

## ARTICLE 15: DOMESTIC RELATIONS

### 15.00 [RESERVED]

### 15.01 DEFINITION

(a) For purposes of the Rules under this Article 15, a domestic relations case is defined as any proceeding arising under the provisions of 750 ILCS, which seeks an order or judgment relating to dissolution of marriage, declaration of invalidity of marriage or legal separation, including proceedings concerning such matters as temporary support and maintenance, child custody, visitation, Orders of Ne Exeat, or applicable petitions for orders of protection.

(b) The Rules set forth in this Article 15 are promulgated in accordance with the authority conferred in section 802 of the Illinois Marriage and Dissolution of Marriage Act [750 ILCS 5/802] and the Code of Civil Procedure.

### 15.02 MARRIAGE

(a) A petition for an order directing the County Clerk of Kane County to issue a marriage license as provided in 750 ILCS 5/201 et seq. shall be substantially in one of the forms provided by the Clerk.

(b) An order granting such petition may be entered substantially in the form provided by the Clerk.

(c) The issuance of a marriage license by the clerk shall be prima facie evidence of compliance with the statute and may be relied upon by any judge asked to perform a marriage ceremony.

### 15.03 NOTICE

(a) Service of Notice of Motion or Petition shall be in accordance with Supreme Court Rules 11, 12 and 13.

(b) Effective dates of service shall be:

(1) If by mail, four (4) days after mailing.

(2) If in person, twenty-four (24) hours from the time of service.

(c) The use of personal service of notice with a return date of less than four (4) days is discouraged and should be used only in "emergency" matters. (See Rule 15.12)

### 15.04 RULES TO SHOW CAUSE

(a) No Rule to Show Cause shall issue except upon proper Notice and Motion except for good cause shown by verified pleading. Petitions for Rule to Show Cause shall be handled as noncontested "hand-up" matters, and there shall be no evidentiary hearing at the time of issue. Accordingly, the burden of proof shall not shift to the respondent upon the issuance of the rule.

(b) Rules shall be returnable not less than 14 nor more than 30 days from the date of issuance.

(c) Service shall be in accordance with Supreme Court Rules as in service of summons.

(d) The Circuit Clerk may upon determination based on records of that office that a delinquency exists in support payments, cause an appropriate Notice and Motion to issue which shall be returnable on a date and time certain before such judge as may be assigned to hear such matters. Copies shall be furnished the special Assistant State's Attorney handling these matters pursuant to Resolution of the County Board and approval of the Chief Judge. This procedure shall not apply where there is in effect a valid Order for Withholding pursuant to 750 ILCS 5/706.1 et seq. in which case the procedures recited therein for determination of delinquency and execution of the withholding order shall apply.

(e) Upon Notice and Motion pursuant to Paragraph D above, a Rule to Show Cause may issue.

#### 15.05 AFFIDAVITS RELATING TO INCOME AND EXPENSE

(a) Every pleading seeking to establish or otherwise affect issues of support or maintenance, whether temporary or permanent in nature, shall be accompanied by an affidavit as to income and expenses in substantially the form attached hereto as Exhibit 1.

(b) Said affidavit shall be attached to and filed with the initial and responsive pleadings. No affidavit prepared more than 60 days before the date of hearing or pre-trial shall be considered valid for purposes of that proceeding unless accompanied by a new affidavit stating that the party offering it represents there has been no substantial change in any of the information since the last affidavit was prepared.

(c) References in any pleading or order to an "Expense Affidavit" or "Income Affidavit" shall be presumed to refer to the document described herein.

(d) Failure by either party to submit the affidavit required hereunder shall be cause for such sanctions as the court may deem appropriate including but not limited to the striking of pleadings of the party not in compliance.

#### 15.06 PROVE-UPS

(a) Notice to Respondent - After default on personal service, four-day written notice of intent to appear on prove-up shall be given to the respondent at the address where the respondent was served with summons or at the last known residence or place of employment of the respondent and certificate of such service shall be filed at or prior to hearing.

(b) Presence of Respondent in Open Court - Whenever it shall appear from the record or the testimony that there has been some communication and/or agreement between the parties concerning support, custody, or other material issues, then in such event both parties should appear in open court at the time of the hearing to acknowledge their agreement. The Court may excuse the presence of respondent for good cause shown. If the non-moving party fails to appear at the prove-up, counsel shall serve a copy of the judgment on such

party by mail within ten days from the entry of said judgment and shall file a proof of service with the Clerk of Court.

(c) Waiting Period - No dissolution of marriage, legal separation or invalidity of marriage case will be heard upon its merits prior to the summons return date or thirty (30) days from the filing date if upon response and/or appearance without issuance and service of summons. The parties may waive in open court or in writing the 30-day waiting period.

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

(1) Judgment Order.

(2) Fully Completed Certificate of Dissolution, Declaration of Invalidity or Legal Separation (IDPH Form VR 700).

(3) Fully completed order for withholding unless there is no support or maintenance obligation (750 ILCS 5/706.1 et seq.).

(4) Joint Parenting Agreement and Joint Parenting Order containing appropriate findings pursuant to 750 ILCS 5/602 et seq. if joint custody of minor child(ren) has been approved by the Court.

(5) Fully completed supplemental order for payment of support or maintenance through the Office of the Circuit Clerk unless waived by the parties.

(6) Signed original of any written agreement of the parties that has been testified to, received in evidence and is to be incorporated in the Judgment or Declaration.

(e) Court reporter fees shall be paid in full at the time of hearing, unless waived by the Court. Payment of said fees is the responsibility of the attorney representing the party seeking dissolution. Failure to make prompt payment may result in sanctions against said attorney or party. Within 30 days of the date of the prove-up transcripts of the proceeding shall be prepared unless waived by order of court and submitted to the prove-up judge for approval and filed with the Clerk of the Circuit Court by the assigned court reporter.

(f) Failure to comply with the foregoing paragraphs will result in the case being dismissed without prejudice. Reinstatement may be had if, within one year from the date of dismissal, either party, or their attorney, files an appropriate notice and motion and pays the required reinstatement fee.

(g) In addition to or in place of all other remedies provided herein, the court shall retain jurisdiction of the parties and of counsel for purposes of using its contempt powers to enforce its orders.

(h) Failure to present the documents required herein due to non-payment of fees shall subject the offender to such sanctions as the court may deem appropriate.

(i) Failure to fully complete documents will result in their return.

(j) Matters which are not on the regularly scheduled "prove-up" call but which are settled and treated as a "prove-up" (such as following pretrial negotiations) shall be subject to all of the foregoing rules except as they may be modified by Rule 15.07.

(k) Effective October 1, 1987 all requests for Prove-up dates/times must be accompanied by a "Certificate of Readiness and Order." Copies are available from the Circuit Clerk.

The form should be completed, a date obtained from scheduling and then presented to any of the Family Court judges for signature and filing. For an example of a "Certificate of Readiness and Order", see Appendix B. These matters need not be scheduled. The certificate, with approved date, should simply be presented as a "hand up" order.

#### 15.07 JUDGMENTS FOR DISSOLUTION OF MARRIAGE, LEGAL SEPARATION OR DECLARATION OF INVALIDITY

(a) All documents purporting to effect the status of marriage shall conform to the provisions of:

(1) 750 ILCS 5301 et seq.

(2) 750 ILCS 5/401 et seq.

(3) 750 ILCS 5/402 et seq. all as from time to time amended and shall contain findings relating to:

(4) Jurisdiction of the subject matter and of the parties

(5) The date and place of marriage

(6) Whether any children were born or adopted to the marriage, their names and birthdates, and whether the wife is pregnant

(7) Such additional findings as may be appropriate.

(b) It shall be the responsibility of the person seeking to effect the marital status, or his or her attorney, to present to the trial judge, in a single package the following:

(1) Judgment Order

(2) Fully Completed Certificate of Dissolution, Declaration of Invalidity or legal Separation (IDPH Form VR 700)

(3) Report of Proceedings (unless waived)

(4) Fully completed order for withholding unless there is no support or maintenance obligation (750 ILCS 5/706.1 et seq.)

(5) Joint Parenting Agreement and Joint Parenting Order containing appropriate findings pursuant to 750 ILCS 5/102.1 if joint custody of the child(ren) has been approved by the Court.

(6) Fully completed supplemental order for payment of support or maintenance through the Office of the Circuit Clerk unless waived by the parties.

(7) Signed original of any written agreement of the parties that has been testified to, received in evidence and is to be incorporated in the Judgment or Declaration.

(c) Documents required hereunder shall be presented not later than 30 days after prove-up, or on or before such date as the Court may order.

(d) Court reporter fees shall not be paid in full at the time of hearing, or if the cost is not then known, upon receipt of invoice, unless waived by the Court. Payment of said fees is the responsibility of the attorney representing the party seeking dissolution. Failure to make prompt payment may result in sanctions against said attorney or party.

(e) Failure to comply with the foregoing paragraphs will result in the case being dismissed without prejudice. Reinstatement may be had if, within one year from the date of dismissal, either party, or their attorney, files an appropriate notice and motion and pays a reinstatement fee of \$50.00. In the event the Defendant or Respondent or their counsel shall, after such dismissal, obtain reinstatement and pay the fee, therefore, then an order shall be entered against the Plaintiff or Petitioner or their attorney for reimbursement of such fee as well or for such monetary sanctions as the Court may deem appropriate, including fees and out of pocket expenses.

(f) In addition to or in place of all other remedies provided herein, the Court shall retain jurisdiction of the parties and of counsel for purposes of enforcement of its orders.

(g) Failure to present the documents required herein due to non-payment of fees shall subject the offender to such sanctions as the Court may deem appropriate.

(h) Failure to fully complete documents will result in their return.

(i) Unless otherwise ordered by the Court, court reporters shall, within 30 days of the taking of proofs, forward to the attorney for the party seeking to effect the marital relationship a transcript of proceedings together with a statement for services rendered.

That statement shall contain the following:

The undersigned, being an officer of the Circuit Court of Kane County, states that the original of the transcript referred to herein, together with the original of this statement, was forwarded to the above on the date stated via first class mail with postage fully prepaid.

Court Reporter

If delivery is made personally, then the statement should contain the following:

The undersigned, being an officer of the Circuit Court of Kane County, states that the original of the transcript referred to herein, together with the original of this statement, were personally delivered to the above on the day of , 19 .

Court Reporter

A copy of that statement should be placed in the court file.

(j) Where counsel has been unable to complete a judgment within the prescribed 30 days, an additional 14 days may be allowed by order of court on oral motion. Additional extension of time to file shall be granted only for good cause shown.

#### 15.08 SERVICE BY PUBLICATION

(a) Service by publication shall be in accordance with 735 ILCS 5/2-206 and 5/2-207 (735 ILCS 5/2-206 et seq.) as from time to time amended.

(b) The person or entity seeking to obtain jurisdiction by publication, shall provide copies of all necessary documents to the Circuit Clerk including copies for mailing.

(c) The responsibility for the prompt filing of appropriate Certificates of Publication and/or Certificates of Mailing shall be that of the person seeking such service except as to those matters which are the responsibility of the Circuit Clerk (750 ILCS 5/2-206).

#### 15.09 ATTORNEY'S FEES

(a) No award of attorneys fees on behalf of an attorney against his client shall be made without the prior filing of a verified petition for attorneys fees and an itemization of the billing including the hourly cost, the time spent on the case, and an itemization of the tasks performed.

(b) Notice for any Petition for attorneys fees on behalf of an attorney against his client shall be in substantial compliance with the following:

You are hereby notified that on , the day of , at or as soon thereafter as counsel may be heard, the undersigned shall appear before the Hon. Judge , in Room , at the Kane County Judicial Center, 37W777 Rt. 38, St. Charles, Illinois and then and there present a Petition for Attorney's Fees pursuant to Section 508 of the IMDMA.

The law requires that you be advised of your right to a copy of that Petition and an itemized copy of the bill, copies of which are attached, and further provides for a right to a hearing on the Petition, and a right to be represented at your expense at that hearing by an attorney other than one associated with the undersigned. If you do not appear, a judgment may be entered in accordance with the Petition.

(c) No agreed order for attorney fees on behalf of an attorney against his client, or consent judgment, shall be entered unless the requirements of subparagraph (a) have been met and the client is present in open court and knowingly waives his/her right to a hearing and separate representation.

#### 15.10 SETTING OF CASES ON COURT CALLS

(a) General:

Pre-trial and trial dates must be obtained from the Court. All other dates shall be obtained from the scheduler, subject to approval of the Court.

(b) Changes in court dates initiated by the Court:

(i) Whenever the assigned judge determines it necessary to reschedule a court date, the scheduler, at the direction of the assigned judge, shall prepare an order for signature by the assigned judge.

(ii) A copy of the order shall be sent by the scheduler to all attorneys of record in the case.

(iii) Whenever possible, attorneys of record shall be contacted by the scheduler beforehand to obtain a mutually acceptable date.

#### 15.11 HEARINGS

(a) Motion calls shall be held at such times as may be established and published by the presiding judge of the Family Division. Separate calls shall be held for pre-judgment and post-judgment matters.

(b) The presiding judge of the Family Division shall designate one of the judges of that division to act as "Motion Judge" and shall rotate that assignment as deemed appropriate.

(c) New cases shall be assigned to one of the judges of the Family Division on a purely random selection basis as established by the Circuit Court Clerk.

(d) Once assigned that case shall remain the responsibility of the assigned judge unless otherwise ordered. Substantial decisions made by a "Motion Judge" shall not be cause for a change of judges from the one originally assigned so long as said judge is still assigned to the Divorce Division. In the event that the originally assigned judge is not then serving in the Family Law Division, then the matter shall be transferred automatically to the judge currently assigned to hear that former judge's call.

(e) Prove-ups shall be in accordance with Rule 15.06.

(f) The presiding judge of the Family Law Division may reassign matters among the judges assigned to that division in order to accomplish the expeditious handling of cases.

#### 15.12 EMERGENCY MATTERS

(a) Designation of a matter as an "emergency" is determined to be an extraordinary measure.

(b) The proponent of an alleged "emergency" matter shall have the initial burden of proving the emergency which burden shall include, at least, all of the following:

(1) Inability to obtain an assignment on the regularly scheduled call within a reasonable time given the circumstances for which or from which relief is sought.

(2) Notice to the opposing party pursuant to Rule 15.03.

(3) That immediate and irreparable injury, loss or damage will result if the relief is not granted and that there exists no adequate remedy at law.

(c) Matters designated "emergency" shall be heard at the discretion of the Court and by the motion judge or such other judge as may be designated by the presiding judge.

(d) Upon a determination by the Court that a matter does not meet the criteria for "emergency" matters, an order so finding shall be entered and the matter may be set on a regular call. A party or their counsel who respond to a motion propounded as but found not to be an "emergency" shall be entitled to reimbursement by the proponent for actual expenses and fees and costs incurred in responding to said motion.

#### 15.13 SUPPORT

(a) Levels of support shall be established pursuant to statute. (750 ILCS 5/505)

(b) The Court shall consider the affidavit of the parties (See Rule 15.05) as well as such additional testimony and documents as may be appropriately before the Court.

(c) The Court shall further consider the provisions of 750 ILCS 5/513 in conjunction with (a) and (b) above in setting support levels.

(d) Modifications and termination shall be pursuant to statute.

#### 15.14 FORM SUGGESTIONS FOR CUSTODY AND VISITATION

Rules with Respect to Custody and Visitation, as published by the Court, shall be incorporated into every Custody Order or Judgment. ([Guidelines for Custody and Visitation](#))

(a) The care, custody, control and education of, minor child (children) of the parties is hereby awarded to until the further order of the court.

(b) They shall have visitation with said child (children) as follows:

(1) Every other weekend commencing subject to changes as hereinafter provided and commencing Friday at p.m. and ending Sunday at p.m.

(2) Alternating the ten major holidays (New Year, Easter, Mother's Day, Decoration Day, Father's Day, Independence Day, Labor Day, Thanksgiving Day, Christmas and Birthday of Child (children) with having the first of said holidays following the entry of this Judgment of Dissolution of Marriage. (Yom Kippur, Rosh Hashanah, Passover, Hanukkah)\*

(3) Two weeks during the summer school vacation subject to four weeks notice to the person having physical custody.

(4) When the Holiday shall fall on Tuesday, Wednesday or Thursday, the Holiday visitation shall commence at p.m. on the day prior to the Holiday and terminate at p.m. on the day of the Holiday.

(5) When the holiday shall fall on a Friday and is to be celebrated on that day, then the Holiday visitation shall commence Thursday at p.m. and end on Sunday at p.m.

(6) When the Holiday shall be celebrated by State Law on Monday or falls on a Monday, then the Holiday visitation shall commence on Friday at p.m. and end Monday at p.m.

(7) The parent entitled to the Holiday visitation shall have the visitation if the holiday is on a weekend, irrespective of the alternating weekend provision, and the other parent shall have the following weekend and thus beginning a new sequence of alternating weekends.

#### 15.15 DOMESTIC VIOLENCE ORDERS OF PROTECTION

(a) Emergency Orders of Protection:

Petitions for Emergency Orders of Protection shall generally be heard by the judge then assigned as the "motion judge" or such other judge as may be designated by the presiding judge. Petitions for Emergency Orders of Protection shall be heard promptly and need not be scheduled on the motion call.

(b) Petitions for Orders of Protection, Emergency, Temporary or Plenary shall conform with the Illinois Domestic Violence Act of 1986, 750 ILCS 60/2313-1 et seq.

(c) Assignment of Cases:

All independent civil actions not brought as part of a dissolution or criminal proceeding shall be assigned as set forth in Paragraph A above. Domestic violence issues relating to pending dissolution cases shall be heard by the judge assigned to the dissolution case except where the relief sought is an Emergency Order of Protection, in which case Paragraph A above shall apply.

(d) Presence of Petitioner:

When a verified petition for an Emergency Order of Protection is presented, the presence of the petitioner is strongly encouraged where he or she is physically able to be present.

(e) Orders:

All Orders of Protection in independent and dissolution proceedings shall be made on approved forms. If there is not sufficient space on the forms, an attachment shall be used as a rider to the approved forms.

(f) Hearings on petitions to dissolve or modify Emergency Orders of Protection shall be given priority.

(g) The Illinois Domestic Violence Act specifically prohibits mutual Orders of Protection absent independent pleadings and proof by each of the parties. Accordingly, no such orders will be entered unless in compliance with statute.

#### 15.16 SETTING OF PRETRIAL CONFERENCES AND TRIALS

(a) If on the date the case has been set for status, no prior order has been entered setting the case for pretrial or trial, a pretrial date shall be set.

(b) All cases, including post-judgment, shall be set for pre-trial conference before being set for trial. If the matter is not settled at the pre-trial conference, it shall be set for trial. The Order setting the matter for trial shall include a schedule for any further discovery as well as for compliance with Supreme Court Rule 220.

(c) Cases settled at pre-trial conference should proceed at once to prove-up based on an oral agreement and subject to subsequent filing of a form of judgment incorporating all the terms of the Agreement unless otherwise ordered for good cause shown.

(d) Cases set for pretrial or trial shall not be continued except for statutory cause shown, pursuant to notice, written motion, affidavit, and order of the trial judge. If a case set for trial cannot proceed on the date set, due to the judge being otherwise engaged, the scheduler will notify the attorneys in advance of the trial date as soon as possible and said case will be rescheduled by the Court to the earliest available date.

(e) Counsel for each party shall comply with all terms of any pre-trial order.

(f) Counsel shall file with the Court at time of pre-trial and upon commencement of trial, with copies to opposing counsel, the following information which shall be current:

(1) Affidavit of income and expenses. "Income" is defined by statute (750 ILCS 5/505(a)(3)(a)-(h) where annual earnings exceed the maximum amount taxable under F.I.C.A. then that deduction shall be annualized in arriving at "Income". Use current tax tables. Indicate exemptions assumed.

(2) Statements of balances due on all indebtedness of every kind including the name of the creditor, purpose of the debt, schedule and amount of periodic payments, whether current and, if not, total arrears, including fees, penalties, interest and/or other charges.

(3) A list of anticipated exhibits.

(4) A statement of contested issues.

(g) After a prove-up date has been set, a pretrial conference date has been set, or a trial date has been set and the plaintiff or his attorney fails to appear, the cause will be dismissed for want of prosecution.

(h) After a pretrial date has been set and the defendant or his attorney fails to appear, defendant's answer will be stricken and order of default entered. Reinstatement after such a default will only be allowed for good cause and upon payment of costs and reasonable attorney's fees.

#### 15.17 PRETRIAL CONFERENCES

(a) Failure to comply in all respects with pre-trial orders will lead to the imposition of sanctions.

(b) Pre-trial conferences may be continued or additional conferences allowed at the discretion of the Court. Motions for continuance must be written and are subject to all notice requirements (See 15.03).

(c) If a case set for trial or pre-trial is proved-up prior to the date set, Plaintiff's/Petitioner's counsel shall notify the Court within one court day. Notice may be informal but shall be in writing and shall include: 1) Case name; 2) general number; 3) pending date; 4) name of delivered judge. The notices may either be delivered to the judge personally or left with the Court's Secretary in Room 111. The notice should be dated.

(d) Litigants must attend pretrials with their attorneys unless their attendance has been previously excused by the pretrial judge. If the attorneys or litigants fail to appear for an appointed pretrial conference, the pretrial will be stricken and no further pretrial conferences will be conducted by the Court relative to said case.

#### 15.18 FUTURE COURT DATES

(a) All pending and inactive cases coming before the court on any given day must be given future court dates.

(1) No pending or inactive cases appearing before the Court on any given date (whether on the official court call or an add-on) shall be "stricken from the call" or "stricken" or "taken off call" unless there is a future court date already set.

(2) Upon setting a future court date, the purpose of the future court date shall be specified as one of the following:

ST: status

MOT: motion

P/U: prove-up

PTC: pre-trial conference

DEC: decision

HRG: contested hearing

#### 15.19 MAINTENANCE OR SUPPORT PAYMENTS

(a) Maintenance or Support payments shall be made to the Clerk of the Circuit Court only upon a separate Order of Court providing therefore, using the form furnished by the Clerk's Office.

(b) Orders for Maintenance or Support payments shall be presented to the Court in duplicate together with work and data sheets. (Forms supplied by the Clerk.)

(c) Upon failure of a party to comply with an order of this Court pursuant to paragraph (a) above, a petition for a Rule to Show Cause may be filed with the Court. Such petition may be filed by the obligees or, where appropriate, by the state's attorney on behalf of the obligees.

(d) Following notification pursuant to paragraph (c) above, the Court may order any action authorized by the law to enforce its orders.

#### 15.20 TITLES ON ALL PETITIONS, MOTIONS AND ORDERS

(a) All Petitions, Motions, or Orders submitted to the Court for entry in domestic relations cases shall be substantially in the form provided by law and shall begin with a title which accurately describes the contents of the Petition, Motion, or Order. Examples:

(1) Motion/Petition/Order for Continuance

(2) Motion/Petition/Order for Dismissal

(3) Motion/Petition/Order for Temporary Custody, Child Support and Maintenance

(4) Motion/Petition/Order for Attorney's Fees

(5) Motion/Petition/Order to Set Pre-Trial Date

(6) Motion/Petition/Order to Set Trial Date

(7) Motion/Petition/Order for Change of Custody

(8) Motion/Petition/Order to Fix Visitation

(9) Motion/Petition/Order for Increase in Child Support

(10) Motion/Petition/Order for Termination of Child Support

(11) Motion/Petition/Order to Modify Maintenance (and/or Child Support)

(12) Motion/Petition/Order for Payment of Arrearage

(13) Etc.

(b) If the order is agreed, the adjective "agreed" should precede the word "order" in the title.

(c) If the order covers more than one substantive matter, each subject must be referred to in the title.

#### 15.21 PERIODIC MEETINGS

The Chief Judge, the Presiding Judge of the Domestic Relations Division, and the Chairman of the Matrimonial Committee of the Kane County Bar Association, or their designates, shall meet periodically as necessary to address practice and procedural changes required.

#### 15.22 FAMILY MEDIATION PROGRAM

(a) Definitions

Mediation is a cooperative process for resolving conflict with the assistance of a trained, neutral third party, whose role is to facilitate communication, to assist the parties in identifying issues needing to be resolved, exploring options, negotiating acceptable solutions, and reaching agreement on the issues. Fundamental to the mediation process described herein are principles of cooperation, informality, privacy, confidentiality, self-determination, and full disclosure by the parties of relevant information. Mediation under this rule is a means for parties to maintain control of parenting decisions, by resolving themselves the issues of custody, visitation, removal and other non-financial children's issues. Parties are encouraged to participate in the mediation process by attempting good faith negotiation and resolution of the issues brought to mediation.

Mediation under this rule is not to be considered a substitute for independent legal advice. Instead, it is to work in partnership with the attorneys and the legal process, by giving the parties the ability to be fully informed of options for resolution of their issues, which would include obtaining legal advice before, during and after the mediation process.

"Impediment to mediation" means 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 if mediation should be required, and to insure that only parties having a present, undiminished ability to negotiate are directed by the Court under this rule to mediate.

(b) Subject Matter of Mediation

Court-referred mediation will be limited to disputes involving child custody, visitation, removal, or other non-economic issues relating to the child or children, either prior to dissolution of a marriage or post-judgment.

Mediation may be ordered by the Court for resolving family law issues other than child custody, visitation, removal, or non-economic issues relating to the child or children only if the parties and their attorneys agree. For mediation of these other issues, the Court shall take into account the qualifications and professional background of the individual mediator appointed.

(c) Prerequisite to Mediation

For any county having an established parent education program, the parties referred to mediation by the Court shall complete the parent education program prior to starting mediation or as soon after starting mediation as the parent education program's schedule allows.

The mediator shall screen for the identification of cases that may be deemed as inappropriate for mediation under this rule, in that these cases contain some type of impairment as defined under Paragraph a.

(d) Qualifications and Requirements of Dissolution Mediators

- (1) Any person who meets the following criteria is eligible to serve as a mediator for the purposes of the rule:
  - (a) Satisfactory completion of 40 hour divorce mediation training program approved by the Court. In addition, the applicant must have completed training specific to domestic violence, child abuse, substance abuse and mental illness, which gives the applicant an understanding of the issues related to these impairments and one's ability to negotiate effectively when impacted by one or more of these impairments.
  - (b) The applicant has been awarded a degree in law or in 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, or a related field otherwise approved by a Presiding Judge of the Family Court, or his or her designee.
  - (c) Member in good standing in the professional organization of his/her respective disciplines.
  - (d) Proof of professional liability insurance which covers the mediation process.
  - (e) Minimum of two years of work experience in their discipline or profession, or otherwise supervised by a qualified mediator.
  - (f) Maintain an office in the respective county where the Court is located, unless otherwise allowed by the Presiding Judge of Family Court, or his or her designee.
  - (g) Prior to the passage of this rule, all persons approved to act as mediators under any existing Court mediation program in this Circuit, shall continue to do so without further approval.
- (2) All persons meeting the requirements above who are interested in acting as a Court Appointed Mediator shall provide proof by way of affidavit which is supported by documentation of the aforesaid requirements to the Presiding Judges of the Family Court in each county of the 16<sup>th</sup> Circuit, or the person designated to receive such material in each county.
- (3) A periodic list shall be prepared by the Presiding Judges of the Family Court in each court of the 16<sup>th</sup> Circuit, or the person designated to keep such a list in each county.
- (4) A mediator shall participate in six hours of continuing education every two years from programs approved by the Court, and be personally responsible for ongoing professional growth. A mediator is encouraged to join with other mediators and members of related professions to promote mutual professional development.

- (5) The Court mediators may be required from time to time to attend specific training offered or sponsored by the Family Mediation Program, the Bar Associations or other individuals or organizations.
- (6) A mediator shall mediate two low income cases, as identified by the Court, per year, at a reduced fee.

(e) Referral Procedure

- (1) Kane County. 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 a list of qualified mediators prepared and kept by the Presiding Judge of the Family Division. A Mediation Order shall be issued and signed by the Court. A mediation status date will be set for no later than 60 days from the date the Mediation Order was issued.
- (2) Other Counties. Upon the Court's order for the parties to participate in mediation, a mediator shall be assigned in accordance with the procedures established in that county from the list of qualified mediators prepared by the Presiding Judge of the Family Court or the person designated to prepare said list, and a 60 day hearing date shall be set for the status of the mediation process.
- (3) Judges assigned cases with child custody and/or visitation issues may make the necessary findings to order mediation. The Court may also designate in its order what percentage of the mediation fee should be paid by each party and/or whether the case should be considered a low income case.
- (4) Parties are not obligated to participate in the mediation process until ordered by the Court or agreed to by the parties. The attorneys shall encourage their clients to mediate in good faith, and the parties shall participate in mediation in good faith.  
After entry of a mediation order by the Court, the absence of a party at a mediation session or the lack of a party's participation in the mediation process may result in sanctions, including reasonable costs to the other party for mediation and attorney's fees.
- (4) If the mediator appointed has any conflict of interest, another mediator shall be appointed by the Court from the list. If the mediator appointed on a designated low income case has already met his or her annual requirement for mediating low income cases and cannot or does not wish to take another, and informs the Court, the Court shall appoint another mediator that has not reached the required quota or is willing to take low income cases in excess of two cases per year. The Presiding Judge of Family Court of every county or the person designated shall keep a record of low income cases assigned to each mediator, to insure fair distribution of these cases to all mediators.
- (5) 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.

### Conflict of Interest

- (f) (1) Conflicts of Interest- Generally: In order to avoid the appearance of impropriety, a mediator who has represented or has had a professional relationship with either party prior to the mediation may not mediate the dispute unless the prior relationship is fully disclosed to both parties and each party consents in writing to the participation of the mediator notwithstanding the prior relationship. A mediator who is a mental health professional shall not provide counseling or therapy to the parties during the mediation process. An attorney-mediator may not represent either party in any matter during the mediation process or in a dispute between the parties after the mediation process.
- (2) Imputed Disqualification: No mediator associated with a law firm or a counseling agency shall mediate a dispute when the mediator knows or reasonably should know that another attorney or counselor associated with that firm or agency would be prohibited from undertaking the mediation.
- (3) Exception: A therapist-mediator who would otherwise be disqualified from mediation as a result of imputed disqualification, may undertake the mediation only under the following circumstances:
- (a) There has been full disclosure to both parties about the conflict of interest and the imputed disqualification of the mediator, including the extent to which information is shared by personnel within the agency; and
  - (b) Both parties consent to the mediation in writing.

(g) Exclusionary Rule

The mediator shall be barred from testimony as to confidential mediation issues, and mediation records shall not be subpoenaed in any proceeding except by leave of the Court for good cause shown.

(h) Orientation Session

At the orientation session, a mediator shall inform the parties of the following:

- (1) Neither therapy nor marriage counseling are part of the mediator's function.
- (2) No legal advice will be given by the mediator.
- (3) An attorney-mediator will not act as an attorney for either or both parties and not attorney-client relationship will be formed. Thus the attorney-client privilege will not apply.
- (4) The rules pertaining to confidentiality, as outlined in Paragraph g.

- (5) The basis for terminations of mediation, as outlined in Paragraph j.
- (6) The proposed resolution of the mediated issues will be documented in written summary. This summary will form the basis of the formal mediated agreement presented to the Court for approval.
- (7) Each party shall be strongly encouraged to obtain independent legal counsel to assist and advise him or her throughout the mediation.
- (8) Legal counsel for either party will not be present at any mediation session without the agreement of the parties and the mediator.

(I)

The Mediation Process

Agreement to Mediate. At the initial session the mediator shall provide the parties with a written agreement outlining the guidelines under which mediation shall occur and the expectations of the parties and mediator. This initial agreement shall include at a minimum, all of the foregoing information in Paragraph h. Either or both of the parties shall be permitted to consult their respective legal counsel before executing this agreement.

The mediator shall assess the ability and willingness of the parties to mediate at the orientation session and throughout the process, and shall advise the parties in the event the case is inappropriate for mediation.

(j) Termination of Mediation

The parties shall attend mediation until such time as they shall reach an agreement on the issues or the mediator or the Court suspends or terminates mediation. The mediator shall immediately advise the Court in writing if he or she suspends or terminates mediation or in the event that either or both parties fail to comply with the terms of this paragraph.

(k) Mediator Report

(1) The report to the Court shall state the following:

- (a) Whether an agreement has been reached by the parties and a summary of that agreement.
- (b) The number and duration of sessions conducted to date.
- (c) The fee charged, whether that fee has been paid in full, and if not, the outstanding amount owed. For an outstanding amount owed the Court may direct the parties to pay said amount and establish what percentage should be paid by such party.
- (d) Whether the parties have reviewed the summary of agreement.
- (e) Whether any additional mediation sessions are recommended based on the likelihood of success.
- (f) Other relevant information not considered confidential under this rule.

(2) In the event an agreement is reached on any of the issues, the mediator shall supply a written summary of the agreement to counsel and the Court and the same shall be included in any order or judgment disposing of the dispute.

(3) In the event an agreement is not reached on all issues, the mediator shall identify to the Court and counsel the issues remaining unresolved.

(4) The mediator shall advise the Court as to the time necessary for the completion of the mediation process. It shall be within the Courts' discretion to extend mediation after the 60 day status date.

(l) Discovery

(1) Only written discovery shall be allowed until mediation is terminated by the order of the Court.

(m) Payment of Fees

The mediator shall charge an hourly fee to the parties no higher than \$150 per hour to be shared equally by the parties, unless the Court directs otherwise in an order or otherwise agreed by the parties. This hourly fee shall be paid to the mediator at the time of each session for the time spent in mediation at the session. Along with the hourly fee, the mediator may request an advance deposit of \$300.00 to be paid at the first session. Such deposit may be applied to services rendered by the mediator outside of the mediation session, such as telephone conferences, correspondence, consultation with attorneys or other individuals, preparation of the Mediator Report, and any other work performed by the mediator on behalf of the parties. Any additional fees that exceed the deposit or the fees collected at the time of sessions for services rendered by the mediator shall be paid as required by the mediator. In the event payments are not made as required under this rule, or otherwise agreed to by the mediator and the parties, the mediation process may be suspended by the mediator pending compliance.

(n) Statistics

2. Kane County. The family Court Administrator will be responsible for all statistical data. Data shall include the number of cases referred to mediation, the number of low-income cases referred, the number and duration of sessions per case and the final outcome of each case. These statistics shall be forwarded annually to the Chief Judge of the 16<sup>th</sup> Judicial Circuit and the Presiding Judge of Kane County's Family Court. The Chief judge of the 16<sup>th</sup> Judicial Circuit shall report annually to the Supreme Court of Illinois on this mediation program, including a count of the number of cases assigned to Court Ordered Mediation and the results achieved.

(o) Rule Controlling

- (1) This Amended Family Mediation Program Rule supercedes all previous Family Mediation Rules implemented.

#### 15.23 "KIDS COUNT" PARENT EDUCATION PROGRAM

(a) There is created in the Sixteenth Judicial Circuit, Kane County, Illinois, a program to be known as follows: "Kids Count" Parent Education Program.

(b) In all cases involving custody or visitation of minor children in the Family Court whether pre- or post-dissolution actions, the parties shall be required to attend the Kane County Kids Count Parent Education Program prior to entry of a final judgment disposing of the case. Upon good cause shown, the court may exempt any party from attendance at said program.

(c) The judge shall order one or both of the parties to pay the costs attendant thereto. Fees for attendance by the parties shall be set by the presiding judge of Family Court.

(d) In the event there remains a pre- or post-dissolution dispute over custody or visitation of minor children the case remains subject to mediation as set forth in Local Rule 15.22.

#### 15.24 DISCOVERY RULES IN FAMILY LAW CASES

(a) POLICY: It is the policy of the Family Division Kane County, Illinois, Sixteenth Judicial Circuit to assign a pro-active duty to each party to provide essential financial information to the other party, and to provide for more economical litigation for the parties.

(b) APPLICATION OF DISCOVERY RULES IN FAMILY LAW CASES: The DISCOVERY RULES IN FAMILY LAW CASES shall apply to all the following matters: dissolution of marriage proceedings and legal separation proceedings unless compliance is excused by order of court on its own motion or on motion of a party for good cause shown. The Rules may further apply to actions to establish or declare parentage and to post-judgment proceedings for modification or termination of maintenance; modification of child support; educational contributions; contributions to medical, dental or psychological expenses; insurance expenses or reimbursement; and all other pleadings raising financial issues; but the Rule shall apply in these cases only upon order of court on motion of either party or on the court's own motion. These discovery rules do not apply to Joint Simplified Dissolution 750 ILCS 5/451 et seq. or to precipae for summons.

(c) PRO-ACTIVE DISCOVERY: Within twenty-one (21) days of the filing of the defendant's general appearance or responsive pleading in any family law case as defined in paragraph 1.02 above, each party shall serve upon all parties entitled to notice the completed COMPREHENSIVE FINANCIAL STATEMENT in the form established by these Rules and each party shall file with the Clerk of the Circuit Court within seven (7) days thereafter a certificate of completion and of service (in the form as attached) certifying that the COMPREHENSIVE FINANCIAL STATEMENT has been completed and setting forth the date on which the completed COMPREHENSIVE FINANCIAL STATEMENT was served upon the opposing party. The COMPREHENSIVE FINANCIAL STATEMENT shall not be filed with the Clerk of the Circuit Court.

If a party is unable to complete any portion of the required COMPREHENSIVE FINANCIAL STATEMENT, he or she shall indicate his or her inability to do so an "Unknown" as to each specific item and shall so certify on the last page of the COMPREHENSIVE FINANCIAL STATEMENT pursuant to 735 ILCS 5/1-109. The parties are required to make every reasonable effort to obtain the information required and, to that end, neither party shall secrete or withhold records in his or her control relating to the information sought.

(d) VOLUNTARY PRODUCTION OF DOCUMENTS: All statements of income, assets and debts set forth in the COMPREHENSIVE FINANCIAL STATEMENT shall be corroborated by written documents to be attached to and made part of the COMPREHENSIVE FINANCIAL STATEMENT, whenever a party has such documentation, or whenever a party can obtain such documentation upon reasonable effort from other sources.

(e) DUTY TO UPDATE AND KEEP CURRENT: It is the duty of each party and each party's attorney to frequently update and amend the COMPREHENSIVE FINANCIAL STATEMENT upon the occurrence of any significant change in financial

circumstances. Such updates to or amendments of the COMPREHENSIVE FINANCIAL STATEMENT shall not be filed with the Clerk of the Circuit Court, but shall be served upon each person entitled to notice under the Supreme Court Rules, with proof of service filed with the Clerk.

(f) SANCTIONS FOR NON-COMPLIANCE: The court may impose such sanctions for violation of these DISCOVERY RULES IN FAMILY LAW CASES as are provided in Illinois Supreme Court Rule 219. In addition, the court may decline to find attorney's fee necessarily incurred if these DISCOVERY RULES IN FAMILY LAW CASES are not allowed.

(g) These DISCOVERY RULES IN FAMILY LAW CASES shall be effective sixty (60) days after its approval by the Chief Judge of the Sixteenth Judicial Circuit, Kane County, Illinois.

#### 15.25 FOR GUARDIANS AD LITEM AND ATTORNEYS FOR CHILDREN

#### STANDARDS FOR THE APPOINTMENT OF ATTORNEYS FOR CHILDREN, GUARDIANS AD LITEM, AND CHILD REPRESENTATIVES IN CUSTODY, VISITATION OR REMOVAL PROCEEDINGS.

a) To be eligible for appointment as attorney, guardian ad litem, or child's representative for a child in a custody, visitation or removal proceeding in Family Court, a person must be a licensed attorney for a minimum of three (3) years (or associated with a firm which has a qualified attorney), experienced in the practice of family law, must maintain professional liability insurance coverage and must be trained in the representation of children. The training shall be approved by the Presiding Judge of the Family Division and confirmed by the Chief Judge. The Family Law Committee of the Kane County Bar Association shall make training recommendations to the Presiding Judge as needed.

b) An attorney who requests to be considered for appointment as attorney, guardian ad litem, or child's representative for a child in a custody, visitation or removal proceeding in Family Court shall make application to the Presiding Judge of the Family Division. An attorney's acceptance of a renewal appointment shall be made on or before May 30 of each year. The Presiding Judge shall send a notice to renew on or before April 1 of each year.

c) A guardian ad litem shall not serve as the attorney for the child in the same case. The child's representative shall not serve as the attorney for the child or the guardian ad litem in the same case.

d) In appointing an attorney, guardian ad litem or child's representative for a child, the Court shall consider the experience of the attorney, the complexity and factual circumstances of the case, the recommendations or agreements of the parties, and the geographic location of the child's residence, the parties' residences, and the offices of the attorney for the child, the guardian ad litem or child's representative.

e) An attorney for a child, guardian ad litem or child's representative shall not be appointed as a mediator in the same case.

f) Whenever the Court appoints a child's representative or a guardian ad litem, the appointment order shall specify the tasks expected of said child's representative or guardian ad litem. Designated counsel shall forward a copy of the appointment order to the attorney for the child, the guardian ad litem and/or the child's representative within 5 days of the entry thereof.

g) The attorney for the child, guardian ad litem or child's representative shall, upon retention, file an appearance, be notified of all court appearances and conferences with the judge, and appear unless excused by the Court. There will be no fee for the filing of an appearance as a court-appointed attorney for the child, guardian ad litem or child's representative. Unless previously discharged, the Court shall discharge the attorney for the child, the guardian ad litem or the child's representative at the conclusion of the performance of his or her duties as ordered pursuant to Paragraph f above. Unless previously discharged, the final order disposing of the issues resulting in the appointment shall act as a discharge of the court-appointed attorney for the child, guardian ad litem or child's representative.

h) In the appointment order, the Court shall order the parties to pay retainer amounts to the attorney for the child, guardian ad litem or the child's representative by a date certain. The attorney for the child, guardian ad litem or the child's representative shall submit statements to litigants for services rendered on a minimum bi-monthly basis. Unless otherwise determined by the Court, upon good cause shown, both parties shall be jointly and severally liable for the fees and costs of the attorney for the child, guardian ad litem or the child's representative.

i) The parties' attorneys shall not interview the child(ren) without the consent of the attorney for the child, guardian ad litem or child's representative. Either the attorney for the child or the guardian ad litem or child's representative, or any of them, shall have the right to be present during such interview.

j) The attorney for the child, guardian ad litem or child's representative should take measures to protect the child from harm that may result because of the litigation by striving to expedite the proceedings and encouraging settlement in order to reduce the emotional trauma that can be caused by litigation.

k) All attorney for the child, guardian ad litem and child's representative appointments shall be made pursuant to a standardized appointment order.

l) Standards relating to attorneys for children.

The attorney for the child shall at all times act as the advocate for the child.

(m) Standards relating to guardians ad litem.

(a) During the pretrial stage of a case, the guardian ad litem should use appropriate procedures to elicit facts which the Court should consider in deciding the case. The guardian ad litem shall obtain leave of Court to initiate depositions and, except in circumstances of a serious or emergency nature, enforcement and/or fees, to file pleadings.

(b) At a trial or hearing, the guardian ad litem shall make the Court aware of all facts which the Court should consider.

(c) At the discretion of the Court, the guardian ad litem shall submit a written or oral report(s) with or without recommendations by a date certain designated by the Court.

(d) The guardian ad litem may be duly sworn as a witness and be subject to examination by all parties.

(e) At the discretion of the Court, the guardian ad litem may be allowed to call and examine witnesses at trial.

(n) Standards relating to Child's Representative.

The child's representative shall at all times act in accordance with 750 ILCS 5/506 et seq.

Approved by Family Law Committee of the Kane County Bar Association on October 21, 1999.

Approved by the Kane County Bar Association Board of Managers on October 21, 1999.

Approved by majority vote of the Circuit Judges on January 6, 2000.