

Geauga County Local Rules of Court

Common Pleas Rules

RULE 30: MEDIATION

A. REFERRAL

1. A Mediator may be appointed by the Court when requested by either party or on the Court's own motion. A referral to mediation by the Court may be made at any stage of the proceedings. There are no limitations either as to type or the amount in dispute of any civil or domestic case referred to mediation. The parties may agree to use an outside mediator as long as there is an agreement as to payment of fees, and the Court has given prior approval. The provisions of Ohio Revised Code Section 2710 ("Uniform Mediation Act") (UMA) and Rule 16 of Ohio Supreme Court of Ohio Rules of Superintendence are incorporated into this Rule by reference.

2. Unless proceedings are stayed by Court order during the process of mediation, the parties shall continue to engage in discovery or other trial preparation and the Court shall continue to manage the case by establishing deadlines and placing the matter on the trial docket.

3. All parties and counsel shall advise the assigned judge or magistrate of any domestic violence allegations known 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.

4. Parties shall be allowed to participate in mediation and if they wish, their attorneys and other individuals they designate are allowed to accompany them and participate in mediation.

5. The Court will create a brochure to be displayed in public areas and have available by mediators and other staff to distribute to clients as appropriate. The brochure will include local attorney contact information; resource information for local domestic violence prevention, counseling, substance abuse and mental health services; and information regarding children services.

6. The use of mediation is prohibited in any of the following:

a. As an alternative to prosecution or adjudication of domestic violence

b. In determining whether to grant, modify or terminate a protection order

c. In determining terms and conditions of a protection order; and

d. In determining the penalty for violation of a protection order

7. In addition to mediation referrals to an appointed mediator as set forth above, the Court may refer mediations to a Court employed mediator whose function is to mediate cases referred to him or her by the Court. Such employee shall be compensated and conduct mediations as the Court determines and not pursuant to Paragraph G of this Rule.

B. QUALIFICATIONS

1. Any mediator to whom the Court makes referrals in civil cases, other than domestic relations, shall have such qualifications as deemed appropriate by the referring judge.

2. Any mediator to whom the Court makes referrals pursuant to Ohio Revised Code Section 3109.052 and in any domestic relations case in relation to disputes involving the allocation or parental rights and responsibilities shall have the minimum qualifications set forth in the Rules of Superintendence for the Courts of Ohio. When fear of violence is alleged, suspected, or present, the mediation shall proceed only if all 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.

C. MEDIATION SESSIONS AND PROCESS

1. Cases referred by the Court shall be scheduled for mediation by the mediator. All cancellations and re-scheduling of mediation dates shall be made only upon approval of the mediator. Mediation shall be held at a place convenient to the mediator, and in Geauga County, Ohio, unless all parties otherwise agree.

2. The mediator shall fix a time for mediation to occur, not more than sixty (60) days after submission to mediation and shall notify the parties or their counsel, in writing, at least ten (10) days before the mediation of the time and place of the mediation. The sixty (60) day period may be extended once by the mediator for up to fifteen (15) days. Notwithstanding any continuance, the mediation shall be held and concluded within seventy-five (75) days from the date of submission, unless the Court permits a further extension. The initial mediation session will be scheduled for a minimum of two (2) hours.

3. The parties to the case shall attend all mediation sessions unless their attendance has been excused in advance by the mediator. All persons necessary for authority to settle the case must attend. The lawyer who is primarily responsible for handling trial of the matter shall also attend the mediation unless the attorney is excused by the mediator.

4. All mediations shall be conducted in accordance with the Uniform Mediation Act (ORC Section 2710.01 et. seq.) and, where applicable, with ORC Section 3109.052.

5. Communication in the mediation process, regardless of the method of referral or the nature of the issues referred, are governed by the Uniform Mediation Act (Chapter 2710 ORC); ORC Section 3109.052 where applicable; and, Rule 408 of the Ohio Rules of Evidence. The entire mediation process, including any correspondence with the mediator prior to the mediation conference is confidential except as otherwise provided by law. The parties and the mediator may not disclose information regarding the process, including settlement terms, to the Court or to other persons, unless the parties otherwise agree. A mediator may disclose whether the mediation has occurred or has terminated; whether a settlement was reached; attendance; and, may make the disclosures authorized by Revised Code Section 2710.06. The mediator is disqualified as a witness, consultant, attorney or expert in any pending or future actions relating to the dispute, including actions between persons not parties to the mediation process.

D. PARTICIPATION

1. Parties referred to mediation shall participate in good faith in the mediation process and cooperate in all matters pertaining to the mediation, including payment of mediator fees if ordered by the referring judge.
2. The Court may order parties to return to mediation at any time.
3. In mediations involving the allocation of parental rights and responsibilities pursuant to Revised Code Section 3109.052, the following rules apply: if the opposing parties to any case are a) related by blood, adoption or marriage, or have resided at a common residence; and b) have known or alleged domestic violence 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. The parties in such a case have a duty to participate in any screening process and the Court may order mediation only if it determines that it is in the best interest of the parties to proceed to mediation. The Court must support such determination with specific written findings of fact.

E. SANCTIONS

1. If a party or counsel for a party fails to attend mediation session(s) without good cause or otherwise violates this rule, the Court may, on motion by a party, the mediator, or upon the Court's own motion, impose appropriate sanctions, including, but not limited to, an award of counsel fees and for costs, dismissal, default judgment or contempt.
2. Attorneys shall submit a "Mediation Case Summary" to the mediator prior to mediation. The Mediation Case Summary shall contain the following: a) summary of material facts; b) summary of legal issues; c) status of discovery; d) listing of special damages; and e) settlement attempts to-date, including demands and offers.

F. CONCLUSION OF MEDIATION

1. Immediately on conclusion of the mediation, the mediator will report to the Court only the status of the mediation, i.e., whether a settlement was reached, all or part; and whether all necessary parties attended.

2. If the mediator determines that further mediation efforts would be of no benefit, he or she shall advise the parties and the Court of such determination.

3. If the mediation was successful, the assigned mediator, parties or counsel, if applicable, as agreed by the parties, may immediately prepare a written memorandum memorializing any agreement reached by the parties. The "Mediation Memorandum" may be signed by the parties and counsel (if the "Mediation Memorandum" is signed, it will not be privileged pursuant to R.C. 2710.05(A)(1)). The written "Mediation Memorandum of Understanding" may become an order of the Court after review and approval by the parties and their attorney. No oral agreement by counsel or with parties or an officer of the Court will be binding unless made in open Court. No agreements developed in mediation shall be legally binding until reviewed and approved by the parties and their attorneys. In cases in which an agreement is reached, the parties or their attorneys shall submit final judgment entries to the Court within fourteen (14) days of the conclusion of the mediation, or at such other time as may be ordered by the Court. If an agreement is not reached, the case shall be returned to the assigned judge.

4. If the parties fail to submit an appropriate judgment entry in a timely fashion, then the Court may dismiss the case administratively or impose appropriate sanctions. Upon such administrative dismissal, Court costs and mediator fees shall be paid as ordered by the Court.

G. COMPENSATION OF MEDIATOR

Each mediator shall receive a lump sum compensation in the amount of five hundred dollars (\$500.00) per case. Mediators shall not receive additional compensation for subsequent sessions.

All mediators will provide an application for an order to pay mediation fees upon completion of the mediation and attach an approval order. All compensation for a mediator shall be paid, upon proper warrant, from the funds of Geauga County, Ohio, which have been allocated for the operation of the Common Pleas Court of Geauga County, Ohio. In the event that the mediation is unsuccessful, the cost of the mediation shall be taxed as costs through the Clerk of Courts Office. Upon receipt of costs, the Clerk shall deposit the mediation costs with the Treasurer who will place the funds in the General Division Arbitration/Mediation Special Project Fund.

In the event that the case is settled or dismissed sooner than two days prior to the date scheduled for the mediation, the mediator shall not be entitled to any fees. In the event a case is settled or dismissed within the said two-day period, the mediator is entitled to receive a fee of fifty dollars (\$50.00).

H. DISPUTE RESOLUTION FEES

Pursuant to ORC Section 2303.201(E)(1), commencing February 1, 2010 fees in addition to the fees and costs authorized under Section ORC 2303.20, shall be charged and collected by the Clerk of Courts upon filings in the General Division, as follows: (a) on the filing of each foreclosure action or proceeding, a fee of ninety dollars (\$90.00); (b) on the filing of every other civil (including domestic and domestic post decree) action or proceeding, a fee of twenty-five dollars (\$25.00). Such additional fees shall be used to implement the procedures set forth in this Rule.

All fees collected shall be paid to the Clerk of Courts for deposit with the County Treasurer who will place the funds from these fees in the General Division's Arbitration/Mediation Special Project Fund with an annual report of collection to the Administrative Judge.

If the Court determines that the amount of the money in the fund described herein is more than the amount sufficient to satisfy the purpose for which this fee was imposed, the Court may declare a surplus in the fund and expend the surplus moneys for other appropriate expenses of the Court.

At any time after a lawsuit is filed, the Common Pleas Court, General Administrative Judge may, in the exercise of his or her discretion, order a Plaintiff, Counter-Claimant, Cross Claimant and/or Third-Party Plaintiff to deposit money, up to one thousand dollars (\$1,000.00) per party, in addition to the usual filing fees, for any case which may require extraordinary expenditures to implement mediation. The additional fees shall be paid to, and collected by, the Clerk.

I. EFFECTIVE DATE

This Rule shall become effective February 1, 2010, and a copy hereof filed with the Ohio Supreme Court in accordance with the Rules of Superintendence.