

## **RULES OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**

### **PART 21. CHANCERY DIVISION COURT-ANNEXED MEDIATION**

#### **↑ 21.01 Chancery Division 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 Chancery 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.

#### **↑ 21.02 Actions Eligible for Court-annexed Mediation**

##### **(A) Referral By Judge Or By Stipulation**

The judge to whom a matter is assigned may order any contested civil matter pending in the Chancery Division referred to mediation by entering an Order of Referral. An Order of Referral may be entered by the Court *sua sponte*, pursuant to motion, or by stipulation of the parties. The Court shall address mediation issues at the initial case management conference, although the matter may be subject to the Order of Referral at any time. Any stipulation shall be incorporated into the Order of Referral. Parties are encouraged to include in their stipulation to mediate the number of sessions they agree to attend and the allocation of the costs of the mediation. 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.

#### **↑ 21.03 Appointment of the Mediator and Scheduling of Mediation Session**

##### **(A) Appointment Of The Mediator**

1. Within twenty-one (21) 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. The Court may also appoint a mediator from the Center for Conflict Resolution. When appointing a mediator from the Center for Conflict Resolution, the Court will consider the following factors: financial hardship, the need of the parties to preserve a continuing relationship, the need for an expeditious resolution of the matter, whether there exist matters of community concern and any other circumstance that would cause the parties to be unduly burdened.

3. Neither participation in any training program nor inclusion in the Court's list of certified mediators guarantees the selection of any particular individual as a mediator for any case.

#### (B) Compensation Of The Mediator

Where the parties are able to reach an agreement as to the identity of the mediator without Court assistance, the parties and the mediator shall agree in writing as to the rate of compensation. Where the Court appoints the mediator or assists with the appointment, the parties will first attempt to reach an agreement as to the rate of compensation. In the event that a person appointed by the Court or appointed with the Court's assistance declines 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. Upon the failure of any party to pay its proportionate share of the expense of the mediation, the Court may enforce the obligation to pay upon motion of any party or the mediator.

The Center for Conflict Resolution, a not-for-profit organization, will mediate referred cases without a charge to the parties as a service to the Court. The Center for Conflict Resolution shall comply with the Illinois Not-For-Profit Dispute Resolution Center Act, 710 ILCS 20/1 et. seq.

#### (C) Scheduling Of Initial Mediation Session

Unless otherwise ordered by the Court, the first mediation session shall be held within five (5) 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 initial session, each side shall present to the mediator his or her required submissions. If the attorney or party presenting a submission wishes its contents to remain confidential she/he shall so advise the mediator in writing at the same time the submission is delivered to the mediator.

Mediation shall be completed within seven (7) weeks of the first mediation session unless extended by Order of the Court.

### 21.04 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 in the event a party is not a natural person, a representative of a party having full authority to negotiate a settlement on behalf of 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; or
3. In a class action mediation, the Court has the discretion to determine whether the class representative will be required to attend. 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 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.

#### (E) Termination of Mediation

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

### 21.05 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 by the parties into a written full or partial 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) Full or Partial Agreement

If a full or partial agreement is reached, it shall be reduced to writing and signed by each of the parties.

(C) Completion Of Mediation Upon Entry Into Written Settlement Agreement Or Partial Written Settlement Agreement

Upon completion of the mediation, the parties shall file with the Court Form 4 (Memorandum of Agreement/ No Agreement) and Form 6 (Mediator Report).

### **21.06 Discovery While Case is Being Mediated**

The Court shall decide, in its discretion, whether discovery will continue while the case is being mediated.

### **21.07 Confidentiality of Communications to Mediator**

(A) General Rule Of Mediator Confidentiality

All oral and written communications with the mediator at any time shall be deemed confidential and privileged in accordance with the provisions of the Uniform Mediation Act, 710 ILCS 35/1, *et seq.*

(B) Privilege Against Disclosure, Waiver And Preclusion Of Privilege, And Exceptions To The Privilege

The privilege against disclosure, the waiver and preclusion of privilege, and the exceptions to the privilege shall be governed in accordance with the Uniform Mediation Act, 710 ILCS 35/1, *et seq.*

(C) Disputes Regarding Settlement Agreements

In the event of a dispute over a settlement agreement, a party may move the Court to enforce the settlement agreement. Parties to the mediation may waive confidentiality to the extent necessary to testify at such hearings. The mediator may testify only in accordance with the Uniform Mediation Act, 710 ILCS 35/1, *et seq.*

### **21.08 Mediator Qualifications**

(A) Court-Certified Mediators

1. The Presiding Judge of the Chancery 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 considered for certification by the Presiding Judge as a mediator in the Chancery Division of Cook County the applicant must meet 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 Cook County or 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 Chancery 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 (40) hours of training approved by the Presiding Judge of the Chancery Division of Cook County;
- (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 (30) hour mediation program sponsored or approved by the Presiding Judge of the Chancery Division of Cook County and to having observed or participated as an advocate in at least one (1) mediation of more than two (2) hours in length.
- (f) The applicant shall certify that he or she has been approved by the Center for Conflict Resolution.

2. In addition, the applicant must have held an active license to practice law in the State of Illinois for at least seven (7) years and be one of the following:

- (a) A lawyer registered as active and in good standing with the Illinois Attorney Registration and Disciplinary Commission; or
- (b) A retired judge or retired lawyer registered as retired or 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 Chancery Division. The Presiding Judge may, from time to time, revise these Rules by amending Rule 21.08 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 Chancery Division. Failure to adhere to these Rules governing mediation or the general standards provided for above may result in the decertification of the mediator by the Presiding Judge.

### **21.09 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.

### **21.10 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

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

### **21.11 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 (10) days of the final mediation session. Mediators are encouraged to complete an evaluation form and submit it to the Mandatory Arbitration Center within ten (10) 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.

[Adopted December 13, 2006, effective January 1, 2007.]