

Will County Local Rule 8.17
Mediation Program – Family Division Cases

Mediation under these rules involves a court ordered confidential process whereby a qualified and neutral mediator, selected by the parties or appointed by the Court, assists the litigants in reaching mutually acceptable agreements. 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 agreements. Parties and their representative are required to mediate in good faith.

A. Subject Matter and Commencement of Mediation

1. Matters Subject to Mediation: As authorized by Illinois law, the Court must order mediation of any pre or post-judgment contested issue of parental responsibility, custody, visitation, removal, access to child(ren) or other economic issues pursuant to local rule 17 arising in any action not otherwise determined to be ineligible. Without leave of Court, the parties may not proceed to a judicial hearing on contested issues until the mediation process has been concluded and the mediation report has been submitted to the Court. Mediation may be waived if the parties have participated in mediation pursuant to a joint parenting agreement or have previously attempted mediation on their own accord or pursuant to the terms of their Joint Parenting Agreement or by the Court on good cause shown.

2. Pursuant to Supreme Court Rule 905(b)IV, mediation is mandatory for child custody and visitation issues unless the Court determines an impediment to mediation exists. An impediment to mediation may include, but is not limited to, domestic violence, mental illness, cognitive impairment, drug use, alcohol use, prescription medication use, physical impairment, fraud, duress or undue influence. All cases that are ordered to mediation shall be screened for such impediments. The Court shall make inquiries of counsel and/or the parties concerning the issue of impediments to mediation.

3. The mediator shall also screen for issues of impediments to mediation. A finding that an impediment exists shall be cause for termination of mediation at the mediator's or the Court's discretion.

B. Qualifications of Mediators

1. The 12th Judicial Circuit shall promulgate a list of mediators who have been approved by this Court to act as mediators for the Court Ordered Family Mediation Program. These mediators, approved by the Presiding Judge of the Domestic Relations Division of the 12th Judicial Circuit, must file the required application, supply supporting documentation and meet the following criteria:

(a) Shall satisfactorily complete a Divorce Mediation training program approved by the Court. The Divorce Mediation training program shall be a minimum of 45 hours including 5 hours of impairment recognition training. Impairment recognition training may be waived by the Presiding Judge if the applicant can provide proof of experience in that area.

(b) Hold graduate degree in a field that includes the study of law, psychiatry, psychology, social work, human development, family counseling or other behavioral science substantially related to marriage and family interpersonal relationships, or a related field or other degree program otherwise approved by the Presiding Judge or his/her designee.

(c) If engaged in a licensed discipline, maintain said license in full force and effect.

(d) Shall serve at the discretion of the Presiding Judge.

(e) Shall provide evidence of malpractice insurance in an amount as set by the Presiding Judge. The existence of malpractice insurance does not waive any immunities afforded the mediator as granted by statute, case law or these rules.

(f) Shall agree to mediate at least two (2) reduced fee or pro bono cases per year as identified by the Court.

2. The mediation shall occur in Will County unless the parties agree otherwise.

C. Referral Assignment Procedure

1. Upon the Court's order for the parties to participate in mediation, a mediator shall be selected by agreement of the parties from the list of qualified mediators prepared by the Presiding Judge of the Domestic Relations Division. Absent an agreement, the trial judge shall assign the mediator. A forty-five (45) day status date on the issue of progress of the mediation shall be set.

2. The Court shall designate in its order what percentage of the mediation fee should be paid by each party and/or whether the case should be considered a reduced fee or pro bono case.

3. The attorneys shall encourage the parties to mediate in good faith. The parties shall participate in mediation in good faith.

4. On or before the status date, the mediator shall submit a report to the Court and the parties' legal counsel, which shall include information listed in this rule under the section entitled "Mediation Report".

5. The parties shall contact the mediator within seven (7) days after the referral order is signed for the purpose of setting an appointment.

6. The mediation sessions shall take place without attorneys being present but each party shall have the right to consult with his or her attorney during the process.

D. Conflict of Interest

1. If the mediator has or has had any possible conflict of interest, including but not limited to, a current or previous therapeutic, personal or economic relationship with either party, any child, step-parent, other relative, counsel or anyone else involved in the case, he or she shall decline the appointment or disclose that relationship to the attorneys and may be removed for that reason. If there is a conflict, the parties may select or the Court shall appoint another mediator.

2. A mediator who is a mental health professional shall not provide counseling or therapy to the parties or their children during or after the mediation. An attorney-mediator may not represent either party in any matter during the mediation process or in a dispute between the parties after the mediation process.

E. Reporting Risk of Bodily Harm and Abuse

A mediator shall promptly reveal information to the appropriate law enforcement agency to the extent it appears necessary to prevent a party from committing an act that would result in death or serious harm.

F. Disclosure of Information

1. Except as provided herein, the mediator and the parties shall be barred from testifying as to any statement made at the mediation sessions. Neither mediation records nor work product of the mediator shall be subpoenaed in any proceeding except by leave of the Court.
2. The mediator shall require the parties to execute a confidentiality agreement and complete a screening to determine if an impediment to mediation exists.

G. Attendance and Termination of Mediation

1. The parties shall attend the mediation session(s) which shall be up to an aggregate three (3) hours in length unless extended by agreement of the parties and the mediator. Attendance at mediation shall be limited to the parties to the dispute unless otherwise ordered by Court.
2. The mediator shall immediately advise the Court in writing if he or she suspends or terminates mediation or in the event that either or both parties fail to comply with the terms of this paragraph.
3. The mediation may be terminated or suspended at the option of the mediator or the Court.

H. Mediation Report

1. The mediator shall, on a Court approved form, report to the Court on the progress of mediation within ten (10) days of the termination of the last mediation session including a report outlining what issues the parties reached an agreement on.
2. Only written discovery on issues not being mediated shall be allowed until mediation is terminated, except by order of the Court or agreement of the parties.
3. No investigation or examination pertaining to issues pending in mediation shall be ordered by the Court, except when the Court finds good cause.
4. In the event the party fails to attend mediation without good cause shown, the Court upon motion may impose sanctions, including but not limited to costs and attorney fees.
5. Pursuant to Supreme Court Rule 99, the Court Administrator shall compile statistics regarding the effectiveness of the program and report same to the Administrative Office of the Illinois Courts on a regular basis.

I. Payment of Fees

The mediation fee and the amount of the advance deposit shall be set from time to time by the Presiding Judge of the Domestic Relations Division. Mediation fees shall consist of a maximum of three (3) hours plus one (1) hour for administrative charges which may include but are not limited to time spent in mediation sessions with the parties, telephone conference, correspondence, consultations with attorneys or expert consultants preparation of the mediator's report and any other work performed by the mediator on behalf of the parties. The parties shall be required to pay for individual sessions at the time of each mediation session. In the event payments are not made as agreed by the mediator, the mediation process may not be suspended by the mediator, but failure to pay shall be promptly reported to the Court.