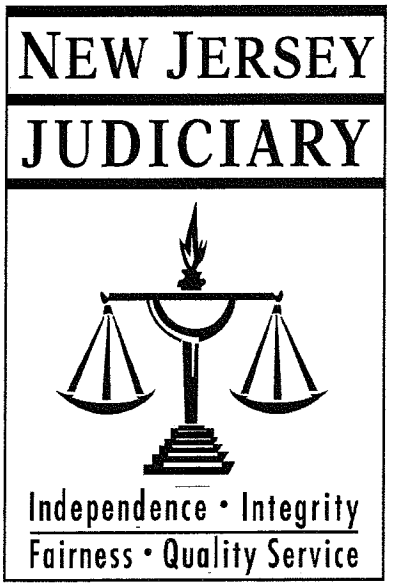
AUTOMOBILE ARBITRATION PROGRAM
REPORT TO THE GOVERNOR AND LEGISLATURE
Calendar Year 2005
(January 1, 2005 through December 31, 2005)



EXECUTIVE SUMMARY

In its twenty-first year of operation, the statewide automobile arbitration program has resolved a significant portion of the civil caseload without the need for a jury or judicial determination. Since the program's inception, it has helped to dispose of about 550,000 auto negligence cases

For program statistics, please see the section titled "Status of the Program," which begins on page six.

AUTOMOBILE ARBITRATION PROGRAM
REPORT TO THE GOVERNOR AND LEGISLATURE

History

On October 4, 1983, Governor Kean signed legislation mandating that all automobile negligence actions in which the claim for non-economic loss is $15,000 or less be submitted to arbitration. The statute also provides for voluntary arbitration of cases in which the value exceeds $15,000, provided no complex factual or novel legal issues are involved. (P.L. 1983, c. 358; *N.J.S.A.* 39:6A-24 *et seq.*; a copy of the statute is attached as Appendix A.) The stated purpose of the legislation was to establish an informal system of handling auto negligence claims in an economic and expeditious manner, and to ease the congestion of the courts. The final section of the statute directed the Supreme Court to adopt rules of court appropriate to effectuate the purpose of the act.

In response to the legislative mandate, the Supreme Court Committee on Complementary Dispute Resolution Programs (known as the "CDR Committee"), then chaired by retired Associate Justice Marie L. Garibaldi, and established in August 1983 to explore methods of dispute resolution as alternatives to trial, was directed to draft rules to govern the operation of an arbitration program.

Because so many cases would be affected by the new program, the CDR Committee recommended to the Supreme Court that automobile arbitration be implemented initially on a pilot basis in two counties only: Union and Burlington. The Court concurred, and adopted pilot rules, which were drafted by the CDR Committee with significant input from attorneys in the pilot counties. By Order of the Supreme Court, the rules became effective on January 1, 1984 in Union and Burlington counties, for all auto negligence cases valued at $15,000 or less, and for auto negligence cases of greater value at the consent of the parties. The first arbitration hearings were held in the pilot counties on February 17, 1984.

The CDR Committee used the pilot rules and the data gathered from Union and Burlington Counties to draft auto arbitration rules for statewide application. These rules, modified slightly to accommodate comments received from the bench and the bar, were approved and adopted by the Supreme Court. They became effective in all counties as of January 1, 1985. However, because of the need to undertake local planning in order to implement the program in the counties, arbitration hearings under the statewide rules commenced at different times in the various counties--from early January 1985 in Atlantic and Cape May Counties to late July 1985 in Ocean County. A copy of the court rules now governing the statewide auto arbitration program is attached as Appendix B. These rules, *R.* 4:21A-1 *et seq.*, reflect the original statewide auto arbitration rules as amended periodically since their adoption.

In August 1985, the Arbitration Advisory Committee was established by the late Chief Justice Robert N. Wilentz to advise the Supreme Court and the Administrative Office of the Courts concerning policies governing the auto arbitration program, and to make recommendations for changes in the program rules. (The CDR Committee had performed this role initially; however, its mandate was broader than the establishment and ongoing oversight of a single alternative dispute resolution program.) Through the efforts of the committee, currently chaired by Ocean County Civil Presiding Judge Frank A. Buczynski, Jr., and with the sponsorship of the Governor, the Legislature and the Judiciary, the automobile arbitration program has shown its potential to provide an expeditious and less costly mechanism for resolving auto negligence claims. Nevertheless, efforts continue to maximize the efficiency and effectiveness of this program.

Features of the Program

The auto arbitration program establishes a statewide system of court-annexed arbitration to handle auto negligence cases. The salient features of the program are:

- The arbitration hearing must occur within 60 days after the close of the applicable discovery period permitted for the particular track, thereby providing parties an

opportunity for a rapid resolution to the dispute [*R.* 4:21A-1(d)].

- Arbitration hearings are held in court facilities and are not recorded [*R.* 4:21A-4(d)].
- The Rules of Evidence do not apply at the arbitration hearing. Arbitrators may hear any evidence necessary to render a decision. Further, in lieu of hearing testimony from witnesses, other than the parties, arbitrators may accept affidavits of witnesses, interrogatories, deposition transcripts, and bills and reports of hospitals, doctors, or other experts [*R.* 4:21A-4(c)]. This more informal and flexible procedure saves both time and witness fees.
- The average length of an arbitration hearing is considerably shorter than most trials. Simpler cases, such as two-party auto negligence cases, can be heard in less than 60 minutes. More complex cases may take several hours to hear, but this is still significantly quicker than a trial.
- Arbitrators must be either attorneys with seven years of experience in personal injury litigation or retired Superior Court judges who have completed certain required training and continuing education requirements. [*R.* 4:21A-2(b) and *R.* 1:40-12(c)]. The qualification requirements for arbitrators are intended to ensure that those serving in the program are skilled and competent in the particular area of law. The training requirements are intended to ensure that cases are handled uniformly and that every participant in arbitration hearings receives the same level of service. The roster of qualified arbitrators in each county is maintained by the Civil Presiding Judge and is composed of names of individuals regularly appearing in the county and recommended at least annually by the arbitrator selection committee of the county bar association. Each committee, appointed by the county bar association, consists of two plaintiffs' attorneys and two defense attorneys regularly representing individuals in personal injury litigation and one attorney who does not regularly represent either side [*R.* 4:21A-2(b)]. This procedure is designed to ensure that the arbitrators in each county are chosen in an unbiased manner and have the confidence of the local bar and the litigants. Each bar committee works

proactively with the court in evaluating the arbitrators on an ongoing basis and in timely addressing problems or deficiencies.

- Although the rules provide that the parties to an arbitration hearing may choose the arbitrator who will hear their case by stipulating in writing to the name of the arbitrator [*R.* 4:21A-2(a)], this alternative procedure is rarely, if ever, used.
- In the option of each county, cases are heard by a single arbitrator who is paid $350 per day or a two-person panel who are paid $450 per day to be evenly split by the parties [*R.* 4:21A-2(c), -2(d)]. The northern and central counties use single arbitrators and the southern counties and Mercer County use two- person panels.
- If any party is not satisfied with the arbitrator's award, that party can request a trial *de novo* upon demand filed and served within 30 days of the filing of the arbitration award and upon payment of $200 [*N.J.S.A.* 39:6A-31, -32; *R.* 4:21A-6(b)(1), -6(c)]. A trial *de novo* is generally scheduled to occur within 90 days of the filing of the trial de novo request. This provision is intended to further the purpose of the arbitration program to provide an expedited resolution of the dispute and to alleviate the burden on attorneys and litigants of having to prepare a case twice.
- If the party demanding a trial *de novo* does not improve its position at trial by at least 20 percent, that party may be subject to monetary sanctions, up to a total of $750 in attorney's fees and $500 for witness costs [*N.J.S.A.* 39:6A-34; *R.* 4:21A-6(c)].
- If no trial *de novo* is requested, the case will be dismissed 50 days after the filing of the arbitration award unless either party moves for confirmation of the arbitration award by the court and entry of judgment, or submits a consent order to the court detailing the terms of settlement and providing for dismissal of the action or entry of judgment [*R.* 4:21A-6(b)].

Status of the Program

In its twenty-first calendar year of operation — January 1, 2005 through December 31, 2005-- more than 1,800 attorneys and a small number of retired judges served as arbitrators in the statewide program. During this period, 25,843 auto negligence cases were scheduled and noticed for arbitration hearings[1]. Of these, 143 cases, or .6 percent of the total scheduled, were removed from the program as ineligible (*i.e.*, involving unusually complex factual or novel legal issues or the subject of an unsuccessful previous court-ordered mediation)[2]; 3,416 cases, about 13.2 percent of the total scheduled, settled prior to or on the hearing day (usually as a result of noticing the attorneys that the case had been scheduled for arbitration); 11,185 cases were arbitrated and had a decision rendered; and 2,265 cases or 8.8 percent were otherwise disposed of through dismissal or default. The remaining cases were adjourned or were pending hearing as of December 31, 2005. A chart providing aggregate and individual county data on the program for 2005 is attached (see Appendix C).

The data indicate that the program's trial *de novo* request rate is 74.7 percent, that is, in 8,354 or 74.7 percent of the 11,185 cases arbitrated, the award was rejected and a trial *de novo* was demanded; however, the majority of these cases settled without trial[3]. In 2005, only 651 arbitrated cases or 5.8 percent of the total arbitrated actually went to trial. It is important to point out that the trial *de novo* rate should not be confused with the trial rate. Each rate is computed differently and the two rates therefore should not be compared.

During calendar year 2005, of the 8,354 arbitrated cases in which a trial *de novo* was requested, 7,070 requests or 84.6 percent of the requests were made by defendants, and the remainder by plaintiffs. Table 1 depicts the percentage of the total trial *de novo*

---

1. It should be noted that total cases scheduled during the report year (2005) includes cases that were scheduled multiple times due to adjournments, discovery extensions and other reasons why they could not be arbitrated on the initial hearing date for which they were scheduled. Each time a case is recycled, it is counted. There currently is no way to break out these cases separately.
2. Effective September 1, 2004, *R.* 4:21A-1(a) was amended to preclude the scheduling of cases that were previously referred to court-ordered mediation.
3. It should be noted that in previous years, this rate was computed as a percentage of all scheduled cases. However, to provide a more meaningful measure, this rate is being calculated as a percentage of only arbitrated cases.

requests filed by plaintiffs and defendants respectively from July 1986, when such data began to be maintained, through 2005. Note the increase in the percentage of defense trial *de novo* requests over time while the requests filed by plaintiffs have generally decreased.

Table 1 - Trial *De Novo* Requests

	1987	1988	1989	1990	1991	1992	1993	1994	1995	
Percentage Filed by Plaintiffs	45	41	38	38	036	31	26	29	25	
Percentage Filed by Defendants	55	59	62	62	64	69	74	71	75	
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Percentage Filed by Plaintiffs	29	28	24	20	19	19	17.8	16.7	15.2	15.4
Percentage Filed by Defendants	71	72	76	80	81	81	82.2	83.3	84.8	84.6

Participants in arbitration are required to complete post-arbitration evaluation forms. The following summarizes the responses of litigants and counsel for a one-year period ending December 31, 2005.

Program Evaluation - 879 Responses from Litigants.

The arbitrator(s) treated me with respect.

783	89%	1 Strongly Agree
59	7%	2
10	1%	3
7	1%	4
5	1%	5 Strongly Disagree
9	1%	6 No Opinion
6	1%	No response

The hearing was conducted fairly.

702	80%	1 Strongly Agree
81	9%	2
30	3%	3
12	1%	4
20	2%	5 Strongly Disagree
17	2%	6 No Opinion
17	2%	No response

I was satisfied with the outcome.

503	57%	1 Strongly Agree
93	11%	2
85	10%	3
33	4%	4
70	8%	5 Strongly Disagree
33	4%	6 No Opinion
62	7%	No response

The hearing was conducted in a professional manner.

698	79%	1 Strongly Agree
67	8%	2
13	1%	3
7	1%	4
7	1%	5 Strongly Disagree
10	1%	6 No Opinion
77	9%	No response

The decision was given in my presence.

676	77%	Yes
203	23%	No

The arbitrator explained why he or she decided the case as it was decided.

680	77%	Yes
199	23%	No

Staff were courteous.

763	87%	1 Strongly Agree
70	8%	2
8	1%	3
2	0%	4
3	0%	5 Strongly Disagree
9	1%	6 No Opinion
24	3%	No response

The facilities were clean.

678	77%	1 Strongly Agree
89	10%	2
31	4%	3
3	0%	4
2	0%	5 Strongly Disagree
6	1%	6 No Opinion
70	8%	No response

Were you a:

579	66%	Plaintiff
277	32%	Defendant
23	3%	Other response or did not respond at all

Arbitrator Evaluation - 4,319 Response from Attorneys.

Please assess the arbitrator's:

Knowledge of relevant substantive law.

3,298	76%	Excellent
786	18%	More than adequate
157	4%	Adequate
27	1%	Less than adequate
17	0%	Poor
18	0%	Not applicable
16	0%	No response

Sufficient experience for deciding case.

3,399	79%	Excellent
731	17%	More than adequate
130	3%	Adequate
15	0%	Less than adequate
9	0%	Poor
10	0%	Not applicable
25	1%	No response

Adequacy of explanation of rulings.

3,275	76%	Excellent
744	17%	More than adequate
198	5%	Adequate
39	1%	Less than adequate
20	0%	Poor
16	0%	Not applicable
27	1%	No response

Adequacy of findings of facts

3,197	74%	Excellent
762	18%	More than adequate
225	5%	Adequate
54	1%	Less than adequate
37	1%	Poor
21	0%	Not applicable
23	1%	No response

Narrowing the issues in dispute.

3,298	76%	Excellent
757	18%	More than adequate
179	4%	Adequate
24	1%	Less than adequate
15	0%	Poor
29	1%	Not applicable
17	0%	No response

Moving the proceeding expeditiously.

3,407	79%	Excellent
703	16%	More than adequate
153	4%	Adequate
21	0%	Less than adequate
18	0%	Poor
5	0%	Not applicable
12	0%	No response

Maintaining control of proceeding.

3,487	81%	Excellent
649	15%	More than adequate
140	3%	Adequate
12	0%	Less than adequate
8	0%	Poor
12	0%	Not applicable
11	0%	No response

Allowing adequate time for presentation of the case.

3,504	81%	Excellent
645	15%	More than adequate
126	3%	Adequate
16	0%	Less than adequate
8	0%	Poor
2	0%	Not applicable
18	0%	No response

Common sense in resolving problems.

3,398	79%	Excellent
643	15%	More than adequate
162	4%	Adequate

32	1%	Less than adequate
32	1%	Poor
30	1%	Not applicable
22	1%	No response

Ensuring that participants understand the proceeding.

3,374	78%	Excellent
693	16%	More than adequate
153	4%	Adequate
13	0%	Less than adequate
9	0%	Poor
50	1%	Not applicable
27	1%	No response

Courtesy.

3,698	86%	Excellent
501	12%	More than adequate
97	2%	Adequate
9	0%	Less than adequate
3	0%	Poor
0	0%	Not applicable
11	0%	No response

Patience.

3,658	85%	Excellent
514	12%	More than adequate
112	3%	Adequate
13	0%	Less than adequate
3	0%	Poor
4	0%	Not applicable
15	0%	No response

Decisiveness.

3,534	82%	Excellent
596	14%	More than adequate
142	3%	Adequate
12	0%	Less than adequate
10	0%	Poor
2	0%	Not applicable
23	1%	No response

Fostering a general sense of fairness.

3,498	81%	Excellent
584	14%	More than adequate
157	4%	Adequate
30	1%	Less than adequate
28	1%	Poor
4	0%	Not applicable
18	0%	No response

Was the arbitrator biased?

5	0%	Yes
2,367	55%	No
1,947	45%	Other response or did not respond at all

Was the award rendered in the presence of the parties?

2,562	59%	Yes
1,757	41%	No

If the arbitrator engaged in settlement negotiations, did he or she do so with the consent of all participants?

1,009	23%	Yes
398	9%	No
2,413	56%	Not applicable
499	12%	Other response or did not respond at all

How many court-annexed arbitration hearings have you appeared in the past six months?

202	5%	One
396	9%	Two to three
515	12%	Four to five
2,741	63%	More than five
465	11%	No response

Overall Impact of Program

Arbitration appears to have enhanced access to justice by providing many litigants with meritorious claims an early, informal and effective opportunity for a "day in court," *i.e.*, an actual adjudication of the merits of their cases.

Every year since the inception of arbitration in New Jersey, the volume of higher-value and more complex cases handled through the program has increased. In addition, the statewide arbitration program was expanded in 2000 to include other types of cases such as book accounts. This underscores the recognition of arbitration as a mechanism that can provide a timely and high-quality resolution in a variety of cases. As detailed previously, participants in arbitration, whether attorneys or litigants, gave overwhelmingly high evaluations to both the program and to those serving as arbitrators.

Implementation of Recommendations for Program Enhancement

The first annual statewide arbitration conference was held on May 29, 2003, with the approval of the Administrative Director and the Conference of Civil Presiding Judges. The purpose of the conference was to promote greater statewide uniformity in the operation of the court-annexed arbitration programs and provide a forum to identify ways for further enhancement of these valuable programs. Invitees included the Civil Presiding Judges, Civil Division Managers, Arbitration Administrators, Chairs of County Arbitration Selection Committees, Chairs of County Bar Civil Practice Committees, the President and Executive Director of the New Jersey State Bar Association, representatives from various specialty bars and the Association of Trial Lawyers of America – New Jersey (ATLA-NJ) and Trial Attorneys of New Jersey (TANJ) and representatives from major insurance carriers who participate in the arbitration process. A total of 124 individuals attended the conference.

Based upon feedback from the conference, the committee prepared a report setting forth nineteen recommendations to improve the operation of the statewide arbitration programs. The recommendations included a number of changes calculated to improve the arbitration program. Nearly all of the recommendations have been implemented. Some of these are:

- Requiring all serving as arbitrators to complete at least three hours of threshold training in order to become an arbitrator as well as two hours of continuing training every two years.
- Ensuring that arbitrators conduct hearings uniformly and in accordance with the approved arbitrators' procedures manual and each Civil Presiding Judge should enforce this.
- Providing that Judiciary shall host a biennial statewide conference to promote uniformity, discuss issues and develop a closer rapport with the state, county and specialty bars and the insurance community and directing the Supreme Court Arbitration Advisory Committee to meet annually with arbitration staff and the local arbitration committee chairs.
- Permitting counties the option of using single arbitrators or two-person arbitrator panels; two-person panels will receive compensation at the rate of $450 per day, to be split evenly.
- Authorizing the committee to meet with insurance carriers in an effort to improve the program from their perspectives.
- Reminding each county bench/bar arbitration committee to meet at least annually to review completed evaluation forms, deal with problems and work proactively to enhance the program.
- Assuring that arbitrators write brief findings of fact and conclusions of law, call the case on what they have before them, and put the lack of a defense report or other lack of preparation in the statement of reasons in the report

and award.

- Reminding counties to use block-scheduling by insurance carrier with adjustors attending the hearings.
- Clarifying the appropriate use of settlement at arbitration.

Since October 2004, arbitrators have been completing the required training through attendance at an approved course given by the New Jersey Institute for Continuing Legal Education (ICLE).

A second statewide conference was held in October 2005 and many additional suggestions for further improvement were discussed. These and others are currently under review by the committee. Moreover, in September 2005, the committee hosted a meeting with representatives of the major insurance carriers and self-insured entities. It is notable that the carrier representatives indicated that they do not view the trial *de novo* request rate as a relevant measure of the program's success or failure. The trial rate is more meaningful assuming that the arbitrators handle cases in accordance with their training. The consensus was that arbitration is a valuable program that provides a vehicle for the settlement of most cases.

Funding

The statewide automobile arbitration program had been funded for fiscal years 1985 through 1989 by legislative appropriations of $1.1 million each year and by trial *de novo* revenues received from the program's operation. In fiscal year 1990, the legislative appropriation was reduced to $600,000 and in fiscal years 1991, 1992 and 1993, it was reduced to $350,000 annually. Starting in fiscal year 1994, no legislature appropriation was provided; accordingly, since that time, arbitrator fees and a portion of the other program expenses have been funded by trial *de novo* revenues.

Conclusion

New Jersey's automobile arbitration program was carefully crafted in response to a legislative mandate. Its day-to-day operations are overseen by state and county administrators; its governing policies are reviewed by the Supreme Court Arbitration Advisory Committee.

During the course of the program's life, many efforts have been made, and continue to be made, to improve its operations. For example:

- The Supreme Court Arbitration Advisory Committee produced a training program, including a video, to emphasize the importance of attorney preparation for arbitration hearings. This training curriculum is now part of the skills and methods course required of every new attorney in New Jersey and is also being presented locally to the practicing bar.
- Effective September 1, 2004, every individual serving as an arbitrator must complete a three-hour baseline training program and two hours of continuing education every two years thereafter. A Procedures Manual for Arbitrators in the Civil Arbitration Program, a training videotape and Arbitrators' Resource Binder have also been developed. During 2003, Standards of Conduct for arbitrators were approved by the Supreme Court. The manual, Standards of Conduct, videotape, resource binder and training, all of which have been well-received, are further enhancing the operation of the program by supplementing the experience of the arbitrators and fostering uniformity in handling the various issues that may arise during arbitration hearings.
- A certificate program for arbitrators was established in 1990 as an incentive for qualified attorneys to serve in the program. In order to receive a certificate, an arbitrator must serve in a county's arbitration program on at least ten separate hearing dates.

- A Committee of Arbitration Administrators from all 21 counties has been established to promote the exchange of ideas and to provide a forum for the discussion of common problems and the development of ways to enhance the administration and operation of the program. In 1994, the Committee produced a training videotape to ensure the use of uniform, optimum procedures statewide. In 1998, the Committee completed a standard operating procedures manual. This manual has been approved for standardized, statewide use and is regularly updated.
- There has been considerable work accomplished in the improvement of arbitration facilities. For instance, significant enhancements have been made to arbitration facilities in Bergen, Somerset, Cumberland, Ocean, Burlington, Hudson, Mercer, Monmouth, Gloucester, Essex, Union and Passaic Counties.
- Starting in 1996, the AOC began publishing a quarterly New Jersey Arbitration Newsletter. In 1999, the scope of the newsletter was expanded to cover all types of civil dispute resolution in addition to arbitration. The newsletter is circulated to judges, arbitrators, counsel, court staff and the public. It highlights arbitration-related issues and innovative approaches, serves as an educational vehicle and an opportunity for dialogue among all arbitration participants.

All of these improvements are intended to enhance the level of service the arbitration program provides to litigants, attorneys and the justice system.

Attachment

MVP\sc
February 2006
S:\RPTS-A-E\04GOV-AUTO(2)-RPT.WPD

APPENDIX A

AUTOMOBILE ARBITRATION STATUTE

39:6A-24. Purpose and intent of act

The purpose and intent of this act is to establish an informal system of settling tort claims arising out of automobile accidents in an expeditious and least costly manner, and to ease the burden and congestion of the State's courts.

39:6A-25. Actions to be submitted to arbitration

a. Any cause of action filed in the Superior Court after the operative date of this act, for the recovery of noneconomic loss, as defined in section 2 of P.L.1972, c. 70 (C. 39:6A-2), or the recovery of uncompensated economic loss, other than for damages to property, arising out of the operation, ownership, maintenance or use of an automobile, as defined in that section 2, shall be submitted, except as hereinafter provided, to arbitration by the assignment judge of the court in which the action is filed, if the court determines that the amount in controversy is $15,000.00 or less, exclusive of interest and costs; provided that if the action is for recovery for both noneconomic and economic loss, the controversy shall be submitted to arbitration if the court determines that the amount in controversy for noneconomic loss is $15,000.00 or less, exclusive of interest and costs.

b. Notwithstanding that the amount in controversy of an action for noneconomic loss is in excess of $15,000.00, the court may refer the matter to arbitration, if all of the parties to the action consent in writing to arbitration and the court determines that the controversy does not involve novel legal or unduly complex factual issues.

No cause of action determined by the court to be, upon proper motion of any party to the controversy, frivolous, insubstantial or without actionable cause shall be submitted to arbitration.

The provisions of this section shall not apply to any controversy on which an arbitration decision was rendered prior to the filing of the action.

The provisions of this section shall apply to any cause of action, subject to this section, filed prior to the operative date of this act, if a pretrial conference has not been concluded thereon.

39:6A-26. Tolling statute of limitations

Submission of a controversy to arbitration shall toll the statute of limitations for filing an action until the filing of the arbitration decision in accordance with section 7 of this act.

39:6A-27. Selection of arbitrators

a. The number or selection of arbitrators may be stipulated by mutual consent of all of the parties to the action, which stipulation shall be made in writing prior to or at the time notice is

given that the controversy is to be submitted to arbitration. The assignment judge shall approve the arbitrators agreed to by the parties, whether or not the designated arbitrators satisfy the requirements of subsection b. of this section, upon a finding that the designees are qualified and their serving would not prejudice the interest of any of the parties.

b. If the parties fail to stipulate the number or names of the arbitrators, the arbitrators shall be selected, in accordance with the Rules of Court adopted by the Supreme Court of New Jersey, from a list of arbitrators compiled by the assignment judge, to be comprised of retired judges and qualified attorneys in this State with at least seven years' negligence experience and recommended by the county or State bar association.

39:6A-28. Compensation and fees; rules governing offers of judgment

Compensation for arbitrators shall be set by the Rules of the Supreme Court of New Jersey. The Supreme Court may also establish a schedule of fees for attorneys representing the parties to the dispute and for witnesses in arbitration proceedings. Attorney's fees may exceed these limits upon application made to the assignment judge in accordance with the Rules of the Court for the purpose of determining a reasonable fee in the light of all the circumstances.

The Supreme Court may adopt rules governing offers of judgment by the claimant or defendant prior to the start of arbitration, including the assessment of the costs of arbitration proceedings and attorney's fees, where an offer is made
but refused by the other party to the controversy.

39:6A-29. Subpoenas

The arbitrators may, at their initiative or at the request of any party to the arbitration, issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence. Subpoenas shall be served and shall be enforceable in the manner provided by law.

39:6A-30. Award; decision of arbitrator

Notwithstanding that a controversy was submitted pursuant to subsection a. of section 2 of this act, the arbitration award for noneconomic loss may exceed $15,000.00. The arbitration decision shall be in writing, and shall set forth the issues in controversy, and the arbitrators' findings and conclusions of law and fact.

39:6A-31. Confirming arbitration decision

Unless one of the parties to the arbitration petitions the court, within 30 days of the filing of the arbitration decision with the court: a. for a trial de novo, or b. for the modification or vacation of the arbitration decision for any of the reasons set forth in chapter 24 of Title 2A of the New Jersey Statutes, or an error of law or factual inconsistencies in the arbitration findings,

the court shall, upon motion of any of the parties, confirm ~~the arbitration decision, and~~ the action of the court shall have the same effect and be enforceable as a judgment in any other action.

39:6A-32. Arbitrators fee; payment

Except in the case of an arbitration decision vacated by the court or offers of judgment made pursuant to court rules, the party petitioning the court for a trial de novo shall pay to the court a trial de novo fee in an amount established pursuant to the Rules of Court, which shall be utilized by the judiciary to pay the costs of arbitration including the fees of the arbitrators.

39:6A-33. Admissibility of evidence at trial de novo

No statements, admissions or testimony made at the arbitration proceedings, nor the arbitration decision, as confirmed or modified by the court, shall be used or referred to at the trial de novo by any of the parties, except that the court may consider any of those matters in determining the amount of any reduction in assessments made pursuant to section 11 of this act.

39:6A-34. Assessment of costs for trial de novo

The party having filed for a trial de novo shall be assessed court costs and other reasonable costs of the other party to the judicial proceeding, including attorney's fees, investigation expenses and expenses for expert or other testimony or evidence, which amount shall be, if the party assessed the costs is the one to whom the award is made, offset against any damages awarded to that party by the court, and only to that extent; except that if the judgment is more favorable to the party having filed for a trial de novo, the court may reduce or eliminate the amount of the assessment in accordance with the extent to which the decision of the court is more favorable to that party than the arbitration decision, and as best serves the interest of justice. The court may waive an assessment of costs required by this section upon a finding that the imposition of costs would create a substantial economic hardship as not to be in the interest of justice.

39:6A-35. Rules; report

The Supreme Court of New Jersey shall adopt Rules of Court appropriate or necessary to effectuate the purpose of this act. The Administrative Office of the Courts shall not later than March 1 of each year file with the Governor and Legislature a report on the impact of the implementation of this act on automobile insurance settlement practices and costs, and on court calendars and workload

APPENDIX B

COURT RULES

1:40-2. Modes and Definitions of Complementary Dispute Resolution

Complementary Dispute Resolution Programs (CDR) conducted under judicial supervision in accordance with these rules, as well as guidelines and directives of the Supreme Court, and the persons who provide the services to these programs are as follows:

(a) "Adjudicative Processes" means and includes the following:

(1) Arbitration: A process by which each party and/or its counsel presents its case to a neutral third party, who then renders a specific award.. The parties may stipulate in advance of the arbitration that the award shall be binding. If not so stipulated, the provisions of Rule 4:21A-6 (Entry of Judgment; Trial De Novo) shall be applicable.
(2) Settlement Proceedings: A process by which the parties appear before a neutral third party or panel of such neutrals, who assists them in attempting to resolve their dispute by voluntary agreement.
(3) Summary Jury Trial: A process by which the parties present summaries of their respective positions to a panel of jurors, which may then issue a non-binding advisory opinion as to liability, damages, or both.

(b) "Evaluative Processes" means and includes the following:

(1) Early Neutral Evaluation (ENE): A pre-discovery process by which the attorneys, in the presence of their respective clients, present their factual and legal contentions to a neutral evaluator, who then provides an assessment of the strengths and weaknesses of each position and, if settlement does not ensue, assists in narrowing the dispute and proposing discovery guidelines.
(2) Neutral Fact Finding: A process by which a neutral, agreed upon by the parties, investigates and analyzes a dispute involving complex or technical issues, and who then makes non-binding findings and recommendations.

(c) "Facilitative Process" means and includes mediation, which is a process by which a mediator facilitates communication between parties in an effort to promote settlement without impositionof the mediator's own judgment regarding the issues in dispute.

(d) "Hybrid Process" means and includes:

(1) Mediation-arbitration: A process by which, after an initial mediation, unresolved issues are then arbitrated.
(2) Mini-trial: A process by which the parties present their legal and factual conditions to either a panel of representatives selected by each party, or a neutral third party, or both, in an effort to

define the issues in dispute and to assist settlement negotiations. A neutral third party may issue an advisory opinion, which shall not, however, be binding, unless the parties have so stipulated in writing in advance.

(e) "Other CDR Programs" means and includes any other method or technique of complementary dispute resolution permitted by guideline or directive of the Supreme Court.

(f) "Neutral": A "neutral" is an individual who provides a CDR process. A "qualified neutral" is an individual included on any roster of neutrals maintained by the Administrative Office of the Courts or an Assignment Judge. Neutral evaluators, neutral fact finders, and settlement program panelists are not required to comply with the training requirements of Rule 1:40-12 or to be on any roster of neutrals maintained by the Administrative Office of the Courts or an Assignment Judge.

Note: Adopted July 14, 1992 to be effective September 1, 1992; caption and text amended, paragraphs (a) through (d) deleted, new paragraphs (a) through (f) adopted July 5, 2000 to be effective September 5, 2000; corrective amendment to paragraph (a)(3) adopted November 8, 2000 to be effective immediately.

4:21A-1. Actions Subject to Arbitration; Notice and Scheduling of Arbitration

(a) Mandatory Arbitration. Arbitration pursuant to this rule is mandatory for applicable cases on Tracks I, II, and III, as set forth in paragraphs (1), (2), and (3) below, and only as required by the managing judge for cases on Track IV, except that cases having undergone a prior, unsuccessful court-ordered mediation shall not be scheduled for arbitration unless the court finds good cause for the matter to be arbitrated or unless all parties request arbitration.

(1) Automobile Negligence Actions. All tort actions arising out of the operation, ownership, maintenance or use of an automobile shall be submitted to arbitration in accordance with these rules.

(2) Other Personal Injury Actions. Except for professional malpractice actions, all actions for personal injury not arising out of the operation, ownership, maintenance or use of an automobile shall be submitted to arbitration in accordance with these rules.

(3) Other Non-Personal Injury Actions. All actions on a book account or instrument of obligation, all personal injury protection claims against plaintiff's insurer, and all other contract and commercial actions that have been screened and identified as appropriate for arbitration shall be submitted to arbitration in accordance with these rules.

(b) Voluntary Arbitration. Any action not subject to mandatory arbitration pursuant to subsections (1), (2), or (3) of paragraph (a) of this rule may be submitted to arbitration on written stipulation of all parties filed with the civil division manager.

(c) Removal From Arbitration. An action assigned to arbitration may be removed therefrom as follows:

(1) Prior to the notice of the scheduling of the case for arbitration or within 15 days thereafter, the case may be removed from arbitration upon submission to the arbitration administrator of a certification stating with specificity that the controversy involves novel legal or unusually complex factual issues or is otherwise ineligible for arbitration pursuant to paragraph (a). A copy of this certification must be provided to all other parties. A party who objects to removal shall so notify the arbitration administrator within ten days after the receipt of the certification, and the matter will then be referred to a judge for determination. The arbitration administrator shall, however, remove the case from arbitration if no objection is made and the reasons for removal certified to are sufficient.

(2) If either party seeks to remove a case from arbitration subsequent to 15 days after the notice of hearing, a formal motion must be made to the Civil Presiding Judge or designee.

(d) Notice of Arbitration; Scheduling; Adjournment. The notice to the parties that the action has been assigned to arbitration shall also specify the time and place of the arbitration hearing and its date, which shall not be earlier than 45 days following the date of the notice. Unless the parties otherwise consent in writing, the hearing shall not be scheduled for a date prior to the end of the applicable discovery period, including any extension thereof. The hearing shall take place,

however, no later than 60 days following the expiration of that period, including any extension. Adjournments of the scheduled date shall be permitted only as provided by R. 4:36-3(b).

(e) Pretrial Discovery. The assignment of an action for arbitration shall not affect a party's opportunity to engage in pretrial discovery nor an attorney's professional obligation to do so.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; caption amended and former paragraph (a) redesignated paragraph (a)(1) and new paragraph (a)(2) adopted, paragraphs (b) and (c)(1) and (2) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a)(1) and (2) and (c)(1) and (2) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(2) and (c)(1) amended July 13, 1994 to be effective September 1, 1994; paragraphs (b) and (d) amended July 10, 1998 to be effective September 1, 1998; new text added to paragraph (a), paragraphs (a)(1) and (2) amended, new paragraph (a)(3) adopted, and paragraphs (c) and (d) amended July 5, 2000 to be effective September 5, 2000; corrective amendment to paragraph (d) adopted October 10, 2000 to be effective immediately; caption to R. 4:21A amended, and text of paragraph (a) of R. 4:21A-1 amended July 12, 2002 to be effective September 3, 2002; paragraphs (a) and (c)(1) amended July 28, 2004 to be effective September 1, 2004.

4:21A-2. Qualification, Selection, Assignment and Compensation of Arbitrators

(a) By Stipulation. All parties to the action may stipulate in writing to the number and names of the arbitrators. The stipulation shall be filed with the civil division manager within 14 days after the date of the notice of arbitration. The stipulated arbitrators shall be subject to the approval of the Assignment Judge and may be approved whether or not they met the requirements of paragraph (b) of this rule if the Assignment Judge is satisfied that they are otherwise qualified and that their service would not prejudice the interest of any of the parties.

(b) Appointment From Roster. If the parties fail to stipulate to the arbitrators pursuant to paragraph (a) of this rule, the arbitrator shall be designated by the civil division manager from the roster of arbitrators maintained by the Assignment Judge on recommendation of the arbitrator selection committee of the county bar association. Inclusion on the roster shall be limited to retired judges of any court of this State who are not on recall and attorneys admitted to practice in this State having at least seven years of experience in any of the substantive areas of law subject to arbitration under these rules, and who have completed the training and continuing education required by R. 1:40-12(c). The arbitrator selection committee, which shall meet at least once annually, shall be appointed by the county bar association and shall consist of one attorney regularly representing plaintiffs in each of the substantive areas of law subject to arbitration under these rules, one attorney regularly representing defendants in each of the substantive areas of law subject to arbitration under these rules, and one member of the bar who does not regularly represent either plaintiff or defendant in each of the substantive areas of law subject to arbitration under these rules. The members of the arbitrator selection committee shall be eligible for inclusion in the roster of arbitrators. The Assignment Judge shall file the roster with the Administrative Director of the Courts. A motion to disqualify a designated arbitrator shall be made to the Assignment Judge on the date of the hearing.

(c) Number of Arbitrators. All arbitration proceedings in each vicinage in which the number and names of the arbitrators are not stipulated by the parties pursuant to paragraph (a) of this rule shall be conducted by either a single arbitrator or by a two-arbitrator panel, as determined by the Assignment Judge.

(d) Compensation of Arbitrators.

(1) Designated Arbitrators. Except as provided by subparagraph (2) hereof, a single arbitrator designated by the civil division manager, including a retired judge not on recall, shall be paid a per diem fee of $350. Two-arbitrator panels shall be paid a total per diem fee of $450, to be divided evenly between the panel members.

(2) Stipulated Arbitrators. Arbitrators stipulated to by the parties pursuant to R. 4:21A-2(a) shall be compensated at the rate of $70 per hour but not exceeding a maximum of $350 per day. If more than one stipulated arbitrator hears the matter, the fee shall be $70 per hour but not exceeding $450 per day, to be divided equally between or among them. The parties may, however, stipulate in writing to the payment of additional fees, such stipulation to specify the amount of the additional fees and the party or parties paying the additional fees.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (b) amended July 10, 1998 to be effective September 1, 1998; caption amended, paragraph (c) amended, and new paragraph (d) adopted July 5, 2000 to be effective September 5, 2000; paragraphs (b) and (d)(1) amended, and former paragraph (d)(3) deleted July 12, 2002 to be effective September 3, 2002; paragraphs (b), (c), (d)(1), and (d)(2) amended July 28, 2004 to be effective September 1, 2004.

4:21A-3. Settlements; Offer of Judgment

If an action is settled prior to the arbitration hearing, the attorneys shall so report to the civil division manager and an order dismissing the action shall be entered. The provisions of R. 4:58 shall not apply to arbitration proceedings.

Note: Adopted November 1, 1985 to be effective January 2, 1986; amended July 10, 1998 to be effective September 1, 1998; amended July 28, 2004 to be effective September 1, 2004.

4:21A-4. Conduct of Hearing

(a) Prehearing Submissions. At least 10 days prior to the scheduled hearing each party shall exchange a concise statement of the factual and legal issues, in the form set forth in Appendix XXII-A or XXII-B to these rules, and may exchange relevant documentary evidence. A copy of all documents exchanged shall be submitted to the arbitrator for review on the day of the hearing.

(b) Powers of Arbitrator. The arbitrator shall have the power to issue subpoenas to compel the appearance of witnesses before the panel, to compel production of relevant documentary evidence, to administer oaths and affirmations, to determine the law and facts of the case, and generally to exercise the powers of a court in the management and conduct of the hearing.

(c) Evidence. The arbitrator shall admit all relevant evidence and shall not be bound by the rules of evidence. In lieu of oral testimony, the arbitrator may accept affidavits of witnesses; interrogatories or deposition transcripts; and bills and reports of hospitals, treating medical personnel and other experts provided the party offering the documents shall have made them available to all other parties at least one week prior to the hearing. In the discretion of the arbitrator, police reports, weather reports, wage loss certifications and other documents of generally accepted reliability may be accepted without formal proof.

(d) General Provisions for Hearing. Arbitration hearings shall be conducted in court facilities and no verbatim record shall be made thereof. Witness fees shall be paid as provided for trials in the Superior Court.

(e) Subsequent Use of Proceedings. The arbitrator's findings of fact and conclusions of law shall not be evidential in any subsequent trial de novo, nor shall any testimony given at the arbitration hearing be used for any purpose at such subsequent trial. Nor may the arbitrator be called as a witness in any such subsequent trial.

(f) Failure to Appear. An appearance on behalf of each party is required at the arbitration hearing. If the party claiming damages does not appear, that party's pleading shall be dismissed. If a party defending against a claim of damages does not appear, that party's pleading shall be stricken, the arbitration shall proceed and the non-appearing party shall be deemed to have waived the right to demand a trial de novo. Relief from any order entered pursuant to this rule shall be granted only on motion showing good cause and on such terms as the court may deem appropriate, including litigation expenses and counsel fees incurred for services directly related to the non-appearance.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a) and (b) amended, and new paragraph (f) adopted July 5, 2000 to be effective September 5, 2000.

4:21A-5. Arbitration Award

No later than ten days after the completion of the arbitration hearing, the arbitrator shall file the written award with the civil division manager. The court shall provide a copy thereof to each of the parties. The award shall include a notice of the right to request a trial de novo and the consequences of such a request as provided by R. 4:21A-6.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (c)(1) amended July 10, 1998 to be effective September 1, 1998; paragraph (a) caption deleted and text amended, and paragraphs (b) and (c) deleted July 5, 2000 to be effective September 5, 2000.

4:21A-6. Entry of Judgment; Trial De Novo

(a) Appealability. The decision and award of the arbitrator shall not be subject to appeal.

(b) Dismissal. An order shall be entered dismissing the action following the filing of the arbitrator's award unless:

(1) within 30 days after filing of the arbitration award, a party thereto files with the civil division manager and serves on all other parties a notice of rejection of the award and demand for a trial de novo and pays a trial de novo fee as set forth in paragraph (c) of this rule; or

(2) within 50 days after the filing of the arbitration award, the parties submit a consent order to the court detailing the terms of settlement and providing for dismissal of the action or for entry of judgment; or

(3) within 50 days after the filing of the arbitration award, any party moves for confirmation of the arbitration award and entry of judgment thereon. The judgment of confirmation shall include prejudgment interest pursuant to R. 4:42-11(b).

(c) Trial De Novo. An action in which a timely trial de novo has been demanded by any party shall be returned, as to all parties, to the trial calendar for disposition. A trial de novo shall be scheduled to occur within 90 days after the filing and service of the request therefor. A party demanding a trial de novo must tender with the trial de novo request a check payable to the "Treasurer, State of New Jersey" in the amount of $200 towards the arbitrator's fee and may be liable to pay the reasonable costs, including attorney's fees, incurred after rejection of the award by those parties not demanding a trial de novo. Reasonable costs shall be awarded on motion supported by detailed certifications subject to the following limitations:

(1) If a monetary award has been rejected, no costs shall be awarded if the party demanding the trial de novo has obtained a verdict at least 20 percent more favorable than the award.

(2) If the rejected arbitration award denied money damages, no costs shall be awarded if the party demanding the trial de novo has obtained a verdict of at least $250.

(3) The award of attorney's fees shall not exceed $750 in total nor $250 per day.

(4) Compensation for witness costs, including expert witnesses, shall not exceed $500.

(5) If the court in its discretion is satisfied that an award of reasonable costs will result in substantial economic hardship, it may deny an application for costs or award reduced costs.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; paragraphs (b)(1) and (c) amended November 2, 1987 to be effective January 1, 1988; paragraph (c)(5) amended November 7, 1988 to be effective January 2, 1989; paragraphs (b)(1) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended May 3, 1994 to be effective July 1, 1994; paragraph (b)(1) amended July 10, 1998 to be effective September 1, 1998; paragraphs (b) and (c) amended July 5, 2000 to be effective September 5, 2000; paragraph (c) amended June 7, 2005 to be effective immediately.

4:21A-7. Arbitration of Minor's and Mentally Incapacitated Person's Claims

If all parties to the action accept the arbitration award disposing of the claim of a minor or mentally incapacitated person, the attorney for the guardian ad litem shall forthwith so report to the Assignment Judge and a proceeding for judicial approval of the award pursuant to R. 4:44 shall be held as expeditiously as possible.

Note: Adopted November 1, 1985 to be effective January 2, 1986; amended July 13, 1994 to be effective September 1, 1994; caption and text amended July 12, 2002 to be effective September 3, 2002.

4:21A-8. Administration

(a) Assignment Judge. The Assignment Judge or other judge designated by order of the Supreme Court shall be responsible for the supervision of the arbitration programs in the vicinage,

including the resolution of all issues arising therefrom. The Assignment Judge may delegate all or any of those powers to any Superior Court judge in the vicinage.

(b) Administrative Director of the Courts. The Administrative Director of the Courts shall promulgate such guidelines and forms as required for the implementation of the programs.

(c) Civil Division Manager. The civil division manager or designee for the vicinage shall perform all of the functions specified by these rules and shall serve as arbitration administrator to perform all required non-judicial functions implementing the arbitration programs.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a), (b) and (c) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 10, 1998 to be effective September 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000.

4:21A-9. Applicability

The July 5, 2000 amendments to R. 4:21A shall apply to all actions commenced on or after September 5, 2000 and to all actions pending as of September 5, 2000 in which notice of arbitration hearing has not yet been sent.

Note: Adopted July 5, 2000 to be effective September 5, 2000.

1:40-12. Qualification and Training Requirements of Court Mediators and Arbitrators

(a) Mediator Qualifications.

(1) Generally. Unless otherwise specified by these rules, no special occupational status or educational degree is required for mediator service and mediation training. An applicant for listing on a roster of mediators maintained by either the Administrative Office of the Courts or the Assignment Judge shall, however, certify to good professional standing. An applicant whose professional license has been revoked shall not be placed on the roster, or if already on the roster shall be removed therefrom.

(2) Custody and Parenting Time Mediators. The Assignment Judge, upon recommendation of the Presiding Judge of the Family Part, may approve persons or agencies to provide mediation services in custody and parenting time disputes if the mediator meets the following minimum qualifications: (A) a graduate degree or certification of advanced training in a behavioral or social science; (B) training in mediation techniques and practice as prescribed by these rules; and (C) supervised clinical experience in mediation, preferably with families. In the discretion of the Assignment Judge relevant experience may be substituted for either a graduate degree or certification, or clinical experience, or both.

(3) Civil, General Equity, and Probate Action Mediators. Mediator applicants for civil, general equity, and probate actions shall have at least five years of professional experience in the field of their expertise, as well as either an advanced degree or an undergraduate degree, coupled in both cases with mediation experience. For purposes of this rule, an advanced degree means a juris doctor or equivalent; an advanced degree in business, finance, or accounting, an advanced degree in the field of expertise in which the applicant will practice mediation, for example, engineering, architecture, or mental health; or state licensure in the field of expertise, for example, certified public accountant, architect, or engineer. For purposes of this rule, mediation experience which, together with an advanced degree, will qualify an applicant means evidence of successful mediation of a minimum of two cases within the last year, provided however that mediation experience is waived if mediation training was completed within the last five years. For purposes of this rule, mediation experience which, together with an undergraduate degree, will qualify an applicant means evidence of successful mediation of a minimum of ten cases involving subject matter otherwise cognizable in the Superior Court within the last five years.

(4) Special Civil Part Mediators. In addition to qualified neutrals on the civil roster, those judicial law clerks, court staff, and volunteers who have completed a course of mediation training approved by the Administrative Office of the Courts may mediate Small Claims actions. In the discretion of the Assignment Judge, such persons may also mediate landlord-tenant disputes and other Special Civil Part actions.

(5) Municipal Court Mediators. Municipal Court mediators shall be approved for that position by the Assignment Judge for the vicinage in which they intend to serve on recommendation of the Municipal Court judge, stating the applicant's qualifications. In considering the recommendation, the Assignment Judge shall review the applicant's general background, suitability for service as a mediator, and any mediation training the applicant may have completed.

(b) Mediator Training Requirements

(1) General Provisions. Unless waived pursuant to subparagraph (2), 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 classroom hours of basic mediation skills complying with the requirements of subparagraph (4) of this rule. Mediators on the civil, general equity, and probate roster of the Superior Court shall have completed 18 classroom hours of basic mediation skills complying with the requirements of subparagraph (4) of this rule and at least five hours being mentored by an experienced mediator on the roster in accordance with guidelines promulgated by the Administrative Office of the Courts in at least two cases in the Superior Court. Individuals may obtain a waiver of the mentoring requirement from the Administrative Office of the Courts on the successful demonstration that they have previously served as a mediator in at least five cases under *R.* 1:40-4 or comparable mediation program or have satisfactorily completed at least 10 hours in an approved advanced mediation course. Family Part mediators shall have completed a 40-hour training program complying with the requirements of subparagraph (5) of this rule; and judicial law clerks shall have successfully completed 12 classroom hours of basic mediation skills complying with the requirements of subparagraph (6) of this rule.

(2) Consideration of Prior Training. The Administrative Office of the Courts or the Assignment Judge, as appropriate, may waive these basic training requirements for mediators already serving prior to the effective date of this rule upon a determination that the mediator is qualified to continue to serve by reason of background, training, relevant educational and professional experience, and any other relevant factor.

(3) Continuing Training. Commencing in the year following the completion of the basic training course or the waiver thereof, all mediators shall annually attend four hours of continuing education and shall file with the Administrative Office of the Courts or the Assignment Judge, as appropriate, an annual certification of compliance. To meet the requirement, this continuing education should cover at least one of the following: (A) reinforcing and enhancing mediation and negotiation concepts and skills, (B) ethical issues associated with mediation practice, or (C) other professional matters related to mediation. Mediators who have been approved to serve as mentors under subsection (b)(1) of this Rule may apply the time spent mentoring to satisfy this requirement.

(4) Mediation Course Content -- Basic Skills. The 18-hour classroom course in basic mediation skills shall, by lectures, demonstrations, exercises and role plays, teach the skills necessary for mediation practice, including but not limited to conflict management, communication and negotiation skills, the mediation process, and addressing problems encountered in mediation.

(5) Mediation Course Content -- Family Part Actions. The 40-hour classroom 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, divorce procedures, family finances, and community resources. 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.

(6) Training Requirements for Judicial Law Clerks. Judicial law clerks serving as mediators shall first have completed either a 12-hour training course prescribed by the Administrative Office of the Courts, an approved course conducted by another institution or agency, or other comparable training. Proof of completion of any training other than the prescribed 12-hour course shall be submitted to the Administrative Office of the Courts for a determination of suitability. The Administrative Office of the Courts shall work with other institutions and agencies to encourage their provision of judicial law clerk mediation training and shall either approve or evaluate that training.

(7) Co-mediation; mentoring; training evaluation. In order to reinforce mediator training, the vicinage CDR coordinator shall, insofar as practical and for a reasonable period following initial training, assign any new mediator who is either an employee or a volunteer to co-mediate with an experienced mediator and shall assign an experienced mediator to mentor a new mediator. Using evaluation forms prescribed by the Administrative Office of the Courts, the vicinage CDR coordinator shall also evaluate the training needs of each new mediator during the first year of the mediator's qualifications and shall periodically assess the training needs of all mediators.

(c) Arbitrator Qualification and Training. Arbitrators serving in judicial arbitration programs shall have the minimum qualifications prescribed by Rule 4:21A-2 and must be annually recommended for inclusion on the approved roster by the local arbitrator selection committee and approved by the Assignment Judge or designee. All arbitrators shall attend initial training of at least three classroom hours and continuing training every two years of at least two hours in courses approved by the Administrative Office of the Courts.

(1) Arbitration Course Content – Initial Training. The three-hour classroom course shall teach the skills necessary for arbitration, including applicable statutes, court rules and administrative directives and policies, the standards of conduct, applicable uniform procedures as reflected in the approved procedures manual and other relevant information.

(2) Arbitration Course Content – Continuing Training. The two-hour biannual training course should cover at least one of the following: (a) reinforcing and enhancing relevant arbitration skills and procedures, (b) ethical issues associated with arbitration, or (c) other matters related to court-annexed arbitration.

(d) Training Program Evaluation. The Administrative Office of the Courts shall conduct periodic assessments and evaluations of the CDR training programs to ensure their continued effectiveness and to identify any needed improvements.

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.

APPENDIX C

AUTO ARBITRATION

JAN 2005 - DEC 2005

		Removed		Adjourned		Other		Settled Prior		Total Arbitrated	DE NOVO REQUESTS		BY PLAINTIFF		BY DEFENDANT		ACTUAL DE NOVO TRIALS COMPLETED	
	Total Scheduled	#	%	#	%	#	%	#	%	#	#	%	#	%	#	%	#	% of cases arbitrated
Atlantic	1,124	12	1.1%	347	30.9%	53	4.7%	213	19.0%	499	382	76.6%	71	18.6%	311	81.4%	48	9.6%
Bergen	2,335	24	1.0%	697	29.9%	100	4.3%	349	14.9%	1,165	862	74.0%	123	14.3%	739	85.7%	45	3.9%
Burlington	1,448	8	0.6%	669	46.2%	101	7.0%	184	12.7%	486	374	77.0%	71	19.0%	303	81.0%	37	7.6%
Camden	2,074	21	1.0%	657	31.7%	188	9.1%	382	18.4%	826	606	73.4%	78	12.9%	528	87.1%	68	8.2%
Cape May	126	0	0.0%	36	28.6%	2	1.6%	28	22.2%	60	40	66.7%	10	25.0%	30	75.0%	1	1.7%
Cumberland	391	1	0.3%	175	44.8%	8	2.0%	78	19.9%	129	89	69.0%	19	21.3%	70	78.7%	5	3.9%
Essex	3,623	21	0.6%	1,288	35.6%	728	20.1%	315	8.7%	1,271	742	58.4%	122	16.4%	620	83.6%	41	3.2%
Gloucester	667	0	0.0%	239	35.8%	34	5.1%	139	20.8%	255	182	71.4%	34	18.7%	148	81.3%	10	3.9%
Hudson	2,231	14	0.6%	660	29.6%	125	5.6%	426	19.1%	1,006	746	74.2%	104	13.9%	642	86.1%	46	4.6%
Hunterdon	95	2	2.1%	30	31.6%	16	16.8%	10	10.5%	37	32	86.5%	9	28.1%	23	71.9%	9	24.3%
Mercer	718	4	0.6%	224	31.2%	14	1.9%	126	17.5%	350	256	73.1%	47	18.4%	209	81.6%	28	8.0%
Middlesex	3,720	14	0.4%	1,553	41.7%	307	8.3%	310	8.3%	1,536	1,273	82.9%	166	13.0%	1,107	87.0%	104	6.8%
Monmouth	1,422	6	0.4%	526	37.0%	93	6.5%	172	12.1%	625	493	78.9%	115	23.3%	378	76.7%	60	9.6%
Morris	736	3	0.4%	267	36.3%	115	15.6%	64	8.7%	287	205	71.4%	36	17.6%	169	82.4%	14	4.9%
Ocean	1,306	8	0.6%	603	46.2%	77	5.9%	116	8.9%	502	421	83.9%	82	19.5%	339	80.5%	34	6.8%
Passaic	1,795	1	0.1%	257	14.3%	168	9.4%	199	11.1%	1,170	890	76.1%	79	8.9%	811	91.1%	38	3.2%
Salem	69	0	0.0%	22	31.9%	9	13.0%	14	20.3%	24	21	87.5%	6	28.6%	15	71.4%	1	4.2%
Somerset	292	0	0.0%	72	24.7%	34	11.6%	35	12.0%	151	119	78.8%	21	17.6%	98	82.4%	23	15.2%
Sussex	134	2	1.5%	55	41.0%	10	7.5%	25	18.7%	42	37	88.1%	4	10.8%	33	89.2%	4	9.5%
Union	1,454	2	0.1%	423	29.1%	77	5.3%	220	15.1%	732	555	75.8%	82	14.8%	473	85.2%	33	4.5%
Warren	83	0	0.0%	34	41.0%	6	7.2%	11	13.3%	32	29	90.6%	5	17.2%	24	82.8%	2	6.3%
State Total	25,843	143	0.6%	8,834	34.2%	2,265	8.8%	3,416	13.2%	11,185	8,354	74.7%	1,284	15.4%	7,070	84.6%	651	5.8%