

## MD Rules, Rule 9-205

### RULE 9-205. MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES

**(a) Scope of Rule.** This Rule applies to any action or proceeding under this Chapter in which the custody of or visitation with a minor child is an issue, including:

- (1) an initial action to determine custody or visitation;
- (2) an action to modify an existing order or judgment as to custody or visitation; and
- (3) a petition for contempt by reason of non-compliance with an order or judgment governing custody or visitation.

**(b) Duty of Court.**

(1) Promptly after an action subject to this Rule is at issue, the court shall determine whether:

(A) mediation of the dispute as to custody or visitation is appropriate and likely would be beneficial to the parties or the child; and

(B) a mediator possessing the qualifications set forth in section (c) of this Rule is available to mediate the dispute.

(2) If a party or a child represents to the court in good faith that there is a genuine issue of abuse, as defined in Code, Family Law Article, § 4-501, of the party or child, and that, as a result, mediation would be inappropriate, the court may not order mediation.

(3) If the court concludes that mediation is appropriate and likely to be beneficial to the parties or the child and that a qualified mediator is available, it shall enter an order requiring the parties to mediate the custody or visitation dispute. The order may stay some or all further proceedings in the action pending the mediation on terms and conditions set forth in the order.

**Cross reference:** With respect to subsection (b)(2) of this Rule, see Rule 1-341 and Rules 19-303.1 and 19-303.3 of the Maryland Attorneys' Rules of Professional Conduct.

**(b) Qualifications of Court-Designated Mediator.** To be eligible for designation as a mediator by the court, an individual shall:

(1) have the basic qualifications set forth in Rule 17-205 (a);

(2) have completed at least 20 hours of training in a family mediation training program that includes:

(A) Maryland law relating to separation, divorce, annulment, child custody and visitation, and child and spousal support;

(B) the emotional aspects of separation and divorce on adults and children;

(C) an introduction to family systems and child development theory;

(D) the interrelationship of custody, visitation, and child support; and

(E) if the training program is given after January 1, 2013, strategies to (i) identify and respond to power imbalances, intimidation, and the presence and effects of domestic violence, and (ii) safely terminate a mediation when termination is warranted; and

(3) have co-mediated at least eight hours of child access mediation sessions with an individual approved by the county administrative judge, or, in addition to any observations during the training program, have observed at least eight hours of such mediation sessions.

**(d) Court Designation of Mediator.**

(1) In an order referring a matter to mediation, the court shall:

(A) designate a mediator from a list of qualified mediators approved by the court;

(B) if the court has a unit of court mediators that provides child access mediation services, direct that unit to select a qualified mediator; or

(C) direct an ADR organization, as defined in Rule 17-102, to select a qualified mediator.

(2) If the referral is to a fee-for-service mediation, the order shall specify the hourly rate that the mediator may charge for mediation in the action, which may not exceed the maximum stated in the applicable fee schedule.

(3) A mediator selected pursuant to subsection (d)(1)(B) or (d)(1)(C) of this Rule has the status of a court-designated mediator.

(4) In designating a mediator, the court is not required to choose at random or in any particular order. The court should endeavor to use the services of as many qualified mediators as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective designees.

(5) The parties may request to substitute for the court-designated mediator another mediator who has the qualifications set forth in Rule 17-205 (a)(1), (2), (3), and (6) and subsection (c)(2) of this Rule, whether or not the mediator's name is on the court's list, by filing with the court no later than 15 days after service of the order of referral to mediation a Request to Substitute Mediator.

(A) The Request to Substitute Mediator shall be substantially in the following form:

	[Caption of Case]
	REQUEST TO SUBSTITUTE MEDIATOR AND SELECTION OF MEDIATOR BY STIPULATION
	We agree to attend mediation proceedings pursuant to Rule 9-205 conducted by
	_____ ,
	(Name, address, and telephone number of mediator)

	and we have made payment arrangements with the mediator. We request that the court substitute this mediator for the mediator designated by the court.	
	(Signature of Plaintiff)	(Signature of Defendant)
	(Signature of Plaintiff's Attorney, if any)	(Signature of Defendant's Attorney, if any)
	I, _____,	
	(Name of Mediator)	
	agree to conduct mediation proceedings in the above-captioned case in accordance with Rule 9-205 (e), (f), (g), (h), (i) and (j).	
	I solemnly affirm under the penalties of perjury that I have the qualifications prescribed by Rule 9-205 (d)(5).	
	Signature of Mediator	

(B) If the Request to Substitute Mediator is timely filed, the court shall enter an order striking the original designation and substituting the individual selected by the parties to conduct the mediation, unless the court determines after notice and opportunity to be heard that the individual does not have the qualifications prescribed by subsection (d)(5)

of this Rule. If no Request to Substitute Mediator is timely filed, the mediator shall be the court-designated mediator.

(C) A mediator selected by stipulation of the parties and substituted by the court pursuant to subsection (d)(5)(B) of this Rule is not subject to the fee schedule provided for in section (j) of this Rule and Rule 17-208 while conducting mediation proceedings pursuant to the stipulation and designation, but shall comply with all other obligations of a court-designated mediator.

**Committee note:** Nothing in this Rule or the Rules in Title 17 prohibits the parties from selecting any individual, regardless of qualifications, to assist them in the resolution of issues by participating in ADR that is not court-ordered.

**(e) Role of Mediator.** The role of a mediator designated by the court or agreed upon by the parties is as set forth in Rule 17-103.

**(f) Confidentiality.** Confidentiality of mediation communications under this Rule is governed by Rule 17-105.

**Cross reference:** For the definition of “mediation communication,” see Rule 17-102 (h).

**Committee note:** By the incorporation of Rule 17-105 by reference in this Rule, the intent is that the provisions of the Maryland Mediation Confidentiality Act are inapplicable to mediations under Rule 9-205. See Code, Courts Article, § 3-1802 (b)(1).

**(g) Scope of Mediation; Restriction on Fee Increase.**

(1) The court's initial order may require the parties to attend a maximum of four hours in not more than two mediation sessions. For good cause and upon the recommendation of the mediator, the court may order up to four additional hours. The parties, by agreement, may extend the mediation beyond the number of hours stated in the initial or any subsequent order.

**Committee note:** Although the parties, without further order of court, may extend the mediation, an amendment to the time requirements contained in a scheduling order may be made only by order of the court.

**Cross reference:** See Rule 2-504.

(2) Mediation under this Rule shall be limited to the issues of custody and visitation unless the parties agree otherwise in writing.

(3) During any extension of the mediation pursuant to subsection (g)(1) of this Rule or expansion of the issues that are the subject of the mediation pursuant to subsection (g)(2) of this Rule, the mediator may not increase the mediator's hourly rate for providing services relating to the action.

**Cross reference:** See Rule 17-208, concerning fee schedules and sanctions for noncompliance with an applicable schedule.

**(h) If Agreement.** If the parties agree on some or all of the disputed issues, the mediator shall provide copies of any document embodying the points of agreement to the parties and their attorneys for review and signature. If the document is signed by the parties as submitted or as modified by the parties, a copy of the signed document shall be sent to the mediator, who shall submit it to the court.

**Committee note:** Mediators often will record points of agreement expressed and adopted by the parties to provide documentation of the results of the mediation. Because a mediator who is not a Maryland lawyer is not authorized to practice law in Maryland, and a mediator who is a Maryland lawyer ordinarily would not be authorized to provide legal advice or services to parties in conflict, a mediator should not be authoring agreements regarding matters in litigation for the parties to sign. If the parties are represented by counsel, the mediator should advise them not to sign the document embodying the points of agreement until they have consulted their attorneys. If the parties, whether represented or not, choose to sign the document, a statement should be added that the points of agreement as recorded by the mediator constitute the points of agreement expressed and adopted by the parties.

**(i) If No Agreement.** If no agreement is reached or the mediator determines that mediation is inappropriate, the mediator shall so advise the court but shall not state the reasons. If the court does not order mediation or the case is returned to the court after mediation without an agreement as to all issues in the case, the court promptly shall schedule the case for hearing on any pendente lite or other appropriate relief not covered by a mediation agreement.

**(j) Evaluation Forms.** At the conclusion of the mediation, the mediator shall give to the parties any evaluation forms and instructions provided by the court.

### **(k) Costs**

(1) *Fee Schedule.* Fee schedules adopted pursuant to Rule 17-208 shall include maximum fees for mediators designated pursuant to this Rule, and a court-designated mediator appointed under this Rule may not charge or accept a fee for a mediation proceeding conducted pursuant to that designation in excess of that allowed by that schedule.

(2) *Payment of Compensation and Expenses* Payment of the compensation and reasonable expenses of a mediator may be compelled by order of court and assessed among the parties as the court may direct. In the order for mediation, the court may waive payment of the compensation and reasonable expenses.

**Source:** This Rule is derived in part from the 2012 version of former Rule 9-205 and is in part new.

### **Credits**

[Adopted Nov. 1, 2012, eff. Jan. 1, 2013. Amended June 6, 2016, eff. July 1, 2016.]  
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