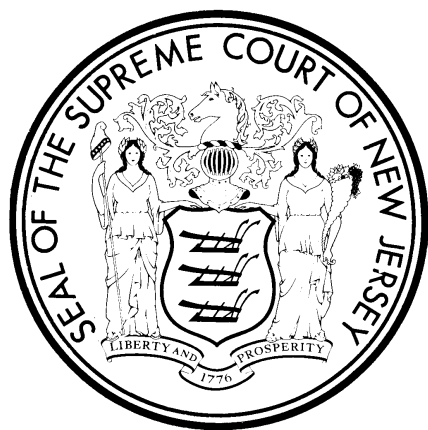


**Report of the New Jersey Supreme Court
Committee on Complementary Dispute Resolution**



**2021-2023
RULES CYCLE**

January 20, 2023

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I. PROPOSED RULE AMENDMENTS

A. Rule 1:40-4(i). Mediation, General Rules. Proposed Amendment to Mandate Submission of Form following Economic Mediation.

In the 2019-2021 cycle, the Complementary Dispute Resolution Committee (“Committee”) was referred consideration of items related to the Family Economic Mediation Program. While the Committee acted on some items, it carried the below issues to the 2021-2023 cycle for further consideration as the proposed amendments are unique to the Family Division and unintentionally impact mediation in the Civil and Municipal Divisions. The Committee considered the following:

- (1) to amend R. 1:40-4(i) to mandate that family economic mediators submit a form prescribed by the Administrative Director of the Courts regardless of the mediation’s outcome; and
- (2) to remove the family economic mediator form from Appendix XIX to permit modification as needed by the Administrative Director.

The Committee noted that the rule, as currently written, does not require the submission of the form when the parties do not reach an agreement. The Committee recommends that R. 1:40-4 (i) be amended to require that the form be completed in all family matters that proceed to economic mediation regardless of whether the parties reached an agreement. The proposed amendments clarify that this is requirement is for Family matters only. Additionally, the Committee recommends that the family economic mediator form be removed from Appendix XIX to permit modification as needed by the Administrative Director.

Therefore, the Committee recommends the following rule amendment:

Rule 1:40-4 . Mediation, General Rules.

(a) Referral to Mediation. . . . no change.

(b) Compensation and Payment of Mediators Serving in the Civil and Family Economic Mediation Programs. . . . no change.

(c) Evidentiary Privilege. . . . no change.

(d) Confidentiality. . . . no change.

(e) Limitations on Service as a Mediator. . . . no change.

(f) Mediator Disclosure of Conflict of Interest. . . . no change.

(g) Conduct of Mediation Proceedings. . . . no change.

(h) Termination of Mediation. . . . no change.

(i) Final Disposition. If the mediation results in the parties' total or partial agreement, said agreement must be reduced to writing, signed by each party, and furnished to each party. The agreement need not be filed with the court, but both roster and non-roster mediators shall report the status of the matter to the court by submission of the Completion of Mediation form. If an agreement is not reached, the matter shall be referred back to court for formal disposition. In Family Economic Mediations, regardless of the mediation's outcome, the economic mediator shall submit to the court a form prescribed by the Administrative Director of the Courts.

Note: Adopted July 14, 1992 to be effective September 1, 1992; paragraph (c)(3) amended and paragraph (c)(4) adopted June 28, 1996 to be effective September 1, 1996; paragraphs (a) and (c)(2) amended and paragraph (c)(3)(v) adopted July 10, 1998 to be effective September 1, 1998; caption amended, paragraph (a) amended and redesignated as paragraphs (a) and (b), paragraphs (b), (c), (d), (e), and (f) amended and redesignated as paragraphs (c), (d), (e), (f), and (g) July 5, 2000 to be effective September 5, 2000; paragraphs (d)(2) and (d)(3) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended July 27, 2006 to be effective September 1, 2006; new paragraph (c) adopted, former paragraph

(c) redesignated as paragraph (d) and amended, former paragraph (d) redesignated as paragraph (e), new paragraph (f) adopted, former paragraph (e) redesignated as paragraph (g) and amended, former paragraph (f) redesignated as paragraph (h), and former paragraph (g) redesignated as paragraph (i) June 15, 2007 to be effective September 1, 2007; paragraph (b) amended and new subparagraph (f)(3) adopted July 16, 2009 to be effective September 1, 2009; paragraph (b) amended, subparagraph (e)(1) deleted, subparagraphs (e)(2), (e)(3) and (e)(4) amended and redesignated as subparagraphs (e)(1), (e)(2) and (e)(3), subparagraphs (f)(1) and (f)(3) amended, paragraph (g) amended, subparagraphs (h)(1) and (h)(2) amended, and paragraph (i) amended July 27, 2105 to be effective September 1, 2015; paragraph (b) amended July 28, 2017 to be effective September 1, 2017; paragraph (i) amended _____ to be effective _____.

Appendix XIX – Mediation of Economic Aspects of Family Actions- “Completion of Mediation” Form

[Appendix XIX – Mediation of Economic Aspects of Family Actions – “Completion of Mediation” Form]

Appendix XIX deleted _____ to be effective _____.

II. MATTERS HELD FOR CONSIDERATION

A. Complementary Dispute Resolution Subcommittee

The following is the initial charge assigned to the Complementary Dispute Resolution Subcommittee:

Conduct a statewide review of all CDR programs provided in the Civil and Family Divisions of the Superior Court, including all types of mediation, arbitration, settlement panels, and other facilitated settlement techniques whether performed by court staff, roster neutrals, Judiciary volunteers, attorneys, and/or others. The exploratory review should specifically seek and document responses regarding local initiatives or pilot programs, such as Probate Early Settlement Panels and Family Dissolution (FM) motion mediation programs. It also should include responses to a uniform questionnaire regarding CDR offerings in the municipal courts.

The Committee focused their charge to consider the current CDR programs and determine whether to expand or improve them with the goal of reducing backlog. The Committee submits the following recommendations and tools for the Civil and Family Division for future full committee review in the second half of the 2021-2023 rules cycle and carried into the 2023-2025 rules cycle.

Civil Division

Conduct a Settlement Day	Expand the Blue-Ribbon Settlement Panels
Hold Insurance Carrier Settlement Days	Send additional notices to the parties regarding settlement opportunities
Assign mediation within 30 days for Track 1 cases	Increase use of Court Trained Mediators/Settlement Conference Facilitators (AS4)
Schedule settlement conference immediately following arbitration	Baseball Arbitration

Family Division

Blitz days	Strong Judicial Case Management
Format for Early Settlement Panels and Intensive Settlement Panels	Sharing Judicial Resources

The Committee seeks permission to continue working on these initiatives through the 2021-2023 rules cycle and carry throughout the 2023-2025 rules cycle to further refine recommendations for full committee review and to present a comprehensive answer to the Court's charge.

B. Quantitative Research Subcommittee

The Quantitative Research Subcommittee of the Complementary Dispute Resolution Committee was formed and given the following charge:

With support from the Judiciary's Quantitative Research Unit and ATCSU, determine the data fields necessary to measuring the effect of Judiciary CDR programs, including but not limited to presumptive mediation and arbitration in Civil cases and matrimonial ESP, economic mediation, and custody and parenting mediation in Family matters. Develop a proposal to capture statewide data showing the participation in and success of some or all CDR programs (with an explanation as to any programs not recommended for statistical assessment at this time).

Background

The subcommittee met and discussed the charge over the course of the 2019-2021 and 2021-2023 Rules Cycles. At the conclusion of the 2019-2021 Rule Cycle, the subcommittee submitted its February 2020 Report which outlined all the court's Complementary Dispute Resolution (CDR) programs in Civil and Family with recommendations for which programs to include for statistical assessment. The report also stated which programs were not recommended for inclusion.

For Civil, the subcommittee recommended including arbitration and mediation in the court-annexed programs. For Family, the subcommittee recommended including the matrimonial early settlement program (MESP), economic mediation panels, the custody and parenting time mediation program and the child welfare mediation program. No recommendation was made for Municipal at that time.

During the 2021-2023 Rules Cycle, the subcommittee met several more times. The subcommittee refined its initial recommendations for Civil and Family programs, developed a recommendation for Municipal, prepared proposed surveys for use in the recommended programs, and developed a proposal for dissemination of the surveys.

The Committee seeks permission to continue working on these initiatives through the 2021-2023 rules cycle and carry throughout the 2023-2025 rules cycle to further refine recommendations and to present a comprehensive answer to the Court's charge.

C. Qualifications Subcommittee

The following is the initial charge assigned to the Qualifications Subcommittee:

Recommend a uniform, statewide approach to addressing the qualifications of court-appointed neutrals, specifically as to areas of expertise. Note that this item will at some point involve consultation with the New Jersey State Bar Association.

During the 2021-2023 rules cycle, the subcommittee narrowed their focus to explore and provide recommendations for standard qualifications of court-appointed neutrals for specific case types that will benefit most arbitrators and mediators.

The subcommittee obtained information from all 50 states regarding best practices for mediator/arbitrator qualifications, reviewed filing statistics throughout the state of NJ, and inquired into the qualification procedures of various mediator/arbitrator organizations worldwide. Based on the research, it is proposed that the subcommittee will focus on recommending qualifications for automobile, employment, chancery, and probate case types for future full committee review.

The Committee seeks permission to continue working on this initiative through the 2021-2023 rules cycle and carry throughout the 2023-2025 rules cycle to further refine recommendations and to present a comprehensive answer to the Court's charge.

D. Initiatives Subcommittee

The following is the initial charge of the Initiatives Subcommittee:

Catalogue recent initiatives of the Arbitration Advisory Committee and determine which projects can be used to inform and guide efforts related to mediation and other non-arbitration forms of CDR, as well as which efforts can be informed and bolstered by prior or ongoing work of the CDR Committee, specifically including the development of statewide protocols for resolution of complaints, with an eye toward a global complaint mechanism for arbitration and mediation and other forms of non-credentialed CDR.

During the 2021-2023 rules cycle, the subcommittee narrowed their charge, and began a targeted approach to polish the proposed disciplinary process for complaints against arbitrators and mediators with a goal to bring the revised proposal to formal adoption.

After meeting several times during the first half of the rules cycle, it was determined that the proposed complaint process needed to be revised and rewritten. The revised proposal is currently under review by the subcommittee. Once the subcommittee approves the current proposal, it will be presented to the full Committee for approval and adoption. Recommendations from the Judicial Council and the Advisory Committee on Mediator Standards will be considered when preparing the final proposal.

The Committee seeks permission to continue working to bring the revised complaint process to formal adoption during the second half of the 2021-2023 rules cycle and carry over into the 2023-2025 rules cycle to present a comprehensive answer to the Court's charge.

III. Committee Members and Staff

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Respectfully submitted,

Hon. Jeffrey R. Jablonski, A.J.S.C., Chair

Dated: January 20, 2023