

## Chapter 15 - Mediation

### Rule 15.01 - Uniform Mediation Act and Definitions

Through this rule, the Medina County Domestic Relations Court incorporates by reference 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 Rules of Superintendence for the Courts of Ohio.

### Rule 15.02 - Definitions

All definitions found in the UMA, R.C. 2710.01, are adopted by this Court through this Rule, including but not limited to the following:

- (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 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 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.

### Rule 15.03 - Purpose

- (A) **General.** It is the policy of the Court to utilize mediation to promote greater efficiency and public satisfaction through the facilitation of the earliest possible resolution for Medina County Domestic Relations cases through the use of mediation.
- (B) The Court has discretion to encourage parties to use mediation in any 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.
- (C) **Exceptions.** Mediation is prohibited in the following:
  1. Cases in which one party has been convicted of, or plead guilty to, a violation of R.C. 2919.25 (domestic violence) within the past two (2) years;
  2. Cases in which a party has an active civil or criminal protection order in effect protecting the other party;
  3. Emergency circumstances requiring an immediate hearing;
  4. Cases in which the parties have achieved an executed agreed order or entry;
  5. Cases in which one of the parties is mentally ill;
  6. As an alternative to the prosecution or adjudication of domestic violence;
  7. In determining whether to grant, modify or terminate a protection order;
  8. In determining the terms and conditions of a protection order; and,

9. In determining the penalty for violation of a protection order.

### **Rule 15.04 - Case Selection**

- (A) A case may be referred to Family Court Resources (“FCR”) for mediation in the following manner:
1. If matter is pending, the court may order parties to participate in the mediation process;
  2. If matter is pending, the court, upon written or oral motion, may order parties to participate in the mediation process.
  3. Upon informal (pre-filing or closed case pre-refiling) request for mediation services may be made by the parties through filing by submitting an Informal Mediation Request form.
- (B) FCR will determine the eligibility and appropriateness of each referral prior to the commencement of the mediation process. FCR may decline any referral deemed inappropriate.
- (C) All parties and counsel shall advise the judge, magistrate or the FCR assessor 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 the mediation process, which allegations involve any two or more persons whom attendance is required by the referral order.
- (D) The mediation shall be communicated via a notice of scheduled mediation, Magistrate’s Order or Judgment Entry which shall, at a minimum, indicate the date, time, place, and contact information for the mediation.
- (E) The following methods may be used to determine the mediator for the case:
1. For qualifying parties, the Court mediator may facilitate the mediation.
  2. The Court randomly assigns 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 approved list of mediators.

### **Rule 15.05 - Procedure**

- (A) If a case is deemed appropriate for mediation, mediation will be scheduled. A mediator may meet with 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 as is necessary and mutually acceptable for the resolution of some or all issues.
- (B) **Formal/Informal.**
1. Parties to informal cases may voluntarily attend mediation sessions.
  2. Parties who are ordered into mediation shall attend scheduled mediation sessions. If the party wishes, they may have their attorney accompany them.
  3. The Court may order parties to return to mediation at any time.

4. The judge, magistrate, and/or a mediator may require the attendance of the parties' attorneys at the mediation sessions if the judge, magistrate and/or mediator deems it necessary and appropriate
- (C) **Duty to Disclose.** 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 abuse 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 the duty to participate in any screening required by the Court.
- (D) **Good Faith.** Each party shall proceed with mediation in good faith to reach a mediated agreement. Any party who agrees to mediation shall perform all obligations expeditiously and shall not use the mediation process for purposes of delay or discovery in any manner other than in a good faith attempt at resolution.
- (E) **Non-party.** 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)
- (F) **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.

### **Rule 15.06 - Confidentiality**

- (A) All mediation communications related to or made during the mediation process are subject to and governed by the UMA, R.C. 2710.01 to 2710.10, R.C. 3109.052, the Rules of Evidence, and any other pertinent judicial rule(s).
- (B) In furtherance of the confidentiality set forth in this Rule, parties and non-parties desiring confidentiality of mediation communications shall execute a written "Agreement to Mediate" prior to the mediation session.
1. "Agreement to Mediate" outlines the confidentiality and privilege of all mediation communications, including but not limited to written and/or verbal agreement.
  2. If a new or different person attends a subsequent session, their signatures shall be obtained prior to proceeding further in the process.
  3. The form of agreement is available for review by any prospective participant by contacting Family Court Resources

### **Rule 15.07 - Continuances**

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 mediation may be continued by the mediator 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. The request must be made to the judge or magistrate assigned to the case who referred the matter.

### **Rule 15.08 - 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.

### **Rule 15.09 - 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 attorney fees and other costs, contempt, or other appropriate sanctions at the discretion of the assigned judge or magistrate.

### **Rule 15.10 - Conclusion of Mediation**

- (A) At the conclusion of the mediation and in compliance with R.C. 2710.06, the Mediator shall provide a report to the Court.
- (B) The Report shall include the following:
  1. Whether the mediation occurred or was terminated;
  2. The attendance of the parties at the scheduled mediation session(s);
  3. If an agreement was reached on all or some of the issues;
  4. If no agreement was reached;
  5. Any future scheduled mediation dates;
  6. Any additional information the parties mutually agree they wish to be disclosed to the Court.