

FAMILY MEDIATION PILOT PROJECT

Administrative Order 17 -

SECTION 1. PURPOSE

The purpose of this order is to establish a Family Mediation Pilot Program. The mission of the Program is to explore a procedure to provide a high quality, impartial, and efficient forum for resolving disputed parental rights and responsibilities matters through mediation. The goal of the Program is to improve the lives of families and children who appear before the court by trying to resolve parental rights and responsibilities disputes through mediation in order to minimize family conflict, encourage shared decision-making, and support healthy relationships and communication among family members.

SECTION 2. SCOPE

This order governs mediation in parental rights and responsibilities disputes in the district courts. To the extent the requirements of N.D.R.Civ.P. 16(b) and N.D.R.Ct. 8.3(b) conflict with this order, this order's provisions control. The N.D.R.Ct. 8.8 alternative dispute resolution statement requirement is satisfied by compliance with this order.

SECTION 3. IN GENERAL

(A) District courts must offer mediation in cases in which there is a dispute or an unresolved issue regarding parental rights and responsibilities or relocation, except as provided in this rule.

(B) The Supreme Court will fund the Program mediation orientation and mediation sessions as provided in this order.

(C) The Program administrator shall manage and oversee the Program as directed by the Chief Justice and the State Court Administrator.

(D) Mediators will be selected for the Program roster by the Program Administrator.

(E) The protocol referenced in this order shall be developed by the Program Administrator and filed with the Clerk of the Supreme Court.

(F) Counsel for represented parties may participate in mediation proceedings.

SECTION 4. DEFINITION

"Mediation" is a process in which a non-judicial neutral mediator facilitates communication between parties to assist the parties in reaching voluntary decisions related to their dispute. A

case evaluation or settlement conference under N.D.R.Civ.P. 16 is not "mediation" under this order.

SECTION 5. QUALIFYING CASES

(A) Except as provided in Section 5 (B), within 10 days of filing, any proceeding for a divorce, separation, paternity, or guardianship in which parental rights and responsibilities or relocation is an issue, must be referred by the clerk to the Program Administrator.

(B) If the court decides that a prima facie case under N.D.C.C. 14-09-06.6 has been established and that mediation may be useful to the parties and the children, a post-judgment motion for parental rights and responsibilities modification may be referred by the clerk to the Program Administrator.

SECTION 6. EXCLUDED CASES

(A) The clerk may not refer proceedings:

- (1) if the parties started mediating prior to commencement of the Program;
- (2) if the parental rights and responsibilities issues are stipulated by the parties at the time of filing;
- (3) if a current domestic violence protection order or other order for protection between the parties exists.

(B) In a case in which an order for protection exists, the court may require mediation if:

- (1) mediation is requested by the victim of the domestic violence or sexual abuse, and an exception to the order of protection is made by the court;
- (2) mediation is provided by a mediator trained to address the needs and safety of victims where domestic violence is at issue;
- (3) the victim of domestic violence is provided the opportunity for separate meetings with the mediator during the mediation, and to mediate using separate rooms if they choose;
- (4) mediation takes place in a courthouse or other building where security measures are in place; and
- (5) the victim has an advocate or support person of his or her choice in the mediation.

SECTION 7. COURT REFERRAL

In addition to the clerk referrals, a district judge or referee assigned to a parental rights and responsibilities proceeding may at any time refer a case to family mediation, except as prohibited by this or any other rule or statute.

SECTION 8. MEDIATION PROCEDURE

(A) When the clerk refers a case, the Program Administrator shall assign a mediator and prepare an order and schedule for mediation for approval by the assigned judge.

(B) The Program Administrator shall send the approved order to the parties, their attorneys, and the mediator.

(C) The order must set time limits for the mediation as follows:

(1) the parties must contact the mediator and attend a pre-mediation orientation separately within 20 days of the date of the order;

(2) the mediation sessions must be completed within 90 days of the date of the order.

(D) The parties and mediator must submit any request to deviate from the order's time limits in writing to the judge presiding over the case, who may allow a time extension for good cause.

(E) If a party fails to appear for orientation or mediation sessions, the mediator shall promptly notify the Program Administrator. The Administrator may report the violation to the judge presiding over the case, who may order the party to show cause for failure to appear.

SECTION 9. PRE-MEDIATION ORIENTATION

(A) All parties in parental rights and responsibilities disputes must receive a mediation orientation session. The assigned mediator must provide the orientation sessions to the parties separately in a way that best meets the needs of the parties.

(B) At the orientation session, the mediator shall inform the parties:

(1) what mediation is and is not;

(2) what to expect from the mediator;

(3) what the goals are for mediation;

(4) any guidelines necessary to have constructive conversations;

(5) how to prepare for the mediation process;

(6) the role of the court, lawyers, and other experts;

- (7) how fee payment works;
- (8) the time line for mediation;
- (9) any other relevant information or requirements.

SECTION 10. SELECTION OF MEDIATORS

(A) Family Mediation Program mediators must meet the criteria set forth in the Pilot Program protocol. Mediators may apply to be placed on the roster of family mediators under Rule 8.9. Mediators must follow Rule 8.9's policies and procedures and they must carry malpractice insurance that covers their mediation practice.

(B) Mediators may be assigned cases by the Program Administrator and must manage cases assigned to them from orientation and screening through conclusion of mediation.

(C) A mediator may not be removed unless the mediator or the parties petition the Program Administrator. Parties may not request a change of mediator unless they present evidence of bias or conflict of interest as described in the ethical guidelines provided in the Family Mediation Program protocol.

(D) All mediators must follow the standards of practice set forth in the protocol. Any violation of the standards must be reported to the Program Administrator.

SECTION 11. CONFIDENTIALITY

Mediators may not discuss or reveal the details of any mediation proceeding or any information provided by a party in a mediation proceeding to any judge, magistrate, or third party.

SECTION 12. PAYMENT FOR MEDIATION

(A) If a case is referred to the Program Administrator, a pre-mediation orientation and screening with a mediator, and at least one mediation session must be provided.

(B) The mediator shall be compensated at a rate established by the Supreme Court.

(C) The parties must be allowed up to 6 hours of mediator services without charge. The parties may purchase additional mediation sessions at a rate established by the Supreme Court.

(D) Parties may request additional mediation sessions and may apply for a fee waiver or sliding scale fee as established by the protocol. If, based on economic factors, the parties qualify for a fee reduction, and additional sessions are approved, the Supreme Court will pay the mediator any difference between the established fee rate and the parties' reduced or waived fee.

SECTION 13. PILOT PROJECT EVALUATION

All mediators and parties shall cooperate with the research and evaluation protocol to help measure the impact and success of the Program. This may include providing written comments, participating in a personal interview, and allowing occasional observation during mediation if the parties approve, as provided in the protocol.

SECTION 14. CONCLUDING MEDIATION

(A) The mediator must notify the Program Administrator when the mediation has concluded for any reason, and advise the judge presiding over the case of one of the following outcomes:

(1) agreement has been reached in whole or part; or

(2) the parties were unable to reach agreement.

(B) If the parties reach agreement, the mediator and parties will prepare a written summary for the parties to sign noting all agreements made and using the parties' own words. A copy of the signed summary must be given to each party.

(C) The parties have five business days from signing to reconsider the decisions made in mediation. If neither party sends a written request to reconsider to the mediator within five business days, the mediator shall send a copy of the written summary to the parties and their attorneys, and file the mediation closing form with the clerk of court with a copy to the judge presiding over the case.

(D) At the close of the case the mediator and the parties must complete the required evaluation forms. The mediator shall submit the forms to the Program Administrator along with a copy of the closing form, mediator's log and the mediator's invoice. The mediator is responsible for collecting fees from the parties if for additional mediation sessions not paid by the court.

SECTION 15. EFFECTIVE DATE

This order is amended effective September 1, 2010, and remains in effect until further order of the Court.