

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 mediator, 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 contents 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 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; and Henry County mediations will be held at the Henry County Courthouse, Cambridge, Illinois 61238, Mercer County mediations will be held at the Mercer County Courthouse, Aledo, Illinois 61231, and Whiteside County mediations will be held at the Whiteside County Courthouse, 200 E. Knox Street, Morrison, Illinois 61270.

C. Motion to Dispense With Mediation.

A party may move, within 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;
4. Other good cause is shown.

D. Motion to Defer Mediation.

Within 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 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 14 days of the Order of Referral, the plaintiff's attorney (or another attorney agreed upon by all attorneys) shall so notify the court within the next 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 5 (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 bono without compensation from the indigent party in the action. A mediator shall not be required to serve pro bono more than once in a twelve 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 mediator 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. No further notification is required for parties present at 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 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.

- a. 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.
- b. 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 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 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 S.Ct. 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 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 agreement after mediation	_____
Full agreement after mediation	_____
No agreement after mediation	_____
Agreement 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.

**FORM 4(n)(1) ORDER OF REFERRAL
TO COURT ANNEXED MEDIATION**

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

Plaintiff(s),)))	No.
vs.)))	TYPE OF CASE: _____
Defendant(s).)))	(Personal Injury – Auto, Contract – Real Estate, etc.)

ORDER OF REFERRAL TO COURT ANNEXED MEDIATION

THIS CAUSE came before the Court pursuant to the Civil Division Mediation Program Rules (Part 26) of the 14th Judicial Circuit for referral to mediation;

THE COURT HEREBY ORDERS:

1. All parties are required to participate in mediation.

a. The appearance of counsel who will try the case and each party or representative of each party with full authority to enter into a full and complete compromise and settlement is mandatory. If insurance is involved, an adjuster with authority to negotiate and recommend settlements shall attend. All parties are urged to bring interested individuals who might assist in facilitating settlement to the negotiation session (For example, lienholders, governmental officials and others whose approval is necessary or those whose interest may need to be negotiated and compromised).

b. The Court may impose sanctions against parties who do not attend the conference or violate the terms of this Order.

c. At least ten (10) days before the conference, each side shall present to 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 contents 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 of 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.

d. All discussions, representations and statements made at the mediation conference shall be privileged consistent with the Confidentiality Agreement to be signed on behalf of each party prior to the commencement of the first mediation conference. The Confidentiality Agreement shall be made a part of the court record in the case.

e. The mediator shall be compensated by the parties as they agree or at the rate of not less than \$150.00 per hour if the mediator is appointed by the Court. The mediator's fee shall be shared equally unless otherwise agreed by the parties. The hourly rate shall include preparation time and hearing time. The mediator shall serve pro bono if a party qualifies under local rules to sue or defend as a poor person.

f. The mediator has no power to compel or enforce settlement agreements and does not give legal advice. If a settlement is reached in this case, the attorneys shall reduce the agreement to writing immediately after the mediation

2. The plaintiff's attorney (or another attorney agreed upon by all attorneys) shall be responsible for obtaining a mediator agreed upon by the attorneys and contact the mediator within 14 days of this Order of Referral. A date and time and place for mediation convenient to all shall be obtained from the mediator. The places designated in Rule 3(B) are hereby deemed a convenient place to all participants.

3. If the parties cannot agree on a mediator within 14 days of this Order of Referral, the responsible attorney shall notify the Court within seven days of the expiration of the 14-day period, and the Court shall appoint a certified mediator selected by rotation.

4. The mediation shall be completed within seven weeks of the first mediation conference unless extended by order of the Court.

5. This cause is set for Status on the ___ day of _____, 20___, at ___ m.

6. The plaintiff shall provide a copy of this order to the ADR Center, 1617 2nd Avenue, Suite 100, Rock Island, Illinois, 61201, phone 309-794-3605, fax 309-794-3607, within 7 days.

ENTERED: _____
Judge

MEDIATION SCHEDULE

1. Date of Referral Order: _____

2. Mediator must be selected by: _____
(14 days from Order)

3. Mediator shall notify counsel for the parties within 28 days of this Order, in writing, of date and time of first mediation conference (must be held within 8 weeks of this Order).

4. Mediation process must be completed within seven (7) weeks of initial mediation conference unless extended by court.

ENTERED: _____
Judge

**FORM 4(n)(2) CONFIDENTIALITY AGREEMENT AND
NONREPRESENTATION ACKNOWLEDGMENT**

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

vs.)
Plaintiff(s),)
)
) No.)
)
)
Defendant(s).)

**CONFIDENTIALITY AGREEMENT AND
NONREPRESENTATION ACKNOWLEDGEMENT**

IT IS HEREBY AGREED by the mediation participants, _____

(Insert all persons, attorneys and other present)

and _____, Mediator, that all matters discussed during the mediation sessions shall be confidential and shall not be disclosed by the participants or the mediator in any court of law. It is further acknowledged by the parties to this lawsuit that the mediator, _____, and his law firm, _____, are not representing any party to this lawsuit and are not providing any legal advice to any party. Parties agree that the mediator shall not be called as a witness in any proceeding concerning this mediation.

DATED: _____

Mediator

FORM 4(n)(3) MEDIATION HELD/NO AGREEMENT RESULTED

MEDIATION HELD/NO AGREEMENT RESULTED

Date [INSERT DATE]

Case No. [INSERT CASE NO.]

IN THE MATTER OF MEDIATION BETWEEN:

[INSERT CAPTION]

[INSERT NAMES AND STATUS OF ALL PERSONS IN ATTENDANCE],
[INSERT MEDIATOR'S NAME], Mediator, appeared for mediation at [INSERT
PLACE OF MEDIATION] on [INSERT DATE] for their scheduled mediation.

We appreciate their appearance and their good faith effort to attempt mediation of
the dispute that exists between them.

Unfortunately, they were unable to resolve their dispute through our services.

[INSERT MEDIATOR'S NAME],
MEDIATOR

FORM 4(n)(4) MEMORANDUM OF AGREEMENT

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

)	
)	
Plaintiff(s),)	
vs.)	No.
)	
)	
Defendant(s).)	

MEMORANDUM OF AGREEMENT (OR PARTIAL AGREEMENT)

We, the undersigned, having participated in a mediation conference on _____,
and being satisfied that the provisions of the resolution of our dispute are fair and reasonable, hereby
agree to abide by and fulfill the following:

It is further understood that no agreement was made on the following issues:

Dated: _____

Mediator
