

## **STATEMENT OF PROCEDURES**

### **THE MATRIMONIAL SPECIAL MASTER/ NEUTRAL EVALUATION PROGRAM**

#### **I. OVERVIEW**

Neutral Evaluation is a confidential alternative dispute resolution process that may result in faster, more convenient, less expensive, and less acrimonious settlement than might be the case in the normal course of litigation. In Neutral Evaluation, a neutral third party — the Neutral Evaluator or for purposes of this program, the Special Master — hears abbreviated case presentations by the parties and counsel, provides an informal assessment of the strengths and weaknesses of the arguments and may offer a non-binding opinion. Special Masters have significant experience in matrimonial law and specific training in Neutral Evaluation. Their assessments and opinions may help parties to analyze the case, facilitate discussion, and generate a settlement.

The Matrimonial Special Masters Program ("Program") offers parties access free of charge to qualified Special Masters who meet the criteria set out in Section VI. The goal of the Program is to assist the parties and their counsel in reaching a resolution on economic issues related to Divorce.

Parties shall attend the Special Master session with their attorneys. Referral to the Program is not appropriate where only one party is represented by counsel, neither party is represented by counsel, or in cases of domestic violence, child abuse, or severe power imbalance.

The Program is established by the Nassau County Supreme Court, Civil Term with the assistance of the Special Masters Program Advisory Committee ("Advisory Committee"). The Advisory Committee is comprised of the Chairs of the Nassau County Bar Association Matrimonial Committee, Family Law and Procedure Committee, the President of the New York Family Law American Inn of Court, a representative of the Nassau County Women's Bar Association, and at least two Justices sitting in Nassau County Supreme Court who are assigned Matrimonial matters. The Advisory Committee assists the Court in developing protocols, recruiting and reviewing prospective neutrals, and raising awareness of the Special Masters Program among the Bar and the public.

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

- (a) "Neutral" shall refer to Neutral Evaluators (and for purposes of this program a/k/a Special Masters)
- (b) "Neutral Evaluation" refers to a confidential, non-binding process in which a neutral third party (the Neutral Evaluator or Special Master) with expertise in the subject matter relating to the dispute provides an assessment of likely court outcomes to help parties reach a settlement.

## **III. PROCEDURES**

The assigned Matrimonial Part Justice or the assigned Court Attorney-Referee may refer parties to the Program. 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 will be screened to avoid inappropriate referrals.

To begin the process, the Court issues an Order of Reference. The Order of Reference specifies the economic issue or issues (e.g., equitable distribution, child support, add-on's, separate property, etc.) to be submitted to the Program. The Order shall direct parties and counsel to attend a free, initial session of up to three (3) hours with a Special Master from the Program's Roster of Neutrals.

The Order of Reference shall contain the control date set by the referring Justice or Court-Attorney Referee for the parties to appear in Court for a conference following the Neutral Evaluation session. All pre-trial proceedings scheduled in the Preliminary Conference order shall continue and shall not be stayed pending the Neutral Evaluation. If both parties request, the referring Justice or Court-Attorney Referee may agree to extend dates given the particular circumstances presented.

The Court shall deliver the Order of Reference to the Program Coordinator ("Coordinator"), Cathy Reidy, located at 400 County Seat Drive, Mineola, NY 11501 (516) 493-3424 Email: [cshrenke@courts.state.ny.us](mailto:cshrenke@courts.state.ny.us).

The Coordinator shall randomly select the names of three Special Masters. Next, the Coordinator shall send to the parties a Notice of Confirmation with the three names. Within five (5) business days of receiving the Notice of Confirmation, counsel shall select one of the three proposed Special Masters, and inform the Coordinator of their selection. If counsel for the parties cannot agree, each side shall have the right within said five (5) business days to object to one of the selected Special Masters. The remaining Special Master shall serve as the Special Master, provided there is no conflict of interest (as identified in Section XIII herein). If there is a conflict with the remaining Special Master, counsel shall send an email to the Coordinator at [cshrenke@courts.state.ny.us](mailto:cshrenke@courts.state.ny.us) within ten (10) business days of receipt of the Notice of Confirmation

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<sup>1</sup> The definitions for this Program are derived from Part 146 of the Rules of the Chief Administrative Judge. See <http://nycourts.gov/rules/chiefadmin/146.shtml>

with a copy to the other side. The Coordinator shall randomly select names of three additional Special Masters, and the process described above shall be repeated.

Once counsel select the Neutral, counsel shall jointly contact the neutral within 72 hours by conference call or email to schedule the first session.

Parties and counsel are required to appear at the Special Master session within forty-five (45) days of receiving a Notice of Confirmation.

The parties' counsel shall simultaneously exchange and submit to the Special Master a concise, two-page summary of the issue presented, relevant facts, and applicable law, if appropriate. The parties' counsel shall also submit (and exchange if not yet exchanged), copies of each client's sworn statement of net worth. The foregoing exchange and submissions shall be made so as to ensure the Special Master receives such submissions and statements of net worth at least five (5) business days before the scheduled Neutral Evaluation. The Special Master may request limited, additional information mindful of the additional cost this may cause the respective parties to incur. The Special Master may further request a conference call with both attorneys regarding any preliminary matters.

Within five (5) business days after the conclusion of the Neutral Evaluation session, the Special Master shall email the "Report of the Neutral" form (annexed) to the Coordinator and to counsel for the parties. The Coordinator shall forward the Report to the Referring Justice. The Special Master shall not disclose other information discussed during the Neutral Evaluation, except as described in Section IX.

#### **IV. ROLE OF THE NEUTRAL**

The Special Master is an expert in the subject matter of the issues referred, who hears abbreviated case presentations and provides a non-binding assessment of the merits of the respective claims in an effort to facilitate settlement. The Special Master is not an advocate, and may give an opinion as to likely court outcomes. At the parties' request, the Special Master may also provide settlement assistance.

At the initial session, the Special Master shall explain that all communications are confidential (with narrow exceptions outlined below) and will not be disclosed to the Justice hearing their case or in any other judicial or administrative proceeding. The Special Master shall also explain that either party is free at any time to end the Neutral Evaluation and return to Court.

During the Neutral Evaluation, each party relates the facts of the dispute and raises particular issues of concern. The Special Master may ask the parties clarifying questions related to the issues submitted.

At some point in the process, either party or the party's counsel may request a caucus. Caucuses are meetings that each side may have alone with the Special Master to explore the possibility of settlement. During the caucus, the Special Master may explore how each spouse views the dispute and the impact of any proposed solutions. The Special Master keeps confidential the information discussed in caucus unless the party permits disclosure. In

discussing whether to caucus, the Special Master shall explain to the parties the risks of separate meetings in the context of an evaluative process where one party is unaware of what the other is saying to the Neutral, is unable to respond to what is said, and is unable to determine how that might influence the Special Master's assessments. To guard against this risk, Special Masters sometimes place "in their pocket" their handwritten assessment of a likely court outcome, before they agree to caucus or attempt to settle the case. By committing to paper their assessment and placing it out of view, Special Masters avoid being influenced by what they learn during a caucus, and can retrieve their initial assessment if the parties cannot settle and request the Special Master's evaluation.

If the parties reach a written agreement during Neutral Evaluation, the parties shall submit the agreement to their respective attorneys for review.

## **V. THE ROLE OF PARTIES AND COUNSEL**

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 Neutral for good cause shown, the parties shall be present during the Special Master session. The presence of counsel for each party at all Special Master sessions is required.

## **VI. THE ROSTER OF NEUTRALS**

The Program has assembled a Roster of Neutrals. Attorneys who wish to join the Roster must comply with the following prerequisites:<sup>2</sup>

Special Masters who wish to qualify for appointment to the Roster must have successfully completed at least six (6) hours of approved training in procedural and ethical matters related to Neutral Evaluation and be:

- (1) Lawyers admitted to practice law for at least fifteen (15) years who also have at least seven (7) years of substantial experience in the area of matrimonial law; or
- (2) Individuals who have served at least five (5) years as a judge with substantial experience in the area of matrimonial law.

**Continuing Education:** All Special Masters must attend at least six (6) hours of additional approved training relevant to their respective practice areas every two (2) years.

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The training and qualifications guidelines for the Program are derived from and in certain aspects 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)

Application to join the Roster shall be made to the Coordinator and shall consist of a letter of interest with a resume or CV. The Coordinator shall submit any such applications to the Advisory Committee for consideration.

The Advisory Committee shall submit recommendations to the District Administrative Judge. The District Administrative Judge shall make final determinations as to whether prospective Neutrals are appointed to the Roster. Continuing presence on the Roster is subject to review by the District Administrative Judge and Neutrals may be removed from the Roster at the discretion of the District Administrative Judge.

**VII. FEES**

The Program does not charge or administer fees. In the event the parties choose to continue the Neutral Evaluation session beyond the initial session, the Special Master may be compensated as agreed upon in writing by the parties and the Special Master. The Special Master's fees shall not exceed \$300 per hour.

**VIII. IMMUNITY**

Neutrals serving in this program shall be immune from subpoena and suit as a result of any conduct or omission during the performance of duties in that capacity to the extent permissible by law.

**IX. CONFIDENTIALITY**

Except as set forth below, all oral, written, or other communications made during the course of the Neutral Evaluation by any party, Special Master or any other person present shall be confidential, and shall not be disclosed in any present or future judicial or administrative proceeding. Similarly, all information generated in or in connection with the Neutral Evaluation – including memoranda, work products or case files of a Special Master – shall remain confidential and not be subject to disclosure in any present or future judicial or administrative proceeding. However, Neutral Evaluation shall not be used as a shield with respect to otherwise discoverable documents or information produced or occurring prior to or outside of the Neutral Evaluation process.

Moreover, except as set forth below, nothing about the substance of the Neutral Evaluation, such as the weaknesses or strengths of the parties' case or the relative willingness of parties to discuss settlement proposals, shall be revealed to the referring Justice, Court-Attorney Referee or to any other person by the Special Master or any party or attorney. The parties shall report to the Court whether the issue or issues referred to the program have been "resolved" or "not resolved." If "resolved" the parties shall prepare and execute a stipulation for submission to the Court on the discrete issue or issues which were resolved.

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***

Whether the parties and their counsel attended the initial session will be reported to the referring Justice or Court Attorney-Referee.

2. ***Waiver***

Parties to the Neutral Evaluation and the Special Master agree in writing to waive confidentiality. 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 Settlement Agreement***

A written settlement agreement signed by both parties.

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

If communications or information constitutes a credible threat of serious and imminent harm, either to the speaker or another person or entity, the appropriate authorities and/or the potential victim may be notified.

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

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 required pursuant to Social Services Law § 413.

**X. CHILD ABUSE AND NEGLECT**

If an allegation of child abuse or neglect is made by any party during the Neutral Evaluation, the Special Master will safely stop the Neutral Evaluation process. Special Masters 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.

**XI. DOMESTIC VIOLENCE/SEVERE POWER IMBALANCE**

When an allegation of domestic violence or severe power imbalance is made by any party during the Neutral Evaluation, the Special Master shall safely stop the Neutral Evaluation process, meet with each party individually where appropriate to learn as much as possible about the circumstances, and consult with the Coordinator (but not the assigned Justice or members of that Justice's staff or Court Attorney-Referee) as to whether to resume the process. Allegations of domestic violence shall not be disclosed to the referring Justice or Court Attorney-Referee; instead, the Coordinator will give victims information regarding their rights in the form prescribed in Family Court Act § 812 (5).

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

Cases may be referred to Neutral Evaluation at any time, including at the preliminary conference.

Referral to the Program will not stay the court proceedings. 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 Neutral Evaluation, a Special Master 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 Special Master, including a financial or personal interest in the outcome, and an existing or past relationship with a party or their attorneys or foreseeable participant in the Neutral Evaluation. The Special Master shall disclose any such known conflict to the parties and counsel as soon as possible before accepting a referral. If unable to function in a fair and impartial manner, the Special Master shall notify counsel for the parties and the Coordinator. The Coordinator shall thereafter promptly provide counsel for the parties with a Notice of Confirmation containing three different Special Masters.

Dated: October 4, 2013

Contact Information for Program Coordinator:

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