

Proposed Mediation Practice Rule – General
(Draft 11/17/06)

Upon order of the Court, a civil action filed in this Court may be submitted to mediation as provided in this rule. By participating in mediation, a non-party participant, as defined by Ohio Revised Code Section 2710.01(D), 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 that no evidence privilege shall be expanded.

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.

Case Selection and Timing for Mediation

All civil cases may be referred to mediation. Before the initial pre-trial conference in a case, counsel shall discuss the appropriateness of mediation in the litigation with their clients and with opposing counsel. Mediation shall not be used as an alternative to the prosecution or adjudication of domestic violence, to determine whether to grant, modify or terminate a protection order, to determine the terms and conditions of a protection order, or to determine the penalty for violation of a protection order.

At the initial pre-trial conference the parties and counsel shall advise the Court of the results of their discussions concerning mediation. At that time and at subsequent conferences, if necessary, the Court may explore with the parties and counsel the possibility of using mediation. A party opposed to either the referral or the appointed mediator must file a written objection with the Court within seven days of receiving notice of the referral or provider and explain the reasons for any opposition.

Referral to Mediation

The case is referred to mediation by order of the Court. The Court may issue the order on its own motion, upon the motion of counsel or upon referral by the mediator.

Continuances

Continuances shall be granted only for good cause shown and after a mutually acceptable future date has been determined. No continuance will be granted if the mediation cannot be scheduled prior to the final pretrial.

No Stay of Proceedings

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

Mediation Privilege

Mediation communications are privileged as described in Ohio Revised Code 2710.03-2710.05.

Client Defined Confidentiality

If the parties wish mediation communication to be confidential they will effect a written confidentiality agreement prior to mediation.

Mediator's Duty

The mediator shall inform the Court who attended the mediation, whether the case settled, and whether efforts to settle the case through mediation are being continued or if the case is being returned to the Court for further proceedings. No other information shall be directly or indirectly communicated by the mediator to the Court, unless all who hold a mediation privilege, including the mediator, have consented to such disclosure. The mediator shall keep mediation communications confidential, unless all who hold a mediation privilege, including the mediator, have consented to such disclosure.

Duties of Attorneys/Parties

Trial counsel, all parties and, if applicable, the principal insurance adjuster(s), all with authority to settle, shall personally attend all mediation sessions prepared to discuss all relevant issues, including settlement terms. A party other than a natural person must be represented by a person other than counsel

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 have either resided in a common residence or are related by blood, adoption, or marriage, and have known or alleged domestic abuse at any time prior to the mediation, then the parties or their counsel have a duty to disclose such information to the mediation staff. Such party shall have a duty to participate in any screening required by the Supreme Court of Ohio's Rules of Superintendence Rule 16 both prior to, and, in the mediator's discretion, during the mediation session(s).

Sanctions

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.

No Advice

The efforts of the mediator shall not be construed as giving legal advice. The Court may have materials for legal or other support services available in the community. The mediator is authorized to provide such resource information; however, such distribution shall not be construed as a recommendation of or referral to such resource. The recipient of that information is charged with the duty to evaluate those resources independently.

Administrative Dismissal

If the parties fail to dismiss a settled case within the later of sixty (60) days or the time noted in the entry that gave the Court notice of the settlement, then the Court may dismiss the case administratively. Upon such administrative dismissal, court costs shall be paid from the funds deposited. If court costs exceed the funds deposited, each party shall bear their own costs.¹

¹ Before recommending the rule, verify with the clerk's office whether the costs language works for them.
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