



STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
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A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

MEMORANDUM

December 4, 2012

TO: All Interested Persons

FROM: John W. McConnell

RE: Proposed rules establishing a voluntary ADR program in matrimonial actions

The Matrimonial Advisory Committee proposes adoption of rules establishing a statewide voluntary alternative dispute resolution (ADR) program in matrimonial actions (Exhibit A). Under the proposal, the court would be authorized to order the parties to participate in a free one-hour ADR session after the court and a qualified ADR professional have determined that a particular form of ADR is appropriate for the parties. Subsequent ADR sessions would be voluntary and paid for by the parties. The proposed rules provide that the court shall not order the parties to participate in ADR where there are allegations of a history of domestic violence, child abuse, or a severe imbalance of power between the parties. ADR neutrals would be selected in accordance with 22 NYCRR Part 146, which sets forth guidelines for qualifications and training of ADR neutrals serving on court rosters (Exhibit B). Appropriate forms of ADR include mediation, neutral evaluation, parenting coordination and collaborative law.

Persons wishing to comment on this proposal should e-mail their submissions to OCAmatrimonialADR@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004.

Comments must be received no later than February 4, 2013.

EXHIBIT A



SUPREME COURT CHAMBERS
Supreme Court State of New York
92 Franklin Street
Buffalo, NY 14202
e-mail: stownsen@courts.state.ny.us

SHARON S. TOWNSEND, J.S.C.
Vice Dean, Family & Matrimonial Law
New York State Judicial Institute

716-845-2502
Fax: 716-845-7503

July 24, 2012

Via US Mail & E-Mail

Hon. A. Gail Prudenti
Chief Administrative Judge
Office of Court Administration
25 Beaver Street
New York, NY 10004

Re: Matrimonial Practice Advisory Committee
Operations Subcommittee ADR Proposal

Dear Judge Prudenti:

Attached is a proposal of the Matrimonial Practice Advisory Committee regarding Alternative Dispute Resolution ("ADR") in matrimonial cases for your consideration. The proposal would create statewide rules for voluntary ADR in New York State Courts based on the successful Nassau County pilot ADR model which was developed under the guidance of the late Hon. Robert A. Ross, J.S.C.

Under the proposal, Judges would have the authority to direct the parties to an appropriate form of ADR with an ADR professional qualified under Rule 146 of the Chief Administrative Judge. No session would commence without both the Court and the neutral professional making a determination that ADR is appropriate. Parties shall be required to attend a one hour free ADR session. Subsequent sessions would be voluntary and paid for by the parties; where practicable sliding scale fees should be encouraged.

The Operations Subcommittee, formed at the request of former Chief Administrative Judge Pfau in early 2011 to make recommendations about operational efficiencies for the courts to cope with the budget crisis, developed this proposal to reduce the number of cases going to trial while at the same time reducing the stress of divorce for litigants. The Subcommittee, currently chaired by Judge Janice Rosa and Judge Jeffrey Sunshine, (Supervising Matrimonial Judges and successors to Judge Ross), first suggested that the proposal be implemented as a pilot project in the counties of Kings, Erie, Bronx,

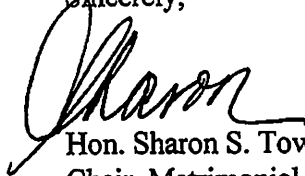
July 31, 2012

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Nassau, Suffolk, and Westchester. However, they later deleted that aspect from the proposed rule. The proposal has the approval of the full Committee and is ready for referral to the Administrative Board for public comment should you deem it appropriate and/or on the issue of implementation in the pilot counties.

Please let me know if I can furnish any additional information or answer any questions you may have regarding this proposal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sharon".

Hon. Sharon S. Townsend
Chair, Matrimonial Practice Advisory Committee

Enc.

cc: John McConnell, Esq. - *Via E-Mail Only*
Hon. Janice M. Rosa, J.S.C. - *Via E-Mail Only*
Hon. Jeffrey Sunshine, J.S.C. - *Via E-Mail Only*
Daniel Weitz, Esq. - *Via E-Mail Only*
Susan Kaufman, Esq. - *Via E-Mail Only*

ADR RULE - MATRIMONIAL ACTIONS

Presented by Operations Sub-committee: Hon. Jan Rosa, Hon. Jeffrey Sunshine, co-chairs.

Alternative Dispute Resolution. Except as otherwise provided in this rule, the court shall have the authority to order parties in matrimonial actions to an appropriate form of alternative dispute resolution ("ADR") by ADR professionals qualified pursuant to Part 146 of the Rules of the Chief Administrative Judge or further rules where necessary. Appropriate forms of ADR may include but are not limited to mediation, neutral evaluation, parenting coordination, and collaborative law. The referral shall be for a session of at least one hour and the parties shall not incur any fees for the ADR professional during the first session. Thereafter, any further sessions shall be voluntary and paid for by the parties; where practicable sliding scale fees should be encouraged.

(1) Definitions.

- a. "Mediation" refers to a confidential process in which a trained, neutral third party – the mediator – helps parties to identify issues, clarify perceptions, and explore options for a mutually acceptable outcome.
- b. "Neutral evaluation" refers to a confidential, non-binding process in which the neutral evaluator – a trained, neutral third party with subject matter expertise – hears party presentations and then provides an opinion about the strengths and weaknesses of each party's case and the likely court outcomes.
- c. "Parenting coordination" refers to a confidential process in which a trained, neutral person — the parenting coordinator — tries to educate, supervise, and manage high-conflict, repetitive-litigant parents with chronic, recurring disputes such as visitation conflicts. The parenting coordinator helps parents to adhere to court orders and may decide parenting disputes consistent with existing court orders. Parenting Coordinators also help parents develop better conflict management skills.
- d. "Collaborative law" refers to a confidential process in which parties, their counsel, and any other retained professionals agree in writing to use their best efforts to resolve in good faith the dissolution of the relationship without resorting to judicial intervention, except to effectuate the parties agreement. The professionals retained may not serve thereafter as litigation counsel or as expert witnesses.

(2) Exceptions: The court shall not order the parties to ADR where there are allegations of a history of domestic violence, child abuse, or a severe power imbalance between the parties. The court prior to the referral shall determine if


ADR is appropriate or if the case falls within this exception. No session shall commence without the professional conducting the session making a similar inquiry and determination.

(3) Voluntary ADR: Subject to approval by the court, parties may voluntarily submit any unresolved issues to whichever form of ADR they prefer.

(4) Timing of referral: Issues of custody and visitation may be referred at any time. Financial issues shall be referred only after the filing of the note of issue unless the parties agree to said referral prior to the filing of the note of issue.

(5) Where a party is not represented by counsel, an agreement reached through court referred ADR herein shall not be binding until an allocation has occurred on the record in open court.

EXHIBIT B



New York State Unified Court System

← Rules

Part & Title:

100
Judicial Conduct

101
Advisory Committee
on Judicial Ethics

102
Reimb. of Travel in
Connection with
Judicial Duties

103
Admin. Rules and
Orders Effective
4/1/78

104
Retention &
Disposition of Court
Records

105
Expedited Crim.
Appeal of an Order
Reducing & Indict. or
Dismissing & Indict.
& Direct. the Filing
of...

106
Elect. Court
Appearances

107
Salary Sched. for
Nonjudicial Officers &
Emp. of UCS

108
Format of Transcripts
& Rates of Pay...

109
Attendance at
Hearings to
Determine Mental
Condition...

110
Procedure Under CPL
330.20

111
Procedure Under CPL
Article 730

112
Rules of Chief Admin.
Pursuant to CPLR
Rules 5529 & 9703

113
Procedure to Eval.
Fitness of Judges or

Rules of the Chief Administrative Judge

PART 146

Guidelines For Qualifications And Training Of ADR Neutrals Serving On Court Rosters

146.1 [Application](#)

146.2 [Definitions](#)

146.3 [Rosters of Neutrals](#)

146.4 [Qualifications and Training of Neutrals](#)

146.5 [Continuing Education for Neutrals](#)

146.6 [Approval of Training Programs and Qualifications](#)

§146.1 Application

These guidelines establish qualifications and training throughout the State for mediators and neutral evaluators serving on court rosters. These guidelines are not intended to cover arbitrators nor to apply to neutrals serving in the UCS Community Dispute Resolution Centers Program.

§146.2 Definitions

(a) "Neutral" shall refer to both mediators and neutral evaluators.

(b) "Mediation" shall refer to a confidential dispute resolution process in which a neutral third party (the mediator) helps parties identify issues, clarify perceptions and explore options for a mutually acceptable outcome.

(c) "Neutral evaluation" shall refer to a confidential, non-binding process in which a neutral third party (the neutral evaluator) with expertise in the subject matter relating to the dispute provides an assessment of likely court outcomes of a case or an issue in an effort to help parties reach a settlement.

§146.3 Rosters of Neutrals

(a) Each District Administrative Judge may compile rosters in his or her judicial district of neutrals who are qualified to receive referrals from the court. In order to be eligible for appointment to the roster, neutrals must meet the minimum qualifications and training criteria set forth below. Each neutral serves at the pleasure of the District Administrative Judge in his or her district, who may terminate a designation to the roster at any time.

(b) Neutrals shall be redesignated to the roster maintained

COURTS

LITIGANTS

ATTORNEYS

JURORS

JUDGES

CAREERS

SEARCH

Justices Who Become Ill

114
[Repealed]

115
Caseload Activity Reporting

116
Community Dispute Res. Ctr. Program

117
Court Appointed Special Advocate Programs

118
Registration of Attorneys
Registration of In-House Counsel

119
[Reserved]

120
[Repealed]

121
Temp. Assign. of Judges to the Supreme Court

122
Judicial Hearing Officers

123
Requirements of Material Submitted to Supreme Ct. Law Libraries

124
Public Access to Records

125
Rules for Engagement of Counsel

126
Compensation & Exp. of Judges Assign. to City Court

127
Assign. and Compensation of Counsel, Psychiatrists, etc.

128
Rules for the Jury Sys.

129
Fair Treatment Standards for Crime Victims

130

by the District Administrative Judge in his or her judicial district every two years. In determining whether to redesignate neutrals, District Administrative Judges must determine that each neutral has complied with section 146.5, (Continuing Education for Neutrals) and must consult with the UCS ADR Office regarding any complaints filed against a neutral who is otherwise eligible for redesignation.

§146.4 Qualifications and Training of Neutrals

(a) Neutral Evaluation. Neutral evaluators who wish to qualify for appointment to a court roster must have successfully completed at least six hours of approved training in procedural and ethical matters related to neutral evaluation and be:

(1) Lawyers admitted to practice law for at least five years who also have at least five years of substantial experience in the specific subject area of the cases that will be referred to them; or

(2) Individuals who have served at least five years as a judge with substantial experience in the specific subject area of the cases that will be referred to them.

(b) Mediation. Mediators who wish to qualify for appointment to a court roster must have successfully completed at least 40 hours of approved training as follows:

(1) At least 24 hours of training in basic mediation skills and techniques; and

(2) At least 16 hours of additional training in the specific mediation techniques pertaining to the subject area of the types of cases referred to them.

Mediators must also have recent experience mediating actual cases in the subject area of the types of cases referred to them.

(c) Mixed Process. Persons who serve as both mediators and neutral evaluators in the same matter must meet the qualifications and training specified in both subdivisions (a) and (b) of this section.

§146.5 Continuing Education for Neutrals

All neutrals must attend at least six hours of additional approved training relevant to their respective practice areas every two years.

§146.6 Approval of Training Programs and Qualifications

(a) The UCS ADR Office, with the approval of the Chief

Cost Sanctions

131
AV Coverage of
Judicial Proceedings

132
UCS Employee
Suggestion Incentive
Program

133
UCS Merit Perf.
Award Program

134
Reporting of Family
Offenses

135
Sick Leave Donation
Program

136
Fee Arbitration in
Domestic Relations
Matters

137
Fee Dispute Res.
Program

138
Justice Court Assist
Program

139
[Reserved]

140
Civil Actions or
Proceed. Brought by
Inmates

141
Integrated Domestic
Violence Parts

142
Criminal Division of
Supreme Court in
Bronx County

143
Superior Courts for
Drug Treatment

144
New York State
Parent Education and
Awareness Program

145
Integrated Youth
Court in Westchester
County

146
Guidelines For
Qualifications And
Training Of ADR
Neutrals Serving On
Court Rosters

147
Superior Court Sex

Administrative Judge and the four Presiding Justices of the Appellate Divisions, shall adopt such criteria as may be appropriate for the approval of training programs under these guidelines and for defining recent experience mediating actual cases pursuant to section 146.4(b).

(b) The UCS ADR Office, with the approval of the Chief Administrative Judge, may increase the qualifications and training requirements in specific court ADR programs.

Historical Note
Added Part 146 on June 18, 2008

