

Benefits of Mediating Supreme Ct. Cases

Richmond County and Beyond

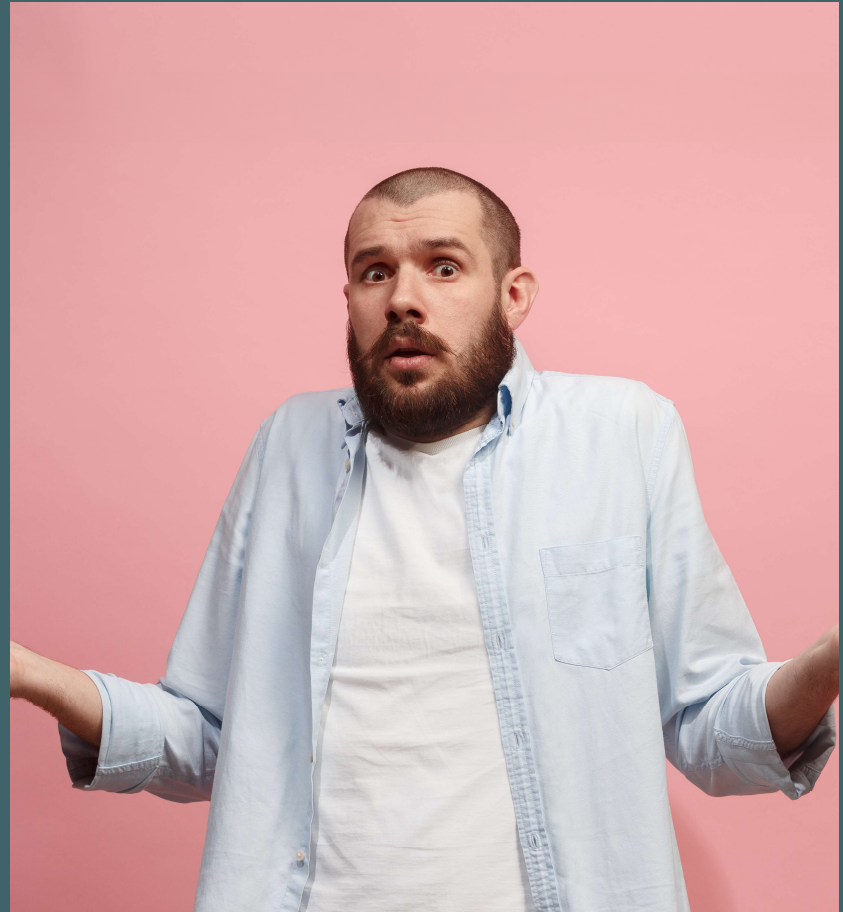
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Overview

- What is Alternative Dispute Resolution?
- Mandatory v. Presumptive v. Voluntary
- Mediation use in the five boroughs
- Case types mediated in Richmond County Supreme Court (Personal Injury, Commercial, Real Estate, Matrimonial, Article 81 Guardianship)
- Differences between a settlement conference, mediation session, arbitration
- How to opt into mediation in Richmond Supreme (prior to April 24, 2026)
- Current rules regarding the use of mediation in NYS Court
 - Part 160 ADR in the Trial Court
- Standard of Conduct for Mediators
- How to prepare for a mediation
 - Confidential statement
- Should counsel be present for a Mediation session?
- Use of outside Mediation

What is Alternative Dispute Resolution?



It depends

Alternative Dispute Resolution (ADR) is a group of processes such as arbitration, mediation, neutral evaluation, or negotiation, in which the parties work to resolve their dispute outside of litigation. The current NYS Court Administration also defines settlement conferences as a part of ADR if the purpose of the conference is to settle the dispute.

[Alternative Dispute Resolution \(ADR\) | New York City Bar Association](#)

Mandatory
v.
Presumptive
v.
Voluntary

Every Court in Every County has Different Rules

Benefits and Downfalls of Mandatory and Presumptive Mediations

- Gets the parties to the table
 - You are not forcing the parties to settle, but merely to engage in dialogue
- Parties can be pushed to evaluate their case earlier in the process to determine if a settlement is possible

- Lack true voluntary aspect
- Premature case with respect to discovery
- Unnecessary added cost (payment for ADR and attorney representation)

Benefits and Downfalls of Voluntary Mediation

- Voluntary Nature – parties are ready to engage in meaningful conversation to resolve their disputes
- Parties are aware of the strengths and weaknesses of their case
- Self Determination
- Cost Savings
- Determinative Outcome that is based on a mutual understanding of the needs of the parties, rather than the law
- Risk assessment has to be done when going through the court system (even said at settlement conferences)
- Not suitable for all cases (difference between Court and private)

ADR in the Five Boroughs

ADR is in every county in the entire state of NY

Supreme Court in the five boroughs

Neutral must be an attorney

Civil Court

Neutral can be a non-attorney

Surrogate's Court

Neutral must be an attorney

Family Court

Neutral can be a non-attorney

Richmond County Supreme Court ADR Program

- Prior to 2026, 95% of the cases were Mediations
- 5% Arbitrations (pilot program)
- In 2026, Court Leadership added settlement conferences to the ADR offerings
- Prior to April 2026, all Neutrals went through an application process and an interview before joining the Richmond Roster
- Case types included: Torts (auto, premise, med mal, labor law), Contracts, Matrimonial, Real Estate, Article 81 Guardianship

Mediation
v.
Settlement Conference
v.
Arbitration

Mediation

- Confidential
- Mediator can be chosen by the Parties
- Less formal than traditional litigation
- Save time and money in comparison to traditional litigation
- Lasting outcomes because parties are in control
- Self Determination

Settlement Conference

- Court Process
- Limited time to hear matter because of volume of cases
- Court driven with court personnel in position of authority
- Evaluative rather than party led
- Law is leading factor; judicial view point

Arbitration

- Confidential
- Arbitrator can be chosen by the Parties
- Less formal than traditional litigation but more structured than mediation
- Save time and money in comparison to traditional litigation

Opting into Mediation

Richmond County

- Email the ADRC
- Call the ADRC
- Complete a Mediation Initiation Form
- Could be a Judicial Referral
- ADRC Referral

Outside Richmond County

- Review ADR website for specific county
- Could be a form, email, pdf
- When in doubt, contact the ADRC

Part 160.2a1

“state-funded court of the UCS shall refer each civil dispute pending before it to an appropriate ADR process at the earliest practicable time unless: (i) such referral is prohibited under statute, local rule of court, or administrative order of the Chief Administrator of the Courts or the Chief Administrator's designee, (ii) the court determines that the parties cannot participate effectively in an ADR process or that, for any other reason, referral to such a process will not serve the interests of justice, (iii) a party to the dispute objects to and opts out from such referral in accordance with local rule of court or administrative order of the Chief Administrator or designee (iv) the court determines, in consultation with the local Administrative Judge, that insufficient ADR resources, including but not limited to, mediators and neutral evaluators, are currently available, or (v) there are allegations of domestic violence as defined by the New York State Office for the Prevention of Domestic Violence or of child abuse or neglect.”

Part 160.2a(2)

To the extent possible, the court shall provide the parties, or their counsel, with access to written or electronic materials describing: (i) how ADR is used to resolve a dispute (including how it may provide opportunities for exchanges of information to facilitate accelerated resolution of disputes), (ii) the associated costs of ADR, if any, and (iii) how a party can opt out of a referral to ADR pursuant to paragraph (1) of this subdivision.

Part 160.2a(4)

Where the parties in a family court or matrimonial matter are referred to mediation under this Part, the parties shall be screened using a standardized mediation screening tool developed by the Statewide ADR Office of the UCS, to determine whether it is appropriate for mediation to proceed. This screening is in addition to any statutory registry checks under section 240 (1)(a) of the Domestic Relations Law and section 651 (e) of the Family Court Act. Where mediation is determined to be inappropriate, the matter shall be returned to the referring court.

Part 160.3

Except as otherwise provided herein or as otherwise required by law, all communications, memoranda, and work products made in preparation for, during, or in connection with an ADR process conducted by a mediator or neutral evaluator to whom a dispute is referred pursuant to this Part shall be confidential and not subject to disclosure in any judicial or administrative proceeding.

Part 160.4

Neutral third parties conducting an ADR process to which a dispute has been referred pursuant to this Part shall have such immunity from liability as may be provided by law.

Neutral Fees

- Fees vary by county, mediator, case type and experience
 - Some counties have fee caps; whereas Richmond does not
 - Fees published on the court website
 - Prep work and first 90 minutes free of charge
 - Excellent panel of neutrals on Richmond Roster
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- Problem is billing and collecting
 - It was suggested to incorporate in a judicial order, great idea, but did not take off

Standard Conduct of Mediators

- A mediator shall inform the parties that mediation is consensual in nature, that the mediator is impartial, that any party may withdraw from mediation in accordance with relevant local and statewide rules of the court, and that the mediator may not impose or force any settlement on the parties
- Because a mediator cannot personally ensure that each party has made a fully informed choice to reach or finalize a particular agreement, a mediator should make the parties aware of the importance of consulting other professionals, including attorneys, to help them make informed decisions.

- A mediator shall always conduct mediation sessions in an impartial manner.
- A mediator shall avoid a conflict of interest or the appearance of a conflict of interest both during and after mediation
- A mediator shall mediate only when the mediator possesses the necessary and required qualifications, temperament, and familiarity with the general principles of the subject matter involved in the case being mediated
- A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation unless disclosure is required or authorized by applicable law.

How to Prepare for ADR, as Counsel

- Prepare a confidential Mediation Statement for the Neutral
- Speak to client and manage expectations
- Explain the differences between the different ADR processes

How to Prepare for ADR, as Neutral

- Conduct a pre-mediation/arbitration conference to gauge where the parties and counsel are with respect to case
- Review NYSCEF
- Read any and all documents submitted by parties

Should Counsel be Present During Mediation or Arbitration?

It depends on:

- Case type
- Nature of case
- Associated cost
- Your client's comfort level

Benefits of Outside Mediation

- You are the client and are in control
- Ability to select own neutral
- Predictability of cost
- Predictability of outcome
- Control of time (as opposed to court schedule)
- Dedicated team to guide and answer questions

Thank
you

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