

## **Chapter 9 - Mediation**

### **Rule 9.01 – Mediation - General Information**

#### **A. Mediation Defined**

Mediation is any proceeding in which a mediator facilitates communications and negotiations between parties to assist them in reaching a voluntary agreement regarding their dispute.

Statements made by the Mediator shall not be construed as giving legal advice.

#### **B. Program Summary**

The Court employs one full-time mediator/mediation coordinator who mediates civil and domestic relations cases at no cost to the parties beyond the initial filing fee. The Court may utilize private mediators who are not employed by the Court.

#### **C. Qualification of Mediators**

The minimum qualifications of mediators shall be those established by the Supreme Court of Ohio. This Court may establish additional minimum qualifications that are not inconsistent with the qualifications established by the Supreme Court of Ohio.

Mediators of domestic relations cases shall comply with the Model Standards of Practice for Family and Divorce Mediations.

#### **D. Communication Defined**

Mediation communications are oral or written statements and may be verbal or nonverbal. Statements are considered mediation communications if they are made during a mediation conference, or before or after the mediation conference if they are made for purposes connected with the mediation, including considering, conducting, participating in, initiating, continuing, or reconvening a mediation conference.

## **Rule 9.02 – Privilege v. Confidentiality**

### **A. Privilege**

Mediation communications are privileged and not admissible as evidence in a court proceeding unless the privilege is properly waived or an individual is precluded from asserting the privilege.

### **B. There are no privileges to mediation communications if any of the following apply:**

1. The terms of an agreement are contained in a signed written agreement;
2. The communication is available to the public under R.C. 149.43;
3. The communication involves an imminent threat or a statement of a plan to inflict bodily injury or commit a crime of violence;
4. The communication is sought to prove or disprove a claim of professional misconduct or malpractice;
5. The communication is used to plan, attempt to commit, commit a crime, or conceal an ongoing crime;
6. The communication is required to be disclosed under R.C. 2921.22: Duty to report a felony;
7. The communication is used to prove or disprove a claim of abuse or neglect; or
8. The communication is perceived by an attorney mediator as professional misconduct by an attorney participant.

### **C. Confidentiality**

Mediation communications are confidential only to the extent agreed upon by the parties. Any party with concerns about public disclosure of the party's mediation communications should enter into a confidentiality agreement prior to or at the mediation conference.

### **Rule 9.03 – Mediation Referral**

Upon the request of any party to an action or upon its own motion, the Court, in its discretion, may order the parties to participate in mediation. Any party may request mediation by filing a motion for mediation and by serving the motion on all parties. A motion for mediation may be filed at any time after the commencement of an action, including during post-decree proceedings.

### **Rule 9.04 – Domestic Violence Screening**

In referring parties to mediation, the Court shall effectively screen and assess the parties relating to problems involving domestic violence convictions or allegations of domestic violence. If the case proceeds to mediation, the screening shall continue throughout the mediation process. The parties and counsel shall cooperate with all portions of the domestic violence screening process.

All parties and counsel shall advise the Magistrate and Mediation Department of any domestic violence allegations known to them to exist or to have existed in the past, or which become known to them following the referral to mediation, but before the conclusion of the mediation proceedings.

The Court encourages appropriate referrals to legal counsel and other support services for all parties, including victims and suspected victims of domestic violence.

When violence or fear of violence is alleged, suspected, or present, mediation may proceed when the following conditions are satisfied:

- A. The person who is or may be the victim of domestic violence has the option to decline participation in the mediation process at any time.
- 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.
- 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.

Mediation shall not be used as follows:

- 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; or
- D. In determining the penalty for violation of a protection order.

### **Rule 9.05 – Mediation Attendance**

The attorney who is primarily responsible for each party's case shall personally attend the mediation conference and shall be prepared and authorized to discuss all relevant issues, including settlement.

The parties shall also attend, except when a party is being represented by an insurance company. In that case, an authorized representative of the insurance company, who has full settlement authority, shall attend. Attendance shall be in person, not by telephone.

In medical malpractice cases, the attorneys of record, an authorized representative of the insurance company, and the medical practitioner must all personally attend the mediation conference, regardless of whether the physician consented to settlement discussions or not.

If there is a guardian ad litem for any child involved in a case that is subject to mediation, the guardian ad litem shall have the right to be involved in the mediation process and attend the mediation conference.

Nonparties may participate in the mediation conference if requested by a party to mediation. The participant who wishes to have additional individuals present at the mediation conference must notify the mediator and opposing party or counsel before the scheduled date. In the event the mediator does not wish to proceed with the nonparty participant, the mediator may cancel the mediation conference.

## **Rule 9.06 – Mediation Continuances**

Continuances of mediation conferences are counter-productive, and requests are discouraged absent exigent circumstances. Requests shall include reasons and are to be directed to the Mediation Department.

## **Rule 9.07 – Mediation Procedures**

A. At least five days prior to the mediation conference, the parties shall submit the following directly to the mediation department:

1. Responses to the mediation department's case summary form, which is available on the Court's website; and
2. Any other materials a party believes would be beneficial to the mediator.

B. During the mediation conference, the mediator shall:

1. Permit each party, through counsel or otherwise, to orally present the dispute;
2. Help to refine and prioritize the issue(s) in dispute; and
3. Hold separate, private caucuses with any party or counsel as needed.

C. If a settlement agreement is reached, the mediator, or one of the parties at the mediator's request, may prepare a memorandum of settlement listing the terms of the agreement. Dismissal entries shall be filed by counsel no later than 30 days after the mediation conference. Counsel shall notify the mediation department when additional time is required.

The mediation department will notify the Court when a dismissal entry is not filed in the allotted time period. Upon notification of the failure to file a dismissal entry, the Court may:

1. Set a status hearing; or
2. Dismiss the case with prejudice after reviewing the signed copy of the memorandum of settlement.

D. At the conclusion of mediation, the mediator shall report in writing to the assigned judge that the session was held, who attended, and whether an agreement was reached.

E. The mediator shall make a reasonable inquiry to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator. The mediator shall disclose those facts to the parties as soon as is practicable.

### **Rule 9.08 – Sanctions**

For a violation of this rule, upon motion by a party, the mediator, or upon the Court's own motion, a party or the party's attorney may be subject to appropriate action, including but not limited to contempt, dismissal, default judgment, attorney fees and/or costs.

### **Rule 9.09 – Workers' Compensation Settlement Days**

On occasion, the Court will conduct Workers' Compensation Settlement Day Mediation Conferences.

### **Rule 9.10 – Foreclosure Mediation Program**

The Court's Foreclosure Mediation Program assists lenders and homeowners to resolve mortgage foreclosure actions.

Once a foreclosure case is referred to mediation, the parties must complete the Court Foreclosure Mediation Questionnaire by the date requested. The court mediator shall immediately review the questionnaires to determine whether the case is appropriate for mediation.

If it is determined that mediation is not appropriate, the matter shall be referred back to the Court's regular docket. Otherwise, the matter shall be scheduled for a mediation conference.

The Court shall defer ruling on all dispositive/default motions until a final Mediation Outcome Report is filed.

## **9.11 – Domestic Pre-filing Mediation Conference**

### **A. Post-Decree Mediation**

Mediation may be available before a post-decree motion is filed in an existing closed divorce or dissolution case, provided all parties consent by completing and signing the Request for Pre-Filing Post Decree Mediation form, which is available at the Clerk of Court's Office and on the Court's website. The parties must submit a copy to the Mediation Department. The Mediation Department will screen to determine if scheduling a mediation conference is appropriate.

### **B. Pre-filing Divorce Mediation**

Individuals may participate in mediation prior to filing a divorce or dissolution by submitting a Joint Request for Mediation Services. This form is available at the Mediation Department and on the Court's website. There is no cost to the parties to participate.

The Mediation Department will screen to determine if mediation is appropriate. Attorneys who represent the parties may participate in the mediation conference if an individual requests. If the matter is scheduled for mediation, and an agreement is reached, the parties shall prepare a Memorandum of Understanding, which will not be signed. The parties will need to file their own dissolution paperwork after the mediation.

## **Rule 9.12 – Private Mediators**

### **A. Court Referral**

The Court may refer cases to a private mediator. A mediator may be selected by agreement of the parties, subject to Court approval, or at the discretion of the Court. When the Court refers a case to a private mediator, the parties may agree to apportion the costs of mediation among themselves. In the event the parties cannot agree to the division of costs, the Court shall apportion the costs after considering the parties' respective ability to pay.

## **B. Party Referral**

If all parties advise the Court that they plan to use a private mediator, the Court shall permit them to do so at the expense of the parties, subject to submission to the Court and Mediation Department of an agreement requesting the use of private mediation, specifically listing:

1. The name of the private mediator,
2. The date of the mediation, and
3. The distribution of costs between the parties.

## **C. Outcome Report**

Counsel shall report the results of each mediation conference to the assigned judge and the Mediation Department within seven days of the close of the mediation conference.

The Mediation Outcome Report shall state:

1. Whether the case settled and, if a settlement involves less than all parties or issues in the case, which parties or issues have settled;
2. Whether an additional mediation conference is needed and the proposed date to reconvene; and
3. Any failure of a party or the party's attorney to attend the mediation conference.

The Court mediation department shall schedule the case for an in-house mediation conference if a Mediation Outcome Report is not filed.