

SIXTH JUDICIAL CIRCUIT

ADMINISTRATIVE ORDER 2021 – 09

RESIDENTIAL EVICTION MEDIATION PROGRAM

A. PURPOSE

The Sixth Judicial Circuit Residential Eviction Mediation Program (Program) is designed to mitigate the surge of evictions resulting from the COVID-19 pandemic, and the ensuing economic fallout. The 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 Sixth Circuit 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 Sixth Judicial Circuit Residential Eviction Mediation Program is established by, and remains under, the authority of the Sixth Judicial Circuit Court through the Chief Judge or designee, as permitted by Illinois Supreme Court Order 30370 (2/23/21).

C. ACTIONS ELIGIBLE FOR MEDIATION

1. The parties in residential eviction proceedings (as defined by 735 ILCS 5/9-101 et seq.) newly filed or still pending in the Sixth Circuit on or after the effective date of this Administrative Order may be eligible for 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.

D. PROGRAM STAFF

The position of Residential Eviction Mediation Administrator (the “Administrator”) is established to oversee the daily operations of the Program. The designated duties of the Administrator are set out within these rules. The Dispute Resolution Institute, Inc. (DRI) will serve as the Administrator.

E. NOTICE AND ENTRY INTO THE EVICTION MEDIATION PROGRAM

1. Effective August 23, 2021, 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 or designee, and made available to residential eviction plaintiffs through the Sixth Circuit website and each Circuit Clerk’s

Office. The First Notice shall inform the defendant(s) that they may be eligible to participate in the Program at their first court appearance. The First Notice shall describe the 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 additional services as available.

2. Enrollment in the program shall occur during the first court appearance at the discretion of the Court. If there is a continuance in the matter, enrollment may occur prior to the continuance date, or at the continued appearance date. Assistance in enrollment for the Program may be facilitated by the Administrator at the first court appearance, in partnership with the Court.
3. Cases may enter the Program through agreement of the parties, or by order of the Court, including parties who have lost eligibility or would otherwise be ineligible to participate.
4. Once admitted to the Program, the parties must contact the Administrator to begin the pre-mediation process within 2 days (not including weekends and court holidays) or such other time as the Court permits.

F. PRE-MEDIATION PROCEDURE

1. 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, but not be limited to, brief legal information, free or low-cost legal aid, financial counseling, housing counseling, and/or technical assistance in preparing rental assistance applications. The Administrator shall have ultimate discretion as to what services are appropriate for referral in each case. Participants shall be afforded a reasonable opportunity to pursue such services prior to the first pre-mediation conference if the Administrator deems it necessary and/or in the interest of justice.
2. Once the party(s) has been screened and referred to the appropriate services as needed, the Administrator shall set an initial pre-mediation date no later than 14 days from the first court appearance. Initial Pre-Mediation dates outside of the 14-day period may be scheduled by mutual agreement of the parties or by order of the Court. Under the discretion of the Administrator, Initial Pre-Mediation conferences may take place at the first appearance date, if referral to services is not necessary.
3. The party(s) and their counsel, if any, with full settlement authority are required to participate in the pre-mediation process. Failure to participate by the defendant and/or their counsel may result in termination of the case from the Program, subject to the Administrator's discretion. Failure to participate by the plaintiff and/or their counsel may result in the case being rescheduled, subject to the Administrator's discretion. The Court shall prohibit any judgment from being entered until the case has been terminated by the

Administrator from the Program. Repeated failure of the party(s) and/or their counsel to participate may be grounds for the Court to impose appropriate sanctions.

4. Prior to the Initial Pre-Mediation Conference, the parties may meet with the Administrator to discuss their objectives and ensure that parties have all the relevant documents and information needed to have a productive pre-mediation conference. The parties may work with the Administrator towards the completion of an application for rental assistance. The parties may request documents relevant to mediation from the other party prior to/or at the time of the initial pre-mediation conference.
5. If a case is not settled at the first Initial Pre-Mediation Conference, the case may be set for additional Pre-Mediation Status Conference(s) to track rental assistance applications or for the parties to have time to consider mutually beneficial agreements. 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 status and/or outcome of the Pre-Mediation Conference.
6. If the parties reach an agreement during the Pre-Mediation Process, it shall be put into writing and the parties, and their counsel, shall sign the agreement. The Administrator shall submit the agreement to the Court for approval.
7. If the parties do not reach an agreement during the Pre-Mediation Process, the case may either be terminated from the Program or set for a Full Mediation subject to the Administrator's discretion.
8. Pre-Mediation Conferences may be conducted in-person at the County Courthouse or via video conferencing, at the discretion of the Administrator.

G. MEDIATION PROCEDURE

1. If a case is deemed appropriate for a Full Mediation Session, the Administrator will assign a mediator to the case from a roster of eviction mediation 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. The Administrator shall notify the parties of the assigned mediator and the date and time of the Mediation. Mediations will take place in-person or via video conferencing, at the discretion of the Administrator. The Administrator will review the file and submit all relevant documents to the mediator before the scheduled date of Mediation.
2. 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.

3. The party(s) and their counsel, if any, with full settlement authority are required to participate in the Mediation Process. Failure to participate by the defendant and/or their counsel may result in termination of the case from the Program, subject to the Mediator and/or Administrator's discretion. Failure to participate by the plaintiff and/or their counsel may result in the case being rescheduled, subject to the Mediator and/or Administrator's discretion. The Court shall prohibit any judgment from being entered until the case has been terminated by the Administrator from the Program. Repeated failure of the party(s) and/or their counsel to participate may be grounds for the Court to impose appropriate sanctions.
4. If a case is not settled at the first Mediation Session, the case may be set for additional sessions at the discretion of the Mediator or by agreement of the parties, to track rental assistance applications or for the parties to have time to consider mutually beneficial agreements.
5. The Mediator shall terminate the Mediation Process when an agreement has been reached or if the mediator believes no purpose would be served by continuing the mediation process.
6. If the parties reach an agreement during the Mediation Process, it shall be put into writing and the parties, and their counsel, shall sign the agreement. The Administrator shall submit the agreement to the Court for approval.
7. If the parties do not reach an agreement during the Mediation Process, the case will be terminated from the Program and the Administrator will file a report with the Court to end the mediation process.

H. POST PRE-MEDIATION/MEDIATION PROCESS PROCEDURE

1. The eviction case shall be set for status within 14 days after either the Pre-Mediation Status Report or the Mediator's Report is submitted to the Court, or at any other date at the discretion of the Judge hearing the case.
2. If the Mediation Process has not been completed, the Administrator will provide an update to the Court and the Court may address this issue upon motion of either party.
3. If the parties were able to reach an agreement through the Program, the eviction case shall be dismissed at the status date, unless otherwise noted in the agreement between the parties. If the case is to be held open to ensure completion of the agreed terms, the Court will retain jurisdiction. If the agreed terms are not fulfilled, the Court shall move forward with the case as outlined in the Agreed Order. If the agreed terms are fulfilled, the Court shall dismiss the case.
4. If the parties were unable to reach an agreement through the Program, an order terminating the mediation shall be entered and litigation shall be allowed to move forward.

5. All parties will receive a request to complete an evaluation form regarding the mediation process at the end of the case.

I. MEDIATORS

1. The Administrator 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 a thirty-two (32) hour mediation training skills program, the content of which is acceptable to the Court, plus additional eviction training as required by the Administrator.
3. Mediators must agree to complete two pro bono eviction mediation shifts per year to remain on the Administrator's list of mediators. Mediators shall be compensated according to the rate established by the Administrator, which may change annually due to funding changes.
4. Mediators shall comply with these rules, applicable law, and standards developed by the Chief Judge and Administrator.
5. The Administrator will assign mediation cases to mediators in alphabetical order, to ensure all mediators have an opportunity to mediate. If a mediator is unable to mediate a case, the next mediator on the list will be consulted, and so on.
6. A mediator shall not be involved in any capacity other than as the 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.
7. If a mediator on the roster fails to comply with these rules or other standards as determined by the Court or Administrator, any or all the following may occur:
 - a. The 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 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 or the Administrator, the mediator does not demonstrate the ability and willingness to comply with all the specific and general mediator standards described in the local rules and any other standards required

by the Chief Judge and/or the Administrator, the Chief Judge and/or the Administrator may remove the mediator from the roster of approved Mediators.

J. 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.

K. 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.

L. IMMUNITY

The Program Administrator and any person approved to act as a mediator under these rules, while acting within the scope of their 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.

M. 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 Administrator is unable to conduct session in an impartial manner, the mediator or Administrator shall withdraw.

N. 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 in writing, the mediator may proceed with the mediation.

O. 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. Language Access services shall be provided at no additional cost to the participants.

P. SUSTAINABILITY PLAN INCLUDING LONG-TERM FUNDING

Funds for the Sixth Judicial Circuit Eviction Mediation program will be obtained through available grants throughout the calendar year and, if the program proves valuable but will require funding beyond available grants, the Chief Judge will consider instituting a filing fee to sustain the program.

Q. STATISTICAL AND DATA COLLECTION AND REPORTING

1. 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 in assisting the parties to the Mediation Process. Personal data shall not be shared or utilized for any other purposes. This includes information collected by the Administrator, Mediator, and/or designees.
2. The Administrator shall maintain aggregated, non-identifying data and statistical data on the results of the mediation and shall report required statistical data to the Administrative Office of the Illinois Courts (AOIC), the Chief Judge's Office, and/or the Administrator's grant funders at such times and in such manner as may be required.

R. ATTACHMENTS

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

Date

8/13/21

Chief Judge Randall B Rosenbaum

