

# LOCAL RULE GUIDE

## COURTS OF COMMON PLEAS, JUVENILE DIVISION

The following examples apply for juvenile courts that elect to use mediation in abuse, neglect, dependency, unruly, and delinquency cases; or juvenile civil protection order cases pursuant to [R.C. 2151.34](#) or [3113.31](#). The first four mandatory provisions are the same as for the courts of appeals, courts of common pleas general, domestic relations, and probate divisions, municipal courts, and county courts, but there are additional mandatory provisions that must be included in the juvenile local rule.

### Mandatory Provisions [Sup.R. 16.21(A)(1)-(6)]

Title

Rule [insert the applicable rule number]: Mediation (effective date January 1, 2020)

#### 1. Ohio Uniform Mediation Act

**Example:**

[Insert court name] incorporates by reference the [R.C. 2710](#) “Uniform Mediation Act” (UMA).

#### 2. Cases Eligible for Mediation

**Example:**

- a. General: The [insert court name] has discretion to encourage 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 [insert court name] 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.
- b. Exceptions: Mediation is prohibited in the following:
  - i. As an alternative to the prosecution or adjudication of domestic violence;
  - ii. In determining whether to grant, modify, or terminate a protection order;
  - iii. In determining the terms and conditions of a protection order;
  - iv. In determining the penalty for violation of a protection order.
- c. Nothing in this division 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; or in a juvenile court delinquency case, even though the case involves juvenile-perpetrated domestic violence.

### 3. Confidentiality

#### **Example 1:** Default of Confidentiality

- a. 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. This 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 [R.C. 2710.01\(D\)](#), submits to the court's jurisdiction to the extent necessary for enforcement of this rule. Any nonparty participant shall have the same rights and duties under this rule as are attributed to parties, except that no evidence privilege shall be expanded.

- b. Exceptions: All mediation communications are confidential with the following exceptions:
  - i. Parties may share all mediation communications with their attorneys;
  - ii. Certain threats of abuse or neglect of a child or an adult;
  - iii. Statements made during the mediation process to plan or hide an ongoing crime; and
  - iv. Statements made during the mediation process that reveal a felony.

#### **Example 2:** Default Is Not Confidentiality

Except as provided in [R.C. 121.22](#) and [149.43](#), mediation communications are confidential to the extent agreed by the parties or provided by other sections of the Revised Code or rules adopted under any section of the Revised Code. Parties desiring confidentiality of mediation communications shall advise the mediator as soon as practical and all mediation participants shall execute any confidentiality agreement prior to the start of mediation.

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

### 4. Referral to Resources

**Example 1:** The court administrator shall maintain resources for mediation parties, including victims and suspected victims of domestic violence, and encourage appropriate referrals to legal counsel and other support services, such as children's services, domestic violence prevention, counseling, substance abuse and mental health services.

**Example 2:** The [insert name of court mediation program, such as “Court Mediation Services”] will maintain information for the public, mediators, and other staff as appropriate. The information will include:

- a. Attorney referral contact information;
- b. Information regarding children's services; and
- c. Resource information for local domestic violence prevention, counseling, substance abuse and mental health services.

## OPTIONAL PROVISIONS

### 5. Counsel Shall Be Present at Mediation Unless Waived by the Party

**Example:** Parties who are not represented by counsel shall attend mediation only if they have waived the right to counsel in open court. Parties represented by counsel may attend mediation without counsel only where the right to have counsel present at the mediation has been specifically waived. Parties waiving counsel at mediation must fill out and sign a “waiver of counsel at mediation” form prior to participation in mediation. Waivers may be rescinded at any time.

### 6. Referrals to Mediation

**Example 1:** The judge or magistrate may refer or order a case to mediation at any point in a case. Any party may request to participate in mediation by filing a motion or joint motion with the court, or by making an oral request for a referral to mediation on the record.

**Example 2:** Parties who wish to participate in mediation in an abuse, neglect, or dependency case prior to adjudication shall apprise the court of this at shelter care hearing or pretrial. The judge or magistrate may refer the court to pre-adjudication mediation. The disposition hearing shall not be delayed past 90 days for participation in mediation. Parties who wish to participate in mediation to resolve visitation, case plan, or custody issues at later points in the case may request an appointment at the mediator’s office without prior court approval. The judge or magistrate may refer or order a case to mediation at any point in a case.

### 7. Notification of Mediation

**Example 1:** The mediator shall file notice to the court that mediation is occurring in the case, including the time and place for mediation, and this notice shall be distributed to all parties and custodians.

**Example 2:** The judge or magistrate shall include any referral to mediation in the entry from the hearing, and the mediation office, as well as all parties and custodians, shall be copied on the distribution list.

## 8. Mediator Training and Education

**Examples:** A mediator shall meet the qualifications of and comply with all training requirements of [Sup.R. 16.23](#) and adopted pursuant to [Sup.R. 16.22](#) governing mediators and mediation.

## 9. Mediator Selection and Assignment

**Example:** The following methods may be used to select a mediator for the case:

1. The court may assign a court mediator to mediate;
2. The court may randomly assign a mediator to the case from the court's roster of approved mediators;
3. Specific appointments may be made by the court taking into consideration the qualifications, skills, expertise, and caseload of the mediator in addition to the type, complexity, and requirements of the case;
4. Parties may select a mediator from the court roster, if any;
5. Parties may request leave to select a mediator without guidance from the court. The 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 set forth in section five above; and
6. [Include any other applicable methods].

## 10. Procedures

**Example:** In accordance with all applicable provisions of this rule, if a case is deemed appropriate by [the court/the mediator/the mediation program] for mediation, mediation may be scheduled.

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/may not] schedule multiple mediation sessions, if necessary and mutually acceptable for the resolution of the issues in part or in their entirety.

A party opposed to either the referral or the appointed mediator must file a written objection with the court within seven days of receiving notice of the referral or provider and explain the reasons for any opposition.

## 11. Party/Nonparty Participation

**Examples:** Parties to informal cases, such as pre-filing or diversion, may voluntarily attend mediation sessions.

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.

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 joined as a party in the pleadings, they shall promptly inform the mediator, as well as the assigned judge or magistrate.

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.

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\(A\)\(2\)](#).

## 12. Termination

**Example:** 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 using the procedure required by this court.

## 13. Stay of Proceedings

**Example 1:** 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.

**Example 2:** Upon referral of a case to mediation, the court may elect to stay all filing deadlines for up to 60 days. The clerk of courts shall not accept for filing any documents while a case is in mediation, unless expressly permitted by these rules or by court order.

Only the following documents may be filed while a mediation stay is in effect:

1. Motion to lift the mediation stay;
2. Response to a motion to lift mediation stay;
3. Motion or stipulation to dismiss the case; and
4. Notice related to counsel.

## 14. Continuances

**Example 1:** It is the policy of this court to determine matters in a timely way. Continuances of scheduled mediations shall be granted only for good cause shown after a mutually acceptable future date has been determined. The case may be continued by the [insert applicable title such as mediation coordinator] or the judge or magistrate who referred the case. 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 scheduled prior to the final pretrial. If a continuance of a scheduled mediation is requested and the proposed new date is within 60 days of the initial referral to mediation, then the request shall be made to the [insert applicable title such as mediation coordinator]. If the requested date is more than 60 days after the referral to mediation, then the request must be made to the judge or magistrate assigned to the case.

**Example 2:** 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, magistrate, or staff mediator, where applicable, for good cause. Extension of time for compliance with deadlines not involving a court hearing will be permitted only on a showing to the court that the extension will not interrupt the scheduled movement of the case. Requests for continuances and extensions, and their disposition, will be recorded in the file of the case. Where continuances and extensions are requested with excessive frequency or insubstantial grounds, the court may adopt one or all of the following procedures:

1. Cross-referencing all requests for continuances and extensions by the name of the lawyer requesting them;
2. Requiring that requests for continuances and stipulations for extensions be in writing and the parties notified; and/or
3. Summoning lawyers who persistently request continuances and extensions to warn them of the possibility of sanctions and to encourage them to make necessary adjustments in the management of their practice. Where such measures fail, restrictions may properly be imposed on the number of cases in which the lawyer may participate at one time.

## 15. Fees and Costs

**Example:** The court may impose upon the parties fees and costs for mediation. If there is a fee for mediation, unless otherwise agreed by the parties, the mediation fees shall be shared equally. The court may waive fees and costs for an indigent party. Mediation shall not be ordered when a party is indigent, unless the mediation is available at no cost to the party.

## 16. Attendance; Sanctions

**Example:** 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 attorney's fees and other costs, contempt, or other appropriate sanctions at the discretion of the assigned judge or magistrate.

## 17. Evaluation, Comments, and Complaints

**Example:** It is the policy of the court to use mediation to benefit the parties, to assist in reaching a resolution, and to provide a process that is timely, flexible, and maintains the trust and confidence of the people. Any mediation participant may submit written comments, complaints, or feedback regarding the performance of mediators receiving referrals from the court.

# SAMPLE MEDIATION LOCAL RULE: MANDATORY AND OPTIONAL PROVISIONS

## COURTS OF COMMON PLEAS, JUVENILE DIVISION

### In the Buckeye County Court of Common Pleas, General Division, Buckeye County, Ohio

Rule 16 Mediation (effective January 1, 2020)

#### 1. Uniform Mediation Act and Definitions

The R.C. 2710 “Uniform Mediation Act” (UMA), including all definitions found in R.C. 2710.01, are incorporated by reference and adopted by this court through this local rule. Frequently-used definitions include:

- 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. “Nonparty participant” means a person other than a party or mediator that participates in a mediation.

#### 2. Cases Eligible for Mediation

- a. General: The court has discretion to encourage 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.
- b. Exceptions: Mediation is prohibited in the following:
  - i. As an alternative to the prosecution or adjudication of domestic violence;
  - ii. In determining whether to grant, modify, or terminate a protection order;
  - iii. In determining the terms and conditions of a protection order; and
  - iv. In determining the penalty for violation of a protection order.
- c. Nothing in this division 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; or in a



juvenile court delinquency case, even though the case involves juvenile-perpetrated domestic violence.

3. Confidentiality *[This template is an example of a mediation rule where mediation is not automatically confidential. Courts may elect to address confidentiality differently by defaulting to confidentiality absent an exception, for example.]*

Except as provided in R.C. 121.22 and 149.43, mediation communications are confidential to the extent agreed by the parties or provided by other sections of the Revised Code or rules adopted under any section of the Revised Code. Parties desiring confidentiality of mediation communications shall advise the mediator as soon as practical and all mediation participants shall execute any confidentiality agreement prior to the start of mediation.

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It is the policy of the court to use mediation to benefit the parties, to assist in reaching a resolution, and to provide a process that is timely, flexible, and maintains the trust and confidence of the people. Any mediation participant may submit written comments, complaints or feedback regarding the performance of mediators receiving referrals from the court.

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