

**SUPREME COURT OF THE STATE OF NEW YORK  
CIVIL DIVISION – COUNTY OF ROCKLAND  
SUPREME COURT  
SURROGATE’S COURT**

**STATEMENT OF PROCEDURES  
ALTERNATIVE DISPUTE RESOLUTION PROGRAM**

**PREAMBLE**

It is the policy of the Courts of this State, as set forth in the State Chief Judge’s Excellence Initiative, to encourage the resolution of disputes and the early settlement of pending litigation through various settlement procedures. The following Rules shall govern cases which qualify for [Alternative Dispute Resolution](#) (“ADR”) through presumptive mediation. The Rules set forth herein are intended to apply in the Civil Division of the Supreme Court and the Surrogate’s Court of Rockland County. These Rules supplement and shall be applied in tandem with the Rules of the Alternative Dispute Resolution Program for the Ninth Judicial District (the “Ninth JD Rules”). Capitalized terms to the extent not defined herein are as defined in the Ninth JD Rules.

**Rule 1. Program:**

The Civil Division of the Supreme Court of the State of New York, County of Rockland, and the Surrogate’s Court of Rockland County employ the Alternative Dispute Resolution Program instituted by the Ninth Judicial District. Unless otherwise directed by the Court, cases referred to the Program shall be mediated. Cases which qualify for referral to the Program shall be those cases that have been designated by the Civil Division as qualifying for presumptive mediation, as identified in Rule 2 herein, as well as any cases where all parties have elected to pursue mediation, and any cases where the Court has exercised its discretion to refer the cases to mediation.

**Rule 2. Cases Qualifying for Presumptive Mediation and Determination of Suitability:**

Listed below are those cases which have been designated as qualifying for presumptive mediation.<sup>1</sup> All such cases shall be referred to mediation utilizing the procedures and forms established by the Ninth JD Rules and any Rockland County specific forms (see schedule 2). Those forms enable parties or their counsel to identify whether their case qualifies for mediation,

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This designation list is for the initial ADR implementation phase and is subject to the addition of other case types once the program is up and running.

following which the Civil Division Justices and/or Surrogate will review such forms to confirm that the case does qualify, in which event the mediation shall be initiated and an Order of Reference issued in accordance with the Ninth JD Rules. The following cases in Rockland County are deemed to qualify for presumptive mediation:

- (1) collection cases
- (2) personal injury cases (post initial exchange of medical information)
- (3) property damage/subrogation matters
- (4) simple matrimonials (e.g., W-2 employees; limited assets; uncontested custody and visitation and where there is no order of protection)
- (5) contracts and commercial disputes with \$50,000 or less in dispute
- (6) simple estate disputes with \$50,000 or less in dispute
- (7) any case which does not fall into the list of cases alone, but where all parties request mediation, or where the Court directs the case to go to mediation in the exercise of the Court's discretion

### **Rule 3. Roster of Mediators and Compensation:**

The Administrative Judge for the Ninth Judicial District shall assemble a roster of neutrals.

- (i) Mediators who wish to join the Roster must comply with the following prerequisites:<sup>22</sup>

In order to be eligible to serve as a Mediator and be listed on the Roster, a person shall possess the following qualifications and such others as may hereafter be promulgated. A mediator must: (a) have completed at least the amount and type of training required by Part 146<sup>22</sup> of the Rules of the Chief Administrator; (b) have recent experience mediating cases in the particular field of expertise as mandated by Part 146; (c) comply with the Standards of Conduct for Mediators as set forth in the 9<sup>th</sup> JD District Wide Rules Applicable to all Mediation and hereinafter promulgated; and (d) attend at least six hours

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Part 146 requires prospective mediators to have successfully completed a minimum of forty (40) hours of training in an OCA-sponsored or OCA-recognized training program, which includes 24 hours of training in basic mediation skills and techniques and 16 hours of training in the specific mediation techniques pertaining to the particular field of expertise (see [Part 146](#) of the Rules of the Chief Administrator).

of additional approved training relevant to their respective practice areas every two years. See [www.nycourts.gov/rules/chiefadmin/146.shtml](http://www.nycourts.gov/rules/chiefadmin/146.shtml) .

•NOTE: Matrimonial cases involving financial issues will be referred only to those Mediators with knowledge of, training in and experience with financial aspects of divorce. Cases involving issues relating to decision-making for a child or parenting time with a child shall be referred only those Mediators with knowledge of, training in and experience with such issues.

- (ii) Continuing presence on the Roster is subject to review by the Administrative Judge. Mediators may be removed from the Roster at the discretion of the Administrative Judge.
- (iii) Unless otherwise directed by the Court, the Mediator shall be compensated in accordance with the Ninth JD Rules, including those provisions allowing for exemptions from parties having to pay for mediator compensation and those provisions allowing for portions of the Mediator's time to be non-compensable.

**Rule 4. Procedure; Automatic Disclosures:**

- (i) The referral form shall reflect the nature of the case so that a mediator with the appropriate knowledge and expertise can be scheduled.
- (ii) Unless otherwise directed by the Mediator, within ten days of the filing of the Order of Reference, pursuant to Ninth JD Rules, each party shall deliver to the Mediator a copy of that party's marked pleadings (including responsive pleadings) together with a pre-mediation memorandum in the form set forth in the Ninth JD Rules. Except as otherwise agreed, this memorandum shall not be served on the adversary or filed in court, shall be read only by the Mediator, and shall be destroyed by the Mediator immediately upon completion of the mediation.
- (iii) Unless otherwise agreed by the parties and the Mediator or as directed by the Mediator, within ten days of the filing of the Order of Reference pursuant to the Ninth JD Rules, the parties shall exchange information as specified in the Mediation Disclosure Protocols annexed hereto as Schedule 1. Disclosure for mediation purposes shall be consistent with the efficient resolution of the case. Unless otherwise directed by the Court or Mediator or agreed to by the parties, the timeframe covering information to be produced pursuant to the Mediation Disclosure Protocols shall be from the earliest date by which the statute of limitations on any claim asserted in the action began to accrue.
- (iv) The Justices of the Supreme Court Civil Division and the Surrogate shall have the discretion to modify the deadlines for initiation and completion of the mediation process, including the discretion to limit required disclosure or to allow for additional disclosure

beyond that which is exchanged pursuant to the Mediation Disclosure Protocols prior to the initiation of the mediation process.

**Rule 5. Continuation of Mediation after Expiration of the 45-Day Period:**

If the matter has not been entirely resolved within the 45-day period as provided in the Ninth JD Rules, but the parties and the Mediator believe that it would be beneficial if the mediation process were to continue, the process may go forward, but in such event, there shall be no extension or stay of the proceedings unless otherwise provided by the Ninth JD Rules or leave is granted by a Justice of the Rockland County Supreme Court and the Surrogate.

**Rule 6. Further Mediation:**

After completion of the mediation, upon request of a party or upon its own initiative, the Civil Division Justice, in his or her discretion, may issue an order directing a second referral to the Program. Any such referral shall be entertained and ordered as early as practicable and shall be administered in accordance with these and the Ninth JD Rules.

**Rule 7. Administration of Program:**

The Program shall be supervised and coordinated by the Principal Court Attorney for the Civil Division Justice or the Surrogate assigned to the case, who shall act as the Administrator for the implementation of ADR for that case.

**Judge Robert Berliner, J.S.C.**

**Judge Sherri L. Eisenpress, J.F.C., A.J.S.C.**

## **Schedule 1**

### **Mediation Disclosure Protocols Civil Division, Supreme Court, Rockland County**

- (1) Documents sufficient to establish the subject contract, statutory cause of action (including the alleged violation), or the relationship between the parties
- (2) Preliminary calculation of damages, including for counterclaims, cross-claims and third party actions
- (3) Proof of any insurance (including excess) available to satisfy any cause of action as well as proof of any reservation of rights or disclaimer of coverage
- (4) Documents sufficient to show any dispositive affirmative defense
- (5) To ensure that there is no gap in communication, parties should advise their adversary of any change in position regarding a previous settlement demand or offer
- (6) Any other documents that the parties, in consultation with the Mediator at the pre-mediation conference, agree to exchange
- (7) The names and titles of the people who will be attending the mediation
- (8) Counsel are, of course, encouraged to exchange any additional documents they believe would be helpful to the resolution of the dispute