

ROCKLAND COUNTY FAMILY COURT
RULES OF THE
ALTERNATIVE DISPUTE RESOLUTION PROGRAM

I. Statement of the Court Program

The Rockland County Family Court Alternative Dispute Resolution (ADR) Program offers parties access to qualified mediators in an effort to resolve disputes without litigation. Cases¹ will be presumptively referred to a Mediator upon filing of the petition with the Rockland Family Court with either a Mediator from the Conflict Dispute Resolution Center (CDRC) or from a Roster of Neutrals. Where the case is referred to the CDRC, the initial mediation session will be scheduled concomitant with the initial appearance date before the Judge, Court Attorney-Referee, or Support Magistrate; the parties will appear before the Court and then immediately go into the initial mediation session in a conference room in the courthouse. Where the case is presumptively referred to a Roster Neutral, the parties will be expected to initiate the mediation process in advance of their initial appearance date before the Court.

The rules set forth below apply to the Rockland County Family Court and will operate concurrently with the Rules of the ADR Program for the Ninth Judicial District, which will define and outline the district-wide operation of the ADR Program.

II. Case Types Referred for Presumptive Mediation

PHASE ONE (commencing September 1, 2019 and continuing until February 28, 2020):

Case types in Phase One to be presumptively referred to Mediation include:

- Initial Custody/Visitation cases, with no prior court action/history.

Up to four (4) cases per week will be presumptively referred to mediation with the CDRC;

Up to four (4) cases per week will be presumptively referred to mediation with a Roster Neutral.

PHASE TWO (commencing March 1, 2020 and continuing until August 31, 2020):

Case types in Phase Two to be presumptively referred to Mediation include:

- Initial Custody/Visitation cases, with no prior court action/history; and
- Initial Custody/Visitation/Guardianship cases with prior case history in either Supreme or Family Court; and

¹ Cases that will not be appropriate for mediation are those where only one party is represented by counsel, or in cases containing allegations of domestic violence, child abuse or neglect, or another articulated severe power imbalance. The Court will screen for these issues/dynamics at the time of the filing of the pleadings, and then again at the initial appearance to insure that only appropriate cases are being referred to mediation.

- Modification/Violation of custody/visitation order cases with prior history in either Supreme or Family Court.

Up to six (6) cases per week will be presumptively referred to mediation with the CDRC;

Up to ten (10) cases per week will be presumptively referred to mediation with a Roster Neutral.

PHASE THREE (commencing September 1, 2020):

Cases types in Phase Three to be presumptively referred to Mediation include:

- Initial Custody/Visitation cases, with no prior court action/history; and
- Initial Custody/Visitation/Guardianship cases with prior case history in either Supreme or Family Court; and
- Modification/Violation of custody/visitation order cases with prior history in either Supreme or Family Court; and
- Child Support Modification/Enforcement (non-willful) proceedings; and
- Relocation cases.

Up to eight (8) cases per week will be presumptively referred to mediation with the CDRC; Up to fifteen (15) cases per week will be presumptively referred to mediation with a Roster Neutral.

I. How Presumptive Referrals for Mediation Work

The assigned Judge or Court Attorney-Referee, or the Support Magistrate, shall presumptively refer parties to the Program where certain criteria are met; however, nothing limits parties, on their own, to request referral to the Program for Mediation.

Family Courts have unique needs compared to other civil courts in that Family Court litigants often appear in Court self-represented, and in most case types before the Family Court, litigants are entitled to the assignment of counsel if they meet certain income criteria/guidelines. Many litigants who do not meet the threshold financial criteria for assigned counsel choose to remain *pro se*, as opposed to hiring attorneys. Thus, unlike in most other civil proceedings in a county-level court, many parties do not have counsel advising them or representing their interests in the litigation. As such, referrals to mediation must be made in different ways, depending on whether the parties are self-represented, represented by assigned counsel, or represented by privately retained counsel. Accordingly, the case will be referred to one or two tracks: the CDRC track or the Roster of Neutrals track.

A. CDRC Track

Where neither party is represented by counsel *or* both parties are represented by assigned counsel, and where Chambers has identified this case as qualifying for presumptive mediation, the Court will send out two documents to the parties/attorneys: (1) a Notice to Appear before the

Assigned Judge, and (2) an Order of Reference directing the parties/attorneys to engage in a mediation with CLUSTER, and directing the parties to contact CLUSTER immediately to perform a telephonic intake with the CDRC. The parties will perform the intake *in advance* of the scheduled court/mediation date.

The parties/attorneys will appear in Court on a date certain before the Judge/Court-Attorney Referee/Support Magistrate for the initial appearance. At the conclusion of that appearance, the parties will be given another court date and sent down the hall to **a conference room in the Rockland County Family Court** to engage in a free 60-90 minute session with a mediator from CLUSTER.

If the parties are able to resolve all issues with the mediator, the Judge/Court-Attorney Referee will attempt to recall the case that day to place the settlement on the record so the matter will be disposed. If the parties are unable to settle the matter at the conclusion of the first, free mediation session, they will have the option of:

(1) Scheduling another mediation session with CLUSTER in accordance with CLUSTER's fee schedule which will take place at the CLUSTER offices, or any other location to which all the parties and mediator agree; however, no adjournment of any future court dates or stay of the proceedings, including any court-authorized exchange of discovery, will be granted for the parties to continue mediation; or

(2) Discontinuing mediation and appearing before the Court on the next scheduled court date.

A. Roster Track

Where both parties are represented by retained counsel, the Court will send out two documents to the attorneys and parties: (1) a Notice to Appear before the Assigned Judge/Court-Attorney Referee/Support Magistrate, and (2) an Order of Reference directing the parties/attorneys to engage in a mediation with a Neutral from the Roster of Neutrals, which the Rockland County Family Court and the Administrative Judge for the Ninth Judicial District shall establish and maintain.¹

In order to be eligible to serve as a Mediator/Neutral and be listed on the Roster, a person shall possess the following qualifications and such others as may hereafter be promulgated. A Neutral shall have (a) have completed at least the amount and type of training required by Part 146¹ of the Rules of the Chief Administrator; (b) have recent experience mediating cases in the

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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).

particular field of expertise as mandated by Part 146; (c) comply with the Standards of Conduct for Mediators as set forth in the 9th JD District Wide Rules Applicable to all Mediation and hereinafter promulgated; and (d) attend at least six hours of additional approved training relevant to their respective practice areas every two years.

Neutrals may be removed from the Roster at the discretion of district Administrative Judge.

The Order of Reference shall direct parties to attend an initial, free, 90-minute session with a Neutral from the Program's Roster of Neutrals. If parties wish to continue ADR beyond the initial ninety (90) minute session, they may continue that session or schedule additional sessions; however Neutrals shall be entitled to compensation beyond the initial session in accordance with the ADR Program rules of the Ninth Judicial District. The Order of Reference shall also contain an appearance date within thirty (30) days as set by the referring Judge, Court-Attorney Referee, or the Support Magistrate. The proceedings on all petitions, including orders authorizing exchange of discovery, **will not be stayed** pending additional ADR sessions.

At the initial appearance before the Court, the Judge, Court Attorney-Referee or Support Magistrate shall inquire as whether the parties have already initiated mediation pursuant to the Order of Reference, and shall ascertain whether there has been compliance with the Order of Reference. A future court appearance will be scheduled for the parties to appear in the event that the matter does not resolve via mediation with a fully-executed stipulation or if the parties wish to place the terms of a settlement on the Court's record. But again, the proceedings on all petitions, including orders authorizing exchange of discovery, **will not be stayed** pending additional ADR sessions.

II. THE ROLE OF ATTORNEYS FOR THE CHILD(REN) IN PARTICIPATING IN MEDIATION

Not every case referred to mediation will have an Attorney for the Child(ren) assigned to represent the children. Also, Attorneys for Child(ren) are assigned at various stages of a pending case.

For cases referred to mediation through the CDRC, if an Attorney for the Child(ren) is present at the initial appearance, that Attorney's presence will be required at the first free courthouse mediation session with CLUSTER, unless the Attorney and the parties agree on the record before the Court that the Attorney's appearance at that initial session is waived.

For those cases referred to mediation with a Roster Neutral in which an Attorney for the Child(ren) had been appointed *prior* to the issuance of the Order of Reference, the initial ADR session may not be held without that Attorney's presence, unless the parties and the Attorney for the Child(ren) agree otherwise in writing. If an Attorney for the Child(ren) is appointed after the initial ADR session, then any future ADR sessions scheduled by the parties must be on notice to the Attorney for the Child(ren) who shall attend the session(s) unless all parties, including the

Attorney for the Child(ren), agree in writing that the Attorney for the Child(ren)'s presence may be waived.

III. Program Coordinator(s)

The ADR Program shall be supervised and coordinated by the Court Attorney for the Family Court Judge assigned to that case, or shall be supervised by the Chief/Deputy Chief Clerks of the Family Court for the Support Magistrate assigned to the child support case. Each of those individuals shall act as the Administrator for the implementation of ADR for each referred case.