

21.1 COURT MEDIATION

I. ALL MEDIATION

(A) Eligible Cases.

- (1) At any time during the litigation, any civil case may be referred to mediation to be conducted by a mediator employed by the court.
- (2) A case may only be referred to mediation by order of the court. The court may issue the order on its own motion, upon the motion of counsel or upon agreement of the parties.
- (3) At any time during the litigation, a business case may be referred to business mediation as provided in Section II of this rule by court order or by agreement of the parties with the approval of the court.

(B) Continuances. Continuances will be granted only for good cause shown. Except as authorized by the court, the existence of pending motions will not be good cause for a continuance and no continuance will be granted unless the mediation can be scheduled prior to the next court event.

(C) No Stay of Proceedings. All court orders issued and pending deadlines will remain in full force and effect. No order is stayed or deadline suspended during the mediation process.

(D) Privilege and Confidentiality.

- (1) Mediation communications are privileged as described in R. C. 2710.03- 05. If the parties believe that confidentiality beyond the scope of the statutory privilege is necessary, the parties should execute a written confidentiality agreement prior to mediation.
- (2) The mediator may not disclose to the judge or any court employee the contents of mediation discussions unless agreed to by all of the parties.
- (3) Parties, counsel and mediators may respond to confidential inquiries or surveys by persons authorized by the court to evaluate the mediation program. Information provided in such inquiries or surveys will remain confidential and will not be identified with particular cases. The mediation process will be treated as a compromise negotiation for purposes of the Ohio Rules of Evidence.
- (4) The mediator may not be called as a witness for any purpose.

(E) Mediator's Duty.

- (1) A mediator is any individual who mediates cases pursuant to an order of this court regardless of whether that individual is an employee, an independent contractor or a volunteer. After mediation, the mediator may inform the court who attended the mediation, whether the case settled, whether efforts to settle the case through mediation are being continued, or that the case is being returned to the court for further proceedings.
- (2) A mediator acting pursuant to this local rule will have all immunity conferred by statute, rule and common law.
- (3) The mediator may not give legal advice. The mediator is authorized to provide contact information for legal or other support services available in the community, however, the provision of that information is not a recommendation of or referral to such resource. The recipient of that information is charged with the duty to evaluate those resources independently.

(F) Attendance at the Mediation Conference.

- (1) The attorney who is primarily responsible for each party's case and all parties whose authority is required to reach settlement must attend the mediation. Where a party has delegated full settlement authority to an insurance representative, the insurance representative must attend the mediation. Willful failure of a party to attend the mediation conference will be reported by the mediator to the assigned judge who may impose appropriate sanctions.
- (2) In addition to counsel, any party may have one support person attend and participate in the mediation conference. Individuals who participate in a mediation conference as non-parties are bound by the same rules of privilege and confidentiality and submit to the court's jurisdiction to the extent necessary for enforcement of this rule.

(G) Mediation Fees.

- (3) No fees will be charged for civil cases referred to the court's dispute resolution department for mediation.
- (4) If the case is referred to a mediator other than the court's dispute resolution department, the parties will share the cost of the mediation in such proportions as they may agree.

II. BUSINESS MEDIATION. In addition to the provisions above, the following provisions apply specifically to business mediation.

(A) Eligible Cases. Business case is defined as any case primarily involving one or more of the following areas of law: contract law; matters arising under the Uniform Commercial Code; commercial and business torts; corporate law; securities law; trade secrets law; employment law; construction law; maritime law; international business law; real estate law; or, a case otherwise designated as a commercial docket case.

(B) Administrative Procedure.

- (1) Upon receipt of the referral order, the dispute resolution administrator will notify the parties in writing and will include the names of three proposed business mediators taken from the list of eligible business mediators. Each party will rank the business mediators in order of preference and within 10 days of the receipt of the notice of referral must return the rankings to the dispute resolution administrator. In the alternative, the parties may agree to select their own business mediator if written notice is given to the court no later than 10 days from the date of referral.
- (2) Upon receipt of the rankings, the dispute resolution administrator will strike from each party's list the least preferred business mediator and select the remaining name as the designated business mediator.
- (3) The designated business mediator will be notified of the assignment by the dispute resolution administrator in writing. The designated business mediator will have seven days to perform a conflict check and notify the dispute resolution administrator that the

Cuyahoga County Common Pleas Court Local Rules

appointment has been accepted or declined. The administrator will then send a Notice of Mediator Designation to all counsel and the designated business mediator. If the designated mediator does not accept the assignment, the dispute resolution administrator will repeat the process until a designated business mediator has been assigned.

- (4) The business mediator must schedule the mediation within 30 days of receipt of the Notice of Mediator Designation and send written notice of the hearing date, time and location to all parties and the dispute resolution administrator.
 - (5) The business mediator will receive \$150 per hour as compensation for hearings lasting four hours or less. This fee will be paid by the court and will not be taxed as costs. If the parties agree, business mediation may continue in excess of four hours and time spent will be charged at the mediator's normal hourly rate and will be paid by the parties. Business mediation sessions may not exceed four hours without prior written consent of all parties.
- (C) **List of Eligible Business Mediators.** Business mediators in all cases referred to business mediation will be selected from the list of eligible business mediators. The list will be maintained by the dispute resolution administrator and distributed to all judges of the court. In order to be placed on the list of eligible business mediators, an attorney must submit a written application to the administrative judge. The administrative judge and any committee created for the purpose of maintaining the list of eligible business mediators will consider the applications and place those who are deemed qualified on the list.
- (D) **Contents of Mediator's Application.** The business mediator's application must include all of the following:
- (1) A current resume; and
 - (2) A statement that the applicant is a lawyer who has been admitted to the practice of law in the State of Ohio for at least 5 years or is a member of the faculty of an accredited Ohio law school; and
 - (3) A statement that the applicant has received Fundamentals of Mediation training as defined in Sup.R.16.23(A)(1) or in the alternative, has met the training requirements outlined in Sup. R. 16.23(A)(2).
- (E) **Written Submissions to the Business Mediator.**
- (1) At least five days before the business mediation conference, the parties must submit the following to the business mediator:
 - (a) Copies of relevant pleadings and motions;
 - (b) A short memorandum stating the legal and factual positions of each party; and
 - (c) Other material that each party believes would be beneficial to the mediator.
 - (2) Upon reviewing such material, the business mediator may schedule a preliminary meeting with counsel.
 - (3) Written mediation memoranda should not be filed with or shown to the court.

Cuyahoga County Common Pleas Court Local Rules

- (F) **Business Mediator's Report.** The business mediator must submit a Mediator's Report to the dispute resolution administrator and to counsel for each party within 10 days of the business mediation conference. The report must comply with the privilege and confidentiality provisions of this rule and R.C. 2710.03. In accordance with Section E of this rule, after the business mediation, the business mediator will issue a report informing the court of who was in attendance, whether the case settled, whether efforts to settle the case will be continued, or that business mediation efforts were unsuccessful and the case is being returned to the court for further proceedings.

III. DOMESTIC ABUSE ISSUES

- (A) Mediation may not be used as an alternative to the prosecution or adjudication of domestic violence, to determine whether to grant, modify, or terminate a protection order, to determine the terms and conditions of a protection order or to determine the penalty for violation of a protection order.
- (B) If opposing parties in any case have either resided in a common residence or are related by blood, adoption, or marriage, and have known or alleged domestic abuse at any time prior to the mediation, then the parties or their counsel have a duty to disclose such information to the dispute resolution staff. Each party will have a duty to participate in any screening required by Sup. R. 16 prior to, and in the mediator's discretion, during the mediation sessions.

Effective 06/01/2021. Renumbered 04/11/2022.