

# **SUPREME COURT, CIVIL BRANCH QUEENS COUNTY**

## **STATEMENT OF PROCEDURES MATRIMONIAL MEDIATION PROGRAM**

### **I. OVERVIEW**

Mediation is a confidential, problem-solving process in which a neutral third party — the mediator — helps disputing parties to identify issues, clarify perceptions, and explore options for a mutually acceptable outcome. Mediation often results in faster, less expensive, more durable, and less acrimonious outcomes than might be the case in the normal course of litigation.

The Queens County Supreme Court’s Matrimonial Mediation Program is open to those parties who already have a case pending before the court. When the parties appear in court, they may request the court to refer them to mediation or the court may order it on its own initiative. The program offers parties a free, 90-minute initial session with a Program mediator. Program mediators have significant training and experience in family mediation and in opening paths of communication that enable meaningful dialogue and cooperation. They help divorcing parties to resolve key issues that affect their relationships with their children and the financial well-being of all family members. Parties are encouraged, but are not required, to bring their attorneys to the mediation session.

Although parties are not obligated to reach agreement in mediation, the process often concludes with a written agreement, as well as improved communication between the parties. If the parties reach an agreement during mediation, the mediator may assist the parties and their counsel in drafting a written agreement. The written agreement is then returned to the referring Justice for review. Subject to the referring Justice’s approval, the agreement will be incorporated in the Court’s Order or Judgment of Divorce.

### **II. PROCEDURES**

Supreme Court Judges may refer parties to the Matrimonial Mediation Program or parties on their own may request referral to the Program at any time. Cases involving orders of protection, 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, domestic violence, or a severe power imbalance between the parties are not appropriate for mediation and shall be excluded from the Program. Please note that parties may be screened by Court staff or the selected mediator at any time to determine eligibility for participation in the Matrimonial Mediation Program.

To begin the process, the Judge signs an Order of Reference directing parties and their counsel to appear at an initial, free, ninety (90) minute mediation session with a Program mediator selected from the Matrimonial Mediation Program's Roster of Mediators. **The Order of Reference may also contain a control date set by the referring Judge for the parties to appear in Court for a conference following the mediation.**

Counsel for the parties shall deliver the Order of Reference to Maria L. Bradley, Esq., the Matrimonial Mediation Program Coordinator ("Coordinator"), who is located in Administrative Chambers, Room 511, at 88-11 Sutphin Blvd., Jamaica, NY 11435, and who can be reached at 718-298-1100 or [mbradley@nycourts.gov](mailto:mbradley@nycourts.gov). The Program Coordinator shall randomly select a mediator from the Court's Roster of Mediators.

Within five (5) business days of receiving the Order of Reference, the Program Coordinator shall notify the parties of the assigned mediator and send them a Notice of Confirmation, which shall contain the mediator's name and contact information. The parties are free to select a different mediator, but if they do so, they must notify the Program Coordinator of the substitution in writing within 5 business days.

It is the responsibility of the parties to contact the mediator within five (5) days of the date of the Notice of Confirmation to make the arrangements for the mediation.

The parties are required to appear at the initial mediation session within twenty (20) days of receiving a Notice of Confirmation. Parties shall complete all scheduled mediation sessions within seventy-five (75) days of date of the Notice of Confirmation.

At least one week before the initial mediation session, parties or their counsel shall send to the mediator a copy of the pleadings, Statements of Net Worth, and any other information necessary for the effective negotiation of the issues involved. The mediator may also request a conference call with the parties' counsel regarding any preliminary matters.

If parties wish to extend the mediation process beyond the initial 90-minute session, they may schedule additional sessions with the mediator at a per hour rate that shall not exceed \$250/hour. Program mediators are strongly encouraged to work on a sliding scale to take into account the parties' financial circumstances.

Within five (5) business days after the mediation's conclusion, which shall occur whenever after the initial 90-minute session one party, both parties, or the mediator decides that the mediation has ended, the mediator shall send a Mediator's Report to counsel and to the Coordinator – but not to the referring Judge – describing the outcome.

The Report shall state (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. The mediator may attach to the Report any original, signed agreement and return it to the Coordinator.

Once counsel receives a copy of the Mediator's Report, if the court has not already assigned a Control date, counsel shall promptly contact the Part of the assigned Judge to schedule a conference concerning further proceedings in the case.

The Program Coordinator shall report to the referring Judge whether the case settled (in whole or in part) but shall not reveal to the referring Judge the selected mediator's identity or disclose other information discussed during the mediation, except as described in Section IX.

### **III. ROLE OF THE MEDIATOR**

The mediator's primary role is to help the parties communicate and negotiate. The mediator does not give legal advice, predict likely court outcomes, or force solutions on the parties.

At the initial mediation session, the mediator explains that all communications are confidential (with narrow exceptions outlined below) and will not be disclosed to the Judge hearing the 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 process and return to court.

During the mediation process, all parties are free to discuss the case as they see it and to raise particular issues of concern that they would like to address. 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 to develop and choose options that meet the parties' needs.

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 party views the dispute and the impact of any proposed solutions. The mediator keeps confidential the information discussed in caucus 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.

### **IV. 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' overall satisfaction with the process and outcome. Accordingly, unless exempted by the mediator for good cause shown, the parties must be present during the mediation.

The presence of separate counsel for each party during mediation sessions is encouraged. If counsel for either party is discharged or withdraws for any reason during the mediation process, the case may not proceed in mediation until a substitution occurs unless otherwise ordered by the Court.

Without representation by counsel, parties risk entering into agreements with insufficient knowledge about financial, legal or other issues. If parties decide to participate in mediation without their attorneys present, they are strongly advised to consult counsel before finalizing any agreement.

For those cases in which an attorney for the child has been assigned, mediation may not commence without the child's attorney present. If the parties and the child's attorney agree to proceed in mediation without the child's attorney, they may do so, unless otherwise ordered by the Court.

## **V. 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 is open to those cases that are already ongoing in court. The Judge may refer the parties to mediation or the parties may request the Judge to refer them.

The Court welcomes the feedback of parties, counsel, and mediators after the conclusion of the proceedings.

## **VI. THE ROSTER OF MEDIATORS**

The Court has assembled a Roster of Mediators. The prerequisites to joining the Roster are as follows:

- **Training:** Completion of at least 60 hours of family mediation training in a training program sponsored or recognized by the New York State Office of Court Administration ("OCA").
- **Experience:** At least four years of family mediation experience, including 250 hours of face-to-face mediation with clients and a minimum of 25 custody and visitation cases, and any other mediation training or experience deemed appropriate by the Court. Cases involving financial disputes will be referred only to those Program mediators with knowledge of, training in and experience with the financial aspects of divorce.
- **Continuing Education:** Pursuant to Part 146 of the Rules of the Chief Administrative Judge, all mediators must attend at least six hours of additional approved training relevant to their respective practice areas every two years.

For a full description of the requirements, please refer to the Uniform Court System

website at [www.nycourts.gov/rules/chiefadmin/146.shtml](http://www.nycourts.gov/rules/chiefadmin/146.shtml).

Continuing presence on the Court's Roster of Mediators is subject to review by the District Administrative Judge. Mediators may be removed from the Roster at the discretion of the District Administrative Judge in consultation with the NYS Unified Court System's Office of Alternative Dispute Resolution and Court Improvement Programs.

## **VII. FEES**

The Program does not charge or administer fees. Parties referred to mediation pursuant to this Statement of Procedures shall not be required to compensate the mediator for services rendered before or during the initial 90-minute mediation session. Should the parties agree to schedule additional sessions with the mediator, the mediator shall be entitled to compensation for services rendered as follows: compensable services shall consist of time spent conducting any mediation session that follows the initial 90-minute session, and time spent reviewing materials submitted by the parties for purposes of subsequent mediation sessions. The mediator's fee for such services shall not exceed \$250.00 per hour. The fee arrangement must be agreed to in writing, and must include the ratio at which the fee will be divided between the parties. The parties must sign this fee agreement before commencing any additional sessions beyond the initial mediation session.

Mediators are encouraged to use a sliding scale where appropriate, and shall consult with the Program Coordinator if the parties are unable to pay for additional sessions.

## **VIII. IMMUNITY**

The mediator shall be immune from suit as a result of any conduct or omission during the performance of duties in that capacity to the extent permitted by law.

## **IX. CONFIDENTIALITY**

Except as set forth below, all oral, written, or other communications made during the course of mediation by any party, 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—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, mediation will not be used as a shield with respect to otherwise discoverable documents or information produced or occurring prior to or outside the mediation.

Moreover, except as set forth below, nothing about the substance of the mediation, 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 Judge or any other person by the Mediator or any party or attorney. Nor will any party or lawyer for a party reveal the outcome of the mediation process to the referring Judge or a member of the Judge's staff 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:

***Attendance***

Whether the parties and their counsel attended the initial mediation session will be reported to the Program Coordinator who may notify the Court.

***Waiver***

Parties to the mediation and the mediator 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.

***Written Agreement***

A writing signed by all the parties embodying a mediated agreement shall be submitted to the court for review. Additionally, a limited report of the outcome will be sent to the referring Judge. Only those signed, mediated agreements that have become court orders may be admissible in any present or future judicial or administrative proceeding.

***Threats of Imminent, Serious Harm***

If communications or information constitute 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.

***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 mediation, the mediator will stop the mediation process and consult with each party individually for the purpose of obtaining as much information about the circumstances as possible. Mediators shall report to the Program Coordinator allegations 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.

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

When an allegation of domestic violence or severe power imbalance is made by any party during the mediation, the mediator shall safely stop the mediation process, meet with each party

individually where appropriate to learn as much as possible about the circumstances, and consult with the Program Coordinator (but not the assigned Judge or members of that Judge's staff) as to whether to resume the mediation process. Allegations of domestic violence will not be disclosed to the referring Judge; instead, victims will be given information regarding their rights in the form prescribed in Family Court Act § 812 (5), and they will receive safety planning information.

## **XII. ORDERS OF PROTECTION**

Those matters in which there are ongoing orders of protection shall not be referred to the Program. If an order of protection is issued during the course of the mediation sessions, the Mediator shall cease the mediation and contact the Program Coordinator.

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

Cases may be referred to mediation upon request of the parties or at any time deemed appropriate by the Judge. A party who attends the initial session complies with the Order of Reference, even if that party ultimately chooses not to proceed with mediation. Parties may move to opt out of the Program for good cause shown.

Referral to mediation will not ordinarily 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, as a general rule. However, parties committed to the mediation process who conclude that additional time is required to fully explore the issues pertaining to their case may request an adjournment. The Court, in the Order of Reference, shall order as to whether court proceedings, including discovery and motion practice, shall or shall not be stayed pending the mediation process.

## **XIV. AVOIDING CONFLICTS OF INTEREST**

Before accepting a mediation, 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 mediation party or foreseeable participant in the mediation. The mediator shall disclose any such known fact to the mediation parties and counsel as soon as possible before accepting a mediation. The mediator is obliged to disclose all potentially disqualifying facts to the parties and, where such facts exist, shall not serve unless the parties consent in writing. If a mediator later learns of any disqualifying fact after accepting a mediation, the mediator shall disclose it as soon as practicable. If the mediator concludes that he or she is unable to function in a fair, impartial and objective manner, the

mediator shall notify the Program Coordinator and a new mediator will be selected.

If, upon disclosure by the mediator of a potential conflict, a party objects to the assignment of the mediator, such party shall notify the Program Coordinator in writing within 5 days of the date of the Notice of Confirmation, on notice to the opposing party, setting forth the basis of the objection. Within the discretion of the Program Coordinator, a new mediator may be selected.

#### **XV. FAILURE TO COMPLY WITH ORDER OF REFERENCE AND THESE RULES**

If a party or counsel refuses to schedule an appearance for an initial mediation session in a timely manner, appear at an initial scheduled session, or otherwise fails to comply with these rules, the Court may impose sanctions, including costs.

Dated: May 6, 2015

MATRIMONIAL MEDIATION PROGRAM  
Supreme Court, Civil Term, Queens County  
Program Coordinator: Maria L. Bradley, Esq.  
Phone: 718-298-1100  
Email: [mbradley@nycourts.gov](mailto:mbradley@nycourts.gov)

<sup>1</sup>The Coordinator has discretion to designate another mediator in appropriate cases.