



PRESS RELEASE

**New York State
Unified Court System**

**Hon. Lawrence K. Marks
Chief Administrative Judge**

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Court System to Implement Presumptive, Early Alternative Dispute Resolution for Civil Cases

New York—In a transformational move to advance the delivery and quality of civil justice in New York as part of the Chief Judge’s Excellence Initiative, Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence K. Marks today announced a systemwide initiative in which, aside from appropriate exceptions, parties in civil cases will be referred to mediation or some other form of alternative dispute resolution (ADR) as the first step in the case proceeding in court. Dubbed “presumptive ADR,” this model builds on prior successes of ADR in New York State and in other jurisdictions by referring cases routinely to mediation and other forms of ADR earlier in the life of a contested matter.

A broad range of civil cases, from personal injury and matrimonial cases to estate matters and commercial disputes, will, at the onset of the case, be directed to ADR—which comprises a variety of resolution approaches—with a focus on court-sponsored mediation. In mediation, a neutral facilitator works to foster negotiation and help narrow the issues, with a view toward settlement. ADR, especially mediation, helps the parties to understand each other’s positions and interests, and consider options apart from conventional litigation to resolve their dispute, typically leading to more satisfying outcomes.

The large-scale initiative announced today, spurred by the recommendations of the Advisory Committee on ADR appointed last year by Chief Judge DiFiore, will build on the success of the courts' existing network of ADR programs. The court system, supported by its ADR Office, collaborates with trial courts, law schools and non-profit community dispute resolution centers around the State to offer parties access to free or reduced-fee ADR services in a variety of disputes, also assisting courts in maintaining rosters of ADR practitioners, among other responsibilities.

While the courts' ADR programs have grown in recent years, with thousands of New Yorkers benefiting from these services annually, court-sponsored mediation remains underutilized. Currently, most mediation referral relies on the parties to opt in to mediation or on individual judges to refer parties to mediation in individual cases. Transitioning to an early and presumptive ADR model—and expanding the scope of ADR to include the broadest possible range of civil case types—will play a significant role in decreasing costs to the parties and the judiciary and improving case outcomes as well as reducing case delays.

To accomplish this systemwide undertaking, Deputy Chief Administrative Judges George Silver and Michael Coccoma and their staffs, in collaboration with the statewide ADR coordinator, will work closely with Administrative Judges and trial court judges—and in consultation with local bar associations and other stakeholders—to expand the number and scope of court-sponsored ADR programs in their respective jurisdictions, taking steps to educate all participants in the constructive use of ADR.

The court system will issue uniform rules to authorize, endorse and provide a framework for courts to introduce and expand court-sponsored mediation programs, particularly early mediation via automatic presumptive referrals in identified types of civil disputes, subject to appropriate opt-out limitations.

The Administrative Judges will formulate plans tailored to local conditions and circumstances. The plans will take the fullest advantage of a wide range of existing resources, including volunteer mediators and neutrals on court rosters, judges, non-judicial staff, judicial hearing officers and community dispute resolution centers.

Implementation and rollout of this statewide program will begin in September, with local protocols, guidelines and best practices to be developed in each jurisdiction to facilitate the process. Additionally, comprehensive data will be collected to help evaluate the progress of court-sponsored ADR programs and allow for changes to improve the performance of programs going forward.

“Making ADR services widely available in civil courts throughout the State—and facilitating the use of such services as early as possible in the case—are major steps toward a more efficient, affordable and meaningful civil justice process. I commend the ADR Advisory Committee, led by John Kiernan, whose expertise and thoughtful study provided a foundation for this large-scale effort, as we strive to make ADR an integral part of our court culture,” said Chief Judge DiFiore.

“Court-sponsored ADR has a proven record of success, with high settlement rates and strong user satisfaction among litigants and lawyers. We are eager to move ahead as we bring ADR into the mainstream, offering a far broader range of options to conventional litigation in our ongoing efforts to streamline the case management process and better serve the justice needs of New Yorkers,” said Chief Administrative Judge Marks.

“This initiative reflects the strong evidence that court-sponsored automatic presumptive referral of disputes to early mediation often leads to upfront settlements, or to significant narrowing of disputes that foster future resolutions. Expanded early mediation will advance core goals of the Chief Judge’s Excellence Initiative, promoting faster and less expensive outcomes, increasing parties’ involvement in resolving their disputes and enhancing the administration of justice,” said Mr. Kiernan, a partner at Debevoise & Plimpton.

A copy of the ADR committee’s interim report is attached.