

## **RULE 17     MEDIATION**

**17.01** The Mahoning County Court of Common Pleas Juvenile Division incorporates by reference R.C. § 2710 “Uniform Mediation Act,” (UMA), R.C. § 3109.052, Mediation of Differences as to the Allocation of Parental Rights and Responsibilities and Rule 16 of the Ohio Rules of Superintendence.

### **17.02** Definitions

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

(A) “Mediation” means any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(B) “Mediator” means an individual who conducts a mediation.

(C) “Mediation Communication” means a statement, whether oral, in a record, verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(D) “Proceeding” means either of the following:

(1) Judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing Motion s, conferences, and discovery;

(2) A legislative hearing or similar process.

### **17.03** Purpose

To promote greater efficiency and to facilitate the earliest possible resolution in Mahoning County Court of Common Pleas Juvenile Division cases, Court Mediation Services has been established.

### **17.04** Scope

At any time and in any action under the jurisdiction of the Mahoning County Court of Common Pleas, Juvenile Division, Court Mediation Services may be chosen as an appropriate method of resolution. The following actions shall be exempted from mediation upon request of any party:

- (A) Cases in which one party has been convicted of, or plead guilty to, a violation of R.C. § 2915.25 (domestic violence) within the past two (2) years or when a civil temporary protection Order is in effect;
- (B) Cases in which the physical distance between parties is so great it is not feasible for them to participate in mediation sessions;
- (C) Cases in which one of the parties is mentally ill;
- (D) In emergency circumstances requiring an immediate hearing by a jurist, or
- (E) Cases in which the parties have achieved an executed Agreed Judgment Entry.

### **17.05 Case Selection**

#### **(A) Referral Process**

A case in Juvenile Division may be referred to Court Mediation Services in the following manner:

- (1) For formal proceedings in Juvenile Division, the Court may Order parties to participate in the mediation process;
- (2) For formal proceedings in Juvenile Division, upon written or oral Motion to the Court, the Court may Order parties to participate in the mediation process;
- (3) For informal cases in Juvenile Division, a referral to Court Mediation Services may be made by Court personnel.

#### **(B) Eligibility of Cases**

Court Mediation Services will determine the eligibility and appropriateness of each referral. Court Mediation Services may decline any referral deemed inappropriate.

#### **(C) Domestic Violence**

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.

(D) Notice

The mediation shall be communicated via a Notice of Scheduled Mediation which shall, at a minimum, indicate the date, time, place and contact information for the mediation.

**17.06 Procedure**

If a case is deemed appropriate by Court Mediation Services, mediation will be scheduled. A mediator may meet with parties individually prior to bringing the parties together. A mediator may schedule multiple mediation sessions as is necessary for the resolution of some or all issues.

(A) Party/Nonparty Participation

(1) Parties to informal cases may voluntarily attend mediation sessions.

(2) 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.

(3) A judge, magistrate and/or a mediator may require the attendance of the parties' attorneys at the mediation sessions if the judge, magistrate and/or mediator deems it necessary and appropriate.

(4) A Guardian Ad Litem shall participate in the mediation upon written Order of the Court.

(5) If the opposing parties to any case are a) related by blood, adoption, or marriage; b) have resided in a common residence, or c) have known or alleged domestic abuse 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.

(6) 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).

(7) Each party shall proceed with mediation in good faith to reach a compromise agreement. Any party who agrees to mediation shall perform all obligations expeditiously and shall not use the mediation process for purposes of delay or discovery in any manner other than in a good faith attempt at resolution.

(B) Stay of Proceedings

All remaining court Orders shall remain in effect. No Order is stayed or suspended during the mediation process except by written court Order.

(C) Confidentiality/Privilege

(1) 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).

(2) 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.

(3) Said Agreement to Mediate outlines the confidentiality and privilege of all mediation communications, including but not limited to, written and/or verbal agreement.

(4) If a new or different person(s) attend a subsequent session, their signatures shall be obtained prior to proceedings further in the process. The form of agreement is available for review by any prospective participant by contacting Court Mediation Services.

(D) Mediator Conflict of Interest

In accordance with R.C. § 2710.08(A) and (B), the mediator conducting a mediation shall disclose to the mediation parties, counsel, if applicable, and any non party 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 mediator withdraw because of the facts so disclosed, the mediator may withdraw in favor of another mediator. If the mediator

determines that withdrawal is not warranted, the mediator may elect to continue. The objecting party may then request the assigned judge or magistrate to remove the mediator. The assigned judge or magistrate may remove the mediator and appoint another mediator. If the assigned judge or magistrate decides that the objection is unwarranted the mediation shall proceed as scheduled, or, if delay was necessary, as soon after the scheduled date as possible.

(E) Mediator Termination

If the 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.

(F) Domestic Violence

Pursuant to Rule 16 of the Ohio Rules of Superintendence, any mediator providing services for the Court shall utilize procedures for all cases that will:

(1) Ensure that the 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.

(3) Encourage appropriate referrals to legal counsel and other support services for all parties, including victims of 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) In determining the penalty for

violation of a protection Order.

(5) 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.

(6) For mediation of allocation of parental rights and responsibilities or the care of, or visitation with, minor children or delinquency or status offense cases, mediation may proceed, when violence or fear of violence is alleged, suspected, or present, only if the mediator has specialized training set forth in "Specific Qualifications and Training: Domestic Abuse," 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.

(d) 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.

(e) 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.

(G) Abuse, Neglect and Dependency and Mediation

Pursuant to Rule 16 of the Ohio Rules of Superintendence, mediation in child abuse, neglect, or dependency cases shall include all provisions outlined above and shall proceed only if the mediator has specialized training set forth in the "Qualifications," section of this Rule

and utilizes procedures that will:

(1) Ensure that 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 can be rescinded at any time.

(2) Provide for the selection and referral of a case to mediation at any point after the case is filed.

(3) Notify the parties and nonparty participants of the mediation.

(H) Conclusion of Mediation

At the conclusion of the mediation and in compliance with R.C. § 2710.06, the Court shall be informed by the mediator of the following:

(1) The attendance of the parties at the scheduled mediation session(s);

(2) If an agreement was reached on all or some of the issues;

(3) If no agreement was reached.

(4) Any future scheduled mediation dates.

(5) Any additional information the parties mutually agree they wish to be disclosed to the Court.

#### **17.07 Agreement**

Parties may reach agreement on all or some issues through the mediation process. Upon mutual agreement of the parties, agreements may be verbal or written. All agreements reached through mediation, are subject to confidentiality and privilege pursuant to "Uniform Mediation Act," (UMA), R.C. §§ 2710.01 to 2710.10 [if the agreement is signed it will not be privileged pursuant to R.C. § 2710.05(A)(1)].

(A) If an agreement is reached through the mediation process and the parties mutually agree, a mediator may put said agreement in writing.

(B) Written agreements reached by the parties during mediation may become an Order of the Court after review and approval by each party and their attorneys, if represented, and presented to the Court by the parties and/or their attorneys, if represented. No oral agreement by the parties and/or their attorneys will be regarded as an Order unless made in open court.

(C) The assigned judge or magistrate retains final approval on all agreements reached through the mediation process in formal cases.

### **17.08 Mediator Qualifications**

Pursuant to Rule 16 of the Ohio Rules of Superintendence, the following qualifications apply to all mediators to whom the Court makes a referral:

#### **(A) General Qualifications**

(1) 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.

(2) Complete at least twelve (12) hours of basic mediation training or equivalent experience as a mediator that is satisfactory to the division.

#### **(B) Specific Qualifications and Training: Family**

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, in addition to the above, at least forty (40) hours of specialized family or divorce mediation training which has been approved by the Supreme Court of Ohio Dispute Resolution Section.

#### **(C) 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 (14) hours of specialized training in domestic abuse and mediation through a training program approved by the Supreme Court of Ohio 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 had completed the specialized training.

(D) Specific Qualifications and Training: Abuse, Neglect, and Dependency

In addition to satisfying the requirements outlined above, a mediator employed by the division or to whom the division makes referrals for mediation of abuse, neglect, or dependency cases shall satisfy both of the following:

(1) Possess significant experience in mediating family disputes;

(2) Complete at least thirty-two (32) hours of specialized child protection mediation training through either a formal training session or through a mentoring program approved by the Supreme Court of Ohio Dispute Resolution Section.

**17.09 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 not be 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.

**17.10 Model Standards**

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 Ohio Rules of Superintendence.