

**IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS**

**PART FIVE - LAW DIVISION
AMENDED COURT RULES**

RULE 1. MEDIATION IN MALPRACTICE CASES

In order to alleviate the burden to the parties of protracted litigation in medical malpractice actions, to further the administration of justice, and to prevent unnecessary delay, the court hereby implements the following local rules for mediation of all pending and future healing arts malpractice actions and nursing home malpractice actions in Madison County.

RULE 2: ELIGIBILITY FOR MANDATORY MEDIATION

- A) From this date forward, the parties will be required to mediate all pending healing arts malpractice actions and nursing home malpractice actions, within 90 days of the depositions of all Plaintiffs and Defendants, or their legal representatives, in said actions.
- B) The court will set a deadline for said depositions at the Initial Case Management Conference. Also, at the Initial Case Management Conference, all issues regarding, service, Certificates of Merit, and early settlement possibilities will be addressed by the court, including the entry of an Order of Referral to Mediation.

RULE 3: CIRCUIT REVIEW PANEL

All healing arts malpractice and nursing home malpractice cases will be reviewed to enhance the advancement of the disposition of cases, and to refer all eligible cases to mediation by scheduling those cases for a hearing before the judge assigned to each case.

RULE 4: SCHEDULING OF MEDIATION

- A) The Order of Referral to Mediation shall be transmitted to the mediator by the Clerk.
- B) Within twenty-eight (28) days after the Order of Referral to Mediation, the mediator shall notify the parties in writing of the location, date and time of the mediation conference which shall be scheduled to be held within 90 days of the date the depositions of all Plaintiffs and Defendants, or their legal representatives, are scheduled to be completed.
- C) A party may move to defer mediation by filing a motion with the court to defer the proceedings. The moving party shall set the motion to defer for hearing prior to the scheduled date for mediation. Notice of the hearing shall

be provided to all interested parties, including any mediator who has been appointed. The motion shall set forth, in detail, the facts and circumstances supporting the motion. Mediation shall not be deferred except for good cause shown.

- D) A party may move to dispense with mediation if the issue to be considered has previously been mediated between the same parties pursuant to this rule, if the issue presents a question of law only, or for other good cause. The moving party shall set the motion to dispense with mediation for hearing prior to any scheduled date for mediation.

RULE 5: MEDIATOR APPOINTMENT, QUALIFICATIONS AND COMPENSATION

- A) A circuit or associate judge of Madison County, who is not assigned to be the trial judge, and who has been trained and certified as a mediator in civil law cases, may serve as the mediator, unless all parties agree to select a non-judicial certified civil mediator.
- B) Within seven (7) days of the Order of Referral to Mediation, the parties may stipulate to mediation by a judicial certified civil mediator or by a non-judicial certified civil mediator.
- C) If the parties cannot agree whether to mediate with a judicial certified mediator or to choose a non-judicial certified mediator from the list maintained by the court, the plaintiff's attorney shall notify the court. The court shall appoint a judicial certified civil mediator by rotation or by such other procedures as may be adopted by administrative order of the Chief Judge.
- D) If the parties agree to use a non-judicial certified civil mediator, the parties may choose the mediator from the list maintained by the court. If the parties agree to use a non-judicial certified civil mediator but cannot agree upon the mediator, the court shall appoint a mediator by rotation or by such other procedures as may be adopted by administrative order of the Chief Judge.
- E) The Trial Court Administrator shall maintain a list of non-judicial certified civil mediators who have been certified by the Court and who have registered for appointment who may be chosen as mediators. For certification, a mediator for healing arts malpractice actions must have completed a civil law mediation training program approved by the Chief Judge and must be a member in good standing of the Illinois Bar with at least five years of practice experience. The mediators shall comply with general standards as may from time to time be established and promulgated in writing by the Chief Judge of the Third Judicial Circuit. The eligibility of each mediator to retain the status of a certified mediator may be periodically reviewed by the Chief Judge or his or her designee. Failure to adhere to the rules governing mediation or the general standards provided for by the Court may result in the decertification of the mediator.

- F) A party may move to enter an order disqualifying a mediator for good cause. If the judge to whom the case is assigned rules that a mediator is disqualified from hearing a case, an order shall be entered naming a replacement mediator. Nothing in this provision precludes a mediator from disqualifying himself or herself or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.
- G) The judge – mediated cases will be handled at no cost to the parties.
- H) The non-judicial certified civil mediators shall be paid by the parties. Each party shall pay a pro-rata portion of the total charges of the non-judicial certified civil mediator.

RULE 6: CONDUCT OF MEDIATION CONFERENCE

- A) All parties will be required to attend mediation, act in good faith, and have persons present with authority to negotiate and enter into settlement agreements.
- B) If a party fails to appear at a duly noticed mediation conference without good cause, the court upon motion shall impose sanctions, including an award of mediator and attorney fees and any other costs, against the party failing to appear. If a party to mediation is a corporate entity, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. Otherwise, unless stipulated by the parties or by order of the court, a party is deemed to appear at a mediation conference if the following persons are present: 1) The party or its representative having full authority to settle without further consultation; and 2) the party’s counsel of record, if any; and 3) a representative of the insurance carrier for any insured party who is not such carrier’s outside counsel and who has full authority to negotiate and recommend settlements to the limits of the policy or the most recent demand, whichever is lower, without further consultation.
- C) The mediator shall be in control of the mediation at all times and the procedures to be followed in the mediation. Counsel shall be permitted to communicate privately with their clients.
- D) The mediator may meet and consult privately with either party or his/her representative during the mediation session.
- E) The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference. No further notification is required for parties present at the adjourned conference.

- F) A mediator shall terminate a mediation conference when, in the mediator's opinion, no purpose would be served by continuing the conference, or an individual necessary to facilitate settlement of the dispute is not present.
- G) The mediator, whether or not a judge, is required to file a report to the trial judge indicating whether or not the parties acted in good faith during mediation by attending the mediation, participating in the mediation, and having all individuals necessary to facilitate settlement present. If a party fails to act in good faith during mediation by failing in any of those regards, the Court, upon motion, may impose sanctions, including costs, attorney fees, or other appropriate remedies.
- H) If the parties do not reach an agreement as to any matter as a result of mediation, or the mediation is terminated, the mediator shall report the lack of an agreement or termination to the court. The mediator shall report any Termination or No Agreement on the same format or on a form supplied by the Court.
- I) If an agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any, at the conclusion of the mediation. The report shall designate either full or partial agreement. This report shall be signed by the mediator and shall be filed with the Circuit Clerk within ten (10) days of the last day of the mediation conference. The report shall be in the same format or on the same form as supplied by the court.
- J) In the event of any breach or failure to perform under the agreement, upon motion to the court, the court may impose sanctions, including attorneys' fees, costs, or other appropriate remedies, including entry of judgment on the agreement.
- K) Continuation of discovery during mediation may be suspended at the discretion of the Court upon motion and hearing.
- L) All oral or written communications in a mediation conference, other than executed settlement agreements, shall be exempt from discovery and shall be confidential and inadmissible as evidence in the underlying cause of action unless all parties agree otherwise except for the limited purpose of any sanction hearing based upon a motion or report of failure to act in good faith. Any information disclosed in a proceeding for sanctions for failure to act in good faith shall not be admissible as evidence in the underlying trial of the action. Evidence with respect to alleged settlement agreements shall be admissible in proceedings to enforce the settlement. Subject to the foregoing, unless authorized by the parties, the mediator may not disclose any information obtained during the mediation process.
- M) The Court shall provide forms to be used in conjunction with this program of mediation and make them available through the Circuit Clerk.

- N) The Chief Judge of the Third Judicial Circuit or his or her designee shall maintain statistical data on all mediation proceedings and report said data to the Administrative Office of the Illinois Courts and the presiding judge or judges of the Civil Division or his or her designee as required.

RULE 7: MOTIONS TO DISMISS INVOLVING CERTIFICATES OF MERIT

For all healing arts malpractice causes accruing prior to August 25, 2005, it shall be the rule of this court that, if the court grants a Motion to Dismiss without prejudice in any such case, due to a Certificate of Merit's lack of compliance with 735 ILCS 5/2-622, the plaintiff shall have 45 days to file an amended certificate to conform to the law. Further continuances will not be granted, and the case will be dismissed with prejudice, unless justice requires otherwise.