

In the
Indiana Supreme Court



CAUSE NUMBER: 94S00-0901-MS-4

ORDER WITHDRAWING SEPTEMBER 15, 2009 ORDER AMENDING INDIANA RULES FOR ALTERNATIVE DISPUTE RESOLUTION AND SUBSTITUTION OF NEW ORDER

By Order dated September 15, 2009, this Court ordered the Amendment of Indiana Rules for Alternative Dispute Resolution. The September 15, 2009 Order is hereby withdrawn and the following Order is issued in its place.

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Indiana Alternative Dispute Resolution Rule 2.7 is amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

...

Rule 2.7. Mediation Procedure

(A) **Advisement of Participants.** The mediator shall:

(1) advise the parties of all persons whose presence at mediation might facilitate settlement; and

(2) in child related matters, ensure that the parties consider fully the best interests of the children and that the parties understand the consequences of any decision they reach concerning

the children; and

(3) inform all parties that the mediator (a) is not providing legal advice, (b) does not represent either party, (c) cannot assure how the court would apply the law or rule in the parties' case, or what the outcome of the case would be if the dispute were to go before the court, and (d)

recommends that the parties seek or consult with their own legal counsel if they desire, or believe they need legal advice; and

(4) explain the difference between a mediator's role and a lawyer's role when a mediator knows or reasonably should know that a party does not understand the mediator's role in the matter; and

(5) not advise any party (i) what that party should do in the specific case, or (ii) whether a party should accept an offer.

(B) Mediation Conferences.

(1) The parties and their attorneys shall be present at all mediation sessions involving domestic relations proceedings unless otherwise agreed. At the discretion of the mediator, non-parties to the dispute may also be present.

(2) All parties, attorneys with settlement authority, representatives with settlement authority, and other necessary individuals shall be present at each mediation conference to facilitate settlement of a dispute unless excused by the court.

(3) A child involved in a domestic relations proceeding, by agreement of the parties or by order of the court, may be interviewed by the mediator out of the presence of the parties or attorneys.

(4) Mediation sessions are not open to the public.

(C) Confidential Statement of Case. Each side may submit to the mediator a confidential statement of the case not to exceed ten (10) pages, prior to a mediation conference, which shall include:

(1) the legal and factual contentions of the respective parties as to both liability and damages;

- (2) the factors considered in arriving at the current settlement posture; and
- (3) the status of the settlement negotiations to date.

A confidential statement of the case may be supplemented by damage brochures, videos, and other exhibits or evidence. The confidential statement of the case shall at all times be held privileged and confidential from other parties unless agreement to the contrary is provided to the mediator. In the mediation process, the mediator may meet jointly or separately with the parties and may express an evaluation of the case to one or more of the parties or their representatives. This evaluation may be expressed in the form of settlement ranges rather than exact amounts.

(D) **Termination of Mediation.** The mediator shall terminate mediation whenever the mediator believes that continuation of the process would harm or prejudice one or more of the parties or the children or whenever the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely. At any time after two (2) sessions have been completed, any party may terminate mediation. The mediator shall not state the reason for termination except when the termination is due to conflict of interest or bias on the part of the mediator, in which case another mediator may be assigned by the court. According to the procedures set forth herein, if the court finds after hearing that an agreement has been breached, sanctions may be imposed by the court.

(E) **Report of Mediation: Status.**

(1) Within ten (10) days after the mediation, the mediator shall submit to the court, without comment or recommendation, a report of mediation status. The report shall indicate that an agreement was or was not reached in whole or in part or that the mediation was extended by the parties. If the parties do not reach any agreement as to any matter as a result of the mediation, the mediator shall report the lack of any agreement to the court without comment or

recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

(2) If an agreement is reached, in whole or in part, it shall be reduced to writing and signed by the parties and their counsel. In domestic relations matters, the agreement shall then be filed with the court. If the agreement is complete on all issues, a joint stipulation of disposition shall be filed with the court. In all other matters, the agreement shall be filed with the court only by agreement of the parties.

(3) In the event of any breach or failure to perform under the agreement, upon motion, and after hearing, the court may impose sanctions, including entry of judgment on the agreement.

(F) Mediator's Preparation and Filing of Documents in Domestic Relations Cases

At the request and with the permission of all parties in a domestic relations case, a Mediator may prepare or assist in the preparation of documents as set forth in this paragraph (F).

The Mediator shall inform an unrepresented party that he or she may have an attorney of his or her choosing (1) be present at the mediation and/or (2) review any documents prepared during the mediation. The Mediator shall also review each document drafted during mediation with any unrepresented parties. During the review the Mediator shall explain to unrepresented parties that they should not view or rely on language in documents prepared by the Mediator as legal advice. When the document(s) are finalized to the parties' and any counsel's satisfaction, and at the request and with the permission of all parties and any counsel, the Mediator may also tender to the court the documents listed below when the mediator's report is filed.

The Mediator may prepare or assist in the preparation of only the following documents:

(1) A written mediated agreement reflecting the parties' actual agreement, with or without the caption in the case and "so ordered" language for the judge presiding over the parties' case;

(2) An order approving a mediated agreement, with the caption in the case, so long as the order is in the form of a document that has been adopted or accepted by the court in which the document is to be filed;

(3) A summary decree of dissolution, with the caption in the case, so long as the decree is in the form of a document that has been adopted or accepted by the court in which the document is to be filed and the summary decree reflects the terms of the mediated agreement;

(4) A verified waiver of final hearing, with the caption in the case, so long as the waiver is in the form of a document that has been adopted or accepted by the court in which the document is to be filed;

(5) A child support calculation, including a child support worksheet and any other required worksheets pursuant to the Indiana Child Support Guidelines or Parenting Time Guidelines, so long as the parties are in agreement on all the entries included in the calculations;

(6) An income withholding order, with the caption in the case, so long as the order is in the form of a document that has been adopted or accepted by the court in which the document is to be filed and the order reflects the terms of the mediated agreement.

These amendments shall take effect January 1, 2010.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each

circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Public Defender's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and Thomson Reuters.

Thomson Reuters is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this 24th day of September, 2009.

/s/ Brent E. Dickson
Brent E. Dickson
Acting Chief Justice of Indiana

All Justices concur.