

Rule 40: NEUTRAL EVALUATION

40.01 Introduction.

Through Rule 40 the Clermont County Juvenile Court incorporates by reference Rules 16.50 – 16.55 of the Rules of Superintendence for the Courts of Ohio.

40.02 Definitions.

- (A) “Neutral Evaluation” (“NE”) is a process in which the parties to a dispute present their claims or defenses and describe the principal evidence on which claims or defenses are based to a neutral third party who then shares impressions about the strengths and weaknesses and probable outcome of each matter.
- (B) “Neutral Evaluator” (“Evaluator”) means a court-appointed individual who conducts the NE session.
- (C) “NE Communication” means a statement, whether oral, in a record, verbal or nonverbal, that occurs during a NE session or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a NE session.

40.03 Purpose.

It is the policy of this Court to utilize NE to promote greater public satisfaction through the facilitation of a fair and efficient resolution for Clermont County Juvenile Court.

40.04 Scope.

NE may be chosen as an appropriate method of resolution for a case. A case may be referred to NE for the resolution of allocation of parental rights and responsibilities or companionship/parenting time issues.

40.05 Case Selection and Referral.

- (A) The Court, upon its own motion or upon the motion of a party, may refer a case to Neutral Evaluation.
- (B) If a case is deemed appropriate for NE, a NE session may be scheduled and two Evaluators will be assigned by the Court.
- (C) Unless otherwise ordered by the Court:
 - (1) The Evaluators will consist of one magistrate and an individual.

- (2) Specific appointments may be made by the Court taking into consideration the qualifications, skills, expertise, and caseload of the Evaluators in addition to the type, complexity, requirements of the case, and other relevant factors.

40.06 Participation

The NE session requires the participation of each party, his or her respective attorney, if represented, and the guardian ad litem. No other person shall be permitted to participate without prior approval of the Court.

40.07 Pre-Session Procedure.

(A) Briefs.

- (1) Unless otherwise ordered by the Court, at least 14 days prior to the NE session, each party is required to submit a Parenting Perspective Brief. The guardian ad litem, if appointed, is not required to submit a Brief
 - (a) One copy of the Brief shall be submitted to the Juvenile Court Clerk, and one copy shall be served upon the other party and the guardian ad litem, if appointed, in accordance with these rules.
 - (b) The Brief shall not be filed with the Clerk of Courts, nor shall the Brief be placed in the case file.
- (2) The Evaluators will review the Briefs to gain a preliminary understanding of the concerns, interests, and issues currently present between the parties.
- (3) If either party fails to timely submit the Brief, the NE session may be cancelled.
- (4) The Court's copies of the Briefs and supporting documents will be destroyed upon completion of the NE process.
- (5) The files maintained by an Evaluator, but not filed with the Clerk of Court or submitted to the Court shall not be available for public access under Sup.R. 44 through 47.

(B) Fees.

- (1) The Court may establish a fee for Neutral Evaluation. Unless otherwise ordered by the Court, the NE fees shall be shared equally between the parties. Fees may be waived or reduced for those participants who are found to be indigent.

- (2) In the event the case requires more than one NE session, the Court may order the parties to pay an additional fee. The Court shall take into consideration the parties' financial circumstances when ordering additional fees.
- (3) Fees shall be paid a minimum of 14 days before the scheduled NE session. Failure to submit the fee 14 days in advance may result in cancellation of the NE session.
- (4) Should the parties resolve the contested issues prior to the NE session, the parties may submit a signed agreement to the judge or assigned magistrate. If the agreement is acceptable to the Court and if the agreement is submitted to the judge or assigned magistrate at least 14 days prior to the scheduled NE session, the NE fees may be refunded.

40.08 Neutral Evaluation Session Procedure.

- (A) A team of two Evaluators shall be appointed to conduct the NE session. The magistrate assigned to the underlying case shall not be an Evaluator in the NE process.
- (B) At the NE session, the Evaluators will oversee the discussion to allow each party and/or attorney the opportunity to be heard in an atmosphere of cooperation and respect.
- (C) Unless otherwise permitted by the Evaluators:
 - (1) When a party is represented by an attorney, the party shall have 15 minutes to present his or her case/issues to the Evaluators. The party's attorney is then allowed 5 minutes to present.
 - (2) A self-represented party and the guardian ad litem, if appointed, shall each be allotted the entire 20 minutes to present.
 - (3) The Evaluators may ask each party questions to clarify the issues, if necessary.
- (D) After the parties' presentations, the Evaluators will consult privately to discuss the strengths and weaknesses of each party's position and to discuss probable outcomes for the parties. The Evaluators will then present their feedback and recommendation to the parties and their attorneys, if represented.
- (E) The parties will be given an opportunity to consult privately with their attorneys to review and discuss the Evaluators' feedback.

The parties will then reconvene to discuss the results and attempt resolution.

- (F) If the parties come to a full or partial agreement, the Evaluators may require the agreement to be reduced to written form and submitted to the judge or assigned magistrate. The matter may be referred to other dispute resolution programs if some issues still need to be resolved.
- (G) Evaluators are prohibited from offering legal advice. However, Evaluators may encourage referrals to legal counsel and other support services for all parties.

40.09 Domestic Abuse and Domestic Violence.

- (A) All cases shall be screened for alleged, suspected or present domestic violence by the Evaluators before the commencement of the NE session and during the NE session.
- (B) When violence or fear of violence is alleged, suspected, or present, NE may proceed only if one of the Evaluators has specialized training as set forth in “Specialized Domestic Abuse Issues and Mediation Training” required by Rule 40.10(C)(3) and the Evaluators have done all of the following:
 - (1) Informed the person who is or may be the victim of domestic abuse or domestic violence about the NE process, the right to decline participation in the NE process, and the option to have a support person, in addition to an attorney, present at the NE session.
 - (2) Assessed and determined that the parties have the capacity to participate in the NE session without fear of coercion or control.
 - (3) Implemented procedures to provide for the safety of the person who is or may be the victim of domestic abuse or domestic violence and all other persons present at the NE session.
 - (4) Implemented procedures for the Evaluators to terminate the NE session if there is a threat of domestic abuse, domestic violence, or coercion between the parties.
- (C) Evaluators may encourage referrals to legal counsel and other support services for victims and suspected victims of domestic abuse or domestic violence.

- (D) NE shall not be used in any of the following:
 - (1) As an alternative to the prosecution or adjudication of domestic violence;
 - (2) In determining whether to grant, modify or terminate a protection order;
 - (3) In determining the terms and conditions of a protection order; and
 - (4) In determining the penalty for violation of a protection order.

40.10 Qualifications and Continuing Education

A team of Evaluators, whether employed by the Court, or with whom the Court is contracted, or to whom the Court makes referrals, shall have the following minimum qualifications.

- (A) At least one Evaluator shall be licensed to practice law in Ohio and have a minimum of five years of experience in domestic relations and/or juvenile law. “Experience in domestic relations law or juvenile law” includes mediation, legal representation in family law matters, or equivalent experience that is satisfactory to the Court.
- (B) The second Evaluator may also be licensed to practice law in Ohio and have a minimum of five years of experience in domestic relations and/or juvenile law. Alternatively, the second Evaluator must possess a master’s degree in the fields of psychology, social work, sociology, counseling, finance, or a related field acceptable to the Court and have a minimum of five years of experience working with children and families. Experience “working with children and families” includes mediation, counseling, casework, legal representation in family law matters, or equivalent experience that is satisfactory to the Court.
- (C) At least one Evaluator shall have completed the following courses approved by the Supreme Court Dispute Resolution Section in accordance with the standards established by the Commission on Dispute Resolution.
 - (1) Fundamentals of Mediation Training or be a qualified Mediator in accordance with Local Rule 35.08;
 - (2) Specialized Family or Divorce Mediation Training; and
 - (3) Specialized Domestic Abuse Issues and Mediation Training.
- (D) Additionally, an Evaluator shall complete at least three hours per calendar year of continuing education relating to neutral evaluation, negotiation, mediation, or the area of law in which the Evaluator evaluates.

If an Evaluator fails to comply with the continuing education requirement, the Evaluator shall not be eligible to serve as an Evaluator until the continuing education requirement is met.

- (E) The Chief Deputy Clerk will maintain a list of qualified Evaluators. All individuals interested in being on the list of qualified Evaluators shall submit on or before January 1st of each year to the Chief Deputy Clerk an updated curriculum vitae (including a list of training related to the field of dispute resolution and profession or association memberships) and continuing education certificates. The Court will review applications of persons seeking to be added to the list of qualified Evaluators in accordance with the procedures adopted by the judge of the Juvenile Court.
- (F) At the request of a party to the NE, the Evaluator shall disclose his or her qualifications to evaluate the subject matter in dispute.

40.11 Neutrality of Evaluators

- (A) If at any time during the NE process an Evaluator or party becomes aware of a conflict of interest or an issue with respect to the neutrality of the Evaluator(s), the Evaluator, the party, or the party's counsel, when applicable, shall disclose the facts of the purported conflict. A party may agree to waive the conflict after a full disclosure of the facts. If a party requests that the Evaluator withdraw, or if the Evaluator believes it necessary that he or she withdraw from the case, the Court may appoint another Evaluator.
- (B) An Evaluator shall not serve as a witness, consultant, attorney, or expert in any pending or future action relating to a dispute for which the evaluator conducted a NE session.

40.12 Confidentiality

- (A) Neutral Evaluation communications are confidential.
- (B) Exceptions to confidentiality include, but are not limited to, the following:
 - (1) Parties may share NE communications with their attorneys;
 - (2) Allegations of abuse or neglect of a child;
 - (3) Certain threats of harm to other people or oneself;
 - (4) Statements made during the NE process to plan or to hide an ongoing crime; and
 - (5) Statements made during the NE process that reveal a felony.

- (C) The foregoing confidentiality requirements shall not preclude Evaluators and participants in a NE session from testifying as to a crime committed in their presence, nor shall they be construed to exempt any person from the statutory duty to report child abuse pursuant to R.C. 2151.421 or to limit any exceptions contained in R.C. 2710.05.
- (D) Neutral Evaluation sessions shall not be recorded.

40.13 Privileged Communications.

- (A) A NE communication is privileged and not subject to discovery or admissible as evidence in a judicial proceeding. An Evaluator shall not be deposed or subpoenaed to testify about any NE communication unless an exception applies.
- (B) Exceptions to privilege include the following:
 - (1) The NE communication is otherwise discoverable;
 - (2) The NE communication is an imminent threat or statement of a plan to inflict bodily injury or commit a crime of violence.
 - (3) The NE communication is intentionally used to plan, to attempt to commit or to commit a crime, or to conceal an ongoing crime or ongoing criminal activity; and
 - (4) The NE communication is required to be disclosed pursuant to R.C. 2921.22.

40.14 Neutral Evaluations and Complaints

- (A) A Neutral Evaluator shall provide participants with the Neutral Evaluation form prior to the first session and at the end of the term of the appointment for submission to the Court Administrator.
- (B) The Court shall complete a review of the Neutral Evaluator on the Court's roster in January of each year.
- (C) A party to a case may file a complaint or written comments regarding the Neutral Evaluator within one year from the termination of the appointment. The complaint or written comments shall be submitted to the Court Administrator, and include all of the following:
 - (1) The case caption and case number;
 - (2) The name of the Neutral Evaluator
 - (3) The name and contact information for the person making the complaint;

- (4) The nature of any alleged misconduct or violation;
- (5) The date the alleged misconduct or violation occurred
- (D) The Court Administrator shall provide a copy of the complaint or written comments to the Neutral Evaluator.
- (E) The Neutral Evaluator has fourteen days from the date of the receipt of the complaint or written comments to respond in writing to the Court Administrator.
- (F) The Court Administrator shall conduct an investigation into the allegations and shall issue a response within thirty days from the date the complaint or written comments were received.
- (G) The Court Administrator shall submit the complaint or written comments, the response of the Neutral Evaluator, and a report of his investigation to the Judge for consideration and appropriate action.
- (H) The Court will maintain a written record in the Neutral Evaluator's file regarding the nature and disposition of any comment or complaint and shall notify the person making the comment or complaint and the Neutral Evaluator of the disposition.

40.15 Sanctions

The Court may impose sanctions for any violations of this Rule which may include, but are not limited to, attorney fees and other costs, contempt, and any other appropriate sanctions at the discretion of the Court.