

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS**

**HON. JOSEPH A. EGITTO
HON. DENISE M. WATSON
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**RULES OF THE FAMILY COURT
ALTERNATIVE DISPUTE RESOLUTION PROGRAM**

PREAMBLE

As set forth in the State Chief Judge's Excellence Initiative, the Courts of the State of New York encourage the resolution of disputes and the early settlement of pending litigation through various settlement procedures. The following rules govern those cases in Dutchess County Family Court which are eligible for Alternative Dispute Resolution ("ADR") through presumptive mediation. The Rules set forth herein supplement and shall be applied in conjunction with the General Mediation Rules for the Ninth Judicial District ("Ninth JD Rules"). Any terms not specifically defined herein are as defined in the Ninth JD Rules.

Rule 1. Program

The Dutchess County Family Court participates in the Alternative Dispute Resolution Program ("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 Dutchess County Family Court as qualifying for presumptive mediation, as identified in Rule 2 herein, as well as any eligible cases where all parties have elected to pursue mediation, and any eligible cases where the Court has exercised its discretion to refer the cases to mediation.

Rule 2. Cases Qualifying for Early Intervention of Presumptive Mediation and Determination of Suitability

Listed below are those cases which have been designated as qualifying for presumptive mediation. Unless otherwise directed by the Court, such cases shall be referred to mediation utilizing the procedures and forms established by the Ninth JD Rules.

- (1) custody/visitation/guardianship cases, including modification and/or enforcement of custody/visitation/guardianship;
- (2) termination of parental rights cases for permanency planning (once implemented district- wide);
- (3) any cases which do not fall into the list of cases above, 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.

Notwithstanding the above, any case in which there is an active temporary or permanent stay away order of protection (“OP”) involving the parties or an active child protective services (“CPS”) investigation is not eligible for mediation. Cases in which there is a history of or ongoing domestic violence but where there is currently not an active stay away order of protection may be deemed inappropriate for mediation, although the existence of domestic violence is not an automatic prohibition to mediation.

Rule 3. Mediators

Dutchess County’s Community Dispute Resolution Center is the Mediation Center of Dutchess County (“MCDC”). All eligible custody, visitation or guardianship cases will be presumptively referred to the MCDC for mediation.

In the event that the MCDC is not able to take a case, or the parties seek an alternate mediator, there will be a court roster of approved mediators to which they shall be referred. Upon implementation of permanency planning mediation in Dutchess County Family Court, such cases shall be referred to a Mediator from the court roster.

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 the parties having to pay for mediator compensation and those provisions allowing for portions of the Mediator’s time to be non-compensable.

Rule 4. Subject Matter Rules:

Custody/Visitation/Guardianship Cases:

At the time of the filing all custody, visitation and guardianship petitions will be initially screened for early intervention presumptive mediation eligibility. For those cases initially deemed eligible for mediation, the Court will provide to the petitioner, and include in the service packet to the respondent, information about mediation and the services offered by the MCDC. Such information will include contact information for the MCDC and directions on how to initiate the mediation process.

Unless a determination is made that a case is ineligible or the Judge presiding over the matter believes that, based upon the particular facts and circumstances of the case, that mediation would not be beneficial or appropriate, the matter shall be referred to mediation. At the first appearance where both parties to the action are present, the Judge will refer the matter to mediation through either the MCDC, or a mediator from the roster, utilizing the procedures and forms established by the Ninth JD Rules. Attorneys for the children and parties may be assigned prior to or at the first appearance.

If there is a representative from the MCDC in Court at the time that the case is heard the matter will be placed on second call in order to allow the parties to speak to the representative and start the intake process, including hopefully scheduling the initial mediation session. Otherwise, a written referral will be sent to the mediator and the parties. The parties will be directed to contact the mediator within a specified time period in order to start the process.

The matter will then be adjourned for a sufficient period of time to allow the mediation process to commence. Generally, the Court will adjourn the matter for a period of 30-45 days for this to occur. The Judge presiding over the matter may adjust the length of adjournment, taking into consideration the particular facts and circumstances of the case and the dates of the initial mediation session, if known.

The Court shall direct the Mediator to provide a report to the Court prior to the return date containing limited information such as: whether the intake process has been completed, the dates of any future mediation session, and the status of mediation. The Court will notify the Mediator of the next court date.

If the parties are engaged in mediation, and the parties and Mediator believe that it would be beneficial for the mediation process to continue, the matter may be further adjourned for a period of time at the discretion of the Family Court Judge presiding over the case. Alternatively, if the Family Court Judge receives information that the parties did not participate, the mediation process is not advancing or that an agreement has not been reached, the Judge may advance the case as his or her calendar permits and the case will progress accordingly.

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

Permanency Planning Mediation and Other Types of Cases:

It is anticipated that once permanency planning mediation is implemented in Dutchess County that the above rules will be adjusted as needed based upon the nature of the case and any relevant statutory time limitations. For other types of cases, the parties will not initially be provided with the informational packet at the time of filing but the remainder of the rules shall remain the same.

Rule 5. Discovery Protocols:

Unless otherwise directed by the Mediator, five days prior to the first scheduled mediation session each party shall deliver to the Mediator a copy of that party's pleadings (including any amended pleadings or attachments), copies of any current custody/visitation/guardianship orders or Judgment of Divorce relating to the custody of the children together with a pre-mediation memorandum (not to exceed five pages) setting forth their view of the facts and proposed resolution. Except as otherwise agreed, this memorandum shall not be served upon 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. In the event that any interim orders are issued by the Court while the mediation process is ongoing, the parties shall deliver a copy of such order to the mediator.

Rule 6. Mediation Statements:

The Mediator shall provide the Court with periodic reports as to the status of the mediation, including but not limited to: whether the parties have scheduled the initial mediation appointment,

whether they are participating in the mediation process; status of the mediation, and whether any agreement has been reached. The Court shall advise the Mediator of any and all adjourn dates of the matter while mediation is ongoing.

Rule 7. Mediation Panel:

The MCDC is the primary mediation resource for Dutchess County Family Court for eligible cases involving custody, visitation and guardianship. The MCDC does not handle permanency planning mediation. Any cases which the MCDC is unable to handle would be referred to a mediator from the court roster of approved mediators.

Rule 8. Training for Mediators:

All mediators handling Family Court matters must successfully complete the mediation training as required by Part 146 of the Rules of the Chief Administrative Judge as well as any additional advanced training as required by the Ninth JD Rules in order to be eligible to be on the court roster. Such advanced training should include training in custody/visitation, domestic violence and, once implemented, permanency mediation. Mediators handling family court matters through the MCDC receive advanced training in custody/visitation and domestic violence.

Rule 9. Administration of Program

This program shall be supervised and coordinated by the Court Attorney for the Family Court Judge assigned to the case, who shall act as the Administrator for the implementation of ADR for that case.