

KINGS COUNTY SUPREME COURT MATRIMONIAL PART **MEDIATION PROGRAM PROTOCOL**

I. INTRODUCTION

Mediation, as a confidential dispute resolution process, aims to provide a neutral forum where parties can discuss their respective viewpoints and work towards mutually beneficial outcomes.

The Kings County Supreme Court Matrimonial Program is available in cases involving parenting time, custody, child support, and/or equitable distribution, preferably at the preliminary conference stage and in post-judgment applications. Inquiry as to mediation will be explored pursuant to a screening protocol.

Matrimonial cases assigned to the Kings County Matrimonial Part may be deemed eligible for mediation and may be assigned to one mandated mediation session at the Judges' discretion. The initial mediation session is at no cost to the parties for the mediator's services. A party or counsel may opt out of mediation by filing and signing an opt-out form on the date of the preliminary conference (PC) or on the adjourned date of the PC stating that they wish not to participate in mediation. If they wish to engage in mediation, a preliminary conference will be conducted considering expanded time frames to accommodate the mediation.

Parties meeting the criteria for participation in mediation will meet with a mediator to discuss the issues that brought them to Court, aiming toward resolution. The roster mediator is a trained neutral who may be associated with a not-for-profit mediation service provider or an independent mediator whose credentials and qualifications have been reviewed and approved to work together with the Court in this program. Some mediations may occur with co-mediators or experienced mediators who are professors accompanied by law students. To be eligible to serve as a mediator on the Program's Roster of Mediators, a mediator must meet specific prerequisites in accordance with Part 146 of the Rules of the Chief Administrative Judge. The comprehensive guideline is available from the Statewide Alternative Dispute Resolution Office within the New York State Unified Court System's Office of Court Administration webpage at [PART 146. Guidelines For Qualifications And Training Of ADR Neutrals Serving On Court Rosters | NYCOURTS.GOV.](https://www.nycourts.gov/part-146-guidelines-for-qualifications-and-training-of-adr-neutrals-serving-on-court-rosters/)

II. INITIAL SCREENING

Screening for eligibility will be done virtually or in person by the Court with the assistance of the Court's Matrimonial Program Coordinator and the New York Peace Institute (NYPI), a not-for-profit Community Dispute Resolution Center. Not all cases will be deemed eligible for mediation. Eligibility may be denied based upon a host of factors, such as past or present orders of protection, a power imbalance, past or

present neglect or abuse petitions, complexity of issues, need for extensive discovery, or other factors that determine a case to be ineligible.

III. CONFIDENTIALITY PROTOCOL

To preserve the integrity of the mediation forum, communication that occurs during the mediation session(s), whether orally or in writing, is excluded from any court proceedings, as such information is deemed confidential. A party or counsel may not call the mediator as a witness in any pending or future court proceeding.

There are exceptions to confidentiality, which include allegations of child abuse or neglect or threats of harm to self or another individual. Under those circumstances, the mediator will have a duty to report and not adhere to the confidentiality provisions.

The parties or counsel shall not request to present in court any records created during the mediation session except for a written agreement delineating the parties' agreed-upon terms. The mediator or matrimonial program coordinator will not comment on any substantive aspect of the case.

IV. APPOINTMENT OF MEDIATORS

The Matrimonial Program Coordinator will inform counsel of record via e-mail whether the matter is eligible or ineligible for mediation. The reason for ineligibility shall not be revealed. If a case is considered eligible for mediation, the Court will issue an Order of Reference directing the parties and counsel, if appropriate, to participate in an initial, free-of-charge 90-minute session with a mediator.

Counsel of record has five (5) business days to agree on a mediator of their choosing if they desire. Resources will be made available by the Court's Matrimonial Program Coordinator to facilitate counsel's search. If the parties or counsel do not provide the name of their agreed-upon mediator within the five (5) business day window, a mediator will be assigned from the roster of mediators based upon availability and ensured to be free of any conflicts of interest.

All roster mediators must adhere to the New York State Unified Court System Standards of Conduct for Mediators. The Court's Matrimonial Program Coordinator will assign mediators to cases based on the mediation program's availability and any threshold income requirements.

Cases may be postponed for consideration of eligibility 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 an attorney for the child(ren).

If parties wish to select their own mediator, they may do so but must notify the Court's Matrimonial Program Coordinator within five (5) business days of the mediator's name and the date and time of the

scheduled mediation. The Matrimonial Program Coordinator will designate a mediator if the parties or counsel fail to provide the information.

A mediator is not a judge, does not give legal advice, and will not decide issues if parties cannot agree. Mediation is voluntary, which means that parties can stop the process at any time.

V. ROLE OF COUNSEL

Counsel is encouraged to attend mediation with their clients. Counsel must notify opposing counsel and the assigned mediator if they plan not to attend with their clients. Any additional mediation sessions are optional for the parties and not mandated by the Court. If parties opt to continue mediating beyond the initial session, they may arrange to mediate with the same mediator or engage a new mediator. If the parties and mediator want to continue to mediate beyond the initial mediation session, and the mediator charges a fee, the mediator must enter into a written agreement with the parties, which shall specify the hourly fee and retainer particulars.

No mediation of pre or post-judgment financial ancillary issues may occur without the exchange of an affidavit of net worth and the prior year's tax returns with supporting W-2s, 1099, and K-1 forms (unless waived), which, if they have not been provided as required by 22 NYCRR 202.16 at the preliminary conference, must be completed and exchanged five business days prior to the mediation, unless waived. While discovery should continue during the period of mediation, no depositions or financial experts need to be retained or appointed until after the mediation unless done so on consent or ordered by the Court.

Agreements facilitated by a mediator are voluntary and always subject to the review and advice of counsel of record. This is to ensure that all parties are adequately represented, and their interests are protected. If legal representation for either party is withdrawn for any reason, a consent to change attorney must be filed, except if directed otherwise by the Judge.

VI. SCHEDULING AND COMPLIANCE

The first mediation session shall be held within thirty days (30 days) of the appointment of the mediator. The Matrimonial Program Coordinator will follow up with the assigned mediator within sixty days (60) to determine the mediation status.

If either party fails to attend the initial, free-of-charge scheduled session or does not provide 24-hour advance written notice to the mediator of their intent to cancel the session, they may forfeit the right to continue in mediation. In cases involving a non-responsive party/parties, the Matrimonial Program Coordinator will contact counsel of record within the 30-day compliance window to encourage participation; otherwise, the case will be deemed as "Non-Responsive," and such disposition shall be communicated to the Judge to avoid delays.

Mediators will submit the Report of Mediator form to the Matrimonial Program Coordinator at least

one (1) week in advance of the adjourned date, even if the session has not been held. The Matrimonial Program Coordinator will update the Part on the status of the mediator's report but will not comment on any substantive nature of the case.

VII. IMMUNITY

All communications between the parties and the mediator about the dispute are excluded from court or any other proceedings, including any disclosures made with a view toward settlement. However, when credible information concerning child abuse or neglect or serious threatened harm to anyone comes to the attention of the mediator, they are not required to adhere to the confidentiality restrictions.

Under this protocol, 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.

Additionally, 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.

VIII. PROGRAM EVALUATION

Participant feedback is an essential element of program development. A post-mediation survey, focusing on key aspects of the mediation process, will be sent to the parties and counsel of record within fifteen days after the conclusion of the mediation.

Honorable Jeffrey S. Sunshine
Statewide Coordinating Judge for Matrimonial Matters
Kings County Supreme Court-Matrimonial Term
Dated: January 2024.