

PART 6. CIVIL MEDIATION

Rule 6.1 Purpose of Mediation. Mediation under these Rules involves a confidential process through which 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 expected to mediate in good faith. These Rules in Part 6 shall not apply to dissolution of marriage and family law cases, and mediation in those cases shall be as set forth in Rule 8.5.

Rule 6.2 Referral by Judge or Stipulation. Except as otherwise provided in these Rules, the Court may order mediation in any civil matter in which the plaintiff asserts a claim having a value, irrespective of defenses or set-offs, in excess of the amount set out for applicability of S. Ct. R. 222. In addition, the parties to any matter may file a written stipulation to mediate any issue between them at any time. This stipulation shall be incorporated into the order of referral.

Rule 6.3 Scheduling Mediation

(a) **Conference or Hearing Date.** Unless otherwise ordered by the Court, the first mediation conference shall be held within eight weeks of the order of referral. At least 10 days before the conference or as otherwise required by the mediator, each party shall present to the mediator a brief written summary of the case containing a list of issues as to each party. If the party or attorney filing the summary wishes its contents to remain confidential, he or she should advise the mediator in writing when 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.

(b) **Notice of Time, Date, and Place.** Within 28 days after the entry of the order of referral, the mediator shall notify the parties in writing of the time, date, and place of the mediation conference.

(c) **Motion to Dispense with Mediation.** A party may move, within 14 days after the entry of the order of referral, to dispense with mediation if:

- (1) The issue to be considered previously has been mediated between the same parties;
- (2) The issue presents a question of law only;
- (3) The matter is not eligible for mediation under Rule 6.2; or
- (4) Other good cause is shown.

(d) **Motion to Defer Mediation.** Within 14 days after entry of the order of referral, any party may move to defer the mediation. The movant shall notice the motion for hearing before the mediation's scheduled date. 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 the Court decides the motion.

Rule 6.4 Mediation Rules and Procedures

(a) Appointment of Mediator

(1) **Designation by Stipulation.** Within 14 days after the entry of the order of referral, the parties may designate by stipulation a certified mediator or a mediator who does not meet the certification requirements of these Rules but who, in the opinion of the parties and on review by and approval of the Court, is otherwise qualified by training or experience to mediate all or some of the issues in the case.

(2) **Appointment by Court.** If the parties cannot agree on a mediator within 14 days after the entry of the order of referral, the plaintiff or plaintiff's attorney (or another attorney agreed on by all attorneys) shall notify the Court within the next seven days, and the Court shall appoint a certified mediator.

(b) Compensation of Mediator

(1) **When Parties Select Mediator.** When the mediator is selected by the parties, the mediator's compensation shall be paid by the parties as agreed between the parties and the mediator.

(2) **When Court Appoints Mediator.** When the Court appoints a mediator, the mediator's compensation shall be shared proportionately by all parties participating in the mediation 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) **Pro Bono Appointment.** If any party has been granted leave to sue or defend as a poor person, the Court shall appoint a mediator who shall serve *pro bono* without compensation from any party to the action.

(4) **Enforcement.** The fee of an appointed mediator shall be subject to appropriate order or judgment for enforcement.

(c) **Disqualification of Mediator.** Any party may move the Court to disqualify a mediator for good cause. If the Court disqualifies a mediator, the Court shall enter an order naming a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing an assignment. The time for mediation shall be tolled during any periods during 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 an emergency motion is pending absent a contrary order of the Court or a decision of the mediator to adjourn pending a disposition of the motion.

(e) Attendance at Mediation Conference

(1) Required Participants. 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 the Court or mediator. 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 the 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) Sanctions. On 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's 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 be in control of the mediation and the procedures to be followed in mediation. Attorneys shall be permitted to communicate privately with their clients during the mediation conference.

(h) Communication with Parties. The mediator may meet and consult privately with either party and his or her representative during the mediation.

(i) Termination of Mediation

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

(2) Exceptions. Mediation shall terminate before the end of seven weeks in the following circumstances:

- (i) All issues referred for mediation have been resolved;
- (ii) The parties have reached an impasse; or
- (iii) The mediator concludes that the willingness or ability of a 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 14 days after the termination of a mediation, the mediator shall file with the Clerk a report as to whether an agreement was reached, in whole or in part.

(k) Imposition of Sanctions. In the event of any breach or failure to perform under a settlement agreement, the Court on motion may impose sanctions, including costs, attorney's fees, or other appropriate remedies, including entry of judgment on the agreement.

(l) Discovery. Whenever possible, the parties before completing mediation are encouraged to limit discovery to the development of information necessary to facilitate a meaningful mediation conference. Unless otherwise ordered by the Court, discovery may continue during 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 case 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.

(n) Immunity. Mediators shall be entitled to immunity as provided by S. Ct. R. 99.

(o) Mechanism for Reporting. The Court Administrator shall keep and maintain 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, which shall include an annual count of the number of cases referred to mediation and the results achieved.

Rule 6.5 Mediator Qualifications

(a) Certification of Mediators. The Court Administrator shall certify attorneys as approved to serve as mediators under these Rules who meet the following criteria:

(1) The attorney has submitted to the Court Administrator a signed, written request for certification.

(2) The attorney is licensed to practice law in Illinois, is in good standing, of good moral character, and has practiced law for at least eight years or is a retired judge, except the Chief Judge may approve the request of an attorney who is otherwise qualified and has practiced for at least three years if the Chief Judge is satisfied the attorney has demonstrated the ability to perform the functions of a mediator.

(3) The attorney has received certification from a formal mediation training program consisting of at least 24 hours' instruction.

(b) Fee Schedule. Once approved, the attorney must advise the Court Administrator of his or her current mediation fee schedule.

(c) Mediator General Standards. In each case, the mediator shall comply with the general standards as may, from time to time, be established and promulgated in writing by the Chief Judge.

(d) Decertification of Mediator. 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 or her designee.