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New Jersey Civil Complementary Dispute Resolution Newsletter

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Arbitrator Continuing Legal Education Training

In 2007, the Supreme Court Arbitration Advisory Committee developed a video to be used as a basis for the two-hour biennial continuing training course for arbitrators, as required by *R.* 1:40-12(c)(2). The video consisted of a series of vignettes depicting various aspects of an arbitration session and was intended to reinforce acceptable practices and conduct of arbitrators. It was anticipated that each vignette would be shown separately and would be followed by a discussion of appropriate procedure.

The video was previewed at the Statewide Arbitration Conference in June 2007 and received mostly positive responses from those in attendance. It was made available to the individual counties in the fall of 2007. Fifteen training sessions were held in the vicinages between Nov. 2007 and Jan. 2008.

Additional sessions were conducted at the Law Center in Jan. 2008, at the New Jersey Bar Association Annual Meeting in Atlantic City in May 2008, and in two vicinages for a total of 19 sessions.

Other trainings have been scheduled for Sept. 17, at the Ocean County Courthouse in Toms River and the Institute of Continuing Legal Education on Oct. 16, at the Woodbridge Hotel and Conference Center in Iselin.

Finally, a continuing legal education training session and the three-hour initial training session to become an arbitrator are being offered at ATLA Mid-Year Conference on Oct. 18, at the Sheraton Meadowlands in East Rutherford.

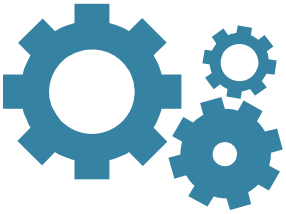
The most recent data indicates that 1,171 arbitrators have attended continuing legal education arbitration training, fulfilling the training requirement and enabling them to remain active in the arbitration program.

There are 396 arbitrators who still have not satisfied the continuing education training requirement. Their names have been marked inactive from the current roster and will be reinstated if they complete any of three upcoming training sessions.

The response from attendees at the training sessions has been mostly favorable. Participants especially liked the interactive nature of the training and the informal yet informative means of reinforcing important arbitration procedures and concepts.

Kudos to the Arbitration Advisory Committee for developing the training program and to the arbitration administrators and local bar committees for implementing it. Everyone's hard work is acknowledged and much appreciated.

Evaluation of the Presumptive Mediation Program



The Presumptive Mediation Pilot Program began in four counties, Union, Hudson, Mercer and Gloucester in early 2000. In June 2001, it was expanded to Cumberland and Salem counties. Following a preliminary evaluation by the Conference of Civil Presiding Judges and the Supreme Court Committee on Complementary Dispute Resolution (CDR) in May 2002, the Supreme Court in June 2002 authorized its expansion to at least four additional counties. Subsequently, the pilot was implemented in all 21 counties. The program was evaluated again by the committee and conference in January 2005.

In this pilot, 11 specific case types are presumed to be amenable to early mediation and so are referred to mediation not later than 90 days from the filing of the first answer. The evaluation of the program, which includes both objective and subjective data, covers the period of January 2000 through December 2007. The objective part of the evaluation consists of manual data collected by court staff prior to automation of the program in June 2001, and data taken thereafter from the Civil Automated Case Management System (ACMS). The subjective portion includes responses taken from exit questionnaires submitted to the AOC by litigants, attorneys and mediators.

The data shows that about 31 percent of cases in which mediation is reported as completed are resolved at the mediation and about 3 percent of cases referred to mediation settled prior to mediation. Additionally, about 2 percent of cases in which mediation was reported as completed were partially resolved.

Most of the cases that settled did so with little or no discovery. Moreover, cases that did not settle while assigned to mediation were tracked. In calendar year 2006, for example, an additional 21 percent of these cases settled within three months following the completion of mediation and another 37 percent settled within six months of the completion of mediation. In calendar year 2007, an additional 13 percent of these cases settled within three months and 26 percent settled within six months.

A large number of attorneys (69 percent) and mediators (71 percent) were satisfied about the early timing of mediation. A majority of attorneys (61 percent) and a significant percentage of litigants (57 percent) surveyed reported that mediation saved time. A large percentage of attorneys (54 percent) and litigants (47 percent) responded that mediation saved money. Both mediators' performance and the process itself were rated exceedingly high by both litigants and attorneys.

The data also show that mediators are spending an average of 2.38 hours to prepare cases for mediation (the rule anticipates that preparation will be only one hour) and 2.73 hours in mediation, of which 1.58 hours are being paid by the parties.

The results of the pilot program have proved encouraging. Both the duration and extent of the project have allowed meaningful measurement of the considerable data collected and analyzed, demonstrating the benefits achieved since the pilot's inception.

ATTORNEY QUESTIONNAIRE

2,206 RESPONSES

Would participant consider mediation for other matters?

2,039	92%	Yes
99	3%	No
68	5%	Responded with other comments or no response

Did mediation preserve clients' rights?

2,021	92%	Yes
79	3%	No
106	5%	Responded with other comments or no response

Did mediation result in equitable outcomes?

1,822	83%	Yes
124	5%	No
260	12%	Responded with other comments or no response

Mediator Performance

Do you think the mediator in this case:
Gave you a full opportunity to convey your interests?

2,119	96%	Yes
34	1%	No
53	2%	Responded with other comments or no response

Was knowledgeable about the law relative to this case?

1,945	88%	Yes
139	6%	No
122	5%	Responded with other comments or no response

Was impartial?

2,100	95%	Yes
41	2%	No
65	3%	Responded with other comments or no response

Understood the issues in this case?

2,043	93%	Yes
70	3%	No
93	4%	Responded with other comments or no response

LITIGANT QUESTIONNAIRE

1,344 RESPONSES

Mediator Performance

Do you think the mediator in this case:
Gave you a full opportunity to convey your interests?

1,248	93%	Yes
31	2%	No
65	5%	Responded with other comments or no response

Was knowledgeable about the law relative to this case?

1,165	87%	Yes
80	6%	No
99	7%	Responded with other comments or no response

Was impartial?

1,202	89%	Yes
60	4%	No
82	6%	Responded with other comments or no response

Understood the issues in this case?

1,187	88%	Yes
70	5%	No
87	6%	Responded with other comments or no response

Did you participate in mediation as or on behalf of the plaintiff or defendant?

652	49%	Plaintiff
652	49%	Defendant
40	2%	Responded with other comments or no response

Was the mediator selected by the court or by the parties/attorneys?

82	6%	Parties/Attorneys
1,178	88%	Court/Judges
84	6%	Responded with other comments or no response

Would you recommend mediation to others?

1,067	80%	Yes
166	12%	No
111	8%	Responded with other comments or no response

Did the mediation in this case save money?*

633	47%	Yes
617	46%	No
94	7%	Responded with other comments or no response

Did the mediation in this case save time? *

761	57%	Yes
497	37%	No
86	6%	Responded with other comments or no response

What impact did mediation have on the case?
(Can have more than one response.)

553	41%	Settled the case
24	1%	Settled some of the issues
171	13%	Moved the case significantly toward settlement
294	22%	Clarified positions
99	7%	Added unnecessary steps
47	4%	Increased tension
156	12%	Responded with other comments or no response

*** This question is of limited value as an evaluative tool because the response assumes that all of those who responded have an awareness of the cost of litigation and sensitivity to the potential verdict.**

*** This observation is equally applicable to the question concerning time savings.**

MEDIATOR CASE INFORMATION FORM

4,651 RESPONSES

Number of mediation sessions and number of hours in each session:

Mediation sessions:	4,161.5
Total hours in sessions:	11,391.5
Average hours per mediation session:	2.73

Number of hours of mediator preparation time:

Mediation sessions:	4,161.5
Total hours of preparation:	9,921.7
Average hours of preparation time per session:	2.38

Number of hours paid by parties:

Mediation sessions:	4,161.5
Hours paid by parties:	6,584.6
Average hours paid by parties per mediation session:	1.58

Were the parties prepared for the mediation sessions?

3,106	67%	Yes
404	8%	No
1,141	25%	Responded with other comments or no response

Were the attorneys prepared for the mediation session?

3,320	71%	Yes
308	7%	No
1,023	22%	Responded with other comments or no response

Did the attorneys submit proper case summaries?

3,337	72%	Yes
590	13%	No
724	15%	Responded with other comments or no response

Has this case undergone any prior CDR technique?

62	1%	Yes
4,016	86%	No
573	12%	Responded with other comments or no response

If the case did not settle in mediation, what were the reasons? (Can have more than one response.)

219	5%	The proper parties with authority to settle were not present
157	3%	One or both parties did not mediate in good faith
209	5%	Issues were too complex
36	1%	Issues were too numerous
1,453	31%	One or both parties too entrenched in their positions
2,580	55%	Responded with other comments or no response

At what stage did the mediation referral occur? (Can have more than one response.)

2,072	45%	Before any discovery
559	12%	After interrogatories and document production
353	7%	Before depositions
153	3%	After depositions
55	1%	After experts' reports served
14	0%	After first trial date scheduled
1,445	31%	Responded with other comments or no response

Was the case referred to mediation too early, too late or at about the right time?

3,306	71%	Appropriate Time
851	18%	Too early
38	1%	Too late
456	9%	Responded with other comments or no response

Impact on Arbitration of Motions to Extend Discovery

If a motion to extend discovery is filed *before an arbitration date is fixed*, arbitration will ordinarily not be scheduled until the motion is decided and the discovery end date passes unless otherwise ordered by the court. On the other hand, if a motion to extend discovery is filed *after the arbitration date has been scheduled* and the motion is heard *before* the scheduled arbitration date, the judge will decide whether the arbitration date will be adjourned. This is not a problem if the judge does not grant the motion, but if discovery is extended beyond the scheduled arbitration date, the arbitration will be adjourned to occur after the discovery end date has passed, unless otherwise ordered by the court.

If the discovery end date is extended after an arbitration hearing is scheduled (which might occur if an exceptional circumstances motion to extend discovery is made after the discovery end date has passed and a hearing scheduled), the order may expressly address the arbitration date issues.

If discovery is extended and the order is silent on the arbitration date, the court will normally adjourn the arbitration, whether the attorneys request it or not. However, this is permissible if all attorneys expressly consent that the arbitration can go forward prior to the discovery end date.

If the motion to extend the discovery end date is *returnable after the scheduled arbitration date*, the court has the discretion to adjourn the arbitration until after the motion is heard or require that arbitration proceed.

Although arbitration is normally scheduled after the close of discovery, the setting of an arbitration date in an order extending discovery is only permissible after the discovery end date has been extended via the "automatic" consensual 60-day extension, or, if the parties cannot consent, in an order extending discovery more than 60 days. In either case, however, at least 45 days' advance notice of the arbitration must be provided.

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