

2.8 MEDIATION

AMENDED 01/01/2007; AMENDED 05/14/2020

Definitions

“Mediation” means any process in which an impartial third party facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute. The parties can agree to mediate or can be court ordered to mediate. Mediation can be a virtual/teleconference or an in-person session.

“Mediator” means a trained impartial individual who conducts mediation and facilitates the communication between parties.

“Mediation party” means a person who participates in mediation and whose agreement is necessary to resolve the dispute.

“Non-party participant” means a person, other than a party or a mediator, who participates in a mediation session.

“Mediation communication” means a statement, whether oral, in a record, verbal or non-verbal, that occurs during a mediation or is made for the purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

“Confidentiality” means all mediation communications related to or made during the mediation process that are subject to and governed under the Uniform Mediation Act (UMA) O.R.C. §§ 2710.01 to 2710.10, O.R.C. § 3109.052, the Rules of Evidence and any other pertinent judicial rules. In furtherance of the confidentiality set forth in this rule, parties and non-party participants requesting confidentiality of mediation communications shall execute a written Agreement to Mediate prior to the mediation session. If different persons attend a subsequent session, additional signatures shall be obtained prior to proceeding further in the process.

Exceptions to confidentiality include the following:

- A. Allegations of abuse or neglect of a child;
- B. Certain threats of harm to other people or oneself;
- C. Statements made during mediation to plan or to hide an ongoing crime; or
- D. Statements made during the process that reveal a felony.

“Privilege” means a mediation communication that is not subject to discovery or that is admissible as evidence in a judicial proceeding. A mediator shall not be deposed or subpoenaed to testify about any mediation communication unless an exception applies:

- A. A communication is otherwise discoverable;
- B. A communication is an imminent threat or a statement of a plan to inflict bodily injury or to commit a crime of violence;

- C. A communication is intentionally used to plan, to attempt to commit or to commit a crime or to conceal an ongoing crime or ongoing criminal activity;
- D. A communication is required to be disclosed pursuant to O.R.C. § 2921.22.

Through this local rule, the Hamilton County Court of Domestic Relations incorporates by reference O.R.C. Chapter 2710 Uniform Mediation Act (UMA), O.R.C. § 3109.052 Mediation of Differences as to Allocation of Parenting Rights and Responsibilities and Rule 16 of the Supreme Court of Ohio Rules of Superintendence.

Purpose

Mediation promotes greater efficiency and public satisfaction through the facilitation of resolutions for Domestic Relations cases. Mediation increases self-determination, improves communication, promotes the best interests of children and reduces economic and emotional costs. Mediation empowers parties to make their own decision with a lower conflict method.

Procedure

The Court's Dispute Resolution Department (DRD) conducts virtual/teleconference or in-court mediation sessions at the Hamilton County Court of Domestic Relations, 800 Broadway, Cincinnati, OH 45202 (513-946-9079). DRD is located on the third floor and is open 8:00 AM to 4:00 PM Monday through Friday.

Once a mediation order is received, DRD will await payment, if necessary, and then assign the mediation to a staff member. The mediator will send a Mediation Appointment Letter with the date and the time for the first mediation appointment. A mediator may schedule mutually agreed subsequent mediation sessions. For virtual mediations, the mediator will request electronic mail addresses from parties for communication of upcoming sessions and events.

A mediator may meet with the parties individually or in a teleconference prior to the initial session for domestic violence screening or may contact the parties for an individual session to screen for domestic violence.

The Court's DRD Director will determine the eligibility and appropriateness of each referral prior to the commencement of the mediation process and may decline any referral(s) deemed inappropriate for mediation.

At the conclusion of the mediation, the mediator shall inform the Court of the status of the mediation including all of the following:

- A. Whether the mediation occurred or was terminated;
- B. Whether agreement was reached on any of the issues that were the subject of mediation; and
- C. Whether all parties attended.

Continuances

The Court's policy is to determine matters in a timely fashion. Continuances of schedule mediations shall be granted only for good cause shown. The party requesting the continuance shall contact the other party to continue a mediation and shall contact the mediator who will select another date. The existence of pending motions is not a reason to continue mediation.

Types of Court Mediation

Parenting Mediation for the Allocation of Parental Rights and Responsibilities

Parenting mediation is defined as a process with issues regarding parental rights and responsibilities including but not limited to custody, parenting time schedule, medical decisions, religion, schools, transportation, extended families or extracurricular activities.

Financial Mediation

Financial mediation is defined as a process with issues including but not limited to spousal support, real estate, retirement plans, banks accounts, debts, and assets.

Pre-Decree Mediation

Prior to the Final Decree of Divorce, the Court may order parties to parenting or to financial mediation. The mediator may be either a community-based or a Court mediator. The Court or the parties may select a community-based mediator. The community-based mediator may be selected from the Court's list of mediators. If the parties select the Court program, the parties are responsible for providing contact information to DRD. The Court will forward the Mediation Order(s) to DRD.

Post-Decree Mediation

Court-Ordered: Following the Entry of a Decree of Divorce or Dissolution, the Court on its own motion or on the motion of the parties may order disputed post-decree parenting or financial issues to mediation in whole or in part. The mediator may be either a community-based mediator from the Court's list of mediators or a Court mediator from the Court's list of mediators.

Agreed: The parties may agree to mediation to resolve disputes related to their parenting or financial issues. If the parties agree to mediation to resolve parenting or financial issues either as a result of a stipulation in their divorce decree or because they desire an alternative to litigation, either party may contact DRD to initiate mediation. DRD will secure an agreement as to whether the parties will attend mediation with a community-based mediator or with a Court mediator.

The Court shall utilize mediation procedures for all cases that will:

- A. Ensure that 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;
- B. Screen for domestic violence before and during mediation;
- C. Encourage appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence. A brochure is displayed in public areas, which is available to mediators and other staff to distribute to clients as appropriate; or
- D. Prohibit the use of mediation in any of the following:
 - 1. Determination of whether to grant, to modify or to terminate a protection Order;
 - 2. Alternative to the prosecution or to the adjudication of domestic violence;
 - 3. Determination of the terms and the conditions of a protection Order; or
 - 4. Determination of the penalty for violation of a protection Order.

Mediator Qualifications

General Qualifications and Training

A community-based or in-Court mediator shall satisfy the following:

- A. Possess a bachelor's degree, or equivalent education or experience as is satisfactory to the Department, 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 Department;
- B. Complete Fundamentals of Mediation training with the additional online education the Dispute Resolution Section of the Supreme Court has approved;
- C. Complete Specialized Domestic Abuse Issues and Mediation Training with the additional online education the Dispute Resolution Section of the Supreme Court of Ohio has approved;
- D. Complete the Specialized Family or Divorce Mediation training with the additional online education the Dispute Resolution Section of the Supreme Court of Ohio has approved; and
- E. Complete 20 hours of co-mediation with an existing mediator, who has completed the above-cited training and who has mediated for at least two years.

Community-based mediators must also:

- A. Complete three-hours of continuing legal education (CLE) each year to remain on the Court's mediator list;
- B. Provide proof of annual CLE by January 1 to the Director of DRD to remain on the Court's mediator list. Proof includes a copy of the education certificate, signed compliance statement and resume; and
- C. Maintain appropriate liability insurance coverage.

Mediator Responsibilities

Mediation of allocation of parental rights and responsibilities or the care of, or parenting time with, minor children shall comply with all provisions set forth in this rule. Mediation may then proceed, when violence or fear of violence is alleged, suspected, or present, only if the mediator has specialized training as set forth in Mediator Qualifications 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 the 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 a continued threat of domestic violence or coercion between the parties. The Court requires all mediators to whom it refers cases to use established procedures to terminate mediation if the mediator believes there is a continued threat of domestic violence or coercion between the parties. Each party must be informed of the termination of the mediation, safety planning, and next steps separately in caucus.
- E. Procedures are in place for issuing written findings of fact, as required by O.R.C. § 3109.052, to refer certain cases involving domestic violence to mediation.

Mediators shall not offer legal advice.

Mediators shall comply with the “Core Values of Mediation” which the Supreme Court of Ohio Dispute Resolution Section Commission on Dispute Resolution established and approved.

Mediator Conflicts of Interest

The mediator assigned to conduct an in-court 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 assigned mediator withdraw because of the facts so disclosed, the assigned mediator shall withdraw and request that DRD re-assign the case. The parties shall be free to retain the mediator with an informed, written waiver of the conflict(s) of interest.

Termination

If the assigned mediator determines that further mediation efforts would be of no benefit to the parties, the mediator shall inform all interested parties and the Court that the mediation is terminated using the Court’s procedure.

Stay of Proceedings

All remaining Court Orders shall continue in effect. Mediation shall not stay discovery, which may continue through the mediation process in accordance with applicable rules, unless the judicial officers and the parties agree. A stay is ordered for statistical reporting to the Supreme Court of Ohio.

List of Qualified Mediators

The Director of DRD maintains a list of qualified mediators and shall distribute that list to all Judges and Magistrates of the Court.

The Director of DRD shall review applications of persons seeking to be added to the list of qualified mediators in accordance with the adopted Court procedures. The Director shall conduct an annual review of each mediator's qualifications and shall remove from the Court's list those mediators who are no longer qualified. To remain on the Court's list, community-based mediators shall provide annual compliance statements by January 1 with a copy of the continuing education certificates to the DRD Director.

Fees and Costs

Pre-decree parenting mediation is at no cost.

Post-decree mediation is \$150.00.

Pre-decree or post-decree financial mediation is \$300.00.

The parties may agree to the allocation of the costs for mediation. Unless the parties agree, the mediation costs will be shared equally or as allocated in the Court's Order.

The Court may waive costs if the parties are indigent and have filed a poverty affidavit.

DRD mediation shall not commence until any applicable fees are paid to the Clerk of Court.

Community based mediators shall set their own fees, contracts and retainers.

Sanctions

If any individual ordered to attend mediation fails to attend mediation without good cause, the Court may impose sanctions

Model Standards

Mediators providing services for the Court shall comply with the AFCC Model Standards of Practice for Family and Divorce Mediations, the Special Policy Considerations for State

Regulation of Family Mediators and Court Affiliated Programs and Rule 16 of the Supreme Court of Ohio Rules of Superintendence.