

NASSAU COUNTY “MAP” PROGRAM RULES

I. MISSION/PURPOSE STATEMENT

The Matrimonial Alternative Dispute Resolution Program (“MAP”) described herein is established to assist the Court, counsel and litigants as they resolve matters. The primary purpose of the process is to recognize, foster and advance the interests of litigants and their children involved in divorce and family litigation. The secondary purpose of the process is to provide a reasonable, cost effective alternative dispute resolution forum for the parties in divorce litigation. The participants are encouraged to take advantage of this unique opportunity with assistance of counsel, while reserving their right to utilize litigation. Mediation shall be provided by mediators appointed to serve on the Court’s roster, as described herein.

II. DEFINITIONS

(a) **Mediation.** When the word “mediation” is used herein, it denotes a cooperative process for resolving conflict with the assistance of a trained court-approved, neutral third party, whose role is to facilitate communication, to help define issues, and to assist the parties in identifying and negotiating fair solutions that are mutually agreeable. Fundamental to the mediation process described herein are principles of safety, self determination, procedural informality, privacy, confidentiality, and full disclosure of relevant information between the parties. Mediation under this rule is a means for parties to maintain control of custodial parenting plans or the issues of finances. Parties are encouraged to participate in the mediation process by attempting meaningful negotiation and resolution of the issues brought to mediation.

Mediation under this rule is not to be considered a substitute for independent legal advice. On the contrary, it is to work in direct partnership with the bar and the legal process, by giving the parties the ability to be fully informed of options for resolution of their issues, which would include obtaining legal advice before, during and after the mediation process. It is intended by the promulgation of these rules that mediation is available to resolve issues of custody and visitation as well as issues relating to equitable distribution of matters where values are ascertained in contested matters, or where discovery issues are complex, protracted, or warrant particular oversight.

(b) **Capacity.** When the word “impairment” is used herein, it means any condition which hinders the ability of a party to negotiate safely and competently, including but not limited to intimidation, substance abuse, mental illness or a cognitive impairment. Pursuant to these rules, the identification of impediments in a case is necessary to determine if mediation should be utilized, and to insure that only parties having a present, undiminished ability to negotiate are referred by the Court under this rule to mediate.

III. PARTICIPATION

(a) Matters Subject to Participation. The designated Supreme Court Justice may order mediation of any contested action, except matters that are ineligible. Such ineligibility shall include:

1. For mediation:

- a. prior or existing domestic violence proceedings between the parties;**
- b. prior adjudications of guilt or responsibility as a result of an independent criminal or civil proceeding based on domestic or family violence; and**
- c. pending criminal or civil proceedings based on domestic or family violence.**

The designated Supreme Court Justice shall further review information about the financial ability of each party to pay the cost of mediation services. Financial hardship shall be determined on a case by case basis. The cost shall be apportioned subject to review at the time of trial.

3. The parties referred to mediation by the Court shall commence the parent education (Rule 144.3, annexed as “A”) program prior to starting mediation or as soon after starting mediation as possible. However, mediation shall not be delayed due to the inability of either party to complete the parent education program.

4. Discovery.

a. Mediation

Completion of discovery shall be determined on a case by case basis, but no case should be mediated unless the attorney for each party stipulates that meaningful settlement discussions can be had or the parties agree to mediate the issues of discovery.

5. First Session. This mediation process contemplates at least one (1) session of approximately one (1) hour. The parties are required to attend the full session. Following attendance at the initial mediation session, either party may terminate mediation even if mediation is not successful. The parties may agree to continue the mediation process beyond the one (1) session without permission of the Court, at their expense, pursuant to a written retainer agreement between the mediator and the parties.

IV. APPOINTMENT AND QUALIFICATION OF MEDIATORS AND NEUTRAL EVALUATORS

(a) **List of Approved Persons.** For each eligible case, a person approved to provide mediation services or neutral evaluator shall be appointed by the Court from a list of court approved mediators, pursuant to Part 146 of the Rules of the Chief Administrative Judge (annexed hereto as Exhibit II). If the parties have agreed on an approved mediator or neutral evaluator, the Court may make an appointment pursuant to that request.

V. ELIGIBILITY REQUIREMENT FOR MEDIATORS AND NEUTRAL EVALUATORS

The Administrative Judge shall maintain and distribute a list of persons approved to provide mediation and/or neutral evaluation services pursuant to 146.3(a) of the Rules of the Chief Administrative Judge. Persons eligible for approval as a mediator and neutral evaluator shall comply with the requirements of Rules 146 (Exhibit II).

(a) **Conflicts of Interest and Impartiality.** Mediators shall abide by the Standards of Conduct for Family Mediators, as promulgated by AFCC, and shall also adhere to the guidelines and requirements as contained herein.

VI. DUTIES OF THE MEDIATOR

(a) **Preliminary Responsibilities.** Before mediation may begin, the mediator shall:

1. Confirm in an executed agreement the parties' understanding regarding the fee for services, the apportionment of such fee, and any reduced fee arrangements for eligible parties with financial hardship.
2. Advise the parties that the mediator neither represents nor advocates for either party and will not provide therapy or counseling to either party.
3. Advise the parties that either party must have his or her attorney accompany that party to mediation and participate in the mediation process, or, that the attorney waive his/her appearance.
4. Define and describe the process of mediation to the parties, including appropriate procedure when an issue of capacity surfaces after mediation is in progress.

5. Disclose the nature and extent of any existing relationships with the parties or their attorneys and any personal, financial, or other interests that could result in bias or a conflict of interest on the part of the mediator.

(b) **Termination without Agreement.** Upon termination without agreement, the mediator shall file with the Court a final mediator report stating that the mediation has concluded without disclosing any reasons for the parties' failure to reach agreement.

(c) **Completion of Mediation.** Unless for good cause shown, cases assigned for mediation shall be completed within thirty (30) days of notification of assignment. If the case cannot be completed within 30 days, the parties may request additional time. The court may consider the length of time that mediation was pending until completion in making findings, if any, for any delay or extension of the time limitations.

VII. APPLICATION OF SAFEGUARDS IN CASE OF LACK OF CAPACITY

(a) **Duty to Assess.** While mediation is in progress, the mediator shall assess continuously whether the parties manifest any issues affecting their ability to mediate safely, competently, and promote self determination.

(b) **Safety.** If an issue affecting safety arises during the course of mediation, the mediator shall adjourn the session to confer with the parties, shall implement appropriate personal safety protocols, shall advise the parties of their right to terminate, and shall terminate mediation when circumstances indicate that protective measures are inadequate to maintain safety and be guided by those provisions as contained in Part XI.

(c) **Competency.** If an impairment affecting competency or self determination, but not safety, arises during the course of mediation, the mediator shall either:

1. suspend mediation when there is a reasonable likelihood the impaired condition of an affected party is only temporary; or
2. terminate mediation when circumstances indicate an affected party's ability to negotiate cannot be adequately restored.

(d) **Effect of Termination.** No mediation terminated by the mediator shall proceed further unless ordered by the Court upon motion of a party.

VIII. CONFIDENTIALITY AND PRIVILEGE

(a) **Confidentiality.** Except as otherwise provided, all written and verbal communications made pursuant to a mediation or neutral evaluation session conducted under these rules are confidential and may not be disclosed by the mediator, any other participant, or observer of the mediation except by the parties to their attorneys.

(b) Evidentiary Privilege. Either party's lawyer and the attorney for the children may be present during mediation, which discussions shall be privileged, to the extent provided by law. Clients may waive their right to have their attorney present if so inclined to do so.

IX. TERMINATION OF MEDIATION GENERALLY

(a) Agreements to be Voluntary. Parties shall not be compelled or pressured by a mediator to reach agreement on any issues arising in an action which is subject to mediation by rule or Court order.

(b) Election of Party to Terminate. In cases determined to be eligible after intake, any time after the first joint mediation session a party may elect to terminate the mediation.

(c) Mediator's Authority to Terminate. Termination by a mediator may be based upon reasonable belief that:

1. the parties have reached a final impasse;
2. the willingness or ability of any party to participate meaningfully in mediation is so lacking that an agreement on voluntary terms is unlikely to be reached by prolonging the negotiations; or
3. a disqualifying issue exists and termination is required.

X. ENTRY OF JUDGMENT OR ORDER

(a) Expedited Entry of Judgment. The Supreme Court Part in which the matter is pending shall provide for an expedited process to insure prompt entry of an appropriate judgment or order in cases where agreement has been reached in mediation pursuant to these rules.

XI. PERSONAL SAFETY PROTOCOLS

(a) Personnel Requirements. It is strongly recommended that other staff or non-participating persons be available within the physical plant during all mediation sessions. This person or persons should be available to assist with emergency phone matters, to monitor parties' movements, and to assist the mediator in implementing appropriate exit procedures.

XII. COSTS AND FEES

(a) Hourly Rates. All mediators under this article shall be compensated by the parties at the rate as scheduled by the Court and subject to review by the Court.

XIII. SUPREME COURT ADVISORY COMMITTEE

(a) The Administrative Judge shall establish an advisory committee known as the Nassau County Matrimonial ADR Advisory Committee, whose membership shall consist of at least twelve (12) persons, including the Supervising Judge of the Matrimonial Parts, 1 Supreme Court Justice, a non-mediator member of the local bar, a practicing attorney-mediator, a practicing mental health professional mediator, a representative of the domestic violence advocacy community, a representative of the Peace Program, the Director of ADR Programs for the Office of Court Administration, and the Chair of the Matrimonial Committee of the Nassau County Bar Association.

(b) The Mediation Advisory Committee shall advise the Administrative Judge in establishing and implementing administrative policy consistent with these rules for the fair and efficient delivery of mediation services including local rules of procedure, standards of conduct for mediators, and systematic review of program performance.

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**NASSAU COUNTY
MATRIMONIAL MEDIATION PART
INFORMATION**

CT. RULE 144.3

§144.3 Application of Program

(a) The New York State Parent Education and Awareness Program may apply in any action or proceeding:

- 1. that affects the interests of children under 18 years of age; and**
- 2. that is brought in Supreme Court or Family Court: (i) to annul a marriage or declare the nullity of a void marriage, (ii) for separation, (iii) for divorce, (iv) to obtain custody of or visitation with minor children, (v) to obtain a modification of a prior order of custody or visitation with minor children, or (vi) where, in the exercise of the court's discretion, a determination is made in a particular matter that attendance by the parents would provide information that would be of benefit to them and their children.**

(b) In any action or proceeding to which the Program may apply, the court, in its discretion, may order both parents to attend a parent education and awareness program. The order must direct that both parents attend, not just one parent, but the parties shall not attend the same class session. Such order shall be made as early in the proceeding as practicable.

(c) In determining whether to order parents to attend a parent education and awareness program, a court shall consider all relevant factors bearing upon the parties to the underlying action or proceeding and their children, including, but not limited to, any history, specific allegations or pleadings of domestic violence or other abuse; medical, financial or travel hardship; language barrier; and whether a parent has previously attended parent education. Where there is any history, or there are specific allegations or pleadings, of domestic violence or other abuse involving the parents or their children, the court shall not mandate attendance at the program.

(d) An order to attend a parent education and awareness program shall not delay the expeditious progress of the underlying proceeding.

(e) A parent who is a victim of domestic violence may opt out of attendance by contacting a program administrator.

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