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OFFICE OF ALTERNATIVE DISPUTE RESOLUTION PROGRAMS

COMMUNITY DISPUTE RESOLUTION CENTERS PROGRAM

For more information, please contact your local Community Dispute Resolution Center or

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Optimizing Your Client's Mediation at a Community Dispute Resolution Center

New York State Unified Court System
Division of Court Operations

Hon. Judith S. Kaye
Chief Judge of New York State

Nancy M. Mangold
Assistant Deputy Chief Administrator

Hon. Jonathan Lippman
Chief Administrative Judge

Daniel M. Weitz, Esq.
State ADR Coordinator

Hon. Ann T. Pfau
Deputy Chief Administrative Judge

Mark V. Collins
Assistant State ADR Coordinator

Benefits of Mediating at a Community Dispute Resolution Center

- All services are confidential
- Your client will be advised of his or her right to have counsel present during mediation
- All services are provided at little or no cost
- You and your client control the outcome
- In mediation, parties can develop and agree to solutions that are unavailable as remedies in court
- Mediation can preserve and improve important business, community and family relationships
- Through mediation, your client can reach an agreement that meets his or her particular needs and interests
- Your client is encouraged to bring any agreement reached to an attorney for review before signing it
- Your client can request that his or her agreement be put in writing
- Over 85% of mediations conclude with an agreement between the parties

What is a Community Dispute Resolution Center?

Community Dispute Resolution Centers (CDRC's) provide services such as mediation, arbitration and conciliation to people, organizations and communities. The not-for-profit centers receive funding from the New York State Unified Court System and provide alternatives to civil, criminal and Family Court litigation.

Pursuant to Article 21-A of the New York State Judiciary Law (§§849-a et seq.), the centers provide parties with a written statement delineating their rights and obligations.

The centers provide dispute resolution processes that are confidential and voluntary. The neutrals whom the centers appoint are impartial and have completed substantial training.

Pursuant to Judiciary Law § 849-b(6), the centers keep all communications ***confidential****; the power of courts and parties to compel disclosure of any communications made during the dispute resolution process is severely curtailed. (See, e.g., People v. Snyder, 129 Misc.2d 137, 492 N.Y.S.2d 890 (Sup. Ct. Erie Co. 1985)).*

Although referring courts may order parties to meet with staff from a dispute resolution center to learn about mediation, no party can be compelled to participate in a mediation. Mediation is a **voluntary** process, and parties are free at any time to terminate a mediation session.

The centers ensure that mediators are **impartial**. Mediators review summary intake information before accepting each case and they confirm with all parties that there are no conflicts of interest that could negatively affect the mediation.

The centers provide **trained mediators** who have completed at least twenty-five hours of UCS-certified mediation training, as well as an apprenticeship. Mediators who mediate cases referred from Family Court complete additional training. Pursuant to guidelines established by the Office of ADR Programs, mediators fulfill an annual continuing education requirement.

What should your client expect during a mediation session?

Mediation is not litigation. A mediator will not decide whether your client has proved his or her case, and there are no formal rules of evidence. Rather, mediation offers your client the opportunity to collaborate with his or her adversary to resolve their own dispute.

Before the mediation is held, your local CDRC will meet with the parties to ensure that your client's case is appropriate for mediation and will schedule the mediation at a time that is convenient for both parties. The CDRC will then assign one or two mediators to the case, depending on local practice.

At the mediation session, the mediator will begin by explaining the process and clarifying expectations. Parties will be assured that the session is voluntary and confidential. Both parties will have equal time to raise issues and concerns. The mediator will ask clarifying questions in an attempt to identify the issues that both parties want to discuss. Once the mediator and parties have agreed on what issues they want to discuss, the mediator will help the parties work collaboratively to develop and choose options that meet the parties' stated interests and needs.

Although most information will be exchanged with everyone at the table, there may come a time when the mediator will meet separately with each party to explore how the parties have been affected by the dispute and how any proposed solutions would impact each of them. The mediator will not divulge any information discussed in caucus without first obtaining the party's permission to do so.

Attorney and Client Participation

You can significantly help your client prior to mediation by explaining the nature of the process and stressing that your client should endeavor to persuade the other party, not the mediator. This principle should guide your client when he or she is organizing any documents to present during the session. Also, you should discuss whether your client should sign any agreement without first presenting it to you for your review and input.

May you attend the mediation session?

Attorneys are welcome at mediation, and your client has the right to have you participate.

What should you and your client do during mediation to get the most out of the experience?

Given that compliance with mediated agreements depends significantly on the degree to which the ***parties*** participate in crafting their own agreement, you and your client should discuss in advance how your client can actively participate. During mediation, your client should articulate his or her concerns and explain why those concerns are important.

When the mediator asks the parties for their suggestions to resolve the dispute, it is recommended that the parties put forth their own proposals. Not only will your client more likely be satisfied with a solution that he or she helps craft, but the other disputant may be more willing to adopt a proposed solution if it comes from your client.

If you appear with your client during the mediation, your expertise can help your client make informed decisions. You can encourage your client to consult with you as needed but not to rely on you to be the primary speaker.

How can you participate without attending the session?

You can advise your client to contact you by telephone with any questions during mediation; the CDRC will provide a telephone upon request.

You can also advise your client to postpone signing any agreement until you have had the opportunity to review it. This will help you ensure that your client has made informed decisions, and it will give you an opportunity to advise your client whether those decisions are in your client's best interest. Please note that should you decide not to attend the session, it may be difficult for you to appreciate the complex choices and trade-offs your client made during the negotiation process.

With your help, your client can achieve a satisfactory resolution.