

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

Comments Requested: The Supreme Court of Ohio will accept public comments until August 15, 2018, 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 [MediationComments@sc.ohio.gov](mailto:MediationComments@sc.ohio.gov) not later than August 15, 2018. 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

1                                   **RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO**

2  
3 **RULE 16.    Mediation.**

4  
5           **(A)    General Provisions.** ~~A division of the court of common pleas, municipal court,~~  
6 ~~and county court shall consider, and may adopt, a local rule providing for mediation.~~

7  
8           **(B)    Content of Mediation Rule.** ~~A local rule providing for mediation shall include the~~  
9 ~~applicable provisions set forth in this division, in addition to such other provisions as the court or~~  
10 ~~division considers necessary and appropriate.~~

11  
12           **(1)    Required provisions for all mediation rules.** ~~A local mediation rule shall include~~  
13 ~~all of the following provisions:~~

14  
15           (a)    ~~Procedures for ensuring that parties are allowed to participate in mediation, and if~~  
16 ~~the parties wish, that their attorneys and other individuals they designate are allowed to accompany~~  
17 ~~them and participate in mediation.~~

18  
19           (b)    ~~Procedures for screening for domestic violence both before and during mediation.~~

20  
21           (c)    ~~Procedures for encouraging appropriate referrals to legal counsel and other support~~  
22 ~~services for all parties, including victims of and suspected victims of domestic violence.~~

23  
24           (d)    ~~Procedures for prohibiting the use of mediation in any of the following:~~

25  
26                   1)    ~~As an alternative to the prosecution or adjudication of domestic violence;~~

27  
28                   2)    ~~In determining whether to grant, modify or terminate a protection order;~~

29  
30                   3)    ~~In determining the terms and conditions of a protection order; and~~

31  
32                   4)    ~~In determining the penalty for violation of a protection order.~~

33  
34           ~~Nothing in division (B)(1)(d) of this rule shall prohibit the use of mediation in a subsequent~~  
35 ~~divorce or custody case even though that case may result in the termination of the provisions of a~~  
36 ~~protection order.~~

37  
38           **(2)    Required provisions for domestic relations and juvenile court mediation rules.**  
39 ~~A local rule for mediation of allocation of parental rights and responsibilities or the care of, or~~  
40 ~~visitation with, minor children or delinquency or status offense cases shall include the provisions~~  
41 ~~of division (B)(1) of this rule. The mediation rule shall include provisions that allow mediation to~~  
42 ~~proceed, when violence or fear of violence is alleged, suspected, or present, only if the mediator~~  
43 ~~has specialized training set forth in division (C)(2) of this rule and all of the following conditions~~  
44 ~~are satisfied:~~

45

46 (a) ~~The person who is or may be the victim of domestic violence is fully informed,~~  
47 ~~both orally and in writing, about the mediation process, his or her right to decline participation in~~  
48 ~~the mediation process, and his or her option to have a support person present at mediation sessions.~~  
49

50 (b) ~~The parties have the capacity to mediate without fear of coercion or control.~~  
51

52 (c) ~~Appropriate procedures are in place to provide for the safety of the person who is~~  
53 ~~or may be the victim of domestic violence and all other persons present at the mediation.~~  
54

55 (d) ~~Procedures are in place for the mediator to terminate mediation if he or she believes~~  
56 ~~there is continued threat of domestic violence or coercion between the parties.~~  
57

58 (e) ~~Procedures are in place for issuing written findings of fact, as required by R.C.~~  
59 ~~3109.052, to refer certain cases involving domestic violence to mediation.~~  
60

61 **(3) Required provisions for child abuse, neglect, or dependency mediation rules.**  
62 ~~A local rule for mediation in child abuse, neglect, or dependency cases shall include the provisions~~  
63 ~~of division (B)(1) and (B)(2) of this rule and all of the following:~~  
64

65 (a) ~~A provision that allows mediation to proceed only if the mediator has specialized~~  
66 ~~training set forth in division (C)(1), (C)(2), and (C)(3) of this rule.~~  
67

68 (b) ~~Procedures for ensuring that parties who are not represented by counsel attend~~  
69 ~~mediation only if they have waived the right to counsel in open court, and that parties represented~~  
70 ~~by counsel attend mediation without counsel only where the right to have counsel present at the~~  
71 ~~mediation has been specifically waived. Waivers can be rescinded at any time.~~  
72

73 (c) ~~Procedures for the selection and referral of a case to mediation at any point after~~  
74 ~~the case is filed.~~  
75

76 (d) ~~Procedures for notifying the parties and nonparty participants of the mediation.~~  
77

78 **(C) Qualification and Training for Domestic Relations and Juvenile Mediators.**  
79 ~~Each domestic relations and juvenile division of the court of common pleas that adopts a local rule~~  
80 ~~providing for mediation shall include the following applicable provisions for the qualification and~~  
81 ~~training of mediators:~~  
82

83 **(1) General qualifications and training.** ~~A mediator employed by the division or to~~  
84 ~~whom the division makes referrals for mediation of allocation of parental rights and~~  
85 ~~responsibilities, the care of, or visitation with, minor children, abuse, neglect, and dependency, or~~  
86 ~~juvenile perpetrated domestic violence cases shall satisfy all of the following:~~  
87

88 (a) ~~Possess a bachelor's degree, or equivalent education experience as is satisfactory~~  
89 ~~to the division, and at least two years of professional experience with families.~~  
90 ~~"Professional experience with families" includes mediation, counseling, casework, legal~~

91 representation in family law matters, or such other equivalent experience satisfactory to the  
92 division.

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

95  
96 (c) After completing the training required by division (C)(1)(b) of this rule, complete  
97 at least forty hours of specialized family or divorce mediation training that is provided by a training  
98 program approved by the Supreme Court Dispute Resolution Section in accordance with standards  
99 established by the Commission on Dispute Resolution.

100  
101 ~~(2) **Specific qualifications and training; domestic abuse.** A mediator employed by~~  
102 ~~the division or to whom the division makes referrals for mediation of any case shall complete at~~  
103 ~~least fourteen hours of specialized training in domestic abuse and mediation through a training~~  
104 ~~program approved by the Supreme Court Dispute Resolution Section in accordance with standards~~  
105 ~~established by the Commission on Dispute Resolution. A mediator who has not completed this~~  
106 ~~specialized training may mediate these cases only if the mediator co-mediate with another~~  
107 ~~mediator who has completed the specialized training.~~

108  
109 ~~(3) **Specific qualifications and training; abuse, neglect, and dependency cases.** In~~  
110 ~~addition to satisfying the requirements of division (C)(1) and (C)(2) of this rule, a mediator~~  
111 ~~employed by the division or to whom the division makes referrals for mediation of abuse, neglect,~~  
112 ~~or dependency cases shall satisfy both of the following:~~

113  
114 (a) ~~Possess significant experience in mediating family disputes;~~

115  
116 (b) ~~Complete at least thirty-two hours of specialized child protection mediation training~~  
117 ~~through either a formal training session or through a mentoring program approved by the Supreme~~  
118 ~~Court Dispute Resolution Section in accordance with standards established by the Commission on~~  
119 ~~Dispute Resolution.~~

120  
121 ~~(D) **Aspirational Standards.** Each division that adopts a local rule providing for~~  
122 ~~mediation of family cases shall encourage mediators to comply with the Model Standards of~~  
123 ~~Practice for Family and Divorce Mediation as set forth in Appendix F and the Special Policy~~  
124 ~~Considerations for State Regulation of Family Mediators and Court Affiliated Programs as set~~  
125 ~~forth in Appendix G to this rule. Wherever a conflict exists between the Model Standards of~~  
126 ~~Practice for Family and Divorce Mediation set forth in Appendix F and the Special Policy~~  
127 ~~Considerations for State Regulation of Family Mediators and Court Affiliated Programs in~~  
128 ~~Appendix G and this rule, this rule shall control.~~

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130  
131 **RULE 16.01. Creation of Commission on Dispute Resolution.**

132  
133 There is hereby created by the Supreme Court the Commission on Dispute Resolution.

134  
135

136 **RULE ~~16.02.~~ 16.01. Duties and Authority.**

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

139 **RULE ~~16.03.~~ 16.02. Membership.**

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

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

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

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

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

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154 **RULE ~~16.06.~~ 16.05. Secretary.**

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

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159 **RULE ~~16.07.~~ 16.06. Meetings.**

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

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164 **RULE ~~16.08.~~ 16.07. Subcommittees.**

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

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168

169 **(C) Application of rules**

170

171 Sup.R. ~~16.06~~ 16.05, ~~16.07(A)~~ 16.06(A) through (D), (G), and (H), ~~16.09~~ 16.08,

172 and ~~16.11~~ 16.10 through ~~16.14~~ 16.13 shall also apply to the work of a subcommittee.

173

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175 **RULE ~~16.09.~~ 16.08. Code of Ethics.**

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

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180 **RULE ~~16.10.~~ 16.09. Annual Report.**

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

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185 **RULE ~~16.11.~~ 16.10. Work Product.**

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

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190 **RULE ~~16.12.~~ 16.11. Budget.**

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

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195 **RULE ~~16.13.~~ 16.12. Compensation.**

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

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200 **RULE ~~16.14.~~ 16.13. Reimbursement of Expenses.**

201  
202 [Existing language unaffected by the amendments is omitted to conserve space]

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204  
205 **RULES 16.20 through 16.24 are reserved for future use**

206  
207  
208 **RULE 16.30. Application.**

209  
210 Sup.R. 16.30 through 16.36 shall apply to all mediation in which a court refers a case or dispute to  
211 any individual mediator, roster of individual mediators, or mediation program to mediate.  
212 Sup.R. 16.30 through 16.36 shall apply regardless of whether the mediator is a court employee,  
213 independent contractor, volunteer, or private mediator and regardless of whether mediation was  
214 requested by or paid for by a party.

215  
216  
217 **RULE 16.31. Definitions.**

218  
219 As used in Sup.R. 16.30 through 16.36:

220  
221 **(A) Mediation**

222  
223 "Mediation" means any process in which a mediator facilitates communication and  
224 negotiation between disputants to assist them in reaching a voluntary agreement regarding  
225 their dispute.

226  
227 **(B) Mediator**

228

229 "Mediator" means an individual who conducts a mediation.  
230  
231

232 **RULE 16.32. Local Mediation Rule.**  
233

234 **(A) General**  
235

236 A court that elects to refer cases or disputes to any individual mediator, roster of individual  
237 mediators, or mediation program to mediate shall adopt a local rule governing mediation.  
238 The local rule shall do all of the following:  
239

240 (1) Incorporate by reference the provisions of the "Ohio Uniform Mediation  
241 Act" under R.C. Chapter 2710;  
242

243 (2) Identify the case types eligible for mediation and those that are precluded  
244 from mediation, if any;  
245

246 (3) Address confidentiality;  
247

248 (4) Prohibit the use of mediation as an alternative to the prosecution or  
249 adjudication of domestic violence; in determining whether to grant, modify, or  
250 terminate a protection order; in determining the terms and conditions of a protection  
251 order; and in determining the penalty for violation of a protection order. Nothing  
252 in this division shall prohibit the use of mediation in a subsequent divorce or  
253 custody case, even though that case may result in the termination of the provisions  
254 of a protection order; in a juvenile court delinquency case, even though the case  
255 involves juvenile-perpetrated domestic violence; or as authorized by Temp.Sup.R.  
256 1.01 through 1.08 for a civil stalking protection order cases pilot project.  
257

258 (5) Establish procedures for encouraging appropriate referrals to legal counsel  
259 and other support services for all parties, including victims and suspected victims  
260 of domestic violence;  
261

262 (6) Address other provisions as the court considers necessary and appropriate.  
263

264 **(B) Juvenile courts**  
265

266 A juvenile court that elects to refer abuse, neglect, and dependency cases or disputes to any  
267 individual mediator, roster of individual mediators, or mediation program shall adopt a  
268 local rule governing mediation. The local rule shall do all of the following:  
269

270 (1) Comply with division (A) of this rule;  
271

272 (2) Include procedures to ensure parties who are not represented by counsel  
273 attend mediation only if they have waived the right to counsel in open court and  
274 that parties represented by counsel attend mediation without counsel only where

275 the right to have counsel present at the mediation has been specifically waived.  
276 Waivers may be rescinded at any time.

277  
278 (3) Include procedures for the selection and referral of a case to mediation at  
279 any point after the case is filed;

280  
281 (4) Include procedures for notifying the parties and nonparty participants of the  
282 mediation.

283  
284  
285 **RULE 16.33.**        **Responsibilities of Mediator.**

286  
287 **(A)**    **General responsibilities**

288  
289 (1) In order to provide a fair mediation process for parties, a mediator shall remain  
290 impartial and neutral and shall comply with all of the following:

291  
292 (a) The “Core Values of Mediation,” as set forth in Appendix F to this rule and  
293 approved by the Supreme Court Dispute Resolution Section in accordance with  
294 recommendations established by the Commission on Dispute Resolution;

295  
296 (b) The “Model Standards of Conduct for Mediators” adopted by the American  
297 Bar Association, American Arbitration Association, and the Association for  
298 Conflict Resolution;

299  
300 (c) For mediation in domestic relations or juvenile courts, the “Model  
301 Standards of Practice for Family and Divorce Mediation” adopted by the  
302 Association for Family and Conciliation Courts;

303  
304 (d) For mediation in juvenile courts of abuse, neglect, and dependency cases,  
305 the “Guidelines for Child Protection Mediation” adopted by the Association for  
306 Family and Conciliation Courts.

307  
308 (2) A mediator shall promptly advise each court from which the mediator receives  
309 referrals of any grounds for unavailability to serve as a mediator.

310  
311 **(B)**    **Conflicts of interest**

312  
313 (1) A mediator shall avoid any actual or apparent conflicts of interest arising from any  
314 relationship or activity, including but not limited to those of employment or business or  
315 from professional or personal contacts with parties or others involved in the dispute. A  
316 mediator shall avoid self-dealing or associations from which the mediator might benefit,  
317 directly or indirectly, except from compensation for services as a mediator.

318  
319 (2) Upon becoming aware of any actual or apparent conflict of interest, a mediator shall  
320 notify the parties as soon as practicable.



321  
322 (3) The requirements of this rule are in addition to and do not supersede the  
323 requirements of R.C. 2710.08. Wherever a conflict exists between this rule and R.C.  
324 2710.08, the statute shall control.

325  
326 **(C) Legal Advice**

327  
328 A mediator shall not offer legal advice.

329  
330 **(D) Satisfaction of training requirements**

331  
332 (1) A mediator shall meet the qualifications of and comply with all training  
333 requirements of Sup.R. 16.34 and local court rules governing mediators and mediation  
334 adopted pursuant to Sup.R. 16.32.

335  
336 (2) Upon request, a mediator shall provide a court from which the mediator receives  
337 referrals or its designee documentation indicating compliance with all training  
338 requirements, including the date, location and sponsor of any relevant training.

339  
340  
341 **RULE 16.34. Mediator Pre-Referral Education and Training.**

342  
343 **(A) General**

344  
345 (1) Except as provided in division (A)(2) of this rule, prior to accepting a referral from  
346 a court, a mediator shall complete “Fundamentals of Mediation Training” approved by the  
347 Supreme Court Dispute Resolution Section in accordance with standards established by the  
348 Commission on Dispute Resolution.

349  
350 (2) A mediator shall not be required to complete training pursuant to division (A)(1) of  
351 this rule if any of the following apply:

352  
353 (a) Prior to *[the effective date of rule]*, the mediator has completed at least 12  
354 hours of basic mediation training;

355  
356 (b) Prior to *[the effective date of rule]*, the mediator has served as a full-time  
357 mediator for a minimum of three years or mediated at least 45 cases. The mediator  
358 shall complete the “Advanced Mediation Workshop” provided by a training  
359 program approved by the Supreme Court Dispute Resolution Section in accordance  
360 with standards established by the Commission on Dispute Resolution;

361  
362 (c) The mediator is a law student enrolled in a clinical mediation or dispute  
363 resolution program at an American Bar Association accredited law school, has  
364 completed mandatory coursework in fundamental mediation topics, and mediates  
365 under the supervision of faculty at the law school.  
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**(B) Domestic relations and juvenile courts**

(1) Prior to accepting a referral from a court for disputes involving divorce; annulment; dissolution of marriage; the allocation of parental rights and responsibilities; the care of or visitation with minor children; abuse, neglect, and dependency; or juvenile-perpetrated domestic violence, 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 mediation, 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;

(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 direct supervision of faculty at the law school who has completed the training.

(2) Prior to accepting a referral of a case 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 Sup.R. 16.34(B)(1);

(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 of a case involving school attendance mediation, a mediator shall complete “School Attendance Mediation Training” approved by the

413 Supreme Court Dispute Resolution Section in accordance with standards established by the  
414 Commission on Dispute Resolution.

415  
416  
417 **RULE 16.35.**            **Responsibilities of Court.**  
418

419 In order to ensure only qualified individuals perform the duties of a mediator and the requirements  
420 of Sup. R. 16.30 through 16.36 are met, a court that elects to refer cases or disputes to any  
421 individual mediator, roster of individual mediators, or mediation program to mediate shall do all  
422 of the following:

423  
424        (A) Require screening, both before and during mediation, for the capacity of the parties  
425 and the mediator to mediate;

426  
427        (B) Establish procedures for monitoring and evaluating mediation to ensure the quality  
428 of the mediators and programs to which cases are referred;

429  
430        (C) Develop a process and appoint a person for accepting and considering written  
431 comments and complaints regarding the performance of mediators receiving referrals from  
432 the court. A copy of comments and complaints submitted to the court shall be provided to  
433 the mediator who is the subject of the complaint or comment. The person appointed may  
434 forward any comments and complaints to the administrative judge of the court for  
435 consideration and appropriate action. Dispositions by the court shall be made promptly.  
436 The court shall maintain a written record in the mediator's file regarding the nature and  
437 disposition of any comment or complaint and shall notify the person making the comment  
438 or complaint and the subject mediator of the disposition.

439  
440        (D) Allow mediation to proceed only if the mediator meets the pre-referral  
441 qualifications, education, and training requirements of Sup.R. 16.34;

442  
443        (E) Prohibit mediation when domestic abuse or domestic violence is alleged, suspected,  
444 or present unless all of the following conditions are satisfied:

445  
446            (a) Screening is conducted both before and during mediation, for domestic  
447 abuse and domestic violence, and for the capacity of the parties and mediator to  
448 mediate;

449  
450            (b) The person who is or may be the victim of domestic abuse or domestic  
451 violence is fully informed about the mediation process, right to decline participation  
452 in the mediation process, and of the option to have a support person present at the  
453 mediation sessions;

454  
455            (c) The parties have the capacity to mediate without fear of coercion or control;  
456

457                   (d)     Appropriate procedures are in place to provide for the safety of the person  
458                   who is or may be the victim of domestic abuse or domestic violence and all other  
459                   persons involved in the mediation process;

461                   (e)     Procedures are in place for the mediator to terminate a mediation session if  
462                   there is a continued threat of domestic abuse, domestic violence, or coercion  
463                   between the parties;

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

468  
469     **RULE 16.36.**           **Public Access.**  
470  
471     The files maintained by a mediator but not filed with a clerk or submitted to a court shall not be  
472     available for public access pursuant to Sup.R. 44 through 47.

473 APPENDIX F

474  
475 ~~[Model Standards of Practice for Family and Divorce Mediation~~  
476 ~~(adopted by the American Bar Association, Association of Family and Conciliation Courts~~  
477 ~~and the Association for Conflict Resolution) modified to reference express provisions of Ohio~~  
478 ~~law.]~~

479  
480 **Overview and Definitions**

481  
482 Family and divorce mediation (“family mediation” or “mediation”) is a process in which a  
483 mediator, an impartial third party, facilitates the resolution of family disputes by promoting the  
484 participants’ voluntary agreement. The family mediator assists communication, encourages  
485 understanding and focuses the participants on their individual and common interests. The family  
486 mediator helps the participants to explore options, make decisions and reach their own agreements.

487  
488 Family mediation is neither a substitute for the need for family members to obtain  
489 independent legal advice or counseling or therapy, nor is it appropriate for all families. However,  
490 experience has established that family mediation is a valuable option for many families because it  
491 can:

- 492  
493 (A) Increase the self-determination of participants and improve their ability to  
494 communicate;
- 495  
496 (B) Promote the best interests of children; and
- 497  
498 (C) Reduce the economic and emotional costs associated with the resolution of family  
499 disputes.

500  
501 Effective mediation requires that the family mediator be qualified by training, experience  
502 and temperament; that the mediator be impartial; that the participants reach their decisions  
503 voluntarily; that their decisions be based on sufficient factual data; that the mediator be aware of  
504 the impact of culture and diversity issues that impact the mediation process; and that the best  
505 interests of children be taken into account. Further, the mediator should also be prepared to  
506 identify families whose history includes domestic abuse or child abuse.

507  
508 These Model Standards of Practice for Family and Divorce Mediation (“Model Standards”)   
509 aim to perform three major functions:

- 510  
511 (A) To serve as a guide for the conduct of family mediators;
- 512  
513 (B) To inform the mediating participants of what they can expect; and
- 514  
515 (C) To promote public confidence in mediation as a process for resolving family  
516 disputes.

517

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

520  
521           ~~The Model Standards include different levels of guidance:~~

522  
523           ~~Use of the term “may” in a Standard is the lowest strength of guidance and indicates a~~  
524 ~~practice that the family mediator should consider adopting but which can be deviated from in the~~  
525 ~~exercise of good professional judgment.~~

526  
527           ~~Most of the Standards employ the term “should” which indicates that the practice described~~  
528 ~~in the Standard is highly desirable and should be departed from only with very strong reason.~~

529  
530           ~~The term “shall” in a Standard is a higher level of guidance to the family mediator,~~  
531 ~~indicating that the mediator should not have discretion to depart from the practice described.~~

532  
533  
534           **Standard I**

535  
536           ~~*A family mediator shall recognize that mediation is based on the principle of self determination*~~  
537 ~~*by the participants.*~~

538  
539           ~~(A) Self determination is the fundamental principle of family mediation. The~~  
540 ~~mediation process relies upon the ability of participants to make their own voluntary and informed~~  
541 ~~decisions.~~

542  
543           ~~(B) The primary role of a family mediator is to assist the participants to gain a better~~  
544 ~~understanding of their own needs and interests and the needs and interests of others and to facilitate~~  
545 ~~agreement among the participants.~~

546  
547           ~~(C) A family mediator shall inform the participants that they may seek information and~~  
548 ~~advice from a variety of sources during the mediation process.~~

549  
550           ~~(D) A family mediator shall inform the participants that they may withdraw from family~~  
551 ~~mediation at any time and are not required to reach an agreement in mediation.~~

552  
553           ~~(E) The family mediator’s commitment shall be to the participants and the process.~~  
554 ~~Pressure from outside of the mediation process shall never influence the mediator to coerce~~  
555 ~~participants to settle.~~

556  
557  
558           **Standard II**

559  
560           ~~*A family mediator shall be qualified by education and training to undertake the mediation.*~~

561  
562           ~~(A) To perform the family mediator’s role, a mediator should:~~

563

- 564 (1) have knowledge of family law;  
565  
566 (2) have knowledge of and training in the impact of family conflict on parents, children  
567 and other participants, including knowledge of child development, domestic abuse and child abuse  
568 and neglect;  
569  
570 (3) have education and training specific to the process of mediation; and  
571  
572 (4) Be able to recognize the impact of culture and diversity.  
573  
574 (B) Family mediators shall provide information to the participants about the mediator's  
575 relevant training, education and expertise.  
576  
577

### 578 **Standard III**

579  
580 *A family mediator shall facilitate the participants' understanding of what mediation is and assess*  
581 *their capacity to mediate before the participants reach an agreement to mediate.*  
582

583 (A) Before family mediation begins, a mediator shall provide the participants with an  
584 overview of the process and its purposes, including:  
585

586 (1) informing the participants that reaching an agreement in family mediation is  
587 consensual in nature, that a mediator is an impartial facilitator, and that a mediator may not impose  
588 or force any settlement on the parties;  
589

590 (2) distinguishing family mediation from other processes designed to address family  
591 issues and disputes;  
592

593 (3) informing the participants that any agreements reached will be reviewed by the  
594 court when court approval is required;  
595

596 (4) informing the participants that they may obtain independent advice from attorneys,  
597 counsel, advocates, accountants, therapists or other professionals during the mediation process;  
598

599 (5) advising the participants, in appropriate cases, that they can seek the advice of  
600 religious figures, elders or other significant persons in their community whose opinions they value;  
601

602 (6) discussing, if applicable, the issue of separate sessions with the participants, a  
603 description of the circumstances in which the mediator may meet alone with any of the participants,  
604 or with any third party and the conditions of confidentiality concerning these separate sessions;  
605

606 (7) Informing the participants that the presence or absence of other persons at  
607 mediation, including attorneys, counselors or advocates, depends on the wishes of the participants.  
608 The mediator shall take controlling statutes or rules into consideration. The mediator may

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

611  
612 (8) ~~describing the obligations of the mediator to maintain the confidentiality of the~~  
613 ~~mediation process and its results as well as any exceptions to confidentiality;~~

614  
615 (9) ~~Advising the participants of the circumstances under which the mediator may~~  
616 ~~suspend or terminate the mediation process and that a participant has a right to suspend or terminate~~  
617 ~~mediation at any time.~~

618  
619 (B) ~~The family mediator should have participants sign a written agreement to mediate~~  
620 ~~their dispute and the terms and conditions thereof within a reasonable time after first consulting~~  
621 ~~the family mediator, if they desire to mediate.~~

622  
623 (C) ~~The family mediator should be alert to the capacity and willingness of the~~  
624 ~~participants to mediate before proceeding with the mediation and throughout the process. A~~  
625 ~~mediator shall not agree to conduct the mediation if the mediator reasonably believes one or more~~  
626 ~~of the participants are unable or unwilling to participate.~~

627  
628 (D) ~~Family mediators should not accept a dispute for mediation if they cannot satisfy~~  
629 ~~the expectations of the participants concerning the timing of the process.~~

630  
631

#### 632 **Standard IV**

633  
634 ~~A family mediator shall conduct the mediation process in an impartial manner. A family mediator~~  
635 ~~shall disclose all actual and potential grounds of bias and conflicts of interest reasonably known~~  
636 ~~to the mediator. The participants shall be free to retain the mediator by an informed, written~~  
637 ~~waiver of the conflict of interest. However, if a bias or conflict of interest clearly impairs a~~  
638 ~~mediator's impartiality, the mediator shall withdraw regardless of the express agreement of the~~  
639 ~~participants.~~

640  
641 (A) ~~Impartiality means freedom from favoritism or bias in word, action or appearance,~~  
642 ~~and includes a commitment to assist all participants as opposed to any one individual.~~

643  
644 (B) ~~Conflict of interest means any relationship between the mediator, any participant~~  
645 ~~or the subject matter of the dispute that compromises or appears to compromise the mediator's~~  
646 ~~impartiality.~~

647  
648 (C) ~~A family mediator should not accept a dispute for mediation if the family mediator~~  
649 ~~cannot be impartial.~~

650  
651 (D) ~~A family mediator shall identify and disclose potential grounds of bias or conflict~~  
652 ~~of interest upon which a mediator's impartiality might reasonably be questioned. Such disclosure~~  
653 ~~should be made prior to the start of mediation and in time to allow the participants to select an~~  
654 ~~alternate mediator.~~



655  
656 (E) A family mediator shall resolve all doubts in favor of disclosure. All disclosures  
657 shall be made as soon as practical after the mediator becomes aware of the bias or potential conflict  
658 of interest. The duty to disclose is a continuing duty.

659  
660 (F) A family mediator shall guard against bias or partiality based on the participants'  
661 personal characteristics, background or performance at the mediation.

662  
663 (G) A family mediator shall avoid conflicts of interest in recommending the services of  
664 other professionals.

665  
666 (H) A family mediator shall not use information about participants obtained in  
667 mediation for personal gain or advantage.

668  
669 (I) A family mediator shall withdraw pursuant to Standard XI if the mediator believes  
670 the mediator's impartiality has been compromised or a conflict of interest has been identified and  
671 has not been waived by the participants.

672  
673

674 **Standard V**

675

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

678

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

681

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

684

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

687

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

690

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

693

694

695 **Standard VI**

696

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

699

700 (A) ~~The mediator should facilitate full and accurate disclosure and the acquisition and~~  
701 ~~development of information during mediation so that the participants can make informed~~  
702 ~~decisions. This may be accomplished by encouraging participants to consult appropriate experts.~~  
703

704 (B) ~~Consistent with standards of impartiality and preserving participant self-~~  
705 ~~determination, a mediator may provide the participants with information that the mediator is~~  
706 ~~qualified by training or experience to provide. The mediator shall not provide therapy or legal~~  
707 ~~advice.~~  
708

709 (C) ~~If the participants so desire, the mediator shall allow attorneys, counsel or~~  
710 ~~advocates for the participants, or other individual designated by the participants, to be present at~~  
711 ~~the mediation sessions.~~  
712

713 (D) ~~With the agreement of the participants, the mediator may document the~~  
714 ~~participants' resolution of their dispute. The mediator should inform the participants that any~~  
715 ~~agreement should be reviewed by an independent attorney before it is signed.~~  
716  
717

## 718 **Standard VII**

719

720 *A family mediator shall maintain the confidentiality of all information acquired in the mediation*  
721 *process, unless the mediator is permitted or required to reveal the information by law or*  
722 *agreement of the participants.*  
723

724 (A) ~~The mediator should discuss the participants' expectations of confidentiality with~~  
725 ~~them prior to undertaking the mediation. The written agreement to mediate should include~~  
726 ~~provisions concerning confidentiality.~~  
727

728 (B) ~~Prior to undertaking the mediation the mediator shall inform the participants of the~~  
729 ~~limitations of confidentiality such as statutory, judicially or ethically mandated reporting.~~  
730

731 (C) ~~As permitted by law, the mediator shall disclose a participant's threat of suicide or~~  
732 ~~violence against any person to the threatened person and the appropriate authorities if the mediator~~  
733 ~~believes such threat is likely to be acted upon.~~  
734

735 (D) ~~If the mediator holds private sessions with a participant, the obligations of~~  
736 ~~confidentiality concerning those sessions should be discussed and agreed upon prior to the~~  
737 ~~sessions.~~  
738

739 (E) ~~If subpoenaed or otherwise noticed to testify or to produce documents the mediator~~  
740 ~~should inform the participants immediately. The mediator shall not testify or provide documents~~  
741 ~~in response to a subpoena without an order of the court that is pursuant to O.R.C. 3109.52, if the~~  
742 ~~mediator reasonably believes doing so would violate an obligation of confidentiality to the~~  
743 ~~participants.~~  
744  
745

746 **Standard VIII**

747

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

750

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

755

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

758

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

761

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

765

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

768

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

771

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

774

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

781

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

785

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

789

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

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

794

795

796 **Standard IX**

797

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

800

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

803

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

807

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

811

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

814

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

817

818

819 **Standard X**

820

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

823

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

826

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

829

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

834

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

837

- 838 (1) ~~establishing appropriate security arrangements;~~  
839  
840 (2) ~~holding separate sessions with the participants even without the agreement of all~~  
841 ~~participants;~~  
842  
843 (3) ~~allowing a friend, representative, advocate, counsel or attorney to attend the~~  
844 ~~mediation sessions;~~  
845  
846 (4) ~~encouraging the participants to be represented and or accompanied by an attorney,~~  
847 ~~counsel or an advocate throughout the mediation process;~~  
848  
849 (5) ~~referring the participants to appropriate community resources;~~  
850  
851 (6) ~~Suspending or terminating the mediation sessions, with appropriate steps to protect~~  
852 ~~the safety of the participants.~~  
853

854 The mediator should facilitate the participants' formulation of parenting plans that protect  
855 the physical safety and psychological well being of the participants and their children.  
856

857  
858 **Standard XI**  
859

860 *A family mediator shall suspend or terminate the mediation process when the mediator reasonably*  
861 *believes that a participant is unable to effectively participate or for other compelling reason.*  
862

- 863 (A) ~~Circumstances under which a mediator should consider suspending or terminating~~  
864 ~~the mediation, may include, among others:~~  
865  
866 (1) ~~the safety of a participant or well being of a child is threatened;~~  
867  
868 (2) ~~a participant has or is threatening to abduct a child;~~  
869  
870 (3) ~~a participant is unable to participate due to the influence of drugs, alcohol, or~~  
871 ~~physical or mental condition;~~  
872  
873 (4) ~~the participants are about to enter into an agreement that the mediator reasonably~~  
874 ~~believes to be unconscionable;~~  
875  
876 (5) ~~a participant is using the mediation to further illegal conduct;~~  
877  
878 (6) ~~a participant is using the mediation process to gain an unfair advantage;~~  
879  
880 (7) ~~If the mediator believes the mediator's impartiality has been compromised in~~  
881 ~~accordance with Standard IV.~~  
882

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

885  
886  
887 **Standard XII**

888  
889 *A family mediator shall be truthful in the advertisement and solicitation for mediation.*

890  
891 ~~(A) Mediators should refrain from promises and guarantees of results. A mediator~~  
892 ~~should not advertise statistical settlement data or settlement rates.~~

893  
894 ~~(B) Mediators shall accurately represent their qualifications. In an advertisement or~~  
895 ~~other communication, a mediator may make reference to meeting state, national, or private~~  
896 ~~organizational qualifications only if the entity referred to has a procedure for qualifying mediators~~  
897 ~~and the mediator has been duly granted the requisite status.~~

898  
899  
900 **Standard XIII**

901  
902 *A family mediator shall acquire and maintain professional competence in mediation.*

903  
904 ~~(A) Mediators should continuously improve their professional skills and abilities by,~~  
905 ~~among other activities, participating in relevant continuing education programs and should~~  
906 ~~regularly engage in self-assessment.~~

907  
908 ~~(B) Mediators should participate in programs of peer consultation and should help train~~  
909 ~~and mentor the work of less experienced mediators.~~

910  
911 ~~(C) Mediators should continuously strive to understand the impact of culture and~~  
912 ~~diversity on the mediator's practice.~~

913  
914  
915 **CORE VALUES FOR MEDIATION**

916  
917 **Adopted by the Supreme Court of Ohio Dispute Resolution Section based on**  
918 **recommendations of the Commission on Dispute Resolution (2017)**

919  
920  
921 The Supreme Court of Ohio Dispute Resolution Section's and Commission on Dispute  
922 Resolution's "Core Values for Mediation" are guiding principles that direct behavior and action.  
923 These core values are found in statutes, regulations, rules, standards, and ethics that inform and  
924 govern mediators and mediation practice. They help define and guide best practices. Core values  
925 also create a guide for staying on the right path to achieve selected goals. To be an effective  
926 mediator, it is important to be able to define and describe the key characteristics of mediation and  
927 explain the core values of mediation.

929 One common way of describing mediation is that it is a structured, yet informal, process. As in  
930 any structure, the foundation is of critical importance, and in mediation core values create that  
931 foundation. To examine the core values, one can begin with the meaning of the verb “mediate” -  
932 to be in the middle, to act as an intermediary between two or more opposing participants. In its  
933 most fundamental context this is what mediation means.

934  
935 This definition, however, does not present enough guidance for the mediator to be effective. The  
936 core values - guiding principles - that influence the mediation come from its early roots, cultural  
937 values, social conditions and other institutional factors. Mediation is commonly structured as a  
938 six-stage process: (1) pre-mediation preparation; (2) introduction; (3) explanations concerning the  
939 dispute; (4) identification of issues and concerns; (5) generation of solutions; and (6) conclusion.  
940 Within this structure, the mediator must be able to explain the stages of mediation and the core  
941 values that provide a foundation for mediation. The mediator’s work in every stage should be  
942 consistent with the core values.

943  
944 The most pronounced characteristic of the mediation process is that it is a discipline based in  
945 practice. That is why training programs that teach the fundamentals of mediation include  
946 opportunities to practice the skills needed to be an effective mediator. To say that mediation is a  
947 practice is not to use the word practice as a noun, e.g., “a law practice.” In mediation, the practice  
948 is a verb - engaging in the work; much like a yoga class is a practice. The mediator works  
949 continually within the process to gain expertise and confidence. The mediator must be mindful  
950 that he or she takes on a special role that is distinct from being an advocate or counselor. The  
951 mediator will not decide the facts or determine the outcome. Mediation does not require either  
952 agreement or final resolution. Although mediation can help the participants reach resolution and  
953 sometimes repair relationships, it is always up to the participants to decide on any outcomes. In a  
954 trial or arbitration the goal is to reach a final outcome, such as a decision or an award. In mediation,  
955 the goal is to provide the participants with an opportunity to increase their understanding of their  
956 unique situation and to explore whether a mutually acceptable resolution is available.

957  
958 Success in mediation can mean that the participants have reached a full or partial agreement,  
959 narrowed or defined the issues to be resolved, improved relationships, established a dialogue,  
960 expressed interests and perspectives, had an opportunity to be heard, or been able to give – or  
961 receive - an apology. Mediation is successful when the mediator follows the core values and  
962 supports the participants as they work toward removing barriers and creating a resolution.  
963 Learning about core values will help the mediator mediate in a way that provides the best assistance  
964 to the participants and guide how the mediator conducts himself or herself in that process. Below  
965 are discussions of the common use of the core values in mediation.

## 966 **Core Values**

967  
968  
969 1. Self-Determination. Self-determination is the cornerstone in the foundation of core values for  
970 mediation. It is the mediator’s job to support the parties in making their own voluntary and  
971 informed decisions. Any decisions the parties make must be free from undue pressure from the  
972 mediator. The mediator should empower and encourage the parties to consider their own needs  
973 and interests, to gather and obtain sufficient information to make informed decisions and to  
974 understand the implications of those decisions.

975

976 2. Neutrality. The mediator does not seek any particular resolution of the dispute. The mediator  
977 usually does not give advice; and the mediator does not make decisions. Neutrality is an important  
978 way for the mediator to support party self-determination by focusing on a constructive decision-  
979 making process rather than a particular outcome.

980

981 3. Impartiality. The mediator conducts the mediation in a way that is not partial, biased, or  
982 prejudiced. The mediator conducts the mediation in an even-handed manner. Impartial conduct  
983 removes any impression of favoritism and promotes respect of each party's exercise of self-  
984 determination. Impartiality requires the mediator to avoid having his or her own beliefs,  
985 preferences, and other personal perspectives substitute for those of the parties.

986

987 4. Conflict of Interest. A conflict of interest exists when there is any relationship between the  
988 mediator, any participant, or the subject matter of the dispute that compromises or appears to  
989 compromise the mediator's impartiality or neutrality. Checking for potential conflicts of interest  
990 before and during mediation and disclosing anything that might suggest partiality is critical in  
991 maintaining neutrality and impartiality. It is also important for the mediator to avoid subsequent  
992 relationships with the participants or their representatives that might influence or be reasonably  
993 viewed as influencing the mediator's neutrality or impartiality during the mediation or compromise  
994 assurances of confidentiality during the mediation.

995

996 5. Competence. The mediator has a duty to maintain and improve mediation skills. In addition,  
997 the mediator will conduct mediation so as to provide a high quality process that maintains the  
998 integrity of the process and is true to the core values of mediation. A mediator should be honest  
999 and forthcoming with the parties regarding his or her qualifications to act as a mediator.

1000

1001 6. Confidentiality. Ohio's enactment of the Uniform Mediation Act ("UMA") in R.C. 2710.01  
1002 through 2710.10 protects "mediation communications" in Ohio's courts, legislature, and  
1003 administrative agency processes and limits the communications the mediator can have with the  
1004 court and others. It is important for the mediator to inform the participants that the mediator will  
1005 not be communicating with the court or others about what is said in the mediation unless there is  
1006 a specific exception under the UMA. When the participants agree to confidentiality, they may  
1007 word that agreement to extend their own obligations not to speak about anything communicated  
1008 during the mediation process beyond the obligations imposed by the UMA. This can be useful in  
1009 promoting candor within the mediation, but the participants may want to create exceptions to the  
1010 confidentiality agreement to permit disclosures that would be healthy (e.g., talking with family  
1011 members about what was said) or seem important (e.g., reporting threats of harm). A  
1012 confidentiality agreement, in other words, may be worded to be broader than agreeing to abide by  
1013 the obligations of the UMA. A broader agreement can create new obligations for the participants  
1014 that carry the possibility of monetary or other damages for breaching the agreement by telling a  
1015 friend, business associate, or competitor for example, what was said during mediation. When they  
1016 can speak candidly, the participants can voice their underlying interests and move beyond their  
1017 stated positions to make progress toward a mutually acceptable solution.

1018

1019 7. Flexibility and Informality. The mediator may adopt a particular style or a model of mediation,  
1020 such as a facilitative, evaluative, or transformative style. The mediator, however, must adjust the



1021 process to meet the needs of the participants. The mediation process is informal in that there are  
1022 few rules. The mediator may suggest rules and the participants may agree to them. For example,  
1023 some mediators ask parties to use rules of common courtesy or establish ground rules such as  
1024 speak directly to the mediator or do not interrupt when someone else is speaking. In mediation,  
1025 participants can speak openly in ways that are comfortable for them. The mediator's efforts to  
1026 work flexibly and adapt the mediation to the needs of the participants should be guided by whether  
1027 the particular approach will support or undermine core values.

1028  
1029 8. Fairness of process. Fairness in mediation means that the parties experience the process as being  
1030 fair to each of them. It is important for each party to feel respected, heard, and included.  
1031 Sometimes mediators confuse their responsibilities to offer a fair process with a duty to ensure a  
1032 “fair” outcome for the parties.

1033  
1034 9. Voluntariness of the (Settlement) Agreement. For court mediation programs, parties may be  
1035 ordered or strongly encouraged to participate in mediation, but any agreement they make must be  
1036 a voluntary exercise of self-determination. Stating that an agreement reached in mediation must  
1037 be voluntary means it is without undue pressure from the mediator or others and that there must  
1038 be an absence of coercion to settle. As a core value, voluntariness of the agreement is distinguished  
1039 from voluntary participation. Courts may refer matters to mediation, typically through a court rule  
1040 or a general order to mediate.

1041  
1042 10. Cooperation. Mediation is significantly different from a trial or arbitration because it requires  
1043 cooperation to reach a resolution. Parties may come to mediation with an expectation that one of  
1044 them will “win.” If the mediator cannot engage the participants in a cooperative process, the  
1045 mediation will not go forward. There are several benefits to cooperation. First, if the parties  
1046 cooperate, they can better understand that they share the power to make agreements. Second, their  
1047 own agreements are usually more appropriate to their unique situations. Third, agreements parties  
1048 make themselves are more sustainable over time. Cooperation can be misconstrued.

1049  
1050 The parties are not required to like each other or to compromise their own integrity. Cooperation  
1051 focuses on the value of mutually acceptable resolutions and sometimes, the value of improving  
1052 relationships, which are more often the product of working together.

## 1053 Conclusion

1054  
1055  
1056 Reviewing and reflecting on the core values as well as statutes, regulations, rules, standards and  
1057 ethics that inform and govern mediators and mediation practice are important tasks to help  
1058 mediators develop skills and engage in a meaningful and helpful process. Core values also help  
1059 mediators to stay in compliance with statutes, regulations, rules, standards, and ethics regarding  
1060 mediation.

1061

1062 APPENDIX G

1063  
1064 ~~[Special Policy Considerations for State Regulation of Family Mediators and Court~~  
1065 ~~Affiliated Programs]~~

1066  
1067  
1068 ~~The Model Standards recognize the National Standards for Court Connected Dispute~~  
1069 ~~Resolution Programs (1992). There are also state and local regulations governing such programs~~  
1070 ~~and family mediators. The following principles of organization and practice, however, are~~  
1071 ~~especially important for regulation of mediators and court-connected family mediation programs.~~  
1072 ~~They are worthy of separate mention.~~

1073  
1074 ~~(A) Individual states or local courts should set standards and qualifications for family~~  
1075 ~~mediators including procedures for evaluations and guidelines for handling grievances against~~  
1076 ~~mediators. In developing these standards and qualifications, regulators should consult with~~  
1077 ~~appropriate professional groups, including professional associations of family mediators.~~

1078  
1079 ~~(B) When family mediators are appointed by a court or other institution, the appointing~~  
1080 ~~agency should make reasonable efforts to insure that each mediator is qualified for the~~  
1081 ~~appointment. If a list of family mediators qualified for court appointment exists, the requirements~~  
1082 ~~for being included on the list should be made public and available to all interested persons.~~

1083  
1084 ~~(C) Confidentiality should not be construed to limit or prohibit the effective monitoring,~~  
1085 ~~research or evaluation of mediation programs by responsible individuals or academic institutions~~  
1086 ~~provided that no identifying information about any person involved in the mediation is disclosed~~  
1087 ~~without their prior written consent. Under appropriate circumstances, researchers may be~~  
1088 ~~permitted to obtain access to statistical data and, with the permission of the participants, to~~  
1089 ~~individual case files, observations of live mediations and interviews with participants.~~

1090  
1091 Appendix G is reserved for future use