III. FAMILY

ARTICLE 14: FAMILY

14.00 GENERAL

For purposes of these Rules, a Family Division case is defined as any proceeding arising under the provisions of Illinois Marriage and Dissolution of Marriage Act (IMDMA), The Illinois Parentage Act (IPA), or applicable proceedings for Orders of Protection.

14.01 ASSIGNMENT OF CASES

(a) All newly filed Divorce (D) and Family (F) designated cases shall be randomly assigned by the Circuit Court Clerk to a Family Division Judge pursuant to the General Order of Assignments of Judges then in effect. When more than one (1) party files a Family Division Case involving the same parties and issues, all such cases shall be consolidated into the earliest filed case to be heard by the Judge assigned to that case.

(b) Cases that are reinstated after having been dismissed or non-suited shall be assigned to the Judge hearing the case at the time of dismissal. Cases that are re-filed following a dismissal or non-suit, which involve the same parties and subject matter regardless of party designation, shall likewise be assigned to the Judge hearing the case at the time of dismissal.

(c) Whenever possible and appropriate, all proceedings involving the parenting, allocation of parental responsibilities, guardianship or custody of an individual child shall be conducted by a single Judge.

(1) When cases involving the same minor child or children are pending in both the Family Division and the Probate Division, the Judges assigned to each case shall consult with each other to determine if the probate case(s) should be transferred to the Family Division to resolve any issues related to the child(ren).

(2) In any case pending in the Family Division involving a minor child or children who is the subject of a Juvenile Court Act petition, the Family Court Judge shall stay all or part of the proceedings pending the outcome of the Juvenile Court proceedings.

(d) From time to time, the Chief Judge or the Presiding Judge of the Family Division may reassign cases to promote equity and manage caseloads within the division.

14.02 PLEADINGS, MOTIONS AND COURTESY COPIES

(a) All pleadings shall be filed in a form consistent with the relevant statutory authority, Local Court Rules and Supreme Court Rules.

(b) Courtesy copies shall be provided to the Court as directed.

(c) Unless otherwise required by law, rule, or upon leave of Court. **EXHIBITS, PRIOR ORDERS OR PLEADINGS SHALL NOT be attached or filed with the Circuit Clerk.** Violations of this rule may result in appropriate sanctions, including

reasonable costs or fees associated with the enforcement of this rule, and in appropriate cases the barring of the particular exhibit.

14.03 SETTING OF CASES ON COURT CALLS

Unless otherwise set forth in these rules, all pre-decree motions shall be heard by the Judge assigned to the case. All post-decree actions shall be heard by the Judge originally assigned to the case, or the Judge currently sitting in his or her stead.

14.04 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 motion shall be heard by the Presiding Judge of the Family Law Division or his or her designee.

(c) The initial burden of proving the alleged "emergency" shall be on the proponent and 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 relief is sought;
(2) Proper notice to the opposing party; 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) If the Court makes a determination that a matter does not meet the criteria for an "emergency" matter, an order so finding shall be entered. A party or their attorney who responds to a motion propounded as, but found not to be, an "emergency" may be entitled to an order striking the pleading, time to respond, and reimbursement of costs and fees.

14.05 ORDERS OF PROTECTION

(a) Persons seeking an Order of Protection (O.O.P) shall first sign in with the Family Division Administrative Assistant for information regarding their application and the Judge assigned to hear their case that day.

(b) Petitions associated with pending Criminal or Family Division cases, when practicable, should be heard by the Judge assigned to hear the underlying case.

(c) Whenever an O.O.P is filed in a criminal case and there is a pending Family Division case involving the same parties and minor children, the following procedure should apply:

(1) The Judge hearing the criminal case should hear the Petition for Plenary Order of Protection, and unless otherwise agreed, reserve all issues related to the children, including but not limited to support and the allocation of parental responsibilities.
(2) The Judge hearing the criminal case may then transfer the criminal case to the appropriate Family Division Judge for the limited purpose of resolving any or all

of the reserved issues relating to the parenting, care and support of the children.

(d) Whenever an independent petition for O.O.P. is filed involving the same parties and children in a pending Family Division case, the O.O.P. case should be consolidated into the Family Division case.

14.06 INDIRECT CIVIL CONTEMPT

(a) This sub-section shall not apply to actions to enforce allocated parenting time.

(b) No Rule to Show Cause (Rule) shall issue except upon proper notice and motion by verified pleading. Petitions for Rule to Show Cause may initially be handled as uncontested, non-scheduled matters, with 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.

(c) Unless otherwise agreed to by the parties and approved by the court, all Rules shall be returnable not less than fourteen (14) days and no more than thirty (30) days from the date of issuance.

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

14.07 ENFORCEMENT OF ALLOCATED PARENTING TIME

(a) Actions to enforce allocated parenting time shall be initiated by verified pleading which shall set forth the name and case number of the F or D case under which the cause of action arose, the specific remedies being sought and the sub-section in which the remedy is authorized. All enforcement actions shall be given priority, and shall be heard, when possible, within thirty (30) days of the initial return date.

(b) These pleadings shall be entitled "Petition to Enforce Allocated Parenting Time" and shall be filed with the clerk as a new Criminal Contempt (CC) case. The moving party should be named as the Petitioner in the case caption, and the alleged non-complying parent named as Defendant.

(c) Service upon the Defendant may be by Notice to Appear or Summons with an initial return date no less than fourteen (14) days and no more than thirty (30) days from the date of filing. The CC case shall be returnable before the Judge assigned to hear the underlying F or D case from which the cause of action arose.

(d) A Uniform Dispositional Order will be used by the Court when resolving any such action to enforce allocated parenting time.

14.08 DEFAULT

(a) Following the entry of default, appropriate written notice of intent to appear for prove-up shall be sent to the respondent; and, proof of such service shall be filed at or prior to the prove-up.

(b) Whenever it appears that there has been some communication and/or agreement

between the parties concerning any material issue, the court may require both parties to appear in open court at the time of the prove-up to acknowledge their agreement.

14.09 PROVE-UP HEARINGS

(a) The Court may require a court reporter to take a verbatim record of the prove-up hearing, in which case the court reporter fees shall be paid in full at the time of hearing. The payment of said fees is the responsibility of the party seeking dissolution. Failure to make prompt payment may delay the entry of judgment or result in sanctions against said party.

(b) Unless waived by the Court, within thirty (30) days of the date of prove-up, a transcript of the proceeding shall be prepared and filed with the Circuit Court Clerk by the assigned court reporter.

(c) Prove-up dates must be obtained from the Court. Unless otherwise ordered by the Court, prove-up hearings shall be scheduled before the trial Judge assigned to the case.

14.10 FINANCIAL AFFIDAVIT / DISCOVERY RULES

(a) The Financial Affidavit referenced in section 501 of the IMDMA shall be utilized as set forth below in all Dissolution of Marriage or Civil Union and Legal Separation proceedings unless compliance is excused by order of Court. The Court may further require the Financial Affidavit in actions to establish or declare parentage and in post-decree proceedings. These rules do not apply to Joint Simplified Dissolution.

(b) Within thirty (30) days of the filing of the Defendant's general appearance or responsive pleading, the parties shall exchange the completed Financial Affidavit in accordance with and subject to the provisions of section 501 of the IMDMA. **The Financial Affidavit itself shall not be filed with the Circuit Court Clerk.**

(c) In pre-decree cases, no party shall be entitled to serve any request for discovery on another party until the requesting party has served the opposing party, or their attorney, with a fully completed copy of the Financial Affidavit with all corroborating documents attached.

(d) Absent a court order for good cause or agreement by the parties to the contrary, all discovery shall be concluded thirty (30) days prior to trial.

14.11 AFFIDAVITS OF INCOME AND EXPENSES FORM

The single page Affidavit of Income and Expenses form (which is available from the Circuit Court Clerk) may be used in any pre or post-decree case involving financial issues, where the statutory Financial Affidavit referenced in section 501 of the IMDMA is not required by statute or by local court rule. **The affidavit should not be filed with the clerk unless directed by the court.**

14.12 SETTLEMENT CONFERENCES

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

(b) The parties shall exchange, BUT NOT FILE, at least three (3) days before the conference a pretrial memorandum setting forth:

(1) The ages of the parties and duration of the marriage;
(2) The ages of the parties' children and any agreements relating to the Allocation of Parental Responsibilities;
(3) The income, assets and liabilities of the parties; and
(4) Any other agreed or contested issues.

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

14.13 SETTING OF TRIAL STATUS DATE AND TRIAL

(a) All cases, including post-decree cases, may be set for a trial status conference before trial. Any Order setting the matter for trial may include schedules for any further discovery and compliance with Supreme Court Rule 213. The local family court trial order shall be used unless excused by the court.

(b) All trials relating to the allocation of parental responsibilities should be held on consecutive days if possible. The Court may order the parties to provide a court reporter for trial.

(c) The Court may order the parties to appear on the trial status date and present copies of the following to the Court:

(1) A list of witnesses they expect to call during their case in chief;
(2) Any stipulations expected to be used at trial;
(3) A trial memorandum, which shall list all contested issues, the income of each party, all assets and the value ascribed to each asset by the party, all liabilities of the parties and the balance on the indebtedness, and whether the asset(s)/liabilities are marital or non-marital, if applicable;
(4) All pretrial motions, including motions in limine; and
(5) A numerical list of exhibits that party intends to offer during his/her case in chief, along with copies if not previously tendered.

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

14.14 ATTORNEY'S FEES

(a) Petitions for Contribution of Fees sought by one party against the other shall be filed, whenever possible, prior to trial.

(b) In any action for attorney fees, the supporting invoice of legal services rendered shall not be filed, but shall be presented to the Court at the hearing.

14.15 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, to explore options, to negotiate acceptable solutions, and to assist in 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 for 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 designed 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 required to participate in mediation.

(b) Subject Matter of Mediation. Court required mediation will be limited to disputes involving allocation of parental responsibilities; child custody, visitation, relocation, 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. The parties referred to mediation by the Court shall complete the KIDS 1st Parent Education Program (see 14.16) 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.

(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) The applicant has satisfactorily completed a forty (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) The applicant must be a member in good standing in professional organizations of his/her respective disciplines.

(D) The applicant must show proof of professional liability insurance which covers the mediation process.

(E) The applicant has a minimum of two (2) years of work experience in his/her discipline of profession, or otherwise supervised by a qualified mediator.

(F) The applicant maintains an office in Kane County where the Court is located, unless otherwise allowed by the Presiding Judge of the Family Division, or his/her designee.

(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 Judge of the Family Division or the person designated to receive such material. Additionally, each applicant shall specify the hourly rate they will charge for mediation services. [Application for Appointment as Mediator]

(3) A periodic list of approved mediators shall be prepared by the Presiding Judge of the Family Division or the person designated to keep such list.

(4) A mediator shall participate in six (6) hours of continuing education every two (2) years from programs approved by the Court, relating to family law and/or mediation, and be personally responsible for ongoing professional growth.

(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 (2) low income cases, as identified by the Court, per year at a reduced fee or *pro bono* if required by the Court.

(e) Referral Procedures

(1) 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 by agreement of the parties. In the absence of any agreement, the Court shall assign a mediator from a list of approved mediators. A Mediation Order shall be issued and signed by the Court. A mediation status date will be set for no later than sixty (60) days from the date the mediation order was issued.

(2) 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 by 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.

(3) 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 or *pro bono* 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 such cases in excess of two (2) cases per year. Mediators should notify the office of the Presiding Judge of the Family Division of their *pro bono* appointment so that a record may be maintained to ensure fair distribution of these cases to all mediators.

(4) 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 legal counsel of information listed in this rule under section (i).

(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 mediator in writing.

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

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

(A) Neither therapy nor marriage counseling are part of the mediator's function;

(B) No legal advice will be given by the mediator;

(C) An attorney-mediator will not act as an attorney for either or both parties and no attorney-client relationship or attorney-client privilege will apply;

(D) The rules pertaining to confidentiality;

(E) The basis for termination of mediation;

(F) 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;

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

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

(g) 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 above in (f) (5) (A)-(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.

(h) 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.

(i) Mediation Report.

(1) The report to the Court shall be made on the form approved by the Administrative Office of the Illinois Courts ("AOIC").
(2) In the event an agreement is reached on any of the issues in addition to the form report, the mediator shall supply a written summary of the agreement to counsel and the Court.

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

(k) Payment of Fees. The mediator shall charge on an hourly basis for the time spent during mediation and the cost for mediation shall be shared equally by the parties, unless the Court directs otherwise in an order or is otherwise agreed to 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 equal to two hours of mediation services 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.

(l) Statistics. 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. The statistics shall be forwarded, annually, to the Chief Judge of the Sixteenth Judicial Circuit and the Presiding Judge of the Family Division. The Chief Judge 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.

14.16 KIDS 1st MANDATORY PARENTING EDUCATION PROGRAM

(a) The parenting education program in the Sixteenth Judicial Circuit, Kane County, Illinois, shall be known as KIDS 1st.

(b) In all cases involving minor children brought under the IMDMA or the IPA, the parents or guardians of the children shall be required to attend KIDS 1st within sixty (60) days from the commencement of the action or thirty (30) days from when service is completed on defendant, whichever is later. Each party's attendance and completion of KIDS 1st 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.

(c) 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 General Order of the Chief Judge.

(d) If a party fails to attend and complete KIDS 1st within the initial time provided above, that party may be charged a late fee which shall be collected by the Circuit Clerk.

(e) The Court may impose sanctions on any party willfully failing to complete the KIDS 1st.

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

(a) The Presiding Judge of the Family Division or his/her designee shall maintain a list of attorneys qualified to be appointed in matters covered under Article IX of the Illinois Supreme Court Rules as Guardians a*d Litem* ("GAL"), 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 parental allocation or child custody cases or equivalent education programs consisting of a minimum of ten (10) hours of continuing legal education credit within the two (2) years prior to the date the attorney qualifies to be appointed. The ten (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 the GAL, Child Representatives and Attorneys for Children. Attendance at programs approved by the Sixteenth Judicial Circuit may be included as a portion of this continuing education requirement.

(3) To remain on the approved list, each attorney shall supply to the Presiding Judge of Family Division or his/her designee proof of one or more of the following:

(A) Completion of continuing legal education regarding GAL training consisting of at least ten (10) hours within the last two (2) year period;

(B) Any teaching or lecturing on the subject of the qualifications or duties of the GAL, Child Representatives, or Attorneys for Children within the preceding two (2) years, and said course(s) cumulated at least three (3) credit hours; and

(C) Service as a court appointed GAL, Child Representative, or Attorney for Children in at least three (3) cases per year over the last two (2) consecutive years, together with a minimum of three (3) CLE hours relating to child custody issues during the same time period.

(4) Each attorney must complete the Guardian *ad Litem*, Attorney for Child, and Child Representative application provided by the Sixteenth Judicial Circuit and submit it to the Presiding Judge of the Family Division along with a Certification of Attendance at continuing education.

(5) Each attorney must be a licensed attorney for a minimum of three (3) years (or be an associate with a firm which has a qualified attorney), 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, GAL, or Child's Representative for a child shall make application to the Presiding Judge of the Family Division. An attorney's renewal shall be made on or before May 30 of each year. The application shall set forth the Applicant's hourly rate for Guardian *ad Litem*, Attorney for the Child and Child's Representative services. The office of the Presiding Judge shall keep a list of qualified attorneys, including their hourly rates, which shall be made available to family court judges and placed on the Kane County Law Library Website.

(d) In the event that the Court deems it is in the best interests of the child or children to have a GAL, Child's Representative or an Attorney for the Children appointed in a proceeding under Article 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 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, GAL 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, the geographic location of the child's residence, the parties' residences, and the office location of the Attorney for the Child, the GAL or Child's Representative.

(f) An Attorney for a Child, GAL or Child's Representative shall not be appointed as a mediator in the same case. A GAL 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 GAL in the same case.

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

(h) Attorney for the Child, GAL 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, GAL or the Child's Representative by a certain date. The Attorney for the Child, GAL or the Child's Representative shall submit statements to litigants for services rendered within ninety (90) days of his or her appointment, and every subsequent ninety (90) day period thereafter during the course of his or her appointment. Unless otherwise determined by the Court, upon good cause shown, both parties shall be jointly and severally liable for the fees and costs of the Attorney for the Child, GAL and/or the Child's Representative.

(i) The Attorney for the Child, GAL or Child's Representative shall, upon retention, file an appearance. The Attorney for the Child, GAL or Child's Representative shall be provided copies of all court orders and pleadings. The Attorney for the Child, GAL 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, GAL, or Child's Representative. Failure to give proper notice to the Attorney for the Child, GAL 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, GAL 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 GAL and/or Child's Representative. Either the Attorney for the Child, GAL 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 GAL 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 GAL and the Child's Representative at the conclusion of the performance of his/her duties. 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, GAL and Child's Representative.

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

(n) The Attorney for the Child shall, at all times, acts as the advocate for the child.

(o) Standards relating to GAL

(1) During the pretrial stage of a case, the GAL shall use appropriate procedures to elicit facts which the Court should consider in deciding the case. The GAL shall obtain leave of Court to instigate depositions and to file pleadings.

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

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

(4) The GAL may be duly sworn as a witness and be subject to examination by all parties.

(5) At the discretion of the Court, the GAL 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*.

14.18 GUARDIAN AD LITEM FEES

(a) GAL fees shall be paid promptly; and, unless otherwise agreed to by the GAL and the parties, shall be reduced to a Judgment and subject to a specific pay order consistent with 750 ILCS 506(b).

(b) Petitions for GAL fees may be heard by the court on a hand-up basis, upon notice to the parties, unless written objection is made by either party setting forth the basis for their objection. Otherwise, all proceedings on petitions for GAL fees shall be non-evidentiary and summary in nature.

14.19 EVALUATIONS PURSUANT TO SECTION 604.10(b) OF THE IMDMA

(a) The Sixteenth Judicial Circuit may establish a 604.10(b) List of Certified Evaluators, each of whom may be appointed from time to time to serve in the Court ordered 604.10(b) witness program, under the direction and at the discretion of the Chief Judge and the Presiding Judge of the Family Division and according to the provisions as set out below.

(b) **Applicants** Applicants for the program must file the required applications obtained through the Family Division with the Kane County Diagnostic Center, with supporting documentation in compliance with the following minimum criteria:

(1) Academic: Applicants must possess one of the following degrees or licenses in current good standing: PhD; 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;

(2) Professional: Applicants must have completed five (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. Applicants must maintain professional liability insurance.

(3) Applicants must have the availability to conduct evaluations within a reasonable distance of Kane County;

(4) Experience: Post-licensure practice must include no less than two (2) years' experience in two (2) or more of the following areas; families in distress, child or family experience and domestic violence; and

(5) Applicants must be available and willing to accept one pro bono assignment annually.

(c) **Certification**

(1) The list of 604.10(b) Evaluators shall be maintained by the Kane County Diagnostic Center ("KCDC"), with a copy of the list provided to the Presiding Judge of the Family Division. The Director of the Diagnostic Center or his/her designee shall review each application to determine if the applicants possess the required educational background and experience to qualify as an evaluator of a child's best interests in cases relating to allocation of parental responsibilities.

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

(3) The KCDC shall maintain the approved list. Each approved Evaluator must send proof of current licensure, current professional liability insurance and any change of address in a timely fashion, and provide annual proof not later than January 31st of the year in question of current licensure and professional liability insurance.

(4) An approved Evaluator has the affirmative duty to inform the KCDC of any change in his/her licensure or any formal discipline. Upon receipt of this information the KCDC shall inform the Chief Judge and Presiding Judge of the Family Division, along with any appropriate recommendations. Continued certification as an Evaluator is at the discretion of the Chief Judge, which may include but is not limited to a review of compliance with rules for evaluations as well as timeliness of reports.

(5) The KCDC may review each Evaluator's performance for quality assurance, and shall report any non-compliance to the Chief Judge. The Chief Judge has the discretion to remove an Evaluator from the approved list at any time.

(d) **Payment of Fees**

(1) The hourly fee of the Evaluator shall be fixed by the Chief Judge in consultation with the Presiding Judge of the Family Division and the Director of the KCDC. Presently, the rate is fixed at $225, with a maximum fee in a standard case not exceeding $7,875 or thirty-five (35) hours. This amount includes the costs of the investigation, testing, analysis and preparation of the report. The cost of depositions and trial testimony shall be the responsibility of the party seeking the testimony in accordance with the Evaluator's customary rate.

(2) The Court shall indicate in the appointing order whether the evaluation is to be conducted on a *pro bono* or reduced fee basis. The parties shall be ordered to pay a retainer to the Evaluator for all or a portion of the fee. Any balance due shall be paid by the parties as it comes due. However, non-payment shall not suspend the evaluation process, but should be promptly reported to the court. The court shall take appropriate action to insure payment of the Evaluator's fees and may enter a judgment accordingly. In the event that the evaluation process is terminated prior to completion due to settlement or otherwise, the Evaluator shall promptly refund any un-earned portion of the retainer.

(e) **Duration of Evaluation and Report**

(1) A standard evaluation shall consist of up to thirty-five (35) hours of sessions, testing, analysis and preparation of the report. Evaluator requests for compensation in excess of thirty-five (35) hours will be granted only if approved by the court in advance for good cause shown (e.g. complex mental health issues, extraordinary large family groups). Prior to expending over thirty-five (35) hours, the Evaluator must present a written status report to the court and the parties documenting the number and need for proposed additional hours.

(2) The evaluation should be concluded and the report submitted to the Court and the parties within one hundred and twenty (120) days of the appointing order. The Evaluator shall immediately advise the court if the evaluation cannot be completed as ordered, in which case the court may grant additional time or appoint a different Evaluator.

Amended G.O. 19-37