

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM**

HON. VICTOR G. GROSSMAN

**RULES OF THE PUTNAM COUNTY
ALTERNATIVE DISPUTE RESOLUTION 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 Putnam County Supreme Court 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 Supreme Court of Putnam County. 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 Supreme Court of the State of New York, County of Putnam, 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. 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- with or without children
2. Matrimonial – W-2 employees/custody
3. Tort with claims under \$75,000.
4. Contract/Commercial claims under \$75,000.

B. OPTIONAL MEDIATION

1. Personal injury actions
2. Commercial actions
3. Matrimonial actions, except in cases involving allegations of domestic violence and/or where temporary or permanent Orders of Protection have been issued.

C. Any case which does 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.

Rule 3. 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 mediator must: (a) have completed at least the amount and type of training required by Part 146 of the Rules of the Chief Administrator or equivalent experience; (b) have recent experience mediating cases as mandated by Part 146; and (c) comply with the Ninth Judicial District’s Standards of Conduct for Mediators.

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 commercial litigation (see [Part 146](#) of the Rules of the Chief Administrator).

- (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 4. 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 Justices of the Court 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 5. 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 6. Further Mediation:

After completion of the mediation, or upon request of a party or upon its own initiative, the Presiding Division 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 7. Administration of Program:

The Program shall be supervised and coordinated by the Principal Court Attorney for the presiding Justice assigned to the case who shall act as the Administrator for the implementation of ADR for that case.

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SUPREME COURT-PUTNAM COUNTY
PUTNAM COUNTY COURTHOUSE
20 COUNTY CENTER
CARMEL, NEW YORK 10512

Schedule 1

General Mediation Disclosure Protocols Supreme Court, Putnam County

A. GENERAL PROTOCOLS

1. Documents sufficient to establish the subject contract, statutory cause of action (including the alleged violation), or the relationship between the parties;
2. Preliminary calculation of damages, including for counterclaims, cross-claims, and third party actions;
3. Proof of any insurance (including excess) available to satisfy any cause of action as well as proof of any reservation of rights or disclaimer of coverage;
4. Documents sufficient to show any dispositive affirmative defense(s);
5. For construction disputes, only such documents as are necessary for the parties and Mediator to understand the nature and facilitate the resolution of the dispute, such as, for example, contracts, change orders, engineering reports, design documents, project minutes, mechanic's liens and if a subcontractor was replaced, the cost of the replacement subcontractor;
6. To ensure that there is no gap in communication, parties should advise their adversary of any change in position regarding a previous settlement demand or offer;
7. Any other documents that the parties, in consultation with the Mediator at the pre-mediation conference, agree to exchange;
8. The names and titles of the people who will be attending the mediation;
9. Counsel are, of course, encouraged to exchange any documents they believe would be helpful to the resolution of the dispute.

B. MATRIMONIAL ACTIONS

1. In all matrimonial actions, upon the filing of a Request for Judicial Intervention and the scheduling of the Preliminary Conference, the Court shall include with the letter scheduling the Preliminary Conference, a questionnaire to be completed by the filing party within ten (10) days to assist the Court in determining if Mediation is appropriate.

2. Upon receipt of the completed questionnaire, or at the Preliminary Conference, the Court may order the parties to attempt to mediate the action and adjourn the proceedings for a period of forty-five (45) days for that purpose, in addition to any other necessary temporary orders regarding issues of support, maintenance, custody and access.
3. In the event Mediation is ordered, the parties may recommend a Mediator to the Court, but the Court shall make the final determination of the Mediator.
4. The parties shall provide the Mediator with a copy of their Statement of Net Worth, the three most recently filed Federal and State tax returns, current salary information and paychecks, as well as Deferred Compensation Statements and 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.

C. PERSONAL INJURY ACTIONS

1. Within 60 days of the filing of the first Answer in such cases, the parties must produce the information specified in the following discovery protocol. Within 90 days of the filing of that Answer or Request for Judicial Intervention (RJI), or as soon thereafter as it can be scheduled, the parties, their counsel, and any insurance representatives must participate in a mediation session. If any party believes that there is good cause why a particular case should be exempted or delayed from the Discovery schedule, in whole or in part, or that mediation should be adjourned until a later date, that party must raise the issue promptly with the Court. Unless the presiding judge has already scheduled or held an initial pre-trial conference, if the mediation is unsuccessful, the parties shall promptly request that the presiding judge schedule an initial compliance conference.
2. In order to facilitate mediation, within 60 days of the filing of the first Answer or RJI, whichever shall first occur, all parties shall produce the following, if applicable:
 - a. Incident or accident reports concerning the incident or accident;
 - b. Any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment;
 - c. All photographs and videos (including surveillance and security videos) depicting the incident or accident including: damage to vehicle(s), injuries

sustained by parties, or the incident or accident scene, and/or any other photographs or videos which relate to this case;

- d. The names and contact information for each person who witnessed the incident or accident;
- e. All statements or communications of any witness(es) to the incident or accident;
- f. For motor vehicle cases, any invoices, bills, or repair estimates relating to the repair of the vehicle(s) involved in the accident; and
- g. For cases alleging damage to property, other than to motor vehicles, estimates of the damage and costs of repair to the property.

3. Plaintiff(s) shall produce to the Defendant(s) the following documents, if applicable:

- a. If the Plaintiff is claiming lost income, Plaintiff shall produce any documents supporting that claim including: any income tax returns or documents which refer to Plaintiff's employment, W-2 forms, the records of the dates of absences from work, the records relating to the facts and duration of any unemployment, the records of workers' compensation claims, unemployment insurance claims, and applications for assistance from any governmental agency because of unemployment or ill health;
- b. All medical reports and records in Plaintiff's possession relating to the injuries at issue in this matter, as well as any bills, reports, notes and records prepared by any physician, hospital, or healthcare provider who has examined, evaluated, and/or treated plaintiff for injuries sustained as a result of the incident/accident;
- c. Authorizations for release of all medical records relating to the injuries sustained by the Plaintiff because of the incident/accident; and
- d. Documentation concerning any Medicare liens.

4. Defendant(s) must produce to the Plaintiff(s) the following documents, if applicable:

- a. Any Independent Medical Examination report as well as any and all bills, reports, notes, and records prepared by any Independent Medical Examiner or healthcare provider who has examined or evaluated Plaintiff;

- b. Any documents which refer to any inspection made of the area where the incident or accident occurred on or after the date of the incident or accident and for a period of twelve months prior thereto;
- c. Any documents which refer to any complaints or violations issued for the subject location on or after the date of the incident and in the twelve months prior thereto;
- d. Any documents referring to or describing any repairs, replacements, or alterations, to the subject location;
- e. Policy and procedure manuals, posted notices, and any other documents connected to routine repairs, cleaning, maintenance, and upkeep of the premises;
- f. Notices and any other documents connected to non-routine repairs, cleaning, maintenance, and upkeep of the area where the incident or accident occurred, up to and including the date of the subject incident or accident; and
- g. Any documents related to ownership and control of the subject premises.

D. COMMERCIAL MATTERS

1. In commercial matters involving claims of less than \$75,000.00, the party filing a Request for Judicial Intervention (“RJI”) shall file contemporaneously an Addendum identifying the cause of action and nature of the matter, together with a brief description of the amount claimed for compensatory damages, equitable or declaratory relief, and any counterclaims that have been interposed.

2. The Court may, by Order, refer the parties to Mediation

- 1. Within sixty (60) days of the Preliminary Conference;
- 2. Within thirty (30) days after document and interrogatory discovery has been completed;
- 3. When depositions of the parties have been completed;
- 4. At such other time during proceedings as the Court determines may be appropriate.