

ARTICLE 12 MEDIATION

12.01 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 refer to mediation any contested civil matter asserting a claim having a value, irrespective of defenses or setoff, in an amount in excess of the amount set out for applicability of Supreme Court Rule 222. 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) Exclusion from Mediation. Except as otherwise set forth in 12.01(a) above, matters as may be specified by Administrative/General Order of the Chief Judge of the Circuit shall not be referred to mediation except upon petition of all parties.

Amend. by Gen. Order 1, eff. Aug. 12, 1980; Gen. Order 02-05, eff. March 5, 2002; Gen. Order 02-10, eff. April 30, 2002 ; Gen. Order 08-04, eff. May 5th, 2008

12.02 SCHEDULING OF MEDIATION

(a) Conference Hearing Date.

(1) Unless otherwise ordered by the Court, the first mediation conference shall be held within 4 weeks of the Order of Referral.

(2) At least 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, he/she 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 damage and inquiry 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.

(1) 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.

(2) Kane County mediations will be held at the Arbitration Center, Kane County Courthouse, Second Floor, 100 South Third Street, Geneva, Illinois 60134.

(3) DeKalb County mediations will be held at the DeKalb County Courthouse, 133 West State Street, Sycamore, Illinois 60178.

(4) Kendall County mediations will be held at the Kendall County Courthouse, Ridge and Main Streets, Yorkville, Illinois 60560.

(c) Motion to Dispense with Mediation

(1) A party may move, within 14 days after the Order of Referral, to dispense with mediation if:

- (a) The issue to be considered has been previously mediated between the same parties pursuant to Order of the 16th Judicial Circuit;
- (b) The issue presents a question of law only;
- (c) The Order violates Section 12.01(b) of this Administrative/General Order; or
- (d) Other good cause is shown.

(d) Motion to Defer Mediation

(1) Within 14 days of the Order of Referral, any party may file a motion with the court to defer the proceedings. The movant shall set the motion to defer for hearing 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

Amend. by Gen. Order 02-05, eff. March 5, 2002; Gen. Order 02-10, eff. April 30, 2002 ; Gen. Order 08-04, eff. May 5th, 2008

12.03 MEDIATION RULES AND PROCEDURES

(a) Appointment of the Mediator

(1) Within 14 days of the Order of Referral the parties may agree upon 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 7 days of the expiration of the period to agree on a mediator, and the Court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by Administrative/General Order of the Chief Judge in the Circuit in which the action is pending.

(b) Compensation of the Mediator

(1) Each mediator shall agree to mediate 3 cases without compensation. Thereafter, the mediator shall be compensated by the parties at the rate of \$125.00

per hour unless otherwise agreed in writing. Each party shall pay a proportionate share of the total charges of the mediator.

(c) Disqualification of a Mediator

(1) 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

(1) 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) Sanctions for Failure to Appear

(1) If a party fails to appear at a duly noticed mediation conference without good cause, the Court upon motion shall impose sanctions, including an award of mediator and attorneys fees and other costs, against the party failing to appear. If a party to mediation is a public entity, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision making body of the entity. Otherwise, unless stipulated by the parties or by order of the Court, 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
- (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.

(f) Adjournments

(1) The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference notwithstanding 12.01 of this Section. No further notification is required for parties present at the adjourned conference.

(g) Termination of Mediation Conference

(1) At any time after the mediation conference has begun, the mediator may continue or terminate the conference when:

(a) In the mediator's opinion, no purpose would be served by continuing the conference, or

(b) An individual necessary to facilitate settlement of the dispute is not present.

(h) Counsel

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

(i) Communication with Parties

(1) The mediator may meet and consult privately with either party and his/her representative during the mediation session.

(j) Completion of Mediation

(1) Mediation shall be completed within 7 weeks of the first mediation conference unless extended by order of the Court or by stipulation of the parties.

(k) Report of Mediator

(1) 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 14 days after the last day of the mediation conference.

(l) No Agreement

(1) If no agreement was reached, the mediator shall so report without comment or recommendation. The mediator shall also complete such other forms as may be required by the Circuit Court.

(m) Agreement

(1) If an agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any, at the conclusion of the mediation. The

mediation shall be deemed terminated and the attorneys shall report the agreement to the Court.

(n) Imposition of Sanctions

(1) 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.

(o) Discovery

(1) Discovery may continue throughout mediation.

(p) Confidentiality of Communications

(1) 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.

(q) Forms

(1) The following forms shall be used in conjunction with Court annexed mediation:

- (a) Order of Referral to Court Annexed Mediation
- (b) Confidentiality Agreement/Non-representation Acknowledgment
- (c) Mediation Held/No Agreement Resulted
- (d) Memorandum of Agreement
- (e) Memorandum of Understanding/Agreement
- (f) Order Appointing Mediator
- (g) Mediator's Report/Order

Amend. by Gen. Order 02-05, eff. March 5, 2002; Gen. Order 02-10, eff. April 30, 2002 ; Gen. Order 08-04, eff. May 5th, 2008

12.04 MEDIATOR QUALIFICATIONS

(a) Circuit Court Mediators

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

(2) For certification, a mediator of Circuit Court civil matters in excess of \$30,000 must:

- (a) Complete a mediation training program approved by the Chief Judge of the 16th Judicial Circuit; and
- (b) Be a member in good standing of the Illinois Bar with at least 7 years of practice or be a retired Judge; and
- (c) Be of good moral character.

(b) Mediator General Standards

(1) 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 16th Judicial Circuit.

(c) Decertification of Mediators

(1) The eligibility of each mediator to retain the status of a certified mediator may be periodically reviewed by the Chief Judge. Failure to adhere to this Administrative/General Order governing mediation or the General Standards provided for above may result in the decertification of the mediator.

Amend. by Gen Order 99-7, eff. Aug. 30, 1999; Gen. Order 00-3, eff. Feb. 2, 2000; Gen. Order 02-05, eff. March 5, 2002; Gen. Order 02-10, eff. April 30, 2002 ; Gen. Order 08-04, eff. May 5th, 2008

12.05 REPORT TO SUPREME COURT

(a) The Chief Judge of the 16th Judicial Circuit shall report annually to the Supreme Court of Illinois on this mediation program, including a count of the number of cases assigned to the program and the results achieved.

Amend. by Gen. Order 02-05, eff. March 5, 2002; Gen. Order 02-10, eff. April 30, 2002 ; Gen. Order 08-04, eff. May 5th, 2008