

NOTICE TO THE BAR AND PUBLIC

AFFORDABLE HOUSING DISPUTE RESOLUTION PROGRAM (L. 2024, c. 2) – (a) ADMINISTRATIVE DIRECTIVE #14-24; (b) RELAXATION OF RULE 2:2-3 REGARDING PROGRAM APPEALS; (c) JUDICIARY AFFORDABLE HOUSING WEBPAGE

Recent legislation created a new process for municipalities to come into constitutional compliance with their affordable housing obligations under the Fair Housing Act (FHA). The new law, L. 2024, c. 2, also established the Affordable Housing Dispute Resolution Program (“Program”) within the Judiciary for the purpose of resolving disputes associated with the FHA.

(a) Administrative Directive #14-24

As authorized by the law, the Administrative Director has established the procedures for the Program’s operation, as set forth in the attached Administrative Directive #14-24 (“Affordable Housing Dispute Resolution Program – Implementation of L. 2024, c. 2”). The Program procedures address initiating actions and challenges using the Judiciary’s electronic filing systems, criteria for assignment of a case to the Program, appointment of special adjudicators by Program members, settlement conferences and sessions, appeals, codes of conduct, and public access to filings.

(b) Relaxation of Rule 2:2-3

The Supreme Court in the attached November 12, 2024 Order relaxed and supplemented Rule 2:2-3 (“Appeals to the Appellate Division from Final Judgments, Decisions, Actions and from Rules; Tax Court”) to provide that appeals arising out of litigation regarding affordable housing obligations and the Program shall be considered as appeals as of right.

(c) Webpage

The Judiciary has created an Affordable Housing webpage on its website (njcourts.gov), which will include case-related filings. The Affordable Housing webpage is located at [Affordable Housing Dispute Resolution Program | NJ Courts](https://www.njcourts.gov/courts/civil/affordable-housing) (<https://www.njcourts.gov/courts/civil/affordable-housing>).

Questions regarding the Program, Directive #14-24, or the November 12, 2024 rule relaxation order should be directed to the AOC's Civil Practice Division at CivilWebSites.Mailbox@njcourts.gov or (609) 815-2900 x54900.

A handwritten signature in black ink, appearing to read "Glenn A. Grant", written over a horizontal line.

Glenn A. Grant. J.A.D.

Acting Administrative Director of the Courts

Dated: December 18, 2024

GLENN A. GRANT, J.A.D.

Acting Administrative Director of the Courts

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Directive #14-24

Questions may be directed to
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**TO: Assignment Judges
Trial Court Administrators**

FROM: Glenn A. Grant, J.A.D. Acting Administrative Director

**SUBJECT: Civil - Affordable Housing Dispute Resolution Program –
Implementation of L. 2024, c. 2**

DATE: December 13, 2024

This Administrative Directive promulgates procedures and guidelines implementing the Affordable Housing Alternate Dispute Resolution Program (“Program”) created by L. 2024, c. 2. This law amended N.J.S.A. 52:27D-302, the Fair Housing Act (FHA), abolished the Council on Affordable Housing (COAH), and created a new process for municipalities to come into constitutional compliance with their affordable housing obligations. The new law established the Program within the Judiciary for the purpose of resolving disputes associated with the FHA. In furtherance of that end, the Administrative Director of the Courts is authorized to establish guidelines for the resolution of such matters, including the appointment of members, qualified experts, and staff.

I.Membership

The May 17, 2024 [Notice to the Bar](#) announced the Administrative Director’s appointment of members of the Affordable Housing Dispute Resolution Program, consisting of retired judges, including a chairperson. Any changes in the Program membership will similarly be announced by a notice to

the bar posted on the Program's webpage on the Judiciary's website as well as in the notices section of the website.

II. Initiating an Action – Fair Share Obligations and Challenges

For pleadings and other case filings, attorneys must file through eCourts. Self-represented parties can file electronically through JEDS (Judiciary Electronic Document Submission), by mail, or in person.

A. Fair Share Obligations (Housing Need Numbers)

A municipality seeking a certification of compliance with the FHA shall file an action in the form of a declaratory judgment complaint and Civil Case Information Statement (Civil CIS) in the county in which the municipality is located. Filers should select case type 816 (Affordable Housing) on the Civil CIS.

This declaratory judgment action must be filed within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner.

Copies of the municipal resolution must be included with the initial filing.

Actions that are not filed by the statutory deadline will not be considered by the Program.

B. Challenges to the Fair Share Obligation (Housing Need Numbers)

Interested parties must file any challenge to the municipality's calculation of its fair share obligation no later than February 28, 2025. The challenge shall be filed by way of an answer to the declaratory judgment action and must include the Civil CIS. Filers should select case type 816 (Affordable Housing) on the Civil CIS.

Challenges filed after the February 28, 2025 statutory deadline will not be considered by the Program and will be referred to the vicinage's designated Mt. Laurel judge for dismissal.

C. Program Review of a Timely Challenge

Upon the filing of a timely challenge, the matter shall be referred to the Program to review for compliance with N.J.S.A. 52:27D-304.2 and 304.3. The challenge must state with particularity how the municipal calculation fails to comply with N.J.S.A. 52:27D-304.2 and 304.3. The challenge must also include the challenger's own calculation of the fair share obligations in compliance with N.J.S.A. 52:27D-304.2 and 304.3.

Challenges that do not meet the required statutory standards set forth in N.J.S.A. 52:27D-304.1(f)(1)(c) will be dismissed. A Program member will issue a recommendation for a dismissal order with a statement of reasons. The Program will not consider motions for reconsideration of its recommendations.

Where a challenge is recommended for dismissal by the Program, the case will be sent to the vicinage's designated Mt. Laurel judge for review and entry of an order on the fair share obligations in conformance with the FHA. The order shall include findings of fact and conclusions of law pursuant to Rule 1:7-4(a). Upon entry of an order on the fair share obligations, the municipality shall proceed to adopt its Housing Element and Fair Share Plan.

Appeals from the dismissal of a challenge and subsequent entry of an order by the Mt. Laurel judge shall be filed in accordance with the Part II Rules of Court.

D. Assignment to the Program

Challenges that the Program has deemed compliant with N.J.S.A. 52:27D-304.2 and 304.3 shall be assigned by the Program chairperson to a Program member for handling. Where appropriate and in the discretion of the chairperson, cases may be consolidated for handling based on similar facts or legal issues and a determination that consolidation would support expeditious or efficient case disposition. The chairperson in their discretion may assign additional Program members to a case based on complexity of the facts, legal issues, uniqueness or difficulty, or where cases have been consolidated for handling.

E. Special Adjudicators

The Program shall appoint special adjudicators¹ as necessary to serve as qualified experts from a roster approved by the Administrative Director of the Courts.

Special adjudicators' responsibilities may include reviewing filings, reviewing expert reports, preparing written reports for the Program's review, and appearing at Program settlement conferences or sessions. Any written reports prepared by special adjudicators must be submitted to the Program member before the settlement conference.

F. Settlement Conference

Where a matter has been referred to the Program, the first event shall be a settlement conference before the assigned member(s). The settlement conference shall take place with the member(s), interested parties, and, in the discretion of the Program member(s), the special adjudicator. The settlement conference will presumptively be a remote proceeding but may be in person at the discretion of the assigned Program member(s). No verbatim record will be made of the settlement conference. This settlement conference must be a bona fide effort on the part of all to reach a settlement. All counsel must attend the settlement conference with an individual who has the authority to bind that party to the terms of a settlement. A good faith effort is required by all counsel and principals.

If a settlement agreement is reached, the terms shall be reduced to writing and the case shall be referred to the Mt. Laurel judge for review and entry of an order on fair share obligations.

If the case does not resolve at the settlement conference, it shall be scheduled for a session in the Program.

¹ By Notice to Bar dated April 5, 2024, the Supreme Court announced the adoption of the term "Special Adjudicator" and the elimination of the term "Special Master."

G. Sessions

A session shall take place with the member(s), interested parties, and the special adjudicator within 10 days (excluding Saturdays, Sundays, and legal holidays) after the settlement conference. Member(s) shall consider the pleadings and papers filed in the case and the arguments of counsel and interested parties who have filed challenges. No testimony will generally be taken during the session except in the discretion of the Program member(s).

At the conclusion of the session, the Program member(s) shall issue a decision within 10 days (excluding Saturdays, Sundays, and legal holidays), or by the statutory deadline of March 31, 2025, whichever is sooner. A decision shall be by a majority of the Program members participating in the session. A decision will specify the evidence upon which the Program member(s) relied and will include a statement of reasons.

Within 5 days (excluding Saturdays, Sundays, and legal holidays) after issuance of the Program's decision, the decision will be referred to the vicinage's Mt. Laurel judge for entry of an order accepting, rejecting, or accepting in part/rejecting in part the Program's decision and establishing the municipal fair share obligation. The Mt. Laurel judge will determine whether to take testimony to resolve any relevant factual dispute. The order shall include findings of fact and conclusions of law pursuant to Rule 1:7-4(a).

Appeals from the order of the Mt. Laurel judge shall be filed in accordance with the Part II Rules of Court.

III. Initiating an Action – Housing Element and Fair Share Plan and Challenges

For all case filings, attorneys must file through eCourts. Self-represented parties can file electronically through JEDS (Judiciary Electronic Document Submission), by mail, or in person.

A. Housing Element and Fair Share Plan

After the entry of an order determining present and prospective fair share obligations, the municipality must file with the Program its adopted housing element and fair share plan (which shall include the elements set forth in the Addendum attached to this Directive) within 48 hours after adoption or by June 30, 2025, whichever is sooner. Actions that do not meet the statutory deadline will not be considered by the Program. A municipality may apply prior to the expiration of the deadline to the vicinage's Mt. Laurel judge for a grace period pursuant to N.J.S.A. 52:27D-313.

B. Challenges to Housing Element and Fair Share Plan

Interested parties may file a challenge to the municipality's housing element and fair share plan by August 31, 2025.

Challenges filed after the August 31, 2025 statutory deadline will not be considered by the Program and will be referred to the vicinage's Mt. Laurel judge for dismissal, except where the municipality was granted an extension as set forth in paragraph A above. If a grace period extension has been granted, the challenge must be filed within 30 days (excluding Saturdays, Sundays, and legal holidays) from such extension.

C. Program Review of a Timely Challenge

Upon the filing of a timely challenge, the matter shall be referred to the Program to review whether the challenge specifies with particularity those sites or elements of the municipal fair share plan that are alleged to not comply with the FHA.

Challenges that do not meet the standards required by N.J.S.A. 52:27D-304.1(f)(2)(b) will be dismissed. A Program member will issue a recommendation for a dismissal order with a statement of reasons. The Program will not consider motions for reconsideration of its recommendations. Where a challenge is recommended for dismissal by the Program, the case will be sent to the vicinage's Mt. Laurel judge for review and entry of a certification of compliance and order with findings of fact and conclusions of law pursuant to Court Rule 1:7-4(a).

Appeals from the dismissal of a challenge and subsequent entry of an order by the Mt. Laurel judge shall be filed in accordance with the Part II Rules of Court.

D. Assignment to the Program

Challenges that the Program has deemed to be compliant with N.J.S.A. 52:27D-304.1(f)(2)(b) shall be assigned to the member(s) who was previously assigned under Section II above, if practicable. Where appropriate and in the discretion of the Program Chairperson, cases may be consolidated for handling based on similar facts or legal issues where consolidation would support expeditious or efficient case disposition. The Chairperson in their discretion may assign additional members to a case based on complexity of the facts, legal issues, uniqueness or difficulty, or where cases have been consolidated for handling.

E. Settlement Conference

The first event when a matter has been referred to the Program shall be a settlement conference before member(s) assigned by the Program Chairperson or previously assigned member(s). The settlement conference shall take place with the member(s), interested parties, and, in the discretion of the Program member(s), the special adjudicator. The settlement conference will presumptively be a remote proceeding but may be in-person at the discretion of the assigned member(s). No verbatim record will be made of the settlement conference. This settlement conference must be a bona fide effort on the part of all to reach a settlement. All counsel must attend with an individual who has the authority to bind that party to the terms of a settlement. A good faith effort is required by all counsel and principals.

If a settlement agreement is reached, the terms shall be reduced to writing and the case referred to the Mt. Laurel judge for review and entry of certification of compliance.

If the case does not resolve at the settlement conference, it shall be scheduled for a session.

F. Sessions

A session shall take place with the member(s), interested parties, and the special adjudicator within 10 days (excluding Saturdays, Sundays, and legal holidays) after the settlement conference. Member(s) shall consider the pleadings and papers filed in the case and the argument of counsel and interested parties who have filed challenges. No testimony will generally be taken during the session except in the discretion of the Program member(s).

At the conclusion of the session, the program member(s) shall issue a decision within 10 days (excluding Saturdays, Sundays, and legal holidays) after the session or by the statutory deadline of December 31, 2025, whichever is sooner. A decision shall be by a majority of the Program members participating in the session. The decision will specify the evidence upon which the Program member(s) relied and will include a statement of reasons.

Within 5 days (excluding Saturdays, Sundays, and legal holidays) after issuance of the Program's decision, the decision will be referred to the Mt. Laurel judge for entry of an order accepting, rejecting, or accepting/rejecting in part the Program's decision on the Housing Element and Fair Share Plan and Certificate of Compliance. The Mt. Laurel judge will determine whether to take testimony to resolve any relevant factual dispute(s). The order shall include findings of fact and conclusions of law pursuant to Rule 1:7-4(a).

Appeals from the order of the Mt. Laurel judge shall be filed in accordance with the Part II Rules of Court.

IV. Code of Ethics and Conflicts of Interest

A. Program Members

1. Program members who are retired judges serving on recall are subject to the Code of Judicial Conduct and the Rules of Professional Conduct.
2. Program members who are retired judges not serving on recall are subject to the Rules of Professional Conduct.

B. Special Adjudicators

Special Adjudicators are subject to the American Institute of Certified Planners (AICP) Code of Ethics and Professional Conduct.

C. Conflicts of Interest

Conflicts of Interest as to any Program member or Special Adjudicator may be waived with the consent of all parties.

V. Public Access

The Judiciary has created an Affordable Housing webpage on its website (njcourts.gov) to provide public access without cost to filings made pursuant to the FHA. Case-related filings available on the website will include the following: Municipal Resolution of Determination of Present and Prospective Fair Share Obligation; Housing Element and Fair Share Plan; Implementing Ordinances and Resolution; and Compliance Certification Order, as well as other Program information. The Affordable Housing webpage on the Judiciary website is located at <https://www.njcourts.gov/courts/civil/affordable-housing>.

Other case-related filings can be accessed through the eCourts Civil case jackets. To register for eCourts, follow the instructions on the Judiciary website at <https://www.njcourts.gov/self-help/srl-civil-ecourts-access>.

Questions regarding this Directive may be directed to the Administrative Office of the Courts, Civil Practice Division, by phone at 609-815-2900, ext. 54900.

Attachment (Addendum)

cc: Chief Justice Stuart Rabner
Civil Presiding Judges
Mt. Laurel Judges
Program Members
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Clerks of Court
Special Assistants to the Administrative Director
Melissa A. Czartoryski, Chief, Civil Practice
Civil Division Managers

REQUIRED ELEMENTS OF HOUSING ELEMENT AND FAIR SHARE PLAN

- A. The Housing Element and Fair Share Plan (HEFSP) will need to be prepared to reflect all of the terms of the applicable settlement agreement and to meet all of the statutory requirements for such documents as well as the following:
1. One of the requirements for a final HEFSP is the inclusion of detailed site suitability analyses, based on the best available data, for each of the un-built inclusionary or 100 percent affordable housing sites in the plan as well as an identification of each of the sites that were proposed for such development and rejected, along with the reasons for such rejection.
 2. The concept plan for the development of each of the selected sites should be overlaid on the most up to date environmental constraints map for that site as part of its analysis. When the detailed analyses are completed, the municipality can see what changes will be needed (either to the selected sites or to their zoning) to ensure that all of the units required by the settlement agreement will actually be produced. If it becomes apparent that one (or more) of the sites in the plan does not have the capacity to accommodate all of the development proposed for it, the burden will be on the municipality either to adjust its zoning regulations (height, setbacks, etc.) so that the site will be able to yield the number of units and affordable units anticipated by the settlement agreement or to find other mechanisms or other sites as needed to address the likelihood of a shortfall.
 3. The final HEFSP must fully document the creditworthiness of all of the existing affordable housing units in its HEFSP and to demonstrate that it has followed all of the applicable requirements for extending

expiring controls, including confirmation that all of the units on which the controls have been extended are code-compliant or have been rehabilitated to code-compliance, and that all extended controls cover a full 30-year period beginning with the end of the original control period. Documentation as to the start dates and lengths of affordability controls applicable to these units and applicable Affordable Housing Agreements and/or deed restrictions is also required. Additionally, the income and bedroom distributions and continued creditworthiness of all other existing affordable units in the HEFSP must be provided.

4. The HEFSP must include an analysis of how the HEFSP complies with or will comply with all of the terms of the executed settlement agreement.

Once the HEFSP has been prepared, it must be reviewed by Fair Share Housing Center and the Program's Special Adjudicator for compliance with the terms of the executed settlement agreement, the Fair Housing Act (FHA) and Uniform Housing Affordability Controls (UHAC) regulations. The HEFSP must be adopted by the Planning Board and the implementation components of the HEFSP must be adopted by the governing body.

B. The HEFSP must also include (in an Appendix) all of the adopted ordinances and resolutions needed to implement the HEFSP, including:

1. All zoning amendments (or redevelopment plans, if applicable).
2. An Affordable Housing Ordinance that includes, among other required regulations, its applicability to 100 percent affordable and tax credit projects, the monitoring and any reporting requirements set forth in the settlement

agreement, requirements regarding very low income housing and very low income affordability consistent with the FHA and the settlement agreement, provisions for calculating annual increases in income levels and sales prices and rent levels, and a clarification regarding the minimum length of the affordability controls (at least 30 years, until the municipality takes action to release the controls).

3. The adoption of the mandatory set aside ordinance, if any, and the repeal of the existing growth share provisions of the code.
4. An executed and updated Development Fee Ordinance that reflects the court's jurisdiction.
5. An Affirmative Marketing Plan adopted by resolution that contains specific directive to be followed by the Administrative Agent in affirmatively marketing affordable housing units, with an updated COAH form appended to the Affirmative Marketing Plan, and with both documents specifically reflecting the direct notification requirements set forth in the settlement agreement.
6. An updated and adopted Spending Plan indicating how the municipality intends to allocate development fees and other funds, and detailing (in mini manuals) how the municipality proposes to expend funds for affordability assistance, especially those funds earmarked for very low income affordability assistance.
7. A resolution of intent to fund any shortfall in the costs of the municipality's municipally sponsored affordable housing developments as well as its rehabilitation program, including by bonding if necessary.

8. Copies of the resolution(s) and/or contract(s) appointing one or more Administrative Agent(s) and of the adopted ordinance creating the position of, and resolution appointing, the Municipal Affordable Housing Liaison.
9. A resolution from the Planning Board adopting the HEFSP, and, if a final Judgment is sought before all of the implementing ordinances and resolutions can be adopted, a resolution of the governing body endorsing the HEFSP.

C. Consistent with N.J.A.C. 5: 93-5.5, any municipally sponsored 100 percent affordable housing development will be required to be shovel-ready within two (2) years of the deadlines set forth in the settlement agreement:


1. The municipality will be required to submit the identity of the project sponsor, a detailed pro forma of project costs, and documentation of available funding to the municipality and/or project sponsor, including any pending applications for funding, and a commitment to provide a stable alternative source, in the form of a resolution of intent to fund shortfall, including by bonding, if necessary, in the event that a pending application for outside funding has not yet been not approved.
2. Additionally, a construction schedule or timetable must be submitted setting forth each step in the development process, including preparation and approval of a site plan, applications for state and federal permits, selection of a contractor, and start of construction, such that construction can begin within two (2) years of the deadline set forth in the settlement agreement.

SUPREME COURT OF NEW JERSEY

It is ORDERED that the provisions of Rule 2:2-3 (“Appeals to the Appellate Division from Final Judgments, Decisions, Actions and from Rules; Tax Court”) and any other Rules Governing the Courts of the State of New Jersey are relaxed and supplemented so as to provide that appeals arising out of litigation filed pursuant to L. 2024, c. 2, establishing a process for municipalities to come into constitutional compliance with their fourth and future rounds of affordable housing obligations and the Affordable Housing Dispute Resolution Program, shall be considered appealable as of right.

This rule relaxation shall be effective immediately and shall remain in effect through the conclusion of the Affordable Housing Dispute Resolution Program and any appeals resulting from that program.

For the Court,



Chief Justice

Dated: November 12, 2024