

**SUFFOLK COUNTY, SUPREME COURT  
10<sup>th</sup> JUDICIAL DISTRICT**

**MATRIMONIAL MEDIATION PROGRAM**

**STATEMENT OF PROCEDURES**

**I. OVERVIEW**

The Suffolk County Supreme Court's Matrimonial Mediation Program (hereinafter "the Program") offers parties access to qualified Mediators who meet the criteria set out in Section VII.

Mediation is a confidential alternative dispute resolution (ADR) process that often results in faster, more convenient, less expensive, less stressful, and less acrimonious settlements than might be the case in the normal course of litigation. In Mediation, a neutral third party — the Mediator — helps disputing parties identify issues, clarify perceptions, and explore options for a mutually acceptable outcome. Mediators have training and experience in family mediation and in opening paths of communication that emphasize common ground and encourage cooperation. Mediators help parties to negotiate and resolve key issues that affect their relationships with their children and the financial well-being of all family members.

Although the parties are not compelled to reach an agreement during the mediation process, the process frequently concludes with a written agreement. The process also often improves the parties' ability to communicate with each other in the future. Even in instances where no agreement is reached during the mediation process, often the prospective gained during mediation helps the parties reach a final agreement after the case returns to the traditional litigation process.

If the parties cannot reach agreement, they return to court. Parties are strongly encouraged, but are not required, to attend all mediation sessions with their attorneys. Referral to the Program may not be appropriate where only one party is represented by counsel, or in cases involving domestic violence, child abuse or neglect, or in cases where there is a severe power imbalance.

## II. DEFINITIONS<sup>1</sup>

- (a) "Neutral" refers to the In-House Mediator.
- (b) "Mediation" refers to a confidential, dispute resolution process in which a neutral third party — the Mediator — helps parties to communicate, identify issues, clarify perceptions, and explore options for a mutually acceptable outcome.
- (c) "ADR Session" refers to a Mediation session.
- (d) "The Program" refers to the Suffolk County Matrimonial Mediation Program.
- (e) "Neutral Evaluation" refers to a voluntary, confidential dispute resolution process in which a neutral person with subject matter expertise hears abbreviated arguments, reviews the strengths and weaknesses of each side's case, and offers an evaluation of likely court outcomes in an effort to promote settlement. The neutral evaluator may also provide case planning guidance and settlement assistance with the parties' consent.

## 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. However, 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 shall be initially screened by the Court and again screened by the Mediator to prevent inappropriate referrals.

To initiate 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 session with an In-House Mediator from the Program. Counsel for the parties are strongly encouraged, but not required, to attend. If parties wish to continue with the mediation process beyond the initial session, the Mediator will schedule additional sessions with the parties. All sessions with the In-House Mediator shall take place in designated mediation facilities in the courthouse and are provided at no cost to the parties. The In-House Mediator may limit the number of sessions to conserve resources.

The Order of Reference shall include a control date set by the referring Justice or Court Attorney Referee for the parties to appear in Court for a conference

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<sup>1</sup> 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>

following the initial mediation session. All pre-trial proceedings scheduled in the Preliminary Conference order shall continue, and shall not be stayed, pending additional mediation 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, and such other discovery dates as deemed appropriate by the Court. Unless otherwise directed by the Court, the date for completion of discovery set in the Preliminary Conference Order and the date for the Compliance Conference shall not be extended or adjourned by reason of the pendency of the mediation process.

The Court shall endeavor to refer each matter it deems to be appropriate for mediation to the Program and issue an Order of Reference at the Preliminary Conference or as soon thereafter as is reasonably practical after consideration of the individual facts and circumstances of the matter before the Court. Referral to the Program shall not delay the prompt resolution of any emergency relief requested by any party, nor shall it prevent any party from requesting *pendente lite* relief from the Court at anytime. The issuance of an Order of Reference does not constitute a stay of the proceedings.

The Order of Reference shall require the parties to appear at the initial session, and unless otherwise waived by the Mediator, prior to the initial session, the parties' counsel shall send the Mediator a copy of:

1. any pleadings previously filed with Court; and,
2. any pending Court orders in effect relating to the parties; and,
3. each parties' Statements of Net Worth; and,
4. any other information the Mediator deems necessary for the effective negotiation and resolution of the issues involved.

The Mediator may request a conference call with both counsel regarding any preliminary matters.

The Mediator may give to the parties any agreements or memorandum of understanding generated at the sessions. The Mediator, with the consent of the parties may send any agreement, partial or complete, to the referring court. The Mediator may periodically inform the referring court that the mediation is ongoing, the amount of time that has been spent mediating, and may give the court an approximation as how long the mediation is likely to continue. However in doing so the Mediator shall not disclose information discussed during the mediation sessions, except as described in Section X hereof.

The mediation process shall end whenever one party, both parties, or the Mediator decides that the process has ended. At the conclusion of the mediation the Mediator shall send a report ("Report of the Mediator") to the referring 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: and, (4) the total time spent in the mediation sessions.

The Mediator shall not disclose other information discussed during the mediation process, except as described in Section X.

#### **IV. ROLE OF 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 or other judicial officer 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 referring 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' particular needs.

During the mediation process all parties will be afforded an opportunity to raise issues of concern and to explain the facts of the dispute as each party sees them. Once the Mediator and the parties are satisfied that they have identified all the issues for discussion, the Mediator will assist the parties to work collaboratively to develop and choose options that satisfactorily address these issues.

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

will keep all information discussed in caucus confidential and will not divulge same to the other side 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.

## **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 Mediator for good cause shown, the parties must be present during the mediation sessions.

The presence of separate counsel for each party at all mediation sessions is strongly encouraged. Whether appearing alongside their clients or advising clients outside of the mediation 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.

For those cases in which an Attorney for the Child or Guardian Ad Litem has been assigned, mediation sessions may not commence without the appropriate attorney or guardian's presence, unless all parties, and the mediator 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. The program shall be managed by the Suffolk County ADR Coordinator and overseen by the Supervising Judge of the Matrimonial Parts and under the direction and authority of the District Administrative Judge.

## VII. THE APPOINTMENT OF MEDIATORS

The District Administrative Judge, in consultation with the Supervising Judge of the Matrimonial Parts, shall appoint all Mediators to be used in the Program.

(a) Mediators appointed to be used for the Program must comply with the following prerequisites:<sup>2</sup>

- Training: Completion of at least 40 hours of family mediation training in a training program recognized by the New York State Office of Court Administration ("OCA"), broken down as follows: at least, 24 hours of training in basic mediation skills; and techniques and 16 hours of additional training in matrimonial and family mediation.
- Experience: At least two years of family mediation experience, including 100 hours of face-to-face mediation with clients and a minimum of 10 custody and visitation cases, or any other equivalent 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 to those Mediators with knowledge of, training in and experience with such issues.

- 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](http://www.nycourts.gov/rules/chiefadmin/146.shtml) .

The District Administrative Judge, shall determine whether a person qualifies for appointment as a mediator for the Program and whether such person has the requisite temperament, character, and discretion. The continued eligibility of any mediator appointed to the program is subject to periodic review by the District Administrative Judge. Mediators may be disqualified from participating in the Program at the discretion of the District Administrative Judge.

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<sup>2</sup>The training and qualifications guidelines for the Program meet or exceed the minimum requirements established in Part 146 of the Rules of the Chief Administrative Judge. See [www.nycourts.gov/rules/chiefadmin/146.shtml](http://www.nycourts.gov/rules/chiefadmin/146.shtml)

## VIII. FEES

The Program does not charge or administer fees.

## IX. IMMUNITY

Mediators 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 the mediation sessions, by any party, attorney, Mediator 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 the mediation process, including memoranda, work products or case files of a Mediator – shall remain confidential and not be subject to disclosure in any present or future judicial or administrative proceeding. However, the mediation process shall 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 mediation 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 or Court Attorney Referee or to any other person by the Neutral or by any party or attorney for a party. Nor will any party or attorney for a party reveal the outcome of the mediation 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**

Information regarding whether the parties and their counsel attended the initial session will be reported to the referring Justice or Court Attorney Referee.

## **2. Waiver**

All parties to the mediation process, their attorneys and the Mediator may agree in writing to waive confidentiality with respect to any or all the issues. However, 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**

Writings, signed by all the parties, embodying a negotiated agreement will be submitted to the Court for review. Additionally, a limited report of the outcome and time spent mediating, as explained in Section III, will be sent to the referring Justice or Court Attorney Referee. Only those signed agreements may be admissible in any present or future judicial or administrative proceeding.

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

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

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

If 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 or may be required pursuant to Social Services Law § 413, confidentiality will not apply as to those disclosures.

# **XI. CHILD ABUSE AND NEGLECT**

If an allegation of child abuse or neglect is made by any party during the mediation process, the Mediator will safely stop the process. Mediators 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 the mediation process, the Mediator shall safely stop the process, meet with each party individually where appropriate to learn as much as possible about the circumstances so as to determine whether it is appropriate to resume the mediation process. Allegations of domestic violence shall not be disclosed to the referring Justice or Court Attorney Referee; instead, the Mediator will give victims information regarding their rights in the form prescribed in Family Court Act § 812 (5), and they will receive additional referrals.

## **XII. REFERRAL TO THE PROGRAM AND ONGOING LITIGATION**

Cases may be referred to the Program by the Court at the Preliminary Conference, or any time thereafter during the pendency of the litigation. A party who attends the initial session complies with the Order of Reference, even if that party ultimately chooses not to proceed with mediation.

Referral to the Program will not stay the court proceedings in any respect. 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 Mediator 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 Mediator, including a financial or personal interest in the outcome, and an existing or past relationship with a party or their attorneys or foreseeable participants in the ADR process. The Mediator shall disclose any such known conflict to the parties and counsel as soon as possible before accepting a referral. If the Mediator wishes to accept a referral after discovering a potentially disqualifying fact, the Mediator is obliged to disclose the disqualifying facts to the parties and, where such facts exist, shall not serve unless the parties consent. If a Mediator later learns of any disqualifying fact after accepting a case, the Mediator shall disclose it as soon as practicable. If unable to function in a fair and impartial manner, the Mediator shall seek disqualification and notify the Court.

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**Suffolk County Matrimonial Mediation Program**

For more information contact the Suffolk County ADR Coordinator at 631-740-3777