

PART 8. DISSOLUTION OF MARRIAGE AND FAMILY LAW CASES

Rule 8.1 Disclosures Required in Dissolution of Marriage and Family Law Cases

(a) **Financial Affidavit.** In all actions in which there is a dispute involving property, temporary or other maintenance, temporary or other child support, or post-high school educational expenses, each party shall file a financial affidavit at least five days before the hearing on the issue(s) or when otherwise ordered by the Court. The financial affidavit form shall comply with the standardized, statewide form available at the Illinois Supreme Court website. If a financial affidavit has been filed before a hearing on temporary relief, an additional financial affidavit need not be filed before the hearing for permanent relief if there has been no substantial change at the time of the final hearing. The failure of a party to file a financial affidavit when it is due may constitute good cause for the Court to continue the hearing and/or order such other sanctions as the Court deems appropriate.

(b) **Statement of Proposed Property Apportionment.** If property apportionment is in dispute, the parties, at least five days before the hearing or when otherwise ordered by the Court, shall, in addition to the financial affidavit, submit a statement of proposed property apportionment that includes an itemization of all property claimed as marital and non-marital, a proposed value of each item, a proposed property apportionment, and citation to any authorities relied on by the proponent to support the proposed apportionment. If marital indebtedness is in dispute, the statement also shall include a list of all debts that includes the name of the creditor, an identification as to whether the debt is marital or non-marital, the amount of the debt, and the date(s) the debt is due. The failure of a party to file a statement when it is due may constitute good cause for the Court to continue the hearing and/or order such other sanctions as the Court deems appropriate.

(c) **Additional Disclosures if Required.** The Court may, on written motion of a party or its own motion, determine that, because of the nature or complexity of an action, the parties shall, within 30 days and without further notice or request, disclose and exchange the following information, whether the information is within the possession, custody, or control of the party or can be ascertained or acquired by the party by reasonable inquiry and investigation:

(1) Whether paternity of any child, living or unborn, is contested, and, if so, the identity of the child and the alleged putative father of the child;

(2) The name and address of any health and medical insurance carrier covering any spouse and/or children;

(3) A statement describing any worker's compensation, personal injury, or property damage claims the disclosing party may have, whether or not filed;

(4) The name and address of all employers and a description of any self-employment of the disclosing party;

(5) Current representative wage stubs or other documents demonstrating the disclosing party's current income from all sources;

(6) Copies of all appraisals conducted within three years of any personal property or real estate in which either party claims a legal or equitable interest;

(7) A statement setting forth the details of any claim by the disclosing party that the other party has dissipated assets;

(8) A statement setting forth the details of any claim of a right to reimbursement for contribution;

(9) A list of any annuities, pensions, profit sharing plans, retirement plans, IRS accounts, 401(K) or Keogh plans, or other similar equities in which any party has or claims a legal or equitable interest, setting forth the names and addresses of the owner, plan administrator, trustee, or manager and any identifying number of the annuity, account, or plan;

(10) A list of any stocks, bonds, mutual funds, or other equities in which any party has a legal or equitable interest, whether held in the name of a party or by any other person or entity for the benefit of a party;

(11) A list of any accounts held by any bank, savings and loan, brokerage company, credit union, or other thrift institution in which accounts any party has a legal or equitable interest, whether held in the name of a party or by any other person or entity for the benefit of a party, setting forth the name and address or any institution or entity and the identification number of the account;

(12) The existence of any cash value life insurance, term insurance, or other insurance policies covering the life of any party, including the name and address of the company, the policy number, and the face and cash values of each policy;

(13) Copies of federal and state tax returns of any party, together with all supporting schedules, W-2 forms, and 1099 forms for all income included in the returns for the three calendar years preceding the date of the order;

(14) The names and addresses of any doctors, psychologists, psychiatrists, or mental health counselors who have consulted with or treated any child of the parties during the 12 months preceding the date of the order; and

(15) The names, addresses, telephone numbers, and e-mail addresses of all witnesses the disclosing party intends to call at trial, together with a description of the subject matter about which each witness might be called to testify.

Each disclosure shall be made in writing, accompanied by the affidavit of the party that the disclosure is complete and correct as of its date and that all reasonable attempts to comply with this Rule have been made. The duty to disclose required by this Rule shall be a continuing duty, and each party shall seasonably supplement and amend disclosures whenever new or different information or documents become known to the disclosing party.

(d) Impoundment of Documents. In accordance with Rule 3.3, if any party files a financial affidavit, other documents containing a social security or account number, or a medical, psychiatric, psychological, mediator's, or guardian *ad litem*'s report, the Clerk shall without further order impound the document so that only the parties and attorneys of record in the action may have access to them and the right to copy them.

Rule 8.2 Parenting Education. In all cases in which the parties have a minor child, each parent must attend an approved parenting education program and provide proof of completion before any prove-up or final order in the action. The Court may waive this requirement for good cause. A party who has previously attended an approved program need not attend again if he or she is able to provide a copy of the certificate of attendance.

Rule 8.3 Settlement Conference. In any dissolution of marriage or family law action, the Court may on motion of a party or its own motion order the parties and their attorneys, if any, and the guardian *ad litem*, if applicable, to attend a settlement conference. At the settlement conference, the participants shall conduct good faith settlement negotiations, identify all disputed issues the Court needs to resolve, prepare a stipulation as to any agreed matters, and consider any other matters that might aid, expedite, or simplify the action.

Rule 8.4 Criteria for Placement on Approved List of Attorneys.

(a) Allocation Cases Defined. As used in this Rule and Rule 8.5, "Allocation Cases" shall mean and refer to cases, including guardianship cases, that involve contested issues of child custody, allocation of parental responsibilities, relocation of a child, visitation, or parenting time.

(b) Application. Attorneys seeking appointment in Allocation Cases to represent children or serve as a guardian *ad litem* shall apply in writing to the Chief Judge, setting forth the applicant's qualifications. A list of appointed attorneys shall be maintained by the Chief Judge.

(c) Qualifications. Attorneys appointed by the Court to represent children or serve as a guardian *ad litem* in Allocation Cases must possess the ability, knowledge, and experience to fulfill the responsibility in a competent and professional manner and have the following minimum qualifications:

(1) Be licensed and in good standing with the Illinois Supreme Court;
and

(2) Have 10 hours in the two years before the date the attorney qualifies for appointment in approved continuing legal education courses in the following areas: child development, roles of a guardian *ad litem* and child representative; ethics in Allocation Cases; relevant state and federal caselaw in Allocation Cases; family dynamics, including substance abuse, domestic violence, and mental health issues; however, in lieu of the foregoing, an attorney may initially qualify if he or she has acted as a guardian *ad litem*, child representative, or attorney for children in at least five cases in the two-year period before the initial qualification; and

(3) One *pro bono* representation in the year before the appointment.

(d) **Continuing Education.** To remain on the approved list, each attorney shall attend approved continuing legal education courses of at least 10 hours in every two-year period following initial qualification in courses in the following areas: child development; roles of a guardian *ad litem* and child representative; ethics in Allocation Cases; relevant state and federal caselaw in Allocation Cases; and family dynamics, including substance abuse, domestic abuse, and mental health issues. Verification of attendance shall be submitted to the Chief Judge at the time of attendance or on request.

(e) **Contact Information.** Each appointed attorney shall submit to the Chief Judge current contact information (updated as needed) with a statement or other verification of attendance at continuing education.

(f) **Payment of Fees.** Each appointed attorney shall be paid by the parties as ordered by the Court or as agreed between the parties. The fees shall be paid as ordered, and the Court may enforce the orders and judgments as in other proceedings, including by imposing sanctions. When possible, fees shall be paid before engagement in the form of a retainer and accounted for by the appointed attorney.

(g) **Pro Bono Appointments.** The Court may appoint an attorney from the approved list to serve on a *pro bono* basis, but no attorney shall be so appointed and serve more than once in any 12-month period.

(h) **Removal.** The Chief Judge may remove an attorney from the list of approved attorneys based on the attorney's failure to meet or maintain the listed qualifications or for good cause shown, including failure of the attorney to perform as provided in S. Ct. R. 907.

Rule 8.5 Mediation

(a) **Purposes, Goals, and Principles of Mediation.** This Rule is intended to comply with S. Ct. R. 905. This Rule recognizes that healthy parent-child relationships are more likely to emerge in Allocation Cases from a mediated agreement obtained under proper conditions than from the adversarial judicial process. Mediation with a mediator who does not decide the issues but who impartially assists the parties in reaching a fair

settlement helps ensure the parties consider fully the best interests of the children and that they understand the consequences of decisions they reach concerning the issues in Allocation Cases. Mediation assists the parties in examining the separate and individual needs of the children and considering those needs apart from their own desires. Mediation is based on the full disclosure of all facts related to the dispute and on principles of problem-solving that focus on the needs and interests of the parties, fairness, privacy, self-determination, safety, and the best interest of the children involved. Mediation is not a substitute for independent legal advice and is not appropriate when one of the parties is unable to participate competently because of family violence or intimidation, substance abuse, mental illness, or any other condition that adversely affects the ability of the party to represent himself or herself or when the parties are subject to a pending order of protection.

(b) Duties of the Mediator

(1) Information at Initial Session. At the initial session, the mediator shall:

- (i) Determine the issues to be mediated;
- (ii) Explain that the mediator will not provide legal advice, therapy, or counseling;
- (iii) 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;
- (iv) Advise each party that he or she has the right to obtain an attorney to assist and advise the party throughout the mediation;
- (v) Inform the parties that mediation can be suspended or terminated at the request of either party after three hours of mediation and the mediator may suspend or terminate the mediation if either party is acting in bad faith or appears not to understand the negotiation, the prospects of achieving a responsible agreement appear unlikely, or 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 consultation;
- (vi) Explain that the mediation process is confidential as outlined in this Rule;
- (vii) Inform the parties that the mediation process requires voluntary full disclosure of all relevant facts;
- (viii) Explain the fees for mediation and reach an agreement with the parties for payment as previously ordered by the Court;

(ix) Reach an understanding with the parties as to whether the mediator may communicate with either party or his or her attorney or with other persons to discuss the issues in mediation in the absence of the parties; and

(x) Advise each party that advocates or support persons may not be present during the mediation session but that these individuals may be available for consultation for a party while mediation is in progress.

(2) Ethical Conduct. Each mediator must maintain high standards of ethical practice. A mediator shall make accurate statements about the mediation process, its costs and benefits, and about the mediator's qualifications. A mediator shall not mediate any dispute that is being mediated by another mediator without first attempting to consult with the person or persons conducting the mediation. A mediator also shall respect the complementary relationship between the fields of mediation, law, mental health, and other social services and shall promote cooperation with other professionals.

(3) Fair Agreements. The objective of mediation is not a settlement at any cost; rather it is an achievement of a fair and reasonable agreement. While there is no one definition of fair and reasonable, mediators shall disassociate themselves from agreements that they perceive to be outside the parameters of fairness. In such situations, mediators shall withdraw from mediation and terminate the process.

(4) Written Agreements. The mediator shall summarize, in writing, the agreements reached by the parties. A copy 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 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, and approved by the Court in accordance with this Rule.

(5) Report to the Court. The mediator shall report the outcome to the Court. The mediator shall not disclose reasons for the absence of an agreement.

(6) Co-mediation or Shuttle Mediation. Co-mediation or shuttle mediation may be utilized as deemed appropriate by the mediator.

(7) Statistical Information. Mediators shall provide statistical information to the Court, as required by the Illinois Supreme Court, to assist in measuring and monitoring the performance of the mediation program.

(c) Independent Legal Advice

(1) Advising Parties. At the beginning of the mediation, the mediator shall encourage the parties to obtain independent legal advice. Any documents used in the mediation shall be made available to a party's attorney.

(2) Self-Represented Litigant. If a party is an SRL, the Court must be so advised when the mediated agreement is presented for approval.

(3) Referrals. While mediators must encourage the parties to obtain independent legal advice, they shall not refer them to specific attorneys or attempt in any other manner to influence the choice of attorney. Mediators may, however, encourage the parties to use an attorney referral service.

(d) Qualifications for Mediators

(1) Requirements. Mediators shall meet all the following requirements:

(i) Formal Education. 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

(ii) Training. Specialized training in family mediation consisting of a Circuit-approved course of study or certification, to consist of at least 40 hours in the following areas:

- (a) Conflict resolution;
- (b) Psychological issues in separation, dissolution, and family dynamics;
- (c) Issues and needs of children in dissolutions; or
- (d) Mediation process and techniques; and

(iii) Insurance. Professional liability insurance that covers the mediation process.

(2) Continuing Education. Approved mediators are required to complete 10 hours of Circuit-approved continuing education every two years and provide evidence of completion to the Chief Judge.

(e) Confidentiality

(1) Information Provided to Parties. Except for documents made available to attorneys, no information obtained from and about the parties through mediation shall be disclosed by the mediator to any third party, including attorneys. However, when there is a clear danger of imminent harm to a child or party, the obligation

of the mediator to maintain confidentiality will not apply as to the danger of imminent harm.

(2) **Subpoenaed Mediator.** If subpoenaed or otherwise noticed to testify, the mediator shall inform the parties or their attorneys immediately so as to afford the party an opportunity to quash the process. Any subpoena or other process shall be quashed unless the Court determines that a clear danger of imminent harm to a child or party exists.

(3) **Mediator *Ex Parte* Communication.** The mediator shall not communicate with either party alone or with any other person to discuss mediation issues without the consent of the parties as set forth in this Rule.

(f) **List of Mediators.** The Chief Judge shall establish a list of approved mediators. The Chief Judge, in his or her discretion, may require any biographical or other relevant information from the applicant in order to determine whether the applicant should be included on the list. For good cause shown, the Chief Judge may reject the application of any person or remove a mediator from the list. Inclusion on the list by the Chief Judge shall not be considered a warranty that the mediator can successfully mediate any specific dispute. Inclusion of a mediator on the list indicates the explicit agreement by that mediator to abide by the standards of practice set forth in this Rule.

(g) **Referral to Mediation**

(1) **Application.** The Court may order mediation on motion of either party or on its own motion.

(2) **Initial Sessions.** If the parties are referred to mediation, they shall be required to attend a minimum of three hours of mediation within 30 days. Further participation shall be voluntary and consistent with the purposes, standards, and principles of mediation. Mediation may be terminated or suspended before the end of three hours if all mediated issues are resolved or pursuant to these Rules.

(3) **Status Date.** When the Court orders mediation, the Court shall schedule a status hearing within a reasonable time to encourage the parties' prompt attention to mediation and to prevent the use of mediation as a delaying tactic. The Court shall also apportion payment of mediation costs at that time, subject to review at the conclusion of all pending issues in the case.

(4) **Temporary Orders.** The Court may issue temporary orders before or during mediation.

(5) **Fee Reductions.** Mediators shall serve on a *pro bono* or reduced fee basis on a rotating schedule for those cases in which the Court determines that mediation would otherwise be unavailable for financial reasons.

(h) Referral Procedure

(1) Agreed Selection of Mediator. The parties shall select a mediator from the Court's list, which shall be available from the Clerk, together with complete resumes and individual fee schedules. In *pro bono* or reduced fee cases, the mediator shall be appointed by the Court.

(2) Disputed Selection of Mediator. If the parties cannot agree on a mediator, the Court shall select the mediator.

(3) Scheduling Appointments. The parties shall promptly contact the mediator to schedule appointments.

(4) Pre-Session Letter to Mediator. Before the first mediation session, each attorney or SRL may submit a letter to the mediator providing information with regard to the case, including temporary or permanent orders that have been entered and a statement of the unresolved issues. The attorney or SRL shall provide a copy of any letter to the opposing counsel or SRL. The letter to the mediator shall not be confidential and may be disclosed by the mediator to both participants. The attorneys, SRLs, and mediator shall not have further communication with regard to the mediation process except as allowed by these Rules.

(i) Exclusion from or Termination of Mediation

(1) Judicial Exclusion. Parties shall not be referred to mediation if the Court has reason to believe that:

(i) child or spousal abuse has occurred in the recent past or is occurring on an ongoing basis, unless the abuse is addressed and resolved; or

(ii) one or both parties are chemically dependent to the extent the dependence would interfere with mediation, unless the dependence is addressed and resolved; or

(iii) one or both parties are emotionally or mentally impaired to the extent the impairment would interfere with mediation, unless the impairment is addressed and resolved; or

(iv) the physical safety of either party would be jeopardized, unless the safety issue is addressed and resolved; or

(v) either party is acting in bad faith or appears not to understand the negotiation, the prospects of achieving a responsible agreement appear unlikely, or the needs and interests of the minor children are not being considered.

(j) Termination of Mediation on Motion of a Party

(1) Judicial Determination. Any party may move the Court at any time to terminate an ordered mediation based on factors set forth in these Rules, notwithstanding a contrary determination by a mediator.

(2) Filing a Motion. Any motion to terminate mediation must be supported by an affidavit setting forth specific facts as to why continuing the mediation would be inappropriate.

(k) Entry of Judgement or Order

(1) Presentation of Agreement. Each mediated agreement shall be presented to the Court within 30 days following the conclusion of mediation.

(2) Approval by Court. The Court may in its discretion examine the parties as to the content and intent of the agreement and shall reject the agreement if any of its provisions are found by the Court to be unconscionable or contrary to the best interest of a minor child. Unless the agreement is rejected, 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 the agreement are also the terms of the judgment or order.