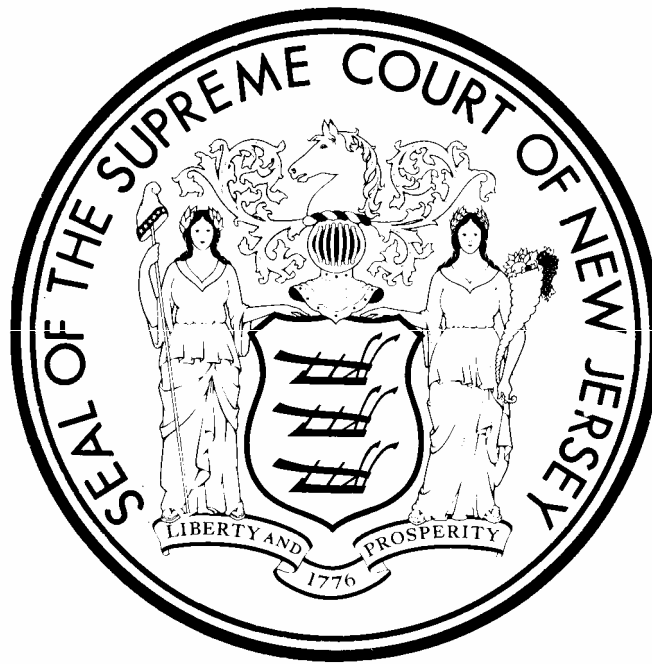


SUPREME COURT COMPLEMENTARY
DISPUTE RESOLUTION COMMITTEE

FINAL REPORT OF THE EVALUATION OF
THE PILOT PROGRAM FOR MEDIATION
OF ECONOMIC ASPECTS OF FAMILY
LAW CASES



2004-2006 CYCLE
REPORT OF MAY 23, 2005

INTRODUCTION AND EXECUTIVE SUMMARY

The Family Programs Subcommittee has concluded its review of the Mandatory Economic Pilot Program and, based thereon, now recommends the termination of the pilot program and the implementation of a statewide program calling for the post-matrimonial early settlement panel (MESP) mandatory mediation of economic aspects of family law cases. This recommendation is based upon a thorough analysis of the results of the pilot program, as well as input received from each of the vicinages in which the pilot program is operating.

It is to be noted that the Subcommittee's recommendation specifically includes a clarification/modification of the pilot to explicitly permit an alternate dispute resolution event selected by the parties to substitute for mediation when so elected by the litigants provided that such a selection is made within a designated period of time following the entry of an Order for mediation. This recommendation is made to encourage litigants and their counsel to avail themselves of alternate dispute resolution in the form litigants and counsel feel will be most productive, understanding however, that post-MESP and pre-trial there will be, if these recommendations are adopted, a mandatory ADR event.

The Subcommittee further recommends that litigants and counsel should be advised of the availability of and encouraged to utilize, on a voluntary basis, alternate dispute resolution modalities, including mediation, at earlier stages of the divorce litigation process. The Subcommittee has concluded that the best way to assure that litigants are advised of the availability of ADR is for a certification to be required to be appended to the first pleading filed in every FM (dissolution) matter indicating that the litigant has been informed of the availability of such services and has been provided with brief descriptive literature explaining the ADR/mediation process. The descriptive literature would be in a form to be prepared by the

subcommittee with the approval of the full committee. The Certification/literature proposal represents a logical next step following last year's amendment to R. 5:3-5(a)(10) that mandates reference in retainer agreement that the client has been informed of the availability of ADR programs and services.

BACKGROUND

The Pilot Program for Mediation of Economic Aspects of Family Law was developed by the Supreme Court Committee on Complementary Dispute Resolution (CDR) through its Subcommittee on Family Court Programs and was first implemented in 1999 in six counties. Three of the counties were designated pre-MESP counties and three counties were designed as post-MESP counties. The three pre-MESP counties were Atlantic County, Burlington County and Union County and the three post-MESP counties were Bergen County, Morris County and Somerset County.

Early experience within the pilot revealed that there was extremely limited success in the implementation of the pilot in pre-MESP counties, with greater success revealed in the post-MESP counties. That experience was discerned from anecdotal accounts as well as from accumulated statistics. It was discerned that in the pre-MESP counties, the program largely failed because there was little acceptance within the Bar of pre-MESP mandatory mediation because a program implemented before completion of discovery was inherently unfair to the less financially advantaged spouse who frequently would not have access to needed information and documentation. Discovery was viewed as the key. Also, anecdotal comments revealed that early on in the litigation process, emotions have not healed sufficiently to prompt programmatic success.

Effective January 1, 2002, the pilot was modified so that all mandatory mediations would take place post-MESP rather than pre-MESP. In 2001, the program was expanded to include

Ocean County. The subcommittee has noted that the pilot has met with increased success and now has the enthusiastic support of the bench in every pilot county regardless of whether there has been widespread use of the pilot. The pilots in Somerset, Bergen and Morris Counties are particularly note worthy.

Although the original pilot was initially scheduled to end on June 30, 2001, on recommendation of the full CDR Committee, the Supreme Court has extended the pilot several times. The first extension ran from June 30, 2001 to December 31, 2001. In January 2002, it was extended to August 31, 2002. At the conclusion of its 2002-2004 rules cycle, the CDR Committee recommended to the Supreme Court a further extension of the pilot and its expansion to an additional large urban northern county, as well as to one southern county with increased statistical reporting.

At its June 15, 2004 Administrative Conference, the Supreme Court considered the request of the CDR Committee for the further extension of the pilot to add two additional counties, as well as a request from the vicinage 10 (consisting of Morris and Sussex counties) that Sussex County be added to the pilot program.

Although the CDR Committee recommended a two-year extension of the pilot, the Court declined to approve that suggestion and further declined to expand the program to the two proposed counties. The Supreme Court did approve a one-year extension of the pilot through June 30, 2005 and permitted Sussex County to be added based upon the fact that Morris County, the other county in the two-county vicinage, was already a participant. In its administrative determinations, the Court indicated that its approval of this expansion of the pilot was to promote “uniformity within the vicinage.”

The Court indicated that it had declined to extend or expand the pilot, requesting that the CDR Committee continue its review of the merits of the program in sufficient time in advance of the June 30, 2005 program end date so that there would be sufficient time to present the CDR Committee's assessment and recommendation to the Court in timely fashion.

Subsequently, the pilot was briefly extended to August 31, 2005 to permit the completion of this Report. A time line was constructed so that this report would be available for consideration by the Conference of Family Presiding Judges on May 23, 2005; by the CDR Committee on May 24, 2005; by the Management and Operations Committee on June 8, 2005; by the Judicial Council on June 29, 2005 and by the Supreme Court at its Administrative Conference on July 6, 2005.

This report is respectfully submitted consistent with the time schedule contained herein.

DESCRIPTION OF THE PILOT PROGRAM

The Pilot Program is described in Appendix XIX of the Rules Governing the Courts of New Jersey as follows:

APPENDIX XIX GUIDELINES FOR PILOT PROGRAM MEDIATION OF ECONOMIC ASPECTS OF FAMILY ACTIONS

Guideline 1. Applicability

The provisions of Rule 1:40, insofar as applicable, as modified and supplemented by these guidelines, shall govern the pilot program in effect in six counties for the mediation of economic issues raised in dissolution, non-dissolution, and post-judgment actions. In all pilot counties (Atlantic, Bergen, Burlington, Morris, Ocean, Somerset and Union) an order of mediation referral shall not be entered *sua sponte* until the parties have participated in the Matrimonial Early Settlement Program. In all counties the parties may request a referral to mediation at any time, and the order of referral may then be entered. No matter shall, however, be referred to mediation if a temporary or final restraining order entered

pursuant to the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 *et seq.*) is in effect.

Guideline 2. Designation of Mediator.

Immediately upon referral to mediation, the parties shall select a mediator from the vicinage roster or may select any other person they deem suitable. If the parties cannot agree on a mediator within 10 days after entry of the order of referral, the judge will assign a mediator from the roster on a rotating basis.

Guideline 3. Program Operations.

After consultation with counsel, the date(s), time(s) and place(s) of the mediation session(s) shall be set by the mediator. Counsel for the parties shall be encouraged to attend the first mediation session and may attend any subsequent session on notice to the other party or, if the other party is represented by counsel, notice shall be given to opposing counsel. The parties shall 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 times for completion of the mediation.

Guideline 4. Mediator Roster.

The vicinage rosters of qualified mediators of economic issues in family disputes shall be maintained by the Administration Office of the Courts.

Guideline 5. Mediator Qualifications and Training.

Qualified mediators of economic issues in family disputes shall have either of the following qualifications:

- A. A Juris Doctor degree or equivalent, admission to the bar for seven years, license to practice in New Jersey, and a practice substantially devoted to family law; or
- B. An advanced degree in psychology, psychiatry, social work, or an allied mental health field, or business, finance or accounting or licensure as a certified public accountant; seven years of experience in the field of expertise; and licensing by the State of New Jersey if licensure is required for that field of expertise.

Qualified mediators shall have completed 40 hours of a training program in family mediation approved by the Administrative Office of the Courts, or completed a minimum of 25 hours of

mediation with the commitment to complete the remaining 15 hours of specialized training within one year following entry on the roster.

Descriptive literature about the Pilot Program has been made available in each of the pilot counties. A copy of that descriptive literature is appended hereto as Exhibit A.

THE INVESTIGATION UNDERTAKEN

In its 2002-2004 rules cycle, the Family Programs Subcommittee sought and received input and testimony from each of the seven pilot counties (Atlantic, Bergen, Burlington, Morris, Ocean, Somerset and Union) as well as from the organized bar and mediation community. Comment was then specifically solicited and received from the Family Law Section of the New Jersey State Bar Association; the New Jersey Association of Professional Mediators; and the New Jersey State Bar Association Alternate Dispute Resolution Section. During the 2004-2006 rules cycle, additional comments were sought. Specifically, input was requested from each of the seven vicinages and from each of the three organizations from which input had been received during the prior rule cycle.

As to the vicinages, all seven vicinages participated either by the submission of written comments or by representatives attending the Subcommittee's meeting on February 16, 2005. In written form, Somerset County's Presiding Family Part Judge, Thomas H. Dilts, wrote:

I personally consider the mandatory economic mediation and best practices together to be the two most important innovations in the Family Division in the past ten years. Both have helped to change the culture in Somerset County and the way that law is practiced. By empowering litigants and their attorneys to work creatively and cooperatively with a mediator, we have not only been able to better serve litigants, we have given them a much better basis to move forward in their lives!

I do not believe that the statistics that are reported fully disclose the impact that the program is having. Unless the case actually settles during mediation or immediately following mediation, credit is not given to the process for settling the cases. Progress

made during the mediation and the creative and cooperative approaches used during that process ultimately bear fruit when the case is settled before trial.

A copy of Judge Dilts' letter is attached hereto as Exhibit B.

Present at the Subcommittee's meeting on February 16, 2005 were, in addition to Subcommittee members, The Honorable Ellen L. Koblitz, P.J.F.P., the Bergen County Presiding Judge and current Chair of the Conference of Family Presiding Judges; The Honorable Jo-Anne B. Spatola, P.J.F.P., the Union County Family Presiding Judge; as well as Bruce Colandrea, Family Division Manager in Union County; Debbie Capozzi, Team Leader in Bergen County; Ann Marasco, the FD-FM Team Leader in Morris County; and Brendan Toner, Family Division Manager in Ocean County. Subcommittee members present included not only Chair Hymerling, but also The Honorable Stephan Hansbury, P.J.F.P., the Presiding Judge in the Morris-Sussex vicinage; The Honorable Barbara Ann Villano, P.J.F.P., the Presiding Judge in Ocean County; The Honorable Susan Maven, J.S.C., a Family Part judge in Atlantic County; and The Honorable Brian R. Martinotti, J.S.C., a Family Part judge from Bergen County; as well as Subcommittee members Suzanne Jorgenson, Esquire and Carl Viniar, Esquire, both mediators. Attending the meeting were also Assistant Director of the Family Practice Division within the Administrative Office of the Courts, Harry T. Cassidy, and Jennifer Lombardi, Esquire, of the Administrative Office staff.

Given the importance of that meeting, a transcript of the meeting was prepared which contained significant comments about the experiences of the economic pilot in the respective pilot counties/vicinages.

Because of the importance of these comments, some of the comments are reproduced below.

Bergen County – Judge Koblitz warmly endorsed implementation of the pilot statewide. She noted that at its inception there was “a certain amount of antagonism from the bar. Not a huge amount, but a certain amount, and certainly on individual cases we heard a lot from lawyers, ‘Oh this case is never going to settle with mediation’; or ‘We don’t want to do it’; or ‘We shouldn’t have to do it’”; but that ultimately “it’s just gotten better and better, and our statistics have gotten better in terms of percentages. Settlements, we have over 50% settlement. It’s very, very well received. I have heard -- I can’t think of a negative comment, and lots of positive feedback about the mediators and how helpful they were. Even in situations where they did not settle, that they were very helpful and the trial day when the case ultimately usually did settle, people would say, well the mediator suggested this. That’s what we’re going to do. So very frequently it helped them to settle later on.”

Judge Koblitz concluded her comments:

That all having been said, I would say it’s been a very successful program. The people are very happy with their -- that they’re happier with it now than they were two years ago. It’s just -- it’s really been very, very successful. I would hate, I almost don’t think you could get rid of it, because I think it would maybe be taken over by the bar or something. But I think that it almost has a likeable sound. I would very much like it to be expanded throughout the state.

Judge Martinotti, also sitting in Bergen County, commented, “...I’ve seen a -- more of an acceptance from the bar. She (Judge Koblitz) indicated even at times before it is ready to go to mediation, people ask to go to mediation.”

Sounding similar themes, Presiding Judge of Morris and Sussex Counties, Stephan Hansbury, commented:

Well, I have little to add... I think Judge Koblitz has really said it all, and I agree with what Judge Koblitz said. So I can only reinforce what they said. It’s an extremely valuable program. It’s effective, helps people reach their own decision, which allows

them then to leave the courthouse at least accepting that this is my decision. I don't like it, but it's my decision. Her numbers run around 50/55% success rates....

...Between the directly settled and partially settled it's 54% and if you eliminate the ones that settled between the time the Order was entered, the numbers are quite high, and that's pretty consistent with what we've seen. Morris has not had any resistance with mediators. I have been involved four years, and the mediators have been as happy as they were -- as they are for years -- they've been very happy for four years. They're excited about the program.... The lawyers understand that mediation is an effective process, and very rarely do I get someone saying, "Judge, I don't believe in the process. Don't send it."

We also -- Sussex is part of our vicinage too, and we've recently been added. Sussex has recently been added. I met with the bar up there a couple weeks ago. We've gotten off the ground a little bit slowly in there, but we're starting to -- Judge Farber is starting to refer people to mediation. The problem there is we don't have enough local mediators.

Judge Spatola, the Union County Presiding Judge, endorsed the program, indicating that its only downside would be the investment of more staff time.

As to Atlantic County, historically the program has been under utilized. Judge Maven, a member of the Subcommittee, commented on the underutilization of the program, explaining that the Atlantic County calendar has been extremely current and little backlog exists. Nonetheless, Judge Maven reported that Atlantic County's Presiding Family Part Judge, The Honorable Vincent D. Segal, expressed to her that he is supportive of the program's expansion if it is beneficial to those who could use it.

Burlington County Family Division Manager Sopronyi observed that Burlington County was originally a pre-MESP program county and that the program then met with "tremendous resistance from the bar." She observed that in the pre-MESP program, members of the bar felt that the program was being done "too early." She believed that the program now "seems like it's starting to be kind of a little bit better ingrained in our system." She specifically indicated that

with the county's numbers starting to increase, implementation may become just that much more important.

Judge Villano, the Family Presiding Judge of Ocean County, also endorsed the program's statewide implementation.

Statewide implementation was endorsed by the mediation community as reflected not only by input received from the New Jersey Association of Professional Mediators, but also mediator members of our Subcommittee. Indeed, in its 2005 deliberations, the Subcommittee received no opinion opposing statewide implementation. It has been noted that the NJSBA Family Law Section did not provide written comment.

Interestingly, during the course of the Subcommittee's deliberations, discussion did focus on what apparently has been viewed as an ambiguity in Appendix XIX. In other words, some questioned whether the program, as referenced in Appendix XIX, was to be regarded as mandatory. It is evident from the comments received that this ambiguity must be closed in the program prior to its statewide implementation. The recommendations contained in this Report are intended to close that ambiguity making it clear that the post-MESP program is intended to be mandatory to all matters assigned to the program.

STATISTICAL ANALYSIS

The principal source of information in the outcome of cases in the mediation program is Mediation Case Information Forms that are completed by mediators at the conclusion of a case. Included within the Appendix are current and historic statistics with regard to mediation from 2000 to the present. A cumulative total of the information provided in the forms returned since the inception of the program is attached in Appendix C along with the forms supplied to the mediators. Of the 1,144 mediations held, 52% reflect successful agreement on all issues and almost 14% reached agreement on some issues. Only 34% reached no agreement. This success

is remarkable, given that these cases are matters that have not settled at Case Management Conferences or MESP. Of 1,144 cases, the average time per case was 4 hours and 55 minutes with mediator preparation time averaging 1 hour and 10 minutes, less than the maximum of 1 hour 30 minutes permitted for preparation. In over 80% of the cases, the referral to mediation was made by the court, with the parties or attorneys choosing the mediator more than 58% of the time. Of the total, 588 cases took more than 3 hours, after which the parties must pay the mediator, and the average time paid for by the parties over and above the free time was 4 hours. 66% of the cases were mediated after full discovery and over 78% of respondents stated the timing of the referral to mediation was “appropriate.”

Prior to the extension of this project in 2004, then Administrative Director Williams requested an analysis of the impact of the mediation program on subsequent applications and time to resolution. A small sample of 20 cases indicated that cases that were successfully resolved through the pilot program took less time to final resolution and filed fewer post-judgment applications. A more extensive sample of 150 cases was examined to confirm this finding. The results of this examination (attached as Appendix E) reflect that cases that settled in mediation were resolved an average of 3 months sooner than cases that did not settle. The 75 cases that settled with mediation filed a total of 34 post-judgment motions in a 2-year timeframe compared to 104 motions for the cases that did not settle in mediation.

While virtually all divorce cases eventually settle, cases that settled in mediation did so in less time and with fewer post-judgment applications. This is evidence that the program has achieved the results intended when the program was initiated.

**COMPATIBILITY OF PROGRAM TO MESP AND WHY BOTH PROGRAMS
SHOULD OPERATE**

The Subcommittee has carefully considered the historic interrelationship between the pilot programs and the Matrimonial Early Settlement Program (MESP) Panels that have existed in each of the pilot counties as well as throughout the State. The MESP process stands as one of the true successes in the Family Court and represents a beacon of bench/bar cooperation. Conceived of by the Bar and then incorporated by rule into the Family Part, the MESP program is a continuing marvel. The MESP process is now more than twenty years old. Although administered somewhat differently in different vicinages, the MESP program represents the single most successful CDR tool in the process of resolving the economic issues inherent in New Jersey divorces. The fact that throughout the state, MESP panelists serve without compensation stands as a tribute to the selflessness and professionalism of the Bar and the wisdom of the Bar's past and present state and county leadership in conceiving of and fostering the continued success of the MESP program. Nothing should be done to challenge the continued success of MESP programs nor should their usefulness or importance be challenged.

The economic pilot was not intended to challenge either the past or future efficacy of the MESP process. Nor has it done so.

As the pilot program evolved, the mandatory program was intended only for post-MESP matters, that is, cases that did not settle as a result of MESP. That is what is now recommended for statewide implementation. The programs have different but complementary purposes. Not only can they coexist but their continued co-existence is important to the success of the statewide program now recommended.

The subcommittee is convinced that there now exists greater acceptance than ever before of the economic mediation program now recommended. This has come with time; with the

development of a culture favoring the program in the most active pilot counties; even as the result of the Bar's greater realization that mediation of economic matters is an appropriate and cost-efficient method to resolve disputes that have not been resolved after MESP. In essence, it is believed that even statewide, the program can and should be implemented thereby becoming **another** tool for the judiciary to foster the amicable resolution of matrimonial disputes.

DISCUSSION OF CONCEPT OF CDR EVENT SELECTED BY
PARTIES AND COUNSEL RATHER THAN AUTOMATIC
REFERRAL TO PROGRAM

The Subcommittee has discussed in detail the concept that in lieu of mandatory assignment to the post-MESP Economic Mediation, litigants should be permitted to agree themselves upon an alternative form of Complementary Dispute Resolution. The Subcommittee has noted an increasing number of both matrimonial attorneys and retired judges who perform valuable CDR services, although not necessarily as trained mediators. The Subcommittee notes that in many instances this constitutes a form of nonbinding arbitration rather than mediation. The Subcommittee encourages this process because it recognizes that what is most important is affording litigants an opportunity to resolve their matters after an MESP and prior to trial. For that reason, the Subcommittee specifically endorses that concept.

COMMENTARY ON VOLUNTARY PRE-MESP MEDIATION

The Subcommittee is mindful that mediation is generally viewed as a voluntary process which permits litigants within a non-adversarial context, with qualified assistance, to resolve their matters. The Subcommittee believes that although the mandatory program should, for many reasons, be confined to post-MESP situations after discovery has been either entirely or largely completed, the public should be advised of the availability of pre-MESP mediation services available on a voluntary basis.

In this regard, the subcommittee distinguishes between the mandatory post-MESP pilot now recommended to be implemented statewide and voluntary mediation that the subcommittee seeks to encourage. The subcommittee views that by continuing to assure that litigants are informed of the availability of mediation services, some will choose mediation.

The process that the subcommittee recommends is that, as a follow up step to the amendment to R. 5:3-5(a)(10) that became effective September 1, 2004 requiring that all matrimonial retainer agreements contain language that there is the “availability of Complementary Dispute Resolution programs including but not limited to mediation and arbitration”, there should now be a required certification appended to the first pleading filed by each party wherein the party Certifies that he or she has been informed of the availability of such programs and has received descriptive literature describing CDR.

Very much in concert with that conclusion is a need that the Subcommittee sees for attempting to differentiate between complex and less complex matrimonial matters. It will be seen in the recommendations that follow that the Subcommittee urges the CDR Committee to refer to the Supreme Court Family Practice Committee its recommendation encouraging the greater implementation of differentiated case management so that less complex matters will be presented to MESP panels more rapidly than appears now to be the practice.

STAFFING THE PROGRAM:

SPECIFIC RECOMMENDATIONS OF THE SUBCOMMITTEE

The current FM or dissolution staffing model is based upon one case processing staff person for every 220 FM cases. For 2006, this represents 292 FM case processing staff for 64,000 cases. The experience of the pilot programs has been that additional staff efforts, beyond those required for ordinary FM case processing has been necessary to implement the program. The additional steps taken include: contact with mediators to schedule cases, follow-up with

mediators to obtain statistical reports and case status, recording and reporting individual mediation case statistics, calculating monthly statistical reports and additional requirements for case tracking. The time and effort required to complete a significant number of these tasks could be reduced if the FACTS system was modified to facilitate the tracking, noticing and statistical reporting. Access to a Web based evaluation form would reduce the burden of mediator follow-up and the receipt of evaluations and case status updates. Such a system would also improve statistical reporting.

With these factors in mind, and based upon a 12 month roll out plan, the Committee recommends that:

1. For fiscal year 2006, the Family Staffing Model be increased by .5 FTE per vicinage as each vicinage initiates the program.
2. The modification of FACTS and development of a web-based evaluation reporting system be established as a fiscal year 2006 priority for ITO.
3. Upon program implementation statewide, and completion of the IT enhancements, the Family Staff Model should be adjusted to incorporate this function into the ordinary FM case-processing model. The “weight” given to the staff efforts for their program should be based upon the assessment of need when the program and supportive computer system are in place.

RECOMMENDATIONS

1. Recommendation No. 1: Termination of the Pilot and Creation of a Statewide Program.

The Pilot Program For The Mediation Of Economic Aspects Of Family Actions should be terminated. The Subcommittee has concluded that there is now sufficient information, both anecdotal and quantitative, to terminate the pilot and based upon the results and acceptance

of the pilot, to recommend that the program be implemented statewide. In large measure the subcommittee has reached this conclusion because of the warm endorsement the pilot has received from each of the pilot counties. With the passage of time, the Subcommittee believes that the program has gained sufficient acceptance from the Bar and public and that the pilot deserves statewide implementation throughout all fifteen vicinages.

2. Recommendation No. 2: Implementation Should Be Phased In Over A Period Of Not More Than Twelve Months With Additional Counties/Vicinages Being Added In An Orderly Fashion Monitored By The Conference of Family Presiding Judges And The CDR Committee.

The statewide program should be implemented in an orderly process as soon as is practicable. Implementation should be phased in over a period of not more than twelve months with additional counties/vicinages being added in an orderly fashion monitored by the Conference of Family Presiding Judges and the CDR committee.

Initially the program should be continued in the now eight pilot counties (Atlantic, Bergen, Burlington, Morris, Ocean, Union, Somerset and Sussex). Additional counties should be added as staff services and the bench and bar are informed of the program, how it will work, and how it will be administered. Although exact implementation may not initially be uniform, the goal should be statewide uniformity within a reasonable period of time. Of critical importance in the statewide implementation of the program will be the selection of one Judge, usually but not always the Presiding Judge, to lead and monitor the implementation process.

The Subcommittee is convinced that on a vicinage-by-vicinage basis, arrangements can be made for the implementation of the program so that the one year goal for full statewide implementation can be achieved and on an annual basis, to report to the Supreme Court on the evolution of the program.

3. Recommendation No. 3: Statewide Roster of Mediators.

The program should continue in its current form, with an established roster of mediators for family programs. Recognizing that qualified mediators are not necessarily located on a county-by-county basis, a statewide roster of mediators should be approved.

4. Recommendation No. 4: The Concept Of Mandatory Post-MESP Mediation Or A Post-Mediation CDR Event.

The program should require that litigants in every case participate in either mandatory post-MESP mediation or in an alternate post-MESP CDR event. The object should be to require participation in such a process regardless of its precise form.

The Subcommittee recommends that an alternate CDR event by agreement of the parties and counsel may be substituted for mandatory post-MESP economic mediation. The subcommittee is mindful that, in recent years, a number of retired judges as well as a number of distinguished matrimonial law practitioners who are not trained as mediators have offered their services to arbitrate matrimonial disputes. The subcommittee does not want to discourage such efforts and instead recommends that utilization of these professionals should be allowed to substitute for referral to the mandatory post-MESP program. It is more important that litigants attempt, after MESP, to resolve their matters through CDR than to insist that only a particular CDR modality be used.

Election of this alternative however, should be made within the timeframe within which litigants may opt in favor of a particular mediator rather than Court appointment from its statewide list of qualified mediators.

5. Recommendation No. 5: Timing and Procedure.

Upon referral to mediation, the parties shall be required to select a mediator from the statewide roster or may select any other person, whether a mediator or not, to conduct a

complementary dispute resolution event. If the parties cannot agree on a mediator/other person within seven days after the entry of the Order of Referral, the judge shall assign a mediator from the statewide mediator roster. It is within that same 7 day period that litigants should be required to make their election of an alternate post-MESP CDR event, listing specifically the attorney or other professional whose services would be utilized. Within that 7-day period, the parties shall be required to consent to the form of an amended Order that would list the name of the alternate mediator or alternate individual who shall conduct the alternate CDR event. The amended Order shall designate the date when the first such mediation or alternate CDR event shall take place.

Generally, the Subcommittee adopts the program operations guidelines set forth in current Appendix XIX of the rules governing the courts of New Jersey as follows:

A. An order of mediation referral shall not be entered *sua sponte* until the parties have participated in the Matrimonial Early Settlement Program.

B. The parties may request a referral to mediation at any time and the order of referral may then be entered.

C. No matter shall be referred to mediation if temporary or final restraints have been entered pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 *et. seq.* and an order remains in effect.

D. Immediately upon referral to mediation, the parties may select a mediator from the statewide roster or designate the individual who will conduct the alternate post-MESP CDR event. If the parties cannot agree, the judge supervising the program shall assign a mediator from the statewide roster. If the parties agree on an alternate form of CDR, the selection, with a specific person on a specific date and time, shall be chosen within 7 days after the entry of an order of referral.

E. After consultation with counsel, the date(s), time(s) and place(s) of the mediation session(s) shall be set by the mediator or by the individual conducting the alternate post-MESP CDR event. Counsel for the parties shall be encouraged to attend the first mediation session and may attend any subsequent session on notice to the other party or if the other party is represented by counsel, notice shall be given to opposing counsel. The parties shall 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 times for completion of the mediation.

F. Consistent with Recommendation 6 contained herein, participation by the parties shall be mandatory for any post-MESP matter in which an order for mediation/order for alternate post-MESP CDR event has been entered. The parties shall be required to participate in an initial meeting up to 3 hours, with no more than 1.5 hours of preparation time by the mediator and at least one 1.5-hour face-to-face mediation with the parties. The costs for said initial 3 hours shall not exceed \$100 per hour shared by the parties unless otherwise agreed by the parties, unless otherwise ordered by the Court. Although the initial 3-hour session shall be regarded as mandatory and subject to the enforcement powers of the Court, additional participation shall be regarded as voluntary. The Subcommittee adopts the recommendations and reasoning contained in the CDR committee's recent report on the free 3-hour issue.

6. Recommendation No. 6: Participation in the Program Should be Mandatory.

The apparent ambiguity in the pilot program must be closed. Participation in the program must be mandatory. Participation in the program should be defined as participation in at least one mediation or post-MESP CDR session. Litigants should not be required to participate in more than one session although it is hoped that, through participation in one such session, they shall come to understand the process and its inherent merit.

7. Recommendation No. 7: The Subcommittee Recommends that Litigants and Counsel Should be Advised of the Availability of and Encouraged to Utilize, on a Voluntary Basis, Alternate Dispute Resolution Modalities, including Mediation, at Earlier Stages of the Divorce Litigation Process.

The Subcommittee recommends that litigants and counsel should be further familiarized with the availability of CDR modalities at earlier stages of the divorce litigation process. Doing so may inform litigants of CDR options and how their matter might be resolved. The Subcommittee recommends that litigants be required to sign a Certification that will be appended to all initial FM pleadings (either a Complaint, Counterclaim or Entry of Appearance) certifying that they have been informed that mediation and other CDR modalities are available to assist them in resolving the financial aspects of their matrimonial disputes and that they have been provided with a copy of a form that will be created by this Subcommittee explaining the CDR process as an alternative or as an adjunct to traditional litigation. The form should not be in the nature of an advertisement but instead a neutrally phrased document explaining the mediation process.

8. Recommendation No. 8: The following Court Rules should be Adopted in R. 1:40 and in Part V of the Rules to Accommodate the Statewide Implementation of the Program.

A. Amendment to R. 5:4-2:

R.5:4-2 should be amended to include a new subsection (g) with the current R.5:4-2(g) renumbered as R.5:4-2(h). The new subsection R.5:4-2(g) should read as follows:

Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives.

The first pleading of each party shall have annexed thereto an affidavit or certification that the litigant has been informed of the availability of complementary dispute resolution alternatives to conventional litigation including but not limited to mediation or arbitration and that the litigant has received the descriptive literature that appears in Appendix XXXX to the rules.

If the Court adopts this recommendation, our subcommittee will address the drafting of the required descriptive literature.

B. Amendment to R. 5:5:

R. 5:5 should be amended to include a new subsection which should appear as R. 5:5-5 with the existing R. 5:5-5 and R. 5:5-6 and R. 5:5-7 being renumbered as R. 5:5-6, R. 5:5-7 and R. 5:5-8. The new subsection R. 5:5-5 should read as follows:

Participation in Mandatory Post-MESP Mediation or in a Mandatory Post-MESP Complementary Dispute Resolution Event.

All vicinages shall establish a post-MESP program for the mediation of the economic aspects of divorce consistent with the procedures set forth in Appendix XIX. Unless good cause is shown why a matter should not be referred to this program, litigants shall be required to participate in the program for no more than 3 hours, consisting of 1.5 hours of preparation time by the mediator or other individual conducting the alternate CDR event and 1.5 hours of time for the mediation or other CDR event. Participation after the first 3 hours shall be voluntary. In any matter in which a settlement is not achieved at the time of the MESP, an order for mediation or other post-MESP Complementary Dispute Resolution event shall be entered. The order shall provide that the litigants may select a mediator from the statewide-approved list of mediators or select an individual to conduct a post-MESP CDR event. Litigants shall be permitted to select another individual who will conduct a post-MESP mediation event provided the selection is made within 7 days.

C. Amendment to R. 1:40:

R. 1:40 should be amended to include an additional section to Rule 1:40-5, which would be renamed “Mediation in Family Part Matters.” Section A would be renamed “Mediation of Custody and Parenting Time Actions” and a new section B would be added as follows:

B. Mediation of Economic Aspects of Divorce

The CDR program of each vicinage shall include a post-Matrimonial Early Settlement Panel (MESP) program for the

mediation of the economic aspects of divorce or for the conduct of a post-MESP alternate CDR event consistent with R.5:5-5 and Appendix XIX of the Rules. 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.*).

CONCLUSION

The Family Program Subcommittee, as of the result of its multi-cycle review of the pilot program for the mediation of the economic aspects of divorce, has concluded that the time has come for the program to be implemented statewide. Although in earlier Rules cycles the Subcommittee had recommended extensions of the pilot rather than statewide implementation, the Subcommittee is now satisfied that the program has gained sufficient acceptance to now justify its statewide implementation. The anecdotal and statistical reports that have been received demonstrate not only the enthusiastic endorsement of the program but also the program's acceptance and success in at least several of the pilot counties. We accept the proposition that in those counties, the program has made a difference that justifies the endorsements that have been received and indeed, that abandonment of the pilot would eliminate what has become a viable option for the resolution of the vexatious economic issues that sometimes lie at the core of family matters. We are convinced that rather than continuing the pilot in select counties, it is now time to implement the program statewide.

We are also convinced that statewide implementation of the program will find general acceptance not only from the bench but also from the bar and that the cry often expressed at the program's inception that its implementation would compromise the effectiveness and even the existence of the Matrimonial Early Settlement Program is no longer a viable concern. It is understandable that a new concept will sometimes be met with skepticism or even outright opposition. Time, however, has a way of assuaging concerns. As CDR concepts have gained

greater statewide acceptance throughout the judicial system, so too here. At this time, the program is unlikely to be greeted with fear or cynicism but instead greeted as a viable alternative to the litigation process.

It is respectfully suggested that implementation of all of the recommendations contained in this report are in the best interests of the citizens of the State of New Jersey. It represents a proactive effort to address past concerns by a comprehensive multi-level and multi-faceted approach. This report should be read in its entirety because it has been carefully crafted to provide a comprehensive program. It retains the now generally accepted conclusion that a required program should only be implemented when an MESP does not provide a comprehensive settlement thereby preserving the integrity of the MESP process, a process that has gained the respect of the public, bench and bar and must not be compromised. Acceptance of the post-MESP approach assures that discovery will have been entirely or largely completed thereby providing a safeguard that litigants will not be required to participate in the program without sufficient knowledge and information to make meaningful and informed decisions. The program incorporates the option of a post-MESP CDR event to substitute for referral to traditional mediation for those who elect to have the event conducted by someone other than a mediator. Doing so opens the way for litigants to elect that such events should be conducted by skilled and experienced retired judges or distinguished matrimonial practitioners. As such, the program is designed to encourage the CDR process rather than any single form of CDR. This is recommended so that form is not exalted over substance. Including a good cause exception to the rule of automatic referral is intended to address any issues that might exist concerning access to the Courts.

The report also incorporates an acknowledgment that in addition to the mandatory aspects of the program, it is appropriate to more widely acknowledge the availability of CDR services at earlier stages of the divorce process. That is why a new Certification appended to initial pleadings is recommended.

The Subcommittee believes that the odyssey of the pilot was extremely worthwhile; that the Supreme Court has permitted it sufficient time to be adequately studied; and that its merit is now adequately shown to warrant statewide implementation.

The subcommittee thanks the full CDR committee for its encouragement over the years and rules cycles the pilot has spanned. The time has come to move forward with the confidence that the program now recommended is worth of enthusiastic support.

Respectfully submitted,

LEE M. HYMERLING, ESQUIRE
Subcommittee Chair

May 23, 2005

Family Programs Subcommittee Members:

Hon. Stephan C. Hansbury, PJFP, Morris/Sussex
Hon. Julie M. Marino, J.S.C.
Hon. Brian R. Martinotti, J.S.C.
Hon. Susan F. Maven, J.S.C.
Bonnie Blume Goldsamt, Esq.
Suzanne M. Jorgensen, Esq.
Suzanne M. McSorley, Esq.
Barbara Sopronyi, Family Division Manager, Burlington
Hon. Barbara Ann Villano, PJFP, Ocean
Carl B. Viniar Esq.

Staff: Jennifer A. Lombardi, Esq., AOC Family Practice Division

EXHIBIT LIST

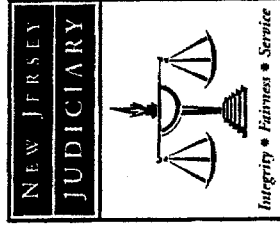
- A. Brochure: "Pilot Program for Mediation of Economic Aspects of Family Law Cases"
- B. Letter from the Honorable Thomas H. Dilts, P.J.F.P., Vicinage 13
- C. Summary of Mediator Responses as of 5/3/03
- D. County Totals for Economic Mediation as of the end of April 2005
- E. Economic Mediation Questionnaire Summary dated June 22, 2004

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APPENDIX A

PILOT PROGRAM
FOR MEDIATION OF
ECONOMIC ASPECTS OF
FAMILY LAW CASES



This brochure was prepared by:

The New Jersey Administrative Office of the Courts

Office of Trial Court Services

Revised: February 2002

COMPLEMENTARY DISPUTE
RESOLUTION

WHAT IS MEDIATION?

Mediation is a dispute resolution process in which an impartial third party - the mediator - facilitates negotiations among the parties to help them reach a mutually acceptable agreement to their dispute. The major distinction of mediation is that a mediator does not make a decision about the outcome of the case.

WHAT IS THE PROGRAM?

The New Jersey Supreme Court Committee on Complementary Dispute Resolution (CDR), through its Subcommittee on Family Court Programs, developed this pilot program of economic mediation in family law cases. The Supreme Court has approved seven counties as pilot sites where mediation will be limited to economic issues. The pilot period will be until August 31, 2002 after which the CDR Committee will submit a report and evaluation for the Supreme Court's consideration. The pilot counties include Atlantic, Bergen, Burlington, Morris, Ocean, Somerset and Union. All pilot counties will concentrate on matrimonial cases in which traditional Matrimonial Early Settlement Programs (MESP) are utilized and completed before referral to mediation. However, in all seven counties the parties may voluntarily request mediation prior to or after the MESP.

HOW IS A MEDIATOR SELECTED FOR A CASE?

A Joint Credentials Committee, consisting of CDR Committee and Family Practice Committee members, has approved a Roster of Mediators for each of the pilot counties. Mediators meet training requirements set forth in Court Rule 1:40-12 and other criteria adopted by the CDR Subcommittee on Family Court Programs. When a case is referred to mediation, the parties have the opportunity to agree on a mediator from the roster, or they may select any other individual they feel is suitable. If they cannot agree, the judge will assign a mediator to the case.

WHAT HAPPENS IN MEDIATION?

One of the most important aspects of mediation is that with few exceptions covered in Court Rule 1:40-4(c), what goes on in mediation is confidential. That is, what is said in mediation cannot be discussed outside of the mediation process unless the parties consent. Prior to mediation, the mediator will usually ask the attorneys to prepare a brief summary of the issues in dispute. Then, at the mediation session, the mediator will ask attorneys and their clients to make brief presentations about the issues from their own perspectives. After that, the mediator will help the parties to explore areas of possible compromise and to develop a solution that meets everybody's interests. Sometimes the mediator may meet with the parties separately for a private discussion that might help move the parties toward a resolution. If an agreement is reached, the mediator will notify the court and a document will be drawn up specifying the agreement.

WHAT ARE THE ROLES OF COUNSEL AND LITIGANTS IN MEDIATION?

Attorneys and their clients are required to make a good faith effort to cooperate with the mediator and engage in constructive dialogue regarding ways to meet client interests in a mutually acceptable settlement. Attorneys are also expected to attend the first mediation session with their clients, after which the attorneys, their clients and the mediator can decide as to appearance at future sessions. Attorneys should prepare their clients prior to mediation by explaining what will happen, and what the roles of attorneys and clients are. They should also agree on who will be the principal spokesperson in presenting the client's view early in the mediation session. For example, attorneys may make brief opening summaries of the issues as they see them, but clients should also be given an opportunity to speak. When it comes to discussing terms of settlement, the parties must play an active part, for it is their case and their settlement. During this process, attorneys should provide counsel on the advisability of settlement options, suggest options and be available for any other consultation with their clients.

HOW DOES A CASE GET INTO MEDIATION?

Appropriate cases for referral can be identified by judges, court staff, or the parties themselves, at any point in the life of a case. A form of order for referral to mediation is prepared and signed by the judge.

WHAT ARE THE BENEFITS OF MEDIATION?

In the Family Division, mediation has been used successfully to resolve parenting issues for many years. Some benefits of mediation include that it is confidential; the parties create their own mutually acceptable agreement; and in most instances, mediation saves the parties time and money. Most important, mediation empowers the parties to take an active role in resolving their own dispute.

HOW MUCH DOES MEDIATION COST?

Under Court Rule 1:40-4(b), the mediator shall serve on a pro bono basis for the initial three (3) hours of service including reasonable preparation time and the first mediation session. After the first three (3) hours, the mediator shall be compensated at the mediator's hourly rate, together with reasonable expenses. The fee of the mediator shall be borne by the parties equally, unless otherwise stipulated by the parties or ordered by the Court.

WHAT IF THE CASE ISN'T RESOLVED IN MEDIATION?

Sometimes the parties are unable to reach agreement, or only agree on certain aspects of the dispute. Even in these cases, the mediation process can usually help the parties move toward an ultimate settlement. In those counties where cases are referred to mediation prior to the MESP, the case will be scheduled for the MESP. For those cases referred to mediation after the MESP, the case will continue on track towards trial.

)

APPENDIX B

SUPERIOR COURT OF NEW JERSEY

Thomas H. Dilts
Presiding Judge



Somerset County Courthouse
20 North Bridge Street
P.O. Box 3000
Somerville, NJ 08876-1262
908-231-7647

February 10, 2005

Jennifer Lombardi, Esq.
Staff Attorney, Family Practice Division
Administrative Office of the Courts
P.O. Box 983
Trenton, NJ 08625

Re: Mandatory Economic Mediation
Family Programs Subcommittee
February 16, 2005

Dear Ms. Lombardi:

I am unable to attend the meeting on February 16, 2005 at 4:00 p.m. I am asking that you communicate to the Committee the strong support that Judge Ross and I both have for the Mandatory Economic Mediation Program. I personally consider the Mandatory Economic Mediation Program and Best Practices together to be the two most important innovations in the Family Division in the past 10 years. Both have helped to change the culture in Somerset County and the way that law is practiced. By empowering litigants and their attorneys to work creatively and cooperatively with a mediator, we have not only been able to better serve litigants, we have given them a much better basis to move forward in their lives!

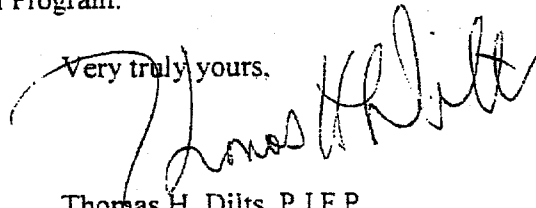
I do not believe that the statistics that are reported fully disclose the impact that the program is having. Unless the case actually settles during mediation or immediately following mediation, credit is not given to the process for settling the cases. The progress made during the mediation and the creative and cooperative approaches used during that process ultimately bear fruit when the case is settled before trial.

I am sending a copy of this letter to the President of the Somerset County Bar Association and the co-chairs of the Family Practice Committee so that they will know of the Committee's consideration of the pilot program and the future of that program. I fully anticipate the strong support of the matrimonial bar for Mandatory Economic Mediation Program.

In closing, at the last Presiding Judges meeting, I introduced a proposal to modify the three-hour requirement to provide for one-half-hour review of file and one-hour meeting with the parties and counsel without charge. Thereafter, the mediator would be free to charge a regular hourly rate. I believe that this strikes a proper balance of competing interests with regard to the question of mediator's time. The Conference of Presiding Judges, as you know, divided on this question, but a total of seven of the 14 Presiding Judges present did endorse my proposed modification.

Please communicate to the Family Program Subcommittee our strong support for continuing the Mandatory Economic Mediation Program.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Thomas H. Dilts", written in a cursive style.

Thomas H. Dilts, P.J.F.P.

THD/th

cc: Graham T. Ross, A.J.S.C.
John P. McDonald, President, Somerset County Bar Association
Amy Wechsler, Esq.
Michele D'Onofrio, Esq.

APPENDIX C

Summary of Mediator Responses

Family Division

Economic Mediation as of 5/3/05

Mediator Case Information Form

Questionnaires Returned.....:	1,400
Mediations Held.....:	1,144
Mediations Not Held.....:	217
Questionnaires With Insufficient Information...:	39

Mediations Held

Number of cases mediated.....:	1,144 cases
Total time for all cases.....:	5,626.0 hours
Average time per case.....:	4 hrs / 55 mins.

Mediator preparation time.....:	1,144 cases
Total time for all cases.....:	1,331.5 hours
Average prep time per case.....:	1 hr / 10 mins

Number of mediation sessions:	2167 sessions
Total time for all cases.....:	4,294.5 hours
Average time per session.....:	2 hrs / 00 mins

Number of cases over 3 hours..:	588 cases
Time paid for by parties.....:	2396.0 hours
Average time paid for.....:	4 hr / 00 mins

Mediations Not Held

Outcome of agreement:

Full agreement on all issues.....:	596	52.1%
Some issues pending.....:	159	13.9%
No agreement.....:	389	34.0%

Settled case before mediation.....:	140	64.5%
Party failed to attend.....:	68	31.3%
Party attended/did not participate:	9	4.1%

Source of Referral:

Bench Referral.....:	809	70.7%
Motion/Request of Plaintiff.....:	1	0.1%
Motion/Request of Defendant.....:	0	0.0%
Consent Request by Both Parties..:	272	23.8%
Did not enter a response.....:	62	5.4%

Bench Referral.....:	175	80.6%
Motion/Request of Plaintiff.....:	0	0.0%
Motion/Request of Defendant.....:	0	0.0%
Consent Request by Both Parties:	28	12.9%
Did not enter a response.....:	14	6.5%

Manner of Mediation Selection:

Assigned by court.....:	302	26.4%
Selected by parties/counsel.....:	682	59.6%
Did not enter a response.....:	160	14.0%

Assigned by court.....:	54	24.9%
Selected by parties/counsel.....:	127	58.5%
Did not enter a response.....:	36	16.6%

Did the attorneys submit the proper case summaries?

Yes.....	967	84.5%
No.....	55	4.8%
Did not enter a response.....	122	10.7%

Were the attorneys prepared for the mediation sessions?

Yes.....	876	76.6%
No.....	18	1.6%
Did not enter a response.....	250	21.9%

Did the parties participate in the mediation sessions?

Yes.....	1,009	88.2%
No.....	11	1.0%
Did not enter a response.....	124	10.8%

At what stage in the case did the mediation session(s) take place?

(Some cases may have more than one selected because the mediation took many sessions)

PRE-MESP - Before any discovery:	10	0.9%
- Incomplete discovery:	37	3.2%
- Complete discovery..:	19	1.7%

POST-MESP - Before any discovery:	54	4.7%
- Incomplete discovery:	242	21.2%
- Complete discovery..:	755	66.0%

Did not enter a response.....	27	2.4%
-------------------------------	----	------

Was the timing of referral to mediation appropriate?

Too early.....	31	2.7%
Appropriate.....	896	78.3%
Too late.....	89	7.8%
Did not enter a response.....	128	11.2%

Have the Custody/Parenting Time issues been through mediation?

Yes.....	125	10.9%
No.....	405	35.4%
Not Applicable.....	184	16.1%
Did not enter a response.....	430	37.6%

If the case did not settle in mediation, what were the reasons?

(Some cases may have more than one selected because there was more than one reason)

One or both parties did not fully participate:	31	2.7%
Issues were too numerous.....	54	4.7%
Issues were too complex.....	65	5.7%
One or both parties were too entrenched...:	316	27.6%
Case settled.....	596	52.1%
Did not enter a response.....	164	14.3%

State of New Jersey

MEDIATION CASE INFORMATION FORM

Pilot Program For Mediation of Economic Aspects of Family Law Cases

FOR OFFICE USE ONLY

DATE RECEIVED:

DATE ENTERED - AOC:

DIRECTIONS: This form is to be completed by the mediator when the mediation is concluded or returned to court.

CASE DOCKET NUMBER	COUNTY	LAST NAME OF MEDIATOR	FIRST NAME OF MEDIATOR	MEDIATOR'S TELEPHONE NUMBER
-----------------------	--------	--------------------------	---------------------------	--------------------------------

OUTCOME / NATURE OF AGREEMENT

- | | | |
|--|--|---|
| <input type="checkbox"/> mediation held / full agreement on all issues | <input type="checkbox"/> mediation held / no agreement | <input type="checkbox"/> no mediation held / party failed to attend |
| <input type="checkbox"/> mediation held / some issues pending | <input type="checkbox"/> no mediation held / parties settled case before mediation session | <input type="checkbox"/> no mediation held / party attended but failed to participate |

SOURCE OF REFERRAL

- | | | | |
|---|--|--|--|
| <input type="checkbox"/> bench referral | <input type="checkbox"/> motion / request of plaintiff | <input type="checkbox"/> motion / request of defendant | <input type="checkbox"/> consent request by both parties |
|---|--|--|--|

MANNER OF MEDIATOR SELECTION

- | | |
|--|--|
| <input type="checkbox"/> assigned by court | <input type="checkbox"/> selected by parties / counsel |
|--|--|

DATE CASE ASSIGNED
TO MEDIATOR

DATE OF INITIAL
MEDIATION SESSION

DATE OF FINAL
MEDIATION SESSION

NUMBER OF MEDIATION
SESSIONS

NUMBER OF HOURS OF
PREPARATION TIME

NUMBER OF HOURS
IN SESSIONS

NUMBER OF HOURS
PAID BY PARTIES

DID THE ATTORNEYS
SUBMIT PROPER
CASE SUMMARIES?

☐ yes ☐ no

WERE THE ATTORNEYS
PREPARED FOR THE
MEDIATION SESSIONS?

☐ yes ☐ no

DID THE PARTIES
PARTICIPATE IN THE
MEDIATION SESSIONS?

☐ yes ☐ no

IF YOU ANSWERED NO TO ANY OF
THE ABOVE QUESTIONS PLEASE
EXPLAIN HERE

AT WHAT STAGE IN THE
CASE DID THE MEDIATION
SESSION TAKE PLACE?
(note all that are applicable)

PRE-MESP

☐ before any discovery

☐ incomplete discovery

☐ complete discovery

POST-MESP

☐ before any discovery

☐ incomplete discovery

☐ complete discovery

WAS THE TIMING OF REFERRAL
TO MEDIATION APPROPRIATE?

☐ too early

☐ appropriate time

☐ too late

HAVE CUSTODY / PARENTING
TIME ISSUES BEEN THROUGH
MEDIATION?

☐ yes ☐ no

APPROXIMATE
DATE

CUSTODY
MEDIATOR'S
NAME

IF THE CASE DID NOT SETTLE IN
MEDIATION, WHAT WERE THE
REASONS? (note all that are applicable)

☐ one or both parties did not
fully participate

☐ issues were too complex

☐ one or both parties too entrenched
in their positions

☐ issues were too numerous

COMMENTS (Please use this section to
note any suggestions, concerns or other
comments on the pilot program.)

PLEASE RETURN TO:

FAMILY DIVISION
ADMINISTRATIVE OFFICE OF THE COURTS
BOX 983
TRENTON, NJ 08625

OR FAX TO:

(609) 984-1479
(609) 984-4788

APPENDIX D

TOTALS FOR ECONOMIC MEDIATION

ATLANTIC							% of County	
	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>Totals</u>	<u>Total</u>
Settled prior to mediation	4				0	0	4	57.1%
Settled	1	1			0	0	2	28.6%
Unsuccessful					0	0	0	0.0%
Partial					0	0	0	0.0%
Other	1				0	0	1	14.3%
Totals	6	1	0	0	0	0	7	100.0%

BERGEN							% of County	
	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005*</u>	<u>Totals</u>	<u>Total</u>
Settled prior to mediation	14	9	11	23	47	15	119	12.6%
Settled	50	23	44	72	185	51	425	44.9%
Unsuccessful	45	31	40	68	89	19	292	30.9%
Partial	11	11	8	17	34	2	83	8.8%
Other	2	3	1	6	15	0	27	2.9%
Totals	122	77	104	186	370	87	946	100.0%

* through 4/05

BURLINGTON							% of County	
	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>Totals</u>	<u>Total</u>
Settled prior to mediation	9					0	9	10.8%
Settled	9	22	7	3	0	0	41	49.4%
Unsuccessful		7	4		1	0	12	14.5%
Partial		20			0	0	20	24.1%
Other		1			0	0	1	1.2%
Totals	18	50	11	3	1	0	83	100.0%

MORRIS							% of County	
	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005*</u>	<u>Totals</u>	<u>Total</u>
Settled prior to mediation			2	18	61	46	127	16.9%
Settled	77	51	14	57	85	41	325	43.3%
Unsuccessful	53	42	9	40	59	16	219	29.2%
Partial		8	2	15	36	18	79	10.5%
Other							0	0.0%
Totals	130	101	27	130	241	121	750	100.0%

* through 4/05

TOTALS FOR ECONOMIC MEDIATION (continued)

OCEAN							% of County	
	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005*</u>	<u>Totals</u>	<u>Total</u>
Settled prior to mediation			1	1	0	0	2	1.1%
Settled		12	5	15	11	9	52	28.7%
Unsuccessful		19	23	28	32	12	114	63.0%
Partial			5	1	0	0	6	3.3%
Other		3	1	2	1	0	7	3.9%
Totals	0	34	35	47	44	21	181	100.0%

* through 4/05

SOMERSET							% of County	
	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005*</u>	<u>Totals</u>	<u>Total</u>
Settled prior to mediation				1	0		1	0.2%
Settled	41	48	43	28	38	16	214	32.2%
Unsuccessful	67	111	102	52	35	11	378	56.9%
Partial	12		10	19	29	1	71	10.7%
Other							0	0.0%
Totals	120	159	155	100	102	28	664	100.0%

* through 4/05

JSSEX							% of County	
	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005*</u>	<u>Totals</u>	<u>Total</u>
Settled prior to mediation						0	0	0.0%
Settled						0	0	0.0%
Unsuccessful						1	1	25.0%
Partial						0	0	0.0%
Other						3	3	75.0%
Totals	0	0	0	0	0	4	4	100.0%

* through 4/05 (started 3/05)

UNION							% of County	
	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005*</u>	<u>Totals</u>	<u>Total</u>
Settled prior to mediation	4	1			1	1	7	3.0%
Settled	5	25	9	4	11	2	56	24.0%
Unsuccessful	22	26	72	18	15	4	157	67.4%
Partial	1	3	1	5	1	0	11	4.7%
Other					1	1	2	0.9%
Totals	32	55	82	27	29	8	233	100.0%

* through 4/05

GRAND TOTALS							% of County	
	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>Totals</u>	<u>Total</u>
Settled prior to mediation	31	10	14	43	109	62	269	9.4%
Settled	183	182	122	179	330	119	1115	38.9%
Unsuccessful	187	236	250	206	231	62	1172	40.9%
Partial	24	42	26	57	100	21	270	9.4%
Other	3	7	2	8	17	1	38	1.3%
GRAND TOTALS	428	477	414	493	787	265	2864	100.0%

APPENDIX E

ADMINISTRATIVE OFFICE OF THE COURTS

FAMILY PRACTICE DIVISION

INTEROFFICE MEMORANDUM

TO: Harry Cassidy
FROM: Keith Vine
RE: Economic Mediation Questionnaire Summary
DATE: June 22, 2004

In response to your request, a larger sample was taken from the Economic Mediation Questionnaires. Previously, 30 questionnaires were examined. In this analysis, 150 questionnaires were examined and divided into two groups: 75 questionnaires where Mediation resulted in a settlement on all issues, and 75 questionnaires where Mediation did not have a positive impact on the case. The results are listed on the attached page and are summarized below.

For both groups, the average time from complaint to MESP was 12 months, and the average time from complaint to Mediation was 15 months.

Where Mediation resulted in a settlement on all issues, the average time from complaint to Disposition was 17 months, while the average time from Mediation to Disposition was 2 months.

Where Mediation did not have a positive impact on the case, the average time from complaint to Disposition was 20 months, while the average time from Mediation to Disposition was 5 months. Therefore, this group where Mediation did not have a positive impact on the case took on average 3 months longer from both complaint to Disposition and from Mediation to Disposition.

The number of Post Judgment motions was 34 for the group where Mediation resulted in a settlement on all issues, compared to 104 for the group where Mediation did not have a positive impact on the case.

In summary, cases where Mediation did not have a positive impact on the case took on average 3 months longer and had more Post Judgment motions than cases where Mediation resulted in a settlement on all issues.

ECONOMIC MEDIATION – MEDIATION QUESTIONNAIRE

(Using a sample of 150 questionnaires, 75 for each group)

1) Mediation resulted in a settlement on all issues

Average time from complaint to MESP: 12 months

Average time from complaint to Mediation: 15 months

Average time from complaint to Disposition: 17 months

Average time from Mediation to Disposition: 2 months

Number of Post Judgment Motions: 34

2) Mediation did not have a positive impact on the case

Average time from complaint to MESP: 12 months

Average time from complaint to Mediation: 15 months

Average time from complaint to Disposition: 20 months

Average time from Mediation to Disposition: 5 months

Number of Post Judgment Motions: 104