

#006

# SUPERIOR COURT OF NEW JERSEY MIDDLESEX VICINAGE

DEBORAH J. VENEZIA  
PRESIDING JUDGE  
FAMILY PART  
CHAMBERS 101



MIDDLESEX COUNTY FAMILY COURTHOUSE  
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## MEMORANDUM

**TO: Hon. Glenn A. Grant, J.A.D., Acting Administrative Director**

**FROM: Hon. Deborah J. Venezia, P.J.F.P., Chair, Conference of Family Presiding Judges**

**DATE: March 21, 2017**

**RE: Inconsistent Recommendations in the Reports of the Complementary Dispute Resolution Committee and the Family Practice Committee in the 2015 – 2017 Rules Cycle**

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The 2015-2017 Rules Cycle Reports of the Supreme Court Complementary Dispute Resolution (CDR) Committee and the Family Practice Committee (FPC) make inconsistent recommendations regarding where mediators may file an action to compel payment of their fee. The CDR Committee recommends amending R. 1:40-4 and Appendix XXVI to delete the requirement that the action be filed in the Special Civil Part and to require the action be filed in the Law Division. The FPC recommends amending Appendix XXVI to permit the action to be filed in either the Family Part or the Special Civil Part. The Conference of Family Presiding Judges (Conference) supports the proposition that either the Family Part or the Law Division may resolve a family mediator's fee dispute.

The CDR Committee's recommendation to amend R. 1:40-4 is found on page 2 of its report as follows:

1:40-4. Mediation – General Rules

- (a) ...no change.
- (b) Compensation and Payment of Mediators Serving in the Civil and Family Economic Mediation Programs. The real parties in interest 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 R. 1:13-2(a). Subject to the provisions of Guidelines 2 and 15 in Appendix XXVI, Guidelines for the Compensation of Mediators, if the parties select a mediator from the court's rosters of civil and family mediators, the parties 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. As provided in Guideline 7 in Appendix XXVI, fees for roster mediators after the first two free hours shall be at the mediator's market rate as set forth on the court's mediation roster. As provided in Guideline 4 in Appendix XXVI, if the parties select a non-roster mediator, that mediator may negotiate a fee and need not provide the first two hours of service free. The remedy for a mediator to compel payment is in the appropriate part of the Law Division of the Superior Court in accordance with paragraph 16 of Appendix XXVI. The remedy for a party and/or counsel to seek compensation for cost and expenses related to a court-ordered mediation with a Civil Roster Mediator or Family Economic Roster Mediator is in accordance with paragraph 17, Appendix XXVI.

The CDR Committee's recommendation to amend Appendix XXVI is found on page 5 of its report as follows:

16. Collection of Unpaid Mediator's Bill/Failure to Mediate in Accordance with Order: If a mediator has not been timely paid or a mediator [and/or a party] has incurred unnecessary costs and expenses because of the failure of a party and/or counsel to participate in the mediation process in accordance with the Order of Referral to Mediation, the mediator [and/or party] may bring an action to compel payment in the [Special Civil Part] appropriate part of the Law Division of the [county in which the underlying case was filed] Superior Court.
17. The remedy for a party and/or counsel requesting compensation for costs and expenses related to a court-ordered mediation with a Civil Roster Mediator or Family Economic Roster Mediator is by filing an action in the appropriate part of the Law Division of the Superior Court.

The FPC's recommendation to amend Appendix XXVI is found on page 40 of its report as follows:

16. Collection of Unpaid Mediator's Bill/Failure to Mediate in Accordance with Order: If a mediator has not been timely paid or a mediator and/or a party has incurred unnecessary costs or expenses because of the failure of a party and/or counsel to participate in the mediation process in accordance with the Order of Referral to Mediation, the mediator, a [and/or] party may file [bring] an action to compel payment in the Family Part or in the Special Civil Part of the county in which the underlying case was filed. The Family Part may exercise other available remedies to compel payment.

## Conclusion

The Conference supports the FPC's recommendation to permit an action for unpaid mediator's fees to be heard in the Family Part. The Family Part is in the best position to assess the

reasonableness of the fees for family mediators based on familiarity with the underlying case. The Conference also recognizes the important work of family mediators in resolving Family Part cases. The Conference also supports the CDR recommendation to broaden Appendix XXVI of the Court Rules to permit an action in the Law Division rather than limiting the action to the Special Civil Part. The current version of R. 1:40-4(b) does not specify where a mediator must file a collection action. That information is set forth in Appendix XXVI, paragraph 16. Therefore, only an amendment to Appendix XXVI is necessary to clarify where a mediator must file a collection action, and an amendment to R. 1:40-4(b) is not necessary.

Thank you for your consideration of the within comments.

cc: Hon. Marie Lihotz, J.A.D., Chair, FPC  
Steven D. Bonville, Chief of Staff  
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