

NOTICE TO THE BAR

DIVORCE CASES AND CDR – ADVISING PARTIES OF AVAILABILITY OF DISPUTE RESOLUTION ALTERNATIVES AND PROVIDING PARTIES WITH LITERATURE ON THOSE DISPUTE RESOLUTION ALTERNATIVES

As part of its July 27, 2006 omnibus rule amendment order, the Supreme Court adopted new paragraph (h) to Rule 5:4-2 (“Complaint”) effective September 1, 2006. That new paragraph – captioned “Affidavit or Certification of Notification on Complementary Dispute Resolution Alternatives” -- requires the first pleading of each party in a divorce case to have attached an affidavit or certification “that the litigant has been informed of the availability of complementary dispute resolution (‘CDR’) alternatives to conventional litigation, including but not limited to mediation or arbitration, and that the litigant has received descriptive literature regarding such CDR alternatives.”

The Supreme Court Committee on Complementary Dispute Resolution is developing the “descriptive literature” regarding CDR alternatives referenced in the rule. Once developed, that descriptive literature will be made available statewide through a variety of means.

Pending development and promulgation of the standardized descriptive literature, to satisfy the requirements of the rule, counsel in divorce cases may provide clients with literature or information on dispute resolution alternatives used by individual vicinages or previously prepared by a professional organization. The purpose of Rule 5:4-2(h) is to inform parties in divorce cases as early in the litigation process as possible concerning the availability of alternatives to adversarial litigation. Counsel thus should provide divorce clients with as much information as possible on available CDR options at the initial meeting between counsel and client. The affidavit or certification required by Rule 5:4-2(h) should so reflect.

Unrepresented or pro se divorce parties also must file the affidavit required by Rule 5:4-2(h). When such individuals contact the court for whatever reason, the court shall provide the litigants with the required descriptive literature on CDR alternatives. The affidavit thus should state that the litigant is aware of CDR alternatives to conventional litigation and has received descriptive literature regarding such CDR alternatives. Pending development and promulgation of standardized descriptive literature, the court may provide the litigants with descriptive literature from individual vicinages or existing material developed by a professional organization.

/s/ Philip S. Carchman

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

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