

## **NOTICE TO THE BAR**

### **CONFORMING CORRECTIVE AMENDMENTS TO COURT RULES 1:40-5, 1:40-6, 1:40-10, AND 1:40-11**

The Supreme Court's June 15, 2007 omnibus rule amendment order included amendments to Rule 1:40-4 ("Mediation – General Rules"), to be effective September 1, 2007. Among other things, the amendments added new paragraphs (c) and (f) to that rule, thus affecting the numbering of certain of the rule's pre-existing paragraphs. That renumbering necessitated conforming corrective amendments to four other rules that contained cross-references to those renumbered paragraphs. Those four rules are Rules 1:40-5, 1:40-6, 1:40-10, and 1:40-11.

Accordingly, the attached order adopts those conforming corrective amendments, keeping the same September 1, 2007 effective date as the omnibus order amendments, but with a July 31, 2007 adoption date.

/s/ Philip S. Carchman

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

Dated: August 1, 2007

## **SUPREME COURT OF NEW JERSEY**

It is ORDERED that the attached amendments to Court Rules 1:40-5, 1:40-6, 1:40-10, and 1:40-11 are adopted to be effective September 1, 2007; these amendments make corrections to cross-references therein necessitated by the amendments to Rule 1:40-4 adopted by the Court's Order of June 15, 2007, which amendments also are effective September 1, 2007.

For the Court,

/s/ Stuart Rabner

Chief Justice

Dated: July 31, 2007

1:40-5. Mediation in Family Part Matters

(a) Mediation of Custody and Parenting Time Actions

(1) ... no change

(2) Conduct of Mediation. In addition to the general requirements of Rule 1:40-4, the parties shall be required to attend a mediation orientation program and may be required to attend an initial mediation session. Mediation sessions shall be closed to the public. The mediator and the parties should consider whether it is appropriate to involve the child in the mediation process. The mediator or either party may terminate a mediation session in accordance with the provisions of Rule [1:40-4(f)] R. 1:40-4(h).

(3) ... no change

(b) ... no change

Note: Adopted July 14, 1992 to be effective September 1, 1992; new paragraph (c) adopted January 21, 1999 to be effective April 5, 1999; caption and paragraphs (a) and (b) amended July 5, 2000 to be effective September 5, 2000; caption amended, former paragraphs (a), (b), and (c) redesignated as paragraphs (a)(1), (a)(2), and (a)(3), new paragraph (a) caption adopted, and new paragraph (b) adopted July 27, 2006 to be effective September 1, 2006; paragraph (a)(2) amended July 31, 2007 to be effective September 1, 2007.

1:40-6. Mediation of Civil, Probate, and General Equity Matters

The CDR program of each vicinage shall include mediation of civil, probate, and general equity matters, pursuant to rules and guidelines approved by the Supreme Court.

(a) ... no change

(b) ... no change

(c) ... no change

(d) ... no change

(e) Mediation Statement. The mediator shall fix a date following the telephonic conference for the exchange by the parties and service upon the mediator of a brief statement of facts and proposals for settlement not exceeding ten pages. All documents prepared for mediation shall be confidential and subject to Rule 1:40-4(c) and (d).

(f) ... no change

(g) ... no change

Note: Adopted July 5, 2000 to be effective September 5, 2000 (and former Rule 1:40-6 redesignated as Rule 1:40-7); paragraph (b) amended July 12, 2002 to be effective September 3, 2002; paragraphs (e) and (g) amended July 27, 2006 to be effective September 1, 2006; paragraph (a) amended September 11, 2006 to be effective immediately; paragraph (e) amended July 31, 2007 to be effective September 1, 2007.

#### 1:40-10. Relaxation of Court Rules and Program Guidelines

These rules, and any program guidelines, may be relaxed or modified by the court in its discretion if it determines that injustice or inequity would otherwise result. Factors to be considered in making that determination include but are not limited to (1) the incapacity of one or more parties to participate in the process, (2) the unwillingness of one or more parties to participate in good faith, (3) the previous participation by the parties in a CDR program involving the same issue, and (4) any factor warranting termination of the program pursuant to Rule [1:40-4(f)] 1:40-4(h).

Note: Adopted July 14, 1992 as Rule 1:40-8 to be effective September 1, 1992; caption and text amended and redesignated as Rule 1:40-10 July 5, 2000 to be effective September 5, 2000; amended July 31, 2007 to be effective September 1, 2007.

#### 1:40-11. Non-Court Dispute Resolution

With the approval of the Assignment Judge or the Assignment Judge's designee, the court, while retaining jurisdiction, may refer a matter to a non-court administered dispute resolution process on the condition that any such mediation process will be subject to the privilege and confidentiality provisions of Rule 1:40-4(c) and (d). The Assignment Judge or designee may approve such referral upon the finding that it will not prejudice the interests of the parties.

Note: Adopted July 14, 1992 as Rule 1:40-9 to be effective September 1, 1992; redesignated as Rule 1:40-11 July 5, 2000 to be effective September 5, 2000; amended July 12, 2002 to be effective September 3, 2002; amended July 31, 2007 to be effective September 1, 2007.