

RULE 29. MEDIATION

A. Cases for Mediation

Any judge may refer any civil or family case to mediation except a habeas corpus case or election contest.

B. Referral to Mediation

1. The Judge may, by appropriate order, refer the case to mediation with or without the consent of the parties. Cases may be referred to a mediator appointed by the Court or a mediator agreed upon by the parties.
2. Any party may move to enter an order disqualifying the mediator for good cause. If the Court rules that a mediator is disqualified from mediating the case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.
3. Referral of a case to mediation shall not operate as a stay of discovery proceedings unless otherwise ordered by the Court or agreed to in writing by the parties.

C. Mediation Conferences

1. Unless otherwise ordered, the parties shall contact the mediator within ten (10) days from the entry of the order to schedule a mediation conference, which shall be held within ninety (90) days from the entry of the order.
2. Except by agreement of the parties or order of Court, all counsel of record and all parties shall attend the mediation. If a party fails to appear at a duly noticed mediation conference without good cause, the Court upon motion may impose sanctions, which may include an award of attorney fees and other costs against the party failing to appear.
 - a. Except by agreement of the parties or order of Court, if a party to mediation is a public entity, that party shall be deemed to appear at a mediation conference by the physical presence of a representative, other than the entity's counsel of record, with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity.
 - b. Except by agreement of the parties or order of Court, if a party to mediation is an organization other than a public entity, that party shall be deemed to appear at a mediation conference by the physical presence of a representative, other than the party's counsel of record, having full authority to settle without further consultation.
 - c. Except by agreement of the parties or order of Court, if a party to mediation is insured, that party shall be deemed to appear at a mediation conference by the physical

presence of a representative of the insurance carrier, other than the insurance carrier's outside counsel, having full authority to settle without further consultation.

3. The mediator may request that the parties bring documents or witnesses, including expert witnesses, to the sessions, but has no authority to order such production.

D. Confidentiality

1. Except as otherwise provided by this rule or ordered by the Court for good cause shown, all mediation documents and mediation communications except signed agreements are confidential and shall not be disclosed. They are not subject to disclosure through discovery or any other process, and are not admissible into evidence in any judicial or administrative proceeding.

2. No part of the mediation proceedings shall be considered a public record, unless entered into the record by the Court.

3. There is no confidentiality and no restriction on disclosure under this rule to the extent that:

a. All parties consent in writing to disclosure; or

b. The mediation communication or mediation document gives the mediator or persons associated with the mediator's office, knowledge of or reasonable cause to suspect that a child or a spouse has been abused or a child has been neglected; or

c. The mediation communications were made in furtherance of the commission of a crime or fraud or as part of a plan to commit a crime or fraud.

4. Nothing in this rule shall be construed so as to permit an individual to obtain immunity from prosecution for criminal conduct.

E. Reporting to the Court

1. If the Court designates the mediator, that mediator shall notify the Court promptly in writing when a case is not accepted for mediation.

2. At any time after a case has been accepted, the mediator may refer it back to the Court for good cause, which shall be in writing.

3. If a case is settled prior to or during mediation, an attorney for one of the parties shall prepare and submit to the Court an order reflecting the fact of settlement as in any other case.

4. If some but not all of the issues in the case are settled during mediation or if agreements are reached to limit discovery or on any other matter, the parties shall submit a joint statement to the Court enumerating the issues that have been resolved and the issues that remain for trial. This statement shall be submitted within 10 days of the termination of mediation. Unsettled cases shall then be returned to the Court's active docket.

5. At the conclusion of cases accepted for mediation, the parties, or the mediator with consent of the parties, will report to the Court in writing the fact that the mediation process has ended. If the parties do not reach an agreement as to any matter as a result of mediation, the parties, or the mediator with consent of the parties, shall report the lack of an agreement to the Court without comment or recommendation. The parties, or the mediator with the consent of the parties, may report to the Court identifying those matters which, if resolved or completed, would facilitate the possibility of settlement.