

2006 ADR Commission Report to the Supreme Court
on
Domestic Relations Dispute Resolution

Changes to Court Rules on Dispute Resolution

- Rule 88 is merged into Rule 17
- Authorizes only mediation in family law matters
- Removes two hour restriction in court-ordered mediation
- Changes “good cause” excuse from court-ordered mediation
- Removes restrictions on mediating contempt, domestic violence, child support and custody modification issues
- Removes discretion of judge to determine who is “qualified”
- Requires family mediator to register with OSCA
- Change in training requirements
- Adds continuing education requirement
- Confidentiality is limited in cases of child abuse & neglect, physical threats
- Affirmative reporting requirement for child abuse and neglect
- Release of agreements restricted

Statutory Changes Proposed

- Removes “good cause” exemption from mediation
- Removes restrictions on mediation paid by the parties for issues of contempt, child support, modification of court orders
- Relaxes authority for parties to terminate mediation in grandparent access disputes
- Substitutes new provisions defining “good cause,” provides for parties paying “reasonable and customary” cost of mediation, authorizes mediation of child support issues

Establishment of Mediator Practice Guidelines

- Adopts “aspirational” guidelines for mediator conduct
- Requires mediator disclosures to parties
- Restricts mediator’s ability to accept conflict of interest cases, child abuse and neglect cases, and domestic violence cases
- Confidentiality consultation required with participants
- Prohibits coercion by mediator to get agreement or make substantive decisions
- Restricts participation of children in mediation
- Regulates mediator advertising

Establishment of Court Mediation Program Standards

- Adopts standards that shall apply to all court-connected family mediation programs, voluntary or mandatory (including referrals by judge to court annexed and court referred programs)
- The standards adopted were promulgated by the State Justice Institute and cover the following areas:
 - Elimination of barrier to access to mediation
 - Program standards for court, program management, complaint mechanism, timing of mediation, referral and attendance, and evaluation
 - Information provided to public, bar, bench and court personnel
 - Mediator qualifications (comply with Rule 17)
 - Selection of mediators (party choice or from Rule 17 list)
 - Role of lawyers in mediation
 - Pressure to Settle
 - Communications between mediators and the court

Institutional Recommendations

- Continuation of ADR Commission
- Adoption of Implementation Model in non-urban areas: funding by Family Court surcharge or tri-county collaboration with ADR program specialist
- Establish an ADR Coordinator in Office of State Court Administrator to:
 - Develop infrastructure to support statewide implementation
 - Serve as centralized resource for technical assistance
 - Conduct ADR research
 - Develop partnerships with other ADR groups
 - Develop educational tool targeting judges, attorneys and public
 - Identify and access funding at state and local levels
- Responsibilities of local circuits: handling consumer complaints and removal of ADR providers from court-approved list