ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

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Directive # 1-07

[Questions or comments may be directed to 609-984-4228.]

To: **Assignment Judges**
Family Presiding Judges
Trial Court Administrators
Family Division Managers

From: **Philip S. Carchman**

Subject: **Statewide Program for Mediation of Economic Aspects of Family Actions – Program Guidelines; Form Referral Order; Mediation Case Information Statement**

Date: **February 6, 2007**

This Directive promulgates Program Guidelines for the Statewide Program for Mediation of Economic Aspects of Family Actions, as approved by the Supreme Court at its January 16, 2007 administrative conference. These Program Guidelines are effective immediately.

The Court's approval of the Program Guidelines followed its determination in June 2006 that the economic mediation program should be implemented statewide. Prior thereto the program had operated on a pilot basis pursuant to the pilot program rules published as Appendix XIX to the Rules of Court. This promulgation of permanent Program Guidelines supersedes those pilot program rules. (The Court will enter an order formally rescinding Rules Appendix XIX.)

Also included here is a standard form of order of referral to mediation (post-MESP) and a standard mediation case information statement for these matters.

Any questions or comments about the Program Guidelines for the Statewide Program for Mediation of Economic Aspects of Family Actions may be directed to Assistant Director Harry Cassidy at 609-984-4228.

P.S.C.

Attachments

cc: Chief Justice James R. Zazzali
Theodore J. Fetter, Deputy Administrative Director
AOC Directors and Assistant Directors
Leigh Eastty, Manager, Special Programs
Kathleen Gaskill, Manager, CDR Programs
Vicinage CDR Coordinators
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

ATTACHMENT 1

PROGRAM GUIDELINES

PROGRAM GUIDELINES FOR STATEWIDE PROGRAM FOR MEDIATION OF ECONOMIC ASPECTS OF FAMILY MATTERS

[Approved by the Supreme Court;
Promulgated By Directive #1-07]

Introduction

Mediation is a dispute resolution process that utilizes an impartial third party to facilitate dialogue among parties to help them reach a mutually acceptable settlement of their pending issues. The mediator does not make decisions regarding the outcome of a case, but rather provides parties the opportunity to (1) express feelings and diffuse anger, (2) clear up misconceptions (3) determine underlying interests or concerns, (4) find areas of agreement, and, ultimately, (5) incorporate a mutually agreed upon solution into a written agreement.

The New Jersey Supreme Court Committee on Complementary Dispute Resolution (CDR) developed the Economic Mediation Pilot Program, which began on a pilot basis in 1999. The pilot eventually was in place in seven counties: Atlantic, Bergen, Burlington, Morris, Ocean, Somerset, and Union. After assessing the positive outcomes of the pilot, the Supreme Court in June 2006 approved the program for statewide implementation. The Court thereafter approved these Program Guidelines, to be effective immediately, in January 2007.

Program Overview

The economic mediation program provides a vehicle for applying complementary dispute resolution techniques to help resolve economic aspects of dissolution (divorce) actions. Additionally, non-dissolution cases also may be referred at the discretion of the Family Presiding Judge. All such cases referred to economic mediation must first be referred to the Matrimonial Early Settlement Panel (MESP) program. To expedite settlement, parties may voluntarily request mediation during any phase of their case. No case shall be referred to mediation if there is a temporary or final restraining order in effect pursuant to the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.). Unless good cause is shown why a particular matter should not be referred to the Economic Mediation Program, litigants will be ordered to attend this program or another post-MESP Complementary Dispute Resolution ("CDR") event. Parties are required to participate in post-MESP mediation for not more than two hours, usually consisting of one hour of preparation time by the mediator and one hour of time for mediation. The parties will not be charged a fee for the mandatory first two hours of mediation. Participation after the first two hours shall be voluntary. If parties consent to continue the

mediation process, the Order of Referral to Economic Mediation will determine the distribution of costs for each party for the additional hours. If the parties choose to participate in an alternate post-MESP CDR event, the fee shall be set by the individual conducting the session. The parties shall share the cost equally unless otherwise determined by the court. The parties are required to participate in at least one session of such alternate post MESP CDR event.

Designation of Mediator

A joint credentials committee comprised of representatives from the Supreme Court Committee on Complementary Dispute Resolution and the Supreme Court Family Practice Committee will be responsible for reviewing and approving all mediator applications. Applicants must complete an application form posted on the Judiciary's Internet website (www.judiciary.state.nj.us or www.njcourtsonline.com) . Mediators who meet the training requirements set forth in Court Rule 1:40-12, and any other approved criteria developed by the Family Court Programs Subcommittee on the Committee on Complementary Dispute Resolution will be added to the Roster of Approved Mediators. The roster will be maintained by the Administrative Office of the Courts and is accessible on the Judiciary's Internet web site.

Mediator Qualifications and Training

Qualified mediators of economic issues in family disputes must meet one of the following sets of experiential requirements and must also have completed the required training set forth below:

Experience

(1) Attorneys
   a. Juris Doctor (or equivalent law degree)
   b. Admission to the bar for at least seven years
   c. Licensed to practice law in the state of New Jersey
   d. Practice substantially devoted to matrimonial law

(2) Non-Attorneys
   a. Advanced degree in psychology, psychiatry, social work or allied mental health field, business, finance, or accounting, or a CPA
   b. At least seven years experience in the field of expertise; and
   c. Licensed in New Jersey if required in the field of expertise.

(3) Any retired Superior Court judge with experience in handling dissolution matters.

Training

Qualified mediators (1) shall have completed 40 hours of training in family mediation approved by the Administrative Office of the Courts, or (2) shall have completed a minimum of 25 hours of mediation training with the commitment to complete the remaining 15 hours of specialized training within one year following addition to the roster if mediators.

Program Operations

Pursuant to Rule 5:5-7, when a case is referred to mediation, the order of referral shall provide that the litigants may select a mediator from the statewide-approved list of mediators or select an individual to conduct a post-MESP CDR event. Litigants shall be permitted to select another individual who will conduct a post-MESP mediation or other alternate CDR event, provided that such selection is made within seven days.

Rules 1:40-4 and 1:40-5 govern the mediation process. These rules provide that mediation must begin with an opening statement by the mediator describing the purpose of mediation and the procedures used in the process. Counsel for the parties are encouraged to attend the first mediation session and may attend any subsequent session on notice to the other party or counsel and the mediator. In mediation of economic aspects of Family actions, parties are required to provide accurate and complete information to the mediator and to each other, including but not limited to tax returns, Case Information Statements, and appraisal reports. The court may, in the Mediation Referral Order, stay discovery and set specific times for completion of mediation. The rules further provide that attorneys and parties have the obligation to participate in the mediation process in good faith and in accordance with program guidelines.

Timing of Referral

Parties are referred to economic mediation or other alternate CDR event following the unsuccessful attempt to resolve their issues through MESP. At the conclusion of the MESP process, parties are directed to confer with appropriate court staff to expedite the referral to economic mediation. The following procedures should be followed:

1. Parties may conference with the judge or the judge's designee.
2. Court staff will explain the program to the parties and/or their attorneys.
3. Parties will be provided with the roster of approved mediators for selection.
4. Once a mediator has been selected, contact is immediately attempted by phone to secure acceptance by the mediator and the date of initial appointment. If court staff cannot contact the mediator for confirmation, the order of referral will reflect that the mediator and the date of initial appointment are tentative

until confirmation is secured. Staff will attempt to confirm within 24 hours and send an amended order to the parties and/or their attorneys.

5. If a mediator notifies the court that he or she cannot take on any additional cases, court staff will convey that to the parties at the time of selection so that an alternate mediator can be selected.
6. The Economic Mediation Referral Order shall be prepared reflecting the name of the mediator, listing the financial documents to be shared between the parties and with the mediator, indicating the allocation of compensation by each party if mediation extends past the initial two hours, stating the court's expectation that the parties will mediate in good faith, defining the mediation time frame, and the identifying the next court event and corresponding date of that next court event.
7. The referral order is to be signed by the judge and provided to the parties before they leave the court house. Tentative orders are replaced by amended orders with confirmed appointments and faxed to the parties and/or their attorneys the next day, if necessary.
8. If the parties are unable to agree upon and select a mediator, the judge will appoint one. Staff should follow the above procedures as applicable.
9. Referral to economic mediation is recorded in the Family Automated Case Tracking System (FACTS).

Mediator Conflict of Interest

If after entry of the Order of Referral the court is advised by the mediator, counsel, or one of the parties that a conflict of interest exists, the court will reassign the case to a different mediator. In such situations, the parties will be provided the opportunity to select a replacement mediator from the roster or the court may appoint one to the case. An Amended Order of Referral will be prepared and provided to the new mediator and to the parties. The appropriate referral procedures should be completed. All data should be entered in FACTS.

Adjournments

Adjournments specific to the mediation process are handled between the mediator, the parties, and/or attorneys, so long as the adjournment does not cause the case to exceed the return date to the court. If an adjournment would cause the case to exceed the return date to the court, a written request to the court is required. The request should be forwarded for consideration to the judge who has responsibility for the case or the judge's designee.

Termination of Mediation

Pursuant to Rule 1:40-4(f), the mediator or a participant may terminate the session if (1) there is an imbalance of power between the parties that the mediator cannot overcome, (2) a party challenges the impartiality of the mediator, (3) there is abusive behavior that the mediator cannot control, or (4) a party continuously resists the mediation process or the mediator.

The mediator shall terminate the session if (1) there is a failure of communication that seriously impedes effective discussion, (2) the mediator believes a party is under the influence of drugs or alcohol, or (3) the mediator believes continued mediation is inappropriate or inadvisable for any reason.

Completion of Mediation

Mediators must promptly complete and submit to the court a Completion of Mediation form. A copy of the Completion of Mediation form must accompany the referral form given to the mediator during initial contact, with instructions on how to fill out the Completion of Mediation form.

Tracking of Mediation

All referrals and data pertaining to the results of mediation must be entered in FACTS. Staff must follow the FACTS Differentiated Case Management program data entry guidelines. Follow-up with mediators may be required to obtain the Mediation Completion Form.

ATTACHMENT 2

STANDARD FORM REFERRAL ORDER

PREPARED BY COURT:

_____	**SUPERIOR COURT OF NEW JERSEY**
Plaintiff,	**CHANCERY DIVISION-FAMILY PART**
	_____ COUNTY
vs.	**DOCKET NO. F__- _____**
	Civil Action
Defendant.	**ORDER OF REFERRAL TO POST-MESP MEDIATION PROGRAM**

This matter having been opened to the court by Case Management Conference; _____, appearing for plaintiff, and _____, appearing for defendant; and good cause having been shown;

IT IS on this ____ day of _____ 20___ ,

ORDERED AS FOLLOWS:

1. This Order is entered pursuant to R.1:40-5(b).

2. The above-captioned matter is hereby referred to the Post-MESP Mediation Program pursuant to R.5:5-6.

3. Post-mediation next event:

_____; Date:_____

4. _____ is designated as the mediator. The mediator was selected from the statewide approved list or is a person chosen by the parties to conduct the mediation at the parties' discretion. The mediator shall serve on a *pro bono* basis for the initial two hours of service, which includes reasonable preparation time (one hour), and the first mediation session (one hour). After the first two hours, the mediator shall be compensated at the mediator's hourly rate, together with reasonable expenses. The mediator's fee shall be paid by the parties as follows: plaintiff ____ % and defendant ____ %. Payment shall be made as billed, unless other arrangements are made with the mediator. Any outstanding bills shall be paid within ___ days of receipt. Either party may opt out of the mediation process after the first two hours.

5. After the first session ordered herein, the date(s), time(s), and place(s) of subsequent mediation session(s) shall be set by the mediator selected or appointed in this matter.

6. The appearance of attorneys at mediation shall be as agreed to by the parties in consultation with the mediator. The court expects and requires all litigants and their attorneys (if applicable) to participate in the mediation sessions in good faith. The parties shall cooperate in providing accurate and complete information to the mediator including, but not limited to, tax returns, Case Information Statements and appraisal reports.

7. Termination of mediation generally shall be governed by R. 1:40-4(f).

8. Upon termination of the mediation process, the mediator shall promptly report to the court in writing as to whether or not the case is settled. If the case is not fully settled, the mediator shall within fourteen days provide the court and the parties notice of which issues are settled and which issues remain open.

9. Unless otherwise agreed by the parties, and subject to R.1:40-4(c), all mediation proceedings shall be confidential and non- evidential. No verbatim record shall be made thereof.

_____

Judge, Superior Court of New Jersey

FIRST MEDIATION SESSION: * _____
(Date & Time)

* Please provide mediator with parties' Case Information Statements and ESP Statements prior to the first mediation session.

MEDIATOR NAME, ADDRESS AND TELEPHONE NUMBER:

_____

_____

_____

_____

Telephone Number:_____

ATTACHMENT 3

MEDIATION CASE INFORMATION STATEMENT

State of New Jersey **MEDIATION CASE INFORMATION FORM** **For Mediation of Economic Aspects of Family Law Cases**	For Office Use Only Date Received: Date Entered:

Directions: This form is to be completed by the mediator when mediation is concluded or the case is returned to court.

CASE DOCKET NUMBER	CASE NAME	NAME OF MEDIATOR

OUTCOME

- ☐ mediation held / full agreement on all issues
- ☐ mediation held / some issues still pending
- ☐ mediation held / no agreement
- ☐ no mediation held / parties settled case before mediation session
- ☐ no mediation held / party failed to attend

DATE CASE ASSIGNED TO MEDIATOR	DATE OF INITIAL MEDIATION SESSION	DATE OF FINAL MEDIATION SESSION
NUMBER OF MEDIATION SESSIONS	**NUMBER OF HOURS FOR PREPARATION**	**NUMBER OF MEDIATION HOURS**
DID THE ATTORNEYS/PARTIES SUBMIT PROPER CASE SUMMARIES? ☐ yes ☐ no	**WERE THE ATTORNEYS/PARTIES PREPARED FOR THE MEDIATION SESSIONS?** ☐ yes ☐ no	**DID THE PARTIES PARTICIPATE IN THE MEDIATION SESSIONS?** ☐ yes ☐ no

PLEASE RETURN TO: FAMILY DIVISION **OR FAX TO:**