



CIVIL STALKING PROTECTION ORDER MEDIATION PILOT PROJECT

INFORMATION FOR COURTS

Mediation

Temp. Sup.R. 10.01 through 1.08 allow designated pilot project courts to mediate civil stalking protection order (CSPO) cases. Generally, mediation means any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching an agreement regarding their dispute. While mediation does not guarantee a settlement, it offers some benefits over traditional adjudicatory hearings, including:

- Timelier and less expensive way of resolving disputes
- Increased satisfaction and willingness to comply with the terms of an agreement
- Tailored to a particular situation and interests of parties
- Preserving a relationship or terminating the relationship less acrimonious

Additionally, mediated agreements tend to withstand the test of time. Notwithstanding the many benefits of mediation, it is important to realize that voluntary agreements may not be easily enforceable.

Mediation sessions may be terminated at any time by any party or the mediator as it is a voluntary process. Although the goal of mediation is to reach an agreement, the parties are not required to reach an agreement in mediation. If the mediation is unsuccessful in the context of a CSPO case, the case will proceed to the full hearing where the judicial officer will grant or deny the protection order. Petitioner and Respondent are permitted to have a support person, e.g., attorney, friend, spouse, victim advocate or any other person designated by a party, during the mediation.

To promote candid, honest, and open communication between parties Temp.Sup.R. 1.05 and 1.06 provide that mediation communications are privileged and confidential. This means that what is said and shared in mediation will not be subject to discovery or admissible in evidence in a subsequent court proceeding unless the parties agree to disclose their communications. There are exceptions to the privilege and

confidentiality provision, including sharing with the court a written mediation agreement or disclosing to the court threats of violence or attempts to commit or conceal a crime. Mediation parties may, however, share mediation communications with their attorneys and a victim advocate. Penalties may be imposed for any improper disclosure of mediation communications.

Referral

Temp.Sup.R. 1.03(A) provides designated pilot project courts the construct for determining which CSPO cases may be appropriately referred to mediation. If a CSPO case is referred to mediation and the parties are unable to reach an agreement, for whatever reason, the case must be scheduled for a full hearing to rule on the petition. In counties where a magistrate may also serve as a mediator, the judicial officer adjudicating the petition cannot be the same person who served as mediator.

Temp. Sup.R. 1.03(B) outlines the criteria that make CSPO cases ineligible for mediation. The court should take particular note that the following cases are not eligible for mediation and should be scheduled for full hearing as set forth cases in R.C. 2903.214:

- Parties who are family or household members (spouse of Respondent; former spouse of Respondent; natural parent of Respondent's child; child of Respondent; parent of Respondent; foster parent; person living as spouse of respondent—now cohabiting or cohabited within 5 years before alleged acts; or other relative related by blood or marriage who has lived with Respondent at any time).
- Domestic violence act (any of the following if alleged between family or household members: attempting to cause or recklessly causing bodily injury; placing another person by the threat of force in fear of imminent serious physical harm or committing menacing by stalking or aggravated trespass; committing any act with respect to a child that would result in the child being an abused child; or committing a sexually oriented offense).
- Sexually oriented offense (e.g., rape; sexual battery; gross sexual imposition; sexual imposition; importuning; voyeurism; compelling prostitution; promoting prostitution; pandering obscenity; pandering obscenity involving a minor; pandering sexually oriented matter involving a minor, or illegal use of minor in nudity-oriented material or performance).

CSPO cases that are ineligible for mediation must be scheduled for a full hearing to rule on the petition.

Screening

As in all mediation cases, screening is a critical aspect of the process. Upon determining that a CSPO case is appropriate for mediation, the continuous screening for safety and capacity to mediate is the hallmark of the process. The Petitioner and Respondent should be interviewed separately to ascertain each party's informed consent and voluntary participation. The court may use any screening instrument it finds appropriate for CSPO cases. See, for example, Sample Interview Questionnaire.

Outcome

When a CSPO case is referred to mediation, the referral may result in a number of outcomes. Each outcome may entail a different procedural consideration and response. The chart below summarizes the implication of each of the contemplated resolutions.

Outcome	Court's Procedural Considerations
Incorporate agreement as a term of the CSPO	<ul style="list-style-type: none"> • Grant CSPO (Form 10.03-F) • Indicate applicability of paragraphs 1-9 in CSPO • Make reference to agreement in paragraph 10 in CSPO • Require Respondent to sign the waiver • If ex parte CSPO issued, send Form 10-A and note new expiration date
Dismiss the Petition without prejudice	<ul style="list-style-type: none"> • Receive Petitioner's motion to dismiss CSPO • Issue judgement entry • If ex parte CSPO issued, send Form 10-A to remove
Treat agreement as court order	<ul style="list-style-type: none"> • Receive Petitioner's motion to dismiss CSPO • Issue judgment entry, which will incorporate agreement and notice invoking of the court's future jurisdiction • If ex parte CSPO issued, send Form 10-A to remove • See <i>Henneke v. Glisson</i>, 2008-Ohio-6759 (12th Dist.); <i>Wilson v. Rowe</i>, 2016-Ohio-523 (5th Dist.), and <i>Infinite Sec. Solutions, L.L.C. v. Karam Properties II, Ltd.</i>, 143 Ohio St.3d 346 (2015-Ohio-1101.)
Mediation did not occur; party no show	<ul style="list-style-type: none"> • Determine if appropriate to schedule another session • If ex parte CSPO granted, determine need to amend • Set case for full hearing to grant or deny CSPO • If ex parte CSPO issued, prepare Form 10-A
No agreement/ Mediation terminated	<ul style="list-style-type: none"> • Set case for full hearing to grant or deny CSPO • If ex parte CSPO issued, send Form 10-A to remove or modify • Refer to victim advocate for safety planning