

PRESUMPTIVE ADR PLAN
KINGS COUNTY, CIVIL TERM
(Effective 11/12/19)

To further expedite early resolution of civil litigation, the Kings County Supreme Court, Civil Term adopts the following policies and procedures:

1. **Statement of Policy**

It is the policy of the Unified Court System to encourage the resolution of civil legal disputes by methods including mediation, arbitration, neutral evaluation, in-court settlement practices, and summary jury trials. All civil actions or proceedings heard in the Supreme Court, Court of Claims, County Court, Family Court, Surrogate's Court, District Court, City Court, and New York City Civil Court shall be presumptively eligible for early referral to an alternative dispute resolution process unless otherwise excluded pursuant to this Plan. Courts may refer parties to an ADR process at any time after an action has been commenced and are encouraged to do so at the earliest appropriate opportunity.

2. **Types of ADR/Definitions**

- **Conferencing or Evaluation by Court Staff:** At any time during the proceedings, a judge may direct that the parties meet with court staff, including court attorneys, law clerks, JHO's and other appropriately trained staff, to discuss the case and attempt to resolve the issue.
- **Mediation:** 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. Mediations may be conducted by court staff, Part 146 approved mediators from a court roster, judges or parties may opt for private mediation services. Mediators do not "decide" cases but help the parties come to a voluntary, mutually agreeable decision.
- **Arbitration:** A process in which the parties present the dispute to a selected decision-maker or a panel of decision-makers, usually with expertise in the subject of the litigation. Arbitration may be binding or non-binding; however, parties must agree beforehand to be bound to the decision of the arbitrator if choosing binding arbitration. Under non-binding arbitration, the parties may reject the decision of the arbitrator and proceed to trial.
- **Neutral Evaluation:** 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. Neutral evaluations are conducted by outside attorneys/experts and not by court staff.

- **Summary Jury Trials:** A binding one-day trial with relaxed rules of evidence. Jury selection is abbreviated, each side receives 10 minutes for openings and closings, along with one hour for the presentation of each side's direct case and one hour for cross examination. Damages can be floored and capped on a high/low basis. The parties must waive their right to appeal and their right to make post-trial motions.
- **Judicial Settlement Conferences:** A conference held by the judge involved where the focus is usually on the attorneys and their arguments.

3. **Proceedings Excluded from this Plan**

- a. All cases will be assigned for a mediation conference except:

Matrimonials (separate mediation program already in place)
Guardianship Proceedings
Special Proceedings
Tax Certiorari Proceedings
Condemnation Proceedings
Foreclosures (statutory mediation procedure already in place)
Mental Hygiene Proceedings

4. **Opt-Out Provisions**

Upon good cause shown at the first mediation, or anytime thereafter, a party may apply to opt out of further mediation.

Applications to opt out of mediation may only be by OSC or motion on papers returnable prior to the assigned date of mediation, or by oral application to the mediator under circumstances wherein further mediation would likely prove unsuccessful.

5. **Proceedings**

With over 22,000 new filings each year, this court is committed to finding less costly and innovative ways of resolving matters. Within the last decade there has been an increase in the number of businesses that have made Kings County home. Though tort litigation comprises our largest case type, the number of commercial cases has increased by 25 percent over the last three years. Over the years, our judges in our Trial Ready Parts have garnered great success in settling trial-ready cases. We believe that we can build on that success, by introducing settlement discussions at an earlier stage. With the introduction

of ADR early in the discovery process, time and expense can be obviated. In keeping with the Excellence Initiative and the vision of our Chief Judge Janet Difiore, we now seek to establish additional ADR programs in addition to our current programs.

Current ADR Programs in Kings Supreme Court, Civil Term

- **Matrimonial Mediation Program**
Kings Supreme Civil Term currently has a presumptive mediation pilot program in place. Rules and procedure for this program can be found in *Exhibit A annexed hereto*.
- **Medical Malpractice Early Settlement Program**
This program started about 8 years ago with a goal of reducing litigation costs associated with medical malpractice cases. Judicial intervention was introduced at an early stage to promote settlement and avoid years of litigation. Though the funding for this program has been abolished, Kings County continued its early settlement parts. There are two parts: 1) New York City Health and Hospital Corporation; and 2) Maimonides Hospital. These cases are conferenced by two experienced med-mal judges.
- **Early Resolution Blockbuster Program**
Our motor vehicle cases comprise of approximately 33% of our total pending inventory. DCAJ Silver teams up with J. Kenneth Sherman on a monthly basis to conduct settlement conferences. These insurance carriers have committed to identifying those cases beforehand. This court would like to expand that program to include other carriers.

New ADR Programs in Kings County Supreme Court, Civil Term

- **Medical Malpractice Program**
Medical Malpractice cases will be assigned to the General Medical Malpractice Program and will be triaged by Justice Genine Edwards. J. Edward's ADR Part will receive cases from our Discovery Complex. Medical Malpractice cases (Med Mal) on our preliminary conference calendar in our discovery complex, will be scheduled in J. Edward's ADR Part on a Friday 45 days after the preliminary conference is held. J. Edwards will mediate those cases when they appear on her ADR calendar. The parties shall submit a one-page memorandum regarding their position on the case and a verdict search at least one week before the scheduled appearance. Attorneys are encouraged to appear with their clients/insurance adjuster. Parties scheduled for an ADR conference in the med mal ADR Part shall appear in J. Edwards' courtroom 366. J. Edward's chambers staff and her part clerk will coordinate with the court's ADR coordinator in the collection and entry of data into the OCA database.

- City/Transit Program

All City/Transit cases will be assigned to the City/Transit program. Cases appearing on the preliminary conference (PC) calendar in the City Discovery Part will be assigned to the City/Transit ADR calendar 45 days after the PC is held. This program should follow the procedure for Other Mediation Eligible Cases as outlined in *5a thru f* of that section below.

- Commercial Program

All cases in the commercial program shall be mediated by Justice Richard Montelione. Cases that appear on the preliminary conference (PC) calendar in the commercial parts shall be scheduled in the commercial ADR part not less than 45 days after the PC is held. Parties shall submit a copy of the pleadings and a one-page statement stating party's position and outlining all the issues in the case. Parties appearing for this calendar shall appear in courtroom 574. The clerk in the commercial part will coordinate with the court's ADR coordinator in the collection and entry of data into the OCA database.

- Other Mediation Eligible Cases

1. Other mediation eligible cases shall be first scheduled for a Triage Conference on a date 45 days after the PC is held. On the date scheduled for Triage, the assigned Triage Coordinator shall evaluate whether the case is ready for mediation, and if so, shall issue an appropriate referral to mediation. If not ready, the case shall be referred to the Adjourned Triage Calendar.
2. The Triage Calendar Shall be called in Courtroom 541 at 9:30 AM. There shall be one call of the calendar. Failure to appear at the 9:30 AM call may result in imposition of costs or sanctions, but defaults will not be taken.
3. The Adjourned Triage Calendar shall be called at 2:00 PM. Defaults shall be taken for failure to appear at the call of the Adjourned Triage Calendar.
4. Where discreet item(s) of discovery are necessary to facilitate the mediation, a supplementary discovery directive may be issued, provided that said directive is not inconsistent with prior court orders.
5.
 - a. All parties should furnish the ADR Coordinator with a confidential memo detailing the facts and their position.
 - b. To facilitate a successful mediation, parties should exchange available documentation at least 10 days prior to the scheduled mediation including: all materials relevant to liability and damages; and insurance coverage

inclusive of policy limits.

- c. Counsel attending the mediation must have full authority to negotiate and settle the case.
 - (1) Where warranted, the assigned mediator may re-track cases for failure of a party to meaningfully participate in the mediation.
- d. At the mediation conference, appropriate cases may be referred back to Triage for assignment to a volunteer neutral from a court maintained list of qualified volunteer neutrals/mediators.
- e. Counsel are under a duty to discuss ADR with their clients.
- f. The assigned mediator shall report the outcome of the mediation to the court's ADR coordinator. This report shall include:
 - 1. whether case has settled
 - 2. whether further mediation is recommended or requested
 - 3. if any issues were settled and further mediation requested or rejected
 - 4. issues not resolved

6. **Volunteer Neutrals**

A list of qualified mediators shall be maintained by the Court. Mediators thereon must pledge at least 45 minutes in preparation and 45 minutes of mediation as uncompensated services. If the parties desire to continue thereafter, they shall share the cost of further mediation, but in no event shall more than \$400.00 per hour be charged.

7. **Private Mediation**

In lieu of a courthouse conference, the parties may elect to seek private mediation. In such event, the ADR Coordinator shall be notified in writing. Such election must be endorsed by all parties and shall identify both the mediator and expected date of mediation.

- (a) Alternatively, the parties may request assignment to a volunteer neutral (see 4. above).

8. **Statewide UCS Rules on ADR Matters**

- Confidentiality in Mediation
Except as may be otherwise established by law (including Judiciary Law Art. 21 A), rule or court order, all statements (verbal, nonverbal, or contained in any writing or other storage medium) made in the course of considering, initiating or reconvening,

conducting, or participating in a mediation or retaining a mediator shall be deemed confidential and inadmissible in court. Information that is otherwise admissible or subject to discovery shall not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation. [Confidentiality provisions for other forms of ADR are forthcoming.]

- Stay of Discovery or Proceedings

Discovery and related litigation proceedings shall not be stayed pending the completion of ADR proceedings unless directed by the court for good cause shown.

- Immunity

Any person designated by a court to serve as a volunteer ADR neutral pursuant to an ADR Plan, and serving without compensation, shall be immune from suit based upon any actions engaged in or omissions made while serving in that capacity, and shall be indemnified against the costs of defending any claim based on such actions or omissions, to the extent permitted by applicable law, including Public Officers Law '17.

- Standards of Conduct of ADR Neutrals

(a) Mediators acting pursuant to these rules shall conform to the Model Standards of Conduct for Mediators (2005) promulgated by the American Arbitration Association, American Bar Association, and the Association for Conflict Resolution, in such form as may be adopted by the ADR Office with the approval of the Chief Administrator;

(b) Arbitrators acting pursuant to these rules shall conform to [forthcoming];

(c) Neutral Evaluators acting pursuant to these rules shall conform to [forthcoming]

9. Geico has committed to a standing, once a month blockbuster day where they will identify beforehand the cases to be heard on that day. These will be both pre- and post-note cases and the settlement conferences will be handled by a designated judge.

10. **Resources and Training**

This plan requires the hiring of an ADR Coordinator to prepare the rosters/lists for each of the above listed programs. Coordinators will also have additional duties of assigning mediators/neutrals, tracking of cases, and generation of reports to ensure that all cases are properly monitored. Additionally, a court clerk is required to assist with the generation of calendars and ensuring that all relevant information is entered into our database.

11. **Implementation**

A series of stakeholder meetings have already been held and the first notices scheduling Mediation Conferences were mailed on September 3, 2019.