



CIVIL STALKING PROTECTION ORDER MEDIATION
INFORMATION FOR COURTS

Mediation

Following a pilot project in courts to mediate civil stalking protection order (CSPO) cases, the Rules of Superintendence for the Courts of Ohio were amended to permit mediation of civil stalking protection order cases. The amendments to Sup.R. 16.14, 16.21, 16.30, 16.31 and 16.32 are effective on April 15, 2021.

The following information contains the amendments to the Rules of Superintendence relating to CSPO mediation including definitions, prohibited uses, and factors that may caution away from referring a CSPO case to mediation. You can read more about the benefits of mediation, generally, and the mediation local rule requirements later in this document.

Civil Stalking Protection Order Mediation

Sup.R. 16.14(A) states that a “civil stalking protection order case” means a proceeding pursuant to R.C. 2903.214.

Sup.R. 16.30 provides courts with the construct for determining which CSPO cases may be appropriately referred to mediation.

A. Prohibited:

Sup.R. 16.30(A) states that a court shall not offer mediation when any of the following apply:

- The petitioner is a family or household member of the respondent, as defined in R.C. 3113.31(A)(3);
- The allegations in the civil stalking protection order petition involve a sexually oriented offense, as defined in R.C. 2950.01(A);
- The allegations in the civil stalking protection order petition involve serious physical harm, as defined in R.C. 2901.01(A)(5);
- The allegations in the civil stalking protection order petition form the basis for an active criminal complaint arising out of the same activities as those that are the basis of the

petition.

CSPO cases that are ineligible for mediation must be scheduled for a full hearing to rule on the petition.

B. Cautioned against, but not prohibited:

Sup.R. 16.30(B) outlines factors that, if present, should caution a court away from referring the CSPO case to mediation:

- Ongoing physical violence;
- History of serious physical harm, as defined in R.C. 2901.01(A)(5):
 - Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
 - Any physical harm that carries a substantial risk of death;
 - Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
 - Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
 - Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.
- Threats of serious physical harm, as defined in R.C. 2901.01(A)(5);
- Threatened use of deadly weapons;
- Coercion, coercive controlling behavior, or intimidation based on past violence;
- Petitioner's fear of the respondent despite the implementation of safety precautions;
- Respondent's controlling, manipulative, or hostile conduct toward the petitioner;
- Respondent's controlling, manipulative, or hostile conduct toward the mediation process;
- Any other circumstance deemed relevant that puts a party or mediator at risk of harm or abuse.

If a CSPO case is referred to mediation and the parties are unable to reach an agreement, for whatever reason, the case must be scheduled for a full hearing to rule on the petition. In counties where a magistrate serves as a mediator, the judicial officer adjudicating the petition should not be the same person who served as mediator.

Who Can Mediate Civil Stalking Protection Order Cases?

A. Court Responsibility

It is the Court's responsibility to ensure that only qualified individuals serve as mediators. Sup.R. 16.24(A)(1) states that 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:

- Establish screening procedures for the capacity of parties to mediate;
- Establish procedures for monitoring and evaluating mediation to ensure the quality of the mediators and programs to which cases are referred;
- 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.
- Allow mediation to proceed only if the mediator meets the qualifications, education, and training requirements of Sup.R. 16.23;
- Prohibit mediation when domestic abuse or domestic violence is alleged, suspected, or present unless all of the following conditions are satisfied:
 - Screening is conducted both before and during mediation, for domestic abuse and domestic violence, and for the capacity of the parties to mediate;
 - 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;
 - The parties have the capacity to mediate without fear of coercion or control;
 - The court has taken reasonable precautions to create a safe mediation environment for the parties and all other persons involved in the mediation process;
 - 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;
 - 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. Mediator Responsibility

Mediators have a responsibility pursuant to Sup.R. 16.22 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:

- 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;
- The “Model Standards of Conduct for Mediators” adopted by the American Bar Association, American Arbitration Association, and the Association for Conflict Resolution;
- 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;
- 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.

In addition, Sup.R. 16.22(B) and R.C. 2710.08 require mediators to disclose actual or apparent conflicts of interests. Sup.R. 16.22(C) states mediators cannot offer legal advice.

Sup.R. 16.22(D) addresses mediator competence by establishing that a mediator must satisfy training requirements:

- 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.
- 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.
- 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.

Process for Offering Mediation

A. Timing of Mediation

Sup.R. 16.31(A) permits court of common pleas to assess a civil stalking protection order case for mediation eligibility pursuant to Sup.R. 16.30 after the filing of the civil stalking protection order petition, but before the final disposition of the case.

Sup.R. 16.31(B)(1) permits a court of common pleas to grant an ex parte civil protection order prior to offering mediation.

Sup.R. 16.31(B)(2) permits a court of common pleas to continue the full hearing in a civil stalking protection order case pursuant to R.C. 2903.214(D)(2)(a)(iv) to allow adequate time for screening of the parties and mediating the case. If the court has granted an ex parte civil

protection order, the court may extend the duration of the order in accordance with R.C. 2903.214(D)(2)(b).

B. Screening by Court and Mediator

As in all mediation cases, screening is a critical aspect of the process.

Upon determining that a CSPO case is appropriate for mediation, the court and mediator must engage in continuous screening for safety and capacity to mediate. As a result, it is possible that even though a court refers a case for mediation, a mediator might learn information prior to or during the mediation that in the mediator's opinion makes the case ineligible for mediation. In such a situation, a mediator will terminate the mediation and notify the court that the mediation has terminated.

If a mediator terminates a mediation upon the mediator's own volition, a mediator will not be permitted to share the mediator's reasons with the court. R.C. 2710.06(A) provides that a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court that may make a ruling on the dispute that is the subject of the mediation. However, R.C. 2710.06(B) provides a mediator may disclose:

- (1) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;
- (2) A mediation communication as permitted by section 2710.05 of the Revised Code; and
- (3) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against abuse, neglect, abandonment, or exploitation.

R.C. 2710.06(C) provides a communication made in violation of division (A) of this section shall not be considered by a court.

Sup.R. 16.31(C) provides that a court of common pleas offering mediation to the parties in a civil stalking protection order case shall use forms that are substantially similar to "Forms 16.30-A through 16.30-D."

C. Participation Must be Voluntary

Participation in mediation must be voluntary. Sup.R. 16.32(A)(1) provides that a court shall not mandate that parties in a civil stalking protection order case use mediation. Sup.R. 16.32(A)(2) further provides that the parties in a civil stalking protection order case shall knowingly and voluntarily participate in mediation based on informed consent; free from coercion or intimidation; and absent from coercive, controlling, or abusive conduct.

To evaluate the parties' capacity to mediate, the Petitioner and Respondent should be interviewed separately to ascertain each party's informed consent and voluntary participation. The court may use any screening instrument it finds appropriate for CSPO cases. The appendix

contains screening forms used by courts in Franklin and Portage counties for other types of mediations. These forms can be used to create screening forms specifically for civil stalking protection order cases.

Sup.R. 16.32(C) requires a court of common pleas shall take reasonable precautions to create a safe mediation environment for the parties and (D) requires the court to ensure that a mediator appointed to a mediate civil stalking protection order case complies with the education and training requirements of Sup.R. 16.23.

Potential Outcomes of Referral to Mediation

When a CSPO case is referred to mediation, the referral may result in a number of outcomes. Each outcome may entail a different procedural consideration and response. The chart below summarizes the implication of each of the contemplated resolutions.

Outcome	Court’s Procedural Considerations
Incorporate agreement as a term of the CSPO	<ul style="list-style-type: none"> • Grant CSPO (Form 10.03-F) • Indicate applicability of paragraphs 1-9 in CSPO • Refer to agreement in CSPO • Require Respondent to sign the waiver • If ex parte CSPO was issued, send new Form 10-A and note “amended” with new expiration date
Dismiss the Petition without prejudice	<ul style="list-style-type: none"> • Receive Petitioner’s motion to dismiss CSPO • Issue judgement entry • If ex parte CSPO issued, send Form 10-A to remove
Treat agreement as court order	<ul style="list-style-type: none"> • Receive Petitioner’s motion to dismiss CSPO • Issue judgment entry, which will incorporate agreement and notice invoking of the court’s future jurisdiction • If ex parte CSPO was issued, send Form 10-A to remove • See <i>Henneke v. Glisson</i>, 2008-Ohio-6759 (12th Dist.); <i>Wilson v. Rowe</i>, 2016-Ohio-523 (5th Dist.), and <i>Infinite Sec. Solutions, L.L.C. v. Karam Properties II, Ltd.</i>, 143 Ohio St.3d 346 (2015-Ohio-1101.)

Mediation did not occur; Party no show	<ul style="list-style-type: none"> • Determine if appropriate to schedule another session • Set case for full hearing to grant or deny CSPO • If ex parte CSPO issued, prepare Form 10-A based on outcome of full hearing
No agreement/ Mediation terminated	<ul style="list-style-type: none"> • Set case for full hearing to grant or deny CSPO • If ex parte CSPO issued, send Form 10-A to remove or modify based on outcome of full hearing • Refer to victim advocate for safety planning, where appropriate

Benefits of Mediation Generally

Generally, mediation means any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching an agreement regarding their dispute. While mediation does not guarantee a settlement, it offers some benefits over traditional adjudicatory hearings, including:

- Timelier and less expensive way of resolving disputes
- Increased satisfaction and willingness to comply with the terms of an agreement
- Process more tailored to a particular situation and interests of parties
- Preserving a relationship or terminating the relationship less acrimoniously

Additionally, mediated agreements tend to withstand the test of time.

Mediation sessions may be terminated at any time by any party, or the mediator, as it is a voluntary process. Although the goal of mediation is to reach an agreement, the parties are not required to reach an agreement in mediation. Petitioner and Respondent are permitted to have a support person, e.g., attorney, friend, spouse, victim advocate or any other person designated by a party, during the mediation. If the mediation is unsuccessful in the context of a CSPO case, the case will proceed to the full hearing, where the judicial officer will grant or deny the protection order.

To promote candid, honest, and open mediation communications between parties the mediation communications are privileged and confidential to the extent set forth in the Ohio Uniform Mediation Act (R.C. 2710). This means that what is said and shared in mediation will not be subject to discovery or admissible in evidence in a subsequent court proceeding unless the parties agree to disclose their communications. There are exceptions to the privilege and

confidentiality provision, including sharing with the court a written mediation agreement, or disclosing to the court threats of violence or attempts to commit or conceal a crime. Mediation parties may, however, share mediation communications with their attorneys and a victim advocate.

Local Mediation Rule

Sup.R. 16.21 requires a court that elects to use mediation to 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 cases pursuant to R.C. 2919.25, 2919.26, 2919.27, and 3113.31. Nothing in this division shall prohibit the use of mediation in either of the following cases:
 - (i) 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;
 - (ii) A juvenile delinquency case.
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.