

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
GENERAL ORDER 16-26
effective October 8, 2016

16mR1

IN THE MATTER OF)
LOCAL RULES)
ARTICLE 16)
CHILD PROTECTION MEDIATION)
PROGRAM)

FILED
ENTERED
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THE HONORABLE JUDGE
CIRCUIT COURT CLERK
KANE COUNTY, IL

FILED
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WHEREAS the Sixteenth Judicial Circuit has acted to update the current version of the Local Rules,

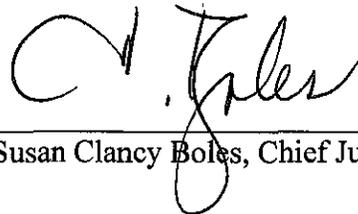
IT IS HEREBY ORDERED:

Pursuant to the authority granted to the circuit courts under Illinois Supreme Court rule 99(b)(1), the Sixteenth Judicial Circuit Court has promulgated rules, approved by a majority vote of the Circuit Judges, for the conduct of mediation proceedings for child protection cases in Kane County.

These rules were approved by the Illinois Supreme Court on October 7, 2016.

A Child Protection Mediation Program is hereby adopted for the Sixteenth Judicial Circuit Court, and rules regarding Child Protection Mediation as provided in the attached document which shall be deemed incorporated herein, are adopted into the Local Court Rules.

Entered this 17th day of November, 2016



Susan Clancy Boles, Chief Judge

Kane County Local Rule

ARTICLE 16: ABUSE, NEGLECT AND DEPENDENCY

16.03 CHILD PROTECTION MEDIATION PROGRAM

(a) **Compliance with Supreme Court Rule 99 (b) (2).** The Child Protection Mediation Program (the “Program”) for Kane County, Illinois, has promulgated rules for the conduct of the mediation proceedings, which are in compliance with Supreme Court Rule 99 (b) (2). The Program Administrator and any person approved to act as a mediator under these rules, while acting within the scope of his or her duties, 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. **Note:** Throughout these rules, “mediate”, “mediation”, and “mediator” may be read to include “co-mediate”, “co-mediation,” and “co-mediators”.

(b) ACTIONS ELIGIBLE FOR REFERRAL TO MEDIATION

(1) **Child protection cases.** Pursuant to Supreme Court Rule 905(a), the Child Protection Mediation Program may make mediation available in cases involving the allocation of parental responsibility or parenting time with a child or children that are initiated under Article II of the Juvenile Court Act of 1987. The mediation program focuses on issues pertaining to temporary or permanent allocation of parental responsibilities and parenting time, which can impact the permanency of a minor child. Any matter or conflict that may be delaying or impeding parenting time or any allocation of parental responsibilities determination is appropriate for mediation. When the Court determines that a matter is appropriate for mediation the Court may refer the case to mediation regardless of the stage of the child protection proceeding. However, because establishing permanency is of primary importance, and because of the necessity to begin permanency planning immediately upon relocation of the minor child (ren) from the care of parents/guardians, priority shall be given to those cases where shelter care has been ordered and prior to the adjudication, if any, of the child (ren). The decision to refer a case to mediation rests in the sound discretion of the Court.

(2) **Other cases.** Pursuant to Supreme Court Rule 905(a), the Child Protection Mediation Program may make mediation available in cases involving allocation of parental responsibilities or parenting time with a child or children that are initiated under Articles III and IV of the Juvenile Court Act of 1987, and guardianship matters involving a minor under Article XI of the Probate Act of 1975 if a Court determines that such matter is appropriate for mediation. Any matter or conflict that may be delaying or impeding parenting time or any allocation of parental responsibilities determination is appropriate for mediation. When the Court determines that a matter is appropriate for mediation the Court may refer the case to mediation regardless of the stage of the proceeding. However, because establishing permanency is of primary importance, and because of the necessity to begin permanency planning immediately upon relocation of the minor child (ren) from the care of parents/guardians, priority shall be given to those cases where shelter care has been ordered and prior to the adjudication of the child (ren). The decision to refer a case to mediation rests in the sound discretion of the Court.

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- (3) Any case(s) shall be excused from mediation if the Court determines that an impediment to mediation exists. Attorneys, social workers, CASA volunteers, family members, GALs, or any other individual involved in these cases may request that a case be referred to mediation. The Court may also refer cases to mediation *sua sponte* and over any party's objection.

(c) CREATION OF PROGRAM ADMINISTRATOR

An administrative position is established to oversee the daily operations of the Program. Whether or not a direct employee of the Sixteenth Judicial Circuit, the Program Administrator serves only with the approval of the Chief Judge and the Judge assigned to Juvenile Abuse and Neglect cases. The Program Administrator may mediate cases at the discretion of the Chief Judge.

(d) APPOINTMENT, QUALIFICATIONS, AND STANDARDS OF THE MEDIATORS

- (1) **Appointment of Mediators.** The Program Administrator, with the consent and approval of the Chief Judge of the Sixteenth Judicial Circuit and the Judge assigned to Juvenile Abuse and Neglect cases, shall appoint mediators from a roster of approved Mediators, which shall be established by the Chief Judge.
- (2) **Mediator Qualifications.** All child protection mediators shall successfully complete a minimum of forty (40) hours mediation training skills program, the content of which is acceptable to the Chief Judge of the Sixteenth Judicial Circuit, plus additional child protection training which shall be approved by the Chief Judge of the Sixteenth Judicial Circuit. Mediators shall also have knowledge and/or experience of the local child protection and juvenile court systems, the dynamics of child welfare administration, and local community resources. Additionally, child protection mediators shall possess one or more of the following:
- (A) A bachelor's, master's or doctoral degree in psychology, social work, marriage and family therapy, conflict resolution, or other behavioral science substantially in the field of juvenile and family law related to family relations, domestic violence, or child development, from an accredited college or university;
 - (B) A Juris Doctorate degree with demonstrated experience or;
 - (C) A background in mediation with experience acceptable to the Court.
- (3) **Mediator Standards.** Mediators shall comply with these rules, applicable law, and standards to be developed by the Court for this program.
- (4) **Roster of Approved Mediators.** Final or continued approval of any eligible mediator is at the discretion of the Chief Judge.
- (A) The Judge assigned to Juvenile Abuse and Neglect cases (or, at the Judge's direction, the Program Administrator) shall prepare and maintain a roster of approved mediators for assignment to child protection mediation as needed and at least on an annual basis.
 - (B) The Judge assigned to Juvenile Abuse and Neglect cases (or, at the Judge's direction, the Program Administrator) has the discretion to determine the

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frequency and order of assignment of mediation cases to mediators on the roster of approved mediators.

- (5) **Pro Bono Mediators.** Initially, all mediators on the Court roster shall serve on a *pro bono* basis. This may be subject to change as funding becomes available. The *pro bono* requirement does not apply to the Program Administrator.
- (6) **Mediator Involvement.** A mediator shall not be involved in any capacity other than mediator in any case to which the mediator is assigned. This does not bar the Program Administrator from completing administrative functions for the case. No mediator may use any information obtained during the mediation process for any purpose outside of mediation unless required to do so by law.
- (7) **Co-Mediation.** All mediations shall be co-mediated unless otherwise determined by the Program Administrator.
- (8) **Conflict of Interest.** A mediator shall not mediate a matter that presents a conflict of interest. A conflict of interest arises when any relationship between the mediator and the mediation participants or the subject matter of the dispute compromises or appears to compromise the mediator's impartiality.
- (9) **Mediator Compliance.** If a mediator on the Program's roster fails to comply with these rules or other standards as determined by the Court, any or all of the following may occur:
 - (A) The Program Administrator shall inform the mediator of any concerns;
 - (B) The frequency of assigned mediation cases may be reduced or stopped until the mediator demonstrates the ability and willingness to comply with the mediator standards;
 - (C) A course for improvement may be required for the mediator, including additional training, observation, and training material review;
 - (D) If, in the opinion of the Chief Judge, the mediator does not demonstrate the ability and willingness to comply with all of the specific and general mediator standards described in the local rules and any other standards required by the Court, the Chief Judge may remove the mediator from the roster of approved mediators.
- (10) **Processing Complaints of Misconduct by Mediators.** Persons alleging that a mediator has engaged in misconduct may file a complaint with the Chief Judge. Misconduct includes any conduct or other circumstances that would warrant removal from the list of approved mediators or discipline under section 9, paragraph D. The Chief Judge shall review each complaint, may require the mediator to file a response to the complaint, may conduct such investigation as he or she deems appropriate, and may dismiss complaints he or she finds to be without merit.

(e) SCHEDULING OF MEDIATION CONFERENCES

Referral to mediation shall be made by an Order to Mediation. Mediation sessions shall be held at the Sixteenth Judicial Circuit Mediation Program, located at 100 S. Third Street, Geneva, IL 60134 or at a location otherwise determined by the Program. When a case is referred to mediation, the involved individuals shall be provided with a date and time for the initial mediation session. All individuals expected to participate in mediation sessions must complete intake forms and submit them to the Program Administrator within seven (7)

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calendar days of entry of the Order to Mediation. When a case is ordered to mediation, a return date before the Judge shall be set.

(f) **CONDUCT OF THE CONFERENCES**

- (1) **Who May Participate.** The Court may order that parents, guardians, foster parents, attorneys, guardians *ad litem*, social workers, case managers from the POS agency, and CASA volunteers to participate in the mediation sessions. Other professionals involved with the family, such as counselors, sponsors, and school personnel may be included. In addition, individuals involved with a participant in a supportive capacity may be permitted to accompany the participant to mediation and to participate in the session if his or her participation is likely to help resolve the issue(s). Following the initial mediation session, subsequent sessions may be scheduled. These sessions may include some or all of the individuals who participated in the initial session, as well as others who did not previously participate. The mediators have the discretion to exclude an individual if it is determined that doing so would advance the mediation process and the discussion focusing on the best interests of the child(ren) and permanency for the child(ren).
- (2) **Child Interviews.** The mediator may conduct a child interview prior to the session to determine whether it is appropriate for the minor to participate in the mediation. The child (ren)'s guardian *ad litem* may be present, and the CASA volunteer and/or case manager may be present during the interview. After consultation with the child (ren)'s guardian *ad litem*, the mediator shall make all final determinations as to the appropriateness of the child (ren)'s participation in the mediation process.
- (3) **Use of Interpreters.** Whenever possible, the mediation conferences shall be conducted in the shared language of the participants. When the participants or mediators speak different languages Court-certified interpreters shall be assigned to translate.

- (g) **MEDIATION PROCESS.** Mediation is a collaborative problem-solving process involving impartial and neutral mediators who facilitate constructive negotiation and communication in an effort to reach a consensus regarding how to resolve issues of concern when children are alleged to be abused, neglected or abandoned. Mediation encourages constructive communication and information sharing, and fosters an environment where genuine engagement and agreement are possible. As a consensual decision making process, no agreement can be reached unless all the involved parties agree. No agreement will be binding on parties who are not present without their written consent. In addition to reaching important decisions regarding children and families, mediation can lead to a greater sense of teamwork and a greater understanding and ownership of resulting agreements by all involved. The mediation program typically uses a facilitative co-mediation model which involves an orientation by one of the mediators; brief opening statement by each participant; open discussions facilitated by the mediators; and caucuses with select individuals in various combinations as needed. No agreement reached will impinge on statutory prosecutorial obligations of the State's Attorney. Mediation agreements shall be subject to the Court's discretion.

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- (h) **DISCOVERY.** Pursuant to the Uniform Mediation Act, 710 ILCS 5/1 *et seq.*, mediation communications are privileged against disclosure and not subject to discovery or admissible in evidence in a judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery. Mediation communications are also privileged against disclosure and not subject to discovery or admissible in evidence in a legislative hearing or similar process. Disclosure of mediation communications shall not be compelled in any arbitration, administrative hearing, adjudication, civil action, or non-criminal proceeding in which, pursuant to law, testimony can be compelled to be given. Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in mediation.
- (i) **ABSENCE OF A PARTY AT CONFERENCE AND SANCTIONS.** Participation in mediation is mandatory for all persons ordered by the Court to participate. A mandated person must participate in all mediation sessions required to address the issues referred to mediation, and other issues raised during the initial session unless he or she has been excluded pursuant to paragraph f, section 1. The State's Attorney may elect not to appear. A mandated person who fails to appear in the mediation may be subject to Court ordered sanctions. Upon agreement of those present, a mediation session may proceed in the absence of an ordered individual if the mediator deems it appropriate.
- (j) **TERMINATION AND REPORT OF MEDIATION CONFERENCE.** Each session shall end when the parties agree it should end, unless a mediator determines the session should be terminated prior to such agreement. The mediators shall have the power to suspend or terminate the mediation process if it is determined that the mediation cannot be conducted in a safe and balanced manner. The mediator shall also have the power to suspend or terminate the mediation process if it is determined that any party is unable to participate in an informed manner for any reason, including fear or intimidation.
- (k) **MEDIATION REPORT.** A mediation report shall be completed by the mediator at the end of each mediation session and submitted to the Court. The report shall also inform the Court if an ordered party failed to appear. Additionally, the report shall indicate whether the mediation parties reached a full agreement, partial agreement, or no agreement. Any agreement shall be reduced to writing and shall be attached to the mediation report. If the mediation does not occur, the report shall inform the Court why it did not occur, whether an informal discussion was facilitated among the parties in attendance, and whether the case has been or shall be reset for mediation. If, after the initial meeting, it was determined that the case is not suitable for mediation at the time, the report will so indicate.
- (l) **FINALIZATION OF AGREEMENT.** If an agreement is reached, the mediator shall assist the mediation parties in memorializing their agreement. Any executed Memorandum of Agreement will be tendered to the Court for approval. If the Court approves and enters the Memorandum of Agreement it is fully enforceable by the Court.

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- (m) **CONFIDENTIALITY.** Except as provided in paragraph n below, all mediation communications occurring during the mediation process shall remain confidential in accordance with the terms of the Uniform Mediation Act. Mediation communications shall not be disclosed in meetings, case reviews, staffing, or similar settings. In addition, mediation communications shall not be recorded in memoranda, case notes, reports, case plans, uniform progress reports, or similar documents.
- (n) **EXCEPTIONS.** Any mediator or mediation participant may disclose the following outside of mediation if they occur in mediation:
- (1) New allegations of abuse or neglect that are revealed during the mediation process;
 - (2) Threats or statements made in mediation where failure to disclose is likely to result in serious imminent harm to any person;
 - (3) Communications that activate mandatory reporting obligations, in accordance with the provisions of the Abused and Neglected Child Reporting Act 325 ILCS 5/1-5/4, of a mediator, mediation party, or nonparty participant;
 - (4) Mediation communications included in any oral or written agreement, including a Memorandum of Agreement;
 - (5) Other communications as otherwise expressly provided by law.
- (o) **REPORTS FOR SUPREME COURT AND CHIEF JUDGE**
- (1) The Circuit Court of Kane County through the Office of the Chief Judge 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.
 - (2) The Program Administrator shall report to the Office of the Chief Judge the number of cases referred to mediation, the number of mediation sessions conducted, case outcomes, participant experience, 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.