

## **DOMESTIC RULE 22. MEDIATION**

The Court incorporates by reference herein, R.C. 2710 “Uniform Mediation Act” (UMA), R.C. 3109.052 Mediation of Differences as to Allocation of Parental Rights and Responsibilities, and Rule 16 of the Supreme Court of Ohio Rules of Superintendence.

### **(A) Definitions**

All definitions found in the “Uniform Mediation Act” (UMA) R.C. 2710.01 are adopted by this court through this local rule.

### **(B) Actions for divorce, annulment or legal separation**

At any time any action under the jurisdiction of this court may be referred to mediation. After service of summons in an action for divorce, annulment or legal separation involving the allocation of parental rights and responsibilities, the court may order the parties to participate in mediation screening. Parties may also participate in mediation prior to or after the filing of a contempt motion for denial of parenting time. Mediation Services will also provide voluntary mediation screenings to parties wishing to mediate without litigation pending.

### **(C) Post-decree motions to reallocate parental rights and responsibilities**

Upon the filing of a motion to modify the allocation of parental rights and responsibilities, the court shall order the parties to participate in mediation screening and mediation. If Mediation Services determines that mediation is appropriate for the parties, the parties shall participate in mediation.

### **(D) Exemption from mediation**

The following actions may be exempted from mediation upon request of any party:

- (1) Cases in which a party does not have the capacity to mediate due to mental illness or domestic violence;
- (2) In emergency circumstances requiring an immediate hearing;
- (3) Cases in which the parties have achieved an executed Agreed Judgment Entry; or
- (4) If the parties have previously mediated the matters at issue.

### **(E) Mediation**

If Mediation Services determines that mediation is appropriate for the parties and the parties agree to or are ordered to mediate, then the parties shall participate in mediation with a court approved mediator. Mediation sessions may be convened from time to time until all issues are resolved in a manner mutually acceptable to the parties or until the mediator determines continued efforts would not be productive. Unless ordered to participate in mediation, the parties may agree to terminate mediation. The Court may order parties to participate in or return to mediation at any time. At the request of the parties or counsel, or upon the court’s own motion,

the court may stay the proceedings for mediation for a period of time not to exceed ninety (90) days.

Parties are generally referred to mediation to mediate issues related to the allocation of parental rights and responsibilities. However, parties may agree to mediate issues other than, or in addition to, the allocation of parental rights and responsibilities, with the approval of their respective counsel or pursuant to court order.

All parties and counsel shall advise the assigned 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 entry of the referral to mediation order but before conclusion of all mediation proceedings, which allegations involve any two or more persons whose attendance is required by the referral order.

Statements made by mediators shall not be construed as giving legal advice.

#### **(F) Confidentiality / Privilege**

Pursuant and subject to the provisions of the UMA, O.R.C. 2710.01 to 2710.10, O.R.C.3109.052, the Rules of Evidence, and any other pertinent judicial rule, all communications related to the mediation or made during the mediation process shall be governed by the privileges as set forth in the UMA, Rules of Evidence and other pertinent judicial rules.

Upon the conclusion of the mediation, the mediator shall notify Mediation Services whether the mediation occurred or was terminated, the parties reached an agreement on all or some issues, and the attendance of the parties. No other information shall be communicated by the mediator to Mediation Services unless all who hold a mediation privilege, including the mediator, have consented to such disclosure. Agreements reached in mediation shall not be binding upon the parties until reviewed and approved by their counsel and the Court.

#### **(G) Participation**

Any mediator providing services for the court shall utilize procedures that will:

- (1) Ensure that parties are allowed to participate in mediation, and if the parties wish, that their attorneys and other individuals they designate are allowed to accompany them and participate in mediation.
- (2) Screen for domestic violence both before and during mediation.
- (3) Encourage appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.
- (4) Prohibit the use of mediation in any of the following:

- (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; and
- (d) In determining the penalty for violation of a protection order.

Nothing in this division of this rule shall prohibit the use of mediation in a subsequent divorce or custody case even though that case may result in the termination of the provisions of a protection order.

Further, any mediator providing services for the court shall only conduct a mediation session where violence or fear of violence is alleged, suspected, or present, when the mediator has completed the specialized training specified herein and ensures that all of the following conditions are satisfied:

- (1) The person who is or may be the victim of domestic violence is fully informed, both orally and in writing, about the mediation process, his or her right to decline participation in the mediation process, and his or her option to have a support person present at mediation sessions.
- (2) The parties have the capacity to mediate without fear of coercion or control.
- (3) 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.
- (4) 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.
- (5) 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.

#### **(H) Party/Non-Party Participation**

Parties who are ordered into mediation in formal cases shall attend scheduled mediation sessions. All parties may have their attorney and / or other support persons attend the mediation. The judge, magistrate and / or mediator may require the attendance of the parties' attorneys and / or the Guardian ad Litem at the mediation sessions if the mediator deems it necessary and appropriate.

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 been joined as a party in the pleadings, they shall promptly inform the mediator as well as the assigned judge or magistrate. 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).

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.

## **(I) Qualifications**

To be a court approved mediator for divorce, annulment, legal separation, post-decree and other cases involving the allocation of parental rights and responsibilities, a mediator shall possess the following qualifications:

### **(1) General Qualifications and Training.**

A mediator employed by the court or to whom the court makes referrals for mediation shall satisfy all of the following:

- a. Possess a bachelor's degree, or equivalent education or experience as is satisfactory to the court, and at least two years of professional experience with families. "Professional experience with families" includes mediation, counseling, casework, legal representation in family law matters, or such other equivalent experience satisfactory to the court.
- b. Complete at least twelve hours of basic mediation training or equivalent experience as a mediator that is satisfactory to the court.
- c. After completing the above training, complete at least forty hours of specialized family or divorce mediation training which has been approved by the Dispute Resolution Section of the Supreme Court.

### **(2) Specific Qualifications and Training: Domestic Abuse**

A mediator employed by the court or to whom the court makes referrals for mediation of any case shall complete at least fourteen hours of specialized training in domestic abuse and mediation through a training program approved by the Ohio Supreme Court Dispute Resolution Section. A mediator who has not completed this specialized training may mediate these cases only if he/she co-mediate with a mediator who has completed the specialized training.

### **(3) Adherence to the Model Standards of Practice for Family and Divorce Mediation.**

(4) Maintenance of appropriate liability insurance specifically covering the activities of the individual as a mediator.

(5) Adherence to the ethical standards of any other profession that the mediator practices or in which the mediator is licensed.

(6) A commitment to continuing education.

- (7) Awareness of the factors affecting the propriety of mediation in particular cases.
- (8) Substantial divorce and family mediation experience, or successful completion of a supervised domestic and family mediation apprenticeship.

**(J) List of Court Approved Mediators**

The Court maintains a list of approved Mediators which shall be maintained by Mediation Services.

All those on the list of approved mediators shall submit to Mediation Services a regularly updated Curriculum Vitae (including a list of training related to the field of dispute resolution and professional or association memberships) which Curriculum Vitae shall be provided by Mediation Services to those requesting information on an assigned Mediator's qualifications to mediate a dispute pursuant the requirements set forth in R.C. 2710.08(C).

The Court will review applications of persons seeking to be added to the list of approved Mediators in accordance with the procedures adopted by the Judges of the Court.

**(K) Fees and Costs**

The parties shall equally divide the cost of mediation unless the parties agree upon or the court orders a different division of the fee. Mediation is available at a reduced cost to low income parties or no cost to indigent parties.

**(L) Sanctions**

If any individual fails to attend mediation as ordered by the court, without good cause, the court may impose sanctions which may include, but are not limited to, the award of attorney's fees and other costs, contempt or other appropriate sanctions at the discretion of the assigned Judge or Magistrate.

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