

IN THE COURT OF COMMON PLEAS, JUVENILE DIVISION, GEauga COUNTY, OHIO
Judge Timothy J. Grendell

Information Sheet
Mediation Agreement Enforcement

WARNING

This Information Sheet is intended to provide you with an overview of the subject matter, effective as of the date noted in the upper left-hand corner. This Information Sheet is not intended to provide you with all legal information that may be necessary for you to decide upon a course of action, and the information provided may not be error-free, complete, or accurate. Moreover, this Information Sheet may not accurately describe the cited sections of the Ohio Revised Code or cited case law. Finally, this Information Sheet is not intended as a substitute for legal advice from a competent licensed attorney, who is familiar with all of the relevant facts of your case, and therefore the Help Center recommends that you seek legal advice from a competent licensed attorney that you select before taking any action. While the Help Center can provide you with a limited amount of general legal information, neither the Help Center staff nor any other Court employee can give you any legal advice.

Background

Our Resource Center staff members are trained to assist with the mediation process. If two persons choose to mediate their dispute regarding child custody, parenting or companionship time (i.e. visitation rights), or child support, and if they sign a written mediation agreement, then one question that should be considered is what course of action can a party take if at a later time the other party does not comply with the terms of that mediation agreement. There are at least two possibilities.

1. Breach of Contract Action. A mediation agreement is a contract. Like any contract, if a party violates the terms of a contract, then the injured party may file a lawsuit for breach of contract against the defaulting party. Often the remedy provided by the court is monetary damages, but money alone may not be suitable if, for example, parenting time is denied. Obtaining a court order that requires the defaulting party to perform the contractual duties by an order of "specific performance" may be difficult to obtain.
2. Establish a Court Order. Before any default (ideally shortly after signing the mediation agreement), the parties can be more proactive and seek to obtain a court order that requires the parties to perform under the terms of a mediation agreement. Then, if a party defaults on the terms of the mediation agreement, that defaulting party is also violating a court order, and may be subject to a "contempt of court" finding, which could result in jail time for failure to perform - similar to the failure to abide by a shared parenting agreement, or any other court order. The process for obtaining court approval and a court order regarding a mediation agreement that resolves issues pertaining to child custody, parenting or companionship time (i.e. visitation rights), or child support (and assuming that the parents are not married to each other), differs depending upon whether a legal proceeding has been started in the juvenile court.

Obtaining Court Order - No Prior Legal Proceeding.

If (i) the parents of the child(ren) in question are not married to each other, (ii) the disputing parties resolve their dispute regarding child custody, parenting or companionship time (i.e. visitation rights), or child support by signing a mediation agreement, and (iii) there is no legal proceeding concerning such issues in this Court or any other court, then they may seek to obtain court approval and a court order regarding their mediation agreement. A legal proceeding is started in juvenile court by filing a complaint.¹ If you elect to proceed without the assistance of an attorney, the Help Center suggests that the parties read the juvenile information sheet titled “Jurisdiction of Ohio Juvenile Courts” and prepare and file with the Court the following documents:

1. Complaint. The primary document to be prepared and filed is a Complaint. The Help Center offers for consideration the form titled “Joint Petition to Approve and Order Mediation Agreement” (GC Juv 002A). Note that you must attached to that Complaint a copy of the Mediation Agreement.
2. Jurisdiction Affidavit. If there is a case pending regarding the child(ren) in question in another court in Ohio or in another State, then this Court may not have authority to consider the mediation agreement. Therefore, one of the parties must prepare and file with the Complaint the form titled “Jurisdiction Affidavit” (GC JF 1.0).²
3. Parent History Affidavit. If one or both of the persons signing the Complaint are parents of the child(ren), then each parent must prepare and file with the Complaint the form titled “Parent History Affidavit” (GC JF 2.0).³
4. Judgment Entry. To assist the Court, it is helpful to prepare and file with the Complaint a proposed court order. The Help Center offers for consideration the form titled “Judgment Entry - Mediation Agreement” (GC Juv 002A1).
5. Instructions for Service. Depending upon the parties to the Mediation Agreement, there may be other persons or entities who are interested in the disputed issues, and thus are entitled to receive a “Summons” and a copy of the Complaint, and thus have the opportunity to be heard by the Court. An example is if one of the parents is not a party to the Mediation Agreement. Another example could be a family member or a public agency such as Job and Family Services. You need to decide who must receive a “Summons” from the Clerk of Courts and provide the Clerk with instructions for service by preparing and filing the form titled “Instructions for Service” (GC JF 7.0). Note that if the address of such interested person is unknown, then you will need to arrange for service of the summons by publication. In that event, you should make an appointment with the Help Center for more information and access to forms.

Obtaining Court Order - Prior Legal Proceeding in this Court.

If (i) the disputing parties resolved their dispute regarding child custody, parenting or companionship time (i.e. visitation rights), or child support by signing a mediation agreement, and (ii) a legal proceeding concerning such issues has already been started in this Court, then they may seek to obtain court approval and a court order regarding their mediation agreement by filing a motion with the Court in that

¹ Juv. R. 10(A).

² See R.C. § 3127.23(A).

³ R.C. § 3109.04(M).

legal proceeding.⁴ If the parties elect to do so without the assistance of legal counsel, then the Help Center suggests that the parties prepare and file with the Court the following documents:

1. Motion. The primary document to be prepared and filed is a Motion. The Help Center offers for consideration the form titled “Joint Motion to Approve and Order Mediation Agreement” (GC Juv 002B). Note that you must attached to that Motion a copy of the Mediation Agreement.
2. Parent History Affidavit. If one or both of the persons signing the Motion are parents of the child(ren), then each parent must prepare and file with the Motion the form titled “Parent History Affidavit” (GC JF 2.0).⁵
3. Judgment Entry. To assist the Court, it is helpful to prepare and file with the Motion a proposed court order. The Help Center offers for consideration the form titled “Judgment Entry - Mediation Agreement” (GC Juv 002B1).
4. Instructions for Service. Depending upon the parties to the Mediation Agreement, there may be other persons or entities who are interested in the disputed issues, and thus are entitled to receive a copy of the Motion, and thus have the opportunity to be heard by the Court. An example is if one of the parents is not a party to the Mediation Agreement. Another example could be another family member or a public agency such as Job and Family Services. You need to decide who must receive a copy of the Motion from the Clerk of Courts and provide the Clerk with instructions of service by preparing and filing the form titled “Instructions for Service” (GC JF 7.0). Note that if the address of such interested person is unknown, then you will need to arrange for service of the Motion by publication. In that event, you should make an appointment with the Help Center for more information and access to forms.

LEGAL PRACTICE IN THE JUVENILE COURT IS RESTRICTED BY LAW TO ATTORNEYS WHO ARE LICENSED BY THE SUPREME COURT OF OHIO AND INDIVIDUALS WHO ARE HANDLING THEIR OWN LEGAL MATTERS. IF AN INDIVIDUAL WISHES TO HANDLE HIS OR HER OWN CASE, THAT PERSON MAY ATTEMPT TO DO SO, HOWEVER DUE TO THE COMPLEXITY OF THE LAW AND THE DESIRE TO AVOID COSTLY ERRORS, MANY PERSONS WHO HAVE MATTERS BEFORE THE COURT ARE REPRESENTED BY AN ATTORNEY.

IF YOU CHOOSE TO REPRESENT YOURSELF AND USE THE COURT’S FORMS, BE AWARE THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF THE GEAUGA COUNTY JUVENILE COURT, INCLUDING THE HELP CENTER STAFF, FROM PROVIDING YOU WITH LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, THEN YOU SHOULD CONTACT AN ATTORNEY OF YOUR CHOOSING.

⁴ Juv. R. 10(A).

⁵ R.C. § 3109.04(M).