

ARTICLE 14 (Part 2): COURT-ORDERED MEDIATION FOR RESIDENTIAL EVICTION CASES

Court-ordered mediation in residential eviction cases is established by Administrative Order, and shall be governed by Administrative Order and this Article.

14.21 PURPOSE OF THE RESIDENTIAL EVICTION MEDIATION PROCESS

The 18th Judicial Circuit Court Eviction Mediation Program (Program) is designed to help mitigate the surge of evictions resulting from the COVID-19 pandemic, and the ensuing economic fallout. Its chief goal is to assist tenants and landlords in avoiding eviction and pursuing mutually beneficial alternatives. The Eviction Mediation Program is designed to aid in the administration of justice by promotion of judicial efficiency. Eviction mediation under these Rules involves a confidential process whereby a neutral mediator, appointed by the Court, assists the litigants in reaching a mutually acceptable agreement. It is a mandatory process that is informal and non-adversarial in nature. 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.

14.22 EVICTION ACTIONS ELIGIBLE FOR COURT-ORDERED MEDIATION

(a) This rule shall apply to all newly filed cases and all pending cases that have not already completed the physical eviction process. However, at any time the Judge can waive this requirement in the Judge's discretion either at the request of a litigant or sua sponte, and no requirements of the mediation program shall prohibit the Court from entering a Default Judgment.

14.23 FILING OF CASES ELIGIBLE FOR COURT-ORDERED RESIDENTIAL EVICTION MEDIATION

(a) Cases filed after September 20, 2021 are required to provide notice of the eviction mediation program, notice is to be provided in substantially the following form, in a document which includes the caption for the case and otherwise conforms with all other requirements for pleadings filed in this Court (including a certificate of service and notice of filing):

NOTICE IS HEREBY GIVEN THAT THIS RESIDENTIAL EVICTION CASE IS SUBJECT TO THE RULES OF THE EIGHTEENTH JUDICIAL CIRCUIT'S EVICTION MEDIATION PROGRAM. You are hereby advised that, unless the Court determines that participation should be excused for any reason, the parties to this action will be required to

participate in mediation prior to this case proceeding to trial. The mediation required hereunder will be conducted in an informal forum, either contemporaneously at the courthouse or on a later date, when the parties can meet in person or on-line through the Zoom video-conferencing program. This mediation is intended to be non-adversarial in nature and confidential. The mediation program includes an initial screening process at the first court appearance, or prior to that date by contacting the Residential Eviction Mediation Program. The role of the court-appointed mediator assigned to your case will include, but is not limited to, assisting the parties in identifying issues, identifying resources which may be useful to either of the parties going forward, exploring settlement alternatives, and helping the parties reach an agreement to avoid the expense and consequences of trial. The Mediation required by these Rules is being provided without charge – neither side is required to pay the mediator in these cases – and the process is governed by Article 14 (Part 2) of the Local Rules of the Eighteenth Judicial Circuit (Court-Ordered Mediation for Residential Eviction Cases) as well as the Illinois Uniform Mediation Act (710 ILCS 35/1, et seq.).

AS A RESIDENTIAL TENANT NAMED AS A DEFENDANT HEREIN, YOU ARE FURTHER GIVEN NOTICE that there are resources available to assist you, including financial counseling services, legal assistance, and other resources, many of which are identified in the brochure being provided to you herewith (a copy of which may be found at <https://www.dupageco.org/courts/>)

(b) However, consistent with S. Ct. Rule 101(g), failure to include the language or brochure above described on or with the summons shall not affect the jurisdiction of the court.

14.24 PROGRAM STAFF

(a) The position of Eviction Mediation Program Coordinator is established to oversee the daily operations of the Program.

(b) The designated duties of the Eviction Mediation Program Coordinator as set out within these Rules may be assigned, delegated, or referred to other court employees, financial and housing counseling agencies, legal aid organizations, bar associations, or other third parties as recognized by the Court.

14.25 ORDER OF REFERRAL TO COURT-ORDERED MEDIATION AND OTHER SERVICES

(a) Enrollment in the Program shall occur before or during the first court appearance, or, if there is a continuance in the matter, prior to the continuance date.

(b) To enroll in the program, any party may contact the Eviction Mediation Program Coordinator and begin the screening process. If one party has enrolled in the Program, the

Eviction Mediation Program Coordinator shall make reasonable efforts to contact the other parties and engage them in the screening process.

(c) During the screening process, the Program shall collect appropriate information and refer the party to appropriate services, including but not limited to financial counseling, rental assistance, and legal assistance. Any personal data captured by the Program shall be limited to use by the Program and its financial counseling and pro bono legal aid partners and shall not be shared or utilized for any other purposes. Aggregated, non-personal data shall be shared with the Administrative Office of the Illinois Courts, as set forth in section 14.29.

(d) As part of the Program, parties shall be provided a meaningful opportunity to access legal and financial counseling services to the extent their needs and interests demand, and as resources permit. These services may include brief legal information, pro bono legal aid, financial counseling, housing counseling, and technical assistance in preparing rental assistance applications. The Program shall have ultimate discretion as to what services are appropriate for any particular party. Participants shall be afforded a reasonable opportunity to pursue such services prior to mediation if the Program deems it necessary and/or in the interest of justice.

(e) Once the defendant has been screened and referred to appropriate services as needed, the Program shall set a mediation date no later than 28 days from the first court appearance.

(f) Parties may enter an agreed order to settle on the date of the first court appearance.

(g) If an order for mediation has been entered and the parties have not yet mediated but have reached an agreement, the parties may enter an agreed order and cancel the mediation appointment.

(h) The parties may agree to subsequent mediation sessions prior to the expiration of 28 days from the first court appearance and the parties with their mediator shall pick mutually agreed upon dates and times for mediation. Mediation sessions outside of the 28-day window may be scheduled by mutual agreement of the parties with approval of the Court.

(i) Mediations may be conducted in person at the DuPage County 18th Judicial Circuit Court located at 505 N. County Farm Road, Wheaton, IL 60187, or via telephone or video conference. Location and format of mediation will be determined by the Chief Judge.

(j) The Court's Mediation Referral Order shall include:

- (i) Instructions as to where, when, and how the mediation will be expected to proceed and what each side should do to prepare for the same;
- (ii) Instructions as to how the case should proceed in the event an agreement is reached through mediation; and
- (iii) Instructions as to how the case should proceed in the event no agreement is reached, including specifically a requirement that the parties return to court on a date and at a time certain thereafter, either to advise the Court as to the status of their dispute and schedule additional proceedings (if the date scheduled in the order is for “STATUS”) or to immediately proceed to trial (if the date scheduled in the order is for “TRIAL”).

(k) The Eviction Mediation Program Coordinator, in consultation with the Arbitration Administrator shall develop forms and a process for the scheduling of each mediation.

(l) If a case is scheduled for trial in the Mediation Referral Order, it shall be subject to the applicable Illinois law and Local Rules governing trials in this circuit, with no continuances allowed other than as provided for in those Rules.

(m) The parties should advise the Court, prior to the entry of a Mediation Referral Order, whether any discovery may be necessary prior to trial and the Court should consider the same in determining whether to schedule the case for STATUS or TRIAL.

14.26 APPOINTMENT, QUALIFICATIONS AND COMPENSATION OF MEDIATORS

(a) No person shall serve as a Mediator, in any matter referred to mediation hereunder, if they have a potential conflict of interest or unless they have first satisfied the requirements necessary to be recognized as a Mediator hereunder.

(b) The Presiding Judge of Chancery, or their designee, shall appoint mediators from a roster of approved Mediators, which shall be established by the Court.

(c) All eviction mediators shall successfully complete either (1) a minimum of forty (40) hours mediation training skills program, the content of which is acceptable to the Presiding Judge of Chancery, or their designee, plus an additional four (4) hour eviction mediation training which shall be approved by the Court or (2) they shall successfully complete an eight (8) hours eviction mediation training which shall be approved by the Court. Additionally, eviction mediators shall possess either (i) a Juris Doctor degree with demonstrated experience or (ii) a background in mediation with experience acceptable to the Court.

(d) The Approved List of Mediators will be updated from time to time to add the names of new members and remove those who either no longer qualify or who the Presiding Judge of Chancery determines have been unable to participate in this program to the extent they were initially expected to do so.

(e) A Mediator, approved and certified by this Circuit and acting pursuant to these Rules, shall have judicial immunity as provided for in Illinois Supreme Court Rule 99(b).

(f) The Presiding Judge of Chancery (or, at the Presiding Judge's direction, the Program) has the discretion to determine the frequency and order of assignment of mediation cases to mediators on the roster of approved Mediators.

(h) A Mediator shall be compensated according to the rate established by the Court.

14.27 CONFIDENTIALITY, APPLICABILITY OF UNIFORM MEDIATION ACT

(a) Mediations conducted pursuant to these Rules shall be governed by the Illinois Uniform Mediation Act, 735 ILCS 35/1, *et seq.* (The "Uniform Act") and "Mediation Communications," as defined therein, shall be deemed privileged and confidential, subject to those limitations as are provided in the Uniform Act.

14.28 ATTENDANCE AND PARTICIPATION IN MEDIATION

(a) The parties to a case which is scheduled for mediation pursuant to a Mediation Referral Order hereunder, are required to attend. If either of the parties is a corporation, that party must be represented by an individual with full authority to negotiate a settlement on behalf of the party. It is not required that such counsel participate, unless their participation would otherwise be required in a corresponding court proceeding, but any party to a mediation hereunder is entitled to have legal counsel present with them as they deem appropriate.

(b) The mediation will commence with introductory comments by the Mediator. The parties will be asked to execute a Confidentiality Agreement at that time and to make any introductory comments as may be appropriate. Thereafter, the Mediator may either work with the group all together or separate each side, allowing for the parties to caucus (a process which allows the Mediator to speak privately with each side outside the presence of the others). The parties and their counsel may also step away as needed to confer with each other. The mediation may be continued, if all agreed determine that a continuance could help facilitate settlement, but no continuance which would require the rescheduling of a trial date may proceed without court approval.

(c) At the conclusion of mediation, the Mediator shall inform the Eviction Mediation Program Coordinator of the mediation outcome and whether all parties attended and participated. If an agreement is reached to resolve the matter in whole or in part, it must be reduced to writing and signed by the parties or their agents at the end of the mediation. The Mediator shall submit the executed agreement to the Eviction Mediation Program Coordinator.

14.29 REPORTING REQUIREMENTS

(a) Following the conclusion of mediation, the Eviction Mediation Program Coordinator shall work with the Presiding Judge of Chancery to complete a Residential Eviction Mediation Report, comply with any other reporting requirements hereunder, assist in the scheduling of mediations under this Program, and facilitate communications between the trial court and Court-Appointed Mediator assigned to each case.

(b) Pursuant to 710 ILCS 35/7(a), a Mediator assigned to a case hereunder “may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation” but a mediator may disclose, under 710 ILCS 35/7(b)(1), “whether the mediation occurred or has terminated, whether a settlement was reached, and attendance.” Such disclosures shall be made by the Mediator to the judge assigned to each case, as aforesaid, in the format provided for under these Rules, or in such additional or other format as the Presiding Judge may deem appropriate.

(c) The Court shall report to the Supreme Court the number of cases submitted to mediation pursuant to this program, the type and number of issues resolved through the mediation program, and participant satisfaction rates and survey results. Said report shall be submitted to the Supreme Court on a quarterly basis or as requested by the Administrative Office of the Illinois Courts.

(d) The Eviction Mediation Program Coordinator shall report to the Court the number of cases submitted to mediation pursuant to this program, the type and number of issues resolved through the mediation program, participant satisfaction rates and survey results, the number of mediation sessions conducted, case outcomes, time from referral to resolution/return to court and a summary of noted problems relevant to the effective administration of the Program. Said report shall be submitted on a quarterly basis or as otherwise requested by the Office of the Chief Judge.

14.30 SETTLEMENT PRIOR TO MEDIATION CONFERENCE

(a) Upon settlement of any mediation case pending before the Court, counsel for plaintiff shall immediately notify the Judge in writing and submit the written settlement or other

dispositive order on or before the scheduled mediation conference date. The counsel for plaintiff shall also notify the mediator and the Eviction Mediation Program Coordinator that the mediation conference will not take place as scheduled.

14.31 ORDERS ON AGREEMENT REACHED IN MEDIATION

(a) The Eviction Mediation Program Coordinator shall develop procedures to ensure that, in each case, a Residential Eviction Mediation Report is provided to the trial court prior to whatever next court date is set forth in the Mediation Referral Order. The Court will review that report with the parties when they then appear in court and shall enter such orders as may be appropriate under the circumstances.

(b) In the event of any party's failure to appear or participate in the mediation, or of any breach or failure to perform by a party under any agreement reached in mediation prior to or contemporaneously with the entry of any final order in the case, the Court shall have authority to impose sanctions on that party, pursuant to and subject to the same restrictions as are provided for discovery violations under Illinois Supreme Court Rule 219.

14.32 POST-MEDIATION CONFERENCE STATUS DATE

(a) The final order to be sent to each party by the attorney designated to appear at the post-mediation conference status date.

(b) All parties or their attorneys whose claim is not resolved after the mediation conference shall appear at the post-mediation conference status date. Failure to appear at the post-mediation conference status date may result in the entry of a default judgment or dismissal.

14.33 PRESIDING JUDGE AND REPORTING REQUIREMENTS

(a) The Presiding Judge of Chancery shall supervise the Court-Ordered Eviction Mediation Program.

(b) The Presiding Judge of Chancery shall review applications submitted by candidates for appointment as a Mediator hereunder, as well as complaints about any particular Mediator or the process, and the determination as to the initial and continued eligibility of such candidates (or as the Presiding Judge delegates these rolls to the Eviction Mediation Program Coordinator); and

(c) General supervision over this program, including periodic reviews of its progress and effect to ensure appropriate recommendations may be submitted to the Chief Judge, ensuring that the training program is properly developed, and ensuring information about

the availability of this program is readily available to the parties as well as attorneys and other professionals who may be interested in service as mediators hereunder.

14.34 LANGUAGE ACCESS

(a) It is the policy of this Program to provide meaningful language access to limited English proficient program participants at all stages of participation. Written materials originated by the Program shall be readily available in English and Spanish, and other language translations shall be reasonably made available upon request. Phone interpretation services may be available for all phone, video and in-person communications, and in-person interpretation services shall be available for in-person mediation hearings unless impracticable. Language Access services shall be provided at no additional cost to the participants.