

**QUEENS SUPREME COURT – CIVIL TERM
11TH JUDICIAL DISTRICT**

Presumptive Alternative Dispute Resolution Program (PAP)

PREAMBLE

The Presumptive ADR Program (PAP), coordinates the early resolution of civil matters through Mediation to avoid costly and time-consuming litigation. The Mediation process can improve case outcomes. Matters eligible to be referred to Mediation through the PAP, are all those cases which do not meet the Commercial Division monetary threshold as set forth in 22 NYCRR §202.70(a) and are not Matrimonial in nature. Parties to matters referred to the PAP program are entitled to **ninety (90) minutes of free** Mediation services provided by an experienced Mediator.

Cases may be referred to PAP program by the presiding Judge assigned to the case, the Compliance Conference Judge, the Trial Scheduling Judge, by the Administrative Judge or upon the consent of the parties to the litigation. Mediation sessions can be conveniently scheduled either in-person or virtually.

Unless otherwise specified, the following Rules shall govern all cases sent to the PAP program.

Rule 1. The Program

The PAP program, includes all cases that do not meet the Commercial Division monetary threshold of one hundred thousand (\$100,000). Cases suitable for referral to Mediation under the PAP program are those which involve, but are not limited to:

- a) Corporate disputes, dissolutions, internal governance disputes and shareholder derivative actions where the business entity is closely held, non-public;
- b) Employment agreements/restrictive covenants/unfair competition, wage and hour, employment discrimination, workplace harassment;
- c) Commercial real estate not involving Yellowstone injunctions;
- d) Transactions involving commercial banks or other financial institutions;
- e) Contract disputes;
- f) Construction litigation;

- g) Condominiums or Cooperative Apartment matters;
- h) Real property; and
- i) Motor Vehicle accidents

Typically, these are cases identified on the Request for Judicial Intervention (**RJI**), as “Business Entity,” “Construction,” “UCC,” “Real Property,” “Employment,” “Insurance,” “Contract,” or “Other Commercial.” Certain Personal Injury cases may also be appropriate for referral to the PAP program.

Rule 2. The Panel

The ADR Coordinator establishes and maintains a panel of Mediators (the Panel). The Mediators on the Panel shall serve and be compensated in accordance with the Rules of the PAP program unless the parties and the Mediator agree and stipulate otherwise in writing.

a) Eligibility to serve as a Mediator on the PAP Panel: A Mediator must be an attorney duly admitted to practice law in New York State for a minimum of five (5) years and must meet the requirements for completion of forty (40) hours of training pursuant to Part 146 of the Chief Administrative Judge’s Rules. This training shall be made up of twenty-four (24) hours of Basic Mediation Training and sixteen (16) hours of “advanced” Mediation training in at least one or more of the specific PAP subject matter areas or such training as deemed appropriate by the ADR Coordinator. All training must be taken from an OCA-sponsored or OCA-recognized training program. To remain eligible to serve on the PAP Panel, all PAP Panel Mediators must complete at least six (6) hours of additional approved CLE training, relevant to their respective practice areas, every two (2) years. See: www.nycourts.gov/rules/chiefadmin/146.shtml

b) Panel Mediators must have additional mediation training or working experience relative to the substance of the subject matter being mediated. Furthermore, Section 146.4(b) of Part 146 mandates those seeking to mediate have **recent** experience relative to the subject matter of the PAP disputes. This requirement is interpreted in this county to mean an applicant must, within the preceding two (2) years, have served as a mediator in PAP-type disputes. Participation as counsel in mediation does not count towards fulfillment of this requirement. Potential applicants to the PAP Mediation Panel who lack adequate experience in mediating actual cases in the PAP practice areas, will be required to participate in at least three (3) PAP mediation sessions with an experienced member of the PAP Panel of Mediators. Participation shall be as a silent observer or as a co-mediator, at the discretion of the experienced PAP mediator.

c) In addition, to be included on the PAP Panel, each Mediator must agree to provide the first ninety (90) minutes of the initial mediation session on a complimentary basis. Preparation time is not to be counted as part of the free 90-minute session. At the conclusion of the complimentary first ninety (90) minutes, any party may bring the mediation session to an end. However, if the parties wish to continue with the mediation session, they must agree to do so in writing and shall agree to compensate the Mediator's time thereafter at a rate of \$350 per hour, unless the parties and the Mediator agree upon an alternate rate of compensation. Any such alternate fee arrangement must be in writing. Mediator fees and expenses are to be equally shared by the parties, unless an alternative arrangement is agreed upon in writing. Individuals serving as an observer or co-mediator are not entitled to compensation, unless another arrangement is agreed upon in writing.

d) Every member of the PAP Panel who serves as a Mediator, shall be bound by these Rules. Each member of the PAP Panel shall also comply with the Model Standards of Conduct for Mediators (2005), promulgated by the American Arbitration Association (AAA), American Bar Association (ABA) and the Association for Conflict Resolution (ACR).

e) Continuing service on the PAP Panel of Mediators is subject to review by the ADR Coordinator and/or the Administrative Judge. Mediators may be removed from the PAP Panel for inactivity, repeated unavailability or for failure to complete a minimum of six (6) CLE credit hours every two (2) years, pursuant to Part 146.5 of the Chief Administrative Judge's Rules. Mediators may also be removed from the PAP Panel at the discretion of the Administrative Judge in consultation with the ADR Coordinator.

The list of PAP Panel Mediators is available on the Queens Supreme Court website [11th JD Queens Supreme Civil Term - HOME | NYCOURTS.GOV](http://www11jd.nycourts.gov), and in the Trial Scheduling Part. To apply, please submit applications to: <http://ww2.nycourts.gov/ip/adr/Application.shtml>

Rule 3. Program Instructions

Only cases pending in Queens Supreme Court, Civil Term, shall be eligible for the PAP program. Cases shall be referred to ADR as soon as possible after a case has been commenced. Cases may be sent to the PAP program by the presiding Justice, the Compliance Conference Judge, the Trial Scheduling Judge, the Administrative Judge or by consent of the parties. Unless otherwise specified, these Instructions shall apply to all matters sent to the PAP program.

a. For Cases Referred by the Court

- 1) When the Court issues an Order of Reference, the parties shall execute a Stipulation to Mediate.

- 2) Counsel or the parties shall complete the Intake form provided with the Stipulation to Mediate and provide **all** contact information, including addresses, emails and phone numbers.
- 3) Upon receipt the Order of Reference, the ADR Coordinator shall select a mediator from the PAP Panel.
- 4) The ADR Coordinator will send a Notice of Confirmation providing the name and contact information of the Mediator.
- 5) The parties may select their own mediator from the Panel. They must notify the ADR Coordinator at qscadr@nycourts.gov within **five (5) business days** of receipt of the Notice of Confirmation.
- 6) The parties may Opt-out of Court-ordered mediation **only** upon good cause, **with** the permission of the Court. The Opt-out Request Form may be requested from the ADR Coordinator and must be returned to the ADR Coordinator at: qscadr@nycourts.gov within **five (5) business days** of receipt of the Order of Reference. The ADR Coordinator will notify the parties of the Court's decision.

b. Upon consent of the Parties

1) When the parties or counsel to the parties in a case filed in this Court wish to request a referral to Mediation, they should contact the ADR Office at: qscadr@nycourts.gov.

2) Upon receipt of the request for referral to Mediation, the ADR Office will mail a Mediation Referral Packet containing a Stipulation to Mediate. The parties and/or their counsel should complete the Stipulation to Mediate and return to the ADR Coordinator's Office at: qscadr@nycourts.gov, as soon as practical. An Order of Reference from the assigned Judge will be obtained once the fully executed Stipulation to Mediate is received. The parties will be emailed a copy of the Order of Reference from the ADR Coordinator with the name and contact information of a court-appointed mediator. The parties also have the option to consult the Queens County Supreme Court Presumptive ADR Panel List, to select a mediator of their own choice.

a) Within five (5) days of receipt of the Order of Reference, the parties must:

- 1) complete the ADR Initiation form and email the same to the office of the ADR Coordinator at: qscadr@nycourts.gov within five (5) days of its receipt;

- 2) notify the ADR Coordinator of their selection of a Mediator of their own choice (if the parties choose to select their own);
- 3) consult with one another to select three (3) mutually agreed-upon dates and times for the mediation session; and
- 4) contact the Mediator and arrange the scheduling of a free ninety (90) minute initial mediation session. The initial ninety (90) minute mediation session must be scheduled and conducted within forty-five (45) days of the receipt of the Order of Reference.

b) At the conclusion of the free **ninety (90) minute** initial mediation session, any party may terminate the mediation or may elect to continue with the mediation process.

c) If all parties agree to continue, the parties agree:

- 1) the Mediator shall be compensated at the rate of \$350 per hour, for each hour beyond the initial ninety (90) minutes, unless an alternative fee arrangement is agreed upon between the Mediator and the parties;
- 2) if the mediation process continues beyond the initial ninety (90) minutes, the parties agree to share the expenses and fees of the Mediator, unless otherwise agreed upon between the Mediator and the parties;
- 3) the Mediator shall not be compensated for “preparation time”, associated with the mediation assignment, unless an alternative arrangement is agreed upon between the Mediator and the parties;
- 4) any “alternate” agreements or provisions as referenced in Items “i”, “ii” or “iii”, must be mutually agreed upon by all parties and the assigned Mediator and must be in writing.

d) The parties and the Mediator may and are encouraged to contact one another to resolve any preliminary matters without the intervention of the ADR Coordinator. Such preliminary matters may include the voluntary, informal exchange of documents or information between the parties, where doing so would result in a more productive and meaningful mediation process. The Mediator is urged to encourage this voluntary exchange of information. The Mediator may assist the parties in reaching a mutually acceptable agreement regarding the extent of the information exchange, in preparation for the Mediation session. The parties may also request that the Referring

Justice include directives as to the exchange of specified information/documents in the Order of Reference.

e) In the event of extraordinary circumstances in scheduling, convening or completing the initial mediation session, the Mediator shall contact the ADR Coordinator. The ADR Coordinator will intervene only if necessary, to expedite the process.

f) **With the exception of Personal Injury or Motor Vehicle Accident cases**, or unless the Mediator otherwise consents, each party and their counsel must attend the initial Mediation session. In the case where a party is a partnership, corporation or other business entity, the party may be represented by an official who has full knowledge of the facts and circumstances of the case and has the authority to resolve the issues. In addition, any participating attorney present at every mediation session, should also have full knowledge of the case and authority to settle the matter,

g) **With the exception of cases referred from the Trial Scheduling Part (TSP)**, at least ten (10) days before the initial mediation session, or upon the instructions of the assigned Mediator, the parties shall forward to the Mediator, a copy of the pleadings in the case.

h) The Mediator **may** also request a **confidential memorandum** of not more than five (5) pages (unless an alternative is agreed upon between the Mediator and the parties), which must contain the following information:

1. The party's opinions as to the facts of the case that are at issue;
2. The party's contentions as to liability and damages (including a breakdown of the calculation of any damages claimed);
3. Suggestions as to how the matter might be resolved;
4. The status and/or outcome of the most recent settlement discussions; and
5. The identity of any individual(s) (in addition to counsel), who will be attending the initial mediation session, including the mandatory attendance of individual(s) with settlement authority.

Please note except as otherwise agreed upon, the confidential memorandum shall be submitted to the Mediator only. At no time should the parties submit the confidential memorandum to the ADR Coordinator or the Referring Justice.

i) **Requests for adjournments.** The Mediator shall have the discretion to grant an adjournment of the initial mediation session, so long as the new date falls within forty-five (45) days of receipt of the Order of Reference. If a party requests an adjourn

date outside of the forty-five (45) day time period, the request shall be submitted by email to the ADR Coordinator, with copies sent simultaneously to all counsel or unrepresented parties. The ADR Coordinator will review the request and may grant an adjournment, so long as the newly scheduled date is within ninety (90) days from the date of the Order of Reference. Should an adjournment date be requested that falls beyond the ninety (90) day time period from the date of the Order of Reference, the ADR Coordinator shall forward such requests to chambers for the Referring Justice. Such requests shall be determined by the Referring Justice, whose determination shall be final. Absent unusual circumstances, **no adjournment shall be granted unless requested at least three (3) business days prior** to the scheduled date. In no event may the initial mediation be adjourned more than three (3) times or for a total of more than thirty (30) days.

j) If a party or attorney for a party fails to appear at a mediation session or abide by the PAP Rules, the Mediator shall advise the ADR Coordinator in writing and specify the nature of the non-compliance. The ADR Coordinator shall intervene in an attempt to resolve the non-compliance. In the event the ADR Coordinator is unable to resolve the non-compliance after reasonable effort, the ADR Coordinator shall report the nature of the non-compliance to chambers of the Referring Justice in writing and shall submit copies to the Mediator and the parties. **The Referring Justice has the discretion to hold a hearing to impose sanctions or take such other action necessary** to ensure compliance with and respect for the Court's Order of Reference and these Rules (*see*, 22 NYCRR § 130-2.1; *Matter of Schwartz*, 177 AD3d 977 [2019]).

k) At the conclusion of the mediation process, the Mediator shall promptly submit a Mediator's Report, to the ADR Coordinator, stating the outcome of the process. The report shall be submitted to the ADR Coordinator within ten (10) days after the conclusion of the mediation process.

Rule 4. Confidentiality

a) The mediation process and mediation session(s) shall be confidential. During the mediation process, the Mediator may decide to meet with each of the parties privately (also known as a caucus). Any information disclosed during a caucus is kept confidential, unless the party agrees the Mediator may share some or all the information with the other party(ies), to the mediation. All documents prepared by the parties or their counsel and any notes or other writing prepared by the Mediator in connection with the proceeding - as well as any communications made by the parties or their counsel for, during or in connection with the mediation shall be kept confidential by the Mediator and the parties. This information shall not be summarized, described, reported or submitted to the court by the Mediator or the parties. No party to the mediation shall, during the time the action is referred to mediation, or in any other legal proceeding, seek to compel production of documents, notes or the writings prepared for or generated in

connection with the mediation, or seek to compel the testimony of any party concerning the substance of the mediation process. Any settlement, in whole or in part, reached during the mediation 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 to the agreement may thereafter commence an action for breach of this agreement. **NOTE:** 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 mediation.

b) No party to an action referred to the PAP program shall subpoena or otherwise seek to compel the Mediator to testify in any legal proceeding concerning the content of the mediation. If a party to an action that had or has been referred to the Program attempts to compel such testimony, that party shall hold the Mediator harmless against any resulting expenses, including reasonable legal fees incurred by the Mediator or reasonable sums lost by the Mediator in representing himself or herself in connection with representation. However, notwithstanding the foregoing and the provisions of Rule 5(a), **a party or the ADR Coordinator may report to an appropriate disciplinary body any unprofessional conduct engaged in by the Mediator and the Mediator may do the same with respect to any such conduct engaged in by counsel to a party.**

c) Notwithstanding the foregoing and, to the extent necessary, (i) the parties may include confidential information in a written settlement agreement; (ii) the Mediator and the parties may communicate with the ADR Coordinator about administrative details of the proceeding; and (iii) the Mediator 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.

Rule 5. Immunity of Mediator

Any person designated to serve as a Mediator shall be immune from suit based upon any actions engaged in or omissions made while serving in that capacity on a volunteer basis, to the extent permitted by Public Officer's Law § 17 and/or any other applicable law.

Rule 6. Stay of Discovery or Proceeding

Unless otherwise directed by the Referring Justice, referral to the PAP program will not stay the court proceedings in any respect.

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

If the matter has not been entirely resolved within the forty-five (45) day period as provided in these rules but the parties and the Mediator believe that it would be beneficial if the mediation were to continue, the process may continue but shall be completed within ninety (90) days from the date of the Order of Reference. **If further time is needed, the parties must seek specific authorization from the Referring Justice to permit the process to continue beyond ninety (90) days.**

Rule 7. Conflicts of Interest

In order to avoid conflicts of interest, any person assigned to serve as a Mediator 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 he or she is a member or employee. Any such conflicts review shall include a check regarding all parents, subsidiaries or affiliates of corporate parties. The Mediator shall fully inform the parties of any potential conflict of interest, or state if he or she is of the opinion that he or she would not be able to participate as a Mediator fairly, objectively, impartially and in accordance with the highest professional standards. The Mediator shall also avoid any appearance of a conflict of interest. The Mediation may proceed, if all parties agree to mediate after the Mediator's disclosure of a potential conflict. If the parties object to the Mediator based on any perceived conflict, the Mediator shall then notify ADR Coordinator, who shall select an alternate mediator.

Rule 8. Option to Participate in Further Mediation During Litigation Process

After completion of the mediation, at the request of the parties upon a showing of good cause, or upon the court's own initiative, the court may issue an order directing a second mediation with a new mediator to be randomly assigned. In such instance, the parties shall also have the option of requesting the same individual who served as the Mediator in the previous mediation session(s).

Rule 9. ADR for Motor Vehicle Accident Cases

A) Motor Vehicle Accident (MVA) cases are eligible for referral to the mediation process. MVA cases shall be referred for mediation, or mediation may be requested as set forth in **Rule 3** (above).

B) Blockbuster Settlement Conference Day: A specially calendared settlement conference day dedicated, but not necessarily limited, to Motor Vehicle Accident cases, generally held with a specific insurance carrier. Counsel for any insurance carrier that wants to participate in a Blockbuster Settlement Conference Day, must send an email to QSJAC@nycourts.gov, requesting that a blockbuster settlement conference day be scheduled. The email must include a list of the cases to be conferenced (no more than 25

cases at a time). The following information must be provided for each case listed: (1) caption; (2) index number; (3) the contact information (name, firm address, email address, and telephone number) for the attorney for each of the parties; and (4) the date the Request For Judicial Intervention (RJI) was filed (**an RJI must be filed in the action for a case to be scheduled for a blockbuster settlement conference**).

Rule 10. Tracking and Data

The ADR Coordinator is responsible for tracking each case and maintaining a database of cases referred to the ADR process. The ADR Coordinator is also responsible for creating, maintaining and updating the panel of qualified Mediators.

Rule 11. Mediation Survey

Mediation surveys that seek information on participant satisfaction with the mediation process may be shared with the ADR Coordinator or Administrative Judge for the Judicial District. These surveys may be shared to evaluate the Program and determine mediator quality to join or remain on a Panel, to counsel a mediator, if necessary, or to remove a mediator from a Panel. A copy of the Mediation Survey is included with every Mediation Package or may be requested from the ADR Coordinator at qscadr@nycourts.gov.

CONTACT

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