



NEW JERSEY CIVIL COMPLEMENTARY DISPUTE RESOLUTION NEWSLETTER

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CONTINUING EDUCATION PROGRAMS FOR MEDIATORS

All mediators serving on the Statewide Roster of Mediators for Civil, General Equity and Probate Cases are required to attend a minimum of four hours of continuing education as set forth under *R. 1:40-12(b)(3)*. Listed below are upcoming ICLE seminars that can fulfill this requirement:

ADR Day VI: Conflict Resolution in a Changed World
Friday, June 7, 2002
9:00 am to 5:00 pm
Sheraton at Woodbridge Place, Iselin

Mediation Advocacy: Representing Your Clients in the Statewide Civil Mediation Program
Tuesday, June 25, 2002
4:00 pm to 8:30 pm
New Jersey Law Center, New Brunswick

Effective Legal Negotiation & Settlement
Wednesday, August 7, 2002
9:00 am to 5:00 pm
New Jersey Law Center, New Brunswick

Further details and registration information can be obtained by contacting ICLE at 732-249-5100.

**MEDIATION IN THE LAW DIVISION:
AN ATLANTIC/CAPE MAY COUNTY PERSPECTIVE
HON. WILLIAM C. TODD, III, P.J.Cv.**

Mediation is one of several forms of complementary dispute resolution. It has been used extensively throughout the court system in New Jersey, particularly in Atlantic and Cape May Counties. Atlantic County has played a leading role in providing mediators and promoting the mediation process through the Community Justice Institute (CJI), an agency created in 1981 through a cooperative process involving Stockton State College, the County and the Atlantic County Bar Association. Mediators provided through CJI handle community disputes presented through the municipal courts and custody and visitation disputes presented through the family court. CJI has also helped develop victim offender and truancy mediation programs for juveniles, involving both the family court and some municipal courts. For years now, law clerks from various divisions of the courts trained by CJI have been regularly assigned to mediate small claims cases pending in the Special Civil Part of the Law Division. The same types of programs have been in place in Cape May County as well. Almost all of these programs involve the use of volunteers. They are widely recognized as a valuable resource both for the court and for the litigants involved. Mediation is a particularly effective way of permitting the litigants themselves to become involved in the process of resolving whatever dispute is presented.

By the same token, mediation was seldom considered as a method of resolving the types of disputes that are normally handled in the Law Division of Superior Court. Historically, the court and counsel have relied upon Bar Panels, arbitration programs and the negotiations that occur on the eve of trial. While some litigants have elected to participate in mediation through private mediation services, the court generally was not involved in that process. That has changed over the last few years and there is now a recognition that mediation can have a meaningful role in resolving many of the kinds of cases that are normally dealt with in the Law Division. The decision whether or not to participate in mediation and the ability to participate in the process meaningfully can be of extraordinary importance to the litigants involved. In any given case, the election to participate in mediation could result in a prompt resolution, producing great savings of time and resources, while also involving litigants directly in the resolution of their disputes. While there are many cases where mediation may not be appropriate, any attorney regularly involved in litigation should have an understanding of the process and the manner in which it can be accessed for the benefit of the litigants in question. This article will review the status of mediation of Law Division matters in Atlantic and Cape May Counties today, with some emphasis on the number of attorneys who are now available to mediate disputes and the types of disputes that have been successfully mediated in the past.

WHAT IS MEDIATION?

As much as mediation has been used, there are still many attorneys who do not understand the process itself or tend to confuse it with other forms of complementary dispute resolution. On a relatively frequent basis, I hear attorneys refer to the processes of arbitration and mediation interchangeably. That is not appropriate. These are very distinct processes. Attorneys also ask whether or not mediation will be binding on the parties, suggesting that submitting to mediation will somehow require the parties to abide by a recommendation, decision or award made by the mediator. That is not consistent with the manner in which mediation is conducted.

Mediation is one distinct form of dispute resolution. Classically, dispute resolution professionals distinguish between negotiation, arbitration and mediation. Negotiation is a process which occurs directly between the parties to the dispute without any third-party intermediary. Arbitration involves a third party who is given the power to resolve the dispute in a specific fashion. Mediation involves the intervention of an acceptable impartial third party without any power to make decisions, who attempts to assist and encourage the parties to the dispute to reach a mutually acceptable agreement. In mediation the dispute in question is resolved

only when the parties reach an agreement. Generally mediators are not empowered to make decisions and should not be expected to decide specific disputes. Mediation will not result in a resolution, absent the agreement of all the parties. In that sense, the process is not “*binding*” as that term is normally used. By the same token, once an agreement is reached, that agreement would be binding.

The mediation process itself is flexible. There are a variety of techniques available to trained mediators. In a typical mediation session, there will be an introductory statement by the mediator and each of the parties will be given an opportunity to express his or her concerns or views with respect to the dispute. The parties may spend a substantial amount of time together exchanging views on particular issues. The mediator may also elect to meet with the parties separately, sometimes on separate occasions. Some matters can be resolved quickly. Others may require extended mediation sessions. Obviously, not all matters will be resolved successfully.

In dealing with the types of matters normally handled in the Law Division, it is essential to understand that mediation is much different than arbitration. This is particularly true since most of the attorneys handling these matters are used to participating in the arbitration programs provided under Court Rules. Those proceedings are structured to require the arbitrator to make a specific decision and to then require the parties to elect to accept or reject that decision, generally through the filing of a demand for a trial de novo. Mediation is a much different process. In a typical arbitration session, the attorneys and litigants involved will be focusing on attempting to convince the arbitrator of the strength of their positions. In mediation, on the other hand, the mediator will be attempting to assist the attorneys and litigants in reaching an agreement. Both the attorneys and litigants involved need to understand the process to be able to participate in mediation on a meaningful basis.

This article is not intended to review all the nuances of the mediation process or to provide all the information that would be appropriate to those who may elect to participate in mediation. A variety of sources are available providing that type of information. Materials are available through ICLE, which regularly schedules mediation training. The Association for Conflict Resolution is a national organization which provides support and training for mediators and information about mediation to the public. That organization can be reached by phone at 202-667-9700, or by fax at 200-265-1968. In New Jersey, The Justice Marie L. Garibaldi American Inn of Courts for Alternative Dispute Resolution is also an appropriate source. That Inn can be reached by phone at 201-333-0400, or by fax at 201-333-1110. A variety of texts, publications and video tapes are also available from several sources, including the American Bar Association, the New Jersey State Bar Association and the Administrative Office of the Courts. Anyone who has questions about the statewide program administered by the court can contact Michele Perone, the Chief of Civil Court Programs with the Administrative Office of the Courts. Her telephone number is 609-292-8470.

MEDIATION IN THE LAW DIVISION

For many years mediation has been available in other parts of the court system and outside the court system. It is only recently, however, that the courts have provided specific structure for the mediation of cases pending in the Law Division. Mediation is now available in a number of different ways under *Rule 1:40*. The first formal program involving the mediation of civil cases began in 1995 when Chief Justice Wilentz designated 78 attorneys as potential mediators in a program that has evolved over the years. In the interim, there have been several amendments to the Court Rules dealing with the mediation process. A formal roster of mediators has been developed, and programs are now in place for the regular approval and re-approval of mediators. At the time this article was written, approximately 600 individuals were listed on the roster. The roster is accessible through the Judiciary website at www.judiciary.state.nj.us. The website provides a method of searching for mediators based on geographical area, area of expertise, and fees. The roster itself provides a variety of information regarding each mediator. There is also a Mediator Monitoring and Facilitating Committee available to respond to questions as to any particular case. The roster of that committee is also available through that website.

Today the Rules provide two basic methods of participating in mediation of the types of disputes normally pending in the Law Division. In addition, there is a pilot program being conducted in six counties. There are also less formal ways of participating in mediation. Each of the basic options which are available will be reviewed briefly.

Rule 1:40-1 deals with the issue of mediation generally, and includes a variety of provisions dealing with mediation in various divisions of the court. Law Division matters will usually be dealt with pursuant to the provisions of *Rule 1:40-6* or *Rule 1:40-11*.

Rule 1:40-6 deals with the mediation of civil, probate and general equity matters. That rule is the result of the program initiated by Chief Justice Wilentz in 1995, with the designation of a discrete number of attorney mediators. Under that section of the Rule, the court has the authority to refer any civil matter to mediation with a mediator from the court approved roster. Under that Rule, there is to be no charge for the first three hours of the mediator's time. Any party is permitted to withdraw from mediation after that first three hours. Following the first three hours, the parties will be required to pay for the mediator's time based on the mediator's hourly rate. The Rule specifically permits the parties to select a mediator, but also empowers the court to designate a mediator if not agreed upon by the parties. The manner in which mediation is scheduled and the amount of time to be devoted to mediation is not addressed directly in the Rule. Those issues are left largely to the discretion of the mediator involved. Perhaps most importantly, the Rule permits a referral to mediation, but does not require that. The Rule also does not require that any particular matter be reviewed by counsel or by the court to determine whether or not a referral to mediation is appropriate. More on that issue later.

Rule 1:40-11 provides a second mechanism by which civil matters may ultimately be referred to mediation. This Rule can presumably be applied in any division to any particular case. It deals with referrals to a non-court administered dispute resolution program not otherwise subject to the Court Rules. *Rule 1:40-11* is brief and fairly open ended. It permits the court to make such a referral, as long as it is done with the approval of the Assignment Judge. Such a referral could involve mediation, but is not limited to mediation services. A referral pursuant to *Rule 1:40-11* is much different than a referral under *Rule 1:40-6*. The referral need not be to a mediator. Obviously, it need not be to a mediator included on the roster maintained by the court. Litigants participating in mediation through a *Rule 1:40-11* referral will not have the right to three free hours of time. They do not have the specific right to opt out of the process. Presumably, fees are established by the particular program in question. A referral under *Rule 1:40-11* could be to any number of public or private dispute resolution programs. In this area, that Rule is commonly used to refer matters to the Office of Dispute Settlement (ODS), an agency established by the state to provide mediation services, with a principal office located in Trenton. Many attorneys are familiar with that agency which has been providing mediation services for some time. As with mediation generally, ODS has been expanding its services over the years. The office has handled a variety of matters including employment disputes, construction disputes, insurance coverage questions, malpractice actions and personal injury actions. It specializes in handling relatively complex civil matters focusing on Track 3 and Track 4 cases which would be pending in the Law Division. ODS is staffed by a group of full-time, professional, in-house mediators who handle all of its mediations. At the present time, it is charging either \$150 per hour or \$250 per hour for its services, based on the amount in controversy. It accepts referrals throughout the state and has historically mediated a variety of matters from Atlantic and Cape May County. ODS can be reached by phone at 609-292-1773, and by fax at 609-292-6292.

As just noted, the court has the authority to make referrals to mediation under *Rule 1:40-6* and *Rule 1:40-11*. In addition, at least in our area, a number of attorneys have elected to participate in mediation with one or another of a group of retired Superior Court Judges. Retired Judges L. Anthony Gibson, Philip Guccio, Barry Weinberg and Gerald Weinstein are the individuals who have generally been utilized in this area. Those mediations are structured through discussions with the retired judges. They are not conducted pursuant to any provision of the Court Rules. Generally, it would be inappropriate for the court to require participation in mediation with a retired Superior Court Judge, given a specific directive issued as a part of the Supreme Court's

Guidelines on the Practice of Law by Retired Judges prohibiting retired judges from accepting fee generating court appointments. That does not prohibit attorneys or litigants from arranging for mediation with a retired judge on their own. However, this would not be done through the type of referral contemplated under either *Rule 1:40-6* or *Rule 1:40-11*.

Similarly, attorneys are always free to arrange to participate in mediation directly with any mediator or agency, without court involvement. There is nothing restricting mediators who have been listed on the court approved roster from conducting private mediation independent of the court. We would expect that to occur more and more frequently as attorneys and litigants become more comfortable with the process. It bears emphasizing that this can occur even before litigation begins.

In a select number of counties there is a more expansive program available involving the mediation of a variety of cases pending in the Law Division. This is through the Presumptive Mediation Pilot Program for Civil Cases, which has now been in effect for several years. That pilot program is currently limited to Cumberland, Gloucester, Hudson, Mercer, Salem and Union counties. In those counties, a specific group of case types are all referred to mediation early in the litigation process. These case types include civil rights, LAD, environmental litigation, real property, contract, tort, other professional malpractice, commercial transactions, employment, toxic tort, construction and tenancy cases. These matters are routinely referred to mediation in accordance with the provisions of *Rule 1:40-6*. The specific purpose of the pilot program is to see if the referral of a larger number of cases to mediation early in the litigation process will be productive. This is an ongoing program, subject to review and modification. It is anticipated the report of that pilot program will be completed in June 2002, at which point the program may be expanded throughout the state. For now, these types of referrals to mediation by case type will not be occurring in Atlantic and Cape May County. We do have one program, however, which involves the screening of employment discrimination cases for mediation, discussed further below.

WHY MEDIATE?

Not all cases are appropriate for mediation. By the same token, mediation can be a very valuable alternative in any number of types of cases normally handled in the Law Division. The reasons for mediation are fairly obvious. The parties are given an opportunity to meet, with the assistance of a third party, to attempt to resolve whatever dispute may be presented quickly and efficiently. Mediation can occur at any time. Depending on the circumstances of the case, it may be appropriate to explore the possibilities of settlement early on, to avoid the cost of litigation. In other circumstances, it may be appropriate to deal with the matter after some discovery has been completed, but before the parties face the cost of participating in trial. The mediation process also gives both the attorneys and the parties in question an opportunity to explore the real disputes at issue. Perhaps most importantly, the parties themselves are given an opportunity to participate in the process on a meaningful basis as soon as that appears appropriate. We have few other structured processes available to accomplish this in our court system at the present time. As I will discuss further below, we have seen any number of different types of cases resolved through this process quickly and efficiently.

HOW DOES A CASE GET TO MEDIATION?

As noted above, there are a number of forms of mediation available for cases which are or may be litigated in the Law Division. In their current form, the Court Rules do not require referrals to mediation in any particular type of case. With the exception of the presumptive mediation pilot program, there is no guarantee that any particular case will be referred to mediation, absent some affirmative action being taken either by counsel or by the court. The Civil Best Practices program effective in September 2000 expanded the use of arbitration, but also encouraged the use of mediation in specific circumstances. Under Best Practices, LAD and CEPA cases are not to be referred to arbitration, and fee shifting and fund in court cases are to be considered for early mediation. The increased use of mediation at the earliest possible time in a case was also encouraged. It bears

noting that a matter that has been referred to mediation may be removed from the arbitration process on that basis. See *Rule 4:21A-1(c)(1)*.

To a limited extent, all cases are screened for potential referrals to mediation by court staff throughout the state. That is generally done based simply on case type, without consultation with counsel. Referrals have been made in a substantial number of cases in the presumptive mediation counties. In other counties, court staff may arrange for the entry of Orders referring fee shifting cases to mediation, without prior consultation with counsel. In Atlantic County and Cape May County, we have two procedures in effect that do provide for some screening. All employment discrimination cases are screened and will normally be scheduled for a conference before the judge assigned to the matter to determine whether or not mediation is appropriate. In addition, our own case management project, which involves the scheduling of case management conferences before the Team Leaders provides a specific mechanism for considering a referral to mediation with consultation with the attorneys involved in almost any case. The form order that has been used in this program does provide for referrals to mediation if counsel agree. These issues can be resolved directly with the Team Leader at the time of the initial conference. In the alternative, such a conference could result in the scheduling of an additional conference before the pre-trial judge to consider the propriety of a referral to mediation.

With these exceptions, however, there are no structured procedures for the screening of cases. This is not the end of the matter, however. All of the judges who sit in the Law Division of Atlantic and Cape May County are sensitive to the fact that mediation may very well be appropriate in any case. They are all quite willing to arrange for referrals or to spend some time discussing the matter with counsel if that appears appropriate. It would not be unusual for a judge to initiate some discussions about the possibility of mediation whenever a matter is called to his or her attention. It should be remembered, however, that under our system specific matters generally are not called to the court's attention unless a motion is filed or the matter is scheduled for trial. In many cases, it may be appropriate to consider a referral to mediation well prior to those events. More and more often we are approached by counsel, independent of any specific structured event, with a request for a referral to mediation or for some relief related to the parties' desire to participate in that process. In the relatively recent past, I was contacted by counsel involved in a fairly substantial matter in which the complaint had been filed but answers had not yet been prepared. The parties had agreed that it was appropriate to participate in mediation relatively quickly. After some brief discussion, we arranged for the entry of an order that deferred the filing of any answers for a short period of time to permit that process to proceed. The matter was subsequently resolved quickly, without the filing of additional answers, to the benefit of all involved. I have also been receiving completely unsolicited proposed orders referring matters to mediation. It is obvious that many of the attorneys practicing in Atlantic and Cape May Counties are now sensitive to the fact that mediation can be effective, and to the need to be somewhat proactive in dealing with the issue.

There are a variety of ways in which a referral to mediation might be triggered. This could occur through the presumptive mediation pilot in some counties. In this county, it might occur through the review of employment discrimination cases, or with a review provided in conjunction with our initial case management conferences. The issue might also be raised by counsel or by the court in conjunction with the filing or consideration of motions. Obviously, the issue could be raised at any time when a matter is subject to judicial case management. Perhaps most importantly, counsel should understand that they are always free to raise the issue themselves at any time, either by initiating discussions with their adversaries, or by requesting some consideration by the court. There is no reason this type of request cannot be presented to the pre-trial judge assigned to any particular matter by letter. In this vicinage, I am certain that type of letter would receive immediate attention. I would urge all the attorneys involved in litigation in the Law Division to be sensitive to the possibility that mediation might be productive and might be initiated at any time. Just as importantly, counsel should understand the process, and should be prepared to participate in it in a meaningful fashion whenever it is initiated. The benefits that can flow from mediation may best be illustrated by referring to some of the matters that have been resolved in this manner in these counties over the last few years, and by reference to the attorneys who are now available to mediate such disputes here pursuant to the Rules. These matters will be dealt with below.

WHAT ISSUES NEED TO BE ADDRESSED BEFORE PROCEEDING WITH MEDIATION?

There are a variety of issues that are raised by the decision to participate in mediation in any particular case. Each of these issues would generally be dealt with based on the nature of the referral. Counsel should be prepared to deal with these issues whenever the matter is considered.

Classically, one basic concern is the question of when mediation should occur. That will depend on the circumstances. In many cases, it may be appropriate to proceed to mediation as quickly as possible. This is certainly true where the parties are facing substantial expenses, and where the parties, together with their attorneys, have a relatively good sense of the manner in which the litigation will proceed. In many cases, it will be relatively easy for counsel to anticipate the types of claims and defenses that will be presented, the manner in which those matters will develop, and the expenses that will be presented in proceeding through the litigation process. This would be true, for example, in dealing with employment discrimination cases, where the parties to the litigation would generally have direct access to the information necessary to resolve any particular dispute. In these types of cases, it will often be appropriate to proceed with mediation as quickly as possible. There are real incentives to early mediation in fee shifting cases where the litigation process itself can generate additional claims for fees, making it more and more difficult to resolve the matter by consent as time goes on. In other cases, it may be appropriate for some discovery or investigation to proceed before mediation begins. This might be true, for example, where counsel need much more specific information to be certain a claim or defense is viable. In some circumstances, it may be appropriate to begin mediation with an eye toward determining just what issues need to be explored to make mediation more fruitful, and then to defer mediation for some period of time. The process is very flexible in that regard.

Related to this is the question of whether or not discovery should be stayed while mediation is proceeding. Again, that depends on the circumstances. Obviously there may be some cases where discovery is necessary for mediation to be meaningful. There also may be times when it is appropriate to defer discovery for a limited period of time to give the parties an opportunity to resolve a specific dispute without substantial expense being incurred. I will not normally stay discovery without some specific understanding of the time period involved and the purpose for the stay. As I understand it, the counties which have been involved in the presumptive mediation pilot have recently altered their view on this issue. Originally, it was anticipated that discovery would be stayed. It now appears that discovery will not be stayed in most cases. In our vicinage, this issue would be subject to discussion in conjunction with any specific referral.

An additional issue is presented regarding the selection of a specific mediator. When the court selects the mediator, referrals pursuant to *Rule 1:40-6* must be made to mediators who are on the roster approved by the Supreme Court. The Rule, however, permits the parties to select a mediator not on that roster, either before the referral or within a short time following the entry of the mediation order. It is my practice to confer with the attorneys before any mediator is selected. In most cases, counsel have been able to agree on the mediator who should be involved. It is my own view that some care should be taken in selecting the mediator to be certain the attorneys involved will feel comfortable with that individual. It may be important to be certain the mediator has some expertise in the particular area in question. It is probably just as important to be certain the mediator will be able to interact appropriately with the particular attorneys and parties involved. As time goes on, it is more and more common to have attorneys request specific mediators based on prior experience.

The issue of fees should also be considered whenever a matter is referred to mediation. At this point, a referral pursuant to *Rule 1:40-6* requires that the first three hours of the mediator's time be provided without cost. The balance of the mediator's time is compensated at the hourly rate established by the mediator, which

should appear on the roster itself. *Rule 1:40-4(b)* is applicable to mediation conducted under *Rule 1:40-6*. That Rule provides that the parties are to equally share the fees and expenses of the mediator on an ongoing basis, subject to court review. While the matter is subject to discussion, in my experience, fees are shared equally in almost all cases. There has recently been some concern over the mediator's ability to collect fees that become due over time. There is a general recognition that the fees due the mediator are ultimately the responsibility of the litigant and not the attorney. It is also anticipated that the mediator should be collecting fees as mediation proceeds to avoid any unnecessary disputes. The Rules are specific, however, in permitting the court to become involved if there is a failure or refusal to pay the mediator, at least with respect to matters referred pursuant to *Rule 1:40-6*. See *Rule 1:40-4(b)*.

SUCCESSFUL MEDIATIONS

The value of mediation is perhaps best illustrated by referring to matters that have been resolved successfully in the past. As noted at the beginning of this article, mediation has been used successfully in a number of different contexts throughout the court system for an extended period of time. I have listed below a number of matters resolved through mediation in the Law Division in Atlantic and Cape May County over the last few years. In each case, I will offer a brief description of the dispute and the referral, with the names of the attorneys and the mediators involved.

- C *Stella v. AC Jitney*; claims arising out of internal dispute involving Jitneymen's Association; Complaint filed November 1999; referred to mediation November or December 1999; reported settled through that process in February 2000; Steven Brog, Esq., Constantine Z. Economides, Esq.; Mediator, Jeffrey Light, Esq.
- C *Palomino v. Blue Star Health Care*; employment discrimination case filed in September 1999; referred to mediation in May 2000 and resolved through that process in July 2000; Mark Pfeffer, Esq., Harry J. Levin, Esq.; Mediator, Ann Haskell, Esq.
- C *Altomare v. WFPG Radio*; complaint for abuse of process, malicious prosecution and defamation; Complaint filed in December 1998; referred to mediation February 2000; resolved through that process in May 2000; Evelyn S. Caterson, Esq., Talbot Kramer, Esq.; Mediator, Jeffrey D. Light, Esq.
- C *Vignola v. Best Buy*; employment discrimination claim; Complaint filed April 2000; referred to mediation August 2000; settled through that process in October 2000; William Riback, Esq., Christine Potosnak, Esq.; Mediator, Sandra F. Gavin, Esq.
- C *Clark v. JC Penneys*; employment discrimination case; Complaint filed April 2000; referred to mediation August 2000; report settled through that process December 2000; Mark Pfeffer, Esq., James Bucci, Esq.; Mediator, Michele Fox, Esq.
- C *Lone v. Creative Control*; personal injury action arising out of accident at construction site; Complaint filed July 1998; parties agreed to participate in mediation with Judge Weinstein in August 2000; matter reported settled as to all but one defendant as of December 2000; Thomas Shusted, Esq., Erin Thompson, Esq., Thomas Monte, Esq., Thomas Decker, Esq., Debra Plaia, Esq., Kevin McCarty, Esq., Fred Warner, Esq.
- C *Tome v. Risley*; action involving alleged construction defects at residential property; Complaint filed February 1999; agreement to participate in mediation with Judge Weinstein in December 2000; resolved through mediation in February 2001; Robert Zane, Esq., Nicholas Kierniesky, Esq., Mitchell Waldman, Esq.
- C *Polish v. Graj*; complex commercial case involving trademark issues and questions as to jurisdiction; Complaint filed July 2000; referred to mediation in December 2000; resolved through that process in March 2001; Warren Soffian, Esq., James Madden, Esq.; Mediator, Michelle Fox, Esq.
- C *Mittleman v. Grok*; personal injury matter involving products liability claim; Complaint filed February 2000; referred to mediation in March 2001; reported settled as to major claims in April

- 2001; Nicholas Schuldt, III, Esq., Kevin T. Smith, Esq., Paul Lawless, Esq.; Mediator, Steven Perskie, Esq.
- C McGinnity v. Richards; employment discrimination case; Complaint filed November 2000; referred to mediation February 2001; resolved through mediation in May 2001; Joseph Antinori, Esq., Michael Fusco, Esq.; Mediator, Jeffrey Light, Esq.
- C Estate of Tonielli v. Future Care Consultants; action alleging failure to provide appropriate care at nursing home; Complaint filed April 2000; referred to mediation November 2000; resolved through mediation in October 2001; Joseph Musso, Esq., James Lisovicz, Esq.; Mediator, Thomas Bradley, Esq.
- C Soloman v. McCay, Donato v. Houlihan, Gramigna v. American Phoenix; series of law suits arising out of the alleged misconduct of officers and principals of an insurance agency and the sale of that agency to another corporation involving two separate proposed class actions; a tentative settlement was reached on behalf of one proposed class which would have required extended additional litigation. The first law suit was filed in December 1999; the matter was initially presented to the court in March 2001; counsel agreed to participate in mediation with Judge Gibson; initial mediation completed in August 2001 and required additional proceedings through October 2001; all matter were resolved by consent, with extraordinary savings of time and fees; Edward Borden, Jr., Esq., Edwin T. Ferrin, Esq., George Fisher, Esq., Robert Rhoad, Esq., James McKenna, Esq., Brian Cullen, Esq., John Donnelly, Esq., Victor Saul, Esq.
- C Madara v. Rose; personal injury action involving substantial injuries and fairly complex products liability claim; Complaint filed November 1999; referred to mediation February 2001; settled through that process in January 2002; Paul R. D'Amato, Esq., Henry J. Kowalski, III, Esq., Anne Manero, Esq., Richard Bryan, Esq., Thomas Crino, Esq.; Mediator, Michele Fox, Esq.
- C Copeland v. Tozzi; wrongful death action; Complaint filed in November 2001; parties agreed to participate in mediation with Judge Weinstein prior to the filing of all Answers; Order entered February 2002 delaying proceedings to permit that process to be completed; matter reported settled through mediation in March 2002; Lewis April, Esq., Frank Basile, Esq.
- C Grottola v. Shover, Carpo v. Shover; consolidated personal injury claims; Complaints filed in December 1999 and January 2000; referred to mediation in April 2001; difficulties encountered in scheduling mediation were complicated by insolvency of one carrier; matters reported settled after two mediation sessions in March 2002; Howard Freed, Esq.; Rocco Santora, Esq.; Richard Romano, Esq.; Jaunice Canning, Esq.; Mediator, Jack Gorny, Esq.

ATLANTIC AND CAPE MAY COUNTY MEDIATORS

It takes some effort to become approved as a mediator whether that occurs through the Community Justice Institute or the program developed by the Supreme Court pursuant to *Rule 1:40*. Until recently, there were relatively few attorneys practicing in this vicinage who have been approved and included on the court's roster. There are now a number of attorneys who either have offices in Atlantic or Cape May County, or who practice here regularly, who are approved to act as mediators under the Rule. The following is a list of mediators taken from the roster maintained by the court who fit within those categories. Many other mediators listed on the statewide roster have indicated a willingness to mediate matters which are pending here. That information is available through the roster itself. The individuals noted below will be familiar to the local bar. A great deal more information with respect to each of them is also available through the roster itself, which contains information as to areas of expertise and fees, as well as more specific information as to each mediator.

Donna A. Bahnck, Esq.
 Keith A. Bonchi, Esq.
 Thomas F. Bradley, Esq.
 Robert A. DeSanto, Esq.
 Lynne A. Dunn, Esq.

Edward P. Epstein, Esq.
 Michele M. Fox, Esq.
 Michael A. Fusco, Esq.
 Jack Gorny, Esq.
 Alan I. Gould, Esq.

Jay H. Greenblatt, Esq.
 Bruce A. Gunther, Esq.
 Rona Z. Kaplan, Esq.
 Joel B. Korin, Esq.
 Vincent L. Lamanna, Esq.

Jeffrey D. Light, Esq.
Dean R. Marcolongo, Esq.
Kevin P. McCann, Esq.
William E. Nugent, Esq.

Anthony Padovani, Esq.
Carl D. Poplar, Esq.
Patricia Sampoli, Esq.
Renee E. Scrocca, Esq.

Mark H. Stein, Esq.
Jeffrey J. Waldman, Esq.

It is obvious that mediation will play some role in the resolution of the types of disputes that are typically handled in the Law Division of Superior Court not only here in Atlantic and Cape May County, but throughout the state. In some cases, that will undoubtedly result in substantial and sometimes extraordinary benefits to the litigants involved from a variety of perspectives. The success of mediation generally and in any particular case, will be dependent largely on the services provided by the mediators, as well as counsel's willingness to participate and understanding of the process. Any attorney involved in handling civil litigation should consider mediation as one of several valuable options available to facilitate the resolution of disputes in a manner which is fair, efficient, and meaningful to the litigants involved.

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