

**CHAPTER 1940. VOLUNTARY MEDIATION IN  
CUSTODY ACTIONS**

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**Source**

The provisions of this Chapter 1940 adopted October 28, 1999, effective immediately, 30 Pa.B. 5820, unless otherwise noted.

**Rule 1940.1. Applicability of Rules to Mediation.**

The rules in this chapter shall apply to all court-established custody mediation programs and to any court-ordered mediation of individual custody cases.

**Rule 1940.2. Definitions.**

As used in this Chapter, the following terms shall have the following meanings:

“Mediation,” the confidential process by which a neutral mediator assists the parties in attempting to reach a mutually acceptable agreement on issues arising in a custody action. Mediation is not a court proceeding; rather, it is an independent, non-record proceeding in lieu of court involvement for the purpose of assisting the parties to address the child’s best interest. An agreement reached by the parties must be based on the voluntary decisions of the parties and not the decision of the mediator. The agreement may resolve all or only some of the disputed issues. The parties are required to mediate in good faith but are not compelled to reach an agreement. While mediation is an alternative means of conflict resolution, it is not a substitute for the benefit of legal advice. The participants in mediation shall be limited to the parties to the custody action, primarily the child’s parents and persons acting as parents. Except as provided in Pa.R.C.P. No. 1940.5(c), non-parties, including children, grandparents, and the parties’ attorneys, shall not participate in the mediation.

**Official Note:** See Pa.R.C.P. No. 1915.1 for the definition of a person acting as a parent.

“Memorandum of Understanding,” the written document prepared by a mediator that contains and summarizes the resolution reached by the parties during mediation. A Memorandum of Understanding is primarily for the benefit of the parties and is not legally binding on either party.

“Orientation Session,” the initial process of educating the parties on the mediation process so that they can make an informed choice about continued participation in mediation. This process may be mandated by the court and may be structured to include either group or individual sessions. An orientation ses-

sion may also include an educational program for parents and children on the process of divorce and separation and the benefits of mediation in resolving custody disputes.

**Source**

The provisions of this Rule 1940.2 amended February 8, 2018, effective April 1, 2018, 48 Pa.B. 1095. Immediately preceding text appears at serial page (305183).

**Rule 1940.3. Order for Orientation Session and Mediation. Selection of Mediator.**

(a) Except as provided in (b), the court may order the parties to attend an orientation session at any time upon motion by a party, stipulation of the parties, or the court's own initiative.

(b) The court may not order an orientation session if a party or a child of either party is or has been the subject of domestic violence or child abuse either during the pendency of the action or within 24 months preceding the filing of the action.

**Official Note:** See also Rule 1940.6(a)(4) requiring termination of mediation when the mediator finds that the proceeding is "inappropriate" for mediation. The mediator has a continuing ethical obligation, consistent with Rule 1940.4(b), during the mediation to screen for abuse and to terminate the mediation in the event he or she determines that the abuse renders the case unsuitable for mediation.

(c) Following the orientation session and with the consent of the parties, the court may refer the parties to mediation. The mediation may address any issues agreed to by the parties unless limited by court order.

**Rule 1940.4. Minimum Qualifications of the Mediator.**

(a) A mediator must have at least the following qualifications:

(1) a bachelor's degree and practical experience in law, psychiatry, psychology, counseling, family therapy or any comparable behavioral or social science field;

(2) successful completion of basic training in domestic and family violence or child abuse and a divorce and custody mediation program approved by the Association for Conflict Resolution, American Bar Association, American Academy of Matrimonial Lawyers, or Administrative Office of Pennsylvania Courts;

(3) mediation professional liability insurance; and

(4) additional mediation training consisting of a minimum of 4 mediated cases totaling 10 hours under the supervision of a mediator who has complied with subdivisions (1) through (3) above and is approved by the court to supervise other mediators.

(b) The mediator shall comply with the ethical standards of the mediator profession as well as those of his or her primary profession and complete at least 20 hours of continuing education every two years in topics related to family mediation.

(c) A post-graduate student enrolled in a state or federally accredited educational institution in the disciplines of law, psychiatry, psychology, counseling,

family therapy or any comparable behavioral or social science field may mediate with direct and actual supervision by a qualified mediator.

**Source**

The provisions of this Rule 1940.4 amended July 21, 2004, effective immediately, 34 Pa.B. 4107. Immediately preceding text appears at serial page (270832).

**Rule 1940.5. Duties of the Mediator. Role of the Mediator.**

(a) As part of the orientation session, the mediator must inform the parties in writing of the following:

- (1) the costs of mediation;

**Official Note:** Pa.R.C.P. No. 240 sets forth the procedures for obtaining leave to proceed *in forma pauperis* when the parties do not have the financial resources to pay the costs of litigation. This rule applies to court-connected mediation services as well, so that parties without sufficient resources may file a petition seeking a waiver or reduction of the costs of mediation.

- (2) the process of mediation;

- (3) that the mediator does not represent either or both of the parties;

- (4) the nature and extent of any relationships with the parties and any personal, financial, or other interests that could result in a bias or conflict of interest;

- (5) that mediation is not a substitute for the benefit of independent legal advice; and

- (6) that the parties should obtain legal assistance for drafting any agreement or for reviewing any agreement drafted by the other party.

(b) When mediating a custody dispute, the mediator shall ensure that the parties consider fully the best interests of the child or children.

(c) With the consent of the parties, the mediator may meet with the parties' children or invite other persons to participate in the mediation.

(d) The role of the mediator is to assist the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, and finding points of agreement.

**Source**

The provisions of this Rule 1940.5 amended February 8, 2018, effective April 1, 2018, 48 Pa.B. 1095. Immediately preceding text appears at serial page (377891).

**Rule 1940.6. Termination of Mediation.**

(a) Mediation shall terminate upon the earliest of the following circumstances to occur:

- (1) a determination by the mediator that the parties are unable to reach a resolution regarding all of the issues subject to mediation;

- (2) a determination by the mediator that the parties have reached a resolution regarding all of the issues subject to mediation;

(3) a determination by the mediator that the parties have reached a partial resolution and that further mediation will not resolve the remaining issues subject to mediation; or

(4) a determination by the mediator that the proceedings are inappropriate for mediation.

(b) If the parties reach a complete or partial resolution, the mediator shall, within 14 days, prepare and transmit to the parties a Memorandum of Understanding. At the request of a party, the mediator shall also transmit a copy of the Memorandum of Understanding to the party's counsel.

(c) If no resolution is reached during mediation, the mediator shall, within 14 days, report this in writing to the court, without further explanation.

#### **Rule 1940.7. Mediator Compensation.**

Mediators shall be compensated for their services at a rate to be established by each court.

#### **Rule 1940.8. Sanctions.**

On its own motion or a party's motion, the court may impose sanctions against any party or attorney who fails to comply or causes a party not to comply with these mediation rules. Sanctions may include an award of mediation costs and attorney fees, including those reasonably incurred in pursuing the sanctions.

**Official Note:** To the extent court orders are employed to direct parties regarding mediation, contempt proceedings may also be instituted to enforce these orders.

#### **Rule 1940.9. Effective Date.**

These rules shall not affect any existing mediation program established in any judicial district pursuant to local rule prior to October 29, 1999. However, any changes or amendments to any existing program shall be consistent with these rules.

#### **Source**

The provisions of this Rule 1940.9 adopted October 27, 2000, effective immediately, 30 Pa.B. 5837.

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