

## LOC.R. 16.1 MEDIATION

All definitions found in the “Uniform Mediation Act” (R.C. 2710.01) are adopted by this Court for purposes of this Local Rule. All mediations shall comply with Sup.R. 16 and the mediator shall endeavor to follow the standards of practice and policy considerations identified in Sup.R. 16(D) when a referred case involves family issues.

Selection - At any time and in any action under the jurisdiction of this Court, a matter may be referred to Court Mediation Services, subject to the right of the Court Mediation Services to decline the referral. Additionally, the Court may refer to mediation with a third-party mediator any case in which there is a matter or issue that the Court or the parties believe may benefit from mediation services.

Domestic Violence - All parties, and their counsel, shall advise the Court and the mediation personnel of any domestic violence allegations known to exist between the persons involved in the mediation in the past, currently, or which develop during the mediation. Upon identification of a situation involving or suspected of involving domestic abuse, the Court or mediation personnel identifying it shall notify the involved counsel, or make other appropriate referrals. A mediation referral is not an alternative to a referral of domestic violence for investigation or prosecution. A mediation referral is not a means of determining whether to grant, modify or terminate a protection order or the means for determining sanctions for a violation of a protection order

Referral Order - Referral for mediation shall be by a Notice of Scheduled Mediation, Judgment Entry, or Magistrate’s Order and the referring order shall recite a “not later than” date for all participants, or their counsel, to make scheduling contact with the identified mediator.

Participation - The Court may order the parties to participate in, or return to, scheduled mediation sessions. The mediation may be conducted in one or more sessions. If a party

participant wishes that party's attorney may participate. To the extent that the mediator believes that it may be helpful, a guardian ad litem representing one of the participants, or a non-party may be permitted to participate. A non-party participant as defined by R.C. 2710.01(D) is (a) bound by this rule and submits to the Court's jurisdiction to the extent necessary to enforce the rule, and (b) has the rights and duties attributable to a participant except as provided by R.C. 2710.03(B)(3) and 2710.04(A)(2). If geographic distance or physical disability prevents a participant from attending personally, the mediator may permit participation by electronic video streaming or telephonic means. Participants shall proceed with mediation in good faith with the goal of reaching a mediation agreement.

The participants will be required to execute a written "Agreement to Mediate" prior to participating in any mediation services. The recording of mediation proceedings is not permitted.

Sanctions - Mediation shall not be used for purposes of delay, discovery or harassment. Sanctions may be imposed upon a party ordered to participate in mediation who fails to attend without good cause. Sanctions may include, but are not limited to, the award of attorney fees to other participants, the assessments of costs, and findings in contempt.

Confidentiality - The confidentiality or admissibility of all mediation communications, discussions and statements are governed by the applicable law and the Rules of Evidence. Mediators will not be permitted to testify regarding the substance of the mediations or the cooperativeness of the participants.

Conflicts of Interest - The mediator shall immediately disclose to the participants any conflicts of interest that the mediator may identify. Upon the request of the mediator, or any participant in the mediation, the Court shall address the removal of the mediator due to a conflict of interest if not resolved by the participants and the mediator.

Termination - The mediation shall terminate when the mediator determines further efforts would be of no benefit to the parties. If the mediator determines that the mediation should terminate, the mediator shall notify all parties and the Court that the mediation is terminated.

Agreements –All mediation agreements are confidential and privileged pursuant to R.C. 2710.01 to 2710.10 (unless signed and therefore not privileged pursuant to R.C. 2710.05(A)(1)). Agreements reached through mediation shall be in writing with each agreeing party receiving a copy and a copy being retained in the mediator's file. No oral agreement to a mediation result is binding, unless made in open court or subsequently reduced to a signed writing. All mediation agreements shall be presented to the Court, with the consent of the parties and waiver of confidentiality and are subject to final approval by the Court.

In the event that the parties are not represented by counsel and an agreement is reached through mediation, the mediator shall file a sealed copy of the written agreement with the Court and the matter shall be set for further hearing, at which hearing the Court shall ask the parties to waive confidentiality as to the agreement and take the acknowledgements of the parties as to the terms of the agreement. In cases where it is necessary or expedient that the mediated agreement be put on the record immediately following the mediation, the Court shall go on the record with the parties and the mediator present and acknowledge the parties' waiver of confidentiality as to the agreement. With the waiver, the mediator shall read the agreement into the record and the Court shall take the acknowledgments of the parties as to the agreement.

If the parties are represented by counsel then either (1) counsel shall submit an Agreed Judgment Entry incorporating the terms of the meditation agreement, or (2) the Court shall go on the record with the parties and the mediator present, acknowledge the parties' waiver of confidentiality as to the agreement, have the mediator read the agreement into the record, take the

acknowledgement of the parties to the agreement as read into the record, and directing counsel to prepare an Agreed Entry reflecting the mediation agreement.

Cost - The cost schedule for mediation when the court appoints an attorney to conduct the mediation shall be: (a) for any probate matters (unless indigency is established) a minimum of \$400 for up to 2 hours of mediation and \$200/per hour for each subsequent hour with the additional hours being assessed among each of the participants equally, and (b) for indigent guardianships a minimum of \$50 per participant for a maximum of 4 hours mediation. For good cause, the Court may modify this schedule. The fee the first two hours of mediation services shall be paid from the Dispute Resolution Trust Fund. For mediations lasting more than two hours, the parties shall obtain the prior permission of the Court or the parties will be responsible for the mediation fees in excess of two hours.

A third party mediator's fee or rate of compensation shall be determined by the Court when the matter is referred for mediation, and it may be based upon the complexity of the issues and other requirements of the case. Generally, the fee shall be apportioned generally in equal proportions between the party participants; however, the Court may allocate the mediation fee otherwise based upon the equities involved. An estimate of the third party mediator's fee shall be deposited prior to the commencement of the mediation and additional advance deposits may be ordered throughout the mediation.