

### Rule 43. Mediation

(A) Mediation is a structured process in which a mediator facilitates communication and negotiation between the parties to assist them in reaching a voluntary agreement regarding their matter.

(B) The following cases may be referred to the Court Mediation Department for a mandatory mediation session:

- (1) Applications to determine custody, shared parenting, or parenting time;
- (2) Applications for companionship or visitation time;
- (3) Motions to modify custody, parenting time, or visitation time;
- (4) All other matters concerning allocation of parental rights and third-party custody and visitation.

(C) When referred - A matter may be referred to mediation at any time after a complaint or motion is filed. Parties may agree to mediate before service has been perfected if the responding party signs a Waiver of Service.

(D) Notice of Mediation Session, Continuances

- (1) When a mediation hearing is scheduled, the court will send a notice to the parties with the date and time of the mediation session. The parties must appear to the mediation session unless it is cancelled or continued.
- (2) Parties may request a continuance of the mediation session by filing a "Motion for Continuance" with the Clerk of Court in compliance with Local Rule 35.

(E) Pre-mediation Screening

- (1) Each matter that is referred to mediation shall be screened by the assigned mediator prior to the scheduled mediation hearing. The screening process is designed to determine if and how the case should be mediated, assess each party's ability to meaningfully participate in mediation and detect any safety concerns. The pre-screening process is NOT the time to discuss the merits of the case or each party's grievances.
- (2) Each party is responsible for ensuring that the Court has up-to-date contact information. Mediators will reach out to the parties by phone during pre-mediation screening. Parties wishing to update their address and/or phone number can file a "Change of Address" form with the Clerk of Court.

- (F) The following cases are exempted from mediation:
- (1) Cases that do not comply with Local Rule 42;
  - (2) Cases in which a litigant is the respondent in an active protection order naming the child as a protected party;
  - (3) Cases in which the Court may be unable to exercise jurisdiction over the child;
  - (4) In emergency circumstances requiring an immediate hearing by a jurist;
  - (5) Cases in which the parties have executed an Agreed Judgment Entry;
  - (6) Cases in which mediation would be inappropriate due to domestic abuse or domestic violence concerns;
  - (7) Mediation is prohibited as an alternative to the prosecution or adjudication of domestic violence; In determining whether to grant, modify, or terminate a protection order; In determining the terms and conditions of a protection order; In determining the penalty for violation of a protection order.
- (G) Parties participating in mediation shall follow all rules and guidelines communicated to them by the mediator. Each party will be given a chance to assert their position and desired goals.
- (H) The mediator will communicate the results of a mediation to the Court as follows:
- (1) If the parties reach an agreement, the agreed-upon terms will be put in writing, signed by the parties, and submitted to the Court.
  - (2) If the parties are unable to reach an agreement, the mediator will prepare a report to the Court and disclose only whether a mediation hearing occurred, whether a settlement was reached, and who attended the mediation hearing. The matter will then be set for further hearing by a Judge or Magistrate.
- (I) Privilege and Confidentiality
- (1) Statements and nonverbal communications that occur during a mediation are generally confidential and privileged. Consequently, communications made during mediations are generally not subject to discovery and they are not admissible in evidence in a proceeding unless the privilege is waived. Any party or participant may refuse to disclose and may be able to prevent others from disclosing mediation communications.
  - (2) There is no privilege for mediation communications to which any of the following applies:

- a. Communications that involve imminent threats or statements of a plan to inflict bodily injury or commit a crime of violence against others;
- b. A party or participant uses the mediation process to commit, conceal, plan, or attempt to commit a crime;
- c. A party or participant makes a communication that can be used to prove or disprove abuse, neglect, abandonment, or exploitation of a child or elderly person, including in a proceeding initiated by a child protection agency which alleges that a child is an abused, neglected, or dependent child;
- d. A party or participant makes a communication that is connected to the commitment of a felony or delinquency proceeding involving a felony if committed by an adult;
- e. The parties reach an agreement that is memorialized in writing and signed by the parties;
- f. Participants seek to prove or disprove a claim of professional misconduct or malpractice filed against a mediator;
- g. The mediation communication qualifies as a public record that is required to be disclosed under section 149.43 of the Ohio Revised Code.

(J) Attorneys and assigned guardians ad litem may attend the mediation hearing with the parties.

(K) Prohibitions

(1) Mediators are prohibited from giving legal advice to parties. Mediators will maintain the following information for the public:

- a. Attorney referral contact information;
- b. Information regarding children's services; and
- c. Resource information for local domestic violence prevention, counseling, substance abuse and mental health services.

(2) Mediators are prohibited from serving as an ongoing resource for parties after the mediation is concluded. Parties shall not solicit input from mediators about a pending matter or contact the mediator outside of the mediation process.

(L) Fees

(1) A \$100 mediation fee shall be assessed to each party unless otherwise ordered by the Court.

(M) Incorporation of the Ohio Uniform Mediation Act – Ohio Revised Code Chapter 2710 is incorporated into this rule by reference as if fully rewritten. Ohio's Uniform Mediation Act can be found on the Juvenile Court's website.

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