

PART 14

THE CIRCUIT COURT FOR THE THIRD JUDICIAL CIRCUIT MADISON COUNTY, ILLINOIS

FILED

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CLERK OF CIRCUIT COURT #43
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Residential Eviction Mediation Program

A. PURPOSE

The 3rd Judicial Circuit Residential Eviction mediation program is designed to mitigate the surge of evictions resulting from the COVID-19 pandemic, and the ensuing economic fallout. The residential eviction mediation program is designed to help assist tenants and landlords in avoiding eviction and pursuing mutually beneficial alternatives to eviction. The program seeks to avoid exposing Madison County families to homelessness 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 helping promote judicial efficiency.

B. AUTHORITY FOR PROGRAM

The 3rd Judicial Circuit Residential Eviction Mediation Program is established by, and remains under, the sole authority of the Third Judicial Circuit Court through the Chief Judge ("Court").

C. ACTIONS ELIGIBLE FOR MEDIATION

1. From the effective date of this rule, the parties in residential eviction proceedings (as defined by the Illinois 765 ILCS 705) filed in Madison County alleging non-payment of rent may be eligible for the Third Judicial Circuit Court Residential Eviction Mediation Program (the "Mediation Program" or the "Program"), subject to discretion of the Court as well as the stipulations set forth herein.
2. Evictions of non-residential or commercial tenants are not eligible for mediation.
3. Evictions involving a violation other than non-payment of rent are not eligible for mediation.

D. PROGRAM STAFF

1. The position of Residential Eviction Mediation Administrator (the "Administrator") is established to oversee the daily operations of the program. The designated duties of the Mediation Administrator are set out within these rules.

E. PRE-MEDIATION AND MEDIATION PROCEDURE

1. 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(s) that they may be eligible to participate in the mediation program at their first court appearance. The First Notice shall describe pre-mediation and mediation process. The First Notice shall include referral information to local free or low cost legal counseling services through Land of Lincoln Legal Aid, local financial counseling services, local housing agencies, and the Madison County Law Library and Self-Help Legal Center.
2. Enrollment in the program shall occur during the first court appearance at discretion of the Court. If there is a continuance in the matter, enrollment may occur prior to the continuance date.
 - a. Assistance in enrollment for the Eviction Mediation Program may be facilitated by Land of Lincoln Legal Aid at the first court appearance.
3. After Court approval, any party may contact the Administrator and begin the pre-mediation screening process. If one party has enrolled in the program, the Program Administrator shall make reasonable efforts to contact the other parties and engage them in the pre-mediation 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.
 - a. If neither party contacts the Administrator after the Court's approval the Administrator will reach out to the parties using information provide in the court file.
4. During the pre-mediation screening process, the Administrator shall collect appropriate information and refer the party (parties) to appropriate services. Parties shall be provided an 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, free or low cost legal aid, financial counseling, housing counseling and technical assistance in preparing rental assistance applications. The Administrator 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 the first pre-mediation conference if the Program deems it necessary and/or in the interest of justice.

5. 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. Personal data shall not be shared or utilized for any other purposes. Aggregated, non-personal data shall be shared with the Administrative Office of the Illinois Courts for statistical purposes.
6. Once the defendant(s) has been screened and referred to the appropriate services as needed, the Administrator shall set a pre-mediation date no later than 28 days from the first court appearance.
 - a. Pre-Mediation sessions outside of the 28-day window may be scheduled by mutual agreement of the parties with approval of the Court.
7. The Defendant(s) and their counsel, if any, are required to participate in the pre-mediation process. Failure to participate by defendant and/or their counsel may result in termination of the case from the Program, subject to the Program Administrator's discretion. Plaintiff(s) and their counsel, if any, are also required to participate in the pre-mediation process, and the Court shall prohibit any judgment from being entered until the case has been terminated from the Program.
 - a. Repeated failure of plaintiff and/or their counsel or defendant and/or their counsel to participate may be grounds for the Court to impose appropriate sanctions.
8. At the Pre-Mediation Conference, the defendant and/or defendant's attorney or designee and plaintiff and/or plaintiff's counsel or representative meet with the program administrator to discuss their objectives and ensure that both parties have all the relevant documents and information needed to have a productive mediation. Defendant and/or Plaintiff may work with the program administrator towards and application for rental assistance.
 - a. The parties may request documents relevant to mediation from the other party prior to/or at the time of the initial pre-mediation conference.
9. After the initial Pre-Mediation Conference, the case may be set for an additional Pre-Mediation Status Conference to track review for rental assistance or for the parties to consider mutually beneficial agreements posed at the initial Pre-Mediation Conference. Upon the conclusion of

each pre-mediation conference, the Administrator shall provide a copy of Pre-Mediation Status Report to all parties as well as the Court. This report shall indicate the outcome of the pre-mediation conference.

- a. If the parties reach an agreement, the parties and their counsel shall sign the agreement and the Administrator shall submit it to the Court for approval.
 - b. If the parties do not reach an agreement at a Pre-Mediation Conference the case may either be terminated from the Program or set for a Full Mediation subject to the Administrator's discretion.
10. Pre-Mediation Conferences will be conducted in person, or via telephone or video conference, at the Madison County Wood River Facility, 101 E. Edwardsville Road, 2nd Floor, Suite 200, Wood River, Illinois 62095.
11. If a case is deemed appropriate for a Full Mediation Session(s) the Administrator shall transfer the case to Dispute Resolution Institute, Inc. (DRI) for mediation case management. DRI will assign a mediator to the case from a roster of court-certified mediators. The Mediation will be scheduled based on the availability of all parties and the amount of time needed for the parties to review the documents from the Pre-Mediation Conferences. DRI shall notify the parties of the assigned mediator and the date and time of the Mediation. All Mediations will take place via Zoom video conference. DRI will review the file and submit all relevant documents to the mediator before the scheduled date of Mediation.
12. 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.
13. The defendant and the defendant's counsel or designee, if any, are required to attend the Mediation. Plaintiff and plaintiff's counsel or designee, if any, are also required to attend mediation. Failure of either party to attend the Mediation or participate in good faith in the mediation process may result in sanctions by the Court.

14. The Mediator shall terminate the mediation when an agreement has been reached or, in the mediator's opinion, no purpose would be served by continuing the Mediation.
 - a. If an agreement is reached through the Mediation, it shall be reduced to writing and signed by both parties and their counsel. The mediator must also indicate whether or not the parties attended the Mediation, fully and actively participated in the Mediation in good faith, and had all individuals necessary to facilitate settlement present at the Mediation.
 - b. If a party fails to participate in good faith the Court, upon motion of either party, may impose sanctions.
 - c. If the parties are unable to reach an agreement after going through good faith negotiations, the mediator shall report to the court that the Mediation concluded in impasse.
 - d. All mediator agreements will be reviewed by DRI and included into the case file.
15. Upon the conclusion of the Mediation, DRI shall return the case file to the Madison County Program Administrator. The Administrator shall file the Mediator's report with the trial court indicating whether the parties came to an agreement through the mediation process.
16. The eviction case shall be set for status within [21] days after either the Pre-Mediation Status Report or Mediator's Report is submitted to the court but no later than [120] days after the initial Pre-Mediation Conference. If the Mediation has not occurred during this time period, the court may address this issue upon motion of either party.
 - a. If the parties were able to reach an agreement through the mediation process, the eviction case shall be dismissed at the status date unless otherwise noted in the agreement between the parties. The Court will retain jurisdiction during the agreement period and case will be set for review.
 - b. If the Mediation resulted in a good faith impasse an order terminating mediation shall be entered and litigation will be allowed to go forward.

- c. If the parties come to a mutually beneficial agreement that resolves the eviction issues the eviction case shall be dismissed.
17. All parties are also required to complete an evaluation form regarding the mediation process.
18. The Program Administrator and DRI 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 an agreement was 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.

F. MEDIATORS

1. Dispute Resolution Institute, Inc. (DRI) shall maintain a list of mediators who have sought appointment and been certified for approval by the court as mediators for the eviction mediation program.
2. 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.
3. Mediators shall comply with these rules, applicable law, and standards to be developed by the Court for this program.
4. DRI (or, at DRI's direction, the Program Administrator) has the discretion to determine the frequency and order of assignment of mediation cases to mediators on the roster of approved mediators.
5. A mediator shall not be involved in any capacity other than mediator in any case to which the mediator is assigned. 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.

6. If a mediator on the roster fails to comply with these rules or other standards as determined by the Court, any or all of the following may occur:
 - a. DRI 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 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 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 and/or DRI, the Court and/or DRI may remove the mediator from the roster of approved Mediators.
7. A mediator shall be compensated according to the rate established by DRI.

G. CONFIDENTIALITY

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

H. 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.

I. IMMUNITY

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 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.

J. IMPARTIALITY

Mediators and the Program Administrator shall conduct pre-mediation conferences and mediations in an impartial manner and avoid conduct that gives the appearance of partiality or impropriety. Mediators and the Program Administrator 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 or the Program Administrator is unable to conduct mediation in an impartial manner, the mediator or Administrator shall withdraw.

K. CONFLICTS OF INTEREST

The Program Administrator shall avoid any conflict of interest or the appearance of any conflict of interest during the pre-mediation process. A mediator shall not mediate an eviction 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.

L. 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 in-person mediation hearings. Language Access services shall be provided at no additional cost to the participants.

M. SUSTAINABILITY PLAN INCLUDING LONG-TERM FUNDING

In all Madison County cases where a complaint is filed for eviction (possession only, up to 15,000, and 15,000.01 and over), the Circuit Clerk shall forward \$100.00 of each filing fee to the Madison County Treasurer to defray the cost of the Madison County Residential Eviction Mediation Program. These funds should be maintained in a separate fund subject to disbursement on order of the Chief Judge of the Third Judicial Circuit.

Funds for the Madison County Eviction Mediation program may also be obtained through available grants throughout the calendar year.

N. 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.
- b. The Program Administrator 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 mediations transferred to DRI for completion, 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.

O. ATTACHMENTS

In residential eviction cases, in addition to the forms required by the Illinois Supreme Court Rules, plaintiff shall use forms in substantial compliance with the following attachments: Notice of the Residential Eviction Mediation Program (Exhibit A) and Eviction Program Initial Questionnaires (Exhibit B). Attorneys may generate forms for use in eviction mediation cases as long as they are substantially similar to the forms approved by the court. The Circuit Clerk may make the determination as to whether attorney-generated forms are substantially similar to the court-approved forms.

On this 26th day of July, 2021, the Circuit Judges of the Third Judicial Circuit, State of Illinois, approve the above amended rules by the majority of the Circuit Judges of the Third Judicial Circuit.

Anna A. Mudd

CHIEF JUDGE

D. A. Pitt

CIRCUIT JUDGE

A. Sholar

CIRCUIT JUDGE

Angela Lee

CIRCUIT JUDGE

Chris Mulholland

CIRCUIT JUDGE

Carolyn H.

CIRCUIT JUDGE

Steph A. Stork

CIRCUIT JUDGE

Kyle Ngip

CIRCUIT JUDGE

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CIRCUIT JUDGE