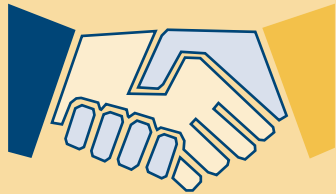


**A GUIDE
TO
COURT-CONNECTED
ALTERNATIVE
DISPUTE
RESOLUTION
SERVICES**



**Prepared by the Massachusetts
Supreme Judicial Court/Trial Court
Standing Committee
on Dispute Resolution
in cooperation with the SJC
Public Information Office**

SUPREME JUDICIAL COURT RULE 1:18, UNIFORM RULES ON DISPUTE RESOLUTION

Rule 5.

Early Notice of Court-Connected Dispute Resolution Services.

Clerks shall make information about court-connected dispute resolution services available to attorneys and unrepresented parties. This information should state that selection of court-connected dispute resolution services can occur at the early intervention event or sooner, and that no court may compel parties to mediate any aspect of an abuse prevention proceeding under G.L. c. 209A, §3. Insofar as possible, information should be available in the primary language of the parties. Attorneys shall: provide their clients with this information about court-connected dispute resolution services; discuss with their clients the advantages and disadvantages of the various methods of dispute resolution; and certify their compliance with this requirement on the civil cover sheet or its equivalent.

“I am pleased that the Standing Committee has



written this booklet to assist attorneys in fulfilling their new duties to inform their clients about

dispute resolution alternatives. Rule 5 calls for a candid discussion about ADR options and this helpful book should enhance these conversations for both attorneys and their clients.”

**Supreme Judicial Court
Chief Justice
Margaret H. Marshall**

“Attorneys filing new cases, as well as those who answer or



move to dismiss, must now certify in writing that they have discussed various methods of dispute resolution with

their clients. This new booklet will be a powerful resource to attorneys as they explain the choices available to their clients and why selecting an ADR option would be sensible. I am delighted to see it widely distributed.”

**Chief Justice for
Administration and Management
Barbara A. Dortch-Okara**

INTRODUCTION

This booklet provides information about the variety of court-connected dispute resolution services available in Massachusetts pursuant to Supreme Judicial Court Rule 1:18, the Uniform Rules on Dispute Resolution. It is intended to assist attorneys in fulfilling their obligations under Rule 5 of the Uniform Rules to provide clients with information about the various available court-connected dispute resolution processes. The booklet explains which claims are most compatible for each court-connected dispute resolution process and at what stage in the legal proceedings the parties may arrange for a court-connected dispute resolution session. In addition, this booklet describes the benefits of these dispute resolution procedures, what happens if a settlement is not attained during the court-connected dispute resolution session, and the costs associated with court-connected dispute resolution programs. The booklet also contains information on signing up for a court-connected dispute resolution session, and gives contact information.

A GUIDE TO COURT-CONNECTED ALTERNATIVE DISPUTE RESOLUTION SERVICES

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WHAT IS COURT-CONNECTED DISPUTE RESOLUTION?

Alternative dispute resolution, or “ADR,” is the generic term used to describe dispute resolution procedures such as arbitration, mediation, and negotiation, all of which have a common aim of eliminating the need for a traditional trial. Court-connected ADR services include any processes in which the parties engage a neutral third party to assist in settling a case or otherwise disposing of a case without a trial. In some forms of ADR, the neutral third party issues a decision. In other types of ADR, the neutral third party helps the parties to reach their own resolution.

“Full-tilt litigation is enormously expensive and hazardous. In many situations, ADR provides an excellent mechanism to resolve disputes speedily and inexpensively.”

— Jim Leavitt, Esq.

There is a body of literature suggesting that the use of appropriate dispute resolution methods at an earlier stage in the process may substantially reduce the cost, time, and complexity of the litigation, while promoting greater satisfaction on the part of both litigants and attorneys. The Massachusetts court system is committed to providing the public with a variety of options for resolving disputes outside the courtroom. The parties may choose to use a dispute resolution service as early in the proceedings as they desire.

GUIDING PRINCIPLES FOR COURT-CONNECTED DISPUTE RESOLUTION

The following principles are found in Rule 1(b) of the Supreme Judicial Court’s Uniform Rules on Dispute Resolution:

Quality/Qualifications

The Trial Court Departments of the Commonwealth are committed to providing high quality court-connected dispute resolution services to the public. The definition of high quality is reflected in the requirements that only approved programs accept court referrals and that neutrals in these approved programs comply with ethical standards of practice (Rule 9).

Integrity

The Ethical Standards promote honesty, integrity, and impartiality by all neutrals involved in providing court-connected dispute resolution services.

Accessibility

The Trial Court seeks to provide court-connected dispute resolution services to all members of the public, regardless of their ability to pay. Approved programs may charge fees for services as allowed by the Chief Justice of the applicable Department. The fee schedule shall provide for fee-waived or reduced-fee services to indigent and low-income litigants.

Informed Consent

The neutral must make all reasonable efforts to help each party understand the dispute resolution process and any agreement reached. However, because the neutral does not act as attorney for either party, it may be wise for each party to consult his or her attorney to make sure that any agreement reached is entered into knowingly and voluntarily.

Self-Determination

Court-connected dispute resolution programs, to the extent possible, shall allow the parties to decide which dispute resolution process to use, select the neutral third party, and choose the issues that will be addressed and the spe-

cific terms of any agreement reached. Advisors may be allowed to participate in court-connected dispute resolution sessions, subject to prior approval from all parties directly involved in the case. Generally, involvement in an ADR process is completely voluntary. There are three exceptions to this rule. First, the Probate and Family Court and the Housing Court can order parties to participate in Dispute Intervention. Second, the parties may be required to participate in court-approved pilot ADR programs for non-binding dispute resolution. Third, the court can require attendance at a screening session to determine what ADR process is most appropriate.

“ADR is an excellent vehicle to resolve disputes in an economical, quiet, informal, and confidential way that preserves the dignity of the parties.”

— David Fairbanks, Esq.

Diversity

Court-connected dispute resolution programs are designed with sensitivity to the diversity of communities served. Programs shall not discriminate on the basis of race, color, sex, age, religion, national origin, disability, political beliefs, or sexual orientation. Interpreter services may be available by pre-arrangement with court staff who will contact the office of Interpreter Services to determine availability.

Timeliness

Court-connected dispute resolution services, to be most effective, should be available early in the course of a dispute.

WHAT TYPES OF COURT-CONNECTED DISPUTE RESOLUTION SERVICES MAY BE AVAILABLE?

There are seven dispute resolution processes identified in the Uniform Rules on Dispute Resolution and provided through the courts. Please note that all processes are not available in all courts and that at times more than one process may be appropriate for a dispute.

Mediation

Mediation is a voluntary, confidential process in which a neutral person (a mediator) assists disputing parties in identifying and discussing issues of concern, exploring various solutions and developing a settlement that is mutually acceptable to them.

Conciliation

Conciliation is a process in which a neutral party (a conciliator) helps the attorneys for the disputing parties in clarifying the issues in conflict, assessing the strengths and weaknesses of both parties' claims, and exploring the remaining steps to prepare the case for trial.

Case Evaluation

Case evaluation is a process in which the parties or their attorneys summarize the conflict for a neutral third party (a case evaluator), who gives a non-binding opinion of the settlement value of the case and/or a non-binding prediction of the likely outcome if the case is adjudicated.

Mini-Trial

Mini-trial is a two-step process to facilitate settlement. In the first step, the attorneys for each party present to a neutral in the presence of individuals with decision-making authority for each party a summary of the evidence and arguments they expect to offer at trial. Then, the individuals with decision-making authority meet with or without the neutral to discuss settlement of the case. If settlement is not reached, the neutral may offer, as a further aid to settlement, a prediction of the likely outcome if the case goes to trial.

Summary Jury Trial

Summary jury trial is a non-binding settlement process in which the parties' attorneys present a summary of the evidence and arguments they expect to offer at trial to a six-person jury chosen from the court's jury pool. The jury deliberates and returns a non-binding decision. The attorneys may discuss with the jurors their reaction to the evidence and reasons for the verdict. Also, the presiding neutral may be available to conduct a mediation with the parties.

“Mediation empowers people to resolve legal problems on a personal, human level using creativity and common sense. It is faster, cheaper, and more satisfying than litigation, and it works!”

— Jim Duffy, Esq.

Arbitration

Arbitration is a process in which the parties select a neutral person (an arbitrator) or a panel of three arbitrators. The arbitrator renders a binding or non-binding decision at the request of the parties after hearing arguments and reviewing the evidence.

Dispute Intervention

Dispute intervention is a process in which court employees meet with litigants and their attorneys, as appropriate, to identify the issues and areas of dispute between the parties, explore resolution, and provide accurate and relevant information and recommendations as requested or ordered by the court. Information obtained through dispute intervention may be reported to the court and participation in dispute intervention may be either voluntary (Housing Court) or mandatory (Probate and Family Court).

	Nature of Process and Role of Neutral	Participation by Parties to the Dispute
Mediation	<ul style="list-style-type: none"> ▪ A voluntary, confidential process for the discussion of issues. ▪ Mediator is skilled and trained in mediation. ▪ May have subject-matter expertise. ▪ Facilitates discussion and negotiation between the parties and/or the attorneys. ▪ Any agreement reached must be mutually acceptable and either party may end the process at any time. 	<ul style="list-style-type: none"> ▪ Parties speak for themselves and negotiate a resolution; or may have their attorneys speak for them.
Case Evaluation	<ul style="list-style-type: none"> ▪ Case Evaluator is experienced trial attorney or judge. ▪ Has subject matter expertise in area of dispute. ▪ Listens to a summary of the conflict by each side and gives non-binding opinion on settlement value or prediction of likely outcome. 	<ul style="list-style-type: none"> ▪ Parties may present a summary of the conflict or defer to their attorney to speak for them.
Conciliation	<ul style="list-style-type: none"> ▪ Conciliator is experienced attorney trained in conciliation. ▪ Conducts meeting of the attorneys to clarify issues and assess strengths and weaknesses of each side and settle case. ▪ Explores next steps in trial preparation. 	<ul style="list-style-type: none"> ▪ Parties participate through their attorneys or <i>pro se</i> if no counsel has been retained.
Arbitration	<ul style="list-style-type: none"> ▪ Arbitrator is one person or a panel of three people skilled and trained in arbitration. ▪ May have subject-matter expertise. ▪ Chosen by the parties or, if the parties choose to defer, by the court or a service provider. ▪ The arbitrator hears arguments, reviews the evidence and then renders a decision. ▪ Parties agree in advance whether it is binding or non-binding. 	<ul style="list-style-type: none"> ▪ May testify at the arbitration. ▪ Respond to questions by the arbitrator. ▪ Respond to questions from counsel.
Dispute Intervention	<ul style="list-style-type: none"> ▪ Court employee trained in dispute intervention meets with parties and their attorneys to identify the issues in dispute and explore resolution. ▪ Provides information and recommendations to court as requested by the court. 	<ul style="list-style-type: none"> ▪ Parties discuss and problem-solve in meetings with the court employee and usually the other party.
Mini-Trial	<ul style="list-style-type: none"> ▪ Neutral is an experienced judge, arbitrator, attorney, or executive-level decision-maker. ▪ Hears summary of evidence and arguments in presence of person with decision-making authority. 	<ul style="list-style-type: none"> ▪ Decision-makers must attend mini-trial and negotiate. ▪ If parties are not the decision-makers, they may or may not attend.
Summary Jury Trial	<ul style="list-style-type: none"> ▪ Six-member jury is chosen from the court's jury pool. ▪ Jury hears a summary of evidence and arguments expected to be offered at trial. 	<ul style="list-style-type: none"> ▪ Through attorney only.

	Role of Attorney	Level of Control by Parties to the Dispute
Mediation	<ul style="list-style-type: none"> ▪ Attends mediation if parties agree. ▪ Assists client before and after mediation. ▪ Briefs clients on the process. ▪ Assists client in defining issues and goals for mediation. ▪ Brainstorms possible solutions with client. 	<ul style="list-style-type: none"> ▪ Parties control much of the process. Some control is relinquished to mediator for facilitation. ▪ Parties control the outcome, design settlement, and are not required to come to a resolution. ▪ If no settlement is reached, parties choose what court action to take next.
Case Evaluation	<ul style="list-style-type: none"> ▪ Presents a summary of the client's case to the case evaluator or defers to the client to make presentation. ▪ Briefs client on the process. ▪ Assists client in defining issues and goals for case evaluation. ▪ Brainstorms possible outcomes with client. 	<ul style="list-style-type: none"> ▪ Case evaluator controls the process. ▪ Evaluator controls the outcome of the evaluation. ▪ Parties control outcome of the case. Have complete discretion in using or rejecting the opinion offered by the case evaluator. ▪ If no settlement is reached, parties choose what court action to take next.
Conciliation	<ul style="list-style-type: none"> ▪ Meets with conciliator and other party's attorney to discuss, negotiate and, if necessary, plan for trial. ▪ Briefs client on the process. ▪ Assists client in defining issues and goals for conciliation. ▪ Brainstorms possible outcomes with client. 	<ul style="list-style-type: none"> ▪ Parties have some control of the process and outcome through their attorneys, who negotiate on client's behalf. ▪ If no settlement is reached, parties choose what court action to take next.
Arbitration	<ul style="list-style-type: none"> ▪ Assists the client in defining the issues for arbitration and choosing the arbitrator. ▪ Presents the arguments and evidence to the arbitrator. ▪ Briefs the client on the process. ▪ Assists client in defining issues and goals for the arbitration. 	<ul style="list-style-type: none"> ▪ Parties have very limited control over the process. Parties can: <ul style="list-style-type: none"> - Choose the arbitrator. - Control the questions the arbitrator will address. - Limit the range of decisions and remedies the arbitrator may consider. ▪ Parties have no control over the outcome, if they have agreed in advance to binding arbitration.
Dispute Intervention	<ul style="list-style-type: none"> ▪ Attends meetings with client. ▪ Briefs client on the process. ▪ Assists client in defining issues and goals for dispute intervention. ▪ Brainstorms possible outcomes with client. 	<ul style="list-style-type: none"> ▪ Party attendance is mandatory in Probate and Family Court and voluntary in Housing Court. ▪ Parties do not control the recommendation to the court, but do control whether to accept a negotiated agreement. ▪ The court controls whether any resolution reached by the parties is acceptable. ▪ Any issues unresolved by the parties will be resolved by the court, including possible imposition of the court employee's recommendations.
Mini-Trial	<ul style="list-style-type: none"> ▪ Presents a summary of evidence and arguments at the mini-trial. ▪ May participate in the negotiations afterward. ▪ Briefs client on the process. 	<ul style="list-style-type: none"> ▪ Parties who are decision-makers have significant control of the process through their attorneys' presentations and their own subsequent negotiations. ▪ Decision-makers choose whether to settle after hearing the neutral's assessment.
Summary Jury Trial	<ul style="list-style-type: none"> ▪ Presents the summary of evidence and arguments at the summary jury trial. ▪ May discuss with jurors reasons for the verdict and their reaction to the evidence. 	<ul style="list-style-type: none"> ▪ Parties' control over the process is limited to attorney presentation of the case. ▪ Parties have complete control of the outcome regardless of the jury opinion offered.

WHAT ARE THE POTENTIAL ADVANTAGES OF USING COURT-CONNECTED DISPUTE RESOLUTION SERVICES?

► Savings of Time and Money

An average lawsuit in America can take over three years to reach trial or settlement. Often court-connected dispute resolution proceedings can resolve cases in days or even hours, saving the parties from having to attend multiple court appearances. Parties can schedule an appointment with a court-connected dispute resolution service provider as soon as they choose their preferred dispute resolution process and provider. By resolving the issue early on, both parties avoid some of the costs associated with pre-trial litigation.

► Finality

Resolution of disputes achieved through binding methods of court-connected dispute resolution is final, eliminating the long and costly process of appeal.

► Compliance

Studies show that parties are more likely to adhere to court-connected dispute resolutions than to court-imposed decisions.

► Custom-Made Solutions

Some court-connected dispute resolution proceedings, such as mediation, allow the parties to create their own solutions tailored to their specific needs. These voluntary court-connected dispute resolution processes often achieve resolution through the sharing of information and the development of mutual understanding of each party's concerns.

► Confidentiality

The ethical standards issued by the Supreme Judicial Court for court-connected dispute resolution providers require that neutrals keep confidential all information disclosed in the course of court-connected dispute resolution proceedings, subject to limited exceptions. Traditional courtroom proceedings are open to the public and documents filed with the court become part of the public record, but only interested parties can attend court-connected

dispute resolution proceedings. In addition, the information shared during court-connected dispute resolution sessions (except in dispute intervention and conciliation) remains confidential.

► Process Control

In most court-connected dispute resolution processes except for dispute intervention, the parties have more control over the process. They may decide where and when to hold the proceeding, which methods to employ, who will be the neutral, which issues will be addressed, when each party will have a chance to speak and whether the outcome will be binding or non-binding. With court-connected dispute resolution, the parties can agree to a mutually acceptable resolution, thereby avoiding the uncertainty related to trial.

“ADR allows parties to meaningfully participate and discuss early resolution of disputes. The earnest commitment of the parties results in tremendous savings to all involved. ... It is my firm conviction that ADR should always be explored and considered.”

— John Komeiji, Esq.

► Enforceable Agreements

A mutually accepted agreement reached through mediation may be written and signed by both parties. The agreement is usually enforceable as a binding contract but is sometimes subject to judicial review. Other court-connected dispute resolution processes may also provide for submission of accepted written terms of settlement to the court.

► Preservation or Enhancement of Long-Term Relationships

Often disputes are caused by underlying issues, and court-connected dispute resolution processes offer the opportunity to create an enduring resolution that will satisfy everyone's goals. Some conflicts are the result of deep differences between parties who nevertheless must sustain ongoing working

relationships. For these disputes, some court-connected dispute resolution processes offer the opportunity to examine and resolve these differences so that the parties' short-term and long-term goals may be achieved.

► Flexibility

Court-connected dispute resolution services can be used to resolve some or all of the issues in a case. For example, in a divorce, the husband and wife can choose to allow the judge to settle matters relating to child custody and use court-connected dispute resolution to determine the division of family possessions.

► Quality

As a result of the Uniform Rules of Dispute Resolution, court-connected dispute resolution providers must insure that the neutrals serving on the program's roster satisfy qualifications established by the Supreme Judicial Court, including standards for ethical practice. Court-connected dispute resolution programs must also monitor performance and provide evaluation of their neutrals.

► Right to a Trial

Court-connected dispute resolution processes supplement the court system; they do not replace it. When the parties agree to participate in a court-connected dispute resolution session, they do not relinquish their rights to trial unless (as in voluntary, binding arbitration) they have agreed to do so. Usually, if utilizing a court-connected dispute resolution process is unsuccessful, the parties resume their position on the court's docket for the next scheduled event.

HOW AND WHEN DO I REFER A CASE TO A COURT-CONNECTED DISPUTE RESOLUTION PROGRAM?

► Talking with Your Client about Court-Connected Dispute Resolution Services

Dispute resolution sessions can be very effective when they occur early in the dispute. Although early court-connected dispute resolution sessions may not result in a complete settlement, these services are designed to help narrow the issues and make future settlement discussions possible. Rule 5 requires that attorneys speak to their clients about court-connected dispute resolution services before filing the initial pleading so that the client may choose a court-connected dispute resolution process as an option at any time in the course of the legal process.

► Recommending Court-Connected Dispute Resolution Services

A wide variety of cases is appropriate for some form of dispute resolution. Examples of claims which have been resolved through court-connected dispute resolution procedures include: landlord-tenant issues, contract disputes, personal injury claims, divorce cases, employment issues, neighborhood conflicts, discrimination claims, minor criminal matters, and complex civil litigation. Not all cases are appropriate for court-connected dispute resolution services. For example, where there are novel issues of statutory or constitutional interpretation, it may be most appropriate for the case to go to trial. Additionally, under G.L. c. 209A, §3, a court may not compel the parties to mediate any aspect of an abuse prevention proceeding.

► Attending a Screening Session

Many courts offer an orientation session, often mandatory, in which parties to a case and/or their attorneys receive information about dispute resolution services. The case is reviewed to determine whether referral to a dispute resolution service is appropriate and, if so, to which one. At a screening session, a list of the court's approved dispute resolution services providers is available. During a screening, there may also be discussion to narrow the issues in the case, to set discovery parameters, or to address other case management issues.

► Determining Which Dispute Resolution Programs are Court-Connected

The SJC/Trial Court Standing Committee on Dispute Resolution publishes a handbook on the Uniform Rules on Dispute Resolution, which contains contact information for court-connected dispute resolution programs approved by the Massachusetts Trial Courts as well as which types of dispute resolution services each program provides. For more information, a list of Trial Court Department officials responsible for ADR services is included at the end of this booklet.

► Selecting a Neutral

What are the qualifications of the ‘neutrals?’

Neutrals are unbiased individuals who have been specially trained to facilitate dispute resolution sessions. To be eligible to serve as a neutral, a person must be affiliated with one of the court-connected dispute resolution programs, observe the program’s requirements, and follow the ethical standards contained within the Uniform Rules. Rule 8 containing additional qualification standards for neutrals is currently being developed. Judges are not considered “neutrals” even when engaging in activities otherwise considered court-connected dispute resolution services. Other court employees and attorneys are considered neutrals only when they are providing court-connected dispute resolution services.

How are the neutrals selected for a case?

Once the parties agree to use court-connected dispute resolution services, a neutral may be chosen by the parties or assigned by the court. The parties may agree on a particular neutral and they can request that person, as long as he or she has been approved by the court to act as a neutral in court-connected dispute resolution proceedings. Otherwise, each party should submit several choices from among neutrals in approved programs to a court-connected dispute resolution administrator, *or* a judge will make the selection based on several factors, including the individual’s expertise and availability. If the parties prefer, the court will randomly designate a neutral for the parties from among those serving in approved programs. The presiding judge will then issue an Order of Referral for court-connected dispute resolution services and

forward a copy to the court-connected dispute resolution provider, who will contact the parties to schedule the first meeting.

► Costs of a Court-Connected Dispute Resolution Session

Dispute resolution services provided by court employees and certain approved programs are free. In addition, the use of court facilities in court-connected dispute resolution proceedings may be free. Some funding is available to subsidize services to indigent and low-income litigants. Parties may also be charged by their attorneys for the time spent preparing for and participating in the proceeding.

If the parties elect to use a private court-connected dispute resolution provider, or if the court refers a case to a court-approved program, the parties will be required to share the expense at a specific court rate: negotiating the percentage of

fees to be paid by each party may be allowed. Any fees charged by approved programs have been approved by the individual court department and the amounts of these fees are available from each court department’s dispute resolution coordinator or local coordinator.

► Location of an ADR Session

Court-connected ADR sessions may be held in the courthouse if space is available in the neutral’s office or at another mutually acceptable location.

► Who Should Attend

The parties to the case and/or anyone having authority to settle the case should either attend or be available by telephone. Lawyers or other representatives or advocates may also be present.

“Expanding Juvenile Mediation in Massachusetts,” a report by the Crime and Justice Foundation, cites a 1991 study estimating that mediation in the Haverhill District Juvenile Session generated an annual cost savings of \$3,227,798.

TRIAL COURT POLICY REGARDING RULE 5 OF THE UNIFORM RULES ON DISPUTE RESOLUTION

The following policy shall govern the implementation of the final sentence of Rule 5 of the Uniform Rules on Dispute Resolution:

- 1 The “Uniform Counsel Certification for Civil Cases” form (attached hereto) shall be promulgated for each Department of the Trial Court to use as is, or to be incorporated, as Rule 5 states, “on the civil cover sheet or its equivalent.”
- 2 Plaintiff’s/Petitioner’s counsel shall file this certification or its equivalent at the time his/her initial pleading is filed. All other counsel shall file it within thirty (30) days of his/her initial entry into the case, whether by answer, motion, appearance slip or other pleading.
- 3 Each Department of the Trial Court may establish exemptions to this rule for cases for which dispute resolution is inappropriate or unavailable.

UNIFORM COUNSEL CERTIFICATION SAMPLE

Commonwealth of Massachusetts
Trial Court
_____ Department

**UNIFORM COUNSEL CERTIFICATION
FOR CIVIL CASES**

CASE NAME: _____ DOCKET # _____
I am attorney-of-record for: _____
plaintiff/defendant/petitioner in the above-entitled matter.

In accordance with Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) which states in part: “... Attorneys shall: provide their clients with this information about court-connected dispute resolution services; discuss with their clients the advantages and disadvantages of the various methods of dispute resolution; and certify their compliance with this requirement on the civil cover sheet or its equivalent, ...” I hereby certify that I have complied with this requirement.

Signature of Attorney-of-Record

Print Name

B.B.O. # _____

Date: _____

This certification may be filed by counsel as is, or this text may be incorporated into a form currently in use at the initiation of a case (e.g., civil cover sheet, appearance form, etc.), as determined to be appropriate in each department of the Trial Court. Plaintiff’s/Petitioner’s counsel shall file this document at the time his/her initial pleading is filed. All other counsel shall file it within thirty (30) days of his/her initial entry into the case whether by answer, motion, appearance slip, or other pleading.

EXEMPTIONS TO RULE 5

Rule 5 Counsel Certification Exemptions, by Trial Court Department

BOSTON MUNICIPAL COURT DEPARTMENT

The following cases will be exempt from completion of the Uniform Counsel Certification forms:

- (1) Summary Process
- (2) Supplementary Process
- (3) Certified Assessments
- (4) Abuse Complaints
- (5) Firearm Appeals
- (6) All Petitions for Judicial Review

DISTRICT COURT DEPARTMENT

- (1) The Uniform Counsel Certification form will be required only when counsel files an appearance in a case type for which the particular division in which counsel is appearing has an approved program.
- (2) In no instance shall counsel be required to file a Uniform Counsel Certification form when appearing in a G.L. c. 209A matter.

HOUSING COURT DEPARTMENT

No cases will be exempt from completion of the Uniform Counsel Certification forms.

JUVENILE COURT DEPARTMENT

The filing of the Uniform Counsel Certification form will only be required under the following circumstances:

- (1) On ALL civil case types covered by an approved program provider. If a program is approved to do only CHINS mediation, the Uniform Counsel Certification form would only be required on CHINS cases.

- (2) On ALL civil case types where there has been an appointment of counsel and/or where counsel has filed an appearance.
- (3) On ANY civil case type unless the court decides that a referral to mediation is not appropriate, i.e., on cases where there is a history of severe domestic violence or an issue of competency.

LAND COURT DEPARTMENT

The following cases will be exempt from the filing of Uniform Counsel Certification forms:

- (1) Tax Lien Foreclosures
- (2) Mortgage Foreclosures under the Soldiers and Sailors' Civil Relief Act
- (3) Zoning and subdivision cases involving a remand to a local public authority for further public hearing and action
- (4) All cases related to original and subsequent registration under G.L. c. 185, §1

PROBATE AND FAMILY COURT DEPARTMENT

The following cases will be exempt from the filing of Uniform Counsel Certification forms:

- (1) Petitions filed pursuant to G.L. c. 209A (protection from abuse)
- (2) Any case in which the petition or complaint includes a prayer for protection from abuse (i.e. elderly abuse, paternity, divorce), until there is a judicial determination that Alternative Dispute Resolution Services would be appropriate

THE SUPERIOR COURT DEPARTMENT

The following cases will be exempt from completion of the Uniform Counsel Certification forms:

- (1) E07/Petition To Dispense With Approval For Abortion
- (2) E14/Sexually Dangerous Person Hearing
- (3) E15/209A Restraining Order

TRIAL COURT DEPARTMENT OFFICIALS RESPONSIBLE FOR MANAGING ADR SERVICES

Administrative Office of the Trial Court
Timothy M. Linnehan, Esq.
Coordinator of ADR Services
2 Center Plaza
Boston, MA 02108 (617) 878-0372

Boston Municipal Court Department
Cynthia Brophy
Administrator of Mediation Services
U. S. Post Office & Courthouse
90 Devonshire Street
Boston, MA 02109 (617) 788-8710

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Housing Court Dept., Boston Division
Robert L. Lewis, Esq.,
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Edward W. Brooke Courthouse
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Boston, MA 02114 (617) 788-6550

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Boston, MA 02114 (617) 788-7470

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Superior Court Department
Patrice Slater
ADR Coordinator
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Boston, MA 02109 (617) 788-7324

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