

RULE 28 – MEDIATION

28.1 The Court hereby adopts the attached Docket and Journal Entry and Orders the Mediation Program to be effective June 1, 2004. The Court hereby adopts pursuant to O.R.C. Section 2101.163 a mediation fund with a reasonable fee of ten (\$10.00) dollars to be assessed toward court costs.

28.2 Civil Mediation Procedure

A. Case Referral

Cases can be referred to mediation in the following categories:

1. Court Referral: All cases and cases previously filed may be referred by the Court for mediation by the Court's in-house mediator.
2. Submission by Agreement of the Parties: All cases and cases previously filed may be referred for mediation by the Court's in house mediator by agreement of the parties. Appendix "A" shall be submitted to the Court if an agreement to mediate is reached.

B. Scheduling

1. Cases referred by the Court or submitted by agreement of the parties will be scheduled for mediation at a mutually agreeable time. The mediation case summary shall be submitted to the court no later than 7 days prior to the scheduled mediation session. (See Appendix "B").

C. Case Management of Mediation Cases

For those cases referred to mediation, the Assigned Judge will continue to manage the case in the appropriate manner by setting a future trial date and establishing appropriate deadlines.

D. Mediation Sessions

1. The parties themselves shall attend all mediation sessions unless their attendance has been excused by the mediator. **All parties necessary for authority to settle the case must also be present.**

2. Each party may be accompanied at the mediation sessions by the lawyer expected to be primarily responsible for handling the trial of the matter.
3. All statements made in mediation sessions or in telephone discussions which include the mediator shall be treated by the parties, their counsel, the mediator and the Court as confidential, except for the following:
 - (a) Information that is statutorily mandated to be reported; or
 - (b) Information that, in the judgment of the mediator, reveals a danger of physical harm to either party or to a third party person.
4. The mediator shall inform the Court of whether a case is in mediation, when the next mediation session is scheduled, whether efforts to settle the case through mediation have ceased or continued, whether full or partial agreement has been reached through mediation, and the name of necessary persons who fail to be present for a scheduled mediation session or fail to make a good faith effort in the mediation process. No other information shall be communicated in any manner by the mediator to the Court.
5. If the mediator determines that mediation would be of no benefit to the parties or that an impasse is reached, the mediator shall inform the Court and all parties that the mediation is terminated.
6. Upon reaching a settlement in mediation, Counsel shall be instructed to present a termination entry for approval within 14 days. If the termination entry is not filed within 14 days, a notice shall be sent by the mediator to Counsel informing them that they have 14 days to file the termination entry. If no entry has been filed 14 days after notice has been sent to Counsel, then an administrative dismissal entry shall be sent to the Assigned Judge for approval.

E. Sanctions

If a party fails to attend a mediation session without due cause or make a good faith effort to participate in the program, the Court may impose appropriate sanctions, including an award of attorney's fees and other costs, contempt or other appropriate sanction.

**Appendix “A” to Local Rule 28
BELMONT COUNTY PROBATE COURT**

Agreement to Mediate

The undersigned participants in mediation, legal counsel and the mediator agree that all matters discussed during the mediation process shall be kept confidential pursuant to Ohio Revised Code Section 2317.023 and therefore inadmissible in any subsequent civil or administrative proceeding. Exceptions to this agreement regarding confidentiality are:

- 1) Communications made by the mediator if all parties and the mediator consent to the disclosure;
- 2) Communications made by a person other than the mediator if all parties consent to the disclosure;
- 3) Communications which cause a person to know that a felony has been or is being committed.
- 4) Communications where a court determines disclosure does not circumvent Evidence Rule 408 and disclosure is necessary to prevent a manifest injustice and that disclosure is of sufficient magnitude to outweigh the importance of protecting the general requirements of confidentiality in mediation proceedings;
- 5) Communications concerning information that prior to its use in mediation was subject to discovery or admission under law of rule of evidence or was subject to disclosure as a public record pursuant to Section 149.43 of the Ohio Revised Code;
- 6) Communications causing a mandated reporter under Ohio Revised Code Section 2151.421 to suspect child abuse or neglect;
- 7) A written settlement agreement signed by the parties to the mediation.

All participants have been informed of the procedure for addressing possible grievances with the Mediator, with the mediation process itself or with the court as a result of this mediation.

All participants understand and agree that the mediation can be terminated in the following ways:

- 1) A settlement of all issues being mediated.
- 2) Termination by the mediator if the mediator determines continuing the mediation would not be in the best interest of any of the participants.
- 3) Termination by any of the participants if approved by the mediator or if not approved by the mediator, approved by the referring judge.

All participants and legal counsel understand and agree that the mediator is neutral and will not make decisions for the participants. Nothing the mediator says is intended as legal advice, and all participants and legal counsel agree that statements made by the mediator will not be regarded as legal advice.

All participants and legal counsel understand and agree that the mediation is voluntary and that there is no requirement to reach agreement unless there is a desire to voluntarily do so.

AGREED, this _____ day of _____, 20____.

Participant

Legal Counsel

Participant

Legal Counsel

Participant

Legal Counsel

Mediator

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**Appendix "B" to Local Rule 28
BELMONT COUNTY PROBATE COURT**

Civil Mediation Program

**101 West Main Street
St. Clairsville, Ohio 43950
Phone: (740) 695-1327 Fax: (740) 695-1327**

Mediation Case Summary

Please complete this form and return it to the Mediation Office no later than 7 days prior to the scheduled mediation session, along with any discoverable documents not in the court file. A copy of the summary should be provided to opposing counsel.

CASE CAPTION: _____ **CASE #:** _____

MATERIAL FACTS OF THE CASE: _____

LEGAL ISSUE TO BE RESOLVED: _____

DAMAGES: _____

SETTLEMENT OFFERS TO DATE: _____

POSITION OF THE PARTIES: _____

Submitted by: _____, **Counsel for** _____

Address: _____

Phone: _____ **Fax:** _____

Date submitted to mediator: ____/____/____ **To opposing counsel:** ____/____/____

***Attach additional pages if more space is necessary**

****Confidential material may be submitted if clearly marked and/or sent under separate cover**