

**State of New Hampshire
Circuit Court
Administrative Order 2021 – 18**

Eviction Diversion and Landlord-Tenant Mediation

Pursuant to RSA 490-F, RSA 490-E, and Supreme Court Rule 54(4), this order is issued to provide structure for the Office of Mediation and Arbitration's Eviction Diversion program, which will offer voluntary pre-suit mediation services for residential landlord and tenant cases that would otherwise be filed in the trial courts, and for post-filing landlord-tenant mediation.

Eviction Diversion (Pre-Filing Mediation)

Eligibility: A dispute is eligible for mediation through the eviction diversion program only if the dispute involves a residential tenant and is referred to the diversion program prior to the filing of a Landlord and Tenant Writ or other eviction action. Thus, cases in which an eviction notice or demand for rent has been served on the tenant but a Landlord and Tenant Writ has not been filed are eligible for eviction diversion.

Referral to Eviction Diversion: A residential landlord or tenant may request mediation through the eviction diversion program without a court case by contacting the Office of Mediation and Arbitration.

The requesting party will go through an intake process, which will require the requesting party to provide information including, but not limited to, contact information for the landlord and tenants and the address of the rental unit. The Office must obtain consent from both disputants before sending a case to mediation.

Electronic Signatures: For the purposes of Circuit Court Administrative Order 2021-08, a dispute mediated through the eviction diversion program will be considered a case that has been referred to mediation by a court.

Post-Filing Mediation

Eligibility: Only residential eviction actions under RSA chapter 540 filed in a court location where the Administrative Judge has established a post-filing mediation program are eligible for post-filing mediation. Court locations with post-filing mediation are listed on the court's website.

Referral to Post-Filing Mediation: The Court may operate a post-filing mediation program at one or more Court locations, based upon case volumes and available resources. All landlords and tenants in residential eviction actions under RSA chapter 540 filed at a Court location where post-filing mediation has been established shall be referred to mediation. Disputants will be given the opportunity to opt out of mediation.

Procedures Applicable to Eviction Diversion and Post-Filing Mediation

Definitions: For the purpose of this administrative order, the following definitions apply.

1. **Mediation.** Mediation is a confidential process in which a mediator facilitates settlement discussions between disputants. Mediation is based upon principles of communication, negotiation, facilitation and problem solving that emphasizes:
 - (a) The needs and interest of the parties
 - (b) Fairness
 - (c) Procedural flexibility
 - (d) Privacy and confidentiality
2. **Mediator.** The role of the mediator includes but is not limited to assisting the disputants in identifying issues, reducing obstacles to communication, and providing the disputants an opportunity for each to be heard in a dignified and thoughtful manner. The mediator's focus will be on encouraging and supporting the disputants' presentations to and reception from one another allowing them to find a resolution that is appropriate.
3. **Disputants.** A disputant is any residential landlord, landlord's authorized agent, or tenant involved in a dispute about which one or both parties has requested mediation from the Office of Mediation and Arbitration, or are part of a case that has been referred to mediation by the court, and their attorneys.
4. **Other Participant:** Any person other than a disputant who has an interest in the dispute subject to mediation, such as a family members supporting a disputant or a person involved in the dispute who is neither the landlord nor the tenant. Other participants may attend the mediation only by mutual consent of the disputants to the mediation.

Self-Determination: Mediation is based on the principle of self-determination by the disputants. The mediation process relies upon the ability of disputants to make their own voluntary and informed decisions. Disputants must have the opportunity to choose whether or not they will choose to attend mediation. The mediator has no authority to make a decision or impose a settlement upon the disputants. Any settlement is entirely voluntary. In the absence of settlement, the disputants lose none of their rights to a resolution of their dispute through litigation.

A mediator shall not coerce or unfairly influence a disputant into a settlement agreement and shall not make a substantive decision for any participant in a mediation process. A mediator shall not intentionally or knowingly misrepresent material facts or circumstances in the course of conducting mediation.

Impartiality: The mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality. Impartiality means freedom from favoritism, bias, or prejudice. A mediator shall withdraw from mediation if the mediator believes that the mediator can no longer be impartial. A mediator shall not give or accept a gift, request,

favor, loan, or any other item of value to or from a disputant, attorney, or any other person involved and arising from the mediation process.

Conflicts of Interest: The mediator shall disclose any circumstances likely to create a conflict of interest or the appearance of conflict of interest, or a reasonable inference of bias or other matter that may prevent the process from proceeding as scheduled. The burden of disclosure rests on the mediator. After appropriate disclosure, the mediator may serve if all disputants so desire. If the mediator believes or perceives that there is a clear conflict of interest, he or she should withdraw, irrespective of the expressed desires of the disputants.

Confidentiality: A mediator shall preserve and maintain the confidentiality of all mediation proceedings. Any communications made during the mediation is confidential. All memoranda, work products, or materials created in service of the mediation process are confidential. Materials used for research, training, or statistical compilations shall be rendered anonymous. Confidential materials and communications are not subject to disclosure in any judicial or administrative proceedings except for any of the following:

- (a) Where the parties to the mediation agree in writing to waive the confidentiality.
- (b) When a subsequent action for damages between the mediator and a disputant to the mediation arises out of the mediation.
- (c) Where there are threats of imminent violence to self or others.
- (d) Where reporting is required by state law.

Inadmissibility of mediation proceeding: All mediation proceedings constitute compromise negotiations within the meaning of New Hampshire Rule of Evidence 408.

With the exception of any settlement agreement reached during mediation, statements made and documents prepared by a disputant, attorney, or other participant in mediation shall be privileged and shall not be disclosed to any Court or construed for any purpose as an admission against interest.

Evidence that would otherwise be admissible at trial shall not be rendered inadmissible as a result of its use in a mediation proceeding under this rule.

A mediator shall not be called as a witness in any subsequent proceeding relating to the disputants' negotiation and participation except:

- (a) Where the disputants to the mediation agree in writing to waive the confidentiality.
- (b) When a subsequent action for damages between the mediator and a party to the mediation arises out of the mediation.
- (c) Where there are threats of imminent violence to self or others.
- (d) Where reporting is required by state law.

Professional Advice: A mediator shall only provide information the mediator is qualified by training or experience to provide. While a mediator may point out a possible outcome of the case, under no circumstances may a mediator offer a personal or professional opinion as to how the court in which the case is filed will resolve the dispute. The mediator shall not give

legal advice before, during, or after the mediation. The mediator may advise the participants to seek independent legal counsel.

Immunity: No mediator shall be held liable for civil damages for any action, statement, admission or decision made in the course of mediation unless that statement, action, admission, or decision is grossly negligent and made with malice or is in willful disregard for the safety or rights of any party to the mediation. See RSA 490-E:5.

Agreements: Landlords and tenants may seek relief on any dispute that arises out of an agreement created through mediation by filing an action in the appropriate court.

October 29, 2021

/s/ David D. King
David D. King
Administrative Judge
NH Circuit Court