

FIFTH DISTRICT COURT OF APPEALS' PROPOSED MEDIATION RULE

RULE 7.5 MEDIATION

The Court has established a mediation program for litigants who have a case pending in the Court. The Court incorporates by reference R.C. Chapter 2710, the "Uniform Mediation Act" (UMA) into this local rule. Under App.R. 20, the Court's pre-mediation and mediation conference procedures will operate as follows:

(A) Cases Eligible for Mediation. The Court has discretion to encourage parties to use mediation in any civil or original action filed in this Court, except those types of cases excluded in Section (B) below. A mediation may be initiated in the following ways:

(1) Initiation by Court. The court's mediator will review the notice of appeal, the trial court's judgment and the docketing statement in all civil and administrative appeals to determine whether a pre-mediation conference is appropriate. The court's mediator will also review original actions, except writs of habeas corpus, for purposes of mediation. If appropriate, the court's mediator will contact the parties to discuss the scheduling of a pre-mediation conference.

(2) Request by Party. Any party may telephone the Court to request a mediation or may do so on the Court's Docketing Statement. Upon request, the request for mediation will be confidential. Requests shall be made as soon as possible after initiation of the appeal or original action, generally within ten (10) days from the filing date of the appeal or original action. However, requests for mediation made by a party beyond the ten (10) day deadline will also be accepted as long as such request is not for purposes of delay. Requests for mediation may or may not be granted by the Court.

(B) Cases Not Eligible for Mediation. Mediation is prohibited in the following: (1) as an alternative to the prosecution or adjudication of domestic violence; (2) in determining whether to grant, modify, or terminate a protection order; (3) in determining the terms and conditions of a protection order; (4) in determining the penalty for violation of a protection order; (5) in habeas corpus original actions; and (6) in permanent custody cases.

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.

(C) Purpose and Procedure. The court mediator will conduct the mediation. The attorneys primarily responsible for the case, as well as their clients (including insurance adjusters), are required to attend the mediation in person, or with the

approval of the court mediator, by telephone or video conferencing. “Attorneys,” for purposes of this rule, means the attorney with primary responsibility for the case and upon whose advice the party relies. Any person excused in advance by the court mediator from attending in person shall be available by telephone.

(1) Goals of Mediation. The goals of the mediation are: (1) to explore settlement possibilities, (2) to simplify the issues in the appeal if settlement is not achieved, and (3) to consider any procedural problems that exist, may arise, or can be anticipated in connection with the appeal. Additionally, any other matters that the court mediator determines may aid in handling the disposition of the proceedings will be considered.

(2) Timing of Mediation. The Court will attempt to schedule the mediation before any additional expense is incurred by the parties in proceeding with the appeal that is, before the transcript of proceedings, if any, is filed or before appellant’s brief is due, if no transcript of proceedings is to be filed.

(D) Stay of Filing Deadlines. Upon referral of a case to mediation, the Court may elect to stay all filing deadlines for up to sixty (60) days. The Court will not decide any motions filed with the clerk of courts while a case is stayed 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.

(E) Confidentiality. All mediation communications related to or made during the mediation process are subject to and governed by the UMA. 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 where possible.

By participating in mediation, a nonparty participant, as defined in 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 rights and duties under this rule as are attributed to parties, except that no evidence privilege shall be expanded.

(1) All mediation communications are confidential with the following exceptions:

(a) Parties may share all mediation communications with their attorneys or vice versa.

(b) The mediator shall inform the Court or report to the proper authorities certain information, including the following:

- (i) Certain threats of abuse or neglect of a child or an adult;
- (ii) Statements made during the mediation process to plan or hide an ongoing crime;
- (iii) Statements made during the mediation process that reveal a felony.

(F) Continuances. It is the policy of this Court to determine matters in a timely manner. Continuances of scheduled mediations shall be granted only for good cause shown after a mutually acceptable future date has been determined. If the rescheduled date is more than sixty (60) days after the referral to mediation and the granting of a stay, the mediation may proceed; however, the matter will not be stayed for purposes of the rescheduled mediation.

(G) Noncompliance Sanctions. If a party or attorney fails to comply with the provisions of this rule or the provisions of the pre-mediation conference order, the Court may hold a party in contempt and/or assess reasonable expenses caused by the failure, including attorney fees. The Court may also assess all or a portion of the appellate costs or dismiss the appeal or original action. Such sanctions may be imposed by the Court sua sponte or at a party's request.

(H) Referral to Resources. The court administrator shall maintain resources for mediation parties, including victims and suspected victims of domestic violence, encouraging appropriate referrals to legal counsel and other support services such as Children Services, domestic violence prevention, counseling, substance abuse, and mental health services.

(I) Evaluation, Comments, and Complaints. 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 and flexible that maintains the trust and confidence of the people. Any mediation participant may submit written comments, complaints, or feedback regarding the performance of the mediator to the court administrator.