

## **N.J. Court Rules, R., Pt. I, Ch. IV, R. 1:40**

Current with all changes received through January 18, 2023

**NJ - New Jersey State & Federal Court Rules > Rules Governing the Courts of the State of New Jersey > PART I. Rules of General Application > CHAPTER IV. Administration > RULE 1:40. Complementary Dispute Resolution Programs**

### **RULE 1:40. Complementary Dispute Resolution Programs**

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Annotations

### **Research References & Practice Aids**

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#### **Treatises**

New Jersey Family Law § 1-10, Mediation

#### **NJ ICLE**

NJ Family Law Practice § 4.9A (R. 1:40 - COMPLIMENTARY DISPUTE RESOLUTION (C.D.R.) PROGRAMS)

#### **Practice Guides**

New Jersey Transaction Guide § 70.20 Contracts Defined

#### **Forms**

5-70 New Jersey Transaction Guide § 70.250 Commercial Arbitration Rules (AAA)

5-70 New Jersey Transaction Guide § 70.251 Arbitration Clauses—AAA Forms

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## **N.J. Court Rules, R. 1:40-1**

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***NJ - New Jersey State & Federal Court Rules > Rules Governing the Courts of the State of New Jersey > PART I. Rules of General Application > CHAPTER IV. Administration > RULE 1:40. Complementary Dispute Resolution Programs***

### **Rule 1:40-1. Purpose, Goals.**

Complementary Dispute Resolution Programs (CDR) provided for by these rules are available in the Superior Court and Municipal Courts and constitute an integral part of the judicial process, intended to enhance its quality and efficacy. Attorneys have a responsibility to become familiar with available CDR programs and inform their clients of them.

### **History**

Adopted July 14, 1992 to be effective September 1, 1992; amended July 5, 2000 to be effective September 5, 2000.

Annotations

### **Notes to Decisions**

**Civil Procedure: Alternative Dispute Resolution: General Overview**

**Civil Procedure: Alternative Dispute Resolution: Mediations**

**Civil Procedure: Settlements: Settlement Agreements: Validity**

**Constitutional Law: Separation of Powers**

**Governments: Courts: Authority to Adjudicate**

**Real Property Law: Financing: Mortgages & Other Security Instruments: Foreclosures: General Overview**

**Civil Procedure: Alternative Dispute Resolution: General Overview**

Section 5 (2004 N.J. Laws 17, § 5) of the New Jersey Medical Access and Responsibility and Patient's First Act, 2004 N.J. Laws 17, directing a judge to refer a medical malpractice action to complementary dispute resolution if the judge has determined doing so could encourage early disposition or settlement, does not violate the separation of powers doctrine; although it deals with procedure, it is not outcome determinative. Further, there is no conflict with N.J. Ct. R. 1:40-1 to N.J. Ct. R. 1:40-12; once the judge determines that referral is appropriate, further proceedings will be in accordance with those Rules. New Jersey State Bar Ass'n v. State, 387 N.J. Super. 24, 902 A.2d 944, 2006 N.J. Super. LEXIS 213 (App.Div.), cert. denied, 188 N.J. 491, 909 A.2d 726, 2006 N.J. LEXIS 1594 (N.J. 2006).

**Civil Procedure: Alternative Dispute Resolution: Mediations**

Defendant entered into the Residential Foreclosure Mediation Program and satisfied all contingent terms of a loan modification agreement, rendering it permanent and binding, and despite being compelled to engage in subsequent mediations and negotiations in an effort to save her home, did not voluntarily abandon the agreement; therefore, the chancery court erred in denying her pro se motion to enforce the agreement as a permanent loan modification, which enabled plaintiff lender to foreclose on her home. GMAC Mortgage, LLC v. Willoughby, 230 N.J. 172, 165 A.3d 787, 2017 N.J. LEXIS 817 (N.J. 2017).

As a mortgagor was afforded all the benefits New Jersey's Foreclosure Mediation Program was designed to provide, and there was no evidence he was treated unfairly in mediation because he was self-represented or that he was ill-advised, the trial court did not err in denying his fourth motion to extend the redemption period. U.S. Bank Nat. Ass'n v. Williams, 415 N.J. Super. 358, 1 A.3d 857, 2010 N.J. Super. LEXIS 175 (App.Div. 2010).

**Civil Procedure: Settlements: Settlement Agreements: Validity**

Defendant entered into the Residential Foreclosure Mediation Program and satisfied all contingent terms of a loan modification agreement, rendering it permanent and binding, and despite being compelled to engage in subsequent mediations and negotiations in an effort to save her home, did not voluntarily abandon the agreement; therefore, the chancery court erred in denying her pro se motion to enforce the agreement as a permanent loan modification, which enabled plaintiff lender to foreclose on her home. GMAC Mortgage, LLC v. Willoughby, 230 N.J. 172, 165 A.3d 787, 2017 N.J. LEXIS 817 (N.J. 2017).

**Constitutional Law: Separation of Powers**

Section 5 (2004 N.J. Laws 17, § 5) of the New Jersey Medical Access and Responsibility and Patient's First Act, 2004 N.J. Laws 17, directing a judge to refer a medical malpractice action to complementary dispute resolution if the judge has determined doing so could encourage early disposition or settlement, does not violate the separation of powers doctrine; although it deals with procedure, it is not outcome determinative. Further, there is no conflict with N.J. Ct. R. 1:40-1 to N.J. Ct. R. 1:40-12; once the judge determines that referral is appropriate, further proceedings will be in accordance with those Rules. New Jersey State Bar Ass'n v. State, 387 N.J. Super. 24, 902 A.2d 944, 2006 N.J. Super. LEXIS 216 (App.Div.), certif. denied, 188 N.J. 491, 909 A.2d 726, 2006 N.J. LEXIS 1594 (N.J. 2006).

**Governments: Courts: Authority to Adjudicate**

Section 5 (2004 N.J. Laws 17, § 5) of the New Jersey Medical Access and Responsibility and Patient's First Act, 2004 N.J. Laws 17, directing a judge to refer a medical malpractice action to complementary dispute resolution if the judge has determined doing so could encourage early disposition or settlement, does not violate the separation of powers doctrine; although it deals with procedure, it is not outcome determinative. Further, there is no conflict with N.J. Ct. R. 1:40-1 to N.J. Ct. R. 1:40-12; once the judge determines that referral is appropriate, further proceedings will be in accordance with those Rules. New Jersey State Bar Ass'n v. State, 387 N.J. Super. 24, 902 A.2d 944, 2006 N.J. Super. LEXIS 216 (App.Div.), certif. denied, 188 N.J. 491, 909 A.2d 726, 2006 N.J. LEXIS 1594 (N.J. 2006).

**Real Property Law: Financing: Mortgages & Other Security Instruments: Foreclosures: General Overview**

As a mortgagor was afforded all the benefits New Jersey's Foreclosure Mediation Program was designed to provide, and there was no evidence he was treated unfairly in mediation because he was self-represented or that he was ill-advised, the trial court did not err in denying his fourth motion to extend the redemption period. *U.S. Bank Nat. Ass'n v. Williams*, 415 N.J. Super. 358, 1 A.3d 857, 2010 N.J. Super. LEXIS 175 (App.Div. 2010).

## **Research References & Practice Aids**

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### **NJ Statutes & Rules**

*N.J. Ct. R. 1:40-2* Modes and definitions of complementary dispute resolution

*N.J. Ct. R. 1:40-3* Organization and management

*N.J. Stat. § 2A:23C-1* Short title

*N.J. Stat. § 2A:24-1* Arbitration provisions; validity and effect

### **Treatises**

*New Jersey Family Law § 1-9*, Complementary Dispute Resolution

### **Practice Guides**

*LexisNexis Practice Guide NJ Pretrial Practice § 7.04* Understanding Purpose and Goal of Complimentary Dispute Resolution (CDR)

*LexisNexis Practice Guide NJ Pretrial Practice § 7.05* Understanding Features of Adjudicative Processes of Arbitration, Settlement Proceedings and Summary Jury Trial

*LexisNexis Practice Guide NJ Pretrial Practice § 7.06* Understanding Components of Evaluative Processes of Early Neutral Evaluation (ENE) and Neutral Fact Finding

*LexisNexis Practice Guide NJ Pretrial Practice § 7.07* Understanding Mediation as Facilitative Process

*LexisNexis Practice Guide NJ Pretrial Practice § 7.08* Understanding Components of Hybrid Processes Such as Mediation-arbitration and Mini-trial

*LexisNexis Practice Guide NJ Pretrial Practice § 7.09* Determining Whether Other CDR Programs Apply

*LexisNexis Practice Guide NJ Pretrial Practice § 7.10* Understanding Organization and Management of CDR Programs

### **Checklists**

*LexisNexis Practice Guide NJ Pretrial Practice § 7.03* CHECKLIST: Understanding Components of Complimentary Dispute Resolution Programs

### **Forms**

*New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.703.01* Uniform Arbitration Statement of Facts (Appendix XXII-A) (N.J. Official Form)

N.J. Court Rules, R. 1:40-1

New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.703.02 Uniform Commercial Arbitration Memorandum  
(Appendix XXII-B) (N.J. Official Form)

**Hierarchy Notes:**

N.J. Court Rules, R., Pt. I, Ch. IV, R. 1:40

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## **N.J. Court Rules, R. 1:40-2**

Current with all changes received through January 18, 2023

**NJ - New Jersey State & Federal Court Rules > Rules Governing the Courts of the State of New Jersey > PART I. Rules of General Application > CHAPTER IV. Administration > RULE 1:40. Complementary Dispute Resolution Programs**

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

Complementary Dispute Resolution (CDR) Programs 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) Settlement Proceedings: A process by which the parties appear before a neutral third party or neutral panel, who assists them in attempting to resolve their dispute by voluntary agreement.
- (3) 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) "Evaluative Processes" means and includes the following:

- (1) Early Neutral Evaluation (ENE): A pre-discovery process by which the attorneys, in the presence of their respective clients, present their factual and legal contentions to a neutral evaluator, who then provides an assessment of the strengths and weaknesses of each position and, if settlement does not ensue, assists in narrowing the dispute and proposing discovery guidelines.
- (2) Neutral Fact Finding: A process by which a neutral third party, agreed upon by the parties, investigates and analyzes a dispute involving complex or technical issues, and who then makes non-binding findings and recommendations.

(c) "Facilitative Process," which includes mediation, is a process by which a neutral third party facilitates communication between parties in an effort to promote settlement without imposition of the facilitator's own judgment regarding the issues in dispute.

(d) "Hybrid Process" means and includes:

- (A) Mediation-arbitration: A process by which, after an initial mediation, unresolved issues are then arbitrated.
  - (B) Arbitration-mediation: A process by which, after initial arbitration proceedings, but before the award is delivered, the parties are jointly given the opportunity to mediate a resolution. If successful, the mediated settlement is executed by the parties and the arbitration award is disregarded. If unsuccessful, the arbitration award is delivered to the parties.
- (2) Mini-trial: A process by which the parties present their legal and factual contentions to either a panel of representatives selected by each party, or a neutral third party, or both, in an effort to

## N.J. Court Rules, R. 1:40-2

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) "Other CDR Programs" means and includes any other method or technique of complementary dispute resolution permitted by guideline or directive of the Supreme Court.

(f) "Neutral Third Party": A "neutral third party" is an individual who provides a CDR process. Neutral third parties serving as mediators must comply with the requirements of R. 1:40-12. Neutral third parties serving as other than mediators, that is, who are conducting Arbitrations, Settlement Proceedings, Summary Jury Trials, Early Neutral Evaluations, or Neutral Fact Finding processes, are not required to comply with the requirements of R. 1:40-12.

(g) Roster Mediator; Non-Roster Mediator: A roster mediator is an individual included on any roster of mediators maintained by the Administrative Office of the Courts or an Assignment Judge. A non-roster mediator is an individual who provides mediation, but is not listed on any roster of mediators maintained by the Administrative Office of the Courts or an Assignment Judge. The parties may agree to use a roster mediator or a non-roster mediator.

## History

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Adopted July 14, 1992 to be effective September 1, 1992; caption and text; amended, paragraphs (a) through (d) deleted, new paragraphs (a) through (f) adopted July 5, 2000 to be effective September 5, 2000; corrective amendment to paragraph (a)(3) adopted November 8, 2000 to be effective immediately; subparagraphs (a)(2) and (b)(2); amended, paragraph (c); amended, subparagraph (d)(1) redesignated as subparagraph (d)(1)(A), new subparagraph (d)(1)(B) adopted, subparagraph (d)(2); amended, paragraph (f); amended and new paragraph (g) adopted July 27, 2015 to be effective September 1, 2015.

Annotations

## Notes to Decisions

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**Civil Procedure: Alternative Dispute Resolution: Validity of ADR Methods**

**Civil Procedure: Sanctions: Baseless Filings: Frivolous Lawsuits**

**Family Law: Child Custody: Procedures**

**Civil Procedure: Alternative Dispute Resolution: Validity of ADR Methods**

In a post-judgment parenting time dispute, the motion judge erred by concluding that the father's application seeking enforcement of a parenting time order was moot and by conditioning the filing of any future motions upon first deferring to a parenting coordinator without a specific finding of the need to control frivolous litigation. Further, the award of counsel fees and costs to the mother was reversed since it was based on a determination that the reviewing court reversed. Parish v. Parish, 412 N.J. Super. 39, 988 A.2d 1180, 2010 N.J. Super. LEXIS 17 (App.Div. 2010).

Enjoining the filing of motions should be considered only following a determination that the pleadings demonstrate the continuation of vexatious or harassing misuse of judicial process; an injunction should only be directed to one whose history of repetitious and frivolous filings indicates a clear intent to abuse the courts, and can require only that a litigant refrain from filing a repetitious claim or a claim that the litigant knows to be frivolous. Parish v. Parish, 412 N.J. Super. 39, 988 A.2d 1180, 2010 N.J. Super. LEXIS 17 (App.Div. 2010).

### **Civil Procedure: Sanctions: Baseless Filings: Frivolous Lawsuits**

Enjoining the filing of motions should be considered only following a determination that the pleadings demonstrate the continuation of vexatious or harassing misuse of judicial process; an injunction should only be directed to one whose history of repetitious and frivolous filings indicates a clear intent to abuse the courts, and can require only that a litigant refrain from filing a repetitious claim or a claim that the litigant knows to be frivolous. *Parish v. Parish*, 412 N.J. Super. 39, 988 A.2d 1180, 2010 N.J. Super. LEXIS 17 (App.Div. 2010).

### **Family Law: Child Custody: Procedures**

In a post-judgment parenting time dispute, the motion judge erred by concluding that the father's application seeking enforcement of a parenting time order was moot and by conditioning the filing of any future motions upon first deferring to a parenting coordinator without a specific finding of the need to control frivolous litigation. Further, the award of counsel fees and costs to the mother was reversed since it was based on a determination that the reviewing court reversed. *Parish v. Parish*, 412 N.J. Super. 39, 988 A.2d 1180, 2010 N.J. Super. LEXIS 17 (App.Div. 2010).

## **Research References & Practice Aids**

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### **NJ Statutes & Rules**

*N.J. Ct. R. 1:40-3* Organization and management

*N.J. Ct. R. 1:40-4* Mediation-general rules

*N.J. Ct. R. 1:40-6* Mediation of civil, probate, and general equity matters

### **Treatises**

*New Jersey Family Law § 13-16*, Mediation of Custody and Visitation Disputes

### **NJ ICLE**

*NJ Family Law Practice § 1.8L* (ALTERNATE DISPUTE METHODS)

### **Practice Guides**

*LexisNexis Practice Guide NJ Pretrial Practice § 7.27* Reviewing Mediation Process with Client; Identifying Interests and Objectives

*LexisNexis Practice Guide NJ Pretrial Practice § 7.28* Selecting Mediator and Gauging Whether Other Side Is Committed to Process

*LexisNexis Practice Guide NJ Pretrial Practice § 7.29* Identifying what Pre-mediation Discovery Will Assist Both Parties at Mediation

*LexisNexis Practice Guide NJ Pretrial Practice § 7.30* Preparing Position Statement, Breakdown of Likely Outcome and Risk-benefit Analysis for Both Sides

*LexisNexis Practice Guide NJ Pretrial Practice § 7.31* Preparing Client and Discussing Alternatives



## N.J. Court Rules, R. 1:40-2

LexisNexis Practice Guide NJ Pretrial Practice § 7.32 Giving Process Time to Work While Maintaining Control of Process

LexisNexis Practice Guide NJ Pretrial Practice § 7.33 Ensuring that Binding Settlement Agreement Is Signed at Mediation

**Checklists**

LexisNexis Practice Guide NJ Pretrial Practice § 7.25 CHECKLIST: Conducting Mediation

**Forms**

New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.725.01 Letter to CDR Coordinator Enclosing Stipulation Appointing Mediator

New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.725.02 Stipulation of Parties Appointing Mediator

New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.725.03 Letter to CDR Coordinator Requesting Referral to Mediation

New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.725.06 Mediation Statement

New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.725.04 Letter to Counsel Confirming Initial Mediation Session

New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.725.05 Letter to Counsel Scheduling Initial Mediation Telephone Conference

New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.725.07 Initial Status Report of Mediator (N.J. Official Form)

New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.725.08 Second Status Report of Mediator (N.J. Official Form)

New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.725.10 Settlement Agreement

New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.725.09 Completion of Mediation Form (N.J. Official Form)

New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.725.11 Notice of Motion for Order Removing Matter from Mediation

New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.725.12 Certification in Lieu of Affidavit in Support of Motion to Remove Matter from Mediation

**Hierarchy Notes:**

N.J. Court Rules, R., Pt. I, Ch. IV, R. 1:40

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## **N.J. Court Rules, R. 1:40-3**

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***NJ - New Jersey State & Federal Court Rules > Rules Governing the Courts of the State of New Jersey > PART I. Rules of General Application > CHAPTER IV. Administration > RULE 1:40. Complementary Dispute Resolution Programs***

### **Rule 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 neutral third parties 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. 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.

### **History**

Adopted July 14, 1992 to be effective September 1, 1992; caption; amended, text; amended and designated as paragraph (a), and new paragraph (b) adopted July 5, 2000 to be effective September 5, 2000; paragraph (a); amended July 27, 2015 to be effective September 1, 2015.

Annotations

### **Research References & Practice Aids**

#### **NJ Statutes & Rules**

*N.J. Ct. R. 1:40-4* Mediation-general rules

#### **Practice Guides**

*LexisNexis Practice Guide NJ Pretrial Practice § 7.12* Determining Whether Case Will Be Referred to Mediation

*LexisNexis Practice Guide NJ Pretrial Practice § 7.13* Paying Mediator's Fee

## N.J. Court Rules, R. 1:40-3

[LexisNexis Practice Guide NJ Pretrial Practice § 7.14](#) Respecting Confidentiality in Mediation

[LexisNexis Practice Guide NJ Pretrial Practice § 7.15](#) Understanding Qualifications of Various Mediators

**Checklists**

[LexisNexis Practice Guide NJ Pretrial Practice § 7.11](#) CHECKLIST: Complying with General Requirements for Mediation

**Forms**

New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.703.03 Order for Stay of Proceedings Pending Mediation

[New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.711.01](#) Guidelines for the Compensation of Mediators Serving in the Civil Mediation Program (Appendix XXVI) (N.J. Official Form)

[New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.711.02](#) Notice of Motion for Stay of Proceedings Pending Mediation

[New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.711.03](#) Order for Stay of Proceedings Pending Mediation

[New Jersey Civil Procedure LexisNexis Forms 1445-CLP 7.711.04](#) Certification in Lieu of Affidavit in Support of Motion for Stay of Discovery Pending Mediation

**Hierarchy Notes:**

[N.J. Court Rules, R., Pt. I, Ch. IV, R. 1:40](#)

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## **N.J. Court Rules, R. 1:40-4**

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### **Rule 1:40-4. Mediation — General Rules.**

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(a) Referral to Mediation. Except as otherwise provided by these rules, a Superior Court or Municipal Court judge may require the parties to attend a mediation session at any time following the filing of a complaint.

(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. When a mediator's fee has not been paid, collection shall be in accordance with Guideline 16 of Appendix XXVI. Specifically, the remedy for a family mediator to compel payment is either by an application, motion or order to show cause in the Family Part or by a separate collection action in the Special Civil Part (or in the Civil Part if the amount exceeds the jurisdictional limit of the Special Civil Part). The remedy for a civil mediator to compel payment is a separate collection action in the Special Civil Part (or in the Civil Part if the amount exceeds the jurisdictional limit of the Special Civil Part). Any action to compel payment may be brought in the county in which the mediation order originated. The remedy for a party and/or counsel to seek compensation for costs and expenses related to a court-ordered mediation shall be in accordance with Guideline 17 of Appendix XXVI.

(c) Evidentiary Privilege. A mediation communication is not subject to discovery or admissible in evidence in any subsequent proceeding except as provided by the New Jersey Uniform Mediation Act, N.J.S.A. 2A:23C-1 to -13. A party may, however, establish the substance of the mediation communication in any such proceeding by independent evidence.

(d) Confidentiality. Unless the participants in a mediation agree otherwise or to the extent disclosure is permitted by this rule, no party, mediator, or other participant in a mediation may disclose any mediation communication to anyone who was not a participant in the mediation. A mediator may disclose a mediation communication to prevent harm to others to the extent such mediation communication would be admissible in a court proceeding. A mediator has the duty to disclose to a proper authority information obtained at a mediation session if required by law or if the mediator has a reasonable belief that such disclosure will prevent a participant from committing a criminal or illegal act likely to result in death or serious bodily harm. No mediator may appear as counsel for any person in the same or any related matter. A lawyer representing a client at a mediation session shall be governed by the provisions of RPC 1.6.

(e) Limitations on Service as a Mediator

## N.J. Court Rules, R. 1:40-4

- (1) No one holding a public office or position or any candidate for a public office or position shall serve as a mediator in a matter directly or indirectly involving the governmental entity in which that individual serves or is seeking to serve.
  - (2) The approval of the Assignment Judge is required for service as a mediator by any of the following:
    - (A) police or other law enforcement officers employed by the State or by any local unit of government;
    - (B) employees of any court; or
    - (C) government officials or employees whose duties involve regular contact with the court in which they serve.
  - (3) The Assignment Judge and the Administrative Office of the Courts shall also have the discretion to request prior review and approval of the Supreme Court of prospective mediators whose employment or position appears to either the Assignment Judge or the Administrative Office of the Courts to require such review and approval.
- (f) Mediator Disclosure of Conflict of Interest.
- (1) Before accepting a mediation, a mediator shall:
    - (A) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable person would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation or an existing or past relationship with a mediation party or foreseeable participant in the mediation; and
    - (B) disclose any such known fact to the mediation parties as soon as is practicable before accepting a mediation.
  - (2) If a mediator learns any fact described in subparagraph (f)(1)(A) after accepting a mediation, the mediator shall disclose it as soon as is practicable.
  - (3) After entry of the order of referral to mediation, if the court is advised by the mediator, counsel, or one of the parties that a conflict of interest exists, the parties shall have the opportunity to select a replacement mediator or the court may appoint one. An amended order of referral shall then be prepared and provided to the parties. All data shall be entered into the 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 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 participants shall be permitted to attend and participate in the mediation 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 party may adjourn or terminate the session if (A) a party challenges the impartiality of the mediator, (B) a party continuously resists the mediation process or the mediator, (C) there is a failure of communication that seriously impedes effective discussion, or (D) the mediator believes a party is under the influence of drugs or alcohol.
  - (2) The mediator shall terminate the session if (A) there is an imbalance of power between the parties that the mediator cannot overcome, (B) 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, said agreement must be reduced to writing, signed by each party, and furnished to each party. The agreement need not be filed with the court, but both roster and non-roster mediators shall report the status of the matter to the court by submission of the Completion of Mediation form. If an agreement is not reached, the matter shall be referred back to court for formal disposition.

## History

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Adopted July 14, 1992 to be effective September 1, 1992; paragraph (c)(3); amended and paragraph (c)(4) adopted June 28, 1996 to be effective September 1, 1996; paragraphs (a) and (c)(2); amended and paragraph (c)(3)(v) adopted July 10, 1998 to be effective September 1, 1998; caption; amended, paragraph (a); amended and redesignated as paragraphs (a) and (b), paragraphs (b), (c), (d), (e), and (f); amended and redesignated as paragraphs (c), (d), (e), (f), and (g) July 5, 2000 to be effective September 5, 2000; paragraphs (d)(2) and (d)(3); amended July 28, 2004 to be effective September 1, 2004; paragraph (b); amended July 27, 2006 to be effective September 1, 2006; new paragraph (c) adopted, former paragraph (c) redesignated as paragraph (d) and; amended, former paragraph (d) redesignated as paragraph (e), new paragraph (f) adopted, former paragraph (e) redesignated as paragraph (g) and; amended, former paragraph (f) redesignated as paragraph (h), and former paragraph (g) redesignated as paragraph (i) June 15, 2007 to be effective September 1, 2007; paragraph (b); amended and new subparagraph (f)(3) adopted July 16, 2009 to be effective September 1, 2009; paragraph (b); amended, subparagraph (e)(1) deleted, subparagraphs (e)(2), (e)(3) and (e)(4); amended and redesignated as subparagraphs (e)(1), (e)(2) and (e)(3), subparagraphs (f)(1) and (f)(3); amended, paragraph (g); amended, subparagraphs (h)(1) and (h)(2); amended, and paragraph (i); amended July 27, 2105 to be effective September 1, 2015; paragraph (b); amended July 28, 2017 to be effective September 1, 2017.

Annotations

## Notes

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### Amendment Notes

2006 amendment, in the third sentence of (b), substituted "two hours" for "three hours" and "shall be allocated equally between" for "shall include."

2007 amendment, inserted (c) and (f) and redesignated the remaining provisions accordingly; in (d) (former (c)), deleted the former first sentence, which read: "Except as otherwise provided by this rule and unless the parties otherwise consent, no disclosure made by a party during mediation shall be admitted as evidence against that party in any civil, criminal, or quasi-criminal proceeding", transferred the former second sentence to become the second sentence of present (c), added the present first two sentences, in the third sentence, substituted "if required by law or if the mediator has a reasonable belief" for "on the reasonable belief", and in the fourth sentence, substituted "No mediator may appear as counsel" for "No mediator may participate in any subsequent hearing or trial of the mediated matter or appear as witness or counsel"; and in (g) (former (e)), inserted the second through fourth sentences.

2009 amendment, in the last sentence of (b), inserted "the fees and costs of the mediator including any additional costs and fees incurred due to the non-payment"; and added (f)(3).

## Notes to Decisions

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**Civil Procedure: Alternative Dispute Resolution: General Overview**

**Civil Procedure: Alternative Dispute Resolution: Arbitrations: Arbitrability**

**Civil Procedure: Alternative Dispute Resolution: Judicial Review**

**Civil Procedure: Alternative Dispute Resolution: Mediations**

**Civil Procedure: Alternative Dispute Resolution: Validity of ADR Methods**

**Civil Procedure: Settlements: Settlement Agreements: Validity****Civil Procedure: Sanctions: Baseless Filings: Bad Faith Motions****Evidence: Competency: General Overview****Evidence: Privileges****Evidence: Privileges: Government Privileges: Waiver****Evidence: Procedural Considerations: Mediation Evidence****Family Law: Child Custody: Procedures****Family Law: Marital Termination & Spousal Support: Dissolution & Divorce: Property Distribution: Property Settlements****Civil Procedure: Alternative Dispute Resolution: General Overview**

In a divorce case, a trial court erred by allowing the parties' mediator to testify at a hearing on remand and then using the mediator's letter and memorandum of understanding that was not accepted or approved in writing by either party as the basis for a purported settlement and entering a judgment of divorce based on that purported settlement; N.J. Ct. R. 1:40-4 clearly restricted the mediator from testifying at any subsequent hearing or trial regarding the mediated matter and clearly established confidentiality with regard to mediation proceedings, and no party had waived such provisions. Trial court's finding that a binding settlement had been reached by the parties based on the mediator's memorandum was unsupported by the evidence since the mediator's own letter and testimony stated that no binding settlement was reached and that 13 issues remained unresolved between the parties, three of which involved financial matters with regard to the husband's child support obligation, the parties' responsibilities with regard to their children's college education expenses, and interim marital expenses. Lehr v. Afflitto, 382 N.J. Super. 376, 889 A.2d 462, 2006 N.J. Super. LEXIS 8 (App.Div. 2006).

**Civil Procedure: Alternative Dispute Resolution: Arbitrations: Arbitrability**

Once an arbitrator functions as a mediator in a divorce action, he may not then conduct arbitration hearings; a new arbitrator must be selected, who will conduct a binding arbitration hearing on any remaining disagreements. Minkowitz v. Israeli, 433 N.J. Super. 111, 77 A.3d 1189, 2013 N.J. Super. LEXIS 144 (App.Div. 2013).

**Civil Procedure: Alternative Dispute Resolution: Judicial Review**

Appellate court affirmed orders confirming arbitration awards issued after the parties' executed written mediation settlement agreements, but vacated the orders confirming arbitration awards entered after the arbitrator functioned as a mediator because in doing so, the arbitrator exceeded his powers as once an arbitrator functions as a mediator, he may not then conduct arbitration hearings; rather, a new arbitrator must be selected. Minkowitz v. Israeli, 433 N.J. Super. 111, 77 A.3d 1189, 2013 N.J. Super. LEXIS 144 (App.Div. 2013).

**Civil Procedure: Alternative Dispute Resolution: Mediations**

Defendant entered into the Residential Foreclosure Mediation Program and satisfied all contingent terms of a loan modification agreement, rendering it permanent and binding, and despite being compelled to engage in subsequent mediations and negotiations in an effort to save her home, did not voluntarily abandon the agreement; therefore, the chancery court erred in denying her pro se motion to enforce the agreement as a permanent loan modification,

which enabled plaintiff lender to foreclose on her home. GMAC Mortgage, LLC v. Willoughby, 230 N.J. 172, 165 A.3d 787, 2017 N.J. LEXIS 817 (N.J. 2017).

Appellate court affirmed orders confirming arbitration awards issued after the parties' executed written mediation settlement agreements, but vacated the orders confirming arbitration awards entered after the arbitrator functioned as a mediator because in doing so, the arbitrator exceeded his powers as once an arbitrator functions as a mediator, he may not then conduct arbitration hearings; rather, a new arbitrator must be selected. Minkowitz v. Israeli, 433 N.J. Super. 111, 77 A.3d 1189, 2013 N.J. Super. LEXIS 144 (App.Div. 2013).

Once an arbitrator functions as a mediator in a divorce action, he may not then conduct arbitration hearings; a new arbitrator must be selected, who will conduct a binding arbitration hearing on any remaining disagreements. Minkowitz v. Israeli, 433 N.J. Super. 111, 77 A.3d 1189, 2013 N.J. Super. LEXIS 144 (App.Div. 2013).

Oral settlement agreement reached by the parties at mediation was upheld under N.J. Ct. R. 1:40-4 because plaintiff failed to timely assert the lack of a signed, written agreement as a defense and waived the mediation-communication privilege by disclosing privileged communications while litigating the validity of the oral settlement agreement. Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C., 215 N.J. 242, 71 A.3d 888, 2013 N.J. LEXIS 831 (N.J. 2013).

Settlement that is reached at mediation but not reduced to a signed written agreement will not be enforceable. Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C., 215 N.J. 242, 71 A.3d 888, 2013 N.J. LEXIS 831 (N.J. 2013).

Settlement reached at a complementary dispute resolution session, such as a mediation, must be reduced to writing expeditiously, but not necessarily at the mediation session. When the mediator and the parties waive the confidentiality afforded to such proceedings by N.J. Stat. Ann. § 2A:23C-5 and N.J. Ct. R. 1:40-4(d), an oral settlement agreement reached through mediation may be enforced by the court. Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C., 421 N.J. Super. 445, 24 A.3d 802, 2011 N.J. Super. LEXIS 154 (App.Div. 2011), aff'd, 215 N.J. 242, 71 A.3d 888, 2013 N.J. LEXIS 831 (N.J. 2013).

Where the mediator and the parties waived the confidentiality afforded to such proceedings, a letter sent to plaintiff by defendants' attorney three days after the mediation ended, memorializing the terms of the settlement, complied with N.J. Ct. R. 1:40-4(i)'s requirement that the agreement be reduced to writing. Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C., 421 N.J. Super. 445, 24 A.3d 802, 2011 N.J. Super. LEXIS 154 (App.Div. 2011), aff'd, 215 N.J. 242, 71 A.3d 888, 2013 N.J. LEXIS 831 (N.J. 2013).

Plaintiff's claim that its settlement with defendants was the product of coercion by the mediator was rejected, as the trial court's findings that plaintiff's principal agreed to the settlement with full knowledge of its terms and consequences were fully supported by the record. Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C., 421 N.J. Super. 445, 24 A.3d 802, 2011 N.J. Super. LEXIS 154 (App.Div. 2011), aff'd, 215 N.J. 242, 71 A.3d 888, 2013 N.J. LEXIS 831 (N.J. 2013).

In a post-judgment parenting time dispute, the motion judge erred by concluding that the father's application seeking enforcement of a parenting time order was moot and by conditioning the filing of any future motions upon first deferring to a parenting coordinator without a specific finding of the need to control frivolous litigation. Further, the award of counsel fees and costs to the mother was reversed since it was based on a determination that the reviewing court reversed. Parish v. Parish, 412 N.J. Super. 39, 988 A.2d 1180, 2010 N.J. Super. LEXIS 17 (App.Div. 2010).

Enjoining the filing of motions should be considered only following a determination that the pleadings demonstrate the continuation of vexatious or harassing misuse of judicial process; an injunction should only be directed to one whose history of repetitious and frivolous filings indicates a clear intent to abuse the courts, and can require only that a litigant refrain from filing a repetitious claim or a claim that the litigant knows to be frivolous. Parish v. Parish, 412 N.J. Super. 39, 988 A.2d 1180, 2010 N.J. Super. LEXIS 17 (App.Div. 2010).



**Civil Procedure: Alternative Dispute Resolution: Validity of ADR Methods**

Mediator was properly excluded from testifying in defendant's criminal trial for assault and weapon possession, which resulted after mediation was unsuccessful between defendant and the victim. Defendant did not make the requisite showings to overcome the mediation privilege as set forth in N.J. Ct. R. 1:40-4(c) in asserting that the testimony was needed to prove his self-defense argument. State v. Williams, 184 N.J. 432, 877 A.2d 1258, 2005 N.J. LEXIS 934 (N.J. 2005).

**Civil Procedure: Settlements: Settlement Agreements: Validity**

Defendant entered into the Residential Foreclosure Mediation Program and satisfied all contingent terms of a loan modification agreement, rendering it permanent and binding, and despite being compelled to engage in subsequent mediations and negotiations in an effort to save her home, did not voluntarily abandon the agreement; therefore, the chancery court erred in denying her pro se motion to enforce the agreement as a permanent loan modification, which enabled plaintiff lender to foreclose on her home. GMAC Mortgage, LLC v. Willoughby, 230 N.J. 172, 165 A.3d 787, 2017 N.J. LEXIS 817 (N.J. 2017).

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**Civil Procedure: Sanctions: Baseless Filings: Bad Faith Motions**

Enjoining the filing of motions should be considered only following a determination that the pleadings demonstrate the continuation of vexatious or harassing misuse of judicial process; an injunction should only be directed to one whose history of repetitious and frivolous filings indicates a clear intent to abuse the courts, and can require only that a litigant refrain from filing a repetitious claim or a claim that the litigant knows to be frivolous. Parish v. Parish, 412 N.J. Super. 39, 988 A.2d 1180, 2010 N.J. Super. LEXIS 17 (App.Div. 2010).

**Evidence: Competency: General Overview**

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**Evidence: Privileges**

Mediator was properly excluded from testifying in defendant's criminal trial for assault and weapon possession, which resulted after mediation was unsuccessful between defendant and the victim. Defendant did not make the requisite showings to overcome the mediation privilege as set forth in N.J. Ct. R. 1:40-4(c) in asserting that the testimony was needed to prove his self-defense argument. State v. Williams, 184 N.J. 432, 877 A.2d 1258, 2005 N.J. LEXIS 934 (N.J. 2005).

**Evidence: Privileges: Government Privileges: Waiver**

In a divorce case, a trial court erred by allowing the parties' mediator to testify at a hearing on remand and then using the mediator's letter and memorandum of understanding that was not accepted or approved in writing by either party as the basis for a purported settlement and entering a judgment of divorce based on that purported settlement; N.J. Ct. R. 1:40-4 clearly restricted the mediator from testifying at any subsequent hearing or trial regarding the mediated matter and clearly established confidentiality with regard to mediation proceedings, and no party had waived such provisions. Trial court's finding that a binding settlement had been reached by the parties based on the mediator's memorandum was unsupported by the evidence since the mediator's own letter and testimony stated that no binding settlement was reached and that 13 issues remained unresolved between the parties, three of which involved financial matters with regard to the husband's child support obligation, the parties' responsibilities with regard to their children's college education expenses, and interim marital expenses. Lehr v. Afflitto, 382 N.J. Super. 376, 889 A.2d 462, 2006 N.J. Super. LEXIS 8 (App.Div. 2006).

**Evidence: Procedural Considerations: Mediation Evidence**

Oral settlement agreement reached by the parties at mediation was upheld under N.J. Ct. R. 1:40-4 because plaintiff failed to timely assert the lack of a signed, written agreement as a defense and waived the mediation-communication privilege by disclosing privileged communications while litigating the validity of the oral settlement agreement. Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C., 215 N.J. 242, 71 A.3d 888, 2013 N.J. LEXIS 831 (N.J. 2013).

Settlement that is reached at mediation but not reduced to a signed written agreement will not be enforceable. Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C., 215 N.J. 242, 71 A.3d 888, 2013 N.J. LEXIS 831 (N.J. 2013).

Mediator in a private mediation should not have been deposed, nor his file subject to discovery, in connection with an attack on a privately mediated property settlement agreement (PSA) as unconscionable, nor should the agreement have been vacated on the basis of his testimony; however, the motion to set aside the PSA provided a basis for the plenary hearing which was ordered, and enough was demonstrated at the hearing to uphold the finding of unconscionability. Addesa v. Addesa, 392 N.J. Super. 58, 919 A.2d 885, 2007 N.J. Super. LEXIS 107 (App.Div. 2007).

**Family Law: Child Custody: Procedures**

In a post-judgment parenting time dispute, the motion judge erred by concluding that the father's application seeking enforcement of a parenting time order was moot and by conditioning the filing of any future motions upon first deferring to a parenting coordinator without a specific finding of the need to control frivolous litigation. Further, the award of counsel fees and costs to the mother was reversed since it was based on a determination that the reviewing court reversed. Parish v. Parish, 412 N.J. Super. 39, 988 A.2d 1180, 2010 N.J. Super. LEXIS 17 (App.Div. 2010).

## Family Law: Marital Termination & Spousal Support: Dissolution & Divorce: Property Distribution: Property Settlements

Mediator in a private mediation should not have been deposed, nor his file subject to discovery, in connection with an attack on a privately mediated property settlement agreement (PSA) as unconscionable, nor should the agreement have been vacated on the basis of his testimony; however, the motion to set aside the PSA provided a basis for the plenary hearing which was ordered, and enough was demonstrated at the hearing to uphold the finding of unconscionability. Addesa v. Addesa, 392 N.J. Super. 58, 919 A.2d 885, 2007 N.J. Super. LEXIS 107 (App.Div. 2007).

## Research References & Practice Aids

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### Practice Tips

LexisNexis NJ Court Rules Anno. P 1:40-3.01 Expert Practice Tips to Rule 1:40-4

### Treatises

Employment Litigation in New Jersey § 7.03[4], Advantages and Disadvantages of Mediation

Employment Litigation in New Jersey § 7.08[1], New Jersey Superior Court Mediation Program

Employment Litigation in New Jersey § 7.08[1][e], Organized Telephone Conference

Employment Litigation in New Jersey § 7.08[1][f], Confidentiality

Employment Litigation in New Jersey § 7.08[1][g], Mediator Fees

New Jersey Family Law § 1-10, Mediation

New Jersey Family Law § 13-16, Mediation of Custody and Visitation Disputes

### NJ ICLE

NJ Family Law Practice § 1.8L (2) (MEDIATION)

### Hierarchy Notes:

N.J. Court Rules, R., Pt. I, Ch. IV, R. 1:40

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## **N.J. Court Rules, R. 1:40-5**

Current with all changes received through January 18, 2023

**NJ - New Jersey State & Federal Court Rules > Rules Governing the Courts of the State of New Jersey > PART I. Rules of General Application > CHAPTER IV. Administration > RULE 1:40. Complementary Dispute Resolution Programs**

### **Rule 1:40-5. Mediation in Family Part Matters.**

**(a) Mediation of Custody and Parenting Time Actions.**

(1) Screening and Referral. All complaints or motions involving a custody or parenting time issue shall be screened to determine whether the issue is genuine and substantial, and if such a determination is made, the matter shall be referred to mediation for resolution in the child's best interests. However, no matter shall be referred to mediation if there is in effect a preliminary or final order of domestic violence entered pursuant to the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.). In matters involving domestic violence in which no order has been entered or in cases involving child abuse or sexual abuse, the custody or parenting time issues shall be referred to mediation provided that the issues of domestic violence, child abuse or sexual abuse shall not be mediated in the custody mediation process. The mediator or either party may petition the court for removal of the case from mediation based upon a determination of good cause.

(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 R. 1:40-4(h).

(3) Mediator Not to Act as Evaluator. The mediator may not subsequently act as an evaluator for any court-ordered report nor make any recommendation to the court respecting custody and parenting time.

**(b) Mediation of Economic Aspects of Dissolution Actions.**

(1) Referral to ESP. The CDR program of each vicinage shall include a post-Early Settlement Panel (ESP) program for the mediation of the economic aspects of dissolution actions or for the conduct of a post-ESP alternate Complementary Dispute Resolution (CDR) event consistent with the provisions of this rule and R. 5:5-6. However, no matter shall be referred to mediation if a temporary or final restraining order is in effect in the matter pursuant to the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.).

(2) Designation of Mediator of Economic Aspects of Family Law Matters. The Administrative Director of the Courts, or the Administrative Director's designee, shall be responsible for reviewing and approving all mediator applications. Applicants must complete an application form posted on the Judiciary's Internet web site [www.njcourts.gov](http://www.njcourts.gov). Mediators who meet the training requirements set forth in this rule, and any other approved criteria developed by the Family Court Programs Subcommittee of the Committee on Complementary Dispute Resolution shall be added to the Roster of Approved Mediators. The roster shall be maintained by the Administrative Office of the Courts and shall be posted on the Judiciary's Internet web site.

(3) Exchange of Information. In mediation of economic aspects of Family actions, parties are required to provide accurate and complete information to the mediator and to each other, including but not limited to tax returns, Case Information Statements, and appraisal reports. The court may, in the Mediation Referral Order, stay discovery and set specific times for completion of mediation.

(4) **Timing of Referral.** Parties shall be referred to economic mediation or other alternate CDR event following the unsuccessful attempt to resolve their issues through ESP. At the conclusion of the ESP process, parties shall be directed to confer with appropriate court staff to expedite the referral to economic mediation in accordance with the following procedures:

- A. Parties may conference with the judge or the judge's designee.
- B. Court staff shall explain the program to the parties and/or their attorneys.
- C. Parties shall be provided with the roster of approved mediators for selection.
- D. After a mediator has been selected, court staff shall attempt immediate contact to secure the mediator's acceptance and the date of initial appointment. If court staff is unable to contact the mediator for confirmation, the order of referral shall state that the mediator and the date of initial appointment remain tentative until confirmation is secured. Staff will attempt to confirm within 24 hours and send an amended order to the parties and/or their attorneys.
- E. If a mediator notifies the court that he or she cannot take on any additional cases, court staff will so advise the parties at the time of selection so that an alternate mediator can be selected.
- F. The court shall enter an Economic Mediation Referral Order stating the name of the mediator, listing the financial documents to be shared between the parties and with the mediator, indicating the allocation of compensation by each party if mediation extends beyond the initial two hours, stating the court's expectation that the parties will mediate in good faith, defining the mediation time frame, and identifying the next court event and the date of that event.
- G. The referral order, signed by the judge, shall be provided to the parties before they leave the courthouse. Amended orders with confirmed appointments shall be faxed to the parties and/or their attorneys the next day, replacing the tentative orders.
- H. If the parties are unable to agree upon and select a mediator, the judge will appoint one. Staff shall then follow the above procedures as applicable.
- I. Referral to economic mediation shall be recorded in the Family Automated Case Tracking System (FACTS).

(5) **Adjournments.** Adjournment of events in the mediation process shall be determined by the mediator after conferring with the parties and/or attorneys, provided that any such adjournment will not result in the case exceeding the return date to the court. If an adjournment would cause delay of the return date to the court, a written adjournment request must be made to the judge who has responsibility for the case or the judge's designee.

## History

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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; paragraph (b) amended and redesignated as paragraph (b)(1), caption for paragraph (b)(1) added, and new paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) adopted July 16, 2009 to be effective September 1, 2009; paragraph (b) caption amended, subparagraph (b)(1) caption and text; amended, and subparagraph (b)(4); amended July 21, 2011 to be effective September 1, 2011; subparagraph (b)(2) amended April 5, 2022 to be effective immediately.

Annotations

## Notes

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## Amendment Notes

2007 amendment, corrected a reference.

2009 amendment, added (b)(2) through (b)(5) and redesignated former (b) as (b)(1); and in (b)(1), substituted "the provisions of this rule and R. 5:5-6" for "R. 5:5-6 and Appendix XIX of these Rules" in the first sentence, and added the caption.

2011 amendment, substituted "post-Early Settlement Panel" for "post-Matrimonial Early Settlement Panel" in the first sentence of (b)(1) and substituted "ESP" for "MESP" throughout (b)(1) and (b)(4); and substituted "dissolution actions" for "divorce" in the first sentence of (b)(1) and in the caption to (b).

## Notes to Decisions

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**Civil Procedure: Alternative Dispute Resolution: Arbitrations: Arbitrability**

**Civil Procedure: Alternative Dispute Resolution: Judicial Review**

**Civil Procedure: Alternative Dispute Resolution: Mediations**

**Civil Procedure: Remedies: Injunctions: Permanent Injunctions**

**Evidence: Procedural Considerations: Mediation Evidence**

**Family Law: Child Custody: Awards: Standards**

**Family Law: Child Custody: Procedures**

**Family Law: Family Protection & Welfare: Cohabitants & Spouses: Abuse, Endangerment & Neglect**

**Family Law: Marital Termination & Spousal Support: Dissolution & Divorce: Property Distribution: Property Settlements**

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Once an arbitrator functions as a mediator in a divorce action, he may not then conduct arbitration hearings; a new arbitrator must be selected, who will conduct a binding arbitration hearing on any remaining disagreements. *Minkowitz v. Israeli*, 433 N.J. Super. 111, 77 A.3d 1189, 2013 N.J. Super. LEXIS 144 (App.Div. 2013).

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#### **Civil Procedure: Remedies: Injunctions: Permanent Injunctions**

Motion court erred in enforcing provisions of a property settlement agreement requiring mediation and parental communication after entry of a final restraining order (FRO) in favor of the former wife, because it should have assumed that the judge who ordered the FRO no-contact provision did so pursuant to the appropriate legal standards, and it should not have encouraged the wife, a domestic violence victim, to lessen the protective language of the FRO. O.P. v. L.G.-P., 440 N.J. Super. 146, 111 A.3d 727, 2015 N.J. Super. LEXIS 50 (App.Div. 2015).

#### **Evidence: Procedural Considerations: Mediation Evidence**

Mediator in a private mediation should not have been deposed, nor his file subject to discovery, in connection with an attack on a privately mediated property settlement agreement (PSA) as unconscionable, nor should the agreement have been vacated on the basis of his testimony; however, the motion to set aside the PSA provided a basis for the plenary hearing which was ordered, and enough was demonstrated at the hearing to uphold the finding of unconscionability. Addesa v. Addesa, 392 N.J. Super. 58, 919 A.2d 885, 2007 N.J. Super. LEXIS 107 (App.Div. 2007).

#### **Family Law: Child Custody: Awards: Standards**

In a non-dissolution, family law division child custody matter, the trial judge's child custody and parenting time order was reversed because he did not send the parties to mediation, denied discovery, denied the mother's lawyer the right to participate in the proceedings, did not afford cross-examination or an opportunity to call witnesses, and decided the issues without fact-finding or a consideration of the statutory custody factors. J.G. v. J.H., 457 N.J. Super. 365, 199 A.3d 834, 2019 N.J. Super. LEXIS 1 (App.Div. 2019).

#### **Family Law: Child Custody: Procedures**

In a non-dissolution, family law division child custody matter, the trial judge's child custody and parenting time order was reversed because he did not send the parties to mediation, denied discovery, denied the mother's lawyer the right to participate in the proceedings, did not afford cross-examination or an opportunity to call witnesses, and decided the issues without fact-finding or a consideration of the statutory custody factors. J.G. v. J.H., 457 N.J. Super. 365, 199 A.3d 834, 2019 N.J. Super. LEXIS 1 (App.Div. 2019).

#### **Family Law: Family Protection & Welfare: Cohabitants & Spouses: Abuse, Endangerment & Neglect**

Motion court erred in enforcing provisions of a property settlement agreement requiring mediation and parental communication after entry of a final restraining order (FRO) in favor of the former wife, because it should have assumed that the judge who ordered the FRO no-contact provision did so pursuant to the appropriate legal

standards, and it should not have encouraged the wife, a domestic violence victim, to lessen the protective language of the FRO. O.P. v. L.G-P., 440 N.J. Super. 146, 111 A.3d 727, 2015 N.J. Super. LEXIS 50 (App.Div. 2015).

### **Family Law: Marital Termination & Spousal Support: Dissolution & Divorce: Property Distribution: Property Settlements**

Mediator in a private mediation should not have been deposed, nor his file subject to discovery, in connection with an attack on a privately mediated property settlement agreement (PSA) as unconscionable, nor should the agreement have been vacated on the basis of his testimony; however, the motion to set aside the PSA provided a basis for the plenary hearing which was ordered, and enough was demonstrated at the hearing to uphold the finding of unconscionability. Addesa v. Addesa, 392 N.J. Super. 58, 919 A.2d 885, 2007 N.J. Super. LEXIS 107 (App.Div. 2007).

## **Research References & Practice Aids**

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### **Treatises**

Employment Litigation in New Jersey § 7.08[1], New Jersey Superior Court Mediation Program

New Jersey Family Law § 1-10, Mediation

New Jersey Family Law § 13-16, Mediation of Custody and Visitation Disputes

### **NJ ICLE**

NJ Family Law Practice § 1.8L (2) (MEDIATION)

NJ Family Law Practice § 4.9B (R. 1:40-5 - MEDIATION OF CUSTODY AND VISITATION ACTIONS)

### **Hierarchy Notes:**

N.J. Court Rules, R., Pt. I, Ch. IV, R. 1:40

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## N.J. Court Rules, R. 1:40-6

Current with all changes received through January 18, 2023

**NJ - New Jersey State & Federal Court Rules > Rules Governing the Courts of the State of New Jersey > PART I. Rules of General Application > CHAPTER IV. Administration > RULE 1:40. Complementary Dispute Resolution Programs**

### Rule 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) Referral to Mediation. The court may, sua sponte and by written order, refer any civil, general equity, or probate action to mediation for an initial two hours, which shall include an organizational telephone conference, preparation by the mediator, and the first mediation session. In addition, the parties to an action may request an order of referral to mediation and may either select the mediator or request the court to designate a mediator from the court-approved roster.

(b) Designation of Mediator. Within 14 days after entry of the mediation referral order, the parties may select a mediator, who may, but need not, be listed on the court's Roster of Civil Mediators. Lead plaintiff's counsel must in writing provide the CDR Point Person in the county, as well as the individual designated by the court in the mediation referral order, with the name of the selected mediator. If the parties do not timely select a mediator, the individual designated by the court in the mediation referral order shall serve. All roster and non-roster mediators, whether party-selected or court-designated, shall comply with the terms and conditions set forth in the mediation referral order.

(c) Stay of Proceedings. The court may, in the mediation referral order, stay discovery for a specific or an indeterminate period.

(d) Withdrawal and Removal from Mediation. A motion for removal from mediation shall be filed and served upon all parties within 10 days after the entry of the mediation referral order and shall be granted only for good cause. Any party may withdraw from mediation after the initial two hours provided for by paragraph (a) of this rule. The mediation may, however, continue with the consent of the mediator and the remaining parties if they determine that it may be productive even without participation by the withdrawing party.

(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. At the discretion of the mediator, each party's statement of facts may be prepared and submitted to the mediator for review without service of the statement of facts on the other party. All documents prepared for mediation shall be confidential and subject to Rule 1:40-4(c) and (d).

(f) Procedure Following Mediation. Promptly upon termination of the mediation process, the mediator shall report to the court in writing as to whether or not the action or any severable claim therein has been settled.

(g) Compensation of Mediators. Mediators shall be compensated as provided by Rule 1:40-4(b) and Appendix XXVI ("Guidelines for the Compensation of Mediators Serving in the Civil Mediation Program").

### History

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; paragraph (d); amended July 9, 2008 to be effective September 1, 2008; paragraph (e); amended July 16, 2009 to be effective September 1, 2009; paragraph (b); amended July 21, 2011 to be effective September 1, 2011; paragraph (b); amended July 27, 2015 to be effective September 1, 2015.

Annotations

## Notes

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### Amendment Notes

2006 amendment, adopted July 27, 2006, in (e), substituted "following the telephonic conference" for "not to exceed 30 days after the entry of the mediation referral order"; and in (g), added "and Appendix XXVI ('Guidelines for the Compensation of Mediators Serving in the Civil Mediation Program')."

2007 amendment, corrected a reference.

2008 amendment, substituted "two hours" for "three hours" in the second sentence of (d).

2009 amendment, inserted the second sentence of (e).

September 11, 2006 amendment substituted "two hours" for "three hours" in the first sentence of (a).

2011 amendment, rewrote (b), which formerly read: "If the parties have not selected the mediator prior to entry of the mediation referral order, the court shall in its referral order designate a mediator from the court-approved roster. The parties may, however, within 14 days after entry of the mediation referral order stipulate in writing to the designation of a different mediator. Within that fourteen-day period, the stipulation shall be filed with the Civil CDR Coordinator and a copy thereof served upon the mediator designated by the mediation referral order. A mediator designated by such stipulation shall comply with all terms and conditions set forth in the mediation referral order."

## Notes to Decisions

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**Civil Procedure: Alternative Dispute Resolution: Mediations**

**Civil Procedure: Settlements: Settlement Agreements: Validity**

**Civil Procedure: Alternative Dispute Resolution: Mediations**

Defendant entered into the Residential Foreclosure Mediation Program and satisfied all contingent terms of a loan modification agreement, rendering it permanent and binding, and despite being compelled to engage in subsequent mediations and negotiations in an effort to save her home, did not voluntarily abandon the agreement; therefore, the chancery court erred in denying her pro se motion to enforce the agreement as a permanent loan modification, which enabled plaintiff lender to foreclose on her home. GMAC Mortgage, LLC v. Willoughby, 230 N.J. 172. 165 A.3d 787, 2017 N.J. LEXIS 817 (N.J. 2017).

**Civil Procedure: Settlements: Settlement Agreements: Validity**

Defendant entered into the Residential Foreclosure Mediation Program and satisfied all contingent terms of a loan modification agreement, rendering it permanent and binding, and despite being compelled to engage in subsequent mediations and negotiations in an effort to save her home, did not voluntarily abandon the agreement; therefore, the chancery court erred in denying her pro se motion to enforce the agreement as a permanent loan modification, which enabled plaintiff lender to foreclose on her home. GMAC Mortgage, LLC v. Willoughby, 230 N.J. 172, 165 A.3d 787, 2017 N.J. LEXIS 817 (N.J. 2017).

## **Research References & Practice Aids**

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### **Treatises**

Employment Litigation in New Jersey § 7.08[1], New Jersey Superior Court Mediation Program

Employment Litigation in New Jersey § 7.08[1][c], Mediation Case Statements

### **Hierarchy Notes:**

N.J. Court Rules, R., Pt. I, Ch. IV, R. 1:40

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## N.J. Court Rules, R. 1:40-7

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**NJ - New Jersey State & Federal Court Rules > Rules Governing the Courts of the State of New Jersey > PART I. Rules of General Application > CHAPTER IV. Administration > RULE 1:40. Complementary Dispute Resolution Programs**

### Rule 1:40-7. Complementary Dispute Resolution in the Special Civil Part.

- (a) Small Claims. Each vicinage shall provide a small claims settlement program in which (1) law clerks from all the divisions who have been trained in complementary dispute resolution settlement negotiation techniques pursuant to R. 1:40-12(b)(6), and other employees and volunteers who have been trained in complementary dispute resolution settlement negotiation techniques and as mediators pursuant to R. 1:40-12(b)(1), serve as trained settlers, not mediators, who help litigants settle their cases, and (2) cases that are not settled are tried on the same day, if possible. The training requirements apply to law clerks but not to other attorneys.
- (b) Tenancy Actions. If complementary dispute resolution programs are used for tenancy actions, cases that are not settled shall be tried on the same day, if possible.
- (c) Other Actions for Damages. For other Special Civil Part actions for damages each vicinage shall establish a settlement program that does not include arbitration in which there is one settlement event scheduled to occur on the trial date.

### History

Adopted July 14, 1992 as Rule 1:40-6 to be effective September 1, 1992; amended and redesignated as Rule 1:40-7 July 5, 2000 to be effective September 5, 2000; caption and text deleted, new caption and new paragraphs (a), (b), and (c) adopted July 12, 2002 to be effective September 3, 2002; paragraph (a); amended July 16, 2009 to be effective September 1, 2009; paragraph (a); amended July 27, 2015 to be effective September 1, 2015; paragraph (a) text; amended July 29, 2019 to be effective September 1, 2019.

Annotations

### Notes

#### Amendment Notes

2009 amendment, in (a), substituted "R. 1:40-12(b)(5)" for "R. 1:40-12(b)(6)."

### Research References & Practice Aids

#### Hierarchy Notes:

N.J. Court Rules, R., Pt. I, Ch. IV, R. 1:40

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## N.J. Court Rules, R. 1:40-8

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**NJ - New Jersey State & Federal Court Rules > Rules Governing the Courts of the State of New Jersey > PART I. Rules of General Application > CHAPTER IV. Administration > RULE 1:40. Complementary Dispute Resolution Programs**

### Rule 1:40-8. Mediation of Minor Disputes in Municipal Court Actions.

(a) Referral. A mediation notice may issue pursuant to R. 7:8-1 requiring the parties to appear at a mediation session to determine whether mediation pursuant to these rules is an appropriate method for resolving the minor dispute. No referral to mediation shall be made if the complaint involves (1) serious injury, (2) repeated acts of violence between the parties, (3) incidents involving the same persons who are already parties to a Superior Court action between them, (4) matters arising under the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.), (5) a violation of the New Jersey Motor Vehicle Code (Title 39), or (6) matters involving penalty enforcement actions.

(b) Appointment of Mediators. A municipal court mediator shall be appointed by the Assignment Judge or a designee. The municipal mediator must comply with the requirements of R. 1:40-12. The Assignment Judge or a designee may, either sua sponte or on request of the municipal court judge, remove a mediator upon the determination that the individual is unable to perform the mediator's functions.

### History

Adopted July 14, 1992 as Rule 1:40-7 to be effective September 1, 1992; paragraph (a); amended January 5, 1998 to be effective February 1, 1998; redesignated as Rule 1:40-8, paragraph (a); amended, and caption and text of paragraph (b); amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b); amended July 27, 2015 to be effective September 1, 2015; subparagraph (a)(3) deleted and subparagraphs (a)(4) through (a)(7) redesignated as subparagraphs (a)(3) through (a)(6) July 29, 2019 to be effective September 1, 2019.

Annotations

### Research References & Practice Aids

#### Hierarchy Notes:

N.J. Court Rules, R., Pt. I, Ch. IV, R. 1:40

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## N.J. Court Rules, R. 1:40-10

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### Rule 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(h).

### History

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.

Annotations

### Notes

#### Amendment Notes

2007 amendment, corrected a reference.

### Research References & Practice Aids

#### Treatises

New Jersey Family Law § 1-10, Mediation

New Jersey Family Law § 13-16, Mediation of Custody and Visitation Disputes

#### Hierarchy Notes:

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# N.J. Court Rules, R. 1:40-11

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**NJ - New Jersey State & Federal Court Rules > Rules Governing the Courts of the State of New Jersey > PART I. Rules of General Application > CHAPTER IV. Administration > RULE 1:40. Complementary Dispute Resolution Programs**

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

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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.

## **History**

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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.

Annotations

## **Notes**

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### **Amendment Notes**

2007 amendment, inserted "privilege and" and "and (d)" in the first sentence.

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

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## **N.J. Court Rules, R. 1:40-12**

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***NJ - New Jersey State & Federal Court Rules > Rules Governing the Courts of the State of New Jersey > PART I. Rules of General Application > CHAPTER IV. Administration > RULE 1:40. Complementary Dispute Resolution Programs***

### **Rule 1:40-12. Mediators and Arbitrators in Court-Annexed Programs.**

**(a) Mediator Qualifications.**

**(1)** Generally. Unless otherwise specified by these rules, no special occupational status or educational degree is required for mediator service and mediation training. An applicant for listing on a roster of mediators maintained by either the Administrative Office of the Courts or the Assignment Judge shall, however, certify to good professional standing. An applicant whose professional license has been revoked shall not be placed on the roster, or if already on the roster shall be removed therefrom.

**(2)** Custody and Parenting Time Mediators. The Assignment Judge, upon recommendation of the Presiding Judge of the Family Part, may approve persons or agencies to provide mediation services in custody and parenting time disputes if the mediator meets the following minimum qualifications: (A) a graduate degree or certification of advanced training in a behavioral or social science; (B) training in mediation techniques and practice as prescribed by these rules; and (C) supervised clinical experience in mediation, preferably with families. In the discretion of the Assignment Judge relevant experience may be substituted for either a graduate degree or certification, or clinical experience, or both.

**(3)** Civil, General Equity, and Probate Action Roster Mediators. Mediator applicants to be on the roster for civil, general equity, and probate actions shall have: (A) at least a bachelor's degree; (B) at least five years of professional experience in the field of their expertise in which they will mediate; (C) completed the required mediation training as defined in subparagraph (b)(5) within the last five years; and (D) except for retired or former New Jersey Supreme Court justices, retired Superior Court judges, retired Administrative Law judges, retired or former federal court judges, and retired judges from other states who presided over a court of general jurisdiction or appellate court, evidence of completed mediation or co-mediation of a minimum of two civil, general equity or probate cases within the last year. Applicants who had the required training over five years prior to their application to the roster must complete the six-hour family or civil supplemental mediation course as defined in subparagraph (b)(8) of this rule.

**(4)** Special Civil Part Settlers. In addition to mediators on the civil roster, those judicial law clerks who have been trained in complementary dispute resolution (CDR) settlement techniques pursuant to R. 1:40-12(b)(6), court staff and volunteers who have completed the 18-hour course of mediation training approved by the Administrative Office of the Courts may settle Small Claims actions. In the discretion of the Assignment Judge, such persons may also settle landlord-tenant disputes and other Special Civil Part actions, provided that they complete additional substantive and procedural training in landlord-tenant law of at least five hours, with such training to be approved by the Administrative Office of the Courts.

**(5)** Municipal Court Volunteer Mediators. Individuals may serve as volunteer mediators in municipal court mediation programs. To serve as municipal court mediators and volunteer their time, effort and skill to mediate minor disputes in municipal court actions, such individuals (A) must be approved by the Assignment Judge or designee in the vicinage in which they intend to serve, (B) must meet the basic dispute resolution training required by R. 1:40-12(b)(1), and (C) must have satisfied any continuing training requirements under R. 1:40-12(b)(2).

## N.J. Court Rules, R. 1:40-12

**(6) Family Part Economic Mediators.** To be listed on the approved roster, mediators of economic issues in family disputes shall meet the applicable requirements set forth below for attorneys and non-attorneys and shall complete the required training set forth in paragraph (b) of this Rule:

**(i) Attorneys**

- a. Juris Doctor (or equivalent law degree)
- b. Admission to the bar for at least seven years
- c. Licensed to practice law in the state of New Jersey
- d. Practice substantially devoted to matrimonial law

**(ii) Non-Attorneys**

- a. Advanced degree in psychology, psychiatry, social work, business, finance, or accounting, or a CPA or other relevant advanced degree deemed appropriate by the credentials committee,
- b. At least seven years of experience in the field of expertise, and
- c. Licensed in New Jersey if required in the field of expertise

**(iii) Any retired Superior Court judge with experience in handling dissolution matters.**

**(b) Mediator Training Requirements.**

**(1) General Provisions.** All persons serving as mediators shall have completed the basic dispute resolution training course as prescribed by these rules and approved by the Administrative Office of the Courts. Volunteer mediators in the Special Civil Part and Municipal Court mediators shall have completed 18 hours of basic mediation skills complying with the requirements of subparagraph (b)(3) of this rule. Mediators on the civil, general equity, and probate roster of the Superior Court shall have completed 40 hours of basic mediation skills complying with the requirements of subparagraph (b)(5) of this rule and shall be mentored in at least two cases in the Law Division - Civil Part or Chancery Division - General Equity or Probate Part of the Superior Court for a minimum of five hours by a civil roster mentor mediator who has been approved in accordance with the "Guidelines for the Civil Mediation Mentoring Program" promulgated by the Administrative Office of the Courts. Family Part mediators shall have completed a 40-hour training program complying with the requirements of subparagraph (b)(4) of this rule and, unless otherwise exempted in this rule, at least five hours being mentored by a family roster mentor mediator in at least two cases in the Family Part. In all cases it is the obligation of the mentor mediator to inform the litigants prior to mediation that a second mediator will be in attendance and why. If either party objects to the presence of the second mediator, the second mediator may not attend the mediation. In all cases, the mentor mediator conducts the mediation, while the second mediator observes. Mentored mediators are provided with the same protections as the primary mediator under the Uniform Mediation Act. Retired or former New Jersey Supreme Court justices and Superior Court judges, retired or former Administrative Law judges, retired or former federal court judges, and retired judges from other states who presided over a court of general jurisdiction or appellate court, child welfare mediators, and staff/law clerk mediators are exempted from the mentoring requirements except as required to do so for remedial reasons. Mediators already serving on the Civil mediator roster prior to September 1, 2015 are exempted from the updated training requirements. Family Roster mediators who wish to serve on the Civil Roster, must complete the six-hour supplemental Civil Mediation training and must comply with the Civil roster mentoring requirement of five hours and two cases in the Civil Part.

**(2) Continuing Training.** Commencing in the year following admission to one of the court's mediator rosters, all mediators shall annually attend four hours of continuing education and shall file with the Administrative Office of the Courts or the Assignment Judge, as appropriate, an annual certification of compliance. To meet the requirement, this continuing education shall include instruction in ethical issues associated with mediation practice, program guidelines and/or case management and should

## N.J. Court Rules, R. 1:40-12

cover at least one of the following: (A) case management skills; and (B) mediation and negotiation concepts and skills.

**(3) Mediation Course Content — Basic Skills.** The 18-hour course in basic mediation skills and complementary dispute resolution (CDR) settlement techniques, 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 problems encountered in mediation and other CDR resolution processes.

**(4) Mediation Course Content — Family Part Actions.** The 40-hour 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 shall have completed 40 hours of training in family mediation in accordance with this rule.

**(5) Mediation Course Content — Civil, General Equity, and Probate Actions.** The 40-hour course for civil, general equity and probate action mediators shall include basic and advanced mediation skills as well as specialized civil mediation training as approved by the Administrative Director of the Courts.

**(6) Training Requirements for Judicial Law Clerks.** Judicial law clerks serving as third-party neutral settlers shall first have completed a Law Clerk Settlement Negotiation Training course prescribed by the Administrative Office of the Courts.

**(7) Co-mediation; mentoring; training evaluation.** In order to reinforce mediator training, the vicinage CDR coordinator shall, insofar as practical and for a reasonable period following initial training, assign any new mediator who is either an employee or a volunteer to co-mediate with an experienced mediator and shall assign an experienced mediator to mentor a new mediator. Using evaluation forms prescribed by the Administrative Office of the Courts, the vicinage CDR coordinator shall also evaluate the training needs of each new mediator during the first year of the mediator's qualifications and shall periodically assess the training needs of all mediators.

**(8) Mediation Course Content — Supplemental Mediation Training for Civil and Family Mediators.** Applicants to the roster who have been trained in a 40-hour out-of-state mediation training or who took the 40-hour New Jersey mediation training more than five years prior to applying to the roster, and who otherwise qualify under this rule, must further attend six hours of supplemental training. The six hours of supplemental training shall consist of attending the four-hour continuing training set forth in subsection (b)(2) of this rule, and two additional hours, which may be offered as a remote live training. The combined trainings shall be completed within one year. There shall be two distinct supplemental courses, one for family mediators and one for civil mediators, which shall be approved by the Administrative Office of the Courts. The combined courses shall include, but are not limited to, training in facilitative methods, training on how to conduct mediation in a virtual setting, case management techniques, procedural requirements for an enforceable mediated settlement, NJ Rules and the Standards of Conduct for Mediators in Court-Connected Programs, Guidelines for Mediator Compensation (see Appendix XXVI to these Rules), the Uniform Mediation Act (N.J.S.A. 2A:23C-1 to -13), and mediation case law.

**(c) Arbitrator Qualification and Training.** Arbitrators serving in judicial arbitration programs shall have the minimum qualifications prescribed by Rule 4:21A-2. All arbitrators shall attend initial training of at least three classroom hours and continuing training of at least two hours in courses approved by the Administrative Office of the Courts.

## N.J. Court Rules, R. 1:40-12

- (1) New Arbitrators. After attending the initial training, a new arbitrator shall attend continuing training after two years. Thereafter, an arbitrator shall attend continuing training every four years.
- (2) Roster Arbitrators. Arbitrators who have already attended the initial training and at least one continuing training shall attend continuing training every four years.
- (3) Arbitration Course Content — Initial Training. The three-hour course shall teach the skills necessary for arbitration, including applicable statutes, court rules and administrative directives and policies, the standards of conduct, applicable uniform procedures as reflected in the approved procedures manual and other relevant information.
- (4) Arbitration Course Content — Continuing Training. The two-hour continuing training course should cover at least one of the following: (a) reinforcing and enhancing relevant arbitration skills and procedures, (b) ethical issues associated with arbitration, or (c) other matters related to court-annexed arbitration as recommended by the Arbitration Advisory Committee.
- (d) Training Program Evaluation. The Administrative Office of the Courts shall conduct periodic assessments and evaluations of the CDR training programs to ensure their continued effectiveness and to identify any needed improvements.

## History

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Note: Adopted July 14, 1992 as Rule 1:40-10 to be effective September 1, 1992; caption; amended, former text redesignated as paragraphs (a) and (b), paragraphs (a)3.1 and (b)4.1; amended June 28, 1996 to be effective September 1, 1996; redesignated as Rule 1:40-12, caption; amended and first sentence deleted, paragraph (a)1.1; amended and redesignated as paragraph (a)(1), paragraph (a)2.1; amended and redesignated as paragraph (a)(2), paragraph (a)2.2; amended and redesignated as paragraph (b)(5), new paragraphs (a)(3) and (a)(4) adopted, paragraph (a)3.1 redesignated as paragraph (a)(5), paragraph (a)3.2; amended and incorporated in paragraph (b)(1), paragraph (a)4.1; amended and redesignated as paragraph (b)(6), paragraph (b)1.1; amended and redesignated as paragraph (b)(1), paragraphs (b)2.1 and (b)3.1; amended and redesignated as paragraphs (b)(2) and (b)(3), paragraph (b)4.1 redesignated as paragraph (b)(4) with caption; amended, paragraph (b)5.1; amended and redesignated as paragraph (b)(7) with caption; amended, new section (c) adopted, and paragraph (b)5.1(d); amended and redesignated as new section (d) with caption; amended July 5, 2000 to be effective September 5, 2000; paragraphs (a)(3) and (b)(1); amended July 12, 2002 to be effective September 3, 2002; paragraphs (b)(1), (b)(3), and (c); amended July 28, 2004 to be effective September 1, 2004; caption; amended and paragraph (a)(4) caption and text; amended June 15, 2007 to be effective September 1, 2007; new paragraph (a)(6) caption and text adopted, paragraph (b)(1); amended, paragraph (b)(2) deleted, paragraphs (b)(3) and (b)(4) redesignated as paragraphs (b)(2) and (b)(3), paragraph (b)(5); amended and redesignated as paragraph (b)(4), and paragraphs (b)(6) and (b)(7) redesignated as paragraphs (b)(5) and (b)(6) July 16, 2009 to be effective September 1, 2009; subparagraphs (b)(2) and (b)(4); amended July 21, 2011 to be effective September 1, 2011; subparagraph (a)(3) caption and text; amended, subparagraphs (a)(4), (a)(6), (b)(1), (b)(2) and (b)(4); amended, former subparagraph (b)(5) redesignated as subparagraph (b)(6), former subparagraph (b)(6) redesignated as subparagraph (b)(7), new subparagraphs (b)(5) and (b)(8) adopted July 27, 2015 to be effective September 1, 2015; subparagraphs (a)(3) text, (a)(5) caption and text, and (b)(1) text and paragraph (c); amended July 28, 2017 to be effective September 1, 2017; paragraph (a)(3); amended, paragraph (a)(4) caption and text; amended, and paragraphs (b)(1), (b)(3), and (b)(6); amended July 29, 2019 to be effective September 1, 2019; paragraph (c); amended July 31, 2020 to be effective September 1, 2020; subparagraphs (b)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(8), paragraph (c), and subparagraph (c)(3); amended July 30, 2021 to be effective September 1, 2021.

Annotations

## Notes

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### Editor's Notes

Rule Relaxation Order: By Order dated Nov. 17, 2008, effective Jan. 5, 2009, the New Jersey Supreme Court, in implementation of the Residential Mortgage Foreclosure Mediation Program, relaxed and supplemented Rule 1:40-12(a)(3) "so as to allow New Jersey licensed attorneys who have met the training requirements of R. 1:40-12(b)(1) to be eligible to serve in the foreclosure mediation program with fewer than five years of experience in their profession and to allow foreclosure mediator applicants who have met the training requirements of R. 1:40-12(b)(1) to be eligible to serve in the program without evidence of prior successful mediation of a minimum of ten cases."

Rule Relaxation Order: By Order dated Nov. 17, 2008, effective Jan. 5, 2009, the New Jersey Supreme Court, in implementation of the Residential Mortgage Foreclosure Mediation Program, relaxed and supplemented Rule 1:40-12(b)(1) "so as to permit mediators who have met the training requirements of this rule to be eligible to serve in the foreclosure mediation program without having been mentored for five hours by an experienced mediator."

Rule Relaxation Order: By Order dated Nov. 17, 2008, effective Jan. 5, 2009, the New Jersey Supreme Court, in implementation of the Residential Mortgage Foreclosure Mediation Program, relaxed and supplemented Standard IIIB ("Unrelated Matters") in the Court-approved Standards of Conduct for Mediators "so as to apply only to mediators actually serving in the residential mortgage foreclosure mediation program and not to other members of the mediators' firms."

Rule Relaxation Order: By Order dated May 6, 2014, effective immediately through Aug. 31, 2016, the New Jersey Supreme Court supplemented and relaxed certain provisions of paragraph (c) of Rule 1:40-12, "so as to suspend the requirement that arbitrators serving in the court-annexed arbitration program attend a two-hour biennial training course in the areas of (a) reinforcing and enhancing relevant arbitration skills and procedures; (b) ethical issues associated with arbitration; or (c) other matters related to arbitration. The purpose of this suspension of the biennial training requirement is to provide the Supreme Court Arbitration Advisory Committee with the opportunity to develop and recommend to the Court an improved and more effective training course for arbitrators. This rule relaxation does not affect the provisions of paragraph (c) of Rule 1:40-12 that set out the initial training requirement for new arbitrators."

### Amendment Notes

2007 amendment, in (a)(4), substituted "mediate/settle" for "mediate" in the first and second sentences, added the language beginning "provided that" to the second sentence, and added "Settlers" to the caption; and rewrote the caption to the rule.

2009 amendment, added (a)(6); deleted former (b)(2) and redesignated the remaining provisions of (b) accordingly; in (b)(1), deleted "Unless waived pursuant to subparagraph (2)" from the beginning of the first sentence; in present (b)(4), added the last sentence, pertaining to economic mediators in family disputes; and updated internal references. Former (b)(2) read: "Consideration of Prior Training. The Administrative Office of the Courts or the Assignment Judge, as appropriate, may waive these basic training requirements for mediators already serving prior to the effective date of this rule upon a determination that the mediator is qualified to continue to serve by reason of background, training, relevant educational and professional experience, and any other relevant factor."

2011 amendment, in the second sentence of (b)(2), inserted "shall include instruction in ethical issues associated with mediation practice, program guidelines and/or case management and", deleted former (B), which read: "ethical issues associated with mediation practice, or", and redesignated former (C) as present (B); and in the first sentence of (b)(4), substituted "dissolution" for "divorce."

## Research References & Practice Aids

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### Hierarchy Note:

N.J. Court Rules, R., Pt. I, Ch. IV, R. 1:40

New Jersey State & Federal Court Rules

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## **N.J. Court Rules, R. 1:40-9**

Current with all changes received through January 18, 2023

***NJ - New Jersey State & Federal Court Rules > Rules Governing the Courts of the State of New Jersey > PART I. Rules of General Application > CHAPTER IV. Administration > RULE 1:40. Complementary Dispute Resolution Programs***

### **Rule 1:40-9. Civil Arbitration.**

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The CDR program of each vicinage shall include arbitration of civil actions in accordance with Rule 4:21A.

### **History**

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Adopted July 5, 2000 to be effective September 5, 2000 (and former Rule 1:40-9 redesignated as Rule 1:40-11).

Annotations

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

*N.J. Court Rules, R., Pt. I, Ch. IV, R. 1:40*

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