

**ELEVENTH JUDICIAL CIRCUIT
COURT-ANNEXED SMALL CLAIMS
MEDIATION PROGRAM**

QUESTION AND ANSWER BOOK



Hon. Elizabeth A. Robb
Chief Judge

Hon. LeeAnn S. Hill
Supervising Judge

Ms. Deborah F. Haas
Arbitration Administrator

McLean County Legal Self-Help Center
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DEFINITIONS

Agreement: an understanding that is reached by people with a dispute. It is usually a list of future actions to help resolve the dispute.

Alternative Dispute Resolution (ADR) Center: the place where voluntary mediation is conducted in McLean County. It is located at 200 W. Front Street, Suite 400B, Bloomington, Illinois.

Bench Trial: a court proceeding in front of a judge where each party to a case presents evidence and arguments to support his or her position.

Confidentiality: an assurance that things said in mediation will be kept private. What is said in the room during mediation should remain there. Exceptions include acts or threats of physical violence towards another.

Court Order: a document, signed by a judge, which directs someone to do something. A court order can be signed by the judge because the parties agree, or because the judge has decided that is what should happen.

Discovery: before a case goes to trial, a party may request information relevant to the case from the other party. In a small claims case, a party must ask permission from the judge first.

Dispute: a conflict or disagreement between two or more people.

Judgment: a final decision of the court which resolves the case and states what the rights and obligations of the parties are. Like a court order, a judgment can be entered by agreement of the parties or after the judge has made a decision. A judgment is different from a court order as a judgment can be noted on your credit report/rating.

Legal Self-Help Center: located in Room 665 of the McLean County Law & Justice Center (the Law Library), it is a place where you can do legal research.

Mediator: someone who can meet with you and the other person with whom you currently have a dispute and help you both come to a resolution you can both agree on. A mediator does not make decisions like a judge. A mediator is neutral, meaning he/she does not take sides, and cannot offer legal advice.

Navigator: the assistant at the McLean County Legal Self-Help Center.

Neutrality: when a person does not take sides with either party.

Party: a person involved in a lawsuit, i.e. a Plaintiff or Defendant.

Pro Se: a person is *pro se* if they are not represented by an attorney.

WHAT IS MEDIATION?

Mediation is a process that helps people who have a disagreement reach a settlement. A mediator helps the parties reach a settlement and is a neutral person who has no involvement with the case, is not a party to the lawsuit or a lawyer for any party.

The Small Claims Mediation Program was established in October 2008 upon approval by the Illinois Supreme Court. At the time, there were only four other such programs offered in the state. In McLean County, cases which may be referred to Small Claims Mediation include all civil cases seeking money damages less than \$50,000, where all parties are *pro se*.

MEDIATION FACILITIES

Where will I mediate my case?

You will mediate at the McLean County **Alternative Dispute Resolution (ADR) Center** located at **200 W. Front Street, Suite 400B, Bloomington, Illinois** (the building immediately to the west of the Law & Justice Center).

If I have any questions regarding the process, who do I call?

You may call the Arbitration Administrator, Deborah Haas, at **(309) 827-7584**, or e-mail arbitration@mcleancountyil.gov.

MEDIATION CASES

What type of cases can be referred to mediation?

Civil cases with money damages under \$50,000, where all parties are *pro se*, can be referred to mediation. All parties must agree to participate in mediation.

Must I go through mediation before I can go to trial?

No, the process is voluntary. However, mediation is strongly encouraged, as both sides can take an active role in reaching a resolution, and there is a greater chance everyone will be satisfied with the result. Additionally, you can consider or discuss options that may not be available to a judge.

MEDIATORS

Who will be the mediators that will hear my case?

All mediators involved in the McLean County Small Claims Mediation Program have been professionally trained. The mediators are volunteers who may be lawyers, law students, retired court personnel and public officials or business people.

Will I have a choice of mediators?

No. Mediators are assigned by the presiding judge of small claims. They are assigned at random to ensure against prejudice or bias. The mediators will be introduced to the parties by the judge before the mediation to determine if there is a conflict of interest.

Do I have to pay the mediators?

No. They are community volunteers who give their time to the program.

How are the mediators chosen?

Mediators are chosen from a list of approved mediators at random in advance of the mediation. Mediators are assigned at random to avoid prejudice or bias.

When will I know who will be the mediator assigned to my case?

When you agree to mediation at the first court appearance at the McLean County Law & Justice Center.

May I ask to change mediators if I think there is prejudice, a conflict or other problems?

Yes. You must file a motion with the Court, asking that the mediator be disqualified, stating the reasons why the mediator should be disqualified. If the Court determines the mediator should be disqualified, a qualified replacement will be appointed. Unless fully disclosed and waived by the parties, a mediator must not have an interest in the outcome of the litigation, must not be retained or employed by any of the parties involved in the litigation, or be related to any of the parties in the litigation.

What happens if a mediator discovers a conflict after the mediation has started?

The parties may agree to continue the mediation despite the conflict after full disclosure by the mediator. If one or more parties do not agree to continue with that mediator but still wish to mediate, and no mediator is available to take his/her place, the mediation can be rescheduled by agreement of the parties.

Can a mediator give me legal advice?

No. While a mediator may explain the process generally, they are a neutral party and may not help any party decide what to do.

DISCOVERY**Is discovery allowed before mediation?**

No.

THE MEDIATION**When will mediation take place?**

At the initial court appearance, the judge will invite the parties to mediate their case, at which time they will leave the courtroom and go to the ADR Center.

What happens at the mediation?

The mediator meets with the parties directly involved in the dispute. The mediator reviews the claim and explains the purpose of the mediation, answering any questions about the mediation process. All parties involved in the mediation process will then be asked to sign an agreement to mediate form. This form is intended to protect the rights of everyone present in the process, ensuring that confidentiality will be maintained and that the expectations of the procedures are understood.

Together, the plaintiff and the defendant clarify what issues need to be resolved. Each party has a chance to tell his or her perspective and to explain what is important to him or her.

Mediators sometimes meet separately with the parties. The mediator will explain this process, known as a caucus, at the beginning of the mediation. All discussions in the mediation are kept strictly confidential. The mediator will help you and the person you have the disagreement with generate options that may lead to possible solutions.

How long should mediation last?

The length of the mediation will vary from case to case, depending upon the parties and complexity of the issues. It should not last more than two (2) hours.

What happens if one or more parties do not show up?

If a party fails to appear at mediation, the case will be set for a bench trial.

THE MEDIATION AGREEMENT

What happens when I reach an agreement with the other party?

All terms of the agreement will be put into writing and signed by the parties. It will then be presented to the judge, who will review it. If the judge approves the agreement, he or she will sign it, making it a court order.

How will the agreement be documented?

The mediator will write up the agreement on the Court's standard form, which can be found on the website for the Circuit Court at <http://www.mcleancountyil.gov/circuitcourt/>.

What if the other party does not comply with the agreement?

You may ask the judge to enforce the agreement. You must file a motion in the Office of the Circuit Clerk and obtain a hearing date. You must send a copy of the motion to the other party with a notice of the court date.

WHAT ARE THE ADVANTAGES OF SMALL CLAIMS MEDIATION?

You and the other party have all the authority about how to resolve your dispute. Rather than relying on an outsider—the judge—to decide what will happen in your life, you retain control over the outcome of your conflict.

If you and the other party reach an agreement, you will only have to come to court one time. If no agreement is reached, you will have to return for a bench trial.

If you are the Defendant and you reach an agreement with the Plaintiff at mediation, your appearance fee will be waived by the Court.

Rather than relying on a judge to impose a decision upon you, you are an active participant in solving your own problem.

You and the other party may be able to solve the problem in a way that the judge could not.

If you are the Defendant, you may avoid having a judgment entered against you if you reach an agreement and comply with the terms of the agreement.

MISCELLANEOUS

What if I need the services of an interpreter?

You should contact the Arbitration Administrator at 309/827-7584 in advance of **your first court appearance** (you will be invited to participate in mediation at that time).

Can I call the mediator as a witness in the bench trial if I do not reach an agreement at mediation?

No.

Can I tell the judge what we talked about at mediation?

No.

What if there is an Order of Protection between the parties?

Mediation shall not take place until further inquiry by the judge.