

RULES OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PART 20. LAW DIVISION MAJOR CASE COURT-ANNEXED CIVIL MEDIATION

↑20.01 Court-annexed Mediation

In an effort to provide an expeditious and expense-saving alternative to traditional litigation in the resolution of controversies, there is hereby established a program of court-annexed mediation which shall operate in cases pending in the Law Division of the Circuit Court of Cook County. Mediation pursuant to this Rule involves a confidential process by which a neutral mediator, selected by the parties or selected by or with the assistance of the Court, assists the litigants in reaching a mutually acceptable agreement. The role of the mediator is to assist in identifying the issues, reducing misunderstandings, exploring and clarifying the parties' respective interests and priorities, and identifying and exploring possible solutions that will satisfy the interests of all parties and thereby resolve some or all of the issues in dispute. Any agreement reached by the parties is to be based on the autonomous decisions of the parties and not the decisions of the mediator. Parties and their representatives are required to mediate in good faith, but are not compelled to reach any agreement. A person approved by the Court to act as a mediator under this Rule shall, pursuant to Supreme Court Rule 99, have judicial immunity in the same manner and to the same extent as a judge.

↑20.02 Actions Eligible for Court-annexed Mediation

(a) Referral by Judge or by Stipulation

The Presiding Judge, individual calendar judge, or motion judge to whom a matter is assigned may order any contested civil matter pending in the Law Division referred to mediation by entering an Order of Referral. An Order of Referral may be entered by the Court sua sponte or upon the motion of any party. Standard case management orders shall include a section addressing when the matter will be considered for mediation. In addition, the parties to any such matter may file a written stipulation to mediate any case or issue between them at any time. Any stipulation shall be incorporated into the Order of Referral. Following the entry of an Order of Referral, the parties shall participate in the court-annexed mediation as set forth in these Rules. Each Order of Referral shall set a court appearance for the twenty-first day following the date of entry of the Order of Referral (unless that date falls on a court holiday, in which case the Order of Referral shall set the court appearance for the first court day following that court holiday). The parties need appear on that date only if, by that date, they have not been able to agree upon a mediator. Upon reaching agreement as to the mediator, the parties shall file the stipulation with the Court and deliver courtesy copies to the referring judge and to the Court-Annexed Mediation Supervisor at the Mandatory Arbitration Center at 222 N. LaSalle St., Chicago, Illinois 60601.

(b) Motion to Dispense with Mediation

Within fourteen (14) days after entry of the Order of Referral, a party may move to set aside or modify the order. Upon good cause shown, the court may exercise its discretion and set aside or modify the order.

20.03 Appointment of the Mediator and Scheduling of Mediation Session

(a) Appointment of the Mediator

1. Within twenty-one days after entry of the Order of Referral, the parties shall, if they are able to reach agreement on a mediator, file with the Court a stipulation designating the mediator. A mediator selected by the parties need not be on the court-certified list of mediators.
2. If the parties cannot agree upon a mediator, the parties shall, at the court appearance on the twenty-first day following the date of entry of the Order of Referral, inform the court of their failure to reach agreement. The Court shall then appoint or assist in the appointment of a court-certified mediator from the list of court-certified mediators.
3. Neither participation in any training program nor inclusion in the Court's list of certified mediators guarantees the selection of any person as a mediator for any case.

(b) Compensation of the Mediator

Unless otherwise agreed in writing by and between the parties and the mediator, the mediator shall be compensated by the parties at the rate of \$250.00 per hour. In the event that a person appointed by the Court or appointed with the Court's assistance as the mediator refuses to accept an appointment at the rate of \$250.00 an hour, the Court will appoint or assist in the appointment of an alternate court-certified mediator from the list of court-certified mediators who is willing to accept that rate.

Unless otherwise agreed by the parties or ordered by the Court upon good cause shown, each party shall pay a proportionate share of the total charges of the mediator.

(c) Scheduling of Initial Mediation Session

Unless otherwise ordered by the Court, the first mediation session shall be held within eight (8) weeks of the date of entry of the Order of Referral. When the date, time and place of the initial mediation session have been agreed upon, the mediator shall send written confirmation of the date, time and place to all parties as well as of any other requirements of the mediation.

At least ten (10) days before the session, each side shall present to the mediator a brief, written summary of the case containing a list of issues as to each party, unless the mediator has requested a different procedure to be followed. If the attorney filing the summary wishes its contents to remain confidential she/he should advise the mediator in writing at the same time the summary is delivered to the mediator. The summary shall include the facts of the occurrence, opinions on liability, all damage and injury information, and any offers or demands regarding

settlement. Names of all participants and their relationship to the parties in the mediation shall be disclosed to the mediator in the summary prior to the session.

Mediation shall be completed within seven (7) weeks of the first mediation session unless extended by order of the court or by stipulation of the parties.

20.04 Conduct of the Mediation Session

(a) Persons Required to be Present

If a party is a public entity, that party shall be deemed to appear at a mediation session by the physical presence of (a) a representative of the party with full authority to negotiate on behalf of the party and to recommend settlement to the appropriate decision-making body and (b) the party's counsel of record. With respect to parties who are not public entities, unless otherwise stipulated by all parties or ordered by the Court, a party shall be deemed to appear at a mediation session if all of the following persons are physically present:

1. The party or a representative of an insured party having full authority to negotiate on behalf of the party; and
2. The party's counsel of record, if any.

If a party fails to appear at mediation session without good cause, the Court upon motion may impose sanctions against the party failing to appear. Such sanctions may include an assessment against the party failing to appear of the attorneys' fees incurred by the other parties in preparing for and attending the mediation session and the fees of the mediator for preparing for and attending the mediation session.

(b) Communication with Parties

The mediator may, during the course of the mediation, speak privately to one or more of the parties outside the presence of other parties.

(c) Counsel

Parties and their respective counsel shall be permitted to confer privately at any time.

(d) Adjournments

The mediator may adjourn the mediation session at any time and may set times for reconvening the adjourned session. The mediator shall confirm in writing to all parties the date, time, and place for reconvening the adjourned session.

20.05 Completion of Mediation

(a) Events Constituting Completion Of Mediation

Mediation shall be considered to have been completed only upon the happening of one of the following events:

1. The entry of the parties into a written settlement agreement;
2. Certification by the mediator that the mediation has been concluded without the parties reaching any agreement; or
3. Entry of an order by the Court, upon the motion of any party, terminating the mediation for good cause shown.

(b) Completion of Mediation upon Entry into Written Settlement Agreement

If an agreement is reached, it shall be reduced to writing and signed by each of the parties. Following execution of the written settlement agreement by all parties, the parties shall file with the Court Form 4 (Memorandum of Agreement/No Agreement) and Form 6 (Mediator Report).

(c) Completion of Mediation upon Mediator's Certification of No Agreement

If the parties have reached no agreement and the mediator concludes that further mediation would not be likely to result in agreement, the mediator shall complete and sign Form 4 (Memorandum of Agreement/No Agreement) and Form 6 (Mediator Report), provide a copy of same to each party, and file the same with the Court.

(d) Completion of Mediation by Court Order

Upon the motion of any party, the Court may enter an order terminating mediation at any time upon good cause shown.

(e) Mediated Agreement as a Contract Among the Parties

In the event of any breach or failure to perform under the written settlement agreement, the Court upon motion may impose sanctions, including costs, attorneys' fees, or other appropriate remedies, including entry of judgment on the agreement.

20.06 Discovery While Case is Being Mediated

Discovery shall continue while the case is being mediated unless otherwise ordered by the Court.

20.07 Confidentiality of Communications to Mediator

(a) General Rule of Mediator Confidentiality

All oral and written communications with the mediator at any time, other than executed settlement agreements, shall be deemed confidential and privileged in accordance with the provisions of the Uniform Mediation Act. All such communications shall be exempt from discovery and inadmissible as evidence in any action or proceeding. However, evidence that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use in a mediation session.

(b) Exceptions to General Rule of Mediator Confidentiality

The general rule of confidentiality does not apply:

1. In situations where professional misconduct reporting rules, such as the Rules of Professional Conduct, require reporting of a mediation communication;
2. As necessary to defend against a lawsuit or claim for malpractice or other misconduct; or
3. In the case of threat of a prospective crime or of serious imminent harm to any person.

In such circumstances, the reporting party may testify to or report only the necessary information to the appropriate authorities. The mediator shall not be compelled to provide evidence of a mediation communication in any lawsuit or claim against an attorney or party participating in the mediation.

(c) Disputes Over Settlement Agreements

In the event of a dispute over a settlement agreement, the Court will allow enforcement hearings only on fully executed written settlement agreements arising out of the mediation. Parties to the mediation may waive confidentiality to the extent necessary to testify at such hearings. The mediator may only testify to the existence or lack of existence of a fully executed written settlement agreement and shall not agree to or be compelled to testify as to any mediation communication or give interpretation of any mediation communication.

 **20.08 Mediator Qualifications**

(a) Court-Certified Mediators

1. The Presiding Judge of the Law Division shall maintain a list of mediators who have been certified by the Court and who have registered for appointment. The Presiding Judge may appoint an advisory committee of other judges, members of the Bar, and/or others to assist in the implementation of these Rules.

In order to be certified as a mediator in the Law Division of Cook County the applicant must meet or exceed any one of the following criteria:

- (a) The applicant shall certify that he or she is currently a mediator in another State of Illinois Court Annexed Major Civil Case Mediation Program in another County in the State of Illinois;
- (b) The applicant shall certify that he or she is currently a mediator in a program approved by the Presiding Judge of the Law Division of Cook County;
- (c) The applicant shall certify that he or she has served as a mediator on at least ten (10) occasions in major civil cases;
- (d) The applicant shall certify to having successfully completed mediation training in a program consisting of forty hours of training approved by the Presiding Judge of the Law Division of Cook County; or
- (e) The applicant shall certify to having experience in the field of civil litigation as a lawyer and/or judge for at least fifteen years and to having successfully completed at least a thirty hour mediation program sponsored or approved by the Presiding Judge of the Law Division of Cook County and to having observed or participated as an advocate in at least one mediation of more than two hours in length.

2. In addition, the applicant must have held an active license to practice law in the State of Illinois for at least seven years and be one of the following:

- (a) A member of the Bar in good standing with the Illinois Attorney Registration and Disciplinary Commission;
- (b) A retired judge registered as active to practice law and in good standing with the Illinois Attorney Registration and Disciplinary Commission; or
- (c) A retired judge or lawyer registered as inactive to practice law and in good standing with the Illinois Attorney Registration and Disciplinary Commission.

(b) Mediator General Standards

In each case, the mediator shall comply with such general standards as may, from time to time, be established and promulgated in writing by the Presiding Judge of the Law Division. The Presiding Judge may, from time to time, revise these Rules by amending Rule 20.08 to include continued legal education for all court-certified mediators.

(c) Decertification of Mediators

The eligibility of each mediator to retain the status of a certified mediator may be periodically reviewed by the Presiding Judge of the Law Division. Failure to adhere to these Rules governing mediation or the general standards provided for above may result in the decertification of the mediator.

(d) Mediator Pro Bono Requirement

Each court-certified mediator shall agree to mediate one case without compensation when a Court has determined that mediation might be beneficial and that none of the parties has the resources to compensate a mediator.

20.09 Mechanism for Reporting to the Supreme Court

The Circuit Court of Cook County through the Office of the Chief Judge shall report the number of cases submitted to mediation pursuant to this rule to the Supreme Court. This report shall also contain the type of case and the outcomes of the mediation i.e., whether settled, not settled, or partially settled. Said report shall be submitted to the Supreme Court for the calendar year not later than the first day of March of the next calendar year.

20.10 Forms

The following forms shall be used in conjunction with court-annexed mediation:

Form 1: Mediator Application and Self Certification Of Qualifications

Form 2: Order of Referral to Court-Annexed Mediation

Form 3: Confidentiality Agreement and Nonrepresentation Acknowledgment (Long Form- See suggested Form A)

Form 4: Memorandum of Agreement/No Agreement

Form 5: Order of Dismissal

Form 6: Mediator Report, pursuant to Supreme Court Rule 99 as a mechanism for reporting to the Supreme Court on the mediation program

20.11 Evaluation

The Court shall collect information regarding the effectiveness of the mediation program. To facilitate this activity, mediators will supply attorneys with evaluation forms at the end of each mediation session. The attorneys are encouraged to complete, and have their clients complete, the forms and return them to the Mandatory Arbitration Center, 222 N. LaSalle St., Chicago, Illinois 60601 within ten days of the final mediation session. Mediators are encouraged to complete an evaluation form and submit it to the Mandatory Arbitration Center within ten days of the final mediation session.

Other forms may be promulgated by the Presiding Judge to aid in reporting on or evaluating the mediation process as required by Supreme Court Rule 99.

[Amended March 25, 2004, effective April 5, 2004.]