

**Local Court Rules for the
Third Judicial Circuit
Mediation of Custody and Visitation Issues Program**

RULE 1. DEFINITIONS

- A. Mediation When the word "mediation" is used herein, it means a cooperative process for resolving conflict with the assistance of a trained court-appointed, neutral third party, whose role is to facilitate communication, to help define issues, and to assist the parties in identifying and negotiating fair solutions that are mutually agreeable. Fundamental to the mediation process, described herein, are principles of safety, self determination, procedural informality, privacy, confidentiality, and full disclosure of relevant information between the parties.
- B. Impediment When the word "impediment" is used herein, it means any condition, including but not limited to domestic violence or intimidation, substance abuse, or mental illness, the existence of which, in an individual or in a relationship, may hinder the ability of any party to negotiate safely, competently, and in good faith. The identification of forms of impediment is designed not to require treatment, but to insure that only parties having a present, undiminished ability to negotiate are directed by court order to mediate. Mediation is based on a full disclosure of all facts related to the disputes so that a fair and equitable agreement can be achieved by the parties

RULE 2. MEDIATION MANDATORY

- A. Matters Subject to Mediation. The designated judge shall order mediation of any contested issue of parental responsibility, custody, visitation, guardianship, removal or access to children arising in any action not otherwise determined to be ineligible pursuant to this program. The parties may not proceed to a judicial hearing on contested issues arising relating to custody as defined by Supreme Court Rules until the mediation process has been concluded and its outcome has been reported to the court unless by specific leave of court.
- B. Prerequisite to Mediation. The parties referred to mediation by the court shall complete the parent education program prior to starting mediation or as soon after starting mediation as the parent education program's schedule allows.
- C. Commencement of Mediation. The mediation process shall commence as provided by Supreme Court Rule 923(a)(3). In no event shall mediation occur before a case has been screened for eligibility pursuant to safety protocols for mediators. The designated judge shall be advised by counsel and/or the parties concerning:
 - 1. Impediment of the parties as defined herein. Reason to believe that an impediment may exist should result in referrals that may address the impediment(s) to mediation.
 - 2. Other circumstances exist which would unreasonably interfere with mediation.
 - 3. Mediation shall not be required if the court determines, upon motion of a party, that a case is ineligible for mediation. Said motion shall be supported by affidavit setting forth specific facts detailing why mediation would be inappropriate.
- D. Discovery. Discovery may continue throughout the mediation unless otherwise ordered by the court.

RULE 3. REFERRAL ASSIGNMENT PROCEDURE

- A. Upon the court's order for the parties to participate in mediation, a mediator may be selected by agreement of the parties from the list of qualified mediators maintained by the Chief Judge or his/her designee. Absent an agreement, the trial judge shall select the mediator and assign the mediator a 45-day status date on the issue of progress of the mediation. The mediators shall be compensated by the parties at the rate agreed to by the parties and the mediator.
1. The court shall designate in its order what percentage of the mediation fee should be paid by the party and/or whether the case is a reduced fee case.
 2. The parties shall contact the mediator within seven days after the referral order is signed for the purpose of setting an appointment.
 3. The attorneys shall encourage the parties to mediate in good faith. The parties shall participate in mediation in good faith.
 4. On or before the status date set by the court for parties who are participating in mediation, the mediator shall submit a report to the court and the parties' legal counsel, which shall include the information required by these Rules.
- B. Conflict of Interest
1. If the mediator appointed has or had any possible conflict of interest, including but not limited to, a current or previous therapeutic, personal or economic relationship with mother, father, child, sibling, step-parent, grandparent, household member, counsel or anyone else directly involved in the case, he or she shall decline the appointment or disclose that relationship to the attorneys and may be removed for that reason. If there is a conflict, the parties may select or the court shall appoint another mediator
 2. A mediator who is a mental health professional shall not provide counseling or therapy to the parties or their children during or after the mediation. An attorney-mediator may not represent either party in any matter during the mediation process or in a dispute between the parties after the mediation process.
- C. Ethical Conduct: Inclusion of a mediator in the Third Judicial Circuit approved mediators list indicates explicit agreement by that mediator to maintain high standards of ethical practice. Failure to comply may result in removal of the mediator's name from the approved list.

RULE 4. MEDIATION PROCESS

- A. Commencement: At or prior to the initial session, the mediator shall:
1. Determine the issues to be mediated;
 2. Explain that no legal advice, therapy or counseling will be provided;
 3. Disclose the nature and extent of any existing relationships with the parties or their attorneys and any personal, financial, or other interests that could result in bias or conflict of interest on the part of the mediator;
 4. Inform each party of his/her right to obtain independent legal counsel;
 5. Inform the parties that:
 - a. mediation can be suspended or terminated at the request of either party after four (4) hours of mediation, or in the discretion of the mediator as outlined in these rules;
 - b. the mediator may suspend or terminate the mediation if an impediment exists that is making it impossible to mediate, if either party is acting in bad faith or appears not to understand the negotiation, the prospects of achieving a responsible agreement appear unlikely, or if the needs and

interests of the minor children are not being considered. In the event of a suspension or termination, the mediator may suggest a referral for outside professional services;

6. Explain that the mediation process is confidential as outlined in these Rules;
 7. Confirm the parties' understanding regarding the fee for services and any reduced fee arrangements for eligible parties with financial hardship; and
 8. Reach an understanding with the parties as to whether the mediator may communicate with either party or their legal counsel or with other persons to discuss the issues in mediation in the absence of the parties. Any separate communication which does occur shall be disclosed to the parties at the first opportunity.
 9. Advise each party that legal counsel, advocates, or other persons may be present only if both parties and the mediator agree in advance. Such individuals may be available for consultation for each participant while mediation is in progress.
 10. Advise each party that children may be allowed to participate in mediation so long as all parties and the mediator consent to said participation, in writing, and that each parent or the child's representative or guardian ad litem, if applicable, has the right to withhold consent.
- B. Reporting Risk of Bodily Harm: While mediation is in progress, the mediator may report to an appropriate law enforcement agency any information revealed in mediation necessary to prevent an individual from committing an act that is likely to result in imminent, serious bodily harm to another. When the identity of an endangered person is known to the mediator, the mediator may warn that person and his attorney of the threat of harm; such notification shall not be considered a breach of confidentiality mandated by this rule.

RULE 5. APPLICATION OF SAFEGUARDS IN CASE OF IMPEDIMENT

- A. Duty to Assess: While mediation is in progress, the mediator shall assess continuously whether the parties manifest any impediments affecting their ability to mediate safely, competently and in good faith.
- B. Safety: If an impediment affecting safety arises during the course of mediation, the mediator shall adjourn the session to confer separately with the parties, may implement appropriate safeguards such as arranging future mediations in a court facility with security, mediating with the parties in separate rooms, or making referrals to community service providers. The mediator may:
 1. Terminate mediation when circumstances indicate that protective measures are inadequate to maintain safety; or
 2. Proceed with mediation after consulting separately with each party and determining whether mediation in some format should continue.
- C. Competency or Good Faith: If an impediment affecting competency or good faith, but not safety, arises during the course of mediation, the mediator may make any appropriate referrals to community service providers and either:
 1. Suspend mediation when there is a reasonable likelihood the impaired condition of an affected party is only temporary; or
 2. Terminate mediation when circumstances indicate an affected party's ability to negotiate cannot be adequately restored.
- D. Effect of Termination: No mediation terminated shall proceed further unless ordered by the court upon motion of a party. In the absence of such an order, the case shall be returned to the docket for adjudication in the manner prescribed by law, including possible mediation by a judge rather than a private mediator to enhance safety and the ability of each party to mediate on an appropriate basis.

RULE 6. CONFIDENTIALITY

- A. Privacy of Sessions: Mediation sessions shall be private. Except as otherwise provided in these Rules, the mediator shall have authority to exclude all persons other than the parties from sessions at which negotiations are to occur.
- B. Confidentiality: Except as otherwise provided by law, all written and verbal communications made in a mediation session conducted pursuant to these rules are confidential and may not be disclosed by the mediator or any other participant or observer of the mediation, except that the parties may report these communications to their attorneys or counselors. Prior to the commencement of mediation, all participants in the mediation shall sign the confidentiality agreement prescribed by these rules.
- C.
 - 1. Limitation of Disclosure: Admissions, representations, statements and other communications made, or disclosed in confidence by any participant in the course of mediation session shall not be admissible as evidence in any court proceeding. Except as identified herein, a mediator may not be called as a witness in any proceeding by any party or by the court to testify regarding matters disclosed in a mediation session, nor may a party be compelled to testify regarding matters disclosed during a mediation session as to privileged communications. These restrictions shall not prohibit any person from obtaining the same information independent of the mediation, or from discovery conducted pursuant to law or court rule.
 - 2. Exceptions: Admissions, representations, statements and other communications are not confidential if:
 - a. all parties consent in writing to the disclosure; or
 - b. the communication reveals either an act of violence committed against another during mediation, or an intent to commit an act that may result in bodily harm to another; or
 - c. the communication reveals evidence of abuse or neglect of a child; or
 - d. non-identifying information is made available for research or evaluation purposes approved by the court; or
 - e. the communication is probative evidence in a pending action alleging negligence or willful misconduct of the mediator.

RULE 7. ATTENDANCE AND TERMINATION OF MEDIATION

- A. Attendance: The parties shall attend the mediation session(s) and shall attend a minimum of four (4) hours of mediation. Further participation may be extended by order of court or agreement of the parties. Mediation may be terminated or suspended prior to completion of the four (4) hours upon resolution of all mediated issues.
- B. Termination or Suspension: The mediation may be terminated or suspended at the option of the mediator or the court.
- C. Notice to Court: The mediator shall immediately advise the court in writing if he or she suspends or terminates mediation or in the event that either or both parties fail to comply with the terms of this Rule.
- D. Sanctions for Failure to Appear: If a party fails to appear without good cause at a previously agreed upon mediation conference or a mediation conference ordered by the court, the court upon motion may impose sanctions, including an award of mediator and attorney fees and other costs, against the party failing to appear.

- E. Termination with Agreement: When agreements or partial agreements are reached by the parties during mediation, the mediator shall provide a written account of the agreements to the parties and their attorneys (if any), but the mediator shall not provide this written account to the court. The mediator shall advise each party to obtain legal assistance in drafting or reviewing any final agreements. The mediator shall advise the parties that agreements reached during mediation will not be legally binding until they are reviewed by the court and signed by the judge.
- F. Termination Without an Agreement: Upon termination without agreement, the mediator shall file with the court a final mediator report stating that the mediation has concluded without disclosing any reasons for the parties' failure to reach an agreement.
- G. Reporting Procedures
 - 1. Mediator's Report: The mediator shall prepare a report on the prescribed form within ten days of the termination of the last mediation session. These reports will be filed with the circuit clerk.
 - 2. Statistics: The mediator shall prepare a statistical report for each case on the prescribed form and file them at least quarterly with the trial court administrator.
 - 3. Reports to the Supreme Court: The trial court administrator or his/her designee shall provide for the maintenance of records of mediations conducted pursuant to these rules. The information shall include the number of mediations conducted, the number of mediations resulting in an agreement and those resulting in no agreement. Such information shall be furnished to the Supreme Court through its administrative office once a year or at such other interval as may be directed.
- H. Appointment of Child Representative/Guardian ad litem: If the mediator has concerns for the welfare or safety of the minor child(ren) or feels that it is in the best interests of the minor, the mediator shall recommend to the court in the report that a child representative or guardian ad litem be appointed for the minor(s).

RULE 8. ENTRY OF JUDGMENT OR ORDER

- A. Presentation of Order: Each mediated agreement shall be presented by the parties or their attorneys (if any) to the court within thirty days following the filing of the final Mediator's Report.
- B. Approval by Court: The court shall examine the parties as to the content and intent of the agreement and shall reject the agreement if any of its provisions are found by the court to be unconscionable or contrary to the best interests of a minor child. Unless the agreement is rejected, the court shall enter an appropriate judgment or order stating its findings and shall incorporate, either explicitly or by reference, the agreement so the terms of such agreement are also the terms of the judgment or order.

Rule 9. QUALIFICATION AND TRAINING OF MEDIATORS

- A. Requirements: Mediators in the Third Judicial Circuit must meet all of the following requirements:

- 1. Formal Education: A mediator must possess a degree in law or a master's or other advanced degree in a field that includes the study of psychiatry, psychology, social work, human development, family counseling or other behavioral science substantially related to marriage and family interpersonal relationships or a related field or other degree program

approved by the Chief Judge or his/her designee. If engaged in a licensed discipline, the mediator must maintain said license in full force and effect.

2. Training: A mediator must complete a specialized training in family mediation consisting of a circuit-approved course of study or certification, consisting of at least 40 hours including the following areas:

- a. Conflict resolution
- b. Psychological issues in separation, dissolution and family dynamics
- c. Issues and needs of children in dissolution
- d. Mediation process, skills and techniques, and
- e. Screening for and addressing domestic violence, child abuse, substance abuse and mental illness.

3. Insurance: Court-approved mediators must secure and maintain professional liability insurance which covers the mediation process and provide evidence of insurance to the Chief Judge annually.

B. Continuing Education: Approved mediators are required to complete ten (10) hours of circuit-approved continuing education every two (2) years of which two (2) hours must cover domestic violence issues and provide evidence of completion to the Chief/Presiding Judge every two (2) years.

C. Establishment of List: The Judicial Circuit shall establish a list of court-approved mediators. All applicants for inclusion on the list shall possess the minimum qualifications set out in this Circuit Rule. The Chief Judge or his/her designee in his/her discretion may require any biographical or other relevant information from an applicant in order to determine the applicant's qualifications for inclusion on the list. For good cause shown, the Chief Judge or his/her designee reserves the right to reject the application of any person who applies and to remove any mediator from the list. Inclusion on the list by the court shall not be considered a warranty that such mediator can successfully mediate any specific dispute.

D. Denial/Removal from List: An applicant denied inclusion on or removed from the court-approved list may appeal the decision in writing within ten (10) days to the Chief Judge or his/her designee. The Chief Judge or his/her designee shall decide the appeal after an opportunity for the applicant or mediator to be heard.

E. Pro Bono Requirement: Each circuit-approved mediator shall agree to mediate cases for a reduced fee as assigned by the Court. The Court will rotate the assignment of reduced fee cases so as not to unreasonably burden any individual mediator.