

February 2, 2021

A message from Hon. Vito C. Caruso

Deputy Chief Administrative Judge for Courts Outside New York City

Concerning Alternative Dispute Resolution in the Courts

As we continue to deal with the Covid-19 pandemic, members of the bar and the public may rest assured that the work of the courts goes on. That work, our mission, is to promote the rule of law and serve the public by achieving just and timely resolution of all matters before the courts. Alternative Dispute Resolution remains a crucial part of this business of the courts. As early as May 1, 2020, Hon. Lawrence K. Marks, Chief Administrative Judge stated in an Administrative Order that “Judges may resume referral of matters for alternative dispute resolution, including to neutrals on court-established panels, community dispute resolution centers, and ADR-dedicated court staff.” (Administrative Order 87/20)

We have seen in the past few months expanded virtual ADR work, novel ADR interventions in new arenas and expanded connections with panels of mediators, CDRCs and other community partners. The courts have taken great strides to incorporate these ADR initiatives into the standard procedures related to case management and the time to embrace these initiatives is more important now than ever.

For some, embarking on an alternative to the litigation process may feel like something new. It was 1984 however, when Chief Justice Warren Burger told the American Bar Association that, “...we must move away from total reliance on the adversary contest for resolving all disputes... For some disputes, trials will be the only means, but for many, trials by the adversary contest must in time go the way of the ancient trial by battle and blood.”ⁱ

This movement towards what some deem *appropriate* dispute resolution was re-inspired by New York State’s Chief Judge, Janet DiFiore, who declared it the policy of the Unified Court System to encourage the resolution of civil legal disputes using Alternative Dispute Resolution. Most civil cases, she wrote, shall be presumptively eligible for early referral to an alternative dispute resolution process.ⁱⁱ In October 2020 she shared in her weekly address that even amid this crisis, “ADR programs continue to bloom and grow all across the state, with more and more lawyers and litigants discovering the advantages.”ⁱⁱⁱ

We are indeed fortunate that many members of the bar have already welcomed these opportunities and are carefully considering the appropriate form of ADR with clients, opposing counsel and the judges in their matters as an early and invariable part of case management and strategy. For those who have not, I implore you to embark on this path with us. Conversations near the beginning of a case allow parties and the attorneys involved to grasp each other's positions and exercise self-determination. This can often generate swift resolutions, improving parties' satisfaction with the process and creating savings for the parties and the court system.

Each community in our state has access to Alternative Dispute Resolution, often through several different channels. Becoming familiar with these channels and the mechanisms for access is an important part of serving parties and clients.

In many courts there are existing programs and partnerships with the local Community Dispute Resolution Centers (CDRCs) (<https://ww2.nycourts.gov/ip/adr/cdrc.shtml>) who mediate cases using professional staff and trained, skilled volunteers proficient in mediation and other alternatives to litigation. These partnerships often exist in high volume courts such as small claims or family court, but in many areas also include novel ventures designed around community and court needs. In addition to their court partnerships, outside of courts the CDRCs provide mediation and other services to help people resolve disputes involving neighbors, parents and children, families and schools, consumers and merchants and provide education and training on constructive dispute resolution for community members.

In addition to judges and chambers' staff continuing to provide settlement conferencing as early as practicable in each case, importantly, many courts have court staff dedicated to providing enhanced settlement conferences or mediations upon referral from chambers or as part of an established diversionary process. These dedicated court staff offer their services at no cost to litigants and have the experience necessary to facilitate productive negotiations. The staff are separate from the chambers of the deciding judge, ensuring confidentiality in the process, and often permitting an opportunity for more expansive conversations between the parties.

Finally, judges have the option to refer parties to mediators and neutral evaluators from established court rosters. These individuals provide some uncompensated time at the outset of the matter, and are thereafter compensated directly by the parties. Many members of the bar have completed the requisite training to become mediators and/or neutral evaluators and information about available mediators may be found through the court's websites

(<http://ww2.nycourts.gov/ip/adr/MedDirectory.shtml>), through chambers or your local ADR Coordinator listed below. Of course, parties or counsel may also ask or volunteer to be referred to a roster/panel mediator and are encouraged to consider this option.

Whatever method is used, we as lawyers and leaders in our communities must embrace this significant opportunity to use the tools that encourage problem solving and help clients achieve their objectives.

Thank you for your ongoing interest and efforts as we navigate this new terrain together.

A handwritten signature in black ink, appearing to read "J. H. Caruso". The signature is fluid and cursive, with a long horizontal stroke at the end.

ⁱ Burger, W. (1984). The State of Justice. *ABA Journal*, 70(4), 62-66. Retrieved November 6, 2020, from <http://www.jstor.org/stable/20757068>

ⁱⁱ STATEMENT OF POLICY: It is the policy of the Unified Court System to encourage the resolution of civil legal disputes by methods including mediation, arbitration, neutral evaluation, in-court settlement practices, and summary jury trials. All civil actions or proceedings heard in the Supreme Court, Court of Claims, County Court, Family Court, Surrogate's Court, District Court, City Court and New York City Civil Court shall be presumptively eligible for referral to an alternative dispute resolution process (ADR) unless otherwise excluded pursuant to this Plan. Courts may refer parties to an ADR process at any time after an action has been commenced and are encouraged to do so at the earliest appropriate opportunity

ⁱⁱⁱ Address of Chief Judge DiFiore 10.12.20 Retrieved 11.2.20 <https://history.nycourts.gov/podcasts/chief-judge-message-october-12/>

New York State Court System

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