

Proposal 04-16 (P.R. 0129)
Offered by the Special Supreme Court Committee on Child Custody Issues

Article IX. Child Custody Proceedings.

Part A. Rules of General Application to Child Custody Proceedings.

Rule 900. Purpose and Scope. (New)

(a) Purpose. Trial courts have a special responsibility in cases involving the care and custody of children. When a child is a ward of the court, the physical and emotional well-being of the child is literally the business of the court. The purpose of this Article (Rules 900 through 990) is to expedite cases affecting the custody of a child, to ensure the coordination of custody matters filed under different statutory Acts, and to focus child custody proceedings on the best interests of the child, while protecting the rights of other parties to the proceedings.

(b)(1) Definitions. For the purposes of this Article “child custody proceeding” means an action affecting child custody or visitation. “Child” means a person who has not attained the age of 18.

(b)(2) Part A. Scope. Rules 900 through 920, except as stated therein, apply to all child custody proceedings initiated under Article II, III, or IV of the Juvenile Court Act of 1987, the Illinois Marriage and Dissolution of Marriage Act, the Uniform Child Custody Jurisdiction Act, the Illinois Parentage Act of 1984, the Illinois Domestic Violence Act of 1986 and Article 112A of the Code of Criminal Procedure of 1963, and guardianship matters involving a minor under Article XI of the Probate Act of 1975.

(b)(3) Part B. Scope of Rules 921 through 940. Rules 921 through 940 apply to child custody proceedings initiated under the Illinois Marriage and Dissolution of Marriage Act, and the Illinois Parentage Act of 1984.

(c) Applicability of Other Rules. Applicable provisions of Articles I and II of these rules shall continue to apply in child custody proceedings except as noted in this Article.

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Rule 901. General Rules. (New)

(a) Expedited Hearings. Child custody proceedings shall be scheduled and heard on an expedited basis. Hearings in child custody proceedings shall be held in strict compliance with applicable deadlines established by statute or by this Article.

(b) Setting of Hearings. Hearings in child custody proceedings shall be set for specific times. At each hearing, the next hearing shall be scheduled and the parties shall be notified of the date and time of the next hearing. Hearings rescheduled following a continuance shall be set for the earliest possible date.

(c) Continuances. Parties, witnesses and counsel shall be held accountable for attending hearings in child custody proceedings. Continuances shall not be granted in child custody proceedings except for good cause shown, and shall be granted only if the continuance is consistent with the health, safety and best interests of the child. The party requesting the continuance and the reasons for the continuance shall be documented in the record, including the factual findings supporting the court's determination that the continuance is in the best interests of the child.

(d) In any child custody proceeding taken under advisement by the trial court, the trial judge shall render its decision as soon as possible but not later than 60 days after the completion of the trial.

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Rule 902. Pleadings. (New)

(a) Complaint or Petition. The initial complaint or petition in a child custody proceeding shall state 1) whether the child involved is the subject of any other child custody proceeding pending before another division of the circuit court, or another court or administrative body of Illinois or of any other state, an Indian tribe, or a foreign country and 2) whether any order affecting the custody or visitation of the child has been entered by the circuit court or any of its divisions, or by another court or administrative body of Illinois or of any other state, an Indian tribe, or a foreign country. If any child custody proceeding is pending with respect to the child, or any order has been entered with respect to the custody or visitation of the child, the initial complaint or petition shall identify the tribunal involved and the parties to the action.

(b) Verification of Initial Complaint or Petition. The plaintiff or petitioner in a child custody proceeding shall verify the pleadings required by paragraph (a) of this rule. If the plaintiff or petitioner is a public agency, the verification shall be on information and belief of the attorney filing the pleading and shall state that reasonable efforts were made to obtain all information relevant to the matters verified.

(c) Answer or Appearance. In a child custody proceeding the defendant's (or respondent's) answer, if required, shall include a verified disclosure of any relevant information known to the defendant (or respondent) regarding any pending

proceedings or orders described in paragraph (a) of this rule. Any defendant or respondent who appears but is not required to file an answer in the child custody matter shall be questioned under oath by the court at the party's first appearance before the court regarding any proceedings or orders described in paragraph (a) of this rule.

(d) Continuing Duty. The parties have a continuing duty to disclose information relating to other pending child custody proceedings or any existing orders affecting the custody or visitation of the child, and shall immediately disclose to the court and the other parties to the proceeding any such information obtained after the initial pleadings, answer or appearance.

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Rule 903. Assignment and Coordination of Cases. (New)

Whenever possible and appropriate, all child custody proceedings relating to an individual child shall be conducted by a single judge. Each judicial circuit shall adopt a rule or order providing for assignment and coordination of child custody proceedings. Assignments in child custody proceedings shall be in accordance with the circuit rule or order then in force.

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Rule 904. Case Management Conferences. (New)

In child custody proceedings other than cases under Articles II, III and IV of the Juvenile Court Act of 1987, and cases under the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act of 1984 provided for under Part B of this Article (see Rule 923), an initial case management conference pursuant to Rule 218 shall be held not later than 60 days after the filing of the petition or complaint. If not previously resolved, the court shall address the appointment of a guardian *ad litem* or counsel for the child and counsel for any indigent party entitled to the assistance of appointed counsel at the initial case management conference.

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Rule 905. Mediation (New)

(a) Each judicial circuit shall establish a program to provide mediation for cases involving the custody of a child or visitation issues (whether or not the parties have been married). In addition to the minimum requirements set forth in subparagraph (b)(2) of Rule 99, local circuit court rules for mediation in child custody and visitation cases shall address: (i) mandatory training for mediators; (ii) limitation of the mediation program to child custody and visitation issues; (iii) (unless otherwise provided for in this Article) standards to determine which child custody and visitation issues must be referred to mandatory mediation, and the time for referral, and (iv) excuse from referral to mandatory mediation for good cause shown. The immunity and approval requirements of subparagraph (b)(1) of Rule 99 shall apply to mediation programs for child custody and visitation matters.

(b) Each judicial circuit shall establish a program to provide mandatory mediation for dissolution of marriage and paternity cases involving the custody of a child or visitation issues (whether or not the parties have been married). In addition to the minimum requirements set forth in subparagraph (b)(2) of Rule 99, local circuit court rules for mediation in dissolution of marriage and paternity cases shall address: (i) mandatory expertise requirements of a mediator; (ii) mandatory training for mediators; (iii) limitation of the mediation program to child custody and visitation issues; and (iv) mandatory referral of child custody and visitation issues to mediation,

unless the parties are excused for good cause shown. The immunity and approval requirements of subparagraph (b)(1) of Rule 99 shall apply to mediation programs for child custody and visitation matters.

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Rule 906. Attorney Qualifications and Education in Child Custody and Visitation Matters. (New)

(a) Statement of Purpose. This rule is promulgated to insure that counsel who participate in child custody and visitation matters possess the ability, knowledge, and experience to do so in a competent and professional manner. To this end each circuit court of this state and the Circuit Court of Cook County, shall develop a set of qualifications and educational requirements for attorneys appointed by the court to represent children in child custody cases and guardianship cases when custody or visitation is an issue and shall further develop a plan for the procurement of qualified attorneys in accordance with the plan.

(b) Submission of qualifications and plan. The Chief Judge of a judicial circuit shall be responsible for the creation of the qualifications and plan and for submitting them to the Conference of Chief Judges for approval. The Chief Judges of two or more contiguous judicial circuits may submit a Plan for the creation of a single set of qualifications and Plan encompassing those judicial circuits or encompassing contiguous counties within the circuits.

(c) Qualifications and Plan. The qualifications shall provide that the attorney is licensed, insured, and in good standing with the Illinois Supreme Court. Certification requirements may address minimum experience requirements for attorneys representing minor children. In addition, the qualifications may include one

or all of the following which are recommended: (1) Prior to appointment the attorney shall have 10 hours in the two years prior to the date the attorney qualifies for appointment in approved continuing legal education courses in the following areas: child development; roles of guardian ad litem and child representative; ethics in child custody cases; relevant substantive state, federal, and case law in custody and visitation matters; family dynamics, including substance abuse, domestic abuse, and mental health issues. (2) Periodic continuing education in approved child related courses shall be required to maintain qualification as an attorney in child custody and visitation cases. (3) Requirements for initial Pro Bono representation.

(d) Supreme Court Review and Approval. The Conference of Chief Judges shall review and approve the Plan or may request that the Chief Judge modify the submitted list of qualifications and Plan. Upon approval, the Chief Judge of each circuit shall be responsible for administering the program and insuring compliance. An attorney approved to participate in child custody and visitation matters under a plan approved in one county or judicial circuit shall have reciprocity to participate in child custody and visitation matters in other counties and judicial circuits in Illinois.

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Rule 907. Minimum Duties and Responsibilities of Attorneys for Minor Children. (New)

(a) Every child representative, attorney for a child and guardian ad litem shall adhere to all ethical rules governing attorneys in professional practice, be mindful of any conflicts in the representation of children and take appropriate action to address such conflicts.

(b) Every child representative, attorney for a minor child and guardian ad litem shall have the right to interview his or her client(s) without any limitation or impediment.

(c) Immediately upon appointment, the child representative, attorney for the child or guardian ad litem shall interview the child, or if the child is too young to be interviewed, the attorney should, at a minimum, observe the child. As expeditiously as possible, the child representative, attorney for the child or guardian ad litem shall take whatever steps necessary to obtain all information pertaining to issues affecting the child, including interviewing family members and others possessing special knowledge of the child's circumstances.

(d) The child representative, attorney for the child or guardian ad litem shall determine what services the family needs to address the custody dispute, make appropriate recommendations to the parties, and seek appropriate relief in court, if required, in order to serve the best interest of the child.

(e) The child representative, attorney for the child or guardian ad litem shall determine whether a settlement of the custody dispute can be achieved by agreement, and, to the extent feasible, shall attempt to resolve such disputes by an agreement that serves the best interest of the child.

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Rule 908. Judicial Training on Child Custody Issues. (New)

(a) Meeting the challenge of deciding child custody cases fairly and expeditiously requires experience or training in a broad range of matters including, but not limited to: a) child development, child psychology and family dynamics; b) domestic violence issues; c) alternative dispute resolution strategies; d) child sexual abuse issues; e) financial issues in custody matters; f) addiction and treatment issues; g) statutory time limitations; and, h) cultural and diversity issues.

(b) Judges should have experience or training in the matters described in paragraph (a) of this Rule before hearing child custody cases. Before a judge is assigned to hear child custody cases, the chief judge of the judicial circuit should consider the judge's background, any prior training the judge has completed and any training that may be available to the judge before he or she will begin hearing child custody cases.

(c) Judges who, by specific assignment or otherwise, may be called upon to hear child custody cases shall attend a seminar approved by the Supreme Court concerning matters described in paragraph (a) of this Rule or related issues at least once every two years. Judges may meet this requirement by attending a seminar in person or by completing approved individual training through the Internet, computer training programs, video presentations, or other means. The chief judges of the

judicial circuits should make reasonable efforts to ensure that judges have the opportunity to attend approved seminars to meet their responsibilities under this Rule.

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Part B - Child Custody Proceedings Under the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act of 1984.

Rule 921. General Provisions. (New)

In addition to the rules in Part A of this Article, the rules in this Part B shall apply to child custody proceedings filed under the Illinois Marriage and Dissolution of Marriage Act, and the Illinois Parentage Act of 1984.

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Part B - Child Custody Proceedings Under the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act of 1984.

Rule 922. Time Limitations. (New)

All child custody proceedings under this rule in the trial court shall be resolved within 18 months from the date of filing to final order. In the event this time limit is not met, the trial court shall make written findings as to the reason(s) for the delay. The 18 month time limit shall not apply if the parties including the attorney representing the child agree in writing and the trial court makes a written finding that the extension of time is for good cause shown. In the event the parties do not agree, the court may consider whether an extension of time should be allowed for good cause shown.

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Rule 923. Case Management Conferences. (New)

(a) Initial Conference. In a child custody proceeding under this Part, an initial case management conference pursuant to Rule 218 shall be held not later than 60 days after the filing of the petition or complaint. In addition to other matters the court may chose to address, the initial conference shall cover the following issues:

(1) Parenting Education: the parents shall show proof of completion of an approved parenting education program as required by Rule 924, provide a fixed schedule for compliance, or show cause to excuse compliance;

(2) Custody and Parenting Plan: The parents shall provide the court with an agreed order regarding custody and an agreed parenting plan, if there is an agreement;

(3) Mediation. If there is no agreement regarding custody or a parenting plan or both, the court shall schedule the matter for mediation and shall advise each parent to comply with the initial requirements of the mediator.

(b) A full case management conference shall be held not later than 30 days after mediation has been completed. In addition to other matters the court may choose to address at the conference, and if the court has not appointed counsel previously, the court shall address the appointment of counsel for the child pursuant to Rule 925.

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Rule 924. Parenting Education Requirement. (New)

(a) Program. Each circuit or county shall create or approve a parenting education program consisting of at least four (4) hours covering the subjects of visitation and custody and their impact on children.

(b) Mandatory Attendance. Except when excused by the court for good cause shown, all parties shall be required to attend and complete an approved parenting education program as soon as possible, but not later than sixty (60) days after an initial case management conference. In the case of a default or lack of jurisdiction over the respondent, only the petitioning party is required to attend but if the respondent later enters an appearance or participates in post-judgment proceedings, then the party who has not attended the program shall attend. The court shall not excuse attendance unless the reason is documented in the record and a finding is made that excusing one or both parents from attendance is in the best interests of the child.

(c) Trial Impact. No final judgment shall be issued nor shall a custody trial occur until the parties have attended an approved parenting education program or have been excused from attendance by the court. The court may impose sanctions on any party failing to complete the program.

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Rule 925. Appointment of Child Representative. (New)

In a case where the court has referred the parties to mediation to resolve their custody dispute and following the holding of a full case management conference and the parties or their counsel have certified to the court that the custody dispute remains unresolved, the court shall appoint an attorney for the minor child or a guardian ad litem or a child representative to represent the best interests of the child.

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Part C - Child Custody Proceedings Under Articles II, III and IV of the Juvenile Court Act of 1987.

Rule 941. General Provisions. (New)

In addition to the rules in Part A of this Article, the rules in this Part C shall apply to child custody proceedings filed under Articles II, III and IV of the Juvenile Court Act of 1987.

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Part C - Child Custody Proceedings Under Articles II, III and IV of the Juvenile Court Act of 1987.

Rule 942. Court Family Conferences. (New)

(a) Abuse Neglect, and Dependency Cases. In cases under Articles II, III, and IV of the Juvenile Court Act of 1987, on motion of any party or on its own motion, the court may in its discretion hold a Court Family Conference in accordance with this Rule.

(b)(1) Initial Conference - Time. At the temporary custody hearing, or as soon thereafter as possible, the court shall set the date and time for an Initial Court Family conference. The initial Court Family Conference shall be held not less than 56 days after the Temporary Custody Hearing.

(2) Initial Conference - Parties. All parties shall appear at the Court Family Conference except the minor, who may appear in person or through a guardian *ad litem* or his or her attorney. The caseworker assigned to the case must also appear. If no party objects, a foster parent may participate in the Conference. If any party objects, the court in its discretion may exclude the foster parent but the foster parent retains the right to be heard by the court before the end of the proceedings. The court may in its discretion allow other persons interested in the minor to attend the Conference at the request of the child or a parent. The failure of any party (with the exception of the child or his or her guardian *ad litem* or attorney) to appear shall not prevent the court from proceeding with the Court Family Conference.

(3) Initial Conference - Record. If all parties are present for the Court Family Conference, the court shall conduct the Conference off the record, and at the conclusion of the Conference summarize the Conference for the record. If the parents are not present, the Court shall conduct the entire Conference on the record.

(4) Initial Conference - Disclosure of Service Plan. The Illinois Department of Children and Family Services or its assigns shall provide the most recent service plan to all parties seven days before the Court Family Conference. In the event that the service plan has not been filed with the court prior to the Court Family Conference, the court shall convene the Court Family Conference and discussion shall focus on services that would appropriately be included in the plan. Such discussion should ensure that the family and the caseworker have a clear understanding of the expectations of the court.

(5) Initial Conference - Issues.

(A) The discussion at the Court Family Conference shall focus on eliminating the causes or conditions that contributed to the findings of probable cause and, if applicable, the existence of urgent and immediate necessity. If possible, at the conclusion of the discussion the court shall set a target date for return home or case closure. If the court determines that setting a target date for return home or case closure is not possible or is premature, the court, during the discussion, shall make clear to the parties and the caseworker what needs to be accomplished before the court will consider setting a

target return home date.

(B) The discussion at the Court Family Conference shall include the services contained in the service plan for the parents and the child. The needs of the child and visitation plans between the parent and the child and between the child and any siblings shall also be discussed.

(C) The discussion shall include any other matters that the court, in its discretion, deems relevant.

(6) Initial Conference - Other Issues. At the initial Court Family Conference, the court may address case management issues that would be appropriate for consideration at a subsequent Court Family Conference.

(7) Initial Conference - Order. At the conclusion of the Court Family Conference, the court shall enter an order approving the service plan or setting forth any changes the court requires to be made to the service plan.

(8) Initial Conference - Confidentiality. With the exception of statements that would support new allegations of abuse or neglect, statements made during an off the record portion of a Court Family Conference shall be inadmissible in any administrative or judicial proceeding. If the court refers to any specific statements made by the parents in its summary of the off the record portion of the Conference or in the order entered following the Conference, upon objection of the parents, such references shall be stricken.

(c) Subsequent Court Family Conferences. Court Family Conferences may

be held after the initial Conference as the court deems necessary. At a subsequent Court Family Conference, the court has the authority to make orders relating to case management as is provided for in other civil cases by Rule 218. In the court's discretion, matters considered at the initial Conference may be reviewed at any subsequent Conference.

(d) Combined Hearings. The initial Court Family Conference may be combined with any hearing held within the required time. Subsequent Court Family Conferences may be combined with any other hearing on the case.