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New Jersey Civil Complementary Dispute Resolution Newsletter

NEW JERSEY JUDICIARY
Independence • Integrity
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Failure to Timely Pay a Civil Mediator

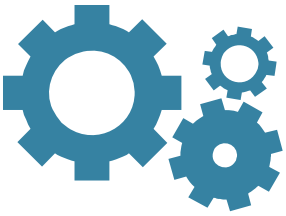
The Conference of Civil Presiding Judges has developed a streamlined procedure for handling non-payment of mediators. This procedure also applies for failure to mediate in accordance with the Order of Referral to Mediation. The mediator can simply fax a letter to the court detailing the facts. Upon receipt of the letter, the court will either make an effort to resolve the matter and/or *sua sponte* issue an Order to Show Cause (OTSC) why the mediator's bill should not be paid or why a consequence for failure to mediate in accordance with the order, (*e.g.*, imposition of costs or fees,) should not be imposed by the court.

Guidelines for the Compensation of Mediators Serving in the Civil Mediation Program appear in Appendix XXVI of the Court Rules.

There have been frequent problems in the operation of Guideline #15 of the Mediator Compensation Guidelines. Specifically, when a mediator's bill is not timely paid and the court receives a fax from the mediator, the guideline does not set a deadline for how long the court (through staff) can allow for informal settlement of the case before an OTSC is scheduled. This process has sometimes resulted in the mediator expending a considerable amount of additional time and resources trying to get paid.

Previously, when the OTSC was scheduled, the mediator would sometimes receive payment the day before a scheduled hearing. When payment was reported as received, the OTSC was cancelled.

Or, if payment was not received and the OTSC hearing was held, the court would simply order payment of the unpaid bill or enter judgment in the amount of the unpaid bill. Judges rarely included provisions in their orders for interest, sanctions or additional fees for collection efforts, even though the court has the authority under Guideline #15 to impose consequences for a failure to mediate in accordance with the referral order, which specifies "prompt payment" of the mediator. The Conference of Civil Presiding Judges is of the view that mediators, who have already lost two hours of uncompensated time on each case, deserve the court's assistance in obtaining the payment that is due them and in deterring people from wasting their time.



The Conference of Civil Presiding Judges has endorsed the following statewide approach to address the problem:

- There should be a 10-day time limit on the attempts of staff to informally resolve a matter (*i.e.*, if a fee is not received within 10 days from the staff person's call to the delinquent party, the OTSC will be scheduled immediately).
- Civil judges are reminded of the importance of scheduling these proceedings without any undue delay and should consider imposing consequences other than simply ordering payment in the amount of the unpaid bill.

Mediation Facilitating Group

An *ad hoc* group of experienced civil mediators is available to provide assistance to mediators with questions or problems about a particular case.

For assistance, a civil mediator may call any of the following individuals:

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Summary of Subjective Evaluations of Arbitration Program and Arbitrators

At the close of every civil arbitration hearing, litigants and attorneys are asked to complete questionnaires evaluating the arbitration program and the arbitrators' performance. These questionnaires are submitted to the AOC and county bar arbitration committees in an effort to evaluate the program and the arbitrators, identify problems and to further enhance the program. The following are the results of evaluations completed during calendar year 2007:

PROGRAM EVALUATION

2,108 RESPONSES FROM LITIGANTS

The arbitrator(s) treated me with respect.

1,939	92%	1	Strongly Agree
110	5%	2	
22	1%	3	
2	0%	4	
18	1%	5	Strongly Disagree
7	0%	6	No Opinion
10	0%		No Response

The hearing was conducted fairly.

1,821	86%	1	Strongly Agree
156	7%	2	
54	3%	3	
14	1%	4	
33	2%	5	Strongly Disagree
14	1%	6	No Opinion
16	1%		No Response

I was satisfied with the outcome.

1,226	58%	1	Strongly Agree
273	13%	2	
203	10%	3	
72	3%	4	
180	9%	5	Strongly Disagree
48	2%	6	No Opinion
106	5%		No Response

The hearing was conducted in a professional manner.

1,872	89%	1	Strongly Agree
136	6%	2	
28	1%	3	
7	0%	4	
20	1%	5	Strongly Disagree
8	0%	6	No Opinion
37	2%		No Response

The decision was given in my presence.

1,777	84%	Yes
331	16%	No
	0%	No Response

The arbitrator explained why he or she decided the case as it was decided.

1,716	81%	Yes
392	19%	No

Staff were courteous.

1,859	88%	1	Strongly Agree
125	6%	2	
20	1%	3	
7	0%	4	
13	1%	5	Strongly Disagree
15	1%	6	No Opinion
69	3%		No Response

The facilities were clean.

1,775	84%	1	Strongly Agree
160	8%	2	
46	2%	3	
7	0%	4	
16	1%	5	Strongly Disagree
4	0%	6	No Opinion
100	5%		No Response

Were you a:

1,428	68%	Plaintiff
572	27%	Defendant
108	5%	No Response

ARBITRATOR EVALUATIONS

9,619 RESPONSES FROM ATTORNEYS

Knowledge of relevant substantive law

7,949	83%	Excellent
1,274	13%	More Than Adequate
265	3%	Adequate
36	0%	Less Than Adequate
25	0%	Poor
43	0%	Not Applicable
1	0%	No Response

Sufficient experience for deciding case

8,126	84%	Excellent
1183	12%	More Than Adequate
213	2%	Adequate
24	0%	Less Than Adequate
8	0%	Poor
26	0%	Not Applicable
38	0%	No Response

Adequacy of explanation of rulings

7,963	83%	Excellent
1,225	13%	More Than Adequate
276	3%	Adequate
63	1%	Less Than Adequate
23	0%	Poor
31	0%	Not Applicable
38	1%	No Response

Adequacy of findings of facts

7,852	82%	Excellent
1,272	13%	More Than Adequate
317	3%	Adequate
66	1%	Less Than Adequate
39	0%	Poor
31	0%	Not Applicable
42	0%	No Response

Narrowing the issues in dispute

8,062	84%	Excellent
1,173	12%	More Than Adequate
56	3%	Adequate
29	0%	Less Than Adequate
20	0%	Poor
43	0%	Not Applicable
36	0%	No Response

Moving the proceeding expeditiously

8,204	85%	Excellent
1,107	12%	More Than Adequate
244	3%	Adequate
19	0%	Less Than Adequate
16	0%	Poor
9	0%	Not Applicable
20	0%	No Response

Maintaining control of proceeding

8,253	86%	Excellent
1,090	11%	More Than Adequate
206	2%	Adequate
15	0%	Less Than Adequate
13	0%	Poor
19	0%	Not Applicable
23	0%	No Response

Allowing adequate time for presentation of the case

8,255	86%	Excellent
1,095	11%	More Than Adequate
205	2%	Adequate
11	0%	Less Than Adequate
15	0%	Poor
12	0%	Not Applicable
26	0%	No Response

Common sense in resolving problems

8,126	84%	Excellent
1,070	11%	More Than Adequate
220	2%	Adequate
47	0%	Less Than Adequate
39	0%	Poor
69	1%	Not Applicable
48	0%	No Response

Ensuring that participants understand the proceeding

8,098	84%	Excellent
1,112	12%	More Than Adequate
241	3%	Adequate
14	0%	Less Than Adequate
16	0%	Poor
89	1%	Not Applicable
49	1%	No Response

Courtesy

8,554	89%	Excellent
866	9%	More Than Adequate
156	2%	Adequate
10	0%	Less Than Adequate
8	0%	Poor
3	0%	Not Applicable
22	0%	No Response

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We're on the Web

njcourtsonline.com

Patience

8,510	88%	Excellent
887	9%	More Than Adequate
170	2%	Adequate
18	0%	Less Than Adequate
8	0%	Poor
6	0%	Not Applicable
20	0%	No Response

Decisiveness

8,368	87%	Excellent
972	10%	More Than Adequate
197	2%	Adequate
22	0%	Less Than Adequate
11	0%	Poor
9	0%	Not Applicable
40	0%	No Response

Fostering a general sense of fairness

8,322	87%	Excellent
961	10%	More Than Adequate
210	2%	Adequate
44	0%	Less Than Adequate
41	0%	Poor
8	0%	Not Applicable
33	0%	No Response

Was the arbitrator biased?

36	0%	Yes
4,718	50%	No
4,764	50%	No Response

If the arbitrator engaged in settlement negotiations, did he or she do so with the consent of all participants?

1,583	16%	Yes
1,047	11%	No
5,078	53%	Not Applicable
1,911	20%	No Response

How many court-annexed arbitration hearings have you appeared in the past six months?

370	4%	One
716	7%	Two to Three
970	10%	Four to Five
5,825	61%	More Than Five
1,738	7%	No Response