ARBITRATORS' TRAINING CURRICULUM

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WHAT IS ARBITRATION?

Arbitration is a process in which a dispute is submitted to experienced and knowledgeable neutral attorneys or retired Superior Court judges to hear arguments, review evidence, and render a decision. It is less formal, less complex, and often concluded more quickly than court proceedings. Copies of the pertinent rule provisions relating to arbitration appear in the appendix.

PURPOSE OF ARBITRATION

The purpose of arbitration is to provide an informal process for resolving civil cases in an economic and expeditious manner.

Pursuant to *R*. 4:21A-1(d), an arbitration hearing must occur no later than 60 days after the closing date of discovery. The earlier the arbitration occurs, the greater the likelihood of meeting the goal of expeditious resolutions, thereby reducing litigation time and cost. Research has confirmed what practitioners have long believed: that the existence of specific time standards for case disposition correlates with earlier dispositions.

The single most important thing a court can do to ensure that counsel and litigants are prepared for arbitration is to ensure that the arbitration occurs on the first scheduled date. Good preparation enhances the quality of the arbitration and the outcome.

The New Jersey arbitration program has shown that arbitration works most effectively and cost-efficiently when the court schedules matters for trial *de novo* on an expedited basis in cases in which a party rejects an arbitration award. Thus, the Rules of Court (*R.* 4:21A-6(c)) require that all trials *de novo* be held within 90 days following the filing and service of a trial *de novo* request.

WHAT TYPES OF CASES ARE ARBITRATED?

The following cases on Tracks I, II and III are subject to mandatory arbitration:

- all auto negligence cases, regardless of the amount in controversy;

- all personal injury cases, regardless of the amount in controversy, including assault and battery cases but not including products liability or professional malpractice cases;
- all Personal Injury Protection (PIP) cases;
- all book account cases and actions on a negotiable instrument; and all other contract and commercial cases that, after screening by the case management teams, are determined to be appropriate for arbitration; and
- all lemon law[1] cases in which the parties opt to go to arbitration or fail to affirmatively choose mediation or voluntary binding arbitration (VBA).

Cases on Track IV may be subject to arbitration in the discretion of the managing judge.

HOW DOES ARBITRATION WORK?

All attorneys and *pro se* parties are notified at least 45 days in advance of their scheduled arbitration hearing. Before the scheduled hearing date, all parties must exchange statements of the factual and legal issues. Two uniform statements of facts and issues have been adopted for statewide use, one for commercial cases and the other for all other cases. These appear as Appendices XXII-A and XXII-B to the Rules of the Court; copies are included in the Appendix.

On the scheduled hearing date, all attorneys and parties are encouraged to appear.

Although *R.* 4:21A-4(f) does not require a party to appear if an attorney is appearing on that party's behalf, arbitration is more meaningful when parties attend. It affords litigants their "day in court." When they arrive, they will be greeted by staff who will mark a calendar with appearances. Once all attorneys and parties in a particular case

1 At its June 7, 2005 Administrative Conference, the Supreme Court approved a statewide pilot program that allows counsel and *pro se* parties in lemon law cases (*N.J.S.A.* 56:12-29 *et seq.)* to choose the complementary dispute resolution (CDR) modality to be used for the particular case. This pilot program commenced statewide on January 1, 2006 and applies to all lemon law cases answered subsequent to that date.

Under the program, following the filing of the first answer, all counsel and *pro se* parties are sent a notice providing them the opportunity to select whether the case should go to mediation pursuant to *Rules* 1:40-4 and 1:40-6, non-binding arbitration pursuant to *R*. 4:21A *et seq*., or VBA pursuant to guidelines approved by the Supreme Court and posted on the Judiciary's Internet website at www.njcourts.gov. Copies of the VBA guidelines and forms appear in the appendix. Failure to affirmatively choose a CDR modality results in the case being scheduled for arbitration at the close of discovery unless otherwise ordered by the court.

have arrived, the case will be placed on a "ready list" to be assigned accordingly. Cases are heard by a single arbitrator or a panel composed of two arbitrators, as determined by the Assignment Judge. See *R*. 4:21A-2(c).

The arbitrators having previously reviewed the statements of facts and issues then conduct the hearing during which each party presents its case. Parties are permitted to introduce exhibits and other relevant documentary evidence. Arbitrators generally exercise the power of the court in the management and conduct hearings. Although the parties themselves may testify during the arbitration, reports are offered in lieu of testimony of witnesses. In more complex cases, however, counsel sometimes will present witnesses to provide limited testimony at the arbitration hearing.

Following the completion of the hearing and in the presence of the parties, the arbitrators render their award, including the basis for their decision. The award is memorialized on a written report and award form.

ARBITRATION PROGRAM OPERATING STANDARDS

The following standards were developed by the Supreme Court Arbitration Advisory Committee and approved by the Conference of Civil Presiding Judges for mandatory statewide use:

- The Civil Presiding Judge is responsible for the overall administration of the arbitration program.
- The courts should ensure that arbitrators possess at least the minimum qualifications prescribed by the Court Rules, are approved by the local bar and the Assignment Judge or his/her designee, and are regularly evaluated by the court in consultation with the local bar to ensure both competence and opportunity to serve. The local bar arbitrator selection committee should make every effort to include women and minorities as arbitrators to ensure cultural diversity.
- All those serving as arbitrators must complete at least three classroom hours of initial training and at least two hours of continuing training thereafter as prescribed by the Court Rules. Written proof of this training must be provided to the AOC.

- Cases should be scheduled with at least 45 days' advance notice and with the hearing to occur within 60 days from the close of the discovery period.
- Arbitration hearings should not be adjourned except for exceptional circumstances. Any matters adjourned should immediately be given a new, firm hearing date.
- Arbitration hearings should be conducted in facilities that convey the dignity of a court proceeding.
- Upon advance notice to the arbitration staff, every effort must be made to provide interpreters at arbitration hearings involving foreign language speaking or hearing impaired participants.
- Arbitrator lists should be broken down by areas of substantive expertise and, cases should be matched with arbitrators having relevant expertise.
- There should be an annual assembly of civil judges, staff and arbitrators in the vicinage.
- All participants at arbitration should be treated fairly, impartially, and with dignity.
- Arbitrators must be impartial in fact and in appearance.
- Attendance by the parties or their attorneys at arbitration is vital; absent extraordinary circumstances arbitration should never be done "on the papers." Also, every effort should be made to have the plaintiff participate by telephone in the arbitration hearing in the event that the plaintiff is out of state on the date of the hearing.
- Arbitrators' decisions should be based on relevant input by all parties and reflect jury verdicts in the county of venue.
- Arbitrators should separate "economic" and "non-economic" damages.
- Arbitrators should clearly print their award, and supportive reasoning, on the arbitration award form.
- Unless there is an exceptional need to reserve a particular decision, arbitrators' decisions must be announced in the presence of the parties.
- The 30-day time period for filing of trial de novo requests should not be enlarged absent "extraordinary circumstances."
- Trials *de novo* must be scheduled to occur within 90 days after the filing of the trial *de novo* request.
- Once the court is aware of verbal threshold issues, attorneys should be encouraged to consider the use of voluntary binding arbitration.
- An arbitration award can be confirmed and judgment entered against a party who was in default at the time the arbitration hearing took place so long as the party received advance notice of the arbitration hearing. See *R*. 4:21A-9.

- "Friendlies" must be held in all cases in which an arbitration award is accepted on behalf of an infant or a mentally incapacitated person.

FEATURES OF THE ARBITRATION PROGRAM

Some of the features of the arbitration program include:

- Arbitrators adjudicate cases thereby providing the parties with a decision on the merits and a "day in court." See *R.* 1:40-2(a)(1).
- The arbitration hearing must occur within 60 days after the close of the applicable discovery period permitted for the particular track, thereby providing a rapid resolution to the dispute but only after all parties are ready to proceed. *R.* 4:21A-1 (d).
- Arbitration hearings are held in court facilities and thus have the same dignity as trials; however, they are not recorded. *R.* 4:21A-4(d).
- The Rules of Evidence do not apply at the arbitration hearing. Arbitrators may hear any evidence necessary to render a decision. Further, instead of bringing actual witnesses, other than the parties, to testify at the hearing, arbitrators may accept affidavits of witnesses, interrogatories, deposition transcripts, and bills and reports of hospitals, doctors, or other experts. *R.* 4:21A-4(c). This more informal and flexible procedure saves both time and witness fees.
- The average length of an arbitration hearing is considerably shorter than most trials. Simpler cases, such as two-party auto negligence cases, often can be heard in less than an hour. More complex cases may take an entire day to hear, but this is still significantly quicker than a trial.
- Although the rules provide that the parties to an arbitration hearing may choose the arbitrator(s) who will hear their case by stipulating in writing to the name(s) of the arbitrator(s), this alternative procedure is rarely, if ever, used.
- Counties have the option of using either single arbitrators or two-person arbitrator panels.
- If any party is not satisfied with an arbitration award, that party can request a trial *de novo* upon demand filed and served within 30 days of the filing of the arbitration award and upon payment of $200. *R.* 4:21A-6(b)(1), -6(c). A trial *de novo* must be scheduled to occur within 90 days of the filing of the request. This provision is intended to prevent the use of a trial *de novo* request as a delay tactic and to alleviate the burden on attorneys and litigants of having to prepare a case twice.

- If the party demanding a trial *de novo* does not improve its position at trial by at least 20 percent, that party may be subject to monetary sanctions, up to a total of $750 in attorney's fees and $500 for witness costs. *R.* 4:21A-6(c).
- If no trial *de novo* is requested, the case will be dismissed 50 days after the filing of the arbitration award unless either party moves for confirmation of the arbitration award and entry of judgment, or submits a consent order to the court detailing the terms of settlement and providing for dismissal of the action or entry of judgment. *R.* 4:21A-6(b).

PROVISIONS RELATING TO ARBITRATORS

Who Are the Arbitrators?

Arbitrators must be either attorneys who have at least ten years of consistent and extensive experience in New Jersey in the particular area of law or retired judges. Separate rosters must be maintained for each discrete area of law. Arbitrators must complete at least three classroom hours of initial training and at least two hours of continuing training in courses approved by the Administrative Office of the Courts. *R.* 1:40-12(c). A copy of the application form to become an arbitrator appears in the Appendix.

Attorneys wishing to serve as an arbitrator should submit a completed application form, resume, and proof of attendance of the required initial training to the Arbitration Administrator of the county in which the applicant wishes to serve. The Arbitration Administrator will submit the application and accompanying documents to the county bar arbitrator selection committee for review and determination. A list of the Arbitration Administrators for each county is included in the Appendix. The Arbitrator Screening Guidelines are also included in the Appendix. The local arbitrator selection committee sends recommendations to the Assignment Judge or his/her designee for final approval. Upon approval by the Assignment Judge or his/her designee, the Arbitration Administrator will advise the AOC Civil Practice Division of the appointment of new arbitrators to the county roster.

Evaluation of the Program and Arbitrators and Reappointment of Arbitrators

The success of the arbitration program depends in large part upon the perception of the litigants and the bar of the effectiveness of the program and of the arbitrators. Statewide evaluation forms have been developed and should be provided to every litigant and attorney attending arbitration hearings. The Conference of Civil Presiding Judges has recommended that the completed forms should be reviewed on an ongoing basis. Moreover, at least annually, the Civil Presiding Judges, staff and the local arbitrator selection committee shall review each roster of arbitrators in accordance with the arbitration screening guidelines and consider the results of the completed evaluation forms received. Following this review, the AOC should be contacted in order to verify the names of all individuals who have submitted proof of completion of the continuing training required under *R*. 1:40-12(c). The AOC Civil Practice Division will forward arbitrator rosters to the Arbitration Administrators for review and updates. Finally, the Arbitration Administrators should contact the AOC Civil Practice Division immediately if roster information changes outside of the annual review.

Arbitrator Standards of Conduct

Attached and appearing in the Appendix is the *Standards of Conduct for Arbitrators in the Court-Annexed Arbitration Program*. The standards were approved by the Supreme Court in May 2003 and apply to all individuals serving in the Civil Court-Annexed Arbitration Program.

Arbitrator Checklist

A checklist has been developed to guide arbitrators in the optimal handling of hearings. A copy appears in the Appendix.

Arbitrator Settlement Protocol

At its June 9, 2006 Administrative Conference, the Supreme Court approved the following settlement protocol for civil arbitrators to follow:

- With the consent of all counsel and *pro se* litigants, any previous or current offers or demands in the case may be disclosed to the arbitrator(s). Said disclosures shall not result in that arbitrator's disqualification. The arbitrator shall not be bound by these disclosures, unless the respective litigants have entered into a binding high/low agreement.
- Upon the consent of <u>all counsel</u> and *pro se* litigants, given prior to the commencement of the hearing, the arbitrator(s) may conduct a settlement conference. In the event that the conference does not result in settlement of the case, the arbitration shall be conducted by a different arbitrator or panel. Nothing herein shall preclude the arbitrator or panel from conducting a settlement conference, upon the request of <u>all</u> parties after the determination by the arbitrator panel.

Powers of Arbitrators

Arbitrators serving in the civil arbitration program have the following powers:

- To issue subpoenas, at the request of a party or on their own initiative, to compel the attendance of witnesses or the production of documents at the arbitration hearing. See *N.J.S.A.* 2A:23A-24. An arbitrator faced with a case in which a party fails or refuses to obey a subpoena or request for the production of documents should immediately bring the matter to the attention of the Assignment Judge or the Civil Presiding Judge for appropriate action.
- To administer oaths and affirmations. See *R.* 4:21A-4(b).
- To determine the law and facts in the case. See *R.* 4:21A-4(b).
- In motor vehicle accident cases, arbitrators may declare a "no cause" where the plaintiff has not met the verbal threshold.
- To exercise the powers of the court in the management and conduct of the hearing. See *R.* 4:21A-4(b).
- To receive any reliable, relevant evidence and determine its weight, regardless of the Rules of Evidence. See *R.* 4:21A-4(c).

Liability, Defense and Indemnification of Arbitrators

Arbitrators are entitled to a defense by the Attorney General of New Jersey and to indemnification by the State pursuant to the provisions of the New Jersey Tort Claims Act for claims or actions arising out of their service as arbitrators. See Opinion Letter of Attorney General dated January 8, 1985.

SCHEDULING

Scheduling Considerations and Arbitrator Caseload

- Arbitrators, including retired judges, are selected in rotating order from the approved roster for each sub-specialty. **(4/19/05 Conference of Civil Presiding Judges' Meeting)**.
- Arbitrators should not be scheduled on days when they have other commitments in the courthouse, including representing clients at hearings before other arbitrators. **(12/13/05 Conference of Civil Presiding Judges' Meeting)**.
- Experience in the auto arbitration program indicates that the settlement/ adjournment/ removal rate of cases scheduled for arbitration is approximately 65 percent. This should be taken into consideration in scheduling cases.
- The Supreme Court Arbitration Advisory Committee recommends that, on the average, arbitrators should be hearing at least five to six negligence cases per arbitration day. However, complex cases such as products liability or more complicated commercial matters will generally take longer to handle and therefore fewer such cases should be scheduled.

UNIFORM ARBITRATION STATEMENT OF FACTS FORMS

Pursuant to *R.* 4:21A-4(a) uniform statement of facts forms must be exchanged by all parties at least 10 days prior to the scheduled arbitration hearing. There are two different forms set forth in Appendix XXII - A and - B of the Rules of Court, one to be used in commercial cases and the other for all other cases. Copies of the forms also appear in the Appendix.

Attorneys who fail to bring the completed applicable uniform statement of facts form appearing in the Appendices to the Court Rules to arbitration will be required to fill out the requisite form on the day of arbitration and prior to the start of the hearing. If attorneys' statements were not exchanged 10 days prior to the hearing, as required by *R.* 4:21A-4(a), the aggrieved attorney may enforce this requirement by bringing the dereliction to the attention of the judge. ***(9/26/00 Conference of Civil Presiding Judges' Meeting)***

ARBITRATION AWARDS

After each side has completed its presentation, arbitrators render a decision and prepare a written award. The decision is normally made on the day of the arbitration hearing in the presence of the participants. The parties are given a copy of the decision (for which they must sign) along with notice of the right to request a trial *de novo*. In consolidated cases, arbitrators should use a separate award sheet for each separate case. In order to avoid confusion in the application of *N.J.S.A.* 2A:15-53, the comparative negligence statute, when completing the arbitration award form, arbitrators should separate the economic and non-economic damages awarded in those situations in which the plaintiff is asserting a claim for economic damages.

The original award should be given to court staff by arbitrators at the conclusion of each hearing and staff must immediately date-stamp it "filed" on the day of the arbitration hearing. In the event that the decision is reserved, court staff must stamp it "filed" on the date that it is received from the arbitrators. Thereafter, the court must provide the decision to all parties pursuant to *R.* 4:21A-5. This procedure is intended to eliminate any question as to when the 30-day period for requesting trial *de novo* begins to run (*i.e.,* from the "filing" date).

Unanimity Required; Procedure When Lacking

When more than one arbitrator hears a case, the decision must be unanimous. If the arbitrators cannot agree, they must immediately advise the parties and the arbitration administrator of the conflict. Within 10 days of being so advised, the parties may request either the designation of a new panel to conduct a second hearing or a trial in Superior Court without further arbitration. In the event that a trial is requested, the provisions of *R*. 4:21A-6(c), providing for the payment of a trial *de novo* fee and for the award of costs following a trial *de novo* does not apply.

Public Access to Arbitration Awards

Because of the nature of arbitration as a court-annexed, adjudicatory procedure, the public has a right of access to arbitration awards and arbitration hearings.

Prejudgment Interest On Arbitration Awards

The prejudgment interest rule provides that prejudgment interest on arbitrated matters accrues from the date the complaint was filed or six months after the cause of action arose, whichever is later, and ends on the date a court order is entered terminating the action. See *R.* 4:42-11(b). Therefore, the full amount of prejudgment interest cannot be calculated until an order has been entered terminating the action. It should be noted that in the absence of the calculation of prejudgment interest, the plaintiff is nevertheless entitled to such interest in addition to the damages awarded, and it continues to accrue until the action is terminated. Prejudgment interest should be calculated by counsel for the party to whom it accrues.

AWARDS ON BEHALF OF MINORS AND INCAPACITATED PERSONS

In the event that an award is accepted on behalf of a minor or mentally incapacitated person, it must be approved by the court and a "friendly" settlement proceeding must be

held as expeditiously as possible. See *R.* 4:21A-7 and *Mack v. Berry*, 205 *N.J. Super.* 600 (Law Div. 1985).

NON-APPEARING PARTIES AT ARBITRATION HEARINGS

Rule 4:21A-4(f) provides that an appearance by or on behalf of each party is required at the arbitration hearing. The comment to the rule makes clear that it is sufficient for either the party or the party's attorney to appear.

If the attendance of a particular party is critical to the other side's proof of his or her case, the opposing party should serve a notice in lieu of a subpoena on the party whose attendance is needed.

If neither the party claiming damages nor that party's attorney appears, the party's pleading will be dismissed. If neither a defendant nor the defendant's attorney appears, the answer will be stricken, the arbitration will proceed, and the non-appearing party shall be deemed to have waived the right to demand a trial *de novo*.

If a plaintiff appears and the defendant does not and the plaintiff requests adjourning the case rather than going forward with the arbitration, staff may not adjourn the case, but rather should refer the matter to a judge for review.

If a plaintiff and plaintiff's attorney appear for arbitration and the defendant appears but defense counsel, despite notice, does not appear, staff must make a good faith effort to reach defense counsel by telephone. If after this good faith effort defense counsel still cannot be reached or refuses to attend, staff may not adjourn the matter, but rather the matter must be referred to a judge who will determine whether there is good cause to adjourn.

Relief from any order entered as a result of a non-appearance shall be granted only on motion showing good cause and on such terms as the court deems appropriate, including payment of litigation expenses and counsel fees incurred as a result of the nonappearance. See *Severino v. Marks*, 366 *N.J. Super.* 275 (App. Div. 2004). If the motion is granted, the

judge may send the case either to a second arbitration or to a trial, depending on the circumstances.

If a previous non-appearing party on "good cause" gets a case reinstated on motion following dismissal or striking of the answer because of failure to appear at arbitration and the judge orders the case to a trial rather than to a second arbitration, the order should specifically provide for payment of the $200 trial *de novo* fee within 10 days of the judge's order as a condition of granting the motion.

If a party in default does not appear at arbitration, an award entered against that party can be confirmed and judgment entered only if that party received advance notice of the arbitration hearing. The court notices only parties in default who previously appeared in the case (*e.g.*, parties whose answers were stricken).

HANDLING ARBITRATIONS INVOLVING CASES WITH DEFAULTING OR STRICKEN PARTIES

If there is only one defendant and that defendant's answer has been stricken or the defendant is in default, the case should **not** be scheduled for arbitration. If there are multiple defendants and one or more **(but not all)** has had default entered against them less than six months prior to the date of the arbitration hearing or have had default judgment on liability entered against them pursuant to *R*. 4:43-2(b), the case should be scheduled for arbitration. The stricken or defaulted defendant(s) should receive notice of the arbitration hearing pursuant to *R*. 4:21A-9 in the form set forth in Appendix XXIX to the Court Rules, a copy of which can be found in the Appendix to this document. Proof of service pursuant to *R*. 4:21A-9(b) shall be provided to the arbitrator(s) at the time of the hearing.

If the defaulted defendant appears, the defendant should be allowed to participate in the proceeding as they would be allowed to participate at trial, that is, they may cross-examine but may not present affirmative witnesses. The stricken or defaulted defendant(s) that participate in the arbitration hearing are not entitled to a trial *de novo* unless that party has moved to vacate the dismissal or default and that motion has been granted before the

time to file the trial *de novo* has run. If another party files for a trial *de novo*, the defendant(s) in default or whose answer(s) have been stricken should get notice and may participate in the trial. The defendant(s) in default or whose answer(s) have been stricken are bound if the arbitration award is confirmed.

If the party against whom a default or default judgment on liability has been entered does not appear, the party obtaining the arbitration award is required to serve a copy of the award on the defaulting party within 10 days of the receipt of the arbitration award as set forth to *R*. 4:21A-9.

PROCEEDINGS FOLLOWING ARBITRATION HEARINGS

An order shall be entered dismissing the action following the filing of the arbitrator's award unless:

1. within 30 days after the filing of the arbitration award, a party files and serves on all adverse parties a notice of rejection of the award and demand for a trial *de novo*; or

2. within 50 days after the filing of the arbitration award, the parties submit a consent order to the court detailing the terms of settlement and providing for dismissal of the action or for entry of judgment; or

3. within 50 days after the filing of the arbitration award, any party moves for confirmation of the award and entry of judgment thereon.

TRIALS *DE NOVO*

Within 30 days after the filing of the arbitration award either party may file and serve a trial *de novo* request. A party demanding a trial *de novo* must tender with the request a fee for $200. The case is then returned to the active trial list as to all parties. Accordingly, only one party needs to request a trial *de novo*.

Other Consequences of Requesting a Trial *De Novo* — Award of Costs Following Trial *De Novo*

Rule 4:21A-6(c) provides that if a party rejects an arbitrator's award and thereafter goes to a trial *de novo*, that party may be liable to pay reasonable costs, including attorney's fees, incurred by those parties not demanding a trial *de novo*. Reasonable costs shall be awarded on motion supported by detailed certification. However, no costs may be awarded if the verdict is not at least 20 percent more favorable than the award. Moreover, if the rejected arbitration award denied money damages, no costs will be awarded if the party requesting the trial *de novo* has obtained a verdict of at least $250. See *R.* 4:21A-6(c)(2). The award of attorney's fees shall not exceed $750 in total, nor $250 per day. Compensation for witness costs, including expert witnesses, shall not exceed $500. See *R.* 4:21A-6(c)(3) and (4).

Per Quod Claims to Be Combined with Award to Injured Spouse in Determining Whether to Award Costs

A *per quod* claim should be combined with the award to the injured spouse in determining a party's potential eligibility for counsel fees and costs under *R.* 4:21A6(c)(1) following a trial *de novo*. See *Coughlin v. Morell and Pfeiffer*, 222 *N.J. Super.* 71. (App. Div. 1987).

Trial *De Novo* Request Must Be Filed to Preserve Appeal

According to *Grey v. Trump Castle Associates*, 367 *N.J. Super.* 443 (App. Div. 2004), when a matter has been arbitrated pursuant to *R*. 4:21A *et seq*., a party may preserve the right to seek appellate review of the interlocutory order only by timely filing a trial *de novo* request. However, once the award has been confirmed and judgment has been entered, an appeal from the award or any interlocutory order is barred.

RESOLUTION OF ARBITRATED CASES QUESTIONNAIRE

An on-line questionnaire has been developed for use in evaluating the impact of arbitration on cases that settle following the filing of a trial *de novo* request. The link to the questionnaire is provided in the notice sent in the name of the Pretrial Judge to all counsel and *pro se* parties. In order to capture the data, the questionnaire must be completed on line at http://www.surveymonkey.com/s/HQFF9DG. Please note that no paper versions will be accepted.

VOLUNTARY BINDING ARBITRATION PROGRAM

The Supreme Court has approved implementation of voluntary binding arbitration programs (VBA) to handle verbal threshold and lemon law cases. It also adopted guidelines permitting counties to use VBA for other case types with advance notice to the AOC. Information regarding the program can be found on the Arbitration page on the Judiciary's website.

APPENDIX

1. **Court Rule 4:21A**

2. **Court Rule 1:40**

3. **Appendix XXII-A - Uniform Arbitration Statement of Facts (R. 4:21A-4)**

4. **Appendix XXII-B - Uniform Commercial Arbitration Memorandum (R. 4:21A-4)**

5. **Arbitrator Application**

6. **Arbitration Appointment and Screening Guidelines**

7. **List of Arbitration Administrators and CDR Point Persons**

8. **Standards of Conduct for Arbitrators in Court-Annexed Arbitration Program**

9. **Arbitrator Checklist**

10. **Statewide Adjournment Procedure for Civil Trials and Arbitrations**

11. **Appendix XXIX - Notice of Arbitration Hearing**

12. **R. 4:21A-9 Checklist**

13. **Report and Award Forms of Arbitrator(s)**

1. Court Rule 4:21A

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 4:21A. ARBITRATION OF CERTAIN CIVIL ACTIONS

4:21A-1. Actions Subject to Arbitration; Notice and Scheduling of Arbitration

(a) Mandatory Arbitration. Arbitration pursuant to this rule is mandatory for applicable cases on Tracks I, II, and III, as set forth in paragraphs (1), (2), and (3) below, and only as required by the managing judge for cases on Track IV, except that cases having undergone a prior, unsuccessful court-ordered mediation shall not be scheduled for arbitration unless the court finds good cause for the matter to be arbitrated or unless all parties request arbitration.

(1) Automobile Negligence Actions. All tort actions arising out of the operation, ownership, maintenance or use of an automobile shall be submitted to arbitration in accordance with these rules.

(2) Other Personal Injury Actions. Except for professional malpractice and products liability actions, all actions for personal injury not arising out of the operation, ownership, maintenance or use of an automobile shall be submitted to arbitration in accordance with these rules.

(3) Other Non-Personal Injury Actions. All actions on a book account or instrument of obligation, all personal injury protection claims against plaintiff's insurer, and all other contract and commercial actions that have been screened and identified as appropriate for arbitration shall be submitted to arbitration in accordance with these rules.

(b) Voluntary Arbitration. Any action not subject to mandatory arbitration pursuant to subsections (1), (2), or (3) of paragraph (a) of this rule may be submitted to arbitration on written stipulation of all parties filed with the civil division manager.

(c) Removal From Arbitration. An action assigned to arbitration may be removed therefrom as follows:

(1) Prior to the notice of the scheduling of the case for arbitration or within 15 days thereafter, the case may be removed from arbitration upon submission to the arbitration administrator of a certification stating with specificity that the controversy involves novel legal or unusually complex factual issues or is otherwise ineligible for arbitration pursuant to paragraph (a). A copy of this certification must be provided to all other parties. A party who objects to removal shall so notify the arbitration administrator within ten days after the receipt of the certification, and the matter will then be referred to a judge for determination. The arbitration administrator shall, however, remove the case from arbitration if no objection is made and the reasons for removal certified to are sufficient.

(2) If either party seeks to remove a case from arbitration subsequent to 15 days after the notice of hearing, a formal motion must be made to the Civil Presiding Judge or designee.

(d) Notice of Arbitration; Scheduling; Adjournment. The notice to the parties that the action has been assigned to arbitration shall also specify the time and place of the arbitration hearing and its date, which shall not be earlier than 45 days following the date of the notice. Unless the parties otherwise consent in writing, the hearing shall not be scheduled for a date prior to the end of the applicable discovery period, including any extension thereof. The hearing shall take place, however, no later than 60 days following the expiration of that period, including any extension. Adjournments of the scheduled date shall be permitted only as provided by R. 4:36-3(b).

(e) Pretrial Discovery. The assignment of an action for arbitration shall not affect a party's opportunity to engage in pretrial discovery nor an attorney's professional obligation to do so.

(f) Arbitration in Family Part Matters. Arbitration in Family Part matters shall be governed by R. 5:1-5.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; caption amended and former paragraph (a) redesignated paragraph (a)(1) and new paragraph (a)(2) adopted, paragraphs (b) and (c)(1) and (2) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a)(1) and (2) and (c)(1) and (2) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(2) and (c)(1) amended July 13, 1994 to be effective September 1, 1994; paragraphs (b) and (d) amended July 10, 1998 to be effective September 1, 1998; new text added to paragraph (a), paragraphs (a)(1) and (2) amended, new paragraph (a)(3) adopted, and paragraphs (c) and (d) amended July 5, 2000 to be effective September 5, 2000; corrective amendment to paragraph (d) adopted October 10, 2000 to be effective immediately; caption to R. 4:21A amended, and text of paragraph (a) of R. 4:21A-1 amended July 12, 2002 to be effective September 3, 2002; paragraphs (a) and (c)(1) amended July 28, 2004 to be effective September 1, 2004; subparagraph (a)(2) amended July 27, 2006 to be effective September 1, 2006; new paragraph (f) caption and text adopted July 27, 2015 to be effective September 1, 2015.

4:21A-2. Qualification, Selection, Assignment and Compensation of Arbitrators

(a) By Stipulation. All parties to the action may stipulate in writing to the number and names of the arbitrators. The stipulation shall be filed with the civil division manager within 14 days after the date of the notice of arbitration. The stipulated arbitrators shall be subject to the approval of the Assignment Judge and may be approved whether or not they met the requirements of paragraph (b) of this rule if the Assignment Judge is satisfied that they are otherwise qualified and that their service would not prejudice the interest of any of the parties.

(b) Appointment From Roster. If the parties fail to stipulate to the arbitrators pursuant to paragraph (a) of this rule, the arbitrator shall be designated by the civil division manager from the roster of arbitrators maintained by the Assignment Judge on recommendation of the arbitrator selection committee of the county bar association.

Inclusion on the roster shall be limited to retired judges of any court of this State who are not on recall and attorneys admitted to practice in this State having at least ten years of consistent and extensive experience in New Jersey in any of the substantive areas of law subject to arbitration under these rules, and who have completed the training and continuing education required by R.1:40-12(c). A Certified Civil Trial Attorney with the requisite experience, who has also completed the training and continuing education required by R.1:40-12(c), will be entitled to automatic inclusion on the roster. The arbitrator selection committee, which shall meet at least once annually, shall be appointed by the county bar association and shall consist of one attorney regularly representing plaintiffs in each of the substantive areas of law subject to arbitration under these rules, one attorney regularly representing defendants in each of the substantive areas of law subject to arbitration under these rules, and one member of the bar who does not regularly represent either plaintiff or defendant in each of the substantive areas of law subject to arbitration under these rules. The arbitrator selection committee shall review the roster of arbitrators annually and, when appropriate, shall make recommendations to the Assignment Judge to remove arbitrators from the roster. The members of the arbitrator selection committee shall be eligible for inclusion in the roster of arbitrators. The Assignment Judge shall file the roster with the Administrative Director of the Courts. A motion to disqualify a designated arbitrator shall be made to the Assignment Judge on the date of the hearing.

(c) Number of Arbitrators. All arbitration proceedings in each vicinage in which the number and names of the arbitrators are not stipulated by the parties pursuant to paragraph (a) of this rule shall be conducted by either a single arbitrator or by a two arbitrator panel, as determined by the Assignment Judge.

(d) Compensation of Arbitrators.

(1) Designated Arbitrators. Except as provided by subparagraph (2) hereof, a single arbitrator designated by the civil division manager, including a retired judge not on recall, shall be paid a per diem fee of $ 350. Two-arbitrator panels shall be paid a total per diem fee of $ 450, to be divided evenly between the panel members.

(2) Stipulated Arbitrators. Arbitrators stipulated to by the parties pursuant to R. 4:21A-2(a) shall be compensated at the rate of $ 70 per hour but not exceeding a maximum of $ 350 per day. If more than one stipulated arbitrator hears the matter, the fee shall be $ 70 per hour but not exceeding $ 450 per day, to be divided equally between or among them. The parties may, however, stipulate in writing to the payment of additional fees, such stipulation to specify the amount of the additional fees and the party or parties paying the additional fees.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (b) amended July 10, 1998 to be effective September 1, 1998; caption amended, paragraph (c) amended, and new paragraph (d) adopted July 5, 2000 to be effective September 5, 2000; paragraphs (b) and (d)(1) amended, and former paragraph (d)(3) deleted July 12, 2002 to be effective September 3, 2002; paragraphs (b), (c), (d)(1), and (d)(2) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended July 27, 2006 to be effective

September 1, 2006; paragraph (b) amended July 28, 2017 to be effective September 1, 2017; paragraph (b) amended July 27, 2018 to be effective September 1, 2018.

4:21A-3. Settlements; Offer of Judgment

If an action is settled prior to the arbitration hearing, the attorneys shall so report to the civil division manager and an order dismissing the action shall be entered. The provisions of R. 4:58 shall not apply to arbitration proceedings.

Note: Adopted November 1, 1985 to be effective January 2, 1986; amended July 10, 1998 to be effective September 1, 1998; amended July 28, 2004 to be effective September 1, 2004.

4:21A-4. Conduct of Hearing

(a) Prehearing Submissions. At least 10 days prior to the scheduled hearing each party shall exchange a concise statement of the factual and legal issues, in the form set forth in Appendix XXII-A or XXII-B to these rules, and may exchange relevant documentary evidence. A copy of all documents exchanged shall be submitted to the arbitrator for review on the day of the hearing.

(b) Powers of Arbitrator. The arbitrator shall have the power to issue subpoenas to compel the appearance of witnesses before the panel, to compel production of relevant documentary evidence, to administer oaths and affirmations, to determine the law and facts of the case, and generally to exercise the powers of a court in the management and conduct of the hearing.

(c) Evidence. The arbitrator shall admit all relevant evidence and shall not be bound by the rules of evidence. In lieu of oral testimony, the arbitrator may accept affidavits of witnesses; interrogatories or deposition transcripts; and bills and reports of hospitals, treating medical personnel and other experts provided the party offering the documents shall have made them available to all other parties at least one week prior to the hearing. In the discretion of the arbitrator, police reports, weather reports, wage loss certifications and other documents of generally accepted reliability may be accepted without formal proof.

(d) General Provisions for Hearing. Arbitration hearings shall be conducted in court facilities and no verbatim record shall be made thereof. Witness fees shall be paid as provided for trials in the Superior Court.

(e) Subsequent Use of Proceedings. The arbitrator's findings of fact and conclusions of law shall not be evidential in any subsequent trial de novo, nor shall any testimony given at the arbitration hearing be used for any purpose at such subsequent trial. Nor may the arbitrator be called as a witness in any such subsequent trial

(f) Failure to Appear. An appearance on behalf of each party is required at the arbitration hearing. If the party claiming damages does not appear, that party's pleading shall be dismissed. If a party defending against a claim of damages does not appear, that party's pleading shall be stricken, the arbitration shall proceed and the nonappearing party shall be deemed to have waived the right to demand a trial de novo. A party obtaining the arbitration award against the non-appearing party shall serve a copy of the arbitration award within 10 days of receipt of the arbitration award from the court pursuant to R. 4:21A-5. Service shall be upon counsel of record, or, if not represented, upon such non-appearing party. Service shall be made as set forth in R. 4:21A- 9(c). Relief from any order entered pursuant to this rule shall be granted only on motion showing good cause, which motion shall be filed within 20 days of the date of service on the non-appearing party by the appearing party. Relief shall be on such terms as the court may deem appropriate, including litigation expenses and attorney's fees incurred for services directly related to the non-appearance.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a) and (b) amended, and new paragraph (f) adopted July 5, 2000 to be effective September 5, 2000; paragraph (f) amended July 23, 2010 to be effective September 1, 2010; paragraph (f) amended August 1, 2016 to be effective September 1, 2016.

4:21A-5. Arbitration Award

No later than ten days after the completion of the arbitration hearing, the arbitrator shall file the written award with the civil division manager. The court shall provide a copy thereof to the parties who appear at the hearing. The award shall include a notice of the right to request a trial de novo and the consequences of such a request as provided by R. 4:21A-6.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (c)(1) amended July 10, 1998 to be effective September 1, 1998; paragraph (a) caption deleted and text amended, and paragraphs (b) and (c) deleted July 5, 2000 to be effective September 5, 2000; amended August 1, 2016 to be effective September 1, 2016.

4:21A-6. Entry of Judgment; Trial De Novo

(a) Appealability. The decision and award of the arbitrator shall not be subject to appeal.

(b) Dismissal. An order shall be entered dismissing the action following the filing of the arbitrator's award unless:

(1) within 30 days after filing of the arbitration award, a party thereto files with the civil division manager and serves on all other parties a notice of rejection of the

award and demand for a trial de novo and pays a trial de novo fee as set forth in paragraph (c) of this rule; or

(2) within 50 days after the filing of the arbitration award, the parties submit a consent order to the court detailing the terms of settlement and providing for dismissal of the action or for entry of judgment; or

(3) within 50 days after the filing of the arbitration award, any party moves for confirmation of the arbitration award and entry of judgment thereon. The judgment of confirmation shall include prejudgment interest pursuant to R. 4:42-11(b).

(c) Trial De Novo. An action in which a timely trial de novo has been demanded by any party shall be returned, as to all parties, to the trial calendar for disposition. A trial de novo shall be scheduled to occur within 90 days after the filing and service of the request therefor. A party demanding a trial de novo must submit with the trial de novo request a fee in the amount of $200 towards the arbitrator's fee and may be liable to pay the reasonable costs, including attorney's fees, incurred after rejection of the award by those parties not demanding a trial de novo. Reasonable costs shall be awarded on motion supported by detailed certifications subject to the following limitations:

(1) If a monetary award has been rejected, no costs shall be awarded if the party demanding the trial de novo has obtained a verdict at least 20 percent more favorable than the award.

(2) If the rejected arbitration award denied money damages, no costs shall be awarded if the party demanding the trial de novo has obtained a verdict of at least $ 250.

(3) The award of attorney's fees shall not exceed $ 750 in total nor $ 250 per day.

(4) Compensation for witness costs, including expert witnesses, shall not exceed $500.

(5) If the court in its discretion is satisfied that an award of reasonable costs will result in substantial economic hardship, it may deny an application for costs or award reduced costs.

(d) Attorney Fees. In all actions where by statute or otherwise an award of attorney fees is allowed, all such issues are reserved for court resolution unless the parties otherwise agree to submit a fee demand to the arbitrator. In all cases in which attorney fees are sought, the party seeking attorney fees must comply with the provisions of R. 4:42-9(b).

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; paragraphs (b)(1) and (c) amended November 2, 1987 to be effective January 1, 1988; paragraph (c)(5) amended November 7, 1988 to be effective January 2, 1989;

paragraphs (b)(1) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended May 3, 1994 to be effective July 1, 1994; paragraph (b)(1) amended July 10, 1998 to be effective September 1, 1998; paragraphs (b) and (c) amended July 5, 2000 to be effective September 5, 2000; paragraph (c) amended June 7, 2005 to be effective immediately; new paragraph (d) adopted July 19, 2012 to be effective September 4, 2012; paragraph (c) amended May 30, 2017 to be effective immediately.

4:21A-7. Arbitration of Minor's and Mentally Incapacitated Person's Claims

If all parties to the action accept the arbitration award disposing of the claim of a minor or mentally incapacitated person, the attorney for the guardian ad litem shall forthwith so report to the Assignment Judge and a proceeding for judicial approval of the award pursuant to R. 4:44 shall be held as expeditiously as possible.

Note: Adopted November 1, 1985 to be effective January 2, 1986; amended July 13, 1994 to be effective September 1, 1994; caption and text amended July 12, 2002 to be effective September 3, 2002.

4:21A-8. Administration

(a) Assignment Judge. The Assignment Judge or other judge designated by order of the Supreme Court shall be responsible for the supervision of the arbitration programs in the vicinage, including the resolution of all issues arising therefrom. The Assignment Judge may delegate all or any of those powers to any Superior Court judge in the vicinage.

(b) Administrative Director of the Courts. The Administrative Director of the Courts shall promulgate such guidelines and forms as required for the implementation of the programs.

(c) Civil Division Manager. The civil division manager or designee for the vicinage shall perform all of the functions specified by these rules and shall serve as arbitration administrator to perform all required non-judicial functions implementing the arbitration program.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a), (b) and (c) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 10, 1998 to be effective September 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000.

4:21A-9. Parties in Default

(a) If a party against whom an arbitration award is sought in a multiple party action (1) has had default entered against such party pursuant to R. 4:43-1 and the said default was entered less than six months prior to the date of the arbitration hearing, or (2) has had default judgment on liability pursuant to R. 4:43-2(b) entered against such

party, the arbitration shall proceed against such party provided that the notice of hearing and proof of mailing as set forth in paragraph (b) of this rule has been complied with.

(b) If a party against whom an arbitration award is sought has had default or default judgment on liability entered against it as set forth in paragraph (a), notice of the arbitration proceeding shall be provided to that party in the form set forth in Appendix XXIX to these Rules no later than 30 days prior to the arbitration hearing by ordinary mail addressed to the same address at which that party was served with process if the process was originally served personally or by certified or ordinary mail, unless the party providing the notice has actual knowledge of a different current address of the defaulting defendant, in which case the notice shall be sent to that address. Proof of service of the notice of arbitration hearing herein shall be filed with the clerk prior to the arbitration hearing and shall certify that the party serving the notice has no actual knowledge that the defaulting party's address has changed subsequent to service of original process, or, if the party has such knowledge, the proof shall certify the underlying facts. A copy of the filed proof of service of the notice provided to the defaulting party shall be provided to the arbitrator at the time of the arbitration hearing and the arbitrator shall indicate same in the arbitration award. In the event the arbitration hearing is adjourned or cancelled, the party providing such notice shall promptly notify the defaulting party of the underlying facts and the new hearing date, if applicable.

(c) If a party against whom an arbitration award is sought has had default or default judgment on liability entered against it and did not appear at the arbitration hearing after notice has been provided in accordance with paragraph (b) of this rule, the party obtaining the arbitration award against such defaulting party shall serve a copy of the arbitration award upon such defaulting party within 10 days of the date of receipt of the arbitration award. Service shall be made by ordinary mail addressed to the same address at which that party was served with service of process if the process was originally served personally or by certified or ordinary mail unless the party serving the arbitration award has actual knowledge of a different current address of the party against whom the award was entered, in which case the copy of the award shall be sent to that address.

(d) If a party who has obtained an arbitration award against the defaulting party moves for confirmation of the arbitration award and entry of judgment pursuant to R. 4:21A-6(b)(3), that party shall comply with the provisions of R. 4:43-2 and R. 1:5-7 and shall provide sufficient proof of compliance to the court.

Note: Prior rule adopted July 5, 2000 to be effective September 5, 2000; rule deleted July 27, 2006 to be effective September 1, 2006. New rule adopted July 19, 2012 to be effective September 4, 2012; paragraph (b) amended July 22, 2014 to be effective September 1, 2014.

2. Court Rule 1:40

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.

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

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:

(1)(A) Mediation-arbitration: A process by which, after an initial mediation, unresolved issues are then arbitrated.

(1)(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 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.

Note: 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.

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.

Note: 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.

Rule 1:40-4. Mediation -- General Rules

(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

(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.

Note: 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.

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. A credentials committee comprised of representatives from the Supreme Court Committee on Complementary Dispute Resolution 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.judiciary.state.nj.us or www.njcourtsonline.com). 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.

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

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").

Note: Adopted July 5, 2000 to be effective September 5, 2000 (and former Rule 1:40-6 redesignated as Rule 1:40-7); paragraph (b) amended July 12, 2002 to be effective September 3, 2002; paragraphs (e) and (g) amended July 27, 2006 to be effective September 1, 2006; paragraph (a) amended September 11, 2006 to be effective immediately; paragraph (e) amended July 31, 2007 to be effective September 1, 2007; 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, 2011.

Rule 1:40-7. Complementary Dispute Resolution Programs 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 settlors, 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.

Note: 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.

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.

Note: 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) resdesignated as subparagraphs (a)(3) through (a)(6) July 29, 2019 to be effective September 1, 2019.

Rule 1:40-9. Civil Arbitration

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

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

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).

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

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

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

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

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 Settlors. 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).

(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 classroom 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 classroom 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 of 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 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 classroom 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 classroom 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 classroom 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 settlors, shall first have completed a six-hour complementary dispute resolution (CDR) settlement techniques 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 a six-hour supplemental course approved by the Administrative Office of the Courts. There shall be two distinct supplemental courses, one for family mediators and one for civil mediators. The courses shall include, but are not limited to, training in facilitative methods, case management techniques, procedural requirements for an enforceable mediated settlement, NJ Rules and mediator ethics, 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 and must be annually recommended for inclusion on the approved roster by the local arbitrator selection committee and approved by the Assignment Judge or designee. All arbitrators shall attend initial training of at least three classroom hours and continuing training every two years of at least two hours in courses approved by the Administrative Office of the Courts.

(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 classroom 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.

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.

3. Appendix XXII-A - Uniform Arbitration Statement of Facts (R. 4:21A-4)

Print Form Clear Form

UNIFORM ARBITRATION STATEMENT OF FACTS

(Use for all but Commercial Cases)

Caption: _____
(Please include Consolidated Case Docket No. If applicable)

(Verbal Threshold)
Yes ☐
No ☐

Docket No: _____ Arbitration Date/Time: _____

Auto: ☐
P.I. ☐

Party Represented: _____

I. Briefly describe the accident/incident occurred. (Please attach police report or expert liability reports):

II. Liability (Please attach expert reports)

III. Damages

A. Non-Economic Losses

l. List injuries (Please attach only hospital discharge summary and/or narrative reports/IME)

2. List objective testing and dates.

3. List current treatments and complaints.

B. Economic Losses (List all out of pocket expenses)

1. Itemized list of all medical bills

Treating Doctor/Hospital/Other	Amount	Total Amount Unpaid Bills

2. Net Wage Loss (List all out of pocket expenses) _____

3. Miscellaneous expense (Please itemize)

	Amount

C. Workers' Compensation and Other Liens (please list)

IV. Other issues you contend that the arbitrator should consider:

I certify this information to be complete and accurate and that copies of this statement have been timely served on all adversaries pursuant to *R*. 4:21A-4.

_____ _____

Signature of Attorney or *Pro Se* Litigant Date

_____

(Please print or type name)

Attorney for: _____

PLEASE DO NOT SEND COPIES OF BILLS, DEPOSITION TRANSCRIPTS, INTERROGATORIES, OR COPIES OF PHOTOGRAPHS. HOWEVER, BE PREPARED TO BRING COPIES OF RELEVANT EVIDENCE.

NOTE: Information provided on this form can not be used for evidentiary purposes in any trial of this matter

4. Appendix XXII-B - Uniform Commercial Arbitration Memorandum (R. 4:21A-4)

Save Print Clear

UNIFORM COMMERCIAL ARBITRATION MEMORANDUM

(All Information Must Be Legibly Printed or Typed)

PLEASE RETURN TO:

Number of Witnesses you are offering at Arbitration: _____

Anticipated length of time for your presentation: _____

1. Brief factual outline as to your position:

2. Set forth disputed facts and issues by any party in outline form:

3. Provide facts that you anticipate will be undisputed:

4. Set forth legal issues to be addressed by arbitrator:

5. Please quantify elements of your alleged damages:

6. Set forth issues addressed in expert reports (attach copies):

7. Discuss mitigation of damages (if applicable):

8. Describe the basis for the defenses you assert to the complaint and/or counterclaim:

9. Have all parties been served: ☐ Yes ☐ No
10. Are any parties in default? ☐ Yes ☐ No
11. List any unserved and/or defaulted parties:

12. Should any special expertise be required by the arbitrator, *e.g.*, should the arbitrator be familiar with a particular discipline and/or industry? If yes, please specify:

I certify this information to be complete and accurate and that copies of this statement have been timely served on all adversaries pursuant to *R.* 4:21A-4.

_____ _____
Signature of Attorney or *Pro Se* Litigant Date

_____
(Please print or type name)

_____
Attorney for

NOTE: Information provided on this form cannot be used for evidentiary purposes in any trial of this matter.

5. Arbitrator Application

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New Jersey Courts
www.njcourts.gov
Independence • Integrity
Fairness • Quality Service

Application for Admission to Roster of Civil Arbitrators

Last Name	First Name	Middle Name

NJ Attorney ID Number	Firm/Business Name

Firm/Business Address

City	State	Zip Code	Telephone Number

Number of years of legal experience:	Name of group/organization in which you served as an arbitrator:

Bar Admission year - New Jersey:	Bar Admission year - other states:

Date of initial arbitration training:	Counties in which you currently serve:	Counties in which you are willing to arbitrate:

☐ I am a Certified Civil Trial Attorney. See *R.* 1:39.

I regularly represent: ☐ Plaintiffs ☐ Defendants ☐ Both

I have at least ten years' experience in the following areas and request to arbitrate them (check all that apply):

☐	502	Book Account	☐ 512	Lemon Law	☐ 603	Auto Neglect-Personal Injury
☐	503	Commercial Transaction	☐ 599	Contract – Other	☐ 605	Personal Injury
☐	506	PIP Coverage	☐ 602	Assault/Battery	☐ 610	Auto Neg - Prop

I certify that the foregoing statements made by me are true and that I am in good standing in my profession.

Date _____ Signature _____

Return this form with a copy of your resume and most recent arbitration training certificate to the Arbitration Administrator of the county in which you want to serve. If you want to serve in more than one county, a separate form must be sent to the Arbitration Administrator for each county.

A list of Arbitration Administrators can be found at: www.njcourts.gov/courts/assets/civil/arbadmincdrpr.pdf

6. Arbitration Screening and Appointment Guidelines

ARBITRATOR SCREENING AND APPOINTMENT GUIDELINES

1. All new arbitrators must submit a completed uniform application form with a copy of their resumé and proof of attendance at the required initial training in accordance with *R*. 1:40-12(c). Existing arbitrators applying for appointment in additional counties must submit proof of attendance at a continuing training in accordance with *R*. 1:40-12(c).

   A Certified Civil Trial Attorney with the requisite experience, who has also completed the training and continuing education required by *R*. 1:40-12(c), will be entitled to automatic inclusion on the roster.

   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. *R*. 1:40-12(c)(1). Arbitrators who have already attended the initial training and at least one continuing training shall attend continuing training every four years. *R*. 1:40-12(c)(2).

   Completed application forms should be submitted to the Arbitration Administrator of the county in which the arbitrator wishes to serve. Appointments to the roster cannot be provisional. All required documents must be submitted prior to consideration for appointment to the roster.

   The Arbitration Administrator will verify and submit the application and accompanying documents to the local selection committee. No applicant is permitted to submit required paperwork directly to the local selection committee nor can the local selection committee consider any applicant that has not previously submitted all required paperwork to the Arbitration Administrator. After its review, the local selection committee will then submit recommendations for the roster to the Assignment Judge or his/her designee for final approval. This is necessary to ensure that arbitrators are qualified in accordance with *R*. 4:21A-2.

2. Upon approval by the Assignment Judge or his/her designee, the Arbitration Administrator will advise the AOC Civil Practice Division of the appointment of new arbitrators to the county roster.

3. Any individual who feels that he or she has been aggrieved during the application or review process may bring this matter to the attention of the Assignment Judge for review.

4. The local selection committee shall annually review the roster of arbitrators

in consultation with the Civil Presiding Judge, Civil Division Manager and Arbitration Administrator and make recommendations to the Assignment Judge to remove arbitrators from the roster. See *R*. 4:21A-2(b). It is imperative that staff are an integral part of this process so that evaluations include staff input regarding arbitrator scheduling issues, time management, promptness, cooperation, professionalism, availability and other relevant issues.

Arbitrator mentoring and other assistance should be made available at the county level. General concerns identified as a result of the evaluation process should be addressed at county meetings to the extent practicable, with Assignment Judges always welcome to reach out to the AOC Civil Practice Division on arbitration-related issues.

5. Each county is encouraged to establish a local monitoring and support committee to provide assistance to arbitrators, court staff, and judges regarding any arbitration-related issues. This can be part of the existing bar committees.

7. List of Arbitration Administrators and CDR Point Persons

Arbitration Administrators and CDR Point Persons Committee
Chair - Marissa McLean

Atlantic

Luz Centeno
Atlantic County Courts Bldg.
1201 Bacharach Blvd.
Atlantic City, NJ 08401
Email: Luz.Centeno@njcourts.gov
Phone: (609) 402-0100 x47594

Bergen

Stephanie Malzberg
Bergen County Justice Center
10 Main Street, Room 115
Hackensack, NJ 07601
Email: Stephanie.Malzbeg@njcourts.gov
Phone: (201) 221-0700 x25699
Fax: (201) 221-0636

Burlington

Jodi Mogan
Burlington County Courts Facility
49 Rancocas Road
Mt. Holly, NJ 08060
Email: Jodi.Mogan@njcourts.gov
Phone: (609) 288-9500 x38315
Fax: (609) 288-9490

Camden

Stephen Gladden
Camden County Hall of Justice
101 South 5th Street, Suite 150
Camden, NJ 08103
Email: Stephen.Gladden@njcourts.gov
Phone: (856) 379-2200 x3070
Fax: (856) 379-2253

Cape May

Patrycja Henofer
Cape May County Civil Division
9 N. Main St.
Cape May Courthouse, NJ 08210
Email: Patrycja.Henofer@njcourts.gov
Phone: (609) 402-0100 x47707
Fax: (609) 376-9974

Arbitration Administrators and CDR Point Persons Committee
Chair - Marissa McLean

Cumberland

Erica Poloff
Cumberland County Courthouse
60 West Broad St.
1st floor
Bridgeton, NJ 08302
Email: Erica.Poloff@njcourts.gov

Phone: (856) 878-5050 x15328
Fax: (856) 453-4349

Essex

Ogechi Okubanjo
Essex County Historic Courthouse
470 Dr. Martin Luther King, Jr. Blvd.
Room 107 HCH
Newark, NJ 07102
Email: Ogechi.Okubanjo@njcourts.gov

Phone: (973) 776-9300 x56589
Fax: (973) 424-6830

Gloucester

Rebecca Bertino
Gloucester County Courthouse
Civil Case Management
1 N. Broad St.
Woodbury, NJ 08096
Email: Rebecca.Bertino@njcourts.gov

Phone: (856) 878-5050 x15241
Fax: (856) 994-9259

Gloucester

Karen L. Kunicki
Gloucester County Courthouse
Civil Division
1 N Broad St.
Woodbury NJ 08096
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Phone: (856) 878-5050 x15259
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Hudson

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Fax: (201) 356-2619

Arbitration Administrators and CDR Point Persons Committee
Chair - Marissa McLean

Hudson

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Fax: (201) 356-2619

Hunterdon

Lisa Baker-Sutton
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Flemington, NJ 08822
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Phone: (908) 824-9750 x13026
Fax: (908) 824-9710

Mercer

James Milton
Mercer County Civil Courthouse
175 South Broad Street
Trenton, NJ 08650
Email: James.Milton@njcourts.gov

Phone: (609) 571-4200 x74458
Fax: (609) 826-7088

Middlesex

Barbara Trzaska
Middlesex County Courthouse
56 Paterson Street
New Brunswick, NJ 08903
Email: Barbara.Trzaska@njcourts.gov

Phone: (732) 645-4300 x88164
Fax: (732) 645-4299

Monmouth

Rachel Walton (temporarily acting)
Monmouth County Courthouse
Civil Assignment Office
Monument & Court Sts.
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Freehold, NJ 07728
Email: Rachel.Walton@njcourts.gov

Phone: (732) 358-8700 x87587
Fax: (732) 677-4369

Arbitration Administrators and CDR Point Persons Committee
Chair - Marissa McLean

Morris

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Phone: (862) 397-5700 x75346
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Ocean

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Toms River, NJ 08754
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Phone: (732) 504-0700 x64385
Fax: (732) 435-8384

Ocean

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Fax: (732) 435-8384

Passaic

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77 Hamilton Street, 3rd Floor
Paterson, NJ 07505
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Phone: (973) 653-2910 x24284
Fax: (973) 247-8185

Salem

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Arbitration Administrators and CDR Point Persons Committee
Chair - Marissa McLean

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Fax: (908) 332-7705

Sussex

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Fax: (862) 397-5708

Sussex

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Phone: (862) 397-5700 x75464
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Union

Rhonda Watts
Union County Courthouse
2 Broad Street
Elizabeth, NJ 07207
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Phone: (908) 787-1650 x21495
Fax: (908) 659-5963

Warren

George Wall
Warren County Courthouse
413 Second Street, P.O. Box 900
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Phone: (908) 750-8100 x13623
Fax: (908) 750-8095

Arbitration Administrators and CDR Point Persons Committee
Chair - Marissa McLean

Warren

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AOC

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AOC

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8. Standards of Conduct for Arbitrators in Court-Annexed Arbitration Program

STANDARDS OF CONDUCT FOR ARBITRATORS IN THE COURT-ANNEXED ARBITRATION PROGRAM

The following Standards of Conduct shall be applicable to arbitrators in any arbitration proceedings conducted in the New Jersey court system pursuant to *Rule* 4:21A.

STANDARD I - IMPARTIALITY

An arbitrator must conduct arbitrations in an impartial manner. An arbitrator should avoid any conduct that might give the appearance of partiality towards any party. An arbitrator should withdraw from a matter if he or she becomes unable to remain impartial in that matter.

An arbitrator should make all determinations based solely on the relevant objective facts and merits of the case, impartially and without prejudice because of a party's background or personal characteristics, social or economic status, actions at the arbitration hearing, or any other factors not directly relevant to the facts or merits of the matter.

STANDARD II - CONFLICTS OF INTEREST

An arbitrator, upon being assigned to arbitrate a particular matter, shall make reasonable inquiry to ascertain whether there are any facts or circumstances regarding the matter that might impair or be seen to impair the arbitrator's impartiality in the matter, including any financial or personal interest in the outcome of the arbitration, or any existing or past relationship with a party, counsel, or any other participant or foreseeable participant in the arbitration. The arbitrator shall disclose any such facts or circumstances to the parties as soon as practicable after becoming aware of them. If any such conflict of interest would cast doubt on the integrity of the process or the program, the arbitrator should decline or withdraw from the assignment. However, if the conflict of interest is of a less substantial magnitude, after consultation with the parties and after consultation also with a judge to whom the matter has been referred by the Civil Division Manager, the parties, judge, and arbitrator may agree that the arbitrator nonetheless may serve or continue to serve as arbitrator in the matter.

An arbitrator should not ordinarily recommend the services of particular professionals to assist the parties or counsel in any arbitration proceeding. However, the arbitrator may suggest the names of professionals if a request for a recommendation is made jointly by all parties and provided that in so recommending the arbitrator does not create or engage in a conflict of interest.

STANDARD III - COMPETENCE

In order to serve as an arbitrator, an individual must have a sufficient level of experience and competence to handle arbitrations of the type of matter in dispute. If an arbitrator believes that he or she does not possess the level of competence or experience necessary to handle a particular matter, he or she should not serve as an arbitrator in that matter and thus should decline the assignment or withdraw from the case.

STANDARD IV - CONFIDENTIALITY

An arbitrator serves in a quasi-judicial capacity and, as such, shall treat all information obtained during the course of an arbitration proceeding consistent with *Rule* 1:38 of the Rules of Court. An arbitrator should never use information acquired during an arbitration proceeding to gain a personal advantage or benefit, to gain an advantage or benefit for others, or to adversely affect the interests of another.

STANDARD V - QUALITY OF THE PROCESS

Arbitrators shall conduct arbitration proceedings fairly, diligently, judiciously, and in a manner respectful of all parties and participants. This requires a commitment by the arbitrator to fairness, high standards, due process, diligence, sensitivity toward the parties, and maintenance of an atmosphere of respect among the parties. An arbitrator should explain to all participants at the outset of the process the procedures that will be followed in the process.

An arbitrator should accept an assignment to serve as an arbitrator only if able to commit the time and attention necessary for to the fair and effective handling and resolution of the matter. The arbitrator should conform to any time deadlines required by the Rules of Court.

An arbitrator should treat parties and counsel with sensitivity, with civility and with respect, and should encourage the parties and counsel to treat each other in the same way.

The arbitrator should provide each party or counsel with an adequate and fair opportunity to make their presentation in the matter and to challenge the presentation of their adversaries. The arbitrator should determine the matter based solely on the parties' presentations on the merits.

Since the role of an arbitrator in a particular matter is to make a quasi-judicial determination, an arbitrator should refrain from providing professional advice in that matter and should at all times distinguish between the role of arbitrator and that of adviser. Arbitrators should refrain from conducting settlement conferences in a matter unless specifically requested to do so by all parties.

The arbitrator shall not engage in *ex parte* communications with participants in a case. The arbitrator may, however, discuss the merits of a case with those parties present at a hearing if another party fails to appear at the hearing after having received due notice.

If the arbitrator discovers an intentional abuse of the arbitration process by a party or counsel, the arbitrator may discontinue the arbitration and advise the Civil Division Manager or Arbitration Administrator of that discontinuation and the reason therefore.

9. Arbitrator Checklist

CHECKLIST FOR ARBITRATORS

This checklist has been prepared to ensure that all arbitrations are conducted in accordance with the Rules of Court and procedures approved by the Conference of Civil Presiding Judges and Judicial Council.

1) Introduce all participants.

2) Explain the adjudicatory nature of the proceeding and his/her background as an unbiased attorney approved by the court and local bar.

3) Take stipulations.

4) Swear in witnesses.

5) Allow all sides to present relevant information.

6) Make a determination based solely on the evidence presented and either call a “no cause” or award full value.

7) Complete the written award ensuring that brief findings of fact and conclusions of law are included and that the absence of parties, or relevant evidence, or of items of incomplete discovery is noted.

8) Absent exceptional circumstances, deliver the award in the presence of the parties.

9) If the arbitrator conducts a settlement conference prior to rendering a decision on the merits of the case, he or she should not continue the arbitration process, but should instead turn the arbitration over to another arbitrator. Otherwise, the arbitrator should not engage in settlement negotiations until after the award form is completed and only with the parties’ consent.

10. Statewide Adjournment Procedure for Civil Trials and Arbitrations

Statewide Adjournment Procedure for Civil Trials and Arbitrations

Directive 6-04	May 14, 2004
Issued by:	Richard J. Williams Administrative Director

At its April 27, 2004 Administrative Conference, the Supreme Court considered and approved the attached Statewide Adjournment Procedure developed by the Conference of Civil Presiding Judges for Civil trials and arbitration hearings. The procedure, which is effective immediately, should be implemented uniformly in every vicinage. Accordingly, please ensure that all Civil judges and staff in your vicinage are made aware of this approved procedure.

STATEWIDE ADJOURNMENT PROCEDURE FOR CIVIL TRIALS AND ARBITRATIONS

[AS APPROVED BY THE SUPREME COURT
AND PROMULGATED BY DIRECTIVE #6-04]

---

1. All requests to adjourn a civil trial or an arbitration are governed by *Rule* 4:36-3(b).

2. A good faith effort shall be made to discuss any request for an adjournment with all other parties before the request is presented to the court.

3. All adjournment requests must be made in writing, submitted to the Civil Division Manager. Faxed submissions are acceptable. Telephone requests will not be accepted absent exceptional circumstances. Requests must be copied to all other parties.

4. Any request for an adjournment must be presented as soon as the need for an adjournment is known. Absent exceptional circumstances, the request must be presented no later than the close of business on the Wednesday preceding the Monday of the week the matter is scheduled for trial or arbitration.

5. The written request must indicate the reason or reasons the adjournment has been requested, and whether the other parties have consented to the proposed adjournment. The written request should also include a new proposed date for trial or arbitration, consented to by all parties. If consent cannot be obtained, the court will determine the matter by conference call with all parties.

6. If the adjournment request is based upon a conflict with another court proceeding, the party requesting the adjournment must indicate whether he or she is designated trial counsel and supply the name of the other matter, the court and county in which it is pending, and the docket number assigned to the matter.

7. No adjournments will be granted to accommodate dispositive motions returnable on or after the scheduled trial date.

8. A matter should not be considered adjourned until court staff has confirmed that the request for an adjournment has been granted. Timely response will be given to

the party requesting the adjournment, who will then be responsible for communicating the decision to all other parties.

9. To the extent any party is dissatisfied with the decision made by the Civil Case Management Office, the following procedure should be followed:
   - in master calendar counties, the aggrieved party should present the matter to the Civil Division Manager directly; to the extent that any party is dissatisfied with the decision made by the Civil Division Manager, that party may ask that the matter be presented to the Civil Presiding Judge;

   - in individual/team calendar counties, the aggrieved party should present the matter to the Civil Division Manager directly; to the extent that any party is dissatisfied with the decision made by the Civil Division Manager, that party may ask that the matter be presented to the pretrial or managing judge.

10. Requests for adjournment of a civil trial based on expert unavailability are governed by *R*. 4:36-3(c).

11. Appendix XXIX - Notice of Arbitration Hearing

Print Form Clear Form

Plaintiff or Filing Attorney Information:

Name _____

NJ Attorney ID Number _____

Address _____

_____

Telephone Number _____

Superior Court of New Jersey

Law Division _____ County

Civil Part

Docket No: _____

_____ ,

Plaintiff,

v.

_____ ,

Defendant.

Civil Action

Notice Of Arbitration Hearing

TO: _____

TAKE NOTICE that a ☐ default / ☐ default judgment on liability was entered against you on _____, 20 _____, in the above matter. An arbitration hearing in this matter is scheduled for _____ ☐ a.m./ ☐ p.m. on _____, 20 _____, at _____.

(location)

You have the right to appear at the arbitration hearing and should take whatever action you deem appropriate with regard to the same.

At the conclusion of the arbitration hearing an award of monetary damages may be entered against you which may then result in a final judgment being entered against you by the court. If the arbitration date is rescheduled or cancelled, you will be notified by separate correspondence. If you have a new address, it is your responsibility to notify the undersigned immediately in writing of your new address.

_____

Attorney for

12.R. 4:21A-9 Checklist

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New Jersey Judiciary
Civil Practice Division
Arbitrator's Checklist – Rule 4:21A-9. Parties in Default

☐ Yes ☐ No 1. Was either default entered less than six months prior to the arbitration date or has default judgment on liability been entered?

☐ Yes ☐ No 2. Was Notice of the Arbitration Proceeding provided to the party in default in the form set forth in Appendix XXIX to the Court Rules (copy attached), no later than thirty (30) days prior to the arbitration hearing?

☐ Yes ☐ No 3. Was Proof of Service of the Notice of Arbitration Hearing filed with the clerk of the court prior to the arbitration hearing?
(The Proof of Service must certify that the party serving the notice has no actual knowledge that the defaulting party's address has changed subsequent to service of original process, or if the party has such knowledge, certifying to those underlying facts.)

☐ Yes ☐ No 4. Has a copy of the filed Proof of Service of the Notice of Arbitration Hearing been provided to you, the arbitrator, at the time of the arbitration hearing?

☐ Yes ☐ No 5. If the party against whom the arbitration award is sought, has had default or default judgment on liability entered against it and did not appear at the arbitration hearing today after notice, did you, the arbitrator, advise the party obtaining the arbitration award against the defaulting party that a copy of the arbitration award must be served upon the defaulting party within ten days of the date of receipt of the arbitration award pursuant to Rule 4:21A-9 (c)?

13. Report and Award Forms of Arbitrator(s)

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SUPERIOR COURT OF NEW JERSEY

REPORT AND AWARD OF ARBITRATOR(S)

ARBITRATION TYPE (Check One)

☐ AUTO

☐ PERSONAL INJURY

CIVIL ACTION

_____

PLAINTIFF

V.

_____

DEFENDANT

COUNTY: _____

DOCKET NO: _____

DATE: _____

The undersigned arbitrator(s) make(s) the following award(s) for the reasons set forth:

Defense presented ☐ yes ☐ no

PARTY		LIABILITY	DAMAGES* Gross	DAMAGES* Net
DEF		%		
DEF		%		
DEF		%		
PL		%		
PL		%	$	$

ARBITRATOR(S): Please sign below

s/ _____

Signature

Parties desiring to reject this award and obtain a trial *de novo* must file with the division manager a trial *de novo* request together with a $200 fee within thirty (30) days of today. Parties requesting a trial *de novo* may be subject to payment of counsel fees and costs as provided by *R.*4:21A-6(c). Note that unless otherwise expressly indicated this award will be filed today.

Counsel and *pro se* litigants acknowledge receipt of this award by signing below.

s/ _____

Signature

s/ _____

Signature

s/ _____

Signature

***Exclusive of prejudgment interest**

Save Print Clear

SUPERIOR COURT OF NEW JERSEY

REPORT AND AWARD OF ARBITRATOR(S)

ARBITRATION TYPE (Check One)

☐ COMMERCIAL

☐ LEMON LAW

CIVIL ACTION

_____

PLAINTIFF

V.

_____

DEFENDANT

COUNTY: 0

DOCKET NO: _____

DATE: _____

The undersigned arbitrator(s) make(s) the following award(s) for the reasons set forth:

Defense presented ☐ yes ☐ no

	PREVAILING PARTY	AMOUNT OF AWARD	RESPONSIBLE PARTY
DEF			
DEF			
DEF			
PL			
PL			

ARBITRATOR(S): Please sign below

s/ _____

Signature

Parties desiring to reject this award and obtain a trial *de novo* must file with the division manager a trial *de novo* request together with a $200 fee within thirty (30) days of today. Parties requesting a trial *de novo* may be subject to payment of counsel fees and costs as provided by *R.*4:21A-6(c). Note that unless otherwise expressly indicated, this award will be filed today.

Counsel and *pro se* litigants acknowledge receipt of this award by signing below.

s/ _____

Signature

s/ _____

Signature

s/ _____

Signature

s/ _____

Signature

s/ _____

Signature