
 - (2) Law Medium forcible entry/detainer/eviction (LM) cases;
 - (3) Mandatory Arbitration (AR) cases;
 - (4) Cases eligible for Mandatory Residential Foreclosure Mediation Program (see Article 5, these rules);
 - (5) Any other matters specifically excluded from mediation by administrative or General Order of the Chief Judge.

10.03 QUALIFICATIONS AND CERTIFICATION OF MEDIATORS

- (a) **Qualifications.** The Chief Judge or the Presiding Judge of the Civil Division shall maintain a list of mediators who have been certified by the Court and who have

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registered for appointment. For certification, a mediator of circuit court civil matters eligible for mediation under these rules shall:

- (1) Be a member in good standing of the Illinois Bar with at least six (6) years of trial practice in Illinois or be a retired judge;
- (2) Demonstrate completion of a mediation training program approved by the Chief Judge or the Presiding Judge of the Civil Division;
- (3) Submit an application for approval and be approved by the Chief Judge or the Presiding Judge of the Civil Division.
- (4) Agree to an assignment for no less than one (1) *pro bono* mediation case assignment annually.

- (b) **List of Mediators and Application.** Copies of the list of certified mediators, blank orders of referral and other forms relating to the mediation program will be kept in the office of the Arbitration Administrator.

10.04 CONFLICTS OF INTEREST AND PROFESSIONAL CONDUCT OF MEDIATORS

- (a) **Rules of Professional Conduct.** Mediators shall comply with the applicable Illinois Rules of Professional Conduct, as adopted by the Supreme Court of Illinois including but not limited to, rules relating to conflicts of interests.
- (b) **Non-involvement in Case.** A mediator shall not be involved in any capacity other than mediator in any case to which the mediator is assigned. A mediator may not use any information obtained during the mediation process for any purpose outside of mediation unless required to do so by law. A person who acts as a mediator in a court ordered mediation case shall be barred from representing any party in that case.

10.05 REMOVAL OF MEDIATORS

The eligibility of each mediator to retain certified status shall be periodically reviewed by the Chief Judge or the Presiding Judge of the Civil Division to determine that they remain in good standing with the Illinois Bar and maintain the quality and integrity of the mediation program. Failure to comply with these rules may result in the decertification or removal of a mediator from the list of approved mediators or to otherwise perform in furtherance of the purposes of the mediation program.

10.06 DISQUALIFICATION OF A MEDIATOR

- (a) **Motion for Disqualification.** Any party may file a motion before the judge assigned to the case to disqualify a mediator for cause. If the court rules that a mediator is disqualified from hearing a case, an order shall be entered naming a replacement mediator from the list of certified mediators, either upon the parties' agreement, or in the absence of such agreement, upon the court's appointment.
- (b) **Recusal or Declination of Appointment.** If a mediator declines appointment or recuses after appointment, the mediator shall notify the parties and the court promptly, and the

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parties shall agree on a replacement mediator or request the judge assigned to the case to appoint a replacement mediator.

- (c) The time for mediation shall be tolled during any periods in which a motion to disqualify or a request to name a replacement mediator is pending.

10.07 COMPENSATION OF MEDIATORS

- (a) When the mediator is selected by the parties, the mediator's compensation shall be paid by the parties as agreed between the parties and the mediator. The parties may agree to a mediator who is not on the list of certified court appointed mediators.
- (b) When the parties are unable to agree on a mediator, the Court shall appoint a mediator from the list of certified court appointed mediators. A Court appointed mediator shall be compensated by the parties at the current hourly rate to be established by the court. The charges shall be shared equally by all parties participating in the mediation conference, unless the Court, on good cause shown, orders differing percentages of contribution by the respective parties. Once a mediator has been appointed the mediator shall be entitled to a minimum of one hour's compensation unless otherwise ordered by the court.
- (c) If any party has been granted leave to sue or defend as a poor person pursuant to Illinois [Supreme Court Rule 298](#), the Court shall appoint a mediator who shall serve *pro bono* without compensation from any party to the action. Any such appointment shall be credited toward the mediator's annual obligation under Section 12.03 above.
- (d) A court appointed mediator's fee shall be subject to appropriate order or judgment for enforcement.

10.08 ORDER OF REFERRAL TO MEDIATION

Pursuant to [Supreme Court Rule 218](#), all cases eligible for court ordered mediation shall be set for a case management conference within ninety (90) days of filing. Upon completion of the initial case management conference, or any subsequent case management conference, a case may be referred to court ordered mediation. The entry of an Order of Referral to court ordered mediation assigns the case to court ordered mediation, and if a mediator is not appointed by said initial order of referral, the matter shall be continued fourteen (14) to twenty-one (21) days to determine whether the parties have agreed upon or will stipulate to certified mediator. On the continuance date, if the parties have been unable to agree or stipulate, the court will appoint a certified mediator from the list to be selected by such procedure as may be adopted by administrative or general order of the Chief Judge. If a mediator is appointed after the initial Order of Referral, an amended Order of Referral shall be entered.

10.09 PROCEDURE FOLLOWING ENTRY OF ORDER OF REFERRAL TO COURT ORDERED MEDIATION

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- (a) **Scheduling of the Mediation Conferences.** Unless otherwise ordered by the Court, the first mediation conference shall be held within forty-five (45) days of the Order of Referral. When the date, time and location of the initial mediation conference have been agreed upon, the mediator shall send written confirmation of such scheduling to all parties.
- (b) **Advancement or Postponement of Mediation Date.** Any party to a case may request advancement or postponement of a scheduled mediation hearing date by filing a written motion with the Circuit Court Clerk requesting the change. The notice of motion and motion shall be served upon attorneys of record and any self-represented parties who have filed appearances, as provided by the Supreme Court Rules and the Local Rules of the Sixteenth Judicial Circuit, with copies served upon the mediator and the mediation center.
- (c) **Motion to Dispense with Mediation.** If mediation has been court ordered and not initiated by stipulations of the parties, a party may move within fourteen (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; or
 - (2) The issue presents a question of law only; or
 - (3) Other good cause is shown
- (d) **Location of Mediation Conferences.** Unless the parties and mediator agree otherwise, mediation conferences shall be held in Kane County at the office of the mediator or other neutral location such as the Kane County Bar Association office if available or such location within the Kane County Courthouse or Judicial Center as may be authorized by the Chief Judge.
- (e) **Party Summaries to be submitted.** Not less than ten (10) days prior to the mediation conference, each party shall present the mediator with a brief written summary of the case containing a list of all pending and resolved claims and all issues to be addressed in mediation. Any party who wishes all or part of their summary contents to remain confidential shall inform the mediator, in writing, at the time the summary is submitted and shall clearly mark the submission or parts thereof as confidential. The summary details may be subject to further discovery, depending on the progress of the case, but if available shall include the following information:
- (1) The names of all mediation participants;
 - (2) The facts of the occurrence;
 - (3) Opinions of liability;
 - (4) All injury and damage information; and
 - (5) Any pending offers or demands toward settlement

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- (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.

10.10 ATTENDANCE AT A MEDIATION CONFERENCE

- (a) All parties, attorneys, representatives with settlement authority and other individuals necessary to facilitate settlement of the disputed claim or issue shall be present at each mediation conference unless excused by court order.
- (b) A party is deemed to be present at a mediation conference if the following persons are physically present or available through appropriate teleconference, video conference, or other virtual technological application:
- (1) The party or its representative having full authority to settle subject to such reasonable approval as may be necessary, and in all instances, the plaintiff should appear at the mediation conference;
 - (2) The party's attorney of record, if applicable;
 - (3) 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.
- (c) Upon motion, the court may impose sanctions against any party or attorney who fails to attend mediation or who fails to comply with this rule, including but not limited to, mediation costs and reasonable attorney's fees related to the mediation process.

10.11 SETTLEMENT PRIOR TO MEDIATION CONFERENCE

Upon settlement of any mediation case, the attorney for plaintiff, or the plaintiff if self-represented, shall immediately notify the judge assigned to the case in writing, and shall submit the written settlement or other dispositive order on or before the scheduled mediation conference date. The attorney for plaintiff shall also notify the mediator that the mediation conference will not take place as scheduled.

10.12 TERMINATION OF MEDIATION

- (a) Mediation shall be completed within forty-five (45) days of the first mediation conference unless extended by the Court or upon stipulation of the parties.
- (b) Mediation shall terminate prior to the end of forty-five (45) days if:
- (1) All issues referred for mediation have been resolved; or
 - (2) The parties have reached an impasse, as determined by the mediator; or
 - (3) 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.

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10.13 REPORT OF MEDIATOR

- (a) **Report to Court.** Within fourteen (14) days after the termination of mediation for any reason, the mediator shall file with the court a report in writing indicating 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”. A copy of the report shall be sent to the parties and to the Presiding Judge of the Civil Division or to his/her designee.
- (b) **Agreement in Writing.** If an agreement is reached, it shall be reduced to writing and signed by the parties or their agents before termination of the mediation conference. Each party and the mediator shall receive a copy of the full agreement, partial agreement, or no agreement document.
- (c) **Full Agreement.** If a full agreement is reached, the report shall state whether the action will be concluded by consent judgement or voluntary dismissal and shall designate the persons required to execute and file such consent judgment or dismissal, and shall indicate the date by which such document shall be filed.
- (d) **Partial Agreement.** If a partial agreement is reached, the report shall state which claims have been resolved and which claims are not resolved. Further the report shall state whether the resolved claims will be concluded by consent judgment or voluntary dismissal and shall identify the persons required to execute and file such documents.
- (e) **No Agreement.** If no agreement is reached, the mediator shall so report without comment or recommendation.
- (f) **Breach of Agreement.** In the event of any breach or failure to perform under the full or partial agreement, the court upon motion may impose sanctions, including but not limited to costs, attorney’s fees or entry of judgment on agreement.
- (g) **Post-mediation Status Conference.** All parties must appear at the post-mediation status conference. At the status conference, the presiding judge shall enter any order of dismissal or consent judgments. A party’s failure to appear at the post-mediation status conference may result in an entry of a default judgment or dismissal.
- (h) **Mechanism for Reporting.** The Civil Division coordinator shall keep and maintain compiled statistics and records on all court ordered mediation cases and shall prepare and file such reports as are required by the Supreme Court, the AOIC, or the Chief Judge.

10.14 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

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parties, the mediator may not disclose any information obtained during the mediation process. Mediations shall not be open to the public. A court reporter shall not be permitted without leave of the Court.

10.15 IMMUNITY

Mediators approved and certified by the Sixteenth Judicial Circuit and acting pursuant to these rules, shall be entitled to such immunity as shall be provided by law.

10.16 DISCOVERY

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

10.17 MECHANISM FOR REPORTING

- (a) The Civil Division or the Arbitration Administrator, if appropriate, shall keep and maintain compiled statistics and records on all court ordered mediation cases and shall prepare and, upon approval of the Chief Judge or the Presiding Judge of the Civil Division, shall file such reports with the AOIC, when and as directed by the Chief Judge.
- (b) At a minimum, the Civil Division or the Arbitration Administrator, if appropriate, shall report the number of cases submitted to mediation and shall classify the types of cases and the outcomes of the mediation process for those cases. The Court may require the parties to complete evaluation forms to be submitted on or before the date of the post-mediation status conference in order to assess the effectiveness of the mediation program.