

THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
MEDINA COUNTY, OHIO

COMMON PLEAS COURT

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FILED
KATHY FORTNEY
MEDINA COUNTY
CLERK OF COURTS

IN RE:
AMENDED LOCAL RULE 6.04

JUDGE MARY R. KOVACK

ORDER

Pursuant to the Revised Rule 16 of the Rules of Superintendence for the Courts of Ohio, any local court rule providing for mediation must include applicable provisions as outlined within Revised Rule 16 effective January 1, 2007. Inasmuch as this Court has included a provision regarding mediation, namely Local Rule 6.04 Mediation, within its local rules, it is hereby amended to conform to the requirements of Revised Rule 16. Attached hereto and incorporated herein by reference is the revised Local Rule 6.04 Mediation.

IT IS SO ORDERED.



JUDGE MARY R. KOVACK

VL 1490 PG 228

**Medina Court of Common Pleas
Domestic Relations Division
Local Rule 6.04**

6.04 Mediation

The Medina County Court of Common Pleas Domestic Relations Division adopts Local Rule 6.04 effective January 1, 2007. Through 6.04 the Domestic Relations Division incorporates by reference the 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.

A. Definitions: All definitions found in the "Uniform Mediation Act" (UMA) R.C. 2710.01 are adopted by this court through this local rule including, but not limited to the following:

- a) "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.
- b) "Mediator" means an individual who conducts a mediation.
- c) "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.
- d) "Proceeding" means either of the following:
 - 1) Judicial, administrative, arbitral or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery;
 - 2) A legislative hearing or similar process.

B. Purpose

To promote greater efficiency and public satisfaction through the facilitation of the earliest possible resolution for domestic relations cases through the use of mediation.

To encourage families to use informal processes to resolve their disputes and problems before resorting to legal action.

To accomplish this goal, the Domestic Relations Court Mediation Services has been established.

C. Scope

- 1) At any time any action under the jurisdiction of this court may be referred to mediation by the Judge, a Magistrate, or Case Services Assessment.
- 2) At any time, whether or not an action is pending before this court, a party to any case over which this court had or has jurisdiction may request an informal mediation of any issue or dispute between the parties.
- 3) A married couple, one of which resides within Medina County, who desires to terminate their marriage by dissolution or uncontested divorce, may request a pre-filing mediation to assist them in reaching agreement on disputed issues.
- 4) The following actions may be exempted from mediation upon request of any party:
 - a. Cases in which one of the parties is mentally ill;
 - b. In emergency circumstances requiring an immediate hearing by a jurist.

D. Referral Process

The court, on its own motion, or the motion or request of any of the parties may refer disputed issues to mediation in whole or in part by "Notice of Scheduled Mediation" which shall, at a minimum indicate the date, time, place and contact information of the mediation.

For informal cases (pre-filing), a referral to Court Mediation Services may be made by court personnel or by request of either or both parties.

All parties and counsel shall advise the assigned judge or magistrate of any domestic violence allegations known to them to exist or to have existed in the past, or which become known to them following entry of the order but before conclusion of all mediation proceedings, which allegations involve any two or more persons whose attendance is required by the referral order.

E. Eligibility of Cases

The Court Mediation Services will determine the eligibility and appropriateness of each referral prior to the commencement of the mediation process and may decline any referral(s) deemed inappropriate.

F. Procedures

- 1) In accordance with all applicable provisions of this rule, if a case is deemed appropriate by the Court Mediation Services, mediation will be scheduled.
- 2) 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 and mutually acceptable for the resolution of the issues in part or in their entirety.
- 3) The court shall utilize procedures for all cases that will ensure:
 - a. That 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 mediation.
 - b. Screen for domestic violence both before and during mediation.
 - c. Encourage appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.
- 4) The court shall 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) Nothing in this division of 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.
- 6) Mediation of allocation of parental rights and responsibilities or the care of, or visitation with, minor children or delinquency or status offense cases shall abide by all provisions set forth in this rule, mediation may then proceed, when violence or fear of violence is alleged, suspected, or present, only if the mediator has specialized training set forth in "Qualifications" section of this rule and all of 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, his or her right to decline participation in the mediation process, and his or her option to have a support person present at mediation sessions.
 - 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 continued threat of domestic violence or coercion between the parties.

e. Procedures are in place for issuing written findings of fact, as required by R.C. 3109.052, to refer certain cases involving domestic violence to mediation.

G. Party/Non-Party Participation

a. Parties to informal cases may voluntarily attend mediation sessions.

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

c. A judge, magistrate and/or mediator may require the attendance of the parties' attorneys at the mediation sessions if the mediator deems it necessary and appropriate.

d. If counsel of any party to the mediation becomes aware of the identity of a person or entity whose consent is required to resolve the dispute, but has not yet been joined as a party in the pleadings, they shall promptly inform the mediator as well as the assigned judge or magistrate.

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

f. By participating in mediation a nonparty participant, as defined by R.C. 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 R.C. 2710.03(B) (3) and 2710.04(A) (2).

H. Confidentiality/Privilege

All mediation communications related to or made during the mediation process are subject to and governed by the "Uniform Mediation Act" (UMA) R.C. 2710.01 to 2710.10, R.C. 3109.052, the Rules of Evidence and any other pertinent judicial rule(s).

I. Mediator Conflicts of Interest

In accordance with R.C. 2710.08(A) and (B), the Mediator assigned by the Court to conduct a mediation shall disclose to the mediation parties, counsel, if applicable, and any nonparty participants any known possible conflicts that may affect the Mediator's impartiality as soon as such conflict(s) become known to the Mediator. If counsel or a mediation party requests that the assigned Mediator withdraw because of the facts so disclosed, the assigned Mediator should withdraw and request that the assigned Judge or Magistrate appoint another Mediator from the list of qualified Mediators that is maintained by the Court. The parties shall be free to retain the mediator by an informed, written waiver of the conflict of interest(s).

J. Termination

If the 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 using the procedure required by this Court.

K. Stay of Proceedings

All remaining court orders shall continue in effect. No order is stayed or suspended during the mediation process except by written court order. Mediation shall not stay discovery, which may continue through the mediation process in accordance with applicable rules, unless agreed upon by the parties and approved by the judge or magistrate assigned to the case.

L. Continuances

It is the policy of this court to determine matters in a timely way. Continuances of a scheduled mediation will be granted only by the Judge, or Mediation Magistrate, for good cause.

M. Guardian Ad Litem

A guardian ad litem for the child or children, who has been appointed by the court, in any case referred to mediation involving children's issues and in other cases where the mediator believes it to be in the best interest of the child may attend and participate in the mediation as necessary or desirable.

N. Mediation Memorandum of Understanding

The mediator, parties or counsel, if applicable, as agreed by the parties, may immediately prepare a written memorandum memorializing the agreement reached by the parties. The "Mediation Memorandum" may be signed by the parties and counsel. If the "Mediation

Memorandum” is signed it will not be privileged pursuant to R.C. 2710.05 (A) (1)). The written “Mediation Memorandum of Understanding” may become an order of the court after review and approval by the parties and their attorney, if applicable. No oral agreement by counsel or with parties or an officer of the court will be regarded unless made in open court.

O. Mediator Report

At the conclusion of the mediation and in compliance with R.C. 2710.06 the court shall be informed of the status of the mediation including all of the following:

- a. Whether the mediation occurred or was terminated;
- b. Whether a settlement was reached on some, all or none of the issues; and
- c. Attendance of the parties.
- d. Future mediation session(s), including date and time.
- e. Whether an entry will be prepared for the court and by whom.

P. Qualifications of the Mediator

A mediator employed by the Domestic Relations Court or to whom the Court makes referrals for mediation of allocation of parental rights and responsibilities, the care of, or visitation with, minor children, shall satisfy all of the following:

- a. Possess a bachelor’s degree, or equivalent education or experience as is satisfactory to the Court, 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 Court.
- 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.

R. Specific Qualifications and Training: Domestic Abuse

A mediator employed by the Domestic Relations Court or to whom the Court 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.

Q. Fees and Costs

- a. Mediation services provided by the Court Mediation Services are offered without cost to parties and to Medina County residents who wish to employ pre-filing mediation to resolve differences before undertaking legal action in this Court. The parties may incur costs or fees for the filing of any documents, motions or entries with the Clerk of Court.
- b. If the parties choose to employ an independent mediation service instead of the Court Mediation Services, the parties will be responsible for any fee charged by the service. The parties may agree between themselves to apportion the costs of the mediation. In the event that the parties cannot agree, the court shall determine the apportionment of the mediation costs to the parties.

R. Model Standards

Mediators providing services for the court shall comply with the Model Standards of Practice for Family and Divorce Mediation, and the Special Policy Considerations for the State Regulation of Family Mediators and Court Affiliated Programs as set for in Rule 16 of the Supreme Court of Ohio Rules. Superintendence for the Courts of Ohio.