

Commercial Division

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Nassau County

Rules of the Alternative Dispute Resolution Program

Hon. Leonard B. Austin

Biography
Parts & Chambers

Hon. Ira B. Warshawsky

Biography
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Hon. Stephen A. Bucaria

Biography
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[Decisions Online](#)

OPERATIONAL INFO:

Uniform Standards for Assignment of Cases & Rules of Practice (22 NYCRR 202.70)



Affirmation in Support of Request for Assignment to Commercial Division



Preliminary Conference Form



ADR Neutrals

[ADR Rules](#)

ARCHIVES:

Former Commercial Division Rules, Nassau Cty.

Former Guidelines for Assignment of Cases



Links require Adobe Acrobat

INTRODUCTION

Alternative dispute resolution ("ADR") refers to a variety of processes other than litigation that parties use to resolve disputes. ADR offers the possibility of a settlement that is achieved sooner, at less expense, and with less inconvenience and acrimony than would be the case in the normal course of litigation. The principal forms of ADR include arbitration, neutral evaluation and mediation.

Parties referred to the program are free to choose whichever form of ADR they prefer. Unless the parties agree otherwise, the Program will offer mediation as the default ADR option. Mediation is a confidential, informal procedure in which a neutral third party helps disputants negotiate. With the assistance of a mediator, parties identify issues, clarify perceptions and explore options for a mutually acceptable outcome. Although parties are not obligated to settle during mediation, the process frequently concludes with a written agreement.

Mediation is particularly appropriate for the resolution of complex commercial cases. Mediation offers the parties a confidential, structured forum in which to explore practical business concerns and develop tailor-made solutions beyond those that a Judge can often provide. Moreover, a mediator will not impose a solution on the parties or attempt to tell them what to do; if the parties cannot reach agreement, the case will be returned to the referring Justice.

The following Rules shall govern cases sent to ADR by Justices of the Commercial Division and other authorized Justices, as well as cases referred upon consent of the parties. Parties whose cases are the subject of an order of reference are free at the outset to use the services of a private ADR provider of their choosing in lieu of taking part in this court's program. After a case has been submitted to the court's program, parties can terminate the process and proceed to ADR elsewhere.

Rule 1. The Program: The Commercial Division of the Supreme Court of the State of New York, Nassau County, operates the Alternative Dispute Resolution Program ("the Program"). The Program shall be applicable to cases referred by Justices of the Commercial Division, the District Administrative Judge of the Supreme Court, Nassau County ("the Administrative Judge"), and the other Justices of the Supreme Court, Nassau County upon authorization of the Administrative Judge; and commercial cases referred by consent of the parties.

**Rule 2. The Roster:**

(a) The Administrative Judge shall establish and maintain a roster of Neutrals ("the Roster") who shall serve without charge to the parties unless the parties otherwise agree or these Rules otherwise permit.

(b) In order to be eligible to serve as a Mediator and be listed on the Roster, one must have:

(i) successfully completed a minimum of twenty four (24) hours of training in an OCA-sponsored or OCA-recognized training program and;

(ii) any other mediation training or experience deemed appropriate by the Administrative Judge.

(c) Arbitrators and neutral evaluators serving on the roster shall possess such qualifications as shall be promulgated.

(d) Each neutral who joins the Roster undertakes to handle on a pro bono basis two matters each year.

(e) Every member of the Roster, and any other person who serves as a Neutral pursuant to these Rules, shall comply with the Code of Ethical Standards for Neutrals of the Commercial Division upon its issuance. Continuing presence on the Roster is subject to review by the Administrative Judge. Neutrals may be removed from the Roster at the discretion of the Administrative Judge in consultation with the Unified Court System Office of ADR Programs.

(f) The Roster will be available through the ADR Coordinator, located in Nassau County Supreme Court or on the Commercial Division website (at <http://www.courts.state.ny.us>).

**Rule 3. Procedure:**

(a) Cases shall be referred to ADR as early as is practicable. If the Justice or the Administrative Judge decides to refer a case to the Program or if the parties consent to a referral at a conference or in a written stipulation, the Justice shall issue an Order of Reference requiring that the case proceed to ADR in accordance with these Rules. Parties referred to the Program are free to choose whichever ADR process they wish. Unless otherwise agreed by the parties, all cases referred to the program shall be mediated. A case not deemed appropriate for referral at its outset may be referred to the Program later in the discretion of the Justice.

(b) Upon receipt of the Order of Reference, the ADR Coordinator will assign a Neutral chosen from the Roster and contact the Neutral to confirm a date upon which to schedule the ADR session. Generally, the next available neutral in alphabetical order will be chosen,

although the Coordinator will have the discretion to designate another member of the Roster in appropriate cases.

(c) Within five (5) business days after the Order of Reference reaches the ADR Coordinator, the ADR Coordinator will forward the Order to the parties and advise the parties of the name and contact information of the neutral and the date on which the ADR proceeding will take place. At this time, the ADR Coordinator will also send the ADR initiation form to the parties, which requires the names and contact information for all parties and counsel to the case and contains additional provisions for confidentiality and neutral immunity.

(d) Within five (5) business days after the date on which the Order of Reference was transmitted to them, the parties must;

(i) sign the ADR Initiation Form and return it to the ADR Coordinator, and

(ii) Agree on a neutral other than the one designated by the ADR Coordinator, if they so desire. In order for a substitution to be made, the parties must contact the other neutral directly, whether a member of the Roster or someone else, and make arrangements for that person to conduct the ADR proceeding. Any person selected from outside the Roster must complete the ADR process within the deadlines set forth in these Rules and comply with Rule 4. When they submit the ADR Initiation Form pursuant to subdivision (d)(i) of this Rule, the parties must report to the Coordinator the substitute neutral's name, contact information if not a member of the Roster and the date when the proceeding will be held.

(e) Within ten (10) days after the date on which the ADR Coordinator receives the ADR Initiation Form, the ADR Coordinator must transmit to the parties and their counsel a Notice of Confirmation. The ADR Coordinator shall transmit a copy of the Notice of Confirmation and ADR initiation form to the Neutral as well.

(f) Should a conflict arise regarding the scheduled date for the ADR session, the parties and the Neutral will agree on a convenient date for the initial session without the involvement of the ADR Coordinator. Notwithstanding the above, the initial ADR session must be conducted within 45 days from the date the Order of Reference was issued. This deadline is important and must be met. In the event of any extraordinary difficulties, the Neutral shall contact the ADR Coordinator and, if necessary, intervention will occur to expedite the process. The Neutral may initially request a conference call with both counsel regarding any preliminary matters.

(g) At least 10 days before the initial session, the neutral may request that each party deliver to the Neutral a copy of its pleadings and a memorandum of not more than ten pages (except where the parties and the Neutral agree in advance upon a different limit) setting forth that party's opinions as to the facts and the issues that are not in dispute, contentions as to liability and damages, and

suggestions as to how the matter might be resolved. This memorandum shall not be served on the adversary or filed in court, shall be read only by the Neutral, and shall be destroyed by the Neutral immediately upon completion of the proceeding.

(h) Unless exempted by the Neutral for good cause, every party, including counsel must attend the initial ADR session either in person or, in the case of a corporation, partnership or other business entity, by an official (or more than one if necessary) who is both fully familiar with all pertinent facts and authorized to settle the matter. Any attorney who participates in the ADR process shall be fully familiar with the action and authorized to settle.

(i) Within seven (7) days after the ADR process has concluded—whether by agreement, or the refusal of one or more parties to continue, the Neutral shall complete the ADR Disposition Form indicating settlement or lack thereof and transmit the Form, along with any written agreement, to the ADR Coordinator. If the ADR process results in a settlement, the parties shall submit a stipulation of discontinuance to the Part of the Justice assigned.

(j) At the end of an initial session mandated by subdivision (a) of this Rule, any party or the Neutral may terminate the ADR proceeding. If the ADR process has been terminated by one party only, the identity of that party shall not be reported.

(k) Notwithstanding the foregoing, if a party or counsel fails to schedule an appearance for an ADR session in a timely manner, appear at any scheduled session or otherwise comply with these Rules, the Neutral shall advise the ADR Coordinator, succinctly specifying the nature of the infraction, and may, if deemed appropriate, recommend the imposition of sanctions.

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Rule 4. Confidentiality:

(a) The ADR proceeding shall be confidential. All documents prepared by parties or their counsel and any notes or other writings prepared by the Neutral in connection with the proceeding—as well as any communications made by the parties or their counsel, for, during, or in connection with the ADR proceeding—shall be kept in confidence by the Neutral and the parties and shall not be summarized, described, reported or submitted to the court by the Neutral or the parties. No party to the ADR proceeding shall, during the action referred to ADR or in any other legal proceeding, seek to compel production of documents, notes or other writings prepared for or generated in connection with the ADR proceeding, or seek to compel the testimony of any other party concerning the substance of the ADR process. Any settlement, in whole or in part, reached during the ADR proceeding shall be effective only upon execution of a written stipulation signed by all parties affected or their duly authorized agents. Such an agreement shall be kept confidential unless the parties agree otherwise, except that any party thereto may thereafter commence an action for breach of this agreement. Documents and information otherwise discoverable under the Civil

Practice Law and Rules shall not be shielded from disclosure merely because the documents and information are submitted or referred to in the ADR proceeding.

(b) No party to an action referred to the Program shall subpoena or otherwise seek to compel the Neutral to testify in any legal proceeding concerning the content of the ADR proceeding. In the event that a party to an action that had or has been referred to the Program attempts to compel such testimony, that party shall hold the Neutral harmless against any resulting expenses, including reasonable legal fees incurred by the Neutral or reasonable sums lost by the Neutral in representing himself or herself in connection therewith. However, notwithstanding the foregoing and the provisions of Rule 4 (a), a party or the ADR Coordinator may report to an appropriate disciplinary body any unprofessional conduct engaged in by the Neutral and the Neutral may do the same with respect to any such conduct engaged in by counsel to a party.

(c) Notwithstanding the foregoing, to the extent necessary, (i) the parties may include confidential information in a written settlement agreement; (ii) the Neutral and the parties may communicate with the ADR Coordinator about administrative details of the proceeding; and (iii) the Neutral may make general reference to the fact of the services rendered by him or her in any action required to collect an unpaid, authorized fee for services performed under these Rules. Furthermore, this Rule shall not apply to binding arbitration.



Rule 5. Immunity of the Neutral; Compensation: Any person designated to serve as a Neutral in a pro-bono capacity pursuant to these Rules shall be immune from suit based upon any actions engaged in or omissions made while serving in that capacity. Neutrals selected by the ADR Coordinator will serve without charge provided that they have not satisfied their pro-bono requirement for that year. If the parties agree on a substitute neutral from the Roster pursuant to Rule 3 (d) and the neutral has satisfied the pro-bono service requirement for that year, the neutral may require the parties to pay reasonable compensation.



Rule 6. Stay of Proceedings:

(a) Unless otherwise directed by the Justice assigned, referral to ADR will not stay the court proceedings in any respect.

(b) Parties committed to the ADR process who conclude that additional time is required to fully explore the issues pertaining to their case may request a stay of proceedings. Regardless of whether a stay is granted by the Assigned Justice, if informal exchange of information concerning the case will promote the effectiveness of the ADR process and the parties so agree, the Neutral shall make reasonable directives for such exchange consistent with any pre-existing disclosure order of the court and in compliance with the deadlines set forth herein.

(c) If the matter has not been entirely resolved within the 45-day period as provided in these rules but the parties and the Neutral believe that it would be beneficial if the ADR process were to continue, the process may go forward. However, the ADR process should be completed within 75 days from the date of the Order of Reference unless the assigned Justice specifically authorizes the process to continue beyond the 75 days.

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Rule 7. Conflicts of Interest: In order to avoid conflicts of interest, any person tentatively designated to serve as a Neutral shall, as a condition to confirmation in that role, conduct a review of his or her prior activities and those of any firm of which she is a member or employee. The Neutral shall disqualify him or herself if the Neutral would not be able to participate as a Neutral fairly, objectively, impartially, and in accordance with the highest professional standards. The Neutral shall also avoid an appearance of a conflict of interest. In the event that any potentially disqualifying facts should be discovered, the Neutral shall fully inform the parties and the ADR Coordinator of all relevant details. Unless all parties after full disclosure consent to the service of that Neutral, the Neutral shall decline the appointment and another Neutral shall promptly be selected by the ADR Coordinator. Any such conflicts review shall include a check with regard to all parents, subsidiaries, or affiliates of corporate parties.

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Rule 8. Communication with Assigned Justice: The ADR Coordinator may communicate with the assigned Justice about administrative details of the processing of any case referred to the Program by that Justice, but shall not identify the Neutral designated or any substantive aspect of the case about which the Coordinator may learn. Upon termination of the proceeding by a party pursuant these rules, the ADR Coordinator should not learn, and, in any event, shall not reveal to the Justice which party brought the proceeding to an end. The ADR Coordinator shall report to the Justice at the conclusion of the proceeding whether the proceeding produced a resolution of the case in whole or in part. The ADR Coordinator shall also report to the Justice, on an appropriate form a copy of which shall be forwarded to the parties, any violation of these Rules as indicated by a Neutral pursuant to these rules and any recommendation for sanctions. The Justice may impose sanctions or take such other action as is necessary to ensure compliance with and respect for the court's Order and these Rules.

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Rule 9. Further ADR:

(a) After completion of the initial ADR session, upon request of a party or upon its own initiative, the court may in its discretion issue an order directing a second referral to the Program. Any such referral shall be entertained and ordered as early as practicable.

(b) Any case so referred shall proceed in accordance with these Rules.

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Rule 10. Other ADR: Parties who choose to proceed to binding arbitration as the initial form of ADR in compliance with Rule 3 (a) and the Order of Reference shall agree upon appropriate procedures to govern the process in lieu of the requirements set forth in these rules. However, a report on the outcome shall be issued within the time for a report of the Neutral fixed by these rules.

Rule 11. Administration of Program: The Program shall be supervised by the Chief Clerk, Nassau County Supreme Court, Civil Term. Daily coordination of the ADR Program shall be conducted by an Alternative Dispute Resolution Coordinator or Coordinators.

October 31, 2002

**THE COMMERCIAL DIVISION
SUPREME COURT, CIVIL BRANCH
NASSAU COUNTY**