

Rule 4.3D. Mediation.

1. Parties to a domestic-relations matter involving children are required to attend the District Court Conciliation and Mediation Services parent-education program “What About The Children” within sixty (60) days from receipt of service of process. This includes filings for dissolution of marriage and determination-of-paternity cases which involve issues of custody, parenting time, visitation, or other access with a child. The parties to motions to compel existing orders which involve parenting issues; applications to modify decrees of dissolution which involve parenting issues; and applications to modify decrees of paternity which involve parenting issues shall be subject to the requirements of this rule and are required to attend the parent-education program “Communication Skills For Parents In Conflict,” unless all issues are resolved by agreement and entry of a stipulated order. Participation in either course may be delayed or waived by the court for good cause shown. Failure or refusal by any party to participate in such a course as ordered by the court shall not delay the entry of a final judgment or an order modifying a final judgment in such action by more than six (6) months and shall in no case be punished by incarceration.

Each party shall be responsible for the costs of attending either parenting education course. At the request of any party, or based upon screening or recommendation of an attorney or mediator, the parties shall be allowed to attend separate courses or to attend the same course at different times, particularly if child abuse or neglect, domestic intimate-partner abuse, or unresolved parental conflict is or has in the past been present in the relationship, or if one party has threatened the other party.

2. For purposes of Fourth Judicial District Rule 4-3D, “facilitator” shall mean persons qualified as “approved specialized mediators” pursuant to Neb. Rev. Stat. § 43-2938(3) and “specialized alternative dispute resolution” as defined by Neb. Rev. Stat. § 43-2922(22) shall also be referred to as “facilitation.”

When the parties or their counsel are unable to negotiate a parenting plan agreement which satisfies the requirements of the Parenting Plan Checklist, then the parties are required to meet and confer with either the Director of the District Court Conciliation and Mediation Services or another assigned mediator to complete a Parenting Plan, including all issues of child custody, parenting time, visitation, grandparent visitation, other access, and any other issues relating to the children that may be susceptible to mediation or the specialized alternative dispute resolution process.

Parties or counsel are required to notify the Director of the District Court Conciliation and Mediation Services of any request for delay in assignment of a mediator or facilitator if the parties or counsel are attempting to negotiate a Parenting Plan agreement, which agreement shall be required to comply with the Parenting Plan Checklist. In the event that there is a failure to request a delay of mediator or facilitator assignment, one shall be assigned pursuant to this rule.

An individual party, a guardian ad litem, or a social service agency may request mediation, specialized alternative dispute resolution, or other alternative dispute resolution process for a matter involving an issue of custody, parenting time, visitation, other access, or a related matter at any time prior to the filing or after the filing of an action with this court. Upon receipt of such request, each mediator, court conciliation

program, or approved mediation center shall provide to each party information about mediation and the specialized alternative dispute resolution process.

At any time in the proceedings, the court may refer a case to mediation or the specialized alternative dispute resolution process in order to attempt resolution of any relevant matter. The court may state a date for the case to return to court, and the court shall not grant an extension of such date except for good cause shown.

3. Prior to commencing an initial mediation session, the mediator shall provide an initial, individual screening session with each party to assess the presence of child abuse or neglect, unresolved parental conflict, domestic intimate-partner abuse, other forms of intimidation or coercion, or a party's inability to negotiate freely and make informed decisions. If any of these conditions exists, the mediator shall direct the parties to return to the Conciliation and Mediation Services Office for assignment of a specialized alternative dispute resolution process that addresses safety measures for the parties. When there are allegations of domestic intimate-partner abuse or unresolved parental conflict between the parties in any proceeding, or when screening by a mediator, mediation center, or the Conciliation and Mediation Services Office identifies the presence of child abuse or neglect; unresolved parental conflict; domestic intimate-partner abuse; other forms of intimidation or coercion; or a party's inability to negotiate freely and make informed decisions, then mediation shall not be required; however, the parents shall be required to meet with a facilitator in the court's specialized alternative dispute resolution process.

The specialized alternative dispute resolution process shall begin with each parent meeting individually with a qualified facilitator to provide an opportunity for the facilitator to educate each party about the process; obtain informed consent from each party in order to proceed; establish safety protocols; allow support persons to attend sessions; and consider opt-out-for-cause. Any party may terminate after an initial, individual screening session and one specialized alternative dispute resolution session are held. The primary consideration in each specialized alternative dispute resolution session shall be the safety of each party and each child. The facilitator of the process has a duty to determine whether to proceed in individual sessions or caucus sessions in order to address safety and freedom to negotiate. Joint sessions shall not be used unless, after a safety assessment by the facilitator, all parties agree to a joint session to be conducted at the courthouse, with appropriate safety measures in place.

No trial date or other dispositive hearing will be scheduled until (1) attendance at the required parent education seminar has been completed and mediation or other specialized alternative dispute resolution process has been attempted to resolve issues of custody, parenting time, visitation, or other access, and (2) the parties have filed a Certificate of Readiness For Trial or a Proposed Scheduling Order pursuant to Fourth Judicial District Rule 4-10, provided, however, that failure or refusal to participate by a party shall not delay entry of a final judgment by more than six (6) months.

Notwithstanding the language in this rule, issues of domestic-violence, domestic intimate-partner abuse, or child abuse or neglect may, upon consideration by the trial court, disqualify the parties from parent education, mediation, or the specialized alternative dispute resolution processes.

4. The Mediation Committee will prepare a letter, for distribution by the District Court Administrator, advising the filing parties and their attorneys that attendance at the Conciliation and Mediation Services seminar “What About the Children?” or “Communication Skills For Parents in Conflict” is mandatory and must be completed within the time frame specified in this rule. The letter should also advise the parties and counsel (1) that Parenting Plans and issues of child custody, parenting time, visitation, or other access with a child will be referred for mediation or specialized alternative dispute resolution; (2) that no trial or other dispositive hearing will be scheduled until attendance at the required parent-education seminar has been completed and mediation or specialized alternative dispute resolution to resolve issues of custody, parenting time, visitation, or other access has been attempted; (3) that failure or refusal to participate by a party shall not delay entry of a final judgment by more than six (6) months; and (4) that issues of domestic-violence, domestic intimate-partner abuse, or child abuse or neglect may, upon consideration by the trial court, disqualify the parties from parent education, mediation, or the specialized alternative dispute resolution processes. The Clerk of the District Court is directed to include this letter with the filing and service packets distributed by the Clerk.

5. The Office of Conciliation and Mediation Services shall maintain a list of mediators and facilitators approved by the District Court judges and the Mediation Committee of the District Court. These mediators and facilitators must meet State of Nebraska (or equivalent) standards for training in order to qualify. The following requirements apply to all participating mediators and facilitators: Court-approved mediators and facilitators will determine their own fees and will provide a copy of their fee schedule to the Conciliation and Mediation Services Director. In order to be on the list of court-approved mediators and facilitators, a mediator or facilitator must agree to use a sliding-fee scale of \$25 to \$75 per person per hour, determined on the basis of what each party is able to pay. Court-approved mediators and facilitators must also agree to take pro bono cases on an “as needed” basis. The Conciliation and Mediation Services Director will determine the need for such pro bono services, so that the burden of these cases is equitably distributed among the participating mediators and facilitators.

6. Mediators and facilitators involved in proceedings shall participate in training to enable them to recognize child abuse or neglect, domestic intimate-partner abuse, and unresolved parental conflict and its potential impact upon children and families.

7. Prior to participation in the program, qualified mediators and facilitators will be required to attend an orientation session, which will be conducted by the Director of Conciliation and Mediation Services, to review the mediation and specialized alternative dispute resolution process procedures, as well as the Parenting Plan Checklist. Each participating mediator and facilitator shall agree to the court requirements for participation, including a requirement to observe all statutory requirements for mediators in the mediation process and for facilitators in the specialized alternative dispute resolution process as established under the Nebraska Parenting Act. Each mediator and facilitator will be asked to sign a statement indicating acknowledgment and acceptance of the requirements.

8. When a judge refers a case for mediation or specialized alternative dispute resolution, the judge will indicate the issues to be mediated or facilitated, as well as any choice of a

mediator or facilitator if the judge has a preference. The judge may also indicate whether there is a particular mediator or facilitator whom the judge does not wish to use. The attorneys for the parties may also mutually agree upon the choice of a mediator or facilitator and may indicate whether they wish the parties to mediate any issues other than custody, parenting time, visitation, or other access with a child. If financial issues are to be mediated, the case will be assigned to an attorney mediator.

9. When the court refers parties to mediation or specialized alternative dispute resolution, the attorneys will be requested to bring the parties to the Conciliation and Mediation Services Office forthwith or to immediately provide the Conciliation and Mediation Services Office with all necessary client information, so the staff can confer with the parties and their attorneys and discuss the appropriate process and selection of a mediator or facilitator. Unless the parties or attorneys have requested a specific mediator or facilitator, the Conciliation and Mediation Services Office will assign, from the rotating list, the next mediator or facilitator appropriate to the parties and their needs, and the Conciliation and Mediation Services Director will contact the mediator or facilitator to confirm the mediator's or facilitator's acceptance of the case. The Conciliation and Mediation Services staff will send paperwork to the mediator or facilitator, who must advise the Conciliation and Mediation Services staff, within ten (10) days of receipt of the paperwork, of the date for the parties' first appointment. The Conciliation and Mediation Services staff will screen each case for domestic violence, child abuse or neglect, unresolved parental conflict, domestic intimate-partner abuse, other forms of intimidation or coercion, or a party's inability to negotiate freely and make informed decisions. If any one or more of these elements are found to exist, then mediation shall not be required; however, the parents shall be required to meet with a facilitator in the court's specialized alternative dispute resolution process.

10.a. If the parties reach an agreement through mediation or the specialized alternative dispute-resolution process, the agreement shall be reduced to writing. The mediator or the

facilitator shall provide copies of the agreement to the parties and their attorneys, together with a notice informing the parties and their attorneys of their right to express their objections to the written agreement. The notice shall inform the parties and their attorneys that they have twenty-one (21) days from the date of the notice to notify the mediator or facilitator and the Conciliation and Mediation Services Office of any written objections to the terms of the agreement. The written objections shall be specific and shall not violate the statutory protections of confidentiality or privilege of the parties by being filed with the clerk of the court. All matters not specifically objected to shall be deemed final. If no objections are received within twenty-one (21) days, then the agreement shall automatically be forwarded to the Conciliation and Mediation Services Office for final processing, pursuant to subsection (c) below.

If the parties and counsel negotiate a Parenting Plan agreement, which agreement shall fully comply with the Parenting Plan Checklist, they shall forward the agreement to the Conciliation and Mediation Services Office immediately after signing, pursuant to subsection (c) below.

b. Upon the filing by either party or attorney of objections to the agreement, the mediator or facilitator shall forthwith schedule a re-mediation or re-facilitation session on the disputed issues identified in the written objection. The mediator or facilitator may charge

additional fees for the re-mediation or re-facilitation session and related expenses. Following re-mediation or re-facilitation efforts, the mediator or facilitator shall forward to the Conciliation and Mediation Services Office the re-mediated or re-facilitated agreement, which shall be clearly denominated the “re-mediated agreement” or the “re-facilitated agreement,” and which shall recite those issues, if any, which remain contested.

c. All agreements shall be forwarded to the Conciliation and Mediation Services Office, where the Conciliation and Mediation Services staff shall review said agreements for compliance with the Parenting Plan Checklist. The Conciliation and Mediation Services staff shall then forward a copy of the final agreement, along with the appropriate closure form, to the judge to whom the case is assigned, and to the court file.

d. At trial, parties shall not present evidence intended to object to a provision in an approved parenting plan or to show a material change in circumstances subsequent to the filing of a final agreement unless a written motion asking leave of the court to present such evidence at trial, accompanied by a notice of hearing, has been filed with the court and has been heard and granted prior to the trial.

11. The Conciliation and Mediation Services staff will follow up on the deadlines set by the court, including any extensions of time that have been granted.

12. *Amendment and Modification cases.* When the parties are mediating or facilitating amendments to existing decrees or modification proceedings, they may directly request mediation or specialized alternative dispute resolution through their previous mediator or facilitator or may request re-assignment to a different person through the Conciliation and Mediation Services Office.

13. The Mediation Committee will be a standing committee of the District Court and will be composed of four (4) district judges, the Conciliation and Mediation Services

Director, at least one outside mediator/advisor, and such other persons as the Committee deems necessary. The Chair Judge of Conciliation and Mediation Services will chair this Committee and may be consulted individually, as may be needed by the Conciliation and Mediation Services Director, for answers on day-to-day operations of the mediation program.

14. The Mediation Committee of the District Court may make such other operating rules as may be needed to facilitate the beginning and continuation of this mediation program.

Adopted effective December 29, 1995; amended effective May 1, 1998; amended effective March 12, 1999; amended effective June 19, 2002; amended effective January 18, 2007; amended effective May 7, 2008.