

**IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO
GENERAL DIVISION**

STATE OF OHIO

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COUNTY OF LAKE

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JOURNAL ENTRY

BY ORDER OF THE COURT, effective April 6, 2007, the attached Rules for Mediation in the General Division of the Lake County Court of Common Pleas have been amended.

IT IS SO ORDERED.

Judge Paul H. Mitrovich

Judge Eugene A. Lucci

Judge Richard L. Collins Jr.

Judge Vincent A. Culotta



RULES FOR MEDIATION LAKE COUNTY COMMON PLEAS COURT GENERAL DIVISION

(Effective January 1, 2007; amended April 6, 2007)

Judges of the General Division of the Court of Common Pleas, Lake County, Ohio

Judge Paul H. Mitrovich
Judge Eugene A. Lucci
Judge Richard L. Collins Jr.
Judge Vincent A. Culotta



Joan Snyder
Mediation Commissioner
(440) 350-2720

**RULES FOR MEDIATION
LAKE COUNTY COMMON PLEAS COURT
GENERAL DIVISION**

In order to promote greater efficiency and public satisfaction through the facilitation of the earliest possible resolution of court cases in Lake County, Ohio, the following procedures shall be in effect from and after January 1, 2007. The court incorporates by reference the R.C. Ch. 2710, "Uniform Mediation Act" (UMA), and Rule 16 of the Supreme Court of Ohio Rules of Superintendence.

PART I

(A) *CASES FOR SUBMISSION TO MEDIATION*

(1) A case shall be submitted to mediation if so ordered by a judge after a case management conference, status conference, or pretrial conference has been conducted, and the court has determined that all parties to the case have made an appearance by filing a responsive pleading or otherwise. The judge should determine that the case is appropriate for mediation and would be helpful to resolving some or all of the issues in the case. Judges should exercise caution in ordering cases to mediation where one or more parties are strongly opposed to the concept. Cases submitted to mediation in accordance with this rule shall be conducted by a mediator who is a member of the bar of Lake County, Ohio, to be selected as provided in Part II.

(2) The parties in any action which is at issue may stipulate, in writing, before or after pretrial conference, that it may be submitted for mediation in accordance with this rule. Upon the filing of such stipulation, the action shall be submitted to mediation if so ordered by the judge assigned to the case.

(3) Any party to an action which is at issue and has been on file at least six months, may file a motion, executed by that party or the representative of that party, requesting that the case be submitted to mediation in accordance with this rule. The judge assigned to the case may grant such motion and order the case submitted to mediation if the motion for submission is unopposed.

(4) All discovery should be substantially completed before a case is submitted to mediation. All timely filed dispositive motions should be ruled upon. All court orders shall continue in effect. Motions filed after the filing of the order of submission may not be ruled upon prior to the mediation. The issues should be joined and the case be significantly ready for trial.

(5) A case is submitted to mediation on the date when the judge assigned to the case places an order on the case docket submitting the case to mediation. Submission of a case to mediation shall not operate as a stay of proceedings, and is not justification for

discontinuing any remaining discovery and preparation, which may continue through the mediation process in accordance with applicable rules, unless otherwise agreed upon by the parties and ordered by the court. No order is stayed or suspended during the mediation process except by written court order. Copies of journal entries issued for cases ordered to mediation shall be forwarded to the mediation commissioner.

(6) If the mediation is anticipated to last more than four hours, the parties shall advise the mediation commissioner within 10 days after submission to mediation so that proper arrangements can be made.

(7) These rules do not affect the ability of the parties to any litigation in this court by agreement to mediate any dispute at any time and with any mediator at the parties' sole expense, provided that such mediation does not interfere with any hearing date(s) and any case management deadline(s) set by the court.

(8) Notwithstanding any provision in these rules to the contrary, mediation is prohibited in any of the following circumstances: a) as an alternative to the prosecution or adjudication of domestic violence; b) in determining whether to grant, modify or terminate a protection order; c) in determining the terms and conditions of a protection order; and d) in determining the penalty for violation of a protection order.

(B) EXCEPTION TO ORDER

Exceptions to an order submitting a case to mediation shall be made by a motion filed within ten days of such order.

PART II

(A) SELECTION OF MEDIATOR

(1) Members of the bar who consent to appointment as mediator shall be qualified by training and experience, commitment to continuing education, membership in a mediation association, and minimum number of years mediating a specific type of case(s), in the opinion of the judges, who shall certify the lists of mediators by substantive area of litigation, and such certification shall be conclusive as to the composition of the lists.

(2) In all cases subject to mediation, the mediator shall be appointed by the mediation commissioner from the list of members of the bar of Lake County. The members of the bar eligible to act shall include only those: a) who have filed with the mediation commissioner their consent to so act, indicating any substantive areas of law the mediator prefers to mediate, and b) who have been deemed qualified by the judges. All members of the practicing bar of Lake County may participate. All those on the list of qualified mediators shall submit to the mediation commissioner a regularly updated curriculum vitae (including a list of training related to the field of dispute resolution and professional or association memberships) which CV shall be provided by the mediation commissioner to those

requesting information on an assigned mediator's qualifications to mediate a dispute. The court will review applications of persons seeking to be added to the list of qualified mediators in accordance with the procedures adopted by the judges of the court. Once a mediator has served on a mediation, his or her name would be placed at the bottom of all of the lists on which his or her name appears.

(3) Alternatively, the parties may select a particular mediator from the available list in the substantive area of law. If the mediation takes place with the selected mediator, that mediator's name shall be placed at the bottom of all of the lists on which his or her name appears. Unless that mediator's name rises to the top of a list in the ordinary course of selection set forth in Part II, the mediator would be ineligible to be selected for three months, so that any one mediator will not be handling a disproportionate number of cases.

(4) If any appointed mediator cannot participate in any given hearing, said mediator shall immediately call the mediation commissioner who, in turn, shall appoint a new mediator to mediate the case. The name of the mediator who cannot participate would be placed at the bottom of all of the lists on which his or her name appears.

(5) Any party may object to the mediator selected and appointed by the mediation commissioner. Any objection shall be filed as a motion for removal and appointment of another mediator and must be filed in the case within seven days of the notice of selection of the mediator. The opposing party may file a brief in support or in opposition to the objection within seven days, and the court may rule on the objection without oral hearing.

(6) In case of unavailability of a mediator, said mediator shall immediately call the mediation commissioner, who, in turn, shall appoint a new mediator to mediate the case.

(7) The mediator assigned by the court to conduct a mediation shall disclose to the mediation parties, counsel, if applicable, and any nonparty participants any known possible conflicts that may affect the mediator's impartiality as soon as such conflict(s) become known to the mediator. If counsel or a mediation party requests that the assigned mediator withdraw because of the facts so disclosed, the assigned mediator should withdraw and request that the assigned judge appoint another mediator from the list of qualified mediators that is maintained by the court. The parties shall be free to retain the mediator by an informed, written waiver of the conflict of interest(s). The name of the mediator who withdrew, declined, or was disqualified for conflict of interest will remain in place on all of the lists on which his or her name appears until again assigned to a mediation.

(B) MANNER OF APPOINTMENT

The list of mediators shall be divided into substantive specialty areas of litigation as follows: administrative appeal, corporate and business, employment, motor vehicle accident, products liability, professional negligence, real estate, workers' compensation, and other. The initial compilation of the lists of mediators in each substantive specialty area will be alphabetical. After the initial compilation of the lists, any names added to the lists

will be placed at the bottom of the lists in the order the application is made. Appointments as mediator shall be made in the order that each name appears on the lists.

(C) ASSIGNMENT OF CASES

The mediation commissioner shall assign a case to a mediator at the time of submission to mediation, and notify the mediator and the parties that the mediation shall occur and be concluded within sixty days of the date on the notice. The mediator shall confer with the attorneys and select a date, time, and place for the mediation. Notwithstanding any provision of these rules to the contrary, a judge may submit a case for mediation to be held between two specific dates.

PART III

(A) MEDIATIONS; WHEN AND WHERE HELD; NOTICE

(1) Mediations shall be held at a place provided by the mediator. Unless counsel for all parties and the mediator agree, the place shall be in Lake County, Ohio. Should the mediator be unable to provide a place for the hearing, the mediator shall request one of the parties to make such a provision. In the absence of another place for the mediation set in accordance with these rules, the mediation shall be held in the Lake County Court House. The mediator shall fix a time for the mediation to occur not more than sixty days after the submission to mediation and shall notify the parties, or their counsel, in writing, at least ten days before the mediation, of the time and place of the mediation. The sixty-day period may be extended once by the mediation commissioner for up to 15 days. No mediation shall be fixed for Saturdays, Sundays, legal holidays or evenings, except upon agreement by counsel for all parties and the mediator.

(2) Notwithstanding any continuances, the mediation shall be held and concluded within seventy-five days from the date of submission, unless the judge assigned to the case permits otherwise.

(3) Counsel, or the parties if unrepresented, shall promptly notify the mediation commissioner in the event of a case settlement or dismissal occurring prior to the mediation.

(4) Any followup session agreed upon by all of the parties and the mediator need not be in writing but shall be conducted within the time limits for mediation in the case.

(5) The efforts of the mediator shall not be construed as giving legal advice. The court may have materials for legal or other support services available in the community. The mediator is authorized to provide such resource information; however, such distribution shall not be construed as a recommendation of or referral to such resource. The recipient of that information is charged with the duty to evaluate those resources independently.

(B) INABILITY OF PARTY TO PROCEED

(1) If, for any reason, the plaintiff(s) and/or defendant(s) wish to seek a continuation of the mediation of the case, the party seeking same shall make all necessary arrangements for the continuance, including written permission from the opposing counsel and the mediator, and also the selection of a new date convenient to the mediator, all counsel, and all parties required to attend in the pending case, to occur within the time limits established in these rules.

(2) 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 or more than thirty days before trial, whichever is earlier. 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.

(C) CASE CONTINUED TWICE CERTIFIED TO COURT

(1) Whenever any case has been continued two times after assignment to mediation, the case shall be certified by the mediator to the judge to whose docket the case has been assigned, who shall summon the parties or their counsel. The judge shall have the power to make any appropriate order, including an order of dismissal for want of prosecution, or an order for other sanctions as the court deems appropriate.

(2) Requests for continuance beyond seventy-five days from the date of submission by the judge must be made by written motion to the judge assigned to the case.

(D) PARTICIPATION

(1) Parties so ordered shall participate in good faith in the mediation process and cooperate in all matters pertaining to the mediation, including payment of the deposit to the clerk of courts for the compensation of the mediator as provided in Part IV of these rules. Along with face-to-face sessions, the mediation process shall provide an opportunity for parties and their attorneys to engage in whatever other appropriate steps may be helpful in settling the matters in dispute.

(2) The court may order parties to return to mediation at any time.

(3) If counsel for 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 been joined as a party in the pleadings, they shall promptly inform the mediator as well as the assigned judge or magistrate.

(4) If the opposing parties to any case are: a) related by blood, adoption, or marriage; b) have resided in a common residence, or c) 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 a duty to participate in any screening required by the court.

(5) 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).

(6) Attorneys may, at their option, or must, if required on a specific case by the judge, submit a "Mediation Case Summary" to the mediator which shall contain the following: a) summary of material facts; b) summary of legal issues; c) status of discovery; d) listing of special damages and summary of injuries or damages; and e) settlement attempts to date, including demands and offers.

(E) ATTENDANCE OF INTERESTED PARTIES

(1) The following persons are considered interested parties to the mediation and shall physically attend the mediation session:

(a) All individual parties; or an officer, director, or employee having full authority to settle the claim for a corporate party; or in the case of a governmental entity or agency, a representative with full authority to negotiate on behalf of the entity or agency and to recommend settlement to the appropriate decision making body; and

(b) The party's counsel primarily responsible for handling of the matter, if any; and

(c) A representative of the insurance carrier for any insured party who has full authority to settle without further consultation.

(F) SANCTIONS FOR FAILURE TO PARTICIPATE OR ATTEND

If any party fails to participate as defined in Section D above, or if any interested party as identified in Section E above fails to attend a duly ordered mediation without good cause, the court may impose sanctions, including an award of attorneys fees and other costs, contempt, or other appropriate sanctions.

(G) CONFIDENTIALITY

All mediation communications related to or made during the mediation process are subject to and governed by the "Uniform Mediation Act" (UMA), R.C. 2710.01 to 2710.10, the Rules of Evidence and any other pertinent judicial rules.

(H) CONCLUDING MEDIATION

(1) Immediately upon conclusion of the mediation, the mediator shall submit a report to the court indicating only the status of mediation, *i.e.*, whether the mediation occurred or was terminated; whether a settlement was reached on some, all, or none of the issues; attendance of the parties; and future mediation session(s), including date and time. In cases in which parties, interested parties, or party representatives having full authority to settle were not present, this shall also be noted in the mediation report.

(2) 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 in his or her mediation report.

(3) The assigned mediator, parties or counsel, if applicable, as agreed by the parties, may immediately prepare a written memorandum memorializing an agreement reached by the parties. The "Mediation Memorandum" may be signed by the parties and counsel (if the "Mediation Memorandum" is signed it will not be privileged pursuant to R.C. 2710.05(A)(1)). The written "Mediation Memorandum of Understanding" may become an order of the court after review and approval by the parties and their attorney, if applicable. No oral agreement by counsel or with parties or an officer of the court will be regarded unless made in open court. No agreements developed in mediation shall be legally binding until reviewed and approved by the parties and their attorneys. In cases in which an agreement is reached, the parties or their attorneys shall submit final judgment entries to the court within fourteen days of the conclusion of the mediation, or earlier if ordered by the court. If an agreement is not reached, the case shall be returned to the assigned judge.

(4) If the parties fail to dismiss a settled case within the later of thirty days or the time noted in the entry that gave the court notice of the settlement, then the court may dismiss the case administratively. Upon such administrative dismissal, court costs shall be paid from the funds deposited. If court costs exceed the funds deposited, each party shall bear their own costs.

PART IV

(A) COMPENSATION OF MEDIATOR; DEPOSIT OF FEES; POVERTY

(1) Upon submission of a case to mediation, the court shall order each party to deposit with the clerk of courts, within seven days of the order of submission, the sum of \$75.00 to be used for compensation of the mediator. For purposes of these rules, if the interests of multiple litigants are essentially the same, "each party" shall mean "each side."

(2) A mediator shall receive as compensation, for services in each case, a minimum fee of \$75.00 from each party. If the mediation requires more than two hours, the mediator shall receive as compensation the fee of \$50.00 per half hour or portion thereof which exceeds two hours. Unless otherwise agreed to by the parties or ordered by the court, the

parties shall share equally the payment of the entire compensation of the mediator (including the amount, if any, that exceeds the initial deposit of the parties), and any settlement shall include a provision for the compensation of the mediator.

(3) The mediator shall consult with the clerk of courts or check the court's docket and verify that any deposit to be used for compensation of the mediator has been made with the clerk of courts before proceeding with the mediation. If the deposit has not been made as ordered by the court, the mediator shall not conduct the mediation and will report this to the court within three days.

(4) The mediator shall not be entitled to receive fees until after filing the report of mediation with the mediation commissioner. Compensation paid to mediators may be taxed as costs or allocated as agreed upon by the parties in any settlement.

(5) All compensation for mediators shall be paid: (a) from the deposit made by the parties for such purpose with the clerk of courts, or, (b) from funds of Lake County, Ohio, which have been allocated for the operation of the Common Pleas Courts of Lake County, Ohio, or, (c) any combination of (a) and (b) as the court deems appropriate.

(6) If a case is settled or dismissed more than two days prior to the date scheduled for mediation, the mediator will not be entitled to the fee. If a case has been settled or dismissed within the two-day period, the mediator will be entitled to receive the minimum fee.

(7) A party desiring to mediate the case or a party in a case ordered to mediation may apply by written motion and affidavit to the court, averring that by reason of poverty the party is unable to make the deposit or payment for compensation of the mediator required by these rules. The motion shall be filed within seven days after the order of submission to mediation. If the judge is satisfied of the truth of the statements in the affidavit, the judge may order that the mediation by such party be allowed without payment of the fees by that party. The mediator's entitlement to fees shall not be affected or diminished by the poverty of a party.

(Amended April 6, 2007)