

PROPOSED AMENDMENTS TO LOCAL RULE (LOC.APP.R. 20)

Comments Requested: The Court of Appeals of Ohio, Eighth Appellate District will accept public comments until March 26, 2020 on the proposed amendments to Loc.App.R. 20.

Comments on the proposed amendments should be submitted in writing to: Erin M. O’Toole, Court Administrator, Eighth District Court of Appeals, 1 Lakeside Ave., Rm. #202, Cleveland, Ohio 44113 or emo@8thappeals.com not later than March 26, 2020. Please include your full name and mailing address in any comments submitted by e-mail.

Summary of Proposed Amendments:

- Changes title to “Mediation Conference”
- Complies with Sup.R. 16.21, incorporating mandatory provisions identifying eligible and ineligible cases for mediation (Section (A)(1)-(3))
- Identifies the purposes of mediation conference (Section (B))
- Eliminates redundancies related to the praecipe and docketing statement form (Former Section (A))
- Explains method for scheduling a mediation (including party requests) and references the court’s website as a resource for obtaining confidential mediation form and instructions for completing it (Section (C))
- Permits stay of filing 9(B) record and/or merit brief for 60 days unless otherwise provided by court order (Section (D))
- Includes a specific provision on attendance and clarifies who must attend (Section (E))
- Complies with Sup.R. 16.21 by expressly incorporating and adopting the UMA as part of the court’s local rule (Section (F))
- Recognizes court’s ability to schedule a prehearing conference, which is separate and distinct from a mediation (Section (H))
- Includes a provision related to available resources as required under Sup.R. 16.21

Key to Proposed Amendments:

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.

~~RULE 20. PREHEARING MEDIATION CONFERENCE~~

~~Under App.R. 20, this court's prehearing mediation conference procedure will operate as follows:~~

The following procedures and requirements apply to mediation conferences held in the Eighth District Court of Appeals.

~~(A) Docketing Statement and Mediation Form.~~

- ~~(1) Each appellant and cross-appellant must complete a docketing statement and the praecipe form required by Loc.App.R. 9.~~
- ~~(2) Counsel for appellant, cross-appellant, appellee, or a self-represented party must complete and submit to the mediator the confidential mediation form provided by the mediator within ten days from date of receipt. The mediator will not disclose this form or its contents to the other parties, unless the submitting party consents to such disclosure. This form will not be filed with the Clerk of Courts for the Court of Appeals but rather sent directly to the Office of the Conference Mediator. (See (C) Privileged Communications and Confidentiality.)~~

(A) Cases Eligible for Mediation.

- (1) General. The court has discretion to encourage parties to use mediation in any civil appeal or original action filed in this court.
- (2) Exceptions. Mediation is prohibited in the following:
 - (a) As an alternative to prosecution or adjudication of domestic violence;

- (b) In determining whether to grant, modify, or terminate a protection order;
- (c) In determining the terms and conditions of a protection order;
- (d) In determining the penalty for violation of a protection order.
- (3) Nothing in this division 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; or in a juvenile court delinquency case, even though the case involves juvenile-perpetrated domestic violence.

(B) Prehearing Purposes of Mediation Conference. The primary purpose is to explore settlement possibilities through mediation. Additionally, any other matters that the mediator determines may aid in handling the disposition of the proceedings will be considered.

- ~~(1) The mediator shall review the required docketing statement filed pursuant to Loc.App.R. 9 or complaint filed pursuant to Loc.App.R. 45 to determine whether a prehearing mediation conference, under App.R. 20, would assist the court or parties. Any party may request a prehearing mediation conference, but the request need not be granted. The court may, in its discretion, order the parties to mediate any action before the court at any stage in the proceedings.~~
- ~~(2) All mandamus actions involving compliance with R.C. 149.43, Ohio's Public Records Acts, shall be referred automatically to the mediation conference program for mediation. If the case is not amenable to mediation, the mediator shall inform the court and the action shall proceed in accordance with Loc.App.R. 45. If amenable to mediation, the mediation conference will proceed in accordance with the time period set forth in section (B)(3) below.~~
- ~~(3) If an appeal or complaint is selected for a prehearing mediation conference, upon seven days' notice from the office of the conference mediator, unless excused, counsel and parties (including insurance adjusters) are required to attend a pre-~~

~~hearing mediation conference before the court's mediator or a visiting judge. The mediation conference is to be held within 21 days after the filing of the notice of appeal or complaint, or as soon thereafter as practicable, to consider the possibility of settlement, the simplification of issues, and such other matters as may aid in the disposition of the proceedings by the court.~~

(C) Scheduling. The court's mediation attorney shall review the notice of appeal, the trial court's judgment from which the appeal is taken, and the praecipe and docketing statement in all civil and administrative appeals to determine whether a ~~prehearing~~ mediation conference will be scheduled. All mandamus actions involving compliance with R.C. 149.43, Ohio's Public Records Act, will be referred automatically to the mediation program and will be scheduled for a mediation if deemed advisable.

In addition, any party may request mediation by contacting the court mediator or by written motion to the court. Such requests may be made confidentially if the requesting party desires. Such requests should be submitted as soon as possible after initiation of the appeal or original action. Requests for a mediation may or may not be granted by the court. Also, the court may, in its discretion, order the parties to mediate any action before the court at any stage in the proceedings.

- (1) Notice. If a mediation is scheduled, the court will notify the attorneys, or the parties if unrepresented, of the date, time and location of the mediation. Mediations will be held within 21 days after the filing of the notice of appeal or complaint, or as soon thereafter as practicable.

- (2) Mediation Form. Within ten days of receiving notice of the scheduled mediation, counsel for the appellant and appellee or self-represented individuals must complete and return the confidential mediation form to the court mediator. (This form will not be filed with the Clerk of Courts for the Court of Appeals but rather sent directly to the Office of the Conference Mediator.) The confidential mediation form, along with the instructions for completing and submitting the form, are found on the court's website at <http://appeals.cuyahogacounty.us>. The mediation attorney will not disclose this form or its contents to the other parties, unless the submitting party consents to such disclosure.

(D) Automatic Stay of Filing Deadlines. Unless otherwise provided by court order, referral of a case for mediation automatically stays the filing of the 9(B) record and/or merit brief for 60 days.

(E) Attendance. Unless otherwise instructed by the court, the following persons must attend the mediation conference in person: counsel, the parties necessary for full settlement authority including insurance adjustors, and self-represented litigants. “Counsel,” for purposes of this rule, means the attorney with primary responsibility for the case and upon whose advice the party relies.

(F) Uniform Mediation Act. The R.C. 2710 “Uniform Mediation Act” (UMA), is incorporated by reference and adopted by this court through this local rule.

(G) Privileged Communications and Confidentiality.

- (1) ~~Except to the extent disclosed by the prehearing mediation conference order entered under Paragraph (E) of this Rule, t~~The definitions contained in R.C. 2710.01 apply to the mediation. The privileges contained in R.C. 2710.03 and the exceptions contained in R.C. 2710.05 apply to mediation communications. The privileges may be waived under R.C. 2710.04. Mediation communications are also confidential, and no one shall disclose any of these communications unless all parties and the mediator consent to such disclosure in writing. This court may impose sanctions for any improper disclosures made in violation of this rule.
- (2) All mediation communications are confidential with the following exceptions:
 - (a) Parties may share all mediation communications with their attorneys or vice versa.
 - (b) The mediator shall inform the court or report to the proper authorities certain information, including the following:
 - (i) Allegations of abuse or neglect of a child or other individual as required by the law;
 - (ii) Certain threats of harm to other people or oneself;
 - (iii) Statements made during the mediation process to plan or hide an ongoing crime;
 - (iv) Statements made during the mediation process that reveal a felony.

~~(D H) Prehearing Mediation Conference Order.~~ ~~At the conclusion of the prehearing mediation conference, the administrative judge, upon recommendation of the mediator, may enter an order setting forth how the action is to proceed. Said order shall remain in force unless modified by the court. If a settlement is reached, the mediator shall submit an outcome report to the administrative judge advising the administrative judge that the matter is settled and is to be dismissed as final upon application of the appellant or relator to dismiss or remand in compliance with the applicable appellate rules. The court's mediation attorney may set cases for prehearing conferences under App.R. 20 in order to simplify the issues in an appeal or original action if a settlement is not possible or for case management purposes. The UMA, which applies to mediations, does not apply to prehearing conferences.~~

(E I) Noncompliance Sanctions. If a party or attorney fails to comply with the provisions of this rule or the provisions of the ~~prehearing~~ mediation conference order, the administrative judge or the merit panel, as applicable, may hold a party in contempt and/or assess reasonable expenses caused by the failure, including attorney fees. The court may also assess all or a portion of the appellate costs or dismiss the appeal or original action.

(J) Referral to Resources. The court administrator as well as the court's mediation office shall maintain resources for mediation parties, including victims and suspected victims of domestic violence, encouraging appropriate referrals to legal counsel and other support services such as Children Services, domestic violence prevention, counseling, substance abuse, and mental health services.