

IN THE SIXTEENTH JUDICIAL CIRCUIT  
GENERAL ORDER 21-05  
Effective March 12, 2021

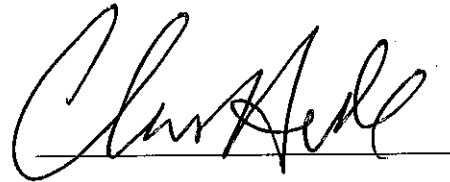
21MR3

IN THE MATTER OF )  
LOCAL COURT RULE )  
ARTICLE 9 )  
SMALL CLAIMS AND FORCIBLE ENTRY AND DETAINER )

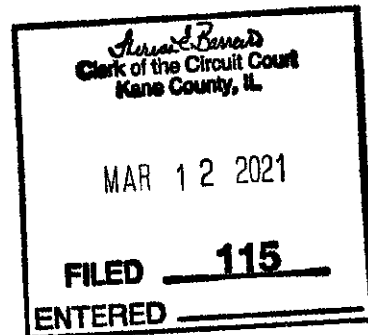
WHEREAS in response to landlord / tenant issues resulting from the COVID-19 pandemic, the Sixteenth Judicial Circuit created an Eviction Mediation Program with the goal of giving both tenants and landlords the opportunity to gain relief without having to enter the court system.

IT IS HEREBY ORDERED that by a majority vote of the Circuit Judges of the Sixteenth Judicial Circuit, the attached Local Court Rule Article 9A Eviction Mediation Program is adopted in and for the Sixteenth Judicial Circuit, effective March 11, 2021, and is added to the current version of Article 9.

Entered this 12<sup>th</sup> day of March 2021, and effective March 12, 2021.



Clint Hull, Chief Judge



## **Article 9A: Eviction Mediation Program**

### **9A.00 PURPOSE OF EVICTION MEDIATION PROCESS**

The 16th Judicial Circuit eviction mediation program is designed to help mitigate the surge of evictions resulting from the COVID-19 pandemic, and the ensuing economic fallout. Its chief goal is to assist tenants and landlords in avoiding eviction and pursuing mutually beneficial alternatives. The program seeks to avoid exposing Kane County families to homelessness during a serious health crisis, while also helping landlords mitigate losses during the extraordinary circumstances that have precipitated the need for this program. Finally, it is also designed to aid the administration of justice by promoting judicial efficiency.

### **9A.01 AUTHORITY FOR PROGRAM**

(a) The 16<sup>th</sup> Judicial Circuit Court Eviction Mediation Program is established by, and remains under, the sole authority of the Sixteenth Judicial Circuit Court through the Chief Judge (“Court”).

### **9A.02 ACTIONS ELIGIBLE FOR MEDIATION**

- (a) From the effective date of this rule, the parties in residential eviction proceedings (as defined by the Illinois 765 ILCS §705) filed in Kane County are eligible for the Sixteenth Judicial Circuit Court Eviction Mediation Program (the “Mediation Program” or the “Program”), subject to the stipulations set forth herein.
- (b) Evictions of non-residential or commercial tenants are not eligible for mediation.

### **9A.03 PROGRAM STAFF**

- (a) The position of Program Coordinator is established to oversee the daily operations of the Program, whether or not a direct employee of the Court.

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

### **9A.04 MEDIATION PROCEDURE**

- (a) A First Notice describing the mediation program must be served on the defendant(s) in a residential eviction case with the summons (or alias summons) in a form approved by the Chief Judge. The First Notice shall inform the defendant that they may participate in the mediation program by completing the screening process at their first court appearance, or prior to that date by contacting the mediation program. The First Notice shall describe mediation and the screening process. The First Notice shall include referral information to local financial counseling services, local pro bono legal counseling services through legal aid agencies and the Kane County Bar Association, and the Kane County Law Library and Self-Help Legal Center.
- (b) Enrollment in the program shall occur before or during the first court appearance, or, if there is a continuance in the matter, prior to the continuance date.
- (c) To enroll in the program, any party may contact the Program and begin the screening process. If one party has enrolled in the Program, the Program Coordinator shall make reasonable efforts to contact the other parties and engage them in the screening process. Additionally, the Court may order parties to enroll in the Program, including parties who have lost eligibility or would otherwise be ineligible to participate.
- (d) During the screening process, the Program shall collect appropriate information and refer the party to appropriate services, including but not limited to financial counseling, rental assistance, and legal assistance. Any personal data captured by the Program shall be limited to use by the Program and its financial counseling and pro bono legal aid partners, and shall not be shared or utilized for any other purposes. Aggregated, non-personal data

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shall be shared with the Administrative Office of the Illinois Courts, as set forth in section \*.10, Reports.

- (e) As part of the screening process, parties shall be provided a meaningful opportunity to access legal and financial counseling services to the extent their needs and interests demand, and as resources permit. These services may include some or all of, but not limited to: brief legal information, pro bono legal aid, financial counseling, housing counseling and technical assistance in preparing rental assistance applications. The Program shall have ultimate discretion as to what services are appropriate for any particular party. Participants shall be afforded a reasonable opportunity to pursue such services prior to mediation if the Program deems it necessary and/or in the interest of justice.
- (f) Once the defendant has been screened and referred to appropriate services as needed, the Program shall set a mediation date no later than 28 days from the first court appearance.
- (g) The Program may schedule subsequent mediation sessions prior to the expiration of 28 days from the first court appearance. Mediation sessions outside of that 28-day window may be scheduled by mutual agreement of the parties with approval of the Court.
- (h) The defendant(s) and their counsel, if any, are required to participate in the mediation. Failure to participate by defendant and/or their counsel may result in termination of the case from the Program, subject to the Program Coordinator's discretion. Plaintiff(s) and their counsel, if any, are also required to participate in mediation, and the Court shall prohibit any judgment from being entered until mediation has taken place. Repeated failure of plaintiff and/or their counsel to participate may be grounds for the Court to impose appropriate sanctions. Any representatives for a party must possess full settlement authority in order to participate in the mediation.
- (i) Mediations may be conducted in person at the Kane County Courthouse, 100 S. 3rd Street in Geneva, IL, or via telephone or video conference. Location and format of mediation will be determined by the Program Coordinator.

- (j) Upon the conclusion of each mediation session, the Program shall file a report with the Court indicating the outcome. If the parties reach an agreement, the parties and their counsel shall sign the agreement and the Program shall submit it to the Court for approval. If the parties do not reach agreement and no further mediation session is scheduled, the plaintiff(s) may return to court to proceed with the eviction action.

### **9A.05: QUALIFICATION, APPOINTMENT, AND COMPENSATION OF MEDIATORS**

- (a) The Program Coordinator, with the consent and approval of the Court, shall appoint mediators from a roster of approved Mediators, which shall be established by the Court.
- (b) All eviction mediators shall successfully complete a minimum of thirty (30) hours mediation training skills program, the content of which is acceptable to the Court, plus additional eviction training which shall be approved by the Court. Additionally, eviction mediators shall possess either: (i) a Juris Doctorate degree with demonstrated experience or; (ii) a background in mediation with experience acceptable to the Court.
- (c) Mediators shall comply with these rules, applicable law, and standards to be developed by the Court for this program.
- (d) The Judge assigned to Eviction cases (“Judge”) (or, at the Judge’s direction, the Program) shall prepare and maintain a roster of approved mediators for assignment to eviction mediation as needed.
- (e) The Judge (or, at the Judge’s direction, the Program Coordinator) has the discretion to determine the frequency and order of assignment of mediation cases to mediators on the roster of approved mediators.
- (f) A mediator shall not be involved in any capacity other than mediator in any case to which the mediator is assigned. If the Program Coordinator is also a mediator for the Program, this provision does not bar the Program Coordinator 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. A mediator shall not mediate a matter that presents a conflict of interest.

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- (g) 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:
- (i) The Program Coordinator shall inform the mediator of any concerns;
  - (ii) 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;
  - (iii) A course for improvement may be required for the mediator, including additional training, observation, and training material review;
  - (iv) If, in the opinion of the Court, 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 Court may remove the mediator from the roster of approved mediators.
- (h) A mediator shall be compensated according to the rate established by the Court.

### **9A.06: DISCOVERY**

Pursuant to the Illinois Uniform Mediation Act, 710 ILCS 35/1 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.

### **9A.07: CONFIDENTIALITY**

Pursuant to the Illinois Uniform Mediation Act, 710 ILCS 35/1 et seq., all oral and written communications to the Program or the mediator, other than written agreements between the parties, shall be exempt from discovery and shall be confidential and inadmissible as evidence in the underlying cause of action, unless otherwise authorized by all parties.

### **9A.08: IMMUNITY**

The Program Coordinator 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.

### **9A.09: LANGUAGE ACCESS**

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

### **9A.10: REPORTS**

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

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