

Memorandum

To: Domestic Relations Court Parties

From: Barbara Schneider Carter, Administrative Judge

Date: February 8, 2022

Re: Butler County Domestic Relations - Amendments to Local Rules 53

The Butler County Common Pleas Court, Division of Domestic Relations is recommending changes to our local rules and we are soliciting comments. Specifically, the court is recommending an addition to the local rules to allow for appointment of mediation services.

The Court will accept comments through March 31, 2022. Comments may be forwarded to DRCourtWebResponse@butlercountyohio.org - Attn: Kari Yeomans

**AMENDMENTS TO THE BUTLER COUNTY DOMESTIC RELATIONS
LOCAL RULES OF PROCEDURE**

The following amendments to the Loc.R. 53

Key to Proposed Amendments:

- 1. Unaltered language appears in regular type. Example: text**
- 2. Language that has been deleted appears in strikethrough. Example: ~~text~~**
- 3. New language that has been added appears in underline. Example: text**

TITLE SEVEN: ALTERNATIVE DISPUTE RESOLUTION

Rule 53 – Mediation

(A) Ohio Uniform Mediation Act. The Ohio Uniform Mediation Act (“UMA”), R.C. 2710, including all definitions, is incorporated by reference into these local rules.

(B) Scope.

(1) At any time, any Judge or Magistrate of the Domestic Relations Division of the Court of Common Pleas may order any case to mediation in accordance with these rules. In considering whether to order a case to mediation or whether to continue with mediation once it is ordered, the Court will consider relevant factors, including the following:

- (a) whether either party has been convicted of or pled guilty to a violation of O.R.C. 2919.25, or whether either party has committed an act resulting in a child being adjudicated to have been abused; in either case, mediation will be ordered only if the Court determines that it is in the best interests of the parties for mediation to proceed and supports that determination with specific written findings of fact;
- (b) whether one party is genuinely in fear of the other where domestic violence is alleged, regardless of whether there is a conviction;
- (c) whether one or both parties are alleged to have a significant drug and/or alcohol dependency;
- (d) whether one of the parties is mentally ill or has significant psychological problems that might interfere with mediation; and

- (e) whether the physical distance between the parties is so great that it is not feasible for them to maintain a consistent mediation schedule which cannot be resolved with the use technology readily available.

(2) Mediation is prohibited in the following cases:

- (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;
- (d) In determining the penalty for violation of a protection order.

(C) Procedure.

- (1) When the Court orders a case to mediation, a mediation order shall be filed. Both parties shall complete a mediation intake form. The mediation intake form will include information to facilitate screening for domestic violence.
- (2) The Court shall appoint a mediator from the list of Qualified Mediators maintained by the Court. Nothing in this rule shall prevent the parties from selecting a private mediator which must be selected in accordance with any orders issued by the Court.
- (3) When the Court appoints a mediator, each party shall each pay one half of the ordered deposit, unless the Hearing Officer finds it equitable to order a different division of the deposit, within **seven (7)** court days of the filing of the mediation order with the Clerk of Courts. The deposit shall be paid directly to the Clerk of Courts. After paying such deposit, a copy of the receipt shall be provided to the Court and directly to the appointed mediator by the paying party. The Mediator is under no obligation to schedule mediation until the full deposit has been paid. The court may reserve the final apportionment of mediation costs as between the parties to be addressed in mediation or by further order upon the conclusion of the case.
- (4) An order to mediate will not delay the effectiveness of any temporary orders issued by this Court nor any scheduling order/discovery matter or hearing, unless a stay is specifically ordered by the Hearing Officer.
- (5) At the conclusion of mediation, the mediator shall submit to the court, the parties, and

counsel (if represented) a mediation report utilizing the Mediator's Report Form Number TBD) that indicates the outcome of the mediation. This report shall be provided to the Court within seven court days of the final mediation session. The mediation report shall not be filed with the Clerk.

- (6) Any written agreements achieved in mediation shall be forwarded to counsel and a copy given to the parties. Mediation agreements shall not be filed with the Court or the Clerk.
- (7) Any agreements reached during mediation are not be binding upon the parties until approved by the parties' attorneys, if any, and by the Court, which shall consider the best interests of the children when allocating parental rights and responsibilities and/or establishing a parenting schedule. The mediation agreement becomes binding when it is adopted by the Court as an Agreed Entry or made a Court Order.
- (8) Pursuant to Ohio Rule of Superintendence 16, parties are permitted to have their attorneys and other individuals they designate accompany them and participate in mediation. Attorney attendance, or attendance by anyone other than the parties, although not expected or encouraged, will be allowed only if sufficient advance notice is given so that opposing counsel may be notified and given an opportunity to attend.
- (9) Children shall not be brought to the mediation session; parents shall not communicate to the children or permit communication with the children regarding the discussions in mediation or mediation agreements.
- (10) The Mediator shall terminate mediation if he/she believes there is a threat of domestic violence or coercion between the parties.
- (11) The Court has the discretion to order the parties to appear for the mediation either in person or via video conference.
- (12) Where appropriate, the mediator will provide appropriate referrals to legal counsel and other support services for all parties.
- (13) Upon completion of mediation, a court appointed mediator shall complete an order and entry to pay mediator fees using Mediation Form Number TBD which shall be submitted to the court with the copy of the mediation report.
 - a. In the event a case settles or is dismissed seven or more days (168 hours) in advance of the scheduled start of the first mediation session, the mediator shall not be entitled to

compensation and the funds on deposit shall be taxed to costs first and thereafter the excess, if any, returned to the parties. The parties, or if represented, the attorney(s) shall provide written notice to the court and the appointed mediator that the matter has been settled and/or dismissed using Mediation Form Number TBD. This Notice shall not be filed with the Court or the Clerk of Courts.

b. In the event the case settles or is dismissed less than seven days (168 hours) in advance of the scheduled start of the first mediation session, the mediator shall be entitled to receive the full compensation which shall be equal to the deposit paid to the Clerk of Court. The parties, or if represented, the attorney(s) shall provide written notice to the court and the appointed mediator that the matter has been settled and/or dismissed using Mediation Form Number TBD. This Notice shall not be filed with the Court or the Clerk of Courts.

(D) Qualifications and Application Process.

(1) Qualified Mediator: A mediator employed by the Court, or to whom the Court makes referrals for mediation, must have the following minimum qualifications:

(a) A bachelor's degree, or equivalent education experience, satisfactory to the Court, and at least two years of professional experience with families. Professional experience with families includes mediation, casework, legal representation in family law matters, or such other equivalent experience that is satisfactory to the Court;

(b) Completion of all applicable trainings approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution pursuant to Sup. R. 16.23 including completion of "Specialized Family or Divorce Mediation Training" and "Specialized Domestic Abuse Issues and Mediation Training" approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.

(c) Mediators who are attorneys must be in Good Standing with Ohio Supreme Court and must also:

- i. Complete three-hours of continuing legal education (CLE) on the subject of mediation or alternate dispute resolution each year to remain on the Court's mediator list;
- ii. Provide proof of annual CLE compliance by January 1. Proof of compliance includes a copy of the CLE certificate or CLE transcript, signed compliance statement, and resume or CV; and

iii. Maintain appropriate liability insurance coverage.

(4) Application Process: Any person seeking to be placed on the Court's list of Qualified Mediators, in addition to meeting the above criteria, must complete the Mediator Application.

Applications will be initially reviewed by the Court Administrator for compliance with the requirements of this Rule. The applications shall then be forwarded to the Judges of the Domestic Relations Division who shall have final authority to accept or reject any application. The Domestic Relations Division Judges may set forth additional criteria for approval of mediators as may be necessary or appropriate for the efficient operation of the court. Acceptance or rejection of any mediator application is at the sole discretion of the judges of the court.

(5) The Court shall maintain a list of Qualified Mediators which will be available to parties and attorneys upon request.

(E) Confidentiality.

(1) All mediation communications related to or made during the mediation process are subject to and governed by the UMA.

(2) 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 before seeking court involvement or intervention.

(3) The foregoing confidentiality requirements do not exempt any person from the statutory duty to report the following:

- a) child abuse pursuant to R.C. 2151.421;
- b) statements that a felony has been or is being committed;
- c) violent acts that occur during mediation; and
- d) threats of harm to other people.

(4) By participating in mediation, a nonparty participant, as defined by the UMA, 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.

(5) In the event that a case does not settle at mediation, the mediator shall not be called as a witness. Any discussion which occurs between a mediator and a party is considered protected information and is not discoverable through deposition or any other discovery procedure.

(F) Cost of Mediation. The Court shall apportion the cost of mediation after considering the parties' respective incomes and other factors deemed relevant by the court. The Court shall retain the right to reconsider the cost allocation upon request by either party and for good cause shown.

(G) Complaint Process. Any comments or complaints regarding a Mediator's performance must be submitted in writing to the Court Administrator. The Court Administrator will forward any comments and complaints to the Judge assigned to the case and, if necessary, the Administrative Judge of the court for consideration and appropriate action. The Court Administrator will notify the person making the comment or complaint and the Mediator of the disposition. A record of the complaint and disposition will be included in the Mediator's file and annual Court performance review.