

# NOTICE TO THE BAR

## **DIVORCE – DISPUTE RESOLUTION ALTERNATIVES TO CONVENTIONAL LITIGATION – DESCRIPTIVE MATERIAL REQUIRED BY RULE 5:4-2(h); CERTIFICATION FORMS**

As part of the July 27 rule amendments that went into effect September 1, the Supreme Court adopted a new paragraph in Rule 5:4-2 (“Complaint”) that requires the first pleading of each party in a divorce action to include an affidavit or certification “that the litigant has been informed of the availability of complementary dispute resolution (‘CDR’) alternatives to conventional litigation, including but not limited to mediation or arbitration, and that the litigant has received descriptive literature regarding such CDR alternatives.” Rule 5:4-2(h) (“Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives”). The Court recently adopted a clarifying amendment to that paragraph, changing “descriptive literature” to “descriptive material.”

In a September 18 Notice to the Bar, I advised that the “descriptive material” was still in the process of being developed by the Committee on Complementary Dispute Resolution. The Committee completed its work and submitted the proposed text and the accompanying certification forms. The Court at its October 10 Administrative Conference approved the “descriptive material” text and the certification forms, subject to some final editing.

That final editing having been made, attached as approved by the Supreme Court is the “descriptive material” on dispute resolution alternatives to conventional divorce litigation, as referenced in Rule 5:4-2(h). Also attached are the two approved certification forms relating to the descriptive literature, one for use by self-represented matrimonial litigants, the other by those litigants represented by counsel. The descriptive material and certification forms should be used effective immediately.

The descriptive material and certification forms also will be published and posted by a Notice to the Bar. Questions may be directed to Assistant Director Harry Cassidy at 609-984-4228.

Note: The adoption of Rule 5:4-2(h) and the promulgation of the attached descriptive material is in no way intended to indicate any change in the Court’s policy, grounded in statutes and court rules, against mediation in any matter in which a temporary or final restraining order has been entered pursuant to the Prevention of Domestic Violence Act.

/s/ Philip S. Carchman

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Philip S. Carchman, J.A.D.  
Acting Administrative Director of the Courts

Dated: December 4, 2006

## **DIVORCE – DISPUTE RESOLUTION ALTERNATIVES** **TO CONVENTIONAL LITIGATION**<sup>\*</sup>

**[Text Promulgated 12/04/06 as Approved by the Supreme Court]**

Resolving issues concerning your divorce can be costly and difficult. While only a judge can actually grant a divorce, division of your property and your debts, alimony, child support, custody and parenting time are some of the other issues that may need to be resolved. A judge can decide all issues at trial. However, there are other ways to resolve many of the issues in your divorce. These alternate dispute resolution methods offer greater privacy than resolving the issues in a public trial. They also may be faster and less expensive, and may reduce the level of conflict between you and your spouse during your divorce. You are encouraged to discuss alternative dispute resolution with your lawyer to decide whether these alternate methods may help you and your spouse resolve as many of the issues relating to your divorce as possible before the matter is presented to the judge.

What follows are short descriptions of various forms of alternative dispute resolution that may be used in divorce cases.

### **MEDIATION**<sup>\*\*</sup>

Mediation is a means of resolving differences with the help of a trained, impartial third party. The parties, with or without lawyers, are brought together by the mediator in a neutral

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<sup>\*</sup> This constitutes the “descriptive material” referenced in Rule 5:4-2(h) that each divorce litigant must receive and certify as having received (using the attached certification forms).

<sup>\*\*</sup> Note: The adoption of Rule 5:4-2(h) and the promulgation of this descriptive material is in no way intended to indicate any change in the Court’s policy, grounded in statutes and court rules, against mediation in any matter in which a temporary or final restraining order has been entered pursuant to the Prevention of Domestic Violence Act.

setting. A mediator does not represent either side and does not offer legal advice. Parties are encouraged to retain an attorney to advise them of their rights during the mediation process. The mediator helps the parties identify the issues, gather the information they need to make informed decisions, and communicate so that they can find a solution agreeable to both. Mediation is designed to facilitate settlements in an informal, non-adversarial manner. The court maintains a roster of approved mediators or you can use private mediation services. The judge would still make the final determination as to whether to grant the divorce.

### **ARBITRATION**

In an arbitration proceeding, an impartial third party decides issues in a case. The parties select the arbitrator and agree on which issues the arbitrator will decide. The parties also agree in advance whether the arbitrator's decisions will be binding on them or instead treated merely as a recommendation. While an arbitrator may decide issues within a divorce case, the judge would still make the final determination as to whether to grant the divorce.

### **USE OF PROFESSIONALS**

Parties in a divorce may also seek the assistance of other skilled professionals to help resolve issues in a case, such as attorneys, accountants or other financial professionals, and various types of mental health professionals (e.g., psychiatrists, psychologists, social workers, therapists). These professionals may help the parties resolve all of the issues or just specific portions of the case. As with mediation and arbitration, parties making use of these professionals to resolve issues in the divorce are encouraged to consult their attorney for advice

throughout this process. While this approach may resolve some issues in the case, the judge would still need to make the final decision to grant the divorce.

### **COMBINATIONS OF ALTERNATIVES**

Depending on your circumstances, it may be helpful for you to use a combination of mediation, arbitration, and skilled professionals to resolve issues in your divorce.

### **CONCLUSION**

Just as every marriage is unique, every divorce is unique as well. The specific circumstances of your divorce determine what method or methods of dispute resolution are best suited to resolve issues in your divorce. You are encouraged to ask your attorney about these alternative dispute resolution methods to resolve issues relating to your divorce.

Using these alternative dispute resolution methods allows you to participate in the decision on those issues, rather than leaving all of the issues to the judge to decide. And presenting the judge with a case in which the only decision remaining is whether to grant the divorce will permit that decision to be made more expeditiously. While the judge must be the one to decide whether to grant the divorce, your role in deciding some or all of the other issues can be enhanced through these alternative dispute resolution methods.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, FAMILY PART

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
COUNTY  
DOCKET NO. FM- \_\_\_\_\_

vs.

\_\_\_\_\_  
Defendant

CIVIL ACTION  
**RULE 5:4-2(h) CERTIFICATION BY  
SELF-REPRESENTED LITIGANT**

\_\_\_\_\_, of full age, hereby certifies as follows:

1. I am the  Plaintiff  Defendant in the above captioned matter.
2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).
3. I have read the document entitled "Divorce -- Dispute Resolution Alternatives to Conventional Litigation".
4. I thus have been informed as to the availability of complementary dispute resolution alternatives to conventional litigation.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: \_\_\_\_\_

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, FAMILY PART

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
COUNTY  
DOCKET NO. FM- \_\_\_\_\_

vs.

\_\_\_\_\_  
Defendant

CIVIL ACTION  
**RULE 5:4-2(h) CERTIFICATION BY  
ATTORNEY AND CLIENT**

\_\_\_\_\_, being of full age, hereby certifies as follows:

1. I am the attorney for the  Plaintiff  Defendant in the above captioned matter.
2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).
3. I have provided my client with a copy of the document entitled "Divorce -- Dispute Resolution Alternatives to Conventional Litigation".
4. I have discussed with my client the complementary dispute resolution alternatives to litigation contained in that document.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: \_\_\_\_\_

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\_\_\_\_\_, being of full age, hereby certifies as follows:

1. I am the  Plaintiff  Defendant in the above captioned matter and am represented in this divorce matter by \_\_\_\_\_.

2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).

3. I have read the document entitled “Divorce – Dispute Resolution Alternatives to Conventional Litigation.”

4. I thus have been informed as to the availability of complementary dispute resolution alternatives to litigation.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: \_\_\_\_\_