



# FDR CENTRE

TE POKAPŪ MO TE WHAKATAU I NGA TAUTOHE WHĀNAU

## FAMILY DISPUTE RESOLUTION (FDR) RULES

January 2017

**FAMILY DISPUTE RESOLUTION CENTRE  
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## Foreword

The Ministry of Justice established the Family Dispute Resolution (**FDR**) Service in March 2014 as part of the family justice reforms.

FDR mediation is a dispute resolution service designed to assist families reach agreements on matters relating to the care of their children. The focus is on putting the welfare and best interests of children first, and avoids the need to go through the Family Court.

In most cases, it is mandatory for parties to a family dispute that involves day-to-day care or guardianship of children to undergo FDR mediation before they can apply to the Family Court for a parenting order or guardianship direction.

Mediation is a consensual, confidential, and informal negotiation process in which parties to a dispute use the services of a skilled and independent mediator to assist them to define the issues in dispute, to develop and explore settlement options, to assess the implications of settlement options, and to negotiate a mutually acceptable settlement of that dispute which meets their interests and needs.

The primary objective of mediation is to enable and empower the parties to negotiate and resolve the dispute promptly and confidentially rather than to have a decision imposed upon them by a judge.

To ensure the objectives of FDR are met in the context of family disputes in New Zealand, the Family Dispute Resolution Centre (**FDR Centre**) has developed Family Dispute Resolution Rules (**Rules**) to promote and encourage the negotiated settlement and early and cost effective resolution of parenting and guardianship disputes by FDR mediation, and a Mediation Protocol to provide a guide to the rights and responsibilities of all participants in the FDR mediation process under these Rules.

The Rules and Protocol provide both a framework and detailed provisions to ensure the efficient and cost effective resolution of disputes by mediation. The Rules are set out in a manner designed to facilitate ease of use, and they are intended to give Parties the widest choice and the capacity to adopt fully administered FDR mediation procedures which are fair, prompt and that provide structure and certainty to the mediation process.

The FDR Centre has established itself as a leader in family dispute resolution in New Zealand and is a Preferred FDR Supplier to the Ministry of Justice.

These Rules allow the FDR Centre to offer a unique dispute resolution service that is specifically tailored to meet the needs and requirements of families in New Zealand – the Rules are fundamentally and purposively directed to ensuring the resolution of disputes in a manner that is private, efficient, flexible, cost effective, and certain.

For more information visit: [www.fdr.co.nz](http://www.fdr.co.nz).



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## 1.0 INTRODUCTION

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- 1.1 These are the Family Dispute Resolution (**FDR**) Rules of the New Zealand Family Dispute Resolution Centre (**FDR Centre**) and may be referred to as the FDR Centre FDR Rules (**Rules**).
- 1.2 These Rules apply to disputes that concern parenting or guardianship matters. In family and relationship disputes involving only matters other than parenting or guardianship issues, the FDR Centre's Mediation Rules will apply.
- 1.3 Where a dispute has been referred to the FDR Centre for FDR (or words to the same effect), the FDR process will be conducted in accordance with the version of the FDR Centre's Rules and Mediation Protocol in effect at the date the application for FDR is made.
- 1.4 The FDR Centre owns copyright to these Rules and the Mediation Protocol, and they may only be used by parties or intending parties (a **Party** or the **Parties**) to FDR administered by the FDR Centre.

## 2.0 APPOINTMENT

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- 2.1 Any Party to a parenting or guardianship dispute may apply for the appointment of an FDR Provider (**Mediator**) by completing the [online application form](#) on the FDR Centre's website (the **Application**).
- 2.2 On receipt of the Application and payment of the relevant fee for FDR as set out in [Appendix 1](#) to these Rules, the FDR Centre will make the necessary administrative arrangements for FDR including among other things, appointing the most appropriate available Mediator to assess the Parties' readiness and suitability for FDR, and where appropriate, to mediate the family dispute on the earliest practicable date.
- 2.3 In making any appointment, the FDR Centre will have regard to, but will not be bound by, any mediator preferences indicated by the Parties in the Application.
- 2.4 The Parties must accept the appointment of the Mediator appointed by the FDR Centre unless a Party can demonstrate on reasonable grounds that circumstances exist that give rise to justifiable doubts as to the Mediator's impartiality or independence in the eyes of any of the Parties.
- 2.5 The decision as to whether to appoint a substitute Mediator will be made by the FDR Centre promptly after giving due consideration to the request. The decision is of an administrative nature and is final and binding on the Parties and the Mediator. It is not subject to appeal to the FDR Centre, or any court, or other body having jurisdiction, and the FDR Centre is not required to state or communicate reasons for its decision.
- 2.6 In the event Parties are redirected back to FDR by the Family Court, the policy of the Ministry of Justice is that the same Mediator will be appointed.

## 3.0 PRE-MEDIATION SESSIONS

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- 3.1 Once the Mediator has been appointed, he or she will meet with the Parties separately to conduct the pre-mediation sessions. The pre-mediation sessions allow the Mediator to work with the parties separately to: assess the Parties' readiness and suitability to participate in



FDR (**Preliminary Assessment**); identify the issues in dispute; and assist the Parties to prepare for the joint FDR mediation session.

- 3.2 The Mediator may communicate with the Parties for the purpose of conducting the pre-mediation sessions in person, by telephone, or video conference, or by any other means of electronic communication that the Mediator considers appropriate in the circumstances.
- 3.3 If the Mediator considers that the dispute is not suitable for FDR because:
- (a) at least one of the Parties is unable or unwilling to participate effectively;
  - (b) at least one of the Parties, or a child of one of the Parties, has been subject to domestic violence by a Party; or
  - (c) one of the Parties refuses to attend or continue to attend FDR,
- the Mediator must give each of the participating Parties a form that complies with s12 of the Family Dispute Resolution Act 2013 (**Outcomes of Family Dispute Resolution Form**) and the FDR process will be terminated at that point.
- 3.4 If the Mediator considers that FDR is appropriate for the dispute, any Party may seek on its own initiative, or the Mediator may recommend that any of the Parties attend preparatory counselling, conflict and communication coaching, or any other service that may help prepare them for the FDR process.
- 3.5 Fulfilment of any recommendations of the Mediator is not required to proceed under these Rules.

## 4.0 JOINT FDR MEDIATION SESSION

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- 4.1 Before the joint FDR mediation session, all Parties must sign the FDR Mediation Agreement at [Appendix 2](#) to these Rules.
- 4.2 The Mediator may conduct the joint FDR mediation session in such manner as the Mediator thinks fit, having regard to the Parties and the nature and circumstances of the family dispute, and may arrange conferences and mediation sessions at times to suit the Parties.
- 4.3 The Mediator may conduct the joint FDR mediation in person, by telephone, or video conference, or by any other electronic communication means that the Mediator considers appropriate in the circumstances.
- 4.4 The Parties must co-operate in good faith with the Mediator and with every other Party to the family dispute in attempting to settle the matters in difference, and agree to comply with the Mediator's reasonable directions to attend joint FDR mediation sessions and provide information.
- 4.5 The Mediator may conduct joint and separate sessions with any or all of the Parties at any time for the purposes of the FDR process.
- 4.6 The Mediator will not provide legal advice and will not make any decisions for the Parties. Any agreement reached during the mediation is the Parties' agreement alone (**Parenting Agreement**).
- 4.7 Parties must participate in the joint FDR mediation session and must be able to make final and conclusive decisions.



## 5.0 REPRESENTATION AND SUPPORT

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- 5.1 Parties may be represented during the FDR process by any person, whether legally trained or not (**Representative**), provided that the engagement of the Representative by a Party does not threaten or bring into question the integrity of the mediation due to a past or present relationship with any Party, unless none of the Parties object after proper disclosure.
- 5.2 Parties may, subject to clause 5.4 below, bring a **Support Person** to the joint FDR mediation session. A Support Person may provide moral and emotional support for a Party, but they are not entitled to intervene or participate in the FDR process.
- 5.3 Parties must advise the Mediator of the names and relevant details of those persons who they wish to accompany them at any joint FDR mediation session, not less than three working days prior to the session. The Mediator will advise the other Parties accordingly. The Mediator will require the Representative or Support Person to sign a Confidentiality Agreement in the form found at [Appendix 3](#) to these Rules as a condition of the Representative's or Support Person's attendance at the joint FDR mediation session.
- 5.4 The Mediator may withhold approval for a Representative or Support Person to attend the joint FDR mediation session where the Mediator, in his or her sole discretion, considers the Representative's or Support Person's attendance could threaten or bring into question the integrity of the mediation.
- 5.5 The Mediator, in his or her sole discretion, may limit the number of Representatives and/or Support Persons to preserve the integrity of the FDR process.

## 6.0 FEES AND EXPENSES

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- 6.1 The Parties must pay the FDR Centre the relevant fees and expenses set out in [Appendix 1](#) to these Rules. The FDR Centre's fees and expenses are payable in advance by way of security for future fees and expenses, and within three days of receipt of an invoice for any sundry additional fees and/or expenses.
- 6.2 The Parties are jointly and severally liable for the fees and expenses of the FDR process, together with any additional costs howsoever incurred by the FDR Centre in recovering any overdue monies, on a full indemnity basis.

## 7.0 CONFIDENTIALITY

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- 7.1 The Parties, their Representatives, Support Persons, the Mediator, the FDR Centre, and any other person involved in the FDR process must keep confidential and not disclose confidential information to any non-party. Confidential information includes:
  - (a) any statement, admission or document created or made for the purpose of the FDR process and all matters disclosed orally in the course of the mediation sessions; and
  - (b) all non-public materials and information provided for FDR by a Party, including documents used or generated for the purpose of a Representative or Support Person in the mediation.

**(Confidential Information)**



- 7.2 If a Party wishes to involve in the FDR Process a non-party including a Support Person, Representative, translator, interpreter, or any other person, that Party must secure the non-party's advance agreement to preserve the confidentiality of the confidential information. This agreement must be recorded in the form provided at [Appendix 3](#) to these Rules and a copy of the agreement signed by each non-party must be provided to the Mediator by that Party.
- 7.3 Notwithstanding Rules 7.1 and 7.2 the FDR Centre, a Party, a Representative, a Support Person, the Mediator or a non-party involved in the mediation may disclose confidential information to the extent necessary to:
- (a) protect the safety of any person from being endangered;
  - (b) record participation in FDR and generate Outcomes of Family Dispute Resolution Forms for the purposes of the Family Dispute Resolution Act 2013;
  - (c) enforce any Parenting Agreement reached in the joint FDR mediation session;
  - (d) pursue a legal right;
  - (e) protect a Party's legal rights in relation to a third party;
  - (f) respond to a professional or other adviser of any of the Parties after that person has signed the Confidentiality Agreement;
  - (g) respond to legitimate subpoena, governmental request for information, or other compulsory process; or
  - (h) comply with the order of a court of competent jurisdiction, or any legal requirement which is binding on the Party making the disclosure

provided always that such publication, disclosure, or communication is no more than what is reasonably required for the purpose.

- 7.4 Any person intending to make disclosure under Rule 7.3(c)-(e) must, within a reasonable period of time prior to the intended disclosure, notify the Mediator, every other Party and the FDR Centre.
- 7.5 This notification must include full details of the intended disclosure and an explanation of the reasons for it.

## 8.0 OUTCOME OF FDR MEDIATION

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- 8.1 If at any time the Mediator decides that:
- (a) one or more of the Parties is unable to participate effectively in FDR; or
  - (b) one of the Parties, or a child of one of the Parties, has been subject to domestic violence by a Party; or
  - (c) a situation exists that gives the Mediator reasonable grounds for deciding that FDR is inappropriate for the Parties,

the Mediator must give each of the Parties an Outcomes of Family Dispute Resolution Form that states that FDR is inappropriate for the dispute.





- 8.2 If at any time the Mediator finds that it is inappropriate to continue with FDR because one of the Parties refuses to attend or to continue to attend FDR, the Mediator must give every other Party an Outcomes of Family Dispute Resolution Form which states that FDR was not possible because that Party refused to attend or to continue to attend FDR.
- 8.3 If at any time the Mediator considers the FDR process to be taking an undue length of time to resolve, the Mediator must give each of the Parties an Outcomes of Family Dispute Resolution Form that:
- (a) describes the parenting and guardianship matters agreed by the Parties and the agreements reached in respect of those matters; and/or
  - (b) describes the parenting and guardianship matters not agreed on by the Parties; and
  - (c) states whether, in the opinion of the Mediator;
    - (i) a settlement conference would be likely to facilitate settlement of the matters on which the Parties did not reach resolution; and/or
    - (ii) at least one of the Parties would need legal representation to participate effectively in the settlement conference.
- 8.4 If the Mediator and the Parties agree that resolution has been reached on all matters in dispute, the Mediator will:
- (a) assist the Parties to draw up a **Parenting Agreement** that the Parties must sign; and
  - (b) give each of the Parties an Outcomes of Family Dispute Resolution Form that describes:
    - (i) the parenting and guardianship matters agreed by the Parties; and
    - (ii) the agreements reached in respect of those matters.
- 8.5 The Parties may not call the Mediator or the FDR Centre to attend any legal or administrative proceeding to explain the opinion reached under Rule 8.3 or the agreements reached under Rule 8.4.

## 9.0 OUTCOME OF OTHER MATTERS

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- 9.1 Where the family dispute involves matters in addition to parenting and guardianship issues, and the Parties reach agreement on some or all of those matters, the Mediator will discuss with the Parties the process for recording and implementing the agreement.
- 9.2 Where a partial agreement has been reached, the Mediator will discuss with the Parties the procedures available to them to resolve the remaining issues.
- 9.3 If the Mediator considers that any agreement reached may be illegal or impossible to enforce or uphold, the Mediator will recommend to the Parties that they take further independent legal advice.
- 9.4 The Parties are under a duty at all times following the FDR process to abide by the terms of any agreement in good faith and in a timely manner



## 10.0 EXCLUSION OF LIABILITY

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- 10.1 The Parties, together and separately, release and discharge the Mediator and the FDR Centre, its agents and employees, from all liability of any kind (whether involving negligence, misrepresentation, breach of contract, or breach of any equitable, fiduciary, statutory, or other duty, or otherwise) which may be alleged to arise in connection with, or to result from, or to in any way relate to the exercise of any of their functions, duties, or powers, whether under the laws of New Zealand, these Rules, or otherwise, unless the act or omission is the fraudulent act of the Mediator, or the FDR Centre, its agents or its employees. The Mediator, the FDR Centre, or any agent or employee of the FDR Centre who has not acted fraudulently and is shown to be unaware of the fraud of any other person, will continue to be released and discharged from liability as provided in these Rules.
- 10.2 No statements or comments, whether written or oral, made or used by the Mediator, the FDR Centre, its agents, or employees in connection with, or resulting from, or in any way relating to the FDR process may be relied on to found or maintain any action for defamation, libel, slander, or any related complaint.
- 10.3 The Parties, together and separately, undertake to indemnify and keep indemnified the Mediator and the FDR Centre, its agents and employees, against all claims, costs, expenses, liabilities, awards, damages, and proceedings of any kind (properly sustained or incurred by them directly, or indirectly made by any third party) in relation to, or in connection with, the exercise of their functions, duties, or powers, whether under the laws of New Zealand, these Rules, or otherwise, unless the act or omission is the fraudulent act of the Mediator, or the FDR Centre, its agents or its employees. If the Mediator, the FDR Centre, or any agent or employee of the FDR Centre has not acted fraudulently and is shown to be unaware of the fraud of any other person, he or she will continue to be indemnified as provided in these Rules.
- 10.4 The purpose of Rules 8.1-8.3 is to provide the Mediator and the FDR Centre, its agents, and employees with the widest immunity from liability that the law will allow.

## 11.0 GENERAL PROVISIONS

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- 11.1 Parties may not call for the records, notes, or work product of the FDR Centre or the Mediator for any purpose, including any legal or administrative proceeding that may arise before, during, or after the pre-mediation or joint FDR mediation sessions. However, any written agreement resulting from the joint FDR mediation session, that is intended by the Parties to have legal effect and to be legally enforceable, may be subpoenaed, called for, or produced in any proceedings to which it is relevant.
- 11.2 Parties must not at any time before, during, or after the FDR process, call the Mediator to testify in any legal or administrative proceeding concerning the dispute or the nature and extent of any agreement(s) that may be reached as a result of participating in FDR.
- 11.3 The FDR process will be held without prejudice to any other legal rights or remedies.



## APPENDIX 1: FEES AND EXPENSES FOR FAMILY DISPUTE RESOLUTION

The FDR Centre provides a fully administered, fixed fee Family Dispute Resolution (**FDR**) service.

The Government funds the FDR process for everyone. Based on your income, you will be either fully funded or partially funded. To find out whether you are entitled to full funding see the [Ministry of Justice website](#).

The FDR Centre does not currently offer fully funded services. However, FDR Parties who qualify for full funding may still choose to use the partially funded service through the FDR Centre and pay the fee set by the Ministry of Justice of \$897.00.

If Parties have already accessed partially funded mediation twice within a 12-month period, they may still access FDR within that same 12-month period, but will need to do so on a non-funded basis.

### FEES FOR PARTIALLY FUNDED FDR

The **fees** for using our partially funded FDR service are payable in two separate instalments, namely:

#### **Part 1 – FDR pre-mediation sessions - \$448.50 including GST**

The fee of **\$448.50** including GST is non-refundable and covers the FDR process up to and including the pre-mediation sessions.

#### **Part 2 – Joint FDR mediation session - \$448.50 including GST**

Where the Mediator considers that the Parties are ready and suitable to participate in a joint FDR mediation session, a further fee of **\$448.50** including GST is payable.

Generally, the fee for the joint FDR mediation is for attendances by the Mediator at the joint FDR mediation session for a period of up to three hours between either 9.00am and 12.00pm or 1.00pm and 4.00pm on any given day of the year unless other arrangements are made by agreement with the Mediator.

### FEES FOR NON-FUNDED FDR

For those Parties who do not qualify for any further Government funding, the FDR fees are payable in two separate instalments, namely:

Part 1 – FDR pre-mediation sessions - **\$650.00** including GST; and

Part 2 – joint FDR mediation session - **\$750.00** including GST.

## ADDITIONAL SERVICES

If the Parties require more than the allocated three hours for FDR mediation as a result of conflict and communication coaching or other non-parenting/guardianship issues which the Parties wish to mediate as part of the same process, the scheduled FDR session can in some cases be extended with the agreement of the Mediator, subject to availability on the day.

Any additional time required on the same day is charged on an hourly basis at \$300.00 per hour including GST, and is payable in advance on the day by credit card, debit card, or direct credit through the [FDR Centre's website](#).

Where the Parties wish to reconvene the mediation on another day, the FDR Centre charges a fee of \$900.00 including GST for a further Mediation session of up to three hours duration and the Fee is also payable by credit card, debit card, or direct credit through the [FDR Centre's website](#).

## WHEN IS PAYMENT REQUIRED?

We require payment of all fees in advance of delivery of each stage of our FDR service.

The initial FDR pre-mediation fee must be paid at the time the Application for FDR is submitted to the FDR Centre, or immediately after. No administrative or procedural steps will be taken by the FDR Centre until payment is made and the funds are cleared. Please note the pre-mediation fee is non-refundable.

The joint FDR mediation fee is only payable by those Parties whom the Mediator decides are suitable and ready for FDR. Payment must be made through the website promptly on receipt of confirmation from the FDR Centre that approval has been granted for the Parties to proceed to the joint FDR mediation session.

Any additional services must be paid for in advance.

If the Parties require the Mediator to provide more than the three hours that have been allocated to the case on the day of the joint FDR session, the Parties must pay for that additional time in advance through the FDR Centre's website. You may make payment by credit card, debit card, or direct credit through the [FDR Centre's website](#) during a break at the end of the allocated three-hour session.

If additional conflict and communication coaching or mediation is required on another day after the scheduled joint FDR session, the Parties must pay the FDR Centre's fee of \$900.00 including GST for a further FDR session of up to three hours' duration. You may make payment by credit card, debit card, or direct credit through the [FDR Centre's website](#) prior to any future session(s). Payment is to be made within three days of the date of the request.

## LIABILITY FOR PAYMENT

The Parties are free to make any arrangements as between them for payment of the FDR Centre's fees.

However, and notwithstanding any agreement as between the Parties, the Parties are jointly and severally liable for the FDR Centre's fees and expenses together with any additional costs incurred by the FDR Centre in recovering any overdue monies on a full indemnity basis.



## METHODS OF PAYMENT

You may make payment of any FDR Centre fees by credit card, debit card, or direct credit through the [FDR Centre's website](#).

Please note that if paying by credit card there is a merchant transaction fee of 2.75% payable in addition to the published FDR Centre fee.

## CANCELLATION FEES

In any case where a Party notifies the FDR Centre in writing that a scheduled joint FDR mediation session is to be vacated (whether the dispute between the Parties has been settled, or the FDR session is adjourned by agreement, or the application for FDR is withdrawn or terminated for any reason whatsoever), and the notice is received by the FDR Centre during ordinary business hours between 14 and eight days from and including the date of the scheduled joint FDR mediation session, the FDR Centre will charge a cancellation fee in the amount of 50% of the relevant fee.

If such notice is received seven days or less from and including the date of the scheduled joint FDR mediation session, the FDR Centre will charge a cancellation fee in the amount of 75% of the fee.

If, for whatever reason, the Parties do not attend a scheduled joint FDR mediation session and do not give advance notice, the full fee for that session will be forfeited by the Parties.

Where a scheduled joint FDR mediation session is vacated 14 days or less from and including the date of the scheduled event, the Parties must pay the FDR Centre the forfeited portion of the relevant fee before a further joint FDR mediation date will be allocated.



**APPENDIX 2: FAMILY DISPUTE RESOLUTION (FDR) MEDIATION AGREEMENT**

I have read, understood, and agree to be bound by the FDR Centre’s Family Dispute Resolution Rules and the FDR Centre’s Mediation Protocol.

**Dated this**                      day of    (month)    (year)

Signature:

Signature:

Name:

Name:

Occupation:

Occupation:

Signature:

Signature:

Name:

Name:

Occupation:

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### **APPENDIX 3: CONFIDENTIALITY AGREEMENT FOR REPRESENTATIVES AND SUPPORT PERSONS OF PARTIES TO FDR MEDIATION**

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The purpose of this agreement is to ensure that you understand the responsibilities that you have, to the Parties and to the Family Dispute Resolution (**FDR**) process, and that you agree to maintain the confidentiality of the FDR process involving the following Parties:

#### **THE PARTIES:**

\_\_\_\_\_ First Party

#### **AND**

\_\_\_\_\_ Second Party

Together, the **Parties**

I understand that the FDR process is private and agree to maintain the confidentiality of the process.

I understand that any agreed terms of settlement and any statement, admission, or document created or made for the purpose of the FDR process, and all matters disclosed orally in the course of FDR shall remain confidential to the Parties and shall not be disclosed or adduced in subsequent proceedings. This requirement is subject to disclosure necessary to:

- (a) protect the safety of any person from being endangered;
- (b) record participation in Family Dispute Resolution and generate Outcomes of Family Dispute Resolution Forms for the purposes of the Family Dispute Resolution Act 2013;
- (c) enforce any Parenting Agreement reached in the joint FDR mediation;
- (d) pursue a legal right;
- (e) protect a Party's legal rights in relation to a third party;
- (f) respond to a professional or other advisor of any of the Parties after that person has signed the Confidentiality Agreement;
- (g) respond to legitimate subpoena, governmental request for information, or other compulsory process; or
- (h) comply with the order of a court of competent jurisdiction, or any legal requirement which is binding on the Party making the disclosure,

