

## **Rule 16.6 Mediation**

(a) **Eligible Cases.** Any civil case may be referred to mediation.

(b) **Selection of Cases.**

(1) **When Selected.** A case may be selected for mediation:

(A) When the status of discovery is such that the parties are generally aware of the strengths and weaknesses of the case; or

(B) At any earlier time by agreement of the parties and with the approval of the Court.

(2) **How Selected.** A case may be selected for mediation:

(A) By the Court on its own motion, in consultation with the parties;

(B) By the Court, on motion of one of the parties; or

(C) By stipulation of all parties.

(3) **Objection to Mediation.**

(A) For good cause, a party may object to the referral to mediation by the Court on its own motion by filing a written request for reconsideration within ten (10) days of the date of the Court's order.

(B) Mediation processes shall be stayed pending decision on the request for reconsideration, unless otherwise ordered by the Court.

(c) **Administrative Procedure.**

(1) Upon notice that a case has been referred to Mediation, the ADR Administrator will promptly provide the parties with a Notice of Referral, listing of available panelists who are qualified to deal with the subject matter of the lawsuit. The parties shall confer with each other within ten (10) days after receiving the written Notice of Referral and provide the ADR Administrator with an agreed list of three proposed mediators, ranked in order of preference. In the event of multiple parties not united in interest, the parties shall add the name of one proposed mediator for each such additional party.

If the parties fail to provide the ADR Administrator with an agreed list of at least three proposed mediators, the ADR Administrator shall select from the list of available panelists provided to the parties a mediator who is qualified to deal with the subject matter of the lawsuit. The ADR Administrator shall make a

preliminary determination that the proposed mediator has no conflicts of interest and that the proposed mediator can serve.

Nothing in this Rule shall limit the right of the parties, with consent of the Court, to select a person of their own choosing to act as a mediator hereunder.

(2) The ADR Administrator shall contact the proposed mediator(s), in the order of preference provided by the parties, concerning potential conflicts of interest and scheduling. Once a determination has been made that a proposed mediator can serve, the ADR Administrator shall provide written Notice of Designation (which shall include the name, address and telephone number of the chosen panelist, hereafter, the “Mediator”) to counsel for all parties (or to parties not yet represented by counsel) and to the Mediator. If, after Notice of Designation is given or sent, a new party is joined in the action, the ADR Administrator shall promptly send that new party a copy of the Notice of Designation.

(3) Promptly after receiving the Notice of Designation, the Mediator shall schedule the mediation conference which, unless otherwise ordered by the Court, shall not be more than thirty (30) days from the date of written Notice of Designation. The Mediator shall send written notice to all parties and to the ADR Administrator advising them as to the date, time and location of the mediation conference.

(4) Without leave of Court, neither the parties nor the neutral may modify the time allowed for completing an ADR process.

**(d) Neutrality of Mediator.** If at any time the Mediator becomes aware of or a party raises an issue with respect to the Mediator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties, the Mediator shall disclose the facts with respect to the issue to all of the parties. If a party requests that the Mediator withdraw because of the facts so disclosed, the Mediator may withdraw and request that the ADR Administrator appoint another mediator. If the Mediator determines that withdrawal is not warranted, the Mediator may elect to continue. The objecting party may then request the ADR Administrator to remove the Mediator. The ADR Administrator may remove the Mediator and choose another from the Federal Court Panel. If the ADR Administrator decides that the objection is unwarranted, the mediation conference shall proceed as scheduled or, if delay was necessary, as soon after the scheduled date as possible.

**(e) Written Submissions to Mediator.**

(1) At least five (5) days before the mediation conference, the parties shall submit to the Mediator:

(A) Copies of relevant pleadings and motions;

(B) A short memorandum stating the legal and factual positions of each party respecting the issues in dispute; and

(C) Such other material as each party believes would be beneficial to the Mediator.

(2) Upon reviewing such material, the Mediator may, at his or her own discretion or on the motion of a party, schedule a preliminary meeting with counsel.

(3) Written mediation memoranda shall not be filed and shall not be shown to the Court.

**(f) Attendance at Mediation Conference.** The attorney who is primarily responsible for each party's case shall personally attend the mediation conference and shall be prepared and authorized to discuss all relevant issues, including settlement. The parties shall also be present, except that when a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of such party or insurance company, with full authority to settle, shall attend. Willful failure of a party to attend the mediation conference shall be reported by the Mediator to the ADR Administrator for transmittal to the assigned Judge, who may impose appropriate sanctions.

**(g) Procedure at Mediation Conference.**

(1) The mediation conference, and such additional conferences as the Mediator deems appropriate, shall be informal. The Mediator shall conduct the process in order to assist the parties in arriving at a settlement of all or some of the issues involved in the case.

(2) The Mediator may hold separate, private caucuses with any party or counsel but may not, without the consent of that party or counsel, disclose the contents of that discussion to any other party or counsel.

(3) If the parties have failed, after reasonable efforts, to develop settlement terms, or if the parties request, the Mediator may submit to the parties a final settlement proposal which the Mediator believes to be fair. The parties will carefully consider such proposal and, at the request of the Mediator, will discuss the proposal with him or her. The Mediator may comment on questions of law at any appropriate time.

(4) The Mediator may conclude the process when:

(A) A settlement is reached; or

(B) The Mediator concludes, and informs the parties, that further efforts would not be useful.

(5) Within ten (10) days of the close of the mediation conference, the Mediator shall report in writing to the ADR Administrator that the mediation was held, whether the mediation has resulted in a settlement and;

(A) If a settlement agreement is reached, the Mediator shall report the time frame within which the parties will submit an agreed entry to the Court concluding the matter or, if required, seeking the Court's approval of the settlement terms.

(B) If a settlement agreement is not reached, the Mediator shall report in writing to the ADR Administrator any agreements reached by the parties, and the Mediator's recommendation, if any, as to future processing of the case.

**(h) Confidentiality.** The entire mediation process is confidential and privileged to the extent provided under Ohio Rev. Code ch. 2710 and Sixth Circuit Law. The parties and the Mediator may not disclose information regarding the process, including settlement terms, to the Court or to third persons unless all parties otherwise agree. Parties, counsel, and mediators may, however, respond to confidential inquiries or surveys by persons authorized by the Court to evaluate the mediation program. Information provided in such inquiries or surveys shall remain confidential and shall not be identified with particular cases.

The mediation process shall be treated as a compromise negotiation for purposes of the Federal Rules of Evidence and state rules of evidence. The Mediator is disqualified as a witness, consultant, attorney, or expert in any pending or future action relating to the dispute, including actions between persons not parties to the mediation process.