

NOTICE TO THE BAR

PROPOSED AMENDMENTS TO RULES 1:40-5 AND 1:40-12 TO SUPPORT THE DOMESTIC VIOLENCE ECONOMIC MEDIATION (DVEM) PROGRAM – REQUEST FOR COMMENT

The Supreme Court invites written comments on proposed amendments to Rule 1:40-5 (“Mediation in Family Part Matters”) and Rule 1:40-12 (“Mediators and Arbitrators in Court-Annexed Programs”). The proposed amendments would support statewide expansion of the Domestic Violence Economic Mediation (“DVEM”) Program, as authorized by the Court and announced in this [July 7, 2023](#) notice.

The attached proposed amendments to Rule 1:40-5 would (1) enable litigants in Family matters to participate in economic mediation when there is an active domestic violence final restraining order (FRO) between the parties and the protected party in the FRO consents to the mediation; (2) prohibit the direct exchange of information between the parties participating in the DVEM program; and (3) require mediators to have a domestic violence designation on the approved Roster of Mediators for Economic Aspects of Family Law Cases in order to be eligible to conduct domestic violence economic mediation.

The proposed amendments to Rule 1:40-12 would require mediators to complete specialized domestic violence mediation training as approved by the Administrative Director of the Courts. Such specialized training would include topics on power and control, progression of abuse, cycle of violence, and issues relating to victims and perpetrators.

Please send any comments on the proposed amendments to Rules 1:40-5 and 1:40-12 in writing by August 14, 2023 to:

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
P.O. Box 037
Trenton, New Jersey 08625-0037

Comments may also be submitted by email to:

Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address (and those submitting comments by email should include their name and email address). Comments are subject to public disclosure upon receipt.



Glenn A. Grant
Administrative Director of the Courts

Dated: July 13, 2023

Rule 1:40-5. Mediation in Family Part Matters

(a) Mediation of Custody and Parenting Time Actions.... No change

(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] 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.) If a final restraining order is in effect, parties may participate in the Domestic Violence Economic Mediation program with the consent of the victim.

(2) Designation of Mediator of Economic Aspects of Family Law Matters.... No change

(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 direct exchange of information between parties participating in the Domestic Violence Economic Mediation program is prohibited. The court may, in the Mediation Referral Order, stay discovery and set specific times for completion of mediation.

(4) Timing of Referral....No change

(A.) ...No change

(B.) ...No change

(C.) Parties shall be provided with the roster of approved mediators for selection. Only mediators who have been approved to conduct domestic violence economic mediation and have a domestic violence designation on the approved roster may be selected to mediate cases where there is a final restraining order.

(D.) ...No change

(E.) ...No change

(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. The direct exchange of information between parties participating in the Domestic Violence Economic Mediation program is prohibited.

(G.) ...No change

(H.) ...No change

(I.) ...No change

(5) Adjournments....No change

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; *subparagraph (b)(5) amended April 5, 2022 to be effective immediately; subparagraphs (b)(1), (b)(3), (b)(4)(C), and (b)(4)(F) amended _____ to be effective _____.*

Rule 1:40-12. Mediators and Arbitrators in Court-Annexed Programs

(a) Mediator Qualifications. ... No change.

(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 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 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]. To mediate economic aspects of dissolution actions that have an active final restraining order between the parties, mediators must receive domestic violence mediation training as approved by the Administrative Director of the Courts. U[un]less otherwise exempted in this rule, Family Part mediators shall also have 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....No change

(3) Mediation Course Content - Basic Skills....No change

(4) Mediation Course Content - Family Part Actions. The 40-hour 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. Specialized domestic violence training for economic mediators shall address topics including but not be limited to: power and control, progression of abuse, cycle of violence, and issues relating to victims and perpetrators. 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....No change

(6) Training Requirements for Judicial Law Clerks....No change

(7) Co-mediation; mentoring; training evaluation.... No change

(8) Mediation Course Content - Supplemental Mediation Training for Civil and Family Mediators....No change

(c) Arbitrator Qualification and Training....No change

(d) Training Program Evaluation....No change

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; paragraph (c) amended July 31, 2020 to be effective September 1, 2020; subparagraphs

(b)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(8), paragraph (c), and subparagraph (c)(3) amended July 30, 2021 to be effective September 1, 2021; paragraphs (b)(1), (b)(4) amended _____ to be effective _____.