

SUPREME COURT, CIVIL BRANCH WESTCHESTER COUNTY

STATEMENT OF PROCEDURES PRESUMPTIVE MATRIMONIAL MEDIATION 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 Westchester County Supreme Court Matrimonial Part desires to use mediation as one method of settling disputes. The benefits to the parties are many, not only in a savings of time and money, but also in providing a result in which all parties benefit. The following Rules shall govern cases which qualify for [Alternative Dispute Resolution](#) ("ADR") through presumptive mediation and optional mediation. The Rules set forth herein are intended to apply in the Westchester Supreme Court Matrimonial Part. 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 Westchester Supreme Court Matrimonial Part, employs 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. A roster of private mediators has been established for this purpose and, in addition, one Court Attorney Referee trained in mediation. Cases which qualify for referral to the Program shall be those cases that have been designated by the Court 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. All such cases shall be referred to mediation utilizing the procedures and forms established by the Ninth JD Rules. Those forms enable parties

and/or their counsel to identify whether their case qualifies for mediation. The Court 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 are deemed to qualify for presumptive mediation:

A. PRESUMPTIVE MEDIATION

1. Matrimonial Actions without children
2. Matrimonial Actions with children and parents are W-2 employees
3. Any case where the parties request mediation

B. EXCLUSION FROM MEDIATION

Matrimonial actions, involving allegations of domestic violence, 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 and/or where temporary or permanent Orders of Protection have been issued are not appropriate for referral to the Program. Cases will be screened to avoid inappropriate referrals.

Rule 3. REFERRAL TO THE PROGRAM AND ONGOING LITIGATION:

Cases may be referred to Mediation at anytime including the preliminary conference (which is typically when referrals are made). A party who attends the initial session complies with the Order of Reference, even if that party ultimately chooses not to proceed with mediation.

Referral to the Program will not stay the court proceedings in any respect. 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.

Rule 4. Roster of Mediators and Compensation:

The Administrative Judge for the Ninth Judicial District shall establish and maintain a Roster of Mediators for the Court (“the Roster”).

- (i) 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) A mediator must have completed at least the amount and type of training required by Part 146 of the Rules of the Chief

Administrator; (b) have recent experience mediating divorce, custody, visitation and equitable distribution cases, and any other mediation training or experience deemed appropriate by the Court; and (c) comply with the Ninth Judicial District's Standards of Conduct for Mediators..

•NOTE: 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) The Roster will be available through the [Court's website \(www.nycourts.gov\)](http://www.nycourts.gov).
- (iv) 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 5. Procedure; Automatic Disclosures:

- (i) Unless otherwise directed by the Mediator, at least ten days before the first mediation session, 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.
- (ii) 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.

- (iii) The Court Attorney Referees supervising discovery 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 6. 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 Court.

Rule 7. Further Mediation:

After completion of the mediation, or upon request of a party or upon its own initiative, the Court Attorney Referee or Supervising 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 8. Administration of Program:

The Program shall be supervised and coordinated by the Rosemary Palladino Telephone: 914-824-5337 Email: rpalladi@nycourts.gov who shall act as the Administrator for the implementation of ADR for that case.

Schedule 1

WESTCHESTER MATRIMONIAL ACTIONS

The parties shall exchange and provide the Mediator with the following documents:

1. A copy of their Statement of Net Worth
2. The three most recently filed Federal and State tax returns
3. Current salary information and paychecks
4. Current Deferred Compensation Statements
5. Any and all information related to the ownership, value, and equity of the marital residence.

At any stage, the Mediator may request a party to submit additional information as the Mediator deems appropriate.