

### **1-125. Domestic Relations Mediation Act programs.**

A. **Applicability.** This rule shall apply only to domestic relations proceedings which involve custody, periods of parental responsibility or visitation of minor children pending in a judicial district that has established a domestic relations mediation program, safe exchange program, or supervised visitation program pursuant to the Domestic Relations Mediation Act. This rule shall not apply to referrals to private programs by stipulation of the parties or preclude a court from operating a program for no fee.

B. **Referral by court.** If the parties to a domestic relations action involving minor children have not filed a parenting plan pursuant to Section 40-4-9.1 NMSA 1978, unless binding arbitration is pending pursuant to Section 40-4-7.2 NMSA 1978, the court may order the parties to:

- (1) attend a general information session;
- (2) meet with a counselor designated by the court;
- (3) participate in mediation;
- (4) participate in priority consultation pursuant to this rule; or
- (5) participate in advisory consultation pursuant to this rule.

C. **Mediation; parenting plan.** If the court orders the parties to participate in mediation, if the mediation is successful, the counselor or mediator shall prepare a parenting plan which shall be submitted to the parties and their respective counsel for approval. When the parenting plan has been signed it shall be submitted to the court for approval together with an order approving it.

D. **Priority consultation.** The court may refer the parties to a priority consultation pursuant to the Domestic Relations Mediation Act. Upon conclusion of a priority consultation, the consultant shall prepare written recommendations to the court which shall be filed with the court and served on the parties. If a party does not agree with the recommendations, within eleven (11) days of the filing of the priority consultation recommendations, the party shall file a motion specifically describing the reasons for the party's objections to the recommendations. The party's objections shall be served on all other parties. The opposing party may file a written response within eleven (11) days after the date of service of the objections. No reply may be filed. The parties may jointly interview the consultant at any time after the filing of the objections and before a hearing on the objections. If no objections are filed within eleven (11) days after service of the recommendations, an order adopting the recommendations shall be entered.

E. **Advisory consultations.** The court may enter an order requiring the parties to submit to an advisory consultation. The order shall be substantially in the form approved by the Supreme Court. At the conclusion of an advisory consultation a report shall be prepared and served on each party.

The person preparing the report shall also prepare and file with the court written recommendations. The written recommendations filed with the court shall not contain the basis for the recommendations.

If a party does not agree with the recommendations, within eleven (11) days of the filing of the advisory consultation recommendations, the party shall file a motion specifically describing the reasons for party's objections to the recommendations. The party's objections shall be served on all other parties. The opposing party may file a written response within eleven (11) days after service of the objections. No reply may be filed. The parties may jointly

interview the consultant at any time after the filing of the objections and before a hearing on the objections. If no objections are filed within eleven (11) days after service of the recommendations, an order adopting the recommendations shall be entered.

**F. Confidentiality.**

(1) **Mediation.** All communications made by any person who participates in mediation proceedings pursuant to this rule are confidential except that there is no protection for information derived from such communications which a participant is required by law to report to a law enforcement officer or state agency. The Mediation Procedures Act, Sections 44-7B-1 to 44-7B-6 NMSA 1978, shall apply to proceedings commenced under this rule.

(2) **Other services.** Information obtained, regardless of the source or type of transmission of the information, during a priority consultation, advisory consultation, or similar service conducted by a court-operated program is confidential and may be disclosed only as follows:

- (a) in written recommendations issued in accordance with this rule;
- (b) in testimony within the case from which it was ordered; or
- (c) by court order upon a showing of good cause for access to the

information.

(3) **Construction.** This paragraph shall be construed to protect the best interests of the child.

**G. Conduct in domestic relations mediation programs.** The parties to a domestic relations mediation proceeding commenced under this rule are expected to participate in good faith, but sanctions shall not be imposed for failure to settle or compromise any claim or defense.

**H. Safe exchange or supervised visitation programs.** The court may establish a safe exchange program or supervised visitation program under Section 40-12-5.1 NMSA 1978. The court may order the parties to use the services of a safe exchange program or supervised visitation program when the court determines that the child's best interest will be served by avoiding contact or confrontation between the parents during exchanges of custody or by providing supervised contact between a parent and the child.

**I. Sliding fee scales.**

(1) Any party who is ordered to participate in a domestic relations mediation program, safe exchange program, or supervised visitation program under this rule shall pay a fee in accordance with a sliding fee scale under Section 40-12-5 NMSA 1978 or Section 40-12-5.1 NMSA 1978. Any fees payable under this rule may be reallocated between the parties in the district court's discretion as appropriate. If a district court elects to operate a domestic relations mediation program, safe exchange program, or supervised visitation program under this rule, either in-house with court staff or by contracting with an outside service provider, the court shall submit a proposed sliding fee scale to the Supreme Court for its approval. Nothing in this rule shall preclude a court from operating a program for no charge.

(2) When submitting a proposed sliding fee scale for the Supreme Court's consideration, the district court shall do the following:

(a) provide the Supreme Court with detailed information regarding the costs incurred by the district court for operating an in-house program or contracting with an outsider service provider to provide services under this rule;

(b) explain how the district court arrived at the cost it proposes to charge each party receiving services from the domestic relations mediation program, safe

exchange program, or supervised visitation program;

(c) submit a separate sliding fee scale for each type of program services the court elects to provide under Paragraphs C, D, E, or H of this rule;

(d) structure the proposed sliding fee scale based on the party's gross income and proportionate ability to pay; and

(e) if the Supreme Court approves the proposed sliding fee scale, the district court shall post the sliding fee scale in the courthouse and on the court's web site.

[Approved, effective November 1, 2000 until November 1, 2001; approved, effective November 1, 2001; as amended by Supreme Court Order No. 09-8300-013; effective May 18, 2009; by Supreme Court Order No. 10-8300-038, effective December 31, 2010; by Supreme Court Order No. 12-8300-029, effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. 17-8300-030, effective for all cases pending or filed on or after December 31, 2017.]

**Committee commentary.** — The committee is aware that some judicial districts have non-disclosure and confidentiality local rules. The committee does not believe that this is a matter for local district court rules. Any local rules and forms containing good faith participation requirements shall conform to the provisions of this rule. The committee takes no position on how individual courts may choose to administer the collection of fees payable under rule.

Paragraph F was amended in 2017 to clarify that, like information obtained during a mediation, information obtained during a priority consultation, advisory consultation, or similar service conducted by a court-operated program is confidential and is not subject to disclosure except in limited circumstances. These programs are offered to provide the court and the parties with an assessment and written report about the “parenting situation” in a custody proceeding. NMSA 1978, § 40-12-3(A), (G) (defining “advisory consultation” and “priority consultation” under the Domestic Relations Mediation Act). The assessment and report are based on confidential, sensitive information about the “positions, situations[,] and relationships of family members” involved in the proceeding, including medical, psychological, mental health, or educational records or assessments. *See id.* Maintaining the confidentiality of such information promotes full and frank participation by the parties. The committee is mindful, however, that there may be circumstances in which disclosure of this information may be warranted, such as when the records may conceal fraud or may be relevant to proceedings in which the child or a parent is charged with a crime. *Cf.* Rule 11-503(D)(1) NMRA. Subparagraph (F)(2)(c) therefore permits disclosure “by court order upon a showing of good cause for access to the information.” [Adopted by Supreme Court Order No. 10-8300-038, effective December 31, 2010; as amended by Supreme Court Order No. 12-8300-029, effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. 17-8300-030, effective for all cases pending or filed on or after December 31, 2017.]