

## **CHAPTER 8 - DOMESTIC RELATIONS PROCEEDINGS**

### 8.011 Mediation of Child Custody and Parenting Time

- (1) In any domestic relations suit involving a contest over custody or parenting time of children, the parties shall make themselves available to the court's mediation service. A notice from the mediation service must be filed with the court stating that the parties have cooperated and the mediation has been unsuccessful before a trial or hearing on the merits is to be held.
- (2) The parties may select, by stipulation, a private mediator. The parties shall directly contract with the private mediator and be responsible for payment of the mediator's fees. If independent mediation is selected, a written stipulation indicating the name of the mediator shall be filed with the court.
- (3) A case filed in the Circuit Court remains under the jurisdiction of that court in all phases of the proceedings, including mediation. Any agreement of the parties reached as a result of mediation for which court enforcement may be sought must be presented to the court and the court shall retain final authority to accept, modify, or reject the agreement. At any point during the mediation, the court may approve a temporary custody and parenting time order reflecting the parties' agreement as to those issues.
- (4) To qualify as a Court-approved mediator, a person must:
  - (a) Meet the requirements of the Oregon Judicial Department Court-Connected Mediator Qualifications Rules;
  - (b) Sign and file an application with the Court; and
  - (c) Receive approval by the Presiding Judge, upon recommendation of the Domestic Relations Mediation Screening Committee.
- (5) Upon a showing of good cause, the Presiding Judge may allow appropriate substitutions, or allow a waiver, of the minimum requirements consistent with the Oregon Judicial Department Court-Connected Mediator Qualification Rules.
- (6) The Presiding Judge may remove a mediator from the court-approved list at any time at the Presiding Judge's discretion.
- (7) A mediator has authority and control over the mediation process; but a mediator has no control or authority over the parties or over their decisions in the case. A mediator shall encourage disputing parties to obtain individual legal review and advice of any mediated agreement before signing any agreement. Further, the mediator shall not act as a lawyer for either party.
- (8) Upon receipt of a mediation assignment, a mediator shall immediately notify

the parties of a reasonable date and time for the initial mediation session which shall occur within twenty one (21) days of the mediator's receipt of the first notice of assignment. Mediation shall be completed in a prompt manner so as to not unduly delay the Court and in no event later than a deadline date ordered by the Court. Ninety percent of cases shall be mediated within 49 days of the date of referral.

- (9) In all cases which have been referred to a court-appointed mediator, the mediator shall make a final report to the court describing the conclusion of the mediation, whether successful or unsuccessful, and in a manner prescribed by the court.
- (10) The mediator shall prepare a written memorandum of any agreement which the parties reach as a result of the mediation. The unsigned, proposed memorandum of agreement shall be distributed to the parties and to their attorneys by the mediator. If the parties choose to sign the memorandum of agreement after having had an opportunity to review it with a lawyer, the document may then be incorporated into a Court Order of Judgment
- (11) The mediator may notify the Court at any time following the initial mediation session involving the parties and the mediator that the mediation was unsuccessful, in which case the proceeding will be scheduled for hearing. The mediator may determine that the mediation has been unsuccessful if the parties are unable to resolve the custody or parenting plan controversy; or, if one or both parties are unwilling to participate in mediation; or, if the mediator determines that either party is using the mediation process in bad faith for the delay of resolution of other issues.
- (12) In issues subject to mandatory mediation under these rules (custody and parenting plan), Jackson County shall compensate the mediator at a per case rate set by the Presiding Judge. Mediators will be credited for each case assigned. All meetings surrounding the case, from the time of appointment for a period of four (4) months will constitute one (1) case. Each case includes time for administrative requirements including setting appointments, corresponding with parties and attorneys, mediation sessions, and for time spent drafting the parties' agreements.
- (13) In the event both parties do not appear at a scheduled mediation session without at least 24 hours advanced notice to the mediator, the mediator may request a cancellation fee, set by the Presiding Judge. Alternatively, the mediator may mediate with one party if shuttle mediation would be helpful in resolving the case, and charge the set per case rate. The party canceling must provide advance notice on a regular business day to avoid imposition of the cancellation fee. In order to charge the cancellation fee, the mediator must send a written notification identifying the responsible parent and the amount charged, to the assigned judge and both parties, through their attorneys if they are represented. The mediator shall refer the case back to the court after two no shows on any one case. The assigned judge will

allocate the cost of any no shows to the responsible party, in the absence of good cause.

- (14) The parties may agree to mediate the financial issues, including, but not limited to, property and debt division, and support. The court may also refer matters to mediate on the motion of one (1) party, or on the court's own motion. In the event the parties agree to mediate financial issues, the mediator is to be compensated at a rate set by and directly paid by the parties to the mediator.
- (15) Regarding issues not involving mandatory mediation, the parties may agree to mediate with the court-appointed mediator; but the compensation arrangement shall be between the parties and mediator, as they may agree in writing, and the compensation rate shall be negotiated between the parties and mediator, unless the court has entered an order allowing for payment.