

Rule 23: MEDIATION

A. UNIFORM MEDIATION ACT AND DEFINITIONS:

O.R.C. Chapter 2710 "Uniform Mediation Act," including all definitions found in O.R.C. Section 2710.01, are incorporated by reference and adopted by this Court through this local rule.

1. "Mediation" means any process in which a mediator facilitates communication and negotiation between the parties to assist them in reaching a voluntary agreement regarding their dispute.
2. "Mediator" means an individual who conducts mediation.
3. "Mediation communication" means a statement, whether oral, in a record, verbal or non-verbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.
4. "Nonparty participant" means a person other than a party or mediator that participates in a mediation.

B. CASES ELIGIBLE FOR MEDIATION:

1. General: The Court has discretion to order parties to use mediation in any civil action filed in this Court. A case may be submitted to mediation as provided in this rule. The Court may issue an order on its own motion, upon the motion of counsel, upon the request of a party or upon referral by the mediator.
2. Exceptions: Mediation is prohibited:
 - 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.
3. Nothing in this rule shall prohibit the use of mediation in a subsequent divorce or custody case, even though that case may result in the termination of the provisions of a protection order.

C. CONFIDENTIALITY:

1. General: All mediation communications related to or made during the mediation process are subject to and governed by the Uniform Mediation Act. Mediation communications are confidential, and no one shall disclose any of these communications unless all parties and the mediator consent to disclosure. The Court may impose penalties for any improper disclosures made in violation of this rule. Disputes regarding confidentiality should first be addressed with the mediator or mediation department where possible.

By participating in mediation, a nonparty participant, as defined by O.R.C. Section 2710.01(D), submits to the Court's jurisdiction to the extent necessary for enforcement of this rule. Any nonparty participant shall have the rights and duties under this rule as are attributed to parties, except that no evidence privilege shall be expanded.

2. Exceptions: All mediation communications are confidential with the following exceptions:

- a. Parties may share all mediation communications with their attorneys;
- b. Certain threats of abuse or neglect of a child or an adult;
- c. Statements made during the mediation process to plan or hide an ongoing crime;
- d. Statements made during the mediation process that reveal a felony.

D. REFERRAL TO RESOURCES:

The Domestic Relations Court Mediator shall maintain resources for mediation parties (including victims and suspected victims of domestic violence) in order to make appropriate referrals to legal counsel and other support services such as Children Services, domestic violence prevention, counseling, substance abuse and mental health.

E. MEDIATOR TRAINING AND EDUCATION:

A mediator shall meet the qualifications of, and comply with, all training requirements set forth in Sup.R. 16.23.

F. PROCEDURES:

A mediator may meet with the parties individually prior to bringing the parties together for any reason including, but not limited to, further screening. A mediator may schedule multiple mediation sessions, if necessary for the resolution of the issues in part or in their entirety.

If the assigned mediator determines that further mediation efforts would be of no benefit to the parties, he or she shall inform all interested parties and the Court that the mediation is terminated.

G. PARTY/NONPARTY PARTICIPATION:

Parties to informal cases such as pre-filing may voluntarily attend mediation.

Parties who are ordered to mediation in formal cases shall attend scheduled mediation sessions. The Court may order parties to return to mediation at any time in formal cases.

If the opposing parties to any case are 1) related by blood, adoption or marriage; 2) have resided in a common residence; and 3) have alleged domestic violence at any time prior to or during the mediation, then the parties and their counsel shall disclose such information to the mediator and shall participate in any screening required by the mediator.

By participating in mediation, a nonparty participant, as defined by O.R.C. Section 2710.01(D), agrees to be bound by this rule and submits to the Court's jurisdiction to the extent necessary for enforcement of this rule. Any nonparty participant shall have the rights and duties under this rule attributed to parties except as provided by O.R.C. Sections 2710.03(B)(3) and 2710.04(A)(2).

H. CONTINUANCES:

Continuances of scheduled mediations shall be granted only for good cause shown. Except as authorized by the Court, the existence of pending motions shall not be good cause for a continuance and no continuance will be granted unless the mediation can be rescheduled prior to the next scheduled pretrial/hearing.

I. ATTENDANCE; SANCTIONS:

If any individual ordered by the Court to attend mediation fails to attend mediation without good cause, the Court may impose sanctions which may include, but are not limited to, the award of attorneys' fees and other costs, contempt or other appropriate sanctions at the discretion of the Court.

J. EVALUATION, COMMENTS AND COMPLAINTS:

It is the policy of the Court to use mediation to assist parties in reaching a resolution, to provide a process that is timely and flexible, and to maintain the trust and confidence of all participants. Any mediation participant may submit written comments, complaints or feedback regarding the performance of mediators (receiving referrals from this Court) to the Court administrator.