

# 9<sup>th</sup> Judicial District Permanency Mediation Program

The 9<sup>th</sup> Judicial District Child Permanency Mediation Program will promote collaborative planning in selected child welfare matters, through mediation between any parties or interested persons in a child welfare matter which may include: the local departments of Social Services, the respondent parents or caregivers, their advocates and families, the attorney for the child(ren), foster parents or service providers.

The Family Court Act specifically authorizes the Court to make referrals to mediation at any point in a child protective proceeding to advance permanency planning for subject children<sup>1</sup>. The mediation program provides a forum where participants, including extended family and any other important people in the child's life, can work together in a non-adversarial setting to create a plan that will provide the best outcome for the subject child or children. In mediation, the participants discuss and define issues, explore options and find mutually acceptable solutions. The process provides participants an opportunity to 1) develop a plan for ensuring safety for the child; 2) explore and plan for services to meet the child's physical, mental, educational and emotional needs; 3) discuss steps that can be taken to preserve and strengthen the family; and 4) discuss permanency plans. In addition, mediation provides an avenue for individuals involved in a case to resolve conflicts among themselves (whether between family members or between the parties and the workers) so that they are able to focus on achieving the best outcome for the child(ren).

## II. DEFINITIONS

As used herein, "mediation" shall describe a consensual dispute resolution process in which a specially trained neutral third party helps disputants to identify issues, clarify perceptions and explore options for a mutually acceptable outcome. In general, mediators do not offer their own opinions regarding likely court outcomes or the merits of the case. Instead, mediators offer the opportunity to expand the settlement discussion beyond the legal issues in dispute and focus on developing creative solutions, which emphasize the parties' practical concerns.

As used herein, "participants" may include the following:

- The local department of social services caseworker, and supervisor, and attorney;
- Respondent parent(s) and their attorney(s);
- The attorney for the child(ren) ;
- The subject child(ren) where appropriate, with the consent of his/her attorney;
- Foster parent(s) where appropriate; and Service providers, relatives or others who may have a stake in the case or who can be a resource to support permanency planning where appropriate.

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<sup>1</sup> Article 10, §1018

### **III. POLICIES AND PROCEDURES**

#### **1. CONFIDENTIALITY**

**Section A: Confidentiality Provision**

1. Except as otherwise expressly provided herein, all writing relating to the subject or process of a mediation including memoranda, work products or case files of a mediator is confidential. All information disclosed during mediation is confidential and shall not be subject to disclosure in any judicial or administrative proceeding. All communications whether in writing, verbally or by other means, made during the course of mediation or in reference to the substance of mediation by any party, mediator or any other person present are confidential and shall not be subject to disclosure in any judicial or administrative proceeding.

**Section B: Exceptions to Confidentiality**

1. Notwithstanding the confidentiality provisions set forth in Section A, information or communications may be subject to disclosure in any judicial or administrative proceeding in the following circumstances:
  - (a) All parties to the mediation and the mediator agree to waive confidentiality. The waiver shall 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 or,
  - (b) The communication or information relates to new allegation(s) of child abuse or neglect as defined by law which must be reported pursuant to Social Service Law §413 or,
  - (c) The communication or information constitutes a credible threat of serious and imminent harm, either to the speaker or to another person or entity, in which case the appropriate authorities and/or potential victim may also be notified.
2. A written agreement may be submitted to the court for review. Only those mediated agreements which are reviewed by and incorporated into an Order of the court may be admissible in any judicial or administrative proceeding.

#### **2. REFERRAL PROCESS**

Referral to mediation may be made by the Court, either on its own initiative or at the request of any person involved in the proceeding. Referrals may be made at any point during the case where the Court believes an in-depth discussion might lead to a resolution of a particular issue or of the case as a whole.

Upon determining to refer the case to mediation, the Court will:

- a. Select a date for the mediation session and a location within the courthouse, with all the parties present. Attendance at this introductory session is mandatory.
- b. The date selected should be at least three weeks away to permit case development and to facilitate the appearance of necessary participants (eg. supervisory staff and foster parents). Two hours should be allocated for the mediation session.
- c. Provide the parties with information regarding the 9<sup>th</sup> District Permanency Mediation program (such information to be provided to the Court by the Child Welfare Court Improvement Office).
- d. Fill out the referral sheet indicating the issues or areas to be addressed in mediation and email it to the Project Manager.
- e. Provide the mediation program staff access to the petition, the fact-finding order (if completed), the dispositional order (if completed) and any reports or information the Court deems pertinent.

### **3. INTAKE AND CASE DEVELOPMENT PROCESS**

After receiving a referral from the Court, the mediators will provide information designed to help parties make an informed choice as to whether or not they wish to participate in mediation. Such information will be provided in printed materials as well as in pre-session contacts between the mediators and the parties and in the mediators' presentation at the initial session.

The mediators will:

- a. Review referral sheet indicating the issues or areas to be addressed in mediation.
- b. Contact all the participants starting with the caseworker and then the attorneys and, with their permission, their clients. Other individuals whose participation would assist in the mediation who may be identified by the parties may participate only by mutual consent of all the parties and the mediators.
- c. Contact the attorney for the child(ren). Children will be permitted to participate in mediation in consultation with, and only on consent of their attorney.
- d. In these conversations, the mediators will explain how mediation works, answer questions and begin to develop relationships with the individuals in the case. During case development, the mediators help the participants identify their own concerns and clarify what they perceive as problems to be addressed by the group.

- e. Determine if conditions are present that might make mediation inappropriate. An example of such a condition would be a history of violence or coercion between or among people who would be present at the mediation. If the mediator determines that the matter is inappropriate for mediation based on a confidential communication, the mediator will refer the matter back to the Court, indicating only that mediation was not appropriate.

#### **4. INITIAL MEDIATION SESSION**

The initial mediation session will begin with the mediator reviewing with the parties information designed to ensure informed participation and decision-making. The mediator will present an overview of the mediation process, explain its confidential nature and the limits of such confidentiality. The mediator will also explain that participation in the mediation process is voluntary and that agreements can be reached only by mutual consent of the participants.

Following an initial explanation of the mediation process, the mediation will commence upon written consent of the parties. Should any party not consent, the program will refer the matter back to Court, indicating only that mediation was not initiated.

#### **5. THE MEDIATION PROCESS**

The mediation process typically involves the following stages:

- a) Exchange of information;
- b) Identification and clarification of issues;
- c) Generating options for resolution;
- d) Analyzing options and selecting among them; and
- e) Developing a written agreement (or ending the session without agreement).

These stages can be completed in one session or may span multiple sessions. When the participants speak different languages, court-certified interpreters will be assigned by the Court to translate at the mediation session.

The mediation process may include sessions with the whole group and also sessions where the mediators meet with smaller sub-groups or with individuals (caucuses). Since mediators are neither decision-makers nor advocates, and since all conversations are confidential (with the safety exceptions noted above), mediators may meet in caucus with individuals or with sub-groups of the participants with no issue of ex-parte communication.

Thus, discussions can be tailored to meet the needs of individuals (eg. children who want to be part of the mediation but are not comfortable facing the large group) or to address specific situations (eg. a problem in the relationship between foster and birth parent that is preventing visitation). Participants can determine whose presence is necessary to address a particular issue

and sessions are structured so that attorneys can participate in the most effective and efficient way possible.

All participants in the mediation must be in agreement for a particular issue to be resolved. Written agreements listing all issues resolved will be reviewed and verbally approved by all participants at the end of the mediation session prior to submission to the Court. Copies of the mediation agreement will be distributed to all participants.

On occasion, there may be an interim agreement between mediation sessions which the parties may choose to submit to the Court. After each session, a status report will be submitted to Court stating the date of the next mediation session or if the case has been closed. It may also contain any other information which all the parties decide to report to the Court.

## **6. MEDIATORS**

### Section A: Qualifications, Training and Experience:

The New York State Unified Court System shall maintain county rosters of Consultant Mediators to mediate child abuse and neglect matters pending before the Family Courts in the Ninth Judicial District (Orange, Dutchess, Putnam, Rockland and Westchester Counties). The program shall operate pursuant to the Rules of the Chief Administrative Judge (§146).

Appointment to the rosters is at the discretion of the Administrative Judge of the Ninth Judicial District who, in consultation with the Coordinator of the NYS Child Welfare Court Improvement Program, shall review applications and make recommendations regarding appointment. Applicants may be requested to complete additional training or experiential requirements prior to admission to the roster if the applicant's mediation training and experience does not fully prepare them for Consultant Mediator status.

Minimum Requirements for appointment to the roster include completion of 24 hours of training in basic mediation skills and an additional 16 hours of specific training on mediation of child welfare (abuse and neglect issues). Applicants must also document substantial recent experience mediating actual cases, preferably family matters. Substantial recent experience is defined as at least 20 mediation cases conducted as either a solo or co-mediator within the last 3 years. Consultant Mediators without prior permanency mediation experience will be scheduled to co-mediate with an experienced mentor until the Program Administrator determines that they are prepared to solo mediate.

Individuals that have completed the training requirement, but who don't meet the experiential requirement may be admitted to the roster as an unpaid apprentice mediator. To attain paid Consultant Mediator status, an apprentice must conduct 20 mediation sessions as a co-mediator under the mentorship of a Consultant Mediator or otherwise document that the experiential requirement has been met and be recommended for admission by the review committee.

Roster members must attend a minimum of six hours of additional approved training relevant to child welfare mediation practice every two years to remain on the roster.

## Section B: Ethics/Standards of Conduct

Mediators will adhere to the following standards, including, but not limited to:

- a. Meet the practice and ethical standards of applicable codes of ethics governing their profession. Maintain objectivity and control for bias during all mediation sessions.
- b. Protect the confidentiality of all parties. This includes not releasing information or making recommendation about the case to the Court or any individual, except as compelled by statute. Limitations to confidentiality will be clearly explained to all mediation participants before sessions begin.
- c. Decline to provide legal advice and not knowingly assist parties in reaching an agreement that would be unenforceable for reasons such as fraud, duress, illegality or the agreement being unconscionable.
- d. Consider the health, safety, welfare and best interest of the child in all phases of the process.
- e. Disclose to the court, any participant and his/her attorney any conflicts or interests or dual relationships. Operate within the limits of his/her training and experience and disclose limitations or bias that would affect the mediation.
- f. Terminate any session in which issues of coercion, inability to participate, lack of intention to resolve the issues at hand or physical or emotional abuse during the mediation sessions are involved.

## Section C: Mediator Payment

Consultant Mediators will be paid \$75 per hour. Billable time will include case development activities, actual time spent in mediation sessions, and post-mediation agreement and paperwork preparation time. Travel time is not a billable expense. Mediators may bill up to ten (10) hours for each case referred. Additional hours beyond ten (10) will not be reimbursed unless pre-approved by the Program Administrator. If a scheduled mediation session cannot be held because a required party fails to show or for other good cause the Consultant Mediator may be paid for one hour for that session. Such payment is at the discretion of the Program Administrator. Reasonable travel reimbursement for mileage and tolls will be made for mediators traveling more than 35 miles from their home. Any travel over 100 miles must be pre-approved by the Program Administrator.

# 9<sup>th</sup> Judicial District Permanency Mediation Program

**It is expressly understood and accepted that the 9<sup>th</sup> District Permanency Mediation Program protocol is not an employment agreement and as such the Consultant will have no claim to Unified Court System benefits or employee considerations.**

**The Consultant agrees to take full responsibility for declaration of income for tax purposes and for the payment thereof.**

**SIGNATURE** \_\_\_\_\_ (Consultant)

**DATE** \_\_\_\_\_