

## **RULE 4.36 MEDIATION**

**(A) Introduction.** This Court incorporates by reference the O.R.C. Chapter 2710, "Uniform Mediation Act" (UMA); R.C. 3109.052, Mediation Order and Rule 16 of the Supreme Court of Ohio Rules of Superintendence. All definitions found in the UMA are adopted by this court.

**(B) Purpose.** To promote greater efficiency and public satisfaction through the facilitation of the earliest possible resolution for domestic relation cases through the use of mediation.

**(C) Scope.** Any action under the jurisdiction of this court may be referred to mediation.

**(D) Case Selection.**

**(1) Referral Process.** The court, on its own motion, or the motion of any of the parties may refer disputed issues to mediation in whole or in part by an "Order Scheduling Mediation" which shall, at a minimum indicate the date, time, place and contact information of the mediation. 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 order but before conclusion of all mediation proceedings, which allegations involve any two or more persons whose attendance is required by the referral order.

If the request for mediation services is not generated from a hearing before a magistrate or judge, an attorney may draft a motion and order signed by the judge and/or magistrate ordering the parties to court mediation service. After the motion is filed, a time-stamped copy of the motion and order shall be given to the mediation specialist.

**(2) Mediator Selection and Assignment.**

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

- a. The court mediator may facilitate the mediation.
- b. The court randomly assigns a mediator to the case from the court's roster of approved mediators.
- c. 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.

**(E) Procedures.** In accordance with all applicable provisions of this rule, if a case is deemed appropriate by the court, mediation will be scheduled. A mediator may meet with the parties individually prior to bringing the parties together for any reason including, but not limited to further screening. A mediator may schedule multiple mediation sessions, if necessary and mutually acceptable for the resolution of the issues in part or in their entirety.

- (1) The court shall utilize procedures for all cases that will:
  - a. 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.
  - b. Screen for domestic violence both before and during mediation.
  - c. Encourage appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.
  - d. Prohibit the use of mediation in any of the following:
    - As an alternative to the prosecution or adjudication of domestic violence;
    - In determining whether to grant, modify or terminate a protection order;
    - In determining the terms and conditions of a protection order; and
    - 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.

- (2) Mediation of allocation of parental rights and responsibilities or the care of, or visitation with, minor children shall abide by all provisions set forth in (E)(1) of this rule, mediation may then proceed, when violence or fear of violence is alleged, suspected, or present, only if the mediator has specialized training set forth in "Qualifications" section (F) of this rule and all of 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, 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.
  - 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.
- (3) 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.
- (4) 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.
- (5) **Party/Non-Party Participation**
- a. Parties to informal cases may voluntarily attend mediation sessions.
  - b. Parties who are ordered into mediation in formal cases shall attend scheduled mediation sessions. The court may order parties to return to mediation at any time in formal cases.
  - c. A judge, magistrate and/or mediator may require the attendance of the parties' attorneys at the mediation sessions if the mediator deems it necessary and appropriate.
  - d. 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.
  - e. 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.

- f. 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).

**(6) Confidentiality/Privilege**

All mediation communications related to or made during the mediation process are subject to and governed by the "Uniform Mediation Act" (UMA) R.C. 2710.01 to 2710.10, R.C. 3109.052, the Rules of Evidence and any other pertinent judicial rule(s). Statements made during the course of mediation assessments or the mediation sessions are confidential except as outlined in R.C. 2710.03. 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 further in the process.

**(7) Mediator Conflicts 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 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 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 list of qualified Mediators that is maintained by the Court. The parties shall be free to retain the mediator by an informed, written waiver of the conflict of interest(s).

**(8) 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 this Court.

**(9) Stay of Proceedings**

All remaining court orders shall continue in effect. No order is stayed or suspended during the mediation process except by written court order. Mediation shall not stay discovery, which may continue through 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.

- (10) Continuances of scheduled mediations shall be granted only for good cause shown after a mutually acceptable future date has been determined.

(11) **Guardian Ad Litem**

A guardian ad litem for the child shall be appointed by the court in all cases involving a child who was the subject of a prior abuse or neglect action, in all cases where one of the parties was the perpetrator of an act which resulted in an adjudication that any other child was abused or neglected and in other cases where the mediator believes it to be in the best interest of the child. A guardian ad litem appointed in these cases may participate in mediation.

(12) **Mediation Memorandum of Understanding**

The assigned mediator, parties or counsel, if applicable, as agreed by the parties, may immediately prepare a written memorandum memorializing the agreement reached by the parties. The "Mediation Memorandum" may be signed by the parties and counsel (if the "Mediation Memorandum" is signed it will not be privileged pursuant to R.C. 2710.05 (A) (1)). The written "Mediation Memorandum of Understanding" may become an order of the court after review and approval by the parties and their attorney, if applicable. No oral agreement by counsel or with parties or an officer of the court will be regarded unless made in open court.

(13) **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; and
- c. Attendance of the parties.

- d. Future mediation session(s), including date and time.

The parties and the mediator shall jointly file a mediation report pursuant to R.C. Section 3109.052(B). Any agreement reached during mediation shall not be binding upon the parties until approved by the court. The court shall consider the best interests of the children when allocating parental rights and responsibilities and/or establishing a possessory schedule.

**(F) 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, abuse, neglect and dependency, or juvenile perpetrated domestic violence cases 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 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 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. 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.

**(G) Fees and Costs.** Fees for mediation through the court's Family Relations Department shall be set by the judge or magistrate.

**(H) Sanctions.** If any individual ordered by the court to attend mediation fails to attend mediation 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.