

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX (12TH JUDICIAL DISTRICT)**  
851 Grand Concourse Boulevard  
Bronx, New York 10451

**RULES AND PROCEDURES OF THE  
ALTERNATIVE DISPUTE RESOLUTION PROGRAM OF THE COMMERCIAL DIVISION  
HON. FIDEL E. GOMEZ, A.J.S.C.**

**I. Program Overview**

These Rules and Procedures shall govern all cases mediated through the Alternative Dispute Resolution Program of the Commercial Division of the Supreme Court of the State of New York, Bronx County (the "Program"). The Program provides ninety (90) minutes of mediation with a qualified Neutral free of charge.

The presiding Justice of the Commercial Division may refer (the "Justice") cases for mediation in the Program. Moreover, if all the parties in a qualifying case consent, they may also voluntarily opt-in to the Program by completing the Agreement to Mediate annexed as Appendix I to these Rules.

While the term Alternative Dispute Resolution ("ADR") refers to a multitude of methods by which disputes may be resolved without a trial, the purpose of the Program is to refer cases to mediation. Mediation is often faster, more convenient, less expensive, less acrimonious, and often results in a more mutually acceptable and durable resolution than the normal course of litigation.

In addition to participating in the Program, all parties appearing before the Commercial Division are encouraged to arrange for any form of ADR they feel may be helpful to a particular case. Such ADR will be at the parties' expense and will not automatically affect any other deadlines. However, parties pursuing ADR are free to request necessary adjournments in the usual course.

## **II. Rules Respecting Neutrals**

(a) *Commercial Division Roster.* The Commercial Division shall, in conjunction with the ADR Department, establish and maintain a roster of Neutrals ("the Roster") suitable to the nature of the Commercial Division cases to be mediated through the Program.

(b) *Eligibility.* To be eligible for the Roster, the Neutral must be an attorney, a member of the 12th Judicial District's mediation roster, and have significant commercial law experience such that commercial matters are a consistent part of their practice.

(c) *Term of Membership.* The Roster shall list the Neutral for as long as he/she continues to be part of the 12th Judicial District's mediation roster. Further, each Neutral shall serve at the pleasure of the Justice, who may terminate membership at any time.

(d) *Obligations of Membership:* Each member of the Roster shall, in the event that the caseload of the Program requires it, serve as a Neutral in three matters annually in the Program. Members shall comply with these Rules and Procedures and with the continuing education requirement set forth in Section 146.5 of Part 146.

(e) *Ethical Standards.* Prior to confirmation as the Neutral in any case, a prospective Neutral shall conduct a check for conflicts regarding parties or related entities. The Neutral must also certify that they remain in compliance with under Part 146 of the Rules of the Chief Administrative Judge (22 NYCRR § 146). The Neutral shall decline to serve if he or she would not be able to do so fairly, impartially, and in accordance with the highest professional standards. Unless all parties consent to the Neutral's

service after having been advised of all disqualifying facts, the Neutral shall decline the appointment and another Neutral shall promptly be selected.

(f) *Compensation.* As stated in Rule IV(i), the assigned Neutral shall serve in that role at no charge for the first ninety (90) minutes of the mediation. In addition, the designated Neutral shall not charge for the time spent preparing for the mediation such as any scheduling conferences or pre-mediation document review. The Neutral is also responsible for complying with Rule IV(i) by not proceeding with any mediation sessions for compensation without receiving a written agreement with respect to same signed by the parties. As stated in IV(i), because of the complex nature of the cases in the Commercial Division and the additional qualifications required to be on the Roster, it will be presumed that the reasonable hourly rate is no less than \$150 per hour.

### **III. Initiating Mediation**

(a) *Order of Reference.* To initiate a mediation under the Program, the Court will issue an Order of Reference. The Order of Reference will generally state the contact information for the assigned Neutral and the deadline for the completion of the mediation.

(b) *Other Deadlines.* An Order of Reference shall not stay court proceedings in the case unless otherwise specified therein.

(c) *When Issued.* The Justice may *sua sponte* issue an Order of Reference to mediation through the Program in any case deemed suitable. Alternatively, if the parties consent to mediate they may submit the Agreement to Mediate annexed to these Rules and

Procedures. If the case is deemed suitable for mediation, the Court will issue an Order of Reference.

(d) *Suitability*. The Justice, in conjunction with the ADR Department, has the discretion to determine whether a case is suitable for mediation. If a party feels that their case is not appropriate for mediation, they must inform the Court in writing and explain why they want to opt-out of mediation.

#### **IV. The Mediation Process**

(a) *Initial Mediation Session*. The purpose of the Program is to provide a free initial mediation session lasting ninety (90) minutes. Parties who are issued an Order of Reference are required to fully participate in the initial mediation session.

(b) *Cooperation in Scheduling*. Although the assigned Neutral customarily initiates communications to schedule mediation, it is ultimately the responsibility of the parties to ensure that an initial mediation session takes place within the time frame set forth in the Order of Reference. All counsel and parties shall promptly communicate with one another and the Neutral and take all steps necessary to schedule the first proceeding in compliance with said deadline. Failure of any party or counsel to respond to communications in a timely manner or to participate in scheduling the mediation session may subject counsel to sanctions.

(c) *Neutral Conflicts*. Either party may notify the ADR Department of a conflict of interest with the assigned Neutral. Such notification must be made in writing within five (5) business days of the issuance of the Order of Reference. In the event of a timely reported conflict, a new Neutral will be assigned and an amended Order of Reference will be issued.

(d) *Party-Selected Neutrals.* The parties may also agree to mediate the case with a Neutral of their choosing as long as they do so at their own expense. The parties must inform the court of their choice within ten (10) business days of the issuance of the Order of Reference. In the event of a timely reported substitution, an amended Order of Reference will be issued.

(e) *Participating in the Process:* The Neutral has discretion to control the process of mediation to facilitate effective negotiations. For example, the Neutral may choose to have a pre-mediation call with the parties or have the parties submit pre-mediation statements or other materials. Participation in the Program requires all parties to comply with the instructions of the assigned Neutral.

(f) *Attendance Required.* Attendance of the parties is required at the initial mediation session. Unless exempted by the Neutral for good cause, every party must appear at each ADR session. In the case of a corporation or other business entity, a party may appear by an official (or more than one if necessary) who is both fully familiar with all pertinent facts and empowered on his or her own to settle the matter. Where necessary to an effective mediation, the Neutral may require the insurance carrier of a party to attend. In addition, counsel of record for each represented party shall be present at each session. Any attorney who participates in the ADR process shall be fully familiar with the action and authorized to take all steps necessary to a meaningful mediation process.

(g) *Mediating Discovery Issues.* Subject to any applicable disclosure order of the court, the Neutral may help the parties

to provide such focused discovery as may assist in the ADR proceeding.

(h) *Adjournments.* Once a mediation has been scheduled, it may be adjourned only at the direction of the Neutral. If additional time is needed beyond the deadline in the Order of Reference, the Justice may decide whether to issue an amended Order of Reference with an extended deadline.

(i) *After the Initial Mediation.* After the conclusion of the initial mediation session, the parties may choose whether to continue mediation.

(1) If the parties choose to continue mediating, the assigned Neutral's hourly rate must be agreed upon in writing beforehand. Because of the complex nature of the cases in the Commercial Division and the additional qualifications required to be on the Roster, it will be presumed that the reasonable hourly rate will be no less than \$150 per hour.

(2) Any fees paid to the Mediator are to be paid equally by the parties unless otherwise agreed upon in writing beforehand. If the parties decide not to continue with mediation, the case will proceed in the normal course without any effect on any deadlines.

(3) If the parties decline to continue mediation, the case will proceed in the normal course without any effect on any deadlines.

(j) *Reporting of Status and Outcome.* Within three (3) business days of the deadline for completion of the initial mediation session set forth in the Order of Reference, the assigned Neutral

shall report the outcome of the mediation to the ADR Department using the Report of Mediator Form annexed as Appendix II to these Rules. If the parties choose to continue mediation, the assigned Neutral will provide a Report of Mediator within three (3) business days of the final mediation.

(k) *Failure to Comply with Rules.* If a party or counsel fails to cooperate in scheduling the mediation or to take steps preliminary thereto, fails to appear at any scheduled session, or otherwise fails to comply with these Rules, the Neutral shall advise the ADR Department, succinctly specifying the nature of the infraction. If the Neutral reports that an infraction has occurred, he or she may recommend the imposition of sanctions, or, where such a report of the Neutral is silent as to sanctions, the ADR Department may recommend the imposition of sanctions based upon that report.

#### **V. Confidentiality of Mediation**

(a) *Confidentiality.* Any mediation conducted through the Program shall be confidential and, except as otherwise provided hereafter, any document prepared, or communications made, by parties, their counsel or a Program Neutral for, during, or in connection with the proceeding shall not be disclosed outside its confines by any participant. Moreover:

(1) No party to the proceeding shall, during the action referred to ADR or in any other legal matter, seek to compel production of documents, notes, or other writings prepared for or generated in connection with the ADR proceeding, or the testimony of any other party or the Neutral concerning communications made during the proceeding.

(2) A settlement, in whole or in part, reached during the ADR proceeding shall be set forth in a writing signed by all parties affected or their duly authorized agents.

(3) Documents and information otherwise discoverable under the Civil Practice Law and Rules shall not be shielded from disclosure merely because they are submitted or referred to in the ADR proceeding.

(4) Should a party attempt in any legal action to compel the testimony of the Neutral concerning the substance of an ADR proceeding in the Program, that party shall hold the Neutral harmless against any resulting expenses, including reasonable legal fees incurred by the Neutral or the reasonable value of time spent by the Neutral in representing himself or herself in connection therewith.

(b) *Exceptions.* Notwithstanding the foregoing:

(1) A Neutral shall disclose to a proper authority information obtained in mediation if required to do so by law or rule or if the Neutral has a reasonable belief that such disclosure will prevent a participant from engaging in an illegal act.

(2) A party, the ADR Department, or the Neutral may report any unethical conduct during the proceeding to a proper authority.

(3) The Neutral and the parties may communicate with the ADR Department about administrative details of and the schedule for the proceeding, the ADR Department may communicate with the Justice; and the Neutral may make general reference to the fact



of services rendered in any action to collect an unpaid fee for services performed under these Rules.

(c) *Communications with Justice.*

(1) *Communications In General.* The ADR Department may communicate with the Justice about administrative details of the processing of any case referred to the Program by that Justice but shall not disclose any substantive aspect of the ADR proceeding. If a proceeding is terminated after the initial mediation session without a settlement, neither the Neutral nor the ADR Department shall reveal to the Justice which party brought the proceeding to an end. The ADR Department shall report to the Justice at the conclusion of the proceeding whether a resolution of the case in whole or in part was reached.

(2) *Reporting Violations of the Rules. Sanctions.* The ADR Department shall report to the Justice, on an appropriate form, a copy of which shall be forwarded to the parties, any violation of these Rules as reported by a Neutral and any recommendation for sanctions by the Neutral or by the ADR Department based upon the report of the Neutral. The Justice may impose sanctions or take such other action as the Justice may find to be necessary to ensure respect for the court's Order and these Rules.

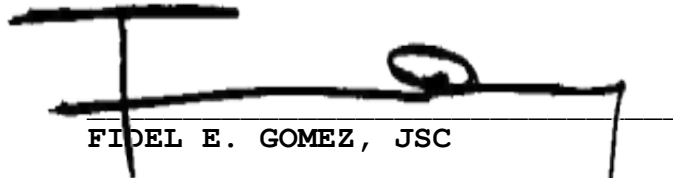
(3) *Party Reporting with Respect to Neutrals.* Parties participating in the Program are encouraged to report their experience with their assigned Neutral to the ADR Department using the form annexed as Appendix III to these Rules.

## **VI. Immunity of Neutrals**

Any Neutral from the Roster who is designated to serve pursuant to these Rules and Procedures shall be immune from suit based upon actions engaged in or omissions made while so serving.

Effective Date: March 31, 2023

COMMERCIAL DIVISION  
ALTERNATIVE DISPUTE RESOLUTION PROGRAM  
Supreme Court  
Bronx County  
851 Grand Concourse  
Bronx, NY 10451  
Phone: 718-618-3007  
Email: [bxsupadr@nycourts.gov](mailto:bxsupadr@nycourts.gov)



FIDEL E. GOMEZ, JSC