



THE SUPREME COURT *of* OHIO

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# CHILD PROTECTION MEDIATION

TOOLKIT



*for Judicial Use*



# THE SUPREME COURT *of* OHIO

## CHILD PROTECTION MEDIATION TOOLKIT FOR JUDICIAL USE



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FOR COURTS

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## INTRODUCTION

This planning toolkit was designed as a guide to help courts and communities assess their current approaches to child protection cases and develop or enhance their use of Child Protection Mediation (CPM). The toolkit is a framework to guide planning and implementation activities. The materials in this toolkit are based on best practices developed by experienced child-protection mediators at local and national levels.

Courts stand to benefit from mediation by potential resolution in these cases at every stage, achieving better outcomes for families and freeing up valuable trial time on the dockets. However, getting a CPM program started takes planning, training, and skilled professional mediators. With mindful decision-making and a dedicated team of stakeholders, courts can efficiently initiate or expand their mediation offerings.

The Supreme Court offers bi-annual specialized training for mediators in abuse, neglect, and dependency cases, pursuant to Sup.R. 16. These trainings cover ethical considerations, the involvement of the child's perspective, legal issues, and the role of a mediator in facilitating communication and relationship-building among all parties, attorneys, and the parents' natural supports — such as grandparents and siblings. Links to register for these trainings are included in this toolkit. This toolkit also explains the role of a mediator in child-welfare cases.

Additionally, the toolkit offers practical links and materials to launch a successful CPM program. For example, to offer mediation as a tool in child-protection cases, the court or division must adopt a local rule governing juvenile court mediation. Detailed instructions for drafting and adopting a local rule and samples of local rules are included here. Moreover, caseworkers and other stakeholders will also require training to understand the benefits and process of mediation. The toolkit contains samples of stakeholder training agendas and useful materials and suggestions.

This toolkit aims to provide all resources a court needs to consider, design, implement, and evaluate a successful CPM program. We hope you find it useful.



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## WHAT IS CHILD PROTECTION MEDIATION?

“Mediation” means any process in which a neutral third party helps the parties and non-party participants communicate and negotiate with each other to help reach a voluntary agreement regarding their dispute. Sup.R. 16.14.

Child Protection Mediation (CPM) is a specialization that seeks to create agreements and solutions in abuse, neglect, and dependency (AND) cases – cases where the government (through children services) takes custody of a child or provides protective supervision for their safety. CPM may be used at any point in child protection cases — including pre-adjudication, parenting-time disputes, discussions about parental case-plan participation, and permanent custody. Typically, a mediator will meet with each party separately to explain the mediation process and assess the appropriateness of mediation in a particular case. If the mediator deems the case appropriate for mediation, then the parties will be brought together in a joint session during which the mediator will set ground rules and each party will be given an opportunity to present their issues.

Often, the purpose of CPM is to develop a case plan to reunify the family and find the best possible placement for the child in the interim. “However, if reunification is not possible, the goal of mediation becomes finding the most suitable permanent placement for the child within the time period established by law. Mediated issues often may include the services the parents will use, conditions that must be satisfied before the child may return home, options for child care, education, and parenting practices, including alternative, non-violent approaches. During the course of child-protection mediation, parties may discuss problems arising during the implementation of the case plan and court order, agree to modify the case plan, or agree to request the court to modify the order. If the parties reach an agreement, the mediator will prepare a ‘memorandum of understanding.’<sup>1</sup>”

Child-protection mediation programs may be particularly helpful in communities where there traditionally have been conflicts among children services, attorneys, and parents. In addition, CPM can help reduce delays in large caseloads by facilitating non-litigated resolutions in child-protection cases.

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1 Alicia M. Hehr, “A Child Shall Lead Them: Developing and Utilizing Child Protection Mediation to Better Serve the Interests of the Child”, 22 Ohio St. J. on Disp. Resol. 443, 454-456 (2007).



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## BENEFITS OF CPM

In child-protection cases, mediation gives parents “a place at the table” and facilitates communication between parents, the child, the agency, relatives, foster parents, and attorneys. Many courts have the problem that parents do not feel they are part of the team for their children — these parents feel the court and the children services agency have already made up their minds, so what can a parent do? By strengthening parents’ voices in these cases, parents will have more investment in the process. The more courts and agencies can foster parental engagement, the more likely parents and children are to have better outcomes in child-protection cases.<sup>2</sup> Empowerment in mediation has been shown to contribute to increased compliance with the case plan.<sup>3</sup> “[O]ne of the key advantages of CPM is its participatory character. Mediation affords parents the chance to participate in the discussion and negotiation process, resulting in the empowering of both families and caseworkers.”<sup>4</sup>

*“I’ve been involved in this case for three years and this is the first time anyone’s asked me what I thought was in my child’s best interest.”*

*- Mother participating in a Henry County, Ohio CPM*

According to Gregory Firestone, Ph.D., director of the University of South Florida Conflict Resolution Collaborative, some benefits of actively involving and empowering parents in child-protection mediation include the following:

1. Increases the exchange of information among the parties;
2. Improves the quality of the agreement due to greater input from all parties;
3. Reinforces the parents’ role by providing parents with the opportunity to contribute to efforts to find a solution;
4. Increases the parents’ sense of ownership and understanding of the agreement;
5. Increases parental compliance with the agreement;

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<sup>2</sup> See Nancy Thoennes, An Evaluation of Child Protection Mediation in Five California Courts, Family and Conciliation Courts Review, 35, 184-195 (1997).

<sup>3</sup> Firestone and Gregory, Empowering Parents in Child Protection Mediation: Challenges and Opportunities, 47 Fam. Ct. Rev. 98, 100 (2009) [hereinafter Firestone and Gregory].

<sup>4</sup> See Linda Crush, When Mediation Fails Child Protection: Lessons for the Future, 23 Can. J. Fam. L. 55, 66 (2007).

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6. Reduces conflict between the parents and professionals and increases the group's ability to work effectively as a team; and
  7. Increases the parents' confidence in the child-protection process.<sup>5</sup>

*“Mediation appears to be beneficial in terms of achieving faster permanency outcomes, improving family functioning, and achieving child protection/welfare goals.”*

*- CPM in Michigan 2019<sup>6</sup>*

“Another potential benefit of mediation is the opportunity to engage individuals in the planning process who may be instrumental to the success of the plan, but who lack the legal standing to be part of court proceedings.”<sup>7</sup> These could include family members, friends, and other support people for the child or parent, such as a pastor, teacher, or treatment sponsor. A mediator may choose to include non-party individuals who are supportive to the family (sometimes referred to as “natural family supports”) in mediation.

CPM also may be effective in permanent-custody cases. Parents and foster parents may make decisions in mediation that would be precluded in court because there is no open-adoption legislation in Ohio.<sup>8</sup> These mediation sessions can often deal with open-adoption issues regarding future communication or contact. Even unenforceable agreements between foster parents and parents may be formed when a basis of trust is developed in mediation. Parents may be more likely to surrender parental rights after a frank and constructive mediation with caseworkers and foster parents.

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5 Firestone and Gregory, *supra* note 3.

6 Kierkus and Johnson, Grand Valley State University College of Community & Public Service and School of Criminal Justice, *Child Protection Mediation in Michigan 2019*, [courts.michigan.gov/Administration/SCAO/OfficesPrograms/ODR/Documents/CPM%20FINAL%20REPORT%202019.pdf](https://courts.michigan.gov/Administration/SCAO/OfficesPrograms/ODR/Documents/CPM%20FINAL%20REPORT%202019.pdf) (accessed Nov. 27, 2019).

7 Nancy Thoennes, *What We Know Now: Findings from Dependency Mediation Research*, 47 *Fam. Ct. Rev.* 21, 30-35 (2009) [hereinafter *Mediation Research*]

8 *Id.*

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**Benefits for parents:**

- Fewer feelings of coercion;
- More say in working out an agreement with the child-protection agency;
- Ability to examine possible solutions for their behavior without a focus on blame; and
- Increased understanding of the children's needs.

**Benefits for caseworkers:**

- More parental buy-in to case-planning terms;
- Better communication between agency workers, custodians, and parents;
- Eliminating the need to spend time preparing for a contested trial;
- Increased understanding of the children's needs;
- Cases move to family reunification or permanency more quickly; and
- Participating in CPM likely will be viewed as a "reasonable effort" toward reunification.

**Benefits for attorneys:**

- Clients who understand the process better;
- Clients who work actively toward solutions for their own children;
- Outcome that is agreed upon, instead of imposed by a court; and
- Fosters a culture that values clients' needs and input.

**Benefits for courts:**

- Less time on the docket needed for contested hearings;
- Parties are focused on the best interest of the children, instead of resorting to blame;
- Parents are engaged and empowered to reunify with their children;
- Provides a process that better deals with relationship and emotional issues inherent in child-custody matters;
- Helps ensure that children and families involved with child welfare experience a legal system in which they have meaningful access to justice and their rights are protected; and
- The court can lead the way in building a collaborative system to help families.

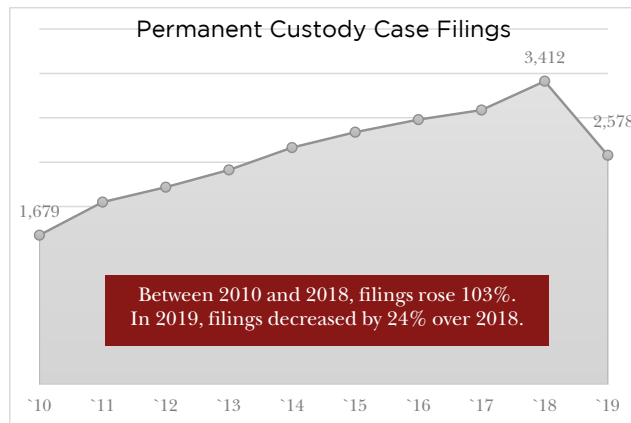
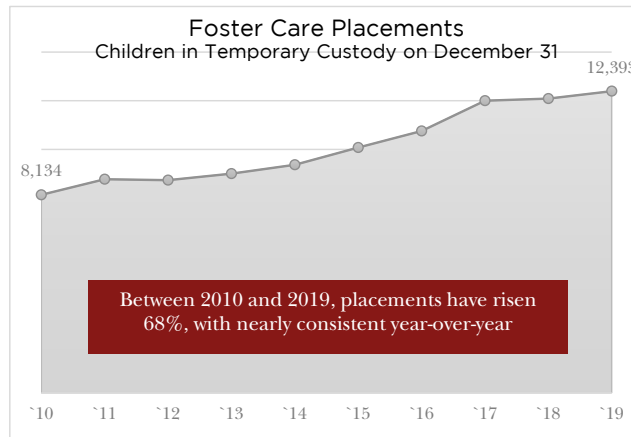
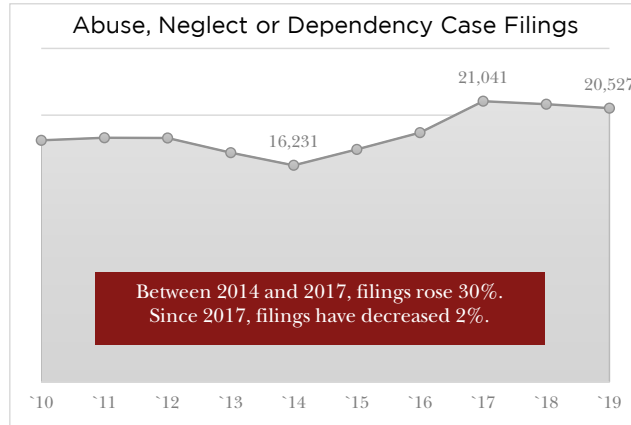




## CPM DATA

### OHIO

Below is a statewide compilation of statistics as to abuse, neglect, and dependency cases.



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## MICHIGAN

The State of Michigan completed a study in 2019 of 270 child-protection cases to determine whether CPM is more effective at achieving permanency outcomes as compared to traditional child-protective-court processes used in Michigan.<sup>9</sup> The results of this research were largely consistent with other mediation studies conducted in the United States.<sup>10</sup> Here are some of the results of the Michigan study. The full study can be viewed online.<sup>11</sup>

### Permanency Outcomes

Jurisdictions that utilize CPM achieve permanency faster and more frequently in comparison to jurisdictions that do not utilize CPM.

- Permanency is achieved, on average, in 559 days using CPM, compared to 619 days in non-CPM jurisdictions;
- While all child-protection cases eventually achieve permanency, during the two-year study period, jurisdictions that used CPM were almost twice as likely to close a case (i.e., permanency), compared to non-CPM courts; and
- The most common permanency outcome using CPM is reunification with parents (54.8 percent).

### Disposition Times

On average, mediation is conducted in advance of Michigan's state-mandated 63-day time period.

Average disposition times are:

- From Petition to Order of CPM: 44.1 days.
- From Order of CPM to End of CPM: 15.2 days.

### Statewide Citizen Satisfaction: CPM vs. Traditional Court

This statewide dataset allowed for the analysis of citizens' (i.e., not court personnel) perceptions of CPM and court processes. The three dimensions measured in this study were: case resolution, staff courtesy, and judge courtesy.

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9 Kierkus and Johnson, Grand Valley State University College of Community & Public Service and School of Criminal Justice, *Child Protection Mediation in Michigan 2019*, <https://courts.michigan.gov/Administration/SCAO/OfficesPrograms/ODR/Documents/CPM%20FINAL%20REPORT%202019.pdf> (accessed Nov. 27, 2019).

10 Mediation Research, *supra* note 6.

11 *Id.*

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On three of these dimensions, participants in the counties that utilize CPM reported higher “Satisfied/Very Satisfied” combined scores relative to counties that use traditional court processes:

- Case resolution (84.5 percent vs. 81.3 percent);
- Staff courtesy (95.5 percent vs. 92.9 percent); and
- Judge Courtesy (92.5 percent vs. 88.3 percent).

### **When CPM Is Used**

CPM is used at various stages, depending upon the county. This suggests that CPM is tailored to the needs and practices of each jurisdiction. The three most common stages where CPM is used include:

- Associated with the Preliminary Hearing (25.9 percent);
- Prior to Trial/Adjudication (54.4 percent); and
- At Post Dispositional Review Hearings (7.8 percent).

### **Participant Satisfaction Levels**

Participant data only was available from Petoskey and Gaylord, Michigan. All participants, regardless of position or role, had extremely positive impressions of the CPM process.

### **Court Acceptance of CPM Agreements**

Approximately 70 percent of CPM cases achieved full or partial agreement; most (about 63 percent) were mediated to full agreement, while a further 6 percent were mediated to a partial agreement. In the majority of cases, the court fully accepted the agreements reached in CPM (73.3 percent).

### **Qualitative Findings**

Responses from interview data and open-ended survey questions suggest that CPM is a widely accepted practice that may improve child-welfare permanency and working relationships between stakeholders. More specifically, these benefits are related to improved working relations among CPM stakeholders and a willingness to participate in the process. Stakeholders in CPM consistently rank other individuals in CPM as likely to be willing to participate in the program. Stakeholders also perceive that CPM improves relationships between themselves and the child protection agency.

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### **Key Findings: 2004 vs. the 2019 CPM Evaluation**

Generally, the 2004 and 2019 evaluations report similar findings. Both evaluations suggest that CPM reduces time to permanency and yields high parental compliance. Positive stakeholder perceptions, improved relationships among child protection professionals, as well as perceived time and cost savings, also are outcomes of CPM. Both studies suggest that individuals more experienced with CPM perceive it as the most effective. Unique to 2019 are the findings that courts employed CPM differently in the context of when and how it is used.

### **NATIONWIDE RESEARCH**

Nancy Thoennes, Ph.D. has conducted research involving juvenile and family courts in approximately 30 states. She serves as the associate director of the Center for Policy Research in Denver, Colorado. She has consulted with numerous states in their efforts to design and implement dependency mediation programs and has published widely about mediation in abuse, neglect, and dependency cases. In a 2009 article, she summarized 15 years' of CPM studies from courts nationwide.<sup>12</sup> Below are some of her findings.

#### **The Nature of Mediated Agreements**

While treatment plans developed in mediation usually are similar to the plans found in non-mediated cases, Thoennes found that mediated parenting-time plans tend to be more specific and often more generous. Agreements in mediation tend to rely less on the typical, default provision that the caseworker will determine the visitation schedule. Parties can discuss alternative ways to provide visit supervision, which can lead to an increase in the number of visits. Often mediation can identify services helpful for the children; “one study concluded that mediation plans contain service provisions for parents and children that are more detailed and specific.”<sup>13</sup> Practical resolutions to problems can become more apparent in mediation. With the help of their attorneys, parents can agree to smart, achievable case-plan goals.

Mediated plans often address issues such as communication between caseworkers and parents and extended family members. While not specifically in a case plan, these conversations and agreements can improve relationships and ease ongoing communication about case-plan progress and barriers.

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*, citing Gatowski, Dobbin, Litchfield, & Oetjen, *Mediation in Child Protection Cases: An evaluation of the Washington, D.C. Family Court Child Protection Mediation Program*. Reno, NV: National Council of Juvenile and Family Court Judges (2005).

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### **Savings in Time and Money**

Depending upon the court, mediation may result in service plans and other agreements being put into place sooner than would be the case through traditional case processing. For example, the research in Jefferson Parish, Louisiana, found that cases mediated prior to disposition were more likely than comparison-group cases to have a resolved disposition within 30 days of the case.<sup>14</sup> The Louisiana study also looked at cases that had at least 12 months elapsing from mediation to data collection. Based on small samples (25 mediated and 91 comparison cases), the study showed that 71 percent of the mediation and 44 percent of the non-mediated cases had a child leave foster care for a permanent home within this 12-month period.<sup>15</sup> The Washington, D.C. evaluation reported less time for mediated versus non-mediated cases with respect to time from the initial hearing to disposition and from the initial hearing to permanency.<sup>16</sup>

“Because continued funding is often in the balance, a number of studies have attempted to offer some conclusions about potential cost savings produced by mediation. The figures range from lows of \$637 saved per mediated case to over \$10,000 per case diverted to mediation at the shelter care hearing.<sup>17</sup> One research team noted: “[d]ue to the multiple factors to be considered, hidden costs, and county variability, the ability to calculate the precise financial savings for Michigan due to permanency planning mediation may remain elusive. However, concluding that there are financial savings to be gained from mediation, based on the above equations, seems to be quite reasonable.”<sup>18</sup>

### **Communications**

In a New York CPM evaluation, “73% of the professionals participating in the post-mediation surveys reported their relationship with their client improved as a result of mediation, and the majority (76%) also reported changes in their own perceptions of families, including a better understanding of the family’s problems following mediation.”<sup>19</sup>

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14 *Id.*, citing Thoennes, Child Advocacy Mediation Project: Jefferson Parish Juvenile Court and Orleans Parish Juvenile Court, Center for Policy Research (2005).

15 *Id.*

16 *Id.*, citing Gatowski.

17 Cohen, Thompson, & McClure, 2003; Nancy Thoennes, Dependency mediation in Colorado’s fourth judicial district, *Juvenile and Family Court Journal*, 51(2), 13-22 (1999).

18 Anderson, G.R., & Whalen, (2004). *Permanency Planning Mediation Project: Evaluation Final Report*, 42. Prepared for the Michigan State Court Administrative Office.

19 Coleman, R. & Ruppel, J. (2007). *Child Permanency Mediation Pilot Project*. Rensselaer, NY: New York State Office of Children and Family Services.

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### **Parental Compliance**

“File reviews have been conducted as part of the outcome research for a number of dependency mediation studies. In the review, trained and experienced data collectors, such as retired court or agency staff, categorize the case as “complete or nearly complete compliance,” “limited compliance or compliance off and on,” and “little or virtually no compliance.”

Using these definitions, a number of the evaluations, but not all, found greater compliance among cases with mediated agreements relative to non-mediated cases. For example, in an assessment of five programs in California, approximately 40 percent of the mediated and 25 percent of the non-mediated cases were classified as being in “complete” compliance six months after the plan was developed.”<sup>20</sup>

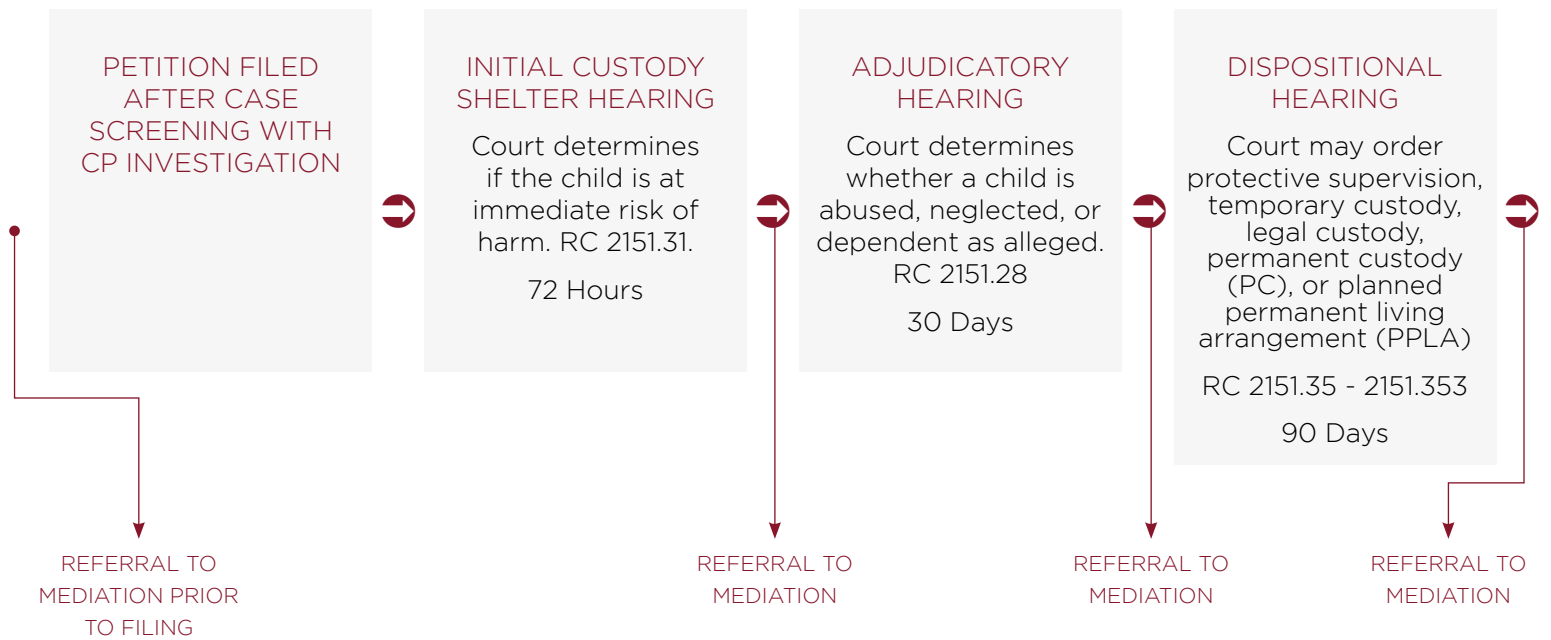
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20 Thoennes, N., Salem, P., & Pearson, J., Mediation and Domestic Violence, 33 Family Court Rev., 1 (1995), <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.174-1617.1995.tb00346.x>.

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## WHEN REFERRALS TO MEDIATION CAN BE MADE

Mediation can be appropriate at nearly any point in a child abuse, neglect, or dependency case. The court may choose to employ mediation only once in a case to assist with delays or issues that typically occur. Alternatively, the court may choose to have a referral program without qualifications. CPM provides flexibility in its implementation to best correspond with the needs of a particular court. If the court is seeking to expand an existing mediation program, consider contacting other juvenile courts or the Dispute Resolution Section of the Supreme Court of Ohio for information about how Ohio courts use CPM. The chart on the following pages provides opportunities for mediation at every stage of a case involving child abuse, neglect, or dependency.



**Benefits and opportunities of mediating before filing a petition:**

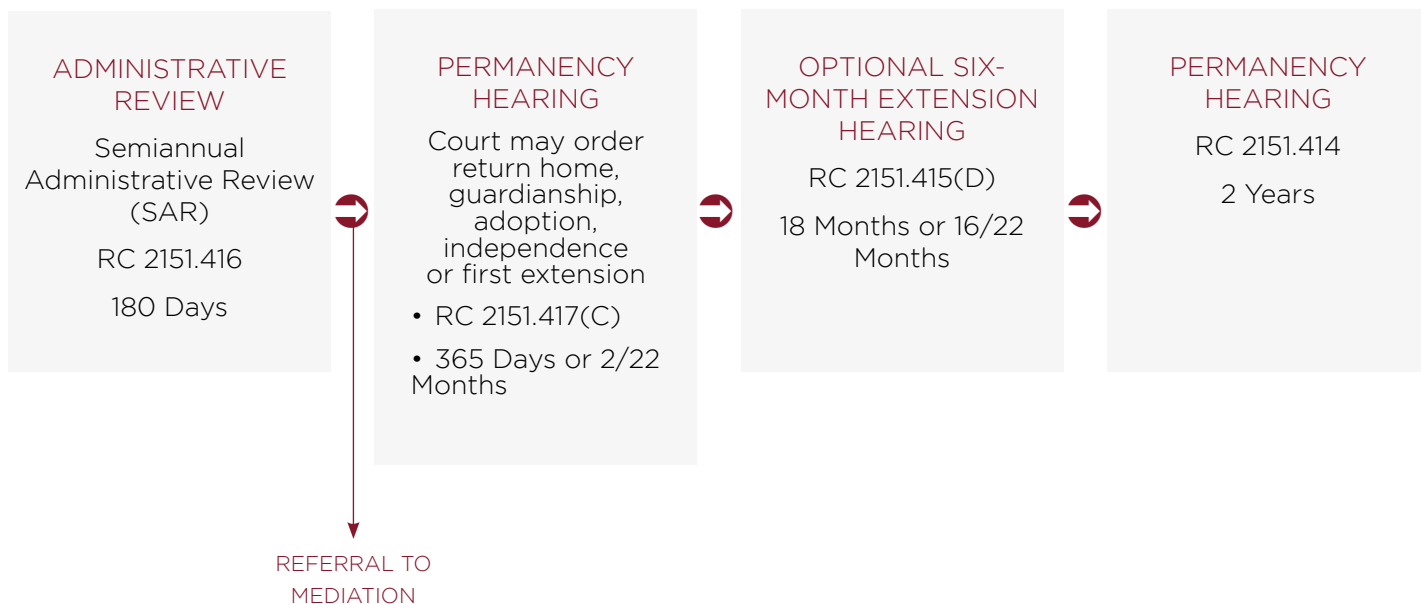
- Engage and empower parents
- Avoid adversarial court process
- Facilitation of communication and relationships among parties

**Benefits and opportunities of mediating at the adjudicatory hearing stage:**

- Focus on the best interests, safety, and permanency
- Early engagement and empowerment of parents
- Early discussion of court process and timelines
- Early discussion of concurrent planning
- Early delineation of roles and responsibilities
- Early engagement of other family members in process
- Early identification of potential placements/relatives
- Early discussion/refinement of visitation plans
- Facilitation of relationship building/mending between any combination of parties
- Discussion of services for child(ren) and parents
- Participation increases ownership of agreements
- For the court and attorneys, less discovery time and fewer contested court hearings.

Full discussion of issues may produce possible points of stipulation. Mediation at this stage can save court time for other contested legal issues not appropriate for mediation.





**Benefits and opportunities of mediating at the dispositional stage:**

- Discussion of possible terms for dispositional order
- Discussion of possible terms for orders of protection for reunification purposes
- Non-dispositional questions relating to the logistics of case plans can be answered (example: transportation, service provider(s) issues, or visitation issues).

**Benefits and opportunities of mediating at the Permanency hearing stage**

- Discussion of permanency options
- Exploration of caregiver understanding and commitment to permanency goal
- Discussion of placement in needs/services necessary for achievement of permanency goal
- Facilitation of relationship building/mending between any combination of parties
- Resolution of custody issues
- Discussion of “back-up plans” in cases moving towards adoption or guardianship

**Nearly all abuse, neglect, and dependency cases are appropriate for child protection mediation.** *Referrals anywhere along the case flow may help a case along, but early referrals are preferred, as long as mediation is not scheduled within two weeks of the initial shelter care hearing.*



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## CONDUCT A NEEDS ASSESSMENT

An important part of developing any new program is to evaluate the organization's fundamental mission and determine if the new program's goals further that mission. Gather information and review the trends within the court and across the state. Develop some long-range projections and identify how the addition or expansion of a CPM program may impact your current systems. Consider the following questions:

1. What is the court's mission/vision statement?
2. How many abuse, neglect, dependency cases were filed in the last year?
3. Of those cases filed, how many cases required trials for adjudication?
4. How many permanent custody cases were filed in the last year?
5. How many days of permanent custody trials were held last year?
6. How does this compare with the filings for the last five years?
7. Did the results occur due to some societal shift or policy change? In what way?
8. What are the projections for the next five years?
9. What mediation services are already in place at the court? What mediation resources exist?
10. What are the current strengths and weaknesses of the current child protection case process?
11. Who currently develops the reunification plan? How much defense attorney input is involved? How much Guardian ad Litem (GAL) input is involved? How much parent input is involved?
12. Is there a process to amend the case plan if there is a disagreement about services?
13. What is the average number of days a child will spend in foster care before permanency or reunification?
14. How many children are currently in foster care? How many in kinship care?
15. How are the relationships between the children services agency and GALs, court-appointed special advocates (CASAs), and attorneys in your community? Could those relationships be improved with mediation?

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16. What needs the most attention? Timeframes for adjudication/disposition? Timeliness of reunification? Format of case plans? Racial bias in removals? Formalizing or expanding an existing mediation program?

17. How might development of a CPM program fit the court's mission statement?

Having conducted a needs assessment, determine the priorities in your jurisdiction and assess whether the proposed program addresses them. A CPM program should be structured to meet and favorably influence identified needs and trends in your data.

- What is your current need for a structured CPM program?
- What benefits could it bring to the court and the public?
- How is it consistent with the court's mission?

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## CPM PROGRAM CHECKLIST

### DOES THE CPM PROGRAM:

- Encourage personal decision-making through the mediated agreements of the parties?
- Maintain due process and confidentiality protections?
- Ensure court staff and the presiding judge are trained on CPM's potential and limitations?
- Ensure that agency leadership, caseworkers, agency attorneys, prosecutors, Guardians ad Litem (GALs), attorneys, and court-appointed special advocates (CASAs) are trained?
- Improve child safety by encouraging people who know the child best to work together in his/her best interest?
- Increase efficient use of court resources, with reduced numbers of appearances and speedier dispositions through agreements crafted by the parties?
- Ensure linkage to social services and other resources to address the needs of family members?
- Improve collaboration among child-protection stakeholders, child welfare agencies, and community-based groups helping parents in crisis and their children?
- Increase confidence in the court system by reducing inefficiency for litigants?

### GUIDING PRINCIPLES

“CPM provides invaluable assistance to the collaborative process by providing a constructive forum for the timely resolution of issues in a manner that best protects children while also promoting increased cooperation among the stakeholders. CPM has the potential to assure that families participate in the decision-making process with child protection professionals in a manner that enables all voices including the child’s voice to be heard and promotes the safety and the well-being of the child.”<sup>21</sup>

According to guidelines developed by the Child Welfare Collaborative Decision-Making Network, CPM should adhere to the following seven principles:

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21 Association of Family and Conciliation Courts, Guidelines for Child Protection Mediation, <https://www.afccnet.org/Portals/0/Guidelines%20for%20Child%20Protection%20Mediation.pdf?ver=2013-08-21-071824-000> (accessed Dec. 12, 2019).

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### **1. An Inclusive Process:**

CPM should actively engage family members and child-protection professionals to meaningfully participate in collaborative problem-solving. Parents should safely participate in every aspect of CPM. When it is safe and appropriate, the child also should be given the opportunity to meaningfully participate in CPM, and in all cases, there should be others present who can discuss and present the child's interests, desires, and perspectives so that the child's "voice" will be heard in every mediation.

The participation of extended family, friends, and others also may play an important role in decision-making and their participation may be essential if they will be impacted by decisions being made in mediation or are needed to implement any agreements reached in mediation.

CPM should be conducted with appropriate and reasonable accommodations for individuals with disabilities. Mediators and other mediation participants should seek to enhance each individual's capacity to effectively participate in mediation.

Respect, appreciation, and understanding of cultural, racial, religious, socioeconomic and other issues of diversity should be promoted in all aspects of the CPM process.

### **2. A Collaborative Process:**

CPM should be conducted in a manner that promotes constructive and open communication among mediation participants and encourages participants to effectively address the needs of children and families in a collaborative manner. Through respectful dialogue and problem-solving, mediation participants can find mutually acceptable solutions while at the same time improving the capacity of the family and professionals to constructively work together.

### **3. A Timely Process:**

CPM needs to occur in a timely manner to encourage early engagement and collaborative problem-solving, promote timely problem resolution, and ensure that CPM does not delay the progression of a case through the child-protection legal system.

### **4. A Safe Process:**

CPM must not compromise the safety of participants or non-participants who may be affected by the mediation process or outcome before, during, or after the mediation session.

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### **5. A Confidential Process:**

Confidentiality is essential to the integrity and effectiveness of the CPM process so that parties feel free to speak openly with others. All party and non-party participants, as well as the court and court staff need to understand the limits of confidentiality and privilege that may exist so they can make informed decisions regarding the extent to which they will communicate openly in mediation.

### **6. An Ethical Process:**

CPM should be conducted in accordance with widely accepted standards of professional conduct for mediators that address all ethical issues including, but not limited to the following:

- Empowerment and self-determination of all mediation participants;
- Voluntary nature of mediation;
- Impartiality and neutrality of the mediator;
- Confidentiality of mediation communications;
- Mediator avoidance of conflicts of interests;
- Mediator competence.

### **7. A Supported Quality Process:**

Leaders at the highest levels of court systems and child-welfare stakeholder groups should be engaged in the development, implementation, evaluation, and promotion of CPM and actively support quality CPM practice. Programs should ensure that competent and adequately trained mediators conduct CPM sessions. CPM programs should work to enhance child-protection stakeholder understanding, capacity, and utilization of collaborative problem-solving methods and should maintain meaningful process and outcome evaluation procedures in order to improve program effectiveness and increase participant satisfaction.<sup>22</sup> Successful programs will take time to earn buy-in from the stakeholders and openly communicate about initial and on-going barriers to implementation.

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<sup>22</sup> *Id.*





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## IMPLEMENTING A SUCCESSFUL CPM PROGRAM IN THE COURT

This section discusses suggested steps for implementing a successful child-protection mediation program in the court. The process provides the tools for developing a program that will satisfy the needs and concerns of the community, as well as the court. Furthermore, these strategies will provide suggestions for monitoring and evaluating the CPM program, so that adjustments may be made, if necessary. The process described is a collaborative effort with the court, lawyers, caseworkers, and families to ensure cooperation.

For more information about planning mediation programs, refer to this publication: “Planning Mediation Programs: A Deskbook for Common Pleas Judges.” [sc.ohio.gov/Publications/pmd.pdf](http://sc.ohio.gov/Publications/pmd.pdf)

### **Step 1: Create a Planning Group**

Carefully select a planning group and give the group a name that is memorable to create ownership, recognition, and importance (one CPM planning group called themselves the Table of Eight). Make sure all major stakeholders have a seat at the table. Their buy-in is essential to developing a program. Be clear about who will administer the program and what will be the scope of your committee. The team can meet frequently as the program is being developed, and less frequently when the project is up and running. Continuing regular meetings even after the CPM program has started is important to address issues that come up, keep program momentum, and assist in maintaining buy-in and standards, even after the initial group members may turnover

Possible participants could include:

- Mediator;
- Court administrator;
- Judge;
- Magistrate;
- Caseworker;
- Children services agency director;
- Public defender;
- Family involved in the system;
- Foster parent;
- GAL;
- CASA;

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- Prosecutor/agency attorney; and
  - Mediator from a county who already has implemented a successful program or a staff member from the Dispute Resolution Section of the Supreme Court of Ohio, almost acting as a neutral party to help with difficult decisions

The Supreme Court can provide you with a video on child-protection mediation or possibly be able to arrange a demonstration. Team members should be able to articulate their roles and resources they offer to the program. Consider visiting a county with a strong CPM program, such as Lucas, Hamilton, or Henry County to evaluate how they use mediation and whether their methods could be adapted for your county.

### **Step 2: Develop the Program**

Work with the team on the following issues:

1. Where will the mediations be held?
2. Is a trained CPM mediator available? Will anyone else complete the training?
3. What is the funding source for the mediation program? Will grants be sought?
4. How widely will mediation be offered? What case types will be mediated? Will some case types be used as part of a pilot program? Will the program include cases headed to permanent custody, pre-adjudication/case plan development, visitation issues, or others?

Some practical considerations to start discussions include:

- The court will want to make mediation time-efficient and convenient for the parties to encourage participation. Is there any way mediations could be helpful the same day as a court hearing to minimize the number of trips to court/time off work/parking for a family? Will the check-in process be easy? Will mediations start promptly on time? Can the technology of video-conference platforms expand accessibility?
- Consider how best to finalize mediated agreements. Will there be a laptop and printer available so attorneys and the mediator can contribute to documents and revise quickly and easily? Will there be pre-made forms with checkboxes and lines? What types of forms will the court like to see? What information will the court like to have in the proposed entries generated by mediation?

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- Budget. Who pays?
    - Most programs (59 percent) report that at least some general court funds are used to provide CPM:
      - › Less than one-quarter of the programs (22 percent) report that some Court Improvement Program dollars are used for CPM, and the same percentage of programs (22 percent) report funds come from other federal and state grants;
      - › A few programs (18 percent) receive funds for CPM from the child protection agency, and a few (7 percent) have private foundation funding or are authorized to use Title IV-E foster-care dollars; and
      - › Smaller counties could join together to fund one traveling mediator.
  - Consider possible tension between the children services agency and the mediation department — every program will be different and unique to fit the community. There are many ways to implement a CPM program. Satisfy the stakeholders.
  - Does the county have trained CPM mediators? CPM is an advanced form of mediation and mediators need to have various prerequisites before beginning CPM training. Check the [Supreme Court Dispute Resolution training calendar](#) to plan ahead. Refresh mediator training if the mediator has not been trained recently.
  - Policy determination — who will manage the program? Is there an ongoing mediation program manager?
  - Where will mediations be conducted? Mediators will need a fairly large room with perhaps an additional smaller room for a caucus. In an online mediation setting, use a reliable online platform with the capability for breakout rooms.
  - Scheduling mediators - will it be mandatory for parties to attend?
  - Develop tasks and timelines for the steering committee. A steering committee should have each stakeholder represented.
  - Funding the defense bar — extraordinary fees may be needed.
  - Make sure the judge supports the development or expansion of the CPM program. This buy-in will increase the likelihood of success.
  - Find a couple of good cases to start the CPM program with successes.
  - Decide how stakeholder training will be rolled out.

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### **Step 3: Set Goals**

Discuss program goals with the planning group. Goals can help measure the effectiveness of the program and keep it on track. Some examples of goals for a CPM program are:

- Empower parties to make their own decisions;
- Decrease the amount of time children spend in out-of-home care;
- Facilitate communication between the parents and the caseworker, between the caseworker and custodian, and between the parent and custodian;
- Create a detailed case plan with clear expectations that focus on the best interest of the children;
- Remove barriers to permanency;
- Reduce litigation;
- Create a decision-making forum for all the parties; and
- Expand the network of resources for the family.

Start with the current data on the court's child-protection cases. The Supreme Court of Ohio has online [Data Dashboards](#) that can help with the compilation of dependency caseload statistics. Is there any other data to collect prior to getting started?

Next, decide how data will be collected about the CPM program, carefully considering confidentiality. Which person on the team will analyze the results data? Examples of data that could be collected include the number of CPMs held per year, the number of cases that result in full or partial resolution of issues, any exit surveys by parents or caseworkers about satisfaction with the mediation process, and time to permanency in mediated cases versus non-mediated cases.

### **Step 4: Tough Decisions**

In discussions with the team, determine how the court will handle certain issues:

- What is the mediation program's approach to confidentiality? Develop a written policy.
- How will written agreements between parties be drafted and signed during the mediation?
- Will participation will be voluntary? For example, some courts have ordered parents to attend mediation to learn about the process, but allow parties to decide whether they will participate. Most courts require or encourage the parents' attorneys to participate, while others exclude them.

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- Magistrates and judges should decide what kind of wording will be used in their referrals to mediation. Word choice helps set the tone for what the parties can expect from mediations and helps frame possible accomplishments that may be achieved through the mediation process (a sample order is included in this toolkit).
  - The team should decide if other entities, such as the caseworker or GAL, also could make a referral to mediation; this may be helpful if an issue arises after disposition and parties are not scheduled to return to court for a while.
  - The team might discuss situations when a child could participate in mediation.

The team also should address the accountability of the program. Who will keep the data? What will be the measures of success? Who handles the situation if a complaint arises? It will help to have administrative support for the program, and assigning a project manager or coordinator to lead the way can ensure the sustainability of the mediation program.

“Research indicates that most programs experience significant initial resistance to mediation, which may contribute to slow starts. However, for many programs, the volume of referrals remains problematic. An evaluation of the New York program noted that, despite repeated presentations to attorneys, caseworkers, and other professionals, most of the programs throughout the state received fewer referrals than originally projected (Coleman & Ruppel, 2007).

The survey of California programs found a lack of referrals cited by several programs as an ongoing problem (CFCC, 2003). Indeed, one article about dependency mediation was essentially a post-mortem of a program that, despite high rates of settlement and savings in time, consistently struggled with a lack of cases and a lack of professional support (Olson, 2003).<sup>23</sup>

### **Step 5: Judicial Review**

“Any hearing for judicial review of the agreement should be convened as soon after the mediation session is concluded as possible. This timeliness is in the interest of avoiding case delays, allowing the parties to convene with the judge when the terms of the agreement are fresh in their minds, and enabling the agreement to be effectuated as quickly as possible.”<sup>24</sup> Judicial support is essential to CPM success.<sup>25</sup>

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23 Mediation Research, *supra* note 6.

24 See Giovannucci and Largent, A Guide to Effective Child Protection Mediation: Lessons From 25 Years of Practice, 47 Fam. Ct. Rev. 38, 48-49 (2009).

25 Mediation Research, *supra* note 6



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## ADOPTING A LOCAL MEDIATION RULE

Effective Jan. 1, 2020, Sup.R. 16.21 requires all courts using mediation to adopt a local rule governing mediation. The following pages of this Toolkit include Sup.R. 16.21 and give examples of the wording a Juvenile Court with a CPM program might use to comply with Rule 16.21.

### RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO

#### RULE 16.21. Local Mediation Rule.

**(A) General**

A court that elects to use mediation shall adopt a local rule governing mediation. The local rule shall do all of the following:

- (1) Incorporate by reference the provisions of the “Ohio Uniform Mediation Act” under R.C. Chapter 2710;
- (2) Identify the case types eligible for mediation and those that are precluded from mediation, if any;
- (3) Address confidentiality;
- (4) Prohibit the use of mediation as an alternative to the prosecution or adjudication of in 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. Nothing in this division shall prohibit the use of mediation in a subsequent divorce or custody case, even though the case may result in the termination of the provisions of a protection order pursuant to R.C. 3113.31.
- (5) Establish procedures for encouraging appropriate referrals to legal counsel and other support services for all parties, including victims and suspected victims of domestic violence;
- (6) Address other provisions as the court considers necessary and appropriate.

**(B) Juvenile courts**

A juvenile court that elects to use mediation in abuse, neglect, dependency, unruly, and delinquency cases; or juvenile civil protection order cases pursuant to R.C. 2151.34 or 3113.31 shall adopt a local rule that does all of the following:

- (1) Complies with division (A) of this rule;

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- (2) Includes procedures in abuse, neglect, and dependency cases to ensure parties who are not represented by counsel attend mediation only if they have waived the right to counsel in open court and that parties represented by counsel attend mediation without counsel only where the right to have counsel present at the mediation has been specifically waived. Waivers may be rescinded at any time.
  - (3) Includes procedures for the selection and referral of a case to mediation at any point after the case is filed;
  - (4) Includes procedures for notifying the parties and nonparty participants of the mediation.



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## COURTS OF COMMON PLEAS JUVENILE DIVISION

### Local Rule Guide

The following examples apply to juvenile courts that elect to use mediation in abuse, neglect, dependency, unruly, and delinquency cases; or juvenile civil protection order cases pursuant to R.C. 2151.34 or 3113.31.

### Mandatory Provisions (Sup.R. 16.21(A)(1)-(6))

#### Example — Title

Rule [Insert the applicable rule number]: Mediation (effective date Jan. 1, 2020)

- (1) Ohio Uniform Mediation Act
- (2) Example: [Insert Court Name] incorporates by reference the R.C. 2710 “Uniform Mediation Act” (UMA).
- (3) Cases Eligible for Mediation

#### Example:

- (a) General. The [insert court name] has the discretion to encourage parties to use mediation in any civil action filed in this court. A case may be submitted to mediation as provided in this rule. The [insert court name] may issue an order on its own motion, upon the motion of counsel, upon the request of a party, or upon referral by the mediator.
- (b) Exceptions. Mediation is prohibited in the following:
  - (i) As an alternative to the prosecution or adjudication of domestic violence;
  - (ii) In determining whether to grant, modify, or terminate a protection order;
  - (iii) In determining the terms and conditions of a protection order; and
  - (iv) In determining the penalty for violation of a protection order.
- (c) Nothing in this division shall prohibit the use of mediation in a subsequent divorce or custody case, even though that case may result in the termination of the provisions of a protection order; or in a juvenile court delinquency case, even though the case involves juvenile-perpetrated domestic violence.

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### **(3) Confidentiality**

#### **Example 1: Default of Confidentiality**

- (a) General. All mediation communications related to or made during the mediation process are subject to and governed by the Uniform Mediation Act. Mediation communications are confidential, and no one shall disclose any of these communications unless all parties and the mediator consent to the 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 or mediation department where possible.

By participating in mediation, a nonparty participant, as defined by R.C. 2710.01(D), submits to the Court's jurisdiction to the extent necessary for the 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.

- (b) Exceptions. All mediation communications are confidential with the following exceptions:
- (i) Parties may share all mediation communications with their attorneys;
  - (ii) Certain threats of abuse or neglect of a child or an adult;
  - (iii) Statements made during the mediation process to plan or hide an ongoing crime; or
  - (iv) Statements made during the mediation process that reveals a felony.

#### **Example 2: Default is not Confidentiality**

Except as provided in Sup.R. 44-47, mediation communications are confidential to the extent agreed by the parties or provided by other sections of the Revised Code or rules adopted under any section of the Revised Code. Parties desiring confidentiality of mediation communications shall advise the mediator as soon as practical and all mediation participants shall execute any confidentiality agreement prior to the start of the mediation.

By participating in mediation, a nonparty participant, as defined by R.C. 2710.01(D), submits to the Court's jurisdiction to the extent necessary for the 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.

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#### **(4) Referral to Resources**

##### **Example 1:**

The court administrator shall maintain resources for mediation parties, including victims and suspected victims of domestic violence, encouraging appropriate referrals to legal counsel and other support services such as children services, domestic violence prevention, counseling, substance abuse, and mental health services.

##### **Example 2:**

The [Insert the name of the court mediation program, such as “Court Mediation Services”] will create a brochure to be displayed in public areas and have available by mediators and other staff to distribute to clients as appropriate. The brochure will include: 1) local attorney referral contact information, 2) information regarding children services and 3) resource information for local domestic violence prevention, counseling, substance abuse, and mental health services.

#### **(5) Counsel shall be present at mediation unless waived by the party**

##### **Example:**

Parties who are not represented by counsel shall attend mediation only if they have waived the right to counsel in open court. Parties represented by counsel may attend mediation without counsel only where the right to have counsel present at the mediation has been specifically waived. Parties waiving counsel at mediation must fill out and sign a “Waiver of Counsel at Mediation” form prior to participation in mediation. Waivers may be rescinded at any time.

#### **(6) Referrals to Mediation**

##### **Example 1:**

The Judge or Magistrate may refer or order a case to mediation at any point in a case. Any party may request to participate in mediation by filing a motion or joint motion with the court, or by making an oral request for a referral to mediation on the record.

##### **Example 2:**

Parties who wish to participate in mediation in an abuse, neglect, dependency case prior to adjudication shall apprise the court of this at shelter care hearing or pretrial. The judge or magistrate may refer the court to pre-adjudication mediation. The disposition hearing shall not be delayed past 90 days for participation in mediation. Parties who wish to participate in mediation to resolve visitation, case plan, or custody issues at later points in the case may request an appointment at the mediator’s office without prior court approval. The judge or magistrate may refer or order a case to mediation at any point in a case.

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### **(7) Notification of Mediation**

#### **Example 1:**

The mediator shall file a notice to the court that mediation is occurring in the case, including the time and place for mediation, and this notice shall be distributed to all parties and custodians.

#### **Example 2:**

The judge or magistrate shall include any referral to mediation in the entry from the hearing, and the mediation office, as well as all parties and custodians, shall be copied on the distribution list.

## **OPTIONAL PROVISIONS**

### **(8) Mediator Training and Education**

#### **Example:**

A mediator shall meet the qualifications of and comply with all training requirements of Sup.R. 16.23 and adopt rules pursuant to Sup.R. 16.22 governing mediators and mediation.

### **(9) Mediator Selection and Assignment**

#### **Example:**

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

- (i) The court may assign a court mediator to mediate;
- (ii) The court may randomly assign a mediator to the case from the court's roster of approved mediators;
- (iii) Specific appointments may be made by the court taking into consideration the qualifications, skills, expertise, and caseload of the mediator in addition to the type, complexity, and requirements of the case;
- (iv) Parties may select a mediator from the court roster;
- (v) Parties may request leave to select a mediator without guidance from the court. The court shall not be responsible for the quality of a mediator selected by the parties without guidance from the court and who does not meet the qualifications, education and training requirements set forth in section (5) above; or
- (vi) [Include any other applicable methods].

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## **(10) Procedures**

### **Example:**

In accordance with all applicable provisions of this rule, if a case is deemed appropriate by [the court/the mediator/the mediation program] for mediation, mediation may be scheduled.

A mediator may meet with the parties individually prior to bringing the parties together for any reason including, but not limited to, further screening. A mediator [may/may not] schedule multiple mediation sessions, if necessary and mutually acceptable for the resolution of the issues in part or in their entirety.

A party opposed to either the referral or the appointed mediator must file a written objection with the court within seven days of receiving notice of the referral or provider and explain the reasons for any opposition.

## **(11) Party/Nonparty Participation**

### **Examples:**

Parties to informal cases such as pre-filing or diversion may voluntarily attend mediation sessions.

Parties who are ordered into mediation in formal cases shall attend scheduled mediation sessions. The court may order parties to return to mediation at any time in formal cases.

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 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 the 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).

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## **(12) Termination**

### **Example:**

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 this court.

## **(13) Stay of Proceedings**

### **Example 1:**

All remaining court orders shall continue in effect. 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.

### **Example 2:**

Upon referral of a case to mediation, the court may elect to stay all filing deadlines for up to 60 days. The clerk of courts shall not accept for filing any documents while a case is in mediation unless expressly permitted by these rules or by court order.

Only the following documents may be filed while a mediation stay is in effect:

- (1) Motion to lift the mediation stay;
- (2) Response to a motion to lift mediation stay;
- (3) Motion or stipulation to dismiss the case; or
- (4) Notice related to counsel.

## **(14) Continuances**

### **Example 1:**

It is the policy of this court to determine 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 case may be continued by the [insert applicable title such as “mediation coordinator”] or the judge or magistrate who referred 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. If a continuance of a scheduled mediation is requested and the proposed new date is within 60 days of the initial referral to mediation, then the request shall be made to the [insert applicable title such as “mediation coordinator”]. If the requested date is more than 60 days after the referral to mediation, then the request must be made to the judge or magistrate assigned to the case.

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**Example 2:**

It is the policy of this court to determine matters in a timely way. Continuances of a scheduled mediation will be granted only by the judge, magistrate, or staff mediator, where applicable, for good cause. Extension of time for compliance with deadlines not involving a court hearing will be permitted only on a showing to the court that the extension will not interrupt the scheduled movement of the case. Requests for continuances and extensions, and their disposition, will be recorded in the file of the case. Where continuances and extensions are requested with excessive frequency or insubstantial grounds, the court may adopt one or all of the following procedures:

- (a) Cross-referencing all requests for continuances and extensions by the name of the lawyer requesting them;
- (b) Requiring that requests for continuances and stipulations for extensions be in writing and the parties notified; or
- (c) Summoning lawyers who persistently request continuances and extensions to warn them of the possibility of sanctions and to encourage them to make necessary adjustments in management of their practice. Where such measures fail, restrictions may properly be imposed on the number of cases in which the lawyer may participate at one time.

**(15) Attendance and Sanctions****Example:**

If any individual ordered by the court to attend mediation fails to attend mediation without good cause, 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.

**(16) Evaluation, Comments, and Complaints****Example:**

It is the policy of the court to use mediation to benefit the parties, to assist in reaching a resolution, and to provide a process that is timely and flexible that maintains the trust and confidence of the people. Any mediation participant may submit written comments, complaints, or feedback regarding the performance of mediators receiving referrals from the court.

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**SAMPLE MEDIATION LOCAL RULE:  
SHORT VERSION (MANDATORY PROVISIONS ONLY)**

**In the Buckeye County Court of Common Pleas, Juvenile Division  
Buckeye County, Ohio**

**Rule 16 Mediation** (*effective Jan. 1, 2020*)

**(1) Uniform Mediation Act and Definitions**

The R.C. 2710 “Uniform Mediation Act” (UMA), including all definitions found in R.C. 2710.01, are incorporated by reference and adopted by this court through this local rule.

**(2) Cases Eligible for Mediation**

- (a) General. The court has discretion to encourage parties to use mediation in any civil action filed in this court. A case may be submitted to mediation as provided in this rule. The court may issue an order on its own motion, upon the motion of counsel, upon the request of a party, or upon referral by the mediator.
- (b) Exceptions. Mediation is prohibited in the following:
  - (i) As an alternative to the prosecution or adjudication of domestic violence;
  - (ii) In determining whether to grant, modify, or terminate a protection order;
  - (iii) In determining the terms and conditions of a protection order;
  - (iv) In determining the penalty for violation of a protection order.
- (c) Nothing in this division shall prohibit the use of mediation in a subsequent divorce or custody case, even though that case may result in the termination of the provisions of a protection order; or in a juvenile court delinquency case, even though the case involves juvenile-perpetrated domestic violence.

**(3) Confidentiality**

*This template is an example of a mediation rule where mediation is not automatically confidential. Courts may elect to address confidentiality differently by defaulting to confidentiality absent an exception, for example:*

Except as provided in Sup.R. 44-47, mediation communications are confidential to the extent agreed by the parties or provided by other sections of the Revised Code or rules adopted under any section of the Revised Code. Parties desiring confidentiality of mediation communications shall advise the mediator as soon as practical and all mediation participants



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shall execute any confidentiality agreement prior to the start of mediation.

By participating in mediation, a nonparty participant, as defined by R.C. 2710.01 (D), 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.

**(4) Referral to Resources**

The court administrator shall maintain resources for mediation parties, including victims and suspected victims of domestic violence, encouraging appropriate referrals to legal counsel and other support services such as children services, domestic violence prevention, counseling, substance abuse, and mental health services.

**(5) Counsel shall be present at mediation unless waived by the party**

Parties who are not represented by counsel shall attend mediation only if they have waived the right to counsel in open court. Parties represented by counsel may attend mediation without counsel only where the right to have counsel present at the mediation has been specifically waived. Parties waiving counsel at mediation must fill out and sign a "Waiver of Counsel at Mediation" form prior to participation in mediation. Waivers may be rescinded at any time.

**(6) Referrals to Mediation**

The judge or magistrate may refer or order a case to mediation at any point in a case. Any party may request to participate in mediation by filing a motion or joint motion with the court, or by making an oral request for a referral to mediation on the record.

**(7) Notification of Mediation**

The mediator shall file a notice to the court that mediation is occurring in the case, including the time and place for mediation, and this notice shall be distributed to all parties and custodians.

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**SAMPLE MEDIATION RULE:  
LONG VERSION (MANDATORY & OPTIONAL PROVISIONS)**

**In the Buckeye County Court of Common Pleas, Juvenile Division  
Buckeye County, Ohio**

**Rule 16 Mediation** (*Jan. 1, 2020*)

**(1) Uniform Mediation Act and Definitions**

The R.C. 2710 “Uniform Mediation Act” (UMA), including all definitions found in R.C. 2710.01, are incorporated by reference and adopted by this court through this local rule. Frequently-used definitions include:

- (a) “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.
- (b) “Mediator” means an individual who conducts a mediation.
- (c) “Mediation Communication” means a statement, whether oral, in a record, verbal or non-verbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.
- (d) “Nonparty participant” means a person other than a party or mediator that participates in mediation.

**(2) Cases Eligible for Mediation**

- (a) General. The court has discretion to encourage parties to use mediation in any civil action filed in this court. A case may be submitted to mediation as provided in this rule. The court may issue an order on its own motion, upon the motion of counsel, upon the request of a party, or upon referral by the mediator.
- (b) Exceptions. Mediation is prohibited in the following:
  - (i) As an alternative to the prosecution or adjudication of domestic violence;
  - (ii) In determining whether to grant, modify, or terminate a protection order;
  - (iii) In determining the terms and conditions of a protection order;
  - (iv) In determining the penalty for violation of a protection order.

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- (c) Nothing in this division shall prohibit the use of mediation in a subsequent divorce or custody case, even though that case may result in the termination of the provisions of a protection order; or in a juvenile court delinquency case, even though the case involves juvenile-perpetrated domestic violence.

**(3) Confidentiality**

*This template is an example of a mediation rule where mediation is not automatically confidential. Courts may elect to address confidentiality differently by defaulting to confidentiality absent an exception, for example:*

Except as provided in Sup.R. 44-47, mediation communications are confidential to the extent agreed by the parties or provided by other sections of the Revised Code or rules adopted under any section of the Revised Code. Parties desiring confidentiality of mediation communications shall advise the mediator as soon as practical and all mediation participants shall execute any confidentiality agreement prior to the start of mediation.

By participating in mediation, a nonparty participant, as defined by R.C. 2710.01 (D), 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.

**(4) Referral to Resources**

The court administrator shall maintain resources for mediation parties, including victims and suspected victims of domestic violence, encouraging appropriate referrals to legal counsel and other support services such as children services, domestic violence prevention, counseling, substance abuse, and mental health services.

**(5) Counsel shall be present at mediation unless waived by the party**

Parties who are not represented by counsel shall attend mediation only if they have waived the right to counsel in open court. Parties represented by counsel may attend mediation without counsel only where the right to have counsel present at the mediation has been specifically waived. Parties waiving counsel at mediation must fill out and sign a "Waiver of Counsel at Mediation" form prior to participation in mediation. Waivers may be rescinded at any time.

**(6) Referrals to Mediation**

The judge or magistrate may refer or order a case to mediation at any point in a case. Any party may request to participate in mediation by filing a motion or joint motion with the court, or by making an oral request for a referral to mediation on the record.

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**(7) Notification of Mediation**

The mediator shall file a notice to the court that mediation is occurring in the case, including the time and place for mediation, and this notice shall be distributed to all parties and custodians.

**(8) Mediator Training and Education**

A mediator shall meet the qualifications of and comply with all training requirements of Sup.R. 16.23 and adopted pursuant to Sup.R. 16.22 governing mediators and mediation.

**(9) Mediator Selection and Assignment**

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

- (a) The court may assign a court mediator to mediate;
- (b) The court may randomly assign a mediator to the case from the court's roster of approved mediators;
- (c) Specific appointments may be made by the court taking into consideration the qualifications, skills, expertise, and caseload of the mediator in addition to the type, complexity, and requirements of the case;
- (d) Parties may select a mediator from the court roster; or
- (e) Parties may request leave to select a mediator without guidance from the court. The court shall not be responsible for the quality of a mediator selected by the parties without guidance from the court and who does not meet the qualifications, education and training requirements set forth in section (5) above.

**(10) Procedures**

In accordance with all applicable provisions of this rule, if a case is deemed appropriate by the court for mediation, mediation may be scheduled.

A mediator may meet with the parties 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 acceptable for the resolution of the issues in part or in their entirety.

A party opposed to either the referral or the appointed mediator must file a written objection with the court within seven days of receiving notice of the referral or provider and explain the reasons for any opposition.

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**(11) Party/Nonparty Participation**

Parties to informal cases such as pre-filing or diversion may voluntarily attend mediation sessions.

Parties who are ordered into mediation in formal cases shall attend scheduled mediation sessions. The court may order parties to return to mediation at any time in formal cases.

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 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).

**(12) Termination**

If the mediator determines that further mediation efforts would be of no benefit to the parties, the mediator shall inform all interested parties and the court that the mediation is terminated using the procedure required by this court.

**(13) Stay of Proceedings**

Upon referral of a case to mediation, the court may elect to stay all filing deadlines for up to 60 days. The clerk of courts shall not accept for filing any documents while a case is in mediation unless expressly permitted by these rules or by court order.

Only the following documents may be filed while a mediation stay is in effect:

- (1) Motion to lift the mediation stay;
- (2) Response to a motion to lift mediation stay;
- (3) Motion or Stipulation to Dismiss the case; and
- (4) Notice related to counsel.

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#### **(14) Continuances**

It is the policy of this court to determine matters in a timely way. Continuances of scheduled mediations shall be granted only for good cause shown after a mutually acceptable future date is determined. The mediation may be continued by the mediator or the judge or magistrate who referred 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. If a continuance of a scheduled mediation is requested and the proposed new date is within 60 days of the initial referral to mediation, then the request shall be made to the mediator. If the requested date is more than 60 days after the referral to mediation, then the request must be made to the judge or magistrate assigned to the case.

#### **(15) Attendance and Sanctions**

If any individual ordered by the court to attend mediation fails to attend mediation without good cause, 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.

#### **(16) Evaluation, Comments, and Complaints**

It is the policy of the court to use mediation to benefit the parties, to assist in reaching a resolution, and to provide a process that is timely and flexible that maintains the trust and confidence of the people. Any mediation participant may submit written comments, complaints or feedback regarding the performance of mediators receiving referrals from the court.

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## TRAINING INFORMATION FOR STAKEHOLDERS

“Courts and court mediation programs should promote mediation and negotiation training for stakeholder groups such as child protection caseworkers, prosecutors, GALs, etc. Such training could include the effective use of collaborative and interest-based negotiation skills to further the mediation process as well as an introduction to the laws and rules that govern mediation in a given jurisdiction. Anecdotal evidence suggests that such stakeholder training can result in dramatic improvements in quality of stakeholder participation in mediation.”<sup>26</sup>

Mediation is most effective with all parties at the table. In CPM, there are many people involved. If CPM is new to the court, offering training to the stakeholders likely will be a valuable use of time; an explanation and possible simulation of CPM will take away the “unknowns” and give attorneys, caseworkers, and other stakeholders a chance to experience how mediation might help their clients. Without the “buy-in” of the potential stakeholders, the program will have a difficult start.

It has been suggested that “prosecutors will listen to prosecutors,” “judges will listen to judges,” and “caseworkers will listen to caseworkers.” For the people working in these demanding roles, they will be most trustful when the information about mediation comes from a peer. People who experienced mediation from the same side as the stakeholder will be in the best position to train that stakeholder because they will fully understand the issues facing that stakeholder — both in and out of court.

However, mediators themselves can be excellent trainers for stakeholders. Mediators can orient attorneys and caseworkers to the process in general. Mediators can discuss stakeholder roles and outline the expectations for the approach the mediator plans to employ. Armed with this knowledge, stakeholders can more effectively help their clients and be more open to negotiation and active listening in mediation. Attorneys and caseworkers, if open and understanding of the mediation process, can be invaluable resources for problem solving and creativity. They can bring a sense of reality and perspective to a client, and to the group at large. Guardians ad litem and attorneys for children can focus the attention on the protection and best interests of the child. During mediation, attorneys for the parents and the agency, as well as GALs, may be invited to explain legal processes and give definitions of common legal words that often are used in these cases. Training can help the stakeholders appreciate their value in mediation and prepare them for what is to come.

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<sup>26</sup> Firestone and Gregory, *supra* note 3, at 98.

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The judge also should be present for at least a portion of the stakeholder training so the participants know that the court supports the mediation program and is invested in its success.

Typical training for stakeholders could include:

- Introduction to the child-protection mediation process;
  - Completion of the Fundamentals of Mediations online course offered by the Supreme Court, so participants have insight into the basics before the stakeholder training.
- A mediation demonstration or video;
- Discussion of the demonstration;
- Break out groups by profession (ex. GALs, caseworkers, attorneys, magistrates);
- Discussion of hot topics like confidentiality, neutrality, and how agreements will be drafted.<sup>27</sup>

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<sup>27</sup> See Schuler and Kosier, Mediation Program Development Guide, Hamilton Cty. Juvenile Court, 27 (Sept. 2002)



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## BENCH NOTES

### Procedural Issues

- An abuse, neglect, dependency case may be referred to mediation at any time. Pre-adjudication mediation can help parties work out the terms of the case plan, stipulate to facts in the complaint, and make agreements as to admissions. Post-disposition mediation allows parties to address ongoing parenting time or grandparent visitation issues. Parties also may come to an agreement on legal custody to a relative, child support, safety planning to reunify the child without danger, or revision of case plan terms. In a permanent custody (PC) case, parties may agree on terms for an uncontested PC hearing or may agree on a plan for parents to have more time to reach certain case plan goals before a permanency trial.
- Ensure all parties to the action understand who needs to be present at the mediation. Most child-protection mediators require that the parents' attorneys, the agency attorney, the caseworker, the parents, and the guardian ad litem be present. Natural family supports for the parents, such as grandparents, usually are welcome. Sometimes foster parents and the child at issue are included as well.

### Child's Participation

- The American Bar Association recommends that the child attend hearings in order to facilitate the child's meaningful participation in the hearings, which was shown to improve case outcomes.<sup>28</sup> Similarly, the child's participation in mediation may be appropriate and desirable. The child's likely intimate knowledge of the family situation and opinions about placement and case planning may enlighten parents as to the impact their behavior has had on the child. The child, depending on maturity, may welcome a chance to contribute to plans and issues that will affect them enormously.

### Appointments

- Ensure that a guardian ad litem was appointed for the child and that parents have counsel or make a waiver of counsel for mediation proceedings.

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28 See National Association of Counsel for Children, Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases, <https://isc.idaho.gov/cp/docs/ABA%20Standards%20of%20Practice%20for%20Lawyers%20who%20represent%20Children%20in%20Abuse%20and%20Neglect%20Cases.pdf> (accessed Jan. 15, 2020), page 16 standard D-5 and accompanying commentary.

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### **Adoption of Mediated Agreements**

- The court should be clear how mediated agreements should be presented to the court. (Typed? Signed by all parties? Confidential?)
- The court should communicate its expectations regarding voluntariness and binding agreements. Make sure parties understand that the adopted mediation agreement could become an enforceable order of the court, if the judge decides to adopt it.

### **Caseflow Timeframes**

- Disposition **MUST** occur within 90 days of the filing of the complaint. Permanent custody hearings **MUST** be held within 120 days of the filing of the permanent custody complaint. Mediation does not change those time frames.

### **Reasonable Efforts Finding**

- The court may consider whether the children services agency's participation in mediation constitutes a reasonable effort to eliminate the continued removal of the child from the home or make it possible for the child to return home safely.

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## **RULES OF SUPERINTENDENCE FOR COURTS RELATING TO MEDIATION**

### **RULE 16.14.**

#### **Definitions.**

As used in Sup.R. 16.14 through 16.43:

#### **(A) Facilitation**

“Facilitation” means a process in which a neutral party moderates discussion by ensuring the fluid and orderly exchange of information and ideas from all participants and that is primarily concerned with assisting individuals in refining their communication and organizational skills so that they may learn to work more efficiently with one another in a group setting.

#### **(B) Mediation**

“Mediation” means any process in which a neutral third party helps the parties communicate and negotiate with each other to help them reach a voluntary agreement regarding their dispute.

#### **(C) Mediator**

“Mediator” means an individual who conducts a mediation.

#### **(D) Neutral evaluation**

“Neutral evaluation” means a process in which the parties to a dispute present their claims or defenses and describe the principal evidence on which their claims or defenses are based to a neutral third party who then shares impressions about the strengths and weaknesses of each matter.

**RULES 16.15 through 16.19 are reserved for future use**

#### **RULE 16.20. Application.**

Sup.R.16.20 through 16.26 shall apply when a court elects to use mediation.

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**RULE 16.21. Local Mediation Rule.**

**(A) General**

A court that elects to use mediation shall adopt a local rule governing mediation. The local rule shall do all of the following:

- (1) Incorporate by reference the provisions of the “Ohio Uniform Mediation Act” under R.C. Chapter 2710;
- (2) Identify the case types eligible for mediation and those that are precluded from mediation, if any;
- (3) Address confidentiality;
- (4) Prohibit the use of mediation 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. Nothing in this division shall prohibit the use of mediation in a subsequent divorce or custody case, even though the case may result in the termination of the provisions of a protection order pursuant to R.C. 3113.31;
- (5) Establish procedures for encouraging appropriate referrals to legal counsel and other support services for all parties, including victims and suspected victims of domestic violence;
- (6) Address other provisions as the court considers necessary and appropriate.

**(B) Juvenile courts**

A juvenile court that elects to use mediation in abuse, neglect, dependency, unruly, and delinquency cases; or juvenile civil protection order cases pursuant to R.C. 2151.34 or 3113.31 shall adopt a local rule that does all of the following:

- (1) Complies with division (A) of this rule;
- (2) Includes procedures in abuse, neglect, and dependency cases to ensure parties who are not represented by counsel attend mediation only if they have waived the right to counsel in open court and that parties represented by counsel attend mediation without counsel only where the right to have counsel present at the mediation has been specifically waived. Waivers may be rescinded at any time;
- (3) Includes procedures for the selection and referral of a case to mediation at any point after the case is filed;

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- (4) Includes procedures for notifying the parties and nonparty participants of the mediation.

**RULE 16.22. Responsibilities of Mediator.**

**(A) General responsibilities**

In order to provide a fair mediation process for parties, a mediator who mediates for a court shall remain impartial and neutral and shall comply with all of the following:

- (1) The “Core Values of Mediation,” as approved by the Supreme Court Dispute Resolution Section in accordance with recommendations established by the Commission on Dispute Resolution;
- (2) The “Model Standards of Conduct for Mediators” adopted by the American Bar Association, American Arbitration Association, and the Association for Conflict Resolution;
- (3) For mediation in domestic relations or juvenile courts, the “Model Standards of Practice for Family and Divorce Mediation” adopted by the Association of Family and Conciliation Courts;
- (4) For mediation in juvenile courts of abuse, neglect, and dependency cases, the “Guidelines for Child Protection Mediation” adopted by the Association of Family and Conciliation Courts.

**(B) Conflicts of interest**

- (1) A mediator shall avoid any actual or apparent conflicts of interest arising from any relationship or activity, including but not limited to those of employment or business or from professional or personal contacts with parties or others involved in the dispute. A mediator shall avoid self-dealing or association from which the mediator might directly or indirectly benefit, except from compensation for services as a mediator.
- (2) Upon becoming aware of any actual or apparent conflict of interest, a mediator shall notify the parties as soon as practicable.
- (3) The requirements of this rule are in addition to and do not supersede the requirements of R.C. 2710.08. Wherever a conflict exists between this rule and R.C. 2710.08, the statute shall control.

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**(C) Legal Advice**

A mediator shall not offer legal advice.

**(D) Satisfaction of training requirements**

- (1) A mediator shall meet the qualifications of and comply with all training requirements of Sup.R. 16.23 and local court rules governing mediators and mediation adopted pursuant to Sup.R. 16.21.
- (2) A mediator shall meet the qualifications for mediators for each court in which the mediator serves and promptly advise the court of any grounds for disqualification or any issues affecting the ability to serve.
- (3) Upon request, a mediator shall provide a court from which the mediator receives referrals documentation indicating compliance with all training and education requirements so that the court may meet the requirements of Sup.R. 16.24(A)(1)(d). The documentation shall include information detailing the date, location, contents, credit hours, and sponsor of any relevant training.

**RULE 16.23. Mediator Education and Training.**

**(A) General**

- (1) Except as provided in division (A)(2) of this rule, a mediator shall complete “Fundamentals of Mediation Training” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.
- (2) A mediator shall not be required to complete training pursuant to division (A)(1) of this rule if any of the following apply:
  - (a) Prior to January 1, 2020, the mediator has completed at least twelve hours of basic mediation training;
  - (b) Prior to January 1, 2020, the mediator has served as a full-time mediator for a minimum of three years or mediated at least forty-five cases, in which case the mediator shall complete the “Advanced Mediation Workshop” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution;
  - (c) The mediator is a law student enrolled in a clinical mediation or dispute resolution program at an American Bar Association

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accredited law school, has completed mandatory coursework in fundamental mediation topics, and mediates under the supervision of faculty at the law school.

**(B) Domestic relations and juvenile courts**

- (1) Prior to accepting a referral from a court for disputes involving the termination of marriage, the allocation of parental rights and responsibilities, the care of or visitation with minor children, unruly, and delinquency cases, or juvenile civil protection order cases pursuant to R.C. 2151.34 or R.C. 3113.31, a mediator shall meet all of the following qualifications:
  - (a) Possess a bachelor's degree, or equivalent educational experience as is satisfactory to the court, and at least two years of professional experience with families, including counseling, casework, legal representation in family law matters, or such other equivalent experience satisfactory to the court;
  - (b) Comply with the requirements of division (A) of this rule;
  - (c) Complete "Specialized Family or Divorce Mediation Training" approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution, provided that a mediator who is mediating a delinquency or unruly case may do so even if the mediator has not taken this training;
  - (d) Complete "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 unless either of the following apply:
    - (i) The mediator is co-mediating with another mediator who has completed the training;
    - (ii) The mediator is a law student enrolled in a clinical mediation or dispute resolution program at an American Bar Association accredited law school, has completed mandatory coursework in fundamental and domestic abuse mediation topics, and mediates under the supervision of faculty at the law school who has completed the training.
- (2) Prior to accepting a referral from a court for disputes involving abuse, neglect and dependency, a mediator shall meet all of the following qualifications:
  - (a) Possess significant experience mediating family disputes;

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- (b) Complete the requirements of division (B)(1) of this rule;
  - (c) Complete “Specialized Child Protection Mediation Training” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.
- (3) Prior to accepting a referral from a court for disputes involving school attendance mediation, a mediator shall meet either of the following qualifications:
- (a) Complete the requirements of division (A) of this rule;
  - (b) Complete “School Attendance Mediation Training” approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.

**RULE 16.24. Responsibilities of Court.**

**(A) General**

- (1) In order to ensure only qualified individuals, perform the duties of a mediator and the requirements of Sup.R. 16.20 through 16.25 are met, a court that elects to use mediation shall do all of the following:
- (a) Establish screening procedures for the capacity of parties to mediate;
  - (b) Establish procedures for monitoring and evaluating mediation to ensure the quality of the mediators and programs to which cases are referred;
  - (c) Develop a process and appoint a person for accepting and considering written comments and complaints regarding the performance of mediators receiving referrals from the court. A copy of comments and complaints submitted to the court shall be provided to the mediator who is the subject of the complaint or comment. The person appointed may forward any comments and complaints to the administrative judge of the court for consideration and appropriate action. Dispositions by the court shall be made promptly. The court shall maintain a written record in the mediator’s file regarding the nature and disposition of any comment or complaint and shall notify the person making the comment or complaint and the mediator of the disposition.



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- (d) Allow mediation to proceed only if the mediator meets the qualifications, education, and training requirements of Sup.R. 16.23;
  - (e) Prohibit mediation when domestic abuse or domestic violence is alleged, suspected, or present unless all of the following conditions are satisfied:
    - (i) Screening is conducted both before and during mediation, for domestic abuse and domestic violence, and for the capacity of the parties to mediate;
    - (ii) The person who is or may be the victim of domestic abuse or domestic violence is fully informed about the mediation process, right to decline participation in the mediation process, and of the option to have a support person, in addition to an attorney, present at the mediation sessions;
    - (iii) The parties have the capacity to mediate without fear of coercion or control;
    - (iv) The court has taken reasonable precautions to create a safe mediation environment for the parties and all other persons involved in the mediation process;
    - (v) Procedures are in place for the mediator to terminate a mediation session if there is a threat of domestic abuse, domestic violence, or coercion between the parties;
    - (vi) Procedures are in place for issuing written findings of fact to refer certain cases involving domestic violence to mediation, as required by R.C. 3109.052.

**(B) General**

A court shall not be responsible for the quality of a mediator selected by the parties without guidance from the court and who does not meet the qualifications, education, and training requirements of Sup.R. 16.23.

**RULE 16.25. Public Access.**

The files maintained by a mediator but not filed with a clerk or submitted to a court shall not be available for public access pursuant to Sup.R. 44 through 47.

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**RULES 16.26 through 16.39 are reserved for future use**

**RULE 16.40. Government Conflict Resolution Services Program.**

**(A) Creation**

There is hereby established the Government Conflict Resolution Services Program. The program shall assist local and county public officials in resolving and preventing conflicts concerning administrative matters, including but not limited to the following:

- (1) Fiscal and budget issues;
- (2) Operations management issues;
- (3) Facilities maintenance issues;
- (4) Other organizational issues.

**(B) Services**

The Government Conflict Resolution Services Program shall provide mediation, facilitation, and neutral evaluation at no cost.

**(C) Uniform Mediation Act**

Mediation conducted by the Government Conflict Resolution Services Program shall be governed by Chapter 2710 of the Revised Code.

**RULE 16.41. Privilege.**

**(A) General and exception**

Except as provided in R.C. 2710.05, mediation communications in connection with the Government Conflict Resolution Services Program are privileged pursuant to R.C. 2710.03.

**(B) Waiver**

Mediation communications in connection with the Government Conflict Resolution Services Program may be waived pursuant to R.C. 2710.04.

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**RULE 16.42. Confidentiality.**

**(A) General**

Mediation communications in connection with the Government Conflict Resolution Services Program are confidential pursuant to R.C. 2710.07. No one shall disclose such communications unless all mediation parties and the mediator consent to disclosure in writing or on the record in open court.

**(B) Exceptions to confidentiality**

Mediation parties may share mediation communications with their attorneys.

**RULE 16.43. Public Access to Information.**

Information collected from or generated by participating parties in connection with the Government Conflict Resolution Services Program shall not be available for public access pursuant to Sup.R. 44 through 47.



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## CPM PROGRAM DESIGN GUIDE

<b>Stakeholders who should be involved in the mediation</b>	<b>Purpose of their involvement</b>

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<b>Stakeholders who should be involved in the mediation</b>	<b>Purpose of their involvement</b>

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**Proposed Program Description**

**Preliminary Goals**

**Preliminary Objectives**

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<b>PARENT GOALS</b>	<b>NO</b>	<b>YES</b>	<b>MAYBE</b>
Child safety			
Goal Two			
Goal Three			
Notes:			

<b>COURT GOALS</b>	<b>NO</b>	<b>YES</b>	<b>MAYBE</b>
Find the best forum			
Parental engagement			
Reduce the length of time to trial			
Judicial economy			
Safety and well-being of child			
Other:			
Notes:			



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<b>OTHER PARTY GOALS</b>	<b>NO</b>	<b>YES</b>	<b>MAYBE</b>
Goal One			
Goal Two			
Other:			
Notes:			

<b>FUNDING</b>	<b>YES</b>	<b>MAYBE</b>	<b>NEED INFO.</b>
Court			
Grants			
State or local appropriated funds			
Combination of funding sources			
Other			
Notes:			

<b>COURT CHALLENGES</b>	<b>STRATEGIES</b>
Budget restrictions:	
Training of personnel and others:	
Policy considerations:	
Impact on related operations:	
Tensions between stakeholders:	
Other:	

<b>SERVICE PROVIDERS</b>	<b>YES</b>	<b>MAYBE</b>	<b>NEED INFO.</b>
Private practitioners			
Community mediation center			
Court staff			
Online Dispute Resolution			
Other:			
Notes:			

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<b>CRITERIA FOR SELECTION OF SERVICE PROVIDERS</b>	<b>YES</b>	<b>MAYBE</b>	<b>NEED INFO.</b>
Education			
Experience			
Training			
Skill-based critiques			
Combination			
Other:			
Notes:			

<b>COMPENSATION FOR SERVICES</b>	<b>YES</b>	<b>MAYBE</b>	<b>NEED INFO.</b>
Paid by the court			
Paid by the parent			
Compensation limits			
Stipends			
Combination of compensation models			
Other:			
Notes:			

<b>REVIEW RELEVANT LAWS, POLICIES, &amp; PROCEDURES</b>	<b>YES</b>	<b>MAYBE</b>	<b>NEED INFO.</b>
Describe and define integration of mediation into existing system			
Standardize rules for district and/or county			
Other:			
Notes:			

<b>PLAN TO SUSTAIN PROGRAM</b>	<b>FUTURE (PERMANENT) FUNDING SOURCES</b>
Face-to-face assessment <i>By Whom:</i>	
Attorney/party determination <i>When/How:</i>	
Judicial determination <i>When/How:</i>	
Questionnaires <i>Completed by whom:</i>	
Criteria	

<b>PROGRAM INTEGRITY</b>	<b>ACTION NECESSARY FOR IMPLEMENTATION</b>
Party participation	
Letter from court	
<ul style="list-style-type: none"> <li>• Encouragement</li> </ul>	
<ul style="list-style-type: none"> <li>• Court orders</li> </ul>	
<ul style="list-style-type: none"> <li>• Compliance monitoring</li> </ul>	
<ul style="list-style-type: none"> <li>• Education</li> </ul>	
<ul style="list-style-type: none"> <li>• Other</li> </ul>	
Confidentiality	
<ul style="list-style-type: none"> <li>• Agreement to use</li> </ul>	
<ul style="list-style-type: none"> <li>• Procedures</li> </ul>	
<ul style="list-style-type: none"> <li>• Legislation/rules/orders</li> </ul>	
<ul style="list-style-type: none"> <li>• Code of ethics</li> </ul>	
<ul style="list-style-type: none"> <li>• Education efforts</li> </ul>	
<ul style="list-style-type: none"> <li>• Media guidelines</li> </ul>	
<ul style="list-style-type: none"> <li>• Other</li> </ul>	
Liability and/or Immunity	
<ul style="list-style-type: none"> <li>• Insurance</li> </ul>	
<ul style="list-style-type: none"> <li>• Legislation</li> </ul>	
<ul style="list-style-type: none"> <li>• Court rules</li> </ul>	
<ul style="list-style-type: none"> <li>• Case law</li> </ul>	
<ul style="list-style-type: none"> <li>• Other</li> </ul>	

QUALITY CONTROL PROGRAM	ACTION NECESSARY FOR IMPLEMENTATION
Recruitment	
<ul style="list-style-type: none"> <li>• Target groups</li> </ul>	
<ul style="list-style-type: none"> <li>• Recruitment strategies</li> </ul>	
<ul style="list-style-type: none"> <li>• Other</li> </ul>	
Selection Standards	
<ul style="list-style-type: none"> <li>• Qualifications</li> </ul>	
<ul style="list-style-type: none"> <li>• Training</li> </ul>	
<ul style="list-style-type: none"> <li>• Practical experience</li> </ul>	
<ul style="list-style-type: none"> <li>• Skills critique</li> </ul>	
Selection methodologies	
<ul style="list-style-type: none"> <li>• Minimum qualifications</li> </ul>	
<ul style="list-style-type: none"> <li>• Interviews</li> </ul>	
<ul style="list-style-type: none"> <li>• Recommendations</li> </ul>	
<ul style="list-style-type: none"> <li>• Skills critique</li> </ul>	
<ul style="list-style-type: none"> <li>• Training</li> </ul>	
<ul style="list-style-type: none"> <li>• Requirements necessary</li> </ul>	
<ul style="list-style-type: none"> <li>• Methodology/content</li> </ul>	
<ul style="list-style-type: none"> <li>• Qualifications of trainers</li> </ul>	
<ul style="list-style-type: none"> <li>• In-house or contracted</li> </ul>	

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Evaluation techniques	
• User surveys	
• Mentorships	
• Observation	
• Solicit feedback	
• Peer review	
○ Case reviews	
○ Mock sessions	
• Self-assessment	
• Staff debriefing	
• Review of agreements	
• Other	

EVALUATION AUDIENCES	WHAT DO THEY WANT TO KNOW?
Courts	
Parents	
Guardian ad litem	
Foster care	
Attorneys	

EVALUATION PURPOSES	METHODS OF DATA COLLECTION
Program effectiveness <i>Defined as:</i>	
Program efficiency <i>Defined as:</i>	
Service provider effectiveness of performance <i>Defined as:</i>	
Service provider efficiency <i>Defined as:</i>	
Party satisfaction <i>Defined as:</i>	
Research <i>Questions to be answered:</i>	
Other:	



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<b>TASKS</b>	<b>PRIORITY</b>	<b>DATE COMPLETED</b>
Identify leaders		
Establish working planning groups		
Identify key issues for consideration		
Educate the school staff, court staff, judiciary and public		
Develop case processing plan		
Develop program staff/facilities plan		
Develop recruitment plan		
Develop training for mediators		
Develop evaluation plan for mediators		
Develop program evaluation methodology		
Promulgate legislation, rules, orders, procedures		
Other		

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AUTHORIZATION	RULES	LEGISLATIVE ORDER OR PROCEDURES	ACTION NEEDED
Referral			
Mandatory/voluntary			
Timing of referral			
Process available			
Confidentiality			
Service provider qualifications			
Service provider selection			
Service provider training			
Participation of parties			
Cost of the service			
Other			

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## RESOURCES

The Association of Family and Conciliation Courts have written helpful [Guidelines for Child Protection Mediation](#).

This [article by Jennifer Shack](#) uses findings from empirical research to suggest that “lawyers should remain open to giving mediation a real try when their cases are ordered to mediation and to consider early mediation as a means to increase the probability of settlement and reduce litigation costs.”

Here is a [collection of tips from around the country](#) on CPM programs collected by the U.S. Department of Health and Human Services, Children’s Bureau.

Judge Leonard Edwards (ret.) is a respected trainer, author, and lecturer. [In this article on Mediate.com, he explains the legal structure and judicial role in children protection mediation](#). “But mediation accomplishes much more. Unlike a contested hearing, the mediation process offers parents the opportunity to say what is on their minds, air their grievances, and grieve the losses that they have been experiencing. It gives the attorneys a forum in which they can work together to identify and solve problems without pressure from the court process or the hindrance of evidentiary rules. Other family members can participate in the mediation process to help determine the best plan for the child. Mediation offers a context in which to work out the details of a child safety plan and thereby tailor an elective resolution addressing the family’s unique needs. It enables everyone to complete the process with a sense of accomplishment—a feeling that their combined efforts have produced something of value for the child and family— as well as a stake in the outcome that they had a hand in creating.”



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FOR **MEDIATORS**

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## HOW TO FIND TRAINING FOR CPM

*[Click here for an updated list of Dispute Resolution Trainings and Roundtables](#)*

The next Supreme Court of Ohio virtual trainings for CPM will be:

- [Nov. 9-10, 2020 \(Part I\)](#)
- [Nov. 16-17, 2020 \(Part II\)](#)

**Faculty:**

Cynthia Shuler

Tammy Martin-Kosier

Register at [OhioCourtEDU](#)





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## TRAINING PROGRAM STANDARDS

### Specialized Child Protection Mediation

#### I. Purpose

To set forth specialized child protection mediation standards for Rule 16.23 of the Rules of Superintendence for the Courts of Ohio.

*(Training program sponsors may apply for Rule 16 training program approval by submitting the “Application for Training Program Approval” located on the [Dispute Resolution Section’s website](#))*

#### II. General

A child protection mediation training program shall last a minimum of thirty-two hours, not including opening remarks, introductions, breaks, and closing remarks.

Materials (written or electronic) shall be distributed to all participants prior to or at the training program.

This is an advanced training pursuant to the Rules of Superintendence for the Courts of Ohio. The purpose of the rule-required prerequisites is to ensure participants have the necessary training, education, and experience to be successful in this training and to create an advanced level of collaborative learning. Prior to participating in child protection training participants shall have: 1) specialized family/divorce mediation training; 2) specialized training in domestic abuse and dispute resolution; 3) significant experience mediating family disputes; 4) at least two years of professional experience with families; 5) possess a bachelor’s degree or equivalent education experience as is satisfactory to the court that will be referring cases to the mediator.

#### III. Faculty Qualifications

Faculty shall be qualified by education, or have the necessary practical skills to conduct the program effectively in accordance with standards set by the Supreme Court of Ohio Dispute Resolution Section. A sponsor shall have an ongoing duty to report any activity, criminal or otherwise that would adversely affect the faculty’s ability to perform the functions of faculty delivering a training program.

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#### **IV. Training Program Methodology**

A combination of at least three of the following teaching techniques shall be utilized:

1. Lecture;
2. Group discussion;
3. Written exercises/activities (drafting mediation documents such as confidentiality agreement, memorandum of understanding, etc.);
4. Mediation demonstration; and
5. Role plays.

#### **V. Training Program, Minimum Requirements**

A. The following categories shall be addressed for the minimum time specified for each subject (examples of topics that meet the requirement are listed under each category):

1. Mediation Process (minimum of 5 hours)
  - (a) Uniform Mediation Act (R.C. 2710)
  - (b) Stages of Mediation
    - › Stage One: Pre-mediation  
Screening (ripeness, domestic abuse, appropriateness), develop a mediation strategy (i.e., room set up, discuss necessary documents and/or other information), etc.
    - › Stage Two: Introduction  
Introductions, ground rules
    - › Stage Three: Fact-Finding  
Telling of stories, problem identification, clarification, re-framing, mediator summary
    - › Stage Four: Issue Identification  
Mediator identifies and clarifies presenting and underlying issues
    - › Stage Five: Generation and Selection of Solutions  
Parties propose, evaluate, and select solutions
    - › Stage Six: Summarization and Conclusion  
Mediator summarizes and outlines next steps, memorializing agreement(s)
  - (c) Other

- 
2. Abuse, Neglect, and Dependency: The Court Process (minimum of 6 hours)
    - (a) Adjudicatory Hearing
    - (b) Dispositional Hearing
    - (c) Permanent Custody Hearing
    - (d) Review Hearing
    - (e) Case plans and Permanent Custody
    - (f) Jurisdictional Issues (UCCJEA, HAGUE Convention)
    - (g) Other
  3. Mediation in the Context of Child Protection Case (minimum 6 hours)
    - (a) AFCC Guidelines for CPM
    - (b) Rules & Statutes
    - (c) The Stakeholders (prosecutors, Ohio Department of Job and Family Services (ODJFS), defense counsel, Guardian Ad Litem (GAL), parties/attorneys, children/attorneys, law enforcement, therapists, party participants, non-party participants)
    - (d) Roles of Mediation Participants (mediator, parent, GAL, ODJFS, parent's attorney, grandparents, stepparents, foster parents, significant others)
    - (e) Pre-adjudication and post-adjudication mediation
    - (f) Role of Mediator
      - (1) Preparing party and participant to mediate
      - (2) Maintaining decorum
      - (3) Professionalism
      - (4) Control of session
      - (5) Structuring and managing the discussion
      - (6) Scheduling the time
      - (7) Location and number of conferences
      - (8) Establishing the format of each conference
      - (9) Focusing discussion
      - (10) Room set up

- 
- (g) Mediator's Opening Statement
    - (1) Description of mediator's role
    - (2) Procedures by which discussion will be conducted
    - (3) Parent's right to be represented by an attorney
    - (4) Limitation of confidentiality of mediator
  - (h) Communication Skills
    - (1) Active listening
    - (2) Effective questioning
    - (3) Note-taking
    - (4) Non-verbal communication
    - (5) Legalese and jargon
    - (6) Decision-making processes (directive, analytical, conceptual, behavioral)
  - (i) Diversity issues (language barriers, personal biases/prejudices, cultural issues)
  - (j) ADA and mediation
  - (k) Caucus vs. joint session
  - (l) Managing multiple parties
    - (1) Room set up
    - (2) Pre-mediation conference calls
  - (m) Involvement of children
  - (n) Building on a partial agreement
  - (o) Termination-when, how, why
  - (p) Needs of pro se party or participant (Rule 16 3(b))
  - (q) Repeat parties and participants
  - (r) Group dynamics
  - (s) Other
4. Ethics and Professionalism (minimum of 2 hours)
- (a) Model Standards of Conduct for Mediators (September 2005). Adopted by AAA, ABA, ACR.
  - (b) Model Standards of Practice for Family and Divorce Mediation Developed by The Symposium on Standards of Practice Approved by the ABA House of Delegates February 2001.

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- (c) Unauthorized practice of law (giving advice versus giving information)
  - (d) Other
5. Dynamics of Abuse (minimum of 6 hours)
- (a) Sexual abuse
  - (b) Emotional maltreatment
  - (c) Neglect
  - (d) Physical abuse
  - (e) Medical neglect
  - (f) Domestic violence and child abuse (anger management vs. domestic violence, power and control wheel, effects of drugs and alcohol)
  - (g) Effects on victims and children (emotional-depression/self-abuse; behavioral-school/truancy, caretaking, attention-seeking, ADHD; social isolation, avoidance, passivity, bullying, regression)
  - (h) Developmental stages of a child
  - (i) Sex offender treatment
  - (j) Reporting abuse (mandatory, optional)
  - (k) Other
6. Issues Affecting Parenting Case Plans and/or Placement (minimum of 6 hours)
- (a) Parental conflict
  - (b) Mental health
  - (c) Learning disabilities
  - (d) Drugs and alcohol
  - (e) Prescription drugs
  - (f) Driver's license
  - (g) Domestic violence
  - (h) Emotional issues
  - (i) Treatment options and community resources
  - (j) Effect of separation/removal of children on individuals and family
  - (k) Importance of permanency and stability in a child's life

- 
- (l) Short and long-term psychological effects of placement of a child in protective services, foster care, long-term relative/non-relative placement
  - (m) Disclosure/recantation relating to child sexual abuse
  - (n) Children’s disclosures and recantations
  - (o) Family member’s denial
  - (p) Protection orders
  - (q) Other

#### **VI. Approval**

Any mediation training program, approved by the Supreme Court of Ohio Dispute Resolution Section as meeting these standards, is approved for a period of two calendar years. However, the trainer shall submit a listing of scheduled courses at least 45 days before each course, giving the date, time, location, and cost, if applicable to the training program. Any material change in the course (such as a change in a primary trainer, expert, or the curriculum) requires a new application to the Supreme Court of Ohio Dispute Resolution Section.

#### **VII. Revocation of Approval**

The Supreme Court of Ohio Dispute Resolution Section has the right to audit approved training programs during the period for which the training program was approved. Such an audit may include but is not limited to attendance of any part of the course, the examination of evaluation forms, the examination of curriculum and written materials, and interviewing participants. Approval of programs which are determined to no longer comply with these standards and/or the “Obligations and Responsibilities for Sponsors” outlined in [the Instructions, Obligations, and Responsibilities for the Approval of Required Dispute Resolution Trainings under the Supreme Court Rules of Superintendence for the Courts of Ohio](#) will be revoked.

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## INSTRUCTIONS, OBLIGATIONS, AND RESPONSIBILITIES FOR TRAINING APPROVAL

### **General information**

Rule 16.23 and Rules 90.05 and 90.06 of the Supreme Court Rules of Superintendence for the Courts of Ohio outline qualifications for dispute resolution professionals that shall be met before local courts refer cases for mediation and parenting coordination.

Below is a general overview of the requirements relating to approval of the following Rule-required trainings:

- Fundamentals of Mediation Training – Sup.R. 16.23
- Parenting Coordination – Sup.R. 90.05 and Sup.R. 90.06
- Parenting Coordinator Continuing Education – Sup.R. 90.07
- School Attendance Mediation Training – Sup.R. 16.23
- Specialized CPM Training – Sup.R. 16.23
- Specialized Family or Divorce Mediation Training – Sup.R. 16.23
- Specialized Domestic Abuse Issues and Mediation Training – Sup.R. 16.23
- Advanced Mediation Workshop – Sup.R. 16.23

### **What is approved?**

A training program that is going to take place or has taken place on a certain date and in a certain location within a calendar year. If there are several definite dates and cities scheduled, they may all be included on one application, as long as all dates occur in the same calendar year. A separate application shall be submitted for each calendar year. (The Supreme Court Dispute Resolution Section does not approve sponsors, providers, or faculty/trainers.)

### **What are the requirements for each training program?**

The training program shall have significant intellectual and practical content, and the primary objective is to improve the participant's professional competence as a dispute-resolution professional.

The training program shall be an organized program of learning dealing with matters directly related to the practice of mediation or parenting coordination, professional conduct, or ethical obligations, applicable statutes or rules, or other subjects that will maintain and improve the quality of dispute resolution services in Ohio.

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The basic requirements of each training program required by the Rules of Superintendence can be found in the [Training Program Standards on the Dispute Resolution webpage](#):

- Advanced Mediation Workshop
- Fundamentals of Mediation Training
- Parenting Coordination
- Parenting Coordinator Continuing Education
- School Attendance Mediation Training
- Specialized CPM Training
- Specialized Family or Divorce Mediation Training
- Specialized Domestic Abuse Issues and Mediation Training
- Advanced Mediation Workshop

**Can an individual submit an application for approval?**

Yes. An individual who successfully completed a past training program that was not approved by the Supreme Court may submit an application to have said training retroactively approved.

**What is the general procedure for applying for approval?**

An organization or individual providing a training program may apply for approval by submitting 1) an application for approval and 2) a Training Program Standards form.

For pre-approval, the application shall be submitted at least 60 days prior to the first day of the first training. Forms can be found at [sc.gov/dispute\\_resolution](http://sc.gov/dispute_resolution).

\*\*\*Applications shall be sent via email to [DisputeResolution@sc.ohio.gov](mailto:DisputeResolution@sc.ohio.gov).

Individuals seeking approval for a training program that was not approved by the Supreme Court shall submit the *Application for Participant Approval*.

Once the application is received, it will be reviewed for completeness. Incomplete applications will be denied with the reason for the denial (See “When would a training program be denied?” below). The typical turnaround time for reviewing an application is about 30-45 days. Filling out the application completely and submitting all required attachments will ensure timely review of the application.



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### **How do I know if a training program was approved?**

If an application is approved, an approval letter will be sent via regular U.S. mail or email to the applicant. Approved programs can be found on the Supreme Court of Ohio Dispute Resolution Section website at: [sc.ohio.gov/JCS/disputeResolution/training](http://sc.ohio.gov/JCS/disputeResolution/training). Once an upcoming program is approved, it will be added to the list. Pending applications and applications for training programs already have occurred will not be posted.

### **When would a training program be denied?**

An application will be denied for the following reasons: 1) substantially incomplete application; 2) the application does not include all of the criteria listed in the checklist for the proposed program; 3) the sponsor obligations listed below were not fulfilled; 4) the title is inconsistent, ambiguous, etc. with the training described in the applicable Rule of Superintendence; 5) failure to comply with the Rules of Superintendence; and/or 6) any other reason determined by the Dispute Resolution Section.

If an application is denied, the applicant will receive a denial letter including the reason(s) for denial. An applicant may reapply by submitting a new application form.

### **What are the applicant's obligations?**

By submitting an Application for Approval, the applicant acknowledges and agrees to comply with all obligations and responsibilities outlined herein:

- Applicant agrees that no changes will be made to the approved training without prior approval from the Court.
- Applicant agrees that all faculty are qualified by education, or have the necessary practical skills to conduct the program effectively in accordance with standards set by the Supreme Court of Ohio Dispute Resolution Section. The sponsor shall have an ongoing duty to report any activity, criminal or otherwise that would adversely affect the faculty's ability to perform the functions of faculty delivering a training program.

Failure to meet these obligations may result in revocation of the training approval.

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## OBLIGATIONS AND RESPONSIBILITIES FOR SPONSORS

### **How do I know if I am a sponsor?**

“Sponsor” is defined as an organization or individual that is providing a Supreme Court Dispute Resolution Section approved training.

### **Who can be a sponsor of CLE programs in Ohio?**

Sponsors of dispute-resolution training programs are not required to be designated as an “accredited” or “approved” provider to have their programs considered and approved. The Supreme Court of Ohio Dispute Resolution Section approves individual activities, not sponsors. This means that any sponsor may submit an application for approval and, if the training meets the Supreme Court’s standards, the program will be approved.

### **Can I advertise using the Supreme Court name?**

Advertising with the use of the Supreme Court name is limited to the information included in the approval letter. Please note that you may not advertise that your training program is “certified” or that your training program is approved until you actually receive the approval letter. You may advertise that your training program is approved, not you or your organization.

### **What are my responsibilities as a sponsor?**

#### *Maintaining Records*

You are required to maintain accurate and complete records for at least two years following the training program. These records shall include (at a minimum) the title, dates, location, and CLE activity code of the program, if applicable. You also need to keep this information readily available for at least two years in case any attendee (or this office) has a question.

#### *Monitoring of Training Program and Attendees*

Sponsors shall monitor and track when participants arrive and leave their program so they can report accurate attendance hours. If an attorney wishes to leave the program early and has attended at least one 60-minute substantive hour, you may give the activity code to the attorney when he or she leaves.

#### *Qualifications of Faculty*

Faculty shall be qualified by education or have the necessary practical skills to conduct the program effectively in accordance with standards set by the Supreme Court of Ohio Dispute Resolution Section. A sponsor shall have an ongoing duty to report any activity, criminal or otherwise that would adversely affect the faculty’s ability to perform the functions of faculty delivering a training program.

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### *Training Program Materials*

Before or at the time of the training program, the sponsor shall provide each participant with training-program materials in printed, electronic, or another format that is of such quality and quantity to indicate that adequate time was devoted to their preparation and that they will be of value to the participants. The sponsor shall make materials available in printed or electronic format prior to or at the time of the activity.

Course materials in PowerPoint or another format shall be subject to the same criteria as other materials.

### *Physical Setting of Training Program*

The training program shall be presented in a suitable setting, conducive to a good educational environment.

### *Training Program Evaluations*

The sponsor shall develop and implement methods to evaluate its training program offerings to determine their effectiveness and the extent to which they meet the needs of participants. Upon request from the Supreme Court Dispute Resolution Section, sponsors shall provide training program evaluations.

### *Minimum Hour Requirement; Calculation of Training Hours*

Attendance at the activity shall consist of a minimum of one uninterrupted hour of instruction. Sixty minutes of instruction equals one hour. Only time of actual instruction counts toward a credit hour. Partial hours over the minimum of 60 minutes are rounded to the nearest one-quarter of an hour. Credit is not awarded for breaks or opening and closing remarks.

**Credit may be awarded for meals or presentations concurrent with the consumption of a meal, as long as all other requirements for approval are met.**

### *Certificates of Attendance*

Certificates of attendance only may be provided for a participant who attended the minimum number of hours for the training program pursuant to the Rules of Superintendence.

For questions, contact the Dispute Resolution Section at [DisputeResolution@sc.ohio.gov](mailto:DisputeResolution@sc.ohio.gov).



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## APPLICATION FOR TRAINING PROGRAM APPROVAL

### **This application is not an application for CLE credit.**

To receive CLE credit you must follow the process and procedure located here: [sc.ohio.gov/AttySvcs/CLE](http://sc.ohio.gov/AttySvcs/CLE).

Submit your application to [DisputeResolution@sc.ohio.gov](mailto:DisputeResolution@sc.ohio.gov).

### **Responses are required for all questions.**

Incomplete applications will be returned with a request for additional information.

Check which training (one per application) you are applying for:

- Advanced Mediation Workshop
- Fundamentals of Mediation (*Note: Fundamentals of Mediation training can, but is not required to, include the 2.25 hours of online learning found in [OhioCourtEDU](http://OhioCourtEDU) for the Uniform Mediation Act and overview of mediation.*)
- Parenting Coordination
- Parenting Coordination Continuing Education
- School Attendance Mediation Training
- Specialized CPM Training
- Specialized Family or Divorce Mediation Training (*Note: The Specialized Family or Divorce Mediation Training can, but is not required to, include the 2.25 hours of online learning found in [OhioCourtEDU](http://OhioCourtEDU) for the Uniform Mediation Act and an overview of mediation.*)
- Specialized Training in Domestic Abuse Issues and Mediation Training

1. Name and address of organization/individual providing the training program.

Name:

Address:

2. Name of contact person for the training program:

Phone number:

Email Address:

3. Title of the training program:

*Note: training may not be approved if the title is inconsistent, ambiguous, etc. with the training described in the Rules of Superintendence.*

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4. List training date(s) and city(s):
  5. Registration fee, if applicable:
  6. Minimum number of participants:  
Maximum number of participants:
  7. Writing surface available?
  8. Methods of presentation (check all that apply):
    - Faculty in room with participants
    - PowerPoint presentation
    - Videotape
    - Other (please specify): \_\_\_\_\_
  9. Advertised to (check all that apply):
    - Lawyers
    - Mediators
    - Parenting Coordinators
    - Other (please specify): \_\_\_\_\_
  10. List admission restrictions, if any:
  11. Method of evaluation (check all that apply):
    - Participant critique
    - Independent evaluator
    - Other (please specify): \_\_\_\_\_
  12. Description of materials to be distributed:
    - Total pages:
    - Loose leaf:
    - Bound:
  13. Please state the total minutes of instruction not including welcome, introductions, breaks and closing remarks. Credit **may be** awarded for presentations concurrent with the consumption of a meal as long as all other requirements for approval are met.
    - General minutes:
    - Professional conduct minutes:

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14. When are materials distributed?

- Before training
- At the training
- Other (please specify):

15. Faculty/Trainer

Lead faculty/trainer name/credentials:

Other faculty/trainer name/credentials:

16. Faculty/trainee ratio for lecture segments

Description of activity:

Faculty/trainee ratio for other segments:

Description of activity:

17. Number of hours of credit approved\* for:

- CLE:             CEU:             CPE:             N/A

*Attach approval letter. If not approved, mail to the address noted above when approval is received.*

18. Required attachments

- (a) Detailed time schedule/agenda (shall show times of day, not just length of time)
- (b) Brochure or any other marketing information, including a web site, if applicable
- (c) Training Program Description
- (d) Table of Contents
- (e) List of all faculty names, credentials, and their resumes/vitae. Faculty shall be qualified by education, or have the necessary practical skills to conduct the program effectively in accordance with standards set by the Supreme Court of Ohio Dispute Resolution Section. A sponsor shall have an ongoing duty to

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report any activity, criminal or otherwise that would adversely affect the faculty's ability to perform the functions of faculty delivering a training program.

(f) Training Program Standards Form

(g) A complete set of materials shall be available upon request.

19. Applicant's obligations:

Applicant acknowledges and agrees to comply with all obligations and responsibilities outlined in the *Instructions, Obligations, and Responsibilities for Approval of Required Dispute Resolution Trainings under the Supreme Court Rules of Superintendence for the Courts of Ohio*.

Name of Person Applying:

Signature:

Address:

Phone:

Email:



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## CHECKLIST TO CONSIDER DURING MEDIATION<sup>29</sup>

### FOR THE CPM MEDIATOR

#### Stage 1: Introduction

- Introduce yourself
- Establish how parties prefer to be addressed
- Establish the nature of the dispute
- If not known, determine if a representative has authority to negotiate
- Describe your role as the mediator
- Define mediation
- Explain confidentiality
- Explain the ground rules regarding courtesy and civility
- Explain any additional ground rules
- Gain the agreement of the parties to abide by the ground rules
- Maintain neutrality in body language and word choice
- Ask the parties if they understand everything explained
- Create a positive climate

#### Stage 2: Storytelling/Problem Determination

- Explain that each party will have a full opportunity to be heard
- Determine who will speak first
- Listen attentively
- Use active listening techniques
- Acknowledge the speaker's emotion
- Use empathic listening techniques
- Obtain a full explanation of the problem from each party
- Start with open-ended questions and follow with short questions
- Finish with questions requiring a yes/no response
- Recognize and explore possible underlying issues
- Restate each party's position accurately

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<sup>29</sup> Hamilton Cty. Juvenile Court and Hamilton Cty. Job and Family Services and St. Aloysius Orphanage (2002), Mediation Program Development Guide, 45-46.

- 
- Remain non-judgmental
  - Summarize in neutral language
  - Gain speaker's agreement that the summary was accurate

**Stage 3: Issues Identification**

- Accurately identify, frame, and characterize the presenting issues
- Recognize and identify any underlying issues
- Insure the parties agree on the issues

**Stage 4: Generation of Alternatives**

- Encourage the parties to make suggestions
- Summarize each proposal to the person offering it
- If a proposal was rejected, challenge the other party to create an alternative
- Offer a neutral suggestion
- Deter parties from blaming one another
- Discuss "BATNA": Best Alternative To a Negotiated Agreement
- Discuss "WATNA": Worst Alternative To a Negotiated Agreement

**Stage 5: Selection of Alternatives**

- Assist the parties in determining the feasibility of each solution
- Gain agreement upon specific details
- Discuss who, what, where, when, and how
- Accurately summarize all agreed terms
- Discuss contingencies and consequences if parties do not comply with the agreement

**Stage 6: Close**

- Thank the parties for their attendance and efforts to resolve the dispute
- Commend them for reconciling their differences if resolution was reached on some or all issues

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## MEDIATOR SKILLS - REFRAMING

When reframing a party's statement, the mediator restates the content but puts a neutral frame around it. The purpose of reframing is to re-package the message in a way that will be more conducive to constructive dialogue and problem solving. The mediator can be like a filtering system; the mediator takes the "toxic language" out of the original message and restates it neutrally.

**Reframing may involve changing a blaming statement to a statement of desired outcome.**

**EXAMPLE:**

"She's so irresponsible about her school work, it will be a miracle if she ever graduates."

*"You are concerned about her ability to get through school successfully."*

**Another type of reframing involves changing a statement about the past (which can't be changed) to an expression of future need or desire (which we do have some control over).**

**EXAMPLE:**

"You held a huge party last week and the children couldn't sleep all night because of the noise."

*"I hear you saying the children need to have quiet at night to sleep."*

**Practice Reframing these statements:**

- "That caseworker needs to apologize for treating me so rudely."
- "This case is a total lie. They all lied so they could get money by adopting out my daughter."
- "I hate the way the Guardian ad Litem listens to the foster parent and never to me."
- "I had to schedule all those appointments myself while watching the kids and working."
- "I hate the way the caseworker criticized me in front of the judge."
- "I work the swing shift and I get furious when the agency schedules my parenting time at dawn."
- "He's a terrible addict. My client reports that he doesn't even try to stop using drugs."



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## VIDEO RESOURCES

### **Links to Mediation Videos**

- The Supreme Court of Ohio [CPM Explainer Video](#)
- An example of a CPM mediation (in development)
- Video Podcast regarding CPM (in development)



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# SAMPLE FORMS

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**SAMPLE AGREEMENT TO MEDIATE**

**In The Court Of Common Pleas, \_\_\_\_\_ County, Ohio  
Juvenile Division**

**Agreement to Mediate**

Mediation Party: \_\_\_\_\_ Mediation Party: \_\_\_\_\_

Mediation Party: \_\_\_\_\_ Mediation Party: \_\_\_\_\_

We understand and agree to the following:

- Mediation is a process. The role of the mediator is that of a neutral facilitator and not that of a judge, magistrate, arbitrator, lawyer or therapist. The parties have the right to consult with an attorney at any time during the process. The mediator is not authorized to give the parties legal advice.
- The mediator has no authority to force the parties to reach an agreement.
- An agreement is reached only if the parties believe that the agreement is fair and in the child’s best interests.
- The mediation process is confidential and privileged to the extent allowed by law, which means that in most cases, no new information shared in the mediation may be used against any party in any court proceeding. Exceptions to that are: (1) any threats of harm made against one’s self or others; (2) any unreported allegations of child abuse or neglect, and (3) any admission to committing or planning to commit a felony. The mediator is required to report any allegation of abuse or neglect of a child to \_\_\_\_\_ County Department of Job and Family Services.
- If a settlement is reached, it will be written up in a Mediation Agreement. Each party shall receive a copy of the Mediation Agreement and a copy shall be provided to the Court. No other record of the proceedings shall be kept by the Court or the mediation participants.

Signature:

Date:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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**SAMPLE ORDER RECOMMENDING MEDIATION**

In The Court Of Common Pleas, \_\_\_\_\_ County, Ohio

**Juvenile Division**

In the Matter of:

Case Number:

Abused/Neglected/Dependent Child(ren):

Judge:

**Order of Referral to Child Protection Mediation (CPM)**

THIS MATTER having come before the Court upon:

The Court's Motion is:

The motion of parties other than the parents:

The stipulation of the parents and other parties, or

Motion by \_\_\_\_\_,

for Appointment of a Child Protection Mediator, the court has reviewed the motion and the court file, taken the testimony presented, considered the argument of counsel and being otherwise duly advised in the premise, FINDS:

**A. CPM Process.**

CPM is a specialized form of dispute resolution process that seeks to create agreement and solutions in Abuse/Neglect/and Dependency cases – cases where the government (through children services) takes custody of a child or provides protective supervision for their safety.

**B. Appropriateness of Process.**

This matter is appropriate for CPM and it is in the best interest of the child(ren):

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**C. Child Protection Mediator:**

A Mediator in CPM is an impartial third person whose role is to assist the parties by:

- Facilitating more effective communication, negotiation, and problem-solving skills;
- Offering education about parenting resources;
- Facilitating the creation, modification, or implementation of a case plan if such a plan is necessary to reach a resolution;
- Making recommendations for resolutions; and
- Assisting parties to make decisions about the care and best interests of the child(ren).

**D. Selection of Child Protection Mediator:**

The following CPM Mediator was selected by parties' agreement or by appointment of the court:

Name:

Address:

Telephone:

Fax Number:

Email:

**E. History of Child Abuse/Domestic Violence.**

Based on testimony and evidence presented, a review of related court records, or other representations made to the Court, the

Court has determined:

- There is no history of verified abuse, neglect, or exploitation.
- There is no history of domestic violence.

OR:

- There is a history of verified abuse, neglect, or exploitation
- There is a history of domestic violence.
- Each party has had an opportunity to consult with an attorney or domestic violence or child advocate before this Court has accepted the parties' consent; and
- The child, or the child's legal representative, if any, and each party participating have freely and voluntarily consented to this referral.

The identity of any person reporting the abuse, neglect, or exploitation is

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not to be released.

It is therefore, ORDERED:

1. The following parties are ordered to participate in the CPM process:

The parties are required to contact the CPM Mediator within ten (10) working days of the date of this Order to schedule the first appointment. A hearing is scheduled to review the need for an extension of the CPM Mediator's term before it expires on:

2. The parties or their attorneys must provide to the CPM Mediator copies of all pleadings and orders filed in this case, as well as such pleadings and orders related to domestic violence, elder abuse, neglect, or exploitation, and any other pleadings and orders requested by the CPM Mediator related to CPM Mediation.





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If an agreement was reached, all parties to the dispute received a copy of the agreement:

- Yes       No       N/A

We agree to the following:

_____	_____	_____
Name	Signature	Date
_____	_____	_____
Name	Signature	Date
_____	_____	_____
Name	Signature	Date
_____	_____	_____
Name	Signature	Date
_____	_____	_____
Name	Signature	Date



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## SAMPLE PRE-MEDIATION ASSESSMENT

Your Name:

1. Is there any reason for you to be afraid of the other party?
2. Has the other party ever threatened you or your children with physical violence?
3. Has the other party ever used any type of physical force (hitting, pushing, choking, kicking, etc.) towards you or your children? If yes, please explain with some detail. If you remember dates include them in your answer.
4. Has your partner ever prevented you from leaving a situation when you wanted to?
5. Has there been any physical violence in your relationship because of drugs or alcohol? Please explain using some detail.

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6. Has anyone ever suggested that you or the other party should attend anger management classes or receive help for drug/alcohol abuse?
  
  7. Have you ever called the police to protect your or your children from the other party?
  
  8. Have you, or the other party, ever been convicted of domestic violence or a related offense?
  
  9. Have you ever had a restraining order against the other party? If yes, please tell me when, and if it is still in effect.
  
  10. Have you ever stayed in a shelter to protect yourself, or your children, from the other party? If yes, please tell me when.

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11. Are you scared to answer these questions for any reason? If you are, please tell me why.
  
  12. Has the other party ever threatened to keep or harm the children or any other friends or family members if you did not cooperate with them?
  
  13. Please explain any fears you may have about mediating in the same room with the other party?
  
  14. Would it make you feel more comfortable to mediate your situation in separate rooms?
  
  15. How will I know if the other party is angry or upset during the mediation?

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16. If you begin to feel uncomfortable during mediation, will you be able to ask for a break, or ask to talk to me in private?
17. If you begin to feel uncomfortable during mediation, will you be able to ask for a break, or ask to talk to me in private?
18. Do you or the other party ever have problems controlling your emotion when you get upset or angry?

If there is anything else you would like to tell me about your situation, please feel free to write it in the remaining space below. Thank you for your time and consideration.<sup>30</sup>

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<sup>30</sup> Family Mediation Security Questions, *The Supreme Court of Ohio*, [sc.ohio.gov/JCS/disputeResolution/resources/mediation/family/familyMediation.pdf](https://sc.ohio.gov/JCS/disputeResolution/resources/mediation/family/familyMediation.pdf).



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