

RULE 35. Mediation

35.01 Ohio Uniform Mediation Act

The Court hereby adopts and incorporates by reference as if fully written herein the provisions of the Ohio Uniform Mediation Act set forth in Chapter 2710 of the Ohio Revised Code, including all definitions found in R.C. §2710.01. ~~the provisions of §3109.052 of the Ohio Revised Code dealing with Mediation of Differences as to Allocation of Parental Rights and Responsibilities and Rule 16 of the Ohio Rules of Superintendence.~~ Frequently used definitions include:

- a. "Mediation" means any process in which a mediator facilitates communication and negotiation between the parties to assist them in reaching a voluntary agreement regarding their dispute.
- b. "Mediator" means an individual who conducts a mediation.
- c. "Mediation Communication" means a statement, whether oral, in a record, verbal or non-verbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.
- d. "Nonparty participant" means a person other than a party or mediator that participates in a mediation.
- e. "Domestic abuse" means aggressive behaviors directed toward a current or former intimate partner that are physical, sexual, economic, spiritual, or coercively controlling. "Domestic abuse" may occur as a single aggressive behavior or a combination of aggressive behaviors and may vary from family to family in terms of frequency, recency, severity, intention, circumstances, and consequence.
- f. "Domestic violence" has the same meaning as in R.C. §3113.31(A)(1).

35.02 Cases Eligible for Mediation

The Court has discretion to encourage parties to use mediation in any civil action filed in this court. Cases eligible for mediation shall include, but not be limited to those actions concerning the allocation of parental rights and responsibilities or the care of, or parenting time or companionship time with minor children or delinquency or status offenses, and abuse, neglect and dependency cases.

A case may be submitted to mediation as provided in this rule. The Judge or Magistrate may issue an order on its own motion, upon the motion of counsel, upon the request of a party, or upon referral by the mediator.

35.03 Mediation Prohibited

Mediation is prohibited in the following circumstances:

- (a) As an alternative to the prosecution or adjudication of domestic violence;
- (b) In determining whether to grant, modify, or terminate a protection order;
- (c) In determining the terms and conditions of a protection order;
- (d) In determining the penalty for violation of a protection order;
- (e) When parties do not have the capacity to mediate upon screening.

Mediation shall not be prohibited in a subsequent custody case, even though the case may result in the termination of the provisions of a protection order issued pursuant to §2151.34 and §3113.31 of the Ohio Revised Code.; **or in a juvenile court delinquency case, even though the case involves juvenile-perpetrated domestic violence.**

35.04 Referrals to Mediation

The Judge or Magistrate may refer a case to mediation at any time. A party may request to participate in mediation by filing a motion or joint motion with the court, or by making an oral request for a referral to mediation on the record. The assignment clerk may refer cases involving shared parenting, companionship time, and custody cases when it appears the parties are amenable to mediation.

35.05 Procedure for Mediation

(A) Notice of **Mediation and Hearings**

The judge or magistrate shall include any referral to mediation in an entry with a copy to all parties and custodians. Notice of the mediation hearing shall, at a minimum, state the date, time, place and contact information. Participants will be contacted by mail, **email**, ~~or by~~ phone or other medium when necessary.

A party opposed to either the referral or the appointed mediator must file a written objection with the court within seven days of receiving notice of the referral or provider and explain the reasons for any opposition.

(B) Mediator Selection and Assignment

The following methods may be used to select a mediator for the case:

- 1. The court may assign a court mediator to mediate;**
- 2. The court may randomly assign a mediator to the case from the court's roster of approved mediators;**
- 3. Specific appointments may be made by the court taking into consideration the qualifications, skills, expertise, and caseload of the mediator in addition to the type, complexity, and requirements of the case;**
- 4. Parties may select a mediator from the court roster, if any;**
- 5. Parties may request leave to select a mediator without guidance from the court. The court shall not be responsible for the quality of a mediator selected by the parties without guidance from the court and who does not meet the qualifications, education, and training requirements set forth in section 35.08 of this Rule.**

(C) Attendance, Participation and Conduct of Proceedings

A mediator may meet with the parties individually prior to bringing the parties together for any reason, **including but not limited to, further screening.** The mediator may schedule multiple mediation sessions, **if necessary and mutually acceptable** for resolution of the issues **in part or in their entirety.** The mediator should screen for domestic violence both before and during mediation.

Parties to informal cases, such as pre-filing or diversion, may voluntarily attend mediation

sessions.

~~Each party~~ **Parties who are ordered into mediation in formal cases** shall attend the mediation session ~~in person~~ **via video conference**, unless otherwise directed by the mediator. Each party may have a support person accompany the party to mediation. **The court may order parties to return to mediation at any time in formal cases.**

If counsel of any party to the mediation becomes aware of the identity of a person or entity whose consent is required to resolve the dispute, but has not yet joined as a party in the pleadings, they shall promptly inform the mediator, as well as the assigned judge or magistrate.

If the opposing parties to any case are 1) related by blood, adoption, or marriage; 2) have resided in a common residence; or 3) have known or alleged domestic violence at any time prior to or during the mediation, then the parties and their counsel have a duty to disclose such information to the mediator and have duty to participate in any screening required by the court.

By participating in mediation, a nonparty participant, as defined by R.C. 2710.01(D), agrees to be bound by this rule and submits to the court's jurisdiction to the extent necessary for enforcement of this rule. Any nonparty participant shall have the rights and duties under this rule attributed to parties except as provided by R.C. 2710.03(B)(3) and 2710.04(A)(2).

Each party shall be prepared to negotiate an agreement as to any or all issues. The Court will notify the parties of their right to have counsel present for mediation and their right to waive presence of legal counsel, which may be rescinded at any time. The mediator shall inform each party of their right to continue the mediation to consult counsel or to terminate the mediation. To ensure prompt resolution of any issues in dispute, the mediator shall have the duty and authority to set the time for all mediation sessions, including private meetings between the mediator and each party, provided that a party may object to meeting with the mediator without counsel present. The mediator shall have the authority to establish a deadline for the parties to act upon a proposed settlement. The mediator shall control all procedural aspects of the mediation not otherwise set by the court.

If an agreement is reached, the mediator shall inform each party the agreement has no binding effect until it is adopted by the Court, and that either party may withdraw from the agreement prior to the court's approval of the agreement. The parties may request to place their agreement on the record immediately following the mediation. If the mediator determines at any time that mediation ~~should be discontinued,~~ **that further mediation would be of no benefit to the parties**, the mediator may **inform all interested parties and the court that the mediation is terminated using the procedure required by the court.** ~~terminate the proceeding and refer the matter back to the court.~~

(D) Counsel

A party who is not represented by counsel shall attend mediation only if they have waived the right to counsel **in open court. Open court shall include video conference.**

A party is entitled to have their respective counsel present for the mediation sessions.

Parties represented by counsel may attend mediation without counsel only where the right to have counsel present at the mediation has been specifically waived. Parties waiving counsel at mediation must fill out and sign a "Waiver of Counsel at Mediation" form prior to participation in mediation. Waivers may be rescinded at any time.

(E) Continuances

It is the policy of this court to determine matters in a timely manner. Scheduled mediations may be continued only for good cause after a mutually acceptable future date has been determined. The case may be continued by the Judge, Magistrate, Mediator or a party. Except as authorized by the court, the existence of pending motions shall not be good cause for a continuance and no continuance will be granted unless the mediation can be scheduled prior to the final pretrial. All requests for continuances by a party shall be in writing and filed no later than 10 days prior to the scheduled mediation date.

Extension of time for compliance with deadlines not involving a court hearing will be permitted only on a showing to the court that the extension will not interrupt the scheduled movement of the case.

Where continuances and extensions are requested with excessive frequency or insubstantial grounds, the court may adopt one or all of the following procedures:

1. Cross-referencing all requests for continuances and extensions by the name of the lawyer requesting them;
2. Requiring that requests for continuances and stipulations for extensions be in writing and the parties notified; and/or
3. Summoning lawyers who persistently request continuances and extensions to warn them of the possibility of sanctions and to encourage them to make necessary adjustments in the management of their practice. Where such measures fail, restrictions may properly be imposed on the number of cases in which the lawyer may participate at one time

(F) Sanctions

If ~~a party~~ any individual fails to attend a mediation proceeding without good cause, the court may impose sanctions which may include, but are not limited to, the award of attorney fees and other costs, contempt or other appropriate sanctions at the discretion of the judge or magistrate.

(G) Fees and Costs

The Court may impose upon the parties fees and costs for mediation. If there is a fee for mediation, unless otherwise agreed by the parties or order of the Court, the fees shall be shared equally. The court may waive fees and costs for an indigent party. Mediation shall not be ordered when a party is indigent, unless the mediation is available at no cost to the party.

(H) Stay of Proceedings

No court order is stayed or suspended during the mediation process except by written court order. Mediation will not stay discovery, which may continue through the mediation process unless agreed upon by the parties and approved by the judge or magistrate assigned to the case. All court orders continue in effect.

Upon referral of a case to mediation, the court may elect to stay all filing deadlines for up to 60 days. The clerk of courts shall not accept for filing any documents while a case is in mediation, unless expressly permitted by these rules or by court order. Only the following documents may be filed while a mediation stay is in effect:

1. Motion to lift the mediation stay;

2. Response to a motion to lift mediation stay;
3. Motion or stipulation to dismiss the case; and
4. Notice related to

counsel.

(I) Mediator Conflict of Interest

A mediator shall avoid any actual or apparent conflicts of interest arising from any relationship or activity, including but not limited to those of employment or business or from professional or personal contacts with parties or others involved in the dispute. A mediator shall avoid self-dealing or association from which the mediator might directly or indirectly benefit, except from compensation for services as a mediator.

The mediator conducting a mediation session shall disclose to the mediation parties, counsel, if applicable, and any non-party participants any known possible conflicts that may affect the mediator's impartiality as soon as such conflict(s) become known to the mediator. If counsel or a mediation party requests that the mediator withdraw because of the facts so disclosed, the mediator may withdraw in favor of another mediator. If the mediator determines that withdrawal is not warranted, the mediator may elect to continue. The objecting party may then request the judge to remove the mediator. The judge may remove the mediator and appoint another mediator. If the judge decides that the objection is unwarranted the mediator shall proceed as scheduled, or, if delay was necessary, as soon after the scheduled date as possible.

The requirements of this rule are in addition to and do not supersede the requirements of R.C. §2710.08. Wherever a conflict exists between this rule and R.C. §2710.08, the statute shall control.

(J) Domestic Violence and/or Fear of Violence

All parties, via the mediation referral sheet, and counsel shall advise the judge or magistrate of any domestic violence allegations known to them to exist or to have existed in the past, or which become known to them following the referral to mediation.

Mediation may proceed, when violence or fear of violence is alleged, suspected, or present, only if all the following conditions are satisfied:

(a) The person who is or may be the victim of domestic violence is fully informed, both orally and in writing, about the mediation process, the right to decline participation in the mediation process, and the option to have a support person in addition to an attorney, present at mediation sessions.

(b) The parties have the capacity to mediate without fear of coercion or control.

(c) Appropriate procedures are in place to provide for the safety of the person who is or may be the victim of domestic violence and all other persons present at the mediation.

(d) Procedures are in place for the mediator to terminate mediation if he or she believes there is continued threat of domestic violence or coercion between the parties.

(e) Procedures are in place for issuing written Findings of Fact, as required by R.C. §3109.052, to refer certain cases involving domestic violence to mediation.

(K) Referral to Resources

The court administrator shall maintain resources for mediation parties, including victims and suspected victims of domestic violence, encouraging appropriate referrals to legal counsel and other support services such as Children Services, domestic violence prevention, counseling, substance abuse, and mental health services.

(L) Confidentiality

All mediation communications related to or made during the mediation process are subject to and governed by the Uniform Mediation Act. Mediation communications are confidential, and no one shall disclose any of these communications unless all parties and the mediator consent to disclosure. This court may impose penalties for any improper disclosures made in violation of this rule. Disputes regarding confidentiality should first be addressed with the mediator where possible.

By participating in mediation, a nonparty participant, as defined by R.C. §2710.01(D), submits to the Court's jurisdiction to the extent necessary for enforcement of this rule. Any nonparty participant shall have the rights and duties under this rule as are attributed to parties, except that no evidence privilege shall be expanded.

All mediation communications are confidential with the following exceptions:

- (i) Parties may share all mediation communications with their attorneys;
- (ii) Certain threats of abuse or neglect of a child or an adult;
- (iii) Statements made during the mediation process to plan or hide an ongoing crime;
- (iv) Statements made during the mediation process that reveal a felony.

35.06 Abuse, Neglect and Dependency Mediation

Mediation in child abuse, neglect, or dependency cases shall comply with all provisions outlined above in Section 35.05 of this Rule.

Parties who wish to participate in mediation in an abuse, neglect, or dependency case prior to adjudication shall apprise the court at the emergency request for custody hearing, initial hearing or pretrial. The judge or magistrate may refer the case to –pre-adjudication mediation. The dispositional hearing shall not be delayed past 90 days for participation in mediation. Parties who wish to participate in mediation to resolve visitation, case plan, or custody issues at later points in the case may request an appointment by contacting a court clerk without prior court approval. The judge or magistrate may refer or order a case to mediation at any point in a case.

All unrepresented parties shall attend mediation ~~unless~~ **only if** a party has provided a written waiver of their right to counsel in open court. The written waiver must contain a notice in bold print that the waiver may be withdrawn at any time.

All parties represented by counsel shall attend with counsel unless their right to have counsel present has been specifically waived. A waiver may be rescinded at any time.

35.07 Responsibility of Mediator

(A) General Responsibilities

In order to provide a fair mediation process for parties, a mediator shall remain impartial and neutral and shall comply with all of the following:

(1) The “Core Values of Mediation,” as approved by the Supreme Court Dispute Resolution Section in accordance with recommendations established by the Commission on Dispute Resolution;

(2) The “Model Standards of Conduct for Mediators” adopted by the American Bar Association, American Arbitration Association, and the Association for Conflict Resolution;

(3) The “Model Standards of Practice for Family and Divorce Mediation” adopted by the Association for Family and Conciliation Courts;

(4) The “Guidelines for Child Protection Mediation” adopted by the Association for Family and Conciliation Courts.

(B) Legal Advice A mediator shall not offer legal advice.

(C) Satisfaction of Training Requirements

(1) A mediator shall meet the qualifications and comply with all training requirements of Sup.R. 16.23 and adopted pursuant to Sup.R. 16.22 governing mediators and mediation. local court rules governing mediators and mediation adopted in Clermont County Juvenile Court Local Rule 35.

(2) A mediator shall meet the qualifications for mediators and promptly advise the court of any grounds for disqualification or any issues affecting the ability to serve.

(3) Upon request, a mediator shall provide the court documentation indicating compliance with all training and education requirements so that the court may meet the requirements of Sup.R. 16.24(A)(1)(d). The documentation shall include information detailing the date, location, contents, credit hours, and sponsor of any relevant training.

35.08 Mediator Training and Education

(A) Training

(1) A mediator shall complete “Fundamentals of Mediation Training” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.

(2) A mediator shall not be required to complete training pursuant to division (A)(1) of this rule if any of the following apply:

(a) Prior to January 1, 2020, the mediator has completed at least twelve hours of basic mediation training;

(b) Prior to January 1, 2020, the mediator has served as a fulltime mediator for a minimum of three years or mediated at least forty-five cases, in which case the mediator shall complete the “Advanced Mediation Workshop” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution;

(c) The mediator is a law student enrolled in a clinical mediation or dispute

resolution program at an American Bar Association accredited law school, has completed mandatory coursework in fundamental mediation topics, and mediates under the supervision of faculty at the law school.

(B) Education

(1) Prior to accepting a referral from a court for disputes involving the termination of marriage; the allocation of parental rights and responsibilities; the care of or visitation with minor children; unruly and delinquency cases; or juvenile civil protection order cases pursuant to R.C. §2151.34 or R.C. §3113.31, a mediator shall meet all of the following qualifications.

(a) Possess a bachelor's degree, or equivalent educational experience as is satisfactory to the court, and at least two years of professional experience with families, including counseling, casework, legal representation in family law matters, or such other equivalent experience satisfactory to the court.

(b) Comply with the requirements of division (A) of this rule;

(c) Complete "Specialized Family or Divorce Mediation Training" approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution, provided that a mediator who is mediating a delinquency or unruly case may do so even if the mediator has not taken this training;

(d) Complete "Specialized Domestic Abuse Issues and Mediation Training" approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution unless either of the following apply

(i) The mediator is co-mediating with another mediator who has completed the training;

(ii) The mediator is a law student enrolled in a clinical mediation or dispute resolution program at an American Bar Association accredited law school, has completed mandatory coursework in fundamental and domestic abuse mediation topics, and mediates under the supervision of faculty at the law school who has completed the training;

(2) Prior to accepting a referral for disputes involving abuse, neglect, and dependency, a mediator shall meet all of the following qualifications:

(a) Possess significant experience mediating family disputes;

(b) Complete the requirements of division (B)(1) of this rule;

(c) Complete "Specialized Child Protection Mediation Training" approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.

(3) Prior to accepting a referral for dispute involving school attendance mediation, a mediator shall meet either of the following qualifications:

(a) Complete the requirements of division (A) of this rule;

(b) Complete "School Attendance Mediation Training" approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.

35.09 Evaluation, Comments, and Complaints

It is the policy of the court to use mediation to benefit the parties, to assist in reaching a resolution, and to provide a process that is timely, flexible, and maintains the trust and confidence of

the people. Any mediation participant may submit written comments, complaints, or feedback regarding the performance of mediators receiving referrals from the court.

35.09 10 Public Access

The files maintained by a mediator but not filed with a clerk or submitted to a court shall not be available for public access pursuant to Sup.R.44 through 47.