

## **MEDIATION**

**4.01 PURPOSE.** To promote greater efficiency and public satisfaction through the facilitation of the earliest possible resolution, the Court has established the Warren County Common Pleas Court Mediation Program.

**4.02** To the extent not inconsistent with this Rule, the Court incorporates by reference R.C. Chapter 2710 “Uniform Mediation Act” (UMA) and Rule 16 of the Ohio Rules of Superintendence.

**4.03 DEFINITIONS.** All definitions found in the “Uniform Mediation Act” (UMA) R.C. 2710.01 are adopted by the Court through this Rule including, but not limited to, the following:

- 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 mediation.
- c) “Mediation Communication” means a statement, whether oral, in a record, verbal or non-verbal, that occurs during mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening mediation or retaining a mediator.
- d) “Proceeding” means either of the following:
  - i) A judicial, administrative, arbitral or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery; or
  - ii) A legislative hearing or similar process.

**4.04 ELIGIBILITY.** Except as provided in subsection (a) and (b) below, at any time any civil action under the jurisdiction of the Court may be referred to mediation. The Warren County Common Pleas Court Mediation Program may determine the eligibility and appropriateness of each referral prior to the commencement of the mediation process and may decline any referral deemed inappropriate.

- a) Use of mediation is prohibited in any of the following:
  - i) As an alternative to the prosecution or adjudication of domestic violence;
  - ii) In determining whether to grant, modify, or terminate a protection order;
  - iii) In determining the terms and conditions of a protection order; and
  - iv) In determining the penalty for violation of a protection order.
- b) The following actions shall be exempted from mediation upon request of any party:
  - i) Cases in which one of the parties is mentally ill or has intellectual disabilities which make the mediation process unworkable;
  - ii) In emergency circumstances requiring an immediate hearing by a jurist; or

- iii) Cases in which the parties have achieved an executed Agreed Judgment Entry.

**4.05 REFERRAL.** The Court shall explore the appropriateness of mediation at the Case Management Conference.

- a) The Court, on its own motion, or on the motion of any of the parties, may refer disputed issues to mediation in whole or in part. A “Notice of Scheduled Mediation” shall be sent to the parties which shall, at a minimum, indicate the date, time, and place and contact information of the mediation.
- b) All parties and counsel shall advise the assigned trial 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 order but before conclusion of all mediation proceedings, which allegations involve any two (2) or more persons whose attendance is required by the referral order.

**4.06 MEDIATOR SELECTION AND ASSIGNMENT.** The following methods may be used to determine the mediator for the case:

- a) If the parties mutually agree to a mediator who is on the Court’s roster of approved mediators, the Court will generally assign the requested mediator unless there is a reason to do otherwise.
- b) If there is no agreement as to the mediator, the Court shall randomly assign a mediator to the case from the Court’s roster of approved mediators.
- c) Parties may mutually agree to a mediator who is not on the Court’s roster of approved mediators at their own expense.
- d) In special instances, the Court may appoint a mediator with particular expertise.

**4.07 MEDIATOR QUALIFICATIONS.** To be a court-approved mediator, the following qualifications apply:

- a) Attorney, licensed and in active, good standing with the Ohio Supreme Court;
- b) At least six (6) years of legal practice experience;
- c) Professional liability insurance with appropriate coverage.

**4.08 LIST OF MEDIATORS.** The secretary of the administrative judge shall maintain a list of qualified mediators. A copy shall be distributed to all judges and magistrates of the Court.

- a) All those interested to become mediators shall submit to the court administrator updated curriculum vitae (including a list of training related to the field of dispute resolution and professional or association memberships) along with proof of liability insurance.
- b) The Court will review applications of person seeking to be added to the list of qualified mediators in accordance with the procedures adopted by the judges of the Court.

**4.09 DATE, TIME AND PLACE OF MEDIATION.** The mediator will be responsible for setting the date, time, and location of mediation. The courthouse may be used when available and should be requested through the court administrator.

**4.10 MEDIATION PROCESS.** In accordance with all applicable provisions of this Rule, if a case is deemed appropriate for the Warren County Common Pleas Court Mediation Program, mediation will be scheduled. A mediator may confer by telephone, email, or separate meeting with the parties and/or their attorneys individually prior to bringing the parties together for any reason, including further screening. A mediator may schedule multiple mediation sessions if necessary and mutually agreeable for the resolution of the issues in part or in their entirety.

- a) Before and during the mediation, the mediator is responsible for continued screening for domestic violence.
- b) Before and during the mediation, the mediator shall make appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.

**4.11 PARTICIPATION IN MEDIATION.** If a case is referred for mediation, each party to the case or the representative of each party who has full settlement authority shall attend the mediation conferences.

- a) A judge, magistrate, and/or mediator shall require the attendance of the decision-making parties' attorneys at the mediation sessions if the mediator deems it necessary and appropriate.
- b) 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, he or she shall promptly inform the mediator as well as the assigned judge or magistrate.
- c) If the opposing parties to any case are (i) related by blood, adoption, or marriage; (ii) have resided in a common residence, or (iii) 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 a duty to participate in any screening required by the Court.
- d) 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).

**4.12 CONFIDENTIALITY/PRIVILEGE.** All mediation communications related to or made during the mediation process are subject to and governed by the UMA, R.C. 2710.01 to 2710.10, and any other pertinent judicial rule(s). In furtherance of the confidentiality set forth in this rule, parties and non-parties desiring confidentiality of mediation communications shall execute a written "Agreement

to Mediate” prior to the mediation session. If a new or different person(s) attend a subsequent session, their signatures shall be obtained prior to proceeding. A blank “Agreement to Mediate” form is available for review by any prospective participant by contacting the magistrates’ assignment commissioner.

**4.13 CONFLICT OF INTEREST.** In accordance with R.C. 2710.08(A) and (B), the mediator assigned by the Court to conduct a mediation shall disclose to the mediation parties, counsel, if applicable, and any nonparty participants any known possible conflict that may affect the mediator’s impartiality as soon as such conflict becomes known to the mediator.

- a) If counsel or a mediation party requests that the assigned mediator withdraw because of the facts so disclosed, the assigned mediator should withdraw and request that the assigned judge or magistrate appoint another mediator from the roster of qualified mediators that is maintained by the Court.
- b) The parties shall be free to retain the mediator by an informed, written waiver of the conflict of interest.

**4.14 TERMINATION.** If the assigned mediator determines that further mediation efforts would be of no benefit to the parties, he or she shall inform all interested parties and the Court that the mediation is terminated using the procedure required by the Court.

**4.15 STAY OF PROCEEDINGS.** No order is stayed or suspended during the mediation process except by written court order. Mediation shall not stay discovery, which may continue throughout the mediation process in accordance with applicable rules, unless agreed upon by the parties and approved by the judge or magistrate assigned to the case.

**4.16 CONTINUANCES.** Continuances of scheduled mediations shall be granted only for good cause shown after a mutually acceptable future date has been determined. The judge or magistrate who referred the case may continue 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.

**4.17 MEDIATION CASE SUMMARY.** Attorneys may, at their option, or must if required on a specific case by the judge, magistrate or mediator, submit a “Mediation Case Summary” to the mediator, which shall contain the following:

- a) A summary of material facts;
- b) A summary of legal issues;
- c) A statement regarding the status of discovery;
- d) A listing of special damages and summary of injuries or damages;
- e) A report of settlement attempts to date, including demands and offers.

**4.18 MEDIATION MEMORANDUM OF UNDERSTANDING.** The assigned mediator, parties or counsel, if applicable, as agreed by the parties, shall immediately prepare a written memorandum memorializing any agreement reached by the parties.

- a) The “Mediation Memorandum” should be signed by the parties and counsel.
- b) A signed “Mediation Memorandum” is not be privileged pursuant to R.C. 2710.05(A)(1).
- c) The written “Mediation Memorandum of Understanding” shall become an order of the Court after review and approval by the parties and their attorney, if applicable.

**4.19 MEDIATOR REPORT.** At the conclusion of the mediation and in compliance with R.C. 2710.06, the Court shall be informed of the status of the mediation including all of the following:

- a) Whether the mediation occurred or was terminated;
- b) Whether a settlement was reached on some, all, or none of the issues;
- c) Attendance of the parties; and
- d) Future mediation session(s), including date and time.

**4.20 FEES AND COSTS.** Mediation costs shall be set by the Court and reviewed periodically.

- a) The cost for foreclosure mediation is \$250.00.
- b) The cost for other civil mediation will be based on a single-session fee of \$500.00 for sessions up to six (6) hours, plus \$100.00 per hour for each additional full or partial hour of a mediation session lasting more than six (6) hours.
- c) The mediator, with consent of the parties, may schedule further sessions after the first six (6) hours. The mediation fees shall be taxed as court costs.
- d) At any time the parties or a single party may discontinue the mediation process. If a single party discontinues the mediation process on the first day, the judge or magistrate may hold that party alone responsible for the \$500.00 fee for mediation.

**4.21 SANCTIONS.** If any individual ordered by the Court to attend mediation fails to attend without good cause, fails to pay mediation fees, or fails to abide by the Court’s mediation policy, 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 assigned judge or magistrate.