

# Chicago Daily Law Bulletin

## Mediation plan pushed for Law Division cases

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Rules for a mediation program aimed at easing the case load in the Cook County Circuit Court's Law Division are headed for consideration by the Illinois Supreme Court.

Cook County Circuit Judge Allen S. Goldberg led an approximately 60-member committee that spent more than nine months drafting the proposal. The committee was composed of judges, lawyers for plaintiffs and defendants, and an insurance industry representative.

"The ultimate goal is [for] all of the bar to see what a tremendous process the mediation process is, and the lawyers will see that and the judges won't even have to initiate it," Goldberg said in a phone interview. "The lawyers will want it."

Under the proposed rules for the court-annexed mediation program for major civil cases, judges would encourage the parties to pursue mediation in more complex cases prior to trial, Goldberg said.

"The bar has shown great interest in this process and therefore I conceive large numbers of cases being mediated," Goldberg said.

Rudolph G. Schade, a principal in Cassidy, Schade & Gloor, a Chicago firm that represents insurance companies, said the program could prove beneficial for cases that otherwise might be in the system longer than necessary.

"I think it's a good idea," said Schade, who was a member of the Cook County committee. "I think it will fly."

Kevin J. Conway, president-elect of the Illinois Trial Lawyers Association and a committee member, said he believes that he and the plaintiff lawyers community have a very open mind when it comes to the mediation program. "Time will tell if it works," he said.

Todd A. Smith, a name partner of Power, Rogers & Smith in Chicago, who also served on the committee, said "I think [the mediation program is] going to work well and will be [well] received by both sides of the

bar – plaintiff and defense."

The rules were forwarded to Cynthia Y. Cobbs, director of Administrative Office of the Illinois Courts, on Tuesday by Chief Cook County Judge Timothy C. Evans. Administrative office employees will review the proposal and make sure it complies with Illinois Supreme Court Rule 99, relating to local rules for mediation programs. If so, the proposal will then be forwarded to the high court, Goldberg said.

The mediation program "will be good for the overall system because it means we will have a process to resolve cases short of a full-blown trial," Evans said by phone Tuesday. In mediation, a third-party neutral, frequently a retired judge or lawyer in private practice, works with the parties to resolve their disputes. Mediation sessions, often held in a confidential setting, typically last several hours and are less expensive to conduct than lengthy trials.

The mediation program would co-exist with the Cook County Circuit Court's Mandatory Arbitration Program, which is used for cases seeking less than \$30,000 in damages. Mediation programs for civil cases are already in place in DuPage, Kane, Lake and Winnebago counties. The co-existing programs are considered successful, court officials said. The initial court-annexed mediation program began in Winnebago County 10 years ago, according to Goldberg.

An estimated 60 percent to 70 percent of the cases settle at the first mediation session, said Harris H. Agnew, who was chief judge of the 17<sup>th</sup> Judicial Circuit when the program began in Winnebago County.

"Even when they don't settle initially, the mediation can have an impact on a settlement at a later date," said Agnew, who retired from the bench in 1996 and provided advice to the Cook County committee.

Gregory P. Guth, a partner at

Holstrom & Kennedy P.C. in Rockford, estimates that he's acted as a mediator in more than 700 cases in the last decade as part of the Winnebago County program. Guth said that process should "be easy to use and hard to refuse."

Guth added, "If it comes from the top, the judge is suggesting it, I think it will work better."

Among the types of cases seeking more than \$3,000 in damages and potentially subject to mediation are personal-injury matters, complex contract cases, product and professional liability actions and commercial litigation, according to the Cook County proposal.

"It is hoped that the mediation process will allow litigants to avoid the cost, expense and drain of a lengthy trial, with no guaranteed outcome," states an introduction to the proposal. "Parties determine their own destiny in mediation and they can often reach accord, with guidance from a skilled and qualified mediator."

The proposal calls for lawyers who have been certified as civil mediators in the court-annexed mediation program to be paid \$250 an hour, with each side paying a proportionate share of the mediation charge. The mediator could be chosen by a judge or selected by the parties. The first mediation session must be held within eight weeks of a judge's referral order, the proposal states.

"The consensus of the committee is that those mediators with good track records will be ones in high demand," said Daniel S. Hefter, a principal in Fox, Hefter, Swibel, Levin & Carroll in Chicago, who chaired a subcommittee of the Cook County committee responsible for drafting the rules proposal.

If the proposed rules are approved by the high court by year's end, the mediation program could start as early as Feb. 1, 2004, said Law Division Presiding Judge William D. Maddux.