

**22<sup>ND</sup> JUDICIAL CIRCUIT  
McHENRY COUNTY**

**Civil Case Mediation Program**

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*Revised by*  
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*and*  
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Circuit Judge, McHenry County

*as of 11/1/07*

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The materials contained herein are accurate as of the publication date of November 1, 2007, but are subject to legislative or administrative amendments after this date.

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## 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 and McHenry County Bar Associations, the 19th Judicial Circuit Court developed a local mediation program for civil cases that exceed the jurisdictional limits of the mandatory court-annexed arbitration program. When McHenry County became the 22<sup>nd</sup> Judicial Circuit on December 1, 2006, the mediation program for McHenry County was retained in the 22<sup>nd</sup> Judicial Circuit. The mediator's role is to meet and work with all parties in the litigation to resolve 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 20.0, detailing the rules associated with the mediation program (pages 8 - 12).

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## **WHAT IS MEDIATION?**

Mediation is a voluntary 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 McHenry County and the amount in controversy must exceed the limits of the mandatory court-annexed arbitration program (currently set at \$50,000.00). Pursuant to local rule 20.01, a case can be referred to mediation by a judge, or parties can stipulate to mediation of any issue between them at any time.

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 session unless time is extended by court order or by stipulation of the parties. This affords 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 reflect the McHenry County community and include retired judges and attorneys with trial experience in a variety of areas. After being selected by the court, mediators undergo a rigorous training program approved by the Court (see local rule for qualifications of mediators).

## **SELECTION OF A MEDIATOR**

Once a case has been referred to the mediation program, parties have 14 days to select a mediator from the list of certified mediators or a mediator who is approved by the Court [see rule 20.03(a)]. If parties cannot agree on a mediator, the Court will appoint one from the Court's list. Once the mediator is determined parties must notify him or her. It is the responsibility of the individual mediator to schedule the mediation conference.

## **COMPENSATION OF THE MEDIATOR**

The mediator determines an hourly fee to be charged to the parties. Once a mediator has been 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. Local rules indicate that the first mediation conference shall be held within eight weeks of the Order of Referral, unless otherwise ordered by the Court [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 [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

## **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 [20.03(e)].

At the commencement of the mediation conference, the mediator and all those present for the mediation conference sign a Confidentiality Agreement. All discussions during the mediation are confidential. Neither the mediator nor a party to the mediation is allowed to discuss what occurs 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 McHenry County helps reduce the time, anxiety and expense associated with traditional litigation. With local attorneys acting as mediators, parties are able to review and discuss their cases with people who understand the judges, juries and communities of McHenry County. Mediators are enthusiastic about the program, as are the judges, attorneys, and litigants who have already utilized this form of alternative dispute resolution.

Further questions and requests for a list of current mediators should be directed to Delta J. Hawkins, ADR Administrator, at 847/360-5747.

## **TWENTY-SECOND JUDICIAL CIRCUIT**

### **PART 20.00 CIVIL DIVISION MEDIATION PROGRAM RULES**

#### **RULE 20.00 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 20.01 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 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. 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.

#### **RULE 20.02 SCHEDULING OF MEDIATION**

(A) **Conference or Hearing Date.** Unless otherwise ordered by the court, the first mediation conference shall be held with 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.

**(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 pursuant to General Order of the 22<sup>nd</sup> Judicial Circuit;
2. The issue presents a question of law only;
3. The order violates subparagraph 20.01 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 20.03 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 mediator on the Court's list of approved mediators; or
  - b. A mediator who does not meet the certifica-

tion 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 mediator from the Court's list of approved mediators.

**(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.

2. 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 at a rate consistent with the usual and customary fees charged by approved mediators. 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 Court shall appoint a mediator who shall serve *pro bono* without compensation from any party to the action.

5. 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 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:

- (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.

**(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) 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.

**(J) Report of Mediator.** Within fourteen (14) days after the termination of mediation for any reasons, 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”.

**(K) 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.

**(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. **20.03(n)1.** Order of Referral to Court-Annexed Mediation.
2. **20.03(n)2.** Confidentiality Agreement and Non-Representation Acknowledgement.
3. **20.03(n)3.** Mediation Held/No Agreement Resulted.

(O) **Immunity.** Mediators shall be entitled to such immunity as provided by Illinois Supreme Court Rule 99.

(p) **Mechanism for Reporting.** The Arbitration Administrator 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.

### **RULE 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 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 22<sup>nd</sup> 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.
5. Make available a copy of his/her current fee schedule as requested by the Chief Judge.

(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 22<sup>nd</sup> 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. Failure to adhere to the rules governing mediation may result in the decertification of the mediator, by the Chief Judge or his designee.

**RULE 20.05 DUTIES OF PRESIDING JUDGE FOR MEDIATION**

The duties of the presiding judge for any case referred to mediation shall include the following:

- a. Approve or appoint the 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.

**RULE 20.06 SMALL CLAIMS MEDIATION PROGRAM**

In keeping with the spirit of the Civil Division Mediation Program, when all parties appear pro-se (representing themselves) in small claims cases, they will be offered the opportunity to voluntarily meet with a court appointed mediator on the return date to attempt possible settlement of their dispute without the necessity of a trial. The mediator shall be appointed by the Judge presiding over the small claims call from an approved list of volunteer mediators from the membership of the McHenry County Bar Association. The mediation process shall be conducted in accordance with local rule 7.08.