

RULE 28 – MEDIATION

28.1 The Court incorporates by reference herein, R.C. 2710 “Uniform Mediation Act” (UMA), R.C. 3109.052 Mediation of Differences as to Allocation of Parental Rights and Responsibilities, and Rule 16 of the Supreme Court of Ohio Rules of Superintendence.

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 Definitions

A. Facilitation: “Facilitation” means a process in which a neutral party moderates discussions by ensuring the fluid and orderly exchange of information and ideas from all participants and that is primarily concerned with assisting individuals in refining their communication and organization skills so that they may learn to work more efficiently with one another in a group setting.

B. Mediation: “Mediation” means any process in which a neutral third party helps the parties communicate and negotiate with each other to help them reach a voluntary agreement regarding their dispute.

C. Mediator: “Mediator” means an individual who conducts a mediation.

D. Neutral Evaluation: “Neutral Evaluation” means a process in which the parties to a dispute present their claims or defenses and describe the principal evidence on which their claims or defenses are based to a neutral third party who then shares impressions about the strengths and weaknesses of each matter.

28.3 Referral

Any time after filing, the Court may, upon its own motion or upon the motion of a party, refer any case to mediation that the Court deems appropriate. Probate cases eligible for mediation include civil filings and exceptions to inventory in estate filings.

28.4 Responsibilities of Mediator

A. General Responsibilities: In order to provide a fair mediation process for parties, a mediator who mediates for a court shall remain impartial and neutral and shall comply with all of the following:

1. The “Core Values of Mediation,” as approved by the Supreme Court Dispute Resolution Section in accordance with recommendations established by the Commission on Dispute Resolution;

2. The “Model Standards of Conduct for Mediators” adopted by the American Bar Association, American Arbitration Association, and the Association for Conflict Resolution;
- B. Conflicts of Interest:
1. A mediator shall avoid any actual or apparent conflicts of interest arising from any relationship or activity, including but not limited to those of employment or business or from professional or personal contacts with parties or others involved in dispute. A mediator shall avoid self-dealing or association from which the mediator might directly or indirectly benefit, except from compensation for services as a mediator.
 2. Upon becoming aware of any actual or apparent conflict or interest, a mediator shall notify the parties as soon as practicable.
 3. The requirements of this rules are in addition to and do not supersede the requirements for R.C. 2710.08. Wherever a conflict exists between this rule and R.C. 2710.08, the statute shall control.
- C. Legal Advice: A mediator shall not offer legal advice.
- D. Satisfaction of Training Requirements:
1. A mediator shall meet the qualifications of and comply with all training requirements of Sup.R. 16.23 and local court rules governing mediators and mediation adopted pursuant to Sup.R. 16.21.
 2. A mediator shall meet the qualifications for mediators for each court in which the mediator serves and promptly advise the court of any grounds for disqualification or any issues affecting the ability to serve.
 3. Upon request, a mediator shall provide a court form which the mediator receives referrals documentation indicating compliance with all training and education requirements so that the court may meet the requirements of Sup. R. 16.24 (A)(1)(d). The documentation shall include information detailing the date, location, contents, credit hours, and sponsor of any relevant training.

28.5 Mediator Education and Training

A. General

1. Except as provided in division (A)(2) of this rule, a mediator shall complete “Fundamentals of Mediation Training” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.
2. A mediator shall not be required to complete training pursuant to division (A)(1) of this rule if any of the following apply:
 - a. Prior to January 1, 2020, the mediator has completed at least twelve hours of basic mediation training;
 - b. Prior to January 1, 2020, the mediator has served as a full-time mediator for a minimum of three years or mediated at least forty-five cases, in which case the mediator shall complete the “Advanced Mediation Workshop” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution;

c. The mediator is a law student enrolled in a clinical mediation or dispute resolution program at an American Bar Association accredited law school, has completed mandatory coursework in fundamental mediation topics, and mediates under the supervision of faculty at the law school.

28.6 Responsibilities of Court

A. General

1. In order to ensure only qualified individuals perform the duties of a mediator and the requirements of Sup. R. 16.20 through 16.25 are met, a court that elects to use mediation shall do all of the following:
 - a. Establish screening procedures for the capacity of parties to mediate;
 - b. Establish procedures for monitoring and evaluation mediation to ensure the quality of the mediators and programs to which cases are referred;
 - c. Develop a process and appoint a person for accepting and considering written comments and complaints regarding the performance of mediators receiving referrals from the court. A copy of comments and complaints submitted to the court shall be provided to the mediator who is the subject of the complaint or comment. The person appointed may forward any comments and complaints to the judge of the court for consideration and appropriate action. Dispositions by the court shall be made promptly. The court shall maintain a written record in the mediator's file regarding the nature and disposition of any comment or complaint and shall notify the person making the comment or complaint and the mediator of the disposition.
 - d. Allow mediation to proceed only if the mediator meets the qualifications, education, and training requirements of Sup. R. 16.23;
 - e. Prohibit mediation when domestic abuse or domestic violence is alleged, suspected, or present unless all of the following conditions are satisfied:
 - i. Screening is conducted both before and during mediation, for domestic abuse and domestic violence, and for the capacity of the parties to mediate;
 - ii. The person who is or may be the victim of domestic abuse or domestic violence is fully informed about the mediation process, right to decline participation in the mediation process, and of the option to have a support person, in addition to an attorney, present at the mediation sessions;
 - iii. The parties have the capacity to mediate without fear or coercion or control;
 - iv. The court has taken reasonable precautions to create a safe mediation environment for the parties and all other persons involved in the mediation process;

- v. Procedures are in place for the mediator to terminate a mediation session of there is a threat of domestic abuse, domestic violence, or coercion between the parties;
- vi. Procedures are in place for issuing written findings of fact to refer certain cases involving domestic violence to mediation, as required by R.C. 3109.052.

B. General: A court shall not be responsible for the quality of a mediator selected by the parties without guidance from the court and who does not meet the qualifications, education, and training requirements of Sup.R. 16.23.

28.7 Public Access

The files maintained by a mediator but not filed with a clerk or submitted to a court shall not be available for public access pursuant to Sup.R. 44 through 47.

28.8 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

**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**