

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

The following amendments to the Rules of Superintendence for the Courts of Ohio (Sup.R. 16 through 16.43) were adopted by the Supreme Court of Ohio. The history of these amendments is as follows:

July 16, 2018	Publication for public comment
September 10, 2019	Final adoption by conference
January 1, 2020	Effective date of amendments

Key to Adopted Amendments:

1. Unaltered language appears in regular type. Example: text
2. Language that has been deleted appears in strikethrough. Example: ~~text~~
3. New language that has been added appears in underline. Example: text

RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO

RULE 16. ~~Mediation.~~

~~(A) General Provisions.~~ A division of the court of common pleas, municipal court, and county court shall consider, and may adopt, a local rule providing for mediation.

~~(B) Content of Mediation Rule.~~ A local rule providing for mediation shall include the applicable provisions set forth in this division, in addition to such other provisions as the court or division considers necessary and appropriate.

~~(1) Required provisions for all mediation rules.~~ A local mediation rule shall include all of the following provisions:

~~(a) Procedures for ensuring that parties are allowed to participate in mediation, and if the parties wish, that their attorneys and other individuals they designate are allowed to accompany them and participate in mediation.~~

~~(b) Procedures for screening for domestic violence both before and during mediation.~~

~~(c) Procedures for encouraging appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.~~

~~(d) Procedures for prohibiting the use of mediation in any of the following:~~

~~1) As an alternative to the prosecution or adjudication of domestic violence;~~

~~2) In determining whether to grant, modify or terminate a protection order;~~

~~3) In determining the terms and conditions of a protection order; and~~

~~4) In determining the penalty for violation of a protection order.~~

~~Nothing in division (B)(1)(d) of this rule 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.~~

~~(2) Required provisions for domestic relations and juvenile court mediation rules.~~ A local rule for mediation of allocation of parental rights and responsibilities or the care of, or visitation with, minor children or delinquency or status offense cases shall include the provisions of division (B)(1) of this rule. The mediation rule shall include provisions that allow mediation to proceed, when violence or fear of violence is alleged, suspected, or present, only if the mediator has specialized training set forth in division (C)(2) of this rule and all of the following conditions are satisfied:

~~(a) The person who is or may be the victim of domestic violence is fully informed, both orally and in writing, about the mediation process, his or her right to decline participation in the mediation process, and his or her option to have a support person present at mediation sessions.~~

~~(b) The parties have the capacity to mediate without fear of coercion or control.~~

~~(c) Appropriate procedures are in place to provide for the safety of the person who is or may be the victim of domestic violence and all other persons present at the mediation.~~

~~(d) Procedures are in place for the mediator to terminate mediation if he or she believes there is continued threat of domestic violence or coercion between the parties.~~

~~(e) Procedures are in place for issuing written findings of fact, as required by R.C. 3109.052, to refer certain cases involving domestic violence to mediation.~~

~~**(3) Required provisions for child abuse, neglect, or dependency mediation rules.**~~

~~A local rule for mediation in child abuse, neglect, or dependency cases shall include the provisions of division (B)(1) and (B)(2) of this rule and all of the following:~~

~~(a) A provision that allows mediation to proceed only if the mediator has specialized training set forth in division (C)(1), (C)(2), and (C)(3) of this rule.~~

~~(b) Procedures for ensuring that 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 can be rescinded at any time.~~

~~(c) Procedures for the selection and referral of a case to mediation at any point after the case is filed.~~

~~(d) Procedures for notifying the parties and nonparty participants of the mediation.~~

~~**(C) Qualification and Training for Domestic Relations and Juvenile Mediators.**~~

~~Each domestic relations and juvenile division of the court of common pleas that adopts a local rule providing for mediation shall include the following applicable provisions for the qualification and training of mediators.~~

~~**(1) General qualifications and training.** A mediator employed by the division or to whom the division makes referrals for mediation of allocation of parental rights and responsibilities, the care of, or visitation with, minor children, abuse, neglect, and dependency, or juvenile perpetrated domestic violence cases shall satisfy all of the following:~~

~~(a) Possess a bachelor's degree, or equivalent education experience as is satisfactory to the division, and at least two years of professional experience with families. "Professional experience with families" includes mediation, counseling, casework, legal representation in family law matters, or such other equivalent experience satisfactory to the division.~~

(b) Complete at least twelve hours of basic mediation training or equivalent experience as a mediator that is satisfactory to the division.

(c) After completing the training required by division (C)(1)(b) of this rule, complete at least forty hours of specialized family or divorce mediation training that is provided by a training program approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.

(2) **Specific qualifications and training; domestic abuse.** A mediator employed by the division or to whom the division makes referrals for mediation of any case shall complete at least fourteen hours of specialized training in domestic abuse and mediation through a training program approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution. A mediator who has not completed this specialized training may mediate these cases only if the mediator co-mediates with another mediator who has completed the specialized training.

(3) **Specific qualifications and training; abuse, neglect, and dependency cases.** In addition to satisfying the requirements of division (C)(1) and (C)(2) of this rule, a mediator employed by the division or to whom the division makes referrals for mediation of abuse, neglect, or dependency cases shall satisfy both of the following:

(a) Possess significant experience in mediating family disputes;

(b) Complete at least thirty two hours of specialized child protection mediation training through either a formal training session or through a mentoring program approved by the Supreme Court Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.

(D) **Aspirational Standards.** Each division that adopts a local rule providing for mediation of family cases shall encourage mediators to comply with the Model Standards of Practice for Family and Divorce Mediation as set forth in Appendix F and the Special Policy Considerations for State Regulation of Family Mediators and Court Affiliated Programs as set forth in Appendix G to this rule. Wherever a conflict exists between the Model Standards of Practice for Family and Divorce Mediation set forth in Appendix F and the Special Policy Considerations for State Regulation of Family Mediators and Court Affiliated Programs in Appendix G and this rule, this rule shall control.

RULE 16.01: Creation of Commission on Dispute Resolution.

There is hereby created by the Supreme Court the Commission on Dispute Resolution.

RULE 16.02: 16.01. Duties and Authority.

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

(A) Duties

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

(2) The Commission on Dispute Resolution shall operate the Government Conflict Resolution Services Program pursuant to Sup. R. 16.40 through ~~16.44~~ 16.43.

RULE ~~16.03~~ 16.02. Membership.

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

RULE ~~16.04~~ 16.03. Terms and Vacancies.

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

RULE ~~16.05~~ 16.04. Chairperson and Vice-Chairperson.

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RULE ~~16.06~~ 16.05. Secretary.

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

RULE ~~16.07~~ 16.06. Meetings.

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RULE ~~16.08~~ 16.07. Subcommittees.

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

(C) Application of rules

Sup.R. ~~16.06~~ 16.05, ~~16.07(A)~~ 16.06(A) through (D), (G), and (H), ~~16.09~~ 16.08, and ~~16.11~~ 16.10 through ~~16.14~~ 16.13 shall also apply to the work of a subcommittee.

RULE ~~46-09~~ 16.08. Code of Ethics.

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

RULE ~~46-10~~ 16.09. Annual Report.

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

RULE ~~46-11~~ 16.10. Work Product.

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

RULE ~~46-12~~ 16.11. Budget.

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

RULE ~~46-13~~ 16.12. Compensation.

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

RULE ~~46-14~~ 16.13. Reimbursement of Expenses.

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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 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 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~~ 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.

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;

(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 for 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 for 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.

(C) Legal Advice

A mediator shall not offer legal advice.

(D) Satisfaction of training requirements

(1) A mediator shall meet the qualifications 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 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;
 - (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.

(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.

RULES ~~16.15~~ 16.26 through 16.39 are reserved for future use

RULE 16.40. Definitions.

As used in Sup.R. 16.40 through 16.44:

(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 organizational skills so that they may learn to work more efficiently with one another in a group setting.~~

(B) Mediation

~~“Mediation” means a 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 by helping the parties clarify their positions and interests, identifying underlying concerns, and creating practical solutions for resolving their dispute.~~

(C) 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.~~

~~RULE 16.41.~~ Government Conflict Resolution Services Program.

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

~~RULE 16.42.~~ 16.41. Privilege.

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

~~RULE 16.43.~~ 16.42. Confidentiality.

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

RULE ~~16.44~~, 16.43 **Public Access to Information.**

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

RULE 99. **Effective Date.**

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

(Insert division letter) The amendments to Sup.R. 16 through 16.14, 16.40 through 16.43, and Appendices F and G, and new Sup.R. 16.20 through 16.25, adopted by the Supreme Court of Ohio on September 10, 2019, shall take effect on January 1, 2020.

APPENDIX F

~~[Model Standards of Practice for Family and Divorce Mediation (adopted by the American Bar Association, Association of Family and Conciliation Courts and the Association for Conflict Resolution) modified to reference express provisions of Ohio law.]~~

~~Overview and Definitions~~

~~Family and divorce mediation (“family mediation” or “mediation”) is a process in which a mediator, an impartial third party, facilitates the resolution of family disputes by promoting the participants’ voluntary agreement. The family mediator assists communication, encourages understanding and focuses the participants on their individual and common interests. The family mediator helps the participants to explore options, make decisions and reach their own agreements.~~

~~Family mediation is neither a substitute for the need for family members to obtain independent legal advice or counseling or therapy, nor is it appropriate for all families. However, experience has established that family mediation is a valuable option for many families because it can:~~

- ~~(A) Increase the self-determination of participants and improve their ability to communicate;~~
- ~~(B) Promote the best interests of children; and~~
- ~~(C) Reduce the economic and emotional costs associated with the resolution of family disputes.~~

~~Effective mediation requires that the family mediator be qualified by training, experience and temperament; that the mediator be impartial; that the participants reach their decisions voluntarily; that their decisions be based on sufficient factual data; that the mediator be aware of the impact of culture and diversity issues that impact the mediation process; and that the best interests of children be taken into account. Further, the mediator should also be prepared to identify families whose history includes domestic abuse or child abuse.~~

~~These Model Standards of Practice for Family and Divorce Mediation (“Model Standards”) aim to perform three major functions:~~

- ~~(A) To serve as a guide for the conduct of family mediators;~~
- ~~(B) To inform the mediating participants of what they can expect; and~~
- ~~(C) To promote public confidence in mediation as a process for resolving family disputes.~~

The Model Standards are aspirational in character. They describe good practices for family mediators. They are not intended to create legal rules or standards of liability.

The Model Standards include different levels of guidance:

Use of the term “may” in a Standard is the lowest strength of guidance and indicates a practice that the family mediator should consider adopting but which can be deviated from in the exercise of good professional judgment.

Most of the Standards employ the term “should” which indicates that the practice described in the Standard is highly desirable and should be departed from only with very strong reason.

The term “shall” in a Standard is a higher level of guidance to the family mediator, indicating that the mediator should not have discretion to depart from the practice described.

Standard I

A family mediator shall recognize that mediation is based on the principle of self-determination by the participants.

(A) Self-determination is the fundamental principle of family mediation. The mediation process relies upon the ability of participants to make their own voluntary and informed decisions.

(B) The primary role of a family mediator is to assist the participants to gain a better understanding of their own needs and interests and the needs and interests of others and to facilitate agreement among the participants.

(C) A family mediator shall inform the participants that they may seek information and advice from a variety of sources during the mediation process.

(D) A family mediator shall inform the participants that they may withdraw from family mediation at any time and are not required to reach an agreement in mediation.

(E) The family mediator’s commitment shall be to the participants and the process. Pressure from outside of the mediation process shall never influence the mediator to coerce participants to settle.

Standard II

A family mediator shall be qualified by education and training to undertake the mediation.

(A) To perform the family mediator’s role, a mediator should:

- (1) have knowledge of family law;
 - (2) have knowledge of and training in the impact of family conflict on parents, children and other participants, including knowledge of child development, domestic abuse and child abuse and neglect;
 - (3) have education and training specific to the process of mediation; and
 - (4) Be able to recognize the impact of culture and diversity.
- (B) Family mediators shall provide information to the participants about the mediator's relevant training, education and expertise.

Standard III

A family mediator shall facilitate the participants' understanding of what mediation is and assess their capacity to mediate before the participants reach an agreement to mediate.

(A) Before family mediation begins, a mediator shall provide the participants with an overview of the process and its purposes, including:

- (1) informing the participants that reaching an agreement in family mediation is consensual in nature, that a mediator is an impartial facilitator, and that a mediator may not impose or force any settlement on the parties;
- (2) distinguishing family mediation from other processes designed to address family issues and disputes;
- (3) informing the participants that any agreements reached will be reviewed by the court when court approval is required;
- (4) informing the participants that they may obtain independent advice from attorneys, counsel, advocates, accountants, therapists or other professionals during the mediation process;
- (5) advising the participants, in appropriate cases, that they can seek the advice of religious figures, elders or other significant persons in their community whose opinions they value;
- (6) discussing, if applicable, the issue of separate sessions with the participants, a description of the circumstances in which the mediator may meet alone with any of the participants, or with any third party and the conditions of confidentiality concerning these separate sessions;
- (7) Informing the participants that the presence or absence of other persons at mediation, including attorneys, counselors or advocates, depends on the wishes of the participants. The mediator shall take controlling statutes or rules into consideration. The mediator may

encourage the presence of another person when there is a history or threat of violence or other serious coercive activity by a participant;

(8) describing the obligations of the mediator to maintain the confidentiality of the mediation process and its results as well as any exceptions to confidentiality;

(9) Advising the participants of the circumstances under which the mediator may suspend or terminate the mediation process and that a participant has a right to suspend or terminate mediation at any time.

(B) The family mediator should have participants sign a written agreement to mediate their dispute and the terms and conditions thereof within a reasonable time after first consulting the family mediator, if they desire to mediate.

(C) The family mediator should be alert to the capacity and willingness of the participants to mediate before proceeding with the mediation and throughout the process. A mediator shall not agree to conduct the mediation if the mediator reasonably believes one or more of the participants are unable or unwilling to participate.

(D) Family mediators should not accept a dispute for mediation if they cannot satisfy the expectations of the participants concerning the timing of the process.

Standard IV

A family mediator shall conduct the mediation process in an impartial manner. A family mediator shall disclose all actual and potential grounds of bias and conflicts of interest reasonably known to the mediator. The participants shall be free to retain the mediator by an informed, written waiver of the conflict of interest. However, if a bias or conflict of interest clearly impairs a mediator's impartiality, the mediator shall withdraw regardless of the express agreement of the participants.

(A) Impartiality means freedom from favoritism or bias in word, action or appearance, and includes a commitment to assist all participants as opposed to any one individual.

(B) Conflict of interest means any relationship between the mediator, any participant or the subject matter of the dispute that compromises or appears to compromise the mediator's impartiality.

(C) A family mediator should not accept a dispute for mediation if the family mediator cannot be impartial.

(D) A family mediator shall identify and disclose potential grounds of bias or conflict of interest upon which a mediator's impartiality might reasonably be questioned. Such disclosure should be made prior to the start of mediation and in time to allow the participants to select an alternate mediator.

~~(E) A family mediator shall resolve all doubts in favor of disclosure. All disclosures shall be made as soon as practical after the mediator becomes aware of the bias or potential conflict of interest. The duty to disclose is a continuing duty.~~

~~(F) A family mediator shall guard against bias or partiality based on the participants' personal characteristics, background or performance at the mediation.~~

~~(G) A family mediator shall avoid conflicts of interest in recommending the services of other professionals.~~

~~(H) A family mediator shall not use information about participants obtained in mediation for personal gain or advantage.~~

~~(I) A family mediator shall withdraw pursuant to Standard XI if the mediator believes the mediator's impartiality has been compromised or a conflict of interest has been identified and has not been waived by the participants.~~

Standard V

A family mediator shall fully disclose and explain the basis of any compensation, fees and charges to the participants.

~~(A) The participants shall be provided with sufficient information about fees at the outset of mediation to determine if they wish to retain the services of the mediator.~~

~~(B) The participants' written agreement to mediate their dispute shall include a description of their fee arrangement with the mediator.~~

~~(C) A mediator shall not enter into a fee agreement that is contingent upon the results of the mediation or the amount of the settlement.~~

~~(D) A mediator shall not accept a fee for referral of a matter to another mediator or to any other person.~~

~~(E) Upon termination of mediation a mediator shall return any unearned fee to the participants.~~

Standard VI

A family mediator shall structure the mediation process so that the participants can make decisions based on sufficient information and knowledge.

~~(A) The mediator should facilitate full and accurate disclosure and the acquisition and development of information during mediation so that the participants can make informed decisions. This may be accomplished by encouraging participants to consult appropriate experts.~~

~~(B) Consistent with standards of impartiality and preserving participant self-determination, a mediator may provide the participants with information that the mediator is qualified by training or experience to provide. The mediator shall not provide therapy or legal advice.~~

~~(C) If the participants so desire, the mediator shall allow attorneys, counsel or advocates for the participants, or other individual designated by the participants, to be present at the mediation sessions.~~

~~(D) With the agreement of the participants, the mediator may document the participants' resolution of their dispute. The mediator should inform the participants that any agreement should be reviewed by an independent attorney before it is signed.~~

Standard VII

A family mediator shall maintain the confidentiality of all information acquired in the mediation process, unless the mediator is permitted or required to reveal the information by law or agreement of the participants.

~~(A) The mediator should discuss the participants' expectations of confidentiality with them prior to undertaking the mediation. The written agreement to mediate should include provisions concerning confidentiality.~~

~~(B) Prior to undertaking the mediation the mediator shall inform the participants of the limitations of confidentiality such as statutory, judicially or ethically mandated reporting.~~

~~(C) As permitted by law, the mediator shall disclose a participant's threat of suicide or violence against any person to the threatened person and the appropriate authorities if the mediator believes such threat is likely to be acted upon.~~

~~(D) If the mediator holds private sessions with a participant, the obligations of confidentiality concerning those sessions should be discussed and agreed upon prior to the sessions.~~

~~(E) If subpoenaed or otherwise noticed to testify or to produce documents the mediator should inform the participants immediately. The mediator shall not testify or provide documents in response to a subpoena without an order of the court that is pursuant to O.R.C. 3109.52, if the mediator reasonably believes doing so would violate an obligation of confidentiality to the participants.~~

Standard VIII

A family mediator shall assist participants in determining how to promote the best interests of children.

(A) ~~The mediator should encourage the participants to explore the range of options available for separation or post-divorce parenting arrangements and their respective costs and benefits. Referral to a specialist in child development may be appropriate for these purposes. The topics for discussion may include, among others:~~

~~(1) Information about community resources and programs that can help the participants and their children cope with the consequences of family reorganization and family violence;~~

~~(2) Problems that continuing conflict creates for children's development and what steps might be taken to ameliorate the effects of conflict on the children;~~

~~(3) Development of a parenting plan that covers the children's physical residence and decision-making responsibilities for the children, with appropriate levels of detail as agreed to by the participants;~~

~~(4) The possible need to revise parenting plans as the developmental needs of the children evolve over time; and~~

~~(5) Encouragement to the participants to develop appropriate dispute-resolution mechanisms to facilitate future revisions of the parenting plan.~~

(B) ~~The mediator shall be sensitive to the impact of culture and religion on parenting philosophy and other decisions.~~

(C) ~~The mediator shall inform any court-appointed representative for the children of the mediation. If a representative for the children participates in mediation, the mediator should, at the outset, discuss the effect of that participation on the mediation process and the confidentiality of the mediation with the participants. Whether the representative of the children participates or not, the mediator shall provide the representative with the resulting agreements insofar as they relate to the children.~~

(D) ~~Except in extraordinary circumstances, the children shall not participate in the mediation process without the consent of both parents and, if applicable, the children's court-appointed representative.~~

(E) ~~Prior to including the children in the mediation process, the mediator shall consult with the parents and the children's court-appointed representative, if applicable, about whether the children should participate in the mediation process and the form of that participation.~~

(F) ~~The mediator shall inform all concerned about the available options for the children's participation (which may include personal participation, an interview with a mental~~

health professional, the mediator interviewing the child, or a videotaped statement by the child) and discuss the costs and benefits of each with the participants.

Standard IX

A family mediator shall take reasonable steps to ascertain a family situation involving child abuse or neglect and take appropriate steps to shape the mediation process accordingly.

(A) As used in these Standards, child abuse or neglect is defined by applicable state law.

(B) A mediator shall not undertake a mediation in which the family situation has been assessed to involve child abuse or neglect without having completed appropriate and adequate training.

(C) If the mediator has reasonable grounds to believe that a child of the participants is abused or neglected within the meaning of the jurisdiction's child abuse and neglect laws, the mediator shall comply with applicable child protection laws.

(1) The mediator should encourage the participants to explore appropriate services for the family.

(2) The mediator shall consider the appropriateness of suspending or terminating the mediation process in light of the allegations.

Standard X

A family mediator shall take reasonable steps to ascertain a family situation involving domestic abuse and take appropriate steps to shape the mediation process accordingly.

(A) As used in these Standards, domestic abuse includes domestic violence as defined by applicable state law and issues of control and intimidation.

(B) A mediator shall not undertake a mediation in which the family situation has been assessed to involve domestic abuse without having completed appropriate and adequate training.

(C) Some cases are not suitable for mediation because of safety, control or intimidation issues. A mediator shall make a reasonable effort to screen for the existence of domestic abuse prior to entering into an agreement to mediate. The mediator shall continue to assess for domestic abuse throughout the mediation process.

(D) If domestic abuse appears to be present the mediator shall consider taking measures to insure the safety of participants and the mediator including, among others:

- (1) establishing appropriate security arrangements;
- (2) holding separate sessions with the participants even without the agreement of all participants;
- (3) allowing a friend, representative, advocate, counsel or attorney to attend the mediation sessions;
- (4) encouraging the participants to be represented and or accompanied by an attorney, counsel or an advocate throughout the mediation process;
- (5) referring the participants to appropriate community resources;
- (6) Suspending or terminating the mediation sessions, with appropriate steps to protect the safety of the participants.

The mediator should facilitate the participants' formulation of parenting plans that protect the physical safety and psychological well being of the participants and their children.

Standard XI

A family mediator shall suspend or terminate the mediation process when the mediator reasonably believes that a participant is unable to effectively participate or for other compelling reason.

- (A) Circumstances under which a mediator should consider suspending or terminating the mediation, may include, among others:
- (1) the safety of a participant or well being of a child is threatened;
 - (2) a participant has or is threatening to abduct a child;
 - (3) a participant is unable to participate due to the influence of drugs, alcohol, or physical or mental condition;
 - (4) the participants are about to enter into an agreement that the mediator reasonably believes to be unconscionable;
 - (5) a participant is using the mediation to further illegal conduct;
 - (6) a participant is using the mediation process to gain an unfair advantage;
 - (7) If the mediator believes the mediator's impartiality has been compromised in accordance with Standard IV.

~~(B) If the mediator does suspend or terminate the mediation, the mediator shall take all reasonable steps to minimize prejudice or inconvenience to the participants, which may result.~~

Standard XII

~~*A family mediator shall be truthful in the advertisement and solicitation for mediation.*~~

~~(A) Mediators should refrain from promises and guarantees of results. A mediator should not advertise statistical settlement data or settlement rates.~~

~~(B) Mediators shall accurately represent their qualifications. In an advertisement or other communication, a mediator may make reference to meeting state, national, or private organizational qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.~~

Standard XIII

~~*A family mediator shall acquire and maintain professional competence in mediation.*~~

~~(A) Mediators should continuously improve their professional skills and abilities by, among other activities, participating in relevant continuing education programs and should regularly engage in self assessment.~~

~~(B) Mediators should participate in programs of peer consultation and should help train and mentor the work of less experienced mediators.~~

~~(C) Mediators should continuously strive to understand the impact of culture and diversity on the mediator's practice.~~

Appendix F is reserved for future use

APPENDIX G

~~{Special Policy Considerations for State Regulation of Family Mediators and Court Affiliated Programs}~~

~~The Model Standards recognize the National Standards for Court Connected Dispute Resolution Programs (1992). There are also state and local regulations governing such programs and family mediators. The following principles of organization and practice, however, are especially important for regulation of mediators and court connected family mediation programs. They are worthy of separate mention.~~

~~(A) Individual states or local courts should set standards and qualifications for family mediators including procedures for evaluations and guidelines for handling grievances against mediators. In developing these standards and qualifications, regulators should consult with appropriate professional groups, including professional associations of family mediators.~~

~~(B) When family mediators are appointed by a court or other institution, the appointing agency should make reasonable efforts to insure that each mediator is qualified for the appointment. If a list of family mediators qualified for court appointment exists, the requirements for being included on the list should be made public and available to all interested persons.~~

~~(C) Confidentiality should not be construed to limit or prohibit the effective monitoring, research or evaluation of mediation programs by responsible individuals or academic institutions provided that no identifying information about any person involved in the mediation is disclosed without their prior written consent. Under appropriate circumstances, researchers may be permitted to obtain access to statistical data and, with the permission of the participants, to individual case files, observations of live mediations and interviews with participants.~~

Appendix G is reserved for future use