

SUPREME COURT, CIVIL BRANCH ROCKLAND COUNTY

STATEMENT OF PROCEDURES

MATRIMONIAL ALTERNATIVE DISPUTE RESOLUTION PROGRAM

I. OVERVIEW

The Rockland County Supreme Court's Matrimonial Alternative Dispute Resolution (ADR) Program offers parties access to qualified Mediators and Neutral Evaluators who meet the criteria set out in Section VII.

Mediation and Neutral Evaluation are confidential ADR processes that may result in faster, more convenient, less expensive, and less acrimonious settlement than might be the case in the normal course of litigation. In Mediation, a neutral third party — the Mediator — helps disputing parties to identify issues, clarify perceptions, and explore options for a mutually acceptable outcome. Mediators have significant training and experience in family mediation and in opening paths of communication that emphasize common ground and encourage cooperation. Mediators help parties to resolve key issues that affect their relationships with their children and the financial well-being of all family members.

In Neutral Evaluation, a neutral third party - the Neutral Evaluator - hears abbreviated case presentations by the parties, assesses strengths and weaknesses and provides an assessment of likely court outcomes of a case or an issue in an effort to help parties reach a settlement. Neutral evaluators may also facilitate settlement discussions with the parties consent.

Although parties are not obligated to settle in mediation or neutral evaluation, parties often emerge with a written agreement. If the parties cannot reach agreement, they return to court. Parties are strongly encouraged, but are not required, to attend ADR sessions with their own attorneys. Referral to the Program is not appropriate where only one party is represented by counsel, or in cases of domestic violence, child abuse, or severe power imbalance.

II. DEFINITIONS¹

¹ The definitions for this Program are established in Part 146 of the Rules of the Chief Administrative Judge. See <http://nycourts.gov/rules/chiefadmin/146.shtml>

- (a) "Neutral" shall refer to mediators and neutral evaluators.
- (b) "Mediation" shall refer to a confidential dispute resolution process in which a neutral third party (the mediator) helps parties identify issues, clarify perceptions and explore options for a mutually acceptable outcome.
- (c) "Neutral evaluation" shall refer to a confidential, non-binding process in which a neutral third party (the neutral evaluator) with expertise in the subject matter relating to the dispute provides an assessment of likely court outcomes of a case or an issue in an effort to help parties reach a settlement.
- (d) "ADR Session" shall refer to a mediation or neutral evaluation session.

III. PROCEDURES

The assigned Matrimonial Part Justice or the assigned court attorney-referee may refer parties to the Program or parties on their own may request referral to the Program. Parties referred to the Program are free to choose the form of ADR they wish to undergo. Unless otherwise agreed by the parties, cases shall be mediated. Cases involving child abuse or neglect (as defined in Family Court Act § 1012(e) and (f) and Social Services Law § 412), domestic violence, or a severe power imbalance between the parties are not appropriate for referral to the Program. Cases will be screened to avoid inappropriate referrals.

To begin the process, the Court issues an Order of Reference. The Order of Reference specifies the topics (e.g., child custody, visitation and/or financial issues) to be submitted to the Program for resolution. The Order shall direct parties to attend an initial, free, 90-minute session with a Neutral from the Program's Roster of Neutrals. Counsel for the parties are encouraged but not required to attend. If parties wish to continue ADR beyond the initial ninety (90) minute session, they may continue that session or schedule additional sessions. Neutrals shall be entitled to compensation from the parties at a rate that shall be \$300 per hour, following the initial session. Payment shall be made in advance of scheduled sessions. See Section VIII.

The Order of Reference shall contain the control date set by the referring justice or court-attorney referee for the parties to appear in Court for a conference following the initial session. All pre-trial proceedings scheduled in the Preliminary Conference order shall continue, and shall not be stayed, pending additional ADR sessions, except that, if all parties request, the referring justice or court-attorney referee may extend the dates for the taking of examinations before trial, provided that, in no event, may such dates be extended beyond twenty (20) days from the date set in the Preliminary Conference Order for the completion of discovery. In no event shall the date for completion of discovery set in the Preliminary Conference Order or the date for the Compliance Conference be extended or adjourned by reason of the pendency of ADR.

The Court shall deliver the Order of Reference to the parties who shall select a Neutral within five business days of receipt of the Order. The parties may choose a Neutral from the Court's Roster of Neutrals, located on-line at <http://www.nycourts.gov/courts/9jd/Rockland/generalCivilMediation.shtml> or they may choose a Neutral who is not on the Court's roster. If the parties cannot agree on a Neutral, they shall send a joint letter to the Court with names and resumes of two Neutrals from the Court's Roster. The parties shall not disclose who chose which Neutral. The parties shall confirm in advance that the two roster Neutrals (a) are available to take the case; (b) do not have a conflict of interest. The referring Justice shall then select one of the Neutrals and notify the parties promptly of the selection.

The parties are required to appear at the initial session within ten (10) days of selecting the Neutral or receiving notification of the selection. At least three (3) business days prior to the initial session, the parties' counsel shall send the Neutral a copy of the pleadings, the Statements of Net Worth, and any other information necessary for the effective negotiation and resolution of the issues involved. The Neutral may request a conference call with both counsel regarding any preliminary matters.

The Neutral may give to the parties any agreements or memorandum of understanding generated at the sessions.

Within five (5) business days after the conclusion of the ADR session(s) — which shall occur whenever after the initial session one party, both parties, or the Neutral decides that the process has ended — the Neutral shall send a Report ("Report of the Neutral") to the Court and to counsel for the parties stating:

- (1) the date of the initial session and whether each party and counsel appeared at the initial session;
- (2) the dates of any subsequent scheduled sessions, but not whether parties appeared; and
- (3) whether the parties reached partial, complete, or no agreement on the issues.

The Neutral shall not disclose other information discussed during ADR, except as described in Section X.

IV. ROLE OF THE NEUTRAL

(a) The Mediator - The Mediator serves as a neutral facilitator of communication and helps the parties reach future-oriented solutions that meet their families' individualized needs. The Mediator can probe the parties' interests, values, and preferences underlying their stated positions. The Mediator does not give legal advice, predict likely court outcomes, or force solutions on the parties.

At the initial session, the Mediator explains that all communications are confidential (with narrow exceptions outlined below) and will not be disclosed to the Justice hearing their case or in

any other judicial or administrative proceeding. The Mediator also explains that either party is free at the close of the initial session or at any time thereafter to end the Mediation and return to court.

During the Mediation, each party relates the facts of the dispute and raises particular issues of concern. The Mediator may ask the parties clarifying questions related to the care of their children, parenting time, and allocation of property and income. The Mediator then helps the parties work collaboratively to develop and choose options that meet the parties' needs.

At some point in the process, either party, the party's counsel, or the Mediator may suggest a caucus. Caucuses are meetings that Mediators hold separately with each side in a dispute. During the caucus, the Mediator may explore how each spouse views the dispute and the impact of any proposed solutions. The Mediator keeps confidential the information discussed in caucus unless the party permits disclosure.

If the parties reach a written agreement during Mediation, the parties are strongly encouraged to submit the agreement to their respective attorneys for review.

There may be a request made by the parties, during the course of the mediation, for an opinion from the Mediator as to the merits of their positions. Only a qualified Neutral Evaluator can offer such opinion (*see Section VII.b*). If the Mediator is also a qualified Neutral Evaluator in the subject area, and upon full consent of the parties, the mediation may expand to include neutral evaluation concerning these issues. However, if the Mediator is not a qualified Neutral Evaluator in the specific subject area, the Mediator should not offer an opinion regarding likely court outcomes or the merits of the case.

(b) The Neutral Evaluator - The Neutral Evaluator hears abbreviated informal presentations by the attorneys for the parties or by the parties themselves. The Neutral Evaluator's opinions may assist parties in their analysis of the merits of their cases, help to facilitate discussions between the parties and aid in reaching a settlement. The neutral evaluator may endeavor to facilitate a settlement between the parties with their informed consent.

V. THE ROLE OF PARTIES, COUNSEL, ATTORNEYS FOR THE CHILD and GUARDIANS AD LITEM

Experience has demonstrated that party participation — as opposed to exclusive participation by counsel — not only increases the likelihood of settlement, but also improves compliance with any agreed-upon terms and enhances the parties' satisfaction. Accordingly, unless exempted by the Neutral for good cause shown, the parties must be present during the ADR sessions.

The presence of separate counsel for each party at all mediation and neutral evaluation sessions is encouraged. Whether appearing alongside their clients or advising clients outside of the ADR process, attorneys play a crucial role in informing parties of their legal rights and responsibilities and the consequences of proposed solutions. Without representation by counsel,

parties risk entering into agreements with insufficient knowledge about financial, legal, or other issues. If counsel for either party is discharged or withdraws for any reason, the case will not proceed in ADR until a substitution is made.

For those cases in which an Attorney for the Child or guardian ad litem has been assigned, ADR may not commence without the appropriate Attorney or guardian's presence, unless the parties agree otherwise.

VI. THE ROLE OF THE COURT

The Program is conducted under Court auspices and pursuant to these rules. Judicial and non-judicial staff are encouraged to inform the parties of the Program's existence. If the parties wish to go to ADR but cannot afford it, the Court may assist qualifying parties to find a Neutral who may take their case for a reduced fee.

The Court welcomes the feedback of parties, counsel, and Neutrals after the conclusion of the proceedings.

VII. THE ROSTER OF NEUTRALS

The Court has assembled a Roster of Neutrals.

(a) Mediators who wish to join the Roster must comply with the following prerequisites:²

- Training: Completion of at least 60 hours of family mediation training in a training program recognized by the New York State Office of Court Administration ("OCA").
- Experience: At least four years of family mediation experience, including 250 hours of face-to-face mediation with clients and a minimum of 25 custody and visitation cases, and any other mediation training or experience deemed appropriate by the Court.
- NOTE: Cases involving financial issues will be referred only to those Mediators with knowledge of, training in and experience with financial aspects of divorce. Cases involving issues relating to decision-making for a child or parenting time with a child shall be referred only those Mediators with knowledge of, training in and experience with such issues.

²The training and qualifications guidelines for the Program exceed the minimum requirements established in Part 146 of the Rules of the Chief Administrative Judge. See www.nycourts.gov/rules/chiefadmin/146.shtml

(b) Neutral Evaluators who wish to join the roster must have successfully completed at least six hours of approved training in procedural and ethical matters related to neutral evaluation and be:

(1) Lawyers admitted to practice law for at least five years who also have at least five years of substantial experience in the specific subject area of the cases that will be referred to them; or

(2) Individuals who have served at least five years as a judge with substantial experience in the specific subject area of the cases that will be referred to them.

• Continuing Education: Pursuant to Part 146 of the Rules of the Chief Administrative Judge, all Neutrals must attend at least six hours of additional approved training relevant to their respective practice areas every two years. See www.nycourts.gov/rules/chiefadmin/146.shtml

The District Administrative Judge shall determine whether a person qualifies for inclusion on the Roster of Neutrals and whether a person seeking inclusion on the Roster of Neutrals has the requisite temperament, character, and discretion. Continuing presence on the Court's Roster of Neutrals is subject to review by the District Administrative Judge. Neutrals may be removed from the Roster at the discretion of the District Administrative Judge.

VIII. FEES

The Program itself does not charge or administer fees. Parties referred to ADR pursuant to this Statement of Procedures shall be required to compensate the Neutral for services rendered following the initial 90-minute session and for time spent reviewing materials submitted by the parties for purposes of any subsequent sessions at a rate of \$300.00 per hour. The fee arrangement with the Neutral must be agreed to in writing, and must include the ratio at which the fee will be divided between the parties. The parties must sign this fee agreement before commencing any sessions for which compensation is required. Sessions shall be paid for in advance. Neutrals are encouraged to work on a sliding scale to take into account the parties' financial circumstances.

IX. IMMUNITY

Neutrals serving in this program shall be immune from suit as a result of any conduct or omission during the performance of duties in that capacity to the extent permissible by law.

X. CONFIDENTIALITY

Except as set forth below, all oral, written, or other communications made during the course of ADR by any party, Neutral or any other person present shall be immune from disclosure in any present or future judicial or administrative proceeding. Similarly, all information generated in or in connection with ADR –including memoranda, work products or case files of a Neutral – shall remain confidential and not be subject to disclosure in any present or future judicial or administrative

proceeding. However, ADR will not be used as a shield with respect to otherwise discoverable documents or information produced or occurring prior to or outside the ADR process.

Moreover, except as set forth below, nothing about the substance of the ADR sessions, such as the weaknesses or strengths of the parties' cases or the relative willingness of parties to discuss settlement proposals, will be revealed to the referring Justice, Court-attorney referee or any other person by the Neutral or any party or attorney. Nor will any party or attorney for a party reveal the outcome of the ADR process to the referring Justice or a member of the Justice's staff or to any Court personnel, including Court attorney-referees unless both sides agree to the disclosure.

Notwithstanding these confidentiality provisions, communications and information may be subject to disclosure in any present or future judicial or administrative proceeding in any of the following five circumstances:

1. ***Attendance***

Whether the parties and their counsel attended the initial session will be reported to the referring Justice or Court attorney-referee.

2. ***Waiver***

Parties to the ADR process and the Neutral agree in writing to waive confidentiality. The waiver must specify the individual communication(s) or information that will be disclosed, the person or entity to whom the disclosure will be made, and the purpose of the disclosure.

3. ***Written Agreement***

A writing signed by all the parties embodying a negotiated agreement submitted to the Court for review. Additionally, a limited report of the outcome, as explained in **Section III**, will be sent to the referring Justice or Court attorney-referee. Only those signed agreements that have become Court orders may be admissible in any present or future judicial or administrative proceeding.

4. ***Threats of Imminent, Serious Harm***

If communications or information constitute a credible threat of serious and imminent harm, either to the speaker or another person or entity, the appropriate authorities and/or the potential victim may be notified.

5. ***Allegations of Child Abuse or Neglect***

The communication or information relates to an allegation of child abuse or neglect as defined in Family Court Act § 1012(e) and (f) and Social Services Law § 412 and for which

disclosure is required pursuant to Social Services Law § 413.

XI. CHILD ABUSE AND NEGLECT

If an allegation of child abuse or neglect is made by any party during the ADR process, the Neutral will safely stop the process. Neutrals shall report to the referring Justice or Court attorney-referee allegations of child abuse or neglect for which disclosure is required pursuant to Social Services Law § 413.

XII. DOMESTIC VIOLENCE/SEVERE POWER IMBALANCE

When an allegation of domestic violence or severe power imbalance is made by any party during ADR, the Neutral shall safely stop the process, meet with each party individually where appropriate to learn as much as possible about the circumstances in order to determine whether to resume the process. Allegations of domestic violence shall not be disclosed to the referring Justice or court attorney-referee; instead, the Neutral will give victims information regarding their rights in the form prescribed in Family Court Act § 812 (5), and they will receive additional information.

XII. REFERRAL TO THE PROGRAM AND ONGOING LITIGATION

Cases may be referred to ADR at anytime including the preliminary conference (which is typically when referrals are made). A party who attends the initial session complies with the Order of Reference, even if that party ultimately chooses not to proceed with ADR.

Referral to the Program will not stay the court proceedings in any respect, unless specifically ordered by the court. The “no stay” policy recognizes the special need for prompt action in matrimonial and family proceedings. Full discovery, emergency and *pendente lite* relief, family dynamics, and the needs of children require ongoing access to the Court.

XIII. AVOIDING CONFLICTS OF INTEREST

Before accepting a case, a Neutral shall make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the Neutral, including a financial or personal interest in the outcome, and an existing or past relationship with a party or their attorneys or foreseeable participant in the ADR process. The Neutral shall disclose any such known conflict to the parties and counsel as soon as possible before accepting a referral. If the Neutral wishes to accept a referral after discovering a potentially disqualifying fact, the Neutral is obliged to disclose the disqualifying facts to the parties and, where such facts exist, shall not serve unless the parties consent in writing. If a Neutral later learns of any disqualifying fact after accepting a case, the Neutral shall disclose it as soon as practicable. If unable to function in a fair and impartial manner, the Neutral shall seek disqualification and notify the Court.

Supreme Court, Civil Branch, Rockland County

Matrimonial ADR Pilot Program
Rockland County Courthouse

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