

# NOTICE TO THE BAR

## **CIVIL PRESUMPTIVE MEDIATION – SUPREME COURT ACTION ON THE RECOMMENDATIONS OF THE COMMITTEE ON COMPLEMENTARY DISPUTE RESOLUTION**

This Notice is to advise of the Supreme Court's actions on the recommendations of the Committee on Complementary Dispute Resolution with regard to the Civil Presumptive Mediation Program. Those recommendations were set forth in the Committee's previously published 2009-2011 report. In acting on the Committee's recommendations, the Court in its July 21, 2011 Omnibus Rule Amendment Order (separately published) adopted amendments to Rules 1:40-6(b) and 1:40-12(b)(2) and to Rules Appendix XXVI. These amendments take effect September 1, 2011.

The amendment to R. 1:40-6(b) provides that parties may select a mediator of their own choosing within 14 days of the Order of Referral to Mediation. If no mediator is selected within 14 days, the mediator designated in the Order of Referral to Mediation will serve. The amendment further clarifies that the selected mediator may, but need not be, listed on the court's Roster of Civil Mediators.

The amendment to R. 1:40-12(b)(2) provides that continuing mediator education shall include instruction in ethical issues associated with mediation practice, program guidelines and/or case management.

The amendments to Appendix XXVI – "Guidelines for the Compensation of Mediators Serving in the Civil and Family Economic Mediation Programs" – provide that:

- Mediators on the court's Mediation Roster may charge a retainer fee once the two free hours of mediation (both in preparation and in-person) have been exhausted. Mediators who are not on the roster may negotiate a fee from the outset.
- If the amount of preparation time by the mediator will exceed one hour and if the mediator intends to charge the parties for that additional preparation time beyond the one free hour should they agree to continue with mediation on a paying basis, then the mediator in a written disclosure prescribed by the Administrative Director of the Courts must so advise the parties prior to commencing the initial mediation session.
- The form must also disclose the specific time at which the free mediation will conclude. The form shall advise the parties that any mediation continued beyond

that time will be billed by the mediator at the mediator's market rate as set forth on the court's Mediation Roster.

° Lastly, Appendix XXVI provides that if a mediator has not been timely paid or a mediator and/or a party has incurred unnecessary costs or expenses because of the failure of a party and/or counsel to participate in the mediation process in accordance with the Order of Referral to Mediation, the mediator and/or party may bring an action to compel payment in the Special Civil Part of the county in which the underlying case was filed. This replaces the current practice of filing an Order to Show Cause.

/s/ Glenn A. Grant

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

Dated: July 29, 2011