

**IN THE CIRCUIT COURT  
OF THE SIXTH JUDICIAL CIRCUIT  
CHAMPAIGN COUNTY, ILLINOIS**

**COUNTY ADMINISTRATIVE ORDER 05-06**

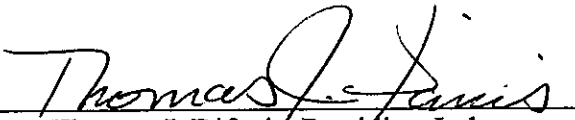
In order to facilitate resolution of financial issues in domestic relations cases it is hereby Ordered that:

1. The "Champaign County Court-Referred Program for Mediation of Financial Issues in Domestic Relations Cases" is established; and
2. Mediation that is conducted as part of this Court-Referred program shall be in accordance with the guidelines, rules and orders contained in the "Champaign County Court-Referred Program for Mediation of Financial Issues in Domestic Relations Cases" protocol, attached hereto, which is adopted and Ordered implemented.

This Order is effective immediately.

ENTER:

6/14/05

  
Thomas J. Difanis, Presiding Judge  
Champaign County Circuit Court

CIRCUIT COURT OF ILLINOIS  
SIXTH JUDICIAL CIRCUIT  
PIATT COUNTY

CHAMBERS OF  
JOHN P. SHONKWILER  
CHIEF JUDGE  
SIXTH JUDICIAL CIRCUIT



306 PIATT COUNTY COURTHOUSE  
MONTICELLO, ILLINOIS 61856-1650  
TELEPHONE (217) 762-5861  
FACSIMILE (217) 762-9399

F A X T R A N S M I T T A L S H E E T

TO : Judge Difanis FAX NO.: 217-384-8424  
FROM: Judge Shonkwiler FAX NO.: 217-762-9399  
DATE: 8/12/05 TIME: 10:45 (am) (pm)  
SUBJECT : Mediation Program

COMMENTS:

Dear Judge Difanis:

Please find enclosed an approval for the Champaign County Mediation Program for financial issues in domestic relations cases. I believe that the program is effective as of this date.

There are 2 pages, including this page.  
In case of poor transmission, please call 217-762-5861



## Administrative Office of the Illinois Courts

Cynthia Y. Cobbs, Esq.  
Director

222 North LaSalle Street, 13th Floor  
Chicago, IL 60601  
Phone (312) 793-3250  
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Springfield, IL 62704-6488  
Phone (217) 558-4490  
Fax (217) 785-3905

August 10, 2005

Hon. John P. Shonkwiler  
Chief Judge, 6<sup>th</sup> Judicial Circuit  
306 Piatt County Courthouse  
Monticello, Illinois 61856

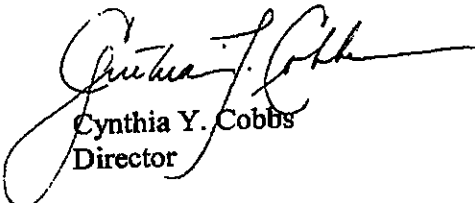
Re: Mediation Program Local Circuit Rule

Dear Chief Judge Shonkwiler:

Upon the review and recommendation of the Administrative Office, the Supreme Court approved the proposed rules for the Champaign County Court Referred Program for Mediation of Financial Issues in Domestic Relations Cases for implementation.

Thank you for your cooperation in this matter.

Sincerely,



Cynthia Y. Cobbs  
Director

c: Doug Bowie, Assistant Director, AOIC  
Jan Zekich, Attorney, AOIC  
Tony Trapani, Court Operations Analyst, AOIC

CHAMPAIGN COUNTY COURT REFERRED  
PROGRAM FOR MEDIATION OF FINANCIAL ISSUES  
IN DOMESTIC RELATIONS CASES

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## RULE 1. DEFINITIONS

- A. Mediation. When the word “mediation” is used herein, it means a cooperative process for resolving conflict with the assistance of a trained court-appointed neutral third party whose role is to facilitate communication, to help define issues, and to assist the parties in identifying and negotiating fair solutions that are mutually agreeable. Fundamental to the mediation process, described herein, are principles of safety, self determination, procedural informality, privacy, confidentiality, and full disclosure of relevant information between the parties.

“Caucus” is a procedure in which a mediator, during a mediation session, meets privately with each party, generally to get information, the non-disclosure of which appears to be impeding the process of the mediation.

“Shuttle mediation” is a variant of the standard in which the mediator meets separately with each party and their attorney (if present) so that direct communication is only with the mediator who relays information, defines issues and suggests possible solutions as the participants remain in separate rooms. The information that is relayed by the mediator will be only that information that a party has authorized the mediator to relay. Either party can provide confidential information to the mediator, and the mediator shall not reveal that information to the other party. The mediator may only “suggest possible solutions” if requested to do so by both parties or both attorneys and then only at the risk of appearing to lose impartiality.

“Co-mediation” is a variant of the standard process, in which two mediators mediate together with the participants.

- A. Impairment. When the word “impairment” is used herein, it means any condition, including but not limited to domestic violence or intimidation, substance abuse, or mental illness, the existence of which, in an individual or in a relationship, hinders the ability of any party to negotiate safely, competently, and in good faith. The identification of forms of impairment is designed not to require treatment, but to insure that only parties having a present, undiminished ability to negotiate are directed by court order to mediate.

## RULE 2. STATEMENT OF PURPOSE

The purpose of the process is to provide a reasonable, cost-effective alternative dispute resolution forum for the parties in dissolution and family litigation. The participants are encouraged to take advantage of this unique opportunity and to take a positive step toward the resolution of their issues.

The objective of mediation is not a settlement at any cost; rather it is to achieve a fair and reasonable agreement. If an agreement appears to be outside the parameters of fairness, a mediator may state his/her concerns to the parties or the attorneys and may withdraw from mediation and terminate the process.

### RULE 3. FINANCIAL MEDIATION PROGRAM

- A. Mission Statement. To create a program to assist willing parties by involving them and their counsel in the resolution of financial issues through a financially focused mediation process. The purpose is to accelerate the resolution of those issues in dissolution or family cases on a voluntary basis through mediation with the cooperation and assistance of the parties, their attorneys, and mediators specifically trained for the purpose of this program.
- B. Matter Subject to Mediation. On motion of either party, or on the Court's own motion, the designated family division judge may order mediation (pursuant to the Court-Approved Order form) of any financial or property issue (s) in any action (whether pre-decree, post-decree, or paternity) not otherwise determined to be ineligible pursuant to this program. In its order, the court may condition mediation on any prerequisites, such as the providing of financial information or providing discovery requested by the mediator. The parties may not proceed to a judicial hearing on contested issues in that case without leave of court, or until the mediation process has been concluded and its outcome has been reported to the court. (See Appendix A for the Court-Approved Order form).
- C. Ineligibility of Child Support Enforcement Cases. All cases brought by the child support enforcement division of the Champaign County State's Attorney's Office either on its own behalf or on behalf of the Illinois Department of Public Aid shall be ineligible for mediation under this program.
- D. Commencement of Mediation. The mediation process shall commence as soon as the parties and/or the attorneys agree, and if they fail to agree, then mediation shall commence as soon as the Court determines it is appropriate. The designated family division judge shall be advised by counsel and/or the parties concerning:
1. Any impairment of the parties as defined in Rule 1(B).
  2. Any circumstances that exist which would unreasonably interfere with mediation.
  3. Any request that mediation not occur. Mediation shall not be required if the court determines, upon motion of a party, that a case is ineligible for mediation. Said motion shall be supported by affidavit setting forth specific facts detailing why mediation would be inappropriate.
- E. Discovery. With notice to the mediator, written discovery may continue throughout mediation.

#### RULE 4. REFERRAL ASSIGNMENT PROCEDURE

- A. Upon the Court's order for the parties to participate in mediation, a mediator may be selected by agreement of the parties and their attorneys from the list of qualified mediators maintained by the presiding judge of the domestic relations division. Absent an agreement, the trial judge shall select the mediator and assign the mediator a status date on which the mediator shall, without revealing the substance of mediation discussions, report on whether mediation is ongoing or terminated.

The mediator shall be compensated by the parties at the rate agreed to by the parties and the mediator, which shall be paid to the mediator as directed by the mediator and shall be divided equally unless otherwise ordered or agreed. The rate charged by the mediator shall be not less than \$150.00 per hour. The mediator shall be paid in advance a retainer of two hours of fees before mediation shall begin.

1. If the allocation of fees is not agreed by the parties or the attorneys, the Court shall designate in its order what percentage of the mediation fee should be paid by the party.
2. The court and/or the attorneys shall encourage the parties to mediate in good faith. The parties shall participate in mediation in good faith.
3. On or before the status date for parties who are participating in mediation, the mediator shall submit a report to the court and the parties' legal counsel, which shall include the information required by Rule 9. (See Appendix C for the mediator's report form).
4. The parties shall contact the mediator within seven (7) days after the referral order is signed for the purpose of setting an appointment.

#### B. Conflict of Interest.

1. If the mediator appointed has or had any possible conflict of interest, including, but not limited to, a current or previous therapeutic, personal or economic relationship with mother, father, child, sibling, step-parent, grandparent, household member, or anyone else directly involved in the case, he or she shall disclose that relationship to the attorneys or the parties and may decline the appointment or be removed for that reason. If there is a conflict, the parties may select or the court shall appoint another mediator.

## RULE 5. QUALIFICATIONS OF MEDIATORS

- A. Requirements: Financial Mediators must meet all of the following requirements:
1. Education. Hold at least a law degree and be licensed to practice law in the State of Illinois.
  2. Experience. Have been involved in the litigation of family law matters for a substantial period of time.
  3. Training.
    - a. Complete at least eight hours of specialized training in dealing with financial and property issues or complete a one (1) day advanced training program for Financial Mediation approved by the Circuit Court of Champaign County.
  4. Insurance. Maintain professional liability insurance which covers the mediation process.
  5. Professional organization. Be a member in good standing of the Mediation Council of Illinois.
- B. Continuing Education. Mediators must satisfy any periodic continuing and professional education requirements that may subsequently be established by the Supreme Court or as may be required from time to time by the presiding judge of the family division in order to maintain the status of a court appointed mediator.
- C. Establishment of Financial Mediator List. The Circuit Court of Champaign County shall establish and maintain a list of court-approved financial Mediators. (See Appendix D).

## RULE 6. MEDIATION PROCESS

- A. Commencement.  
At or prior to the initial session, the mediator shall, with the assistance of the parties and /or counsel:
1. Determine the issues to be mediated. If requested by the mediator:



- a. Counsel for each party shall submit to the mediator and opposing counsel a brief written summary or statement of the pending financial issues.
  - b. Financial Affidavits, Statement of Assets and Liabilities, and other relevant financial information shall be submitted to the Mediator.
  - c. If a Pre-Trial Memorandum was previously prepared, then copies of the same shall be submitted to the Mediator.
  - d. The parties shall provide any additional documentation requested by the mediator. All documents produced to the mediator as part of the mediation process shall be available to all parties.
  - e. Both parties shall sign an affidavit that they have made full disclosure of all assets, liabilities, and income.
2. Explain that no legal advice will be provided by the mediator. If, at the request of the attorneys or the parties, the mediator chooses to make "suggestions" as to possible ways of resolving issues, such "suggestions" shall not constitute "legal advice."
3. Disclose the nature and extent of any existing relationships with the parties or their attorneys and any personal, financial or other interests that could result in bias or conflict of interest on the part of the mediator.
4. Inform the parties that:
  - a. Mediation can be suspended or terminated at the request of either party, or counsel for either party, after the parties have completed two hours of mediation.
  - b. The mediator may suspend or terminate the mediation if an impairment exists, if either party is acting in bad faith or appears not to understand the negotiation, if further financial or property information is needed (additional discovery, appraisals, etc.), or if the prospects of achieving a responsible agreement appear unlikely.
5. Explain that the mediation process is confidential as outlined in Rule 8.
6. Confirm the parties' and their attorneys' understanding regarding the fee for services.

7. Reach an understanding with the parties and their attorneys as to whether the mediator may communicate with either party or their legal counsel or with other persons to discuss the substantive issues in mediation in the absence of parties. (A mediator may communicate with the attorneys at any time on procedural issues: e.g., difficulty contacting a party or scheduling a mediation session.) Any separate substantive communication which does occur shall be disclosed to the parties at the first opportunity.
  8. Advise each party that his or her legal counsel may be present during any mediation sessions, upon mutual agreement of the parties and the mediators.
- B. Co-Mediation or Shuttle Mediation. Co-Mediation or Shuttle Mediation may be utilized as deemed appropriate by the mediator.

#### RULE 7. APPLICATION OF SAFEGUARDS IN CASE OF IMPAIRMENT

- A. Duty to Assess. While mediation is in progress, the mediator shall assess continuously whether the parties manifest any impairments affecting their ability to mediate safely, competently and in good faith.
- B. Safety. If an impairment affecting safety arises during the course of mediation, the mediator shall adjourn the session to confer separately with the parties, may implement appropriate referrals to community service providers, shall advise the parties of their right to terminate, and either shall:
1. Terminate mediation when circumstances indicate that protective measures are inadequate to maintain safety, or
  2. Proceed with mediation after consulting separately with each party and his/her attorney to ascertain whether mediation in any format should continue.
- C. Competency or Good Faith. If an impairment affecting competency or good faith, but not safety, arises during the course of mediation, the mediator may do the following:
1. Suspend mediation when there is a reasonable likelihood the impaired condition of an affected party is only temporary.
  2. Terminate mediation when circumstances indicated an affected party's ability to negotiate cannot be adequately restored.
  3. Terminate the mediation, without explanation, if the mediator determines the existence of fraud, dissipation, or financial misconduct

by one of the parties. The mediator shall not, however, be made a witness by this action.

- D. Effect of Termination. No mediation terminated shall proceed further unless the parties agree otherwise. In the absence of an agreed order, the case shall be returned to the docket for adjudication in the manner prescribed by law.

#### RULE 8. CONFIDENTIALITY

- A. Privacy of Sessions. Mediation sessions shall be private. However, third parties may be present if both parties and the mediator agree.

- B. Caucus. Caucus sessions with the mediator are confidential and shall not be disclosed to the other party or the other party's counsel unless the mediator is authorized to do so.

- C. Confidentiality. Except as otherwise provided by law, all written and verbal communications made in a mediation session conducted pursuant to these rules are confidential and may not be disclosed by the mediator or be testified to by the mediator. Prior to the commencement of mediation, all participants in the mediation shall sign a confidentiality agreement.

1. Limitation of Disclosure. Admissions, representations, statements and other communications made, or disclosed in confidence by any participant in the course of mediation session shall not be admissible as evidence in any court proceeding. A mediator may not be called as a witness in any proceeding by any party or by the court to testify regarding matters disclosed in a mediation session, nor may a party be compelled to testify regarding matters disclosed during a mediation session as to privileged communications. These restrictions shall not prohibit any person from obtaining the same information independent of the mediation, or from discovery conducted pursuant to law or court rule.
2. Exceptions. Admissions, representations, statements, and other communications are not confidential if the communication reveals an act of violence committed against another during mediation.

#### RULE 9. ATTENDANCE AND TERMINATION OF MEDIATION

- A. Attendance. The parties shall attend the mediation session(s) and shall attend a minimum of two (2) hours of mediation. Attorneys may attend all, or any portion of, any mediation session. Further participation may be extended by agreement of the parties. Mediation may be terminated or suspended prior to completion of the two (2) hours upon resolution of all mediated issues.

- B. Termination or Suspension. The mediation may be terminated or suspended at any time at the election of the mediator, or after completion of two (2) hours of mediation, by one of the parties.
- C. Notice to Court. 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 Rule.
- D. Sanctions for Failure to Appear. If a party fails to appear without good cause at a previously agreed upon mediation conference or a mediation conference ordered by the court, the court upon motion may impose sanctions, including an award of mediator and attorney fees and other costs, against the party failing to appear.
- E. Termination with Agreement. When agreements or partial agreements are reached by the parties during mediation, the mediator shall provide a written account of the agreements to the parties and their attorneys, if any, but the mediator shall not provide this written account to the court unless or until the account has been reviewed and approved by the parties and their attorneys, if any.
- F. Termination Without an Agreement. Upon termination without an agreement, the mediator shall file with the court a final mediator report stating that the mediation has concluded without disclosing any reasons for the parties' failure to reach an agreement.
- G. Reporting Procedures.
1. Mediator's Report. The mediator shall prepare a Mediator's Report on the prescribed form within ten (10) days of the termination of the last mediation session. These reports will be filed with the circuit clerk. (See Appendix B and C).

#### RULE 10. ENTRY OF JUDGMENT OR ORDER

- A. Presentation of Order. Each mediated agreement shall be presented by the parties or their attorneys to the court within forty-five (45) days following the filing of the final Mediator's Report.
- B. Approval by Court. The court may 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. Unless the agreement is rejected, the court shall enter an appropriate judgment or order stating its findings and shall incorporate, either explicitly or by reference, the agreement so the terms of such agreement are also the terms of the judgment or order.

RULE 11. EVALUATION OF PROGRAM

- A. Review by Committee. An “Ad Hoc Committee to Explore Mediation of Financial Issues in Domestic Relations Cases” shall meet periodically to monitor the program and report annually to the presiding judge of the family and domestic relations division.
- B. Mediation Reporting to the Supreme Court. The Chief Judge of the Sixth Judicial Circuit, or his or her designee, shall maintain statistical data on all family mediation proceedings and report said data to the Administrative Office of the Illinois Court and Presiding Judge of each county that has adopted this rule no later than February 1<sup>st</sup> of the following year.

APPENDIX A. ORDER FOR MEDIATION

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
CHAMPAIGN COUNTY, ILLINOIS

\_\_\_\_\_ Petitioner, )  
 )  
 v. )  
 ) Case No. \_\_\_\_\_  
\_\_\_\_\_ Respondent. )  
 )  
 )  
 )

**ORDER FOR MEDIATION (FINANCIAL ISSUES)**

This matter having come to be heard on Petitioner's and /or Respondent's Petition for Mediation, or on the Court's own Motion, and it appearing that certain financial issues have arisen between the parties, and in accordance with this Court's policy requiring mediation in such disputes, NOW THEREFORE,

**IT IS HEREBY ORDERED:**

1. That the parties select a mediator from the Court-approved list of mediators.
2. That the parties shall select a mediator from said list within 7 days from the date of this Order, or upon failure to select a mediator, the Court shall select a mediator.
3. That the parties shall complete the mediation process within 35 days from the date of this Order, except that an extension may be granted by the Court, upon a representation of the mediator that sufficient progress is being made in the mediation process and that additional time may be necessary to complete the mediation process, or upon application of either party if good cause is shown.

4. Only written discovery on issues not being mediated shall be allowed until mediation is terminated, except by order of the Court or agreement of the parties.

5. In the event a party fails to attend mediation without good cause shown, the Court upon motion may impose sanctions, including but not limited to, costs and attorney's fees.

6. When the mediation process has been concluded, terminated, or suspended, that fact shall be reported by the mediator to the Court, but the mediator shall not report the substance of any conversation with either of the parties during the mediation meetings, nor shall the mediator be called as a witness in these proceedings.

7. That the parties shall cooperate and make themselves available in any reasonable manner deemed necessary for the purposes of this Order.

8. That no hearing shall be set until such time as the mediation process is complete.

9. Each party shall participate in the mediation process for two (2) hours.

10. Each side shall pay for one hour of the mediator's time at the mediator's established rate within \_\_\_\_\_ days directly to the mediator.

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

---

Presiding Family Law Judge

APPENDIX B. FINANCIAL MEDIATOR'S REPORT (NO AGREEMENTS)

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
CHAMPAIGN COUNTY, ILLINOIS

\_\_\_\_\_)  
\_\_\_\_\_) Petitioner, \_\_\_\_\_)  
v. \_\_\_\_\_)  
\_\_\_\_\_) Respondent. \_\_\_\_\_)  
\_\_\_\_\_) Case No. \_\_\_\_\_)  
\_\_\_\_\_)

FINANCIAL MEDIATOR'S REPORT (NO AGREEMENTS)

I mediated with \_\_\_\_\_ and \_\_\_\_\_ for a total of \_\_\_ hours.

\_\_\_\_\_ The mediation has now been concluded because:

1. I determined that there was no realistic likelihood that a mediated agreement as to the disputed issues could be achieved.

\_\_\_\_\_ The Mediation has been suspended because:

\_\_\_\_\_ 1. Information suggesting unresolved spousal abuse / child abuse / substance abuse / emotional abuse issues is present and these issues must be addressed or resolved before mediation can proceed.

\_\_\_\_\_ 2. Child related issues appear to be preventing agreement on financial issues.

\_\_\_\_\_ 3. One or both of the parties did not appear at scheduled appointment.

\_\_\_\_\_ 4. One or both parties do not agree that their marriage is at an end.

\_\_\_\_\_ 5. One or both parties was / were unwilling to continue with mediation after they had satisfied the minimum meeting requirement.

\_\_\_\_\_ 6. No agreement was signed.

DATED: \_\_\_\_\_ SIGNED: \_\_\_\_\_  
Financial Mediator



APPENDIX C. FINANCIAL MEDIATOR'S REPORT  
(COMPLETE/PARTIAL AGREEMENT)

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
CHAMPAIGN COUNTY, ILLINOIS

\_\_\_\_\_ Petitioner, )  
 )  
 )  
 v. ) Case No: \_\_\_\_\_  
 )  
 \_\_\_\_\_ Respondent. )  
 )  
 )

**FINANCIAL MEDIATOR'S REPORT (COMPLETE/PARTIAL AGREEMENTS)**

I mediated with \_\_\_\_\_ and \_\_\_\_\_ for a total of \_\_\_\_\_ hours.

\_\_\_\_\_ The mediation has now been concluded because:

\_\_\_\_\_ 1. The parties have reached an agreement as to all disputed issues. The agreement has been filed with the Circuit Clerk.

\_\_\_\_\_ 2. The parties have reached an agreement as to some of the disputed issues and are at an impasse in regard to the remaining issues. The statement as to the issues resolved and issues that remain unresolved have been filed with the Circuit Clerk.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_  
Financial Mediator

## APPENDIX D. COURT-APPROVED FINANCIAL MEDIATORS

The names, addresses and phone numbers of all present court-approved financial mediators are:

Catherine Barbercheck  
Johnson and Associates  
202 West Hill  
P.O. Box 112  
Champaign, IL 61820  
217-352-3634

James Mullady  
Meyer Capel  
306 West Church Street  
P.O. Box 6750  
Champaign, IL 61826  
217-352-1800

Kristen Fischer  
Fischer and Wozniak  
P.O. Box 1045  
108 East Anthony Drive  
Urbana, IL 61803  
217-367-1647

John Phipps  
44 Main  
P.O. Box 1220  
Champaign, IL 61824  
217-359-2929

Roger Marsh  
Pavia and Marsh  
123 West Main Street  
Suite 200  
P.O. Box 987  
Urbana, IL 61801  
217-328-0123

Kristin Solberg  
Novak, Weaver and Solberg  
103 West Main Street  
Urbana, IL 61801  
217-384-0000

Anne Martinkus  
Erwin, Martinkus and Cole  
411 West University  
P.O. Box 1098  
Champaign, IL 61821  
217-351-4040

Don Parkinson  
Maloney, Parkinson and Berns  
135 West Main  
Urbana, IL 61801  
217-384-0000

Sarah B. Tinney  
Erwin, Martinkus and Cole  
411 West University  
P.O. Box 1098  
Champaign, IL 61821  
217-351-4040