

IN THE FAMILY COURT OF ST. LOUIS COUNTY, MISSOURI

MEDIATION RULE 68.14

1. ADR POLICY

It is the policy of the St. Louis County Family Court to strongly support the use of alternative dispute resolution (ADR) for the resolution of all issues in domestic cases pending in Family Court. The Family Court recognizes the value of the use of ADR options in eligible cases. It is the Family Court's expectation that litigants will utilize some form of ADR as a mechanism for case resolution before trial.

Missouri Supreme Court Rule 88.02 provides: "As provided in this Rule 88, any judicial circuit may elect to establish a mediation program for contested issues, including, but not limited to, child custody, parenting time, parenting plans, child support, maintenance, and property division, in domestic relations and paternity cases." This Circuit chooses to establish a mediation program, as defined in Missouri Supreme Court Rule 88.03, that will operate as provided by Missouri Supreme Court Rule 88 as supplemented by this Circuit's local rules set out below.

2. MEDIATION DEFINITION

Mediation as used in these rules is the process by which a neutral mediator appointed or approved by the Court assists the parties in reaching a mutually acceptable agreement as to contested issues in domestic relations and paternity cases, including, but not limited to, child custody, parenting time, parenting plans, child support, maintenance, and property division. The role of the mediator is to assist the parties in identifying the issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise, and finding points of agreement. An agreement reached by the parties is to be based on the decisions of the parties and not the decisions of the mediator. The agreement reached can resolve all or only some of the contested issues.

Mediation may be conducted in person, by telephone, or video conferencing.

3. MANDATORY MEDIATION OF CONTESTED ISSUES IN DOMESTIC RELATIONS CASES

Pursuant to that authority, this Circuit requires that, in every domestic relations and paternity case involving contested issues, including, but not limited to, child custody, parenting time, parenting plans, child support, maintenance, or property division, the parties shall be required to participate in mediation as an alternative dispute resolution method, unless the mediator or the

parties show good cause why, or the court, on its own motion, determines, that mediation should not occur. Good cause includes, but is not limited to, domestic violence, abuse, or a significant imbalance of negotiating power.

4. APPOINTMENT OF MEDIATORS

Pursuant to Missouri Supreme Court Rule 88.04(d), "The court may appoint a mediator agreed upon by the parties. If the parties cannot agree or the court does not approve of the agreed-upon mediator, the court may select the mediator." Pursuant to Missouri Supreme Court Rule 88.05(b), the Family Court Administrator shall maintain a master list for the Circuit of qualified mediators available for appointment.

The master list shall indicate the name, office address, mailing address, telephone number, e-mail address, qualifications, and current hourly rates of each mediator listed. The Family Court Administrator shall update such list as needed.

5. COMPLIANCE WITH THIS RULE

This rule may be complied with as follows:

- (a) the parties may jointly and voluntarily agree upon a mediator from the Court's master list to conduct confidential mediation;
- (b) The Court may order the Parties to mediation with a mediator from the Court's master list to conduct confidential mediation; OR
- (c) The Parties may be ordered to work with Domestic Relations Services in St. Louis County Family Court for the purposes of developing a custody plan. The use of Domestic Relations Services is not confidential.

Pursuant to Missouri Supreme Court Rule 88.04(e), "At any time following assignment of a mediator, a party may file a written application to disqualify the mediator only for good cause shown. A service copy of the application and a notice of the time when it will be presented to the court must be provided to all interested parties." An adverse party has 10 days within which to file a denial of the cause or causes alleged in the application.

Upon the filing of a denial, the Court may hear evidence and determine the issue. If the Court finds in the applicant's favor or no denial is filed, reassignment of a mediator shall be done in accordance with the procedures for appointment of a mediator as set out in Missouri Supreme Court Rule 88.04(d).

6. QUALIFICATIONS OF MEDIATORS

In order to be included on the court-approved list, a mediator must submit to the Court an affidavit stating that he or she meets the requirements as outlined in the Mediation Policy and Procedures maintained by the Family Court Administrator and available on the Family Court website.

A mediator who is placed on the court-approved list shall:

- (a) Be an attorney or a person who possesses a graduate degree in a field that includes the study of psychiatry, psychology, social work, counseling or other behavioral science substantially related to marriage and family interpersonal relationships; and
- (b) Meet all of the training and requirements to be placed on the list of court-approved mediators which are included in the Mediation Policy and Procedures maintained by the Family Court Administrator and available on the Family Court website; and
- (c) Certify on an annual basis that they continue to meet all of the requirements for being included on the list and that they want to continue to be on the list.

7. DUTIES OF MEDIATORS

All of the duties of a mediator are included in the Mediation Policy and Procedures maintained by the Family Court Administrator and available on the Family Court website.

8. TERMINATION OF MEDIATION

Termination of mediation shall be as set out in Missouri Supreme Court Rule 88.07.

9. CONFIDENTIALITY OF MEDIATION

Mediation confidentiality shall be as set out in Missouri Supreme Court Rule 88.08.

10. REPRESENTATION BY COUNSEL AND ATTENDANCE OF COUNSEL

With the consent of both parties, counsel for each party may be excluded from participation in the mediation process. Counsel for each party shall at any time be permitted to privately communicate with their client concerning the mediation process. Mediation by parties not represented by counsel shall be governed by Missouri Supreme Court Rule 88.09.

11. COSTS

Where the parties cannot agree upon the method or allocation of the mediator's payment, the Court retains the authority to determine a final, equitable allocation of the costs of the mediation process. If a party fails to pay for the mediator, the Court may, upon motion, issue an order for the payment of such costs and impose appropriate sanctions. If a party is determined indigent by the Court then the Court may order free or low-cost mediation services.

12. FAILURE TO APPEAR

If either party fails to appear for any scheduled mediation session without reasonable notice, the court may, on its own motion or motion of a party, award mediator's fees and/or costs or impose any other appropriate sanction provided by law.

13. Form 15

(a) Ninety (90) days from the date of original service of summons or the filing of an entry of appearance or after a finding of paternity, the parties shall file a Form 15 with the Court certifying that:

- (i) there are no contested issues of child custody, parenting time, parenting plans, child support, maintenance or property division;
- (ii) that the parties have voluntarily participated in mediation;
- (iii) that the parties have agreed to a mediator (identifying the mediator) and have a mediation session scheduled;
- (iv) that the parties cannot agree on a mediator;
- (v) that they are requesting an exemption from this rule; or
- (vi) that the case is not ripe for mediation and an extension of time is requested.

A new Form 15 must be filed every sixty (60) days until the case is mediated.

(b) a party may make an application to waive the mediation requirement for good cause including, but not limited to, allegations of domestic violence, abuse, or if there exists a significant imbalance of negotiating power from this rule using Form 15.

(c) In the event that the parties have not voluntarily engaged in mediation and an exemption has not been granted, the Court may order the parties to participate in mediation and appoint a qualified mediator, OR may refer the parties to Domestic Relations Services.

(d) Unless an extension of time is requested as set out above in 13(a)(vi) and granted, the mediation process must be completed and/or scheduled with the mediator and the Form 15 filed with the Court no later than the date of the first case conference.

(e) A case subject to this mediation requirement may not be set for trial on the merits until the Form 15 has been filed and the requirements of this rule have been satisfied.