

**PROPOSED AMENDMENTS TO THE RULES OF SUPERINTENDENCE
FOR THE COURTS OF OHIO**

Comments Requested: The Supreme Court of Ohio will accept public comments until September 25, 2019, on the following proposed amendments to the Rules of Superintendence for the Courts of Ohio.

Comments on the proposed amendments should be submitted in writing to: Catherine Geyer, Dispute Resolution Programs Manager, Supreme Court of Ohio, 65 South Front Street, 6th Floor, Columbus, Ohio 43215-3431, or CSPO.DisputeResolution@sc.ohio.gov not later than September 25, 2019. Please include your full name and mailing address in any comments submitted by e-mail.

Key to Proposed Amendment:

1. Existing language appears in regular type. Example: text
2. Existing language to be deleted appears in strikethrough. Example: ~~text~~
3. New language to be added appears in underline. Example: text

RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO

1 **RULE 16.14. Definitions.**

2
3 As used in Sup.R. 16.14 through 16.43:

4
5 **(A) Civil stalking protection order case**

6
7 “Civil stalking protection order case” means a proceeding pursuant to R.C. 2903.214.

8
9 **(B) Facilitation**

10
11 “Facilitation” means a process in which a neutral party moderates discussions by ensuring
12 the fluid and orderly exchange of information and ideas from all participants and that is
13 primarily concerned with assisting individuals in refining their communication and
14 organizational skills so that they may learn to work more efficiently with one another in a
15 group setting.

16
17 **~~(B)~~(C) Mediation**

18
19 “Mediation” means a process in which a neutral third party helps the parties communicate
20 and negotiate with each other to help them reach a voluntary agreement regarding their
21 dispute by helping the parties clarify their positions and interests, identifying underlying
22 concerns, and creating practical solutions for resolving their dispute.

23
24 **~~(C)~~(D) Mediator**

25
26 “Mediator” means an individual who conducts a mediation.

27
28 **~~(D)~~(E) Neutral evaluation**

29
30 “Neutral evaluation” means a process in which the parties to a dispute present their claims
31 or defenses and describe the principal evidence on which their claims or defenses are based
32 to a neutral third party who then shares impressions about the strengths and weaknesses of
33 each matter.

34
35
36 **RULE 16.21. Local Mediation Rule.**

37
38 **(A) General**

39
40 A court that elects to use mediation shall adopt a local rule governing mediation. The local
41 rule shall do all of the following:

- 42
43 (1) Incorporate by reference the provisions of the “Ohio Uniform Mediation
44 Act” under R.C. Chapter 2710;

45

- 46 (2) Identify the case types eligible for mediation and those that are precluded
47 from mediation, if any;
48
49 (3) Address confidentiality;
50
51 (4) Prohibit the use of mediation ~~as an alternative to the prosecution or~~
52 ~~adjudication of~~ in domestic violence; ~~in determining whether to grant, modify, or~~
53 ~~terminate a protection order; in determining the terms and conditions of a protection~~
54 ~~order; and in determining the penalty for violation of a protection order cases~~
55 ~~pursuant to R.C. 2919.25, 2919.26, 2919.27, and 3113.31.~~ Nothing in this division
56 shall prohibit the use of mediation in either of the following cases:
57

58 (i) A subsequent divorce or custody case, even though the case may
59 result in the termination of the provisions of a protection order pursuant to
60 R.C. 3113.31;

61
62 (ii) A juvenile delinquency case.
63

64 **[Existing language unaffected by the amendments is omitted to conserve space]**
65

66
67 **RULES 16.26 through ~~46.39~~ 16.29 are reserved for future use**
68

69
70 **RULE 16.30. Civil Stalking Protection Order Mediation.**
71

72 A court of common pleas may offer mediation in a civil stalking protection order case subject to
73 the following factors or restrictions:
74

75 (A) The court shall consider the following factors to determine the appropriateness of
76 offering mediation. The existence of any of the following factors may disfavor the use of
77 mediation:
78

79 (1) Ongoing physical violence;
80

81 (2) Threats of serious physical harm, as defined in R.C. 2901.01(A)(5), or the
82 threatened use of deadly weapons;
83

84 (3) Coercion or intimidation based on past violence;
85

86 (4) Petitioner's fear of the respondent despite the implementation of safety
87 precautions;
88

89 (5) Respondent's controlling, manipulative, or hostile conduct toward the
90 petitioner or the mediation process;
91

- 92 (6) Any other circumstance deemed relevant that puts a party or mediator at
93 risk of harm or abuse.
94
95 (B) None of the following conditions exist or are met:
96
97 (1) The petitioner is a family or household member of the respondent, as
98 defined in R.C. 3113.31(A)(3);
99
100 (2) The allegations in the civil stalking protection order petition involve a
101 sexually oriented offense, as defined in R.C. 2950.01(A);
102
103 (3) The allegations in the civil stalking protection order petition involve serious
104 physical harm, as defined in R.C. 2901.01(A)(5);
105
106 (4) The allegations in the civil stalking protection order petition form the basis
107 for an active criminal proceeding arising out the same activities as those that are
108 the basis of the petition.
109
110

111 **RULE 16.31. Process for Offering Mediation.**

112
113 **(A) Assessment**

114
115 A court of common pleas may assess a civil stalking protection order case for mediation
116 eligibility pursuant to Sup.R. 16.30 after the filing of the civil stalking protection order
117 petition, but before the final disposition of the case.
118

119 **(B) Civil protection order proceedings**

120
121 (1) A court of common pleas may grant an ex parte civil protection order prior to
122 offering mediation.
123

124 (2) A court of common pleas may continue the full hearing in a civil stalking protection
125 order case pursuant to R.C. 2903.214(D)(2)(a)(iv) to allow adequate time for screening of
126 the parties and mediating the case. If the court has granted an ex parte civil protection
127 order, the court may extend the duration of the order in accordance with R.C.
128 2903.214(D)(2)(b).
129

130 **(C) Self-represented parties**

131
132 Self-represented parties in a civil stalking protection order case shall have seventy-two
133 hours to review a mediation agreement with an attorney before the agreement becomes
134 effective.
135
136
137

138 **(D) Forms**
139
140 A court of common pleas offering mediation to the parties in a civil stalking protection
141 order case shall use forms that are substantially similar to “Forms 16.30-A through 16.30-
142 D.”
143
144

145 **RULE 16.32. General**
146

147 **(A) Voluntary participation**
148

149 (1) A court shall not mandate that parties in a civil stalking protection order case use
150 mediation.
151

152 (2) The parties in a civil stalking protection order case shall knowingly and voluntarily
153 participate in mediation based on informed consent, free from coercion or intimidation,
154 and absent from coercive, controlling, or abusive conduct.
155

156 **(B) Fees and costs**
157

158 A court of common pleas shall not assess to the petitioner any fees or costs in connection
159 with the mediation of a civil stalking protection order case.
160

161 **(C) Mediation environment**
162

163 A court of common pleas shall take reasonable precautions to create a safe mediation
164 environment for the parties.
165

166 **(D) Education and training**
167

168 A mediator appointed to a mediate civil stalking protection order case shall comply with
169 the education and training requirements of Sup.R. 16.23.
170

171
172 **RULES 16.33 through 16.39 are reserved for future use**
173

174
175 **Temp.Sup.R. 1.01. Definitions.**
176

177 As used in Temp.Sup.R. 1.01 through 1.08:
178

179 **(A) Civil stalking protection order**
180

181 “Civil stalking protection order” means an order issued pursuant to R.C. 2903.214.
182
183

184 ~~(B)~~ ~~Domestic violence~~
185
186 ~~“Domestic violence” has the same meaning as in R.C. 3113.31(A)(1).~~
187
188 ~~(C)~~ ~~Family or household member~~
189
190 ~~“Family or household member” has the same meaning as in R.C. 3113.31(A)(3).~~
191
192 ~~(D)~~ ~~Mediation~~
193
194 ~~“Mediation” has the same meaning as in R.C. 2710.01(A).~~
195
196 ~~(E)~~ ~~Mediation communication~~
197
198 ~~“Mediation communication” has the same meaning as in R.C. 2710.01(B).~~
199
200 ~~(F)~~ ~~Mediation party~~
201
202 ~~“Mediation party” has the same meaning as in R.C. 2710.01(E).~~
203
204 ~~(G)~~ ~~Serious physical harm~~
205
206 ~~“Serious physical harm” has the same meaning as “serious physical harm to persons” in~~
207 ~~R.C. 2901.01(A)(5).~~
208
209 ~~(H)~~ ~~Sexually oriented offense~~
210
211 ~~“Sexually oriented offense” has the same meaning as in R.C. 2950.01(A).~~
212
213
214 ~~Temp.Sup.R. 1.02. Pilot Project Courts.~~
215
216 ~~(A)~~ ~~Designation~~
217
218 ~~The Chief Justice of the Supreme Court shall designate up to twelve courts of common~~
219 ~~pleas to participate in a mediation of civil stalking protection order cases pilot project~~
220 ~~pursuant to Temp.Sup.R. 1.01 through 1.08. Such courts shall be styled “pilot project~~
221 ~~courts.” The Commission on Dispute Resolution shall recommend to the Chief Justice~~
222 ~~courts for designation as pilot project courts. The Chief Justice shall designate a court as~~
223 ~~a pilot project court only if the court agrees to participate in the pilot project.~~
224
225 ~~(B)~~ ~~Mediation authority~~
226
227 ~~Notwithstanding any rule of the Rules of Superintendence for the Courts of Ohio or local~~
228 ~~rules of court to the contrary, participating judges and magistrates of a pilot project court~~

229 ~~shall be authorized to mediate civil stalking protection order cases pursuant to the~~
230 ~~requirements of Temp.Sup.R. 1.01 through 1.08.~~

231
232 **(C) Training**
233

234 ~~In each pilot project court, the following individuals shall complete an orientation and~~
235 ~~training seminar on mediation of civil stalking protection order cases to be offered by the~~
236 ~~Dispute Resolution Section of the Supreme Court:~~

237
238 (1) ~~Each participating judge or magistrate of the court who will use mediated~~
239 ~~agreements in civil stalking protection order cases;~~

240
241 (2) ~~Each mediator who will be appointed to mediate civil stalking protection~~
242 ~~order cases;~~

243
244 (3) ~~Any other court personnel the participating judges deem appropriate.~~

245
246
247 **Temp.Sup.R. 1.03 Scope of Pilot Project.**

248
249 **(A) Cases eligible for mediation**
250

251 A participating judge or magistrate of a pilot project court shall accept a civil stalking
252 protection order case for mediation if all of the following conditions are met:

253
254 (1) ~~The case is within the statutory jurisdiction of the court;~~

255
256 (2) ~~The petitioner and respondent have the capacity to negotiate an agreement~~
257 ~~that is satisfactory;~~

258
259 (3) ~~The petitioner and respondent are knowingly and voluntarily participating~~
260 ~~based on informed consent, in good faith, free from coercion or intimidation, and~~
261 ~~absent from coercive, controlling, or abusive conduct.~~

262
263 **(B) Cases not eligible for mediation**
264

265 A participating judge or magistrate of a pilot project court shall not accept a civil stalking
266 protection order case for mediation if any of the following conditions are met:

267
268 (1) ~~The petitioner is a family or household member of the respondent;~~

269
270 (2) ~~The allegations in the civil stalking protection order petition involve~~
271 ~~domestic violence or a sexually oriented offense;~~

272

273 (3) ~~The mediation may result in excusing the violence or violent conduct of the~~
274 ~~respondent or would be used to negotiate any type of violence alleged in the~~
275 ~~petition;~~

276
277 (4) ~~The pattern of conduct or threat of violence from the respondent limits the~~
278 ~~petitioner from negotiating without fear, intimidation, or concern for the safety of~~
279 ~~a family or household member;~~

280
281 (5) ~~Any other circumstance that disfavors the use of mediation in the case,~~
282 ~~including but not limited to any of the following:~~

283 (a) ~~Ongoing physical violence;~~

284 (b) ~~Threats of serious physical harm or the threatened use of firearms;~~

285 (c) ~~Coercion or intimidation based on past violence;~~

286 (d) ~~The petitioner's fear of the respondent despite the implementation~~
287 ~~of safety precautions;~~

288 (e) ~~Controlling or manipulative conduct or hostility from the respondent~~
289 ~~toward the petitioner or the mediation process;~~

290 (f) ~~Any other circumstance deemed relevant that puts the petitioner,~~
291 ~~respondent, or mediator at risk of harm or abuse.~~

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299 ~~(C)~~ ~~**Process for mediation**~~

300
301 (1) ~~A participating judge or magistrate of a pilot project court hearing a civil stalking~~
302 ~~protection order case may assess the case for mediation eligibility after the filing of the~~
303 ~~petition and before the full hearing.~~

304
305 (2) ~~Upon determining the suitability of a civil stalking protection order case for~~
306 ~~mediation, the judge or magistrate may grant an ex parte civil protection order and shall~~
307 ~~hold the mediation before the full hearing.~~

308
309 (3) ~~The judge or magistrate, at the judge's or magistrate's sole discretion and for good~~
310 ~~cause shown, may continue the case and shall extend the duration of the ex parte civil~~
311 ~~protection order, if one has been granted, to allow adequate time for effective screening of~~
312 ~~the parties and scheduling and holding the mediation.~~

313
314 ~~(D)~~ ~~**Requirements during mediation**~~

315
316 ~~A civil stalking protection order case determined to be eligible for mediation shall be~~
317 ~~subject to both of the following requirements:~~

318

319 (1) ~~Regardless of the expressed interest of the petitioner and respondent to~~
320 ~~mediate the civil stalking protection order case, it shall be at the sole discretion of~~
321 ~~the mediator to accept or terminate the case after assessing the capacity of the~~
322 ~~parties to mediate;~~

324 (2) ~~The mediator shall take reasonable precautions to create a safe mediation~~
325 ~~environment.~~

327
328 **~~Temp.Sup.R. 1.04 Pilot Project Evaluation.~~**

329
330 ~~The Commission on Dispute Resolution and the Advisory Committee on Domestic Violence shall~~
331 ~~collect, analyze, correlate, and interpret information and data concerning the mediation of civil~~
332 ~~stalking protection order cases from each of the pilot project courts. The Chief Justice of the~~
333 ~~Supreme Court or the Chief Justice's designee may require pilot project courts to provide any~~
334 ~~necessary information and data in order for the Commission on Dispute Resolution and the~~
335 ~~Advisory Committee on Domestic Violence to discharge this duty.~~

336
337
338 **~~Temp.Sup.R. 1.05 Privilege.~~**

339
340 **~~(A) General and exception~~**

341
342 ~~Except as provided in R.C. 2710.05, mediation communications in connection with civil~~
343 ~~stalking protection order cases eligible for mediation are privileged pursuant to R.C.~~
344 ~~2710.03.~~

345
346 **~~(B) Waiver~~**

347
348 ~~The privilege for mediation communications in civil stalking protection order cases eligible~~
349 ~~for mediation may be waived pursuant to R.C. 2710.04.~~

350
351
352 **~~Temp.Sup.R. 1.06 Confidentiality.~~**

353
354 **~~(A) General~~**

355
356 ~~Mediation communications in connection with civil stalking protection order cases eligible~~
357 ~~for mediation are confidential pursuant to R.C. 2710.07. No one shall disclose such~~
358 ~~communications unless all mediation parties and the mediator consent to disclosure in~~
359 ~~writing or on the record in open court.~~

360
361 **~~(B) Exceptions to confidentiality~~**

362
363 ~~(1) Mediation parties may share mediation communications with their attorneys and a~~
364 ~~victim advocate.~~

365 (2) A mediator shall inform a participating judge or magistrate of a pilot court or report
366 to the proper authorities the following mediation communications:

- 367 (a) Allegations of abuse or neglect of a child;
- 368 (b) The imminent threat of physical harm to self or another person;
- 369 (c) Statements to plan or hide an ongoing crime;
- 370 (d) Statements that reveal a felony.

371
372
373
374
375
376 **(C) Penalties**

377 ~~A participating judge or magistrate hearing a civil stalking protection order case may~~
378 ~~impose penalties for any improper disclosure made in violation of this rule.~~

379
380
381
382 **Temp.Sup.R. 1.07 Public Access.**

383
384 ~~Information collected from or generated by participating judges, magistrates, mediators, court~~
385 ~~personnel, and mediation parties pursuant to mediation of civil stalking protection order cases shall~~
386 ~~not be available for public access pursuant to Sup.R. 44 through 47.~~

387
388
389 **Temp.Sup.R. 1.08 Term of Temporary Rules.**

390
391 ~~Temp.Sup.R. 1.01 through 1.08 adopted by the Supreme Court on May 2, 2017, shall take effect~~
392 ~~June 1, 2017, and shall remain in effect through December 31, 2018, unless extended, modified,~~
393 ~~or withdrawn by the Supreme Court prior to that date. Any mediation of a civil stalking protection~~
394 ~~order case pending after the term of these temporary rules shall continue pursuant to the~~
395 ~~requirements of the rules until final disposition thereof.~~