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## New Jersey Association of Professional Mediators

April 10, 2015

The Honorable Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Rules Comments  
Hughes Justice Complex; P.O. Box 037  
Trenton, NJ 08625-0037

### **Via electronic mail and first class mail**

Re: Comments on proposed rules changes regarding mediation

Dear Judge Grant:

The New Jersey Association of Professional Mediators (NJAPM) appreciates the opportunity to submit comments on the proposed rule and procedure changes in the recently published Report of the Complementary Dispute Resolution (CDR) Committee ("Report"). As the largest organization of mediators in the state, we have a high degree of interest in the work of the Committee and the CDR rules promulgated by the court.

We would also like to thank the court again for granting NJAPM a seat on the Committee. We believe our organization and our representative, retired Judge John J. Harper, provides valuable insights and suggestions to the Committee.

NJAPM largely supports the rule and procedure changes recommended by the Committee. We have the following minor concerns:

- The rule change in Rule 1:40-4(b) regarding use of non-roster mediators does not require the parties to stay in mediation for a minimum amount of time. The parties may only opt-out of mediation when using a roster mediator upon expiration of the free time. While non-roster mediators are not subject to providing free time, parties who decide to use a non-roster mediator should be required to spend a similar minimum amount of time in mediation. Functionally, this is one hour in session.
- A proposed amendment to Rule 1:40-4(i) uses the term "non-qualified" mediator. The term, while differentiating from a Rule 1:40 qualified mediator, could be perceived as demeaning (i.e. the non-roster mediator is not qualified to mediate). We suggest the language be changed to "non-roster" mediator. This would also harmonize the term as used in Appendix XXVI, Guideline 4 (current, Guideline 5 as proposed).

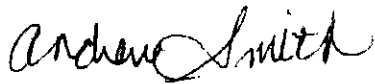
The first exposure to mediation for many parties is when the court refers their litigation to mediation. A bad mediation experience will not only fail to help resolve their case but will sour their impression of mediation for future use in dispute resolution. Therefore, mediator quality

is of concern to NJAPM. A bad mediation experience also reflects poorly on the court. We are happy that the court is considering the following to help improve roster mediator quality:

- Removing the advanced degree requirement, as NJAPM is not aware of any study that has shown a correlation between mediator effectiveness and the level of education a mediator has attained.
- Increasing the training requirement for civil roster mediators to 40 hours. Eighteen (18) hours of training is inadequate to produce a quality mediator.
- Better specifying what topics mediation training must cover.
- Removing the seldom-followed two-tier training requirement for Family Part mediators. The court should not partially qualify mediators for court service.
- Expanding the Mediator Facilitating Committee to better serve the court, roster mediators and the users of mediation.

NJAPM again thanks the court for the opportunity to serve on the Committee and to submit these comments on the proposed changes regarding mediation. We look forward to working with the Committee and the court in implementing the approved changes and on developing other improvements for the Presumptive and other Court Mediation Programs.

Respectfully submitted on behalf of the NJAPM Board of Directors,



Andrew Smith, Esq., MBA, APM  
NJAPM President

cc: NJAPM Board of Directors  
Judge (ret.) John J. Harper, NJAPM Judiciary Relations Chairman