2011-2013 Rules Cycle

Report of the New Jersey Supreme Court Committee on Complementary Dispute Resolution

January 15, 2013

TABLE OF CONTENTS

I. PROPOSED RULE AMENDMENTS RECOMMENDED 1

A. Proposed Amendment to Rule 1:40-2 -- Modes and Definitions of Complementary Dispute Resolution 1

B. Proposed Amendments to Rule 1:40-3 -- Organization and Management 4

C. Proposed Amendment to Rule 1:40-4 -- Mediation – General Rules 7

D. Proposed Amendment to R. 1:40-12 -- Mediators and Arbitrators in Court-Annexed Programs 12

II. OTHER RECOMMENDATIONS 16

A. Establishment of one-time Mandatory 4-Hour Continuing Education Requirement 16

B. Municipal Court Presumptive Mediation Pilot Program 18

III. LEGISLATION 20

IV. MATTERS HELD FOR CONSIDERATION 21

A. Mediation Where a Final Restraining Order Exists 21

Appendix - Pilot Study: Municipal Presumptive Mediation Report 24

I. PROPOSED RULE AMENDMENTS RECOMMENDED

A. Proposed Amendment to Rule 1:40-2 -- Modes and Definitions of Complementary Dispute Resolution

The Committee recommends an amendment to this rule to include reference to the Alternative Procedure for Dispute Resolution Act. Additionally, the Committee recommends amending the definition of the "Arbitration-Mediation" hybrid process to conform to the current practice. Lastly, "Neutral" is amended to conform to Appendix XXVI.

The proposed amendments to Rule 1:40-2 follow:

1:40-2. Modes and Definitions of Complementary Dispute Resolution

Complementary Dispute Resolution Programs (CDR) conducted under judicial supervision in accordance with these rules, as well as guidelines and directives of the Supreme Court, and the persons who provide the services to these programs are as follows:

(a) "Adjudicative Processes" means and includes the following:

(1) Arbitration: A process by which each party and/or its counsel presents its case to a neutral third party, who then renders a specific award. The parties may stipulate in advance of the arbitration that the award shall be binding. If not so stipulated, the provisions of Rule 4:21A-6 (Entry of Judgment; Trial De Novo) shall be applicable.

(2) Alternative Procedure for Dispute Resolution Act (N.J.S.A. 2A:23A-1, et. seq.) – Any provision in a written contract whereby the parties agree to settle by means of alternative resolution, as provided in this act, (1) any controversy that may arise from the contract or from a refusal to perform the contract or (2) any written agreement whereby the parties to an existing controversy agree to use alternative resolution as provided in this act, whether the controversy arose out of a contract or otherwise. Any process under this act is subject to limited review.

[(2)] (3) Settlement Proceedings: A process by which the parties appear before a neutral third party or panel of such neutrals, who assists them in attempting to resolve their dispute by voluntary agreement.

[(3)] (4) Summary Jury Trial: A process by which the parties present summaries of their respective positions to a panel of jurors, which may then issue a non-binding advisory opinion as to liability, damages, or both.

(b) …no change.

(c) …no change.

(d) "Hybrid Process" means and includes:

(1) [Mediation-arbitration] Arbitration-mediation: A process by which, after an initial [mediation, unresolved issues are then arbitrated] arbitration, but before the award is delivered, the parties are jointly given the opportunity to mediate a resolution; if successful the arbitration award is disregarded and the mediated settlement is executed by the parties. If the mediation is unsuccessful, the arbitration award is delivered to the parties.

(2) Mini-trial: A process by which the parties present their legal and factual conditions to either a panel of representatives selected by each party, or a neutral third party, or both, in an effort to define the issues in dispute and to assist settlement negotiations. A neutral third party may issue an advisory opinion, which shall not, however, be binding, unless the parties have so stipulated in writing in advance.

(e) …no change.

(f) "Neutral": A "neutral" is an individual who provides a CDR process. A "qualified neutral" is an individual included on any roster of neutrals maintained by the Administrative Office of the Courts or an Assignment Judge. Neutral evaluators, neutral fact finders, and settlement program panelists are not required to comply with the training requirements of Rule 1:40-12 or to be on any roster of neutrals maintained by the Administrative Office of the Courts or an Assignment Judge. The parties may choose any neutral agreeable to all parties. The agreed upon neutral does not have to be listed on any roster of neutrals maintained by the AOC or Assignment Judge.

B. Proposed Amendments to Rule 1:40-3 -- Organization and Management

The Committee recommends amendments to several sections primarily to make the language more consistent with the guidelines found in Appendix XXVI of the Rules Governing the Courts.

The proposed amendments to Rule 1:40-3 follow:

1:40-3. Organization and Management

(a) Vicinage Organization and Management. Pursuant to these rules and Supreme Court guidelines, the Assignment Judge of each vicinage shall have overall responsibility for CDR programs, including their development and oversight, continuing relations with the Bar to secure the effectiveness of these programs, and mechanisms to educate judges, attorneys, staff, and the public on the benefits of CDR. The Assignment Judge shall appoint a CDR coordinator to assist in the oversight, coordination and management of the vicinage CDR programs. The Assignment Judge shall maintain, pursuant to these rules, all required rosters of neutrals except the roster of statewide civil, general equity, and probate action mediators[.], which shall be maintained by the Administrative Office of the Courts.

(b) Statewide Organization and Management. In collaboration with the Supreme Court CDR Committee, [T]the Administrative Office of the Courts shall have the responsibility (1) to promote uniformity and quality of CDR programs in all vicinages, (2) to monitor and evaluate vicinage CDR programs and assist CDR Coordinators in implementing them; (3) to serve as a clearinghouse for ideas, issues, and new trends relating to CDR, both in New Jersey and in other jurisdictions; (4) to develop CDR pilot projects to meet new needs; (5) to monitor training and continuing education programs for neutrals; and (6) to institutionalize relationships relating to CDR with the bar, universities, the Marie L. Garibaldi ADR Inn of Court, and private providers of CDR services. The Administrative Office of the Courts shall maintain the statewide roster of civil, general equity, and probate action mediators.

(c) …no change.

(d) …no change.

(e) …no change.

(f) …no change.

(g) …no change.

(h) …no change.

C. Proposed Amendment to Rule 1:40-4 -- Mediation – General Rules

The Committee recommends amendment to section (b) primarily to make the language more consistent with Appendix XXVI of the Rules Governing the Courts.

The proposed amendment to Rule 1:40-4 follows:

1:40-4 Mediation – General Rules

(a) …no change.

(b) Compensation and Payment of Mediators. Parties in Superior Court, except in the Special Civil Part, assigned to mediation pursuant to this rule shall equally share the fees and expenses of the mediator on an ongoing basis, subject to court review and allocation to create equity. Any fee or expense of the mediator shall be waived in cases, as to those parties exempt, pursuant to Rule 1:13-2(a). [A party may opt out of the mediation process after the mediator has expended two hours of service, which shall be allocated equally between preparation and the first mediation session, and which shall be at no cost to the parties. Fees shall be as determined by the mediator and the parties.] Mediators on the court's Rosters of Civil and Family Mediators shall serve free for two hours. The two free hours shall be divided equally between (a) reasonable preparation time, administrative tasks, the organizational telephonic conference and (b) an initial mediation session. If the parties select a mediator who is not on the court's rosters, the mediator may negotiate his/her fee with the parties. Failure to pay the mediator may result in an order by the court to pay the fees and costs of the mediator including any additional costs and fees incurred due to the non-payment and imposing appropriate sanctions.

(c) …no change.

(d) …no change.

(e) Limitations on Service as a Mediator.

(1) …no change.

(2) …no change.

(3) …no change

(4) The Administrative Director of the Courts or his designee and the Assignment Judge shall also have the discretion to require prior review and approval of the Supreme Court of prospective mediators whose employment or position appears to either the Assignment Judge or to Administrative Director of the Courts or authorized designee to require such review and approval.

(f) Mediator Disclosure of Conflict of Interest.

(1) …no change.

(2) …no change.

(3) After entry of the order of referral in [an economic] mediation, if the court is advised by the mediator, counsel, or one of the parties that a conflict of interest exists, the court shall reassign the case to a different mediator[.] if the parties do not, within fourteen days, agree upon such substitute mediator. [The parties shall have the opportunity to select a replacement mediator from the roster or the court may appoint one]. An amended order of referral shall [then be prepared and provided to the parties. All data] not be prepared, but updated information shall be entered into the [Family Automated Case Tracking System (FACTS).] appropriate judiciary case management system.

(g) Conduct of Mediation Proceedings. Mediation proceedings shall commence with an opening statement by the mediator describing the purpose and procedures of the process. Mediators may require the participation of persons with negotiating authority. An attorney or [other individual] representative designated by a party may accompany the party to and participate in a mediation. [A waiver of representation or participation given before the

mediation may be rescinded. Non-party witnesses may be heard in] Non-parties may participate at the discretion of the mediator[, and other non-parties shall be permitted to attend only with the consent of the parties and the mediator]. Multiple sessions may be scheduled. Attorneys and parties have an obligation to participate in the mediation process in good faith and with a sense of urgency in accordance with program guidelines.

(h) Termination of Mediation.

(1) The mediator or a participant may terminate the session if (A) [there is an imbalance of power between the parties that the mediator] a party challenges the impartiality of the mediator, (B) [a party challenges the impartiality of the mediator,] a party continuously resists the mediation process or the mediator, (C) [there is abusive behavior that the mediator cannot control,] there is a failure of communication that seriously impedes effective discussion, or (D) [a party continuously resists the mediation process or the mediator] the mediator believes a party is under the influence of drugs or alcohol.

(2) The mediator shall terminate the session if (A) [there is a failure of communication that seriously impedes effective discussion,] there is an imbalance of power between the parties that the mediator cannot overcome, (B) [the mediator believes a party is under the influence of drugs or alcohol,] there is abusive behavior that the mediator cannot control or (C) the mediator believes continued mediation is inappropriate or inadvisable for any reason.

(i) Final Disposition. If the mediation results in the parties' total or partial agreement, it shall be reduced to writing and a copy thereof furnished to each party. [The agreement need not be filed with the court, but if formal proceedings have been stayed pending mediation, the] The mediator shall report to the court whether agreement has been reached, partial agreement has

been reached, a term sheet has been signed or no agreement has been reached. [If an agreement is not reached, the matter shall be referred back to court for formal disposition.]

D. Proposed Amendment to R. 1:40-12 -- Mediators and Arbitrators in Court-Annexed Programs

The Committee recommends increasing the minimum mediation training requirements for mediators on the civil, general equity, and probate mediator roster from 18 hours to 40 hours. Similarly, the Committee recommends removing the provision in Rule 1:40-12(b)(4) that permits Family mediators to have completed 25 hours of mediation training with a commitment to complete an additional 15 hours within one year.

Increasing the minimum hours of mediation training to 40 hours will provide consistency within the rules regarding training requirements for mediators on the Civil and Family Rosters. In addition, increasing the hours for the basic mediation training will provide prospective mediators with additional case management, ethics, and conflict resolution practice and techniques unique to the Civil Part, thereby improving the quality of mediators.

In consideration of the fact that Family Part mediators receive training to facilitate unique issues apart from Civil Part matters, the Committee recommends that Family Part mediators who seek inclusion on the Civil Part roster shall attend four hours of substantive training specific to civil mediation and that such training includes two hours of case management, one hour of ethics, and one hour of conflict management. The Subcommittee also recommends that Family Part mediators be required to comply with the civil mentoring component of the Civil Part.

1:40-12 Mediators and Arbitrators in Court-Annexed Programs

(a) Mediator Qualifications

(1) …no change.

(2) …no change.

(3) …no change.

(4) …no change.

(5) …no change.

(6) …no change.

(b) Mediator Training Requirements

(1) General Provisions. All persons serving as mediators shall have completed the applicable basic dispute resolution training course as prescribed by these rules and approved by the Administrative Office of the Courts. (A) Volunteer mediators in the Special Civil Part and Municipal Court mediators shall have completed 18 classroom hours of basic mediation skills [complying with the requirements of subparagraph (3) of this rule.] (B) Mediators on the civil, general equity, and probate roster of the Superior Court shall have completed [18] 40 classroom hours of basic mediation skills complying with the requirements of subparagraph (3) of this rule and at least five hours being mentored by [an experienced mediator on the roster] a civil roster mentor mediator in at least two Superior Court cases, all in accordance with guidelines promulgated by the Administrative Office of the Courts. [in at least two cases in the Superior Court. Individuals may obtain a waiver of the mentoring requirement from the Administrative

Office of the Courts on the successful demonstration that they have previously served as a mediator in at least five cases under R. 1:40-4 or comparable mediation program or have satisfactorily completed at least 10 hours in an approved advanced mediation course.] Existing civil roster mediators will be grandfathered as of the effective date of the proposed rule change. (C) Family Part mediators shall have completed a 40-hour training program complying with the requirements of subparagraph (4) of this rule[; and judicial law clerks shall have successfully completed 12 classroom hours of basic mediation skills complying with the requirements of subparagraph (5) of this rule]. (D) Mediators on the Family Part roster who apply for inclusion on the civil, general equity, and probate roster of the Superior Court shall have completed an additional four-hour specialized civil mediation training that covers two hours of case management, one hour of ethics, and one hour of conflict management and shall have completed at least five hours being mentored as required by subparagraph (B) of this rule. (E) Judicial law clerks shall have successfully completed 12 classroom hours of basic mediation skills complying with the requirements of subparagraph (5) of this rule.

(2) . . . no change.

(3) Mediation Course Content – Basic Skills. The [18] 40-hour classroom course in basic mediation skills shall, by lectures, demonstrations, exercises and role plays, teach the skills necessary for mediation practice, including but not limited to conflict management, communication and negotiation skills, the mediation process, and [addressing] case management and shall address problems encountered in mediation.

(4) Mediation Course Content -- Family Part Actions. The 40-hour classroom course for family action mediators shall include basic mediation skills as well as at least 22 hours of

specialized family mediation training, which should cover family and child development, family law, dissolution procedures, family finances, and community resources. In special circumstances and at the request of the Assignment Judge, the Administrative Office of the Courts may temporarily approve for a one-year period an applicant who has not yet completed the specialized family mediation training, provided the applicant has at least three years of experience as a mediator or a combination of mediation experience and service in the Family Part, has co-mediated in a CDR program with an experienced family mediator, and certifies to the intention to complete the specialized training within one year following the temporary approval. Economic mediators in family disputes[: (1)] shall have completed 40 hours of training in family mediation in accordance with this rule. [, or (2) shall have completed a minimum of 25 hours of mediation training with a commitment to complete the remaining 15 hours of specialized training within one year following their addition to the roster of mediators consistent with the requirements of this subparagraph.]

(5) …no change.

(6) ….no change.

(c) …no change.

(d) …no change.

II. OTHER RECOMMENDATIONS

A. Establishment of one-time Mandatory 4-Hour Continuing Education Requirement

In support of the recommendation to increase the minimum hours for mediation training from 18 hours to 40 hours for mediators on the Civil Roster and to protect the integrity of the program and quality of mediators, the Committee requests that an Assignment Judge Memo, announce the protocol for existing mediators on the civil roster to complete four hours of the continuing education requirement. This substantive training should include two hours of case management, one hour of ethics, and one hour of conflict management. The Committee recommends that this be a one-time mandatory training to be completed on or before August 31, 2015. This training will also satisfy the annual continuing education training requirement pursuant to R. 1:40-12 (b)(2).

The Committee suggests that retired judges who served on the bench in Civil and mediators who can prove their successful participation in a comparable training are exempt from having to attend the mandatory training.

The Committee suggests that as mediators complete this mandatory, one-time, mediation training, they submit to the court upon receipt of a mediation referral, a certification that they completed the training. Only one certification is required to prove this training was completed by September 1, 2015.

As of September 1, 2015, in an effort to minimize the courts' resources tracking the mediators' compliance pursuant to the continuing education requirement, Rule 1:40-12(b)(2), it is recommended that all mediators on the rosters maintain their training credentials and produce documentation confirming they are in compliance if audited by the Administrative Office of the

Courts or other entity delegated with the authority to request such documentation, such as the Advisory Committee on Mediator Standards.

In addition, the Committee agreed that it is important for the rules and the content to be consistent regarding mediation training. Thus, the Committee suggests that a list of the Teaching Modules for the required 40-Hour Civil Mediation Training and the 40-Hour Family Mediation Training, be available to the Administrative Office of the Courts to have as a reference to compare and determine if a training program satisfies the rule requirements and the minimum standards for the respective mediation training.

B. Municipal Court Presumptive Mediation Pilot Program

In 2009, the Supreme Court ordered the replication of an earlier pilot program designed to test the concept of using presumptive mediation in the municipal courts. Although the earlier pilot project yielded positive results, those results were deemed inconclusive due to the limited number of participating pilot sites and the limited data collected during the pilot. In approving the second pilot, the Supreme Court ordered that additional pilot sites be chosen and that greater emphasis be placed on collecting data and insuring participation. The Municipal Programs Subcommittee was tasked by the Supreme Court Committee on Complementary Dispute Resolution with replicating the pilot. The attached report represents the efforts of the Municipal Court Programs Subcommittee in that regard.

This report details the methodology used by the Subcommittee. It also provides detailed analysis of the survey results used to gauge the opinions of those involved in the presumptive mediation process (e.g., citizens, mediators, judges and staff). As reflected in the report, the results clearly show that those involved in the pilot strongly supported not only the use of mediation in the municipal courts, but more specifically the use of presumptive mediation. Overall, 91% of the judges, 89% of the court staff and 82% of the mediators surveyed agreed that the presumptive mediation concept should be replicated statewide in the municipal courts.

The definition of presumptive mediation used during the pilot program was that all private citizen complaints, not explicitly prohibited from mediation under R. 7:8-1, were to be presumptively sent to mediation. Courts were authorized to exclude cases from mediation only when good cause existed. While the data show that not all courts fully adhered to the presumptive mediation model, the Subcommittee believes that sufficient data were collected from the 45 participating courts to enable meaningful comparisons for study.

Finally, in the report, the Subcommittee makes nine separate recommendations, which are being forwarded to the full Committee for its consideration. The first six recommendations are tied directly to the municipal court presumptive mediation concept, while the remaining three recommendations apply to mediation in general and were an indirect result of the pilot program analysis. Further, the Subcommittee believes that two of the recommendations (numbers two and five) should only be implemented subject to the statewide implementation of the municipal court presumptive model (i.e., recommendation one). The nine recommendations for consideration by the full CDR Committee are as follows:

Recommendation 1: The Working Group recommends that presumptive mediation be utilized statewide in the municipal courts.

Recommendation 2: The AOC and vicinage municipal divisions should develop and provide training to municipal court judges and staff to ensure that courts fully understand and utilize the presumptive mediation concept.

Recommendation 3: The AOC should enhance the ATS/ACS computer System, when feasible, to enable better tracking of mediation cases, including notice in lieu cases.

Recommendation 4: The AOC should make enhancements to the ATS/ACS computer system, when feasible, to assist with scheduling mediation cases, noticing mediation participants and providing outcome-based mediation statistics.

Recommendation 5: The AOC should develop computerized reports to aid Municipal Presiding Judges in their oversight of the presumptive mediation program.

Recommendation 6: The forms and notices developed for use by the pilot courts should be promulgated for use by all municipal courts.

Recommendation 7: Courts should be authorized to send to mediation complaints issued by a police officer when the complaint clearly involves a “neighborhood” or other minor dispute, or a case involving truancy.

Recommendation 8: Shoplifting cases should be excluded from mediation.

Recommendation 9: The Conference of Presiding Judges-Municipal Courts should be asked to make recommendations to the full CDR Committee on any matters (or types of matters) it believes should be included or excluded from mediation.

III. LEGISLATION

The Committee has made no recommendations regarding legislation.

IV. MATTERS HELD FOR CONSIDERATION

A. Mediation Where a Final Restraining Order Exists

In February 2011, the Supreme Court Complementary Dispute Resolution Committee ("CDR Committee") presented a proposal to the State Domestic Violence Working Group (SDVWG) regarding a pilot program where economic mediation would occur in certain domestic violence matters where a Final Restraining Order exists. The SDVWG convened an ad hoc committee to consider the proposal and presented its recommendations on the proposal to the full SDVWG during its June 2011 meeting. Although the full committee rejected the proposal (in a vote of 9 against to 8 in favor) the committee did subsequently vote to allow the ad hoc continue to work with the CDR Committee to refine the proposal to address some of their concerns.

The proposal has continued to be modified, and includes three recommendations from the SDVWG:

1. Only cases where a Final Restraining Order exists are appropriate. Cases involving only a Temporary Restraining Order are not appropriate.

2. Cases where there has been a contempt of the FRO are also not appropriate and should be excluded.

3. All domestic violence victims participating in the pilot program should amend his/her FRO to permit communication through the pilot program and should meet with a domestic violence advocate before doing so.

Thus the CDR Committee is continuing to work with the SDVWG to develop a draft proposal that both Committees can endorse and move forward with a goal toward piloting the project in a limited number of vicinages. The proposal will also be expanded to include a specialized mediator training component, with only those mediators who have been through the

specialized training component being permitted to mediate cases involving Final Restraining Orders.

Respectfully Submitted,

Stephan C. Hansbury, JSC, Chair

Jamie D. Happas, JSC Vice Chair

Peter Abeles

Kathryn A. Brock JSC (Ret.)

Paul Catanese, PJMC (Ret.)

Jill M. Deitch, Esq.

Monica E. de los Rios, Esq.

Harriet E. Derman, JSC (Ret.)

Catherine M. Fitzpatrick, JSC

Bonnie Blume Goldsamt, Esq.

Roger T. Haley, PJMC

John J. Harper, JSC (Ret.)

John R. Holsinger, Esq.

Judith Irizarry

Regina Waynes Joseph, Esq.

Leslie-Ann Justus, JSC

Laura Kaster, Esq.

Donald A. Kessler, JSC

David Landau, PJAD (Ret.)

Peter C. Lange, Jr., JMC

Lilia L. Lopez

Robert E. Margulies, Esq.

Eric Max, Esq.

Estelle Joy Munn, Esq.

Connie M. Pascale, Esq.

Lewis J. Pepperman, Esq.

Peter A. Scarpato, Esq.

Willard C. Shih, Esq.

Barbara Sopronyi

Richard H. Steen, Esq.

Sandra Thaler-Gerber, Esq.

Carl B. Viniar, Esq.

Barbara Byrd Wecker, JAD (Ret.)

Barbara Weisman, Esq.

William J. Wolf, Esq.

AOC Staff:

Leigh G. Eastty

Kathleen M. Gaskill

Gina G. Bellucci, Esq.

Leslie Santora, Esq.

Steven Somogyi

APPENDIX

Pilot Study: Municipal Presumptive Mediation Report

Municipal Court Presumptive Mediation Pilot Program

Final Report

Submitted by the Municipal Court Programs Subcommittee, Supreme Court Committee on Complementary Dispute Resolution

Members

Paul Catanese, P.J.M.C. (retired), Chair
Peter Abeles
Roger T. Haley, P.J.M.C.
Peter C. Lange, Jr., J.M.C.
Lilia L. Lopez, Municipal Division Manager

Staff

Steven A. Somogyi, AOC
Valorie Landsky, AOC (former staff)

December 2012

Executive Summary

In 2009, the Supreme Court ordered the replication of an earlier pilot program designed to test the concept of using presumptive mediation in the municipal courts. Although the earlier pilot project yielded positive results, those results were deemed inconclusive due to the limited number of participating pilot sites and the limited data collected during the pilot. In approving the second pilot, the Supreme Court ordered that additional pilot sites be chosen and that greater emphasis be placed on collecting data and insuring participation. This final report represents the efforts by the Municipal Court Programs Subcommittee to implement the second pilot and evaluate the results.

This report details the methodology used by the Working Group to replicate the pilot. It also provides detailed analysis of the survey results used to gauge the opinions of those involved in the presumptive mediation process (e.g., citizens, mediators, judges and staff). As reflected in the report, the results clearly show that those involved in the pilot strongly supported not only the use of mediation in the municipal courts, but more specifically the use of presumptive mediation. Overall, 91% of the judges, 89% of the court staff and 82% of the mediators surveyed agreed that the presumptive mediation concept should be replicated statewide in the municipal courts.

The definition of presumptive mediation used during the pilot program was that all private citizen complaints, not explicitly prohibited from mediation under R. 7:8-1, were to be presumptively sent to mediation. Courts were authorized to exclude cases from mediation only when good cause existed. While the data show that not all courts fully adhered to the presumptive mediation model, sufficient data were collected from the 45 participating courts to enable meaningful comparisons for study.

Finally, in the report, the Subcommittee makes nine separate recommendations, which are being forwarded to the full Committee for its consideration. Recommendations one through six are tied directly to the municipal court presumptive mediation concept, while the remaining three recommendations apply to mediation in general and are an indirect result of the pilot program analysis. Further, two of the recommendations (numbers two and five) should only be implemented subject to the statewide implementation of the municipal court presumptive model (i.e., recommendation one). The nine recommendations for consideration by the full CDR Committee are as follows:

Recommendation 1

The Working Group recommends that presumptive mediation be utilized statewide in the municipal courts.

Recommendation 2

The AOC and vicinage municipal divisions should develop and provide training to municipal court judges and staff to ensure that courts fully understand and utilize the presumptive mediation concept.

Recommendation 3

The AOC should enhance the ATS/ACS computer System, when feasible, to enable better tracking of mediation cases, including notice in lieu cases.

Recommendation 4

The AOC should make enhancements to the ATS/ACS computer system, when feasible, to assist with scheduling mediation cases, noticing mediation participants and providing outcome-based mediation statistics.

Recommendation 5

The AOC should develop computerized reports to aid Municipal Presiding Judges in their oversight of the presumptive mediation program.

Recommendation 6

The forms and notices developed for use by the pilot courts should be promulgated for use by all municipal courts.

Recommendation 7

Courts should be authorized to send to mediation complaints issued by a police officer when the complaint clearly involves a "neighborhood" or other minor dispute, or a case involving truancy.

Recommendation 8

Shoplifting cases should be excluded from mediation.

Recommendation 9

The Conference of Presiding Judges-Municipal Courts should be asked to make recommendations to the full CDR Committee on any matters (or types of matters) it believes should be included or excluded from mediation.

Municipal Court Presumptive Mediation Pilot Program
Final Report

I. Background

In July 2005, the New Jersey Supreme Court approved a recommendation made by the Supreme Court Committee on Complementary Dispute Resolution (hereinafter CDR Committee) to implement a pilot project to explore the effectiveness and efficiency of using presumptive mediation to resolve certain types of municipal court cases. In addition to testing the effectiveness of the presumptive model, the pilot also focused on three specific issues: 1) whether mediation helps reduce the time it takes to resolve disputes, 2) whether the program helps conserve valuable bench time, and 3) whether mediation provides a forum that enables parties to amicably resolve their disputes.

An earlier pilot program, coordinated by the Superior Court Civil Division, found that mediation had a "significant potential for handling a variety of civil cases . . . [t]he data derived clearly demonstrated that mediation in appropriate cases brings about early resolution after only nominal discovery."[1] In making the recommendation to the Supreme Court to establish the municipal presumptive pilot, the CDR Committee held that if the same positive results could be replicated in the municipal courts, it would aid in helping reduce municipal court backlog, as well as provide litigants with a positive forum for resolving disputes.

[1] State of NJ Judiciary, Supreme Court Committee on Complementary Dispute Resolution, *Report on the Evaluation of the Presumptive Mediation Pilot Program* (2002).

To test the presumptive mediation concept in the municipal courts, seven municipal courts from across the state, representing a cross-section of courts and municipalities, were chosen to participate in an 18 month pilot program. During the first 12 months, the seven participating courts were asked to send all mediation eligible cases to a mediator for resolution. To test program effectiveness, surveys were used to gauge the views of litigants, mediators, judges and staff. Based on the data collected, the Municipal Programs Subcommittee (hereinafter Subcommittee), charged by the CDR Committee with overseeing the pilot, concluded that mediation was an effective tool for use by the municipal courts. However, due to the limited number of pilot courts and the limited data collected by several participating sites, the Subcommittee also determined that the results, while positive, should be considered inconclusive. In its final report to the full CDR Committee, the Subcommittee recommended that the "presumptive mediation pilot be expanded to collect additional data from other courts around the state." Additionally, the Subcommittee believed that "expansion will improve the quality of the data collected thus far and corroborate the existing study."[2] Agreeing with the Subcommittee findings, the full CDR Committee made the same recommendation to the Supreme Court in its final report.

In considering the CDR Committee's recommendation, the Supreme Court agreed that more research was needed to test the municipal court presumptive

[2] State of New Jersey Judiciary, Municipal Programs Subcommittee, *Pilot Study: Presumptive Mediation Report* (2008).

mediation concept. Therefore, the Court ordered that the pilot be replicated to include additional sites. In its written response to the CDR Committee, the Court ordered that a minimum of 14 pilot courts be included to further test the presumptive mediation concept. The Court also directed that 1) the forms and surveys used in the original pilot be modified, as appropriate; 2) more reliable data collection procedures be established; and 3) a procedure to better monitor pilot court participation be established.

II. The Presumptive Mediation Pilot Program Working Group

Following the Court's decision, the newly reconstituted CDR Committee, at the beginning of the 2009-2011 rules cycle, charged the Municipal Programs Subcommittee with replicating the municipal presumptive pilot. To accomplish this task, a Presumptive Mediation Pilot Program Working Group (hereinafter Working Group) was established, comprised of Subcommittee members and staff from the Administrative Office of the Courts (see appendix A for a list of Working Group members).

In accepting this responsibility, the Working Group was cognizant of the requirements set by the Supreme Court, as well as the limitations inherent in the first pilot. The Working Group, therefore, determined that 45 pilot courts, three from each vicinage should be selected to participate. To help select these courts and to better ensure each actively participated in the pilot, assistance was sought

from the Conferences of Municipal Presiding Judges and Municipal Division Managers. See Appendix B for a list of the 45 pilot courts.

An important, early task of the Working Group was to closely analyze the surveys and other materials used in the original pilot and make necessary changes. While much of the original surveys, forms and notices were kept intact, the Working Group made a number of significant changes to better inform participants about the program requirements and to gather more meaningful information from respondents. Of significance, the Working Group included in the surveys specific questions designed to elicit views regarding the benefits of the presumptive mediation concept, something which was not specifically tested in the original pilot.

III. Description of the Pilot Project

In keeping with the presumptive mediation concept, it was determined that all private citizen complaints, not explicitly prohibited from mediation under R. 7:8-1, would presumptively be sent to mediation. Of importance is that judges and staff (if so authorized) would have the discretion to not send a case to mediation if good cause existed. Such cases would instead be handled through traditional case processing. Rule 7:8-1 provides, in pertinent part, that,

> "No referral to mediation shall be made, however, if the complaint involves (1) serious injury, (2) repeated acts of violence between the parties, (3) clearly demonstrated psychological or emotional disability of a party, (4) incidents involving the same persons who are already parties to a Superior Court action between them, (5) matters arising under the Prevention of Domestic Violence Act

> (N.J.S.A. 2C:25-17 et seq.), (6) a violation of the New Jersey Motor Vehicle Code (Title 39), or (7) matters involving penalty enforcement actions."

In identifying eligible cases, the Working Group concluded that only private citizen complaint cases not specifically prohibited under the rule would be eligible for the program. This includes cases formally filed with the court, as well as cases handled as a *notice in lieu*. While many courts have elected to no longer accept *notice in lieu* cases, many courts still continue to handle less serious neighborhood complaints informally. Moreover, cases filed by law enforcement or some other government entity would not be eligible.

The Working Group determined that the pilot period would commence on July 1, 2010 and run for 12 consecutive months. In anticipation of the July 1 start date, the Working Group, during May and June 2010, provided three regional training sessions for the judges and court administrators (or designee) of the pilot courts. These mandatory sessions were provided to ensure that each participating court fully understood the pilot program expectations. Municipal Presiding Judges and Division Managers were also required to attend. More than 100 judges and staff participated. Subsequent to this regional training, participating judges and staff met with their court mediator(s) to ensure that they, too, understood the pilot program requirements.

It should be noted that the three regional training sessions were organized and conducted by the Working Group members, including retired Municipal Court

Presiding Judge Paul Catanese, then Chair of the Conference of Presiding Judges-Municipal Courts. Paul Catanese currently serves as Chair of the Municipal Programs Subcommittee.

IV. Survey Methodology

As indicated previously, surveys were used to help test the presumptive mediation model. Building from the original pilot, the Working Group used three individualized surveys to gauge the views of involved parties. The first survey was used to gauge the views of both the person who filed the complaint, as well as the person who was the responding party (i.e. subject of the complaint). Each was asked to complete the survey following their session, regardless of the session's outcome. The second survey, to be completed by the mediator, was designed to assess the mediator's views about the pilot and mediation in general. The mediator completed one survey for each round of mediations held that day.

The third set of surveys, distributed shortly after the pilot's conclusion, was developed for completion by municipal court judges and staff. These surveys were designed to solicit general views about mediation, as well as each respondent's views about the presumptive mediation concept. Exemplars of all survey instruments can be found in Appendix C.

Each of the noted surveys relied on a series of Likert-scale questions to determine the respondent's views concerning the pilot. Likert-scale questions

are generally used to investigate how respondents feel about a series of statements. Specifically, each respondent rates his/her level of agreement or disagreement to the particular question by assigning a value, in this case from one to five. A value of one means the respondent strongly disagrees with the statement, while a value of five means the respondent strongly agrees. The remaining values, two through four, serve as different points on the "strongly agree" to "strongly disagree" continuum. In addition to the Likert-scale questions, respondents were encouraged to provide comments about the presumptive mediation concept or suggestions for how to improve the program through several open-ended questions.

V. Other Materials Developed for the Pilot

Several other documents were developed by the Working Group for use during the pilot. These forms and notices were in use in varying degrees by the municipal courts, but were refined and standardized for use during the pilot. Incidentally, non-pilot courts were encouraged to make use of these updated forms to aid in the use of their own mediation programs. These forms and notices, which can be found in Appendix D, include:

- **Mediation Information** – this form, to be completed by the person filing (or seeking to file) the complaint, serves as the court's screening tool to determine whether the case is eligible for mediation. This is also the form used to gather information about the parties.

- **Notice of Scheduled Mediation** – this notice was used by courts to formally advise citizen participants that their case was referred to mediation. In addition to advising parties regarding the date, time and

location of the mediation session, the notice provides parties with general information about the mediation process.

- **Mediation Session Guidelines** – these guidelines, sent to the parties along with the above notice, provide more detailed information about mediation. The guidelines, for example, provide information regarding the role of the mediator and how the mediation session is to be conducted. It also informs participants about their ability to bring witnesses and/or documentation to the session that may help resolve the dispute. Finally, the parties are advised of the consequences should one or both fail to appear.

- **Mediation Agreement** – as with traditional mediation, the mediation agreement is used to document the results of a successfully mediated agreement. A successful agreement is signed by the parties and the mediator.

- **Mediator's Final Report** – this form is completed by the mediator and used to advise the court of the session's outcome. This report also provides the mediator the ability to advise the court that the mediation was unsuccessful because one or both parties failed to appear.

VI. Survey Results

A. Results of the Participant Evaluation Surveys

In total, 657 citizen participants completed a survey to express their opinions about the presumptive mediation process. This included the views of the persons filing the complaint (filers), the responding parties (the subject of the complaint), as well as respondents who were parties to a cross-complaint. Obtaining the views of the public is vital for determining the program's future effectiveness, since putting in place a program that the public does not like or want makes little sense. Appendix E includes the tables summarizing the responses provided by participants.

Overall, participants reported being pleased with the presumptive mediation process. This finding is not surprising, given that 72% of cases sent to municipal mediation are successfully mediated. As reflected below, the most common response to each question conveyed a positive experience about mediation. A breakdown of each question's responses is found below.

Question 1: ***The information mailed to me adequately explained the mediation process.***

Most participants strongly agreed that the information mailed to them adequately explained the mediation process. In fact, of the 641 valid responses, 69% strongly agreed, while another 15% somewhat agreed. Only 8% strongly disagreed or somewhat disagreed with this statement. When viewed across the three different participant groups – the filers, the responding party (person subject of the complaint) and cross complainants – the positive responses were evenly distributed. For example, 85% of the filers, 84% of the responding parties and 79% of the cross-complainants strongly agreed or somewhat agreed that the mailed information adequately explained the process.

Question 2: ***The mediator(s) made sure I understood the process prior to beginning the mediation.***

Of the 650 participants who responded to this question, 82% strongly agreed, while another 10% somewhat agreed. In fact, only 6% reported strong disagreement or some disagreement with this statement. These same

percentages hold true regardless of the participant. Persons filing the complaint, for example, reported strongly agreeing with this statement 83% of the time, while the responding party and cross-complainants reported strong agreement 80% and 85% of the time, respectively. Based on these results, it is clear that the mediators took time to educate the parties about the mediation process.

Question 3: ***The mediator(s) was pleasant and courteous.***

The results reflect that the mediators were pleasant and courteous. In fact, 86% of participants strongly agreed with this statement. This included 88% of complaint filers, 84% of those in the responding party and 88% of those involved in a cross-complaint. Only 6% of all participants responded negatively (strongly disagreed or somewhat disagreed) to this statement. These results reflect well on the professionalism of our municipal court mediators.

Question 4: ***I was satisfied with the mediation program and the way my mediation was handled.***

The responses to question 4 show that participants were satisfied with the mediation process. In fact, almost three in four (73%) strongly agreed with the above statement, while an additional 13% somewhat agreed. Only 9% strongly disagreed or somewhat disagreed. These trends were consistent regardless of the type of participant. Specifically, 85% of those who filed the complaint, 86% of the responding parties and 86% of cross-complainants reported strong agreement or some agreement with this statement. Conversely, only 10% of

filers, 7% of responders and 6% of cross-complainants expressed strong disagreement or some disagreement with this statement.

Question 5: ***The mediator(s) was fair and impartial.***

A critical issue for the Judiciary is whether mediators are perceived as fair and impartial. These two concepts relate directly to three of the Judiciary's four core values (independence, integrity and fairness). In responding to question 5, the participants clearly perceived the mediators as being neutral, not favoring one side over the other. Nine in ten participants either strongly agreed (79%) or somewhat agreed (11%) that the mediator was fair and impartial. Participants involved in a cross-complaint responded most favorably, with 98% responding either strongly agree or somewhat agree; those who filed the complaint and those who were the responding party answering favorably 92% and 89% of the time, respectively. Only 6% of participants questioned the fairness or neutrality of the mediator, by responding either strongly disagree or somewhat disagree to this statement.

Question 6: ***The mediator(s) kept the discussion directed to the main issues of the dispute during the mediation.***

The participants clearly felt that mediators kept the discussion focused on key issues. Nine in ten either strongly agreed (81%) or somewhat agreed (9%) with this statement, while only 6% strongly disagreed or somewhat disagreed. Little difference existed between the groups, with 92% of those filing the

complaints and 90% of the responding parties responding positively; 88% of those involved in a cross-complaint also strongly agreed or somewhat agreed with this statement.

Question 7: ***The mediator(s) appeared to be genuinely interested in the settlement of my dispute.***

The strong majority of participants felt the mediator was genuinely interested in the settlement of their dispute – i.e., 82% strongly agreed, while 8% somewhat agreed. This was consistent across all three participant types, with 92% of filers, 90% of respondents and 92% of cross-complainants responding in this fashion. Only 6% of participants responded negatively to this question.

Question 8: ***The mediator(s) encouraged both parties to reach an agreement.***

The responses reflect that mediators encouraged both parties to reach an accord, with 85% of participants strongly agreeing with this statement and another 7% somewhat agreeing. Only 5% of participants strongly disagreed or somewhat disagreed. Of interest is that 89% of persons filing complaints strongly agreed, compared to 82% of the responding parties. Although this difference seems slight, this seven percentage point difference reflected the largest margin of difference between these two groups across the first eight questions.

Question 9: ***If I became a party to a similar dispute in the future, I am likely to want to try mediation again.***

While all the questions asked to respondents were important, number nine was arguably the most important. This question, in effect, sums up the participants' views of the mediation program. It asks whether the participants would likely try mediation again, which is possibly the true litmus test of the program's effectiveness. Three in four participants (75%) responded "strongly agree" to this statement. This included 71% of those who filed the complaint, 80% of the responding parties and 78% of cross-complainants. Another 10% of participants responded "somewhat agree". Conversely, less than one in ten (9%) participants strongly disagreed or somewhat disagreed with this statement.

Question 10a: ***If your mediation resulted in a written agreement: I was satisfied with the terms of the agreement.***

Question 10b: ***If your mediation did not result in an agreement: I was satisfied that the mediator(s) did everything possible to bring about a settlement.***

Question 10 was a two-part question, designed to assess the views of participants based on whether their mediation resulted in a written agreement. Question 10a was to be completed by participants whose session resulted in a written agreement, while question 10b was to be completed by those whose session did not. As reflected in Appendix E, 359 participants responded to question 10a, while only 51 participants responded to 10b. These numbers, or lack thereof, are important. Based on the limited responses, the Working Group

believes that respondents may have been confused by the question and, thus, chose not to respond. Specifically, while 657 participant surveys were returned, only 410 (62%) included an answer to question 10. As a result, the Subcommittee contends that the information derived from question 10 should be treated less reliably than information derived from the other questions.

With that said, however, it is still worth reviewing the data. Nearly two-thirds (64%) of participants whose cases resulted in a written agreement reported being strongly satisfied with the agreement, while another 16% reported being somewhat satisfied. In total, four in five (80%) participants expressed a level of satisfaction with the agreement. The responding party reported the highest satisfaction, with 70% strongly agreeing and another 13% somewhat agreeing with this statement. Cross-complainants expressed similar satisfaction, posting 68% (strongly agreed) and 7% (somewhat agreed) results, respectively. Mildly surprising is that 79% of all persons filing complaints agreed with this statement -- 59% strongly agreed and another 20% somewhat agreeing.

When focusing on the question 10b results, we see that 57% of participants whose mediation session did not result in a written settlement felt strongly that the mediator did everything possible to bring about a settlement; another 18% said they somewhat agreed with this statement; thus three in four participants reported agreement. Conversely, one in five respondents (20%) either strongly disagreed or somewhat disagreed with this statement. Similar to

the responses for question 10a, the responding parties expressed the highest level of satisfaction (68% strongly agreeing). This is significantly higher than the percentage of filers (57%) or cross-complainants (40%) who strongly agreed. Again, the Working Group suggests that these results be considered somewhat less reliable than those derived from other questions.

B. Mediator Survey Results

The mediator is an obvious key player in the municipal court presumptive mediation program. As such, the Working Group designed a survey to assess the views of the mediators. In addition to asking questions relative to the administrative impact of the pilot program, the survey solicited mediator views about whether presumptive mediation is the proper direction for our municipal courts.

While well over 600 different survey responses were received from mediators, it soon became apparent that many of those surveys were duplicitous. Specifically, it became clear that a small percentage of mediators were submitting a disproportionate number of surveys, since mediators in towns making greater use of mediation were naturally submitting completed surveys at a much higher rate. While generally seen as a positive in survey research, in this case, the excess surveys were not helpful. This redundancy had the ability to skew the results, since a small group of mediators could statistically control the results of a much larger group.

To remedy this, it was decided that the results of only one completed survey would be counted for each mediator. For mediators who submitted multiple surveys, the last survey submitted would be used, since it was surmised that the final survey would encompass the respondent's most comprehensive views about the program. In total, 82 mediator surveys were analyzed. A copy of the mediator survey instrument can be found in Appendix C, while the survey results can be found in Appendix F.

Question 1: ***Mediation was appropriate for the matter(s) that I received.***

This question was designed to gauge mediators' views about the types of cases referred to mediation. This question was deemed important by the working group because, in many courts, use of the presumptive model had the potential to expand the types of cases normally sent to mediation. The data show that, overall, mediators appeared comfortable with the types of cases referred. Nearly three in four (74%) responded that they strongly agreed with this statement, while another 10% replied that they somewhat agreed. Only 9% of mediators somewhat disagreed or strongly disagreed with this statement.

Question 2: ***The court's procedures were efficient in getting matters to me.***

An often overlooked aspect of the mediation program is the administrative requirements involved in scheduling cases. Based on the data, the mediators

were obviously pleased with the procedures courts used to send them cases. In fact, 88% of mediators reported that the court was efficient in this regard. Of importance is that no mediator strongly disagreed with this statement, while only 4% somewhat disagreed.

Question 3: ***The presumptive mediation pilot project created substantially more paperwork for me to handle.***

Similar to question two, this question helped gauge the administrative aspects of the presumptive program. This question, in particular, sought input on whether the presumptive program created more paperwork for mediators. The results were somewhat mixed. Less than half (47%) the mediators strongly agreed with this statement, while another 19% somewhat agreed. Nearly one in five (18%) mediators disagreed, responding either strongly disagree or somewhat disagree; 17% took no position.

These results are somewhat curious, since the program, as designed, generated more paperwork for the mediator. In addition to having to complete their own surveys, the mediators were also responsible for distributing, collecting and forwarding to the court the surveys completed by the participating parties. While clearly more work, it can be surmised that mediators may have felt that the additional paperwork was not unmanageable or was simply a necessary part of the pilot.

Question 4: **The scheduling of the presumptive mediation sessions was done effectively.**

Virtually all mediators agreed that the scheduling of cases was done effectively. In fact, only 2% of mediators disagreed with this statement (both selecting "somewhat disagree"). Ninety-five percent of mediators strongly agreed (85%) or somewhat agreed (10%) with this statement. This obviously speaks well to the work done by the pilot courts to schedule cases.

Question 5: **I recommend that presumptive mediation should be used statewide.**

This question gauged mediators' views about presumptive mediation. More than three in four (77%) strongly agreed with this statement, while another 5% somewhat agreed. Only 6% of mediators strongly disagreed or somewhat disagreed. The remaining 12% took no position, neither agreeing nor disagreeing. In short, most mediators surveyed believe the presumptive model should be replicated statewide.

Question 6: **The mediation training prepared me to handle the presumptive matters being referred to me in the pilot program.**

Municipal court mediators are required to complete 18 hours of approved training prior to mediating in the municipal courts. These same mediators are required to satisfy four hours of continuing education credits annually. Nearly nine in ten (88%) mediators agreed that the mediation training they received

prepared them to handle the cases referred during the pilot. This included 69% who strongly agreed and 19% who somewhat agreed. Only 4% of mediators responded that the training may have been inadequate; another 9% took no position.

As noted in the write-up to the first question, the presumptive mediation concept likely resulted in most mediators handling cases incorporating a wider range of case types (or defendant types) than normal. The program was designed to require courts to send to mediation cases many otherwise would not have sent. The positive response by mediations regarding the appropriateness of the mediation training speaks to the quality of that training. This is important to know when considering increased use of mediation, including the possible statewide implementation of a presumptive mediation program.

C. Judge and Staff Survey Results

As reported previously, judges and staff were surveyed at the end of the pilot period (following the 12th month). Copies of the survey instruments are found in Appendix C, while tables depicting survey responses are found in Appendix G. In addition to soliciting views on the administrative aspects of the pilot program, the surveys also asked directed questions intended to gauge perceptions and opinions about the appropriateness of presumptive mediation in the municipal courts.

Question 1: **The judge was involved in deciding which cases were referred to presumptive mediation.**

The mediation referral process works differently in different courts. In some courts, the judge refers all or most cases to mediation, while in others the judge has little involvement, instead conferring this authority on the court administrator or other staff member(s). Still other courts use a combination of these two options. This decision also impacts, at least in most courts, when cases are referred to mediation. The decision by a judge to refer a case is oftentimes made during court, with one or both parties present. Referrals made by staff generally occur prior to court, typically at the time of initial filing or shortly after.

A third (33%) of all judges and almost a quarter (23%) of all staff strongly agreed that the judge was involved in deciding which cases were sent to mediation; another 17% of judges and 19% of administrators somewhat agreed. Conversely, 31% of judges and 42% of administrators strongly disagreed or somewhat disagreed with this statement, meaning that judges had little to no involvement in the decision. These responses clearly illustrate that courts differed in how they referred cases to mediation, with the judges having some involvement in about half the courts. Of interest is that judges perceived their role as being greater than that reported by staff.

Question 2: **With presumptive mediation the cases in my court were scheduled and resolved in a more timely manner than prior to the implementation of the program.**

Of significance is that the most common response to this statement, for both judges and staff, was the neutral response. Specifically, 40% of staff and 30% of judges responded “neither agree nor disagree” when asked whether the program led to cases being scheduled and resolved in a more timely manner. Overall, judges responded somewhat more positively than staff, with 45% of judges either strongly agreeing or somewhat agreeing with this statement; only 32% of staff responded likewise. Moreover, nearly one in three (30%) staff and one in four (25%) judges disagreed that the program led to cases being scheduled and resolved more timely, responding either strongly disagree or somewhat disagree.

An integral aspect of the pilot program was that participating courts would presumptively send all eligible cases to mediation. Unless a court was already following this model, the program was designed to increase the number of mediation cases. Following this logic and reflecting on the aforementioned responses, the results appear to be mixed as to whether presumptive mediation had a positive impact on the timeliness of cases being scheduled and resolved. This is important given that one of the stated program goals is that mediation is to increase the timeliness cases being handled.

Finally, these results clearly differ from results found in the aforementioned Civil Division study. In that study, mediation clearly led to more timely resolutions at an earlier stage. The same cannot be said here. In fact, based on these responses, many judges and administrators concluded that mediation provided little benefit to reducing the time required to resolve cases.

Question 3: **I would like my court to continue the presumptive mediation program even though the pilot has ended.**

Judges and staff responded similarly to this question, with 47% of judges and 43% of staff strongly agreeing that their court should continue the presumptive mediation model even though the pilot had ended. An additional 17% and 15%, respectively, somewhat agreed. Only 19% of judges and 21% of staff disagreed, by responding either strongly disagree or somewhat disagree. These responses show that participating judges and staff were supportive of continuing the presumptive mediation concept, even after the pilot's conclusion.

Question 4: **Did the automatic referral of most cases to mediation make a difference in your mediation program?**

Judges and staff provided almost identical responses to question 4. Fifty-one percent of judges and 52% of administrators reported that the automatic referral of cases made a difference to their mediation program. Conversely, 49% and 48%, respectively, reported the automatic referral process made no difference in their program.

Helpful in diagnosing these data is that judges and staff were asked to explain their response. Twenty-six judges and 38 staff provided comments (see Appendix G). Not surprisingly, the comments varied greatly. Where a position was taken, about half the respondents claimed that the presumptive component impacted their program favorably, and resulted in more cases going to mediation. A similar number of responses indicated the opposite, reporting that the presumptive concept little changed what the court was doing. Importantly, though, is that a fair number of these latter responses claimed little change because the court already had a robust mediation program in place. Also noteworthy is that several comments were highly critical of the program, including: the program led to higher interpreter costs, the presumptive concept resulted in a lower percentage of settlements, or the program led to greater delays. While these comments were few, they bear mentioning.

Question 5: **Did the pilot program create more work for your staff?**

Almost three in four (74%) staff and nearly three in five (57%) judges reported that the pilot program created more work for staff. Further confirming these numbers are the comments provided by respondents. Most comments offered by judges and staff to this question highlighted the additional paperwork and other administrative tasks staff had to accomplish.

While significant, these responses are not unexpected, since the administration of the pilot program itself resulted in more work for staff. In

addition to maintaining statistics on the program, staff was also required to collect all surveys and forward them monthly to the AOC. More important, however, sending a case to mediation simply results in more work than handling it through traditional case processing. Specifically, staff must manually schedule a mediation case, notice the parties, coordinate with the mediator, schedule the room logistics, and arrange for security. This is largely because there have been few computer system enhancements (ATS/ACS) to support the mediation program.

Question 6: **Did you need to recruit additional mediators or reduce the size of your mediator panel to accommodate increases in cases being referred as a result of the presumptive mediation program?**

Mediators are an important resource in a presumptive mediation program. Question 6 was designed to gauge whether the presumptive program put too much stress on mediators. In short, for the pilot courts, were there enough mediators to handle the increased volume?

Most judges and staff reported they did not need to recruit additional mediators to support the program. In fact, less than one in five (18%) judges and less than three in ten (28%) staff reported that additional mediators were needed. Conversely, 82% of judges and 72% of staff reported that additional mediators were not needed.

These results bear out two likely causes. First, many municipal mediators are not being overworked. In fact, it has been reported over the years to Subcommittee members that many municipal mediators are asking that more municipal cases be referred to mediation. Second, and as reported in section VII. *Measuring Adherence to the Presumptive Mediation Model*, a fair number of pilot courts appear to have not followed the presumptive model.

Question 7: **What do you think would be a significant obstacle to continuing a presumptive mediation program?**

Judges and staff were asked this open-ended question to solicit their views on what they believe would be significant obstacles to continuing a presumptive mediation program. In total, 40 judges provided a response, as did 45 staff members. The most common response for both groups was “none” or “nothing”, meaning they saw no significant obstacle to continuing the program. In fact, judges responded this way 45% of the time, while staff responded “none” or “nothing” 42% of the time. Other common responses included: concerns about the additional paperwork generated by the program or the lack of automation (20% of judges and 20% of staff), or concerns that there may not be enough qualified mediators (15% of judges and 20% of staff). A breakdown of the most common responses can be found in Appendix G.

Question 8: **Are you supportive of the presumptive mediation concept?**

This is obviously an important question. It specifically asks judges and staff whether they support the presumptive mediation concept. The strong majority of judges and staff who participated in the pilot responded affirmatively. Specifically, approximately nine in ten judges (91%) and staff (89%) responded yes. These results are very telling and significant. The success of any court program, particularly one designed to limit discretion, requires strong support from judges and staff in order to be truly effective.

Question 9: **What types of cases are appropriate for mediation.**

In question 9, judges and staff were asked to identify what offenses, or types of offenses, are appropriate for a presumptive mediation program. Respondents were provided with 13 common municipal court offenses (or offense types) and asked to specify whether each should – or should not – presumptively be sent to mediation. These 13 are some of the more common (non traffic) matters handled by our municipal courts. Appendix G provides a breakdown of judge and staff responses to each type.

Responses by judges and staff were fairly consistent. In fact, in only three of the 13 offenses did the judge and staff responses differ by more than 10 percentage points. This included: landlord/tenant disputes (25% difference), bad checks (17% difference) and criminal mischief (16% difference). Additionally, based on the responses, judges and staff concluded that most of the listed matters should be eligible for mediation. Eight of the 13 matters were strongly

endorsed for mediation (defined as 75% or higher) by both groups. These eight matters include: 1) DP/PDP matters; 2) harassment; 3) creating disturbance/noise complaints; 4) neighborhood disputes; 5) merchant/customer disputes; 6) bad check charges; 7) property disputes; and 8) animal complaints. Judges strongly endorsed a ninth matter for mediation – landlord/tenant disputes – although staff felt less strong.

The only listed matter that the respondents clearly felt should not go to mediation was shoplifting. In fact, two-thirds (67%) of judges and three-quarters (76%) of staff responded that shoplifting cases should not be referred. While reasons were not solicited, this may be linked to shoplifting being a graduated sanction, with a mandatory jail term for a third or subsequent offense. Several other offenses also garnered limited support. Simple assault, for example, was supported by only half (52%) the staff and 59% of judges. Landlord/tenant was supported by only 60% of staff (although strongly supported by judges). Similarly, only 57% of staff supported criminal mischief cases going to mediation, although this was supported by 73% of judges.

Interestingly, when comparing staff and judge responses, judge support for the listed matters going to mediation was routinely higher than that of staff. Affirmative responses by judges eclipsed that of staff in 11 of the 13 matters. In fact, the only two matters where this was not the case included creating disturbance/noise complaints and animal complaints.

VII. Measuring Adherence to the Presumptive Mediation Model

A. Building Our Comparison Groups

The above survey responses are helpful in identifying what the different players (i.e., participants, mediators, judges and staff) thought about the mediation pilot. Another important question, however, that must be answered is whether this was, in fact, a presumptive mediation pilot. In other words, did the pilot courts adhere to the presumptive model by sending all (or even most) eligible cases to mediation, consistent with the Rule. The answer to this question is important for helping determine whether the presumptive mediation concept can and should be replicated statewide.

To help in this regard, two separate levels of data are needed. First, for each pilot court, we need to know the number of cases actually referred to mediation. To accomplish this, referral data were collected monthly from each participating court. While data were collected for the full 12 month period, for the purposes of this analysis a six month view is to be used – September 1, 2010 through February 28, 2011. This six month view was chosen because it not only gave courts sufficient time to establish their presumptive referral procedures, but because it also excludes possible instances where courts, as time went by, may have reverted back to their typical (i.e. non-presumptive) referral practices.

The second and more difficult statistic to identify is each pilot court's number of mediation eligible cases. To determine this, a computer program was

written to extract mediation eligible case information from the Automated Traffic System / Automated Complaint System (ATS/ACS), the computer system used by the municipal courts. The extract was for the same six month time frame cited above. The logic used to create the program was derived from the language in R. 7:8-1, which reads as follows:

> "No referral to mediation shall be made, however, if the complaint involves (1) serious injury, (2) repeated acts of violence between the parties, (3) clearly demonstrated psychological or emotional disability of a party, (4) incidents involving the same persons who are already parties to a Superior Court action between them, (5) matters arising under the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.), (6) a violation of the New Jersey Motor Vehicle Code (Title 39), or (7) matters involving penalty enforcement actions."

The first factor used to help identify the number of mediation eligible cases was that only private citizen complaints would be selected. Complaints issued by law enforcement or other government entities were excluded. [Note: this logic automatically excludes penalty enforcement actions (number 7), which are only issued by government entities.] Second, Title 39 (number 6) and domestic violence matters (number 5) were also excluded. This was accomplished by focusing on the initial charge field, as well as the domestic violence indicator field, and filtering out cases accordingly. Finally, matters transferred to the County Prosecutor were excluded. This logic helped filter out all indictable offenses, as well as DP/PDP and other matters not within the direct control of the municipal court (i.e. those being handled by the Superior Court).

While the above logic provides usable information to help gauge each court's adherence to the presumptive mediation concept, it does have limitations. As explained below, for some courts, this will generate an over inflated estimate of eligible mediation cases, while for others, it will provide an under inflated estimate. An over inflated estimate may occur because it is not possible to filter out all scenarios excluded by the rule. Specifically, due to certain data not being available in ATS/ACS, there is no way to identify cases to be excluded via the first four criteria identified in the Rule: 1) whether the case involved serious injury, 2) whether there have been repeated acts of violence between the parties, 3) whether one or both parties exhibited a clear psychological or emotional disability, or 4) whether matters between the same parties are pending in the Superior Court. Ameliorating this to a small degree, however, is that a percentage of cases exhibiting these factors are likely already excluded by our excluding cases transferred to the County Prosecutor. Cases sent to the County Prosecutor, by definition, involve more serious cases, which is consistent with the exclusions. Moreover, it should be noted that cases exhibiting one or more of these factors are not common occurrences in the municipal courts.

As stated, the above logic can also generate, for some courts, an under inflated estimate of the number of eligible cases. First, although not recommended in the pilot, some courts do send certain types of police issued complaints to mediation. This is not only known anecdotally to the Subcommittee, but was also confirmed through some of the comments submitted

by judges and staff. Noise ordinances and other neighborhood dispute cases, for example, are routinely sent to mediation, regardless of whether they were private citizen complaints or police officer issued. Second, and more importantly, the above computer logic cannot account for *notice in lieu* cases. Rather than a formal complaint being filed, *notice in lieu* cases are handled informally by the court and sent to mediation. In some towns, these informal cases may even be referred to mediation by the police, the school or some other local government entity. In identifying eligible mediation cases, *Notice in lieu* cases provide a unique challenge because these matters are not entered into the computer system; only formal complaints are entered into ATS/ACS. In some courts, *notice in lieu* cases equal or even exceed the number of regularly filed cases; this means that, for some courts, the total number of estimated cases may be under inflated by as much as half.

Based on the above, it's clear that some courts will have over inflated estimates while for others the estimate will be too low. However, in taking into account these limitations, it's logical to conclude that our overall estimates are more likely to be too low rather than too high. This is important to keep in mind when considering the results.

B. <u>The Analysis</u>

The table in Appendix H reflects, for each participating court, data on the number of cases referred to mediation during the six month time frame

(September 1, 2010 through February 28, 2011), as well as an estimate of the number of cases eligible for mediation. It further provides a comparison between these two numbers by dividing the number of cases referred to mediation by the number of eligible cases. The resulting percentage provides a perspective on how well the court complied with the presumptive nature of the pilot.

The data show that some courts adhered to the presumptive model, while others did not. Overall, the 45 pilot courts referred about half (49%) of their nearly 5,000 eligible cases to mediation during the six month period. Eleven courts actually sent more cases to mediation than their estimated number. (Note: this is likely due to those courts sending *notice in lieu* or police complaint cases to mediation.) Six additional courts sent at least 80% of their eligible cases to mediation. These 17 courts account for 38% of the pilot courts, and included some of the courts with the highest numbers of referrals.

Conversely, 14 courts, almost a third of the pilot courts, referred less than one in four eligible cases to mediation. This included one court with two referrals, another with only one, and four courts with no referrals. Twenty-two of the 45 pilot courts (49%) referred less than 38% of their eligible cases to mediation. Moreover, an additional 6 courts referred between 43% and 65% of their eligible cases.

Even with the noted data limitations, there appears to be inconsistency in how well courts adhered to the presumptive model. While some courts clearly followed the model, others did not. Importantly, the noted percentages may even be less positive when you factor in *notice in lieu* and police cases that may have been referred to mediation but not accounted for in the estimate. These results put into question the degree to which courts will closely follow the presumptive model if effectuated statewide.

VIII. Conclusions and Recommendations

The primary goal of this program was to see if the positive results from the original pilot could be replicated, since those results were put into question due to the limited number of participating courts. The Subcommittee is pleased to report that this second pilot validates the positive results found during the first. The survey responses clearly show that participants, mediators, judges and staff strongly support municipal court mediation. Based on information derived from the surveys, respondents strongly support the use of mediation for handling minor disputes.

In light of these positive results, the following recommendations are submitted to the full CDR Committee for its consideration. The recommendations are contained in two sections. Section A includes recommendations directly related to the use of a presumptive mediation program. Section B includes recommendations not directly tied to presumptive mediation, but rather to

mediation in general. These latter recommendations are a by product of the program analysis. Additionally, Recommendations 2 and 5 in Section A should only be implemented subject to the approval of Recommendation 1. The remaining Section A recommendations, although tied to presumptive mediation, are considered worthy of individual consideration.

Statewide implementation of presumptive mediation in municipal court should not be contingent upon completion of the programming recommendations set forth in recommendations 3 and 4, although completion of that programming is critical to the ultimate success of the statewide program.

A. Recommendations Linked to Presumptive Mediation

Recommendation 1

The Working Group recommends that presumptive mediation be utilized statewide in the municipal courts.

In addition to measuring general views about mediation, the goal of this pilot program and the original was to determine whether presumptive mediation should be implemented statewide. Direct questions regarding the appropriateness of a statewide presumptive mediation program was asked of judges, staff and mediators. All three groups strongly supported the presumptive mediation concept. As reported earlier, 91% of judges, 89% of staff and 82% of participating mediators agreed that the presumptive concept should be replicated statewide. Recommendation 1 reflects that consensus.

Recommendation 2

The AOC and vicinage municipal divisions should develop and provide training to municipal court judges and staff to ensure that courts fully understand and utilize the presumptive mediation concept.

An important finding from this pilot, as well as the original, is that a fair percentage of pilot courts did not adhere to the presumptive mediation concept. Whether the reason was that judges and staff simply misunderstood the program expectations or whether courts actively chose not to adhere to the pilot concept is not known. Both may have played a factor. To account for the first possibility, the Working Group recommends statewide implementation of the presumptive model should be supported by mandatory training to all judges and staff to help reinforce the mediation concept. Additionally, information about the presumptive model should be incorporated into the Principles of Municipal Court Administrator (POMCA) program, the New Judge's Orientation program, and the newly developed CJOP program. (Note: these changes to training should only occur subject to statewide implementation of the presumptive model.)

Recommendation 3

The AOC should enhance the ATS/ACS computer system to enable better tracking of mediation cases, including notice in lieu cases.

To gather data for this report on the number of cases referred to mediation, participating courts were required to submit monthly reports to help track mediation statistics. These reports, developed manually by court staff,

were then manually compiled by AOC staff. In order to make collection of mediation statistics more efficient and reliable, the Working Group recommends that enhancements be made to the ATS/ACS computer system to better track the number of mediated cases, as well as mediation case outcomes (i.e. successful or unsuccessful mediation). This should include tracking cases formally filed with the court, as well as *notice in lieu* cases (see the commentary under Recommendation 4 for additional information on tracking *notice in lieu* cases).

Recommendation 4

The AOC should make enhancements to the ATS/ACS computer system to assist with scheduling mediation cases, noticing mediation participants and providing outcome-based mediation statistics.

One of the more common criticisms levied at mediation is that it creates more work for staff. This is because the mediation scheduling process is manual. Specifically, staff must coordinate with the mediator to schedule a case then generate letters to advise both parties of the session particulars. Staff must also make arrangements to send the proper material/forms to mediators, as well as schedule the meeting room and arrange for court security. Collectively, this likely serves as a disincentive to some courts to use mediation. To help ameliorate these issues, the Working Group recommends that enhancements be made to the ATS/ACS computer system to aid with scheduling cases and noticing participants.

More significantly, as noted in the report and highlighted in Recommendation 3, *notice in lieu* cases are currently not entered into or tracked by the ATS/ACS computer system. It is strongly recommended that an enhancement be made to the ATS/ACS system to enable these matters to be entered and tracked. Moreover, the same scheduling and noticing features discussed above should be available for use with *notice in lieu* cases.

Recommendation 5

The AOC should develop computerized reports to aid Municipal Presiding Judges in their oversight of the presumptive mediation program.

As indicated in the commentary for recommendation 2, a large number of pilot courts failed to follow the presumptive mediation concept. To better ensure compliance should the presumptive model be replicated statewide, the AOC should develop an electronic report(s) to aid Municipal Presiding Judges in overseeing program compliance. (Note: this increased reporting should only be completed following the statewide implementation of the presumptive model.)

Recommendation 6

The forms and notices developed for use by the pilot courts should be promulgated for use by all municipal courts.

Section V identifies five forms and notices developed for use by the pilot courts. These forms and notices were developed to aid the courts in administering the mediation program. Promulgation of these five forms and

notices will help standardize the implementation of the mediation program in all courts. Where possible, and consistent with recommendation 4, these notices and forms should be available through the ATS/ACS computer system. The five forms and notices are as follows: 1) Mediation Information Form, 2) Notice of Scheduled Mediation, 3) Mediation Session Guidelines, 4) Mediation Agreement, and 5) Mediator's Final Report.

B. Additional Recommendations

Recommendation 7

Courts should be authorized to send to mediation complaints issued by a police officer when the complaint clearly involves a "neighborhood" or other minor dispute, or a case involving truancy.

Most courts interpret the language in R. 7:8-1 to mean that only private citizen complaints should be sent to mediation. As such, most courts refrain from sending to mediation police issued complaints. In Section VII, we reported that some courts interpret the rule more broadly and send police issued complaints to mediation when the case really involves a minor dispute between two (or more) parties.

The Subcommittee believes that a dispute involving two (or more) neighbors may be amenable to mediation regardless of whether the matter is filed by a police officer or brought by a private citizen. In reality, direct

involvement by the police in these minor complaints is oftentimes more a product of police resources or philosophy than case seriousness or strength of case; some police departments are simply more amenable to taking and issuing these minor complaints. The Subcommittee, therefore, believes that the rule to be modified to authorize all courts to send police issued complaints to mediation when appropriate. These cases, however, should not be presumptively sent to mediation. They should be referred by the judge only after obtaining input from the municipal prosecutor and the issuing officer. Further, only the private citizen – i.e. the person who called the police and the subject of the complaint – should be directed to mediation; the police officer may not participate.

Additionally, the Subcommittee recommends that truancy cases (Title 18) handled by municipal courts should similarly be eligible for mediation, regardless of who issued the complaint (a representative from the school district or the police). The Subcommittee contends that the informal atmosphere at mediation makes these cases amenable to mediation, since it enables the child, the parent(s), and a school representative to reach an amicable resolution. This also alleviates concerns regarding the handling of these family-type cases in an open municipal court. Finally, as with police complaints, it is recommended that these matters not be presumptively sent to mediation, but rather carefully screened by judges and staff.

Recommendation 8

Shoplifting cases should be excluded from mediation.

As reported in Section VI.C, judges and staff were provided with a list of thirteen different matters (or types of matters) and asked to specify the appropriateness of each for mediation. Shoplifting was the only offense both groups felt strongly should not go to mediation. Based on the strong level of support to exclude these matters and because shoplifting may involve mandatory jail time, the Working Group recommends that shoplifting cases be specifically prohibited from mediation. This will require a change to Rules 1:40-8 and 7:8-1. The recommended language change in both Rules would be as follows:

> "No referral to mediation shall be made, however, if the complaint involves (1) serious injury, (2) repeated acts of violence between the parties, (3) clearly demonstrated psychological or emotional disability of a party, (4) incidents involving the same persons who are already parties to a Superior Court action between them, (5) matters arising under the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.), (6) a violation of the New Jersey Motor Vehicle Code (Title 39), [or] (7) matters involving penalty enforcement actions, or (8) shoplifting charges (N.J.S.A. 2C:20-11)."

Recommendation 9

The Conference of Presiding Judges-Municipal Courts should be asked to make recommendations to the full CDR Committee on any matters (or types of matters) it believes should be included or excluded from mediation.

The Subcommittee recommends that the Conference of Presiding Judges-Municipal Courts be asked to consider whether other matters should similarly be

included or excluded from mediation. The Conference should consider this issue and report its recommendations to the Municipal Programs Subcommittee for consideration during the 2013-2015 Rules cycle.

Appendices

Appendix A

Presumptive Mediation Pilot Program Working Group

Paul Catanese, P.J.M.C. (retired), Chair
Leigh Eastty, Manager
Kathleen Gaskill, Manager
Debra Jenkins, Assistant Director
Valorie Landsky, Administrative Specialist 4
Lilia L. Lopez, Municipal Division Manager
Steven A. Somogyi, Chief
Lawrence E. Walton, Chief (retired)
Carol A. Welsch, Chief

Appendix B

The Forty-five Participating Pilot Courts, by Vicinage

Atlantic/Cape May
Brigantine
North Wildwood
Ventnor

Bergen
Lodi
Paramus
Waldwck

Burlington
Florence
Pemberton
Riverside

Camden
Bellmawr
Collingswood
Winslow

Essex
Belleville
Livingston
Orange

Cumberland/Gloucester/Salem
Millville
Pittsgrove
Woolrich Joint

Hudson
Hoboken
Jersey City
Secaucus

Mercer
Ewing
Hightstown
Lawrence

Middlesex
East Brunswick
Highland Park
Sayreville

Monmouth
Belmar
Shrewsbury
Tinton Falls

Morris/Sussex
Lincoln Park
Morristown
Vernon

Ocean
Brick
Berkeley
Toms River

Passaic
Clifton
Hawthorne
Wayne

Somerset/Hunterdon/Warren
Bridgewater
North Hunterdon Joint
Phillipsburg

Union
Elizabeth
Garwood
Springfield

Appendix C

Survey Instruments

- **Participant Survey**
- **Mediator Survey**
- **Judges Surveys**
- **Staff Surveys**

New Jersey Judiciary
Municipal Court Services Division - Presumptive Mediation Pilot Program

Participant Evaluation

Municipal Court of _____

Please take a few minutes to complete this form, place it in the envelope provided to you, and seal the envelope. Return the sealed envelope to your mediator(s) or the court administrator. **Your answers to this questionnaire are strictly confidential**.

Thank you. Your evaluation is important in helping us improve our mediation program.

I am the ☐ **Person Filing the Complaint** ☐ **Responding Party** ☐ **Both (cross complaint)**

Part I - Circle the number that best represents your answer.

		Strongly Disagree	Somewhat Disagree	Neither Agree nor Disagree	Somewhat Agree	Strongly Agree
1.	The information mailed to me adequately explained the mediation process.	1	2	3	4	5
2.	The mediator(s) made sure I understood the process prior to beginning the mediation.	1	2	3	4	5
3.	The mediator(s) was pleasant and courteous.	1	2	3	4	5
4.	I was satisfied with the mediation program and the way my mediation was handled.	1	2	3	4	5
5.	The mediator(s) was fair and impartial.	1	2	3	4	5
6.	The mediator(s) kept the discussion directed to the main issues of the dispute during the mediation.	1	2	3	4	5
7.	The mediator(s) appeared to be genuinely interested in the settlement of my dispute.	1	2	3	4	5
8.	The mediator(s) encouraged both parties to reach an agreement.	1	2	3	4	5
9.	If I become a party to a similar dispute in the future, I am likely to want to try mediation again.	1	2	3	4	5

Part II (Select only ONE response)

10. Did your mediation result in a written agreement?

☐ **Yes**, I was satisfied with the terms of the agreement.

(Circle one)
1 Strongly Disagree
2. Somewhat Disagree
3. Neither Agree nor Disagree
4. Somewhat Agree
5. Strongly Agree

OR

☐ **No**; however, I was satisfied that the mediator(s) did everything possible to bring about a settlement.

(Circle one)
1 Strongly Disagree
2. Somewhat Disagree
3. Neither Agree nor Disagree
4. Somewhat Agree
5. Strongly Agree

Additional comments (may be continued on back):

New Jersey Judiciary
Municipal Court Services Division
Presumptive Mediation Pilot Program

Mediator Evaluation

Municipal Court of _____

Mediator's Name _____ Date _____

Please take a few minutes to complete this form, place it in the envelope provided to you, and seal the envelope. Return the sealed envelope to the court administrator.

Your answers to this questionnaire are strictly confidential.

Thank you. Your evaluation is important in helping us improve our mediation program.

Instructions: For questions 1-6 please circle the number that best represents your agreement with each statement, from "Strongly Disagree" (1) to "Strongly Agree" (5).

		Strongly Disagree	Somewhat Disagree	Neither Agree nor Disagree	Somewhat Agree	Strongly Agree
1.	Mediation was appropriate for the matter(s) that I received.	1	2	3	4	5
2.	The court's procedures were efficient in getting matters to me.	1	2	3	4	5
3.	The presumptive mediation pilot project created substantially more paperwork for me to handle.	1	2	3	4	5
4.	The scheduling of the presumptive mediation sessions was done effectively.	1	2	3	4	5
5.	I recommend that presumptive mediation should be used statewide.	1	2	3	4	5
6.	The mediation training prepared me to handle the presumptive matters being referred to me in the pilot program.	1	2	3	4	5

7. Please list any suggestions that you feel will improve the program.

Additional comments:

Thank you for your participation and cooperation

New Jersey Judiciary
Municipal Court Services Division
Presumptive Mediation Pilot Program
July 1, 2010 – June 30, 2011

Judge's Final Evaluation

Municipal Court of _____

Name _____ Date _____

Please allow 10-15 minutes of your time to provide thorough responses. Your responses will be considered when determining whether this pilot program should be expanded statewide.

Instructions: For questions 1-3 please circle the number that best represents your agreement with each statement from "Strongly Disagree" (1) to "Strongly Agree" (5).

		Strongly Disagree	Somewhat Disagree	Neither Agree nor Disagree	Somewhat Agree	Strongly Agree
1.	The judge was involved in deciding which cases were referred to presumptive mediation.	1	2	3	4	5
2.	With presumptive mediation the cases in my court were scheduled and resolved in a more timely manner than prior to the implementation of the program.	1	2	3	4	5
3.	I would like my court to continue the presumptive mediation program even though the pilot has ended.	1	2	3	4	5

4. Did the automatic referral of most cases to mediation make a difference in your mediation program? Please explain your response. ☐ Yes ☐ No

_____

_____

5. Did the pilot program create more work for your staff? If yes, please provide details below. ☐ Yes ☐ No

_____

_____

6. Did you need to recruit additional mediators or reduce the size of your mediator panel in order to accommodate the increase in the number of cases being referred as a result of the presumptive mediation program? Include any comments below. ☐ Yes ☐ No

_____

_____

7. What do you think would be a significant obstacle to continuing a presumptive mediation program in your municipal court?

_____

_____

8. Are you supportive of the presumptive mediation concept? Specifically, do you believe that certain types of municipal court cases should automatically be sent to mediation? Please explain your response. ☐ Yes ☐ No

_____

_____

9. The following cases have been determined appropriate for mediation. Based on your knowledge and experience, please indicate which of the following you feel are appropriate for presumptive mediation. Please also add any cases not on the list that you believe are appropriate for presumptive mediation.

		Appropriate for Presumptive Mediation?	
a.	Disorderly Persons and Petty Disorderly Persons	☐ Yes	☐ No
b.	Simple assaults	☐ Yes	☐ No
c.	Trespassing	☐ Yes	☐ No
d.	Harassment	☐ Yes	☐ No
e.	Creating disturbance/noise complaints	☐ Yes	☐ No
f.	Shoplifting under $200	☐ Yes	☐ No
g.	Neighborhood disputes	☐ Yes	☐ No
h.	Merchant/customer disputes	☐ Yes	☐ No
i.	Landlord/tenant disputes	☐ Yes	☐ No
j.	Bad check charges	☐ Yes	☐ No
k.	Criminal mischief	☐ Yes	☐ No
l.	Property disputes	☐ Yes	☐ No
m.	Animal complaints	☐ Yes	☐ No
n.	_____	☐ Yes	☐ No
o.	_____	☐ Yes	☐ No
p.	_____	☐ Yes	☐ No

Comments regarding the above:

_____

_____

Please include any other comments you feel would assist us in evaluating the success of the Presumptive Mediation Pilot Program:

_____

_____

_____

Thank you for your participation.

New Jersey Judiciary
Municipal Court Services Division
Presumptive Mediation Pilot Program
July 1, 2010 – June 30, 2011

Court Administrator's Final Evaluation

Municipal Court of _____

Name _____ Date _____

Please allow 10-15 minutes of your time to provide thorough responses. Your responses will be considered when determining whether this pilot program should be expanded statewide.

Instructions: For questions 1-3 please circle the number that best represents your agreement with each statement from "Strongly Disagree" (1) to "Strongly Agree" (5).

		Strongly Disagree	Somewhat Disagree	Neither Agree nor Disagree	Somewhat Agree	Strongly Agree
1.	The judge was involved in deciding which cases were referred to presumptive mediation.	1	2	3	4	5
2.	With presumptive mediation the cases in my court were scheduled and resolved in a more timely manner than prior to the implementation of the program.	1	2	3	4	5
3.	I would like my court to continue the presumptive mediation program even though the pilot has ended.	1	2	3	4	5

4. Did the automatic referral of most cases to mediation make a difference in your mediation program? Please explain your response. ☐ Yes ☐ No

_____

_____

5. Did the pilot program create more work for your staff? If yes, please provide details below. ☐ Yes ☐ No

_____

_____

6. Did you need to recruit additional mediators or reduce the size of your mediator panel in order to accommodate the increase in the number of cases being referred as a result of the presumptive mediation program? Include any comments below. ☐ Yes ☐ No

_____

_____

7. What do you think would be a significant obstacle to continuing a presumptive mediation program in your municipal court?

_____

_____

Published 07/2011, CN 11503

8. Are you supportive of the presumptive mediation concept? Specifically, do you believe that certain types of municipal court cases should automatically be sent to mediation? Please explain your response. ☐ Yes ☐ No

_____

_____

9. The following cases have been determined appropriate for mediation. Based on your knowledge and experience, please indicate which of the following you feel are appropriate for presumptive mediation. Please also add any cases not on the list that you believe are appropriate for presumptive mediation.

		Appropriate for Presumptive Mediation?	
a.	Disorderly Persons and Petty Disorderly Persons	☐ Yes	☐ No
b.	Simple assaults	☐ Yes	☐ No
c.	Trespassing	☐ Yes	☐ No
d.	Harassment	☐ Yes	☐ No
e.	Creating disturbance/noise complaints	☐ Yes	☐ No
f.	Shoplifting under $200	☐ Yes	☐ No
g.	Neighborhood disputes	☐ Yes	☐ No
h.	Merchant/customer disputes	☐ Yes	☐ No
i.	Landlord/tenant disputes	☐ Yes	☐ No
j.	Bad check charges	☐ Yes	☐ No
k.	Criminal mischief	☐ Yes	☐ No
l.	Property disputes	☐ Yes	☐ No
m.	Animal complaints	☐ Yes	☐ No
n.	_____	☐ Yes	☐ No
o.	_____	☐ Yes	☐ No
p.	_____	☐ Yes	☐ No

Comments regarding the above:

_____

_____

Please include any other comments you feel would assist us in evaluating the success of the Presumptive Mediation Pilot Program:

_____

_____

_____

Thank you for your participation.

Appendix D

Other Forms/Notices Used in the Pilot Program

New Jersey Judiciary
Municipal Court Services Division
Presumptive Mediation Pilot Program
Mediation Information

Municipal Court of _____

For Office Use Only
Mediation Case Number

Sent to Mediation?
☐ Yes ☐ No

Date:

Filing Party	**Other Party** (include as much information as you can)
NAME Last / First / Middle	NAME Last / First / Middle
ADDRESS Street	ADDRESS Street
City / State / Zip Code	City / State / Zip Code
PHONE NO. Home / Work	PHONE NO. Home / Work
Do you have any needs under the Americans with Disabilities Act? ☐ Yes ☐ No If yes, please identify any requirements or accommodations you may require.	Does the other party have any needs under the Americans with Disabilities Act? ☐ Yes ☐ No ☐ Unknown If yes, please identify any requirements or accommodations the other party may require (if known).
Do you require an interpreter? ☐ Yes ☐ No If yes, for what language? _____	Will an interpreter be needed? ☐ Yes ☐ No ☐ Unknown If yes, for what language? _____

Other party's relationship to you (neighbor, friend, etc.) _____

Is the other party 18 years old or older?	☐ Yes ☐ No ☐ Unknown
Were there any serious injuries?	☐ Yes ☐ No
Does your dispute involve a traffic violation?	☐ Yes ☐ No
Is there a current Domestic Violence Restraining Order between you and the other party; or, are you and the other party involved in a court matter under the Prevention of Domestic Violence Act?	☐ Yes ☐ No
Are you and the other party involved in a Superior Court matter at this time?	☐ Yes ☐ No
Are you aware of a clearly demonstrated psychological or emotional disability of the other party?	☐ Yes ☐ No
Have there been repeated acts of violence between you and the other party?	☐ Yes ☐ No

Briefly describe what happened:

_____ Signature

_____ Date

Notice of Scheduled Mediation

Municipal Court of _____

_____

_____

_____

Telephone: _____ Mediation Case # _____

_____
Filing Party

_____
Responding Party

Please be advised that the court has referred this case to mediation in an attempt to resolve this dispute.

Your case is scheduled for _____, 20__ at _____ ☐ am ☐ pm at the following location:

_____

Mediation is a court-approved process in which a trained neutral person, called a mediator, encourages and facilitates the resolution of a dispute between two or more parties. A mediation session is informal and non-adversarial; its objective is to help the disputing parties reach a mutually acceptable and voluntary agreement.

The mediators are citizen-volunteers, appointed by the court, who assist other citizens in resolving their disputes through the process of mediation. The mediator listens impartially to what everyone has to say. The mediator does not take sides and will not make judgments about "right" or "wrong."

Mediators do not determine guilt or innocence or impose penalties, but rather help the parties explore solutions to the problem. Mediation avoids the necessity of a formal court appearance and the possibility of court costs, fines, and/or a criminal record. More importantly, solutions reached through mediation are often more acceptable to both parties and more lasting.

Please read the Guidelines accompanying this Notice.

All parties can win in mediation. There are no losers. Since mediation is cooperative problem solving, the solution will satisfy everyone. Mediation provides citizens with a convenient, fair and effective process for resolving disputes and encourages them to take an active role in their legal system. **Thank you in advance for participating in the mediation process.**

You are required to appear at the mediation session. Failure to appear may result in the court issuing a warrant for your arrest. **Rescheduling or postponements will only be allowed in extraordinary circumstances.**

_____ _____
Date Court Administrator / Deputy Court Administrator

Please notify the court of any disability accommodation needs and language interpreting needs before your mediation date.

MEDIATION SESSION GUIDELINES

- Mediation is a confidential process. The parties and the mediator are bound by the rules of confidentiality (*R.* 1:40-4) and the Supreme Court Standards of Conduct for Mediators in Court-Connected Programs.
- Neither the public nor the press is permitted at any of the sessions. Only those individuals directly related to the case are allowed to be present. In that way, the parties have more privacy than if the case was heard in open court.
- All parties will be given adequate time to present their comments regarding the disputed issue(s). Feel free to speak openly. Anything said or any notes taken during the session cannot be used as evidence in court.
- At the discretion of the mediator, both parties may use other witnesses in presenting their cases, but the time allowed for each witness will be limited by the mediator. Witnesses are typically allowed inside the session room only when providing testimony.
- The parties are allowed to bring to the session any pertinent information, such as receipts, estimates, pictures, etc., which may be helpful in resolving the dispute.
- Each party will have the opportunity to be heard by the mediator with the other party present. In most cases, the party who filed the matter will be heard first. The responding party will be heard second. At some point during the session, the mediator may ask to speak with each party separately.
- If the party who filed the matter fails to appear for the session, the mediator will recommend to the court that the matter be dismissed.
- If the responding party fails to appear for the session, the mediator will send the case back to the court.
- All parties are expected to listen courteously to each other and refrain from name-calling, profanity or threatening behavior. The mediator has the discretion to limit comments or language that he/she feels is inappropriate, or to end the session.
- After a full discussion of the issues, the mediators will work with the parties to discover what mutually agreeable solutions might exist. Any agreement reached must be acceptable to all parties. The agreement will become part of the official court record. It is expected that the parties will follow the terms of the agreement. All parties will receive a copy of the agreement.
- If no agreement can be reached, the matter will be returned to the court.
- Unless otherwise agreed to by all parties, a mediator is prohibited from handling a case involving someone he or she knows. If any party objects, another mediator will hear the case.
- Certain matters, including those involving domestic violence or where a restraining order is in effect, cannot be heard by a mediator. If you have any questions regarding what matters can and cannot be sent to mediation, please refer to the Rules Governing the Courts of the State of New Jersey (*Rule* 7:8-1). Please also feel free to contact the municipal court administrator.

New Jersey Judiciary
Municipal Court Services Division
Presumptive Mediation Pilot Program

Mediation Agreement

Municipal Court of _____

Mediation Case #: _____

Matter Filed By: _____

Respondent: _____

Mediator Name (print): _____

Mediator Signature: _____ Date: _____

We, the undersigned parties, have participated in mediation in which certain matters in dispute were discussed and resolved.

We have reached an agreement and agree to the following:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

We have read this agreement. We have entered into it voluntarily and without force or coercion and we understand its terms and conditions.

We agree to be bound by this agreement and understand that failure to adhere to it may result in further court action by formal complaint.

_____ _____
Signature of Person Who Filed Complaint Date

_____ _____
Signature of Responding Party Date

New Jersey Judiciary
Municipal Court Services Division
Presumptive Mediation Pilot Program

Mediator's Final Report

Municipal Court of _____

Mediation Case #: _____ Date: _____

To (Judge): _____

From (Mediator): _____

☐ 1. A mediation session was held and both parties appeared.

- ☐ A. The parties reached an agreement and agreed to dismiss the charges. A copy of the agreement is attached.
- ☐ B. The parties did not reach an agreement and I have advised the parties that this case will be referred back to the municipal court.

☐ 2. A mediation session was not held. (Please check all that apply)

- ☐ A. Person filing the matter failed to appear.
- ☐ B. Respondent failed to appear.
- ☐ C. The parties settled before mediation.
- ☐ D. Other _____

☐ 3. Other comments, suggestions or concerns about the mediation program:
[Note: Do not disclose any mediation communication from the session as per Court Rule 1:40-4]

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Respectfully submitted,

_____
Mediator's Signature

Appendix E

Citizen Participant Survey Results

Participant Survey Results

Question 1: The information mailed to me adequately explained the mediation process.

	Person Filing the Complaint	Person Subject of the Complaint	Cross-Complainants	Totals *
Strongly Agree	187	157	33	440
Somewhat Agree	41	39	6	97
Neutral	22	16	7	50
Somewhat Disagree	3	4	0	9
Strongly Disagree	14	18	3	45
Totals	267	234	49	641

Question 2: The mediator(s) made sure I understood the process prior to beginning the mediation.

	Person Filing the Complaint	Person Subject of the Complaint	Cross-Complainants	Totals *
Strongly Agree	229	189	39	530
Somewhat Agree	30	25	3	66
Neutral	3	7	4	17
Somewhat Disagree	4	4	0	8
Strongly Disagree	11	11	0	29
Totals	277	236	46	650

*** Please note that the totals columns, for each question, do not reflect the totals of the three other columns (i.e., Person Filing the Complaint, Person Subject of the Complaint and Cross-Complainants). This is because some respondents never identified their status.**

Question 3: The mediator(s) was pleasant and courteous

	Person Filing the Complaint	Person Subject of the Complaint	Cross-Complainants	Totals *
Strongly Agree	242	199	45	561
Somewhat Agree	18	16	4	43
Neutral	2	5	1	10
Somewhat Disagree	2	2	0	5
Strongly Disagree	10	13	1	31
Totals	274	235	51	650

Question 4: I was satisfied with the mediation program and the way my mediation was handled.

	Person Filing the Complaint	Person Subject of the Complaint	Cross-Complainants	Totals *
Strongly Agree	194	174	37	471
Somewhat Agree	42	26	5	81
Neutral	13	15	4	35
Somewhat Disagree	10	2	1	14
Strongly Disagree	18	15	2	46
Totals	277	232	49	647

Question 5: The mediator(s) was fair and impartial.

	Person Filing the Complaint	Person Subject of the Complaint	Cross-Complainants	Totals *
Strongly Agree	223	177	42	511
Somewhat Agree	29	29	7	72
Neutral	7	10	1	24
Somewhat Disagree	4	3	0	8
Strongly Disagree	12	13	0	31
Totals	275	232	50	646

Question 6: The mediator(s) kept the discussion directed to the main issues of the dispute during the mediation.

	Person Filing the Complaint	Person Subject of the Complaint	Cross-Complainants	Totals *
Strongly Agree	228	187	42	528
Somewhat Agree	25	25	2	58
Neutral	5	7	5	21
Somewhat Disagree	7	4	0	12
Strongly Disagree	9	12	1	30
Totals	274	236	50	649

Question 7: The mediator(s) appeared to be genuinely interested in the settlement of my dispute.

	Person Filing the Complaint	Person Subject of the Complaint	Cross-Complainants	Totals *
Strongly Agree	226	194	43	532
Somewhat Agree	22	18	4	52
Neutral	11	8	2	24
Somewhat Disagree	5	4	2	15
Strongly Disagree	9	12	0	27
Totals	273	236	51	650

Question 8: The mediator(s) encouraged both parties to reach an agreement.

	Person Filing the Complaint	Person Subject of the Complaint	Cross-Complainants	Totals *
Strongly Agree	242	190	44	546
Somewhat Agree	14	22	4	47
Neutral	7	6	3	17
Somewhat Disagree	1	1	0	4
Strongly Disagree	9	13	0	29
Totals	273	232	51	643

Question 9: If I became a party to a similar dispute in the future, I am likely to want to try mediation again.

	Person Filing the Complaint	Person Subject of the Complaint	Cross-Complainants	Totals *
Strongly Agree	193	186	39	484
Somewhat Agree	32	22	6	66
Neutral	21	6	2	36
Somewhat Disagree	9	3	3	17
Strongly Disagree	18	16	0	43
Totals	273	233	50	646

Question 10a: Did your mediation result in a written agreement? Yes, I was satisfied with the agreement terms.

	Person Filing the Complaint	Person Subject of the Complaint	Cross-Complainants	Totals *
Strongly Agree	91	99	19	231
Somewhat Agree	31	18	2	56
Neutral	8	5	1	16
Somewhat Disagree	7	4	1	12
Strongly Disagree	18	15	5	44
Totals	155	141	28	359

Question 10b: Did your mediation result in a written agreement? – No; however, I was satisfied that the mediator(s) did everything possible to bring about a settlement.

	Person Filing the Complaint	Person Subject of the Complaint	Cross-Complainants	Totals *
Strongly Agree	13	13	2	29
Somewhat Agree	5	2	1	9
Neutral	1	1	1	3
Somewhat Disagree	2	2	0	5
Strongly Disagree	2	1	1	5
Totals	23	19	5	51

Participant Surveys

Participant Surveys
Average Scores Ranked in Descending Order
Based on Total Sample Column

Question	Total Sample	Filing Party	Responding Party	Cross Complainant
[Sample Size] *	[650]	[277]	[236]	[51]
The mediator(s) was pleasant and courteous.	4.69 **	4.75	4.64	4.80
The mediator(s) encouraged both parties to reach an agreement.	4.67	4.75	4.62	4.80
The mediator(s) kept the discussion directed to the main issues of the dispute during the mediation.	4.66	4.66	4.56	4.68
The mediator(s) made sure I understood the process prior to beginning the mediation.	4.63	4.67	4.60	4.76
The mediator(s) appeared to be genuinely interested in the settlement of my dispute.	4.61	4.65	4.60	4.73
The mediator(s) was fair and impartial.	4.59	4.63	4.53	4.82
If I become a party to a similar dispute in the future, I am likely to want to try mediation again.	4.44	4.37	4.54	4.62
I was satisfied with the mediation program and the way my mediation was handled.	4.42	4.39	4.47	4.51
The information mailed to me adequately explained the mediation process.	4.37	4.44	4.34	4.35
Average Score	4.56	4.59	4.54	4.67

*** Note: Column totals do not reflect the total of the three remaining columns (i.e. Filing Party, Responding Party and Cross-Complainants). This is because some respondents never identified their status.**

**** Note: Responses are based on a five point Likert-scale. A value of one means the respondent strongly disagrees with the statement, while a value of five means the respondent strongly agrees. The remaining values, two through four, serve as different points on the "strongly agree" to "strongly disagree" continuum.**

Participant Surveys

Did your mediation result in a written agreement?

	Total Sample	Filing Party	Responding Party	Cross Complainant
Yes, I was satisfied with the terms of the agreement.				
Sample Size = 359	4.16	4.10	4.29	4.04
No; however, I was satisfied that the mediator(s) did everything possible to bring about a settlement.				
Sample Size = 51	4.02	4.09	4.26	3.60

Appendix F

Mediator Survey Results

Mediator Survey Results

Question 1: Mediation was appropriate for the matter(s) that I handled.

	Mediator Response Totals	Percentages
Strongly Agree	61	74%
Somewhat Agree	8	10%
Neutral	5	6%
Somewhat Disagree	6	7%
Strongly Disagree	2	2%

Question 2: The court's procedures were efficient in getting matters to me.

	Mediator Response Totals	Percentages
Strongly Agree	71	88%
Somewhat Agree	5	6%
Neutral	2	2%
Somewhat Disagree	3	4%
Strongly Disagree	0	0%

Question 3: The presumptive mediation pilot project created substantially more paperwork for me to handle.

	Mediator Response Totals	Percentages
Strongly Agree	37	46%
Somewhat Agree	15	19%
Neutral	14	17%
Somewhat Disagree	6	7%
Strongly Disagree	9	11%

Question 4: The scheduling of presumptive mediation sessions was done effectively.

	Mediator Response Totals	Percentages
Strongly Agree	69	85%
Somewhat Agree	8	10%
Neutral	2	2%
Somewhat Disagree	2	2%
Strongly Disagree	0	0%

Question 5: I recommend that presumptive mediation should be used statewide.

	Mediator Response Totals	Percentages
Strongly Agree	62	77%
Somewhat Agree	4	5%
Neutral	10	12%
Somewhat Disagree	2	2%
Strongly Disagree	3	4%

Question 6: The mediation training prepared me to handle the presumptive matters being referred to me in the pilot program.

	Mediator Response Totals	Percentages
Strongly Agree	55	69%
Somewhat Agree	15	19%
Neutral	7	9%
Somewhat Disagree	1	1%
Strongly Disagree	2	3%

Mediator Surveys

Final Mediator Evaluations
Ranked in Descending Order

Questions	[Sample Size]	Average *
The court's procedures were efficient in getting matters to me.	[81]	4.78
The scheduling of the presumptive mediation sessions was done effectively.	[81]	4.78
The mediation training prepared me to handle the presumptive matters being referred to me in the pilot program.	[81]	4.50
I recommend that presumptive mediation should be used statewide.	[81]	4.48
Mediation was appropriate for the matter(s) that I received	[82]	4.46
The presumptive mediation pilot project created substantially more paperwork for me to handle.	[81]	3.80

**** Note: Responses are based on a five point Likert-scale. A value of one means the respondent strongly disagrees with the statement, while a value of five means the respondent strongly agrees. The remaining values, two through four, serve as different points on the "strongly agree" to "strongly disagree" continuum.**

Appendix G

Judge and Staff Survey Results

Judge and Court Staff Survey Results

Question 1: The judge was involved in deciding which cases were referred to presumptive mediation.

	Judge Responses		Court Staff Responses	
	#	%	#	%
Strongly Agree	16	33%	11	23%
Somewhat Agree	8	17%	9	19%
Neutral	9	19%	8	17%
Somewhat Disagree	5	10%	11	23%
Strongly Disagree	10	21%	9	19%

Question 2: With presumptive mediation the cases in my court were scheduled and resolved in a more time manner than prior to the implementation of the program.

	Judge Responses		Court Staff Responses	
	#	%	#	%
Strongly Agree	8	17%	8	17%
Somewhat Agree	13	28%	7	15%
Neutral	14	30%	19	40%
Somewhat Disagree	5	11%	6	13%
Strongly Disagree	7	15%	8	17%

Question 3: I would like my court to continue the presumptive mediation program even though the pilot has ended.

	Judge Responses		Court Staff Responses	
	#	%	#	%
Strongly Agree	22	47%	20	43%
Somewhat Agree	8	17%	7	15%
Neutral	8	17%	10	21%
Somewhat Disagree	2	4%	3	6%
Strongly Disagree	7	15%	7	15%

Question 4: Did the automatic referral of most cases to mediation make a difference in your mediation program? Please explain your response. *

	Judge Responses		Court Staff Responses	
	#	%	#	%
Yes	22	51%	22	52%
No	21	49%	20	48%

* **See attached for additional Information**

Question 5: Did the pilot program create more work for your staff? If yes, please provide details below. *

	Judge Responses		Court Staff Responses	
	#	%	#	%
Yes	25	57%	34	74%
No	19	43%	12	26%

* **See attached for additional Information**

Question 6: Did you need to recruit additional mediators or reduce the size of your mediator panel in order to accommodate the increase in the number of cases being referred as a result of the presumptive mediation program? Include any comments below.

	Judge Responses		Court Staff Responses	
	#	%	#	%
Yes	8	18%	13	28%
No	37	82%	33	72%

* **See attached for additional Information**

Question 7: What do you think would be a significant obstacle to continuing a presumptive mediation program in your municipal court?

* **See attached for additional Information**

Question 8: Are you supportive of the presumptive mediation concept? Specifically, do you believe that certain types of municipal court cases should automatically be sent to mediation? Please explain your response.

	Judge Responses		Court Staff Responses	
	#	%	#	%
Yes	41	91%	40	89%
No	4	9%	5	11%

* **See attached for additional Information**

Question 9: The following cases have been determined appropriate for mediation. Based on your knowledge and experience, please indicate which of the following you feel are appropriate for presumptive mediation. Please also add any cases not on the list that you believe are appropriate for presumptive mediation.

	Judge Responses *		Court Staff Responses *	
	#	%	#	%
DP/PDP Cases	28	80%	30	75%
Simple Assault	23	59%	22	52%
Trespassing	34	81%	31	72%
Harassment	39	95%	41	93%
Creating Dist./Noise Viol.	40	95%	45	98%
Shoplifting under $200	13	33%	11	24%
Neighborhood Disputes	43	100%	45	98%
Merchant/Cust. Disputes	35	90%	37	82%
Landlord/Tenant Disputes	34	85%	26	60%
Bad Check Charges	38	93%	34	76%
Criminal Mischief	29	73%	25	57%
Property Disputes	40	100%	41	98%
Animal Complaints	35	90%	41	93%

*** All numbers and percentages are in the affirmative.**

Judge and Court Administrator Surveys

General Perceptions About the Presumptive Mediation Pilot Program
Responses to “Yes/No” Questions

	Number Responding "YES" to the Following Questions			
[Sample Size]	[96]	[48]	[48]	
	Total	Judges	Court Admins	Diff
Are you supportive of the presumptive mediation concept? Specifically, do you believe that certain types of municipal court cases should automatically be sent to mediation? Please explain your response.	81	41	40	1
Did the pilot program create more work for your staff? If yes, please provide details below.	59	25	34	-9
Did the automatic referral of most cases to mediation make a difference in your mediation program? Please explain your response.	44	22	22	0
Did you need to recruit additional mediators or reduce the size of your mediator panel in order to accommodate the increase in the number of cases being referred as a result of the presumptive mediation program? Include any comments below	21	8	13	-5

Written Comments Offered to Individual Questions

The following comments were submitted in response to Question 4: Did the automatic referral of most cases to mediation make a difference in your mediation program?

	Yes Responses	No Responses
Comments Submitted by Judges	We encouraged more cases to go to mediation from the outset.	We had very few cases referred by our court.
	Some different charges were referred to mediation, i.e. bad checks.	We had no cases for mediation during the pilot period.
	Quickened scheduling and resolution without court time used.	This court has always used mediation since I've been the judge.
	Parties immediately dealt with mediator and did not feel it necessary to speak with judge.	The cases were generally not referred to mediation until the parties appeared in court.
	Not necessarily. We had been handling mediation in the same way previously.	Mediation has always been a favorable option, automatic of not.
	More cases were sent to mediation and disposed of more quickly.	Even before the pilot program, we were strong users of mediation.
	Mediation is effective in disposition of minor matters, saving court time.	Did not think there was a large increase. We have always tried to forward appropriate cases to mediation.
	It was one less appearance for the defendant and one less calendar call.	Cases were sent to mediation previously.
	Increased the coast of interpreters.	Cases referred would have been the same.
	Good diversionary situation.	No cases were sent.
	Faster resolution to the issues	
	Expedited process.	
	Case flow improved.	
	Backlog in dates.	

	Yes Responses	No Responses
Comments Submitted by Court Staff	Caused a backlog – Had to wait as much as two months for mediation date availability.	We already has a policy where all applicable cases were being sent to mediation.
	More cases were referred to mediation during this program.	Previously referred all private citizen DP's to mediation.
	Yes, we sent charges that were not	We had approximately the same

	eligible for mediation before (i.e. bad checks, simple assault).	amount of cases.
	Cases were scheduled with more flexibility – namely on non court days.	The mediation program was great here before presumptive mediation.
	There was little decision involved. Everything went unless it met the specific criteria for exemption.	Our court already had a mediation program with god results.
	Some problems with getting the court room and interpreters. Also, interpreter fees increased.	We already had an active program and just continued to schedule cases each month.
	Program does assist in out of court settlements. Enables court to focus on more serious cases.	We had mediation before this program.
	It helped us resolve cases faster; however, it increased the number of cases referred.	We did not have sufficient number of eligible cases to make a difference.
	Occasionally parties found a way to resolve problems themselves.	The cases were referred to mediation by the judge.
	Cut out some time.	No.
	More cases went to mediation.	No cases.
	The mediators were overloaded with cases. Cases were scheduled for mediation 4 months down the road.	We have had a mediation program for over 20 years. There have always been guidelines on what we can send.
	More cases went to mediation than previously.	We didn't have any cases that qualified for mediation.
	Most people were happy to go to mediation, rather than to court.	We are a small court and have very few cases.
	Most of the time, the case was resolved by the time it went to mediation.	The only thing it did was let us get mediators involved faster.
	The ability to schedule cases in a timely manner was a key	We already sent most cases to mediation.
	We have court 3 times a month. If the judge needed to make the decision, it would take longer.	
	Mediation cases were resolved faster.	
	We could schedule cases to mediation directly, instead of after they came to court.	
	There were more cases that did not settle as a result of automatic referral.	
	Our private citizen complaints really "bog down" our court. This program was a tremendous help.	
	It made mediation much easier, because all cases were referred in court.	

The following comments were submitted in response to question 5: Did the pilot program create more work for your staff?

	Yes Responses	No Responses
Comments Submitted by Judges	The multiple forms we had to complete were disruptive to the flow of cases.	The staff did work hard to achieve the goals of the program but it also saved time for trials and in-court work.
	My understanding is that it required more paper work.	
	The extra forms that were required to be collected and generated for the pilot.	
	The available materials and procedures were helpful. Unfortunately we did not have many cases.	
	Some additional paperwork for files referred.	
	Paper work, scheduling, the forms, surveys, time with the mediator.	
	Only the extra surveys.	
	More paper work and more arguments with attorneys who did not want their clients to attend.	
	More paper work to complete.	
	More paper work for staff to complete.	
	More paper work for the staff and the mediator.	
	More paper work.	
	More paper work.	
	Many more telephone calls and repetitive paper work processing	
	This manual process needs to be integrated into ACS.	
	Just a small amount	
	More paper work.	
	In the beginning, until staff became comfortable with the process.	

	Yes Responses	No Responses
Comments Submitted by Court Staff	Time consuming – people needed help filling out forms – and people claiming it took too much time.	Our court created a tracking system to manage the program and paper work.
	Yes, more forms.	No, not really. It was worth it.
	Way too much paper work. Finally,	No cases were referred.

	everyone stopped doing it.	
	Trying to get the court room for the cases and scheduling interpreter.	No cases.
	Too much paper work. Also, we had to create a spread sheet for tracking purposes.	Same amount of work as scheduling mediation previously.
	Too many papers to fill out for the process. Need to make it ore simple.	
	There was more paper work and scheduling of cases.	
	There is much more paper work at the on-set. However, there may have been less paper work in the long run, since cases were not scheduled for court numerous times.	
	The follow-up paperwork was a bit much, but it was generally okay.	
	Surveys were annoying to prepare and mail out and the two sets of paper work if a case did not settle was onerous.	
	Slight increase in paper work.	
	Paper work has increased.	
	Paper work and the number of cases sent to mediation increased.	
	Organized paper work and questionnaires prior to mediation and mailings.	
	More phone calls from participants – more paper work.	
	More paper work to fill out, distribute, etc.	
	More paper work.	
	More paper work.	
	More paper work.	
	More mediation equals more paper work.	
	More forms to have filled out. More work for mediators.	
	More forms to fill out.	
	Lots of paper work.	
	Just managing additional paper work & evaluations for every file.	
	More forms to fill out.	
	Just a bit more paper work and slight difficultly finding mediators to cover increased caseloads.	
	It was twice the paper work with redundant information.	
	It seemed like there were more follow-up reports. There should be an automatic monthly statistical report that can be used to track the	

	necessary information.	
	It seemed like more work until we became familiar with the forms.	
	It definitely increased the paperwork for the volunteers as well as staff. A lot more phone calls inquiring about the program from both defendants and complainants. Longer mediation sessions.	
	Created MANY more phone calls to court due to forms used.	
	Added paper work involving the many forms.	
	Absolutely – the forms were a burden for the clerk who manages the program.	

The following comments were submitted in response to question 6: Did you need to recruit additional mediators or reduce the size of your mediator panel in order to accommodate the increase in the number of cases being referred as a result of the presumptive mediation program?

	Yes Responses	No Responses
Comments Submitted by Judges	Our court did not have a mediator in place immediately prior to the pilot program.	We have tried to recruit additional mediators but not directly connected to this program.
		Did not seem so.
		Very difficult.

	Yes Responses	No Responses
Comments Submitted by Court Staff	The court is so large that we usually have three or four mediators on board.	We have a very dependable mediator
	We actually lost mediators.	Nom we did not. But we would need to recruit and have more sessions to reduce backlog.
	We had one, but we now have five – volume.	One mediator twice monthly was sufficient.
	We previously had no mediator, but we now have three.	We already had a very active mediation program in place.
	Our mediations were normally conducted at a regional location, but we did the scheduling.	Did have mediators here twice a month – previously only once per month.
	Because of the program, more sessions were needed, as we were	No.

	trying to schedule cases.	
	Arrangements are underway to add additional panels.	We use the county pool of mediators.
	Yes we would need to increase the number of times we meet each month and that would mean more volunteer mediators.	This has been a “down” year for mediation in our court. In the past we had more cases sent to mediation.
	Mediation was not offered in our courts prior; we sent cases to another court.	We use the county pool of mediators.
		No cases.

The following comments were submitted in response to question 7: What do you think would be a significant obstacle to continuing a presumptive mediation program in your municipal court?

Comments Submitted by Judges	The multiple forms to be completed by the various parties and keeping accurate track of them.
	We had no cases.
	The excess paper work.
	The paper work involved in the program.
	The loss of the mediator.
	No mediations were scheduled.
	Paper work required.
	Only obstacle -- in the event that the court loses its mediator and he/she can’t be replaced.
	Only 1 mediator.
	Nothing.
	Nothing.
	Nothing.
	None.
	Not having process automated.
	None – the mediation program is helpful whenever we can take advantage of it.
	None.
	None.
	None.
	None.
	None.
	None.
	None.
	None.
	None.
	None.
	None.
	None.
	No problem.
	No obstacle.

	No eligible cases.
	N/A
	N/A
	Must reduce level of paper work.
	Lack of security in building after hours.
	Lack of cases eligible for mediation based on present guidelines (limitations).
	It makes more work for staff with no benefit.
	I do not think there would be a significant obstacle to continuing the program.
	Getting qualified mediators.
	Facilities/time/mediators.
	Currently lack of staff / and administrator / ultimately up to the new judge.
	Cost.
	Backlog.

Comments Submitted by Court Staff	We need more mediators. And mediators did not have access to a copy machine to be able to give copies back to parties.
	One obstacle would be referral to mediation by police officers.
	Nothing.
	None.
	My court is extremely short staffed and the program put unnecessary burden on overworked staff.
	The paper work and phone calls. I believe our previous program was more streamlined.
	Not enough staff to keep up with the paper work.
	Nothing. We have had a strong mediation program in place for years.
	Paperwork.
	More mediators needed to have a successful program.
	We would need to recruit new mediators. If we were to continue presumpt9ive mediation because of the volume of cases being sent.
	None.
	N/A/ - we always had mediation.
	No obstacles. This is a worthwhile program.
	In most cases, defendants resolve differences just by talking through the mediator.
	Interpreter fees.
	None.
	None because we have always used presumptive mediation in this court.
	Lack of mediators – really need more.
	Just the lack of mediators available.
	Just the amount of mediators we have.
	I don’t see any obstacles.
	No obstacles.
	The type of required forms.
	Nothing – we plan to continue the program.
	Reduce paperwork and have additional mediators available.

	We are a somewhat busier court than most, but with better scheduling it can be done.
	Lack of cases.
	N/A
	It seems we must send everything to mediation first. I believe that some cases should first be reviewed by the judge.
	Possibility of violence with certain cases and defendants. No available security after hours.
	Nothing. We promote mediation in our court and have done so for a long time.
	Nothing.
	N/A
	None.
	N/A
	A bit costly to the town.
	Mediators will be needed. It generates more paper work and postage costs for the township that hosts and sessions.
	Recruiting additional mediators.
	N/A
	There have been no obstacles because we had no cases.
	If the paper work was required, then I would stop the program.
	The need for better documentation and tracking of mediation cases.
	None.

The following comments were submitted in response to question 8: Are you supportive of the presumptive mediation concept? Specifically, do you believe that certain types of municipal court cases should automatically be sent to mediation? Please explain your response.

	Yes Responses	No Responses
Comments Submitted by Judges	You need to expand the types of cases to be set to presumptive mediation.	I think these cases should go before the judge at least once.
	Items checked below may be appropriate for presumptive mediation.	Every case depends on its facts.
	The program should be mandatory throughout the municipal court system.	
	The program helps divert minor matters away from a judicial determination and into a personal resolution.	
	The parties feel they have resolved the issues to their satisfaction and with a resolution they agree to.	
	The current model is appropriate and should be followed.	

	The benefits are basic: less time for all parties.	
	Ordinance violations and disputes between neighbors.	
	Neighborhood disputes, workplace disputes, civil (check. Payment) disputes.	
	Mediation is essential for civilian complaints and their amicable resolution.	
	If gives parties ability to work out their issues rather than just get a court order.	
	I believe that certain types of cases and the issues underlying these matters should truly be resolved through mediation.	
	Helps move caseload.	
	Expedited process – moves cases faster.	
	Certain types of cases call for mediation and get resolved.	
	Cases listed in question 9 and motor vehicle matters that involve citizens.	
	Yes, but I believe that some cases are better handled through mediation if they first come to court.	
	A decent idea, but too many forms.	

	Yes Responses	**No Responses**
Comments Submitted by Court Staff	Private citizen, neighbor disputes, dismissal matters with unreasonable people made it very easy to say it's going this route.	Sometimes tell which cases are appropriate for mediation by the personalities of the people involved.
	Weeds out the nonsense issues.	I believe the judge should be involved in sending people to mediation.
	It's a great program – eliminating these often time consuming cases in court.	Maybe prosecutor should review cases before they are automatically sent to mediation.
	While I like the concept, the execution policy is absurd.	I believe that each case needs to be reviewed individually.
	I support the concept, but it has to be better managed (i.e. less paper work).	You have to look at each case, but I believe the ones listed in question 9 are appropriate.
	It enables our judges to concentrate on more critical matters.	
	The majority of these cases are resolved by the mediators saving the	

	judges time for other matters.	
	All disorderly, petty disorderly where there is no personal injury.	
	Yes, certain cases are appropriate for mediation and get resolved.	
	Saves time of court, all citizen complaints should be resolved without judge, if possible.	
	With the judge's approval and review.	
	Some cases are simple minded problems that can be handled out of court.	
	It's a good way for people to "work things out" which is often what they want to do.	
	I believe many people are willing to resolve cases at mediation even when they are resistant at first.	
	Yes. People do not need to have a criminal record because they are having problems with their neighbors.	
	Yes, it saves a lot of time in court, especially neighborhood disputes and harassment complaints.	
	Many times cases should not even be in court, so mediation helps.	
	I strongly agree with the concept, but I did not like the required forms.	
	Without a doubt! Not all cases are of a serious nature needing court hearings.	
	I have dealt with mediators in other courts with success.	
	All monetary cases, and all cases not involving an act of violence.	
	Yes, when the disputes / complaints involve private citizens.	
	Neighborhood disputes.	
	Mediation is a great alternative when cases are available.	
	Certain neighbor disputes and barking dogs, bad checks, all should go to mediation first.	
	We already sent all cases that applied before beginning the pilot.	
	I support the concept, however, some cases need to be referred based on certain circumstances.	

Appendix H

Measuring Adherence to the Presumptive Model

Municipal Court Presumptive Mediation
Comparing the Number of Cases Sent to Mediation to the Number Eligible for Mediation

September 2010 through February 2011

COURT		Total Cases Eligible for Mediation	Total Cases Sent to Mediation	Cases Sent Divided by Cases Eligible
1424	MORRISTOWN MUNICIPAL COURT	6	27	450%
1416	LINCOLN PARK MUNICIPAL COURT	5	19	380%
1207	HIGHLAND PARK BORO COURT	4	13	325%
0103	BRIGANTINE MUNICIPAL COURT	10	28	280%
2006	GARWOOD BORO MUNICIPAL COURT	5	11	220%
1602	CLIFTON MUNICIPAL COURT	27	45	167%
0330	PEMBERTON TWP MUNICIPAL COURT	96	157	164%
1102	EWING TOWNSHIP MUNICIPAL COURT	130	172	132%
1604	HAWTHORNE BORO MUNICIPAL COURT	9	11	122%
1505	BERKELEY TWP MUNICIPAL COURT	29	35	121%
0122	VENTNOR CITY MUNICIPAL COURT	23	24	104%
0610	MILLVILLE MUNICIPAL COURT	200	189	95%
1507	TOMS RIVER MUNICIPAL COURT	253	239	94%
1614	WAYNE TWP MUNICIPAL COURT	40	37	93%
1506	BRICK TOWNSHIP MUNICIPAL COURT	95	86	91%
0507	NORTH WILDWOOD MUNICIPAL COURT	29	24	83%
2119	PHILLIPSBURG MUNICIPAL COURT	90	73	81%
0404	BELLMAWR MUNICIPAL COURT	20	13	65%
2004	ELIZABETH MUNICIPAL COURT	580	368	63%
1922	VERNON TWP MUNICIPAL COURT	58	36	62%
0701	BELLEVILLE TWP MUNICIPAL COURT	287	160	56%
2017	SPRINGFIELD TWP COURT	21	11	52%
0411	COLLINGSWOOD MUNICIPAL COURT	44	19	43%
0436	WINSLOW TOWNSHIP MUNICIPAL CT	352	130	37%
0331	RIVERSIDE TWP MUNICIPAL COURT	33	12	36%
0905	HOBOKEN CITY MUNICIPAL COURT	144	50	35%
1104	HIGHTSTOWN MUNICIPAL COURT	15	5	33%
1006	NORTH HUNTERDON MUNICIPAL CT	41	13	32%
0231	LODI BORO MUNICIPAL COURT	79	23	29%
0315	FLORENCE TWP MC	53	14	26%
1107	LAWRENCE TWP MUNICIPAL COURT	133	35	26%
0906	JERSEY CITY MUNICIPAL COURT	728	170	23%
0710	LIVINGSTON MUNICIPAL COURT	66	15	23%
0717	ORANGE CITY MUNICIPAL COURT	164	32	20%
1710	PITTSGROVE TOWNSHIP M C	23	4	17%
1307	BELMAR BORO MUNICIPAL COURT	6	1	17%
1219	SAYREVILLE MUNICIPAL COURT	151	19	13%
1204	EAST BRUNSWICK MUNICIPAL COURT	190	21	11%
1806	BRIDGEWATER TWP COURT	104	11	11%
0824	WOOLWICH JOINT MUNICIPAL CT	204	10	5%
0909	SECAUCUS TOWN MUNICIPAL COURT	75	2	3%
0246	PARAMUS BORO MUNICIPAL COURT	131	0	0%
0264	WALDWICK BORO MUNICIPAL COURT	24	0	0%
1336	TINTON FALLS MUNICIPAL COURT	4	0	0%
1345	SHREWSBURY BORO MUNI COURT	1	0	0%
TOTAL		**4782**	**2364**	**49%**