

## **RULE 12 – CRIMINAL/JUVENILE CASE DISCOVERY**

- 12.1** The Court may hold a Pre-Trial Conference (also designated as Status Conference) on all charges, at which time the Court shall review the production of Discovery by the State, set dates for the filing of all Motions (Dispositive Motions, Motions to Suppress, Procedural, etc.), Plea Agreement Deadlines, if deemed necessary, and otherwise address procedural matters. The Court, in its own discretion, or upon request of the State or the Defendant, may set an additional Pre-Trial Conference closer to the date of Trial so as to anticipate last minute matters which pertain to Trial.
- 12.2** The Disclosures, set forth in Criminal Rule 16, shall be made by the Prosecutor in felony cases, on or before the date of the Pre-Trial Conference. No Written Request need be made to obtain such Disclosures under this Rule. If a question of failure to provide complete Disclosure, as required by Criminal Rule 16, arises, the Court shall address the issue at the Pre-Trial Conference or upon the filing of an appropriate Motion for Enforcement of said Discovery, which Motion shall be filed by Defendant not later than fourteen (14) days after the date of the Pre-Trial or the date Discovery is provided, whichever shall later occur.
- 12.3** Upon the Defendant having received the above-mentioned Discovery from the State said Defendant shall make the Disclosures set forth in Criminal Rule 16 not later than fourteen (14) days after the Pre-Trial Conference or after the date of receipt of Discovery from the State, whichever later occurs; however, in no event not later than ten (10) days before Trial. No Written Request by the State is necessary to obtain such Disclosures under this Rule. If Disclosures are not made by Defendant, the prosecution shall apply to the Court for enforcement.
- 12.4** In the event of the failure of either the State or the Defendant to provide Discovery in accord with this Rule, the Court shall decide whether such failure to provide Discovery has resulted from an intentional, negligent, or otherwise inadvertent action and/or the imposition of an appropriate sanction, if any, to include imposition of fines and/or reasonable expenses, including attorneys fees, caused by the failure and/or an order prohibiting the introduction of designated matters into evidence, or whatever reasonable sanction the Court deems appropriate.

## **Rule 12(A) – Mediation**

The Court incorporates by reference herein, R.C. 2710 “Uniform Mediation Act” (UMA), R.C. 3109.052 Mediation of Differences as to Allocation of Parental Rights and Responsibilities, and Rule 16 of the Supreme Court of Ohio Rules of Superintendence.

### **12(A).1 Definitions**

A. Facilitation: “Facilitation” means a process in which a neutral party moderates discussions 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 organization 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.

### **12(A).2 Referral**

Any time after filing, the Court may, upon its own motion or upon the motion of a party, refer any case to mediation that the Court deems appropriate. Juvenile cases eligible for mediation involve the allocation of parental rights and the care or visitation with minor children.

### **12(A).3 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 the juvenile court, the “Model Standards of Practice for Family and Divorce 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 or 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 for R.C. 2710.08. Wherever a conflict exists between this rule and R.C. 2710.08, the statute shall control.

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 form 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.

#### **12(A).4 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 accredited law school,

- has completed mandatory coursework in fundamental mediation topics, and mediates under the supervision of faculty at the law school.
3. Prior to accepting a referral from a court for disputes involving the allocation of parental rights and responsibilities, the care of or visitation with minor children, 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 11(A).3 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;
    - 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.

#### **12(A).5 Responsibilities of Court**

##### **A. General:**

1. In order to ensure only a qualified individual performs 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 evaluation 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 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.

- 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 or 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.

#### **12(A).6 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.

#### **12(A).7 Fees**

- (a) No additional deposit fees are charged for cases referred to the (Belmont County Mediation Program)
- (b) The Judge or Magistrate shall consider the following approaches to allocating mediation fees, but retain discretion to allocate fees in any manner deemed appropriate:

- (1) The Court may divide fees for mediation services equally based on the family's financial situation and ability to pay
- (2) The Court may approve any agreement reached by the parties regarding the payment of mediation services
- (3) The Court may allocate all fees to one party or the other based on financial ability to pay for services
- (4) The Court may waive mediation fees based on both parties ability to pay for such services

#### **12(A).8 Pro se Cases**

All cases involving pro se litigants shall be automatically referred to the Court's mediation program: Pro se litigants shall be fully and clearly informed by the mediator of what the pro se litigant is and is not required to do in mediation, including the nature of mediation and the purpose for the mediation.

#### **12(A).9 Counsel**

- (a) The parties may waive the presence of any counsel, or the Court also may require counsel for all parties to attend.
- (b) The parties shall have the opportunity to consult or appear with counsel before the Court approves the mediation agreement.

#### **12(A).10 Time Frame for Completion**

- (a) The Court may stay the proceedings for mediation for a period of time not to exceed 45 days.
- (b) The assigned Judge or Magistrate must approve or deny any agreement reached by the parties and reduced to writing within 10 days.
- (c) If either party fails to appear for mediation, if no agreement is reached in mediation, or if the agreements reached is not approved by the Judge or Magistrate, the case shall be scheduled for a pretrial or trial hearing.

#### **12(A).11 Confidentiality**

- (a) Any disclosure made by the parties or information received from any source or person during mediation shall be deemed confidential and shall not be admissible as evidence in any other action before the Court: Mediators shall not disclose or testify about any statements or discussions which occurred during the mediation.
- (b) A written confidentiality agreement shall be executed by all those in

attendance prior to beginning the mediation session. If new or different persons attend a subsequent session, their signatures shall be obtained prior to proceeding further in the process.

### **12(A).12 Sanctions**

If any party fails to attend mediation as ordered by the Court, 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.

## **Rule 12(B) – Juvenile Competency**

### **General Purpose**

The purpose of these rules is to expedite proceedings under sections 2152.51 to 2152.59 of the Revised Code, to ensure that proper notice of competency hearings is provided to the appropriate persons, and to ensure that any proceedings on an underlying complaint are stayed pending the determinations under these sections.

### **Expedited Hearings**

Juvenile competency proceedings shall be scheduled and heard on an expedited basis. Hearings in juvenile competency proceedings shall be held in strict compliance with applicable deadlines as established by statute or by this rule.

### **Notice**

Upon the conclusion of each hearing, the court shall provide written notice to the prosecuting attorney, the child's attorney, the child's guardian ad litem, and the child's parents, guardian, or custodian of the date, time and place of the next scheduled hearing. Mailed notice shall not be required for any party or other individual designated in this rule to whom notice of the next hearing was provided in writing upon conclusion of the immediately preceding hearing.

### **Stay of Proceedings**

Upon the filing of a motion for determination regarding a child's competency or upon the court's own motion the court shall stay all delinquency proceedings pending a determination of competency. If, upon a determination of competency, the court determines that the child is not competent but could likely attain competency, the court order staying the delinquency proceedings shall remain in effect until such time as the child attains competency or the proceeding is dismissed.