

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and with advice and consent of the Administrative Board of the Courts, I hereby adopt, effective immediately, a new Part 160 of the Rules of the Chief Administrator of the Courts, to read as follows (new material underlined):

PART 160. ALTERNATIVE DISPUTE RESOLUTION IN THE TRIAL COURTS

§160.1. Definitions. As used in this Part, the following terms shall have the indicated meanings:

(a) “Alternative dispute resolution” or “ADR” shall refer to any one of a variety of processes designed to help parties resolve civil disputes alongside or apart from litigation. These processes include, but are not limited to, mediation, neutral evaluation, and other dispute resolution processes offered by community dispute resolution centers.

(b) “Civil dispute” shall refer to any civil action or proceeding commenced in a court of the Unified Court System (“UCS”).

(c) “Community dispute resolution center” shall refer to a not-for-profit organization that is a center within the meaning of subdivision one of section 849-a of the Judiciary Law and that receives funding from the UCS pursuant to Article 21-A of such Law.

(d) “Court ADR program administrative personnel” shall refer to a local ADR coordinator or other nonjudicial court staff who administers an ADR program.

(e) “Mediation” shall refer to an ADR process in which a neutral third party (referred to as a mediator) helps parties communicate, identify issues, clarify perceptions, and explore options for a mutually acceptable outcome.

(f) “Mediation-trained court staff” shall refer to employees of the UCS who have completed the training required of a mediator pursuant to subdivision (b) of section 146.4 of the Rules of the Chief Administrator of the Courts (22 NYCRR §146.4(b)), or its equivalent as approved by the administrative judge of the judicial district in which they serve in consultation with the Statewide ADR Office of the UCS, and who provide mediation services in disputes referred to an ADR process in accordance with this Part.

(g) “Neutral evaluation” shall refer to a non-binding process in which a neutral third party (referred to as a neutral evaluator) with expertise in the subject matter relating to the civil dispute referred to such process provides an assessment of likely court outcomes of that dispute or an issue to help the parties to such dispute reach a settlement.

(h) “Roster mediator” shall refer to a mediator who has been appointed to a roster of mediators compiled pursuant to section 146.3 of the Rules of the Chief Administrator of the Courts (22 NYCRR §146.3).

(i) “Roster neutral evaluator” shall refer to a neutral evaluator who has been appointed to a roster of neutral evaluators compiled pursuant to section 146.3 of the Rules of the Chief Administrator of the Courts (22 NYCRR §146.3).

§160.2. Court Referral of Civil Disputes to ADR.

(a)(1) As provided in this Part, a state-funded court of the UCS shall refer each civil dispute pending before it to an appropriate ADR process at the earliest practicable time unless:
(i) such referral is prohibited under statute, local rule of court, or administrative order of the Chief Administrator of the Courts or the Chief Administrator’s designee, (ii) the court determines that the parties cannot participate effectively in an ADR process or that, for any other reason, referral to such a process will not serve the interests of justice, (iii) a party to the dispute

objects to and opts out from such referral in accordance with local rule of court or administrative order of the Chief Administrator or designee (iv) the court determines, in consultation with the local Administrative Judge, that insufficient ADR resources, including but not limited to, mediators and neutral evaluators, are currently available, or (v) there are allegations of domestic violence as defined by the New York State Office for the Prevention of Domestic Violence or of child abuse or neglect.

(2) At the earliest practicable time, a court shall inform the parties to such dispute regarding the available ADR processes. To the extent possible, the court shall provide the parties, or their counsel, with access to written or electronic materials describing: (i) how ADR is used to resolve a dispute (including how it may provide opportunities for exchanges of information to facilitate accelerated resolution of disputes), (ii) the associated costs of ADR, if any, and (iii) how a party can opt out of a referral to ADR pursuant to paragraph (1) of this subdivision.

(3) Where a court refers a dispute to an ADR process under this Part, the court shall refer such dispute to mediation unless there are compelling reasons to select another ADR process. In determining whether such compelling reasons exist, the court shall consider all relevant factors, including but not limited to: (i) any preference for a particular ADR process expressed by the parties to the dispute, (ii) the specific issues raised by the dispute, (iii) whether a party or parties to the dispute are unrepresented; and (iv) the availability of ADR processes other than mediation.

(4) Where the parties in a family court or matrimonial matter are referred to mediation under this Part, the parties shall be screened using a standardized mediation screening tool developed by the Statewide ADR Office of the UCS, to determine whether it is appropriate for mediation to proceed. This screening is in addition to any statutory registry checks under section

240(1)(a) of the Domestic Relations Law and section 651(e) of the Family Court Act. Where mediation is determined to be inappropriate, the matter shall be returned to the referring court.

(5) Referrals in accordance with this section may be to a neutral third party chosen by the parties to the dispute or, as appropriate, to a roster mediator, to a roster neutral evaluator, to mediation-trained court staff, or to a community dispute resolution center. Where the parties agree upon the choice of a neutral third party, they shall provide notice thereof to the court's ADR administrative personnel, as prescribed by the court.

(6) Notwithstanding the foregoing, a court may at any time remove a dispute from an ADR process to which it already has been referred where: (i) the court determines that such referral does not serve the interests of justice; or (ii) a party to the dispute objects to and opts out from such referral in accordance with local rule of court or administrative order of the Chief Administrator of the Courts or the Chief Administrator's designee.

(b) Referral to a neutral third party.

(1) Where a referral in accordance with this section is to a mediator or neutral evaluator, other than one chosen by the parties to the dispute, such mediator or neutral evaluator must qualify under Part 146 of the Rule of the Chief Administrator of the Courts (22 NYCRR Part 146) or, in the case of a mediator, be eligible to serve as a mediator pursuant to rules of the Chief Administrator applicable to community dispute resolution centers, and meet such additional criteria as the court may prescribe.

(2) Courts may establish protocols for (i) the selection of neutral third parties, (ii) the referral of disputes to them, (iii) their compensation, (iv) the manner in which complaints of the parties about their conduct may be addressed, consistent with such statewide complaint process as shall have been approved by the Chief Administrator and such disciplinary process as may be

applicable to nonjudicial employees of the UCS, and (v) the options available where one or more of the parties are unable to pay the costs of ADR. Nothing in this paragraph shall prohibit the Chief Administrator from prescribing, by administrative order, rules of general applicability regulating the compensation of neutral third parties in appropriate case types.

§160.3. ADR Process Conducted by a Mediator or Neutral Evaluator to be Confidential.

(a) Except as otherwise provided herein or as otherwise required by law, all communications, memoranda, and work products made in preparation for, during, or in connection with an ADR process conducted by a mediator or neutral evaluator to whom a dispute is referred pursuant to this Part shall be confidential and not subject to disclosure in any judicial or administrative proceeding.

(b) (1) Session information. A mediator or neutral evaluator may report to court ADR program administrative personnel details as to an ADR process such mediator or neutral evaluator is conducting pursuant to this Part including: (i) the duration of a session conducted as part of such process, (ii) whether the parties thereto requested and held additional sessions and session dates, (iii) whether the dispute subject to the ADR process was resolved in whole or in part, (iv) whether the dispute remains unresolved, and (v) whether one or more parties opted out of referral to an ADR process where authorized to do so (without disclosing the name(s) of that party or parties), (vi) whether the mediator or neutral evaluator had a conflict of interest, and (vii) whether the dispute is not appropriate for the process. The foregoing shall be reported without comment on any substantive aspect of the dispute.

(2) Written agreement settling a dispute. A writing signed by all parties embodying a negotiated agreement settling a dispute that has been referred to an ADR process pursuant to this

Part, in compliance with statutory requirements, if any, may be submitted to the court for review on consent of all parties.

(3) Threats of imminent, serious harm. Nothing in this section shall prohibit a mediator or neutral evaluator conducting an ADR process to which a dispute has been referred pursuant to this Part or a party to that dispute from notifying any potential victim and/or the appropriate authorities where the mediator or neutral evaluator or the party to the dispute becomes aware that information or a communication disclosed in that process constitutes a credible threat of serious and imminent harm to the mediator or neutral evaluator, a party to the dispute, or any other person or entity.

(4) Child abuse or neglect. If information or a communication reveals reasonable cause to suspect that a child is an “abused child” or a “neglected child” as defined by subdivisions (e) and (f) of section 1012(e) of the Family Court Act, respectively, appropriate authorities may be notified.

(5) Complaints or claims of wrongdoing or malpractice. Any participant in an ADR process to which a dispute has been referred pursuant to this Part pursuing or defending against a complaint or claim of wrongdoing or legal malpractice arising from such ADR process may seek party or court permission to reveal, or may be compelled to disclose, otherwise confidential information or communications, to the extent directed by court order or through party agreement, or, where appropriate, through the mediation complaint process approved by the UCS, or through any other state disciplinary or law enforcement proceeding. Such disclosure shall be permitted only to the extent necessary to pursue or defend against such complaint or claim.

(6) To collect an authorized, unpaid fee for services in relation to an ADR process, a mediator or neutral evaluator may disclose the services such mediator or neutral evaluator has rendered.

(7) Research and education. Information or a communication may be disclosed for research or educational purposes provided that the names of the parties, other identifying information, and specific facts related to the issues in controversy shall remain confidential.

(c) Parties to an ADR process to which a dispute has been referred pursuant to this Part and their counsel, if any, may agree to waive confidentiality as to certain information or communications. Such waiver shall be in writing and signed by each party to the dispute, or their counsel, or the parties or their counsel may agree to such waiver on the record of the court in which the dispute is pending. Each waiver shall specify the information or communication(s) that may be disclosed, the person or entity to whom the disclosure may be made, and the purpose of the disclosure. The court may not consider or draw an adverse inference by a party's decision to maintain confidentiality.

(d) Mediators and neutral evaluators and their notes or other work product shall not be subject to compelled testimony or discovery.

(e) Roster mediators shall be subject to the standards of conduct for mediators in court-referred ADR promulgated by the Office of Court Administration.

§160.4. Immunity for Neutral Third Parties. Neutral third parties conducting an ADR process to which a dispute has been referred pursuant to this Part shall have such immunity from liability as may be provided by law.

§160.5. Local ADR Rules. Following consultation with local bar associations and, as appropriate, with others, including but not limited to the Chief Judge's Advisory Committee on

ADR, the UCS Commercial Division Advisory Council, and the Office of Court Administration Office of ADR, and with the approval of the appropriate Deputy Chief Administrative Judge, each District Administrative Judge shall develop local rules for the implementation of this Part in the courts of the Judicial District over which such District Administrative Judge exercises jurisdiction. These local rules may include a proposal for such local rules of court as may be necessary for their implementation.

§160.6. Settlement Conferences. Nothing in this Part shall prohibit or otherwise limit use of settlement conferences by the courts to resolve civil disputes.

§160.7. Effect of Rules. The rules set forth in this Part shall not supersede any existing rule or order of the Chief Judge of the State or of the Chief Administrative Judge, or any provision of statute, including but not limited to section 4547 of the CPLR and Article 21-A of the Judiciary Law.



Chief Administrative Judge

Dated: February 13, 2024

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