



NEW JERSEY CIVIL COMPLEMENTARY DISPUTE RESOLUTION NEWSLETTER

Published by the Administrative Office of the Court, New Jersey Judiciary

NOTICE TO THE BAR

Accompanying the publication of this Notice to the Bar are Standards of Conduct for Arbitrators in the Court-Annexed Arbitration Program. These Standards, developed by the Supreme Court Arbitration Advisory Committee, were approved by the Supreme Court at its May 20, 2003 Administrative Conference. The Standards apply to all arbitrators serving in all court-annexed civil arbitration programs statewide.

All questions relating to this matter should be directed to the following:

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/s/Richard J. Williams, J.A.D.
Administrative Director of the Courts

Dated: June 27, 2003

STANDARDS OF CONDUCT FOR ARBITRATORS IN THE COURT-ANNEXED ARBITRATION PROGRAM

The following Standards of Conduct shall be applicable to arbitrators in any arbitration proceedings conducted in the New Jersey court system pursuant to Rule 4:21A.

STANDARD I - IMPARTIALITY

An arbitrator must conduct arbitrations in an impartial manner. An arbitrator should avoid any conduct that might give the appearance of partiality towards any party. An arbitrator should withdraw from a matter if he or she becomes unable to remain impartial in that matter.

An arbitrator should make all determinations based solely on the relevant objective facts and merits of the case, impartially and without prejudice because of a party's background or personal characteristics, social or economic status, actions at the arbitration hearing, or any other factors not directly relevant to the facts or merits of the matter.

STANDARD II - CONFLICTS OF INTEREST

An arbitrator, upon being assigned to arbitrate a particular matter, shall make reasonable inquiry to ascertain whether there are any facts or circumstances regarding the matter that might impair or be seen to impair the arbitrator's impartiality in the matter, including any financial or personal interest in the outcome of the arbitration, or any existing or past relationship with a party, counsel, or any other participant or foreseeable participant in the arbitration. The arbitrator shall disclose any such facts or circumstances to the parties as soon as practicable after becoming aware of them. If any such conflict of interest would cast doubt on the integrity of the process or the program, the arbitrator should decline or withdraw from the assignment. However, if the conflict of interest is of a less substantial magnitude, after consultation with the parties and after consultation also with a judge to whom the matter has been referred by the Civil Division Manager, the parties, judge, and arbitrator may agree that the arbitrator nonetheless may serve or continue to serve as arbitrator in the matter.

An arbitrator should not ordinarily recommend the services of particular professionals to assist the parties or counsel in any arbitration proceeding. However, the arbitrator may suggest the names of professionals if a request for a recommendation is made jointly by all parties and provided that in so recommending the arbitrator does not create or engage in a conflict of interest.

STANDARD III - COMPETENCE

In order to serve as an arbitrator, an individual must have a sufficient level of experience and competence to handle arbitrations of the type of matter in dispute. If an arbitrator believes that he or she does not possess the level of competence or experience necessary to handle a particular matter, he or she should not serve as an arbitrator in that matter and thus should decline the assignment or withdraw from the case.

STANDARD IV - CONFIDENTIALITY

An arbitrator serves in a quasi-judicial capacity and, as such, shall treat all information obtained during the course of an arbitration proceeding consistent with Rule 1:38 of the Rules of Court. An arbitrator should never use information acquired during an arbitration proceeding to gain a personal advantage or benefit, to gain an advantage or benefit for others, or to adversely affect the interests of another.

STANDARD V - QUALITY OF THE PROCESS

Arbitrators shall conduct arbitration proceedings fairly, diligently, judiciously, and in a manner respectful of all parties and participants. This requires a commitment by the arbitrator to fairness, high standards, due process, diligence, sensitivity toward the parties, and maintenance of an atmosphere of respect among the parties. An arbitrator should explain to all participants at the outset of the process the procedures that will be followed in the process.

An arbitrator should accept an assignment to serve as an arbitrator only if able to commit the time and attention necessary for to the fair and effective handling and resolution of the matter. The arbitrator should conform to any time deadlines required by the Rules of Court.

An arbitrator should treat parties and counsel with sensitivity, with civility and with respect, and should encourage the parties and counsel to treat each other in the same way.

The arbitrator should provide each party or counsel with an adequate and fair opportunity to make their presentation in the matter and to challenge the presentation of their adversaries. The arbitrator should determine the matter based solely on the parties' presentations on the merits.

Since the role of an arbitrator in a particular matter is to make a quasi-judicial determination, an arbitrator should refrain from providing professional advice in that matter and should at all times distinguish between the role of arbitrator and that of adviser. Arbitrators should refrain from conducting settlement conferences in a matter unless specifically requested to do so by all parties.

The arbitrator shall not engage in *ex parte* communications with participants in a case. The arbitrator may, however, discuss the merits of a case with those parties present at a hearing if another party fails to appear at the hearing after having received due notice.

If the arbitrator discovers an intentional abuse of the arbitration process by a party or counsel, the arbitrator may discontinue the arbitration and advise the Civil Division Manager or Arbitration Administrator of that discontinuation and the reason therefore.

Approved May 20, 2003

NOTICE TO THE BAR

Re: Revised Guidelines for the Civil Mediation Mentoring Program

Accompanying the publication of this Notice to the Bar are the revised Guidelines for the Civil Mediation Mentoring Program as approved by the Supreme Court. The Guidelines were developed by the Supreme Court Committee on Complementary Dispute Resolution and govern then co-mediation requirement under R. 1:40-12 applicable to applicants to the Roster of Mediators for Civil, General Equity and Probate cases.

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Dated: July 14, 2003

Guidelines for Civil Mediation Mentoring Program

- 1. Following the successful completion of a qualified mediation course of at least eighteen (18) hours, each applicant for admission to the Statewide Roster of Mediators for Civil, General Equity and Probate Matters should attend and observe at least two (2) R. 1:40-4 mediations of at least five (5) hours total duration. In the event that the two (2) mediation sessions were less than five (5) hours in duration, the applicant, in order to fulfill this requirement, would be required to attend additional sessions until the time requirement is met. Exceptions to this requirement may be made if an individual demonstrates that he or she has completed mediations in at least five (5) cases under R. 1:40-4 or comparable mediation program.**
- 2. The mediator/mentor shall be an approved mediator on the statewide roster of mediators who shall certify that they have completed at least fifteen (15) mediations under R. 1:40-4 or comparable mediation program. The AOC shall solicit volunteers meeting these requirements to serve as mentors. The mediator/mentor list shall be published on the Judiciary=s website.**
- 3. The mediator/mentor, in addition to permitting the applicant to fully observe all aspects of the process, shall meet with the applicant to describe the process and approach in advance of the session and to brief the applicant after the session, intending that this process be part of the education. The mediator/mentor shall make available the submissions of the parties and include the applicant on the telephonic conference call.**
- 4. The mediator/mentor shall, no later than the telephonic conference call, obtain the parties= consent to the applicant=s attendance during the mediation process. The applicant shall be firmly bound by the standards of mediator conduct, including without limitation, the confidentiality of the process, the conflict of interest provisions, as well the reasonable expectation of the parties.**
- 5. There shall be no charge to the applicant, nor a fee collected by the applicant, for the sessions.**
- 6. Following successful attendance at the mediation sessions of at least five (5) hours duration, the applicant shall certify his/her compliance to the AOC.**

ARBITRATION ADVISORY COMMITTEE CONSIDERS IDEAS ADVANCED AT STATEWIDE CONFERENCE

On May 29, 2003, a statewide conference on the uniform administration of the court-annexed civil arbitration was held at the Law Center in New Brunswick. The conference was hosted by the Supreme Court Arbitration Advisory Committee, chaired by Ocean County Civil Presiding Judge Frank A. Buczynski, Jr. The Committee, appointed by the Supreme Court to oversee the civil arbitration programs and recommend policies and procedures for the programs, enhancement of the civil arbitration programs consists of civil judges, members of the bar and court staff.

Attendees at the conference included the Conference of Civil Presiding Judges, key court staff, the chairs of the county bar civil practice committees, the chairs of the county bar arbitrator selection committees, representatives of the New Jersey State Bar Association, other bar representatives including members of the various specialty bar groups, and key users of the system including insurance carrier representatives.

The Advisory Committee's goal in holding this conference was to clarify how the arbitration program is to be administered on a uniform statewide basis and to discuss possible enhancements to the program.

As a result of the discussions at the conference a number of very promising ideas were explored for ways to improve the arbitration programs. These are currently being considered by the Committee and a report will be made to the Conference of Civil Presiding Judges. It is hoped that this report will lead to a number of constructive and worthwhile improvements to the arbitration program.

New Jersey Civil Complementary Dispute Resolution Newsletter is a publication of the Civil Practice Division, the Administrative Office of the Courts, New Jersey Judiciary, Richard J. Hughes Justice Complex, Trenton, NJ 08625-0981. The Chief Justice of the New Jersey Supreme Court is Deborah T. Poritz. The Administrative Director of the Courts is Richard J. Williams, J.A.D.

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