

## LOCAL RULE 27

### CIVIL MEDIATION

This Local Rule incorporates by reference the “Uniform Mediation Act” (UMA), codified at ORC § 2710.01, and Rule 16 of the Supreme Court of Ohio Rules of Superintendence.

#### 27.1 Definitions

The following definitions apply to this rule:

- A. Mediation – 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 – An individual who conducts mediation.
- C. Mediation Participant – A person who participates in mediation and whose agreement is necessary to resolve the dispute.
- D. Mediation Communication – 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.
- E. Proceeding - either
  - (1) A judicial, administrative, arbitral, or other adjudicative process including related pre-hearing and post-hearing motions, conferences, and discovery; and
  - (2) A legislative hearing or similar process.

#### 27.2 Referral to Mediation

- A. Any civil case may be referred to mediation pursuant to a party’s motion, by agreement of the parties, or on the Court’s own motion. The referral to mediation may occur at the pretrial scheduling conference or at any other time prior to trial.
- B. Mediation shall not be used for any of 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; and
  - (4) In determining the penalty for violation of a protection order.
- C. For good cause, a party may object to the referral to mediation by the Court on its own motion by filing a written request for reconsideration within ten (10) days of the date of the Court’s order of referral to mediation. The Court shall be the final say on whether the case proceeds to mediation.

#### 27.3 Case Management of Mediation Cases

- A. For those cases referred to mediation, the Judge will continue to manage the case in the appropriate manner by setting a future trial date and establishing appropriate deadlines. Absent Court Order, referral for mediation shall not act as a stay of the proceeding nor modify the dates in a Scheduling Order in any way.
- B. In cases identified for mediation, a specific order of referral shall go out to counsel indicating the case has been referred to mediation and notifying them of the date and time of the mediation conference. The mediation conference shall be scheduled no later than ninety (90) days prior to the scheduled trial date, unless otherwise ordered by the Court.

#### 27.4 Mediation Conference

- A. Parties and persons necessary with authority to settle the case, as well as counsel for all parties, are required to be present at the mediation conference.
- B. Each party shall submit a Mediation Case Summary not to exceed three (3) pages to the Court Mediator and all other parties no later than ten (10)

business days prior to the mediation conference. The summary shall contain the following:

- (1) Summary of material facts;
- (2) Summary of legal issues;
- (3) Status of discovery;
- (4) List of special damages and summaries of injuries; and
- (5) Settlement attempts to date including demands and offers.

Any party that desires to convey confidential information to the assigned Mediator with the provision that the information not be disclosed to the other party without the submitting party's later consent, shall submit the information to the assigned Mediator clearly indicating the request for confidentiality. The information is not to be filed with the Clerk of Courts and will be maintained separate and apart from the case file.

- C. At the mediation conference, the assigned Mediator shall help the parties identify areas of agreement and explore the possibility of settling the case through mediation techniques:
  - (1) The facts and issues will be discussed by each side and a good faith effort will be made to settle the case;
  - (2) Any discovery or problems that are standing in the way of resolution will be identified;
  - (3) Potential solutions will be discussed and if possible, pursued to agreement; and
  - (4) In the event the case is not ready for resolution, parties will identify the information or discovery they require in order to be in a position to negotiate further. The Mediator may then continue the mediation for an additional date. In no event shall this be after the trial date already scheduled, (if applicable).
- D. If any individual or representative required by these rules to attend a mediation session fails to attend without good cause, the Court may impose sanctions that may include, but are not limited to, payment of a non-cancellation fee, the award of attorney's fees and other costs, contempt, or other appropriate sanctions at the discretion of the Judge.

## **27.5 Mediator**

A Mediator appointed by the Judge will conduct mediation conferences for cases referred to mediation. In accordance with ORC §2710.08(A) and (B), the Mediator assigned by the Court to conduct mediation shall disclose to counsel, the mediation parties, and any non-party participants any known possible conflicts that may affect the Mediator's impartiality as soon as the assigned Mediator becomes aware of such conflict. If counsel or a mediation party requests that the assigned Mediator withdraw because of the facts so disclosed, the assigned Mediator may withdraw and request that the Judge appoint another Mediator. If the Mediator determines that withdrawal is not warranted, the Mediator may elect to continue. The objecting party may then request the Judge to remove the assigned Mediator. The Judge may remove the appointed Mediator and appoint another Mediator from a list of qualified mediators that is maintained by the Court. If the Judge decides that the objection is unwarranted, the mediation conference shall proceed as scheduled, or, if delay was necessary, as soon after the scheduled date as possible.

## **27.6 Mediator Report**

At the conclusion of the mediation and in compliance with ORC §2710.06, the Court shall be informed of the status of the mediation including without limitation all of the following:

- A. Whether the mediation occurred or was terminated;
- B. Whether a settlement was reached on some, all, or none of the issues;
- C. Attendance of the parties; and
- D. Future mediation sessions, including date and time.

## **27.7 Entry upon Settlement**

If the mediation results in settlement, counsel for the parties are responsible for submitting the necessary entry within ten (10) business days. If only a portion of the issues are settled

during mediation, the parties shall submit a joint entry to the Court listing the issues settled and that remain disputed within ten (10) business days of the termination of the mediation.

### **27.8 Fees**

- A. The mediation fee is \$300 per party in interest. This fee shall be paid to the Clerk of Courts no later than ten (10) business days prior to the scheduled mediation conference.
- B. If the mediation fee is not paid to the Clerk of Courts, the Court may impose sanctions that 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 Judge.