# NOTICE TO THE BAR

## DIVORCE OR DISSOLUTION -- DISPUTE RESOLUTION ALTERNATIVES TO CONVENTIONAL LITIGATION -- REVISED DESCRIPTIVE MATERIAL REQUIRED BY RULE 5:4-2(h)

This Notice promulgates a revised version of the form entitled, "Divorce or Dissolution – Dispute Resolution Alternatives to Conventional Litigation" (Descriptive Material), to be effective September 1, 2016. This form was originally promulgated by a December 4, 2006 Notice to the Bar, with the two certification forms incorporated into the Rules Appendix, entitled "Rule 5:4-2(h) Certification by Attorney and Client" (Rules Appendix XXVII-A), and "Rule 5:4-2(h) Certification by Self-Represented Litigant" (Rules Appendix XXVII-B). The Supreme Court, in its August 1, 2016 Omnibus Order, revised Rules Appendix XXVII-A and Rules Appendix XXVII-B, to be effective September 1, 2016.

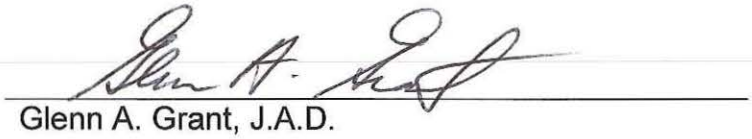
The requirements of R. 5:4-2(h) apply to those family court actions filed in the divorce or dissolution docket, also called the FM docket. Those matters filed in the FM docket include: divorce from marriage, dissolution of a civil union, termination of a domestic partnership, and annulment.

The revisions were necessitated by the Court's adoption of an amendment to R. 5:4-2(h) effective September 1, 2015 to include collaborative law (New Jersey Family Collaborative Law Act, N.J.S.A. 2A:23D-1 through -18) as one of the specified Complementary Dispute Resolution (CDR) alternatives to conventional litigation.

The revised "Descriptive Material" document required by R. 5:4-2(h) now includes: (a) a section on the collaborative law process as a result of the amendment to R. 5:4-2(h); (b) a statement that an arbitration decision is binding and final once it is approved by the court. Rule 5:4-2(h) also requires the parties to a divorce or dissolution action to attach to their respective first pleadings an affidavit or certification using the form provided in Appendix XXVII-A or XXVII-B stating that they received the Descriptive Material.

Questions regarding this notice, the Descriptive Material or Rules Appendix XXVII-A and Rules Appendix XXVII-B may be directed to the Family Practice Division in the Administrative Office of the Courts at 609-984-4228.

Note: The Court's policy against the mediation of matters in which a temporary or final restraining order has been entered pursuant to the Prevention of Domestic Violence Act remains in effect.



Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: August 12, 2016

**Descriptive Material (R. 5:4-2(h))**
**Divorce or Dissolution – [Dispute Resolution] Alternatives to [Conventional] Litigation[*]**

**As Approved by the Supreme Court August 1, 2016**

Resolving issues concerning your divorce or dissolution matter can be [costly] expensive and difficult. You are receiving this document because you are a party to a divorce or dissolution matter (FM docket). Cases filed in the FM docket include: divorce from marriage, dissolving a civil union, terminating a domestic partnership and annulment. [While] Only a judge can [actually] grant a divorce [, division] or dissolution of a relationship. You also may need to address the following issues: division of your property and your debts, alimony, child support, custody and parenting time [are some of the other issues that may need to be resolved]. A judge can decide all of your issues at trial. However, there are other [ways] methods to resolve these matters [many of the issues in your divorce]. [These alternate dispute resolution methods offer greater privacy than resolving the issues in a public trial.] [They also may be faster and] These methods may also be more efficient, less expensive, offer privacy, and may reduce the level of conflict between you and [your spouse] the other party during your [divorce] court case. You are encouraged to discuss alternate resolutions [alternative dispute resolution] with your lawyer [to decide whether these alternate methods may help you and your spouse resolve as many of the issues relating to your divorce as possible before the matter is presented to the judge].

What follows are short descriptions of the other methods you may use to help you resolve your case [various forms of alternative dispute resolution that may be used in divorce cases].

[*] [This constitutes the "descriptive material" referenced in Rule 5:4-2(h) that each divorce litigant must receive and certify as having received (using the attached certification forms).]

## Mediation[1]

Mediation is a way [means] of resolving differences with the help of a trained, [impartial] independent third party. The parties, with or without lawyers, are brought together by the mediator in a neutral setting. A mediator does not represent either side and does not offer legal advice. Parties are encouraged to [retain an attorney] hire a lawyer to advise them of their rights during the mediation process. The mediator helps the parties identify the issues, gather the information they need to make informed decisions, and communicate so that they can find a solution agreeable to both. Mediation is designed to [facilitate] assist with settling [settlements] court cases in an informal, [non-adversarial] cooperative manner. The court maintains a roster of approved mediators or [you can use] private non-roster mediation services also are available. The judge [would still] will make the final decision [determination as to whether] to grant the divorce or dissolution.

## Arbitration

If arbitration is selected, the parties will waive their right to having the court decide the issues that will be resolved in arbitration. In this process [an arbitration proceeding], an [impartial] independent third party decides issues in a case. The parties select and hire the arbitrator and agree on which issues the arbitrator will decide. [The parties also agree in advance whether the arbitrator's decisions will be binding on them or instead treated merely as a recommendation.] The arbitrator's decision is binding and final. While an arbitrator may

[1] The Court's policy against the mediation of matters in which a temporary or final restraining order has been entered pursuant to the Prevention of Domestic Violence Act remains in effect. [Note: The adoption of Rule 5:4-2(h) and the promulgation of this descriptive material is in no way intended to indicate any change in the Court's policy, grounded in statutes and court rules, against mediation in any matter in which a temporary or final restraining order has been entered pursuant to the Prevention of Domestic Violence Act.]

decide some issues [within a divorce case], the judge [would still] will make the final decision [determination as to whether] to grant the divorce or dissolution.

## Collaborative Law Process

The collaborative law process allows parties represented by lawyers to work together to resolve disputes without court involvement. The parties and their lawyers meet and, as needed, consult with experts who are not lawyers but are professionals in their fields. These experts may include certified financial planners, certified public accountants, licensed clinical social workers, psychologists, licensed professional counselors, licensed marriage and family therapists, and psychiatrists. All participants understand and agree that this process is intended to replace traditional divorce or dissolution proceedings. The parties further understand the collaborative law process will end if either party files a divorce or dissolution complaint. Upon termination of the collaborative law process, the parties are not permitted to hire any lawyers or law firms that represented them in that process for purposes of the divorce or dissolution.

## Use of Professionals

As part of or in addition to the methods described above, parties [Parties] in a divorce or dissolution matter may [also] seek the assistance of [other] skilled professionals to help resolve issues [in a case, such as attorneys, accountants or other financial professionals, and various types of mental health professionals (e.g., psychiatrists, psychologists, social workers, therapists)]. These professionals may help the parties resolve all or some of the issues [or just specific portions of] in the case. [As with mediation and arbitration, parties making use of these professionals to resolve issues in the divorce are encouraged to consult their attorney for

advice throughout this process.] While this approach may resolve some issues [in the case], the judge [would still need to] will make the final decision to grant the divorce or dissolution.

## Combinations of Alternatives

Depending on your circumstances, it may be helpful for you to use a combination of mediation, arbitration, collaborative law and/or skilled professionals to resolve issues in your divorce or dissolution matter.

## Conclusion

Just as every [marriage] relationship is unique, every divorce or dissolution is unique [as well]. The specific circumstances of your [divorce] case determine what [method or] methods [of dispute resolution] are best suited to resolve your issues [in your divorce]. You are encouraged to ask your [attorney] lawyer about whether [these alternative dispute resolution methods to resolve issues relating to your divorce] mediation, arbitration, collaborative law or the use of professionals may assist you in resolving issues in your divorce or dissolution.

[Using these alternative dispute resolution methods allows you to participate in the decision on those issues, rather than leaving all of the issues to the judge to decide. And presenting the judge with a case in which the only decision remaining is whether to grant the divorce will permit that decision to be made more expeditiously. While the judge must be the one to decide whether to grant the divorce, your role in deciding some or all of the other issues can be enhanced through these alternative dispute resolution methods.]