

Rule 99.1. Mortgage Foreclosure Mediation Programs.

(a) Mortgage foreclosure specific mediation programs implemented by any judicial circuit must adhere to the requirements set forth in Rule 99 and this rule.

(b) Each judicial circuit that currently has approved local rules for a mediation program in place in accordance with Rule 99 may apply that program to mortgage foreclosure cases if applicable. Local rules amended or created to accommodate mortgage foreclosure cases consistent with this rule must be submitted to the Administrative Office of the Illinois Courts for review and approval prior to implementation.

(c) Each judicial circuit electing to establish a new mortgage foreclosure mediation program shall adopt rules for the conduct of the mortgage foreclosure mediation proceedings. If a judicial circuit elects to establish a new mortgage foreclosure mediation program, the judicial circuit shall establish a plan for starting a mortgage foreclosure mediation program that demonstrates the mediation program can be implemented for that particular county or counties at the time of submission of the local rules for approval by the Administrative Office.

(d) Based on the plan established pursuant to paragraph (c), the local circuit rules shall address:

- (i) the requirements set forth in Rule 99;
- (ii) resources to provide meaningful access to HUD-certified housing counseling services for eligible homeowners;
- (iii) resources to provide meaningful access to *pro bono* legal representation for eligible homeowners;
- (iv) resources to provide meaningful language access for program participants;
- (v) any costs charged to any participant in the mortgage foreclosure case;
- (vi) a sustainability plan that includes a long-term funding plan; and
- (vii) training of judges, key court personnel and volunteers on mortgage foreclosure mediation.

[Adopted Feb. 22, 2013, eff. Mar. 1, 2013.](#)

COMMITTEE COMMENTS

(March 1, 2013)

The creation of Rule 99.1 resulted from the drastic increase in mortgage foreclosure cases and the resultant burden on judicial circuits throughout the state. Each judicial circuit faced a foreclosure crisis and began adapting its court procedures to most effectively administer the foreclosure proceedings. As a result, the judicial circuits began applying to the Illinois Supreme Court under Rule 99 for approval of mortgage foreclosure specific mediation programs. These programs varied widely in scope, capacity, and structure. To more fully understand the needs of mortgage foreclosure specific mediation, the Illinois Supreme Court appointed a committee to study and hold public hearings to address the need for uniformity among mediation programs. The Special Supreme Court Committee on Mortgage Foreclosures concluded that there was no

one model that would work well for each judicial circuit but certain elements must be present to provide equal accessibility and assistance throughout the state. The intention of this rule is to incorporate more consistent elements in programs throughout the state while also allowing flexibility for changing conditions with mortgage foreclosure filings in the future.

The plan required in paragraph (c) recognizes the Supreme Court's need to understand the extent of the mortgage foreclosure problem in the county or counties in each judicial circuit applying for approval. The Supreme Court should be provided the history of the mortgage foreclosure filings in the judicial circuit, the available resources, and the staffing scope of the judicial circuit that shows that the mortgage foreclosure program is realistically attainable for the judicial circuit. The judicial circuit applying for approval should provide a plan that is comparable in scope, size and capacity to the mortgage foreclosure problem facing that circuit. Additionally, the plan should include information about available resources for qualified homeowners that will contribute to the successful implementation of such a program.

Paragraph (d) sets forth requirements specific to mortgage foreclosure mediation programs in addition to the requirements articulated in Rule 99. The Committee concluded that for residential mortgage foreclosures where a defendant was actively living in the home and facing foreclosure, access to a HUD-certified housing counselor and *pro bono* legal representation is beneficial. However, the Committee also recognized that the availability of those resources may differ from circuit to circuit in the state. As a result, any program proposal submitted for approval shall detail the access the program will be able to provide to eligible homeowners to HUD-certified housing counseling services and *pro bono* legal representation. Lack of availability of particular resources due to financial or geographic constraints shall not preclude approval of a mediation program.

The Committee also recognized that the implementation of a mortgage foreclosure mediation program can drain a court's resources both financially and in staffing capacity. As a result, paragraphs (d)(v) and (vi) require any new mortgage foreclosure mediation program to set forth any costs charged to the parties in the litigation, as well as the sustainability funding plan. The fees charged may include, but are not limited to, mediator fees for mediation sessions and dedicated filing-fee add-ons. A sustainability plan may include those costs charged to litigants or another identifiable source of funding.