

Rules Of Practice

Circuit Court of Illinois

Fourth Judicial Circuit

Christian, Clay, Clinton, Effingham, Fayette, Jasper
Marion, Montgomery and Shelby Counties

Adopted November 16, 1984 Effective November 16, 1984
(Amended October 2, 2020)

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**RULES OF PRACTICE
CIRCUIT COURT OF ILLINOIS
FOURTH JUDICIAL CIRCUIT**

RULE 1. RULES OF COURT

1-1 Power of Court to adopt rules: These rules are adopted pursuant to Supreme Court Rule 21 and Section 1-104(b) of the Code of Civil Procedure.

1-2 Existing rules repealed: These rules shall become effective on November 16, 1984. All prior rules of the Circuit Court of the Fourth Judicial Circuit, State of Illinois, are hereby repealed.

1-3 Amendment of rules: Any amendment of these rules shall be passed on by a majority vote of all Circuit Judges of the Fourth Judicial Circuit, with each voting Judge being mailed a copy of the proposed amendment at least ten (10) days prior to the vote thereon.

1-4 Filing of rules: All rules, and amendments thereto, shall be filed with the Administrative Director of Illinois Courts within ten (10) days after they are adopted, in accordance with Supreme Court Rule 21. Same shall also be filed with the Clerk of the Circuit Court in each County of the Fourth Judicial Circuit, and shall be made available to all attorneys practicing in this Circuit, upon request, or by direction of the Chief Judge.

1-5 Applicability and Construction: Applicability and construction of these rules shall be in accordance with these rules and Supreme Court Rules 1 and 2.

RULE 2. JUDICIAL ADMINISTRATION

2-1 Chief Judge

(a) Election and Term: The Chief Judge shall be elected during April in odd numbered years. The term shall be for three years, commencing July 1 following the election. Voting shall be by secret ballot, either in person or by proxy. The Chief Judge shall not serve more than two full terms in succession.

(b) Procedure for Balloting:

(1) Whenever a Chief Judge is to be elected, a ballot containing the names of all Circuit Judges, arranged alphabetically, shall be provided to each Circuit Judge at a meeting called for that purpose. Each Circuit Judge shall indicate thereon the Circuit Judge for whom they are voting.

(2) An election committee appointed by the Chief Judge shall canvass the votes and announce the judge that received the required number of votes. In the event the Chief Judge is unavailable to appoint an election committee to canvass the ballots, the Circuit Judge in attendance with the greatest seniority of judicial service shall appoint the election committee to canvass the votes.

(3) The judge receiving votes from a majority of the Circuit Judges who cast votes shall be declared elected as Chief Judge. Balloting shall continue until one judge receives votes from a majority of the Circuit Judges who cast votes; provided, however, if no judge is otherwise declared elected after three ballots, then the judge receiving the most votes of the Circuit Judges who cast votes on the third ballot shall be declared elected as Chief Judge; provided, further, that if there is a tie for the most number of votes on the third ballot, the new Chief Judge shall then be determined between those tied for the most number of votes by lot in such manner as determined by the election committee.

2-2 Acting Chief Judge: The Chief Judge shall designate one of the Circuit Judges to act as Chief Judge in his absence, who shall have the same powers and duties as Chief Judge.

2-3 Vacancy: Whenever a vacancy occurs in the office of Chief Judge, any two Circuit Judges may call a meeting of the Circuit Judges to select a Circuit Judge to fill such vacancy.

2-4 Regular Meetings: The Circuit Judges and the Associate Judges shall meet quarterly, on the second (2nd) Friday in the months of January, April, July and October. In the event any such regular meeting date falls on a court holiday, the meeting shall be on the first Friday thereafter which is not a court holiday.

2-5 Special Meetings: Special meetings may be called at any time by the Chief Judge or by any two Circuit Judges upon five (5) days notice to all Circuit Judges and Associate Judges.

RULE 3. JURORS -- TERM OF SERVICE

3-1 Grand Jurors: Grand Jurors shall be called by the Chief Judge or his designate. Each Grand Jury and the members thereof shall serve for a term determined by the Chief Judge and the Resident Circuit Judge of the particular county, but in any event shall not exceed eighteen months. Grand Jurors shall be summoned to appear on the days determined by the Judge assigned to criminal jury trials. After being impaneled, sworn and instructed by the Court, the Grand Jury shall sit at such time as the Court may order and may be recessed from time to time to a day certain, or subject to recall. (Amended 1/12/01, Effective 7/1/01).

3-2 Petit Jurors: The Chief Judge or his designate shall certify to the Clerk of the Court the number of Petit Jurors required and the date and time and place at which they shall be summoned. The length of service for petit jurors shall be determined by the Chief Judge, Resident Circuit Judge and Trial Judge of any particular county, but in any event shall not exceed six (6) months. The notice to each juror shall state the period of service for which they shall be summoned. (Amended 1/10/14)

3-3 Excuse: The Chief Judge or his designate shall have charge of excusing summoned jurors from service.

3-4 Rules Applicable: The Grand Jury and Petit Jury are subject to the rules of the County Jury Commission if such commission has been established within the particular county.

RULE 4. APPEARANCES -- TIME TO PLEAD -- WITHDRAWAL

4-1 Appearances, time to plead and withdrawal: Appearances, time to plead and withdrawal of attorneys shall be in accordance with Supreme Court Rule 13, as amended from time to time.

RULE 5. MOTIONS

5-1 Notice of Hearing of Motions:

(a) Notice Required: Written notice of the hearing of all motions shall be given by the party requesting hearing to all parties who have appeared and have not theretofore been found by the Court to be in default for failure to plead, and to all parties whose time to appear has not expired on the date of notice. Notice of motion made within a court day of trial shall be given as directed by the court. Notice that additional relief has been sought shall be given in accordance with Supreme Court Rule 11.

(b) Content of Notice: The notice of hearing shall designate the motion Judge, shall show the title and number of the action, and the date and time when the motion will be presented. Notice of motion to be made shall state the nature of the motion. A copy of any written motion and of all papers presented therewith or a statement that they previously have been served, shall be served with the notice.

(c) Manner of Service: Notice shall be given in the manner and to the persons described in Supreme Court Rule 11.

(d) Time of Notice: Except as otherwise provided in these rules, service of a notice of hearing of any motion shall be completed no later than the second court day preceding the hearing. If a notice of hearing is delivered before 4:00 p.m. by

either personal service, or by leaving it in the office of a party's attorney or at an unrepresented party's residence, then service of the notice is complete as of the day of delivery; if such notice is delivered at or after 4:00 p.m., then service of the notice is complete on the first court day following delivery. Service of a notice of hearing given by any other method is complete as set forth in Supreme Court Rule 12. (Amended 1/8/16)

(e) Summary Judgment: A motion for summary judgment will not be heard before ten (10) days after service of the notice of motion under Supreme Court Rule 11.

5-2 Ex Parte and Emergency Motions:

(a) Ex Parte Applications: Every complaint or petition upon which it is sought to obtain ex parte an order for the appointment of a receiver, for a temporary restraining order, for a preliminary injunction or for an order of ne exeat shall be filed in the office of the Clerk, if that office is open, before application to a Judge for the order. (See Code of Civil Procedure, Sec. 2-1501, re: abolition of writs.)

(b) Notice Not Required: Emergency motions and motions which by law may be made ex parte may, in the discretion of the Court, be heard without calling the motion for hearing. Emergency motions shall, so far as possible be given precedence.

(c) Notice After Hearing: If a motion is heard without prior notice under this rule, written notice of the hearing of the motion showing the title and number of the action, the name of the Judge who heard the motion, date of the hearing, and the order of the Court thereon, whether granted or denied, shall be served by the attorney obtaining the order upon all parties not theretofore found by the Court to be in default for failure to plead thereto; and proof of service thereof shall be filed with the clerk within two (2) days after the hearing. Notice shall be given in the manner and to the persons described in Supreme Court Rule 11.

5-3 Failure to Call Motions for Hearing: The burden of calling for hearing any motion previously filed is on the party making the motion. If any such motion is not called for hearing within ninety (90) days from the date it is filed, the court may strike the motion or set the motion for hearing.

RULE 6. DISCOVERY

6-1 Discovery Compliance: In all civil matters an original request for discovery shall be made by serving such request upon the party or parties upon whom it is directed. A copy of the request shall not be filed with the Clerk of the Court.

(a) Proof of service of the request for discovery shall be made by certification of counsel briefly describing the requests made together with proof of service on the party to whom it is directed. The certification shall be filed with the Clerk of the Court. If identical requests are made of multiple parties, they may be included in one certification.

(b) Proof of compliance with a request for discovery in all civil matters shall be made by filing with the Clerk of the Court the certification of counsel showing that compliance has been made. The certification shall include a description of the documents filed with reference to the request made. The documents supplied in response to a discovery request shall not be filed with the Circuit Clerk.

(c) For the purpose of this Rule, Discovery shall include:

Interrogatories (Supreme Court Rule 213)
Discovery of Documents, Objects, and Tangible Things
(Supreme Court Rule 214)
Discovery Deposition (Rule 210)

(d) Effective January 1, 1990, the Circuit Clerk is directed to refuse to accept any papers that are not permitted to be filed by this Rule.

(e) When necessary to the determination of any motion, a copy of all relevant discovery materials shall be attached as an exhibit to the motion and filed with the Clerk.

6-2 Days for Taking Depositions: Unless otherwise agreed by the parties or ordered by the Court, depositions shall not be taken on Saturdays, Sundays or court holidays.

6-3 Supreme Court Rule 218 Case Management Procedures are mandatory only for civil cases in which money damages sought exceed \$50,000.00, i.e. cases with Case Code Letter "L". In all other civil cases, Rule 218 shall be invoked at the discretion of the assigned judge. (Approved by Supreme Court 1-31-96.)

RULE 7. PRE-TRIAL PROCEDURE

7-1 Pre-trial Conferences:

- (a) Deleted as of April 15, 1991.
- (b) Deleted as of April 15, 1991.
- (c) Deleted as of April 15, 1991.

(d) Settlement Prior to Trial: In the event of settlement prior to trial, the attorneys for the parties shall notify the Judge promptly. If same occurs within seventy-two (72) hours preceding the time for commencement of trial, said attorneys shall additionally notify the Clerk of the Court, instanter, personally, in order that unnecessary juror expense can be avoided.

- (e) Deleted as of April 15, 1991.

7-2 Deleted as of April 15, 1991.

7-3 Dismissal for Want of Prosecution:

(a) Procedure: In all cases where no appeal is pending and there has been no action of record for a period of one (1) year, the Court may summarily dismiss the cause of action for want of prosecution and it shall not thereafter be redocketed without good cause shown and leave of Court.

(b) Notice: Upon dismissal of any cause for want of prosecution, the Clerk of the Court shall give all pro se parties and all attorneys of record notice of the dismissal by regular U.S. Mail within ten (10) days of the dismissal. A copy of the notice with the Clerk's certificate of mailing shall be filed of record. Such cases shall not be redocketed if a motion to reinstate is not filed within thirty (30) days from the date of said notice.

7-4 Subpoenas in Criminal Cases (Adopted 4/24/20)

(a) Procedure: The Circuit Clerk shall issue subpoenas limited to the production of specified documents, objects, or tangible things when requested by the prosecutor or the defendant's attorney. The subpoena shall require the person or entity to whom it is directed to produce the designated documents, objects, or tangible things. Subpoenas shall be returnable to the Circuit Clerk for delivery to the presiding judge or the judge specifically assigned to the case at a time that the court is normally in session.

(b) Service: Only completed subpoenas shall be submitted to the Circuit Clerk for issuance. Subpoenas issued pursuant to this Rule shall be served in accordance with the Supreme Court Rules.

(c) Response: The person or entity to whom a subpoena is directed who has actual or constructive possession or control of the specified documents, objects, or tangible things sought by the subpoena shall respond to any lawful subpoena of which he or she has actual knowledge. Service of a subpoena by mail may be proved *prima facie* by return receipt showing delivery to the deponent or his or her authorized agent by certified or registered mail at least 14 days before the date on which compliance is required, together with an affidavit showing the mailing was prepaid and was addressed to the deponent, restricted delivery, return receipt requested, showing to whom, date and address of delivery, and that a check or money order for the fee and reasonable copy charges enclosed.

(d) Return: The person or entity to whom the subpoena is directed who has constructive or actual possession or control of the specified documents, objects, or tangible things may comply with said subpoena, without personal appearance, by providing complete and legible copies to the Circuit Clerk together with a certificate that compliance is complete and accurate on or before the return date listed on the subpoena. The party seeking the use of a pre-trial Subpoena Duces Tecum shall provide for the return of documents or any tangible things to the Circuit Clerk for delivery to the presiding judge or the judge specifically assigned to the case. A party seeking to have discoverable material returned by mail from the person or entity to whom it is directed shall provide an envelope of appropriate size for return mailing addressed to the Circuit Clerk with (1) the name of the case; (2) the case number; (3) the date for hearing; and (4) "Subpoena Duces Tecum" endorsed in the lower left-hand corner of said envelope.

(e) Form of Subpoena: A subpoena issued under this provision seeking specified documents, objects, or tangible things shall bear the following legend on the face of said subpoena, or conspicuously attached thereto, and a copy of said subpoena and notice of service shall be mailed first class within 48 hours of issuance to all parties having appeared in the action:

YOU MAY COMPLY WITH THIS SUBPOENA BY APPEARING IN PERSON IN COURT ON THE RETURN DATE WITH THE SUBPOENAED MATERIALS. YOU ALSO MAY COMPLY BY MAILING LEGIBLE AND COMPLETE COPIES OF ALL SPECIFIED DOCUMENTS, OBJECTS, OR TANGIBLE THINGS REQUESTED IN THIS SUBPOENA AT LEAST FIVE DAYS BEFORE THE DUE DATE TO CIRCUIT CLERK, (Courthouse Address), ILLINOIS (Zip code)." COMPLIANCE BY MAIL REQUIRES THAT THE ATTACHED CERTIFICATE BE SIGNED AND RETURNED. DO NOT SEND THESE MATERIALS TO ANYONE OTHER THAN THE CIRCUIT CLERK, FOR DELIVERY TO THE PRESIDING JUDGE OR THE JUDGE SPECIFICALLY ASSIGNED TO THE CASE.

(f) Certification: A certification page containing the following language shall be sent with all subpoenas issued pursuant to this section:

I hereby certify, under penalty of perjury and contempt of court, that I have examined the subpoena issued in this cause and that the documents, objects, and tangible things attached hereto represent full and complete compliance with said subpoena.

Date

Signature

Printed Name

(g) Procedure on Return: Upon the return of documents or any tangible thing to the Circuit Clerk, the Circuit Clerk shall hold such documents or tangible things without making them a part of the court file. On the return date, the case shall be called and, upon verification by the presiding judge or the judge specifically assigned to the case that date that there has been a return, the return of documents or any tangible things shall be provided to the requesting party in open court. The requesting party may be directed to provide to all other parties, within 7 days (or sooner if so ordered), true and correct copies of the return of documents and reasonable access to inspect any tangible thing. Unless otherwise ordered or agreed, reasonable charges by the deponent for production in accordance with this procedure shall be paid by the party requesting the same, and all other parties shall pay reasonable copying and delivery charges for materials they receive. Objections to the return may be made by appropriate motion and noticed for hearing in accordance with applicable law or local rules.

(h) Trial Subpoenas: Subpoenas requiring the presence of a witness or the production of specified documents, objects or tangible things at trial shall be governed by the Code of Criminal Procedure, 725 ILCS 5/100-1 et seq.

7-5 Deleted as of April 5, 2002

RULE 8. SPECIAL RULES PERTAINING TO FAMILY CASES

8-1 Family Cases Defined: Family cases are defined as any proceedings for an order or judgment relating to dissolution, legal separation or invalidation of marriage, paternity, support, custody, visitation, allocation of parental responsibilities (decision-making or parenting time), removal, relocation, third-party visitation, and related matters, including all ancillary proceedings. (Amended 1/8/16)

8-2 Notice of Dispute as to Child Custody or Allocation of Parental Responsibilities: If either child custody or allocation of parental responsibilities (decision-making or parenting time) is in dispute, the plaintiff will so inform the Court upon the filing of the initial pleadings, or as soon thereafter that a dispute is known to exist. In such a case, the Court may order a background investigation, appoint a court consultant and/or Guardian ad Litem and may order that one or both parties deposit with the Clerk of the Court all or a reasonable portion of the costs thereof. (Amended 1/8/16)

8-3 Financial Affidavit: (Amended 4/24/20)

(a) Filing of Financial Affidavit – The parties shall file with the Clerk a Financial Affidavit:

(1) In all proceedings where there is a dispute involving attorney’s fees, property, maintenance, support, child custody and/or allocation of parental responsibilities (decision-making or parenting time), or modification of any previous orders relating thereto;

(2) As required by applicable law; and

(3) As otherwise ordered by the Court.

(b) The Financial Affidavit shall be in the form designated from time to time by the Illinois Supreme Court, with the same supporting documentary evidence attached as is required by 750 ILCS 5/501 for temporary issues. A copy of the form Financial Affidavit currently designated by the Illinois Supreme Court, with further instructions regarding this form and the completion of this form, may be found on the official website of the Illinois Supreme Court, currently located online at: www.illinoiscourts.gov/Forms/approved/divorce/financial_affidavit.asp.

(c) Sealing of Financial Affidavits: Unless otherwise ordered by the Court, any Financial Affidavit presented for filing shall be sealed by the Clerk and shall be made available only to the Court, to an appellate court in which the proceedings are subject to review, to the parties and their attorneys of record, and to such other persons as the Court directs.

(d) Time for Filing Financial Affidavits: Financial Affidavits, when required, shall be filed within the same time period set forth in 750 ILCS 5/602.10 for submitting proposed parenting plans, or at least five (5) days prior to the hearing on contested issues, whichever is sooner, or as otherwise ordered by the court. If such Affidavit has been filed for purposes of a hearing on temporary relief, an additional Affidavit need not be filed prior to hearing for permanent relief unless there has been a substantial change of anything included therein.

8-4 Statement of Proposed Disposition: In addition to the Financial Affidavit required in Rule 8-3, if there are any issues in dispute, each party shall file a written statement of proposed disposition, addressing all issues (both agreed and contested), within the same time period set forth in 750 ILCS 5/602.10 for submitting proposed parenting plans, or at least five (5) days prior to the hearing on contested issues, whichever is sooner, or as otherwise ordered by the court. If issues relating to custody, visitation or allocation of parental responsibilities are in dispute, the proposed disposition shall include a party's proposed parenting plan as may be required by 750 ILCS 5/602.10. If the issue of property apportionment is in dispute, the parties shall submit a statement of proposed apportionment, which shall include an itemization of all property claimed as marital and non-marital together with an estimated fair cash market value of each item. If the issue of apportionment of marital indebtedness is in dispute, the statement shall also include a proposed apportionment of marital indebtedness and shall include a listing of any non-marital indebtedness for which either party is currently liable. (Amended 1/8/16)

8-5 Requirements for Judgment: (Adopted 4/24/20)

(a) It shall be the responsibility of the person seeking to affect the marital status of the parties, or his or her attorney, to present to the Court for prove-up, in a single package and prior to the commencement of any testimony, the following:

- (1) Proposed judgment order;
- (2) Fully completed Certificate of Dissolution, Declaration of Invalidity or Legal Separation;
- (3) Fully completed uniform order for payment of support or maintenance, if applicable;
- (4) Signed original of any written agreement of the parties that has been, or will be, testified to or that is to be incorporated in the Judgment or Declaration;
- (5) Obligor order for any fee to Circuit Clerk pursuant to 750 ILCS 5/711, if support or maintenance is ordered;

(6) Certificate that the person seeking to affect the marital status of the parties has completed the parenting education program as provided in Supreme Court Rule 924 and amended Administrative Order 06-20, if applicable, unless the Court waives this requirement or grants the parties additional time to complete this requirement.

(b) Failure to provide said package to the Court prior to the hearing as set forth in Rule 8-5(a), or failure to establish jurisdiction of the court over all parties and the subject matter, may result in the Court not hearing the matter at the requested time for hearing.

(c) On request and in the Court's sole discretion, the Court may consider entry of the proposed judgment without either party appearing before the Court in person, if:

(1) All items required by Section 8-5(a) have been presented to
The Court;

(2) The Court file establishes jurisdiction of the court over all
Parties and over the subject matter; and

(3) There is on file a verified petition establishing that there are no children born of the marriage, that there are no pending contracts for adoption and that neither party is currently pregnant.

**RULE 9. SPECIAL RULES PERTAINING TO SMALL CLAIMS CASES
(Amended 4/24/20)**

9-1 Summons: Summons, substantially in the form set forth in Supreme Court Rule 101(b), shall be served upon each defendant, together with a copy of the complaint. Summons forms shall be provided by the Circuit Clerk.

9-2 Complaint: The complaint to be used in small claims actions shall provide for a statement of claim setting forth the elements provided in Supreme Court Rule 282. Complaint forms shall be provided by the Circuit Clerk. If the claim is based upon a written instrument or assignment, a copy of such instrument or assignment must be attached to the original and all copies of the complaint.

9-3 Verification: Verification of any pleading or affidavit shall be compliant with 735 ILCS 5/2-605 and Supreme Court Rule 137.

9-4 Affidavits: In all cases where a Party seeks to prove or challenge damages by affidavit, such affidavits shall be in compliance with the Illinois Rules of Evidence.

9-5 Costs: A prevailing Plaintiff seeking to recover costs other than a filing fee or service of summons fee shall file an affidavit prior to entry of judgment setting forth, with specifications, each separate cost sought to be recovered showing the purpose of each cost, the specific amount of each cost actually expended, and the date such cost was paid. The court will only take notice of filing fees and service of summons costs, the payment of which is evident by examination of the court file.

9-6 Response by the Defendant: After service of summons in a small claims action, the defendant may do any of the following:

(a) Notify the Clerk of the Court, in writing at least five (5) days prior to the appearance date on the summons, that he or she wishes to contest the claim and setting forth the title and number of the case, his or her name, address, telephone number and the name and address of the plaintiff and his or her attorney, if any, or;

(b) File a written motion or answer, with a copy served on all other parties who have appeared, in accordance with Supreme Court Rules 11 and 12, or;

(c) Appear in person or by attorney on the appearance date, and admit or deny the allegations in the complaint.

9-7 Setting of Trial Date: Upon being notified that the claim is contested, the Court shall fix a trial date and cause all parties to be notified of the time, date and place of trial.

9-8 Summons Appearance Date Not Considered the Trial Date: Unless otherwise ordered by the Court, the appearance date as noted on the summons shall not be the date of the trial.

9-9 Demand for Trial by Jury: Upon a demand for trial by jury and payment of the jury fee, the Court shall set the cause for jury trial following such pretrial conferences, settlement conferences and other proceedings as the court deems appropriate. If jury demand is made by the plaintiff, no date for a jury trial shall be set until after the appearance date as noted on the summons.

9-10 Return Day Procedures:

(a) Plaintiff Fails to Appear: If the plaintiff fails to appear on the return date, the case may be dismissed for want of prosecution.

(b) Defendant Fails to Appear: If a defendant who has been duly served with summons fails to appear or respond on or before the day and time designated as the return day, the court may take the allegations in the complaint as admitted by the defendant and upon motion without notice, enter a judgment by default against defendant for the amount claimed plus court costs. Such judgment may be entered on the return day or any time thereafter. However, the court may, in its discretion, require the presentation of evidence and set the case down for "prove up."

(c) Both Parties Appear: If both parties appear, the Court shall ascertain whether the claim is contested and, if it is not, enter a judgment. In addition, the Court may order that the amount of a small claim judgment shall be paid to the prevailing party on a certain date or in specified installments and may stay the enforcement of the judgment and other supplementary process during compliance with such order consistent with Supreme Court Rule 288. If the claim is contested, the Court may conduct an informal pre-trial conference to determine if the parties are able to settle the case. If the case cannot then be settled, the Court shall set it for trial, unless all parties announce that they are ready for immediate trial and the Court's calendar permits the case to be tried immediately.

9-11 Notice of Small Claims Rule: The Clerk of the Court shall attach to each summons a copy of this rule and any other information deemed necessary by the Court. Rule 9-8 and Rule 9-10(b) and (c) shall be highlighted or in bold type in such notice.

RULE 10. ADMINISTRATIVE RULES

10-1 Designation of Court Facilities: All court will be held in the County Courthouse of each County, unless otherwise specifically ordered by the Chief Judge.

10-2 Court Hours: Court shall convene daily at 9:00 a.m.

10-3 Signing of Orders and Judgments: The Judge will sign only the original order and/or judgment. Copies and certified copies will be prepared by the Clerk if requested.

10-4 Removal of Files: Original court files, documents or exhibits shall not be removed from the office of the Circuit Clerk or courtroom except by leave of Court or the Clerk of the Court. Original court files, documents, or exhibits shall not be removed from the courthouse except by written court order. Any party removing such items from the courthouse shall give the Circuit Clerk a receipt therefore, and removed items shall not be retained by the party removing such items for more than two days without specific

leave of court. However, any judge hearing a case may remove (or have delivered to that judge) the court file, documents, and exhibits for purposes of preparing for hearing, writing an opinion, or other similar purpose, and no receipt shall be required. (Amended 4/24/20)

10-5 Representation: No pleading or entry of appearance for an opposing party shall be prepared or acknowledged by any attorney, members of his firm or employee.

10-6 Filing of Documents: All documents to be filed with the Circuit Clerk shall be filed in accordance with Supreme Court Rule 9. Any document exempt from electronic filing shall be filed during the regular business hours of the Circuit Clerk of the county in which the document is filed. (Amended 10/2/20)

10-7 Opening of Secured Files: Should any authorized party, other than the court, review all or any part of a court file that is impounded, under seal or otherwise secured, then the Circuit Clerk shall record in the court record the date and time the impounded, sealed or secured file was viewed and also identify the person viewing the material. The Circuit Clerk's Office shall then again impound, seal or otherwise secure the file. (Adopted 10/2/20)

10-8 Remote Appearances (Adopted 10/2/20)

(a) Authorization: To increase the efficiencies of the court and reduce costs to participants, and to the full extent authorized by Supreme Court Rules 185 and 241, by Supreme Court Rule 21(b), by other Orders entered by the Supreme Court from time to time, and by the Court's inherent authority, remote appearances shall be permitted as set forth herein or by separate order.

(b) Vendor: All remote appearances shall be initiated through the designated remote appearance vendor of the Fourth Circuit. The current designated remote appearance vendor is Zoom or as otherwise designated by the Chief Judge from time to time by Administrative Order. Status hearings and other proceedings may be conducted by telephone only, without use of the designated vendor, on such terms as designated by the presiding judge. Appearances by county jail inmates may be made using other platforms or products adopted by each county of this Circuit for use between the courtroom and jail.

(c) Scheduling: Remote appearances may be scheduled on the request of either party or by order of the court, in accordance with Supreme Court Rules, including Rules 45 and 241. Once scheduled, any objection to proceeding by way of remote hearing shall be made by a timely filed motion properly noticed for hearing. The court, in its discretion, may allow or require any or all participants in a hearing to appear in person rather than remotely.

(d) **Initiation of Remote Appearance:** Except for status hearings conducted by phone only, and except as otherwise designated by the Court, remote appearances shall be initiated by the Court through the designated vendor at such times as may be designated by the Court, appropriately noticed for hearing by a party upon coordination with the Circuit Clerk, or otherwise noticed or assigned by the Circuit Clerk.

(e) **Responsibilities:** For any remote hearing, it shall be the responsibility of each party, and any attorney for a party, to ensure access to the necessary technology for a remote appearance and to timely appear for the remote hearing through the noticed platform or product. It shall also be the responsibility of each party to ensure that any witness for that party also has access to the necessary technology and will timely appear for the remote hearing through the noticed platform or product. If any party does not have access to the necessary technology or has a witness who will not have the necessary technology, that party shall contact the Circuit Clerk at least 24 hours in advance of the scheduled remote hearing with a request to have the hearing rescheduled for an in person appearance at the appropriate physical courtroom. Requests for a continuance to another date or for an in-person appearance at the appropriate physical courtroom shall be made by a timely filed and properly noticed motion to continue.

(f) **Rules and Procedures:** The following rules and procedures shall apply to all remote hearings:

(1) Except as otherwise provided in this Rule, all proceedings conducted by way of remote hearing shall be conducted to the same standards as hearings in a physical courtroom and in accordance with the Illinois Rules of Civil Procedure or the Illinois Rules of Criminal Procedure, as applicable, Illinois Supreme Court Rules, local Rules of Practice of the Circuit Court for the Fourth Judicial Circuit, and all other applicable rules or laws.

(2) Attorneys, parties and witnesses shall sign in to the remote hearing using both their first and their last names, with attorneys adding “Attorney” in front of their first name (e.g., an attorney named John Doe would use “Attorney John” for a first name and “Doe for a last name).

(3) The precise method in which a remote hearing is conducted remains within the discretion of the presiding judge or the judge specially assigned to the case, within the bounds of applicable rules, laws and practice procedures.

(4) Remote hearings require proper planning and preparation. All proposed exhibits, proposed orders, fully signed agreed orders, agreements or stipulations, and all other documents that any party intends to present to the court for review or consideration shall be submitted at least 48 hours prior to the scheduled remote hearing through the county efile system or to a designated Dropbox account, as designated by the Court or the Circuit Clerk, as follows:

- (i) All submissions shall be submitted in PDF format;
- (ii) The subject line for a submission email shall include the case number and the last name of at least one party;
- (iii) Each proposed exhibit shall be submitted as a separate file with a file name that reflects the party offering it and the exhibit number (e.g., PlaintiffExhibit1, PetitionerExhibit2, DefendantExhibit3, RespondentExhibit4, etc.);
- (iv) Each proposed order, fully signed agreed order, agreement, stipulation or other document shall be submitted as a separate file with a file name that reflects the party offering it and the nature of the document (e.g., Plaintiff proposed order, Petitioner agreed order, Defendant stipulation, Respondent cases in support, etc.);
- (v) An index of exhibits, if any, shall be included that states the number of pages for each exhibit; and
- (vi) For any exhibit or other document greater than four pages long, page numbers must be inserted electronically within the PDF (not handwritten).

(5) Notwithstanding the provisions of this rule, the presiding judge or the judge specifically assigned to a case may, in that judge's discretion, waive the requirements for submitting any document in advance.

(6) Once an exhibit is admitted into evidence during the hearing, the Circuit Clerk shall upload the exhibit into the official court record through the designated case management program for the Fourth Circuit, currently PCJIMS. The Circuit Clerk shall also upload into the official court record through the designated case management program for the Fourth Circuit any orders, agreements or stipulations or other document as directed by the presiding judge or the judge specifically assigned to the case during the remote hearing. Upon conclusion of the hearing, the Circuit Clerk shall not be obligated to maintain any proposed exhibits, proposed orders, fully signed agreed orders, agreements or stipulations or other documents submitted by a party to the

designated email address that were not made a part of the official court record and may delete them at the Circuit Clerk's convenience.

(7) Any defendant in criminal proceedings who appears for a remote hearing while in the custody of jail or prison personnel shall appear alone in a secure room with doors closed in such a manner as will enable confidential communications between the defendant and his attorney as may be requested and allowed before, during and after that defendant's proceedings.

(8) Witnesses called to testify at a remote hearing shall be sworn or affirmed by the judge prior to the commencement of their testimony. Each witness shall, during that witnesses sworn testimony, be alone in a secure room with doors closed. The judge should make a record as to these conditions.

(9) All persons attending a remote hearing, including attorneys, parties, witnesses, members of the general public, and media, shall wear appropriate attire and present themselves in compliance with court rules as they would if appearing in a physical courtroom.

(10) All attorneys, parties, witnesses and other direct participants in a remote hearing shall ensure that there will be no interruptions or distractions for the duration of their appearance at the remote hearing. No person attending a remote hearing shall do so while operating a motor vehicle.

(11) The court reporter is the only person authorized to record the remote hearing by electronic means, stenography or other means. Any recording of the remote hearing by an attorney, party, witness, member of the general public, media or any other person without the permission of the court is strictly prohibited.

(12) Attorneys shall be permitted to communicate directly with their client using any private chat feature available through the designated remote appearance vendor. Any other use of the chat feature, private or group, during a remote hearing is strictly prohibited. Requests for a private conversation through the use of breakout room or similar feature may be granted in the discretion of the presiding judge or the judge specifically assigned to hear a case.

(13) All attorneys, parties and witnesses attending a remote hearing should ensure that they have a good connection sufficient to avoid a breakdown in the connection during the remote hearing. A poor video connection for an attorney or party alone is not grounds to continue a remote hearing.

(14) The presiding judge or the judge specifically assigned to a case shall retain the right at all times to remove any person from the remote hearing for the same reasons that a person would be removed from a physical courtroom.

(15) The presiding judge or the judge specifically assigned to a case shall retain the right at all times to continue a remote hearing to a different time or place, including a physical courtroom, for good cause, including but not limited to an unmanageable number of participants in the hearing, poor connections or other conditions that interfere with the ability of the court to conduct the remote hearing, or any other condition that unduly interferes with the rights of a party to a fair hearing.

(16) American courts are generally open to the public and it remains highly desirable that the operations of the courts are as transparent as possible. Within this context, the courts and the parties must consider how the media and the general public can have access to the remote hearing. The daily court schedule shall reflect that the hearing is remote. Members of the media or the general public who desire to observe a remote hearing should contact the Circuit Clerk for directions on how to attend. Observers are prohibited from speaking to witnesses or potential witnesses concerning any testimony or evidence until after the evidence has closed.

RULE 11. MEDIATION – FAMILY LAW (Amended 1/8/16)

11-1 Statement of Purpose: Mediation for cases involving disputed child custody, visitation, removal, allocation of parental responsibilities (decision-making or parenting time), relocation, third-party visitation, or a parenting plan, is adopted as the policy of the Fourth Judicial Circuit of Illinois. Mediation is a distinct practice, regardless of the mediator’s core profession. The mediator’s role is to allow the participants to define and clarify their differences with the intention of improving relationships and understanding. It is an exercise of their self-determination. This policy will promote amicable and practicable solutions to these issues. Parties are required to use mediation as a method of resolving such contested issues unless they are able to reach a fair agreement approved by the court or unless an impediment to mediation is found to exist. When a mediated resolution is appropriate for a case, these rules provide a format for mediation services. It is not the intention of the judges of the Fourth Judicial Circuit to avoid conducting contested hearings on these issues when appropriate. Rather, it is the intent of these rules to make available less costly and more amicable avenues of resolution when in the best interests of the parties and the minor children. The objective of mediation is not a settlement at any cost; rather it is to achieve a fair and reasonable agreement. (Amended 1/8/16)

11-2 Definitions:

(a) These rules adopt by reference the definitions of “mediation”, “mediation communication”, “mediator”, “non-party participant” and “mediation party” contained in 710 ILCS 35/2 of the Illinois Uniform Mediation Act as if fully set forth herein, and the following definitions.

(b) “Shuttle mediation” is a variant of the standard process in which the mediator meets separately with each party so that direct communication is only with the mediator who relays information, defines issues and suggests possible solutions as the participants remain in separate rooms.

(c) An “impediment to mediation” is any condition, including but not limited to domestic violence or intimidation, substance abuse, child abuse, mental illness or a cognitive impairment, which hinders the ability of a party to negotiate safely, competently, and in good faith. Pursuant to these rules, the identification of impediments in a case is necessary to determine whether mediation should be required, and to insure that only those parties having a present, undiminished ability to negotiate are directed by the Court under these rules to mediate.

11-3 Subject Matter of Mediation: Initially, court referred mediation will be limited to issues of custody, visitation, removal, allocation of parental responsibilities (decision-making or parenting time), relocation and third-party visitation. The parties may, by written agreement, choose to mediate child support, child related expenses or any other issues. (Amended 1/8/16)

11-4 Duties of the Mediator:

(a) Commencement: At or prior to the initial session, the mediator shall:

(1) Determine the issues to be mediated;

(2) Explain that no legal advice, therapy or counseling will be provided;

(3) Disclose the nature and extent of any existing relationships with the parties or their attorneys and any personal, financial, or other interests that could result in bias or conflict of interest on the part of the mediator;

(4) Encourage each party to obtain independent legal counsel;

(5) Inform the parties that:

(i) mediation can be suspended or terminated at the request of either party after three (3) hours of mediation, or in the discretion of the mediator as outlined in Rule 4(a)(5)(ii);

(ii) the mediator may suspend or terminate the mediation: (1) if an “impediment to mediation” exists; (2) if either party is acting in bad faith; or (3) appears not to understand the negotiation, after reasonable efforts to address

their lack of understanding have been made; (4) the prospects of achieving a reasonable agreement appear unlikely; or (5) if the needs and interests of the minor children are not being considered. In the event of a suspension or termination, the mediator may suggest a referral for outside professional services;

(6) Explain that the mediation process is confidential;

(7) Confirm the parties' understanding regarding the fee for services and any reduced fee arrangements for eligible parties with financial hardship;

(8) Reach an understanding with the parties as to whether the mediator may communicate with either party or their legal counsel or with other persons to discuss the issues in mediation in the absence of the parties. Any separate communication which does occur shall be disclosed to the parties at the first opportunity.

(9) Advise each party that they may be accompanied to mediation by an attorney or an advocate or another person only if both parties and the mediator agree in advance. Said individual may then participate in the mediation or be available for consultation while mediation is in progress as has been agreed upon in advance. (Amended 4/24/20)

(10) Advise each party that children are not normally allowed to participate in mediation based upon the purpose of mediation; to-wit, to allow the parties to exercise their self-determination and reach a voluntary agreement and the negative impact participation may have on the children. However, in appropriate situations children may be allowed to participate in mediation so long as all parties and the mediator consent to said participation, in writing, and each parent or the child's representative or guardian ad litem, if applicable, has the right to withhold consent. (Amended 6/1/11)

(b) Shuttle Mediation: Shuttle Mediation may be utilized as deemed appropriate by the mediator.

(c) Reporting Risk of Bodily Harm and Abuse:

(1) A mediator shall promptly reveal information to the appropriate law enforcement agency to the extent it appears necessary to prevent a party from committing an act that would result in death or serious harm;

(2) Attorneys shall reveal information required by Rule 1.6 "Confidentiality of Information" under the Illinois Rules of Professional Conduct;

(3) The mandated reporting requirement of the Abuse and Neglected Child Reporting Act, 325 ILCS 5/1 et seq., as applied to mental health professionals shall also apply to all mediators.

(d) Conduct of Mediators: The mediator shall comply with the “Model Standards of Conduct for Mediators” adopted in August 2005, as may be amended from time to time, by the American Bar Association, the American Arbitration Association, and the Association for Conflict Resolution to the extent that said standards do not conflict with any rule set forth in this mediation program.

(e) Written Agreements: The mediator shall summarize, in writing, the agreements reached by the parties in a format that would facilitate this summary being later signed by the parties as their final agreement. A copy of this summary shall be given to the parties and their attorneys, if any. The mediator shall advise each party to obtain legal assistance in drafting any final agreement or in reviewing the summary or in reviewing any agreement drafted by the other party. The mediator shall advise the parties that decisions reached during mediation are not binding until reviewed by the attorneys, if the parties are represented by counsel, and approved by the court. (Amended 4/24/20)

11-5 Qualifications of Mediators:

(a) Requirements:

Mediators must meet all of the following requirements:

(1) Formal Education: Possess a degree in law or a graduate degree in a field that includes the study of psychiatry, psychology, social work, human development, family counseling or other behavioral science substantially related to marriage and family interpersonal relationships; and

(2) Training: Completed a specialized training in family mediation consisting of a court-approved course of study or certification, to consist of at least 40 hours in the following areas:

- (i) Conflict resolution;
- (ii) Psychological issues in separation, dissolution and family dynamics;
- (iii) Issues and needs of children in dissolution; and
- (iv) Mediation process and techniques; or
- (v) 20 hours of training in the foregoing areas and have 10 years of practical experience in handling custody/family disputes as a significant part of their professional duties.

(3) Insurance: Pursuant to Illinois Supreme Court Rule 99(b)(1) approved mediators shall have judicial immunity in the same manner and to the same extent as a judge. Professional liability insurance for any act or omission for which judicial immunity may not apply must be maintained.

(4) Office and Professional Experience: The mediator shall maintain an office within the Fourth Judicial Circuit or a county contiguous thereto, or conduct mediation at an agreed location within the Fourth Circuit, and have not less than three (3) years work experience in their profession or be licensed by the State of Illinois to practice in their field of expertise.

11-6 List of Mediators:

(a) Establishment of List: The Chief Judge shall establish a list of court approved mediators. All applicants for inclusion on the list shall possess the minimum qualifications set out in Rule 5. The court, in its discretion, may require any biographical or other relevant information from an applicant in order to determine whether the applicant should be included on the list. For good cause shown, the court reserves the right to reject the application of any person who applies and to remove any mediator from the list. Inclusion on the list by the court shall not be considered a warranty that such mediator can successfully mediate any specific dispute.

(b) Denial/Removal from List: An applicant denied inclusion on or removed from the court approved list may appeal the decision in writing within ten (10) days to the Chief Judge. The Chief Judge shall decide the appeal after an opportunity for the applicant or mediator to be heard.

11-7 Referral Procedure:

(a) Upon the court's order or the parties' agreement to participate in mediation, the case shall be assigned a mediator. This mediator may be chosen per agreement of the parties. In absence of any agreement, the court shall assign a mediator from the list of qualified mediators, and the selection of the mediator shall be in the sole discretion of the judge. A Mediation Order shall be issued and signed by the court. A mediation status date will be set for no later than seven (7) weeks from the date the Mediation Order was issued. Parties must contact the mediator within seven (7) days of the entry of the Mediation Order to set up mediation. Each may submit a letter to the mediator identifying the issues and their position within fourteen (14) days of the Mediation Order. The letter shall not exceed two (2) pages and a copy of same must be submitted to the other party or their counsel, if represented.

(b) The court shall also designate in its Mediation Order what percentage of the mediation fee should be paid by each party, or whether the parties should not be required to pay any mediation fee because they have been found to be indigent persons, pursuant to 735 ILCS 5/5-105. Each party must file a financial affidavit prior to the Mediation Order being entered, unless the parties agree on the division of the mediation fee. Parties are obligated to participate in the mediation process when ordered by the court. The attorneys shall encourage their clients to mediate in good faith, and the parties shall participate in mediation in good faith.

(c) After entry of a Mediation Order by the Court, the absence of a party at a mediation session may result in sanctions, including reasonable costs to the other party for mediation and attorney's fees.

(d) If the appointed mediator has any conflict of interest, another mediator shall be appointed from the list. If a mediator is appointed to mediate a case involving indigent persons, but the mediator already has met his or her twelve-month requirement for such mediations, and so informs the court, the court shall appoint another mediator. The Chief Judge, or the person designated by the Chief Judge, shall keep a record of the cases involving indigent persons assigned to each mediator, to ensure a fair distribution of these cases to all mediators. By requesting inclusion on the list, each mediator agrees to handle, without any fee, three (3) mediations involving indigent persons within a twelve (12) month period.

(e) By the status date, the mediator shall submit a report to the court and the parties' legal counsel, in the form of a Mediator Report, notifying the court and legal counsel of information listed in this Rule under the section entitled Mediator Report.

11-8 Mediator Report:

(a) These rules hereby adopt by reference the provisions on prohibited mediator reports as contained in 710 ILCS 35/7 as if fully set forth herein. In addition to those provisions, the following requirements apply to mediations under this rule.

(b) A Mediator Report, in compliance with 710 ILCS 35/7(b) must be filed prior to the status date and within fourteen (14) days after the last day of the mediation conference, and shall state the following:

- (1) Whether an agreement has been reached by the parties;
- (2) The number and duration of sessions conducted to date and the names of those in attendance;
- (3) Whether mediation has been terminated or suspended.

(4) The fee charged, whether that fee has been paid in full and, if not so, the outstanding amount owed. For any outstanding amount owed, the court may direct the parties to pay said amount and establish what percentage each party will pay;

(5) Whether any additional mediation sessions are recommended;

(6) Other relevant information not considered privileged or confidential under these rules or the Uniform Mediation Act 710 ILCS 35/1 et seq which is adopted and incorporated herein to the extent same is not inconsistent with the procedural rules set forth in this mediation program;

(7) Whether any of the parties did not have legal counsel.

(c) In the event that all of the above information cannot be provided on the due date of the Mediator Report, the mediator shall advise the court as to the time necessary for the completion of the mediation process. It shall be within the court's discretion to extend mediation after the seven-week (7) status date.

11-9 Litigation Status:

(a) Temporary Orders: The court may issue temporary orders prior to or during mediation.

(b) Discovery: Unless otherwise ordered by the court, discovery shall be limited to written discovery until mediation is terminated by order of the court.

(c) Attorney Letter to Mediator: Each attorney may submit a letter to the mediator providing information with regard to the legal status of the case, including temporary or permanent orders which have been entered by the court and a statement of the unresolved legal issues. The attorney shall provide a copy of such letter to the opposing counsel or party. The letter provided by the attorney to the mediator shall not be confidential and may be disclosed by the mediator to both participants. The attorneys and mediator shall not have further communication with regard to the mediation process except if agreed by the parties in writing.

(d) Witnesses: The mediator may not be called as a witness in litigation.

11-10 Termination of Mediation on Motion of a Party:

(a) Judicial Determination: Any party may move the court at any time for a ruling that a case is ineligible for mediation based upon the factors set forth in 11-2(c) notwithstanding a contrary determination by a mediator.

(b) Filing a Motion: Any such motion must be supported by affidavit setting forth specific facts as to why mediation would be inappropriate.

11-11 Entry of Judgment Order:

(a) Presentation of Order: The final draft of each mediated agreement shall be presented to the court within twenty-eight (28) days following conclusion of mediation.

(b) Approval of Court: The court shall examine the parties as to the content and intent of agreement and shall reject the agreement if any of its provision are found by the court to be unconscionable or contrary to the best interest of a minor child. If the agreement is approved, the court shall enter an appropriate judgment or order stating its findings and shall incorporate, either physically or by reference, the agreement so that the terms of such agreement are also the terms of the judgment or order. (Amended 6/1/11)

(c) Copies of all orders ordering mediation and docket entries approving mediation agreements shall be maintained by the clerk of the court and sent to the Chief Judge's Office on a quarterly basis for data compilation and reporting to the Illinois Supreme Court as required.

RULE 12 CIVIL MEDIATION (Adopted 6/1/11)

12-1 Purpose of the Mediation Process: Mediation under these rules involves a voluntary confidential process whereby a neutral mediator, selected by the parties or appointed by the court, assists the litigants in reaching a mutually acceptable agreement. It is an informal and non-adversarial process. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem-solving, exploring settlement alternatives, and reaching an agreement. Parties and their representatives are required to mediate in good faith.

12-2 Actions Eligible for Civil Mediation:

Referral by Judge or Stipulation: The judge to whom a matter is assigned may order into mediation any issue in any contested civil matter asserting a claim filed as or appropriately classified as a civil case, including Law, Chancery and Probate cases, not otherwise covered under Rule 11. In addition, the parties to any such matter may file a written stipulation to mediate any issue between them at any time. Such stipulation shall be incorporated into an order of referral.

12-3 Scheduling of Mediation:

(a) Conference or Hearing Date: Unless otherwise ordered by the court, the first mediation conference shall be held within eight (8) weeks of the Order of Referral. At least ten (10) days before the conference, each party shall present to the mediator a brief, written summary of the case containing a list of issues as to each party. If the party filing the summary wishes its contents to remain confidential, the party should advise the mediator in writing at the same time this summary is filed. The summary shall include the facts pertaining to the issue being mediated and may include the facts of the occurrence, opinions on liability, all damages and injury information, and any offers or demands regarding settlement. The names, addresses and email addresses of all participants in the mediation shall be disclosed to the mediator in the summary prior to the session.

(b) Notice of Date, Time and Place: Within twenty-eight (28) days after the Order of Referral, the mediator shall notify the parties in writing of the date and time of the mediation conference. The parties or their attorneys may initiate contact with the mediator by conference call or otherwise to coordinate a mutually convenient date and time for the mediation conference.

(c) Motion to Dispense with Mediation: A party may move, within fourteen (14) days after the Order of Referral, to dispense with mediation if:

- (1) The issue to be considered has been previously mediated between the same parties;
- (2) The issue presents a question of law only;
- (3) Other good cause is shown.

(d) Motion to Defer Mediation: Within fourteen (14) days of the Order of Referral, any party may file a motion with the court to defer the mediation. The movant shall set the motion to defer the mediation proceeding 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 be tolled until disposition of the motion.

12-4 Mediation Rules and Procedures:

(a) Appointment of the Mediator:

(1) Within fourteen (14) days of the Order of Referral, by agreement of the parties, the court shall designate:

- (i) A certified mediator; or

(ii) A mediator who does not meet the certification requirements of these rules but who, in the opinion of the parties and upon review by and approval of the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

(2) If the parties cannot agree upon a mediator within fourteen (14) days of the Order of Referral, the plaintiff's attorney (or another attorney agreed upon by all attorneys) shall so notify the court within the next seven (7) days, and the court shall appoint a certified mediator by such other procedures as may be adopted by administrative order of the Chief Judge.

(b) Compensation of the Mediator:

(1) When the mediator is selected by the parties, the mediator's compensation shall be paid by the parties as agreed upon between the parties and the mediator.

(2) When the parties cannot agree on a mediator, the court shall appoint a mediator from the list of mediators maintained by the court. The compensation for a mediator so appointed shall be shared proportionately by all parties participating in the mediation conference, unless otherwise ordered by the court.

(3) If any party has been granted leave to sue or defend as a poor person pursuant to Supreme Court Rule 298, the court shall appoint a mediator who shall serve pro bono without compensation from that party.

(4) The fee of an appointed mediator shall be subject to appropriate order or judgment for enforcement.

(c) Disqualification of a Mediator: Any party may move to enter an order disqualifying a mediator for good cause. If the court rules that mediator is disqualified from hearing a case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(d) Interim or Emergency Relief: A party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such a motion is pending absent a contrary order of the court or a decision of the mediator to adjourn pending disposition of the motion.

(e) Attendance at a Mediation Conference:

(1) All parties, attorneys, representatives with settlement authority, and other individuals necessary to facilitate settlement of the dispute shall be present at each mediation conference unless excused by court order or by the mediator. A party is deemed to appear at a mediation conference if the following persons are physically present:

(i) The party or its representative having full authority to settle without further consultation, and in all instances, the plaintiff must appear at the mediation conference; and

(ii) The party's counsel of record, if any; and

(iii) 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.

(2) Upon motion, the court may impose sanctions against any party, or attorney, who fails to comply with this rule, including, but not limited to, mediation costs and reasonable attorney fees relating to the mediation process.

(f) Adjournments: 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.

(g) Counsel: The mediator shall at all times be in control of the mediation and the procedures to be followed in mediation. Counsel shall be permitted to communicate privately with their clients.

(h) Communication with Parties: The mediator may meet and consult privately with either party and his/her representative during the mediation process.

(i) Termination of Mediation:

(1) Mediation shall be completed within seven (7) weeks of the first mediation conference unless extended by the order of the court or by stipulation of the parties.

(2) Mediation shall terminate prior to the end of seven (7) weeks in the following circumstances:

(i) All issues referred for mediation have been resolved;

(ii) The parties have reached an impasse, as determined by the mediator;

(iii) The mediator concludes that the willingness or ability of any party to participate meaningfully is so lacking that an agreement on voluntary terms is unlikely to be reached by prolonging the negotiations.

(j) Report of Mediator: Within fourteen (14) days after the termination of mediation for any reason, the mediator shall file with the court a report in a form prescribed by the Chief Judge as to whether or not an agreement was reached by the parties. The report shall be signed by the mediator and shall designate, “full agreement,” “partial agreement” or “no agreement”.

(k) Imposition of Sanctions: In the event of any breach or failure to perform under the agreement, the court upon motion may impose sanctions, including costs, attorney fees, or other appropriate remedies including entry of judgment on the agreement.

(l) Discovery: Whenever possible, the parties are encouraged to limit discovery (prior to completing the mediation process) to the development of the information necessary to facilitate a meaningful mediation conference. Discovery may continue throughout mediation.

(m) Confidentiality of Communications: 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. 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.

(n) Immunity: Mediators shall be entitled to such immunity as shall be provided by law.

(o) Mechanism for Reporting: The clerk of the court shall keep and maintain compiled statistics and records of all cases referred to mediation and shall file reports with the Administrative Office of the Illinois Courts as directed by the Chief Judge.

12-5 Mediator Qualifications

(a) Circuit Court Mediators: The Chief Judge shall maintain a list of mediators who have been certified by the court and who have registered for appointment. For certification, a mediator of circuit court civil matters in this circuit must:

(1) Complete a civil case mediation training program approved by the Chief Judge of the Fourth Circuit Court of Illinois;

(2) Be a member in good standing of the Illinois Bar with at least eight years of practice or be a retired judge; and

(3) Be of good moral character; and

(4) Submit an application that is approved by the Chief Judge or his designee.

(b) Mediator General Standards: In each case, the mediator shall comply with such general standards as may, from time to time, be established and promulgated in writing by the Chief Judge of the Circuit Court of the Fourth Judicial Circuit.

(c) Decertification of Mediators: The eligibility of each mediator to retain the status of a certified mediator shall be periodically reviewed by the Chief Judge, and in any event no longer than three (3) years after date of appointment. Failure to adhere to this general order governing mediation or the general standards provided for above may result in the decertification of the mediator by the Chief Judge or the Chief Judge's designee.

(d) Mediator Pro Bono Requirement: Each court-certified mediator shall agree to mediate without compensation when a court has determined that mediation might be beneficial and that the parties are indigent and have no resources to compensate a mediator. The Chief Judge, or the person designated by the Chief Judge, shall keep a record of the cases involving indigent persons assigned to each mediator, to ensure a fair distribution of these cases to all mediators. By requesting inclusion on the list, each mediator agrees to handle without any fee, one (1) mediation involving indigent persons within a twelve (12) month period.

RULE 13 SPECIAL RULES PERTAINING TO PROBATE CASES

(Adopted 10/02/20)

13-1 Probate Cases Defined: Probate cases are defined as any proceedings filed for the primary purpose of obtaining an order or judgment opening or administering a decedent's estate, a minor's guardianship of the person or estate, or a disabled adult guardianship of the person or estate; other cases traditionally using the P case filing code; and all ancillary proceedings.

13-2 Admission of Will to Probate:

(a) Holographic Will: When a will is handwritten, the petitioner shall file a typewritten copy of the will along with the petition to probate and an affidavit of the petitioner or his or her attorney that the typewritten copy is true and correct to the best of his or her knowledge.

(b) Will in Language Other Than English: When a will is in a language other than English, the petitioner shall file a typewritten copy of the will in English along with the petition to probate and a certification by a qualified translator that the translation of the will is true and correct.

(c) All Other Wills: In addition to all requirements of 755 ILCS 5/6-2, a petition for the admission of a will to probate shall have attached thereto a copy of the will believed by the petitioner to be the valid last will of the testator.

13-3 Proof and Declaration of Heirship and Distributive Rights:

(a) Manner of Proving Heirship: When a petition for admission of a will to probate or for letters of administration is filed, proof of heirship shall be made by:

(1) The testimony of a witness examined in open court, reduced to writing by the official court reporter, certified by the court and filed with the clerk; or

(2) Affidavit as provided in Section 5-3 of the Probate Act.

(b) Proof of Heirship: The proof of heirship shall be made by any person with sufficient knowledge of facts from which heirship can be determined.

(c) Affidavit Regarding Heirship: An affidavit of heirship shall include the following:

(1) The date and place of death of the decedent;

(2) Whether the decedent left a surviving spouse. The affidavit should also address prior marriages ending in death or divorce and the children born to or adopted by the decedent from each marriage;

(3) The names of all children, if any, born or adopted by the decedent. The affidavit shall specifically state that there are no other children, born or adopted.

(4) The date of death and the descendants, born or adopted, if any, of any deceased child. The affidavit shall specifically state that there are no other descendants, born or adopted.

(5) If there is no spouse or descendants, born or adopted, the parents, brothers and sisters and the descendants of any deceased brother or sister, born or adopted. The affidavit shall specifically state that there are no other brothers, sisters or the descendants of any deceased brother or sister, born or adopted.

(6) The manner in which the affiant is related to the decedent. If the affiant is not related to the decedent, the affidavit shall adequately establish the basis of the affiant's knowledge of the decedent's heirship.

(7) An assertion of any unknown heirs or addresses which shall specifically state what diligent efforts have been made to ascertain the same.

(8) The concluding section shall trace the per stirpes relationship of each heir to the decedent; for example, "A, grandson of decedent, being a son of B, predeceased daughter of decedent," or, "A, nephew of decedent, being a son of B, predeceased sister of the decedent."

(9) The affidavit shall state whether the decedent was ever a party to a civil union pursuant to the Illinois Religious Freedom Protection and Civil Union Act, or any substantially similar legal relationship recognized by any other state.

(d) Order Declaring Heirship: At the time of filing of an affidavit pursuant to Section 5-3 of the Probate Act, the representative shall submit to the Circuit Clerk a separate proposed Order Declaring Heirship which shall reflect the language contained in the concluding section of the affidavit.

(e) Amended Order Declaring Heirship: If the order declaring heirship is incomplete or erroneous, an amended proof of heirship shall be made as provided in this Rule and an amended order declaring heirship shall be entered, as appropriate.

(f) Change in Distributive Rights: If there is a change in distributive rights during the administration of an estate, including a change resulting from death, renunciation, disclaimer or other election provided by law, upon motion of any person or the court's own motion, an appropriate order shall be entered determining the substituted takers.

13-4 Bonds and Sureties:

(a) Individuals: When an individual is offered as security on a bond of a legal representative, the surety shall state his or her residence address below their signature, and when requested by the court, shall furnish a verified affidavit and shall agree in writing that they will notify the court before conveying or encumbering any real estate described in said affidavit, until the surety is discharged by order of the court.

(b) **Written Bond:** Regardless of whether security is excused by the will or as provided in subsection (b) of Section 12-4 of the Illinois Probate Act, the bond of the representative in the amount from time to time required under the Illinois Probate Act shall be in writing and signed by the representative.

13-5 **Expenditures from Ward's Estate:** A petition of a guardian to apply any part of the ward's estate for the support, comfort, or education of the ward or other person entitled to support from his or her estate shall state the present value of the estate, the annual income available to the ward, and the purpose of the proposed expenditure. It further shall list all payments being received by the ward or by petitioner either individually or as guardian on behalf of the ward, including Social Security payments, disability or benefit payments from the Veteran's Administration or other governmental agency or department, or other assistance from a charitable or relief organization, payment from a trust, or from one having an obligation to support the ward.

13-6 **Withdrawal of Ward's Money:**

(a) **Petition to Withdraw:** A petition to withdraw funds deposited or invested, as provided in Section 24-21 of the Illinois Probate Act, or pursuant to this rule, shall be presented in person by the parent, spouse, person standing in loco parentis, or person having the responsibility of custody of the ward, unless personal presentation is waived by the court. The petitioner may be required to furnish evidence that the sums to be withdrawn or proceeds of sale or redemption are necessary for the ward's support, comfort, education, or other benefit to the ward or his dependents. Unless otherwise excused by the Court, within 30 days after entry of the order for withdrawal, the petitioner shall file receipts for all sums expended. All unexpended funds shall be redeposited in accordance with Section 24-21 of the Illinois Probate Act.

(b) **Minor Beneficiary of Decedent's Estate:** If a minor is entitled to a distributive share of a decedent's estate and: (1) The share consists entirely of money, and (2) No guardian has been appointed for his estate, the Court, upon a showing under oath that it is in the best interests of the minor, may direct the distributive share to be deposited and paid out in accordance with Section 24-21 of the Illinois Probate Act. A receipt of the bank or other financial institution is a voucher for accounting purposes.

13-7 **Dormant Estates:** Whenever the Court determines that there has been no activity in an estate for a period of not less than one (1) year, the Court may set the estate for status call and direct the Clerk to give notice of the time, date and place to the attorney of record, the personal representative, or both, at their last known address. At the status call, if nobody appears and the Court finds that the estate is dormant and cannot be conveniently terminated, the Court shall proceed pursuant to Section 13-8(d) of these rules.

13-8 Periodic Accounting:

(a) When Required--Executor/Administrator. Every executor and administrator shall present the account and evidence of disbursements required by Section 24-1 of the Illinois Probate Act:

- (1) Within 14 months after the issuance of letters;
- (2) Annually after the date of the first account; and
- (3) At such other times as the Court may order.

(b) When Required--Guardian. Every guardian shall present the account and evidence required by Section 24-11 of the Illinois Probate Act:

- (1) Within 13 months after the issuance of letters;
- (2) Annually after the date of the first account;
- (3) Within 30 days after the termination of his office; and
- (4) At such other times as the Court may order.

(c) Requests for Extension of Time to File: Requests for an extension of time to a definite date or for an order allowing the accounting in a particular estate less frequently than above provided shall be made by written request of the personal representative, or his or her attorney, specifying the reasons for the request. On a showing of good cause, this request may, in the Court's discretion, be considered by the Court without notice or hearing; provided, the personal representative, or his or her attorney, shall then be directed to provide notice to all interested parties of any new hearing date.

(d) Periodic Accounting Not Filed. In any case in which an account has not been filed within the time specified in paragraphs (a) and (b) above or on the date certain set by court order, the following procedure is prescribed:

(1) The clerk shall mail to the attorneys of record in the estate, or, if none, to the representative, a notice that the account is due together with a notice of the date and time for a hearing on the account.

(2) If the account is not filed on or before the date of the hearing on the account, the Court shall direct the Clerk to issue a Rule to Show Cause directing the

personal representative to account as required or to appear on a date fixed by the Court to show cause why he or she should not do so, or be removed as personal representative, or be held in contempt of court.

(3) If the personal representative fails to account or to appear as directed, or if, having appeared, he or she fails or refuses to account as required or to show cause why he should not do so, his or her letters may be revoked and he or she may be subject to contempt of court.

(4) At the time of the issuance of a Rule to Show Cause required by this rule, the Clerk shall mail notice of the pendency of the contempt proceeding, and return date thereof, to all persons interested in the administration of the estate, including unpaid creditors.

(e) Notice of Accounting: Notice of the hearing on any account intended to be binding pursuant to Section 24-2 or Section 24-11 of the Illinois Probate Act shall be provided as follows:

(1) Unless waived by the person entitled thereto, the notice of hearing shall be given to the ward (if any), to each claimant whose claim is filed and remains undetermined or unpaid (if any), and to all other interested persons (as defined by Section 1-2.11 of the Illinois Probate Act, if any).

(2) The notice of hearing shall contain the time, date, place and nature of the hearing and shall include the following or a substantially similar statement: "If the account is approved by the judge upon hearing, in the absence of fraud, accident or mistake, the account as approved is binding upon all persons to whom this notice is given."

(3) The notice of hearing shall be given and served in accordance with Supreme Court Rules 11 and 12.

13-9 Independent Administration--Status Report: Whenever an order is entered granting independent administration in a decedent's estate pursuant to Section 28-2 of the Illinois Probate Act, a status date shall be set for a date certain fourteen (14) months after the entry of the order. Upon the failure of counsel or the independent representative to appear on that status date, the Court shall proceed as set forth in Rule 13-8(d).

13-10 Settlement of Claims:

(a) Contents of Petition. To settle a cause of action for personal injuries sustained by a minor, or ward, or any other action in which a minor or ward will receive any or all of the settlement proceeds, a verified petition shall be filed executed by the legal representative of the minor, ward, or the decedent's estate, and shall recite:

(1) A description of the occurrence giving rise to the cause of action.

(2) The name and address of the person or entity against whom the cause of action has accrued.

(3) The name and address of the liability insurance carrier, if any, affording coverage to the person or entity against whom the cause of action has accrued, and the monetary limits of the liability insurance policy issued by said insurance carrier in effect at the time of the occurrence.

(4) A brief description of the injuries sustained by the minor and a list of hospital and medical expenses incurred on behalf of said minor as a result of the occurrence, and a current medical report or letter executed by the attending physician stating the nature and extent of the injuries sustained and giving the prognosis.

(5) The terms of any settlement offer and a statement by the attorney for the petitioner of his or her opinion as to the fairness of the proposed settlement and a recommendation as to whether the offer should be approved.

(b) Appointment of Guardian Ad Litem.: In cases where no independent attorney has been employed by the legal representative of the minor or ward, the court shall, and in all other cases may, appoint an attorney as guardian ad litem to investigate the merits of the proposed settlement and to report his or her findings and recommendations before approval of the proposed settlement. In the event the appointed guardian ad litem does not recommend the approval of the proposed settlement, the appointed guardian ad litem shall not represent as a private attorney the legal representative or any of the parties having an interest in the case, but may continue as such guardian ad litem with reference to any revised offer of settlement so long as the legal representative has not employed independent counsel for the case. The court shall fix an appropriate fee for the guardian ad litem to be taxed as costs in the case.

(c) Attorney's Fees: In a minor's personal injury case, the judge hearing the case, upon the approval of a settlement or upon the entry of a judgment, shall determine the expenses, including attorneys' compensation, to be deducted from the settlement or judgment and shall determine the net amount distributable to the minor. Attorneys' compensation shall not be more than one-third (1/3) of the recovery if the case is disposed of in the trial court by settlement or trial. If an appeal is perfected and the case disposed of by the reviewing court, the compensation to be paid to the attorney shall not in any event exceed one-half (1/2) of the recovery.

(d) Order Approving Settlement: The order entered approving settlement shall provide for the distribution of the settlement funds and the filing of

vouchers signed by recipients of any portion of the settlement proceeds within a time prescribed by the court. The receipts or vouchers shall account for the total sum approved and obtained in settlement.

(e) Vouchers. The court shall continue the case to a specific date for the purpose of having a voucher from the financial institution filed. The voucher from the depository shall acknowledge receipt of the funds and a copy of the order of the court approving settlement, and shall include the express language that: “No withdrawals shall be made from this account, unless authorized by order of court, at any time prior to {date upon which the minor will reach the age of majority}.”

(f) Deposit and Investment of Funds: Any settlement funds that are to be received by a legal representative on behalf of a minor shall be required by court order to be deposited or invested for the benefit of the minor in accordance with the provisions of Section 24-21 of the Illinois Probate Act. These funds shall not be withdrawn or used without approval by court order.

(g) Annuity Payments to Minor’s Estate: Where annuity payments or income are payable prior to the beneficiary reaching majority age, the order approving settlement shall provide that such payments be made only to the estate of the minor; that they not be expended, transferred or withdrawn from the estate without leave of court; and the order shall require the filing of proof of payment of such periodic or partial distributions by the guardian of the minor.

13-11 Citation Proceedings:

(a) Proposed Citation and Order: Any petition for a citation as contemplated by Section 16-1 of the Illinois Probate Act that is presented to the Clerk for filing shall first be accompanied by the proposed citation as requested in the petition, with a return date that has been coordinated with the Clerk, and by a proposed order granting the petition and directing the issuance of the citation. If the petition is not accompanied by the proposed citation or the proposed order, the Clerk shall reject the petition.

(b) Procedure Upon Filing: Upon the filing of any petition for a citation as contemplated by Section 16-1 of the Illinois Probate Act, with the proposed citation and the proposed order required by Rule 13-15(a), the Circuit Clerk shall file such petition of record and then present the petition, the proposed citation and the proposed order to the presiding judge for entry of the order.

(c) Procedure for Issuance of Citation. Upon entry of an order directing the clerk to issue a citation, the Clerk shall issue the citation in accordance with the provisions of Section 16-1 of the Illinois Probate Act.

13-12 Guardian ad Litem:

(a) The appointment of a guardian ad litem for an alleged disabled adult, pursuant to Section 11a-10 of the Illinois Probate Act, or of a guardian ad litem for a minor, pursuant to Section 11-10.1 of the Illinois Probate Act, shall terminate upon termination of the guardianship, and the guardian ad litem shall be deemed discharged from further duties as of the date of termination, unless sooner ordered by the court (whether on motion of the guardian ad litem or otherwise).

(b) Any guardian ad litem appointed for a minor, an alleged disabled adult or a disabled adult in a probate case brought under the provisions of the Illinois Probate Act shall be compensated for his or her reasonable time spent in fulfilling the duties of the guardian ad litem at a rate of \$75 per hour, unless otherwise ordered by the court for good cause shown or pursuant to an agreement by the guardian ad litem and the guardian or, if no guardian is then appointed, the petitioner seeking appointment of a guardian.