

**Public Records and other Dispute Resolution Processes in the Court of Claims**

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The Supreme Court of Ohio  
Office of Dispute Resolution  
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**Mediation in Civil Actions in the Court of Claims**

- Different dockets may call for different ways of mediating.
- Mediation in civil actions in the Ohio Court of Claims follows a more traditional model, separate from the model used in public records cases.
- These cases may be referred for court-provided mediation with
  - (1) a magistrate not assigned to the case, or
  - (2) the Supreme Court of Ohio Office of Dispute Resolution.
- All types of cases may be referred for mediation. Private mediation is more common in medical malpractice and construction contract cases.

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**Civil Actions - Timing of Referral**

- Cases may be referred at any stage of the proceedings, by motion or by the court's initiative. Successful mediations have more often occurred in cases where discovery is substantially complete, but every case is different.
- Let parties know about mediation options early in the proceedings.
- Flexibility in the timing of mediation referrals is helpful
- Some cases are stayed (with discovery continuing) during the mediation process, while in other cases the trial schedule remains in place.

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### Civil Actions – Deciding Whether to Refer

- In general, cases are only referred for mediation with the agreement of the parties.
  - If one party wants to mediate and the other is not sure, consider allowing that party time to evaluate. This is especially true where settlement authority involves high-level/complex layers of approval, which sometimes happens since all defendants in the court are instrumentalities of the state.
  - Use your judgment to decide if mediation would be a meaningful. Consider the subject matter and logistics, and inquire as necessary into how prepared the parties are, what kind of settlement discussions they have had, and what the likelihood of success is. Avoid 'fishing expeditions.'




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### Civil Actions – Model of Referral

- Unlike public records cases, the court does not routinely schedule mediation in each case.
- The court has used different models in the past (i.e. setting every case for mediation; referring cases for 'early intervention' mediation).
- It is OK to experiment and be flexible. Understand that what works in one docket may not work in another.




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### Civil Actions – Mediating Remotely

- Be creative and open to different ways of mediating as the circumstances may dictate.
- Mediating in person is best in many, if not most, cases but not always necessary or feasible. Some examples:
  - Parties who live far away or cannot travel (including incarcerated persons)
  - Disputes involving minimal dollar amounts
  - Disputes that are more impersonal/transactional in nature




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### Civil Actions – Mediating Remotely (cont'd)

- Considerations for mediating via telephone or videoconference:
  - Planning is key. Discuss logistics with the parties and plan how to convene them together and caucus separately. Example: If one party appears in person, they can begin in the room with the phone, and then move to another room to caucus.
  - If a represented party is at a prison or other remote site, will the attorney be there? One recent case also involved an interpreter – where will that person be?
  - Establish who is at the remote locations. Avoid surprises, such as unidentified persons listening in. In the case of an inmate, coordinate with the prison and determine security issues, such as corrections officers being present.
  - Are there documents that the parties should exchange beforehand?




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### Civil Actions – Settlement Agreements

- Settlement agreements must be approved by the Attorney General, filed with the court, and approved by a judge pursuant to R.C. 2743.15.
  - Newly enacted R.C. 126.071 (effective 9/29/17) also states: "No state agency shall agree to any monetary settlement that obligates payment from any fund within the state treasury without consulting with the director of budget and management."
- Not allowing confidential settlements ensures accountability for public money being expended.
- Parties should be made aware that the settlement will be public, and also understand what to expect after settlement is reached.




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### Mediation in Public Records Cases

- R.C. 2743.75 provides for an "expeditious and economical procedure" that attempts to resolve disputes alleging denial of access to public records in violation of R.C. 149.43 using:
  - Mediation
  - Streamlined pleadings and evidence
  - Special Masters




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### Mandatory Mediation

- All public records cases are referred to mediation. All parts of mediation are conducted over the phone.
- Mediation Steps
  - 1) Staff Attorney contacts parties and conducts "triage."
  - 2) If "triage" fails, the case is referred to formal mediation.
- Privilege and confidentiality apply to the entire mediation process. The Staff Attorney and mediator will not share information with the Special Master.




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### Mediation Practice Tips

- Be thoroughly familiar with the facts and the law before the session. Putting your best effort into mediation makes the process more effective.
- Think critically about your real underlying interests in the dispute, and what minor interests you might trade or forego.
- If you expect to see the other party again, use mediation to gain understanding of their public records problems and goals.
- Use the mediation process to build goodwill for the future relationship!




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### Speed

#### REQUESTER

- Trim request size
- Prioritize sub-requests
- Clarify/specific request

#### PUBLIC AGENCY

- Rolling release
- Include non-records
- Waive exemption(s)
- Scan and e-mail




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### Access

#### REQUESTER

- Agree to redaction of non-records/non-responsive records
- Concede specific exemption(s)

#### PUBLIC AGENCY

- Waive exemption(s)
- Include non-records
- Explains records maintenance and access




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### Burden

#### REQUESTER

- Trim request
- Rolling release
- Agree to extend response time to a specific or conditional date
- Jointly rewrite acceptable request

#### PUBLIC AGENCY

- Include non-records
- Waive exemption(s)
- Scan and e-mail




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### Public Perception/Openness/Goodwill

#### REQUESTER

- Agree to note public office's cooperation and compliance in media story
- Arrange for periodic future contact

#### PUBLIC AGENCY

- Agree to modified request in lieu of requiring another records request
- Agree to note (in any public statement) requester's willingness to compromise




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**Stalemate!**

- Official statement or release of information, rather than records
- Public Agency agrees to reimburse requester for the \$25 filing fee
- Ask requester for more information about the documents they are requesting
- Ask public agency do conduct a second or third search for documents




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**Contact Information**

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