OHIO STATE BAR ASSOCIATION
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Court Mediation

What is mediation?

"Mediation" is any process in which a *mediator* facilitates communication and negotiation between parties to help them reach a voluntary agreement regarding a dispute. Ohio's law governing mediation is called the Uniform Mediation Act (*Ohio Revised Code* Chapter 2710).

What does the mediator do?

The mediator, a neutral third party, provides a forum that allows parties (and their attorneys or support individuals, if present) to discuss their dispute and any other issues that may concern them. These discussions may include everyone in the same room, or the mediator may speak with each party separately, including the attorneys, without their clients being present. The mediator also will make sure parties provide all documents, forms, or other materials needed to reach an agreement.

The mediator does not act as a judge and does not make any decisions in the case. While the mediator facilitates discussions in a "facilitative" mediation, and may even evaluate the case in an "evaluative" mediation, it is the attorney's job to give advice and opinions to their clients. The goal of mediation is to allow the parties (rather than a judge or a jury) to decide the outcome of the case. The mediator will provide education and refer parties to other sources for support, where appropriate.

How should I prepare for mediation?

Before the scheduled mediation, contact the court's mediation services to ask how much time the mediation is likely to take and plan accordingly. Also, ask what documents, forms, etc., you need and whether you should provide them in advance. A lack of appropriate information may require you to reschedule your mediation. If you are concerned about possible violence or coercion from another party, it is important to inform the mediator so appropriate safety measures can be taken. You can participate in mediation without even seeing another party.

If you are represented, talk with your attorney before the mediation date. Determine (with your support person(s) and/or your attorney, if you have one) your goals, what has kept you from settling the dispute, how you will evaluate offers presented at the mediation, what the other side likely will need to resolve the case, and who you would like to attend the mediation. You should also evaluate the strengths and weaknesses of your case, the costs of going to trial and the potential risks of going to trial.

Generally, parties will share information before the mediation session. This may include information contained in financial documents, such as pay stubs and utility bills, child-related documents and other relevant information. Sharing such information beforehand allows you time to review it, and may eliminate the need for another session to consider additional documentation necessary for settlement. Some local courts conduct pre-mediation conference calls to ensure that parties are fully prepared, have provided all the necessary financial and other documentation and can attend the mediation on the scheduled date.

Who attends mediation?

The court may order all parties in the case to attend the mediation session. Assuming the parties are represented, their attorneys almost always attend, but need not be present if excused by the court. Insurance company representatives, if any, also may attend, along with any other party necessary to settle the case. You and the other party also may invite individuals who are *not* necessary to settle the case, but may provide support. You do not need an attorney to attend the mediation, but you can always ask the mediator to stop the mediation so you can call an attorney before you proceed.

What happens if we do not settle, or settle only some of the issues?

You do not have to settle your entire case, but you should come to the mediation willing to discuss settlement options. You may reach a partial settlement, and then reschedule the mediation to finalize remaining issues. If you do not settle, your case will be returned to the court's regular schedule or "docket." If some of the issues are settled, then the court may make a decision on only the unsettled issues.

How long will mediation take?

Most mediations sessions take between one and two hours, but some may take longer.

Can the other side reveal in court what we say during mediation?

Unlike a trial, mediation is conducted in a non-public setting (usually a private room in the courthouse). Ohio law protects mediation communications from being disclosed in court proceedings except in certain cases (such as when there are threats of harm, admissions of crimes or admissions of abuse). Generally, *no one* who participates in mediation may reveal mediation communications in any proceeding, including court. Communications may, however, be revealed as long as all of the parties agree. Before waiving confidentiality, it is wise to talk with an attorney.

Remember, however, that mediation is *only* confidential to the extent that all of the parties agree. Therefore, if you do not want your mediation communications to be revealed anywhere outside of any legal proceeding (for example, published in the local newspaper), you should tell your mediator you want to enter into a confidentiality agreement with the other party before the mediation begins. You should put this agreement in writing and include the signatures of any and all people who participate in the mediation, including those participating by phone. If your attorney does not attend the mediation, you should list him/her (and any other outside party you may want to talk with about the mediation) as an exception to the confidentiality agreement. Sometimes a confidentiality agreement is included in the court's Agreement to Mediate.

Why should I consider mediation?

Mediation allows you to have more control of the outcome of your dispute. Mediating a dispute also can help you and the other party to identify ***solutions and other issues that are not included in the formal case***.

An agreement created by you and the other party is more likely to meet your needs. If you can settle your case without going to trial, then you ***eliminate the risk*** of losing your case or getting a judgment that is less acceptable than a negotiated agreement.

Also, you ***save money and time*** that a trial would require. Often, courts provide mediation services at ***no charge*** to you. Any fee that may be charged is typically much lower than the cost of a trial. Also, mediation discussions are ***less formal and generally more relaxed*** than a trial.

Finally, if you go to trial, then you must accept the judge or jury's decision, unless an attorney advises you to appeal. Even if your case is appealed, there are mediation programs in nearly all of the appellate courts including a mediation department at the Supreme Court of Ohio.

Where can I learn more about mediation and mediators?

Both the Ohio State Bar Association (OSBA) and the Supreme Court of Ohio provide information about mediation and mediator directories through their websites. Visit the OSBA's website at www.ohiobar.org or visit the Supreme Court's website at www.supremecourtofohio.gov/JCS/DisputeResolution. You can also contact the Supreme Court's Dispute Resolution Section at (614) 387-9420.

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