

---

## Mason County Superior Court

---

### LCR 40 STATUS CONFERENCES, MEDIATION, TRIAL SETTING CONFERENCES

#### (b) Status Conferences, Mediation, Trial Setting Conferences

##### 1. Status Conferences.

1.1 A status conference may be assigned at the time a case is filed, by notice from the court administrator's office, or upon motion of any party.

1.2 At the status conference, the court may direct the case to arbitration or mediation, and/or may set an additional status conference date. The court may determine and set a discovery deadline, a mediation deadline, a trial setting conference date, and other dates and deadlines as necessary.

##### 2. Mediation.

2.1 Presumption of Mediation. It is presumed that all contested civil and family law matters, with the following exceptions, will have completed mediation prior to trial:

- \* Dependencies and termination of parental rights;
- \* Uniform Parentage actions, up until establishment of paternity;
- \* Matters in which a domestic violence or sexual assault protection order is in place;
- \* Petitions for Civil Commitment (Sexual Predators);
- \* Actions regarding seizure of property by the State;
- \* Matters subject to Mandatory Arbitration Rules, or that are to be arbitrated by agreement, up until a request for a trial de novo;
- \* Matters that have been previously mediated consistent with the standards set forth in this rule; and
- \* By court order upon motion of any party, upon the court's determination that there is good cause not to require mediation.

Any party may move the court for an order that there is good cause to require mediation in any matter, including those cases designated as exceptions above.

2.2 Mediators. Parties may agree to a mediator from among the three categories of mediators below. If the parties cannot agree, the court shall upon motion by any party appoint a mediator. Appointment of a mediator is subject to the mediator's right to decline to serve.

2.2.1 Mediation Panel. There shall be a panel of mediators established by the court. The list of court-approved mediators and their information sheets will be available to the public in the court administrator's office.

Parties may stipulate to using a mediator from the Mediation Panel. If the parties stipulate to using a mediator from the Mediation Panel, but are not able to agree on a specific mediator, a mediator will be assigned from the Mediation Panel.

2.2.2 Volunteer Mediation Panel. There shall be a panel of volunteer mediators established by the court. Parties may qualify for appointment of a mediator from the Volunteer Mediation Panel if income and asset tests as determined by the court are met. The list of court-approved volunteer mediators and their information sheets will be available to the public in the court administrator's office.

Parties who qualify may stipulate to using a mediator from the Volunteer Mediation Panel. If the parties stipulate to using a mediator from the Volunteer Mediation Panel, but are not able to agree on a specific mediator, a mediator will be assigned from the Volunteer Mediation Panel.

2.2.3 Other Mediators. Upon approval by the court, parties may stipulate to a mediator not on the Mediation Panel or the Volunteer Mediation Panel. The court may approve appointment of a proposed mediator upon satisfactory showing of qualifications and knowledge of subject matter. Any mediator certified as such by a Washington State dispute resolution center is qualified to serve as a mediator under this paragraph.

2.2.4 Application and Trainings. A person who wishes to be placed on the Mediation Panel and/or Volunteer Mediation Panel shall complete an information sheet on the form prescribed by the court, which shall demonstrate the person's qualifications as mediator, and as to specific subject matters. Mediators and any person who wishes to be considered as a mediator may participate in court-sponsored mediation trainings.

2.3 Cost of Mediation. Parties may stipulate to the allocation of mediation costs. If the parties are unable to agree, the court will order the same upon motion of any party. Parties using mediators from the Volunteer Mediation Panel may be charged an administrative fee as set by the court.

##### 2.4 Mediation Orders and Process.

2.4.1 Mediation Status and Terms. An order shall be entered setting forth the following:

- \* Mediation status (whether the case is to be mediated); and
- \* Mediation terms (including but not limited to the mediator or category the mediator is to be chosen from, allocation of costs of mediation, mediation deadline, and identity of parties with authority required to attend mediation).

If the parties agree as to mediation status and/or terms, they may so stipulate and submit an agreed order for the court's approval prior to the status conference, or at any time thereafter prior to the discovery deadline.

If the parties are unable to agree to the status and/or all terms of mediation, a party may file and note a motion

for entry of an order setting the status and terms of mediation.

2.4.2 Litigation Process During Period of Mediation. Pending mediation, all litigation processes such as discovery, motions for temporary orders, and motions for dispositive orders shall continue.

2.4.3 RCW ch. 7.07. All mediations undertaken pursuant to this Rule are subject to the provisions of RCW ch. 7.07, the Uniform Mediation Act, including its requirements regarding privilege and confidentiality.

2.4.4 Civil Mediation Statements. In civil actions, all parties shall prepare and deliver a Civil Mediation Statement to the mediator and opposing parties, no later than five working days prior to the mediation. The statement shall address the matters set forth in Appendix A. The statement shall not be filed with the court.

2.4.5 Family Law Mediation Statements. In family law actions, all parties shall prepare and deliver a Family Law Mediation Statement to the mediator, opposing parties, and the State of Washington, if the State is a party, no later than five working days prior to the mediation. The statement shall address the matters set forth in Appendix B. The statement shall not be filed with the court.

2.4.6 Appearance at Mediation. The parties shall appear in person at mediation unless the court orders in advance that they may be present by telephone or electronic means sufficient to allow full participation. Each party shall ensure the presence at mediation of persons who have necessary authority to approve a settlement.

2.4.7 Sanctions for Failure to Comply. The court, consistent with the provisions of RCW Ch. 7.07, upon motion or upon its own initiative, may impose an appropriate sanction on any party or attorney for refusal to participate in mediation or comply with any of the requirements of this rule, for willful delay in completing mediation or for participation in bad faith. The sanction may include, but is not limited to, an order to pay a fee sufficient to deter the conduct and an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the sanctionable conduct. The court shall not entertain any motion with respect to this subsection unless the parties have conferred with respect to the motion. The moving party shall arrange for a mutually convenient conference in person or by telephone. The court may apply sanctions if the court finds that any part or its counsel, upon whom a motion with respect to matters covered by such rules has been served, has willfully refused or failed to confer in good faith. Any motion seeking sanctions under this subsection shall include a certification that the conference requirements of this rule have not been met.

2.4.8 Mediation Report. Within five days after completion of mediation, the mediator shall file a Mediation Report indicating whether the case has been resolved. A copy of the Mediation Report shall be provided to the court administrator's office.

### 3. Discovery.

Discovery shall be completed in accordance with the discovery schedule set at the status conference. Exceptions will be made only upon prior approval of the court, and for good cause.

### 4. Trial Setting Conference.

4.1 A date for a trial setting conference may be set at the status conference, by notice from the court administrator's office, or upon motion of any party. A party may also request an accelerated trial date by motion at any time prior to the trial setting conference date.

4.2 Trial setting conferences shall not be continued absent a showing of good cause and upon prior approval of the court.

4.3 At the trial setting conference, the court shall consider compliance with dates and deadlines, the status of mediation, and readiness for trial.

4.4 Cases shall be assigned a secondary and/or primary trial setting to be determined by the court. Where out-of-state witnesses or substantial expert testimony is anticipated, the parties may request that the court dispense with the secondary trial setting.

4.5 The court may set schedules, deadlines and other pretrial dates as appropriate.

### 5. Compliance.

5.1 Counsel for the parties and pro se parties shall appear in person or by telephone at each of the conferences set by the court. Counsel appearing for a party shall preferably be lead counsel for that party. Any counsel appearing for a party shall be prepared with an understanding of the case and authority to enter into agreements as contemplated herein.

5.2 Failure to comply with deadlines, dates, or other requirements set out in these rules, or failure to appear at a conference set by the court, may result in sanctions being imposed, including terms. The court may also strike a trial date if mediation has not been completed by the applicable deadline.

[Amended effective 9-1-11; Amended effective 9-1-18]

---