

## MEDIATION PROTOCOL CIRCLEVILLE MUNICIPAL COURT

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Circleville Municipal Court is adopting this protocol in conjunction with a team of mediators in and for Circleville Municipal court in order to recognize a basic tenet and that is,

“In every society there is a wide range of alternatives for coping with the conflict stirred by personal disputes. Litigation is only one choice among many possibilities, ranging from avoidance to violence. The varieties of dispute settlement, and the socially sanctioned choices in any culture communicate the ideals people

cherish, their perceptions of themselves and the quality of their relationships with others. They indicate whether people wish to avoid or encourage conflict, suppress it, or resolve it amicably. Ultimately, the most basic values of society are revealed in its dispute-settlement procedures.”<sup>1</sup>

Circleville Municipal Court intends to initiate a mediation process, which will be entered either voluntarily or by initiation of the Court sua sponte.

Typically, mediation is a voluntary process through which the parties of a dispute are aided in their settlement negotiations by a neutral third party. Unlike judicial sanctions, the mediator does not have the power to impose a resolution. In mediation the parties control the outcome and the potential exists for an agreed upon solution which preserves the essential integrity and interest of all the disputants.

Mediation enables the parties to communicate perceptions, feelings and information directly to one another in a controlled environment. This far-reaching method of communication reduces hostility and facilitates rational discussion and agreement.

The outcome of mediation is limited only by the nature of the problem and the extent of the parties' own creativity enhanced by the mediator. Ostensibly the mediation process should be a learning procedure and should ultimately affect resolution but should also provide a learning environment from which the parties can address solutions without outside intervention in the future.

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<sup>1</sup>Quoted from “Justice Without Law?”, J. Auerbach, (1983)

## **MEDIATION ADOPTED BY CIRCLEVILLE MUNICIPAL COURT**

Circleville Municipal Court has been trained in and specifically adopts the “Seven Stage Model of Mediation”.

### ***STAGE 1 - INTRODUCTION***

This simple, informal stage consists of the mediator opening a session among the parties by introducing himself/herself and the participants. The mediator further identifies respective roles within the mediation. During the introduction the mediator should explain the process, the role he/she will play as a facilitator and the mediator’s expectations of the parties. Rules are established for conducting the mediation consisting, at the minimum, of mutual courtesy, containment of remarks, addressing comments to the mediator, the rules of confidentiality and with questions and concerns that the parties to the mediation may have. This stage permits the mediator to create an atmosphere of trust and confidence, establish a professional image and an evaluation of the parties’ emotional states and authority-interest in settlement.

### ***STAGE 2 - PROBLEM DETERMINATION***

During this stage each of the parties are given an opportunity to make an uninterrupted presentation of the facts that bring them to the mediation table and their perception regarding the dispute. This should be a probing exchange during which the mediator asks important questions to understand the conflict and reduce it to its most important elements. It gives each party the opportunity to hear the exact nature of the dispute. It is the first opportunity that the parties have to engage in “listening”. Critical during this period is to perceive misunderstandings or communications between the parties that need clarification in order to provide an appropriate key to resolution of the dispute. At this point, a mediator restates the problems insuring that everyone’s perception is correct.

### ***STAGE 3 - SUMMARIZATION***

After the parties have stated their positions the mediator should reflect and summarize their perception of the parties’ complaints or positions. The summary should be both accurate and complete. The summary does not indicate any opinion or bias by the mediator toward either of the parties. It gives the mediator an opportunity to convert perhaps emotional positions to more clinical terms.

### ***STAGE 4 - ISSUE IDENTIFICATION***

The mediator assists the parties in identifying and prioritizing the issues that are in dispute. Ranking the issues is critical in order to insure that the parties are accurately analyzing the basis of their dispute and to conceptualize potential solutions. During this stage the mediator must assist the parties in evaluating the symptoms and

potentials for resolution, discovering and dealing with any underlying problems which, in fact, are contributing to the conflict. In this stage it is critical the perspective of the parties changes from the past to the future.

### ***STAGE 5 - GENERATION OF ALTERNATIVES***

This is the search for the appropriate alternatives, which the parties ultimately perceive as a win-win result. The task of the mediator is to assist the parties in emerging intact in their effort to obtain an alternative solution. The mediator, during this stage, will encourage the parties to suggest potential solutions. Brainstorming and other flashes of insight are important. The parties are not equipped to make clinical suggestions. The mediator may offer appropriate suggestions from their perception for a “ray of light” alternative.

### ***STAGE 6 - SELECTION OF APPROPRIATE ALTERNATIVES***

Clearly the function of this stage is to confirm among the parties that an agreement has been reached and to insure there is no misunderstanding as to the terms of the agreement or the potential for ultimately being able to complete the agreement. This agreement must be specific, workable and realistic for the parties. A written memorandum of the parties’ understanding should be completed.

### ***STAGE 7 - CLOSURE***

The mediator should congratulate the parties on their ability to accomplish an appropriate resolution and encourage their compliance with the agreement.

**Confidentiality** is the order of the Court as a part of the mediation processes that discussions, response given, documents disclosed or otherwise will be kept confidential. No person involved in the mediation process will disclose any information for any reason to parties other than the disputants.

The only exception to the disclosure of information is if the mediator learns that an individual’s welfare is at risk.

As a result of this rule, no recording or stenographic record of the mediation session will be made. Any notes taken during the process of mediation in order to facilitate agreement will be destroyed at the conclusion of the mediation session. Any information disclosed in confidence to the mediator in private caucus during the mediation will be not be revealed to anyone unless the party making the disclosure specifically agrees.

### **ATTORNEYS IN MEDIATION**

An attorney may accompany a party to mediation and participate in the mediation

process if the parties agree. Attorneys, however, will be cautioned in advance that the purpose of mediation is to attempt to resolve the dispute and their role in the proceedings will be only that of an advisor not that of an advocate.

If an attorney interrupts the mediation process and is not playing a positive role, the mediator shall have the authority to continue the mediation to a time other than the present, to discontinue the mediation or to dissolve the mediation for want of cooperation of the attorney.

### **SCHEDULED MEETINGS**

Occasionally hearings cannot be held for a variety of reasons, such as, absence of one or more of the parties, illness, sudden emergency of the mediator. In such circumstances, the mediation coordinator will contact the parties by telephone to reestablish an appropriate mediation date and time.

### **INSERTION INTO MEDIATION**

When a person comes to Circleville Municipal Court to initiate a civil complaint, they will be provided by the clerk, a copy of "Mediation in Circleville Municipal Court" which explains to that person that there is an alternative to filing suit which will not cost anything for them to attempt and preserves the normal judicial process if the matter is not resolved through mediation. If the party agrees to attempt mediation they will then be given a mediation intake form to complete. Year and mediation case number starting with 0001 will document that form. The intake clerk will establish a mediation date. A mediation calendar will be kept and maintained by the Office of the Clerk of Court for this purpose. The copy of the mediation request, a copy of mediation in Circleville Municipal Court, a tentative date for mediation will be forwarded by regular US mail to the respondent.