

RULE 16 MEDIATION RULES

(AS ADOPTED, EFFECTIVE JANUARY 1, 2020)

RULE 16.14. Definitions.

As used in Sup.R. 16.14 through 16.43:

(A) Facilitation

“Facilitation” means a process in which a neutral party moderates discussions by ensuring the fluid and orderly exchange of information and ideas from all participants and that is primarily concerned with assisting individuals in refining their communication and organizational skills so that they may learn to work more efficiently with one another in a group setting.

(B) Mediation

“Mediation” means any process in which a neutral third party helps the parties communicate and negotiate with each other to help them reach a voluntary agreement regarding their dispute.

(C) Mediator

“Mediator” means an individual who conducts a mediation.

(D) Neutral Evaluation

“Neutral evaluation” means a process in which the parties to a dispute present their claims or defenses and describe the principal evidence on which their claims or defenses are based to a neutral third party who then shares impressions about the strengths and weaknesses of each matter.

RULES 16.15 through 16.19 are reserved for future use.

RULE 16.20. Application.

Sup.R.16.20 through 16.26 shall apply when a court elects to use mediation.

RULE 16.21. Local Mediation Rule.

(A) General

A court that elects to use mediation shall adopt a local rule governing mediation. The local rule shall do all of the following:

1. Incorporate by reference the provisions of the “Ohio Uniform Mediation Act” under R.C. Chapter 2710;
2. Identify the case types eligible for mediation and those that are precluded from mediation, if any;
3. Address confidentiality;
4. Prohibit the use of mediation 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 shall prohibit the use of mediation in a subsequent divorce or custody case, even though the case may result in the termination of the provisions of a protection order pursuant to R.C. 3113.31;
5. Establish procedures for and encourage appropriate referrals to legal counsel and other support services for all parties, including victims and suspected victims of domestic violence;
6. Address other provisions as the court considers necessary and appropriate.

(B) Juvenile Courts

A juvenile court that elects to use mediation in abuse, neglect, dependency, unruly, and delinquency cases; or juvenile civil protection order cases pursuant to R.C. 2151.34 or 3113.31 shall adopt a local rule that does all of the following:

1. Complies with division (A) of this rule;
2. Includes procedures in abuse, neglect, and dependency cases to ensure parties who are not represented by counsel attend mediation only if they have waived the right to counsel in open court and that parties represented by counsel attend mediation without counsel only where the right to have counsel present at the mediation has been specifically waived. Waivers may be rescinded at any time;
3. Includes procedures for the selection and referral of a case to mediation at any point after the case is filed;
4. Includes procedures for notifying the parties and nonparty participants of the mediation.

RULE 16.22. Responsibilities of Mediator.

(A) General Responsibilities

In order to provide a fair mediation process for parties, a mediator who mediates for a court shall remain impartial and neutral and shall comply with all of the following:

1. The “Core Values of Mediation,” as approved by the Supreme Court Dispute Resolution Section in accordance with recommendations established by the Commission on Dispute Resolution;
2. The “Model Standards of Conduct for Mediators” adopted by the American Bar Association, American Arbitration Association, and the Association for Conflict Resolution;
3. For mediation in domestic relations or juvenile courts, the “Model Standards of Practice for Family and Divorce Mediation” adopted by the Association of Family and Conciliation Courts;
4. For mediation in juvenile courts of abuse, neglect, and dependency cases, the “Guidelines for Child Protection Mediation” adopted by the Association of Family and Conciliation Courts.

(B) Conflicts of Interest

1. A mediator shall avoid any actual or apparent conflicts of interest arising from any relationship or activity, including but not limited to those of employment or business or from professional or personal contacts with parties or others involved in the dispute. A mediator shall avoid self-dealing or association from which the mediator might directly or indirectly benefit, except from compensation for services as a mediator.
2. Upon becoming aware of any actual or apparent conflict of interest, a mediator shall notify the parties as soon as practicable.
3. The requirements of this rule are in addition to and do not supersede the requirements of R.C. 2710.08. Wherever a conflict exists between this rule and R.C. 2710.08, the statute shall control.

(C) Legal Advice

A mediator shall not offer legal advice.

(D) Satisfaction of Training Requirements

1. A mediator shall meet the qualifications of and comply with all training requirements of Sup.R. 16.23 and local court rules governing mediators and mediation adopted pursuant to Sup.R. 16.21.
2. A mediator shall meet the qualifications for mediators for each court in which the mediator serves and promptly advise the court of any grounds for disqualification or any issues affecting the ability to serve.

3. Upon request, a mediator shall provide a court from which the mediator receives referrals documentation indicating compliance with all training and education requirements so that the court may meet the requirements of Sup.R. 16.24(A)(1)(d). The documentation shall include information detailing the date, location, contents, credit hours, and sponsor of any relevant training.

RULE 16.23. Mediator Education and Training.

(A) General

1. Except as provided in division (A)(2) of this rule, a mediator shall complete “Fundamentals of Mediation Training” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.
2. A mediator shall not be required to complete training pursuant to division (A)(1) of this rule if any of the following apply:
 - a. Prior to January 1, 2020, the mediator has completed at least twelve hours of basic mediation training;
 - b. Prior to January 1, 2020, the mediator has served as a full-time mediator for a minimum of three years or mediated at least forty-five cases, in which case the mediator shall complete the “Advanced Mediation Workshop” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution;
 - c. The mediator is a law student enrolled in a clinical mediation or dispute resolution program at an American Bar Association accredited law school, has completed mandatory coursework in fundamental mediation topics, and mediates under the supervision of faculty at the law school.

(B) Domestic Relations and Juvenile Courts

1. Prior to accepting a referral from a court for disputes involving the termination of marriage, the allocation of parental rights and responsibilities, the care of or visitation with minor children, unruly, and delinquency cases, or juvenile civil protection order cases pursuant to R.C. 2151.34 or R.C. 3113.31, a mediator shall meet all of the following qualifications:
 - a. Possess a bachelor’s degree, or equivalent educational experience as is satisfactory to the court, and at least two years of professional experience with families, including counseling, casework, legal representation in family law matters, or such other equivalent experience satisfactory to the court;
 - b. Comply with the requirements of division (A) of this rule;
 - c. Complete “Specialized Family or Divorce Mediation Training” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on

Dispute Resolution, provided that a mediator who is mediating a delinquency or unruly case may do so even if the mediator has not taken this training;

- d. Complete “Specialized Domestic Abuse Issues and Mediation Training” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution unless either of the following apply:
 - i. The mediator is co-mediating with another mediator who has completed the training;
 - ii. The mediator is a law student enrolled in a clinical mediation or dispute resolution program at an American Bar Association accredited law school, has completed mandatory coursework in fundamental and domestic abuse mediation topics, and mediates under the supervision of faculty at the law school who has completed the training.
2. Prior to accepting a referral from a court for disputes involving abuse, neglect and dependency, a mediator shall meet all of the following qualifications:
 - a. Possess significant experience mediating family disputes;
 - b. Complete the requirements of division (B)(1) of this rule;
 - c. Complete “Specialized Child Protection Mediation Training” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.
3. Prior to accepting a referral from a court for disputes involving school attendance mediation, a mediator shall meet either of the following qualifications:
 - a. Complete the requirements of division (A) of this rule;
 - b. Complete “School Attendance Mediation Training” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.

RULE 16.24. Responsibilities of Court.

(A) General

1. In order to ensure only qualified individuals perform the duties of a mediator and the requirements of Sup. R. 16.20 through 16.25 are met, a court that elects to use mediation shall do all of the following:
 - a. Establish screening procedures for the capacity of parties to mediate;
 - b. Establish procedures for monitoring and evaluating mediation to ensure the quality of the mediators and programs to which cases are referred;
 - c. Develop a process and appoint a person for accepting and considering written comments and complaints regarding the performance of mediators receiving referrals from the court. A

copy of comments and complaints submitted to the court shall be provided to the mediator who is the subject of the complaint or comment. The person appointed may forward any comments and complaints to the administrative judge of the court for consideration and appropriate action. Dispositions by the court shall be made promptly. The court shall maintain a written record in the mediator's file regarding the nature and disposition of any comment or complaint and shall notify the person making the comment or complaint and the mediator of the disposition.

- d. Allow mediation to proceed only if the mediator meets the qualifications, education, and training requirements of Sup.R. 16.23;
- e. Prohibit mediation when domestic abuse or domestic violence is alleged, suspected, or present unless all of the following conditions are satisfied:
 - i. Screening is conducted both before and during mediation, for domestic abuse and domestic violence, and for the capacity of the parties to mediate;
 - ii. The person who is or may be the victim of domestic abuse or domestic violence is fully informed about the mediation process, right to decline participation in the mediation process, and of the option to have a support person, in addition to an attorney, present at the mediation sessions;
 - iii. The parties have the capacity to mediate without fear of coercion or control;
 - iv. The court has taken reasonable precautions to create a safe mediation environment for the parties and all other persons involved in the mediation process;
 - v. Procedures are in place for the mediator to terminate a mediation session if there is a threat of domestic abuse, domestic violence, or coercion between the parties;
 - vi. Procedures are in place for issuing written findings of fact to refer certain cases involving domestic violence to mediation, as required by R.C. 3109.052.

(B) General

A court shall not be responsible for the quality of a mediator selected by the parties without guidance from the court and who does not meet the qualifications, education, and training requirements of Sup.R. 16.23.

RULE 16.25. Public Access.

The files maintained by a mediator but not filed with a clerk or submitted to a court shall not be available for public access pursuant to Sup.R. 44 through 47.

RULES 16.26 through 16.39 are reserved for future use.

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