

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

**RULES OF THE FAMILY COURT
ALTERNATIVE DISPUTE RESOLUTION-MEDIATION PROGRAM**

PREAMBLE

The following rules govern the cases in Westchester 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

Unless the parties demonstrate to the Court good cause for opting out, cases referred to the Alternative Dispute Resolution/Mediation Program (“Program”) shall be mediated. Cases which qualify for referral to the Program shall be those cases that have been designated by the Westchester 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 matter(s) 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. Unless the parties demonstrate good cause for opting out, such cases shall be referred to mediation utilizing the procedures and forms established by the Ninth Judicial District Rules.

(1) Custody/visitation/guardianship cases, including modification and/or enforcement of custody/visitation/guardianship involving **Indigent** Litigants: After issue is joined, the Court shall make proper inquiry and review paperwork relating to the parties’ finances. If the parties are indigent, they will be referred to participate in the PEACE program by Family Kind and then will mediate at the local Community Dispute Resolution Center (CDRC) of CLUSTER, Inc.

(2) Custody/visitation/guardianship cases, including modification and/or enforcement of custody/visitation/guardianship involving **Non-Indigent** Litigants: After issue is joined, the Court shall make proper inquiry and review paperwork relating to the parties’ finances. If the parties are found to have financial means they will be referred to participate in the PEACE program by Family Kind and then will be referred to mediation to be conducted by a roster mediator or Family Kind.

(3) After issue is joined, termination of parental rights cases will be referred to permanency mediation after discovery is completed to be conducted by a mediator who has been accepted to the permanency mediation roster;

(4) Any cases that do not fall into the list of cases above, but where all parties request and consent to participate in 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 involving the parties or an active child protective services ("CPS") investigation is not eligible for mediation.

Rule 3. Mediators

Westchester County's Community Dispute Resolution Center ("CDRC") is CLUSTER, Inc. All eligible custody, visitation or guardianship cases involving indigent parties will be presumptively referred to the CDRC for mediation.

If the CDRC is not able to take a case, or the parties request and consent to being referred to an alternate mediator, the Court will refer them to a mediator from the roster of approved Westchester County mediators.

Permanency mediators are those who have had training pursuant to the Rule of the Administrative Judge's Part 146 coupled with enhanced permanency mediation training.

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:

After issue is joined, unless the parties demonstrate good cause to opt out of presumptive mediation, or the presiding Judge makes a determination that a case is ineligible or the presiding Judge 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 CDRC, Family Kind 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 CDRC in Court at the time that the case involving indigent litigants is heard, the matter will immediately be referred to the CDRC and the parties will be directed to speak to the representative, start the intake process and schedule the initial mediation session. If a CDRC representative is not present in court when the matter is heard, 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. The matter will then be adjourned for a 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 then direct the Mediator to provide a report to the Court prior to the return date containing non-confidential 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 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:

After issue is joined, the presiding judge will refer the parties their counsel, the attorney(s) for the child(ren), the foster parents, the Assistant County Attorney and appropriate staff from the Westchester County Department of Social Services to mediation.

Rule 5. Protocols:

1. Client Preparation: Counsel shall prepare for their case to be referred to mediation by:
 - a. Informing their clients about the Court's mediation program and its expectations and requirements.
 - b. Identifying the information and material that may be useful to exchange with other parties in advance of mediation, including any information required to be exchanged by any discovery protocol prescribed by the Part.

1. Pre-mediation Memoranda: The parties shall provide a five page-limited confidential memorandum setting forth their view as to the facts, the issues that are in dispute, suggestions as to how the matter might be resolved, as well as such other information concerning the litigation as the mediator deems necessary for the effective negotiation and resolution of the issues. No portion of the confidential memorandum shall be disclosed to the Court, nor, unless otherwise agreed by the parties, to any other party to the proceeding. Any departure from the requirements set forth herein may be authorized by the Part or the Mediator.

- a. Pre-mediation Conference Calls: The Mediator may request a conference call regarding any preliminary matters and may thereafter meet or speak privately with any party and their respective counsel prior to or during a mediation session.

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:

1. Qualifications: The Administrative Judge shall establish, and the District ADR Coordinator shall maintain, a roster of trained mediators ("The Roster") for the Program which shall be available on the applicable Court or Part website within the District. To be eligible to join the Roster as a Mediator, a person shall satisfy the training and experience requirements of Part 146 of the Rules of the Chief Administrative Judge as follows:
 2. All Court Roster Mediators shall have received at least:
 - a. 24 hours of basic mediation training,
 - b. 16 hours of additional training in the specific mediation techniques applicable to specific subject areas of the types of cases referred to them.
 - c. Any additional training or experience required for permanency mediation.
 3. All Court Roster Mediators shall have recent experience mediating actual cases in the subject area of the types of cases to be referred to them. Mediation experience can be achieved by:
 - a. Mediating at least three (3) Court cases which were filed within a State or Federal Court in New York, or
 - b. Completing a Court Mediation Apprenticeship, which shall include:
 - i. Observing at least one (1) mediation, regardless of case type;
 - ii. Co-mediating three (3) Court cases in the subject area of the types of cases to be referred to them;
 - iii. Debriefing all observations and mediations with a court roster mediator or ADR Program Contact; and
 - iv. Evaluation by a court roster mediator or ADR Program Contact;

Rule 8. CONFIDENTIALITY

Mediation shall be confidential and, except as otherwise provided, any document prepared, or communications made, by parties, their counsel or a Mediator for, during, or in connection with the proceeding shall not be disclosed outside its confines by any participant. No Party to the proceeding shall, during the action referred to mediation or in any other legal matter, seek to compel production of documents, notes, or other writings prepared for or generated in connection with mediation, or the testimony of any other Party or the Mediator concerning communications made during the proceeding. A settlement, in whole or in part, reached during mediation shall be set forth in a writing signed by all parties affected or their duly authorized agents. Documents and information otherwise discoverable under New York Law shall not be shielded from disclosure merely because they are submitted or referred to in mediation.

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.