

**Public Comments Regarding Proposed Rules for Mandatory Mediation in  
Certain Family Law Cases (due February 24, 2019)**

|   |            |
|---|------------|
| <b>Table of Contents</b>                            | (received) |
| Sarah Reindl  | 11-26-2018 |
| Myron L. Gookin                                     | 11-28-2018 |
| Karen Volz  | 11-28-2018 |
| George B. Jones                                     | 11-29-2018 |
| Darin S. Harmon                                     | 11-29-2018 |
| Lucas W. Otto                                       | 12-04-2018 |
| David A. Reedy                                      | 12-11-2018 |
| Christina Paulson                                   | 01-07-2019 |
| David Burbidge                                      | 02-05-2019 |
| Iowa Coalition Against<br>Domestic Violence (1 & 2) | 02-06-2019 |
| William Talbot                                      | 02-06-2019 |
| Sixth Judicial District                             | 02-06-2019 |
| Mary Ann Brown                                      | 02-07-2019 |
| Melissa S. Larson                                   | 02-13-2019 |
| Crilley Law Offices                                 | 02-15-2019 |
| Mona Knoll  | 02-18-2019 |
| Sally Frank   | 02-18-2019 |
| Southwest Iowa Mediation Center                     | 02-20-2019 |
| Dawn Long   | 02-20-2019 |
| Iowa Legal Aid                                      | 02-20-2019 |

|                                    |            |
|------------------------------------|------------|
| Joe Harrison                       | 02-21-2019 |
| Iowa State Bar Association         | 02-21-2019 |
| Sarah Whiteley                     | 02-22-2019 |
| State Public Defender              | 02-22-2019 |
| Black Hawk County Mediators        | 02-22-2019 |
| Mediation Services of Eastern Iowa | 02-22-2019 |
| Annie Tucker (1)                   | 02-22-2019 |
| Rachel McCrate                     | 02-22-2019 |
| Matthew J.Brandes                  | 02-24-2019 |
| Thomas Langlas                     | 02-25-2019 |
| Kids First Law Center              | 02-25-2019 |
| Polk County Bar Association        | 02-25-2019 |
| Thomas Reidel                      | 02-25-2019 |
| Annie Tucker (2)                   | 02-26-2019 |



**[EXTERNAL] Mandatory Family Law Mediation**  
Sarah Reindl to: rules.comments

11/26/2018 04:17 PM

1 attachment



Mandatory Mediation.docx

**FILED**

NOV 26 2018

CLERK SUPREME COURT

**FILED**

NOV 26 2018

**Mandatory Mediation—OPPOSED Rule 15 et al**

CLERK SUPREME COURT

I have been a family law practitioner for almost 20 years. Mediation should remain voluntary. People are intelligent enough to know when mediation is beneficial to them. When you introduce a mandatory dispute resolution process, you introduce corruption into the legal system because attorneys then cater to the mediators and other such people for preferential treatment. The mediators then cater to the powerful attorneys to secure further referrals and work. It is an awful idea.

Thank you for listening.

Sarah Reindl

**FILED**

NOV 28 2018

CLERK SUPREME COURT  
11/28/2018 12:44 PM



**Mandatory Family Law Mediation**  
Myron Gookin to: Rules Comments

Comments for consideration attached.



Comments-final-Mandatory Family Law Mediation rules.docx

Myron L. Gookin  
Iowa District Court Judge  
Jefferson County Courthouse  
Fairfield, Iowa 52556  
641.472.3454

**FILED**

NOV 28 2018

CLERK SUPREME COURT

**Myron L. Gookin**

Judge, 8<sup>th</sup> Judicial District of Iowa  
Jefferson County Courthouse  
51 West Briggs, Suite 5  
Fairfield, Iowa 52556  
Phone (641) 472-3454 | FAX (641) 472-9472  
myron.gookin@iowacourts.gov

November 28, 2018

**COMMENTS REGARDING PROPOSED RULES FOR MANDATORY  
FAMILY LAW MEDIATION**

I request further review of proposed rule 15.3(1)(a), which exempts temporary proceedings from mandatory mediation. Emotions of the parties often run high in the early weeks and months of a divorce or custody proceeding. Reasonable communication between the parties is often difficult to achieve. Based upon my 28 years in the practice of law involving scores of these types of cases, and 7 years as a district court judge hearing and deciding scores of these cases, it is my opinion the best and most effective time to require mediation is early in the case and before consideration of any temporary matters.

A good mediator often can accommodate the first calm and reasonable communication between the parties. Mediation often can completely resolve temporary custody, visitation and support disputes or at least narrow those issues. Mediation often can determine the future course of the litigation, either civil, rational and abbreviated or heated, unbridled and protracted.

The 8<sup>th</sup> District has always required mediation before considering temporary requests. In my opinion, that has resolved many temporary matters or narrowed their focus before judicial consideration. The judiciary is being required to deal with more matters on busy court service days (e.g., Chapter 236 domestic abuse hearings) and

more unrepresented litigants. Requiring mandatory mediation prior to consideration of temporary matters is a win-win situation for the parties and the courts. It requires a means by which “heat” between the parties may dissipate, so they can make their own good decisions about temporary matters. It also helps relieve the increasing burdens on the district court.

Obviously, the parties always should have the option to request waiver of mediation before consideration of temporary matters under the special circumstances of their case. I believe, however, it is detrimental to both the parties and the judicial system to exempt temporary proceedings from mandatory mediation. I request proposed rule 15.3(1)(a) be removed from the final rules to be adopted.

Thank you for your consideration.

/s/ Myron L. Gookin

Judge, 8<sup>th</sup> Judicial District of Iowa

**FILED**

NOV 28 2018

**CLERK SUPREME COURT**

11/28/2018 05:13 PM



**[EXTERNAL] Mandatory Family Law Mediation**  
Karen Volz to: rules.comments@iowacourts.gov

1 attachment



Comments to Rule 15.docx

I have some comments to Rule 15.

Karen Volz  
4056 Glass Rd NE  
Cedar Rapids, Iowa 52402

Just in general, will an order go out with the petition explaining these rules and ordering a default mediator?

**Rule 15.2** Lines 12-14 and **Rule 15.3(1)** lines 21-24

This is very confusing. Temporary hearings and contempt hearings are filed under Code Section 598 so it appears that mediation is required. Yet the next section states that temporary matters and contempt proceedings are exempt from mediation. This needs to be clarified somehow because the temporary hearing hopefully will take place sooner than 180 days from service.

**Rule 15.3(2)** line 9: The rule states that mediation can be waived if a stipulation is filed within 90 days of service. What if the parties schedule mediation for the 120<sup>th</sup> day after service, (they have 180 days to mediate) but end up settling the case and submitting a stipulation on the 100<sup>th</sup> day? Will the court make them go to mediation after they have signed a settlement agreement?

**Rule 15.4 (1)** lines 13-14: The rule states that the parties have to schedule mediation within 30 days of service. They have 180 days from the date of service to get the mediation completed. Will a default mediator be appointed in the order? A pro se client may not understand the process and there are several mediators to choose from. I can foresee a spouse who is reluctant to be divorced making the selection and scheduling process difficult. If you have to ask the court to appoint a mediator, will that be set for hearing? A hearing in our district is set about two months out.

**Rule 15.7** lines 9-10: What if indigent parties cannot afford the cost of mediation? Is there any rule to address this situation?

# KINTZINGER · HARMON · KONRARDY

An Iowa Professional Limited Company  
Established in 1897  
ATTORNEYS AT LAW

Darin S. Harmon†  
Dean J. Konrardy\*  
Brian W. Peters

100 West 12<sup>th</sup> Street  
P. O. Box 703  
Dubuque, Iowa 52004-0703

Telephone  
563-588-0547

Facsimile  
563-588-1981

Website  
kintzlaw.com

Charles A. Kintzinger  
(1925-1999)

\*Also licensed in Illinois  
†Also licensed in Wisconsin

Tuesday, November 27, 2018

Clerk of the Iowa Supreme Court  
111 East Court Ave.  
Des Moines, IA 50319

**FILED**

NOV 29 2018

CLERK SUPREME COURT

Re: Mandatory Family Law Mediation

To Whom It May Concern:

I am writing pursuant to the request for public comment on the proposed Rules for Mandatory Mediation in Certain Family Law Cases. I am providing my comments both as an Iowa lawyer for 30 years and an experienced mediator. I received my 40-hour certification in 2008 and have subsequently been board certified by the American Academy of ADR Attorneys in Mediation in 2016 and presently serve on the Board of the Academy. I was also on the committee for Judicial District 1A, which established our mediation program. My comments are as follows:

1. I am pleased to see the Iowa Supreme Court is adopting mandatory mediation in family law cases. I have found great success in participating in mediation, both as an advocate and a mediator and firmly believe that family law cases are best resolved in mediation, rather than in Court.

2. It appears that the committee has done it's homework and generally has done a great job in providing these proposed rules and limitations for mediation.

3. I believe there is a disconnect or possible area for amendment in the proposed rules in Rule 15.3(2)(b). Specifically, lines 9 and 10 on page 2 of the rules, it provides: "The parties file a stipulated settlement addressing all issues within 90 days of service;". I believe this is in conflict with the general rule requiring that the parties complete mediation within 180 days. Certainly, the parties should be free to communicate and settle the case prior to the mediation occurring within the 180 day requirement. As a result, I would suggest that the 90 days under Rule 15.3(2)(b) be extended to 180 days to allow the parties to explore settlement all the way up to mediation. Further, while many judicial districts have mandatory disclosure of certain financial information, that

financial information is not required to be completed in many of these judicial districts until the 90 days has expired. It is difficult to mediate cases, either as an advocate or as a mediator, without the necessary financial information. Extending the deadline to 180 days makes sense.

4. One comment about the selection of mediators that I specifically like about these proposed rules is that it allows the parties to first select a mediator from the registry, by agreement, and then if they cannot agree, the Court will appoint a mediator. Presently, the process in most counties is that the Court takes it upon itself to appoint the mediator and then, more often than not, the parties select an alternate. Allowing the parties to select a mediator at the outset will definitely streamline this process.

5. Under Rule 15.6(2), starting at line 30 and continuing through line 32 on page 2, I am concerned that it allows a party to have a person other than the party's attorney present at the mediation. While I realize that people often want others present for moral support, such an allowance of a person participating at mediation who is not a party and is not an attorney, can result in that non-attorney/non-party offering legal advice and engaging in the authorized practice of law. As such, I suggest deletion of Rule 15.6(2) entirely.

6. As to Rule 15.7 regarding the payment of mediators found on page 3, lines 9 and 10, I would request that as a mediator, that the Court be allowed to assess any unpaid mediation fees as court costs should the mediator file an Application to have them taxed as costs. While it does not happen very often, the parties will sometimes run past their retainer provided at the outset of mediation or will show up without the retainer at mediation and the mediator is stuck either trying to reschedule the mediation or faces the choice of going forth without the retainer and then gets stuck with the bill in the end. Unfortunately, there is no statutory method such as an attorney's lien to collect and then the mediator is forced with the decision as to whether or not to file a small claim in order to collect for what is generally a very small amount. It is especially disconcerting when a mediator has worked hard and actually brought the case to a resolution and then doesn't get paid, yet the attorneys on both sides, who have retainers, receive payment.

7. Regarding Rule 15.9(3) as to registry fees, I simply don't understand why mediators would have to pay a fee to register. In most Judicial Districts, mediators' fees are established at a reduced rate from an attorney's normal hourly rate. I do not see the establishment of any rates in these rules and am hoping that means these rules will supersede any local rule establishing reduced rates. Most of the mediators have already agreed to participate in the mandatory mediation program in the various Judicial Districts and have agreed to accept a lower fee than their normal hourly rate. For example, my normal hourly rate is \$225.00 per hour, yet the mediation rate in Judicial District 1A is limited at \$165.00 per hour. Adding a registry fee on top of reduced rates provides a disincentive for experienced, qualified mediators to participate. As such, my request is to either do away with the registry fee or abolish maximum rates established by the local Judicial Districts.

8. It appears there is duplication under Rule 15.9(6) regarding the waiver of a training requirement. While I appreciate the fact that the Court is allowing for the waiver of the training requirement under Rule 15.9(4), if the mediator has already been approved by the Iowa District Court Administrator as of June 30, 2019, why would the mediator then have to show that they have previously completed the training requirements set forth under Rule 15.9(4) as set forth in lines 25 and 26 on page 4? If the mediator has to show those requirements anyway, then there is duplication and simply has to comply with Rule 15.9(4), meaning in reality, there is no waiver. As such, I suggest deletion of lines 25 and 26 and merely allow the mediator to submit the Application for Waiver showing that they have previously been approved.

Once again, I want to thank you for your attention to this matter and your diligence in providing what I believe is a very good initial draft of Rules for Mandatory Mediation in Family Law Cases. If the committee would agree to adopt these proposed changes, I am hopeful we can make these rules even better.

Yours truly,

KINTZINGER, HARMON, KONRARDY, P.L.C.

By:



Darin S. Harmon  
[Harmon@kintzlaw.com](mailto:Harmon@kintzlaw.com)

DSH/lmb

**FILED**

**NOV 29 2018**

**CLERK SUPREME COURT**  
11/29/2018 08:35 AM



**[EXTERNAL] Mandatory Family Law Mediation**  
George Jones to: rules.comments

1 attachment



Rule comment.docx

As to Rule 15.3, I believe that temporary proceedings and contempt proceedings should not be exempt from mediation mandatory. While mediation often adds an extra layer of expense to the process, the 5th District has been requiring mediation in temporary matters and contempt matters, with great success, often without utilization of court time and the resultant expense to the client.

**George B. Jones, Attorney at Law**

**Lamoni Office: 117 S. Linden Street, P.O. Box 36, Lamoni, IA 50140**

**Tel: 641-784-6970 Fax: 641-784-6968 Se habla Español**

**Facebook: [facebook.com/topiowalawyer](https://www.facebook.com/topiowalawyer)**

**Website: [topiowalawyer.com](http://topiowalawyer.com)**

NOTICE: This email, including attachments, is covered by the Electronic Communications Privacy Act, 18 U.S.C. §2510-2521, is confidential and may contain private and legally privileged material. This email is intended for the persons named above. If you are not the intended recipient, be advised that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received this message in error, then delete it and any and all copies.

**FILED**

NOV 29 2018

rules.comments@iowacourts.gov

Mandatory Family Law Mediation

CLERK SUPREME COURT

Comment:

As to Rule 15.3, I believe that temporary proceedings and contempt proceedings should not be exempt from mediation. While mediation often adds an extra layer of expense to the process, the 5th District has been requiring mediation in temporary matters and contempt matters, with great success, often without utilization of court time and the resultant expense to the client.

**George B. Jones, Attorney at Law**

**Lamoni Office: 117 S. Linden Street, P.O. Box 36, Lamoni, IA 50140**

**Tel: 641-784-6970 Fax: 641-784-6968 Se habla Español**

Facebook: [facebook.com/topiowalawyer](https://www.facebook.com/topiowalawyer)

Website: [topiowalawyer.com](http://topiowalawyer.com)

**FILED**

DEC 04 2018

CLERK SUPREME COURT

12/04/2018 09:44 AM



**[EXTERNAL] Mandatory Family Law Mediation**  
Lucas W. Otto to: rules.comments@iowacourts.gov

1 attachment



Comment.docx

Lucas W. Otto, J.D.

**OTTO**

LAW OFFICE PLLC

123 W 2<sup>nd</sup> St N

P.O. Box 1356

Newton, IA 50208

P: 641.792.7000

F: 641.792.7001

[www.ottolawyers.com](http://www.ottolawyers.com)

NOTICE: This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Clients are warned about the risk of sending or receiving electronic communications using a computer or other device, or e-mail account, to which a third party may gain access.

Comment: Rule 15.3(1), line 23

CLERK SUPREME COURT

I believe it is a mistake to no longer require mediation on ALL temporary matters. In our district mediation has not been required for financial matters, but has been required for custody/care matters. I've found this approach to work well.

We all know that our temporary hearing system is imperfect and places judges in a difficult position. I have found that over 50% of custody/care cases settle at temp matters mediation. Removing the mediation requirement for all temp matters will simply force more cases before the court. It might make sense to waive temp matters mediation by mutual agreement, as some of those temp matters mediations are 10-20 minutes, but I do not understand the rationale for removing the requirement entirely. Mediation is a great thing and places people in a better position to make decisions.

**FILED**

DEC 11 2018

CLERK SUPREME COURT

12/11/2018 09:05 AM



**[EXTERNAL] Mandatory Family Law Mediation**  
David Reedy to: [rules.comments@iowacourts.gov](mailto:rules.comments@iowacourts.gov)

To the Clerk of Court:

Attached is the Microsoft Word Document containing some concerns regarding potential changes to

Chapter 15 Mediation changes.

Thank you very much,

David A. Reedy, MA

Family and Divorce Mediator

319.558.8985

---

Virus-free. [www.avast.com](http://www.avast.com)



Family mediation chapter 15 proposed changes.docx

**Addressing Concerns of Family Mediation Chapter 15 Proposed Changes**

I would like to take the time to address the proposed changes to Iowa's mediation rules.

15.2(2) Sounds like it could mean more mediation opportunities for mediators.

But 15.3(1)a and b will certainly mean a decrease in mediation opportunities.

Quite honestly, I'm not sure how 15.3(1) f and g will effect mediators.

15.3(2) Could also result in less opportunities for mediators, but its intent, spirit, and utility seems to be 100% in alignment with self-determination and cost efficiency, that one can hardly get upset. But still some people do come to mediation and in the very least, a mediator can go over a checklist with them and make sure they've considered all issues ranging from front door keys, kids' homework schedules, to selling the joint cemetery plots, etc. How often is this applied currently, and how often might it be applied?

15.4 Does seem to serve the utility of giving the parties time to cool down, orient themselves, and resolve things themselves. Could this give more parties an avenue of not mediating or otherwise resolving issues, though?

15.5(2) Causes some concerns, specifically. How does the entire gamut of the state "registry of qualified mediators" work? –how will this appointment work, and will it be more or less random than what we have now? Will there be localized control of rosters anymore or no? Will this ultimately destroy/delegitimize/defund 6<sup>th</sup> Districts' MSEI? Will we have enough time to be certain to know of and qualify for state qualifications? On the positive side will we see a mediation program in all counties?

15.9(3) What is considered a "reasonable administrative fee" and what will this do to organizations like MSEI who survive largely on the roster fees we pay to them now?

Per the whole program, for states that do/may have a shortage of willing and able mediators, is there something that could be written in that would give us an incentive to mediate and/or drive there to mediate?

Will there be enforcement of the court orders to mediate? Could there be written in some means of compensation for time spent on those who "blow off" or "no-show" mediation?

Will there be additional means and opportunities to obtain additional CEU/CLEs for all mediators (as other mediation organizations are far and few between, and with some struggles that may further be exacerbated by this change.).

Could there be some more utility and encouragement for Parenting Coordination and Collaborative Lawyers (and Mediators)?

**Other Programs**

Does anyone (person or entity) have the means, person(s) with responsibility to formally, and all best ways legally/ethically/procedurally garnish support for state-wide family and divorce mediation program as well as other programs? Does our state Capitol and our state government branches know that small

claims courts have 40-60% success in agreements, that Family and Divorce has 60-80% success rate in getting some or complete agreement, and that satisfaction in RJ/victim-offender mediations have 80-90% satisfaction ratings among participants—and the positive stats found with Circles of Support and Accountability (Still in the early stages of study, but small-scale findings seemingly reducing recidivism by 70-97%)?

-Any means or desire to promote Victim-offender mediation and/or partnerships with organizations that do Circles of Support and Accountability (such as the pretty successful RISE program/Linn County Jail Ministry efforts)?

Any means of providing even the meagerest of incentives/compensation to small claims court mediators?

### **SUMMARY**

I realize that my concerns have been specifically from a mediator-centric point of view only that what matters most is the financial bottom line and removing the time constraints from an already overly-congested court system. My thoughts are that with a well-maintained mediation program with compassionate, eager, trained, experienced and as close to full-time as possible mediators we could be something of a shining example to the rest of the country, with more people funneling out of courts, the courts having more time and resources for bigger and more pressing cases, and money being saved from areas ranging from the courts, to the jails, social services, etc.

I appreciate the time you've taken to read this. I feel it necessary that everyone, including myself, who has concerns should find a legitimate channel to voice those concerns, lest the whole world change and we not even spend a moment to take part.

In the end, I'm very excited to see some parties moving forward with creating that state unified mediation program we're supposed to have. My concerns, rather based on self-interest, are that conditions may be changed to such a degree that I will mediate less, lose opportunities to train and grow as a mediator, spend more out of pocket to meet qualifications, and that all of us as mediators may lose valuable resources for so many people and organizations, etc.

Thank you,

David A. Reedy, MA

FILED

JAN 07 2019

CLERK SUPREME COURT



**[EXTERNAL] Mandatory Family Law Mediation**

Christina Paulson to: SW IA Mediation Center, rules.comments

01/07/2019 12:23 PM

In relation to Domestic Abuse cases in which the parties continue to participate in mediation, specialized training should be considered for mediators who mediate cases to ensure that the mediation is free from coercion. Cases with domestic violence should be given the opportunity to participate in Specialized Alternative Dispute Resolution similar to Nebraska and Georgia that has built in safety measures to ensure a balance of powers in these cases. In instances of domestic violence the mediator should have a responsibility to maintain the balance of powers to ensure a safe parenting plan is constructed over the responsibility of the mediator to maintain neutrality in Specialized Alternative Dispute Resolution.

Providing specialized training for mediators that mediate for family's with domestic violence, child abuse, child neglect and/or high conflict parents will help parents to create safe parenting plans that are in the best interest of their children in spite of the presence of a history of these risks which may harm the well being of children. Mediation can be a worthwhile tool for victims of domestic violence and their status of a victim or alleged victim of domestic violence should ensure careful handling of these cases.

Christina Paulson

On Jan 6, 2019 2:03 PM, "SW IA Mediation Center" <[info@swiamediationcenter.org](mailto:info@swiamediationcenter.org)> wrote:  
Mediators:

Attached are Proposed Mediation Rules from the Supreme Court. The Court is requesting public comment.

Please review them and let me know if you have any comments/concerns/suggestions. I will share them with the Board of Directors. You can also send comments to the Court, but please send me your comments too. Please send by 1/11/19 so that we can consider your comments for the next Board meeting.

Thank you.

Mark

FILED

FEB 05 2019

CLERK SUPREME COURT

02/05/2019 11:48 AM



**[EXTERNAL] Mandatory Family Law Mediation**  
David Burbidge to: rules.comments@iowacourts.gov

15.1(2). Mediator definition must include one that is trained and certified.

15.3(1):

- Temporary hearing should not be waived.
- Contempt should not be waived.
- Domestic abuse cases should not be waived. Claims of DA are thrown around in family law to misuse the protections. This misuse can only be limited if the system cracks down on the whole procedure. Mediation is one way - a mediator can filter out fake and manipulative claims better than a judge.

15.3(2). Claim of domestic abuse should not be grounds for waiver. Claims of DA are thrown around in family law to misuse the protections. This misuse can only be limited if the system cracks down on the whole procedure. Mediation is one way - a mediator can filter out fake and manipulative claims better than a judge.

15.4(3). Mediator must be obligated to file, not the parties.

15.6(2). Mediator should not have authority to restrict who is with the party in caucused mediation.

15.6(4). Mediator must be obligated to file.

15.9(2). Mediator must be willing to travel to the county seat where the case is pending.

Thank you.

**David Burbidge**

JOHNSTON, STANNARD, KLESNER, BURBIDGE & FITZGERALD, P.L.C.

373 Scott Court, Suite B., P.O. Box 3400, Iowa City, Iowa 52244-3400

Tel 319-354-1712 Fax 319-354-7265

<http://www.iclawfirm.com>

This E-mail (including the attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error, and then delete it. Thank You.

FILED

FEB 06 2019

CLERK SUPREME COURT

02/06/2019 01:56 PM



[EXTERNAL] Mandatory Family Law Mediation  
Charissa Flege to: rules.comments@iowacourts.gov

1 attachment



Mandatory Family Law Mediation.docx

Attached are comments on behalf of the Iowa Coalition Against Domestic Violence.

**Charissa Flege, Esq.**  
*Co-Director of Legal Services*



ICADV IOWA COALITION AGAINST  
DOMESTIC VIOLENCE

6200 Aurora Avenue, Suite 405E  
Urbandale, IA 50322  
**Office:** 515-244-8028  
**Fax:** 515-244-7417  
**Email:** [charissaf@icadv.org](mailto:charissaf@icadv.org)

**NOTICE:** This e-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error, then delete it. Thank you.

## Mandatory Family Law Mediation

### Comments

Rule 15.3(1). Should include Sexual Abuse cases under Chapter 236A

Rule 15.3(2)(a), line 8. The subsection for a finding of domestic violence is 598.41(3)(j).

Rule 15.3(2)(b). Why is it only 90 days? Shouldn't any complete stipulation filed at any time be adequate to waive mediation? If this is to encourage judges to allow collaborative divorce filings within the 90-day waiting period, include two separate subsections to make it clear that a final stipulation filing at any time should be grounds to waive mediation.

Rule 15.4(1). 30 Days from service is a pretty quick turn around. Many parties don't have an attorney yet. It also seems unnecessary and redundant to create an additional deadline for meeting a deadline. Consider simply having the 180-day mediation deadline and individual judges or districts can set a deadline for scheduling if it is an issue in their area. Alternatively, require it at pretrial conference so it is in line with other early filing deadlines and gives the parties enough time to secure counsel, start communication & negotiations, etc.

Rule 15.4(3). An unintended consequence of this rule may be that cases are delayed further past the 9 month deadline. For example, in cases where the respondent is non-responsive to attempts to schedule mediation or don't show for mediation, as frequently happens when pro se and/or indigent, it appears the other party must either file for default (which in most cases won't be granted at that point) or file a motion to waive the requirement based on 'good cause' before they can even set trial at the trial scheduling conference. Often times we are scheduling these mediations within the weeks preceding of the trial scheduling conference since their deadlines fall around the same time. So, if this rule is enforced strictly, the courts may be required to delay the trial scheduling conference to allow a hearing on default or waiver before getting a case on the trial calendar. In Polk county, this will result in a delay due to how full the trial calendar is.

**FILED**

FEB 06 2019



**[EXTERNAL] Mandatory Family Law Mediation**  
Charissa Flege to: rules.comments@iowacourts.gov

CLERK SUPREME COURT  
02/06/2019 02:17 PM

1 attachment



Mandatory mediation comments 2.docx

Attached are additional comments on behalf of the Iowa Coalition Against Domestic Violence

**Charissa Flege, Esq.**  
*Co-Director of Legal Services*



6200 Aurora Avenue, Suite 405E  
Urbandale, IA 50322  
**Office:** 515-244-8028  
**Fax:** 515-244-7417  
**Email:** [charissaf@icadv.org](mailto:charissaf@icadv.org)

**NOTICE:** This e-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error, then delete it. Thank you.

## Mandatory Family Law Mediation

### Comments

Rule 15.6(2). We support the right of parties to have another person in attendance at mediation. Specifically, it is essential that domestic violence/sexual assault advocates be allowed to be present. While there is a waiver of the mediation requirement for domestic violence survivors, unfortunately most Iowa survivors do not ever report their abuse to law enforcement. In Iowa, only about 6,000 domestic violence prosecutions occur a year, while domestic violence service providers serve about 40,000 Iowans. Therefore, most family law cases involving domestic violence in Iowa will not have the legal documentation to meet the burden a judge requires to waive mediation and having an advocate present is essential to prevent further trauma and harm to victims.



**[EXTERNAL] mandatory family law mediation**  
William Talbot to: rules.comments@iowacourts.gov

02/06/2019 02:50 PM

Greetings.

I have been practicing for many years and am sometimes considered somewhat of a specialist in major asset divorce cases, especially large farming operations and family businesses, both as an attorney and mediator. Mediation has been helpful to resolving many cases, but most everyone in the judiciary is trying to make this too complex, the Polk County model is almost more hurtful than helpful.

1. There is no need for a mandatory mediation prior to temporary hearings. If the parties could cooperate enough to mediate, they could reach agreement on temporary matters. The courts generally do not allow arguments on temporary financial issues and the parties sure are not going to resolve disputed custody issues before a temporary hearing is needed.
2. Please do not have a mediation office that schedules and charges for it's services, it merely is in the way of efficient scheduling. All that is needed is an order to mediate within 60 days of service unless excused by the court, and order the Petitioner to initiate communication and scheduling with the Respondent, allow that to occur by email.
3. Have the clerk in each county maintain a roster of mediators with their contact information and hourly fee.

Please do not have a mediation scheduling office for this process. The scheduling office just interferes with efficient use of time and efforts. Thanks. Bill

William T. Talbot  
Attorney and Mediator  
Newbrough Law Firm  
PO Box 847  
612 Kellogg Ave.  
Ames, Iowa 50010  
515-232-1761

This e-mail, including attachments, may include confidential and/or proprietary information, and may be used only by the person or entity to which it is addressed. If the reader of this e-mail is not the intended recipient or his or her authorized agent, the reader is hereby notified that any dissemination, distribution or copying of this e-mail is prohibited. If you have received this e-mail in error, please notify the sender by replying to this message and delete this e-mail immediately.

**FILED**

FEB 06 2019

CLERK SUPREME COURT

02/07/2019 08:34 AM

**Fw: Mediation rules**

Kathy Higginbotham to: Rules Comments

Kathy Higginbotham  
Iowa Supreme Court  
1111 East Court Avenue  
Des Moines, IA 50319  
(515) 348-4960

----- Forwarded by Kathy Higginbotham/SCA/JUDICIAL on 02/07/2019 08:34 AM -----

From: Molly Kottmeyer/SCA/JUDICIAL  
To: Kathy Higginbotham/SCA/JUDICIAL@JUDICIAL, Timothy Eckley/SCA/JUDICIAL@JUDICIAL  
Date: 02/06/2019 12:25 PM  
Subject: Fw: Mediation rules

---

Please file with the mediation public comments.

----- Forwarded by Molly Kottmeyer/SCA/JUDICIAL on 02/06/2019 12:24 PM -----

From: Patrick R Grady/District6/JUDICIAL  
To: Todd Nuccio/SCA/JUDICIAL@JUDICIAL, Molly Kottmeyer/SCA/JUDICIAL@JUDICIAL  
Date: 02/06/2019 12:08 PM  
Subject: Mediation rules

---

I apologize for the tardiness of this, but my judges feel very strongly about their comments. I hope the Court will still consider this.



Letter to Nuccio re mediation rules.doc

Patrick R. Grady  
Chief Judge  
Sixth Judicial District

THE IOWA DISTRICT COURT

SIXTH JUDICIAL DISTRICT  
LINN COUNTY COURTHOUSE  
P.O. Box 1468  
Cedar Rapids, Iowa 52406

FILED

FEB 06 2019

Chambers of  
PATRICK R. GRADY  
District Judge

Court Reporter  
Julie Novak  
CLERK SUPREME COURT

February 6, 2019

Mr. Todd Nuccio  
State Court Administrator  
1111 East Court Avenue  
Des Moines, IA 50319

Dear Todd:

Re: Proposed mediation rules

The district judges of the Sixth Judicial District wish to express our concerns about Subsections 15.3(1)(a) and 15.3(1)(b) in the proposed rules for mandatory mediation in certain family law cases.

As currently drafted, these subsections prohibit districts from ordering mediation in temporary proceedings and contempt cases. The original recommendation submitted to and approved by the Judicial Council provided each district with the flexibility to order mediation in temporary proceedings and contempt matters in family law cases. Section 15.2(2) of the proposed rules seems to bestow this type of flexibility upon the districts. However, Section 15.3(1) appears to be in direct conflict with that notion through language stating that temporary proceedings and contempt proceedings are exempted from mandatory mediation.

It is clear that all the other matters listed in Section 15.3(1) besides contempt and temporary proceedings are not subject to district discretion as they are either exempted from mediation by the Iowa Code or by means of a Supreme Court policy (i.e. Family Law Trial Pilot Project). Given that the other matters included under the exemption section of Rule 15.3(1) are clearly not subject to mediation, it is difficult to conclude that the rules, as currently drafted, allow judicial districts to order mandatory mediation for temporary proceedings and contempt matters.

We strongly urge the Supreme Court to delete subsections 15.3(1)(a) and 15.3(1)(b) from the proposed rules so that districts have the flexibility to order mediation in temporary proceedings and contempt matters as was originally proposed. Eliminating these subsections will have no impact on districts that do not wish to mediate these matters.

If the Supreme Court eliminates our ability to order mediation for temporary proceedings and contempt matters, it will have a tremendous impact on our workload. We depend on mediation to either resolve or narrow these kinds of issues in our family law cases, especially the temporary

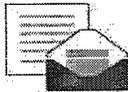
matters. For years, our statistics have shown that mediators have been able to settle at least some if not all issues in about two-thirds of the cases that are mediated. Without the ability to order mediation in temporary and contempt matters we believe our family law docket will become unmanageable.

In sum, we are strongly in favor of retaining our authority to order mediation for temporary and contempt matters in family law cases, and would ask that there be a change in the proposed rule as reflected above to accommodate this request.

**FILED**

FEB 07 2019

CLERK SUPREME COURT



**Mandatory Family Law Mediation**  
Mary Ann Brown to: Rules Comments

02/07/2019 02:18 PM

Attached are my comments on proposed Court Rule 15.



Mediation Rules comment.docx

Mary Ann Brown  
District Court Judge  
Des Moines County Courthouse  
P. O. Box 158  
Burlington, Iowa 52601  
319-753-8202

**MARY ANN BROWN**  
Chief Judge  
Eighth Judicial District  
P.O. Box 158  
Burlington, IA 52601  
(319) 753-8202  
Maryann.brown@iowacourts.gov

CLERK SUPREME COURT

---

February 7, 2019

**COMMENTS RE: PROPOSED RULES FOR MANDATORY FAMILY LAW  
MEDIATION**

The 8<sup>th</sup> Judicial District implemented mandatory mediation in family law cases involving custody or visitation issues, in the fall of 2010. There was signification push back from our local bar. Many attorneys did not think mediation would help resolve cases. Since then I think most of our local attorneys are supporters of mandatory mediation for child custody and visitation issues. I cannot provide anything other than my observations, but I believe fewer cases require a full trial.

We also require parents to participate in mediation before we consider any applications on temporary matters. I really think this benefits the parents being able to work together down the road in co-parenting their children. Temporary matters generally come before the court soon after the parties have separated or the court case has been filed. This is when emotions are often at their highest. Consequently, people often make more venomous statements about the other parent then, than they would after some healing has taken place. Those ugly statements can cause long-term tension and friction between the parents. Requiring the parents to participate in mediation before we consider temporary matters has greatly reduced the number of contested temporary proceedings. I also believe in those cases that still require judicial intervention, the parties are less acrimonious having gone through the mediation process.

Because of our success with mediation before temporary orders are issued, I suggest that exempting temporary proceedings from mandatory mediation be eliminated in Rule 15.3(1).

We have not required parties to participate in mediation if the only issues in dispute relate to asset and debt distribution or if there no minor children are involved. Quite often financial matters require a specialized expertise that a mediator might not possess; such as tax consequences or property law principals. Lay people often can reach a decision concerning their children without expertise advice while they might need such advice for asset and debt issues.

Considering such circumstances, I suggest that Chapter 598 cases involving only asset and debt distribution or that do not involve minor child, be exempted from mandatory mediation. This of course would not prevent the court from ordering the parties to participate in mediation in individual cases, if determined it would be beneficial.

FILED

FEB 13 2019

CLERK SUPREME COURT



**[EXTERNAL] Mandatory Family Law Mediation**  
Melissa Larson to: rules.comments

02/13/2019 11:01 AM

1 attachment



Mediation Rules Comment.docx

Hello,

Attached please find my public comment on the proposed Mandatory Family Law Mediation rules.

Thank you,

--

Melissa S. Larson  
Attorney & Mediator  
Melissa S. Larson, P.C.  
205 E. Iowa St., P.O. Box 317  
Greenfield, IA 50849  
Ph. 641-221-9052

NOTICE: This message, including attachments, is confidential and may contain information protected by the attorney-client privilege or work product doctrine. If you are not the addressee, any disclosure, copying, distribution, or use of the contents of this message are prohibited. If you have received this email in error, please destroy it and any copies or attachments, and notify me immediately at [melissa@melissalarsonlaw.com](mailto:melissa@melissalarsonlaw.com).

FILED

FEB 13 2019

CLERK SUPREME COURT



MELISSA S. LARSON, P.C.  
ATTORNEY & MEDIATOR

205 E. Iowa Street, P.O. Box 317  
Greenfield, IA 50849  
Ph. 641-221-9052  
Fax 641-632-2122  
Email: melissa@melissalarsonlaw.com

---

February 13, 2019

Clerk of the Iowa Supreme Court  
111 E. Court Ave.  
Des Moines, IA 50319

Re: Proposed Mandatory Family Law Mediation Rules

To Whom it May Concern:

As a family law practitioner and trained, active mediator in our 5B judicial district, mediation has been mandatory in our family law cases for several years. We currently are required to mediate temporary and final matters for divorce, custody cases, and modifications. We also are required to mediate contempt proceedings, unless they are purely financial.

I believe that the proposed rules over all are good, and will be beneficial to litigants. There is going to be a time of growing pains for districts that do not already require mediation, but if you ask just about any attorney in the 5th, mediation is very worthwhile in most cases. As a mediator, most of the cases I assist parties with settle. Those that do not often are able to reach an agreement built off of what we worked through in mediation. It is better for the families that we serve to have a hand in their final decree or court order, and to reduce the animosity between the parties that no longer need an adversarial trial that serves no one's best interests.

The change that I would include would be not to automatically exempt temporary matters and contempt matters that are about child custody or visitation as currently provided in Rule 15.3(1), lines 21-24. As a mediator, there have been countless times that parties come in on a temporary mediation only to resolve the case entirely. I believe there is a lot of value in that! And as for contempt, it is beneficial to mediate these cases more often than not because we can come up with solutions to help the families move forward.

If the court does not wish to make mediation mandatory for all temporary matters and contempt matters, perhaps add a provision to Rule 15.3 that allows one party to request mediation in those matters and unless the case meets a different exception in rule 15.3(1), the other party cannot refuse mediation. My concern is that if one side wishes to mediate and it's not mandatory, it's not going to happen.

Thank you for your time and consideration.

Sincerely,

/s

Melissa S. Larson

Attorney & Mediator

FILED

FEB 15 2019

CLERK SUPREME COURT

02/15/2019 05:13 PM



**[EXTERNAL] Mandatory Family Law Mediation**  
Christine Crilley to: rules.comments  
Cc: clc, dmm

1 attachment



Letter\_Public Comment to Proposed Chapter 15 Rules\_Supreme Court\_2-15-19.doc

February 15, 2019

Email: [rules.comments@iowacourts.gov](mailto:rules.comments@iowacourts.gov)

Email Subject Line: Mandatory Family Law Mediation

Re: Our Public Comment to Proposed Rules for Family Law Mandatory Mediation

To: Supreme Court

From: Christine Crilley, Lawyer, Mediator, Mediation Trainer  
Daniel Morgan: Lawyer, Mediator  
Crilley Law Offices, PLLC  
Crilley Mediation Services

Please find enclosed our comments to the Proposed Rules for Family Law Mandatory Mediation which we have done through "strike/addition" editing for your convenience.

If you have any questions, please contact us.

Sincerely,

Christine L. Crilley  
Daniel M. Morgan

Crilley Law Offices PLLC  
Crilley Mediation Services  
320 Miller Road  
Hiawatha, Iowa 52233  
(P) 319-363-5606  
(F) 319-364-4859

CONFIDENTIALITY NOTICE: The information contained in this email message and the documents accompanying this email

CRILLEY LAW OFFICES PLLC  
◆◆◆  
dba CRILLEY MEDIATION SERVICES  
Christine L. Crilley ◆ Daniel M. Morgan

FILED

FEB 15 2019

CLERK SUPREME COURT

February 15, 2019

Email: [rules.comments@iowacourtgs.gov](mailto:rules.comments@iowacourtgs.gov)

Email Subject Line: Mandatory Family Law Mediation

Re: Our Public Comment to Proposed Rules for Family Law Mandatory Mediation

To: Supreme Court

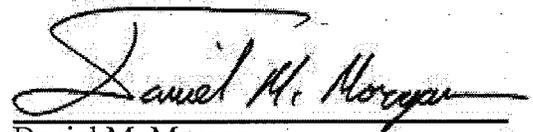
From: Christine Crilley, Lawyer, Mediator, Mediation Trainer  
Daniel Morgan: Lawyer, Mediator  
Crilley Law Offices, PLLC  
Crilley Mediation Services

Please find enclosed our comments to the Proposed Rules for Family Law Mandatory Mediation which we have done through "strike/addition" editing for your convenience. Our comments follow immediately on the next page.

If you have any questions, please contact us.

Sincerely,

  
Christine L. Crilley

  
Daniel M. Morgan

1

2

## Chapter 15

3

### Rules of Mandatory Mediation in Certain Family Law Cases

4

**Rule 15.1 Definitions.** As used in this chapter:

5

**15.1(1)** "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

6

**15.1(2)** "Mediator" means an individual who conducts a mediation.

7

**15.1(3)** "Mediation Agreement" means a written voluntary agreement the parties have reached during the mediation process.

8

**15.1(4)** "Mediation Program" refers to the individual Mediation Programs set in each judicial district.

9

**Rule 15.2 Scope.** **15.1(5)** "Registry" refers to the statewide Mediator registry maintained by the Office of Professional Regulation.

10

**15.2(1)** All parties must participate in mediation in all cases involving permanent custody, visitation, and other matters filed under Iowa Code chapters 598 and 600B. This rule applies to both initial proceedings and modification proceedings.

11

**15.2(2)** Each judicial district or court retains the authority to order mediation for other matters filed under Iowa Code chapters 598 and 600B such as temporary proceedings and contempt proceedings.

12

**15.2(3)** Mediation does not change a party's obligation to follow statutory requirements in Iowa Code chapter 598.

13

14

15

**Rule 15.3 Waivers and exemptions.**

16

**15.3(1)** The following cases are exempt from mandatory mediation:

17

*a.* All temporary proceedings.

18

*b.* All contempt proceedings.

19

*c.* Child support or medical support obligations enforced by the Child Support Recovery Unit.

20

*d.* Elder abuse pursuant to Iowa Code chapter 235F.

21

*e.* Domestic abuse pursuant to Iowa Code chapter 236.

22

*f.* Cases in which a mediation party is served by publication.

23

*g.* Cases in which a party serves a Notice of Intent to File Written Application for Default Judgment, an Application for Default Judgment, or a similar pleading regarding default judgment.

24

25

26

27

28

29

30

31

32

33

1  
2 *h.* Cases participating in the Informal Family Law Trial Pilot Project or other  
3 court-approved informal or abbreviated family law trial proceedings.

4  
5 **15.3(2)** Upon application of a party, the court may grant a waiver from  
6 mandatory mediation when:

7 *a.* The party demonstrates a history of domestic abuse as specified in Iowa  
8 Code section 598.41(3);

9 *b.* The parties file a stipulation of settlement addressing all issues within 120 days  
10 of service; or

11 *c.* The party shows good cause for a waiver.

12 **Rule 15.4 Scheduling.**

13 **15.4(1)** Within 30 days from the date of service, The parties must <sup>complete</sup> set a date  
14 for mediation to be completed within 120 180 days from the date of service unless a  
15 case is exempt from mandatory mediation under rule 15.3 (1) or the court has  
16 granted a waiver from mandatory mediation under rule 15.3 (2).

17 **15.4(2)** The parties or their attorneys must obtain a date for mediation  
18 directly with the mediator or through the mediation program in the judicial  
19 district where the case is filed from the registry of qualified mediators.

20 **15.4(3)** Following completion of mediation, the <sup>Mediator</sup> parties must file a Certificate  
21 of Mediation with the court, on a form the supreme court prescribes, before a  
22 trial date may be scheduled; copy to be provided to the parties.

23 **Rule 15.5 Selection of mediators.**

24 **15.5(1)** The parties must select a mediator from the registry of qualified  
25 mediators.

26 **15.5(2)** <sup>The Court will appoint a default mediator from the registry of qualified Mediators,</sup>  
27 if the parties cannot agree on a mediator, ~~the court will appoint a~~  
mediator from the registry of qualified mediators. <sup>then they will use the default mediator.</sup>

28 **Rule 15.6 Mediation process.**

29 **15.6(1)** Parties may be represented by their attorneys at the mediation.

30 **15.6(2)** A party may have a person other than the party's attorney attend the  
31 mediation, but the mediator may determine whether the person will be allowed  
32 to participate in the mediation.

1  
2 **15.6(3)** Mediation sessions are confidential and are governed by the  
3 requirements of Iowa Code chapter 679C and Iowa Court Rule 11.6.

4  
5 ~~**15.6(4)** When the parties have completed mediation, the mediator will provide~~  
6 ~~the parties with a supreme court prescribed Certificate of Mediation for filing~~  
7 ~~with the court.~~

8  
9 **Rule 15.7 Payment of mediators.** Mediator fees will be evenly divided between  
10 the parties unless the parties agree otherwise, or as ordered by the Court, and may be  
11 taxed as Court costs. (See 598.7(e)).

12 **Rule 15.8 Enforcement.** The court may enforce the requirements of these rules  
13 through contempt proceedings, compliance hearings, imposition of sanctions, or  
14 other means the court deems appropriate.

14 **Rule 15.9 Mediator registry and qualifications.**

15 **15.9(1)** *Statewide mediator registry.*

16 a. The office of professional regulation will maintain a statewide registry of  
17 qualified family law mediators. The registry will be updated and published on a  
18 regular basis. The office of professional regulation will review applications from  
19 persons who wish to be listed on the registry of qualified family law mediators,  
20 which will include persons who meet the training requirements established in  
21 this rule or who have received a waiver under rule 15.9(6).

22 b. The statewide mediator registry will contain the mediators' names, business  
23 addresses, telephone numbers, and any biographical information the mediator  
24 provides, including information about the mediator's education, professional  
25 experience, and mediation training and experience, and will be maintained on  
26 the office of professional regulation's website.

27 **15.9(2)** *Mediators' designations.* As part of the application process, all  
28 mediators must designate the judicial districts or counties for which they are  
29 willing to accept court appointments. Each designation will be deemed to be a  
30 representation that the mediator will accept appointments from the designated  
31 district or county and will not may charge for travel time and expenses incurred in  
32 carrying out the mediator's duties associated with those appointments. A refusal  
33 to accept an appointment in a mediator's designated judicial district or county  
34 may be grounds for denying future appointments of the mediator in the judicial  
35 district or county.

1

2       **15.9(3) Registry fees.** The office of professional regulation will establish a  
3 reasonable administrative fee for qualified individuals and organizations to be  
4 placed on the statewide registry. Any such fees will go to the office of professional  
5 regulation for administration of the statewide registry.

6       **15.9(4) Mediator qualifications.** Prior to being listed on the statewide  
7 registry, all mediators providing family law mediation services under this chapter  
8 must have a minimum of 40 hours of family law mediation training accredited  
9 by the Iowa Supreme Court Commission on Continuing Legal Education.  
10 ~~Mediators who are attorneys must have an active Iowa law license.~~

~~This does not require that a mediator have a special qualification by background or profession (see 679C.109(6))~~

11       **15.9(5) Removal from statewide registry.** ~~The office of professional~~  
12 ~~regulation may administratively remove a mediator from the statewide registry if~~  
13 ~~the mediator's law license has been suspended, revoked, or placed into exempt~~  
14 ~~or inactive status. A mediator may also be removed from the registry for reasons~~  
15 including, but not limited to, concerns about the mediator's competence,  
16 misrepresentations the mediator made during the application process, a finding  
17 of liability against the mediator under Iowa Code section 679C.115, or a  
18 determination by a court that the mediator has engaged in the unauthorized  
19 practice of law. Any removal from the registry may be reviewed by the State Court  
20 Administrator upon written request. ~~This shall not abrogate mediator immunity~~  
21 ~~under Iowa Code Section 679C.115~~

22       **15.9(6) Waiver of training requirement.** Mediators who are listed on one or  
23 more rosters of family law mediators maintained by an Iowa district court  
24 administrator as of June 30, 2019, may be listed on the statewide registry  
25 maintained by the office of professional regulation by submitting an application  
26 and showing they have previously completed the training requirements set forth  
in rule 15.9(4).

27       **Rule 15.10 Administration.**

28       **15.10(1)** The director of the office of professional regulation will serve as the  
29 principal executive officer for matters pertaining to the qualifications,  
30 classification, and discipline of family law mediators under this chapter. The  
31 director may, subject to the approval of the supreme court, employ such other  
32 employees as may be necessary to carry out the duties of this chapter.

33       **15.10(2)** At least 60 days prior to the start of each fiscal year or on a date  
34 otherwise set by the supreme court, the director of the office of professional  
35 regulation will submit to the supreme court for consideration and approval a

1

2 budget for the upcoming fiscal year covering the operations provided for in this  
3 chapter. The supreme court's approval of the budget authorizes payment as  
4 provided in the budget. A separate bank account designated as the mediator  
5 operating account must be maintained for payment of authorized expenditures  
6 as provided in the approved budget. Fees or other funds received or collected as  
7 directed in this chapter or in accordance with an interagency agreement will be  
8 deposited in the mediator operating account for payment of the expenditures  
9 authorized in the approved budget.

10 **Rule 15.11 Immunity**

11 **15.12(1) Claims.** Claims against the director, assistant directors, and staff of  
12 the office of professional regulation are subject to the State Tort Claims Act set  
13 forth in Iowa Code chapter 669.

14

15 **15.12(2) Immunity.** The director, assistant director, and staff of the office of  
16 professional regulation are immune from all civil liability for damages for the  
17 conduct, communications, and omissions occurring in the performance of and  
18 within the scope of their official duties under these rules.

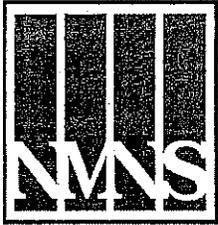
19

20 **15.12(3) Qualified immunity.** Records, statements of opinion, and other  
21 information regarding a mediator that are communicated by an entity, including  
22 any person, firm, or institution, without malice, to the director, assistant  
23 directors, and staff of the office of professional regulation, are privileged and civil  
24 suits predicated thereon may not be instituted.

25

26

27



**NAZETTE · MARNER  
NATHANSON · SHEA**  
LLP

Richard F. Nazette (1919-2007)  
David L. Marners, Sr. (Retired)  
Randall A. Nazette  
Henry E. Nathanson  
Mona Knoll  
David L. Marners, Jr.  
Crystal L. Usher  
Kevin P. Shea  
Ann M.K. McCrea  
Jeffrey M. Beatty

February 15, 2019

**FILED**

FEB 18 2019

CLERK OF THE IOWA SUPREME COURT  
1111 EAST COURT AVENUE  
DES MOINES, IA 50319

CLERK SUPREME COURT

RE: Mandatory Family Law Mediation

I have reviewed the proposals for mandatory mediation in certain family law cases. Not only do I practice quite a bit of family law but have been a mediator for many years. I think it is an excellent idea to have state-wide mediation in family law cases. We have been requiring mediation in Dissolution of Marriage and unmarried custody and care cases in the Sixth Judicial District for about as long as I have been a mediator, probably about 25 years. We have had excellent support from our judges who have, over time, expanded the requirements to include mediation in contempt and temporary custody and care hearings. While a few attorneys have been slow to accept mandatory mediation, most family law attorneys realize the benefits derived from offering this form of alternate dispute resolution. I feel that our experience with mediation in our district was largely responsible for several of us becoming trained in the collaborative process which has offered yet another form of client-centered resolution of cases. Practicing in family law, I certainly value any process that is client-centered, effective, and avoids hostility so often displayed in court.

I do have concerns with the proposed rules and they follow:

- Rule 15.2(1) indicates that "other matters" can be the subject of mediation in Iowa but Rule 15.3(1) appears to exempt temporary proceedings and contempt proceedings from mandatory mediation. These two rules seem to conflict. I think it just needs to be made clear that "other matters" can certainly include temporary proceedings and contempt proceedings. As stated above, I believe that litigants, attorneys and judges in the Sixth Judicial District have found mediation to be very useful in both temporary custody and care hearings and contempt.
- Rule 15.9(1) in the Sixth Judicial District, for many years, we have had a roster of mediators. To be on the roster, mediators must complete an approved 40-hour course in mediation as well additional hours concerning domestic abuse and the screening for

615 2nd Street SW  
Cedar Rapids, IA 52404  
P.O. Box 74210  
Cedar Rapids, IA 52407-4250  
T 319.366.1000  
F 319.313.7843  
mknoll@nazettelaw.com

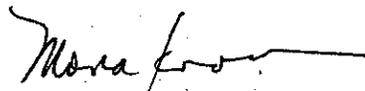
domestic abuse. Additionally, we have a requirement of seven (7) hours of continuing education which can be anything relevant to family mediation, mediation training, or about parents' or children's therapy. I am not sure how having a state-wide registry might change these requirements. I suspect that the 40-hour class requirement will remain but am unsure whether mediators will be required to continue their education with a state-wide registry. Also, because there are continuing education requirements, we have fairly regular seminars presented in our district and, without the requirement, I am not sure if we will continue to have as many of those classes offered.

- In our district, mediators can charge whatever they wish, whatever the market will bear. There is quite a selection of mediators available at various hourly rates. There has been, of course, some natural selection of preferred mediators based not only on experience but also on cost. I understand that there have been, in some districts, limits on what a mediator can charge. This would affect some of our most experienced mediators and would likely discourage them from continuing to offer their services. This would be a considerable loss. While I appreciate efforts to keep the cost of mediation down, mediation is usually much less expensive than going to court represented by attorneys. I would be in favor of allowing parties to choose their mediators any way they wish but certainly not do anything to discourage good experienced mediators who charge more than others.
- Rule 15.9(2) I am not sure how this rule will affect mediators going into the less populated counties. It appears that, if a mediator says he or she is available for appointment in an area, that will obligate the mediator to accept all appointments and travel for free to those appointments. Since mediators are sometimes fairly scarce in rural areas, this will probably limit the mediators considering doing their work in those areas. Also, refusal to accept an appointment in a designated area may be grounds for denying future appointments. I am not sure whether this paragraph is talking about pro bono appointments or any appointments. It seems like there is no standards under which a mediator can refuse an appointment. For instance, if the mediator is double scheduled, will this result in denial of future appointments? It is just not clear to me what this restriction might be.
- Rule 15.9(4) Sets forth mediator qualifications and, of course, I have no problem with minimum of 40 hours of family law mediation training accredited by the Iowa Supreme Court Commission on continuing legal education. There needs to be some standards set out for which programs would be accredited and how that accreditation would be awarded. I do not believe that mediators who conduct facilitative or neutral mediation need to have an active Iowa law license. Certainly, I believe that mediator attorneys should be licensed if they are conducting evaluative or directive mediation as that can call for giving opinions but facilitative or neutral mediation actually prohibits the giving of any opinion so the requirement for a law license seems frivolous in those cases. For instance, a retired attorney or an attorney who simply does not want to practice law, could be a very effective facilitative or neutral mediator, along with very capable non-attorneys.
- Rule 15.9(6) Is of concern to me personally as I was trained many years ago by an out-of-state trainer and have lost any evidence of that training due to a flood. I would hope there would be some way to be grandfathered in as a mediator if one has been on a roster, attended continuing education and has been practicing as long as I have.

- Finally, just let me repeat that I think that some minimum standards will be valuable and I am thankful that mediation has become more wide spread and encouraged by our Supreme Court. I recognize that the two longest and probably strongest programs, the Sixth Judicial District and the Fifth Judicial District are quite different but both effective and well regarded within their districts. I would not like to see any requirements that would hinder these well-established programs. I think the key is to allow the judiciary in each district to refine and add to minimum requirements so that mediation can be the most useful in each of our districts in Iowa.

*Sincerely*

Nazette, Marner,  
Nathanson & Shea, LLP



**MONA KNOLL**

MK/nrs

FILED

FEB 18 2019

CLERK SUPREME COURT

02/18/2019 03:03 PM



**[EXTERNAL] Mandatory Family Law Mediation**  
Sally Frank to: rules.comments@iowacourts.gov

1 attachment



Mediation rule sup ct comment.docx

Attached are comments on the proposed rules for mandatory family law mediation.

Sally Frank  
Professor of Law  
Drake University

COMMENT ON PROPOSED RULES REGARDING MANDATORY MEDIATION  
CLERK SUPREME COURT

This comment is specifically addressing proposed rule 15.7 which appears on lines 9-10. The proposed rule states, "Rule 15.7 Payment of mediators. Mediator fees will be evenly divided between the parties unless the parties agree otherwise." It does not include a provision to waive mediator fees for indigent parties.

Under this rule, if one party is indigent, that party would be required to pay the same charge for mediation as a non-indigent opponent. Moreover, nowhere in the rule is there a provision for mediation fees to be waived if one or both parties are indigent.

The current practice in Polk County is to require people, no matter how poor, to pay something for mediation. The "pro bono rate" is \$10 per hour. If a person has any job no matter how few hours the person works, but is also receiving public assistance (for instance a person working a few hours a month who is on SSI), the individual is required to pay \$60.00 (half of the administrative fee) on top of the \$10 per hour charge for the mediator. This is a prohibitive sum for a poor person. The proposed rule does not mention an administrative fee to be paid by parties for mediation. The only fee mentioned in the rule is one to be on the registry of mediators. If this means that there will be no administrative fee for parties, I have no objection. If the administrative fees remain but are just unstated, I have the same objection on behalf of indigent parties that I am addressing in this comment on mediator fees.

We have a case in which our client is living solely on FIP and food stamps. She has 5 children. We moved the court to either waive mediation or order that it be free since \$30 is a huge sum to a person of her income. The Court waived mediation. We also sought and received a waiver of Children in the Middle since she could not afford the fee for that class either. These

rules should make clear that indigent people are to be provided mediation for free or that poverty is good cause to waive mediation.

The United States Supreme Court, in *Boddie v. Connecticut*, 401 U.S. 371 (1971), discussed the issue of costs imposed upon plaintiffs seeking divorces. While the direct issue in the case was a refusal by Connecticut courts to waive filing and service fees, the case is applicable to the issue of fees imposed during proceedings as well. The Court recognized that marriage is a fundamental right and that the state has a monopoly on dissolving marriages. As the Court said:

It is not surprising, then, that the States have seen fit to oversee many aspects of that institution [of marriage]. Without a prior judicial imprimatur, individuals may freely enter into and rescind commercial contracts, for example, but we are unaware of any jurisdiction where private citizens may covenant for or dissolve marriages without state approval. Even where all substantive requirements are concededly met, we know of no instance where two consenting adults may divorce and mutually liberate themselves from the constraints of legal obligations that go with marriage, and more fundamentally the prohibition against remarriage, without invoking the State's judicial machinery. *Id.* at 376.

Because of this monopoly, the Court found that due process requirements apply to plaintiffs as well as defendants. The Court ruled:

[W]e conclude that the State's refusal to admit these appellants to its courts, the sole means in Connecticut for obtaining a divorce, must be regarded as the equivalent of denying them an opportunity to be heard upon their claimed right to a dissolution of their marriages, and, in the absence of a sufficient countervailing justification for the State's action, a denial of due process. *Id.* at 380-81 (footnote omitted).

The Iowa courts permit indigent petitioners who are seeking a divorce or custody order to seek a waiver of prepayment of fees and costs and the costs for service. However, as mediation works in Polk County and would work under this rule, poor parties could be deprived of their opportunity to be heard because they would face sanctions for being unable to afford to pay for

mediation. They could be fined for contempt or even have their cases dismissed merely for being poor. Already, parties to divorces, custody cases, and modifications must pay private entities for Children in the Middle courses. I have found no agency offering Children in the Middle that has been approved by the Fifth Judicial District willing to completely waive fees for the course. The best I have found is one agency willing to reduce the fee to \$15 on the basis of a letter from my office telling the group that the party is indigent. Children in the Middle is only \$40 but even that is prohibitive to a poor person. Mediation costs are much higher.

While I recognize that there are costs to the Court to set up a mediation program, those costs do not justify preventing poor people from being able to conclude their divorces because they are unable to pay for mediation. Connecticut argued that the costs it refused to waive were necessary to help fund the administration of the courts and prevent frivolous suits. The Supreme Court rejected that argument, "Such a justification was offered and rejected in *Griffin v. Illinois*, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956)." *Boddie* at 382.

The proposed rule needs to include a complete waiver of the costs of mediation including paying for the mediator and the administrative fee for indigent parties. In my experience, mediation is often very useful in settling divorce and custody cases, but poor people should not have to choose between life necessities of food, clothing, shelter, water, electricity, etc, and obtaining a divorce, modification, or custody order.

FILED

FEB 20 2019

CLERK SUPREME COURT

02/20/2019 10:53 AM



[EXTERNAL] Mandatory Family Law Mediation  
SW IA Mediation Center to: rules.comments

1 attachment



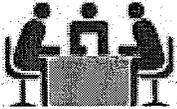
2019 Comments Proposed Chapter 15 mediation rules.doc

Comments attached.

Mark Haverkamp

Director

Southwest Iowa Mediation Center



## Southwest Iowa Mediation Center

Mark Haverkamp  
Director

P.O. Box 1620  
Council Bluffs, Iowa 51502-1620  
712-310-2843  
info@swiamediationcenter.org

February 20, 2019  
Clerk of the Iowa Supreme Court  
1111 East Court Avenue  
Des Moines, Iowa 50319

FILED

FEB 20 2019

Re: Mandatory Family Law Mediation

CLERK SUPREME COURT

Dear Clerk:

The board of directors of the Southwest Iowa Mediation Center (the mediation program for the 4th Judicial District) respectfully submits the following comments. With regards to rule 15.4(1) lines 13-16, The Southwest Iowa Mediation Center recommends changing "date of service" to "date of answer" for the start of the scheduling time line. It has been our experience since our program was established in 2010 that using the date of answer rather than the date of service reduces confusion and saves on time and expense for administration, the mediator, and the parties. Rule 15.3(1)(g), lines 30-32, provides for a waiver in cases in which a party serves a Notice of Intent to File Written Application for Default, an Application for Default Judgment, or a similar pleading regarding default judgment. However, administration would have to keep track of such filings, and may have started work on the case in order to comply with the 30 day scheduling requirement. Using the date of answer eliminates any such issues.

Sincerely Yours,  
/s/Mark Haverkamp  
Director  
Southwest Iowa Mediation Center

FILED

FEB 20 2019

CLERK SUPREME COURT



**[EXTERNAL] Comment to Proposed Rules for Family Law Mandatory Mediation**

Dawn Long to: 'rules.comments@iowacourts.gov'

02/20/2019 03:34 PM

1 attachment



Comment to Proposed Rules for Family Law Mandatory Mediation.pdf

Please see attached. Thank you for your consideration.

**Dawn D. Long**  
**Attorney At Law**  
**Howes Law Firm, P.C.**

3200 37<sup>th</sup> Avenue SW  
Cedar Rapids, Iowa 52404  
Phone: 319-396-2410  
Fax: 319-390-1635

[www.howeslawfirmpc.com](http://www.howeslawfirmpc.com)

Find us on [Facebook](#) or [the Web](#)

Now accepting [online payments](#)

**CONFIDENTIALITY NOTICE:** This email and its attachments are covered by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521, and may contain attorney-client or attorney work-product privileged and confidential information, which privileges are reserved. If you are not the intended recipient addressed by Howes Law Firm, P.C., or the agent responsible for delivering it to the intended recipient, and have received this communication in error, please notify the sender and destroy this communication and its attachments. Please further note that any retention, distribution, or copying of this communication is strictly prohibited by all others than the intended recipient.

## HOWES LAW FIRM, P.C.

CLERK SUPREME COURT

## ATTORNEYS AT LAW

BARBARA A. CONNOLLY  
STEVEN E. HOWES  
JASE H. JENSEN

3200 - 37<sup>TH</sup> AVE., S.W.  
CEDAR RAPIDS, IOWA 52404  
TEL: (319) 396-2410  
FAX: (319) 390-1635  
www.howeslawfirmpc.com

DAWN D. LONG  
KEVIN C. RIGDON  
JOHN M. TITLER  
(OF COUNSEL)

February 20, 2019

Email: [rules.comments@iowacourtgs.gov](mailto:rules.comments@iowacourtgs.gov)

Email Subject Line: Mandatory Family Law Mediation

Re: Comment to Proposed Rules for Family Law Mandatory Mediation

To: Supreme Court

From: Dawn Long, Howes Law Firm, P.C.

I have had an opportunity to review and discuss the proposed rules with other mediators in the Sixth Judicial District. I join the comments submitted by Christine L. Crilley done through "strike/addition" editing (attached) *except as set forth below*:

I agree with the proposed rule that mediation of contempt matters should *not* be required. I propose additional language: "The Court encourages mediation and a default mediator has been assigned to this contempt action. If both parties participate in mediation and such participation does not resolve the contempt action, any person found to be in contempt of a court order shall be required by the Court to reimburse any mediation costs paid by the prevailing party."

Thank you for your consideration.

Sincerely,



Dawn D. Long

Attachment

FBI

**CRILLEY LAW OFFICES PLLC**

---

**dba CRILLEY MEDIATION SERVICES**

Christine L. Crilley ♦ Daniel M. Morgan

February 15, 2019

Email: [rules.comments@iowacourtgs.gov](mailto:rules.comments@iowacourtgs.gov)

Email Subject Line: Mandatory Family Law Mediation

Re: Our Public Comment to Proposed Rules for Family Law Mandatory Mediation

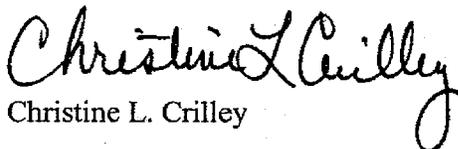
To: Supreme Court

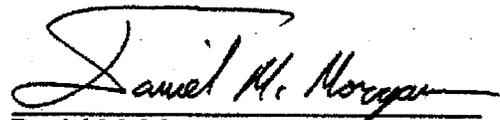
From: Christine Crilley, Lawyer, Mediator, Mediation Trainer  
Daniel Morgan: Lawyer, Mediator  
Crilley Law Offices, PLLC  
Crilley Mediation Services

Please find enclosed our comments to the Proposed Rules for Family Law Mandatory Mediation which we have done through "strike/addition" editing for your convenience. Our comments follow immediately on the next page.

If you have any questions, please contact us.

Sincerely,

  
Christine L. Crilley

  
Daniel M. Morgan

1

2

## Chapter 15

3

### Rules of Mandatory Mediation in Certain Family Law Cases

4

**Rule 15.1 Definitions.** As used in this chapter:

5

**15.1(1)** "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

6

**15.1(2)** "Mediator" means an individual who conducts a mediation.

7

**15.1(3)** "Mediation Agreement" means a written voluntary agreement the parties have reached during the mediation process.

8

~~**15.1(4)** "Mediation Program" refers to the individual Mediation Programs set in each judicial district.~~

9

~~**Rule 15.2 Scope.** **15.1(5)** "Registry" refers to the statewide Mediator registry maintained by the Office of Professional Regulation.~~

10

**15.2(1)** All parties must participate in mediation in all cases involving permanent custody, visitation, and other matters filed under Iowa Code chapters 598 and 600B. This rule applies to both initial proceedings and modification proceedings.

11

**15.2(2)** Each judicial district or court retains the authority to order mediation for other matters filed under Iowa Code chapters 598 and 600B ~~such as temporary proceedings and contempt proceedings.~~

12

**15.2(3)** Mediation does not change a party's obligation to follow statutory requirements in Iowa Code chapter 598.

13

14

**Rule 15.3 Waivers and exemptions.**

15

**15.3(1)** The following cases are exempt from mandatory mediation:

16

~~a. All temporary proceedings.~~

17

~~b. All contempt proceedings.~~ *Keep*

18

c. Child support or medical support obligations enforced by the Child Support Recovery Unit.

19

d. Elder abuse pursuant to Iowa Code chapter 235F.

20

e. Domestic abuse pursuant to Iowa Code chapter 236.

21

f. Cases in which a mediation party is served by publication.

22

g. Cases in which a party serves a Notice of Intent to File Written Application for Default Judgment, an Application for Default Judgment, or a similar pleading regarding default judgment.

23

24

25

26

27

28

29

30

31

32

33

1  
2     *h.* Cases participating in the Informal Family Law Trial Pilot Project or other  
3 court-approved informal or abbreviated family law trial proceedings.  
4

5     **15.3(2)** Upon application of a party, the court may grant a waiver from  
6 mandatory mediation when:

7     *a.* The party demonstrates a history of domestic abuse as specified in Iowa  
8 Code section 598.41(3);

9     *b.* The parties file a ~~stipulation of~~ settlement addressing all issues within ~~120~~ days  
10 of service; or

11     *c.* The party shows good cause for a waiver.

12     **Rule 15.4 Scheduling.**

13     **15.4(1)** ~~Within 30 days from the date of service, The parties must set a date~~<sup>complete</sup>  
14 ~~for mediation to be completed within 120-180 days from the date of service unless a~~  
15 ~~case is exempt from mandatory mediation under rule 15.3 (1) or the court has~~  
16 ~~granted a waiver from mandatory mediation under rule 15.3 (2).~~

17     **15.4(2)** The parties or their attorneys must obtain a date for mediation  
18 directly with the mediator or through the mediation program in the judicial  
19 district where the case is filed ~~from the registry of qualified mediators.~~

20     **15.4(3)** Following completion of mediation, the ~~parties~~<sup>Mediator</sup> must file a Certificate  
21 of Mediation with the court, on a form the supreme court prescribes, before a  
22 trial date may be scheduled; ~~copy to be provided to the parties.~~

23     **Rule 15.5 Selection of mediators.**

24     **15.5(1)** The parties must select a mediator from the registry of qualified  
25 mediators.

~~The Court will appoint a default mediator from the registry of qualified Mediators.~~

26     **15.5(2)** ~~If the parties cannot agree on a mediator, the court will appoint a~~  
27 ~~mediator from the registry of qualified mediators. then they will use the default mediator.~~

28     **Rule 15.6 Mediation process.**

29     **15.6(1)** Parties may be represented by their attorneys at the mediation.

30     **15.6(2)** A party may have a person other than the party's attorney attend the  
31 mediation, but the mediator may determine whether the person will be allowed  
32 to participate in the mediation.

33

1  
2 **15.6(3)** Mediation sessions are confidential and are governed by the  
3 requirements of Iowa Code chapter 679C and Iowa Court Rule 11.6.  
4

5 ~~**15.6(4)** When the parties have completed mediation, the mediator will provide~~  
6 ~~the parties with a supreme court prescribed Certificate of Mediation for filing~~  
7 ~~with the court.~~  
8

9 **Rule 15.7 Payment of mediators.** Mediator fees will be evenly divided between  
10 the parties unless the parties agree otherwise, or as ordered by the Court, and may be  
11 ~~taxed as Court costs. (See 598.7(e)).~~

12 **Rule 15.8 Enforcement.** The court may enforce the requirements of these rules  
13 through contempt proceedings, compliance hearings, imposition of sanctions, or  
14 other means the court deems appropriate.

15 **Rule 15.9 Mediator registry and qualifications.**

16 **15.9(1) Statewide mediator registry.**

17 a. The office of professional regulation will maintain a statewide registry of  
18 qualified family law mediators. The registry will be updated and published on a  
19 regular basis. The office of professional regulation will review applications from  
20 persons who wish to be listed on the registry of qualified family law mediators,  
21 which will include persons who meet the training requirements established in  
22 this rule or who have received a waiver under rule 15.9(6).

23 b. The statewide mediator registry will contain the mediators' names, ~~business~~  
24 addresses, telephone numbers, and any biographical information the mediator  
25 provides, including information about the mediator's education, professional  
26 experience, and mediation training and experience, and will be maintained on  
27 the office of professional regulation's website.

28 **15.9(2) Mediators' designations.** As part of the application process, all  
29 mediators must designate the judicial districts or counties for which they are  
30 willing to accept court appointments. Each designation will be deemed to be a  
31 representation that the mediator will accept appointments from the designated  
32 district or county and will not may charge for travel time and expenses incurred in  
33 carrying out the mediator's duties associated with those appointments. A refusal  
34 to accept an appointment in a mediator's designated judicial district or county  
35 may be grounds for denying future appointments of the mediator in the judicial  
36 district or county.

1

2       **15.9(3) Registry fees.** The office of professional regulation will establish a  
3 reasonable administrative fee for qualified individuals and organizations to be  
4 placed on the statewide registry. Any such fees will go to the office of professional  
5 regulation for administration of the statewide registry.

6       **15.9(4) Mediator qualifications.** Prior to being listed on the statewide  
7 registry, all mediators providing family law mediation services under this chapter  
8 must have a minimum of 40 hours of family law mediation training accredited  
9 by the Iowa Supreme Court Commission on Continuing Legal Education.

10 ~~Mediators who are attorneys must have an active Iowa law license.~~

~~This does not require that a mediator have a special qualification by background or profession (see 679C.109(6))~~

11       **15.9(5) Removal from statewide registry.** The office of professional  
12 regulation may administratively remove a mediator from the statewide registry if  
13 the mediator's law license has been suspended, revoked, or placed into exempt  
14 or inactive status. A mediator may also be removed from the registry for reasons  
15 including, but not limited to, concerns about the mediator's competence,  
16 misrepresentations the mediator made during the application process, a finding  
17 of liability against the mediator under Iowa Code section 679C.115, or a  
18 determination by a court that the mediator has engaged in the unauthorized  
19 practice of law. Any removal from the registry may be reviewed by the State Court  
20 Administrator upon written request. ~~This shall not abrogate mediator immunity~~  
~~under Iowa Code Section 679C.115.~~

21       **15.9(6) Waiver of training requirement.** Mediators who are listed on one or  
22 more rosters of family law mediators maintained by an Iowa district court  
23 administrator as of June 30, 2019, may be listed on the statewide registry  
24 maintained by the office of professional regulation by submitting an application  
25 and showing they have previously completed the training requirements set forth  
26 in rule 15.9(4).

27 **Rule 15.10 Administration.**

28       **15.10(1)** The director of the office of professional regulation will serve as the  
29 principal executive officer for matters pertaining to the qualifications,  
30 classification, and discipline of family law mediators under this chapter. The  
31 director may, subject to the approval of the supreme court, employ such other  
32 employees as may be necessary to carry out the duties of this chapter.

33       **15.10(2)** At least 60 days prior to the start of each fiscal year or on a date  
34 otherwise set by the supreme court, the director of the office of professional  
35 regulation will submit to the supreme court for consideration and approval a

1

2 budget for the upcoming fiscal year covering the operations provided for in this  
3 chapter. The supreme court's approval of the budget authorizes payment as  
4 provided in the budget. A separate bank account designated as the mediator  
5 operating account must be maintained for payment of authorized expenditures  
6 as provided in the approved budget. Fees or other funds received or collected as  
7 directed in this chapter or in accordance with an interagency agreement will be  
8 deposited in the mediator operating account for payment of the expenditures  
9 authorized in the approved budget.

10 **Rule 15.11 Immunity**

11 **15.12(1) Claims.** Claims against the director, assistant directors, and staff of  
12 the office of professional regulation are subject to the State Tort Claims Act set  
13 forth in Iowa Code chapter 669.

14

15 **15.12(2) Immunity.** The director, assistant director, and staff of the office of  
16 professional regulation are immune from all civil liability for damages for the  
17 conduct, communications, and omissions occurring in the performance of and  
18 within the scope of their official duties under these rules.

19

20 **15.12(3) Qualified immunity.** Records, statements of opinion, and other  
21 information regarding a mediator that are communicated by an entity, including  
22 any person, firm, or institution, without malice, to the director, assistant  
23 directors, and staff of the office of professional regulation, are privileged and civil  
24 suits predicated thereon may not be instituted.

25

26

27

FILED

FEB 20 2019

CLERK SUPREME COURT

02/20/2019 05:13 PM



**[EXTERNAL] Mandatory Family Law Mediation**  
Chris Luzzie to: rules.comments@iowacourts.gov

1 attachment



Iowa Legal Aid comments mandatory mediation 2-20-19.docx

Attached please find comments on the Proposed Rules filed on Nov. 26, 2018.

Christine M. Luzzie  
Deputy Director  
Iowa Legal Aid  
1700 S. 1st Avenue, Suite 10  
Iowa City, IA 52240  
319 351 6570

**NOTICE:**

Email sent between you and Iowa Legal Aid goes over the Internet. Iowa LegalAid cannot assure that email is secure. You should be careful when emailing confidential information. You may decide not to use email when communicating with Iowa Legal Aid.

This email and any attachments may contain confidential or legally privileged information. The sender does not intend to waive any privilege, including the attorney-client privilege. If you are not the intended recipient(s), you are not authorized to read, print, retain, copy, forward or disseminate this communication. If you have received this communication in error, please email the sender immediately and delete this communication and all copies.

**Iowa Legal Aid Comments to Proposed Mediation Program for Family  
Law Cases**

CLERK SUPREME COURT

Iowa Legal Aid provides free legal assistance in civil cases to low-income lowans and seniors. In 2018 Iowa Legal Aid closed approximately 15,000 cases and assisted nearly 35,000 lowans. Twenty-seven percent of these cases were family law cases including domestic abuse protective orders, custody and dissolution of marriage. Because of limited resources, clients accepted for service may not receive all of the legal services that the clients need or want. Further, many low-income lowans who are eligible for services are not able to receive any legal assistance due to lack of resources. As a result, many low-income lowans must navigate the court system without counsel. Any additional costs that low-income lowans must incur may well be detrimental to the health and safety of their families. Any rules must be drafted in such a way as to make access to justice attainable for low-income lowans.

Additional barriers confront lowans with Limited English Proficiency (LEP). Rules which establish additional requirements must address the unique needs of this population for interpretation and translation services at no cost.

Free or low-cost mediator

The proposed rule provides no direction regarding what will happen if one or both parties are unable to afford a mediator at market rates. For those low-income lowans for whom mediation is an option, it is not likely that they will have the resources to pay for mediation at market rates. Therefore, for a mediation program to be successful, low-income lowans must be able to access free or low-cost mediation services. The rule must provide some direction on how judicial districts treat litigants who are unable to pay for mediation.

It would be preferable for each district to set up a free or low-cost mediation service, as it should be available to all litigants as part of access to the court system. Some districts already have such a program which could be replicated in other districts as they establish their program. If unable to establish such a program, then it needs to be clear that inability to pay is a reason for good cause waiver of mediation.

If a free or low-cost service is available, notice of its availability should be required. Several districts have an application form which must be filled out to obtain a reduced rate mediation fee. Applications are accompanied by a financial affidavit. These forms should be standardized across the state, described in any mediation program and made readily available. Any forms developed for use should be available on the Iowa Supreme Court website as part of the self-represented litigant forms.

Proposed language to be added as part of Rule 15.7, line 9-10, page 3:

Each judicial district must establish a free or low-cost option for those parties who are unable to afford market rate. Notice of the availability of the program must be included in notices which are sent to parties. Copies of an application form and financial affidavit must be included in the notice. If a judicial district is unable to meet the need for free or low-cost mediation, it will be considered good cause for waiver of the requirement.

## Waivers and exemptions

Rule 15.3 currently exempts "all temporary proceedings" and "all contempt proceedings" (line 23 and 24) from mandatory mediation. At least three judicial districts currently require either or both temporary and contempt proceedings to be mediated. Our experience with this type of mediation has been very positive. The caveat is that such mediation must be available free or at very low-cost. If it is not, it will create a significant barrier for low-income lowans, limiting their ability to access justice.

If there is a consensus that mediation is a valuable process that results in better and more efficient outcomes in family law cases, then we see no reason to exclude temporary hearings and contempt actions from the process. These two proceedings, perhaps more than a mediation prior to a final trial, are at a point when a mediated agreement may be likely to occur. In a temporary hearing, the case has only recently been filed. The parties are less sure about possible outcomes (and therefore more likely to benefit from a mediator who can guide them to a more realistic solution) and less entrenched in their positions. If the parties have already litigated some of the contested issues in a temporary hearing and invested in a lengthy and expensive discovery process, then the parties have likely lost much of the possible amicability that can exist at the beginning of the case. If one party has already received their desired outcome from a contested temporary hearing, they may be less likely to give up that position at a mediation just prior to trial.

For contempt proceedings, which can sometimes be filed by attorneys based on misunderstandings or incomplete information from their clients, a mediation can be an opportunity to get a more complete picture of the case. For self represented litigants, understanding what has to be proven in a contempt may make an agreement more acceptable. Once all the information is on the table, it can be clearer to each party what the actual outcome of a contempt is likely to be. Furthermore, contempt actions may well lend themselves to agreed resolutions. In our experience, contempt actions are often filed to get makeup visitation, or a medical bill paid, or to resolve a disagreement about a decision made regarding the children. Since permanent and dramatic changes to the existing agreement are usually not being contemplated in a contempt, they seem ideally suited to the type of compromises reached in a mediation.

For the above stated reasons, we would recommend that mediation be required prior to temporary hearings and contempt proceedings. This should only be implemented if free or low-cost mediation is also required to be available.

Proposed language to be deleted from Rule 15.3(1), line 23 and 24:

- ~~a. All temporary proceedings.~~
- ~~b. All contempt proceedings.~~

## Limited English Proficient (LEP) Clients

Each year the number of Iowans with limited English proficiency (LEP) grows. LEP individuals have a broad spectrum of English limitations, ranging from those who have no English language abilities at all, to those who speak English, but not "very well." Persons who are unable to speak, read, write, or understand the English language at a level that permits effective interaction in a particular situation should be considered LEP. Therefore, LEP individuals will not be able to meaningfully participate in mediation unless their mediator is bilingual, or an interpreter assists them with mediation.

While Spanish is the predominant language of LEP Iowans, and Arabic, Chinese, and Vietnamese are also significant languages, many LEP Iowans can only effectively communicate in one of 50+ additional languages, such as Karen, Burmese, Swahili, French, Karenni, Somali, Kirundi, Chin, Bosnian, and others. Depending on the language, there is an insufficient number of bilingual mediators in rural and urban counties to meet the needs of LEP litigants – and even urban counties cannot provide bilingual mediators in many of the languages of LEP litigants.

As a result, interpreters will be needed to allow a mediation to proceed. If mediation is mandatory, it would become part of the legal proceeding before the court. Iowa Rules of Court 47.1 defines participant in a legal proceeding as "a party participating in a court-ordered program." As set forth in this Rule, mediation will be a court-ordered program. Pursuant to Iowa Code Ch. 622A, every LEP party is entitled to an interpreter in a legal proceeding.

If an interpreter is required, cost becomes an issue. If the party is indigent, the court is required to appoint the interpreter without expense to the litigant. However, the costs of the interpreter are taxed as court costs. By statute, the indigent LEP party can still be held responsible for the costs of vital interpreter services through apportionment of court costs. Iowa Code §622A.3(2). This provision seems to be at odds with the direction by the U.S. Department of Justice requiring meaningful access for LEP persons. See letter from Thomas E. Perez to Chief Justices/State Court Administrators, dated August 16, 2010, setting out requirements for enforcement of national original discrimination laws resulting in the conclusion that LEP litigants cannot be charged for interpreter services. (Attached as exhibit A).

Unless the direction of the U.S. Department of Justice is followed, the necessity of an interpreter at mediation thus presents a potential additional financial burden, particularly to low-income Iowans. By providing interpreters at mediation, the cost of interpretation services may be reduced as other court proceedings and potentially lengthy trials are averted. We would recommend that interpreters or bilingual mediators be provided at no cost to low-income Iowans. If cost-free interpreter services cannot be assured, then the need for an interpreter should be set out as a specific reason to grant a waiver of mediation.

Information about mediation and applications to reduce mediation costs should be available in multiple languages as required by law. County clerks or court administrators should maintain a list of bilingual mediators and provide applications for cost reduction in a manner that LEP litigants can understand.

Proposed language to be added as new Rule 15.12, line 26, page 5:

Interpretation services shall be provided at mediations without cost to the parties. Cost of interpreter services at mediation shall not be taxed as court costs. Notice of mediation and applications to obtain mediation at free or reduced cost shall be available in those languages

where required by law. If interpreters are not available without cost, it will be considered good cause for waiver of the mediation requirement.

Respectfully submitted,

Christine M. Luzzie  
Deputy Director  
Iowa Legal Aid  
1700 S. 1<sup>st</sup> Ave, Suite 10  
Iowa City, IA 52240

Gail Klearman  
Managing Attorney  
Iowa Legal Aid  
1111 9<sup>th</sup> St, Suite 230  
Des Moines, IA 50314

Carrie O'Connor  
Managing Attorney  
Iowa Legal Aid  
799 Main St, Suite 280  
Dubuque, IA 52001

Evelyn Ocheltree  
Senior Staff Attorney  
Iowa Legal Aid  
22 N. Georgia, Suite 2  
Mason City, IA 50401

Kelsey Deabler  
Staff Attorney  
Iowa Legal Aid  
532 First Ave, Suite 300  
Council Bluffs, IA 51503



U. S. Department of Justice

Civil Rights Division

FILED

FEB 20 2019

CLERK SUPREME COURT

Assistant Attorney General

Washington, D.C. 20530

August 16, 2010

Dear Chief Justice/State Court Administrator:

In the past decade, increasing numbers of state court systems have sought to improve their capacity to handle cases and other matters involving parties or witnesses who are limited English proficient (LEP). In some instances the progress has been laudable and reflects increased recognition that language access costs must be treated as essential to sound court management. However, the Department of Justice (DOJ) continues to encounter state court language access policies or practices that are inconsistent with federal civil rights requirements. Through this letter, DOJ intends to provide greater clarity regarding the requirement that courts receiving federal financial assistance provide meaningful access for LEP individuals.

Dispensing justice fairly, efficiently, and accurately is a cornerstone of the judiciary. Policies and practices that deny LEP persons meaningful access to the courts undermine that cornerstone. They may also place state courts in violation of long-standing civil rights requirements. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.* (Title VI), and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3789d(c) (Safe Streets Act), both prohibit national origin discrimination by recipients of federal financial assistance. Title VI and Safe Streets Act regulations further prohibit recipients from administering programs in a manner that has the effect of subjecting individuals to discrimination based on their national origin. See 28 C.F.R. §§ 42.104(b)(2), 42.203(e).

The Supreme Court has held that failing to take reasonable steps to ensure meaningful access for LEP persons is a form of national origin discrimination prohibited by Title VI regulations. See *Lau v. Nichols*, 414 U.S. 563 (1974). Executive Order 13166, which was issued in 2000, further emphasized the point by directing federal agencies to publish LEP guidance for their financial assistance recipients, consistent with initial general guidance from DOJ. See 65 Fed. Reg. 50,121 (Aug. 16, 2000). In 2002, DOJ issued final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 67 Fed. Reg. 41,455 (June 18, 2002) (DOJ Guidance). The DOJ Guidance and subsequent technical assistance letters from the Civil Rights Division explained that court systems receiving federal financial assistance, either directly or indirectly, must provide meaningful access to LEP persons in order to comply with Title VI, the Safe Streets Act, and their implementing regulations. The federal requirement to provide language assistance to LEP individuals applies notwithstanding conflicting state or local laws or court rules.

Despite efforts to bring courts into compliance, some state court system policies and practices significantly and unreasonably impede, hinder, or restrict participation in court proceedings and access to court operations based upon a person's English language ability. Examples of particular concern include the following:

1. Limiting the types of proceedings for which qualified interpreter services are provided by the court. Some courts only provide competent interpreter assistance in limited categories of cases, such as in criminal, termination of parental rights, or domestic violence proceedings. DOJ, however, views access to *all* court proceedings as critical. The DOJ Guidance refers to the importance of meaningful access to courts and courtrooms, without distinguishing among civil, criminal, or administrative matters. See DOJ Guidance, 67 Fed. Reg. at 41,462. It states that "every effort should be taken to ensure competent interpretation for LEP individuals during *all* hearings, trials, and motions," *id.* at 41,471 (emphasis added), including administrative court proceedings. *Id.* at 41,459, n.5.

Courts should also provide language assistance to non-party LEP individuals whose presence or participation in a court matter is necessary or appropriate, including parents and guardians of minor victims of crime or of juveniles and family members involved in delinquency proceedings. Proceedings handled by officials such as magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other decision-makers should also include professional interpreter coverage. DOJ expects that meaningful access will be provided to LEP persons in all court and court-annexed proceedings, whether civil, criminal, or administrative including those presided over by non-judges.

2. Charging interpreter costs to one or more parties. Many courts that ostensibly provide qualified interpreters for covered court proceedings require or authorize one or more of the persons involved in the case to be charged with the cost of the interpreter. Although the rules or practices vary, and may exempt indigent parties, their common impact is either to subject some individuals to a surcharge based upon a party's or witness' English language proficiency, or to discourage parties from requesting or using a competent interpreter. Title VI and its regulations prohibit practices that have the effect of charging parties, impairing their participation in proceedings, or limiting presentation of witnesses based upon national origin. As such, the DOJ Guidance makes clear that court proceedings are among the most important activities conducted by recipients of federal funds, and emphasizes the need to provide interpretation free of cost. Courts that charge interpreter costs to the parties may be arranging for an interpreter's presence, but they are not "providing" the interpreter. DOJ expects that, when meaningful access requires interpretation, courts will provide interpreters at no cost to the persons involved.

3. Restricting language services to courtrooms. Some states provide language assistance only for courtroom proceedings, but the meaningful access requirement extends to court functions that are conducted outside the courtroom as well. Examples of such court-managed offices, operations, and programs can include information counters; intake or filing offices; cashiers; records rooms; sheriff's offices; probation and parole offices; alternative dispute resolution programs; *pro se* clinics; criminal diversion programs; anger management classes; detention facilities; and other similar offices, operations, and programs. Access to these points of public contact is essential to the fair administration of justice, especially for unrepresented LEP persons. DOJ expects courts to provide meaningful access for LEP persons to such court operated or managed points of public contact in the judicial process, whether the contact at issue occurs inside or outside the courtroom.

4. Failing to ensure effective communication with court-appointed or supervised personnel. Some recipient court systems have failed to ensure that LEP persons are able to communicate effectively with a variety of individuals involved in a case under a court appointment or order. Criminal defense counsel, child advocates or guardians *ad litem*, court psychologists, probation officers, doctors, trustees, and other such individuals who are employed, paid, or supervised by the courts, and who are required to communicate with LEP parties or other individuals as part of their case-related functions, must possess demonstrated bilingual skills or have support from professional interpreters. In order for a court to provide meaningful access to LEP persons, it must ensure language access in all such operations and encounters with professionals.

DOJ continues to interpret Title VI and the Title VI regulations to prohibit, in most circumstances, the practices described above. Nevertheless, DOJ has observed that some court systems continue to operate in apparent violation of federal law. Most court systems have long accepted their legal duty under the Americans with Disabilities Act (ADA) to provide auxiliary aids and services to persons with disabilities, and would not consciously engage in the practices highlighted in this letter in providing an accommodation to a person with a disability. While ADA and Title VI requirements are not the same, existing ADA plans and policy for sign language interpreting may provide an effective template for managing interpreting and translating needs for some state courts.

Language services expenses should be treated as a basic and essential operating expense, not as an ancillary cost. Court systems have many operating expenses – judges and staff, buildings, utilities, security, filing, data and records systems, insurance, research, and printing costs, to name a few. Court systems in every part of the country serve populations of LEP individuals and most jurisdictions, if not all, have encountered substantial increases in the number of LEP parties and witnesses and the diversity of languages they speak. Budgeting adequate funds to ensure language access is fundamental to the business of the courts.

We recognize that most state and local courts are struggling with unusual budgetary constraints that have slowed the pace of progress in this area. The DOJ Guidance acknowledges that recipients can consider the costs of the services and the resources available to the court as part of the determination of what language assistance is reasonably required in order to provide meaningful LEP access. *See id.* at 41,460. Fiscal pressures, however, do not provide an exemption from civil rights requirements. In considering a system's compliance with language access standards in light of limited resources, DOJ will consider all of the facts and circumstances of a particular court system. Factors to review may include, but are not limited to, the following:

- The extent to which current language access deficiencies reflect the impact of the fiscal crisis as demonstrated by previous success in providing meaningful access;
- The extent to which other essential court operations are being restricted or defunded;
- The extent to which the court system has secured additional revenues from fees, fines, grants, or other sources, and has increased efficiency through collaboration, technology, or other means;
- Whether the court system has adopted an implementation plan to move promptly towards full compliance; and
- The nature and significance of the adverse impact on LEP persons affected by the existing language access deficiencies.

DOJ acknowledges that it takes time to create systems that ensure competent interpretation in all court proceedings and to build a qualified interpreter corps. Yet nearly a decade has passed since the issuance of Executive Order 13166 and publication of initial general guidance clarifying language access requirements for recipients. Reasonable efforts by now should have resulted in significant and continuing improvements for all recipients. With this passage of time, the need to show progress in providing all LEP persons with meaningful access has increased. DOJ expects that courts that have done well will continue to make progress toward full compliance in policy and practice. At the same time, we expect that court recipients that are furthest behind will take significant steps in order to move promptly toward compliance.

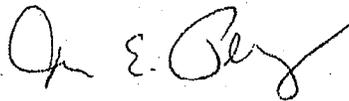
The DOJ guidance encourages recipients to develop and maintain a periodically-updated written plan on language assistance for LEP persons as an appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Such written plans can provide additional benefits to recipients' managers in the areas of training, administrating, planning, and budgeting. The DOJ Guidance goes on to note that these benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. In court systems, we have found that meaningful access inside the courtroom is most effectively implemented in states that have adopted a court rule, statute, or administrative order providing for universal, free, and qualified court interpreting. In addition, state court systems that have strong leadership and a designated coordinator of language services in the office of the court administrator, and that have identified personnel in charge of ensuring language access in each courthouse, will more likely be able to provide effective and consistent language access for LEP

individuals. Enclosed, for illustrative purposes only, are copies of Administrative Order JB-06-3 of the Supreme Judicial Court of Maine, together with the September 2008 Memorandum of Understanding between that court and DOJ. Also enclosed for your information is a copy of "Chapter 5: Tips and Tools Specific to Courts" from DOJ, *Executive Order 13166 Limited English Proficiency Document: Tips and Tools from the Field* (2004).

The Office of Justice Programs provides Justice Assistance Grant funds to the states to be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and criminal justice information systems that will improve or enhance criminal justice programs including prosecution and court programs. Funding language services in the courts is a permissible use of these funds.

DOJ has an abiding interest in securing state and local court system compliance with the language access requirements of Title VI and the Safe Streets Act and will continue to review courts for compliance and to investigate complaints. The Civil Rights Division also welcomes requests for technical assistance from state courts and can provide training for court personnel. Should you have any questions, please contact Mark J. Kappelhoff, Acting Chief, Federal Coordination and Compliance Section (formally known as Coordination and Review Section) at (202) 307-2222.

Sincerely,



Thomas E. Perez  
Assistant Attorney General

Enclosures

FILED

FEB 21 2019

CLERK SUPREME COURT

02/21/2019 08:47 AM



**[EXTERNAL] Mandatory family law mediation**  
Joe Harrison to: rules.comments@iowacourts.gov

1 attachment



proposed rules.docx

Please see the attached comments. Thank you. – Joe (515)210-8361

Sent from Mail for Windows 10

FILED

FEB 21 2019

Date: Feb. 21, 2019

CLERK SUPREME COURT

RE: Rules of Mandatory Mediation in Certain Family law cases

From: Joe Harrison, past coordinator of the Polk County Bar Association's District Court Mediation Program

To whom it may concern:

As the former coordinator of the above-referenced program for the past 29 years (my last day was Feb. 15, 2019), I perhaps have the best handle on how this should work, and would welcome the opportunity to express this in person. For now, though, here are my comments with regard to three of the proposed rules.

#### Rule 15.2 *Scope*

15.2(2) Specifies "each judicial district or court retains the authority to order mediation for other matters filed under Iowa Code chapters 598 and 600B." Later, rules 15.3(1) a and b specifically exempts all temporary and contempt proceedings. These matters should not be exempt. Therefore, 15.2(2) should read: "Each judicial district or court retains the authority to order mediation for other matters that deviate from the proposed rules" to clarify this.

#### Rule 15.4 *Scheduling*

Rule 15.4(1) "Within 30 days from the date of service, the parties must set a date for mediation to be completed within 180 days from the date of service unless waived or exempted." This rule does not contemplate a potential temporary matters hearing, the possibility of reconciliation counselling, a home study, and a host of other complicating factors. The 30/180 days may serve as a framework, but flexibility is needed here.

Rule 15.4(2) "The parties or their attorneys must obtain a date for mediation directly with the mediator or through the mediation program in the judicial district where the case is filed." In the 5<sup>th</sup> Judicial District, the orders allow the parties to schedule mediation through the mediation program in the judicial district where the case is filed or any mediator or mediation service. By barring the parties or their attorneys from scheduling mediation with a mediation service of their choosing, this would eliminate choice in the market place and be challenged as restraint of trade. Rule 15.9(4) *mediator qualifications* notwithstanding... the court should not dictate which mediator or mediation service the parties or their attorneys may contact.

As mentioned, I've successfully coordinated mediation in Polk County and the 5<sup>th</sup> Judicial District the last 29 years. I would be pleased to share my expertise with those involved in this endeavor.

Joe Harrison  
515-210-8361; felixclancy@yahoo.com

FILED

FEB 21 2019

CLERK SUPREME COURT

02/21/2019 04:04 PM



**[EXTERNAL] Mandatory Family Law Mediation**  
Dwight Dinkla to: rules.comments@iowacourts.gov  
Cc: "tom.levis@brickgentrylaw.com", "Laura J. Parrish"

1 attachment



Levis Tom Dwight Dinkla (family law mandatory mediation).docx

On behalf of President Tom Levis, President of The Iowa State Bar Association (ISBA), we are submitting written comments on proposed rules for Mandatory Family Law Mediation. The attached three pages of comments were prepared by Laura Parrish, Chair of the ISBA Family & Juvenile Law Section and approved by the ISBA Administrative Committee for submission to the Judicial Council and the Supreme Court of Iowa for consideration.

The Iowa State Bar Association sincerely appreciates the opportunity to provide comment regarding the proposed mediation rules.

Respectfully,

Dwight Dinkla  
Executive Director  
The Iowa State Bar Association  
625 East Court Avenue  
Des Moines, IA 50309

LAW OFFICES OF  
**MILLER, PEARSON, GLOE, BURNS, BEATTY & PARRISH, P.L.C.**

JAMES BURNS  
LAURA J. PARRISH♦  
THAIS ANN FOLTA\*

301 WEST BROADWAY  
POST OFFICE BOX 28  
DECORAH, IOWA 52101-0028  
TELEPHONE: (563) 382-4226

FRANK R. MILLER  
(1915-1977)  
ROBERT J. COWIE, JR.  
(1955-2008)

FLOYD S. PEARSON  
(1918-2011)

MARION L. BEATTY  
(1953-2016)

DONALD H. GLOE  
(1935-2017)

DANA DE SIMONE

FAX: (563) 382-3783

♦Attorney and Mediator

EMAIL: [lparrish@millerlawdecorah.com](mailto:lparrish@millerlawdecorah.com)

\*Also Licensed in Minnesota,  
Missouri & Indiana

WEBSITE: <http://www.millerlawdecorah.com>

February 22, 2019

FILED

FEB 21 2019

Thomas J. Levis  
Via Email: [tom.levis@brickgentrylaw.com](mailto:tom.levis@brickgentrylaw.com)

CLERK SUPREME COURT

Dwight Dinkla  
Via Email: [ddinkla@iowabar.org](mailto:ddinkla@iowabar.org)

RE: Proposed Rules for Family Law Mandatory Mediation

Dear Tom & Dwight:

Over the course of the past couple of months, I received comments regarding the proposed Family Law Mandatory Mediation rules from approximately 25 family law attorneys across the state. Responses from both urban and rural practitioners were included. The vast majority of the comments favor mediation and are in support of more uniform family law mediation rules. Only two comments were negative, stating that local mandatory mediation rules had not been beneficial in the practitioner's opinion.

Many similar themes emerged from the comments that I received and I will summarize below the suggestions that I received to amend and clarify the proposed rules:

1. The majority of the comments that I received identified concern regarding the automatic waiver of mediation for all temporary proceedings, all contempt proceedings, elder abuse and domestic abuse matters found in Rule 15.3(1). Generally, practitioners have found that temporary matters are resolved more quickly and at less expense than if a court hearing was required on those same matters. This is not uniform, however, and some practitioners expressed a concern that having to schedule mediation prior to scheduling a hearing on temporary matters resulted in delays that negatively impacted their client's case. My impression is that there is a large disparity in wait times for a temporary matters hearings across the state and that the difference viewpoints depend heavily on the practitioner's judicial district. Several attorneys commented that mediation on temporary and contempt proceedings was popular among judges, as it resulted in far less congestion on court service days, especially in the rural areas, where court service days may be held only once a week, or even less.

The reference to elder abuse and domestic abuse is a bit unclear in the proposed rule, but the assumption is that a companion proceeding under 235F or 236 would be pending in conjunction with a divorce under Chapter 598 or a child custody proceeding under Chapter 600B. Mediation is often a safer avenue for a survivor of abuse than confrontation in a courtroom or other setting. Further, many couples in abusive relationships have children together and mediation can be a strong starting point for those couples in developing healthy communication going forward. An automatic exemption also potentially penalizes abuse survivors, by requiring them to pay for litigation, when their finances are often quite limited. The decision to exempt should be made on a case by case basis.

2. Currently, in those districts that have mandatory mediation, scheduling requirements vary widely. The family law attorneys who commented on Rule 15.5 were all concerned with the suggested time frames to complete mediation. The current time frames are likely to create a major back log of scheduling issues for mediators, with large volumes of cancellations. Suggestions for frames varied, however, the majority were in favor of pushing back the date to designate the mediator, but requiring mediation within approximately 120 days from the date of service.

3. The mediator qualifications described in Rule 15.9(4) are also the subject of much discussion. Comments were received noting that many of the most popular mediators across the state have not necessarily had 40 hours of family law specific mediation training. Further, the requirement that an attorney must have an active Iowa law license precludes retired status attorneys from doing mediations when in fact several retired attorneys across the state are able to offer flexible schedules and many years of experience to meet mediation needs.

4. The waiver of mediation provisions in Rule 15.3(2) should be clarified, as the current wording seems to create a situation where mediation would not necessarily be waived if a stipulation was on file (Rule 15.3(2)(b)). The current majority practice is that the mediation requirement is automatically satisfied by the filing of a stipulation.

5. The proposed rule makes no mention of mediator rates, but does say that mediators may not charge for travel time and expenses. The restriction on charging for travel time is almost unanimously opposed by family law attorneys and the preference is that mediators be permitted to establish their own rates and that they may charge for travel time and expenses associated with their mediations. If parties do not wish to pay a particular mediator's travel cost, they could choose to travel to the mediator's office or they could select an alternate mediator.

In rural areas, this is a particular problem. For example, in the first judicial district, mediation is only mandatory in Black Hawk County and Dubuque County, resulting in rural mediators having to travel significant distances, at no cost, in order to participate in the existing mandatory mediation programs. It creates a disincentive for practitioners to become trained mediators and the problem will be compounded across the state if the

current proposed rule is implemented as the larger volume of cases to be mediated will be in urban areas. Further, mediators should be permitted to refuse appointments in situations where they may have a conflict, are not able to complete the mediation in an appropriate time frame, etc.

6. Additional comments regarding Rules 15.6 suggested that 15.6(1) may more appropriately say, "parties have a right to be represented by counsel at the time of mediation", to clarify that mediation is intended to resolve all issues being mediated and is binding upon the parties. Further, in 15.6(4), it is suggested that the mediator should file the appropriate certificate with the court memorializing the outcome of the mediation. Under the current EDMS rules, a court appointed mediator receives notice of mediation from the clerk of court and is able to file a certificate, without accessing other information included on the court's docket.

The ISBA family law attorneys are appreciative of the court's efforts to address family law mediation practices across the state. The increase in mediation has already resulted in not only an improved process for resolving family disputes in times of great stress, but has also provided an avenue to reduce the burden on over crowded court dockets. We look forward to implementation of a final rule and a continuing opportunity to strengthen this method of alternative dispute resolution.

Very truly yours,

MILLER, PEARSON, GLOE, BURNS,  
BEATTY & PARRISH, P.L.C.

Laura J. Parrish

Chair, Family & Juvenile Law Section  
The Iowa State Bar Association

LJP:dk

**FILED**

FEB 22 2019



**[EXTERNAL] Mandatory Family Law Mediation**  
Sarah Whiteley to: rules.comments

CLERK SUPREME COURT

02/22/2019 10:23 AM

1 attachment



Mandatory Family Law Mediation Comments.docx

Please find my comments attached. Thank you.

Sarah Whiteley

--

Sarah Whiteley, J.D.

Phone: 319-535-0253

Fax: 319-540-8501

[whiteleylaw-mediation.com](http://whiteleylaw-mediation.com)

CONFIDENTIALITY NOTICE: The information contained in this communication, along with any attachments, are attorney privileged and confidential information intended only for the use of the individual or entity to which it is addressed. If you, the reader of this message, are not the individual or entity to which this communication is addressed, you are hereby notified that any dissemination, distribution or copying of this communication, or any attachment is strictly prohibited. If you have received this message in error, please notify the original sender immediately by return email and delete this message, along with any attachments, from your computer, Thank you.



FILED

FEB 22 2019

CLERK SUPREME COURT

# Whiteley Law and Mediation Services

305 2<sup>nd</sup> Ave SE, Cedar Rapids, IA 52401

sarah@whiteleylaw-mediation.com

February 22, 2019

Email: [rules.comments@iowacourts.gov](mailto:rules.comments@iowacourts.gov)

Email Subject Line: Mandatory Family Law Mediation

RE: Public Comment to Proposed Rules for Family Law Mandatory Mediation

To: Supreme Court

From: Sarah Whiteley, Lawyer and Mediator  
Whiteley Law and Mediation Services

Please find enclosed my comments to the Proposed Rules for Family Law Mandatory Mediation. My comments follow immediately on the next page. If you have any questions, please contact me.

Sincerely,

Sarah Whiteley

## Chapter 15

### Rules of Mandatory Mediation in Certain Family Law Cases

**Rule 15.1 Definitions.** As used in this chapter:

**15.1(1)** “Mediation” means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

**15.1(2)** “Mediator” means an individual who conducts a mediation.

**15.1(3)** “Mediation Agreement” means a written voluntary agreement the parties have reached during the mediation process.

**15.1(4)** “Mediation Program” refers to the individual Mediation Programs set in each judicial district. (Addition only.)

**15.1(5)** “Registry” refers to the statewide Mediator registry maintained by the Office of Professional Regulation. (Addition only.)

**Rule 15.2 Scope.**

**15.2(1)** All parties must participate in mediation in all cases involving permanent custody, visitation, and other matters filed under Iowa Code chapters 598 and 600B. This rule applies to both initial proceedings and modification proceedings.

**15.2(2)** Each judicial district or court retains the authority to order mediation for other matters filed under Iowa Code chapters 598 and 600B such as temporary and contempt proceedings. (Page 1 Lines 16 and 17)

**15.2(3)** Mediation does not change a party’s obligation to follow statutory requirements in Iowa Code chapter 598.

**Rule 15.3 Waivers and exemptions.**

**15.3(1)** The following cases are exempt from mandatory mediation:

~~a. All temporary proceedings. Temporary proceedings should not be exempt. (Page 1 Line 23)~~

~~b. All contempt proceedings. Contempt proceedings should not be exempt. (Page 1 Line 24)~~

c. Child support or medical support obligations enforced by the Child Support Recovery Unit.

d. Elder abuse pursuant to Iowa Code chapter 235F.

e. Domestic abuse pursuant to Iowa Code chapter 236.

f. Cases in which a mediation party is served by publication.

g. Cases in which a party serves a Notice of Intent to File Written Application for Default Judgment, an Application for Default Judgment, or a similar pleading regarding default judgment.

h. Cases participating in the Informal Family Law Trial Pilot Project or other court-approved informal or abbreviated family law trial proceedings.

**15.3(2)** Upon application of a party, the court may grant a waiver from mandatory mediation when:

a. The party demonstrates a history of domestic abuse as specified in Iowa Code section 598.41(3);

b. The parties file a stipulated settlement addressing all issues within 120 days of service; or (Page 2 Line 9)

c. The party shows good cause for a waiver.

#### **Rule 15.4 Scheduling.**

**15.4(1)** Within 30 days from the date of service, (Page 2 Line 13) The parties must set a date for mediation to be completed within 120 (Page 2 Line 14) days from the date of service unless a case is exempt from mandatory mediation under rule 15.3 (1) or the court has granted a waiver from mandatory mediation under rule 15.3 (2).

**15.4(2)** The parties or their attorneys must obtain a date for mediation directly with the mediator or through the mediation program in the judicial district where the case is filed from the registry of qualified mediators. (Page 2 Line 19)

**15.4(3)** Following completion of mediation, the Mediator (Page 2 Line 20) must file a Certificate of Mediation with the court, on a form the supreme court prescribes, before a trial date may be scheduled.

#### **Rule 15.5 Selection of mediators.**

**15.5(1)** The parties must select a mediator from the registry of qualified mediators.

**15.5(2)** If the parties cannot agree on a mediator, the court will appoint a mediator from the registry of qualified mediators.

#### **Rule 15.6 Mediation process.**

**15.6(1)** Parties may be represented by their attorneys at the mediation.

**15.6(2)** A party may have a person other than the party's attorney attend the mediation, but the mediator may determine whether the person will be allowed to participate in the mediation.

**15.6(3)** Mediation sessions are confidential and are governed by the requirements of Iowa Code chapter 679C and Iowa Court Rule 11.6.

~~**15.6(4)** When the parties have completed mediation, the mediator will provide the parties with a supreme court prescribed Certificate of Mediation for filing with the court. Deleted because the Mediator will file the Certificate of Mediation. (Page 3 Lines 5-7)~~

**Rule 15.7 Payment of mediators.** Mediator fees will be evenly divided between the parties unless the parties agree otherwise, or as ordered by the Court, and may be taxed as Court costs. (See 598.7(e)). (Page 3 Lines 9 and 10)

**Rule 15.8 Enforcement.** The court may enforce the requirements of these rules through contempt proceedings, compliance hearings, imposition of sanctions, or other means the court deems appropriate.

**Rule 15.9 Mediator registry and qualifications.**

**15.9(1) Statewide mediator registry.**

a. The office of professional regulation will maintain a statewide registry of qualified family law mediators. The registry will be updated and published on a regular basis. The office of professional regulation will review applications from persons who wish to be listed on the registry of qualified family law mediators, which will include persons who meet the training requirements established in this rule or who have received a waiver under rule 15.9(6).

b. The statewide mediator registry will contain the mediators' names, addresses, telephone numbers, and any biographical information the mediator provides, including information about the mediator's education, professional experience, and mediation training and experience, and will be maintained on the office of professional regulation's website.

**15.9(2) Mediators' designations.** As part of the application process, all mediators must designate the judicial districts or counties for which they are willing to accept court appointments. Each designation will be deemed to be a representation that the mediator will accept appointments from the designated district or county and may (Page 3 Line 31) charge for travel time and expenses incurred in carrying out the mediator's duties associated with those appointments. ~~A refusal to accept an appointment in a mediator's designated judicial district or county may be grounds for denying future appointments of the mediator in the judicial district or county. (Page 3 Lines 32-35)~~

**15.9(3) Registry fees.** The office of professional regulation will establish a reasonable administrative fee for qualified individuals and organizations to be placed on the statewide registry. Any such fees will go to the office of professional regulation for administration of the statewide registry.

**15.9(4) Mediator qualifications.** Prior to being listed on the statewide registry, all mediators providing family law mediation services under this chapter must have a minimum of 40 hours of family law mediation training accredited by the Iowa Supreme Court Commission on Continuing Legal Education. Mediators who are attorneys must have an active Iowa law license or retired status. This does not require that a mediator have a special qualification by background or profession (see 697C.109(6)). (Page 4 Line 10)

**15.9(5) Removal from statewide registry.** The office of professional regulation may administratively remove a mediator from the statewide registry if the mediator's law license has been suspended, revoked, or placed into exempt or inactive status. (Page 4 Lines 11-14) A mediator may (Page 4 Line 14) be removed from the registry for reasons including, but not limited to, concerns about the mediator's competence, misrepresentations the mediator made during the application process, a finding of liability against the mediator under Iowa Code section 679C.115, or a determination by a court that the mediator has engaged in the unauthorized practice of law. Any removal from the registry may be reviewed by the State Court Administrator upon written request. This shall not abrogate mediator mediator immunity under Iowa Code Section 679C.115. (Page 4 Line 20)

**15.9(6) Waiver of training requirement.** Mediators who are listed on one or more rosters of family law mediators maintained by an Iowa district court administrator as of June 30, 2019, may be listed on the statewide registry maintained by the office of professional regulation by submitting an application and showing they have previously completed the training requirements set forth in rule 15.9(4).

### **Rule 15.10 Administration.**

**15.10(1)** The director of the office of professional regulation will serve as the principal executive officer for matters pertaining to the qualifications, classification, and discipline of family law mediators under this chapter. The director may, subject to the approval of the supreme court, employ such other employees as may be necessary to carry out the duties of this chapter.

**15.10(2)** At least 60 days prior to the start of each fiscal year or on a date otherwise set by the supreme court, the director of the office of professional regulation will submit to the supreme court for consideration and approval a

budget for the upcoming fiscal year covering the operations provided for in this chapter. The supreme court's approval of the budget authorizes payment as provided in the budget. A separate bank account designated as the mediator operating account must be maintained for payment of authorized expenditures as provided in the approved budget. Fees or other funds received or collected as directed in this chapter or in accordance with an interagency agreement will be deposited in the mediator operating account for payment of the expenditures authorized in the approved budget.

### **Rule 15.11 Immunity**

**15.12(1) *Claims.*** Claims against the director, assistant directors, and staff of the office of professional regulation are subject to the State Tort Claims Act set forth in Iowa Code chapter 669.

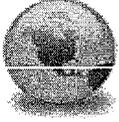
**15.12(2) *Immunity.*** The director, assistant director, and staff of the office of professional regulation are immune from all civil liability for damages for the conduct, communications, and omissions occurring in the performance of and within the scope of their official duties under these rules.

**15.12(3) *Qualified immunity.*** Records, statements of opinion, and other information regarding a mediator that are communicated by an entity, including any person, firm, or institution, without malice, to the director, assistant directors, and staff of the office of professional regulation, are privileged and civil suits predicated thereon may not be instituted.

FILED

FEB 22 2019

CLERK SUPREME COURT  
02/22/2019 11:32 AM



**[EXTERNAL] Mandatory Family Law Mediation**

Johnson, Larry to: rules.comments, Kurt [SPD] Swaim, Julie  
Miller

1 attachment



State Public Defender - Mandatory Family Law Mediation Comments.docx

Thank you for the opportunity to comment on this rule.

Larry Johnson, Jr.

State Public Defender

**Office of the State Public Defender**

Lucas State Office Building, Fourth Floor

321 E. 12th Street

Des Moines, Iowa 50319-0087

(515) 242-6158 (phone)

(515) 281-7289 (fax)

[LJohnson@spd.state.ia.us](mailto:LJohnson@spd.state.ia.us)



OFFICE OF THE

STATE PUBLIC DEFENDER

FILED

FEB 22 2019

CLERK SUPREME COURT

KIM REYNOLDS, GOVERNOR

ADAM GREGG, LT. GOVERNOR

LARRY JOHNSON, JR., STATE PUBLIC DEFENDER

**COMMENTS**

**PROPOSED AMENDMENT TO IOWA COURT RULES**

On behalf of the Office of the State Public Defender, thank you for the opportunity to comment on the proposed new chapter 15 of the Iowa Court Rules for Mandatory Mediation in Certain Family Law Cases. My comments apply to all of chapter 15.

In general, the new chapter 15 will require mediation to occur in family law cases filed under Iowa Code chapters 598 and 600B. My concern is that as the rule is currently written, the parties and courts involved in a chapter 232 juvenile case would expand the scope of the rule and require the mediation either in the juvenile case or in a district court case as a way to resolve the chapter 232 case. The court could then require the court appointed attorney in the juvenile case to participate in the mediation adding attorney fees and expenses (for the attorney and the mediator) to be paid by the State Public Defender from the indigent defense fund. There are several problems if this were to occur. First, mediation fees and expenses for a district court case are not payable from the indigent defense fund under Iowa Code section 815.11. Second, most of the issues in the mediation would not be relevant to the chapter 232 juvenile case.

The State Public Defender requests a provision be added to the rules to specifically exclude attorney fees and mediation expenses for all chapter 232,

LUCAS STATE OFFICE BUILDING, 321 EAST 12TH STREET, DES MOINES, IOWA 50319-0087

PHONE (515) 242-6158 FAX (515) 281-7289 HTTP://SPD.IOWA.GOV

598 or 600B cases where the State Public Defender would be responsible for court appointed attorney fees and expenses.

Again, thank you for the opportunity to comment on the proposed rules. If this Office can be of further assistance, please do not hesitate to contact me.

A handwritten signature in black ink, appearing to read "Larry Johnson". The signature is written in a cursive, somewhat stylized font.

Larry Johnson

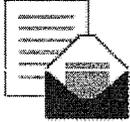
State Public Defender

[ljohnson@spd.state.ia.us](mailto:ljohnson@spd.state.ia.us)

FILED

FEB 22 2019

CLERK SUPREME COURT



**Fw: District 1 (Black Hawk County)- Public Comment to Proposed Rules for Family Law Mandatory Mediation**  
Jim Mahoney to: Rules Comments

02/22/2019 03:07 PM

----- Forwarded by Jim Mahoney/District1/JUDICIAL on 02/22/2019 03:07 PM -----

From: Jim Mahoney/District1/JUDICIAL  
To: rules.comments@iowacourtgs.gov  
Cc: tdhp@prodigy.net, tlanglas200@gmail.com  
Date: 02/22/2019 03:05 PM  
Subject: District 1 (Black Hawk County)- Public Comment to Proposed Rules for Family Law Mandatory Mediation

---

Supreme Court,

Please find the attached Word document containing comments from the Black Hawk County Mediators meeting to the Proposed Rules for Family Law Mandatory Mediation. We appreciate your consideration.



Mediation Minutes from JM with TDP expansions (1).docx

Regards,

Jim Mahoney  
Family Law Mediation  
Coordinator  
(319) 833-3390

Mediation Minutes

February 15, 2019

CLERK SUPREME COURT

Rule 15.9(4) Consensus – Retired attorneys in good standing should be allowed to mediate without being required to have an active law license.

Clarification for qualifications for mediators more than 40 hour a week course? Criminal Record? Etc....

Rule 15.3(1) a Consensus – Temporary Proceedings should not be exempt from mediation.  
Recommendation to add.....The following cases are exempt from automatic mandatory mediation.

Rule 15.4(3) Mediation must be scheduled before a TSC and mediation must be completed 30 days prior to trial date.

Rule 15.5 Default mediator should be assigned when case is filed.

Rule 15.6(4) Consensus – Mediator should file Certificate of Mediation of completion for temporary matters and full mediation.

On February 15, 2019 an open meeting was held in Waterloo at the Black Hawk County Courthouse. District 1 Mediators and members of the Black Hawk County Bar Association were invited to attend.

There was a consensus on the following issues:

1. Rule 15.9(4) should be amended to permit attorneys who retired from the practice of law while in good standing to be roster mediators even though they no longer have an active law license.

The discussion was that retired family law attorneys have knowledge and experience to draw from in conducting mediations and should not be excluded.

2. The interaction between Rule 15.2(2) and Rule 15.3 should be clarified. It was suggested that clarification would be to provide that the authority of the District Court to order mediation for other matters under Iowa Code Chapters 598 and 600B include those matters listed as exempt under Rule 15.3(1). It was suggested that could be accomplished by changing the language of 15.2(1) to read: *The following cases are exempt from **automatic** mandatory mediation:*

The discussion was that it was unclear whether judges would be able to order mediation in cases where it was appropriate based on the circumstances of the individual case or the circumstances of the individual case if the case fell under one of those situations listed as exempt. Specific examples were temporary matters, contempts where the parties would be

best served by working out make-up visitation schedules, or cases where a Notice of Intent to Take Default was served, but the Default was cured.

3. Rule 15.3(1) delete 15.3(1)a exempting temporary proceedings and add *cases where the parties file a stipulated settlement addressing all issues.*

The discussion was that generally temporary hearing mediations were useful (although they add to cost). There was consensus that it did not seem logical to require an additional step of obtaining a waiver of mediation if the case had been settled without mediation. It seems to add an unnecessary step.

4. Rule 15.4 and 15.5 concerning selection of mediators and scheduling be amended to
  - a. have a default roster mediator appointed when the case is filed;
  - b. require the parties/attorneys contact the default mediator or another chosen roster mediator within thirty days to set the date for the mediation;
  - c. the mediator would certify to the court that the mediation has been scheduled, naming the date the mediation has been scheduled;
  - d. upon certification mediation has been scheduled, a trial scheduling conference be set and a trial date be assigned no sooner than thirty days after the established mediation date;
  - e. the mediator, rather than the parties, have the obligation to file the Certification of Completion of Mediation with the court. The mediation must be completed 30 days prior to trial or trial will be rescheduled.

The discussion was that starting with a default mediator that may be replaced by any agreed-upon roster mediator (which is the 1<sup>st</sup> District Program) would be simpler to administer, easier for self-represented litigants to manage and involve less attorney time/cost than the proposed program. Also simpler for self-represented litigants and in high conflict cases. Allowing trial setting once the mediation is scheduled allows the parties to decide whether to use early mediation or late mediation. Having the mediator file the certifications would make it simpler for self-represented litigants.

There were concerns raised on the following issues:

1. The rules do not establish any criteria for non-attorney mediators other than completion of a 40 hour training. Due to the confidential nature of the process and the information shared with the mediators, there was a concern there is no provision concerning screening for relevant criminal convictions (such as identity theft). Due to the complexity of issues, concerns were raised about no minimum education requirement. There were also concerns raised about different advertising standards for non-attorney mediators and attorney mediators.
2. There is no provision for declining court-appointed mediation assignments due to conflicts of interest or a requirement for screening for conflicts of interest.
3. The 1<sup>st</sup> District Mediation program has a fee cap and a requirement to do some pro-bono or reduced fee cases. Those issues are not addressed in the proposed rules.

4. Because Elder Abuse cases under 235F and Domestic Abuse cases under 236 are not cases for mandatory mediation under 598 or 600B, it was unclear what was intended by listing those cases under the mandatory exemptions. Clarifying whether it is intended to exclude cases where there are companion cases that are pending, no contact orders are in place under those chapters, or a pre-existing finding of abuse has been entered would be useful.

FILED

FEB 22 2019



**[EXTERNAL] Mandatory Family Law Mediation**  
Annie Tucker to: rules.comments

CLERK SUPREME COURT  
02/22/2019 03:53 PM

1 attachment



MSEI Comments re Mandatory Family Law Mediation PDF.pdf

To: The Iowa Supreme Court

Attached please find comments submitted by the Board of Directors of Mediation Services of Eastern Iowa (MSEI), a 501(c)3 nonprofit which is the court-appointed administrator of the Sixth Judicial District Family Mediation Program.

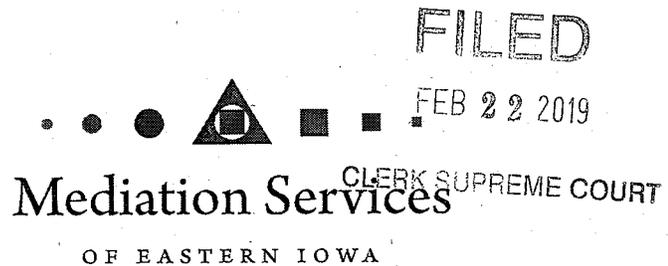
If you have any questions, please feel free to contact me. I will also be glad to provide contact information for our board members, if you want to contact them.

Sincerely,

Annie Tucker

Annie Tucker, Director  
Mediation Services of Eastern Iowa  
509 Kirkwood Ave.  
Iowa City, IA 52240  
[mediateiowa.org](http://mediateiowa.org)

(319) 248-1940  
admin@mediateiowa.org  
www.mediateiowa.org  
509 Kirkwood Ave.  
Iowa City, IA 52240



**February 20, 2019**

**To: Clerk of Iowa Supreme Court (sent via email to [rules.comments@iowacourts.gov](mailto:rules.comments@iowacourts.gov))**

**RE: Mandatory Family Law Mediation**

**FROM: MEDIATION SERVICES OF EASTERN IOWA**

Thank you for your work on the Chapter 15 proposed rules and for helping to promote the use of mediation throughout the state of Iowa.

Mediation Services of Eastern Iowa (MSEI) is a non-profit organization that serves as the court-appointed administrator of the Sixth Judicial District's Family Mediation Program. Our organization has been overseeing the mediation program for the district for more than 20 years. Throughout this time, we have consistently collected data from parties, attorneys and mediators in an effort to expand and improve the program by providing parties opportunities and access to resolve their cases through mediation and other forms of alternative dispute resolution.

Because of our substantial history with mediation in family law cases, we believe our insight could be helpful to the Supreme Court as decisions are made to expand mandatory mediation throughout the state.

We hope you consider our comments below, which we have narrowed into three categories.

Thank you for your time.

(319) 248-1940  
admin@mediateiowa.org  
www.mediateiowa.org  
509 Kirkwood Ave.  
Iowa City, IA 52240



### MSEI COMMENTS

1. **Domestic Violence.** An integral part of our mediation program requires mediators to be trained in dealing with domestic violence in mediations. Our program also requires mediators, or their trained employees, to screen parties to access whether domestic violence is present in each case. Because of the high prevalence of domestic violence in domestic relations cases—and the increase in danger to victims during the course of a separation from their partners, we believe this issue should be addressed in the rules. Therefore, we propose the following.
  - A. We propose an addition to **Rule 15.9 Mediator registry and qualifications** that would require mediators on the registry to be trained in domestic violence by completing a 15-hour training relating to domestic violence in mediations.
  - B. We also propose that the rules be expanded to include a requirement for mediators on the registry to screen for domestic abuse. Having knowledge about whether a history of domestic abuse exists between the parties is necessary to keep the mediator and the parties safe and to ensure the mediation is handled appropriately. Roster mediators can also have a staff member screen for domestic abuse as long as that staff member has taken the required training as described above in paragraph 1(A). For more details on the screening requirements the Sixth Judicial District currently uses, please contact Annie Tucker at admin@mediateiowa.org.
2. **Access to Justice.** Undoubtedly, the underlying goal of a statewide mediation requirement is to allow all parties throughout the state to benefit from the advantages provided by a mediation program. With any mandatory requirement that requires payment, there is a question of how to handle indigent parties. As written, the rules do not address any solution to those individuals who cannot afford mediation. Presumably, without a statewide standard, each district would need to determine a plan to address pro bono mediations, and most would require mediators from

(319) 248-1940  
admin@mediateiowa.org  
www.mediateiowa.org  
509 Kirkwood Ave.  
Iowa City, IA 52240



the registry to be appointed on a pro bono basis. This would require a large enough pool of mediators on the registry for each county to handle the pro bono mediations without a significant hardship. In the counties that currently have mediation programs, this will not be a problem. However, in the counties that do not currently have mediation programs—and especially those that are not geographically near a county that has a mediation program, it may be more difficult for the Court to have a significant pool of mediators to use for appointments. Further, **Rule 15.9(2), Line 29-35**, which prevents mediators from charging for travel time and requires mediators to accept all appointments, is likely to reduce the likelihood qualified mediators will be willing to serve parties out of county.

Although this is a difficult issue to solve, one option would be to allow mediators to register in certain counties to provide mediation solely by phone or video conference. Although the best practice is to provide in-person mediations, the option to provide phone or video conferencing is better than an inability to utilize mediation at all.

- 3. Parties' Access to Information to Choose a Mediator.** MSEI currently maintains the roster of mediators for the Sixth Judicial District. This roster operates in the same way the statewide registry will operate. On our website, each mediator has a profile listing a substantial amount of information about the mediator including the mediator's contact information, background, education, experience, the types of cases the mediator is willing to take, the counties served, parking accessibility, philosophy about mediation, etc. Each mediator has access to update his or her photograph or information as needed. We have found this to be an invaluable tool for parties as they search for and choose a mediator. Although represented parties have the opportunity to be guided by their attorney when choosing a mediator, pro-se parties do not have this benefit. Choosing the right mediator makes a substantial difference in these cases. We strongly believe it is in the best interests of the parties to have access to this type of substantial and current information. We propose the Office of Professional Regulation adopt a similar platform to allow parties easy access to information necessary to choose the right mediator for their case.

(319) 248-1940  
admin@mediateiowa.org  
www.mediateiowa.org  
509 Kirkwood Ave.  
Iowa City, IA 52240



Our website also provides a large number of resources for parties relating to the mediation process including but not limited to a video about the mediation process, details about when mediation may not be appropriate, how to prepare for mediation, and statistics on mediation. We believe this is helpful to parties who would like to learn more about mediation and who are unsure or uncomfortable with the mediation process. The Court Order requiring mediation directs parties to our website to choose a mediator and access this additional information. We propose providing parties across the state with information relating to the mediation process in a similar fashion.

Please feel free to review our website for further information:  
[www.mediateiowa.org](http://www.mediateiowa.org).

Thank you for your time in reviewing our comments. We would be happy to provide any additional information if you feel it would be helpful. For more information, please contact our Director, Annie Tucker at [admin@mediateiowa.org](mailto:admin@mediateiowa.org).

Board of Directors  
Mediation Services of Eastern Iowa

FILED

FEB 22 2019



**[EXTERNAL] Mandatory Family Law Mediation**  
Annie Tucker to: rules.comments

CLERK SUPREME COURT  
02/22/2019 05:01 PM

7 attachments



Cover Letter re Ch 15 proposal and comments AHT 2-22-19.docx



Mandatory Family Law Mediation - Ch. 15 AHT 2-22-19.docx



Comments on Mandatory Family Law Mediation in Certain Family Law Cases AHT 2-22-19.docx



6JD Family Mediation Program document as of May 2018.doc6JD-FMP MEDIATION WAIVER APPLICATION[1].doc



6JD Family Law Requirements Order with children (1).pdf



Reduced Fee Mediator Application REVISED Sept 28 2016 (3).doc

To: The Supreme Court

Thank you for the opportunity to provide comments on the Mandatory Family Law Mediation proposal.

Attached please find a cover letter, a marked copy of the proposed Chapter 15 with suggested changes, a document of my comments, and four documents mentioned in the Comments document, for your reference. I regret I am not able to provide a copy of the 6JD Family Law Case Requirements order in Word at this time.

If you have any questions, I would be glad to talk with you.

Many thanks,  
Annie Tucker

FILED

FEB 22 2019

CLERK SUPREME COURT

## Annie Tucker, M.A. Conflict Resolution

February 22, 2019

RE: Public Comment to Proposed Rules for Mandatory Family Law Mediation

To: Iowa Supreme Court

Thank you for the opportunity to comment on the Mandatory Family Law Mediation proposed Chapter 15. And many thanks to all who worked on this document and who have worked on getting Iowa to this point.

The Iowa Supreme Court has a commitment to and a sense of urgency about access to justice in Iowa. Access to Justice is an appropriate frame for evaluating the proposal re: Mandatory Family Law Mediation.

Parties in family law cases who are in abusive relationships and are ordered by the Court to mediation are *litigants with special requirements*, one of the three 'most pressing case processing concerns impacting access to courts by family law litigants' identified in *The Supreme Court Family Law Case Processing Reform Task Force Access to Courts Workgroup Report Preface* (<https://www.iowacourts.gov/collections/115/files/181/embedDocument/>)

This proposed Chapter 15 does not address parties in abusive relationships or set policies and practices to address their needs. Research says that parties in abusive relationships can comprise from 25-40% of separating couples.

Please find my proposals re: the Proposed Rules for Family Law Mediation which have been done through "addition/strike-through" editing, for your convenience. The additions related to domestic abuse are highlighted in yellow, for your additional convenience. My comments and references follow the copy of Chapter 15.

All the suggestions are policies currently in effect in the Sixth Judicial District and other judicial districts. They are not a deterrent: 80% of our roster mediators are attorneys.

If you have any questions, please contact me at [annietuckermediator@gmail.com](mailto:annietuckermediator@gmail.com). I am also the director of Mediation Services of Eastern Iowa, the 501(c)3 that is the court-appointed administrator of the Sixth Judicial District Family Mediation Program and can be reached at [admin@mediateiowa.org](mailto:admin@mediateiowa.org).

The Board of Mediation Services of Eastern Iowa (MSEI) is also submitting its own comments.

Sincerely,

Annie Tucker

Public comment period:  
November 26, 2018, through February 25, 2019

Proposed rules

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

**Chapter 15**

**Rules of Mandatory Mediation in Certain Family Law Cases**

**Rule 15.1 Definitions.** As used in this chapter:

**15.1(1)** "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

**15.1(2)** "Mediator" means an individual who conducts a mediation.

**15.1(3)** "Mediation Agreement" means a written voluntary agreement the parties have reached during the mediation process.

**15.1(3)a** No Agreements are signed in mediation unless parties are both represented by attorneys and the attorneys are present during the mediation. Otherwise, proposed agreements are submitted to the parties' attorneys, whether directly or through the client for review. Parties are not legally bound by any agreements made in mediation until the agreements are reviewed by their attorneys, if they have them, have been put in a written document signed by both parties outside of mediation, and is thereafter approved by the Court. This prevents finalization of an agreement made under intimidation that is not perceived by the Mediator.

**15.1(3)b** In mediation, parties can discuss and make an agreement on anything except whether domestic abuse has occurred. This prevents such a decision being made under unperceived duress.

**15.1(4)** "Mediation Program" refers to the individual Mediation Programs set in each judicial district.

**15.1(5)** "Registry" refers to the statewide Mediator registry maintained by the Office of Professional Regulation.

**15.1(6)** Domestic abuse can be pursuant to Iowa Code chapter 236 or can be determined by a mediator or an attorney (or their trained employee) by screening both parties separately for safety and capacity, to assess whether mediation is appropriate in a specific case. Or a party can inform the court of domestic abuse by describing behaviors and events. Court or police

Public comment period:  
November 26, 2018, through February 25, 2019

Proposed rules

1 documentation is not required to determine whether mediation is appropriate  
2 in a given case.

3 15.1(7) Screening for domestic abuse refers to a method for assessing  
4 appropriateness of mediation by determining each party's capacity to use the  
5 mediation process and each party's actual or perceived sense of safety re:  
6 meeting with or discussing related issues with the other party in mediation.  
7 Mediators, or their trained employee, shall screen for domestic abuse prior to  
8 scheduling mediation and the mediator should continue to screen throughout  
9 the process to determine whether or not there is current and/or on-going fear  
10 of abuse or harm. Every mediator and family law attorney, or their trained  
11 employee, is required to screen for domestic abuse in every case ordered to  
12 mediation.

13 15.1(7)a Waivers may be necessary in some cases, including cases involving  
14 domestic abuse. Mediation is based on the principle of self-determination by  
15 the parties. Some victims of domestic abuse may want participate in mediation.  
16 There is no general rule prohibiting mediation in cases with a current valid  
17 Domestic Abuse Protective or No Contact Order, and they can be modified to  
18 allow for mediation. Victims of domestic abuse should be able to make an  
19 informed decision as to whether they want to participate in mediation.  
20 Mediator screening includes providing information about the process and  
21 possible adaptations so a vulnerable party can make an informed decision. The  
22 Court retains the ability to waive mediation on a case-by-case basis upon  
23 application by a party or parties.

24 15.1(7)b The mediator may inform the court that mediation is 'inappropriate  
25 based on the program guidelines' if s/he determines mediation is inappropriate  
26 and the vulnerable party does not want to mediate due to safety or abuse  
27 concerns, is reluctant to request a waiver due to safety concerns, or if the court  
28 has already denied a waiver and if the party is unrepresented.

29 15.1(8) Training re: domestic abuse, screening, and determining  
30 appropriateness for mediation refers to a training that is required for all  
31 mediators on the "Registry" and family law attorneys who have cases ordered to  
32 mediation, and any employees of either who will be doing screening in their  
33 cases.

34 15.1(9) Pro Bono, or Reduced Fee, Mediators are assigned on a strictly  
35 rotating basis from the Registry to individuals who apply independently and  
36 provide proof of indigence that is accepted by the court. The other party pays

Public comment period:  
November 26, 2018, through February 25, 2019

Proposed rules

1 ~~their own share of the mediator's usual fee. The court may accept the following~~  
2 ~~as proof: documentation of being a recipient of food stamps, WIC, FIP, etc.~~

3 ~~**15.1(10)** Party education refers to explanations of the mediation process,~~  
4 ~~information on roster mediators, process and reasons for applying for a waiver,~~  
5 ~~pro bono application, etc. The court will use court orders, the court website,~~  
6 ~~any printed information from the Mediation Programs to educate the parties.~~  
7 ~~Parties are also ordered to complete a ½ hour Mediation Education Class,~~  
8 ~~offered in person with the Children in the Middle Classes and online at~~  
9 ~~mediateiowa.org.~~

10 **Rule 15.2 Scope.**

11 **15.2(1)** All parties must participate in mediation in all cases involving  
12 permanent custody, visitation, and other matters filed under Iowa Code  
13 chapters 598 and 600B. This rule applies to both initial proceedings and  
14 modification proceedings.

15 **15.2(2)** Each judicial district or court retains the authority to order  
16 mediation for other matters filed under Iowa Code chapters 598 and 600B such  
17 as temporary proceedings and contempt proceedings.

18 **15.2(3)** Mediation does not change a party's obligation to follow statutory  
19 requirements in Iowa Code chapter 598.

20 **Rule 15.3 Waivers and exemptions.**

21 **15.3(1)** The following cases are exempt from mandatory mediation:

22 *a.* ~~DELETE: All temporary proceedings~~All temporary proceedings

23 *b.* ~~DELETE: All contempt proceedings~~All contempt proceedings

24 *c.* Child support or medical support obligations enforced by the Child  
25 Support Recovery Unit.

26 *d.* Elder abuse pursuant to Iowa Code chapter 235F.

27 *e.* Domestic abuse pursuant to Iowa Code chapter 236.

28 *f.* Cases in which a mediation party is served by publication.

29 *g.* Cases in which a party serves a Notice of Intent to File Written  
30 Application for Default Judgment, an Application for Default Judgment, or a  
31 similar pleading regarding default judgment.

32 *h.* Cases participating in the Informal Family Law Trial Pilot Project or other  
33 court-approved informal or abbreviated family law trial proceedings.  
34  
35  
36

Public comment period:  
November 26, 2018, through February 25, 2019

Proposed rules

1 i. Physical, sexual, mental and/or emotional abuse as determined by a  
2 required screening for safety and capacity of both parties by the mediator or  
3 any attorney in the case, or their trained employee.

4 h.i. Physical, sexual, mental and/or emotional abuse as reported by the  
5 victim. A court or police record is not required to document abuse for the  
6 purpose of determining whether an exemption from mandatory mediation is  
7 appropriate in a case.

Formatted: Font: (Default) Bookman Old Style, 12 pt,  
Underline

8  
9 **15.3(2)** Upon application of a party, the court may grant a waiver from  
10 mandatory mediation when:

11 a. The party demonstrates a history of domestic abuse as specified in Iowa  
12 Code section 598.41(3);

13 b. The parties file a stipulated stipulation of settlement addressing all  
14 issues within ~~90~~ 120 days of service; or

15 c. The party shows good cause for a waiver.

16 **15.3(3)** There is no general rule prohibiting mediation in cases with a  
17 current valid Domestic Abuse Protective or No Contact Order. Mediation is  
18 based on the principle of self-determination by the parties. Some victims of  
19 domestic abuse may want to participate in mediation. There is no general  
20 rule prohibiting mediation in cases with a current valid Domestic Abuse  
21 Protective or No Contact Order, and they can be modified to allow for  
22 mediation if the vulnerable party requests it. Victims of domestic abuse  
23 should be able to make an informed decision as to whether they want to  
24 participate in mediation. Mediator screening includes providing information  
25 about the mediation process and possible adaptations so a vulnerable party  
26 can make an informed decision. The Court retains the ability to waive  
27 mediation on a case-by-case basis upon application by a party or parties.

28 **Rule 15.4 Scheduling.**

29 **15.4(1)** Within 30 days from the date of service, the The parties must  
30 complete set a date for mediation to be completed within 120 180 days from  
31 the date of service unless a case is exempt from mandatory mediation under  
32 rule 15.3 (1) or the court has granted a waiver from mandatory mediation  
33 under rule 15.3 (2).

34 **15.4(2)** The parties or their attorneys must obtain a date for mediation  
35 directly with the mediator or through the mediation program in the judicial  
36 district where the case is filed from the registry of qualified mediators.

Public comment period:  
November 26, 2018, through February 25, 2019

Proposed rules

1 15.4(3) Following completion of mediation, the Mediator parties must file a  
2 Certificate of Mediation with the court, on a form the supreme court prescribes,  
3 before a trial date may be scheduled; copy to be provided to the parties.

4 **Rule 15.5 Selection of mediators.**

5 **15.5(1)** The parties must select a mediator from the registry of qualified  
6 mediators.

7 15.5(2) The Court will appoint a default mediator from the registry of  
8 qualified Mediators in the initial court order. If the parties cannot agree on a  
9 mediator, then they will use the default mediator. the court will appoint a  
10 mediator from the registry of qualified mediators

11 **Rule 15.6 Mediation process.**

12 15.6(1)a Both parties will be screened for domestic abuse by the Mediator  
13 and their attorneys (if any) or their trained employees to determine before any  
14 mediation session whether the parties have the capacity of using the mediation  
15 process and/or whether it is safe to bring the parties together.

16 **15.6(1)** Parties may be represented by their attorneys at the mediation.

17 **15.6(2)** A party may have a person other than the party's attorney attend  
18 the mediation, but the mediator may determine whether the person will be  
19 allowed to participate in the mediation.

20  
21  
22 **15.6(3)** Mediation sessions are confidential and are governed by the  
23 requirements of Iowa Code chapter 679C and Iowa Court Rule 11.6.

24  
25 15.6(4) Parties cannot sign a mediated agreement in mediation session  
26 unless both parties have their attorneys present. (See 15.1(3)a)

27 15.6(4) When the parties have completed mediation, the  
28 mediator will provide the parties with a supreme court prescribed  
29 Certificate of Mediation for filing with the court.

30  
31 **Rule 15.7 Payment of mediators.** Mediator fees will be evenly divided  
32 between the parties unless the parties agree otherwise, or as ordered by the  
33 Court, and may be taxed as Court costs. (See 598.7(e)).

34 15.7(1) Pro Bono, or Reduced Fee, Mediators. Individuals may apply for a  
35 Reduced Fee Mediator by providing proof of indigency. If accepted by the court,

Formatted: Indent: First line: 0.25"

Public comment period:  
November 26, 2018, through February 25, 2019

Proposed rules

1 that party will pay a very reduced hourly fee and the other party will pay their  
2 usual share of the Mediator's fee. All Registry Mediators are required to provide  
3 pro bono mediations. Reduced Fee Mediators will be assigned by the court on a  
4 strictly rotating basis from the Registry. This provision ensures that all parties  
5 have access to mediation.

6 **Rule 15.8 Enforcement.** The court may enforce the requirements of these  
7 rules through contempt proceedings, compliance hearings, imposition of  
8 sanctions, or other means the court deems appropriate.

9 **Rule 15.9 Mediator registry and qualifications.**

10 **15.9(1) Statewide mediator registry.**

11 a. The office of professional regulation will maintain a statewide registry of  
12 qualified family law mediators. The registry will be updated and published on a  
13 regular basis. The office of professional regulation will review applications from  
14 persons who wish to be listed on the registry of qualified family law mediators,  
15 which will include persons who meet the training requirements established in  
16 this rule or who have received a waiver under rule 15.9(6).

17 b. The statewide mediator registry will contain the mediators' names,  
18 addresses, telephone numbers, and any biographical information the mediator  
19 provides, including information about the mediator's education, professional  
20 experience, and mediation training and experience, and will be maintained on  
21 the office of professional regulation's website.

22 **15.9(2) Mediators' designations.** As part of the application process, all  
23 mediators must designate the judicial districts or counties for which they are  
24 willing to accept court appointments. Each designation will be deemed to be a  
25 representation that the mediator will accept appointments from the designated  
26 district or county and ~~will not may~~ charge for travel time and expenses  
27 incurred in carrying out the mediator's duties associated with those  
28 appointments. ~~A refusal to accept an appointment in a mediator's designated~~  
29 ~~judicial district or county may be grounds for denying future appointments of~~  
30 ~~the mediator in the judicial district or county.~~

31 **15.9(3) Registry fees.** The office of professional regulation will establish a  
32 reasonable administrative fee for qualified individuals and organizations to be  
33 placed on the statewide registry. Any such fees will go to the office of  
34 professional regulation for administration of the statewide registry.

Public comment period:  
November 26, 2018, through February 25, 2019

Proposed rules

Formatted: Indent: First line: 0"

1 **15.9(4)** *Mediator qualifications.* Prior to being listed on the statewide  
2 registry, all mediators providing family law mediation services under this  
3 chapter must have a minimum of 40 hours of family law mediation training  
4 accredited by the Iowa Supreme Court Commission on Continuing Legal  
5 Education. Mediators must also take a 15 hour certified training on recognizing  
6 domestic abuse, screening for domestic abuse, adapting the mediation process,  
7 etc. If a paid employee will be doing the screening for the Mediator, that person  
8 is also required to take the same course. The current certified course is  
9 authorized for 15 CLE credits, including 1 hour Ethics. Mediators who are  
10 attorneys must have an active Iowa law license. This does not require that a  
11 mediator have a special qualification by background or profession (see  
12 679C.109(6)).

13 **15.9(5)** *Removal from statewide registry.* ~~The office of professional~~  
14 ~~regulation may administratively remove a mediator from the statewide registry~~  
15 ~~if the mediator's law license has been suspended, revoked, or placed into~~  
16 ~~exempt or inactive status. A mediator may also be removed from the registry for~~  
17 reasons including, but not limited to, concerns about the mediator's  
18 competence, misrepresentations the mediator made during the application  
19 process, a finding of liability against the mediator under Iowa Code section  
20 679C.115, or a determination by a court that the mediator has engaged in the  
21 unauthorized practice of law. Any removal from the registry may be reviewed by  
22 the State Court Administrator upon written request. This shall not abrogate  
23 mediator immunity under Iowa Code Section 679C.115.

24 **15.9(6)** *Waiver of training requirement.* Mediators who are listed on one or  
25 more rosters of family law mediators maintained by an Iowa district court  
26 administrator as of June 30, 2019, may be listed on the statewide registry  
27 maintained by the office of professional regulation by submitting an application  
28 and showing they have previously completed the training requirements set  
29 forth in rule 15.9(4).

30 **Rule 15.10 Administration.**

31 **15.10(1)** The director of the office of professional regulation will serve as the  
32 principal executive officer for matters pertaining to the qualifications,  
33 classification, and discipline of family law mediators under this chapter. The  
34 director may, subject to the approval of the supreme court, employ such other  
35 employees as may be necessary to carry out the duties of this chapter.

Public comment period:

November 26, 2018, through February 25, 2019

Proposed rules

1       **15.10(2)** At least 60 days prior to the start of each fiscal year or on a date  
2 otherwise set by the supreme court, the director of the office of professional  
3 regulation will submit to the supreme court for consideration and approval a

4  
5 budget for the upcoming fiscal year covering the operations provided for in this  
6 chapter. The supreme court's approval of the budget authorizes payment as  
7 provided in the budget. A separate bank account designated as the mediator  
8 operating account must be maintained for payment of authorized expenditures  
9 as provided in the approved budget. Fees or other funds received or collected as  
10 directed in this chapter or in accordance with an interagency agreement will be  
11 deposited in the mediator operating account for payment of the expenditures  
12 authorized in the approved budget.

13       **Rule 15.11 Immunity**

14       **15.12(1) Claims.** Claims against the director, assistant directors, and staff  
15 of the office of professional regulation are subject to the State Tort Claims Act  
16 set forth in Iowa Code chapter 669.

17  
18       **15.12(2) Immunity.** The director, assistant director, and staff of the office of  
19 professional regulation are immune from all civil liability for damages for the  
20 conduct, communications, and omissions occurring in the performance of and  
21 within the scope of their official duties under these rules.

22  
23       **15.12(3) Qualified immunity.** Records, statements of opinion, and other  
24 information regarding a mediator that are communicated by an entity,  
25 including any person, firm, or institution, without malice, to the director,  
26 assistant directors, and staff of the office of professional regulation, are  
27 privileged and civil suits predicated thereon may not be instituted.

28

29

30

**Comments on Mandatory Family Law Mediation in Certain Family Law Cases**  
**Proposed Chapter 15**

**February 21, 2019**

My thanks to the Iowa Supreme Court for requesting comments on their recent proposal on Mandatory Family Law Mediation in Certain Family Law Cases. Thanks also to the committee who worked on it, to the Judicial Council, and to the members of previous Supreme Court Task Forces and Work Groups and committees who have worked hard on this and related issues, and brought us to this point.

I welcome the opportunity to comment. I bring the following experience and expertise to the task:

I am a 6JD Family Mediation Program roster mediator of 22 years. I have been the director of the 6JD Family Mediation Program since 1997. I have a Masters degree in Conflict Resolution. I am the director of Mediation Services of Eastern Iowa (MSEI), the 501(c)3 nonprofit that is the court-appointed administrator of the court—connected mediation programs in the 6JD. I co-developed and co-lead multiple ACR-certified (Association for Conflict Resolution) 40-hour divorce and custody mediation trainings with Steve Sovern. I co-developed the curriculum and currently co-lead the *Introduction to Mediation and Domestic Violence*, a 15 hour CLE-certified training required of all roster mediators in the 6JD Family Mediation Program. Kirsten Faisal, State Trainer for ICCADV, is the co-developer and co-leader of this 2-day training, which includes 1 hour of Ethics. I was a member of the Iowa Supreme Court Family Law Case Processing Reform Task Force ADR Work Group. I was a member of the Iowa Supreme Court Mediation and Domestic Violence Work Group in 1999, chaired by Jennifer Juhler, current Director of Education and Training for the Iowa Judicial Branch.

The Iowa Supreme Court has a commitment to and a sense of urgency about access to justice in Iowa. Access to Justice is an appropriate frame for evaluating the proposed Chapter 15.

**Access to Justice, Mandatory Mediation and Parties in Abusive Relationships**

Parties in family law cases who are in abusive relationships and are ordered by the Court to mediation are *litigants with special requirements*, one of the three 'most pressing case processing concerns impacting access to courts by family law litigants' identified in The Supreme Court Family Law Case Processing Reform Task Force Access to Courts Workgroup Report Preface

(<https://www.iowacourts.gov/collections/115/files/181/embedDocument/>)

As indicated in the report, they need supports to effectively participate in the family law litigation process. For a victim of domestic abuse, participating effectively may be not mediating at all if a party is not safe being with the other party or if one or both do not have the capacity to use the process. On the other hand, if a vulnerable party is given information on how mediation works and what adaptations can be made to the process,

s/he may want to mediate in spite of being abused. A mediator would need to have a screening conversation to help that party know her/his options and make an informed decision, especially if s/he is self-represented.

This proposed Chapter 15 does not address parties in abusive relationships or set policies and practices to address their needs.

### **How prevalent is domestic abuse?**

Different sources indicate that 25 to 33% or even as many as 40% of parties divorcing or separating have serious power imbalance or abuse issues. The time of separation for a couple with domestic abuse is the time of greatest risk of serious violence or homicide. This is the time when mediation is ordered in divorce and custody cases.

The Iowa Attorney General's Office puts out a list of Iowans killed by intimate partners every year. The 2015 report lists 175 women killed since 1995. Of those, 67 were known to have left or been in the process of leaving the relationship, approximately 34%.

There are reports from the Iowa Death Review Team that show leaving a relationship as one of the things the cases are most likely to have in common, according to Kirsten Faisal, State Trainer for the Iowa Coalition Against Domestic Violence.

The stakes are clearly high. If the court is going to order parties in family law cases to mediation, it has a responsibility to implement policies designed to prevent bringing parties together if there is a safety risk or if one or both of the parties do not have the capacity to mediate.

### **Addressing Access**

The Supreme Court Family Law Case Processing Reform Task Force Access to Courts Workgroup Report Preface **identifies the following as the most effective measures to address concerns re: access:**

- 1. Education of the judicial branch, attorneys, and the general public with regard to family law processes, available supports, and appropriate interactions.**
- 2. Simplification of processes**, including imposition of uniform practices where appropriate, respecting differing needs of urban and rural litigants.
- 3. Simplification and expansion of existing supports for litigants.**
- 4. Systematic support, monitoring, and review of cases involving *litigants with special requirements*, including, but not limited to, self-represented litigants.**

**How do we identify parties in abusive relationships in divorce or custody cases?**

The court does not have staff to do it. Even cross-referencing for parties who also have no contact orders would not be sufficient: Many of these parties are not 'in the system.' For example, it may increase their risk to call the police or apply for a no contact order.

**How do we know if it is safe to bring the parties together in mediation at the time of their separation?**

**How do we educate the parties about their options, including applying for a waiver?**

**How do we prevent a vulnerable party from being intimidated in mediation and making a permanent decision based on veiled threats or references to past violence unrecognized by a mediator?**

**Fortunately, we do not have to figure this out.** That has already been done by the Iowa Supreme Court Mediation and Domestic Violence Work Group. Their report, written by Jennifer Juhler, current Director of Education and Training at State of Iowa Judicial Branch, is a succinct resource that contains vital information regarding domestic abuse and identifies how to determine whether mediation is appropriate. It also contains 35 recommendations regarding cases with parties in abusive relationships and court-ordered mediation. The report can be found at:

[https://mediateiowa.org/wpcontent/uploads/Iowa Supreme Court Report Mediation and Domestic Violence.pdf](https://mediateiowa.org/wpcontent/uploads/Iowa_Supreme_Court_Report_Mediation_and_Domestic_Violence.pdf)

**The proposed additions are highlighted in yellow in the attached Track Changes copy of the proposed Chapter 15. All of these additions were recommended by the Mediation and Domestic Violence Work Group Report in 1999 and in fact are all long-standing policies and procedures in the 6JD Family Mediation Program. They have already been successfully implemented. (See the 6JD Family Mediation Program Document. Below are also citings from other Iowa Family Mediation Programs.)**

The 6JD Family Mediation Program, Iowa's pilot family mediation program, was implemented in 1996, over 22 years ago, with a grant from the Court Technology Fund. The program was developed by, and continues to be overseen by, the Mediation Advisory Committee (MAC). It was originally chaired by Judge William L. Thomas, and includes District Court Administrator Carroll Edmondson, numerous judges, the Linn County Clerk of Court, family law attorneys and family law mediators. This committee monitors the program and proposes new policies to the district court judges. The first director of the program, attorney Crevon Tarrance, had previously been the director of the state mediation program in Vermont. In 1995-96, she schooled the MAC in what is necessary regarding policies that address needs of domestic abuse survivors ordered by the court to mediate their family law cases.

The requirements for screening for domestic abuse and CLE requirements are not deterrents to attorneys: 80% of the mediators on the 6JD family law roster of mediators are attorneys.

We have had great success with requiring roster mediators, *or their trained employee*, to screen for domestic abuse. All roster mediators, and any employee who will be screening, are required to take the *Introduction to Mediation and Domestic Abuse* course, which is a 15 hour approved CLE and includes 1 hour of Ethics. Allowing the option of having a trained employee screen for domestic abuse has made screening financially feasible for many high-profile attorney mediators who could not justify spending non-billable hours on screening. A little known secret is that, in the many cases without domestic abuse, the threshold screening questions can be done in 5 minutes when there are no safety or fear concerns. And it can take about 5 minutes if there are very serious safety or fear concerns. For the other cases, the screening conversations can take longer.

**Policies which promote access by providing 'Systematic support, monitoring, and review of cases involving litigants with special requirements' follow.** I was not able to include the lines from the original draft, since many of my suggestions are additions. I have indicated the specific rule number.)

- 15.1(7) and 15.6(1)a: Mediators (or their trained employees) are required to screen parties separately for domestic abuse (safety and capacity) before they are brought together in mediation. (See Recommendation 1 from the 1999 Work Group Report, which includes: Family law attorneys, the court and mediators should all screen for violence and sexual assault. See also the 6JD FMP Program Document. In addition, 8JD District Court Administrator Heidi Baker states: "We discuss with mediators during orientation the importance of the domestic violence screening." Also, the 8JD brochure on the Judicial Branch website states: MEDIATING YOUR FAMILY LAW MATTER Is It Appropriate? "Attorneys and mediators will ask about cases where there has been physical or emotional abuse.")
- 15.1(8) and 15.9(4). Mediators are required to take a training where they learn to recognize and deal with the dynamics of domestic abuse, learn to screen for domestic abuse and learn how to adapt the mediation process when there is abuse or power imbalance. If they will be having an employee do their screening, that employee is also required to take the same training. (6JD Family Mediation Program Document. 6JDFMP PD)
- 15.1(6) and 15.3(1) i and j. Requesting a waiver does not require court or police documentation. Calling the police or getting a no contact order can often increase a vulnerable party's risk. A party's representation of behaviors or situation is sufficient for the purpose of determining whether mediation is appropriate for that party. (6JD Program Document, page 6 and 6JD Application for Waiver of Mediation.)

- 15.1(3)a Parties do not sign mediated agreements unless both have attorneys present in the mediation. This is to prevent finalizing an agreement reached under intimidation that is unrecognized by a mediator. (6JD Program Document. The 8JD brochure on the Iowa Judicial Branch website indicates mediated agreements are not signed in mediation.)

**Policies which simplify court processes and provide party education:**

- 15.5(2) A default mediator is assigned from the registry on a rotating basis in each initial court order. Parties do not have to coordinate or make an extra effort to get a default mediator when they cannot agree on a mediator. Court staff do not have to take time to deal with this case again. Assigning a default mediator from the registry on a rotating basis and inserting it on the initial order is quick. (See the 6JD Case Requirements Order.)
- 15.1(10) The court provides multiple means of educating parties about mediation, each mediator, case requirements, options and deadlines, when mediation might not be appropriate or safe and how to apply for a waiver, how to apply for a reduced-fee mediator, including the court orders (written in simply street language), a website, links to other resources. (6JD court orders; MSEI website: mediateiowa.org; the 8JD uses the Iowa Judicial Branch website to provide party education.)
- 15.1(9) and 15.7(1) There is a simplified process for applying for a pro bono or reduced fee mediator. The court assigns roster mediators on a strictly rotating basis. (6JD Program Document.)
- 15.4(3) Mediators file the Certificate of Mediation with the court. With EDMS, this is a simple task that can be done immediately after a mediator and can be delegated to an employee. Relying on the parties brings uncertainty into the process of confirming mediation has occurred. (6JD Program Document.)
- All parties ordered to mediate are ordered to a 30-minute mandatory mediation education class which is offered at the same time as the “Children in the Middle” classes for parties who have minor children together or online for parties who don’t have minor children together. (6JD Case Requirements Order and 6JD Program Document.)

**Processes that support mediators:**

- 15.7(1) The court assigns roster mediators as pro bono or reduced fee mediators on a strictly rotating basis. Not distributing this responsibility evenly undermines the desirability of being on the registry. Some attorney mediators may choose to not be on the registry and to rely on referrals from colleagues.

**I am attaching the following for your review:**

The Program Document for the Sixth Judicial District Family Mediation Program

The 6JD Case Requirements Order

The 6JD Application for Waiver of Mediation

The 6JD Application for Reduced Fee Mediator

Again, thank you for reviewing these suggestions. If you have any questions, please contact me at [annietuckermediator@gmail.com](mailto:annietuckermediator@gmail.com) or [admin@mediateiowa.org](mailto:admin@mediateiowa.org).

Sincerely,

Annie Tucker

## Sixth Judicial District Family Mediation Program History & Policy Document

As of May 2018

FILED

FEB 22 2019

CLERK SUPREME COURT

Johnson County. In the fall of 1995, the Iowa Supreme Court awarded an ADR grant to the Sixth Judicial District to establish a Court-annexed family mediation program. The District Court Administrator appointed a Mediation Advisory Committee to oversee the design and implementation of the program. The committee includes members of the judiciary, the Johnson County bar, local mediators, the court administrator, the Child Advocate, a consultant and the program director.

Linn County. In the fall of 1995, a Linn County Bar Association committee of similar and overlapping membership began meeting in Linn County, though, without grant assistance.

Both committees met to consider the use of mediation in family law cases and the court system should respond to this promising method of dispute resolution. In 1994, the legislature authorized courts to order mediation in dissolution of marriage proceedings.

The program was implemented by the judges of the Sixth Judicial District, and has been administered by a Program Director and the District Court Administrator.

The judges created a Mediation Advisory Committee consisting of judges, the court administrator, a deputy clerk of court, mediators, and attorneys to monitor the program and advise the judges of needed changes.

### Purpose

The Mediation Program makes mediation available as an alternative to litigation for resolving family disputes. The Program's objectives are to:

- Encourage parties to make their own decisions on issues that will affect their lives and those of their children.
- Increase parties' satisfaction and compliance with final decrees.
- Reduce the burden of the Court of the family law caseload.
- Reduce the time required to complete cases.
- Save litigants and the judicial branch time and money.
- Reduce stress experienced by family law lawyers.
- Encourage parties to develop the working relationship they will need to enable them to parent their children effectively after the final decree.
- Reduce the trauma endured by children affected by family law cases.

### Mediation Defined

Mediation is significantly different from litigation and arbitration.

**Litigation** is a process in which the facts are decided by an agent of the government, a judge or jury, and a result is imposed on both parties.

**Arbitration** is similar to litigation, but the facts are decided and the result is imposed on both parties by a neutral third party who is typically not an agent of the government.

**Mediation**, as defined by Section 679C.102, is "a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching voluntary agreement regarding their dispute." Mediation is a confidential process for

resolving disputes in which a solution is developed by the parties with the assistance of a neutral person, the mediator, who has no power to impose a solution. The mediator assists the disputing parties to talk together, clarify understandings, define the issues, develop options, and reach a mutually acceptable agreement. The mediator does not give legal advice or make recommendations to the Court.

Mediation respects the parties' rights to self-determination and encourages them to develop the working relationship they will need to enable them to parent their children after the final decree. Mediation can help the parties develop tools to resolve future disputes on their own, thus reducing the need for modification and contempt proceedings. Whether children are involved or not, mediation can help the parties move on with their lives.

In mediation, the parties themselves are deeply involved in the fashioning of details of the final agreement, whether represented by counsel or proceeding without counsel. In cases where the parties are represented, lawyers serve more as advisors and less as adversaries yet the role of lawyers remains central to the management of those cases. The Court reviews the parties' agreements and, if the court approves, incorporates them into orders and decrees.

Most people report greater satisfaction with mediation and its outcome than with litigation, since they feel more involved in the decision-making.

### **Overview of Court Annexed Mediation**

#### National overview:

Responding to increasing caseloads and delay, Courts in various locations in the United States began to use alternative dispute resolution methods in the Court annexed programs in the early 1970's. In 1987 the Conference of State Court Administrators and the National Center for State Courts (NCSC) conducted a survey and found 700 alternative dispute resolution programs in the United States. These Programs provided a wide range of services including mediation, arbitration, fact-finding and summary jury trials, and they dealt with all kinds of civil cases and minor criminal cases.

The survey found that Courts most commonly uses mediation for domestic relations cases. 201 programs in 37 jurisdictions reported offering divorce mediation. At that time most programs were local, though six states had statewide programs. Twelve states had programs in only one trial Court.

The survey examined 118 divorce mediation programs and found that 37% of them had fewer than 100 cases per year; 25% handled 100-500 cases per year; 4% handled 500-1000 cases per year and only 14% of the programs handled over 1000 cases per year.

NCSC has not replicated that study; however, it estimates there are currently over 2000 ADR programs in the United States.

#### Sixth Judicial District overview:

The Sixth Judicial District program has benefitted the courts, the parties and the people of Iowa. Since the program was implemented in 1996, nearly 3300 cases have mediated. In over 66% of the cases, parties have reached agreement on some or all issues. 82% of the parties have spent three hours or less mediating.

1. **Reduction in temporary hearings:** The number of hearings on temporary custody and visitation dropped 60% in the first year, a considerable savings of time for court staff and the judges.
2. **Shorter trials:** In Linn County, the number of days per trial dropped significantly since the program started. Before the program was implemented, at least 25% of the trials lasted 3-5 days. After the first five years, more than 85 % last from 1 hour to 2 days, due to the parties reaching agreement on some of their issues in mediation.
3. **Fewer modifications in cases with mediated agreements:** Research on 150 Linn County cases (50 cases which had mediated an agreement, 50 where the parties stipulated/reached agreement without mediation, and 50 where the parties went to court for a decision) showed that divorced parents who had mediated their divorce decisions were 7-8 times less likely to return to the court for further decisions on custody and visitation issues.

### **Need for Mediation in Family Law Cases**

Both the Iowa Legislature and the Iowa Supreme Court have taken strong positions regarding the benefits of mediation in family law matters and the importance of establishing mediation programs for Iowans. In 2000, the Legislature amended Iowa Code 598.7A to include the language “The supreme court shall establish a dispute resolution program in family law cases that includes the opportunities for mediation and settlement conferences” The Intent Section of that legislative measure (House File 683) included the following:

*“Because research demonstrates that parental conflict may result in emotional and psychological damage to parties and their children, the general assembly finds that mediation should be utilized to the greatest extent possible in the resolution of domestic relations disputes in this state.”*

The Supreme Court, then, established the Iowa Supreme Court Mediation Study Group chaired by Justice Mark Cady. At the conclusion of their work the 14 member Group said, “The Supreme Court’s Mediation Study Group unanimously recommends that the Supreme Court adopt the proposed statewide mediation program model for family law cases set forth in this report.” In its subsequent report to the Legislature and in support of the Study Group’s findings, the Supreme Court concluded:

*“Family law mediation will provide a direct benefit for litigants and children involved in family disputes and provide an indirect benefit for all Iowans. The program will reduce parental conflicts for the overall benefit of children, and plant the seeds for reduced conflict in non-family disputes.”*

The Iowa State Bar Association has also acknowledged the benefits of mediation in family law matters. The ISBA **Task Force for the Delivery of Enhanced Legal Services throughout Iowa** included the following language in their Interim Report dated September 25, 2009 Expansion of Mediation (page 10):

*Family law matters, particularly dissolution cases, consume a significant amount of judicial officer resources. In dissolution cases, mediation offers strong potential benefits not found in other cases.*

*Mediation fosters dialogue and communication among the parties, which is critical when children are involved and the parties need to communicate regularly after the case is resolved. Mediation not only increases communication, but it helps avoid the heightened tensions between parents that can result from a trial. Mediation does add a new cost for litigants, particularly when mediation is unsuccessful.*

*Mediation in the 6th District and in Polk County, where it is required, has been shown to successfully resolve issues, negating the need for trials or sharply reducing the length of trials.*

*Expanding mandatory mediation throughout the state for dissolution cases should be explored. Limiting mediation to dissolutions involving children may be an appropriate step if concern exists to extending mediation to all dissolutions. Maintaining judicial involvement regarding child custody and support orders is very important.*

### **Statutory Authority**

Section 598.7 provides authority for mediation: “The district court may, on its own motion or on the motion of any party, order the parties to participate in mediation in any dissolution of marriage action or other domestic relations action.” So the court may order mediation in any divorce proceeding under chapter 598, but also in any other domestic relations action, mainly non-marital custody cases.

The same section contemplates that the Supreme Court will establish a dispute resolution program involving mediation and settlement conferences, and gives the court authority to set rules, subject to some restrictions found in 598.7(4).

That latter section defines “participation” as including “attendance at a mediation session with the mediator and the parties to the action, listening to the mediator’s explanation of the mediation process, presentation of one party’s views of the case and listening to the response of the other party. Participation in mediation does not require that the parties reach an agreement.”

598.7 also provides that no mediation agreement is enforceable until approved by the court.

The section gives the court authority to prescribe qualification for mediators, though the court cannot require that mediators be licensed to practice any particular profession; i.e., the court could not restrict mediation to lawyers.

Mediations are conducted in accordance with the provisions of chapter 679C, the Uniform Mediation Act, which deals with privileged statements and confidentiality. Many mediation statements are privileged pursuant to section 679C.104. In most legal proceedings:

- a. A mediation party may refuse to disclose, and may prevent any other person from disclosing a mediation communication.
- b. A mediator may refuse to disclose a mediation communication and may prevent any other person from disclosing a mediation communication of the mediator.
- c. A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the non-party participant.

### **The Program**

The program includes all dissolution of marriage cases under Chapter 598 of the Code and all other equity cases in which a child custody or visitation order could be entered, except domestic abuse cases under Chapter 236 and contempt of Court actions under Section 598.23. [Cases to establish, modify or adjust child support and cases to establish temporary alimony only are not included. Cases involving determination of post high school educational support are included.]

1. The Program requires all parties to attend a Mediation Education Class. This class explains the mediation process and to encourage the parties to seek legal counsel.
2. Parties are ordered to attend a mandatory course for divorcing and separating parents concerning the effects on children of parents separating, and receive the Mediation Education Class as part of that program. Parties without children must attend only the Mediation Education Class. The schedule of the classes is provided by the Clerk of Court at the time the dissolution of marriage case is filed.
3. The Court orders parties to participate in mediation in the following circumstances:
  - a. Upon the filing of all dissolution of marriage cases, all modifications of custody or visitation and all equity cases involving child custody or visitation
  - b. Upon the filing of any request for temporary custody, visitation or spousal support. The court will require that no affidavits in support of or in resistance to any application for temporary custody or visitation be filed until mediation has been completed.
  - c. At a status conference, conducted by a judge, upon the determination that the parties have failed to mediate within 90 days of filing.
  - d. Even if a party has already attended a mediation session in connection with the pending case, either party may request mediation and the court retains authority to order it.
  - e. On the court's own motion or the motion of any party, as provided by Section 598.7, the Code.
  - f. If both parties certify that they have reached a settlement of all issues, including custody, visitation, child support, spousal support, property and debts by the time of the trial setting conference (120 days after filing), the order to mediate is considered automatically waived.
4. Parties ordered to mediate must participate in the initial actual mediation session and are encouraged to continue with mediation as long as progress is being made.
5. No agreements are signed in mediation. Proposed agreements are submitted to the parties' attorneys, whether directly or through the client for review. Parties are not legally bound by any agreements made in mediation until the agreements are reviewed by their attorneys, if they have them, have been put in a written document signed by both parties, and is thereafter approved by the Court. Written agreements should be signed outside of mediation, unless the parties are both represented by attorneys and the attorneys are present during the mediation. The Court has the final authority to approve or not approve all or any part of a settlement.
6. The Court Administrator will not schedule a trial until the parties have participated in mediation or the Court has excused them from participation in

mediation. The Court will make all efforts to insure that Court-ordered mediation will not impair compliance with the Supreme Court's Time Standards for Case Processing.

### **Issues for Mediation—Excuses from Mediation**

The Parties may mediate any issue relevant to or arising out of a petition before the Court, except that no mediator shall mediate the issue of whether domestic abuse has occurred, and all mediations concerning the issue of child support shall be conducted in light of the Iowa Supreme Court Child Support Guidelines.

The court, upon receipt of a written application showing good cause, may excuse a party from participating in an ordered mediation session. Good cause includes, for example, (1) a history of domestic abuse or violence or substance abuse so severe that mediation would be inappropriate; (2) cases where the parties have already contracted for mediation services or have already mediated in connection with the pending petition or application; (3) where the respondent is genuinely in default. In cases where the parties have already resolved all issues by written stipulation, no written application is necessary.

The party seeking to be excused shall file an application setting forth the grounds and the Court may, in its discretion, require a hearing on the issue.

### **Domestic Abuse Screening**

Although the court may order mediation, mediation is not appropriate in every case.

The time of separation for a couple with domestic violence is the time of greatest risk for serious violence. This is often the time when mediation is ordered in divorce and custody cases. Batterers are more likely to stalk, harass, batter, injure or kill their intimate partners when the victim takes steps to end the relationship. The rate of intimate partner victimization (per 1000 persons) is 31.9% for divorced and separated women and 6.2% for divorced and separated men. Domestic abuse can affect nearly 40% of the cases. It is not safe to bring both parties to the same location before determining whether there are safety risks and whether both parties have the capacity to use the process.

Lawyers have the primary responsibility to screen their clients for domestic abuse and to file the appropriate request with the Court if they believe that mediation is not appropriate. Mediators are also responsible for screening for abuse, regardless of whether anyone else does.

Mediators, or their trained employees, are required to have a screening discussion with both parties separately, by telephone or in person, to help the parties and the mediator determine whether mediation is appropriate, based on assessing the parties' capacity and their actual and perceived sense of safety. The screening discussions must occur before the parties arrive at the mediator's office for mediation. Mediators are required to take the Mediation and Domestic Abuse courses. The trained employee must take the Mediation and Domestic Abuse 1 course to become eligible to provide the screenings. Further training is recommended.

If a mediator determines that mediation is not appropriate and an application for waiver has been denied or a party requests that the mediator do so, the mediator may write a letter to the court stating that s/he has determined that mediation is inappropriate based on the program guidelines. Judges will accept that letter and provide a waiver.

If mediation is appropriate despite the existence of a no-contact order the parties are responsible to obtain a modification of that order to permit their mutual participation. If the parties wish to mediate but their presence together in mediation is unsafe there are process alternatives including phone mediation, mediation from separate rooms, mediation at separate times or mediation in the courthouse.

### **Mediation Education Classes and Program Funding**

All parties in divorce and custody cases are ordered to the Mediation Education Class. Most people are unfamiliar with mediation. The Mediation Education Class informs the parties about the process of mediation as a means of communicating and resolving disputes and explains the value of a non-adversarial approach to dispute resolution in reducing trauma to the children and encouraging a future parenting relationship between the parties. The session provides information about domestic abuse and its effect on mediation and how to apply for a mediation waiver. The program encourages all participants to consult with a lawyer.

The one half hour Mediation Education Class is conducted by the providers of the mandatory course for divorcing and separating parents (Iowa Code Section 598.15) as part of that class, for the convenience of the parties. The Petitioner shall complete the education class within 45 days of the date of the petition and the Respondent shall complete it within 45 days of the date of service of the original notice and petition, unless the parties are ordered to complete it earlier in connection with a request for temporary custody.

Mediation Services of Eastern Iowa is responsible for evaluating the content of all mediation education classes offered by approved providers of mediation education classes in the District.

### **Program Funding**

The Sixth Judicial District generates funds for administering its family mediation program by requiring the providers of the course mandated by Section 598.15 to provide a half-hour mediation education component in the course, and by assessing a separate fee for that component. That fee (currently \$20 per person) is collected by the provider and 85% (\$17.00 per person) is remitted to Mediation Services of Eastern Iowa (MSEI), the 501(c)(3) agency which manages the mediation program. The agency providing the class retains 15% of the fee, or \$3 per person. MSEI has developed and provides a class power-point to the course providers and meets with them annually.

### **Court Ordered Mediation Session**

The Court ordered mediation session gives parties in eligible cases the opportunity to "try" mediation and to make an informed decision whether mediation is appropriate for them. Unless the requirement of mediation is waived, parties ordered to mediation must participate in one mediation session and are encouraged to continue attending sessions voluntarily until they have resolved all or as many issues as possible. Parties pay all mediation fees at the rate they and the mediator agree upon. Any agreement about fees shall be in writing. Pro bono mediators will be available for indigent parties upon application and approval by the Court.

The mediator shall explain the mediation process and goals. The mediator must decide whether mediation is appropriate. The mediator will encourage each party to hire a lawyer and consult with the lawyer after each session.

The mediator shall notify the Court Administrator after the first session whether the parties attended. The notice shall only state whether the parties attend.

### **Program Mediators**

The Program Director will maintain a Roster of Program Mediators available at the program website: [mediateiowa.org](http://mediateiowa.org). Each roster mediator has a page which includes information regarding the mediator's credentials, experience, fees, and policies in attorney and third party participation and other pertinent information.

Mediators are required to abide by the 2005 Model Standards of Conduct for Mediators, maintain mediator malpractice insurance, meet the continuing education requirements, screen for domestic violence, and provide pro bono services as assigned by the Court on a rotating basis.

Mediators may draft a memorandum of understanding and give it to the parties. Parties are not legally bound by any agreements made in mediation until the agreements are reviewed by their attorneys, if they have them, have been put in a written document signed by both parties, and is thereafter approved by the Court. Written agreements should be signed outside of mediation, unless the parties are both represented by attorneys and the attorneys are present during the mediation. The Court has the final authority to approve or not approve all or any part of a settlement.

Mediators are not employees of the State of Iowa or the Judicial Branch. They operate as independent contractors available for selection from the Roster furnished by the Court. Their written agreement to mediate, to be signed by the parties before mediation commences, shall include the language: "I understand that [name of mediator], my mediator, operates as an independent contractor. I have contracted with him/her directly as an independent contractor for mediation services. She/he is not an employee of the State of Iowa or of the Judicial Branch."

Roster mediators may place themselves on the roster for counties where they do not have an office. If mediation is court-ordered and if a mediator is the court-appointed default mediator, the mediator must be willing to travel to the parties' county and the mediator cannot charge the parties for his /her travel time and/or transportation costs related to traveling to the parties' county for mediation. The mediator can ask those parties whether they want to come to the mediator's office to mediate. It is the parties' decision where they will mediate. Mediators may arrange to use court house space for mediation.

Annual fee: Roster mediators pay an annual fee of \$120 to be on the roster. This begins to cover the costs of online marketing: each roster mediator has a webpage on the MSEI web page: [mediateiowa.org](http://mediateiowa.org); referrals through the county 'default mediator' lists; free three hour orientation session for new roster mediators; administration on the roster; etc. Mediators joining the roster after January will pay a prorated annual fee.

### **Selection of a Mediator**

The mediator may be selected by the parties or by the Court. Parties are encouraged to make their own selection.

By the Parties. The parties may agree to and privately retain any person they wish as their mediator. They may also select someone from the Roster maintained at the Court. The parties shall select a mediator within the time specified in the order mandating mediation.

By the Court. In every case, the Court appoints a default mediator from the roster on a rotating basis. If the parties are unable to agree on a mediator within the mandated time, the parties must mediate with the appointed default mediator.

Pro bono mediators. Parties may apply for a pro bono mediator by completing an application and the financial affidavit form used to apply for Court appointed attorneys and filing them with the Court. Parties apply individually, not jointly. For indigent parties, the Court will appoint a pro bono mediator from the roster on a rotating basis. All roster mediators are required to provide pro bono mediations. Indigence for purposes of this provision has the same meaning as in Sec. 815.9, The Code.

### **Qualifications of Mediators**

The Program Director will place any mediator applicant on the Roster of Mediators who meets the following qualifications:

#### **1. Mediation Training.**

Any person who has received 40 hours of an Association for Conflict Resolution-certified divorce and custody mediation training and has participated in 4 hours of domestic abuse role-play/skills based trainings offered by Mediation Services of Eastern Iowa or an approved provider.

ACR-certified divorce and custody mediation trainings require 15 identified training outcomes, six of which deal with helping trainee mediators develop the skills to help the parties communicate, and the requirement for a minimum of 6 hours of supervised mediation role plays. Not all professional 40-hour mediation trainings emphasize gaining the skills to help people have a difficult conversation, an ability that is particularly important in mediating family issues. The mediation profession recognizes role plays as vital to gaining skills.

#### **2. Continuing Education**

a. **General Continuing Education Requirement.** Roster mediators are required to complete 7 hours of relevant continuing education each year. In addition to the required courses on domestic violence and mediation issues, relevant topics include divorce mediation, mediation, divorce-related issues, family law, child development, family dynamics, etc.

b. **Required Introduction to Mediation and Domestic Abuse course:**

1. Mediators who can document having had 2 full hours of training on mediation and domestic abuse issues in their 40-hour divorce and custody mediation training must take the 2-day Introduction to Mediation and Domestic Abuse course within the first six months on the roster.
2. Mediators who cannot document having had 2 full hours of training on domestic violence and mediation issues in their 40-hour mediation training must take the 2-day Introduction to Mediation and Domestic Abuse course before they are put on the roster.

3. As part of the 2-day Introduction to Mediation and Domestic Abuse course, MSEI offers a 4-hour role play-based training on situations with domestic abuse or power imbalances.

**3. Other conditions of being on the roster**

- a. Every person listed as a mediator on the Roster shall maintain malpractice insurance, which specifically covers mediation.
- b. Every person listed as a mediator on the Roster shall agree to do a limited number of mediations on a pro bono basis. They will be assigned as pro bono mediators on a rotating basis by the Court. "Pro bono basis" means the mediation is free or done on a sliding scale, with a nominal fee for the poorest participants. The program will insure that no one is denied mediation services for financial reasons.
- c. Every person listed as a mediator must attend the Roster Mediator Orientation, which shall include, among other things, training on screening for domestic abuse, child support guidelines, program procedures, confidentiality, standards of practice, and the legal system.

**4. Standards of Practice and Ethical Rules.**

The program has adopted the 2005 Model Standards of Conduct for Mediators. Every Roster Mediator shall comply with these standards. Lawyer mediators shall also abide by the Rules Governing Standards of Practice for Lawyer Mediators in Family Disputes, and in the event of a conflict, the mandatory rules of the Supreme Court govern lawyers' conduct.

**Confidentiality of Mediation, Mediator Privilege and Mediator Immunity**

Iowa Code Chapter 679C provides as follows:

*679C.2 Confidentiality.*

*If a mediation is conducted pursuant to a court order, a court-connected mediation program, a written agreement between the parties, or a provision of law, all communications and mediation documents are privileged and confidential and not subject to disclosure in any judicial or administrative proceeding except under any of the following circumstances:*

1. *When all parties to mediation agree, in writing, to disclosure.*
2. *When a written agreement by the parties to mediate permits disclosure.*
3. *When disclosure is required by the statute.*
4. *When a mediation communication or mediation document provides evidence of an ongoing or future criminal activity.*
5. *When a mediation communication or a mediation document provides evidence of child abuse as defined in section 232.68, subsection 2.*
6. *When a mediation communication or mediation document is relevant to the legal claims of a party against a mediator or mediation program arising out of a breach of the legal obligations of the mediator or mediation program.*
7. *When a mediation communication or mediation document is relevant to determining the existence of an agreement that resulted from the mediation or is relevant to the enforcement of such an agreement.*

### *670 9C .3 Mediator privilege*

*If a mediation is conducted pursuant to a court order, a court connected mediation program, a written agreement between the parties, or a provision of law, a mediator or a representative of a mediation program shall not testify about a mediation communication or mediation document in any judicial or administrative proceeding except under any of the following circumstances:*

The statute then goes on to repeat all of the exceptions listed under 679C .2 (above) with the exception of item 7, which is omitted here.

### *679C .4 Mediator immunity*

*A mediator or mediation program shall not be liable for civil damages for a statement, decision, or omission made in the process of mediation unless the act or omission by the mediator or mediation program is made in bad faith, with malicious purpose, or in a manner exhibiting willful or wanton disregard of human rights, safety, or property. This section shall apply to mediation conducted before the workers compensation commissioner and mediation conducted pursuant to Chapter 216.*

## **Disputes and Conflicts About the Program**

Iowa law provides no grievance procedure for mediators who may feel they have been badly treated by the program. Similarly, there is no grievance procedure for parties who feel they have been badly treated by a mediator, except for the Grievance Commission that can deal with lawyer mediators. Since the premise of the program is that mediation is the method of choice for dispute resolution, the program provides mediation as the mechanism for the resolution of these complaints.

The Program Director reviews the qualifications of roster candidates and makes a recommendation to the District Court Administrator who decides whether candidates are placed on the roster. Any person denied admission to the Roster or removed from it may file an appeal with the chief judge. The chief judge's decision is final.

Any party who feels that a mediator has done something improper may submit a grievance to the Program Director or the District Court Administrator. All unresolved grievances will be mediated with a mediator mutually acceptable to both parties.

## **Evaluation of Program**

Mediation Services of Eastern Iowa (MSEI) collects data through program forms completed by the mediators and the parties. The mediators are responsible for filing these forms and for providing an evaluation form to each of the parties.

MSEI maintains a database on the program mediations and uses it to analyze the adequacy and effectiveness of the program. MSEI reports findings to the Court and the public at least annually.

FILED

FEB 22 2019

CLERK SUPREME COURT

IN THE IOWA DISTRICT COURT IN \_\_\_\_\_ COUNTY

\_\_\_\_\_

Petitioner

\_\_\_\_ CDDM \_\_\_\_\_

\_\_\_\_ DRCV \_\_\_\_\_

APPLICATION FOR WAIVER OF MEDIATION

\_\_\_\_\_

Respondent

The parties in this case have been ordered to participate in mediation by court order dated \_\_\_\_\_, 20\_\_\_\_, and the \_\_\_\_\_ (Petitioner or Respondent – please indicate) seeks a waiver of that requirement for the following reason(s). (Check all that apply.)

\_\_\_\_ 1. The \_\_\_\_\_ is a protected party in a currently valid domestic abuse protective order issued in a civil or criminal case. A copy of the order is attached to this application. (If no order is attached, provide an affidavit from the protected party as to the name of the case, jurisdiction issuing the order, date of issuance and other pertinent information concerning the scope of the order.)

\_\_\_\_ 2. The parties were ordered to participate in mediation, but the mediator has written a letter indicating the mediator's opinion that mediation is not appropriate in this case, based on the guidelines of the Family Mediation Program. (Attach a copy of the letter.)

\_\_\_\_ 3. There is a history of domestic abuse, as defined in Section 598.41(3)(j), and because of that history, the \_\_\_\_\_ believes that he/she is in danger of physical or emotional abuse in connection with any mediation session. (An affidavit from the person seeking the waiver of mediation, which sets forth the history of domestic abuse, is attached.)

\_\_\_\_ 4. The movant seeks a waiver of mediation for the reasons set forth in the attached affidavit.

Dated: \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
ATTORNEY FOR \_\_\_\_\_

FILED

FEB 22 2019

CLERK SUPREME COURT

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

UPON THE PETITION OF

Petitioner,  
AND CONCERNING

CASE NO.

FAMILY LAW CASE  
REQUIREMENTS ORDER  
(with minor children)

Dated:

Respondent.

This Order tells each person in this case what must be done to get final orders from the Court. These requirements apply to both parties, whether you hire a lawyer or not. If you are representing yourself, you can get guidance and the forms you need to obtain a divorce by going to <http://www.iowacourts.gov> and clicking on the tab "How Do I..." at the top left and then clicking on "Represent Myself in Court." In general, you are both required to:

1. Complete a Mediation Education Class and a class for divorcing or separating parents within 45 days from the date the case is filed;
2. Give certain financial information to your lawyer, if you have one, and to the other person or their lawyer not more than 60 days from the date the case is filed;
3. Attend together a mediation session with a mediator within 120 days from the date the case is filed;
4. Complete and file with the clerk the Assets and Liabilities and Pretrial Report within 120 days from the date the case is filed; and
5. Participate in a trial setting conference if you have not settled your case after 150 days from the date of filing and you want the case set for trial.

These requirements are designed to encourage you and the other person in the case to exchange information and to discuss possible settlement of your case before going to trial before a judge.

IT IS THEREFORE ORDERED AS FOLLOWS:

St. Lukes 319-369-7952

I. **Mediation Education Class and Class for Divorcing or Separating Parents.** You must complete these two classes within 45 days of the date you filed the case or were notified that a case has been filed. For your convenience the mediation education class and the class for divorcing or separating parents are offered together at the same time, but there is a separate fee for each class. The classes will provide you with information about a) children of separated parents and their needs at different ages; b) parenting skills for divorced or separated parents; c) the financial responsibilities of parents following divorce; and d) mediation as a process for helping people talk and listen to each other about what is important to them and best for their children.

If you do not attend these two classes by the deadline, this may, 1) delay the entry of final orders in your case until you have completed the class; 2) hurt your chances of getting what you want if there is a hearing or trial; and/or 3) possibly result in a fine payable to the court or the other person. You are responsible for the class fees and for making arrangements to attend the classes by calling and registering with an approved agency presenting the classes. There is a sheet with this order which provides you with the names of class providers and class schedules. **This class is also available online at <http://www.mediateiowa.org>.**

II. **Financial Information Exchange.** Not more than 60 days from the date the case was filed, you shall give your lawyer, if you have one, and to the other person or his/her lawyer the following information:

1. Paystubs or other documentation showing income from all sources, including all deductions for federal and state taxes, health insurance premiums, union dues, mandatory pension withholdings for the past six (6) months;
2. Federal and State income tax returns, including all schedules and W-2's for the last five (5) years;
3. The legal description and all appraisal and/or market analyses for all real estate owned jointly and separately;
4. Current value statements on all investments, including but not necessarily limited to stocks, bonds, mutual funds, life insurance policies, bank accounts held jointly or individually;
5. Copies of IRA accounts, retirement plans, 401k's, deferred compensation, savings plans and any other similar plan documents;
6. Current statements or other documentation of all indebtedness incurred individually or jointly;
7. Any documentation establishing a claim that assets or debts are gifted or inherited property or are premarital property;
8. Any prenuptial agreements between the parties;
9. Documentation on the value of any other assets or the amounts of any other indebtedness not specifically requested above, whether individually or jointly owned or owed.

10. An affidavit of financial status, and child support guidelines worksheets if applicable.

If you are involved in a modification case or an unmarried custody case, you only have to provide the information contained in numbers 1, 2, and 10. If you are involved in a dissolution of marriage proceeding, you must provide all the information listed. If you do not provide this information on time, you may not be able to dispute any financial information presented by the other person in the case. You could also be fined by the court. Under the Iowa Rules of Civil Procedure, you and the other person have the right to request additional information from each other if you wish to do so.

**III. Mediation Requirement.** In agreement with Iowa Code Section 598.7, both you and the other person must participate in a mediation session with a mediator within 120 days from the date your case was filed, or by . You and the other person may, and are encouraged to, choose your own mediator. If you cannot agree on a mediator before any required mediation session, your default mediator shall be (. For a complete list of the court's roster of mediators from which you can choose, go to the website <http://www.mediateiowa.org>.

Each of you shall individually call the mediator you have chosen together or the default mediator, if you do not agree, to make a joint appointment. You both shall directly call the mediator of your choice or the default mediator to make an appointment before the date listed above. The mediator will help you discuss your concerns and possible settlement options in your case, but the mediator will NOT give you legal advice or make any decisions for you. One mediation session is required, but you may find that attending additional sessions will help you resolve your case.

Mediation may not be appropriate when there has been physical or emotional abuse. If mediation is not appropriate, you can request a waiver or excuse from the Court. Please discuss any concerns about this with your attorney or with your mediator. No Contact Orders can be changed to permit attending mediation, if mediation is appropriate. An application for waiver of mediation can be obtained from the Clerk of Court.

You must attend an initial mediation session by the above date set by the Court, unless you ask the Court in writing to reset the date. You are free to continue mediation after the initial session. You are not legally bound by any agreements made in mediation until the agreements are put into writing, reviewed by your attorneys, if you have them, signed by both parties, and then approved by the Court. Written agreements should be signed outside of mediation, unless both parties are represented by attorneys and the attorneys are present during the mediation. The Court has the final authority to approve or not approve all or any part of a settlement.

The cost of the mediation is to be divided between you and the other person in the case, but if you believe you cannot afford to pay a mediator, you can ask the Court to allow you to pay on a reduced fee basis by filing an Application for Appointment of Reduced-Fee Mediator. This form is available at the Clerk of Court's office.

Useful information about mediation and mediators, including fee information, can be obtained from the website <http://www.mediateiowa.org> or by calling Mediation Services of Eastern Iowa at 319-248-1940.

Failure to attend mediation by the date set by the Court could result in a delay in having your case set for hearing or trial. It could also cause you to be fined by the Court.

**IV. Pretrial Report and Stipulation of Assets and Liabilities.**

The parties and counsel if any, shall jointly complete and sign the attached, "Pretrial Report and Stipulation of Assets and Liabilities." In this form, the parties will list and value all of their assets and liabilities and they will identify the issues they have agreed upon and the issues still in dispute. They will also estimate the time they will need for trial. The parties shall file their completed Pretrial Report and Stipulation of Assets and Liabilities with the Clerk of Court. **EXCEPTION: Parties involved in a modification case or an unmarried custody case do not need to complete the Stipulation of Assets and Liabilities Portion of the Pretrial Report.**

The parties must complete all the requirements specified in Sections I, II, III, and IV of this order before a trial date will be scheduled.

**\*If the parties have not been served, have not filed an answer, have not participated in mediation, have not filed a stipulation of assets and liabilities, and have not filed a Joint pretrial report, the following Trial Scheduling Conference will NOT be held.**

The conference will be conducted by telephone and the District Court Administrator's staff will initiate the conference call unless otherwise arranged. Any parties appearing pro se (without an attorney) must contact the Court Administrator's Office at least 7 days before the trial setting conference with a phone number where they can be reached. (For Linn County-Contact Lori Schoon 319-398-3920 EXT 1321, For Benton, Iowa, Jones and Tama Counties-Contact Julie Fette at 319-398-3920 EXT.1105. For Johnson County-Contact Erica Beason at 319-356-6070, EXT.3313) At the trial setting conference, you, the other person, or your lawyers (if you and/or the other person are represented by a lawyer), must report on the following:

- A. Whether you have attended the mediation education class and the required class for divorcing or separating parents; *Or Kids In the Middle*
- B. Whether you have provided each other with the required financial information;
- C. Whether you have attended a mediation session with a mediator;
- D. Whether you have filed a Pretrial Report and Stipulation of Assets and Liabilities, with the Clerk of Court.
- E. Whether there are any issues that have been agreed upon and which issues you and the other person do not agree upon;
- F. The true estimate of time you believe you need for trial.

If you have done what you have been ordered to do, a trial date for your case will be assigned.

**If you have not met the requirements of this Order, you will be referred to a District Court Judge for a Compliance Hearing to discover why you have not met these requirements. Any individual who does not meet the requirements may be penalized and/or fined by the Court.**

**If you believe you cannot fulfill any of the requirements listed in this order, you must seek a waiver of the requirements by written application to a District Court Judge. The requirements are waived only after the judge has signed an order waiving them.**



FILED

FEB 22 2019



CLERK SUPREME COURT

**GRAY, STEFANI & MITVALSKY, P.L.C.**

FRANK S. MITVALSKY  
RAYMOND R. STEFANI II  
RICHARD A. STEFANI  
THOMAS F. OCHS  
RICHARD F. MITVALSKY  
RACHEL R. McCRATE

\*Also Admitted in Missouri

WILLIAM O. GRAY (1914-1997)  
RAYMOND R. STEFANI (1929-2008)

Lawyers  
*Established 1938*  
425 Second Street S.E., Suite 700  
Cedar Rapids, Iowa 52401-1245

TELEPHONE (319) 364-1535  
FACSIMILE (319) 364-1562  
www.gsmlawyers.com

MAILING ADDRESS  
P.O. Box 456  
Cedar Rapids, Iowa 52406-0456

Writer's email: [rmccrate@gsmlawyers.com](mailto:rmccrate@gsmlawyers.com)

February 22, 2019

To: Clerk of Iowa Supreme Court (sent via email to [rules.comments@iowacourts.gov](mailto:rules.comments@iowacourts.gov))

RE: Mandatory Family Law Mediation

FROM: Rachel R. McCrate

Thank you for your work on the Chapter 15 proposed rules and for helping to promote the use of mediation throughout the state of Iowa.

I am a member of Gray, Stefani & Mitvalsky, PLC in Cedar Rapids, Iowa, and I practice family law exclusively. I am an attorney and mediator, and am currently serving as the President of Mediation Services of Eastern Iowa, which is the non-profit organization that serves as the court-appointed administrator of the Sixth Judicial District's Family Mediation Program. I also serve on the Sixth Judicial District Mediation Advisory Board.

After careful study of the proposed rules, I have drafted the following comments. I have also drafted a corresponding version of the Chapter 15 proposed rules with suggested track changes.

Thank you for your time.

COMMENTS

1. **Courts' Ability to Order Mediation in Additional Cases.** I believe the rules intend to allow judicial districts the ability to order mediation for other matters in Chapter 598 and 600B (temporary hearings, contempts) even if Chapter 15 does not require mandatory mediation for those cases. It appears this is the intent of Rule 15.2(2). However, one interpretation of Rule 15.3 is that Courts are prohibited from requiring mediation in temporary proceedings, contempt proceedings, etc. This interpretation creates a contradiction within the rules. The Sixth Judicial District currently requires mediation prior to temporary hearings and contempt actions. These mediations yield positive results, and it would be inefficient and harmful to parties to prevent Courts from having the ability to require mediation in these (or other) cases as the Court determines appropriate.

Further, Rule 15.3(1) exempts certain types of cases from mandatory mediation. However, I believe mediation can be particularly helpful in temporary proceedings (Rule 15.3(1)(a)) and cases participating in the Informal Family Law Trial Pilot Project or other court appointed abbreviated family law trial proceedings (Rule 5.3(1)(h)). As for the abbreviated family law trial proceedings, if the cases are quickly resolved, mediation will be waived. If no resolution occurs, it seems mediation would be a useful process to resolve the case and save judicial resources.

2. **Timing of Mediation.** Rule 15.3(2)(b) allows the court to waive mediation if it is completed within 90 days of service. I don't believe a deadline is necessary here. If a case has been completely resolved (regardless of how much time has passed since the date of service), mediation would no longer be necessary and should be waived.

Rule 15.4(1) requires parties to schedule mediation within 30 days of the date of service and complete mediation within 180 days of service. I worry the 30-day requirement will frequently require parties to schedule mediation before they know the appropriate time for mediation for their case. In order to utilize mediation effectively, timing matters. Some cases require urgent mediations to address temporary custody matters. Others require extended deadlines because of the time it takes to gather complicated financials. Each case deserves mediation to be scheduled at a time that best suits the situation. If parties are always required to schedule mediation within 30 days, they will be required to pick a date, which may need to be changed later to a more advantageous

time. This places a burden on mediators who will be taking the time to schedule cases and reserving calendar time for mediations months in advance, which are likely to be canceled or rescheduled. I believe it would be more efficient to allow parties to schedule mediation closer in time to their mediation date. I also believe 120—rather than 180 days—gives parties plenty of time to complete mediation and decreases their wait to get a trial date by two months.

3. **Selection of Mediators.** Rule 15.5 requires parties to select mediators, and, if they are unable to do so, the Court appoints a mediator. I believe it is important for parties to choose their own mediators, but I think this can also be accomplished by courts appointing a default mediator to use in the event parties are unable to mutually agree on a mediator. I believe my corresponding edited version of the Chapter 15 Rules allows courts more flexibility while accomplishing the same purpose. Some counties may benefit from appointing default mediators, which would provide mediators on the registry for that county greater opportunities to be hired, therefore encouraging participation on the registry, which is necessary for districts to comply with the mandatory mediation requirement.
  
4. **Parties' Access to Information to Choose a Mediator.** Rule 15.9(1)(b) lists the information the registry will include about the mediators. I think it is important to provide as much information about mediators as possible to allow parties to make an informed decision. These rules have anticipated this. However, one addition I recommend is to include a link or links to the mediator's website and/or profile. Mediation Services of Eastern Iowa maintains a website of mediator profiles for the Sixth Judicial District. The court order requiring mediation includes the website, and I frequently receive calls from parties who used the website to find their mediators or get information about a mediator who was referred to them. The profiles include a large amount of information including the rates and fees the mediator charges. Also, mediators have the ability to update and maintain their profiles. It is advantageous to parties to be able to access as much information as possible about the mediators on the registry to make an informed decision about their selection. If possible, it would also be beneficial to allow mediators to include a hyperlink to their personal website for additional information. Including rates and fees also avoids the need for parties to make (and mediators to field) calls about the mediators' costs. Finally, it would save

the Office of Professional Regulations time and money if mediators were able to maintain their own profiles on the registry.

5. **Travel Time.** Rule 15.9(2) prevents mediators from charging for their travel time. I understand the obligation for mediators to be willing to be present in the counties in which they are registered for appointments. However, mediators should be free to charge for travel if conducting a mediation for which they have not been appointed. Parties would not be prejudiced by this because they are free to select a different mediator if uncomfortable with the costs.
  
6. **Domestic Violence and Mediator Qualifications.** Physical, sexual, emotional and mental abuse frequently exist in family law cases. These issues can significantly impact the mediation process. The Sixth Judicial District requires mediators to (1) attend a 15-hour training (CLE) on domestic abuse in mediations and (2) to screen the parties for domestic abuse prior to each mediation. These requirements are intended to provide mediators skills and knowledge to support victims of domestic abuse through the mediation process (and determine which cases are not appropriate for mediation) and to help keep mediators and the parties safe. Because of the frequency of these issues and the dangers associated with them, I believe requiring training and screening is important.

Therefore, I propose Rule 15.9(4) be amended to add a requirement for mediators on the registry to attend a 15-hour training on domestic abuse in the mediation process. I also propose mediators be required to screen parties for domestic abuse prior to each mediation. I believe these requirements are necessary to ensure the state has safeguards in place to protect the safety of parties and mediators.

7. **Attorney Mediator Qualifications.** Rule 15.9(4) requires mediators who are attorneys to have an active Iowa law license. Rule 15.9(5) allows the Office of Professional Regulation to remove an attorney mediator from the registry if the attorney's license has been suspended, revoked, or placed in exempt or inactive status. Because mediators are not required to be attorneys, requiring attorneys to have an active Iowa law license is an unnecessarily restrictive requirement. Of course, certain acts resulting in suspension or revocation may also be grounds for removal from the registry, but this removal would be because of the specific act rather than the law license status. The Office of Professional Regulations already has the ability to remove mediators for cause pursuant to Rule 15.9(5).

Prohibiting attorneys without an active law license from serving on the registry would disallow potential qualified mediators including but not limited to attorneys who are licensed in another state but living in Iowa, attorneys have elected inactive status while raising children, and retired attorneys who have elected inactive status.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

## Chapter 15

### Rules of Mandatory Mediation in Certain Family Law Cases

**Rule 15.1 Definitions.** As used in this chapter:

**15.1(1)** "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

**15.1(2)** "Mediator" means an individual who conducts a mediation.

**15.1(3)** "Mediation Agreement" means a written voluntary agreement the parties have reached during the mediation process.

**Rule 15.2 Scope.**

**15.2(1)** All parties must participate in mediation in all cases involving permanent custody, visitation, and other matters filed under Iowa Code chapters 598 and 600B. This rule applies to both initial proceedings and modification proceedings.

**15.2(2)** Each judicial district or court retains the authority to order mediation for other matters filed under Iowa Code chapters 598 and 600B.

**15.2(3)** Mediation does not change a party's obligation to follow statutory requirements in Iowa Code chapter 598.

**Rule 15.3 Waivers and exemptions.**

**15.3(1)** ~~The Judicial Districts are not required to order mediation for the following cases. This does not prevent Judicial Districts from ordering mediation in these cases if the Court desires. following cases are exempt from mandatory mediation:~~

~~a. All temporary proceedings.~~

~~b. All contempt proceedings.~~

~~c. Child support or medical support obligations enforced by the Child Support Recovery Unit.~~

~~d. Elder abuse pursuant to Iowa Code chapter 235F.~~

~~e. Domestic abuse pursuant to Iowa Code chapter 236.~~

Public comment period:

November 26, 2018, through February 25, 2019

Proposed rules

1 e. Any case involving physical, sexual, mental or emotional abuse. Such  
2 abuse does not have to be documented by Court record, medical record,  
3 police record or any other documentation.

4 f. Cases in which a mediation party is served by publication.

5 ~~g. Cases in which a party serves a Notice of Intent to File Written~~  
6 ~~Application for Default Judgment, an Application for Default Judgment, or a~~  
7 ~~similar pleading regarding default judgment.~~

8 ~~a.~~  
9 ~~g. Cases participating in the Informal Family Law Trial Pilot Project or other~~  
10 ~~court approved informal or abbreviated family law trial proceedings.~~

11 **15.3(2)** Upon application of a party, the court may grant a waiver from  
12 mandatory mediation when:

13 a. The party demonstrates a history of domestic abuse as specified in Iowa  
14 Code section 598.41(3);

15 b. The parties file a stipulated settlement addressing all issues ~~within 90~~  
16 ~~days of service;~~ or

17 c. The party shows good cause for a waiver.

18 **Rule 15.4 Scheduling.**

19 **15.4(1)** ~~Within 30 days from the date of service, the parties must set a date~~  
20 ~~for complete mediation to be completed within 180-120 days from the date of~~  
21 ~~service unless a case is exempt from mandatory mediation under rule 15.3 (1)~~  
22 ~~or the court has granted a waiver from mandatory mediation under rule 15.3~~  
23 ~~(2).~~

24 **15.4(2)** The parties or their attorneys must obtain a date for mediation  
25 directly with the mediator or through the mediation program in the judicial  
26 district where the case is filed.

27 **15.4(3)** Following completion of mediation, the ~~parties mediator~~ must file a  
28 Certificate of Mediation with the court, on a form the supreme court prescribes,  
29 before a trial date may be scheduled.

30 **Rule 15.5 Selection of mediators.**

31 **15.5(1)** Judicial Districts shall either appoint a default mediator from the  
32 registry of qualified mediators or shall instruct parties to choose a mediator  
33 from the registry of qualified mediators. ~~The parties must select a mediator~~  
34 ~~from the registry of qualified mediators.~~

Formatted: Font: (Default) Bookman Old Style, 12 pt

Formatted: List Paragraph, Indent: Left: 0", First line:  
0.25", Numbered + Level: 1 + Numbering Style: a, b, c,  
... + Start at: 1 + Alignment: Left + Aligned at: 0.31" +  
Indent at: 0.56"

Public comment period:  
November 26, 2018, through February 25, 2019

Proposed rules

1 **15.5(2)** If the parties cannot agree on a mediator, the court will appoint a  
2 mediator from the registry of qualified mediators.

3 **Rule 15.6 Mediation process.**

4 **15.6(1)** Parties may be represented by their attorneys at the mediation.

5 **15.6(2)** A party may have a person other than the party's attorney attend  
6 the mediation, but the mediator may determine whether the person will be  
7 allowed to participate in the mediation.

8

9  
10 **15.6(3)** Mediation sessions are confidential and are governed by the  
11 requirements of Iowa Code chapter 679C and Iowa Court Rule 11.6.

12

13 **15.6(4)** When the parties have completed mediation, the mediator will  
14 ~~provide the parties with~~ file a supreme court prescribed Certificate of Mediation  
15 ~~for filing with the court.~~

16

17 **Rule 15.7 Payment of mediators.**

18 **15.7(1)** Mediator fees will be evenly divided between the parties unless the  
19 parties agree otherwise or the Court orders an alternate division of the costs of  
20 mediation.

21 **15.7(2)** Each Judicial District shall establish a process to allow indigent  
22 parties to participate in mediation.

23 **15.7(3)** Each mediator shall be permitted to set his or her rates and fees  
24 for mediation, drafting agreements, travel and any other work within the scope  
25 of the mediator's job duties.

26 **Rule 15.8 Enforcement.** The court may enforce the requirements of these  
27 rules through contempt proceedings, compliance hearings, imposition of  
28 sanctions, or other means the court deems appropriate.

29 **Rule 15.9 Mediator registry and qualifications.**

30 **15.9(1)** *Statewide mediator registry.*

31 *a.* The office of professional regulation will maintain a statewide registry of  
32 qualified family law mediators. The registry will be updated and published on a  
33 regular basis. The office of professional regulation will review applications from

Formatted: Indent: First line: 0", Space After: 10 pt,  
Line spacing: Multiple 1.15 li

Formatted: Indent: First line: 0"

Formatted: Indent: First line: 0.5"

Formatted: Font: Not Bold

Public comment period:  
November 26, 2018, through February 25, 2019

Proposed rules

1 persons who wish to be listed on the registry of qualified family law mediators,  
2 which will include persons who meet the training requirements established in  
3 this rule or who have received a waiver under rule 15.9(6).

4 *b.* The statewide mediator registry will contain the mediators' names,  
5 addresses, telephone numbers, and any biographical information the mediator  
6 provides, including information about the mediator's education, professional  
7 experience, and mediation training and experience, rate and fees, and a link to  
8 their individual website or profile if desired, and will be maintained on the  
9 office of professional regulation's website.

10 **15.9(2) Mediators' designations.** As part of the application process, all  
11 mediators must designate the judicial districts or counties for which they are  
12 willing to accept court appointments. Each designation will be deemed to be a  
13 representation that the mediator will accept appointments from the designated  
14 district or county and if appointed by the Court will not charge for travel time  
15 and expenses incurred in carrying out the mediator's duties associated with  
16 those appointments. A refusal to accept an appointment without good cause in  
17 a mediator's designated judicial district or county may be grounds for denying  
18 future appointments of the mediator in the that judicial district or county.

19  
20

21 **15.9(3) Registry fees.** The office of professional regulation will establish a  
22 reasonable administrative fee for qualified individuals and organizations to be  
23 placed on the statewide registry. Any such fees will go to the office of  
24 professional regulation for administration of the statewide registry.

25 **15.9(4) Mediator qualifications.** Prior to being listed on the statewide  
26 registry, all mediators providing family law mediation services under this  
27 chapter must have a minimum of 40 hours of family law mediation training  
28 accredited by the Iowa Supreme Court Commission on Continuing Legal  
29 Education and must have a minimum of 15 hours of training on recognizing  
30 domestic abuse, screening for domestic abuse and adapting the mediation  
31 process for cases with domestic abuse accredited by the Iowa Supreme Court  
32 Commission on Continuing Legal Education. Mediators must also agree to  
33 conduct screening for domestic abuse prior to each mediation. ~~Mediators who~~  
34 ~~are attorneys must have an active Iowa law license.~~

4

Formatted: Indent: First line: 0"

Public comment period:

November 26, 2018, through February 25, 2019

Proposed rules

1     **15.9(5) Removal from statewide registry.** ~~The office of professional~~  
2 ~~regulation may administratively remove a mediator from the statewide registry~~  
3 ~~if the mediator's law license has been suspended, revoked, or placed into~~  
4 ~~exempt or inactive status.~~ A mediator may also be removed from the registry for  
5 reasons just cause, including, but not limited to, concerns about the mediator's  
6 competence, misrepresentations the mediator made during the application  
7 process, a finding of liability against the mediator under Iowa Code section  
8 679C.115, or a determination by a court that the mediator has engaged in the  
9 unauthorized practice of law. Any removal from the registry may be reviewed by  
10 the State Court Administrator upon written request.

11     **15.9(6) Waiver of training requirement.** Mediators who are listed on one or  
12 more rosters of family law mediators maintained by an Iowa district court  
13 administrator as of June 30, 2019, may be listed on the statewide registry  
14 maintained by the office of professional regulation by submitting an application  
15 and showing they have previously completed the training requirements set  
16 forth in rule 15.9(4).

17 **Rule 15.10 Administration.**

18     **15.10(1)** The director of the office of professional regulation will serve as the  
19 principal executive officer for matters pertaining to the qualifications,  
20 classification, and discipline of family law mediators under this chapter. The  
21 director may, subject to the approval of the supreme court, employ such other  
22 employees as may be necessary to carry out the duties of this chapter.

23     **15.10(2)** At least 60 days prior to the start of each fiscal year or on a date  
24 otherwise set by the supreme court, the director of the office of professional  
25 regulation will submit to the supreme court for consideration and approval a

26

27     budget for the upcoming fiscal year covering the operations provided for in  
28 this chapter. The supreme court's approval of the budget authorizes payment  
29 as provided in the budget. A separate bank account designated as the mediator  
30 operating account must be maintained for payment of authorized expenditures  
31 as provided in the approved budget. Fees or other funds received or collected as  
32 directed in this chapter or in accordance with an interagency agreement will be  
33 deposited in the mediator operating account for payment of the expenditures  
34 authorized in the approved budget.

35 **Rule 15.11 Immunity**

Formatted: Indent: First line: 0.25"

Public comment period:

November 26, 2018, through February 25, 2019

Proposed rules

1       **15.12(1) Claims.** Claims against the director, assistant directors, and staff  
2 of the office of professional regulation are subject to the State Tort Claims Act  
3 set forth in Iowa Code chapter 669.

4  
5       **15.12(2) Immunity.** The director, assistant director, and staff of the office of  
6 professional regulation are immune from all civil liability for damages for the  
7 conduct, communications, and omissions occurring in the performance of and  
8 within the scope of their official duties under these rules.

9  
10       **15.12(3) Qualified immunity.** Records, statements of opinion, and other  
11 information regarding a mediator that are communicated by an entity,  
12 including any person, firm, or institution, without malice, to the director,  
13 assistant directors, and staff of the office of professional regulation, are  
14 privileged and civil suits predicated thereon may not be instituted.

15

16

17

FILED

FEB 24 2019

CLERK SUPREME COURT



[EXTERNAL] Mandatory Family Law Mediation [IWOV-SPMB.FID311394]

Matthew J. Brandes to: 'rules.comments@iowacourts.gov'

02/24/2019 04:37 PM

1 attachment



Chapter 15 Comments.DOCX

Here are comments on proposed Chapter 15. Thank you for considering them.



Matthew J. Brandes  
Member

Simmons Perrine Moyer Bergman PLC  
115 3rd Street SE, Suite 1200  
Cedar Rapids, Iowa 52401-1266  
Telephone: (319) 896-4021  
Fax: (319) 366-1917  
[Email](#) | [Bio](#)

[www.spmblaw.com](http://www.spmblaw.com)

Please notify me if you receive this confidential email in error.

## Comments Regarding Mandatory Mediation and Proposed Chapter 15

The Supreme Court's consistent attention to family law case processing since the creation of the Family Law Case Processing Reform Task Force in January 2015 is making a difference for thousands of lowans, adults and affected children that seek judicial assistance to resolve a private, family law issue every year. The promulgation of the current, proposed rules for mandatory mediation in certain family law cases is another step forward. The court and the authors of proposed Chapter 15 are to be commended for this effort.

Because private family law cases have overwhelmed state courts since 1970, there is a tendency to look for "fixes" to docket crowding through court reform aimed at such cases. A typical response is to design special processes for these cases or offload them entirely because they are "incapable of judicial resolution". While nobly motivated, such efforts are misguided because the primary causes of all disputes are human nature, structural changes in society, and the dearth of public education on legal topics and the role of courts in a democracy. The proposed Chapter 15 appropriately balances the need for public education with the court's primary governmental role i.e. authoritative, public management of private controversies. While amendments are suggested below, some form of this chapter should be adopted as soon as possible. While experience with the rules develops, the court should continue to devote the resources it can to public education on the limited role of courts in our democracy and the private management of family dispute resolution through mediation and limited scope representation by attorneys. The court should actively encourage the Bar to join this effort.

| Rule Number | Lines   | Comments  |
|-------------|---------|---|
| Rule 15.1   |         | Add a 5.1(4) to provide a definition of "Settlement Conference". Settlement conference means a mediation conducted by a sitting judge or a private mediator pursuant to a written, contract between the parties and the mediator. In the case of settlement conferences conducted by private mediators, the contract will provide there is no confidentiality and mediation agreements made at the conference will be legally binding if mutually relied upon by the parties in subsequent actions related to the continuance of court proceedings. |
| 15.2(1)     | Line 12 | Revise as follows: "All parties must participate in mediation or a settlement conference in any cases ..."  |
| 15.2(2)     | Line 17 | Add "or a settlement conference"  |
|             |         |   |

|            |             |  |
|------------|-------------|--|
|            |             |  |
| 15.3(1)(a) | Line 23     | Delete. The exemption for temporary proceedings creates a lack of clarity with Rule 15.2(2). Ordering mediation before temporary custody hearings has been shown to increase settlement rates, decrease party hostility, and increase compliance with care and visitation orders. Mediation before temporary custody hearings is well established in the 5 <sup>th</sup> and 5 <sup>th</sup> Judicial Districts.   |
| 15.3(1)(b) | Line 24     | Delete. The exemption for contempt hearings creates a lack of clarity with Rule 15.2(2). Ordering mediation before contempt hearings has been shown to increase settlement rates, decrease party hostility, and increase compliance with subsequent orders. Mediation before contempt hearings is well established in the 5 <sup>th</sup> and 5 <sup>th</sup> Judicial Districts.  |
| 15.3(2)(b) | Lines 9-10  | Allow mediation waivers without penalty up to the time of trial scheduling. Consider imposing monetary sanctions for waiver requests filed any time after trial setting.   |
| 15.4(1)    | Lines 13    | Increase time for scheduling mediation to 90 days from the date of service for cases in which no temporary orders are requested.   |
| 15.4(2)    | Line 18-19  | Strike "mediation program in the judicial district where the case is filed." Add provision for appointment of a default mediator at the time of case filing as is done in the 6 <sup>th</sup> Judicial District.   |
| 15.4(3)    | Line 20     | Require mediators to file Certificate of Mediation. Strike prohibition of trial scheduling in advance of trial scheduling. Delay in trial scheduling causes delay in the completion of family law cases. The possible imposition of monetary sanctions on parties <b>or lawyers</b> in failing to meet the mediation requirement before trial may be more effective.   |
| 15.5(1)    | Line 25     | Add "maintained by the office of professional regulation."   |
| 15.5(2)    | Lines 26-27 | Require use of the qualified mediator appointed at the time of case filing. See comment to Proposed Rule 15.4(2) above.  |
| 15.6(4)    | Line 5-6    | Require the approved Certificate of Mediation to be filed by the mediator. This requirement will aid in gathering information on mediation.  |
| 15.9       |             | Consider adding to the duties of the office of professional regulation responsibility for maintaining an approved list of divorce and separating parent education program providers within the state. The providers of such programs should be required to obtain approval of their curriculums from the OPR and to pay a fee for being on the approved list.<br><br>Add a new section 15.9(7) Mediation Contracts. "All mediators on the statewide registry will obtain a signed and written contract for mediation services from mediation participants on a form the supreme court prescribes." This contract should include the following language: I understand that [name of mediator], my mediator, operates as an independent contractor. I have contracted with her/him directly as an independent contractor for mediation services. He/she is not an employee of the State of Iowa or the Iowa Judicial Branch. |
| 15.9(2)    | Line 27-29  | Add to the first and third sentences: "as a default mediator."   |

|          |           |  |
|----------|-----------|--|
|          | and 34    |  |
| 15.9(3)  | Line 5    | Add to the end of the final sentence "or other purposes related to the statewide mediation program."   |
|          |           |  |
| 15.9(4)  | Lines 7-9 | Add after registry: "as a default mediator" and add at the end of the sentence after Education: "and provide proof of mediator errors and omissions insurance in a minimum amount of [to be established]." |
| 15.9(4)  | Line 10   | Replace the final sentence with "All mediators must be in good standing with the office of professional regulation under Rule 15.9(2) and (5) to be named as a default mediator."                          |
| 15.10(1) | Line 29   | Add after for matters pertaining to: "the operation of the statewide mediation program or"   |

FILED

FEB 25 2019



[EXTERNAL] Mandatory Family Law Mediation - Chapter 15 CLERK SUPREME COURT  
thomas langlas to: rules.comments

02/25/2019 12:55 PM

1 attachment



Tom - Letter re - Mediation Rules.docx

Re: Public Comment to Proposed Chapter 15 Rules for Family Law Mandatory Mediation

Please see attached letter regarding this issue.

Thank you!

Thomas W. Langlas

February 23, 2019

FILED

FEB 25 2019

CLERK SUPREME COURT

Email: rules.comments@iowacourts.gov

Email Subject Line: Mandatory Family Law Mediation – Chapter 15

Re: Public Comment to Proposed Chapter 15 Rules for Family Law Mandatory Mediation

To: Iowa Supreme Court

From: Thomas W. Langlas (Mediator)

200 Sheridan Road

Waterloo, IA 50701

tlanglas200@gmail.com

Included in this correspondence are my comments regarding the proposed Chapter 15 Rules of Mandatory Mediation in certain Family Law cases. My emphasis will be primarily related to Sections 15.9(4) and 15.9(5) as it relates to current or former members of the legal profession. You should, or will have, already received a communication from a meeting of District One (1) Mediators held in Black Hawk County on February 15, 2019, which addresses several other issues as well as Chapters 15.9(4) and 15.9(5).

I was admitted to the Bar on June 16, 1967 and actively practiced law until I voluntarily went to inactive status about three (3) years ago. The reason for that was I simply decided I did not want to continue the day – to – day practice but wanted to reserve my right to become active again if I chose to do so. I was in good standing when I became inactive and remain so today.

I remained with the same law office in Black Hawk County and handled cases throughout the State of Iowa.

I engaged in general practice with an emphasis on litigation, particularly family and juvenile law. I was an active member of the ISBA and on both the section council for Family and Juvenile Law and on

Alternative Dispute Resolution. From 2000 to 2002, I was chair of the Family and Juvenile Law section. I was also a member of the Supreme Court Advisory Committee to review the Child Support Guidelines in 2012. My other credentials include being a Fellow of the American Academy of Matrimonial Lawyers and the Iowa Academy of Trial Lawyers.

Over the past five (5) decades, I would estimate I was involved in over 5000 family and juvenile law matters and mediated hundreds of family law matters. I received my original forty (40) hour Certification as a Mediator from Pepperdine University Law School over 25 years ago. Dean Richard Caulkins has had me judge mediators at several training and regional contests.

I studied law and practiced law because I wanted to help people. I thoroughly enjoy mediation as I believe strongly that it does help families going through difficult times. The citizens of Iowa deserve qualified, experienced mediators to assist them in reaching an agreement without the cost and angst of a trial.

My question is this: Why squander all the wisdom and experience of 5 decades by requiring me and others to be active lawyers to be mediators? There is no other requirement for other non-law trained mediators. As it is with these rules; a young person can graduate from high school, take a 40 hour training course and become a mediator instantly without knowing anything about mediation except for a one week training course.

These rules proposed still contain the ability to remove current and former attorneys from the registry for reasons set forth in Rule 15.9(5). It seems patently unfair to require a former attorney to re-acquire his or her law license at great expense (CLE;s) and then have the additional cost of malpractice insurance because they are once again required to become licensed in order to mediate.

Thank you for your consideration regarding this issue.

Sincerely,

Thomas W. Langlas

FILED

FEB 25 2019

CLERK SUPREME COURT

02/25/2019 02:19 PM



**[EXTERNAL] Mandatory Family Law Mediation**  
Jenny Schulz to: rules.comments@iowacourts.gov

1 attachment



proposed comments and modifications of Chapter 15.docx

Please find attached comments from Kids First Law Center on the proposed Rules of Mandatory Mediation in Certain Family Law Cases.

The header on the proposed rules notes that the public comment period runs through today, February 25, 2019.

Thank you.

Jenny

Jenny Schulz

Kids First Law Center

420 6th Street SE, Suite 160

Cedar Rapids, IA 52401

(319) 365-5437 phone

(319) 739-5426 direct line

(319) 366-3308 fax

[www.kidsfirstiowa.org](http://www.kidsfirstiowa.org)

**Comments to Chapter 15: Rules of Mandatory Mediation in Certain Family Law Cases**

Kids First supports the expansion of mediation in family law cases and we urge the Court to adopt these Rules with some minor modifications. In the Sixth Judicial District, where mediation has long been required in all family law matters, it has been very successful in resolving disputes. Especially in this era of reduced funding for the judiciary, the Court should favor expansion of mediation to most family law cases. Mediation is a kind of triage that ensures that the Court's limited resources are available for matters that cannot be resolved amicably.

We respectfully ask the Court to consider the concerns outlined below and to adopt the proposed changes.

**15.3 Waivers and exemptions.****Comment:**

To clarify that this provision does not conflict with 15.2(2), it should state that each judicial district has the authority to require mediation in these otherwise exempt categories.

Temporary proceedings and contempt proceedings should not be automatically exempted from mandatory mediation. In temporary matters, mediation helps set the expectation early in the case that the parents need to work to find common ground on behalf of their children. In contempt proceedings, mediation can help parties straighten out misunderstandings pertaining to custody and review each other's numbers when financial issues are at stake; even if agreement is not reached, it may help narrow the issues so that hearings are more efficient.

**Suggested modification to page 1, line 21:**

15.3(1) Unless otherwise required in the judicial district in which the case is filed, the following cases are exempt from mandatory mediation:

**Delete page 1, lines 23-24:**

- a. All temporary proceedings.
- b. All contempt proceedings.

**15.5 Selection of mediators.****Comment:**

District courts should be responsible for designating default mediators for cases pending in their district. The default mediator should be identified at the outset to avoid causing delays in the selection of a mediator (instead of waiting to learn that the parties do not agree on a mediator). Knowing who has been designated as a default mediator can help parties come to an agreement in selecting a mediator.

The default mediator should be chosen on a rotating basis to avoid favoritism by the court.

An added provision is needed to clarify that the parties may comply with the mediation requirement by mediating with any mediator on the state registry or any qualified mediator, even if the mediator is not on the registry for that county. Parties in Cedar Rapids, for example, should have the ability to hire a Des Moines mediator if they wish. Furthermore, some qualified mediators will elect not to be on the registry. At Kids First, for example, our mediator has completed the 40 hour family law mediation training and meets the criteria to be on the registry. However, based on grant funding restrictions, Kids First can only mediate when child-related issues are in dispute and cannot mediate in cases where there are no children or where only financial issues are at stake. Thus, Kids First cannot be on the registry or it subjects itself to being assigned as the mediator on cases it cannot mediate. In providing free mediations for low-income persons, Kids First is providing an important service that should be recognized as meeting the mediation requirements.

**Suggested modification to page 2, lines 24-27:**

15.5(1) In its order requiring mediation, the district court will assign a default mediator on a rotating basis from the registry of qualified mediators for that county.

15.5(2) If the parties cannot agree on a mediator, the parties shall use the default mediator named in the court order.

15.5(3) The parties may agree upon and choose any qualified mediator to meet the mediation requirement, even if the mediator is not on the registry for that county.

**15.6 Mediation process.**

**Comment:**

The mediator in the case should file the Certificate of Mediation directly with the court to ensure prompt and accurate filing. This change will also save parties the cost of paying their own attorney to file the certificate.

**Suggested modification to page 3, lines 5-7:**

15.6(4) Within one week of the parties having completed mediation, the mediator shall file a Certificate of Mediation in the court case.

**15.9 Mediator registry and qualifications.**

**15.9 (2)**

**Comment:**

All mediators should meet the requirements listed and be listed on the statewide registry in order to mediate cases in Iowa. However, mediators should not be required to designate a county or judicial district in which they will accept court appointments (see comment to 15.5 above), or Kids First will be precluded from having its free mediation for low-income parents in custody cases meet the mediation requirement.

Kids First attorneys refer parties in their family law cases to private attorney mediators who provide an excellent service but who choose not to be listed on the registry; these private attorneys should not be required to accept court-appointed cases in order for their mediations to meet the mandated mediation requirement.

**Suggested modification to page 3, lines 27-29:**

15.9(2) *Mediators' designations.* Mediators on the registry are not required to accept court appointments. If mediators would like to receive court appointments and to be on the default mediator list, mediators must designate the judicial districts or counties in which they are willing to accept court appointments.

**15.9 (3)**

**Comment:**

Legal services organizations that provide free mediation should not be required to pay an administrative fee.

**Suggested modification to page 4, line 5:**

15.9(3) Add sentence: Mediators employed by nonprofit legal services organizations are exempt from paying an administrative fee.

**15.10 Administration.**

**Comment:**

Any changes in the qualifications required for mediators should be made by the Iowa Supreme Court with the opportunity to comment in advance.

**Suggested modification to page 4, lines 28-30:**

15.10(1) Any changes to the qualifications required of mediators shall be made by the Iowa Supreme Court after an opportunity for public comment is provided. The director of the office of professional regulation will serve as the principal executive officer for matters pertaining to the classification and discipline of family law mediators under this chapter....

Thank you for the opportunity to comment on this proposed rule.

Respectfully submitted,

Jenny Schulz, Executive Director on behalf of  
Kids First Law Center  
420 6<sup>th</sup> Street SE, Suite 160  
Cedar Rapids, IA 52401  
(319) 365-5437  
jenny@kidsfirstiowa.org

FILED

FEB 25 2019

CLERK SUPREME COURT



**[EXTERNAL] Mandatory Family Law Mediation**

David Nelmark to: 'rules.comments@iowacourts.gov'

Cc: Carol Phillips, "Donna Miller (dmiller@mzelaw.com)"

02/25/2019 02:20 PM

3 attachments



02.25.19 PCBA ltr re\_ Proposed Mediation Rules.PDFRules Comments Letter 02.25.19 (formatted).DOC



Proposed Mandatory Mediation Rules (edits 02.07.19).docx

To Whom it May Concern,

An attached letter with enclosure is attached via PDF, and the unsigned letter and attachment are separately attached in Word. Please let me know if you need more information.

Thanks,

David

David W. Nelmark, Partner

**GISLASON & HUNTER LLP**

666 Walnut St., Suite 1710

Des Moines, IA 50309

Phone: 515-244-6199

Fax: 515-244-6493

E-Mail address: [dnelmark@gislason.com](mailto:dnelmark@gislason.com)

\*\*\*\*\*Internet E-Mail Confidentiality Statement\*\*\*\*\*

Information contained in this e-mail transmission is intended only for the use of the addressee(s) named above and is privileged and confidential. If you are not the addressee, or the person responsible for delivering it to the addressee, you are hereby notified that any reading or dissemination, distribution or copying of this communication or any of its contents is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the message and immediately delete the original message and any copy of it. Thank you.

FEB 25 2019

CLERK SUPREME COURT



**Polk County Bar Association**  
 625 E. Court Ave., Suite 100  
 Des Moines, IA 50309  
 P: (515) 243-3904 F: (515) 697-7886  
 info@pcbaonline.org www.pcbaonline.org

February 25, 2019

president

**David W. Nelmark**  
 666 Walnut St., Suite 1710  
 Des Moines, IA 50309  
 515-244-6199  
 dnelmark@gislason.com

president elect

**Donna R. Miller**  
 550 SW 9<sup>th</sup> Street, Suite 9000  
 Des Moines, IA 50309  
 515-809-9699  
 dmiller@mzelaw.com

vice president

**Nicholas O. Cooper**  
 699 Walnut Street, Suite 2000  
 Des Moines, IA 50309  
 515-288-6041  
 cooper@whitfieldlaw.com

treasurer

**Joseph A. Happe**  
 Davis Brown Law Firm  
 215 10th Street, Suite 1300  
 Des Moines, IA 50309  
 515-288-2500  
 joehappy@davisbrownlaw.com

secretary

**Debra A. Hockett-Clark**  
 5550 Wild Rose Ln., Suite 400  
 West Des Moines, IA 50266  
 515-247-9293  
 debra@hockett-clarklawfirm.com

executive director

**Carol L. Phillips**  
 625 E. Court Ave., Suite 100  
 Des Moines, IA 50309  
 515-243-3904  
 cphillips@pcbaonline.org

Dear Chief Justice Cady,

I write on behalf of the Polk County Bar Association Board of Directors, the PCBA Mediation Committee, and the PCBA Family Law Committee in response to your request for comments on the proposed Chapter 15 Rules of Mandatory Mediation in Certain Family Law Cases. Both Committees and the Board have reviewed the proposed rules and have approved the attached suggested revisions. Many of the revisions are self-explanatory, but we wanted to highlight the rationales for some.

We understand these to be the minimum requirements for mediation in district court and that individual districts or judges may order mediation in particular cases or types of cases in addition to those requirements set forth in the proposed rules. For example, the 5th Judicial District has had positive results with the mediation requirement for temporary and contempt matters involving any issue other than delinquent child support. The Polk County Bar Mediation Program assisted with mediations in over 700 contempt matters during the period 2014 – 2018. Over half of those resulted in full or partial settlements. In the same time period, the Program mediated at least 1345 temporary matters, and over 900 of those resulted in full or partial settlement.

With regard to the timelines for scheduling mediation, members voiced several concerns:

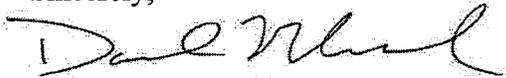
- If the deadline to mediate is 180 days after service, it will be difficult to schedule a trial within the 9 month trial scheduling guideline for those attorneys who push out the mediation to the end of 180 day period.
- If the parties are required to schedule mediation 30 days after service in every case, it will result in many cases getting scheduled that are not anticipated to need mediation and thus mediators having many mediations on their schedule that will be cancelled. This may result in mediators either being reluctant to schedule mediations or double-scheduling with the understanding that most will cancel.
- The 30-day scheduling deadline may also result in the district court appointing mediators in a number of cases that are not in need of, or ripe for, mediation.

Thus, the consensus is to propose that mediations be scheduled 90 days after service. This would allow the parties to participate in the required exchange of financial information and hopefully have a better understanding of whether mediation will be needed, prior to scheduling. It was also the consensus that the deadline for the mediation to be completed be shortened to 120 days, which will allow sufficient time to schedule a trial, if needed, within the 9 month guideline.

Finally, in addition to the 40 hours of initial training to qualify for the registry, we suggest considering some number of family law CLE hours at regular intervals to maintain registry eligibility.

As an organization with many years of mediation experience and many members who frequently participate in the mediation process as both advocates and mediators, we appreciate the opportunity to comment on the proposed rules. If you would like to discuss further, please do not hesitate to contact me.

Sincerely,



David W. Nelmark  
Polk County Bar Association President

Enclosure: Revisions to Proposed Rules

2650835.1

**Chapter 15****Rules of Mandatory Mediation in Certain Family Law Cases**

**Rule 15.1 Definitions.** As used in this chapter:

**5 15.1(1)** “Mediation” means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

**15.1(2)** “Mediator” means an individual who conducts a mediation.

**15.1(3)** “Mediation Agreement” means a written voluntary agreement the parties have reached during the mediation process.

**Rule 15.2 Scope.**

**15.2(1)** All parties must participate in mediation in all cases involving permanent custody, visitation, and other matters filed under Iowa Code chapters 598 and 600B. This rule applies to both initial proceedings and modification proceedings.

**15.2(2)** Each judicial district or court retains the authority to order mediation for other matters filed under Iowa Code chapters 598 and 600B.

**15.2(3)** Mediation does not change a party’s obligation to follow statutory requirements in Iowa Code chapter 598.

**Rule 15.3 Waivers and exemptions.**

**15.3(1)** The following cases are exempt from mandatory mediation unless otherwise ordered by a judicial district or court pursuant to Rule 15.2(2):

- a.* All temporary proceedings.
- b.* All contempt proceedings.
- c.* Child support or medical support obligations enforced by the Child Support Recovery Unit.
- d.* Elder abuse pursuant to Iowa Code chapter 235F.
- e.* Domestic abuse pursuant to Iowa Code chapter 236.
- f.* Cases in which a mediation party is served by publication.

g. Cases in which a party serves a Notice of Intent to File Written Application for Default Judgment, an Application for Default Judgment, or a similar pleading regarding default judgment.

h. Cases participating in the Informal Family Law Trial Pilot Project or other court-approved informal or abbreviated family law trial proceeds.

**15.3(2)** Upon application of a party, the court may grant a waiver from mandatory mediation when:

a. The party demonstrates a history of domestic abuse as specified in Iowa Code section 598.41(3);

b. The parties file a stipulated settlement addressing all issues within 90 days of service; or

c. The party shows good cause for a waiver.

#### **Rule 15.4 Scheduling.**

**15.4(1)** Within ~~30~~90 days from the date of service, the parties must set a date for mediation to be completed within ~~180~~120 days from the date of service unless a case is exempt from mandatory mediation under rule 15.3(1) or the court has granted a waiver from mandatory mediation under rule 15.3(2).

**15.4(2)** The parties or their attorneys must obtain a date for mediation directly ~~with the mediator or through the~~ a mediation program in approved by the judicial district where the case is filed or directly with a mediator if no mediation program exists in the judicial district where the case was filed.

**15.4(3)** Following completion of mediation, the parties must file a Certificate of Mediation with the court, on a form the supreme court prescribes, before a trial date may be scheduled.

#### **Rule 15.5 Selection of mediators.**

**15.5(1)** The parties must select a mediator from the registry of qualified mediators.

**15.5(2)** If the parties cannot agree on a mediator, the court will appoint a mediator from the registry of qualified mediators.

#### **Rule 15.6 Mediation process.**

**15.6(1)** ~~Parties may have a right to be represented by their attorneys at the mediation.~~ Any party represented by counsel shall be allowed to have their attorney present at the mediation

**15.6(2)** ~~A Subject to the discretion of the mediator, a party may have a person other than the party's attorney attend and/or participate in the mediation, but the mediator may determine whether the person will be allowed to participate in the mediation.~~

**15.6(3)** Mediation sessions are confidential and are governed by the requirements of Iowa Code chapter 679C and Iowa Court Rule 11.6.

**15.6(4)** When the parties have completed mediation, the mediator will provide the parties with a supreme court prescribed Certificate of Mediation for filing with the court.

**Rule 15.7 Payment of mediators.** Mediator fees, including any applicable program administration fees, will be evenly divided between the parties unless the parties agree otherwise or the Court orders otherwise.

**Rule 15.8 Enforcement.** The court may enforce the requirements of these rules through contempt proceedings, compliance hearings, imposition of sanctions, or other means the court deems appropriate.

**Rule 15.9 Mediator registry and qualifications.**

15.9(1) *Statewide mediator registry.*

*a.* The office of professional regulation will maintain a statewide registry of qualified family law mediators. The registry will be updated and published on a regular basis. The office of professional regulation will review applications from persons who wish to be listed on the registry of qualified family law mediators, which will include persons who meet the training requirements established in this rule or who have received a waiver under rule 15.9(6).

*b.* The statewide mediator registry will contain the mediators' names, addresses, telephone numbers, and any biographical information the mediator provides, including information about the mediator's education, professional

experience, and mediation training and experience, and will be maintained on the office of professional regulation's website.

**15.9(2) Mediators' designations.** As part of the application process, all mediators must designate the judicial districts or counties for which they are willing to accept court appointments. A willingness to accept court appointments is not required to be listed on the statewide registry of mediators. Each designation will be deemed to be a representation that the mediator will accept appointments from the designated district or county and will not charge for travel time and expenses incurred in carrying out the mediator's duties associated with those appointments. A refusal to accept an appointment in a mediator's designated judicial district or county may be grounds for denying future appointments of the mediator in the judicial district or county, if such refusal is not based on reasonable grounds including a scheduling conflict or conflict of interest. A mediator may amend his or her designation with respect to court appointments by notifying the office of professional regulation.

**15.9(3) Registry fees.** The office of professional regulation will establish a reasonable administrative fee for qualified individuals and organizations to be placed on the statewide registry. Any such fees will go to the office of professional regulation for administration of the statewide registry.

**15.9(4) Mediator qualifications.** Prior to being listed on the statewide registry, all mediators providing family law mediation services under this chapter must have a minimum of 40 hours of family law mediation training ~~accredited~~ that has been approved for credit by the Iowa Supreme Court Commission on Continuing Legal Education. Mediators who are attorneys must have an active Iowa law license.

**15.9(5) Removal from statewide registry.** The office of professional regulation may administratively remove a mediator from the statewide registry if the mediator's law license has been suspended, revoked, or placed into exempt or inactive status. A mediator may also be removed from the registry for reasons including, but not limited to, concerns about the mediator's competence, misrepresentations the mediator made during the application process, a finding of liability against the mediator under Iowa Code section 679C.115, or a determination by a court that the mediator has engaged in the unauthorized practice of law. Any removal from the registry may be reviewed by the State Court Administrator upon written request.

**15.9(6) *Waiver of training requirement.*** Mediators who are listed on one or more rosters of family law mediators maintained by an Iowa district court administrator or a mediation program endorsed or approved by an Iowa district court administrator as of June 30, 2019, may be listed on the statewide registry maintained by the office of professional regulation by submitting an application and showing they have previously completed the training requirements set forth in rule 15.9(4).

#### **Rule 15.10 Administration.**

**15.10(1)** The director of the office of professional regulation will serve as the principal executive officer for matters pertaining to the qualifications, classification, and discipline of family law mediators under this chapter. The director may, subject to the approval of the supreme court, employ such other employees as may be necessary to carry out the duties of this chapter.

**15.10(2)** At least 60 days prior to the start of each fiscal year or on a date otherwise set by the supreme court, the director of the office of professional regulation will submit to the supreme court for consideration and approval a budget for the upcoming fiscal year covering the operations provided for in this chapter. The supreme court's approval of the budget authorizes payment as provided in the budget. A separate bank account designated as the mediator operating account must be maintained for payment of authorized expenditures as provided in the approved budget. Fees or other funds received or collected as directed in this chapter or in accordance with an interagency agreement will be deposited in the mediator operating account for payment of the expenditures authorized in the approved budget.

#### **Rule 15.11 Immunity**

**15.12(1) *Claims.*** Claims against the director, assistant directors, and staff of the office of professional regulation are subject to the State Tort Claims Act set forth in Iowa Code chapter 669.

**15.12(2) *Immunity.*** The director, assistant director, and staff of the office of professional regulation are immune from all civil liability for damages for the conduct, communications, and omissions occurring in the performance of and within the scope of their official duties under these rules.

**15.12(3) *Qualified immunity.*** Records, statements of opinion, and other information regarding a mediator that are communicated by an entity, including any person, firm, or institution, without malice, to the director, assistant directors, and staff of the office of professional regulation, are privileged and civil suits predicated thereon may not be instituted.

FILE

FEB 25 2019

CLERK SUPREME COURT



**Mandatory Family Law Mediation**  
Thomas Reidel to: Rules Comments

02/25/2019 03:52 PM



Mediation Public Comments.docx



**Hon. Thomas G. Reidel** | District Court Judge  
Iowa Judicial Branch | Seventh Judicial District  
Scott County Courthouse | 400 West Fourth Street | Davenport | Iowa 52801  
563.326.8783 (Scott County) | 563.263.6634 (Muscatine County)  
[thomas.reidel@iowacourts.gov](mailto:thomas.reidel@iowacourts.gov)  
[www.iowacourts.gov](http://www.iowacourts.gov)

*The Iowa Judicial Branch dedicates itself to providing independent and accessible forums for the fair and prompt resolution of disputes, administering justice under law equally to all persons.*

**THE IOWA DISTRICT COURT SEVENTH JUDICIAL DISTRICT  
ADMINISTRATIVE OFFICE, SCOTT COUNTY COURTHOUSE  
400 WEST FOURTH STREET  
DAVENPORT, IA 52801-1104  
PHONE | (563) 326-8783  
FAX | (563) 326-8218**

**FILED**

FEB 25 2019

CLERK SUPREME COURT

Honorable Marlita A. Greve  
Chief District Court Judge  
Marlita.Greve@iowacourts.gov

Kathy M. Gaylord  
District Court Administrator  
Kathy.Gaylord@iowacourts.gov

**District Judges**

Hon. Mark D. Cleve  
Hon. Nancy S. Tabor  
Hon. Mary E. Howes  
Hon. Marlita A. Greve  
Hon. Thomas G. Reidel  
Hon. John D. Telleen  
Hon. Joel W. Barrows  
Hon. Mark R. Lawson  
Hon. Henry W. Latham II  
Hon. Stuart P. Werling  
Hon. Patrick A. McElyea  
Hon. Mark R. Fowler

**Senior District Judge**

Hon. Mark J. Smith

**District Associate Judges**

Hon. Gary P. Strausser  
Hon. Christine Dalton  
Hon. Phillip J. Tabor  
Hon. Cheryl E. Traum  
Hon. Korie L. Shippee

**Magistrates**

Hon. Bert M. Watson  
Hon. R. Douglas Wells  
Hon. Michael M. Judge  
Hon. Neva Rettig Baker  
Hon. Cynthia Z. Taylor  
Hon. Stephen P. Wing  
Hon. John E. Wunder  
Hon. John L. Kies  
Hon. Christine D. Frederick  
Hon. Tamra J. Roberts  
Hon. Eric C. Syverud  
Hon. Meghan K. Corbin  
Hon. Michael E. Motto  
Hon. Mark J. Neary  
Hon. Elizabeth A. Srp  
Hon. Trey Sucher  
Hon. Paul A. Aitken

February 25, 2019

Clerk of the Supreme Court  
1111 East Court Avenue  
Des Moines, IA 50319  
(sent via e-mail [-rules.comments@iowacourts.gov](mailto:-rules.comments@iowacourts.gov))

In Re: Mandatory Family Law Mediation

Dear Justices:

In the fall of 2016, Chief Judge Marlita A. Greve called for the creation of the Seventh Judicial District Mediation Study Committee and asked me to chair said Committee. The Committee was formed to ensure that the District would be prepared in the event that the Iowa Supreme Court required mediation in all family law cases, which is currently under consideration. This Committee was not tasked with determining whether a mandatory mediation program should be established in the Seventh Judicial District for family law cases but rather to recommend how such a program should be constituted in the District if mediation became mandatory statewide. During the course of its work, Chief Judge Greve also tasked the Committee with making a specific recommendation regarding the inclusion or exclusion of judge-led settlement conferences as part of family law case processing should a mediation program be adopted.

The Mediation Study Committee was composed of stakeholders from all counties in our District. The Committee consisted of the following individuals: District Court Judges Thomas Reidel, Mary Howes and Henry Latham; Lawyers Tamra Roberts and Lisa Jones from Cedar County; Lawyers Sarah Oldsen and James Pillers from Clinton County; Lawyers Joshua Reicks and Brad Bofelli from Jackson County; Lawyers Esther Dean and Brian Metcalf from Muscatine County; Lawyers Jennie Clausen, Jen Olsen, Justin Teitle, and Maria Waterman from Scott County; District Court Administrator Kathy Gaylord; and Assistant District Court Administrator Brian K. McKenrick.

The Seventh Judicial District Mediation Study Committee met as a whole once each month. The group undertook a review of the mediation procedure in all of the other judicial districts in the State of Iowa. The review also included the Rock Island, Illinois mediation program due to its close proximity to the region. Various Committee members solicited information from attorneys, court administrators, and mediation coordinators across the State to determine what parts of their respective programs worked best and what changes they would recommend to their own programs. Annie Tucker, Mediation Coordinator in the Sixth Judicial District, and Liz Araguas, mediator in the Sixth Judicial District, met with the committee to answer questions regarding the success of and drawbacks with their program. Consideration was given to the anecdotal responses obtained from attorneys, court administrators and mediation coordinators. The response was uniformly positive regarding the mediation process.

**THE IOWA DISTRICT COURT SEVENTH JUDICIAL DISTRICT  
ADMINISTRATIVE OFFICE, SCOTT COUNTY COURTHOUSE  
400 WEST FOURTH STREET  
DAVENPORT, IA 52801-1104  
(563)326-8783  
FAX (563)326-8218**

I have reviewed the proposed Rules of Mandatory Mediation in Certain Family Law Cases. Rule 15.4(3) requires that mediation be completed before a trial date may be scheduled. Our committee researched the issue and reported to Chief Judge Greve as follows:

A great deal of discussion and research was conducted in an attempt to come up with a method that allows for the parties to participate in mediation in a productive and meaningful manner. Other judicial districts require mediation to be completed prior to a trial date being set. The Committee sees little benefit in this requirement. On the contrary, such timing could be exploited by a party to delay trial scheduling. As briefly discussed above, the Committee recommends that the mediator be appointed at the time of the trial scheduling conference from a maintained roster of qualified mediators unless the parties have mutually agreed to a mediator. This allows time for the parties to complete initial disclosures required under Iowa R. Civ. P. 1.500. More importantly, it gives parties an opportunity to emotionally process the turmoil and reality of the family law matter so that mediation may be more productive.

The last line was the most important in the committee's recommendations. Overwhelming anecdotal statements reflected that early in the process many people were simply not emotionally able to resolve issues. Our goal was to follow the normal methods to schedule a trial in a timely manner but to require that mediation be completed by a pre-determined time prior to trial. This allows parties to mediate on a schedule that helps to prevent people from making emotional choices and also provides the benefit of completing cases more quickly. This is more beneficial to the litigants. I strongly encourage you to reconsider Rule 15.4(3) in order to protect the litigants, ensure fairness and prevent unnecessary delays in the trial process.

I would happy to provide a copy of our entire report if you think it will be of assistance. Thank you for the opportunity to comment.

Sincerely,

Thomas G. Reidel  
District Court Judge

FILED

FEB 26 2019



Fwd: [EXTERNAL] A 6JD perspective on Mandatory Family Law Mediation  
Molly Kottmeyer to: Kathy Higginbotham

CLERK SUPREME COURT  
02/27/2019 12:23 PM

Would you please include with the other public comments on mandatory mediation.

Thanks,  
Molly

----- Forwarded by Mark S Cady/District2/JUDICIAL on 02/27/2019 10:53 AM -----

From: Annie Tucker <[admin@mediateiowa.org](mailto:admin@mediateiowa.org)>  
To: Mark Cady <[mark.cady@iowacourts.gov](mailto:mark.cady@iowacourts.gov)>  
Date: 02/26/2019 05:07 PM  
Subject: [EXTERNAL] A 6JD perspective on Mandatory Family Law Mediation

Dear Chief Justice Cady,

I hope this email finds you well.

I deeply appreciate your good work.

You and I met years ago when you came to IC to talk with Judge Thomas at the Johnson County Courthouse about the 6JD Family Mediation Program. I was at that time and still am the director of the 6JD Family Mediation Program.

Attached are my comments on the Mandatory Family Law Mediation proposal, which I sent to the committee as a professional mediator, since I am still the part-time director of the 6JD Family Mediation Program and a part-time roster mediator. The board of Mediation Services of Eastern Iowa (MSEI) also sent comments. MSEI is the 501(c)3 that is the court-appointed administrator of the mediation programs in the 6JD.

I am grateful that support for mandatory mediation across the state continues to grow.

My concern is that the court intends to order all parties in certain family law cases to mediation without addressing very real concerns about parties in abusive relationships. Research indicates that in relationships where parties are separating, 25-40% have abuse or power imbalances. Research also indicates that the time of separation is the time when vulnerable parties in an abusive relationship are most at risk of serious harm or murder. The current proposal does not address the safety and capacity issues presented by 1/4 to potentially nearly 1/2 of the cases ordered to mediation.

I think it is an access to justice issue. Abused parties are litigants with special requirements, needing systematic support, monitoring, and review of their cases.

How do we figure out in which cases there are safety concerns or capacity issues or which parties need a waiver?

Fortunately, we do not have to figure this out. That has already been done by the Iowa Supreme Court Mediation and Domestic Violence Work Group. Their report, written by Jennifer Juhler, current Director of Education and Training at State of Iowa Judicial Branch, is a succinct resource that contains vital information regarding domestic abuse and identifies how to determine whether mediation is appropriate. It also contains 35 recommendations regarding cases with parties in abusive relationships and court-ordered mediation. The report can be found at:

[https://mediateiowa.org/wpcontent/uploads/Iowa\\_Supreme\\_Court\\_Report\\_Mediation\\_and\\_Domestic\\_Violence.pdf](https://mediateiowa.org/wpcontent/uploads/Iowa_Supreme_Court_Report_Mediation_and_Domestic_Violence.pdf) (by the way, this is on the MSEI website.)

And the Sixth Judicial District has had such policies in place for over 20 years.

I know from being on the Iowa Supreme Court Family Law Case Processing Reform Task Force ADR Work Group that there can be a reluctance to address DV issues in mediation proposals. In our work group, even attorney mediators who screen for domestic abuse were reluctant to even mention domestic abuse in our report, thinking that requiring screening would be a deterrent to attorney support. I do understand competing priorities, but it was incredibly frustrating to see safety take a back seat. I am concerned that my comments will again be seen as annoying.

Our policies have not been a deterrent in the 6JD: 80% of our family roster mediators are attorneys. Also, we developed a policy where attorneys can have a staffperson also take the required training so they can do the screening.

Thanks for reading this far.

If you have 5 minutes to read my suggested policies and comments, I will be deeply appreciative.

Thank you for all you are doing and have already done to increase justice in our state and beyond.

I wish you the best.

Sincerely,

Annie Tucker

Annie Tucker, Director  
Mediation Services of Eastern Iowa  
509 Kirkwood Ave.  
Iowa City, IA 52240