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SUPREME COURT NEW YORK COUNTY PRESUMPTIVE MATRIMONIAL MEDIATION PILOT PROGRAM

Procedures

The Matrimonial Division of the Supreme Court Civil Branch, New York County is pleased to announce the creation of a Matrimonial Mediation Pilot Program. Below is a statement of procedures for the program.

Participating Parts: Part 9 - Hon. Lori Sattler and Part 44 - Hon. Douglas Hoffman will be designated as presumptive matrimonial mediation parts. Presumptive mediation means that cases are deemed eligible for mediation and may, at the Judges' discretion, be assigned to one mediation session. In Part 9, all new cases with even Index Numbers appearing for a Preliminary Conference will be referred to mediation. All cases with odd Index Numbers scheduled for a Preliminary Conference before Judge Hoffman will also be referred to mediation. Due to the Covid-19 pandemic emergency, unless otherwise ordered, the preliminary conference, the screening for appropriateness, and the mediation will be conducted virtually.

In addition to the participating presumptive parts, all other matrimonial cases in New York County Supreme eligible for Mediation at the initial return dates for preliminary conferences and post-judgment applications. Post-judgment actions relating to parenting time, custody, and/or child support will also be considered eligible for mediation. **Mediation:** The parties will generally meet with the mediator and talk about the issues they have come to court to resolve.¹ The

¹ Due to the Covid-19 pandemic emergency, mediation may be conducted virtually.

mediator may be associated with a not-for-profit mediation service provider or be an independent mediator who, after review of their credentials and qualifications, has been approved to work with the Court in this program. A mediator is not a judge and will not decide issues if the parties cannot agree. The mediation may take place in the courthouse, the mediator's office, or in the offices of a mediation center. If the mediation takes place in the court, it will usually be in an assigned mediation conference room. Subject to the consent of the parties, mediations may take place with co-mediators or with experienced mediators who are professors accompanied by law students.

Mediation is voluntary, which means that parties can stop the process at any time. Parties also do not need to agree to anything. (For further information, see, "What is mediation?" attached.) The parties will sign an agreement to mediate at the time the court issues a referral order to mediation.

If the mediator is assigned by the court from its roster of Matrimonial Mediators, then the initial mediation session is at no charge to the parties. Parties and counsel at the PC shall provide the information requested on the Order of Reference (copy annexed) after the initial screening, which will prompt the assignment of a mediator to the case. The timeframes set forth in the preliminary conference stipulation and order will take into consideration the mediation.

Notwithstanding the foregoing, a party or counsel may opt out of presumptive mediation by signing and filing with the manager of the program a Presumptive Mediation Opt-Out Form. The form shall be filed at the time of the PC.

All communications between the parties and the mediator about the dispute are excluded from court or in any other proceedings including any disclosures made with a view towards settlement. A party may not call the mediator as a witness to testify in any other proceeding regarding any aspect of the mediation. The parties shall not require the production in court or in any other proceeding of any records or documents made by the mediator.

However, when credible information concerning child abuse or neglect or threatened serious harm to anyone comes to the attention of the mediator, they are not required to adhere to the confidentiality restrictions. In addition, documents and information otherwise discoverable under the CPLR, DRL or other law, are not shielded from disclosure on the basis that they are submitted or referred to in the mediation.

Initial Screening: Case screening for cases presumptively designated for

mediation will be done by Court Staff. Screening is being conducted virtually. A case may be deemed ineligible for mediation based upon a number of factors, such as: past or present orders of protection, history of domestic violence, a power imbalance, past or present neglect or abuse petitions, complexity of issues, need for extensive discovery or other factors determined by the Judge assigned.

Mediation may be deferred by the Judge pending determination of, or an agreement as to, interim issues of temporary child support, temporary maintenance, interim counsel fees or assignment of counsel (custody and visitation), or appointment of an attorney for the child(ren).

Mediators: The manager of the pilot program will assign mediators to cases based upon availability and any income requirements of a particular mediation program. The mediator will conduct a check for conflicts with regard to the parties and counsel. Assuming there is no conflict, the mediator will, within four (4) days, arrange a conference call for scheduling the session. If the mediator finds a conflict, he or she will inform the manager who will assign a different mediator.

If parties wish to select their own mediator, they may do so. (See, How to Find a Mediator, attached, for assistance in finding a mediator). The parties or their counsel will so inform the program manager within five (5) court days of receiving notice of the assigned mediator and will provide their mediator's name to the manager within five (5) court days of conveying their intention to select their own mediator.

Mediation Sessions and Scheduling: Counsel shall attend at least the first mediation with their clients, which shall be held within sixty (60) days of the appointment of a mediator. Any additional mediation sessions are optional for the parties. If parties opt to continue mediating with the same mediator beyond the initial session, and the mediator charges a fee, the mediator must enter into a written agreement with the parties, which shall include payment details. If the parties want to continue mediating but wish to engage a new mediator, they may do so, and shall inform the manager of the name of the new mediator. There will be mediation service providers who provide reduced fee or free services to qualifying families. If either party fails to attend a scheduled mediation or does not provide 24 hours' advance written notice to the mediator that they are not attending a scheduled mediation session, they may incur a fee from the mediator or forfeit the 90-minute free of charge session.

Exchange of Documents: No mediation of financial ancillary issues should occur without the exchange of sworn net worth statements. This information, if it has not already been exchanged, shall be exchanged, and shall be provided to the mediator at least five (5) days prior to the mediation. Other documents which may be helpful to mediation include each party's prior year's tax returns with supporting W-2s, 1099, and K-1 forms. The exchange of this information is also required by 22 NYCRR 202.16.

Further Discovery and Motions: While further discovery should continue during the period of mediation, no depositions or financial experts need be retained or appointed until after the mediation, unless done so on consent or ordered by the Court. During the mediation, parties are permitted to make pendente lite applications and the court may still issue orders on custody-related issues and/or appoint an Attorney for the child(ren).

Post Mediation/Compliance Conference (PMCC): All cases referred to mediation must attend a PMCC with the Judge or Judge's Law Clerk no later than sixty (60) calendar days after the referral to mediation. If there is no agreement, or mediation has not taken place, the case will be scheduled for a final compliance conference. However, the period of mediation may be extended by the Court for good cause.

The mediator's report as to compliance and outcome will be sent to the part clerk who shall provide quarterly reports to the program manager. Additionally, a follow-up survey will be conducted in writing.