

ORANGE COUNTY FAMILY COURT
MEDIATION AND ALTERNATIVE DISPUTE RESOLUTION PROGRAM

PREAMBLE and OVERVIEW

The New York State Unified Court System has implemented a systemwide initiative in which, aside from appropriate exceptions, parties in civil cases will be referred to mediation, or some other form of alternative dispute resolution (ADR) as the first step in the case proceeding Court. 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 Orange County Family Court and shall supplement and be applied in tandem with the Rules of the Alternative Dispute Resolution Program for the Ninth Judicial District (the Ninth JD Rules”).

The Orange County Family Court will be referring appropriate cases to mediation prior to a first appearance before a Judge. Mediation, a type of ADR, is a process in which a neutral facilitates settlement discussions between parties. The neutral has no authority to make a decision or impose a settlement upon the parties. The neutral attempts to focus the attention of the parties on their needs and interests rather than upon rights and positions. This helps the parties to understand each other’s positions and interests, and consider options apart from conventional litigation to resolve their dispute, typically leading to more satisfying outcomes, although any settlement is entirely voluntary.

Rule 1. Referral to mediation and qualifying cases

(A) Except as herein provided, any contested civil matter shall have a presumption of referral to mediation or another form of Alternative Dispute Resolution (ADR). For family court, this will consist of custody and visitation cases, child support cases and certain PINS cases [parent/child mediation]. Although the parties may be referred to mediation, compliance does not require that the parties reach a settlement. Cases shall be screened by the Court to determine whether the case is appropriate for mediation and whether a need for emergency relief makes the referral inappropriate until the emergency relief is heard by the Court.

(B) Family offense and custody and visitation cases that allege domestic violence will not be referred to mediation/ADR. Intake and screening procedures will be implemented by the Court to identify cases in which there are allegations of domestic violence and to provide a process by which a party alleging violence will make a determination based on informed consent whether or not to proceed with mediation. Such cases can proceed to mediation if both parties consent.

(C) All cases subject to the presumption of Alternative Dispute Resolution shall be referred to the Dispute Resolution Center unless the parties agree and consent to an alternate ADR provider. If the parties have participated in mediation or other ADR services prior to the filing of a petition, they will not be required to submit to mediation a second time. The Dispute Resolution Center maintains a roster of OCA-trained mediators, with specific knowledge in all areas of family law. The DRC is responsible for the training, assignment and oversight of the mediators once a matter is referred to the DRC.

(D) If it is apparent that a case which was not otherwise eligible for mediation at the time of filing becomes a candidate for mediation as the case progresses, the Judge may refer the case for mediation. However, such referral will not remove the case from the assigned Judge, interfere with discovery, nor serve to postpone scheduled motions and hearings. In the Courts discretion, the standards and goals time frame may be tolled pending mediation.

(E) All cases involving child support (except violations and other matters involving incarceration) will be referred to a mediator who is familiar with the CSMA and the financial guidelines. Participants will be expected to bring with them all necessary financial documents including tax returns, pay stubs, educational and medical bills, etc.

Rule 2. Timing of ADR Process

(A) Unless otherwise ordered by the Court, the first mediation screening shall be held within 10 calendar days after the referral to mediation, which generally will be generated upon the filing of the first petition. The filing of subsequent, related petitions will not extend the time.

(B) Within 2 business days of the mediation session, the DRC shall provide the Court with a status update indicating whether mediation was successful, was unsuccessful or additional sessions will be held.

Rule 3. Exemption/Exclusion of Cases from Mediation

(A) any party to a dispute referred to mediation may petition the Court to exclude the case from mediation if (i) the issue to be considered has been previously mediated; (ii) the issue presents a question of law only; (iii) other good cause is shown before the Judge to whom the case is assigned; or (iv) the parties have engaged the services of a private ADR provider.

(B) For Family Court matters, the following actions shall not be referred to mediation except upon consent of all parties or upon sua sponte motion of the Court:

- (1) Objections from rulings of the Support Magistrate ;
- (2) Abuse and/or Neglect petitions;
- (3) Paternity proceedings;
- (4) Habeas corpus and writs;
- (5) Family Offense Petitions;
- (6) Juvenile Delinquency petitions.

Rule 4. Confidentiality and Immunity

Any statement made during court-referred mediation or as a part of intake by DRC staff in preparation for a mediation is confidential, not subject to disclosure, may not be disclosed by the mediator or staff, and may not be used as evidence in any subsequent administrative or judicial proceeding. Any document or other document generated in connection with mediation is not subject to discovery. However, a written and executed agreement resulting from mediation is not subject to the confidentiality described above.

Neither a neutral or any other observer present with permission of the parties during a mediation session may be subpoenaed or otherwise required to testify concerning a mediation in any subsequent court proceedings, nor are any notes taken by the neutral subject to discovery.

Rule 5. Appearance at Mediation

The mediation sessions will take place at the offices of the Dispute Resolution Services, or at an appropriate facility located within the Family Court building if deemed necessary. The presence of parties at all mediation sessions is required in order to move forward with mediation and it is not necessary for the parties to appear with attorneys. If one party appears with an attorney and one remains unrepresented and does not consent to the attorney being present for mediation, that attorney will remain outside the mediation room. If an agreement is reached, the party can review the agreement with counsel prior to signing it. If a party fails to appear at a duly noticed mediation session without good cause, the DRC shall notify the Judge to whom the case is assigned. After the initial Court appearance, the Judge may refer the matter back to mediation prior to trial.

Rule 6. Communication

(A) The only ex parte communication between a party and the mediator outside of the mediation session shall be for the purposes of caucus, where the mediator may ask to meet privately with each party in an attempt to facilitate an agreement.

(B) In order to preserve the objectivity of the court and the neutrality of the mediator, there will be no communication between the mediator and the Court. The DRC staff will communicate with the Court regarding attendance, request for additional time to complete mediation, notification that the matter is not appropriate for mediation, or other reasons on consent of the parties. The parties will be copied on all written communication between the DRC staff and the Court.

Rule 7. Completion of Mediation

(A) Mediation shall be completed within 45 days of the Order referring the matter to mediation unless extended by the Court. Any request for extension of mediation shall be on motion to the Court, unless requested by the DRC, which such request shall be in writing.

(B) The duration of the mediation session will generally be one to two hours. The session may be shorter or longer depending on the assessment of progress by the mediator and parties. If additional sessions are needed, the mediator and the parties will schedule the next session, without additional notice being sent by the Court.

(C) If an agreement is reached, it shall be reduced to writing at the end of the mediation session. The mediator is responsible for drafting the settlement and shall be signed by the mediator and the parties. The mediator will send a copy of the agreement to the Court and the parties will have the option of withdrawing their pending petition(s) or appearing in Court to

place the agreement on the record and having it reduced to a Court Order. [If both parties are represented by counsel, a written proposed Order can be submitted, on consent, prior to the scheduled Court appearance].

(D) If a partial agreement is reached, it shall be reduced to writing and signed by the parties and the mediator and forwarded to the Court.

(E) If it is apparent that an agreement cannot be reached, the DRC will report the lack of agreement to the Court and the matter will proceed in Court.

Rule 8. Administration of Program

The Program shall be supervised and coordinated by the Court Attorney for the individual Family Court Judge assigned to the case, who shall act as the Administrator for the implementation of ADR for that case. For cases appearing before a Support Magistrate, the Program will be supervised and coordinated through the Family Court Clerk's Office.