

**Rule 19**  
**COURT MEDIATION SERVICES**

19.01

**Definitions**

All definitions found in the "Uniform Mediation Act" (UMA) O.R.C. section 2710.01 are adopted by this Court through this Local Rule, including the following as used in this Local Rule:

- A. "Mediation" means any process in which a mediator facilitates communication and negotiation between 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 nonverbal, 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 a judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery.

19.02

**Purpose**

Mediation services have been established in order to promote greater efficiency and to facilitate the earliest possible resolution in Marion County Family Court cases.

The Court will determine whether a matter is appropriate for the mediation process before scheduling a mediation conference. A mediation conference may be scheduled by court order during any pending case. Parties must attend the scheduled mediation conference.

19.03

**Scope**

At any time and in any pending action under the jurisdiction of the Marion County Family Court, a case may be referred for mediation services either in house or to an outside mediator. Mediation is prohibited in any case as an alternative to the prosecution or adjudication of domestic violence; in determining whether to grant, modify or terminate a protection order; in determining the terms and conditions of a

protection order; or in determining the penalties or disposition for violation of a protection order. Mediation may be utilized in a subsequent divorce or custody case even though that case may result in the termination or modification of the provisions of a protection order.

In Probate proceedings, mediation is prohibited in the following cases:

- (a) Cases where one of the parties is or is alleged to be mentally ill;
- (b) In emergency circumstances requiring an immediate hearing by a jurist;
- (c) Cases in which the parties have submitted an executed Agreed Judgment Entry;
- (d) In Motions for an Emergency Guardian; or
- (e) Upon Applications for a Special Administrator

#### 19.04 **Post Decree Mediation**

The parties may file a Motion for Post Decree Mediation through the Court. The Motion and UCCJA forms are available at the Court. A filing fee will be charged which will include the cost of mediation.

#### 19.05 **Procedure**

The Court may order parties to participate in mediation and/or an assessment session to determine the need for appropriate services. If, as a result of the mediation assessment process, a determination is made that the case will proceed to mediation, the Court may permit both parties to participate in mediation for a period not to exceed ninety (90) days, unless both parties request an extension for a time certain.

#### 19.06 **Mediator Duties**

The mediator shall do the following:

- (a) Advise all parties of their right to participate in mediation, and if the parties wish, that their attorney or other individual they designate may accompany them and participate in mediation.
- (b) Keep confidential all communication whether verbal

or written and advise parties and other participants of confidentiality issues.

- (c) Disclose to the mediation parties, counsel, and any non party participants any known possible conflicts that may affect the mediator's impartiality as soon as the conflict becomes known to the mediator (see O.R.C. 2710.08 (A) and (B)).
- (d) Inform all interested parties and the Court that mediation is terminated if the mediator determines that further mediation efforts would be of no benefit to the parties or is otherwise inappropriate.
- (e) Screen for domestic violence both before and during mediation (see F.C. Rule 19.08).
- (f) Encourage appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.
- (g) Comply with the Rules of Superintendence for Courts of Common Pleas and submit to the Court an Affidavit of Compliance in a form prescribed by the Court;
- (h) Provide to the parties and their attorneys a summary of any agreement reached or a statement that the mediation has been terminated without an agreement;
- (i) Provide to the attorneys and the Court a mediation report in the form provided by the Court.

19.07

#### **Confidentiality/Privilege**

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

All disclosures made by parties or information received from any source or person during mediation shall be deemed confidential and the mediator shall not be required to disclose any statements or discussions which

occurred during mediation. Communications during mediation fall within the purview of the Rules of Evidence which prohibit any party from introducing these communications into evidence. The foregoing confidentiality requirements shall not, however, be construed to exempt any person from the statutory duty to report child abuse pursuant to Revised Code 2151.421.

19.08

**Mediation in Cases with Domestic Violence Issues**

For mediation of allocation of parental rights and responsibilities or the care of, or parenting time 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 of the following have been satisfied:

(a) The person who is or may be the victim 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 that there is a continued threat of domestic violence or coercion between the parties.

(e) Written findings of fact, as required by O.R.C. 3109.052, have been made by the Court in referring a case involving domestic violence to mediation.

19.09

**Mediation in Abuse, Neglect and Dependency Cases**

Mediations in abuse, neglect and dependency cases shall comply with all provisions outlined above. In addition the mediator shall:

(a) Have had specialized training as set forth in the "Specific Qualifications and Training: Abuse, Neglect, and Dependency" section of this rule.

(b) Ensure that all parties will either be represented by counsel during mediation or will waive the right to counsel in open court prior to the onset of mediation. If a party is represented by counsel the party may attend mediation without his Attorney only when the right to have counsel present at mediation has been specifically waived. Waivers can be rescinded at any time.

(c) Notify the parties and non party participants of all mediation sessions.

(d) When mediation is ordered in a permanent custody case or a dependency, neglect and/or abuse case, it is a Court docketed event and mandates the appearance of all parties, legal counsel and the guardian ad litem.

19.10

**Mediator Qualifications**

The following qualifications apply to all mediators to whom the Court makes a referral:

(a) General

Possess a bachelor's degree or equivalent education or have at least two (2) years of professional experience with families, have completed at least twelve hours of basic mediation training or equivalent experience as a mediator that is satisfactory to the Court.

(b) Specific Qualifications and Training: Family

A mediator employed by the Family Court or to whom the Family Court makes referrals for mediation of allocation of parental rights and responsibilities, the care of, or parenting time/visitation with minor children, abuse, neglect and dependency, or juvenile perpetrated domestic violence shall satisfy, in addition to the above, at least forty hours of specialized family or divorce mediation training which has been approved by the Dispute Resolution Section of the Supreme Court and have at least two years of professional experience with families. "Professional experience with families" includes mediation, counseling, casework, legal representation in family law matter, or such equivalent

experience satisfactory to the Court.

(c) Specific Qualifications and Training: Domestic Abuse

A mediator employed by the Family Court or to whom the Family 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 had completed the specialized training.

(d) Specific Qualifications and Training: Abuse, Neglect and Dependency

In addition to satisfying the requirements outlined above, a mediator employed by the Family Court or who the Family Court makes referrals for mediation of abuse, neglect, or dependency cases shall 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 Ohio Supreme Court. In addition, the mediator shall possess significant experience in mediating family disputes.

19.11 **Model Standards**

Mediators providing services for the court shall endeavor to 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. In cases where these models are in conflict with Rule 16 of the Rules of Superintendence for the Courts of Ohio, the Rule shall control.

19.12 **Mediation Reports**

(a) Mediation Agreement: If pro se parties or parties with their respective attorneys reach an agreement in mediation, the mediation report is submitted to the court for review. If an attorney is not present at the mediation and the parties reach an agreement, the attorney is mailed a copy of the mediation report. The

attorney may file written objections to the mediation report within ten (10) days of the date of mailing. If an objection is timely filed, the case may be referred to a magistrate or judge. If no objection is timely filed, the mediation report is submitted to the court for review.

Agreements reached by the parties during mediation may become an order of the Court after review by each party's attorney and upon submission to the Court in proper entry form.

(b) Absence of Mediation Agreement: If the parties do not reach an agreement to mediation, the mediation report is filed with the court and the matter is referred to a magistrate or judge.

19.13

**Costs**

The Court reserves the right to assess costs for mediation services and determine compensation for any mediator as may be deemed appropriate.