

Courts of Common Pleas General, POLICY

2.14

Warren County Mediation

The Warren County Common Pleas Court adopts Local Rule 2.14 effective January 1, 2010. The Warren County Common Pleas Court incorporates by reference the R.C. 2710 “Uniform Mediation Act” (UMA) and Rule 16 of the Supreme Court of Ohio Rules of Superintendence.

(A) Definitions

All definitions found in the “Uniform Mediation Act” (UMA) R.C. 2710.01 are adopted by this court through this local rule including, but not limited to the following:

- (1) “Mediation” means any process in which a mediator facilitates communication and negotiation between the parties to assist them in reaching a voluntary agreement regarding their dispute.
- (2) “Mediator” means an individual who conducts mediation.
- (3) “Mediation Communication” means a statement, whether oral, in a record, verbal or non verbal, that occurs during mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening mediation or retaining a mediator.
- (4) “Proceeding” means either of the following:
 - a. Judicial, administrative, arbitral or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery;
 - b. A legislative hearing or similar process.

(B) Purpose

To promote greater efficiency and public satisfaction through the facilitation of the earliest possible resolution for Warren County Common Pleas Court cases through the use of mediation. To accomplish this goal, The Warren County Common Pleas Court mediation program has been established.

(C) Scope

At any time any civil action under the jurisdiction of this court may be referred to mediation. The following actions shall be exempted from mediation upon request of any party:

- (1) Cases in which one of the parties is mentally ill;
- (2) In emergency circumstances requiring an immediate hearing by a jurist,
or
- (3) Cases in which the parties have achieved an executed Agreed Judgment Entry.

(D) Case Selection

(1) Referral Process

The court, on its own motion, or the motion of any of the parties may refer disputed issues to mediation in whole or in part by “Notice of Scheduled Mediation” which shall, at a minimum indicate the date, time, and place and contact information of the mediator. All parties and counsel shall advise the assigned judge or magistrate of any domestic violence allegations known to them to exist or to have existed in the past, or which become known to them following entry of the order but before conclusion of all mediation proceedings, which allegations involve any two or more persons whose attendance is required by the referral order.

(2) Eligibility of Cases

The Warren County Common Pleas Court Mediation program may, determine the eligibility and appropriateness of each referral prior to the commencement of the mediation process and may decline any referral(s) deemed inappropriate.

(3) Mediator Selection and Assignment

The following methods may be used to determine the mediator for the case:

- a. The court randomly assigns a mediator to the case from the court’s roster of approved mediators, in special instances the court may decide to assign, recommend or appoint a mediator with particular expertise.
- b. Parties may mutually agree to a mediator not appointed by the court at their own expense.

(4) Date, time and Place of Mediation:

- a. The Mediator will be responsible to set date and time and location of mediation. The court may be used when available and should be requested through the court administrator.

(E) Procedures

In accordance with all applicable provisions of this rule, if a case is deemed appropriate for the Warren County Common Pleas Court Mediation program, mediation will be scheduled. A mediator may confer by telephone, email or separate meeting with the parties and or their attorneys individually prior to bringing the parties together for any reason including, but not limited to further screening. A mediator may schedule multiple mediation sessions, if necessary and mutually agreeable for the resolution of the issues in part or in their entirety.

(1) The court shall utilize procedures for all cases that will:

- Ensure that parties are allowed to participate in mediation, and if the parties wish, their attorneys and other individuals they designate are allowed to accompany them and participate in mediation.
- Screen for domestic violence both before and during mediation.
- Encourage appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.
- Prohibit the use of mediation in any of the following:
 - As an alternative to the prosecution or adjudication of domestic violence;
 - In determining whether to grant, modify or terminate a protection order;
 - In determining the terms and conditions of a protection order; and
 - In determining the penalty for violation of a protection order.

(2) Party/Non-Party Participation

- If a case is referred for mediation, each party to the case or the representative of the each party who has full settlement authority shall attend the mediation conferences.
- A judge, magistrate and/or mediator shall require the attendance of the decision-making parties' attorneys at the mediation sessions if the mediator deems it necessary and appropriate.
- If counsel of 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.
- If the opposing parties to any case are 1) related by blood, adoption, or marriage; 2) have resided in a common residence, or 3) 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 the duty to participate in any screening required by the court.
- 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).

(3) Confidentiality/Privilege

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 and any other pertinent judicial rule(s). In furtherance of the confidentiality set forth in this rule, parties and non-parties desiring confidentiality of mediation communications shall execute a written "Agreement to Mediate" prior to the mediation session. If a new or different person(s) attend a subsequent session, their signatures shall be obtained prior to proceeding further in the process. A blank "Agreement to

Mediate” form is available for review by any prospective participant by contacting the Magistrates Assignment Commissioner.

(4) Mediator Conflicts of Interest

In accordance with R.C. 2710.08(A) and (B), 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 or Magistrate 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).

(5) Termination

If the assigned 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 that the mediation is terminated using the procedure required by the Court.

(6) Stay of Proceedings

All remaining court orders shall continue in effect during the mediation process. No order is stayed or suspended during the mediation process except by written court order. Mediation shall not stay discovery, which may continue through the mediation process in accordance with applicable rules, unless agreed upon by the parties and approved by the judge or magistrate assigned to the case.

(7) Continuances

It is the policy of the court to conduct matters in a timely way. Continuances of scheduled mediations shall be granted only for good cause shown after a mutually acceptable future date has been determined. The Judge or Magistrate who referred the case may continue the case. 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.

(8) Mediation Case Summary

Attorneys may, at their option, or must if required on a specific case by the judge and/or magistrate, submit a “Mediation Case Summary” to the mediator, which shall contain the following:

- Summary of material facts.
- Summary of legal issues.
- Status of discovery.
- List special damages and summarize injuries or damages.
- Settlement attempts to date, including demands and offers.

(9) Mediation Memorandum of Understanding

The assigned mediator, parties or counsel, if applicable, as agreed by the parties, shall immediately prepare a written memorandum memorializing any agreement reached by the parties. The “Mediation Memorandum” should 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” shall become an order of the court after review and approval by the parties and their attorney, if applicable.

(10) Mediator Report

At the conclusion of the mediation and in compliance with R.C. 2710.06 the court shall be informed of the status of the mediation including all of the following:

- Whether the mediation occurred or was terminated;
- Whether a settlement was reached on some, all or none of the issues; and
- Attendance of the parties.
- Future mediation session(s), including date and time.

(F) Qualifications

(1) Qualifications

To be a court approved mediator the following qualifications apply:

- 6 years legal practice experience.
- Law degree (JD)
- Member of Warren County Bar Association

(2) List of Qualified Mediators

The court maintains a list of qualified Mediators, which shall be maintained by The Administrative Judge's Secretary and a copy shall be distributed to all Judges and Magistrates of the Court.

- a. All those interested to become mediators shall submit to the Court Administrator updated Curriculum Vitae (including a list of training related to the field of dispute resolution and professional or association memberships) along with liability insurance and proof of Warren County Bar Membership.
- b. The Court will review applications of person seeking to be added to the list of qualified Mediators in accordance with the procedures adopted by the Judges of the Court.

(G) Fees and Costs

(1) Per Session Fee

The payment for foreclosure mediation is \$250.00 flat rate.

The cost for other civil mediation will be based a single session fee of \$500.00 for sessions up to 6 hours plus \$100.00 per hour for each full or partial hour of a mediation session lasting more than six hours. The mediator with consent of the parties may schedule further sessions after the first 6 hours. The mediation fees shall be taxed as court cost. At any time the parties or party may discontinue the mediation process. If a single party discontinues the mediation process on day 1 the Judge or Magistrate may hold them alone responsible for the \$500.00 fee for mediation.

(H) Sanctions

If any individual ordered by the court to attend mediation fails to attend mediation without good cause, or fails to pay the mediation fee or abide by courts mediation policy the court may impose sanctions, which 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 assigned Judge or Magistrate.