

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

Information Sheet
The Mediator

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. If you do not have an attorney, then the legal process of resolving all disputes regarding custody or parenting or companionship time may be challenging and overwhelming. You must be prepared to attend hearings before the Judge, to prepare your case, to understand the applicable law, the rules of procedure and evidence, and to conduct yourself at all hearings in a proper manner. Please review the two Information Sheets titled “Preparing For Your Hearing” and “Conduct During A Hearing.” If possible, it may better serve you to reach a voluntary settlement of your dispute with other opposing parties without having to undergo the formality of court hearings. One option is the use of a Mediator, who is trained to facilitate that process.¹

What is Mediation? Mediation is a process where a trained facilitator assists the disputing parties (the “mediation parties”), through communication and negotiation, to reach a voluntary settlement agreement regarding their dispute.² For additional information you should read the Court’s Juvenile Local Rule 25 regarding mediation.

How is Mediation Started?³ In disputes regarding the allocation of parental rights and responsibilities, the mediation process is started by a Court order that requires the parties to mediate. The Court may order mediation on its own, or at the request of one or both of the parties. However, when determining whether mediation is appropriate, the Court shall consider whether

¹ R.C. 3109.052(A) permits the Court to appoint a mediator to assist the disputing parties to resolve their differences regarding the allocation of parental rights and responsibilities.

² R.C. 2710.01(A).

³ R.C. 3109.052(A)

one or both of the parents are guilty or have pleaded guilty to certain crimes regarding domestic violence or child abuse. If one or both parents have such a criminal record, then the Court may order mediation only if: (1) the Court determines that mediation is in the best interest of the parties, and (2) the Court makes specific findings of fact to support its determination.

When the Court issues a mediation order the Court may order the parties to file a mediation report within a specified period of time and order the parents to pay the mediation cost. However, the parties may file a timely motion requesting that the Court waive the requirement to file the report or pay the costs of mediation.

If a parent files a complaint or motion regarding child custody or parenting time, It is likely that the Court will refer the matter to the Resource Center for mediation.

The Role of the Mediator. The Mediator's primary role is to inform the mediation parties of the needs and rights of each other and the minor children, which may include legal information (but not legal advice), available resources, and possible settlement options. However, at all times the Mediator must be impartial. The Mediator is only committed to the mediation process and will not pressure or coerce the mediation parties to settle. Even if the Mediator is an attorney, in all events the Mediator may not provide legal advice. Likewise, even if the Mediator is a social worker or therapist, the Mediator may not provide therapy. However, the Mediator may recommend that the mediation parties seek legal advice, therapy, or other professional advice.

Education and Training. The Mediator will possess a bachelor's degree, or equivalent education experience as is satisfactory to the Court, and at least two years of professional experience with families. "Professional experience with families" includes mediation, counseling, casework, legal representation in family law matters, or such other equivalent experience satisfactory to the Court. Additionally, the Mediator will have completed at least 12 hours of basic mediation training or equivalent experience as a mediator that is satisfactory to the Court. Finally, after completing such basic training, the Mediator will have completed at least 40 hours of specialized family mediation training that is provided by a training program approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.⁴ A mediation party may request that a Mediator provide relevant information concerning the Mediator's education and experience.

Privilege and Confidentiality. In order to encourage open and frank communication to facilitate effective negotiation needed to reach a mutual settlement, the law provides significant requirements regarding confidentiality and privilege. With few exceptions, all communications during the mediation are privileged. That means that all participants may choose not to disclose any such information at a later time, and all participants make take necessary legal action to prevent the disclosure of such information.⁵ Except as required by law, all communications are confidential to the extent agreed to by the parties.⁶ Additionally, with few exceptions, the Mediator will not provide the Court with any reports, findings, evaluations, findings, or recommendations, except a report required by the Court that mediation has occurred, terminated, or a settlement reached.

⁴ Sup. R. 16(C)(1). Additionally, the Mediator may have taken training related to domestic abuse, per Sup. R. 16(C)(2).

⁵ R.C. 2710.03.

⁶ R.C. 2710.07.

Exceptions. In the following circumstances, mediation communication is not privileged and the mediator may have a duty to disclosure a communication that:⁷

- evidences abuse, neglect, abandonment, or exploitation of a person;
- concerns a crime or criminal activity;
- evidences a threat or plan to cause bodily injury or violence (including threat of suicide); or
- concerns an act of malpractice

Conflict of Interest. In order that the mediation parties can be confident in the mediation process, the Mediator must inform the mediation parties of any known conflict of interest before entering into the mediation process or during the mediation process if learned by the Mediator after entering into the mediation process. A conflict of interest includes any possibility of financial gain by the Mediator, a personal interest in the outcome, or a present or past relationship with a mediation party.⁸

Mediation Process. Some of the fundamentals of the mediation process are the following:

Advisors. A mediation party may have an attorney or other designated person accompany the mediation party to and participate in the mediation; but the Help Center recommends that you provide the Mediator and other mediation parties with adequate notice before doing so.⁹

Best Interest of Children. The Mediator will consider the best interest of children at all times. The Mediator may request that a guardian ad litem or other advocate (including an attorney) be appointed for the children. The Mediator may suggest other professional assistance for the children, including therapy and counselling. Except in extraordinary circumstances, the Mediator will not permit children to participate in the mediation process.

Abuse or Violence. If the Mediator suspects child abuse or neglect or domestic violence, then the Mediator is likely to terminate the mediation process. Additionally, to the extent required by law, the Mediator will notify the appropriate government authorities. Depending upon the nature of the abuse or violence, and the Mediator's training, the Mediator may continue the mediation process, taking necessary steps to assure the safety of all concerned, and the elimination of intimidation or control.

Separate Sessions. During the mediation process, the Mediator may request that the Mediator meet with a mediation party, with the other mediation party not being present. Unless abuse or domestic violence is involved, the Mediator will first obtain the consent of the other mediation party. However, any mediation regarding child custody is likely to include both parties at all times.

Termination. For mediation to be effective, that is in order for the mediation parties to reach a voluntary settlement, the mediation parties must cooperate and seek a settlement of their dispute. Thus, except for a court order to the contrary, a mediation party may terminate the mediation process at any time. Additionally, the Mediator may terminate or suspend the mediation process for a number of reasons, including:

⁷ R.C. 2710.05 and 2710.07.

⁸ R.C. 2710.08.

⁹ R.C. 2710.09

- acts of abuse or violence;
- the judgment of a mediation party is impaired by alcohol, drugs, or physical or mental condition;
- Mediator cannot be impartial – e.g., conflict of interest; or
- A mediation party is improperly using the mediation to gain an unfair advantage or to further illegal conduct.

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.