

Sample

MEDIATION IN DOMESTIC RELATIONS

Upon order of the Court, a domestic relations matter filed in this Court may be submitted to mediation as provided in this Rule.

A. A Domestic Relations case may be referred to mediation by order of the Court. The Court may issue the order on its own motion, upon the motion of counsel, upon referral by the mediator or upon agreement of the parties. A case may also be referred to mediation by random selection.

By participating in a mediation, a non-party participant, as defined by Ohio Revised Code Section (O.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 non-party participant shall have the rights and duties under this rule as are attributed to parties, except as provided by O.R.C. 2710.03(B) (3) and O.R.C. 2710.04(A) (2).

Mediator is defined to mean any individual who mediates cases pursuant to an order of this Court, regardless of whether that individual is an employee, an independent contractor or a volunteer.

B. All remaining court orders shall remain in effect. No order is stayed or suspended during the mediation process.

C. Continuances of scheduled mediations shall be granted only for good cause shown after a mutually acceptable future date has been determined. The case may be continued by the Mediation Coordinator or the Judge or Magistrate who referred the case. 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.

D. Pursuant and subject to the provisions of the “Uniform Mediation Act” (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 written agreement, all communications may be confidential.

The Mediator shall inform the Court who attended and whether the case settled. If the case has not settled, then the Mediator shall inform the Court whether the case is scheduled for further mediation or is returned to the Court for further proceedings. No other information shall be communicated by the Mediator to the Court unless all who hold a mediation privilege, including the mediator, have consented to such disclosure.

E. The efforts of the Mediator shall not be construed as giving legal advice.

F. All parties shall attend the mediation sessions, including the GAL, unless previously excused. Further, and pursuant to the UMA, all parties may have their attorney and/or other support person or persons attend the mediation session. If counsel or any mediation party becomes aware of the identity of a person or entity whose consent is required to resolve the dispute, but who has not yet been joined as a party in the pleadings, they shall promptly inform the mediator as well as the assigned Judge of such fact.

If the opposing parties to any case are (1) related by blood, adoption, or marriage; (2) if the parties have resided in a common residence, or (3) have known or alleged domestic abuse at any time prior to the mediation, then the parties and their counsel have a duty to disclose such information to the Mediation Office and have a duty to participate in any screening required by the Supreme Court of Ohio’s Rules of Superintendence Rule 16.

The mediator however, shall have the right not to conduct the mediation session. The Court shall also have the right to require the attendance of the attorneys as the session if the Court

determines it is appropriate and necessary for the process and consistent with O.R.C.

2710.09. If a party insists upon bringing a person to the session that the mediator believes is inappropriate or would harm the process.

G. If any of the individuals identified in the above-paragraph fail to attend mediation without good cause, the Court may impose sanctions, including the award of attorney's fees and other costs, contempt or other appropriate sanctions.

H. Attorneys may, at their option, or must if required on a specific case by the Court, submit to the mediator a mediation memorandum which shall contain the following:

1. The elements of each claim asserted by the party filing the mediation memorandum;
2. A brief statement of the facts supporting the claim(s);
a statement of admitted or undisputed facts;
and, a statement of remaining issues of facts to be tried;
3. Any amendments required to the pleadings;
4. Any tender of issues in the pleadings that are to be abandoned;
5. A proposal for settlement of the claim(s). This proposal may be submitted in camera.

Mediation memoranda may be submitted in confidence or exchanged by counsel at their preference. However, any attorney who submits a Mediation Memorandum in confidence shall advise the opposing counsel it is their intention to file it in confidence. Any mediation memorandum submitted under this Rule shall be provided to the mediator at least 5 working days prior to the mediation session.

I. Any mediator hired to work for the court's Mediation Service or hired by the service as a contract mediator shall meet the following qualifications:

1. General qualifications and training. A mediator employed by the division or to whom the division makes referrals for mediation of allocation of parental rights and responsibilities, the care of, or visitation with, minor children shall satisfy all of the following:

- a. Possess a bachelor's degree, or equivalent education or experience as is satisfactory to the division, 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 division.
- b. Complete at least twelve hours of basic mediation training or equivalent experience as a mediator that is satisfactory to the division.
- c. After completing the training required by division (C)(1)(b) of this rule, complete at least forty hours of specialized family or divorce mediation training which has been approved by the court.

2. Specific qualifications and training: domestic abuse. A mediator employed by the division or to whom the division 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 in accordance with standards established by the Supreme Court Advisory Committee on Dispute Resolution. A mediator who has not

completed this specialized training may mediate these cases only if he/she co-mediate with a mediator who had completed the specialized training.

J. 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 and by using a three tiered screening method along with the use of appropriate screening tools (see attached written screening tool);
3. Encourage appropriate referrals to legal counsel and other support services for all parties, including victims or 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) determining the penalty for violation of a protection order.

K. 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 that mediator has completed the training specified above and ensures that the following conditions are satisfied:

1. Give the person who is or may be the victim of domestic violence is fully informed, both orally and in writing and written information 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 the mediation sessions;
2. Conclude that the parties have the capacity to mediate without fear of coercion or control;
3. Use the procedures defined by the Court's Mediation Department to provide for the safety of the parties, non-party participants, and the mediator. Appropriate procedures are in place to provide for the safety of the person who is or may be the victim of domestic violence or coercion between the parties;
4. Use the procedures defined by the Court's Mediation Department to terminate a mediation if the mediator believes there is a continued threat of domestic violence or coercion. 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. Use the procedures defined by the Court's Mediation Department to ensure that the Court has issued written findings of fact, as required by O.R.C. 3109.052 to refer certain cases involving domestic violence to mediation. (See attached Exhibit A).

L. Mediators providing services for the court shall comply with the Model Standards of Practice for Family and Divorce Mediation and the Special Policy Considerations for the State Regulation of Family Mediators and Court Affiliated Programs as set for in Rule 16 of the Rules Superintendence for the Courts of Ohio.