

LINN COUNTY CIRCUIT COURT--SMALL CLAIMS DEPARTMENT MEDIATION PROGRAM

The purpose of the Small Claims Mediation Program is to provide an option, other than litigation, for the settlement of a small claim. Although the actual mediation process is optional, it is **mandatory** for the parties to attend the orientation describing the mediation process unless the requirement is waived by a Judge. Failure to appear at mediation orientation could result in a judgment against that party. Please be sure to keep the Court apprised of any change of address as the Court's mail is not forwarded. If your mailing address changes, send written notice to the Court that includes the case name and case number.

Whenever a defendant chooses to have a hearing, the Court will schedule all parties for orientation. Mediation orientation generally is scheduled by the Linn County Circuit Court on the 2nd and, occasionally on another Monday of the month when necessary. Notices are mailed to all parties giving the date, time and place they are to appear for the orientation.

At the orientation, the parties will be given the option to proceed through mediation or to request a trial. If the mediation option is selected, the parties will be assigned to a mediator, and the mediation session is normally completed the same day. If one or more of the parties request a trial, the matter will be scheduled for trial as determined by available time on the court docket (usually within 6 - 12 weeks). Notices will be mailed to all parties giving the date and time to appear for the court trial.

The Orientation Process:

At the orientation, a Judge or Court Official will explain the mediation process and encourage the parties to attempt to work out their differences using the mediator as a neutral facilitator. Mediators will be present in the courtroom to accept assignments and to mediate with the respective parties to the case. Each case will be "called", the parties will be asked if they wish to proceed with mediation, and if each party has the authority to reach a settlement in the case. If one or more of the parties object to mediation, the case will be scheduled for a court trial. If the parties select the mediation option, the parties will be assigned to a mediator and will adjourn to another room for the mediation.

The Mediation Process:

The mediator is a neutral party trained to help the parties work out a satisfactory solution to the situation. The mediator does not listen to evidence and decide what should be done. The mediator works with the parties to help THEM come to an agreement which will solve the situation. The parties have an opportunity to explain their side of the story to each other and to negotiate a solution. The role of the mediator is to facilitate the overall discussion. After an agreement is reached, the mediator will put the agreement in writing and have each party sign the document. The agreement becomes a contract between the parties to perform some action. The agreement is entered into the court file as an agreement, not as a judgment and the case will be dismissed. If either party violates the agreement, the other party may submit an affidavit of non-compliance to the Court and the agreement may become a judgment with all of the ability to enforce a judgment handed down by a Small Claims Court.

If an agreement is not reached within a reasonable time (approximately one hour in duration) or the parties terminate the mediation, the case is sent back to the Court. The matter will be scheduled for a trial as determined by available time on the court docket (usually within 6 to 12 weeks). Notices will be mailed to all parties giving the date and time to appear for the trial.

Advantages to Mediation:

- 1) The number one advantage to mediation versus litigation is that in mediation, the parties have a "say" concerning the solution. In a trial, the parties present evidence and a Judge makes a decision based on law. There is no negotiation and THERE IS NO APPEAL FROM A SMALL CLAIMS HEARING OR TRIAL. In mediation, there is an opportunity to negotiate a solution which may be more appropriate to the situation than a legal decision.
- 2) Normally, all parties work harder to fulfill the terms of an agreement which they help craft versus a decision dictated by a neutral, third party.
- 3) Generally there is less damage to a long-term relationship when the parties work out their own agreement versus having a judge tell them what they MUST DO.
- 4) Mediation provides more flexibility to reach a solution appropriate to the situation than if a judge has to make a ruling.
- 5) The mediation process is faster, normally completed in the same day, versus coming back for a court trial at some later time.
- 6) As long as the parties meet the conditions of the agreement, there is no judgment filed. Having no judgments helps to protect the credit rating and provides other fiscal benefits for the respective party.

Mediation is your opportunity to settle your case with terms agreeable to both parties with the help of a neutral, third-party mediator. Please be ready to participate in mediation, including having all documents necessary to reach an agreement which will take place immediately after the orientation.