

Rule 37

CITIZENS DISPUTE SETTLEMENT PROGRAM

(A) Pursuant to Rule 16 of the Rules of Superintendence for the Courts of Ohio wherein referrals to appropriate and available alternatives dispute resolution programs shall be set forth in the local rules, the Citizens Dispute Settlement Program (CDSP) is recognized as providing the people living within the Toledo Municipal Court's jurisdiction an alternative means of solving interpersonal disputes other than by going through the judicial court system, i.e., resolutions through mediation. "Mediation" is a non-binding process involving a neutral mediator who acts as a facilitator to assist the parties to craft a mutually acceptable resolution for themselves.

(B) Case Selection. Cases considered appropriate for the program are those involving disputes with people having ongoing relationships such as family members, friends, neighbors, and civil cases identified for the Early Dispute Resolution Program. All civil cases may be referred to mediation. Before the initial pre-trial conference in a case, counsel shall discuss the appropriateness of mediation in the litigation with their clients and with opposing counsel.

Mediation shall not be used as an alternative to the prosecution or adjudication of domestic violence; to determine whether to grant, modify or terminate a protection order; to determine the terms and conditions of a protection order; or to determine the penalty for violation of a protection order.

(C) Sources of referrals to this program include the city prosecutor's office, the judges, magistrates, the police department, community agencies, attorneys, and individuals. Civil cases may be referred to the civil mediation program by sua sponte judicial order, by the granting of a motion of any party, or by agreement of the parties with the approval of the judge.

(D) Agreements reached by the parties are written and signed. The case is disposed after payment of costs and a judgment entry reflecting the parties' written agreement is signed by a judge. All remaining court orders shall remain in effect. No order is stayed or suspended during the mediation process.

(E) Mediator's Duty. The mediator shall inform the court who attended the mediation, whether the case settled, and whether efforts to settle the case through mediation are being continued or if the case is being returned to the court for further proceedings. No other information shall be directly or indirectly communicated by the mediator to the court, unless all who hold a mediation privilege, including the mediator, have consented to such disclosure. The mediator shall keep mediation communications confidential, unless all who hold a mediation privilege, including the mediator, have consented to such disclosure.

The efforts of the mediator shall not be construed as giving legal advice. The court may have materials for legal or other support services available in the community. The mediator is authorized to provide such resource information; however, such distribution shall not be construed as a recommendation of or referral to such resource. The recipient of that information is charged with the duty to evaluate those resources independently.

(F) Attendance. All participation in mediation is voluntary except in certain civil cases. Civil referrals made per Toledo Municipal Court Rule 35 require mandatory participation. The parties may allow, if they wish, their attorneys or other individuals they designate to accompany them and participate in mediation.

(G) Administrative Dismissal. If the parties fail to dismiss a settled case within the later of sixty (60) days or the time noted in the entry that gave the court notice of the settlement, then the court may dismiss the case administratively. Upon such administrative dismissal, court costs shall be paid from the funds deposited. If court costs exceed the funds deposited, each party shall bear their own costs.

(H) Small claims court cases can also use CDSP's Alternative Dispute Resolution Program. Cases can be mediated either before the case is filed or after the filing fee is paid and the case has been put on the small claims court docket.

(I) The check resolution service is offered by the Toledo Municipal Court to promote successful resolution of passing bad check complaints through mediation thereby providing an alternative to the criminal process.

The clerk's office, prosecutor's office, or Toledo Police Department shall refer all complainants who wish to file a complaint, affidavit or warrant for a misdemeanor charge of passing bad checks to the Citizens Dispute Settlement Program check resolution service.

The complainant shall provide proof to the check resolution service of notice to the drawer or endorser pursuant to Ohio Revised Code Section 2913.11(B)(2) or Toledo Municipal Code Section 545.09(b)(2) or similar ordinance. The check resolution service shall require the complainant to complete an application form and to pay a case processing fee of \$15.00. A case is defined for purposes of this rule as no more than 10 passing bad checks written by one individual. The service shall send a letter by regular mail to the drawer or endorser advising the party of the complaint and to discharge the check by payment in full to the complainant. The payment to the complainant shall include the application fee. The letter shall also advise the drawer or endorser of a date scheduled for mediation. The drawer or endorser shall be advised to attend the mediation at the appointed time if payment has not been made to the complainant prior to the scheduled mediation date.

Mediations will be held in the offices of the Citizens Dispute Settlement Program. If an agreement is reached between the two parties, the endorser may pay the monies owed directly to the complainant or the parties may set forth the terms of repayment in writing. The application fee (\$15.00) shall be reimbursed by the endorser to the complainant. The check resolution service shall not collect any monies for disbursement to the complainant. If the mediation is unsuccessful or if it is determined that the offender is ineligible to participate in the program, the check resolution service shall refer the complainant to the appropriate law enforcement agency to secure a police report, or if a report has already been filed, to the prosecutor's office.

Passing bad check cases which reach the court without mediation through the check resolution service may be referred to the Program for mediation at the discretion of the court. If a case is referred to the service, no plea will be taken and the case will be scheduled for mediation. If there is a successful mediation, the check resolution service shall recommend dismissal to the prosecutor who shall recommend dismissal to the court. The application fee shall be waived and the defendant will be required to pay court costs on at least one check. If the defendant shows proof of full payment to the court at the arraignment and prior to a referral to the check resolution service, the case may be directly referred to the prosecutor's office for a recommendation. If the prosecutor

recommends dismissal, the defendant shall pay court costs on at least one passing bad check complaint.

(J) The Collection Mediation Service (CMS) is offered by the Toledo Municipal Court to promote successful resolution of delinquent unpaid accounts through mediation. CMS will accept referrals from businesses, individual professionals or collection agencies. The complainant business must reside in the City of Toledo, Washington Township or Ottawa Hills. The service requires the complainant to complete an application form and pay a processing fee of \$15.00 per case. Per case is defined as one account per individual. The service shall send a letter to the respondent advising the party to discharge the delinquent account by paying the complainant in full, any restitution prior to mediation shall, include the court processing fee. If payment is not paid in full prior to mediation, the respondent is expected to attend the scheduled mediation set forth in the complaint letter. If mediation is held and an agreement is reached the respondent may pay the complainant directly or set forth in writing restitution terms via payment plan. All payment plans must be voluntarily agreed to by both parties. The complainant is allowed to add the court filing fee to money owed. The CMS shall not collect any monies for disbursement to the complainant. If the mediation is unsuccessful either through failed negotiation, payment or non-attendance, the complainant shall be referred to the civil branch of the court system for further assistance.

(K) Civil Mediation. Cases referred to mediation shall be scheduled for mediation within 30 days of referral. If necessary discovery is not completed, a case may be continued to a future mediation date with a judge's consent. If a party or attorney objects to the referral of his or her case to mediation, that person shall proffer a written objection for consideration of the assigned judge. A referral to mediation shall be reversed only under compelling circumstances.

Parties and/or parties' representatives with authority to settle a claim, and parties' counsel shall attend the mediation. If counsel or any necessary party fails to attend or attends and does not meaningfully participate in the process, the court may order sanctions including, but not limited to, attorney fees, other costs, contempt, dismissal or default judgment.

The court mediator shall promptly notify parties and counsel of a case referral. This notification shall include the date and time of mediation and a description of the mediation process.

In accordance with Ohio Revised Code Section 2317.023, all written and oral communications made in connection with the mediation of a case shall be treated by the court as confidential. Said communication shall not be used for any purpose, including impeachment of a witness. No mediator may be subpoenaed to testify in any legal proceeding regarding the communications made in connection with the mediation.

If an agreement is reached through the mediation process, a corresponding settlement/dismissal judgment entry shall be submitted within 30 days for court approval.

If an agreement is not reached or a necessary party did not appear, the court mediator shall advise the court within 24 hours of the scheduled mediation. No other information shall be communicated to the court. Unresolved cases will be placed on the assigned judge's docket or referred to the assignment commissioner for assignment.

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