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The purpose of the following operational policies is to assist those individual dispute resolution centers that contract with the Chief Administrator of the Unified Court System of the State of New York. The Office of ADR Programs also uses these as monitoring guidelines for the Community Dispute Resolution Centers Program.

## **I. ADMINISTRATIVE POLICIES**

### **A. Compliance with Legislation and Regulations**

1. Community Dispute Resolution Centers Shall Comply With Article 21-A of the New York State Judiciary Law.

Please see Chapter Four of this Program Manual for a copy of Article 21-A of the New York State Judiciary Law.

2. Community Dispute Resolution Centers Shall Comply with Part 116 of the Rules of the Chief Administrator of the Unified Court System (22 NYCRR, Part 116 [Rules Governing Community Dispute Resolution Centers Program])

Please see Chapter Four of this Program Manual for a copy of Part 116 of the Rules of the Chief Administrator of the Unified Court System.

### **B. Agency Administration**

1. Only nonprofit entities organized for the resolution of disputes or for religious, charitable or educational purposes may operate a community dispute resolution center.

Each center shall maintain documentation to prove that entity operating a community dispute resolution center is a nonprofit organization.

2. Centers shall provide dispute resolution services without cost to indigents and at nominal or no cost to other participants.

3. Each grant recipient (as that term is defined in Judiciary Law § 849-a [3])<sup>1</sup> shall designate a single administrative officer to manage its centers.

One person shall be designated responsible for management of the dispute resolution center(s).

4. Centers shall submit an organizational chart delineating the board management and structure.

5. Each grant recipient shall have at a minimum an annual meeting of its board of directors. The board shall strive to recruit members that reflect the diversity of the community.

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<sup>1</sup> See Chapter Four, page 1.

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6. Centers shall conduct regularly scheduled staff meetings.

### C. Personnel

1. Centers shall not discriminate when hiring staff or recruiting neutrals with regard to age, sex, religion, creed, ethnic origin, sexual orientation or disability.
2. Each center shall provide written job descriptions and job qualifications for all staff and neutral positions.
3. Each center shall have a written employee grievance procedure approved by its board of directors.
4. All mediators shall complete training consistent with the guidelines set forth in Chapter Seven of this Program Manual.
5. All center shall receive and complete training for their program functions. The administrative officer shall determine the nature of this training.

The Office of ADR Programs strongly encourages all administrative officers to provide process-specific training during the first three months of employment to newly hired staff who screen cases or assign neutrals to cases.

6. Centers shall have regularly scheduled in-service training for all staff and neutrals.
7. The administrative officer shall annually evaluate staff and neutrals, and the board of directors shall annually evaluate the administrator.

### D. Public Education and Outreach

1. Centers should make ongoing efforts to promote mediation and other dispute resolution services. Centers should provide the public with information regarding dispute resolution services for members of the community.

This should include but not be limited to presentations, meetings, interviews, internet sites, and current brochures describing dispute resolution services.

2. Centers should make effective use of available media to inform the public of their programs.
3. Every effort should be made to inform and involve the courts and other components of the justice system in the dispute resolution processes.
4. Centers should inform and communicate with all referral agencies on a regular basis.

### E. Facilities

1. Whenever reasonable and possible, the program should make use of public facilities at free or nominal cost.
2. The center facilities shall comply with all applicable zoning ordinances as well as all building and fire codes.

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3. The facilities should provide convenient access to the dispute resolution services, including convenient access for people with disabilities. If the facilities do not afford adequate access to an individual with a disability, the program shall find an alternate location that will afford adequate access for the session involving that individual.
4. The facility should have restroom accommodations and drinking water on its premises or within a reasonable distance from the program.
5. The program should provide an atmosphere for reasonable safety of all the clients, staff and mediators.
6. Mediation rooms should be large enough to accommodate the neutral(s), disputants, and witness(es), including people with disabilities.

#### F. Data Retention

1. Each center shall retain all records and files according to the requirements of the Unified Court System of the State of New York.
  - a) Centers shall retain all financial records for a minimum of six years after the expiration of the contract entered into with the Unified Court System.
  - b) Centers shall retain a copy of the written agreement or decision subscribed to by the parties setting forth the settlement of the issues and future responsibilities of each party for a period of six years after execution.
  - c) Centers shall retain for a period of six years after the termination of each case a record—either written or electronic—of each case from which the center may compile the information required for program evaluation.
2. Each center shall make available to the Unified Court System all requested information in addition to that which is required by contract.

## II. GUIDELINES FOR CASES INVOLVING CHILD ABUSE OR NEGLECT, DOMESTIC VIOLENCE, AND FELONIES

### A. Child Abuse or Neglect Guidelines<sup>2</sup>

#### Purpose

It is the purpose of this policy to increase the availability of appropriate mediation and ADR options in cases involving child abuse and neglect, while ensuring that these services promote the informed decision making of all necessary stakeholders. By requiring that CDRCs collaboratively involve local stakeholders in the creation of child protective dispute resolution program protocols, the policy aims to promote dialogue among organizations actively involved with addressing child abuse and neglect so that these cases are handled with the utmost concern for the safety of children and the

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<sup>2</sup> Adopted May 10, 2012.

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interests of all stakeholders and parties. This policy also recognizes that in order for neutrals to provide responsible dispute resolution services in child protective cases, specialized training in child abuse and neglect matters is required.

### **Definitions**

For the purposes of these guidelines, the term “child abuse or neglect” shall include allegations regarding an abused child, or a neglected child as defined in Family Court Act §1012.

For the purposes of these guidelines, the term “child protective case” shall refer to matters filed in a court of competent jurisdiction in which:

- 1) A petition alleging child abuse or neglect (including educational neglect) is filed;
- 2) A petition seeking approval for a voluntary placement is filed; or
- 3) A petition seeking to terminate parental rights is filed.

The court’s jurisdiction begins with the filing of such a petition and continues until the court case is closed, including the end of any period of court ordered supervision.

### **Guideline I**

It is the policy of the Community Dispute Resolution Centers Program that child abuse or neglect is not a proper subject for dispute resolution services, except under the specific circumstances discussed below.

The CDRC shall in all custody and visitation, parent-child and divorce cases incorporate questions in its case intake and screening process to make reasonable efforts to determine if a matter referred for dispute resolution services involves unreported allegations of child abuse or neglect. The CDRC shall also inquire whether there is an open child protective case, current involvement of the Local Department of Social Services (LDSS) or any prior history with child protective court proceedings or LDSS involvement, regarding the matter being referred.

All parties to the dispute resolution process shall be advised that if previously unreported allegations of child abuse arise during the dispute resolution process, such information or communications are not confidential and may be reported to the statewide central register of child abuse and maltreatment and/or subject to disclosure in any subsequent judicial or administrative proceeding.

A CDRC may accept a referral for dispute resolution services of a custody and visitation, parent-child and/or divorce case, which involves a closed prior history of child protective court proceedings and/or LDSS involvement, under the following circumstances:

- 1) There is no open child protective case under the court’s jurisdiction; and
- 2) The underlying allegations have been previously reported, investigated and closed by the proper authorities; and

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- 3) The program can assign a neutral with specialized training in child abuse or neglect.

### **Guideline II**

#### **Procedures For Handling Child Protective Cases Under The Court’s Jurisdiction**

A CDRC shall not accept a referral for dispute resolution services of a matter in which there is an open child protective case currently under the court’s jurisdiction for the resolution of any issues involving the care, custody, visitation or supervision of the subject child or any other child of a respondent in an open child protective case unless and until:

- 1) The CDRC program has contacted the ADRCIP Office to:
  - a) determine the appropriate protocol development process for such referral depending on the subject matter of the dispute, and
  - b) for assistance with convening the stakeholder group described below; and
- 2) The CDRC program has developed a child protective dispute resolution program protocol in collaboration with a group of stakeholders including, but not limited to the Supervising Family Court Judge<sup>3</sup> or their designee, the Local Department of Social Services (LDSS) Commissioner or their designee, representatives of the Parents and Children’s Bar and the office that provides representation to the LDSS in child protective court proceedings, and the program administrator of a court-based child permanency mediation program in jurisdictions with such a program; and
- 3) The Coordinator of the Office of ADR Programs has reviewed and approved the child protective dispute resolution program protocol; and
- 4) The CDRC program can assign a neutral who has completed specialized child abuse and neglect training<sup>4</sup>.

### **Guideline III**

#### **Procedures For Handling Child Protective Cases with Current LDSS Involvement But Not Under The Court’s Jurisdiction**

A CDRC may accept a referral for dispute resolution services of a matter which is not under the court’s jurisdiction and which involves previously reported and investigated allegations of child abuse (such as pre-petition “preventive” cases referred by the LDSS), under the following circumstances:

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<sup>3</sup> Or the Administrative Judge in those jurisdictions without a designated Family Court Supervising Judge.

<sup>4</sup> See the Standards and Requirements for Mediators and Mediation Trainers Chapter in the CDRC Program Manual for minimum training standards. Additionally, Court-Based Permanency Mediation programs have established more comprehensive standards based on specialized training and prior experience mediating complex family matters.

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- 1) The CDRC shall conduct a thorough assessment of the matter to determine whether the complexity of the legal issues and family dynamics may preclude dispute resolution services; and
- 2) If after conducting such an assessment, the CDRC determines that it is appropriate to accept the referral, the CDRC shall assign a neutral with specialized training in child abuse or neglect; and
- 3) The CDRC shall make reasonable efforts to ensure that all interested stakeholders are given an opportunity to participate in the dispute resolution process.

**Guideline IV**

If previously unreported allegations of child abuse arise during any dispute resolution process (including the intake process), the CDRC shall have a policy that instructs staff and neutrals:

- 1) To stop the process; and
- 2) To consult with all parties individually to obtain as much information about the circumstances as is possible; and
- 3) After consultation with designated supervisory persons, determine whether to resume the dispute resolution process or whether the CDRC should report the matter to the statewide central register of child abuse and maltreatment based on a reasonable suspicion that a child's health or safety is in jeopardy.

**Guideline V**

To promote the purposes of these guidelines, and to facilitate compliance therewith, the CDRC shall provide all staff and neutrals with instruction concerning these guidelines and issues relating to child abuse and neglect.

**B. Domestic Violence Guidelines**

The Community Dispute Resolution Centers Program serves as a resource for the citizens and the justice system in the State of New York. We recognize the danger that a program contracting with the Unified Court System to provide dispute resolution services may be inappropriately used as a substitute for prosecution in domestic violence cases. It is not the intent of dispute resolution centers to inhibit or limit an individual's access to any legal remedy or protection.

The following guidelines have been developed by the community dispute resolution centers to assist in identifying domestic violence and in taking appropriate action in these cases.

**Guideline I**

The Dispute Resolution Center staff must be trained in the issues regarding domestic violence. Service programs for domestic violence victims and batterers must be identified and methods for referring complainants and respondents must be developed.

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The programs shall work with the local prosecutor's office, law enforcement and the courts to assist appropriate case flow, enforcement and victim protection in domestic violence cases.

**Guideline II**

Domestic violence is not a negotiable issue.

**Guideline III**

All domestic cases involving actually or potentially violent or imminently dangerous situations shall be referred to court or the appropriate agency for proper action.

**Guideline IV**

It is the obligation of the dispute resolution centers to inform domestic violence complainants and respondents of their available options.

In domestic violence cases in which the complainant expresses interest in the mediation alternative, it is the obligation of the community dispute resolution center to inform the complainant that mediation is remedial and nonpunitive and that mediation cannot provide legal protection against future violence.

**Guideline V**

If both parties, having been informed by the dispute resolution center staff of all available options, still voluntarily choose to request services from the center, the center may provide assistance to both parties with services designed to inform, protect, educate and support the individuals but in no way excuse the violent behavior.

**Guideline VI**

In providing any services to domestic violence cases the following precautions should be taken:

1. Staff should speak to each party individually to obtain as much information about the circumstances as possible.
2. Staff should make every effort to obtain all legal protection available for the victim.
3. Any staff person providing services to domestic violence cases must be trained in issues regarding domestic violence.
4. Staff should never encourage a domestic violence victim to withdraw or request dismissal of pending criminal charges or to not pursue criminal, civil or social service remedies.
5. It is the obligation of the dispute resolution centers to conduct follow up services with any case in which domestic violence has been identified to assure the protection of the victim and the availability of legal and social service resources.

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### C. Felony Guidelines

Since 1981, the Unified Court System of the State of New York, through the Community Dispute Resolution Centers Program, has provided funding and operational direction to dispute resolution centers in communities around the state. These centers have served ably as alternative forums to the court for the resolution of minor civil and criminal disputes. Recognizing this fact and responding to a continuing need to free scarce prosecutorial and judicial resources for the disposition of the most complex and serious matters, the 1986 Legislature in Chapter 837, enlarged the field of criminal disputes authorized to be diverted from the courts to dispute resolution to include certain felony matters which often involve family members, relatives, neighbors, acquaintances and others who have some type of past, present or future interaction.

The following information is designed to assist prosecutors, courts and dispute resolution centers in achieving the purposes for which Chapter 837 was enacted.

1. A Felony Can Be Referred to a Dispute Resolution Center:
  - a) Upon or after arraignment in a local criminal court upon a felony complaint, and before final disposition.
  - b) Upon or after arraignment in a superior court upon an indictment or superior court information, and before final disposition.
  - c) With the consent of the People and of the defendant and with reasonable notice to the victim and an opportunity for the victim to be heard, the court may order that the action be adjourned in contemplation of dismissal, for the purpose of referring the action to a dispute resolution center established pursuant to Article 21-A of the Judiciary Law.
2. A Felony Cannot Be Referred to a Dispute Resolution Center if it is:
  - a) A class A felony.
  - b) A violent felony offense as defined in section 70.02 of the Penal Law.
  - c) Any drug offense as defined in Article 220 of the Penal Law.
  - d) A felony upon the conviction of which the defendant must be sentenced as a second felony offender, a second violent felony offender, or a persistent violent felony offender pursuant to sections 70.06, 70.04 and 70.08 of the Penal Law, or a felony upon the conviction of which the defendant may be sentenced as a persistent felony offender pursuant to section 70.10 of such law.
3. Procedures for the Justice System and the Dispute Resolution Center.
 

Upon issuing an order adjourning a felony action in contemplation of dismissal (ACD), the court must release the defendant on his or her own recognizance and refer the action to a dispute resolution center.

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Within 45 days of a referral of an action to a dispute resolution center, the center must advise the district attorney as to whether the matter has been resolved. A copy of any written agreement reached or written notification indicating a failure to reach agreement must be sent to the district attorney within this time frame.

If the defendant has agreed to pay a fine, restitution or reparation, the district attorney must be advised every thirty days as to the status of such fine, restitution or reparation.

Upon application of the People made at any time not more than six months after issuance of an order adjourning an action in contemplation of dismissal, the court may restore the action to the calendar upon a determination that dismissal of the accusatory instrument would not be in furtherance of justice and the action must thereupon proceed.

Where a party has agreed to pay a fine, restitution or reparation, but has not paid such fine, restitution or reparation, upon application of the people, made at any time not more than one year after an issuance of an order adjourning an action in contemplation of dismissal, the court may restore the action to the calendar upon a determination that the party has failed to pay such fine, restitution or reparation and the action must thereupon proceed.

#### 4. Dismissal of Action.

If an action has not been restored to the calendar within six months, or where the defendant has agreed to pay a fine, restitution or reparation but has not paid such fine, restitution or reparation, within one year, of the issuance of an order adjourning the action in contemplation of dismissal, the accusatory instrument shall be deemed to have been dismissed by the court in furtherance of justice at the expiration of such six month or one year period, as the case may be. Upon dismissal of an action, the arrest and prosecution shall be deemed a nullity, and defendant shall be restored to the status he or she occupied before his or her arrest and prosecution. All papers and records relating to an action that has been dismissed pursuant to this section shall be subject to the sealing provisions of section 160.50.

#### 5. Monetary Awards

Monetary awards in the form of a fine, restitution or reparation cannot be made except upon consent of the parties, and such awards may not exceed the monetary jurisdiction of the small claims part of the justice court, except where an action has been adjourned in contemplation of dismissal pursuant to section 215.10 of the Criminal Procedure Law, a monetary award not in excess of five thousand dollars may be made.

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### **III. GUIDELINES FOR CASES INVOLVING MINORS<sup>5</sup>**

Learning to resolve disputes and manage conflict is an important element in society. People of all ages should have access to the dispute resolution centers contracting with the Unified Court System of the State of New York through the Community Dispute Resolution Centers Program. In order to encourage young people to benefit from these centers, the following guidelines have been developed to assist centers in the delivery of dispute resolution services for persons under the age of eighteen.

#### **Guideline I**

Directors of community dispute resolution centers should have mediators specifically trained to work with young people's issues and concerns.

#### **Guideline II**

When a person under the age of 18 seeks dispute resolution services from a center, every effort should be made to provide this resource to them and it is recommended that the parents or legal guardians be notified to allow them to participate in the dispute resolution process with their children.

#### **Guideline III**

In a situation where a minor is entering into a Consent Agreement, it is recommended that both parental or legal guardian consent and the signature of the parent or legal guardian be on the face of the agreement.

#### **Guideline IV**

In the event that a parent or legal guardian of a minor disputant is notified by the center of the minor's participation in the dispute resolution process and elects not to be present at the session(s), it is recommended that the center have a waiver available for parental or guardian signatures. The waiver should state that the parent or guardian is aware that the minor is involved in participating in a dispute resolution process.

#### **Guideline V**

In the event the minor does not wish to have the parent or guardian notified that they are involved in a dispute resolution process, it should be made clear in writing or orally to all the parties to the dispute that if they enter into an agreement, the matter is an informal agreement between the parties and may not be legally binding through Judicial Law 21A.

#### **Guideline VI**

In the event the center is working with a school and dispute resolution services are offered, it is strongly recommended that the center should have a policy developed with the school administration regarding notification and/or parental consent to the minor's participation in the dispute resolution process.

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<sup>5</sup> Adopted April 1, 1988.

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#### **IV. PROGRAMMATIC POLICIES**

##### **A. Arbitration**

1. Until such time that the Community Dispute Resolution Centers Program promulgates minimum training requirements for arbitrators, each center shall provide each arbitrator with such training as the center director deems appropriate prior to assigning that neutral to arbitrate a dispute at the center.
2. Each center that provides arbitration services shall ensure that staff who assign arbitrators or schedule arbitration hearings are familiar with Article 75 of the Civil Practice Law and Rules. A copy of this statute may be found in Chapter Five.

##### **B. Intake**

1. Centers shall not accept for dispute resolution any defendant:
  - a) who has a pending felony charge contained in an indictment or information arising out of the same transaction or involving the same parties; or
  - b) who is named in a filed accusatory instrument
    - (1) charging a violent felony offense as defined in section 70.02 of the Penal Law, or
    - (2) any drug offense as defined in Article 220 of the Penal Law; or
    - (3) if convicted would be a second felony offender as defined in section 70.06 of the Penal Law.
2. Each center shall provide to parties, in advance of the scheduled dispute resolution session, a written document describing:
  - a) the parties' rights and obligations, including the right of each party to call and examine witnesses;
  - b) the nature of the dispute; and
  - c) that a written decision (a.k.a. award) with the reasons therefor will be rendered if the parties participate in a process in which the neutral finds facts and decides the outcome to the dispute.

Section 849-b (5) (e) of the Judiciary Law also requires centers to provide a written statement indicating "the dispute resolution process will be final and binding upon the parties." However, there is nothing in Article 21-A of the Judiciary Law that renders the outcome of every dispute resolution process final and binding. Accordingly, centers that comply with this requirement might inadvertently mislead parties into believing that the outcome will be final and binding when in fact it might not be.

A Center may comply with this requirement by advising parties that they might reach an outcome to the dispute resolution process (although some processes, such as mediation and conciliation, may not produce an outcome) that is final and binding

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upon them pursuant to the laws of the State of New York. Parties should consult an attorney with any questions concerning the finality of their outcome and the degree to which each party is bound to the outcome. In the case of agreements produced during mediation or conciliation, each party has the right to have an attorney review the proposed agreement before that party signs the document.

3. Centers shall permit all parties to appear with representatives, including counsel, and to present all relevant evidence relating to the dispute, including calling and examining witnesses and presenting written materials.

Centers must also ensure that parties who are participating in voluntary dispute resolution processes, such as mediation, retain the right to terminate a session when they refuse to participate in the process in the presence of another party's representatives.

4. Centers shall not discriminate on the basis of age, sex, religion, creed, ethnic origin, sexual orientation or disability.
5. Centers should refer parties to other community agencies and resources, particularly when the parties' case is deemed inappropriate for mediation.

Centers shall maintain a list of referral agencies.

6. Centers should schedule the hearing or session at a place and time that is as convenient as possible for the parties and accommodate the needs of any person with disabilities. The program should advise parties prior to the session that accommodations for persons with disabilities will be provided if requested and that requests should be made in advance.

Cases should be scheduled within 10 days after intake whenever possible.

## C. Voluntariness and Confidentiality

### 1. *Voluntariness of Dispute Resolution Processes*

The Office of ADR Programs recognizes the generally accepted principle that Community Dispute Resolution Centers provide dispute resolution services upon *informed* and *voluntary* consent.<sup>6</sup> The Office of ADR Programs recognizes that this is an aspirational principle that cannot fully be met in every case; nevertheless, centers should strive to ensure that parties make informed and voluntary choices.

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<sup>6</sup> There are narrow exceptions to this foundational principle, such as arbitration pursuant to the New York Lemon Law, in which one party (the manufacturer) is compelled by operation of law to submit a dispute to a CDRC for resolution; however, the legislature demonstrated its preference for the voluntary resolution of disputes in the enabling legislation for the CDRC: "Community dispute resolution centers can meet the needs of their community by providing forums in which persons can participate in the resolution of disputes in an informal atmosphere *without restraint and intimidation.*" (L. 1981, c. 847, § 1) (emphasis added).

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“*Informed*” means that a center should provide prospective parties with sufficient information about the proposed dispute resolution process so they may make a reasoned decision whether or not to participate.

“*Voluntary*” means that a center should ensure that each party’s decision to participate or not participate in a dispute resolution process be made without compulsion and without fear of reprisal, particularly from the center, a referring institution, or other participants.

It is integral to voluntary processes, such as mediation, that parties make their decisions to participate or not participate in a dispute resolution process without compulsion and without fear of reprisal from the center, the referring institution, or other participants, especially in those cases where the referring institution requires the party to meet with center staff.

Therefore, center representatives, including directors, staff and volunteer mediators, should provide parties with sufficient information to make an informed decision about whether to participate in a dispute resolution process. Moreover, center directors should work with referring institutions—consistent with § (IV)(C)(3) [Release of Case File Information] and § (IV)(C)(4) [Disclosure of Case File Information to Referring Judicial Institutions]—to ensure that parties are sufficiently free from coercion that those parties may voluntarily consent to participate in a dispute resolution process.

## 2. *Confidentiality of Case File Information*

Except as set forth in § (IV)(C)(3) [Release of Case File Information] and § (IV)(C)(4) [Disclosure of Case File Information to Referring Judicial Institutions], as well as in Chapter One of this Program Manual, a center should not disclose to anyone any information contained in the center’s case files, including:

- a) The identity of a party;
- b) Whether a party contacted the center;
- c) Whether a party attended an information/screening session;
- d) Whether a party participated in a dispute resolution session;
- e) Whether a party reached an agreement, award or otherwise obtained an outcome in the dispute resolution process;
- f) The terms of a party’s agreement, award or other outcome;
- g) Whether a party complied with the terms of any agreement, award or other outcome;
- h) The stated reason that a party chose to participate or not participate in a dispute resolution session; and

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- i) The reason that a center concluded that dispute resolution services are (in)appropriate or that a case is (un)amenable for services.

All of the above information constitutes case-file information, and this information must be stored in a locked file cabinet and/or a password-protected electronic file.

Each of the items listed in items (a) through (g) above constitute *releasable* case-file information. A center may release information pertaining to any item listed in (a) through (g) provided that the center complies with § (IV)(C)(3) [Release of Case File Information] and § (IV)(C)(4) [Disclosure of Case File Information to Referring Judicial Institutions]. A center may also release to the Office of ADR Programs the information contained in items (b) through (g) and such other information as is necessary to fulfill the center's obligations as set forth in Chapter One of the Program Manual.

Items (h) and (i) constitute *non-releasable* case-file information. A center may not release any information pertaining to items (h) or (i), even upon request from a party or referring institution to do so. Centers may not release this information because a party's stated reasons for refusing dispute resolution services are either inextricably intertwined with the subject matter of the dispute, which is deemed confidential pursuant to Judiciary Law § 849-b(6), or because victims of violence might suffer harm at the revelation of the stated reasons for their decisions.<sup>7</sup> Likewise, a center's conclusion that a case is inappropriate or unamenable for mediation is often inseparable from communications relating to the subject matter of the dispute, which the Judiciary Law deems confidential.

### 3. *Release of Case-File Information*

A center may provide to an individual or the individual's representative or designee a report containing "releasable case-file information" (as that term is defined in § (IV)(C)(2) [Confidentiality of Case-File Information]), provided that the party first signs a document that permits and requests the center to disclose that information. This request may itemize the information that the party wants the center to disclose, and it may indicate the institution or person to whom the center should send the information.

Except as set forth in § (IV)(C)(4) [Disclosure of Case-File Information to Referring Judicial Institutions], a center should release no more information than necessary to comply with a party's request for information. Any information that is supplied should not disclose information about any other parties to the dispute resolution process unless each party permits in writing the center to do so. Moreover, a center may not disclose information unless that information is deemed "releasable case-file information."

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<sup>7</sup> For example, a victim of domestic violence who declines to participate may face abuse by his or her partner if the victim explains that he or she does not want to participate because he or she is afraid of the abuser.

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#### 4. *Disclosure of Case-File Information to Referring Judicial Institutions*

In general, referring institutions fall into two categories: those that have jurisdiction or some state-sanctioned authority over a party and those that do not. Examples of referring institutions that have jurisdiction or state-sanctioned authority over a person include but are not limited to the following: courts that have jurisdiction over a criminal defendant, departments of probation that have state-sanctioned authority over a person in need of supervision, and family courts that are addressing issues of child abuse or neglect. For purposes of this guideline, such institutions shall be deemed “judicial institutions.”

While all referring institutions have an interest in learning whether a party complies with a referral, that interest is heightened for judicial institutions.<sup>8</sup> Although centers may adopt standards of conduct that limit the scope of information they supply to referring institutions in general and judicial institutions in particular, they are authorized to disclose releasable case-file information (as that term is defined in § (IV)(C)(2) [Confidentiality of Case-File Information]) pursuant to the protocols in this guideline.

When centers and referring judicial institutions craft protocols for the centers to report the centers’ contacts with parties, this office encourages centers and their sources of referral to distinguish between information/screening sessions<sup>9</sup> and dispute resolution (or mediation) sessions<sup>10</sup>. As explained more fully in the rationale at the conclusion of § (IV)(C), parties, judicial institutions, and centers occasionally have conflicting interests. This two-tier construct is designed to help centers and judicial institutions weigh those interests so that the referring institutions can get the information that they need while centers can maintain the confidentiality of parties’ statements made during the dispute resolution process.

##### a) Non-Mandated Referrals

For those cases in which a party is a litigant or client of a judicial institution, and where the party agrees but is not ordered or required to contact the center for an information/screening session, the center may disclose any of the following information to the referring judicial institution:

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<sup>8</sup> For additional discussion of the heightened interests that some institutions have, see the rationale at the conclusion of § (IV)(C).

<sup>9</sup> In an information/screening session, a staff member or other representative of the center meets with the referred party to explain the dispute resolution process, ask the party questions that help the representative screen the case as appropriate or inappropriate for dispute resolution services, and confirm whether the referred party or parties wish to participate in a dispute resolution process.

<sup>10</sup> In the dispute resolution session(s), parties discuss the substance of their conflict, and the content of these sessions should never be revealed to a referring institution as per § (IV)(C)(5) [Confidentiality of Communications Made During the Dispute Resolution Process].

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- (1) Whether the case was screened (in)appropriate or (un)amenable for dispute resolution;
- (2) Whether a dispute resolution session was held or scheduled;
- (3) Whether the parties are requesting an extension for an additional dispute resolution session (the center may also indicate when the parties plan to meet for the next session);
- (4) Whether the parties reached an agreement or award that resolves all of the issues;
- (5) Whether the parties reached an agreement or award that resolves some of the issues;
- (6) Whether the parties met but did not reach an agreement; and
- (7) The center may forward a copy of the parties' agreement or award to the referring institution with the permission of the parties.

b) **Mandated Referrals**

For those cases in which the party is a litigant or client of a judicial institution, and where the judicial institution orders or otherwise requires the party to attend an information/screening session, the center may disclose the following information to the judicial institution:

- (1) All of the information delineated in § (IV)(C)(4)(a) [Non-Mandated Referrals]; and
- (2) Whether the party who is ordered or required to attend the information/screening session actually contacted the center, including the date and time that the party contacted the center, if requested by the judicial institution and if known by staff of the center.

**Adjournments in Contemplation of Dismissal**

In any case in which a party's criminal case has been adjourned in contemplation of dismissal and the case referred to dispute resolution pursuant to Article 215 of the Criminal Procedure Law, the center must advise the district attorney and the referring court whether the charges against that defendant were resolved in dispute resolution.

Moreover, if the defendant in the criminal case agrees in dispute resolution to pay a fine, restitution or reparation, the center may advise the district attorney or referring court as to the status of the fine, restitution or reparation.

5. *Confidentiality of Communications Made During the Dispute Resolution Process*

Except as set forth in the following paragraph, centers, staff and mediators may not disclose any communications relating to the subject matter of the dispute resolution process made during the resolution process by any participant, mediator, or any other

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person present at the dispute resolution process. These communications are deemed confidential communications.

Pursuant to § (II)(A) [Child Abuse Guidelines] of this chapter of the Program Manual, a center or a staff representative of the center may disclose allegations of child abuse, and such allegations shall not be deemed confidential communications under the Judiciary Law.

6. *Requests for Information*

The program director must develop a written protocol for responding to requests for information. In particular, centers should develop a form for parties who want the center to disclose releasable case-file information, as well as a form to report the disposition of a case to a referring judicial institution.

7. *Rationale for Permitting Disclosure of Information Upon Request*

Centers that accept referrals from courts or other agencies may disclose limited information consistent with the following principles and values, and program directors should work with referring institutions to develop consistent policies. When establishing these policies, directors and referring institutions should be cognizant of the various constituents whose interests are at stake: the center, the court or referring agency, and—most importantly—the referred party.

- The referred parties' interests include remaining safe, ensuring that information disclosed in confidence remains private, acquiring unbiased information to help them decide whether to utilize the services of the center, and fulfilling any obligations that they may have to the referring institution.
- The referring institution's interests include monitoring its caseload and connecting its litigants / clients with appropriate services. When a judicial institution orders a party to meet with staff from the center, the judicial institution has the additional interest of confirming whether the party complies with its order. Note that courts and other referring judicial institutions often have heightened interests for ensuring that criminal defendants, juvenile delinquents, and other persons under the institution's charge comply with referrals that are court-ordered or part of a comprehensive service plan.
- The center's interests include providing appropriate services to parties, maintaining a productive relationship with the referral institution, and preserving the integrity of the dispute resolution process. That integrity is often measured by the degree to which the center respects the informed, voluntary decisions of parties and does not disclose the parties' confidential statements.

The Office of ADR Programs recognizes that the relative importance of many of these interests changes as the relationship between the referred party and the center develops. For example, the center's interest in keeping confidential the party's

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communications is less acute when the party does not contact the center than when a party is actually participating in a dispute resolution session. Likewise, a court’s interest in monitoring a litigant’s compliance with an order to learn about the benefits of dispute resolution becomes less significant once the litigant has met with center staff and decided whether to participate in the dispute resolution process. The pivotal event around which these interests shift is the party’s decision whether to participate in a center’s dispute resolution process.

Accordingly, we encourage centers and referring judicial institutions (as that term is defined in § (IV)(C)(4) [Disclosure of Case-File Information to Referring Judicial Institutions]) to distinguish between referrals to an “information/screening session” and referrals to a “dispute resolution session.” (See the footnotes to § (IV)(C)(4) [Disclosure of Case-File Information to Referring Judicial Institutions] for definitions of these terms).

While parties should never be compelled to participate in a dispute resolution session, a referring judicial institution may order a party to attend an information/screening session.<sup>11</sup> When a judge or a public official—such as a probation department officer who is monitoring a designated person in need of supervision—orders a party to meet with a representative from the center, the judge or public official legitimately expects such cooperation from the center that the official can determine whether the party has complied with the order. Frequently, employees of the center are uniquely situated to accurately furnish this information. Thus, permitting staff to reveal whether a party actually contacted the center will serve the following ends: it will promote a stronger referral relationship between the center and the referring judicial institution, it will help parties verify their compliance with the order of referral, and it will help the referring institution meet its administrative needs.

This policy is narrowly tailored so that centers are prohibited from revealing the reasons given by a party who chooses not to use the services of a center. There are three primary reasons that centers should not be permitted to disclose this information to a referring institution, even in the case of an ordered referral. First, parties who are victims of violence should not be forced to choose between negotiating with their abusers and facing abuse after a center employee informs the court that there is abuse in the parties’ relationship. Second, centers adhere to standards of conduct that compel them to remain neutral and to respect a party’s informed decisions, including his or her decision whether to participate in dispute resolution. If center staff conveyed a party’s stated reasons for declining to participate in dispute resolution services, it would likely both undermine the perception of centers as neutral and force the centers to play a role in imposing a penalty on parties who choose not to participate in dispute resolution. Finally, the reasons that parties give for declining dispute resolution services are almost universally intertwined with the subject matter

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<sup>11</sup> See, e.g., *Laeyt v. Laeyt*, 268 A.D.2d 815 (3d Dept. 2000), affirming a Family Court order that required parties to contact a CDRC before filing any additional petitions in Family Court.

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of the dispute itself, as are the parties' statements that compel center staff to conclude that a case is inappropriate or unamenable for dispute resolution services. As set forth in § (IV)(C)(5) [Confidentiality of Communications Made During the Dispute Resolution Process], centers are prohibited by law from revealing communications that are related to the subject matter of the dispute.

Sections (IV)(C)(2) through (IV)(C)(4) permit centers to release finite information in certain circumstances. Nothing in these guidelines requires centers to furnish this information to parties or referring institutions upon request. Accordingly, a center may adhere to standards of conduct that prohibit the center from sharing information with a referring judicial institution or party even though these guidelines authorize the center to disclose that information.