RULES OF THE CIRCUIT COURT

FIRST JUDICIAL CIRCUIT

STATE OF ILLINOIS

April 16, 2018

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The following Rules are adopted for the First Judicial Circuit of Illinois, pursuant to the authority granted by Supreme Court Rule 21, by a majority of the Circuit Judges of the First Judicial Circuit. Prior rules not included are repealed.

The Rules shall be filed with the Administrative Director of the Supreme Court within 10 days of their adoption, duplicated and distributed to the Judges, Circuit Clerks, and Lawyers of the Circuit, and shall become effective on the 16th day of April, 2018.

Circuit Judges:
s/ Hon. James R. Williamson, *Chief Judge*
s/ Hon. Brad Bleyer
s/ Hon. Mark Boie
s/ Hon. Mark H. Clarke
s/ Hon. Jeffery B. Farris
s/ Hon. Carey C. Gill
s/ Hon. W. Charles Grace
s/ Hon. Joe Leberman
s/ Hon. Walden Morris
s/ Hon. John Sanders
s/ Hon. William G. Schwartz
s/ Hon. William Thurston

Table of Contents

ARTICLE I
GENERAL RULES OF CIRCUIT

RULE 1.1 CHIEF JUDGE

A. **Selection and Tenure.** In the first full week of May in each even-numbered year, at a meeting to be called by the Chief Judge, the circuit judges shall by ballot select a Chief Judge to take office immediately and serve for the next two years.

B. **Election Procedure.** The ballot shall contain the names of all the circuit judges, arranged alphabetically. An election committee, appointed by the Chief Judge or acting Chief Judge, shall canvass and announce the votes cast on each ballot. If on any ballot a judge receives the votes of a majority of the circuit judges that judge shall be declared elected.

C. **Removal.** A majority of the circuit judges may, at any time, by written order, call a meeting, at a time and place stated, to consider the removal of the Chief Judge. A copy of the order shall be delivered to each judge not joining in it, at least five days before the time fixed for the meeting. At the meeting the circuit judges shall vote by ballot on the question "Shall the present Chief Judge be removed from office?" If a majority of the vote is in the affirmative, the Chief Judge is thereby removed from office, and the circuit judges shall thereupon proceed to select one of their number to serve as the new Chief Judge, to take office at once and serve until the end of the term of the Chief Judge removed.

D. **Resignation.** If the Chief Judge shall at any time desire to resign, he or she shall call a meeting of the circuit judges and present his or her resignation. If the resignation is accepted, the circuit judges shall thereupon proceed to select one of their number to serve as the new Chief Judge, to take office at once and serve for the remainder of the term of the Chief Judge resigning.

E. **Vacancy.** Should the office of Chief Judge at any time become vacant, from any cause not otherwise provided for in this rule, the acting Chief Judge shall call a meeting to elect a new Chief Judge, to take office at once and serve for the remainder of the term.

RULE 1.2 ACTING CHIEF JUDGE

The Chief Judge shall appoint an acting Chief Judge who shall serve at the pleasure of the Chief Judge. The acting Chief Judge shall discharge all the duties of the Chief Judge during any incapacity or absence from the circuit of the Chief Judge.

RULE 1.3 PRESIDING JUDGE

The Chief Judge shall designate a presiding judge for each county in the circuit. The presiding judge shall serve at the pleasure of the Chief Judge. Each presiding judge shall have the responsibility and power to supervise all of the judicial activities of the county in which he or she presides, unless otherwise ordered by the Chief Judge.

RULE 1.4 COURT RECORDS

A. **Inspection of Records.** Except as otherwise ordered or provided by stature, clerks and deputy clerks of the court shall permit inspection of all files and records of cases in their respective offices.

B. **Impounded Records.** No one except judges, clerks, and deputy clerks will be permitted to examine the impounded indexes. The basic and permanent records of adoptions, marriage license petitions, and juvenile cases may be examined only as permitted by law.

C. **Removal of Records.** Records shall be removed from the office of the clerk of the court only for use in court, by a judge, or pursuant to order of court.

D. **Expunged Records.** When court records are ordered expunged pursuant to law, the circuit clerk shall retain the number in the case number list and in the index. The name of the defendant whose records have been ordered expunged shall be deleted in the case number list and in the index and the word "expunged" written in lieu thereof. The court file shall then be impounded and kept locked. No one shall be permitted access to expunged records except by order of court.

RULE 1.5 NON-JUDICIAL APPOINTMENTS

Non-judicial appointments, vested by law in the circuit court or the judges thereof, shall be made by a majority of the circuit judges.

RULE 1.6 INACTIVE STATUS OF PROBATE MATTERS

Whenever a judge of the circuit court determines that a probate case (decedent's estate or guardianship) has remained inactive for a considerable time, he or she may direct the clerk of the court to place the case on a docket call, and the clerk shall give notice, as directed by the judge, to the last known attorney of record or personal representative, or both, of the time and place of the docket call. Should the judge determine at the docket call that the case cannot be conveniently terminated, he or she may enter an order directing the clerk to transfer the case to an inactive docket, and the case file shall thereafter be filed

with the closed probate files. A case may be removed from the inactive docket to the active docket on motion and order.

RULE 1.7 PETIT AND GRAND JURORS

A. The general jury list required by 705 ILCS 305/1 may be accomplished through the services of the Administrative Office of Illinois Courts. The general jury list shall consist of all person designated by statute.

B. The petit jury list required by 705 ILCS 305/2 shall consist of the entire general jury list.

C. The drawing of petit jurors pursuant to 705 ILCS 305/8 and of grand jurors pursuant to 705 ILCS 305/9 may be done by computer.

RULE 1.8 JURY COMMISSIONS

In counties that have jury commissions:

All jury commissioners, circuit clerks, and judges shall comply with the Jury Commission Act and applicable Administrative Orders.

RULE 1.9 JUDICIAL SALES

In sales of real estate under judgments, the attorney for the plaintiff shall be responsible for preparing the documents and performing the services necessary for the sheriff, judge, or authorized officer to carry out the judgment of sale.

RULE 1.10 DISMISSAL FOR WANT OF PROSECUTION

In any case in which no setting, trial, service, or other action of the court has been requested or obtained of record within six months of the last filing or court action, the case may be dismissed for want of prosecution, at the cost of the plaintiff. The clerk of the court shall forward a copy of the order of dismissal to all attorneys and unrepresented parties of record.

RULE 1.11 COURT PROCEDURE ON WARRANTS

A. **Transfer of Cases.** Any pending criminal felony or misdemeanor case in which a warrant for the arrest of the defendant has been outstanding and unserved for a period of six months shall be transferred by the clerk of the court to a warrant calendar and shown as terminated for statistical purposes.

B. Reinstatement to Active File. Upon service and filing of an outstanding warrant in a case on the warrant calendar, or upon order of court, the clerk shall transfer the case to the active docket and reinstate the case for statistical purposes.

C. Call of Warrant Calendar. Annually in December, the clerk shall prepare and provide to the state's attorney and the presiding judge a list of all cases on the warrant calendar pending for more than one year. The presiding judge shall then order a call of the cases on the list, at which call it shall be determined whether each case should remain on the warrant calendar, be dismissed, or be reinstated as an active case.

RULE 1.12 PREPARATION OF JUDGMENTS AND ORDERS

All judges are expected to render their decisions promptly.

In the event that written argument and/or memoranda are allowed or directed by the court, said written argument or memoranda shall be submitted promptly, no later than 30 days thereafter, unless otherwise ordered by the Court.

When the Court takes any matter in any case under advisement, that fact shall be noted in a docket entry, which shall direct the clerk to pull the file for the judge's review within 30 days from the date the matter was taken under advisement, unless a decision has been made in the interim.

If no decision has been made within 30 days of the matter being taken under advisement, that fact shall be noted in a docket entry, which shall direct the clerk to pull the file for the judge's review within 30 days thereafter, unless a decision has been made in the interim. Upon the filing of a written request by any party, the Court shall promptly schedule a case management conference and shall take whatever steps deemed necessary to resolve the matter.

If no decision has been made within 60 days of the matter being taken under advisement, that fact shall be noted in a docket entry, and a copy of that docket entry shall be sent to the Chief Judge's Office. The Chief Judge may take whatever steps deemed necessary to resolve the matter.

Unless the Court directs otherwise, whenever a written order or judgment is required, the attorney or the prevailing party shall promptly prepare and present a draft to the court, with proof of service on opposing counsel. The draft tendered may be entered forthwith unless objection is made within five workings days after service of the draft.

If the proposed order or judgment has not been presented to the Court within 30 days after the Court's decision, that fact shall be noted in a docket entry, which shall direct the clerk to pull the file for the judge's review within 30 days thereafter, unless the order or judgment has been entered by the Court in the interim. Upon the filing of a written request by any party, the Court shall promptly schedule a case management conference and shall take whatever steps deemed necessary to resolve the matter.

If no order or judgment has been entered within 60 days after the Court's decision, that fact shall be noted in a docket entry, a copy of which shall be sent to the Chief Judge's Office. The Chief Judge may take whatever steps deemed appropriate to resolve the matter.

RULE 1.13 CIRCUIT CLERK OFFICE HOURS AND HOLIDAYS

Offices of the circuit clerk shall be open Monday through Friday of each week except on state legal holidays or days celebrated as such, or when court is closed by the presiding judge of the county because of natural causes or other hazards creating an emergency. In counties having a population of 25,000 or more, office hours shall be from 8:00 A.M. to 4:00 P.M. In counties having a population of less than 25,000, office hours shall be from 8:00 A.M. to 12:00 noon and from 1:00 P.M. to 4:00 P.M.

RULE 1.14 NO FACSIMILE FILING

All pleadings, motions, and other papers shall be filed in person or via mail. Facsimile filing is not authorized. Electronic filing shall be authorized as adopted by the various counties and approved by the Chief Judge.

ARTICLE II
CIVIL PRACTICE

RULE 2.1 PRE-TRIAL AND POST-TRIAL MOTIONS

A. Every pre-trial and post-trial motion shall be in writing and (unless it be an *ex parte* or emergency motion) shall be served on all parties of record before filing. Each such motion shall specifically set forth its factual and legal basis. Each such motion shall contain or be accompanied by a short, concise statement containing the citation of any legal authority the movant may wish the court to consider.

B. Any party that opposes such a motion shall within ten days of its filing submit an answering memorandum containing the reasons for opposition together with citations of relevant authorities

C. Upon expiration of the 10-day period, the clerk will refer the motion papers and the case file to the court for appropriate disposition. There will be no oral arguments unless ordered by the court.

D. Except for motions for summary judgment, which are governed by statute and not subject to this rule, any party that desires to present testimony or other evidence to support or oppose a motion (where authorized by law) should so indicate in the motion or answering memorandum. The matter may then be set for hearing.

E. The clerk shall refuse to file any pleading which is not signed and/or accompanied by a proof of service.

RULE 2.2 ORAL ARGUMENT OF MOTIONS AND APPEARANCES

A. Non-evidentiary pre-trial and post-trial motions in civil cases will only be set for oral argument when authorized by the judge presiding.

B. Failure of a party to appear in person or by written brief in connection with any motion will not of itself constitute grounds for ruling against the party.

RULE 2.3 *EX PARTE,* EMERGENCY, AND STIPULATED MOTIONS

Ex parte or emergency motions and motions in accordance with stipulations for agreed orders may be presented without a setting. Every such motion shall be accompanied by a proposed order.

RULE 2.4 MOTIONS FOR CONTINUANCE

A. **Strict Compliance.** A motion for continuance for any cause set out in Supreme Court Rule 231 must comply strictly with Supreme Court Rule 231 to receive consideration of the judge presiding.

B. **Agreements**. Agreements of Counsel or parties as to a motion to continue shall not be binding on the court. Continuances may be granted only by the court.

C. **Trial Continuance**. A trial continuance shall not be granted solely upon the ground of substitution or addition of attorneys, except for good cause shown by motion and affidavit.

D. **Signature of Party.** In any case which has been pending for more than 24 months, and in any case in which trial is set to commence within 48 hours, any motion for continuance shall be personally signed by the party whose attorney is requesting the continuance, unless the judge is satisfied that good cause for the absence of the party's signature has been shown.

E. **Notice to Adverse Party.** The attorney or party moving for continuance must attempt to contact the adverse party or his or her attorney prior to filing the motion for continuance. The motion shall state whether the adverse party or attorney agrees or objects to the motion. If the adverse party or attorney is not contacted or does not respond, the movant shall provide the court, in writing, with the details of the attempts to contact the adverse party or attorney or the failure of the adverse party or their attorney to respond.

F. **Emergency Motion.** If a motion for continuance is filed in an emergency situation, the movant must state the nature of the emergency and the reasons why the adverse party or attorney could not be contacted prior to the filing of the motion.

G. **Compliance with Supreme Court Rule 901.** In all cases involving child custody, allocation of parental responsibilities, visitation, allocation of parenting time, or support, any request must strictly comply with the provisions of Supreme Court Rule 901.

RULE 2.5 DISCOVERY

A. **Restrictive Filing of Discovery.** Interrogatories under Supreme Court Rules 213 and 220, and the answers thereto, discovery of documents and other materials under Supreme Court Rule 214, and depositions under Supreme Court Rules 206 and 207 shall be served with proof of service upon other counsel or parties, but shall not be filed with the clerk of the court. The party responsible for service of the discovery material shall retain the original and become the custodian.

B. **Relief Involving Discovery Materials.** If relief is sought concerning any deposition, interrogatory, request for production or inspection, answer to interrogatory, or response to request for production or inspection, copies of the portion of the deposition, interrogatory, request, answer, or response in dispute shall be filed with the clerk contemporaneously with any motion.

C. **Use at Trial or for Motion.** If interrogatories, requests, answers, responses, or depositions are to be used at trial or are necessary to a motion, the portions to be used shall be filed with the clerk at the outset of the trial or upon filing of the motion, insofar as their use reasonably can be anticipated.

D. **Unfiled Discovery--Appeals.** When documentation of discovery not previously in the record is needed for appeal purposes, upon an application to and order of the court, the necessary discovery papers shall be filed with the clerk of the circuit court for transmittal with the rest of the record on appeal.

E. **Removal from Files.** At the discretion of the judge assigned to the case, discovery materials already filed may be removed from a file and retrieved by the party filing the materials. In such event, the judge shall make an appropriate docket entry indicating what materials were removed, the date they were originally filed, and who is the custodian of the materials.

F. **Requests for Admission.** Requests for admission of fact, requests for admission of the genuineness of documents, and the responses thereto pursuant to Supreme Court Rule 216 are not affected by this rule, and shall be filed of record.

RULE 2.6 PROCEEDINGS IN FORMA PAUPERIS

All applications for leave to sue or defend as a poor person shall be in compliance with Supreme Court Rule 298.

The application of a prisoner to bring a civil action under this rule may be denied if the prisoner has on three or more prior occasions, while incarcerated or detained in any facility, brought an action that was dismissed on the grounds that it is frivolous as defined in 705 ILCS 105/27.9, unless the prisoner is under imminent danger of serious physical injury. As used in this rule, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for violation of criminal law or the terms of and conditions of parole or probation.

ARTICLE III
SMALL CLAIM PROCEDURE

RULE 3.1 ACTION OF COURT ON RETURN DAY

In all small claim cases, on the appearance date the judge shall take the following action in the following events:

A. If the defendant has not appeared and the plaintiff is present, a default judgment shall be entered on the complaint, provided that in all cases of unliquidated damages the plaintiff shall be required to make proof of damages in open court.

B. If the defendant appears but neither the plaintiff nor the plaintiff's attorney appears, or if neither party appears, the case shall be dismissed.

C. If both parties appear, the judge shall ascertain whether the claim is contested and, if it is not, enter an appropriate order for the payment of the judgment in installments or otherwise as the case may be. If the claim is contested, the judge shall conduct an informal pretrial conference in an attempt to help the parties settle the case. If the case cannot then be settled, the judge shall set it for trial on the next available date, unless all parties announce that they are ready for immediate trial, no one has timely demanded a jury, and the judge's calendar permits the case to be tried on the appearance date.

RULE 3.2 FORM OF SUMMONS IN SMALL CLAIMS

In small claim cases, the "Notice to Defendants" required on the summons by Supreme Court Rule 101(b)(1) shall set out the text of Rule 3.1.

ARTICLE IV
CIVIL CONTEMPT PROCEDURE

RULE 4.1 INITIATION BY PETITION

A proceeding for indirect civil contempt may be initiated by the filing of a petition for order to show cause why the respondent should not be held in contempt. The petition shall be verified and set forth with particularity that portion of the order that is alleged to have been violated, the nature of the violation, and the acts required of the respondent to purge the contempt.

RULE 4.2 PRESENTATION TO COURT

A. The petition may be presented *ex parte.*

B. If the violation alleged is the failure of the respondent to make court-ordered payments to the clerk of the court, the records of the clerk shall be sufficient to support an order to show cause.

C. Where an order to show cause is sought based upon a failure to appear in response to a citation to discover assets, no written petition shall be necessary, but a sheriff's return or other proper proof of service of the citation shall be sufficient to support the issuance of an order to show cause.

D. Before an order to show cause may issue for any other claim of alleged indirect civil contempt, the petition must be supported by affidavit meeting the requirements of Supreme Court Rule 191.

E. The order to show cause shall set a time and place for the respondent to appear and show cause.

RULE 4.3 SERVICE

A signed and file-marked copy of the order to show cause shall be personally served upon the respondent in the manner of summons requiring an appearance not less than 21 days nor more than 40 days after issuance, and shall be served not less than seven days before the day for appearance.

RULE 4.4 ANSWER

No later than three days prior to the hearing, the respondent may file a written answer denying with specificity any allegations of the petition and setting out any affirmative defenses.

RULE 4.5 TRIAL

Civil contempt proceedings shall be tried before the court without a jury.

RULE 4.6 IMPOSITION OF SANCTIONS

If the court finds the respondent to be in civil contempt, it may continue the matter for a reasonable time before the imposition of sanctions or it may impose sanctions authorized by law forthwith**.**

In civil contempt proceedings involving the non-payment of child support, or in any other type of cases as required in the discretion of the court, prior to the imposition of sanctions against a *pro se* litigant, the court shall determine whether the non-payment of was willful. The court shall provide the *pro se* litigant with a notice regarding contempt and an opportunity to complete a financial affidavit. The notice and affidavit will be on forms approved by the Chief Judge.

RULE 4.7 JUDGMENT OF CONTEMPT

Upon an adjudication of civil contempt, a written judgment shall be promptly prepared and filed which specifies the contumacious conduct, the sanctions imposed, and the means by which the contemnor may purge himself. A signed, file-marked copy of the judgment shall be served upon the contemnor, and proof of service shall be filed.

An order of body attachment or other civil order for the incarceration or detention of a natural person is subject to 735 ILCS 5/12-107.5.

ARTICLE V
ATTORNEYS AND COUNSELORS AT LAW

RULE 5.1 FEES IN MINORS' AND DISABLED PERSONS' CASES

Prior to approval of attorney's fees in a case based upon personal injuries to a minor or a disabled person the Court shall require the submission of a sworn petition setting forth:

A. the terms of employment;

B. the services rendered;

C. the customary and usual charges for such services; and

D. any special circumstances which might bear on the question of fees.

ARTICLE VI
CRIMINAL PRACTICE AND PROCEDURE

RULE 6.1 RESTRICTIONS ON FILING PAPERS IN CRIMINAL CASES

A. **Discovery.** Disclosures made pursuant to Supreme Court Rules 412 and 413, and Sections 114-9 and 114-10 of the Code of Criminal procedure, shall not be filed with the clerk of the court except with prior leave of court for good cause shown. Counsel shall file a certificate of compliance with discovery orders.

B. **Evidence Depositions.** Depositions filed in accordance with Supreme Court Rule 414(d) (incorporating Rule 207) shall remain sealed until ordered opened by the court.

C. **Materials Previously Filed.** At the discretion of the judge assigned to a case, previously filed materials which are subject to this rule may either be removed from the file and returned to the party filing them or ordered sealed. In either such event, the judge shall make an appropriate docket entry.

ARTICLE VII
FAMILY LAW PROCEDURE/MEDIATION

RULE 7.1 MULTIPLE CASES CONCERNING SAME CHILD(REN)

As mandated by Supreme Court Rule 903, whenever possible and appropriate all child custody and allocation of parental responsibilities proceedings, as defined in Supreme Court Rule 900, and relating to an individual child, shall be conducted by a single judge. Each judge to whom a child custody and allocation of parental responsibilities proceeding is currently or subsequently assigned upon being apprised of the existence of another child custody and allocation of parental responsibilities proceeding involving custody and allocation of parental responsibilities or visitation and parenting time issues with respect to the subject child, shall confer with any other judge to whom another custody and allocation of parental responsibilities proceeding is assigned. If the conferring judges are in agreement as to whether the cases should or should not be reassigned such should be noted on their respective previously assigned files and said cases shall be assigned in the manner as agreed. If said judges are unable to reach an agreement, each judge shall make a request in writing to the Chief Judge containing their recommendation and reason for assignment of the cases involving said child in a certain manner. The Chief Judge shall then make a determination as to the proper assignment of the cases.
(This is Administrative Order 2006-1 dated December 27, 2006)

RULE 7.2 FAMILY PROGRAM

Pursuant to Illinois Supreme Court Rule 905, the judges of the First Judicial Circuit of Illinois provide a mandatory circuit-wide mediation program of all contested issues of parental responsibility, custody, visitation, parenting time, removal, or relocation or access to children arising in all actions to which the Supreme Court Rules apply.

DEFINITIONS

A. **Mediation.** Mediation is a cooperative process for resolving conflict with the assistance of a trained court appointed neutral third party, or mediator, whose role is to facilitate communication, help define issues, and assist the parties in identifying and negotiating fair solutions. Fundamental to the mediation process are principles of safety, self-determination, procedural informality, privacy and confidentiality. Mediation is based on a full disclosure of all facts related to the disputes so that the parties can achieve a fair and equitable agreement.

B. **Impediment.** As used herein is defined as any condition, including but not limited to, domestic violence, intimidation, substance abuse, or mental illness, the existence of which hinders the ability of any party to negotiate safely, competently and in good faith. The identification of forms of impediment is designed not to require treatment, but to insure that only parties having a present, undiminished ability to negotiate are directed by court order to mediate.

C. **Indigent Case.** As used herein is defined as one requiring mediation pursuant to this program, however, based upon the financial information considered by the trial judge, the parties cannot, without substantial additional hardship to one or both of the parents or to the minor children residing with either parent, pay any allocation of a private mediation fee.

SECTION 1. GENERAL PROVISIONS

A. Qualifications of Mediators; Approved List

(1) Private Mediators

(a) The First Judicial Circuit shall promulgate a list of private mediators who have been approved by the Chief Judge after filing the required application, supplying supporting documentation and meeting the following criteria:

(i) Satisfactory completion of an approved forty hour family mediation program covering the areas of conflict resolution; psychological issues in separation, dissolution and family dynamics; mediation process, skills and techniques; and screening for and addressing domestic violence, child abuse and mental illness.

(ii) A degree in law from an accredited law school or at least a master's degree from an accredited institution in a field that includes the study of psychiatry, psychology, social work, human development, family counseling, or other behavior science substantially related to family counseling, marriage family interpersonal relationships, or a related field approved by the Chief Judge. Alternatively, an applicant with a different post-secondary degree from an accredited institution having sufficient mediating experience considered to be commensurate with that of other approved mediators may, at the sole determination of the Chief Judge, be approved.

(iii) If engaged in a licensed discipline, such license must be maintained in full force and effect.

(iv) Agree to mediate at least four reduced fee or pro bono cases per year as assigned by the court.

(v) Attend ten hours of circuit approved continuing education every two years, of which two hours must cover domestic violence issues, and provide evidence of completion to the Chief Judge.

(b) The Chief Judge may remove a mediator from the approved list for failure to comply with the requirements of this rule or for other good cause. A denied applicant or removed mediator may appeal the decision in writing within ten days to the Chief Judge who shall decide the appeal after allowing the individual an opportunity to be heard.

(c) Inclusion on the approved list shall not be considered a warranty that a mediator can successfully mediate a specific dispute; however, it does indicate explicit agreement by that he or she will comply with the provisions of this rule and maintain high standards of ethical practice. Any person approved to act as a mediator under these rules, while acting in the scope of his or her duties as a mediator, shall have judicial immunity in the same manner and extent as a judge in the State of Illinois as provided in Supreme Court Rule 99(b)(1) and Rule 905(b).

(d) The parties at an agreed rate shall compensate the mediator. Within the Mediation Order, the trial judge may designate the percentage of the fee to be paid by each party and/or whether the case should be considered a reduced fee or pro bono case.

(e) Private mediation pursuant to this program is subject to the provisions of the Uniform Mediation Act, 710 ILCS 35/1 et. seq.

(2) Subject Matter of Mediation; Mandatory Participation

(a) Court referred mediation through this program will apply to all contested issues of child custody, allocation of parental responsibilities, visitation, parenting time, removal, relocation, or other non-economic issues relating to children ("qualifying issues") in temporary, initial and post-judgment proceedings. Mediation may include other family law issues if the parties and mediator agree. Parties must fully cooperate and participate in mediation and provide all pertinent information requested by the mediator. Mediation shall be for a period of four hours unless terminated sooner by the mediator or, for good cause, extended in duration.

(b) **Case Management Conferences; Mediation Orders**
In all cases having qualifying issues subject to the mediation requirements of this rule, the trial judge shall conduct a case management conference in accordance with Supreme Court Rules 923. If the mediation prerequisites have been met and no impedements exist, the trial judge shall refer the case to mediation at the initial case management conference unless an agreement on all qualifying issues has been reached. Alternatively, if there is no agreement and settlement appears imminent, the court may enter an order deferring appointment of a mediator and continue the conference to a short date. All Mediation Orders wherein appointment of a mediator is made shall assign a 45 day continued case management conference date for a status report on the progress of mediation. If mediation has not been concluded by the date of the conference, it shall be reset to a short date to allow for the completion of mediation. After mediation has concluded, the trial court shall conduct a full, post-mediation case management conference wherein mediation agreements, provisional orders or results will be presented.

(c) **Temporary Relief; Expedited Proceedings; Referral to Early Mediation**
Upon the filing of any pleading for temporary relief concerning qualifying issues, except a sworn pleading asserting facts showing a present or threatened serious endangerment to the physical or emotional health of the child(ren), the clerk shall set an expedited case management conference within 14 days with parties and counsel in attendance. In the absence of agreement on temporary issues, the trial judge presiding at an expedited case management conference shall:

(i) Set a hearing upon the request for temporary relief; or

(ii) Refer the case to early mediation on such temporary issues. Referral to Judicial mediation on temporary issues may be made in non-indigent cases if a private mediator is unavailable within a reasonable time period. A judicial mediator shall be authorized, though not required, to conduct further mediation in the case.

(d) **Prerequisites to Mediation; Disclosure of Impediments**
Except when mediation is ordered for temporary qualifying issues at an expedited case management conference, the parties shall complete an approved parenting education program, unless the court approves later completion or they have previously attended such a program before referral to mediation. The parties shall also file financial affidavits and pre-mediation questionnaires with the clerk at least 7 days prior to the expedited or initial case management conference. The clerk shall file and seal the original pre-mediation questionnaires, copies of which shall later be sent to the appointed mediator. The parties shall advise the trial judge of any impediments or other circumstances which could unreasonably interfere with mediation. The finding of an impediment should, whenever practicable, result in measures addressing the impediment rather than disqualifying the case from mediation. However, mediation shall not be required if the court, upon motion supported by affidavit, finds that a case should not be mediated because of impediment or other circumstances.

(e) **Referral to Private Mediation**

In each case in which referral is made, the trial judge shall expressly find whether the case is an indigent case and make record entry of such finding. Unless upon examination of the parties' financial affidavits the trial judge finds that a case is an indigent case, such case shall be referred to private mediation. The parties may select an agreed mediator from the approved list, or absent agreement, the trial judge shall select a mediator. The trial judge may require that the parties remit to the mediator a retainer in the amount of the agreed mediation fee or, in the absence of agreed fee, the amount of the average private mediation fee charged during the immediately-preceding calendar year as determined from time to time by the Chief Judge.

(f) **Notification by Circuit Clerk; Review by Mediator**

(i) Upon entry of a Mediation Order appointing a mediator, the Circuit Clerk shall:

a. Mail or fax a copy of the Order to the mediator together with copies of the following:

b. Record sheets and pleadings in dispute, and

c. Financial affidavits and premediation questionnaires, if any.

(ii) Docket the case for status report at the 45 day continued case management conference recited in the Mediation Order. Upon receipt of the Mediation Order and for warded case documents, the mediator shall examine the materials and:

a. If a private mediator, determine whether any present or possible conflict of interest exist including any current or previous therapeutic, personal or economic relationship with a party or with someone having a blood, legal or other close relationship with a party and, if so, decline appointment unless a written waiver signed by both adult parties to the case is secured.

b. If the mediator is a mental health professional, he or she shall not mediate a case in which a party or subject child has been provided counseling or therapy by such professional within two years of the appointment or within any greater time period required by the ethical rules pertaining to the professional's practice. An attorney mediator may not represent either party in any matter during the mediation process through the conclusion of the case nor provide any legal advice.

(iii) If after reviewing all case materials, the mediator finds disqualification or recusal is required or the existence of an impediment renders mediation unworkable, the mediator shall promptly notify the parties, their attorneys and the trial judge so that another mediator can be appointed or further action taken.

(iv) If no basis for disqualification or recusal is found, the mediator shall promptly set a mediation session giving required notices to the parties and their attorneys.

(g) **Restriction upon Litigation or Filings during Mediation**

(i) After referral to mediation, all proceedings except continued case management conferences, discovery, and presentation of agreed matters shall be stayed pending the post-mediation case management at the conclusion of mediation. Hearing shall not be held sooner on contested matters, including discovery enforcement proceedings, without leave of court granted for good cause pursuant to written motion

(ii) During this period, no pleadings related to issues to be mediated shall be filed without leave of court except:

a. Documents required for mediation;

b. Pleadings as to which stipulation is being made or agreement have been reached;

c. Sworn pleadings based upon asserted present or threatened serious endangerment to the physical or emotional health of the minor(s) or a party to the litigation based upon asserted facts or circumstances which have arisen subsequent to entry of the Mediation Order or of which the pleading party could not have known prior to entry of said order;

d. Motions for leave to withdraw as counsel for a party; and

e. Discovery requests and responses.

(iii) Any party filing a pleading by leave of court or referred to in 2.(c.) or (d.) above shall immediately cause it to be presented to the trial judge for setting of hearing.

(h) **Reporting Risk of Bodily Harm**

While mediation is in progress, the mediator may report to an appropriate law enforcement agency any information revealed in mediation necessary to prevent an individual from committing an act which is likely to result in imminent, serious bodily harm to another. When the mediator knows the identity of an endangered person, the mediator may warn that person and his attorney of the threat of harm and without committing a breach of confidentiality.

(i) **Statistical Reporting**

All mediators shall file a statistical report on a prescribed form with the Chief Judge's Office at least quarterly. The Chief Judge's Office shall maintain such records, which shall include the number of mediations conducted, and success ratio. Such information shall be furnished to the Supreme Court annually, or at such other intervals as may be directed.

(j) **Ruling by Assigned Judge**

To the extent practicable, presentation of an agreement or provisional order should be made to the judge assigned to that particular case. However, such ruling may be made by another judge as necessary to comply with the Supreme Court's requirement that a full case management conference be held within 30 days after conclusion of mediation.

SECTION II. PRIVATE MEDIATION PROGRAM AND PROCEDURES

A. Confidentiality and Privilege

(1) Unless otherwise agreed to by the mediator, parties and their attorneys, all other persons shall be excluded from mediation sessions.

(2) Except as otherwise provided by law, all written and verbal communications made in a mediation session are confidential and may not be disclosed, except the parties may report these communications to their attorneys or counselors. Prior to the commencement of mediation, all participants in the mediation shall sign the confidentiality agreement prescribed by these rules. Admissions and other communications made in confidence by any participant in the course of mediation session shall not be admissible as evidence in any court proceeding. Except as identified herein, no participant may be called as a witness in any proceeding by a party or the court regarding matters disclosed in a mediation session. These restrictions shall not prohibit any person from lawfully obtaining the same information independent of the mediation.

Exceptions: Admissions and other communications are not confidential if:

(a) All parties consent in writing to the disclosure; or

(b) The communication reveals either an act of violence committed against another during mediation, or an intent to commit an act that may result in bodily harm to another; or

(c) The communication reveals evidence of abuse or neglect of a child; or

(d) Non-identifying information is made available for research or evaluation purposes approved by the court; or

(e) The communication is probative evidence in a pending action alleging negligence or willful misconduct of the mediator.

B. Conduct of Mediation

(1) Prior to commencing mediation, the mediator shall:

(a) Explain that the mediation process is confidential as outlined herein and confirm the parties' understanding regarding the fee for services including any reduced fee for eligible parties with financial hardship;

(b) Disclose the nature and extent of any existing relationships with the parties or their attorneys and any personal, financial, or other interests that could result in bias or conflict of interest on the part of the mediator;

I Determine the issues to be mediated;

(d) Explain that no legal advice, therapy or counseling will be provided and that each party has the right to counsel; and

(e) Advise each party that the mediator may communicate with either party or legal counsel during mediation sessions for the purpose of fostering agreement;

(f) Advise each party that children may be allowed to participate in mediation so long as all parties and the mediator consent in writing.

(g) Inform the parties that:

Mediation can be suspended or terminated at the request of either party after four hours of mediation in the absence of good cause for extension, or in the discretion of the mediator; and,

(i) The mediator may suspend or terminate the mediation if an impediment exists, either party is acting in bad faith or appears not to understand the negotiation, the prospects of achieving a responsible agreement appear unlikely or if the needs and interests of the minor children are not being considered. In the event of a suspension or termination, the mediator may suggest a referral for outside professional services.

(2) While mediation is in progress, the mediator shall continuously assess whether the parties manifest any impediments affecting their ability to mediate safely, competently and in good faith, and: If an impediment affecting safety arises during the course of mediation, the mediator shall adjourn the session to confer separately with the parties, implement appropriate referrals to community service providers, advise the parties of their right to terminate and shall either:

(a) Terminate mediation when circumstances indicate that protective measures are inadequate to maintain safety; or

(b) Proceed with mediation after consulting separately with each party to ascertain whether mediation in any format should continue. If an impediment affecting competency or good faith, but not safety, the mediator may make any appropriate referrals to community service providers and shall either:

(i) Suspend mediation when there is a reasonable likelihood the impaired condition of an affected party is only temporary; or

(ii) Terminate mediation when circumstances indicate an affected party's ability to negotiate cannot be adequately restored.

(3) No terminated mediation shall proceed further unless ordered by the court, but instead shall be returned to the docket for adjudication in the manner prescribed by law. The mediator shall immediately advise the trial judge in writing if he or she suspends or terminates mediation for some reason other than agreement or inability to reach agreement, specifying the reason for such termination.

(4) If a party fails to appear without good cause at a mediation session, the trial judge may impose sanctions, including an award of mediator, attorney fees and other costs.

(5) Unless mediation has sooner terminated, the mediator shall before the continued case management conference, file with the Circuit Clerk a report describing the progress of mediation in general terms.

C. Conclusion of Private Mediation

(1) When the parties reach agreement or partial agreement during mediation, the mediator shall provide a written account of the agreement to the parties and attorneys, but not to the court. The mediator shall advise each party to obtain legal assistance in drafting or reviewing any agreements and that agreements reached during mediation will not be legally binding until reviewed and approved by the trial judge.

(2) Promptly upon conclusion of mediation, the mediator shall file with the Circuit Clerk a report, on a form provided by the Chief Judge, specifying any issues on which agreement was reached or whether the matter has concluded unsuccessfully. The report shall not specify the reasons for the in ability of the parties to reach agreement.

(3) If the mediator has concerns for the welfare or safety of the minor child(ren) or feels that it is in the best interest of the minor, the mediator shall recommend in the final report that a child representative or guardian ad litem be appointed.

D. Post-Mediation Procedures

(1) At the full, post-mediation conference following the conclusion of mediation, mediation agreements or results shall be presented to the trial judge. The court shall examine the parties as to the content and intent of the agreement and reject it if its provisions are found to be unconscionable or contrary to the best interests of a minor child. Unless the agreement is rejected, the court shall enter an appropriate judgment or order reciting its findings and incorporating the agreement as part of the judgment or order.

(2) In cases where no agreement has been reached, the trial judge shall conclude the full, post-mediation conference and set the matter for further proceedings in accordance with the rules.

RULE 7.3 ATTORNEY QUALIFICATIONS IN CHILD CUSTODY, ALLOCATION OF PARENTAL RESPONSIBILITIES, VISITATION, AND PARENTING TIME **(Administrative Order 2006-2 – December 27, 2006)**

A. Counsel who are appointed by the court to participate in child custody, allocation of parental responsibilities, visitation, and parenting time matters, as delineated in Illinois Supreme Court Rule 900(b)(2), must possess the ability, knowledge, and experience to do so in a competent and professional manner.

B. Attorneys seeking appointment in child custody, allocation of parental responsibilities, visitation, and parenting time shall apply in writing to the Chief Judge of the circuit. The application shall set forth all qualifications as set forth herein. A list of attorneys so qualified shall be maintained by the Chief Judge's Office.

C. Attorneys appointed by the court to represent children in child custody, allocation of parental responsibilities, visitation, parenting time, or guardianship cases when custody, allocation of parental responsibilities, visitation, or parenting time is an issue shall have the following minimum qualifications.

(1) Be licensed and in good standing with the Illinois Supreme Court; and

(2) Prior to appointment, the attorney shall have attended the education program created by the Illinois State Bar Association for education of attorneys appointed in child custody and allocation of parental responsibilities cases or equivalent education programs consisting of a minimum of ten hours of continuing legal education credit within the two years prior to the date the attorney qualifies to be appointed. The education program should include courses in child development; ethics in child custody and allocation of parental responsibilities cases; relevant substantive law in custody and allocation of parental responsibilities, guardianship and visitation and parenting time issues; domestic violence; family dynamics including substance abuse and mental health issues; and education on the roles and responsibilities of guardians ad litem, child representatives, and attorneys for children.

(3) One *pro bono* representation in the year prior to the appointment. In lieu of Item #2 above, an attorney may initially qualify if he or she has acted as a guardian ad litem, child representative, or attorney for children in at least 5 cases in a two-year period preceding initial qualification.

D. To remain on the approved list, each attorney shall attend approved continuing legal education courses consisting of at least five hours every two year period following initial qualification. The areas covered by this continuing education shall conform with C.2. above. Verification of attendance shall be submitted to the Office of the Chief Circuit Judge at the time of attendance or upon request.

E. Each attorney must complete the Child Representative Information Sheet provided by this circuit and return it with a statement or other verification of attendance at continuing education.

F. Each attorney must adhere to the minimum duties and responsibilities of attorneys for minor children as delineated in Supreme Court Rule 907.

G. Each attorney placed on the approved list and appointed shall be paid by the parties to the litigation as ordered by the judge handling the file or as agreed between the litigants. The costs for the appointed attorneys shall be paid as ordered and the court may enforce the orders and judgments as in other proceedings, including the imposition of sanctions. Where possible, such fees shall be paid prior to engagement in the form of a retainer and accounted for by the appointed attorney where appropriate.

H. In the event the court deems it is in the best interests of the child or children to have an attorney appointed in a proceeding under Section IX of the Supreme Court Rules but finds that the parties are both indigent, the court may appoint an attorney from the approved list to serve pro bono.

I. The Chief Judge shall maintain the list of the approved attorneys and shall rotate the appointment of pro bono representations. Each attorney on the approved list for the First Judicial Circuit shall only be required to accept no more than two pro bono appointments each calendar year.

J. The Chief Judge of this Circuit maintains the authority to remove any attorney from the list of approved attorneys based upon the failure to meet the listed qualifications or for good cause, including the failure of any appointed attorney to perform as provided in Supreme Court Rule 907.

RULE 7.4 PARENTING EDUCATION REQUIREMENT

Pursuant to Supreme Court Rule 924, each court shall require strict compliance. All parties are required to attend and complete a program of parenting education, when child custody, allocation of parental responsibilities, visitation, or parenting time issues are in dispute. The Chief Judge's Office shall keep a listing of all programs approved by the circuit judges for this education. Proof of attendance shall be provided to the court by the parties per Supreme Court Rule 924.

ARTICLE VIII

MEDIATION – CIVIL ACTIONS

Mediation under these rules involves a confidential process whereby a neutral mediator, selected by the parties or appointed by the court, assists the litigants in reaching a mutually acceptable settlement agreement. It is an informal and non-adversarial process. The mediator does not decide the issues or bind the parties to a decision after a contested hearing. The role of the mediator includes assisting the parties in identifying the issues, fostering joint problem solving, exploring settlement alternatives, and aiding the parties in reaching an agreement. Parties and their representatives are required to mediate in good faith.

Rule 8.1 MEDIATION PROCEDURE

A. **Civil Actions.** Court ordered mediation shall be available, at the discretion of the judge presiding over the case, in all civil actions. Such actions shall include Law, LM, Probate, Chancery, Miscellaneous Remedy, Tax and Eminent Domain Cases.

B. **Assignment for Mediation.** At any time while an eligible case is pending, by agreement of the parties, or upon the Court's own motion, the judge presiding over the case may assign the case to court ordered mediation. Upon assignment for mediation, all further action in the case shall be stayed until mediation is complete.

C. **Choice of Mediator**. Upon assignment of a case for mediation, the parties shall choose a mediator within seven (7) days. In the event that the parties are unable to agree upon a mediator within said time period, within seven (7) days thereafter, each party shall submit a list of three (3) approved mediators to the judge presiding, who shall assign a mediator from the lists submitted.

D. **Time for Mediation.** Mediation shall be completed within sixty (60) days of assignment, except for good cause shown. In the event that mediation is not complete within said sixty (60) days, either party may petition the court for additional time.

E. **Location of Mediation Conferences.** Unless otherwise ordered by the court, the mediator shall determine the location of all mediation.

F. **Attendance at Mediation Conferences.** 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.

(1) A party in a civil case is deemed to have appeared if the following persons are present at the mediation conference:

(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

© Representative of the insurance carrier for any insured party who has full authority to negotiate and recommend settlement to the limits of the policy, without further consultation.

(2) All parties to a dispute involving family law cases shall appear at the mediation conference.

The mediator shall have full authority to require the attendance of any additional individuals deemed reasonable and necessary by the mediator in order to proceed with a meaningful mediation conference.

G. **Number of Mediation Conferences.** The parties shall be required to attend as many mediation conferences as the mediator deems reasonable and necessary to complete the mediation process.

H. **Confidentiality.** Mediation conferences held pursuant to these rules shall be confidential and shall not be open to the public. Court reporters shall not be permitted except by leave of court.

I. Discovery.

(1) Discovery shall proceed as in all other civil actions.

(2) Whenever possible, the parties are encouraged to limit discovery to the development of the information necessary to facilitate a meaningful mediation conference. The duty to supplement existing discovery continues throughout the mediation process.

(3) All oral or written communications made throughout the mediation process shall be confidential, exempt from discovery, and inadmissible as evidence in the underlying cause of action unless all parties agree otherwise in writing. Evidence with respect to settlement agreements shall be admissible in proceedings to enforce the settlement. Subject to the foregoing, the mediator may not disclose any information obtained during the mediation process.

J. Completion of Mediation.

(1) The mediator may terminate mediation at any time when, in the mediator's opinion, no purpose would be served by continuing mediation. Likewise, the mediator may require additional mediation conferences when, in the opinion of the mediator, such additional conferences have a reasonable chance of resulting in a full or partial settlement of the case.

(2) The mediator shall report to the court in writing whether or not an agreement was reached by the parties. The report shall designate, "full agreement", "partial agreement" or "no agreement". The report shall be signed by the mediator and filed in the court file of the case under mediation within fourteen (14) days after the last day of mediation. A copy of said report shall be served by the mediator upon all parties.

(3) If an agreement is reached, it shall be reduced to writing and signed by the parties or their agents before termination of mediation. Each party shall receive a copy of such agreement.

(4) If a full agreement is reached, the report of the mediator shall so state and shall identify those individuals designated to complete and submit all documents necessary to the conclusion of the agreement.

(5) If a partial agreement is reached, the report of the mediator shall state which claims have been resolved and which claims have not been resolved. The report shall also identify those individuals designated to complete and submit all documents necessary to the conclusion of those claims resolved by agreement.

(6) If no agreement is reached, the mediator shall so report without comment or recommendation.

K. **Sanctions.** The court may impose sanctions upon any party or attorney for failing to comply with these rules, or for failing to participate in mediation in good faith, including but not limited to mediation costs and reasonable attorney fees related to the mediation process.

L. **Immunity of Mediators.** Any person approved to act as a mediator under these rules, while acting within the scope of his or her duties as a mediator, shall have judicial immunity in the same manner and to the same extent as a judge in the State of Illinois, as provided in Supreme Court Rule 99.

Rule 8.2 QUALIFICATIONS, CERTIFICATION AND COMPENSATION OF MEDIATORS

A. **Qualifications of Mediators in Civil Cases (Non-Family Law Cases).** In order to become a certified mediator in the First Judicial Circuit in civil cases, an individual must meet the following qualifications:

(1) Be a retired Illinois judge; or

(2) Be an attorney meeting the following qualifications:

(a) Be in good standing with the Illinois Attorney Registration and Disciplinary Commission with at least ten (10) years of civil trial practice in Illinois; and

(b) Complete a mediation training program approved by the Chief Judge of the First Judicial Circuit; and

(c) File an approved application form with the office of the Chief Judge of the First Judicial Circuit. The applicant shall certify that he or she is licensed to practice law in the State of Illinois, that his or her license is in good standing, that he or she has engaged in civil litigation for not less than ten (10) years, and that he or she has filed proof of legal malpractice insurance.

B. Certification.

(1) Applicants to serve as mediators shall be certified by a majority of the members of the Mediation Committee, which shall consist of five (5) judges of the First Judicial Circuit appointed to serve in such capacity by the Chief Judge. Any applicant denied certification by the Mediation Committee may appeal such denial to the Chief Judge, whose decision shall be final.

(2) On or before February 1 of each year, each certified mediator shall apply for re-certification, on a form prescribed by the Chief Judge, by minimally certifying that his or her professional license continues to be in good standing, and by filing annual proof of professional liability insurance covering his or her work as a mediator.

(3) Any mediator who ceases to be listed in good standing with the Illinois Attorney Registration and Disciplinary Commission or other applicable state agency, fails to annually file proof of professional liability insurance, or fails to apply for re-certification shall be removed from the list of certified mediators. In the event that a mediator otherwise fails to maintain the quality and integrity of the court ordered mediation program of the First Judicial Circuit, such mediator may be removed from the list of certified mediators by a majority vote of the members of the Mediation Committee. Such removal may be appealed to the Chief Judge, whose decision shall be final.

(4) Any party may file a motion before the presiding judge for disqualification of a mediator for good cause. If the court disqualifies a mediator who has previously been chosen, the parties shall re-commence the process of selecting a new mediator. The time for mediation shall be tolled during the time that a motion for disqualification of a mediator is pending. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. A person selected or appointed to act as a mediator in a case, and who

accepts such assignment, and who is an attorney, shall thereafter be barred from representing any party in that case. Any non-attorney serving as a mediator in a family law case shall be barred from engaging in a professional relationship with any party for a period of two (2) years following completion of the mediation.

(5) The Office of the Chief Judge shall maintain separate lists of certified mediators for civil cases and family law cases in the First Judicial Circuit, which shall be provided to the Clerk of the Circuit Court in each county. Such lists shall include a short biographical sketch of each certified mediator, which shall be provided at the time of application, and the mediator's charges for mediation.

C. Compensation.

(1) Certified mediators shall determine their manner and amount of compensation. At the time of initial application for certification, and annually at application for re-certification, mediators shall publish their charges for mediation, which shall be included in the certified list of mediators maintained by the Clerk of the Circuit Court in each county.

(2) Unless otherwise agreed by the parties, or ordered by the court, compensation of the mediator shall be shared equally by the parties participating in the mediation process.

(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 without compensation from any party to the action. No mediator shall be required to accept more than one pro bono case per year. Refusal to accept one pro bono case per year shall be grounds for removal of a mediator from the list of certified mediators.

(4) The fees of a court appointed mediator shall be subject to appropriate order or judgment for enforcement.

Rule 8.3 REPORTS AND RECORD-KEEPING

The Clerk of the Circuit Court of each county shall maintain a record of cases referred for mediation. Such record shall include the number of cases referred in each category, and whether such mediation resulted in full agreements, partial agreements or no agreements. Each clerk shall report such information to the Office of the Chief Judge on a monthly basis on a form to be prescribed by the Chief Judge. The Chief Judge shall report such information to the Supreme Court at such times and in such manner as shall be required.

Rule 8.4 APPLICATION AND EFFECTIVE DATE

This Rule shall become effective upon its approval by the Illinois Supreme Court, acting through its Administrative Office, as required by Supreme Court Rule 99, and shall apply to all cases then pending or thereafter filed.

ARTICLE IX

MEDIATION – FORECLOSURE

Rule 9.1 PURPOSE

The Foreclosure Mediation Program (Program) is designed to alleviate the burden of costs and expenses to lenders, borrowers and taxpayers caused by residential mortgage foreclosures. The Program creates an opportunity for borrowers and plaintiffs to come together to explore mutually beneficial alternatives to foreclosure. These alternatives may include retention options, such as a loan modification, repayment plan, reinstatement, or forbearance agreement and non-retention options, such as a short sale, deed-in-lieu of foreclosure, or consent foreclosure. The Program aims to keep families in homes and prevent vacant and abandoned homes that negatively impact property values and destabilize neighborhoods. It promotes greater efficiency in the administration of justice by reduction in the backlog of court cases in the lengthy foreclosure process.

Rule 9.2 ACTIONS ELIGIBLE FOR MEDIATION

The Program is mandatory and limited to borrower-occupied residential property that serves as the borrower's primary residence. Foreclosures of non-residential, investment, or commercial properties are not eligible for the Program.

Rule 9.3 ADMINISTRATION OF PROGRAM / KEY COURT PERSONNEL

The Foreclosure Mediation Program will be managed by a Program Administrator (Administrator). The Administrator refers to an individual or organization funded to oversee the project, or if no such person exists, to the Administrator identified by the Chief Judge of the First Circuit.

Rule 9.4 FILING FEE / COMPLAINT / PROGRAM PARTICIPANT COSTS

A. In all First Judicial Circuit cases where a complaint is filed to foreclosure a residential mortgage, the Circuit Clerk shall charge the plaintiff an additional $50.00 filing fee to defray the cost of the First Circuit Foreclosure Mediation Program. The fees collected shall be forwarded to the Williamson County Treasurer and maintained in a separate fund subject to disbursement on order of the Chief Judge of the First Judicial Circuit.

B. The Complaint shall clearly designate whether the case is subject to mediation, beneath the caption title "Complaint", the plaintiff shall include "Subject to Mandatory Mediation" or "Not Subject to Mandatory Mediation". All borrower-occupied residential foreclosures are subject to mandatory mediation.

C. The First Circuit Foreclosure Mediation Program is free of charge to the borrowers.

Rule 9.5 SUMMONS / ATTACHMENTS TO SUMMONS

A. After the foreclosure complaint is filed, the borrower is served with the summons, notice of mandatory mediation and the foreclosure mediation program initial questionnaire. With the exception of the Complaint, all other documents for mediation shall be kept in a confidential file separate from the court file to be maintained by the Administrator throughout the entire mediation process.

B. The notice of mandatory mediation shall: advise the borrower to bring certain documents to the Initial Intake Conference; contain a list of housing counselors certified by the Housing and Urban Development that may be available to assist the borrowers in foreclosure; advise the borrower of free legal assistance in the area, specifically, Land of Lincoln Legal Assistance Foundation; and advise the borrower that a language interpreter is available without cost upon contacting the Administrator.

C. In residential foreclosure cases, in addition to the forms required by the Illinois Supreme Court Rules, plaintiff shall use the following forms: Summons (Exhibit A), Notice of Mandatory Mediation (Exhibit B), and Foreclosure Program Initial Questionnaire (Exhibit C).

Rule 9.6 ANSWER / MOTIONS / ENTRY OF APPEARANCE / DISCOVERY

A. The borrower must file an answer and appearance in the foreclosure action if he or she wishes to litigate the case. The borrower does not have to file an answer and appearance to participate in the mandatory mediation program.

B. No dispositive motions, including motion for default judgment, shall be filed until mandatory mediation is completed. If a borrower fails to appear for the Initial Intake Conference for mandatory mediation, all motions shall be allowed, including but not limited to, a motion for default judgment. If a temporary agreement has been reached as outlined in Rule 9.11 and the borrower fails to comply with the agreement, all motions shall be allowed, including but not limited to, a motion for default judgment.

C. If the borrower is represented by an attorney, the attorney must file a notice of representation with the lender to advise if the lender may contact the borrower directly. If representation is terminated at any point in the process, a letter must be sent to the lender advising that the borrower is no longer represented.

D. Unless otherwise ordered by the court, no discovery shall take place until after the mediation process is complete. However, both parties are required to submit documents and provide information necessary for the mediation process.

Rule 9.7 INITIAL INTAKE CONFERENCE

A. In all residential foreclosure cases, the plaintiff shall select a date and time for the Initial Intake Conference from a list of dates issued by the Circuit Court, to be included in the Summons. The date shall be at least thirty (30) days but not more than forty-five (45) days from the issuance of Summons.

B. If service is by Publication, the plaintiff shall pick a date from the Circuit Court list which is at least forty-five (45) days but not more than sixty (60) days from the date of first publication. When service is by publication, the plaintiff shall file a copy of the affidavit for Publication containing the date for the Initial Intake Conference with the Circuit Clerk so the Clerk can add the case to the Initial Intake Conference calendar for the date selected.

C. The Circuit Clerk and the Administrator shall work together to compile a list of available dates for Initial Intake Conferences. The Circuit Clerk shall notify the Administrator when Initial Intake Conferences are scheduled.

D. The location of the Initial Intake Conference will be included in the Summons and will be held in the First Judicial Circuit Courthouse of the County in which the foreclosure has been filed, unless otherwise noted.

E. If the borrower fails to appear for the Initial Intake Conference, mandatory mediation will not proceed and the plaintiff may proceed with foreclosure. If a borrower fails to appear at the Initial Intake Conference, and the redemption period has not expired, the borrower may petition the court for entry into the mediation program. The Administrator will provide the Foreclosure Judge and Circuit Clerk with a list of participants as they have been accepted to the Program.

F. During the Initial Intake Conference, the borrower and the Administrator will discuss options available for the borrower through the Program. Borrowers who are currently in bankruptcy or are not residing in the residence of which the mortgage is being foreclosed cannot proceed with mandatory mediation. The Administrator will collect the completed initial questionnaire and any necessary documents from the borrower. When possible, housing counseling and legal service agencies will be present to present information to the borrowers, screen the borrower to qualify for the services the agency provides, and answer questions on the foreclosure process.

G. If accepted into the Program after the Initial Intake Conference, the borrower and the plaintiff will be notified by the Administrator by mail or e-mail (if available) of the first Pre-Mediation Conference.

H. The plaintiff shall provide a loan modification application packet to the borrower within fifteen (15) days of the completion of the Initial Intake Conference in preparation for Pre-Mediation Conferences. If the plaintiff provides a loan modification packet to the Administrator before the Initial Intake Conference the Administrator shall provide the packet to the borrower at the Initial Intake Conference.

Rule 9.8 PRE-MEDIATION CONFERENCE

A. At the Pre-Mediation Conference, the parties meet with the Administrator to discuss their objectives and ensure both parties have all the relevant documents and information needed to have a productive Pre-Mediation Conference. The plaintiff's counsel or representative will explain the review process for various options for the borrower's specific lender and provide the borrower with a list of any and all documents needed to review the borrower for those options. The borrower may request documents relevant to mediation from the plaintiff at any time.

B. Notices will include particular information that must be brought to the first Pre-Mediation Conference by each party. Each party shall be prepared to provide the following at the first Pre-Mediation Conference:

(1) The lender or its representative shall provide:

(a) A copy of the complaint, including the note attachment including all indorsements and allonges, per Supreme Court Rule 113, and;

(b) A lender's current loan modification packet, and;

© Payment history records with respect to the mortgage, including all fees and costs incurred, and;

(d) An itemization of the amounts needed to cure and payoff the mortgage.

(2) The borrower shall provide:

(a) Proof of income, including when available, pay stubs, benefit statements, and/or bank statements.

C. After the initial Pre-Mediation Conference, the case may be set for a Pre-Mediation Status Conference to review the borrower's options. There is a limit of three (3) total Pre-Mediation Conferences/Status Conferences, however a case may be scheduled for additional meetings at the discretion of the Administrator or by agreement of the parties.

D. The following persons must participate in Pre-Mediation Conferences:

The borrower; and
The borrower's attorney, if any (in person or by telephone);
The lender with full settlement authority (in person or by telephone); and
The lender's attorney (in person or by telephone).

Additional Parties: In addition to legal counsel, the borrower may be assisted by any designee of his or her choosing, including by not limited to a family member, HUD-certified housing counselor, or trained community volunteer. Such designees may attend Pre-Mediation Conferences and Mediation Sessions with the borrower and provide any assistance the borrower requests of him or her throughout the Mediation process, including but not limited to, communicating with the plaintiff or plaintiff's counsel on the borrower's behalf, requesting

information, or providing general support. These designees may be required to sign an authorization form provided by the plaintiff allowing the plaintiff to discuss private information and requiring all attendees to keep the information confidential.

Failure of either party to attend the Pre-Mediation Conference or participate in good faith in the Pre-Mediation Conference may result in sanctions by the court.

E. If the case is resolved through Pre-Mediation resulting in a temporary agreement or a permanent agreement, the Administrator will not send the case to a full Mediation and follow the steps outlined in Rule 9.11 and Rule 9.12.

F. If the case is unable to be resolved through the Pre-Mediation process, the borrower or the plaintiff may request full Mediation. The Administrator will decide whether the case is appropriate for a full Mediation and schedule if appropriate. If the case is not appropriate for full Mediation, the Administrator will return the case to court as outlined in Rule 9.12, to continue in the foreclosure process.

Rule 9.9 MEDIATION

A. The Administrator will assign a mediator to the case from the list of court-certified mediators. The Administrator shall notify the parties of the assigned mediator and the date, time and place of the Mediation. The Administrator will gather all relevant documents and give them to the mediator before the scheduled Mediation.

B. Either party may request disqualification of a mediator for good cause. Mediators may also disqualify themselves or refuse an assignment for good cause. Good cause includes, but is not limited to, a conflict of interest or the appearance of impropriety. If a mediator is disqualified, an alternate mediator will be assigned and the Mediation will be rescheduled accordingly.

C. The first Mediation Session shall be scheduled within 45 days of the last Pre-Mediation Status Conference, unless an alternative date is agreed to by the parties. Additional Mediation Sessions shall be held within 30-45 days or as agreed by the parties.

D. There is a limit of three (3) total Mediation Sessions; however a case may be scheduled for additional meetings at the discretion of the Administrator, the mediator, or by agreement of the parties.

E. The following persons must participate in Mediation Sessions:

The borrower; and
The borrower's attorney (if any);
The lender with full settlement authority (in person or by telephone); and
The lender's attorney.

Additional Parties: In addition to legal counsel, the borrower may be assisted by any designee of his or her choosing, including by not limited to a family member, HUD-certified housing counselor, or trained community volunteer. Such designees may attend Pre-Mediation Conferences and Mediation Sessions with the borrower and provide any assistance the borrower

requests of him or her throughout the Mediation process, including but not limited to, communicating with the plaintiff or plaintiff's counsel on the borrower's behalf, requesting information, or providing general support. These designees must sign an authorization form provided by the plaintiff allowing the plaintiff to discuss private information and requiring all attendees to keep the information confidential.

Failure of either party to attend the Mediation Session or participate in good faith in the Mediation process may result in sanctions by the court.

F. If the case is resolved through Mediation resulting in a temporary agreement or a permanent agreement, the mediator will follow the steps outlined in Rule 9.11 and Rule 9.12.

G. If the case is unable to be resolved through Mediation, or if in the mediator's opinion no purpose would be served by continuing in Mediation, the mediator shall make a final report to the court as outlined in Rule 9.12.

Rule 9.10 CONTINUANCES

A party may, upon good cause shown, request a continuance of a scheduled Initial Intake Conference, Pre-Mediation Conference or Mediation Session. If a party is requesting a continuance, the request must be made to the Administrator. If the Administrator finds good cause to continue the Pre-Mediation Conference or Mediation Session, the Administrator will continue the conference and provide the parties and mediator (if applicable) with a new conference date.

Rule 9.11 TEMPORARY AND PERMANENT AGREEMENTS

A. Temporary Agreements

(1) A temporary agreement may include, but is not limited to, a trial loan modification, a deferment agreement or a forbearance agreement. During this time, the case remains pending in the mediation process, and is not remanded back to court.

(2) If a temporary agreement has been reached, and such agreement will result in a longer period of time between conferences then generally allowed by these rules, the parties can extend the Pre-Mediation Conference/Mediation Session date out to a date that incorporates the end of the trial period.

(3) The Administrator or the mediator will file notice with the court that a temporary agreement has been reached, the terms of the agreement, and the date of the next Pre-Mediation Conference or Mediation Session once scheduled.

B. Permanent Agreements

(1) If a permanent agreement is reached, a Summary of Agreement, outlining the terms of the agreement shall be drafted by the Administrator, mediator or the lender. The agreement shall be signed by the borrower, the borrower's attorney or representative, the lender's attorney and the lender.

(2) The agreement shall be filed in the mediation file with the court as outlined in Rule 9.12.

Rule 9.12 CONCLUSION OF THE MEDIATION PROCESS / REPORT TO THE COURT

A. Conclusion of the Mediation Process

(1) The Administrator or the mediator may terminate the mediation process at any time during the mediation process for the following reasons:

(a) A permanent agreement has been reached between the parties, or;

(b) In the Administrator or mediator's opinion, no purpose would be served by continuing the mediation process, or;

(c) A party has failed to mediate in good faith.

B. Report to the Court

(1) The Administrator or the mediator will file, with the trial court, a report indicating the following:

(a) The parties came to a temporary or permanent agreement, and the nature of that agreement, or;

(b) There is no purpose served by continuing with the mediation process, or;

(c) A party did not mediate in good faith, and the nature of the failure to mediate in good faith.

Rule 9.13 OBLIGATION TO MEDIATE IN GOOD FAITH

A. Each mediation party, and authorized representative of a mediation party, shall make a good faith effort to mediate all issues, including production of all documents outlined in these rules to be produced.

B. A mediation party shall cooperate with the Administrator and mediator to produce the information requested to permit the mediation process to function effectively.

C. A mediation party shall attend all Pre-Mediation Conferences and Mediation Sessions as scheduled by the Administrator.

D. If a party does not mediate in good faith, the court may impose sanctions as outlined in Rule 9.23.

Rule 9.14 COURT STATUS DATE POST MEDIATION REPORT

A. The foreclosure case shall be set for status hearing within (21) days after the Administrator's final report (if case has concluded and is not being scheduled for a full mediation) or the mediator's final report is submitted to the Court.

B. If the parties mediated in good faith but could not reach an agreement, and there is no purpose in continuing with the mediation process, the court shall issue an order terminating the mediation process and allowing litigation to go forward.

Rule 9.15 JUDICIAL REFERRAL TO MEDIATION AT ANY TIME PRIOR TO THE SALE OF THE RESIDENCE

A. During a foreclosure case, if it comes to the court's attention that there are facts that warrant mediation, the court may stay the foreclosure proceedings further, and remand the case to the Program.

B. Facts to consider may include:

(1) The borrower had no opportunity to attend mandatory mediation due to service before the implementation of the Program.

(2) The borrower has been working with the lender and has been placed in a loan modification, but the case has continued to move through the foreclosure process.

(3) The borrower has actively engaged the lender with the possibility of a loan modification, but has met barriers, such as being advised that documents have been lost, misplaced or not received.

(4) The borrower now has income to conceivably enter into a loan modification.

(5) Other circumstances the court finds persuasive.

Rule 9.16 CELL PHONE USAGE

Since it is contemplated the plaintiff's counsel and lender's representatives will need to consult telephonically and/or appear telephonically in the Mediation Process, counsel and lender's representatives shall be allowed to participate by phone or, if appearing in person, shall be allowed to bring cell phones into the location of the mediation solely for the purpose of aiding in the Mediation Process, even if the location has a current ban on cell phone use. In addition, this section allows the Administrator to use a cell phone as needed to assist counsel and representatives to attend conferences by phone, as allowed by these rules. In no case are photographs or recordings of the proceedings or personnel attending allowed.

Rule 9.17 MEDIATORS

A. Qualifications

(1) Applicants shall be eligible for appointment to serve as mediators by filing with the Administrator an application form certifying the following:

(a) Is a retired judge OR a certified mediator in any Illinois Circuit Court mediation program or any federal mediation program, and;

(b) Has completed at least 20-hours of basic mediation training, and;

(c) Has attended a mandatory Foreclosure Mediation Seminar, and;

(d) Has read and is informed of the rules of the Illinois Supreme Court relating to Mediation Programs and the Foreclosure Mediation Program Rules of the First Judicial Circuit.

(2) Each application must be reviewed and approved by the Chief Judge or his or her designee.

(3) Mediators shall comply with general standards that may, from time to time, be established and promulgated in writing by the Chief Judge of the First Judicial Circuit. The eligibility of each mediator to retain the status of certified mediator may be periodically reviewed by the Chief Judge or his or her designee. Failure to comply with the rules governing mediation or the general standards provided for by the court may result in the decertification of the mediator.

B. Appointment

The Administrator shall maintain an alphabetical list of persons qualified to serve as mediators who shall be assigned on a rotating basis.

C. Compensation

(1) Mediators shall be compensated $150.00 for each case mediated, so long as funding remains available through the Illinois Attorney General Foreclosure Mediation Grant or through a source identified by the Chief Judge of the First Judicial Circuit. This is a per case reimbursement, not a per session reimbursement.

(2) Upon completion of the mediation process, the mediator will file a voucher with the Administrator. The Administrator shall process the vouchers for payment to the mediators.

Rule 9.18 TRAINING OF JUDGES, KEY COURT PERSONNEL AND MEDIATORS

A. Judges

(1) The Chief Judge shall select Associate and Circuit Judges to be trained in the First Judicial Court Foreclosure Mediation Program by attending a Foreclosure Mediation Seminar or other training designated by the Administrator or Chief Judge.

(2) Judges assigned to the foreclosure court shall attend continuing judicial education courses offered by the Administrative Office of the Illinois Courts, including during the every-other-year EDCON conference.

B. Key Court Personnel

The Circuit Clerk shall assign individual clerks to attend the Foreclosure Mediation Seminar or other training designated by the Administrator or Chief Judge.

C. Mediators

All individuals interested in applying to be included in the court approved list of Foreclosure Mediation Mediators must attend the Foreclosure Mediation Seminar or other training designated by the Administrator or Chief Judge.

Rule 9.19 CONFIDENTIALITY

Unless otherwise authorized by the parties, all oral and written communications made in the mediation process, other than written agreements between the parties and documents filed of record, shall be exempt from discovery and shall be confidential and inadmissible as evidence in the underlying cause of action.

Rule 9.20 IMMUNITY

Any person approved to act as a mediator under these rules, while acting within the scope of his or her duties as a mediator, shall have judicial immunity in the same manner and to the same extent as a judge in the State of Illinois, as provided in Illinois Supreme Court Rule 99.

Rule 9.21 IMPARTIALITY

A mediator shall conduct mediation in an impartial manner and avoid conduct that gives the appearance of partiality or impropriety. Mediators shall not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or any other reason. If at any time a mediator is unable to conduct mediation in an impartial manner, the mediator shall withdraw.

Rule 9.22 CONFLICTS OF INTEREST

A mediator shall avoid any conflict of interest or the appearance of any conflict of interest during the mediation process. A mediator shall not mediate a foreclosure case if the mediator has any past or present, personal or professional relationship with either party involved in the mediation that reasonably raises a question of a mediator's impartiality without both parties' consent. A mediator shall disclose, as soon as possible, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation.

Rule 9.23 SANCTIONS

If the mediation was terminated for failure to mediate in good faith, the court shall review the nature of the complaint. The court may order sanctions including but not limited to the following: a fine against the lender, order the case back to mediation, order the terms of a settlement agreement to be honored, dismiss the foreclosure action against the borrower, and/or waive all costs assessed by the lender again the borrower in the foreclosure action.

Rule 9.24 CAPACITY TO PROVIDE LANGUAGE ASSISTANCE

For those individuals whose principal language is not English, or for individuals that are hearing impaired, the Circuit Clerk will provide assistance using either local language interpreters, or level five certified deaf interpreters.

Rule 9.25 REPORTING TO THE ILLINOIS SUPREME COURT

The court shall maintain statistical data on the results of mediation, including the number of cases where the initial criteria was met and the number of cases where loans were modified or otherwise worked out between parties, and shall report the same to the Administrative Office of the Illinois Courts at such times and in such manner as may be required.

The court shall also maintain financial information relating to the program and shall report the same to the Administrative Office of the Illinois Courts at such times and in such manner as may be required.

Rule 9.26 SUSTAINABILITY PLAN INCLUDING LONG-TERM FUNDING

The Chief Judge of the Circuit shall review the financial sustainability of the Foreclosure Mediation Program on an annual basis. To ensure sustainability of the administration of this program, it is the intent of the Court that any reserves from the additional $50.00 filing fee on complaints filed to foreclose a real estate mortgage will be used to support the cost of administration.