



August 14, 2023

Administrative Director Glenn A. Grant  
Administrative Office of the Courts  
Attn: Proposed Amendments to Court Rules 1:40-5 and 1:40-12  
Hughes Justice Complex  
PO Box 037  
Trenton, NJ 08625-0037

To the Honorable Judge Grant,

The New Jersey Coalition to End Domestic Violence respectfully submits this letter in response to the proposed amendments to Rules 1:40-5 and 1:40-12, allowing statewide expansion of the Domestic Violence Economic Mediation Program.

The New Jersey Coalition to End Domestic Violence is a statewide organization with a membership of 35 domestic violence and culturally specific organizations providing a range of services for individuals impacted by domestic violence in each of our state's 21 counties. Many of these programs offer legal advocacy and support to survivors navigating the legal system.

NJCEDV appreciates the AOC's time and efforts to relax rules that have prohibited economic mediation when there is an active domestic violence restraining order. We also appreciate the considerations that have been made to ensure the safety of victims and survivors participating in this program, and the education that has been required to ensure mediators are informed on domestic violence and their role in mediating cases where domestic violence exists.

NJCEDV provides the following comments to help further ensure the safety and confidentiality of the parties involved in economic mediation.

**Rule 1:40-5 (b)(3)- Exchange of information**

We appreciate that the rule clarifies that the direct exchange of information between parties participating in the Domestic Violence Mediation program is prohibited. However, we believe it would benefit mediators and the parties involved if there was clarification provided as to how information will be shared through the mediation and shuttle diplomacy utilized in these matters.

## The Role of the Domestic Violence Victim Advocate

Representatives from NJCEDV recently had the opportunity to participate in the first of the two-day domestic violence training program hosted by the NJ Bar Association and the AOC for economic mediators interested in participating in the Domestic Violence Economic Mediation Program. While it is not referenced in the proposed Rule amendments, we feel it is critical to clarify the role of the Domestic Violence Victim Advocate. We appreciate the AOC directing court staff to connect victims interested in economic mediation to a Domestic Violence Victim Advocate to help ensure that the victim is providing informed consent to the process, considering any safety concerns or needs related to their participation, and that their questions are answered before giving consent. However, advocates should not assist victims with completing the form to consent or to advise on the steps of the divorce process. This should ideally be done on the record with a judge, but minimally in the presence of court staff who can countersign the document. N.J.R.E. 517 provides victim counselor privilege ensuring confidential communication between a victim and victim advocate/counselor and “render[ing] immune from discovery or legal process the records of these communications.” Placing advocates in the role of cosignatory will jeopardize this privilege and the confidential support advocates provide to victims as they navigate the legal system.

In addition, the Operational Guidelines instructs that: “The DV Advocate or trained court staff should review these forms with both parties and answer any questions.” The legal advocates at the courthouse are not trained to work with defendants. In addition, their education focuses on the restraining order process and trauma, so they will only be able to review if the party feels safe and is consenting to the form voluntarily. The advocate will not have any information pertaining to the divorce proceedings to offer the defendant and their informed consent is not applicable to the process.

With this, we think it is also important to clarify that mediators nor advocates can be subpoenaed to testify about their participation in the Domestic Violence Economic Mediation Program. Advocates will be protected by the Federal confidentiality provisions and the state privilege laws, but responding to subpoenas can be cumbersome and may chill the participation of advocates.

We appreciate your consideration of our comments and look forward to working together to ensure survivors’ safe access to the Domestic Violence Economic Mediation Program. Please contact us if we can provide further information.

Sincerely,

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Legal Director

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