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PART 26. COURT-ANNEXED CIVIL MEDIATION PROGRAM RULES

RULE 1. PURPOSE OF THE MEDIATION PROCESS

Mediation under these rules involves a voluntary confidential process whereby a neutral mediation, selected by the parties or appointed by the court, assists the litigants in reaching a mutually acceptable agreement. It is an informal and non-adversarial process. The role of the mediator includes, but is not limited to, assisting 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.

RULE 2. ACTIONS ELIGIBLE FOR COURT-ANNEXED MEDIATION

(a) **Referral by Judge or Stipulation.** Except as hereinafter provided, the judge to whom a matter is assigned may order any contested civil matter asserting a claim having a value, irrespective of defenses or set-offs, in an amount in excess of eligibility for Mandatory Arbitration in this circuit, referred to mediation on or after May 1, 2001. In addition, the parties to any such matter 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) **Exclusions From Mediation.** Except as otherwise set forth in subparagraph 2(a) above, matters as may be specified by administrative order of the chief judge of the circuit shall not be referred to mediation except upon petition of all parties.

RULE 3. SCHEDULING OF MEDIATION

(a) **Conference or Hearing Date.** Unless otherwise ordered by the court, the first mediation conference shall be held within eight (8) weeks of the Order of Referral.

At least ten (10) days before the conference, each side shall present to the mediator a brief, written summary of the case containing a list of issues as to each party. If the attorney filing the summary wishes its content to remain confidential, she/he should advise the mediator in writing at the same time the summary is filed. The summary shall include the facts of the occurrence, opinions on liability, all damages and injury information, and any offers or demands regarding settlement. Names of all participants in the mediation shall be disclosed to the mediator in the summary prior to the session.

(b) **Notice of Date, Time and Place.** Within twenty-eight (28) days after the Order of Referral, the mediator shall notify the parties in writing of the date and time of the mediation conference. Unless all parties and the mediator otherwise agree: Rock Island County mediations will be held at the Rock Island County Arbitration Center, 1617 2Nd Avenue, Suite 100, Rock Island IL 61201; and Henry County mediations will be held at the Henry County Courthouse, 307 W. Center Street, Cambridge IL 61238; and Mercer County mediations will be held at the Mercer County Courthouse, 100 S.E. Third Street, Aledo, IL 61231; and Whiteside County mediations will be held at the Whiteside County Courthouse, 200 E. Knox Street, Morrison IL 61270.

(c) **Motion to Dispense with Mediation.** 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;
- (2) the issue presents a question of law only;
- (3) the order violates subparagraph 2(b) of this General Order; or
- (4) other good cause is shown.

(d) **Motion to Defer Mediation.** Within fourteen (14) days of the Order of Referral, any party may file a motion with the court to defer the mediation. The movant shall set the motion to defer the mediation proceeding prior to the scheduled date for mediation. Notice of the hearing shall be provided to all interested parties, including any mediator who has been appointed. The motion shall set forth, in detail, the facts and circumstances supporting the motion. Mediation shall be tolled until disposition of the motion.

RULE 4. MEDIATION RULES AND PROCEDURES

(a) Appointment of the Mediator.

1. Within fourteen (14) days of the Order of Referral the parties may agree upon a stipulation with the court designating:

- a. A certified mediator; or
- b. A mediator who does not meet the certification requirements of these rules but who, in the opinion of the parties and upon review by and approval of the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

2. If the parties cannot agree upon a mediator within fourteen (14) days of the Order of Referral, the plaintiffs' attorney (or another attorney agreed upon by all attorneys) shall so notify the court within the next seven (7) days, and the court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending.

(b) Compensation of the Mediator.

1. When the mediator is selected by the parties, the mediator's compensation shall be paid by the parties as agreed upon between the parties and the mediator, or as ordered by the court.

2. When the parties cannot agree on a mediator, the court shall appoint a mediator from the list of mediators as provided in S(a) of these rules. The compensation for a mediator so appointed shall be shared proportionately by all parties participating in the mediation conference. The fee for a mediator so appointed shall be in the discretion of the court, but at the rate of not less than \$150.00 per hour. Once a mediator has been appointed, the mediator shall be entitled to a minimum of one hour's compensation.

3. If any party has been granted leave to sue or defend as a poor person pursuant to Supreme Court Rule 298, the parties shall agree or the court shall appoint a mediator who shall serve pro bona without compensation from the indigent party in the action. A mediator shall not be required to serve pro bona more than once in a twelve (12) month period.

4. The fee of an appointed mediator shall be subject to appropriate order or judgment for enforcement.

(c) Disqualification of a Mediator. Any party may move to enter an order disqualifying a mediator for good cause. If the court rules that a mediator is disqualified from hearing a case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(d) Interim or Emergency Relief. A party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such a motion is pending absent a contrary order of the court or a decision of the mediation to adjourn pending disposition of the motion.

(e) Attendance at a Mediation Conference.

1. All parties, attorneys, representatives with settlement authority and other individuals necessary to facilitate settlement of the dispute shall be present at each mediation conference unless excused by court order.

A party is deemed to appear at a mediation conference if the following persons are physically present:

(i) The party or its representative having full authority to settle without further consultation, and in all instances, the plaintiff must appear at the mediation conference; and

(ii) The party's counsel of record, if any; and

(iii) 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.

2. Upon motion, the court may impose sanctions against any party, or attorney, who fails to comply with this rule, including, but not limited to, mediation costs and reasonable attorney fees relating to the mediation process.

(f) Adjournments. The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference.

(g) **Counsel.** The mediator shall at all times be in control of the mediation and the procedures to be followed in mediation. Counsel shall be permitted to communicate privately with their clients.

(h) **Communication with Parties.** The mediator may meet and consult privately with either party and his/her representative during the mediation process.

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

(j) **Report of Mediator.** The mediator shall report to the court in writing whether or not an agreement was reached by the parties, within fourteen (14) days after the last day of the mediation conference. The report shall designate, "full agreement," "partial agreement" or "no agreement." This report shall be signed by the mediator and shall be filed with the Circuit Court Clerk within fourteen (14) days after the last day of mediation conference.

(k) Imposition of Sanctions.

1. If a party fails to appear at a duly noticed mediation conference without good cause, the court shall impose sanctions, including but not limited to, an award of mediator and/or attorneys' fees and other costs against the missing party.

2. In the event of any breach or failure to perform under the agreement, the court upon motion may impose sanctions, including costs, attorney fees, or other appropriate remedies including entry of judgment on the agreement.

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

(m) **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 parties, the mediator may not disclose any information obtained during the mediation process.

(n) Forms.

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

1. Order of Referral to Court-Annexed Mediation
2. Confidentiality Agreement and Non-representative Acknowledgment
3. Mediation Held/No Agreement Resulted
4. Memorandum of Agreement

RULE 5. MEDIATOR QUALIFICATIONS

(a) Circuit Court Mediators.

The Chief Judge shall maintain a list of mediators who have been certified by the court and who have registered for appointment.

For certification a mediator of circuit court civil matters in an amount in excess of eligibility for Mandatory Arbitration in this circuit must:

1. Complete a mediation training program approved by the Chief Judge of the 14th Judicial Circuit; and
2. Be a member in good standing of the Illinois Bar with at least eight (8) years of practice or be a retired judge; and
3. Be of good moral character; and
4. Submit an application that is approved by the Chief Judge or his designee.

(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 Chief Judge of the 14th Judicial Circuit.

(c) Decertification of Mediators.

The eligibility of each mediator to retain the status of a certified mediator shall be periodically reviewed by the Chief Judge, and in any event no longer than three (3) years after the date of appointment. Failure to adhere to this general order governing mediation or the general standards provided for above may result in the decertification of the mediator, by the Chief Judge or his designee.

RULE 6. COURT-ORDERED MEDIATION IN CIVIL CASES

The Chief Judge or his designee of the 14th Judicial Circuit may appoint a judge or judges of the 14th Judicial Circuit to act as Supervising Judge for the Court-Ordered Mediation in Civil cases in each of the four counties, who shall serve at the direction of the Chief Judge.

RULE 7. DUTIES OF SUPERVISING JUDGE FOR MEDIATION

The duties of the Supervising Judge for Mediation shall include the following:

- a. Approve or appoint Mediator.
- b. Hear motions to interpret all Mediation rules.
- c. Hear motions to advance, postpone or defer hearings.
- d. Hear motions to disqualify a Mediator.
- e. Hear all post-mediation Motions, including motions for entry of judgment, or other dispositive motions, prior to reassignment.
- f. Transfer unresolved, post-mediation cases to originally assigned trial court.

RULE 8. MEDIATOR IMMUNITY

Mediators appointed by court order issued pursuant to local rules of the Fourteenth Judicial Circuit are recognized as non-judicial officials of the Court during the term of their appointment and shall be deemed to require the use of discretion in making their own judgments as to what is necessary and proper in guiding the mediation process.

Mediators appointed by court order issued pursuant to local rules of the Fourteenth Judicial Circuit are deemed to be assigned a function that is integrally associated with the judicial process of civil litigation

and is necessary for resolving disputes between parties within the meaning of Antoine v. Byers and Anderson, Inc., 508 U.S. 429; 113 Sc.D. 2167, 2171; 124 L.Ed.2d 391 (1993), as it recognizes the doctrine of quasi-judicial immunity. Ryan v. DuPage County Jury Commission, 837 F.Supp. 898 (1993), Eastern Division of the Northern District of Illinois.

RULE 9. FINALIZATION OF AGREEMENT

(a) **No Agreement.** If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

(b) **Agreement.** If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. The agreement shall be filed when required by law or with the parties' consent. A report of the agreement shall be submitted to the court or a stipulation of dismissal shall be filed. By stipulation of the parties, the agreement may be electronically or stenographically recorded. In such event, the transcript may be filed with the court. The mediator shall report the existence of the signed or transcribed agreement to the court without comment within ten (10) days thereof. No agreement under this rule shall be reported to the court except as provided herein.

RULE 10. REPORTS TO THE ILLINOIS SUPREME COURT

The Administrative Assistant for the Fourteenth Circuit Court-Annexed Civil Mediation Program shall report to the Illinois Supreme Court on a yearly basis the following information:

The number of:

Partial agreements after mediation

Full agreements after mediation

No agreements after mediation

Agreements after failed mediation but before trial

RULE 11. TERMINATION AND REPORT OF MEDIATION CONFERENCE

A. At any time after the mediation conference has begun, the mediator may continue or terminate the conference when:

- (i) in the mediator's opinion, no purpose would be served by continuing the conference, or
- (ii) an individual necessary to facilitate settlement of the dispute is not present.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 14TH JUDICIAL CIRCUIT
_____ COUNTY

IN RE THE MARRIAGE OF:

Petitioner,

and

Respondent.

)
)
)
)
)
)
)

CASE NO. _____

ORDER APPOINTING MEDIATOR

The court being advised in the premises and having jurisdiction of the subject matter,

IT IS THEREFORE ORDERED that:

1. The parties are to participate in mediation.
2. By agreement of the parties,
_____ is appointed as the mediator.
As the parties can not agree on a mediator,
_____ is appointed as the mediator, and such mediator is to
be advanced a retainer of \$500 prior to the commencement of mediation.
3. Each party is to individually call the mediator within ten business days of this
date to schedule a mediation session.
4. The Petitioner is responsible for _____ % of the mediation costs and the
Respondent/Defendant is responsible for the remaining portion.
5. Legal counsel for the parties may must attend the mediation
session(s).
6. The parties shall provide a copy of the order to the mediator.
7. **The parties shall provide a copy of the order to the Court Administrator.**
8. _____.

DATED this _____ day of _____, year _____

ENTER:

JUDGE

Petitioner: _____

Name

City

Petitioner's Attorney

Attorney or pro se Phone

Respondent: _____

Name

City

Respondent's Attorney

Attorney or pro se Phone

FORM 9A(m)3(A)

SCREENING PROTOCOLS FOR MEDIATORS

Pursuant to Rule 3 of the 14th Judicial Circuit Family Mediation Program, the following safety protocols are adopted in an attempt to protect against the occurrence of violence in the course of mediation and to enable each party in mediation to negotiate without feelings of undue influence or coercion. Mediators are encouraged to abide by the following protocols:

A. When first contacted to serve as a mediator, the mediator or the mediator's designee should ask the party calling:

1. If any party or any of the children had any medical treatment or hospitalization for psychiatric disorders?
2. If there are any concerns regarding the use of alcohol and/or drugs by any party?
3. If there has ever been any physical confrontations between the parties?
4. If any of the parties have any other concerns about their own emotional or physical safety?
5. If any party is afraid to meet with the other party and the mediator.

B. When a mediation appointment is made with one of the parties, regardless of whether any concerns about exclusion were raised, the mediator should call the other party to confirm the appointment. The questions in Section A above should be asked of the second party.

C. Whenever an active Order of Protection is in force, the mediator may schedule the initial meeting with the parties at separate times and determine from these meetings whether it will be advisable to meet jointly with the parties.

D. Where there has been a history of domestic violence, and the parties meet jointly, the mediator should set firm ground rules for negotiation — e.g., no name calling, no shouting, etc.

CONFIDENTIALITY AGREEMENT

IT IS HEREBY AGREED by and between the mediation participants,
_____ and _____, their representatives,
_____ and _____, and the mediator, _____ that all
matters discussed during any and all mediation sessions shall be confidential and shall not
be disclosed by the participants or the mediator in any court proceeding or any court of law,
except as follows:

- A. if the parties consent in writing to the disclosure; or
- B. the communication reveals either an act of violence committed against another
during mediation, or an intent to commit an act that may result in bodily harm
to another; or
- C. the communication reveals evidence of abuse or neglect of a child; or
- D. non-identifying information is made available for research or evaluation
purposes approved by the court; or
- E. the communication is probative evidence in a pending action alleging
negligence or willful misconduct of the mediator.

DATED: _____

SO AGREED:

FORM 9A(m)7(B)

and Petitioner,

)

) No. _____

)

Respondent.

)

FORM 9A(m)8(G)(i)

**14TH JUDICIAL CIRCUIT FAMILY MEDIATION PROGRAM
STATISTICAL TERMINATION RECORD**

Please complete this form following the termination of each mediation case that you conduct. This information will be used to help evaluate the program.

- 1] Rock Island County Case Henry County Case
Whiteside County Case Mercer County Case
- 2] Referral source: Attorney Court Order Self-Referred Other _____
- 3] Was mediation required by a joint parenting agreement? Yes No
- 4] Parties involved in mediation: Mother Father Grandparents
Other Relatives Other Adults _____
- 5] Did children participate in mediation sessions? Yes No
How many _____ When (*i.e. first session, last session*) _____
- 6] Length of time couple was separated or divorced prior to the beginning of mediation _____
- 7] When did mediation begin: prior to final hearing
after final initial court settlement: post decree
- 8] Original issues presented for mediation: Custody Visitation Removal Other a]
What other issues were resolved? _____
b] What other issues surfaced during mediation which were not resolved?

- 9] Did mediation result in an agreement by both parties?
No Yes Written or Verbal Signed or Unsigned
- 10] If no agreement was reached, was mediation terminated by:
Mediator Couple Mother Father All agreed to terminate
No Show _____
- 11] Total number of sessions in mediation _____
- 12] Total number of hours in mediation _____
- 13] Time span required in mediation process:
Date of initial mediation session _____ Date of termination session _____
- 14] Total cost of mediation: _____
- 15] Which parties negotiated in good faith? Both One None