

Rule 43. Mediation

(A) Scope.

(1) Mediation when ordered.

At any time after service of summons, unless expressly excluded hereunder and unless otherwise directed by the Court, all new Applications to Determine the Custody of a Child not the Ward of Another Court of this State and/or Motions for Parenting Time and/or Motions to Modify the Allocation of Parental Rights and Responsibilities, and such cases as the Court directs, shall be referred to any Court-approved mediator or mediation program for a mandatory first session, including assessment for mediation.

(2) The following actions shall be exempted from mediation upon the request of any party:

- (a) Cases in which one party has been convicted of, or pled guilty to, a violation of R.C. 2919.25 (domestic violence) within the past two (2) years or when a civil temporary protection order is in effect;
- (b) Cases in which the physical distance between parties is so great that it is not feasible for them to participate in mediation sessions;
- (c) Cases in which one of the parties is mentally ill;
- (d) In emergency circumstances requiring an immediate hearing by a jurist; or,
- (e) Cases in which the parties have achieved an executed Agreed Judgment Entry.

(B) Mediators shall contact all the parties within time frames approved by the Court, conduct assessments and mediation sessions, and submit either an agreement or a report. Any agreement reached during mediation shall be binding upon the parties.

(C) A guardian ad litem for the child shall be appointed by the Court in all cases involving a child who was the subject of a prior abuse or neglect action, in all cases where one of the parties was the perpetrator of an act which resulted in an adjudication that any other child was abused or neglected and in other cases where the mediator believes it to be in the child's best interest. A guardian ad litem appointed in these cases shall participate in mediation.

(D) Domestic violence.

The court shall utilize procedures for all cases that will:

- (1) Ensure that the 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 the mediation.
- (2) Screen for domestic violence before and during mediation.

- (3) Encourage appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.
 - (4) Prohibit the use of mediation in any of the following:
 - (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; and
 - (d) In determining the penalty for violation of a protection order.
 - (5) For mediation of allocation of parental rights and responsibilities or the care of, or visitation with, minor children or delinquency or status offense cases, mediation may proceed, when violence or fear of violence is alleged, suspected, or present, only if the mediator has specialized training set forth in "Specific qualifications and training: domestic abuse" of this rule and 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, and his or her option to have a support person present at mediation.
 - (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 O.R.C. 3109.052, to refer certain cases involving domestic violence to mediation.
- (E) Abuse, neglect and dependency and mediation.

Pursuant to Rule 16 of the Rules of Superintendence as adopted by this Court through Local Rule 8, mediation in child abuse, neglect, or dependency cases shall include all provisions outlined above and shall proceed only if the mediator has specialized training set forth in the "Qualifications" section of this rule and utilizes procedures that will:

- (1) Ensure the parties who are not represented by counsel attend mediation only if they have waived the right to counsel in open court, and that parties represented by counsel attend mediation without counsel only where the right

to have counsel present at the mediation has been specifically waived. Waivers can be rescinded at any time.

- (2) Provide for the selection and referral of a case to mediation at any point after the case is filed.
 - (3) Notify the parties and non-party participants of the mediation.
- (F) All disclosures made by the parents or information received from any source or person during mediation shall be deemed confidential and, as compromise negotiations, shall not be admissible as evidence pursuant to Evidence Rule 408 in the action before the Court. Mediators shall not disclose or testify about any statements or discussions which occurred during or regarding mediation. The foregoing confidentiality requirements shall not be construed to exempt any person from the statutory duty to report child abuse or neglect pursuant to R.C. 2151.421 and 2921.22.
- (G) Qualifications of mediators.

The mediation sessions shall be conducted by mediators trained in compliance with Superintendence Rule 16, as amended from time to time, and as approved and recommended by the Court Administrator and/or his/her designee.

- (1) General qualifications and training.

A mediator employed by the division or to whom the division makes referrals for mediation of allocation of parental rights and responsibilities, the care of, or visitation with minor children, abuse neglect and dependency, or juvenile perpetrated domestic violence cases shall satisfy all of the following:

- (a) Possess a bachelor's degree or equivalent education or experience as is satisfactory to the division, 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 division.
 - (b) Complete at least twelve hours of basic mediation training or equivalent experience as a mediator that is satisfactory to the division.
 - (c) After completing the above training, complete at least forty hours of specialized family or divorce mediation training which has been approved by the Dispute Resolution section of the Supreme Court.
- (2) Specific qualifications and training; Domestic abuse.

A mediator employed by the division or to whom the division makes referrals for mediation of any case shall complete at least fourteen hours of specialized training in domestic abuse and mediation through a training program approved by the Ohio Supreme Court Dispute Resolution Section. A mediator who has not completed this specialized training may mediate these cases only

if he/she co-mediate with a mediator who has completed the specialized training.

- (3) Specific qualifications and training; Abuse, neglect, and dependency cases.

In addition to satisfying the requirements outlined above, a mediator employed by the division or to whom the division makes referrals for mediation of abuse, neglect, or dependency cases shall satisfy both of the following:

- (a) Possess significant experience in mediating family disputes;
 - (b) Complete at least thirty-two hours of specialized child protection mediation training through either a formal training session or through a mentoring program approved by the Dispute Resolution Section of the Supreme Court.
- (H) Mediators shall submit an invoice for the payment of mediation costs on forms approved by the Court. All costs shall be determined by the Court. The parties may agree between themselves to apportion the costs of mediation. Unless otherwise agreed by the parties, the mediation costs shall be shared equally. In the event that the parties cannot agree, the Court shall set a hearing to determine the apportionment of the mediation costs to the parties. The Court may waive costs for parties who are unable to pay.