

SAMPLE COURT ADR RULE

ILLINOIS

Circuit Court of Cook County

[Local Rule 19A.19: Child Protection Mediation Program](#)

Statewide or local: Local

Process: Mediation

Eligible Cases: All child protection and dependency cases involving child custody and visitation

Related authority: Authority is derived from [Supreme Court Rule 905](#). Confidentiality and conflict of interest are governed by the [Illinois Uniform Mediation Act](#).

Summary:

Under this rule, anyone involved in a case - including the judge, attorneys, caseworkers, or family members - may request the case be ordered to mediation. The court has the discretion to then order the case to mediation, and to name those whose attendance is mandatory. Issues to be mediated are issues pertaining to temporary or permanent custody and visitation, as well as “any matter that may be delaying or impeding visitation or any custody.” Referral can be made at any stage of the case. Mediators are full-time staff of the court. No payment is required of the parties.

What is good about this rule:

- *Allows for mediation at all stages for all issues:* Studies of dependency mediation programs have found that it is effective at all stages and for all issues affecting dependency.
- *Thoroughness:* Includes conduct of the conferences and the process as well as such items as the role of discovery, confidentiality, sanctions, termination, and reporting.
- *Detailed mediator qualifications:* Guidelines on what background, training, and experience are necessary. This makes clear what the requirements are, which helps to promote confidence in the abilities of the neutrals and helps to control the quality of the mediators.
 - ⇒ For a discussion of what mediator qualifications should include, see [National Standards for Court-Connected Mediation Programs](#), Center for Dispute Settlement.
- *Allows for mediators to be either attorneys or other professionals:* This recognizes that no single career path best prepares individuals to mediate these cases.
- *Use of Interpreters:* Calls for court certified interpreters to be used whenever the participants speak different languages.

Additional points to note:

- Mediators determine whether minors will participate in mediation.
- Children who do not participate in mediation may be interviewed by mediators prior to the mediation. This helps the mediators to understand the issues from the children’s perspective.

- The program typically uses a co-mediation model. This model is used in many jurisdictions. It is seen as helping the mediators to perceive more of the underlying issues of the case and to keep track of a process that can contain upwards of a dozen participants. Courts that contract with outside agencies or mediators may find this to be financially infeasible, however.
- The program is required to report to the Illinois Supreme Court the number of cases mediated and the number and type of issues resolved through the program. While minimal, this requirement induces the program to have some amount of accountability while also giving the Supreme Court information to help in its oversight of the courts.

Further Reading:

Qualifications

[National Standards for Court-Connected Mediation Programs](#), Center for Dispute Settlement

Ethics

[National Standards for Court-Connected Mediation Programs](#), Center for Dispute Settlement

[Model Standards of Conduct for Mediators](#), American Arbitration Association, American Bar Association, Association for Conflict Resolution

Training

[Guidelines for Implementation of Qualifications Standards for Neutrals](#), Massachusetts Supreme Judicial Court Standing Committee on Dispute Resolution

Domestic Violence Screening

[Model Court Protocol for Domestic Violence and Child Abuse Screening in Matters Referred to Domestic Relations Mediation](#), Michigan Domestic Violence Prevention and Treatment Board

Monitoring and Evaluation

[Monitoring and Evaluating Court-Based Dispute Resolution Programs: A Guide for Judges and Court Managers](#), National Center for State Courts, 1997.

CIRCUIT COURT OF COOK COUNTY

19A.19 Child Protection Mediation Local Rules

(i) Actions eligible for referral to mediation.

(a) All cases involving the custody of children initiated under article II of the Juvenile Court Act of 1987 are eligible for mediation at any stage of the Child Protection proceeding. The mediation program focuses on issues pertaining to temporary or permanent custody and visitation. Any matter or conflict that may be delaying or impeding visitation or any custody determination is appropriate for mediation. Mediation will be provided unless the court determines an impediment to mediation exists. Hearing Officers, attorneys, social workers, CASA volunteers, family members, or any other individual involved in the case may request that the case be referred to mediation. The Court may also refer cases to mediation *sua sponte* and over any party's objection.

(b) Cases involving issues of visitation or the custody of a child that are initiated under articles III and IV of Juvenile Court Act of 1987, the Uniform Child Custody Jurisdiction and Enforcement Act, and guardianship matters involving a minor under article XI of the Probate Act of 1975 are also eligible for referral to the Child Protection Mediation Program at any stage of the proceeding. Any matter or conflict that may be delaying or impeding visitation or any custody determination is appropriate for mediation. Mediation will be provided unless the court determines an impediment to mediation exists.

(ii) Appointment, qualifications and compensation of the mediators.

(a) **Appointment of Mediators.** The Presiding Judge of the Child Protection Division, with the consent and approval of the Chief Judge of the Circuit Court of Cook County, will appoint mediators.

(b) **Mediator Qualifications.** Mediators shall possess one or more of the following: (1) a bachelor's, master's, or doctoral degree in psychology, social work, marriage and family therapy, conflict resolution, or other behavioral science, substantially in the field of juvenile and family law related to family relations, domestic violence, or child development, from an accredited college or university; (2) a Juris Doctorate degree with demonstrated experience; or (3) a background in mediation with experience acceptable to the Court to be served. All mediators hired after the adoption of this rule shall successfully complete a minimum 40-hour mediation training skill program conducted by the Center for Conflict Resolution or comparably recognized training program, or provide verifiable evidence of prior successful completion of such a program and recent mediation experience acceptable to the Presiding Judge of the Child Protection Division. Mediators shall also have knowledge and/or experience in the workings of the local child protection and juvenile court systems, the dynamics of child welfare administration, and local community resources.

(c) Mediator Compensation. Mediators will be compensated pursuant to personnel grade levels as approved by the Cook County Board.

(iii) Scheduling of mediation conferences. The mediation shall be held at a location provided by the Court. When a case is referred to mediation the Child Protection Mediation staff will work with court personnel, the parties, and other involved individuals to schedule a date and time for the mediation, and to complete all necessary forms and orders. When a case is ordered to mediation, a return date before the Judge or Hearing Officer will also be set.

(iv) Conduct of the conferences.

(a) Who May Participate. The Court may order and the Cook County Mediation Program anticipates the active participation of parents, guardians, foster parents, attorneys, guardians *ad litem*, social workers, CASA volunteers, and any other individuals involved with the family or the case at the initial session, followed by various combinations of involved individuals at subsequent sessions. However, the actual list of participants gathered for any mediation session is determined on a case by case basis. The mediators may conduct a child interview prior to the session to determine whether it is appropriate for a minor to participate in the mediation. The minor's guardian *ad litem*, attorney, and/or case manager may be present during the interview. The Child Protection Mediation Department shall make all final determinations as to the appropriateness of a minor's participation in the mediation process.

(b) The Mediation Process. The Cook County Mediation Program typically utilizes a facilitative co-mediation model which involves: an orientation by one of the mediators; brief opening statements by each of the participants; open discussions facilitated by the mediators; and caucuses with select individuals in various combinations as needed.

(c) Use of Interpreters. Whenever possible, the mediation conferences shall be conducted in the shared language of the participants. When the participants speak different languages, court certified interpreters will be assigned to translate.

(v) Discovery. All mediation communications as defined by the Uniform Mediation Act, 710 ILCS 35/1 et seq., shall be exempt from discovery and inadmissible as evidence in the child protection case. Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in mediation. Disclosure of mediation communications shall not be compelled in any arbitration, administrative hearing, adjudication, civil action, or non-criminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(vi) Absence of party at conference and sanctions. Participation in the mediation session is mandatory for all persons ordered by the court to participate. A mandated person who fails to participate in the mediation may be subject to court ordered sanctions. Upon agreement

of those present, a mediation session may proceed in the absence of an ordered individual if the mediators deem it appropriate.

(vii) Termination and report of mediation conference.

(a) Termination. Each session will end with the consensus of the parties unless a mediator determines the session should be terminated prior to such consensus. The mediators shall have the power to suspend or terminate the mediation process if it is determined that the mediation cannot be conducted in a safe or appropriately balanced manner. The mediator shall also suspend or terminate the mediation process if it is determined that any party is unable to participate in an informed manner for any reason, including fear or intimidation.

(b) Mediation Report. A mediation report and a continuance order shall be completed by the mediators at the end of each mediation session and submitted to the Court. The report shall inform the Court if an ordered party failed to appear. Additionally, the report shall indicate whether the mediation parties reached full agreement, partial agreement, or no agreement. Any agreement reduced to writing shall be attached to the mediation report. Oral agreements will be recorded as no agreement for the purpose of the mediation report. If the mediation did not occur, the report shall inform the Court why it did not occur, whether an informal discussion was facilitated amongst the parties in attendance, and/or whether the case is not recommended for mediation after an initial meeting.

(viii) Finalization of agreement. If agreement is reached by the mediation parties and they wish to reduce their agreement to writing, the mediators will assist the mediation parties in memorializing their agreement. Executed Memorandums of Agreement are tendered to the Court for approval. Once the Court approves and enters the Memorandum of Agreement, it is fully enforceable by the Court.

(ix) Confidentiality. Except as provided in paragraph (a) below, all mediation communications occurring during the course of the Child Protection mediation process shall remain confidential.

(a) Exceptions. In the Cook County Child Protection mediation process, any mediator or mediation participant may disclose:

- (1) new allegations of abuse or neglect that are disclosed during the mediation process;
- (2) threats or statements made in mediation where failure to disclose is likely to result in serious or imminent harm to any person;
- (3) communications that activate mandatory reporting obligations, in accordance with the provisions of the Abused and Neglected Child Reporting Act (325 ILCS 5/1-5/4), of any mediation party or nonparty participant; or
- (4) as otherwise expressly provided by law.

(x) Mechanism for reporting to the Supreme Court on the mediation program. The Circuit Court of Cook County through the Office of the Chief Judge shall report to the Supreme Court the number of cases submitted to mediation pursuant to this rule. This report shall also contain the type and number of issues resolved through the mediation program. Said report shall be submitted to the Supreme Court for the calendar year not later than the first day of March of the next calendar year.

[Amended December 26, 2006, effective January 1, 2007.]