

**SUPREME COURT, CIVIL BRANCH
WESTCHESTER COUNTY
STATEMENT OF PROCEDURES
MATRIMONIAL PART
EARLY NEUTRAL EVALUATION PROGRAM**

I. OVERVIEW

Neutral Evaluation is a confidential alternative dispute resolution process that may result in faster, more convenient, less expensive, and less acrimonious settlement than might be the case in the normal course of litigation. In Neutral Evaluation, a neutral third party—the Neutral Evaluator— hears abbreviated case presentations by the parties and counsel, provides an informal assessment of the strengths and weaknesses of the arguments and may offer a non-binding opinion. Neutral Evaluators have significant experience in matrimonial law and specific training in Neutral Evaluation. Their assessments and opinions may help parties to analyze the case, facilitate discussion, and generate a settlement.

The Early Neutral Evaluation Program (the "ENEP" or the "Program") offers parties access to qualified Neutral Evaluators who meet the criteria set out in Section VI. The goal of the ENEP is to assist the parties and their counsel in reaching a resolution on a discrete issue or issues. Although parties are not obligated to settle in Neutral Evaluation, parties often resolve the discrete issue or issues referred to the Neutral. Parties shall attend the Neutral Evaluation session with their attorneys. Referral to the Program is not appropriate where only one party is represented by counsel, or in cases of domestic violence, child abuse, or severe power imbalance.

II. DEFINITIONS

"Neutral" shall refer to Neutral Evaluators.

"Neutral Evaluation" refers to 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 to help parties reach a settlement.

III. PROCEDURES

The assigned Matrimonial Part Justice or the assigned court attorney-referee may

refer parties to the Program with their consent or the parties, on their own, may request referral to the Program. Cases involving child abuse or neglect (as defined in Family Court Act § 1012(e) and (f) and Social Services Law § 412), domestic violence, or a severe power imbalance between the parties are not appropriate for referral to the Program. Cases will be screened to avoid inappropriate referrals.

To begin the process, the court issues an Order of Reference on consent of the parties. The Order of Reference specifies the discrete issue (e.g., child custody, visitation and/or financial issues, including equitable distribution, child support, add-on's, and separate property) to be submitted to the Program. The Order shall direct parties and counsel to attend a free, 90 minute session with a Neutral Evaluator from the Program's Roster of Neutrals. If parties wish to continue beyond the initial ninety (90) minute session, they may continue that session or schedule additional sessions. Neutrals shall be entitled to compensation from the parties at a rate that shall be \$400 per hour, following the initial session. Payment shall be made in advance of scheduled sessions. See Section VII.

The Order of Reference shall contain the control date set by the referring Justice or Court-Attorney Referee for the parties to appear in Court for a conference following the Neutral Evaluation session. All pre-trial proceedings scheduled in the Preliminary Conference order shall continue and shall not be stayed pending the Neutral Evaluation. If all parties request, the referring Justice or Court-Attorney Referee may agree to extend dates given the particular circumstances presented. In no event shall the date for completion of discovery set in the Preliminary Conference Order or the date for the Compliance Conference be extended or adjourned by reason of the pendency of the Neutral Evaluation.

The Court shall deliver the Order of Reference to the parties who shall select a Neutral within five business days of receipt of the Order. The parties may choose a Neutral Evaluator from the Court's Roster of Neutrals or they may choose a Neutral who is not on the Court's roster. If the parties cannot agree on a Neutral, they shall send parties shall not disclose who chose which Neutral. The parties shall confirm in advance that the two roster Neutrals (a) are available to take the case; (b) do not have a conflict of interest. The referring Justice shall then select one of the Neutrals and notify the parties promptly of the selection.

The parties are required to appear at the initial session within ten (10) days of selecting the Neutral or receiving notification of the selection. The parties' counsel shall simultaneously exchange and submit to the Neutral Evaluator a concise, two-page summary of the issue presented, relevant facts, and applicable law, if any. The parties'

counsel shall also submit (and exchange if not yet exchanged) copies of each client's sworn statement of net worth. The foregoing exchange and submissions shall be made so as to ensure that the Neutral Evaluator receives such submissions and statements of net worth at least five business days before the scheduled Neutral Evaluation. The Neutral Evaluator may request limited, additional information, keeping in mind the additional cost this may cause the respective parties. The Neutral Evaluator may further request a conference call with both attorneys regarding any preliminary matters. The Neutral may give to the parties any agreements or memorandum of understating generated at the sessions.

Within five (5) business days after the conclusion of the Neutral Evaluation session(s) — which shall occur whenever after the initial session one party, both parties, or the Neutral decides that the process has ended — the Neutral shall send a Report (“Report of the Neutral”) to the Court and to counsel for the parties stating:

- (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 Neutral shall not disclose other information discussed during Neutral Evaluation, except as described in Section IX.

IV. ROLE OF THE NEUTRAL

The Neutral Evaluator is an expert in the subject matter of the issues referred who hears abbreviated case presentations and provides a non-binding assessment of the merits of the respective claims in an effort to facilitate settlement. The Neutral Evaluator is not an advocate and may give an opinion as to likely court outcomes. At the parties' request, the Neutral Evaluator may also provide settlement assistance.

At the initial session, the Neutral Evaluator shall explain that all communications are confidential (with narrow exceptions outlined below) and will not be disclosed to the Justice hearing the case or in any other judicial or administrative proceeding. The Neutral Evaluator shall also explain that either party is free at any time to end the Neutral

Evaluation and return to Court.

During the Neutral Evaluation, each party relates the facts of the dispute and raises particular issues of concern. The Neutral Evaluator may ask the parties clarifying questions related to the issues submitted.

If the parties reach a written agreement during Neutral Evaluation, the parties shall submit the agreement to their respective attorneys for review.

V. 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' satisfaction. Accordingly, unless exempted by the Neutral for good cause shown, the parties shall be present during the Neutral Evaluation session.

The presence of counsel for each party at all Neutral Evaluation sessions is required. For those cases in which an Attorney for the Child or guardian ad litem has been assigned, Neutral Evaluation may not commence without the appropriate Attorney or guardian's presence, unless the parties agree otherwise.

VI. THE ROSTER OF NEUTRALS

The Program has assembled a Roster of Neutrals. Attorneys who wish to join the Roster must comply with the following prerequisites:¹

Neutral Evaluators who wish to qualify for appointment to the Roster must have successfully completed at least six hours of approved training in procedural and ethical matters related to Neutral Evaluation and be:

- (1) Lawyers admitted to practice law for at least five years who also have at least five years of substantial experience in the area of matrimonial law; or
- (2) Individuals who have served at least five years as a judge with

¹ The training and qualifications guidelines for the Program are from Part 146 of the Rules of the Chief Administrative Judge. See Part 146 at www.nycourts.gov/rules/chiefadmin/146.shtml

substantial experience in the area of matrimonial law.

Continuing Education: All Neutral Evaluators must attend at least six hours of additional approved training relevant to their respective practice areas every two years.

Application to join the Roster shall be made to the Administrative Judge and shall include a letter of interest with a description of the applicant's credentials in the format prescribed by the Program.

The Administrative Judge shall determine whether a person qualifies for inclusion on the Roster and whether a person seeking inclusion on the Roster has the requisite temperament, character, and discretion for appointment. Continuing presence on the Roster is subject to review by the Administrative Judge. Neutrals may be removed from the Roster at the discretion of the Administrative Judge.

VII. FEES

The Program does not charge or administer fees. Parties referred to ADR pursuant to this Statement of Procedures shall be required to compensate the Neutral for services rendered following the initial 90-minute session and for time spent reviewing materials submitted by the parties for purposes of any subsequent sessions at a rate of \$300.00 per hour. The fee arrangement with the Neutral 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 sessions for which compensation is required. Sessions shall be paid for in advance. Neutrals are encouraged to work on a sliding scale to take into account the parties' financial circumstances.

VIII. IMMUNITY

Neutrals serving in this program shall be immune from suit as a result of any conduct or omission during the performance of duties in that capacity to the extent permissible by law.

IX. CONFIDENTIALITY

Except as set forth below, all oral, written, or other communications made during the course of the Neutral Evaluation by any party, Neutral Evaluator, or any other person present shall be confidential, and shall not be disclosed in any present or future judicial or administrative proceeding. Similarly, all information generated in or in connection with the Neutral Evaluation — including memoranda, work products or case files of a Neutral Evaluator — shall remain confidential and not be subject to disclosure in any present or

future judicial or administrative proceeding. However, Neutral Evaluation shall not be used as a shield with respect to otherwise discoverable documents or information produced or occurring prior to or outside of the Neutral Evaluation process.

Moreover, except as set forth below, nothing about the substance of the Neutral Evaluation, such as the weaknesses or strengths of the parties' cases or the relative willingness of parties to discuss settlement proposals, shall be revealed to the referring Justice, Court-Attorney Referee, or any other person by the Neutral Evaluator or any party or attorney. The parties shall report to the Court whether the issue or issues referred to the program have been "resolved" or "not resolved." If "resolved" the parties shall prepare and execute a stipulation for submission to the Court on the discrete issue or issues which were resolved.

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:

1. Attendance

Whether the parties and their counsel attended the initial session will be reported to the referring Justice or Court Attorney-Referee.

2. Waiver

Parties to the Neutral Evaluation and the Neutral Evaluator 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.

3. Written Agreement

A writing signed by all the parties embodying a negotiated agreement submitted to the court for review. Additionally, a limited report of the outcome, as explained in Section III, will be sent to the referring Justice or Court Attorney-Referee. Only those signed agreements that have become court orders may be admissible in any present or future judicial or administrative proceeding.

4. Threats of Imminent, Serious Harm

If a communication or information constitutes 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.

5. 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 Neutral Evaluation, the Neutral Evaluator will safely stop the Neutral Evaluation process. Neutral Evaluators shall report to the referring Justice or Court Attorney-Referee allegations of child abuse or neglect 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 Neutral Evaluation, the Neutral Evaluator shall safely stop the Neutral Evaluation process, meet with each party individually where appropriate to learn as much as possible about the circumstances as to whether to resume the process. Allegations of domestic violence shall not be disclosed to the referring Justice or Court Attorney-Referee; instead, the Neutral Evaluator will give victims information regarding their rights in the form prescribed in Family Court Act § 812 (5).

XII. REFERRAL TO THE PROGRAM AND ONGOING LITIGATION

Cases may be referred to Neutral Evaluation on consent of the parties at any time, including at the preliminary conference. Referral to the Program will not stay the court proceedings. 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.

XIII. AVOIDING CONFLICTS OF INTEREST

Before accepting a Neutral Evaluation, a Neutral Evaluator 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 Neutral

Evaluator, including a financial or personal interest in the outcome, and an existing or past relationship with a party, the party's attorneys, or a foreseeable participant in the Neutral Evaluation. The Neutral Evaluator shall disclose any such known conflict to the parties and counsel as soon as possible before accepting a referral. If the Neutral wishes to accept a referral after discovering a potentially disqualifying fact, the Neutral is obliged to disclose the disqualifying facts to the parties and, where such facts exist, shall not serve unless the parties consent in writing. If a Neutral later learns of any disqualifying fact after accepting a case, the Neutral shall disclose it as soon as practicable. If unable to function in a fair and impartial manner, the Neutral shall seek disqualification and notify the Court.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON.

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Plaintiff,

Index No.

- against -

**ORDER OF REFERENCE
NEUTRAL EVALUATION**

Defendant.

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1. On consent of the parties the following issues are hereby referred to the Westchester County Supreme Court, Matrimonial Neutral Evaluation Program and shall be evaluated in accordance with the Program's Statement of Procedures:

2. Counsel for the parties/the parties have designated the following Neutral Evaluators from the Court's Roster of Neutrals to be contacted by the parties in the following order of priority:

- A. _____
- B. _____
- C. _____

3. The parties shall immediately contact the Neutral Evaluators to determine their availability in order of priority and shall schedule an initial session within ten (10) days of this Order of Reference with the first available Neutral Evaluator.

4. Counsel for (Plaintiff / Defendant) shall immediately forward this Order of Reference to the selected Neutral Evaluator.

5. Where financial issues are raised, at least five (5) business days prior to the initial session, the parties/counsel shall send the Neutral Evaluator a copy of the pleadings, the Statements of Net Worth, Current Tax Returns and any other information necessary for the effective evaluation of the issues involved.

6. Please indicate whether any of the following matters are pending in this case:

Motions *sub judice*: Yes _ No _ Appeals: Yes _ No _ Order(s) of protection: Yes _ No _

7. By signing below, the parties and/or their counsel, agree that they shall comply with the Statement of Procedures for the Matrimonial Neutral Evaluation Program, including those provisions regarding confidentiality and immunity. Parties and/or their counsel further understand and agree that no attorney-client relationship exists between the Neutral Evaluator and the parties, and that the Neutral Evaluator may not provide legal advice to the parties.

8. The attorneys for the parties herein are as follows:

For Plaintiff _____

For Defendant: _____

Phone: _____

Phone: _____

E-Mail: _____

E-Mail: _____

9. The parties shall appear for a status conference before this court on _____.

Signature of Counsel for Plaintiff

Signature of Counsel for Defendant

SO ORDERED:

Dated: _____

White Plains,, New York

Supreme Court Justice/Court Attorney Referee