

# NASSAU COUNTY SUPREME COURT

## MATRIMONIAL CENTER MATRIMONIAL MEDIATION PROGRAM

### Statement of Procedures

#### OVERVIEW

It is the policy of the Unified Court System to encourage the resolution of civil legal disputes by alternative dispute resolution (“ADR”) methods including mediation. Accordingly, Courts may refer parties to an ADR process at any time after an action has been commenced and, preferably, at the earliest appropriate opportunity.

Mediation is a confidential dispute resolution process in which a trained, neutral third-party, the mediator, helps parties to identify issues, clarify perceptions, and explore options for a mutually acceptable outcome. The mediator seeks to ensure that the parties arrive at a voluntary, uncoerced decision in which each party makes free and informed choices. Parties are encouraged to discuss mediation and other dispute resolution options with their own attorneys to determine what dispute resolution process choice might be most appropriate for them. Counsel are strongly encouraged to participate in mediation, as well as in any other court-referred dispute resolution process. In some contexts, counsel may be required to participate. Mediation can result in faster, less expensive, more durable, and less acrimonious outcomes than might be the case in the normal course of litigation.

The Nassau County Matrimonial Center’s Matrimonial Mediation Program (“the Program”) is open to those parties who already have a case pending before the court, unless otherwise excluded from the Program. When the parties appear in court, the court may recommend that the parties participate in the Program or the parties may request the court to refer them to mediation.

The Program is established by the Nassau County Supreme Court, Civil Term with the assistance of the Matrimonial Mediation Program Advisory Committee (“Advisory Committee”). The Advisory Committee is comprised of Nassau County Supreme Court Matrimonial Judges, including the Supervising Judge of the Matrimonial Center and his or her Law Clerk; Chairs of the Nassau County Bar Association’s Matrimonial, the Family Court Law and Procedure, and the Alternative Dispute Resolution Committees; practicing members of the matrimonial bar; and the District’s Alternative Dispute Resolution Coordinator. The Advisory Committee assists the Court in developing protocols, recruiting and reviewing prospective neutrals, and raising awareness of the Program among the Bar and the public.

## **I. THE PROGRAM**

The Program offers parties a free, 90-minute initial mediation session (“Initial Session”) with a mediator from the court’s roster of mediators who meets the criteria set out below. Roster mediators have significant training and experience in family mediation and in opening paths of communication that enable meaningful dialogue and cooperation. They help divorcing parties to resolve key issues that affect their relationships with their children and the financial well-being of all family members. Parties are encouraged, but are not required, to bring their attorneys to the mediation session. Although parties are not obligated to reach agreement in mediation, the process often concludes with a written agreement, as well as improved communication between the parties. If the parties reach a full written agreement as a result of mediation, such agreement is separate from a Judgment of Divorce. The parties must still obtain a final Judgment of Divorce from the Court, notwithstanding a written agreement reached during mediation if they wish to divorce.

## **II. SCREENING**

Parties may be screened by court staff, the Program Coordinator or the Mediator at any time to determine whether participation in the Program is appropriate. Upon screening, matrimonial cases that may not be appropriate for mediation may be excluded from the Program including cases: involving an on-going order of protection; where safety is a concern; involving child abuse or neglect (as defined in Family Court Act § 1012(e) and (f) and Social Services Law § 412) and for which disclosure is required pursuant to Social Services Law § 413; where domestic violence is present; where a party is included on the Sexual Offender Registry (SORA); or where there is a severe power imbalance between the parties.

## **III. PROCEDURE**

The Supreme Court Judges may recommend that parties participate in the Program or parties on their own may request referral to the Program at any time. To begin the process, the Court issues an Order of Reference directing parties to appear at an initial ninety (90) minute mediation session with a Mediator. The Order of Reference shall contain the control date set by the Court for the parties to appear in Court for a conference following the Mediation.

Referral to mediation will not stay the court proceedings in any respect. The "no stay" policy recognizes the special need for prompt action in matrimonial and family proceedings. Full discovery, emergency and pendente lite relief, family dynamics, and the needs of children require ongoing access to the court, as a general rule. However, parties committed to the mediation process who conclude that additional time is required to fully explore the issues pertaining to their case may request an adjournment of dates given the particular circumstances presented.

The Court shall deliver a copy of the Order of Reference to the Program Coordinator (“Program Coordinator”), Cathy Reidy, located at 400 County Seat Drive, Mineola, NY 11501 (516) 493-3460, email: [cbreidy@nycourts.gov](mailto:cbreidy@nycourts.gov).

The Program Coordinator, in consultation with the Supervising Judge and ADR Coordinator, if necessary, shall assign an appropriate Mediator from the Program Roster based

upon the quality and complexity of the issues to be mediated. Next, the Program Coordinator shall send to the parties a Notice of Confirmation with the name and contact information of the assigned Mediator. Once the Mediator has been assigned, the parties shall jointly contact the Mediator within 72 hours by conference call, video conference, or email to schedule the first session. Once a mediator has been assigned to two (2) cases his or her name shall be removed by the Program Coordinator from the list of available mediators for the remainder of that calendar month.

If there is a conflict with the assigned Mediator, the parties shall send an email to the Program Coordinator [cbreidy@nycourts.gov](mailto:cbreidy@nycourts.gov) within ten (10) business days of receipt of the Notice of Confirmation with a copy to the other side. The Program Coordinator shall assign a substitute Mediator from the Program Roster.

Parties are required to appear at the Mediation session within thirty (30) days of receiving a Notice of Confirmation.

No mediation of financial ancillary issues may occur without the exchange of a recent affidavit of net worth and the prior year's tax returns with supporting W-2s, 1099, and K-1 forms (unless waived), which if they have not been provided as required by 22 NYCRR 202.16 at the preliminary conference, must be completed and exchanged five (5) business days prior to the mediation, unless waived. At least five business days before the Initial Session, the parties shall send to the Mediator any information necessary for the effective negotiation of the issues involved, including but not limited to the aforementioned documents. The Mediator may also request a conference call with the parties' counsel regarding any preliminary matters and may request that the parties supply pre-mediation summaries outlining each party's goals.

#### **IV. THE ROSTER OF MEDIATORS**

The Court shall establish and maintain a Roster of Mediators ("Roster") to mediate cases referred to the Program. In order to be eligible to serve as a mediator on the Program's Roster a person shall possess the following prerequisites and such others as may hereafter be promulgated:

- (a) Training: In accordance with Part 146 of the Rules of the Chief Administrative Judge, completion of at least 40 hours in a training program sponsored or recognized by the NYS Unified Court System Office of Court Administration ("OCA"), as follows: at least 24 hours of training in basic mediation skills and techniques; and at least 16 hours of additional training in divorce or custody/visitation mediation techniques; and
- (b) Experience: At least 10 years of substantial experience in the area of matrimonial law including any experience requirements set forth in Part 146.

Pursuant to Part 146 of the Rules of the Chief Administrative Judge, all mediators appointed to the Program's Roster must attend at least six hours of additional approved training relevant to their respective practice areas every two years. For a full description of the Part 146 requirements, please refer to the Uniform Court System website at [www.nycourts.gov/rules/chiefadmin/146.shtml](http://www.nycourts.gov/rules/chiefadmin/146.shtml).

The 10th Judicial District—Nassau County serves a wide variety of litigants, including persons of varying age, race, ethnicity, national origin, gender, sexual orientation, physical or mental ability, religion, socioeconomic and family status. Neutrals with a wide variety of cultural and life experiences enrich the alternate dispute resolution process by bringing diverse perspectives to resolving disputes. To better serve our District’s population and instill confidence in participants in the alternate dispute resolution process, the 10th JD is committed to attracting and retaining court-approved neutrals who represent a range of personal and professional backgrounds. Qualified applicants of diverse backgrounds and experiences are encouraged to apply for admission to the Roster.

If you meet the minimum requirements outlined above, you may apply to join the Roster by completing the [Statewide Universal Mediator Application](http://ww2.nycourts.gov/ip/adr/Application.shtml) (<http://ww2.nycourts.gov/ip/adr/Application.shtml>) and indicating your interest in mediating matrimonial matters in the 10<sup>th</sup> JD-Nassau County. Applicants may be contacted by the ADR Coordinator if additional information is required. The ADR Coordinator shall submit any such applications to the Advisory Committee for consideration on a quarterly basis.

The Advisory Committee shall submit recommendations to the District Administrative Judge. The District Administrative Judge shall make final determinations as to whether prospective mediators are appointed to the Roster. Continuing presence on the Court’s Roster of Mediators is subject to review by the District Administrative Judge. Mediators may be removed from the Roster at the discretion of the District Administrative Judge in consultation with the NYS Unified Court System’s Office of Alternative Dispute Resolution.

## **V. ROLE OF THE MEDIATOR**

The Mediator’s primary role is to help the parties communicate and negotiate. The Mediator does not give legal advice, predict likely court outcomes, or force solutions on the parties.

At the Initial Session, the Mediator explains that all communications are confidential (with narrow exceptions outlined below) and will not be disclosed to the Judge hearing the case or in any other judicial or administrative proceeding. The Mediator also explains that either party is free at the close of the Initial Session or at any time thereafter to end the mediation process and return to court. The need for translation services shall be addressed with the Mediator prior to the Initial Session.

If the Mediator and the parties have agreed to proceed by a secure, video-conferencing platform, the Mediator shall, prior to the Initial Session, discuss the following with the parties: privacy expectations; confidentiality; prohibition on recording; participants’ ability to access and use virtual technology, including the availability of a secure internet connection; whether the participant needs an interpreter or other accommodation; safety concerns; any other requests by participant, including a participant’s request to have a support person present for the session (to be discussed and agreed to by the other participant). The Mediator shall advise the parties that children shall not be present in the room where a party is participating in a virtual mediation or

within such proximity to a participant so that the child may become privy to the mediation discussion.

During the mediation process, all parties are free to discuss the case as they see it and to raise particular issues of concern that they would like to address. The Mediator may ask the parties clarifying questions related to the care of their children, parenting time, and allocation of property and income. The Mediator then helps the parties to develop and choose options that meet the parties' needs.

At some point in the process, either party, the party's counsel, or the Mediator may suggest a caucus. Caucuses are meetings that mediators hold separately with each side in a dispute. During the caucus, the Mediator may explore how each party views the dispute and the impact of any proposed solutions. The Mediator keeps confidential the information discussed in caucus unless the party permits disclosure.

If parties are unrepresented, parties are strongly encouraged to consult with an attorney regarding the terms of any written agreement reached as a result of mediation prior to executing such agreement.

Within five (5) business days after the mediation's conclusion, which shall occur whenever after the Initial Session one party, both parties, or the Mediator decides that the mediation has ended, the Mediator shall send a Mediator's Report describing the outcome to the parties and/or counsel and to the Program Coordinator, but not to the referring Judge.

The Mediator Report can be found at on the [Court's ADR webpage \(https://ww2.nycourts.gov/courts/10jd/nassau/ADR.shtml\)](https://ww2.nycourts.gov/courts/10jd/nassau/ADR.shtml) and shall include the following:

- (1) the date of the Initial Session and whether each party and counsel appeared at the Initial Session
- (2) the dates of any subsequent scheduled sessions, but not whether parties appeared; and
- (3) whether the parties reached partial, complete, or no agreement on the issues.

No comment should be made as to any substantive aspect of the case, or if applicable, the reason why the mediation failed to resolve the case.

Once the parties or counsel receives a copy of the Mediator's Report, if the court has not already assigned a control date, the parties or counsel shall promptly contact the Part of the referring Judge to schedule a conference concerning further proceedings in the case.

The Program Coordinator shall report to the referring Judge whether the case settled (in whole or in part) but shall not reveal to the referring Judge the selected Mediator's identity or disclose other information discussed during the mediation, except as described below in Section X.

## **VI. THE ROLE OF COUNSEL and ATTORNEYS FOR THE CHILD**

The presence of separate counsel for each party during mediation sessions is encouraged. Without representation by counsel, parties risk entering into agreements with insufficient knowledge about financial, legal or other issues. Any agreement should be entered into voluntarily, and with the advice and review of counsel, if any, or all parties are represented. If counsel for either party is discharged or withdraws for any reason during the mediation process, the case may not proceed in mediation until a substitution occurs unless otherwise ordered by the Court.

In cases where an Attorney for the Child (“AFC”) has been appointed, mediation may proceed with or without the AFC present. An AFC shall not participate in mediation without having first communicated with his or her client.

Any agreement reached by the parties as to custody, visitation or parenting time, as a result of the mediation, shall be reviewed by the AFC prior to being executed by the parties.

## **VII. THE ROLE OF THE COURT**

The Program is conducted under Court auspices and pursuant to these rules. Judicial and non-judicial staff are encouraged to inform the parties of the Program’s existence. The Program is open to those cases that are already ongoing in court. The Judge may recommend the parties participate in mediation or the parties may request the Judge refer them to the Program.

The Court welcomes the feedback of parties, counsel, and mediators after the conclusion of the proceedings.

A written agreement between the parties acknowledged in the form of a deed shall be binding upon the parties without an allocation on the record before the Court, unless otherwise requested by the parties or counsel.

## **VIII. COST, FEES and PRO BONO SERVICE**

The Program does not charge or administer fees. Parties referred to mediation pursuant to this Statement of Procedures shall not be required to compensate the Mediator for services rendered before or during the initial 90-minute mediation session. Should the parties agree to continue beyond the Initial Session or to schedule additional sessions with the Mediator, the Mediator shall be entitled to compensation for services rendered as follows: compensable services shall consist of time spent conducting any mediation session that follows the Initial Session and time spent reviewing materials submitted by the parties for purposes of subsequent mediation sessions. The specific time at which the non-compensable Initial Session will conclude shall be disclosed to the parties in writing prior to or at the start of the Initial Session.

Should the parties choose to continue beyond the Initial Session, the Mediator’s compensation shall not exceed \$450.00 per hour. A written agreement setting forth the Mediator’s

rate to be charge for compensable time beyond the Initial Session shall be executed by the parties prior to the start of the Initial Session and a copy shall be provided to the parties. The fee agreement must include the ratio at which the fee will be divided between the parties.

Mediators on the Program's Roster are strongly encouraged to work on a sliding fee scale taking into account a party's financial circumstances, particularly for a party who has been granted permission to proceed in his or her case as a poor person pursuant to New York Civil Practice Law and Rules § 1101 or who has qualified for assigned counsel pursuant to Judiciary Law § 35(8).

All mediators who are on the Program's Roster are expected to provide pro bono services as a mediator. If requested by the Court, each Roster mediator may be required to mediate a maximum of two *pro bono* cases a year.

## **IX. IMMUNITY**

The Mediator shall be immune from subpoena and suit as a result of any conduct or omission during the performance of duties in that capacity to the extent permitted by law, and shall be indemnified against the costs of defending any claim based on such actions or omissions, to the extent permissible by applicable law, including Public Officers Law § 17.

## **X. CONFIDENTIALITY**

The entire mediation process shall be confidential, and, except as otherwise provided, any document prepared, or communications made, by parties, their counsel or by a mediator for, during or in connection with the proceeding shall not be disclosed outside its confines or by any participant present and shall be confidential and immune from disclosure in any present or future judicial or administrative proceeding and shall not be used for purposes of litigation. No party or participant to the proceeding shall, during the action referred to mediation or in any other legal matter, seek to compel production of 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, reached in whole or in part during mediation, shall be set forth in a writing signed by all parties affected. 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. Any and all privileges and rules of evidence regarding confidentiality of settlement discussions shall apply to all discussions and documents prepared for the purpose of, in the course of, or pursuant to the mediation.

Notwithstanding these confidentiality provisions, communications and information may be subject to disclosure in any present or future judicial or administrative proceeding in any of the following circumstances:

### *Attendance*

Whether the parties and their counsel attended the Initial Session will be reported to the Program Coordinator who may notify the Court.

### *Session Information*

The Mediator may report to the Court whether the parties are requesting additional mediation sessions as well as the date of any mediation session and whether the parties reached partial, complete, or no agreement on the issues.

### *Waiver*

Parties to the mediation and the Mediator agree in writing to waive confidentiality. The waiver must specify the individual communication(s) and writing that will be disclosed, the person or entity to whom the disclosure will be made, and the purpose of the disclosure. All waivers shall be in writing or on the record. Nothing herein shall be construed to require a mediator to appear in any court.

### *Written Agreement*

An agreement by the parties in writing, subscribed by the parties, and acknowledged or proven in the manner required to entitle a deed to be recorded, and made during or in conjunction with the mediation, unless the parties have otherwise prohibited disclosure by the written agreement.

### *Threats of Imminent, Serious Harm*

If communications or information constitute a credible threat of serious and imminent harm to any person or entity, the appropriate authorities and/or the potential endangered person may be notified.

### *Allegations of Child Abuse or Neglect*

The communication or information relates to an allegation of child abuse or neglect as defined in Family Court Act § 1012(e) and (f) and Social Services Law § 412, and for which disclosure is required pursuant to Social Services Law § 413, appropriate authorities may be notified.

### *Mediation Survey*

Mediation surveys that elicit participant satisfaction with the mediation process may be shared with the local ADR Coordinator or Administrative Judge. These surveys may be shared to evaluate the Program, to determine whether to approve a mediator to join or remain on the Roster, to counsel a mediator, if necessary, or to remove a mediator from the Roster.

### *Unprofessional Conduct*

A party, counsel to a party, or a mediator, may report unprofessional conduct to an appropriate disciplinary body or to the local ADR coordinator.



### *Collection of Fees*

The Mediator may make general references to the fact of mediation services rendered in any action to collect an unpaid authorized fee for services performed under local court rules.

## **XIII. AVOIDING CONFLICTS OF INTEREST**

Before accepting a mediation, a mediator shall make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the Mediator, including a financial or personal interest in the outcome, and an existing or past relationship with a mediation party or foreseeable participant in the mediation. The Mediator shall disclose any such known fact to the mediation parties and counsel as soon as possible before accepting a mediation. The Mediator is obliged to disclose all potentially disqualifying facts to the parties and, where such facts exist, shall not serve unless the parties consent in writing.

If the Mediator later learns of any disqualifying fact after accepting a mediation, the Mediator shall disclose it as soon as practicable. If the Mediator concludes that he or she is unable to function in a fair, impartial and objective manner, the Program Coordinator has discretion to designate another mediator in appropriate cases. The Mediator shall notify the Program Coordinator and a new mediator will be selected.

If, upon disclosure by the Mediator of a potential conflict, a party objects to the assignment of the Mediator, such party shall notify the Program Coordinator in writing within 5 days of the date of the Notice of Confirmation, on notice to the opposing party, setting forth the basis of the objection. Within the discretion of the Program Coordinator, a new mediator may be selected. If a mediator is removed from due to a potential conflict, his or her name will be reinstated as available in the random selection process by the Program Coordinator.

## **XIV. COMPLIANCE**

Failure to comply with these rules may subject the offending party or attorney to sanctions, including but not limited to sanctions under CPLR § 3126 and 22 NYCRR 130.

## **XV. PROGRAM ASSESSMENT**

To assist in the continued development of the Program, we ask the parties and counsel, if applicable, complete a Post-Mediation Survey within fifteen (15) business days after the final mediation session. The Post-Mediation Survey may be easily completed and submitted online at: <https://mediationsurvey.questionpro.com?custom1=21>

Once submitted, the online survey is sent automatically to the Program Coordinator and ADR Coordinator. The Mediator is encouraged to share the survey link with the parties *via* email or by inserting it into the chat feature at the end of a virtual mediation.

**Dated: August 18, 2022**

**MATRIMONIAL MEDIATION PROGRAM  
Nassau County Supreme Court, Civil Term  
Matrimonial Center**