

Circuit Court of Lake County 19th Judicial Circuit Civil Case Mediation Program



Revised by
Delta J. Hawkins
ADR Program Administrator

as of 1/15

The materials contained herein are accurate as of the publication date of January 2015, but are subject to legislative or administrative amendments after this date.

Additional copies of this pamphlet are available at the Lake County Arbitration Center and www.19thcircuitcourt.state.il.us.

INTRODUCTION

Mediation is one form of alternative dispute resolution (ADR) that allows litigants to select a neutral third party (the mediator) to help facilitate a settlement. Many courts across the country employ mediation in one form or another. Private organizations also offer mediation services. In 1996, in a joint effort with the Lake County Bar Association, the 19th Judicial Circuit Court developed a local mediation program for civil cases. The mediator's role is to meet and work with all parties in the litigation to aid in the resolution of the issues in the lawsuit. Using a mediator enables the parties to resolve their case without having to go through the time and expense of traditional litigation and allows the parties some control over the process.

The purpose of this booklet is to inform and educate the public in the utilization of the mediation program. The information is divided into two sections: (1) explanations of the mediation program; and (2) Local Rule 20.00, detailing the rules associated with the mediation program (pages 4 - 10).

Further questions and requests for a list of current mediators should be directed to Delta J. Hawkins, ADR Administrator, at 847.377.3700.

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WHAT IS MEDIATION?

Mediation is a confidential process whereby litigants work toward a mutually acceptable solution with the help of an impartial third party (the mediator). Mediation differs from a trial in that mediation is an informal discussion of the case issues held in a private environment. The mediator helps the parties understand the issues, facilitates creative problem solving techniques, and assists the parties in settlement negotiations.

REFERRAL TO MEDIATION

In order to use the mediation program, a case must be filed in the Circuit Court of Lake County. Pursuant to local rule 20.01, any contested civil matter can be referred to mediation by the judge to whom the matter is assigned. Additionally, 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 to Court Annexed Mediation.

The mediation process allows parties to discuss aspects of their case on an informal basis, which may otherwise not be admissible to a judge or a jury. Mediation may be conducted in multiple sessions, but must be completed within seven (7) weeks of the first mediation conference unless time is extended by the Court [local rule 20.03(j)]. Multiple sessions afford parties the opportunity to think about issues discussed during the first mediation session and can facilitate negotiations at a second meeting. In contrast, a trial is an ongoing process often lasting several consecutive days. There is little room for reflection and deliberation by the parties.

WHO ARE THE MEDIATORS?

Mediators include retired judges and attorneys with trial experience in a variety of areas who have registered with the Court for an appointment. After being approved by the court, mediators are required to complete a rigorous training program approved by the Court (see local rule 20.04 for qualifications of mediators).

SELECTION OF A MEDIATOR

Once a case has been referred to the mediation program, the parties have 14 days to select a mediator from the list of certified media-

tors or, alternatively, to request that the Court grant permission for a qualified mediator who does not meet the certification requirements [see local rule 20.03(a)]. If the parties cannot agree on a mediator within fourteen (14) days, the Plaintiff's attorney (or other agreed upon attorney) shall notify the Court within the next seven (7) days. The Court will appoint a certified mediator from the approved list. Once the mediator is determined, the parties must notify him or her. It is the responsibility of the individual mediator to schedule the mediation conference.

COMPENSATION OF THE MEDIATOR

Each mediator is required to mediate two (2) cases per calendar year without compensation. 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. Once a mediator is appointed, there is a minimum of one hour's compensation.

SCHEDULING THE MEDIATION CONFERENCE

Once the mediator has agreed to act as a mediator in a particular case, it is the mediator's responsibility to schedule a date, time, and location for the mediation session. Per rule, the first mediation conference shall be held within eight weeks of the Order of Referral, unless otherwise ordered by the Court [local rule 20.02(a)].

Mediation conferences can be held at the mediator's office, at a party's office, or any location agreed upon by the parties and the mediator. Alternatively, mediation will be conducted at the Lake County Arbitration Center [local rule 20.02(b)]. There is flexibility in scheduling the date, time, and location of the mediation conference within the time parameters prescribed by the local rules for initiation and completion of the mediation. Scheduling a mediation conference at the Arbitration Center requires an Order of Referral to Court Annexed Mediation and is contingent on room availability.

THE MEDIATION CONFERENCE

The mediation conference shall be attended by all parties, attorneys, representatives with settlement authority, and other individuals necessary to facilitate settlement of the dispute unless excused by court order [local rule 20.03(f)].

At the commencement of the mediation conference, the mediator and all those present for the mediation conference shall sign a Confidentiality Agreement. All oral or written communication, other than executed settlement agreements, are confidential, exempt from discovery, and inadmissible as evidence in the underlying cause of action unless all parties agree otherwise [local rule 20.03(n)]. Neither the mediator nor a party to the mediation is allowed to discuss what occurred at the mediation. The Confidentiality Agreement also protects the mediator from being called to testify at a later date.

The mediation can have one of three end results: (1) agreement reached; (2) partial agreement reached; and (3) no agreement reached. If an agreement is reached, a Memorandum of Agreement is completed and signed by the mediator. If the parties, after attempting to resolve their case, cannot reach a full agreement at the mediation session, the mediator will complete the appropriate Mediation Held/Partial Agreement Reached or Mediation Held/No Agreement Reached form. On a previously set status date, the parties will advise the Court as to whether a dismissal order will be entered (pursuant to the Memorandum of Agreement) or if the case will proceed to trial.

CONCLUSION

The civil case mediation program developed in the Circuit Court of Lake County helps reduce the time, anxiety, and expense associated with traditional litigation. With local attorneys and retired judges acting as mediators, parties are able to review and discuss their cases with people who understand the judges, juries, and communities of Lake County. Mediators are enthusiastic about the program, as are the judges, attorneys, and litigants who have already utilized this form of alternative dispute resolution.

PART 20.00 CIVIL DIVISION MEDIATION PROGRAM

- 20.00 Applicability
 - 20.01 Actions Eligible for Court-Annexed Mediation
 - 20.02 Scheduling of Mediation
 - 20.03 Mediation Rules and Procedures
 - 20.04 Mediator Qualifications
 - 20.05 Court-Ordered Mediation in Civil Cases
 - 20.06 Duties of Supervising Judge for Mediation
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20.00 APPLICABILITY

This part 20.00 is intended to govern mediation in civil matters, except where a more specific rule applies. Unless otherwise addressed in these rules, the provisions of the Uniform Mediation Act (710 ILCS 35/1 et seq.) shall apply. Nothing in this rule shall limit the Court's authority to enter any order it deems appropriate on its own motion or any party's motion.

A. Purpose of the Mediation Process. Mediation under these rules involves a 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.

20.01 ACTIONS ELIGIBLE FOR COURT-ANNEXED MEDIATION

Referral by judge or stipulation. Except as hereinafter provided, the judge to whom a matter is assigned may order any contested civil matter referred to mediation. 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.

20.02 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 seven (7) 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 con-

tents to remain confidential, she/he should advise the mediator in writing at the same time this 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 of being advised of the entry of an 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: Mediations will be held at the Lake County Arbitration Center, 415 Washington Street, Suite 106, Waukegan, Illinois 60085.

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 pursuant to Local Rule of the Circuit Court of Lake County;
2. The issue presents a question of law only;
3. 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.

20.03 MEDIATION RULES AND PROCEDURES

A. Mediator. The mediator shall at all times be in control of the mediation and the procedures to be followed in mediation.

B. 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 fourteen (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 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.

C. Compensation of the Mediator

1. Each mediator shall agree to mediate two cases per calendar year without compensation.
2. 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.
3. When the parties cannot agree on a mediator, the Court shall appoint a mediator from the list of mediators as provided in 20.04(A) of these rules. The compensation for a mediator so appointed shall be shared proportionately by all parties participating in the mediation conference. Once a mediator has been appointed, the mediator shall be entitled to a minimum of one hour's compensation.
4. If any party has been granted leave to sue or defend as a poor person pursuant to Supreme Court Rule 298, the Court shall appoint a mediator who shall serve pro bono as to that party. Any such appointment shall be credited toward the obligation under 20.03 B.1.
5. The fee of an appointed mediator shall be subject to appropriate order or judgment for enforcement. Fees are the joint responsibility of each party and his/her counsel.

D. Disqualification of a Mediator. Any party may move to enter an order disqualifying a mediator for good cause. If the Court rules that 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.

E. 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.

F. 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:

- a. 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
 - b. The party's counsel of record, if any; and
 - c. 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.

G. 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.

H. Counsel. Counsel shall be permitted to communicate privately with their clients.

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

J. Termination of Mediation.

1. 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.
2. Mediation shall terminate prior to the end of seven (7) weeks in the following circumstances
 - a. All issues referred for mediation have been resolved.
 - b. The parties have reached an impasse, as determined by the mediator.
 - c. The mediator concludes that the willingness or ability of any party to participate meaningfully is so lacking that an agreement on voluntary terms is unlikely to be reached by prolonging the negotiations.

K. Report of Mediator. Within fourteen (14) days after the termination of mediation for any reason, the mediator shall file with the court a report in a form prescribed by the Chief Judge as to whether or not an agreement was reached by the parties. The report shall be signed by the mediator and shall designate, "full agreement," "partial agreement" or "no agreement." A copy of the report must be sent to the parties and to the Arbitration Center.

L. Imposition of Sanctions. 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.

M. 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.

N. 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.

O. Immunity. Mediators shall be entitled to such immunity as shall be provided by law.

P. Mechanism for Reporting. The Clerk of the Court shall keep and maintain compiled statistics and records on all cases referred to mediation and shall file reports with the Administrative Office of the Illinois Courts, as directed by the Chief Judge.

20.04 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 Chancery or seeking an amount in excess of eligibility for Small Claims in this circuit must:

1. Complete a mediation training program approved by the Chief Judge of the Circuit Court of Lake County; and
2. Be a member in good standing of the Illinois Bar with at least eight years of practice or 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 Circuit Court of Lake County.

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 date of appointment. Failure to adhere to this Local Rule governing mediation or the general standards provided for above may result in the decertification of the mediator, by the Chief Judge or his designee.

D. Mediation in Other Case Types. The qualifications of mediators in other civil matters shall be as provided by local circuit rule or by administrative order.

20.05 COURT-ORDERED MEDIATION IN CIVIL CASES

The Chief Judge or his designee of the Circuit Court of Lake County may appoint a judge or judges of the Circuit Court of Lake County to act as Supervising Judge for Mediation of Civil Cases, who shall serve at the pleasure of the Chief Judge. In the absence of the appointment of a Supervising Judge for Mediation of Civil Cases, the Presiding Judge of the Civil Division shall be assigned the responsibility.

20.06 DUTIES OF SUPERVISING JUDGE FOR MEDIATION

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

A. Approve or appoint Mediator.

B. Hear motions to interpret all Mediation rules.

C. Hear motions to disqualify a Mediator.