

MEDIATOR CHECK LIST FOR RULE 1:40 CIVIL MEDIATIONS

CASE INFORMATION

Case Name
County
Docket #
Mediation Referral Order (MRO) Date
Discovery End Date

Date	Done(✓)		Civil Mediation Resources*
------	---------	--	----------------------------

PRELIMINARY CONTACTS

		1. Conduct a conflict check of parties and attorneys.	R.1:40-4(f)
		2. Send Initial Letter to Attorneys/Parties Scheduling Organizational Telephonic Conference (Call). - Conduct within 35 days of MRO, on at least 5 days advance notice. - Set forth purpose: to explain mediation process, set ground rules, identify necessary persons with settlement authority, facilitate pre-mediation exchange of information, facilitate resolution of discovery issues and schedule mediation session. - Specify initiator of Call. - Request parties to submit pleadings in advance of Call.	MRO, MTB 1, 2, 58
		3. If a party requests adjournment of Call, calendar and confirm rescheduled date.	MTB 1, 4, 8
		4. Conduct well organized and purposeful Call.	R.1:40-6(a)
		- Have your calendar available for scheduling.	
		- Confirm all parties represented.	
		- Confirm contact info & email for all counsel.	
		- Become familiar with essential facts and primary legal claims of case. [Practices may include prior review of pleadings and/or prior caucus communication with counsel and/or requesting brief description of matter from each counsel during Call, etc.]	MTB 58
		- Discuss critical pre-session informational exchange. Identify scheduling, procedural and discovery problems/issues and facilitate resolution. - Establish completion date for informational exchange.	MTB 4-7, 12
		- Discuss guidelines for mediation statements (confidential vs shared; length, supporting documents if appropriate) and establish submission date.	R.1:40-6(e) MTB 14, 15
		- Establish mediation date, time & location (not more than 40 mi. to the parties or courthouse of venue OR by party consent). - NOTE: Scheduling a mediation session soon after critical discovery exchange and early in litigation process is preferable. Sessions should be scheduled adequately prior to Discovery End Date (DED).	App. XXVI-13 MTB 16, 18, 20-22
		- Discuss appropriate party participation at mediation; identify persons with (a) authority to settle and (b) knowledge of critical facts.	1:40-4(g) MTB 2,3, 12, 16-22
		- Discuss beneficial non-party participation (if any) and obtain agreement.	1:40-4(g) MTB 12, 25
		- Inform parties regarding mediator compensation.	MRO; App. XXVI; R.1:40-4(b), 6(g)
		- Request that parties and counsel block entire day for mediation session.	
		5. Confirm mediation date and scheduling agreement.	MTB 7, 8, 12
		6. Calendar mediation and reserve conference room.	

NOTE: the 35 and 90 day reporting requirements have been eliminated		
PRE-SESSION PREPARATION		
	1. Send reminder notice for Mediation Statement (if necessary).	MTB 1, 8, 14
	2. Send reminder notice for Mediation one week prior.	MTB 1, 8
	3. Review mediation statements and prepare for mediation session. Become familiar with significant facts, documents, legal arguments and positions. Assess potential strategy of all parties.	MTB 14, 15
	4. Contact counsel confidentially if necessary to clarify statements, discuss anticipated process issues, party participation issues, etc	MTB 2-8, 11, 12, 20-22
	5. Prepare "Disclosure Concerning Continuation of Mediation and Mediation Preparation Time" form. Submit to counsel for parties' signature. Confirm payment apportionment. If preparation time has/will be significantly in excess of one free hour, contact counsel to discuss payment responsibilities.	App XXVI-G7 MTB 37,42-43, 47 www.njcourts.com (form online)
	6. Establish confidentiality protocol; prepare Confidentiality Acknowledgment for signatures by counsel and parties.	R.1:40-4(d)
	7. Prepare Mediator Disclosure/Opening Statement.	R.1:40-4(g)
	8. Prepare Pre-Session Statement of Services.	
	9. Consider customizing mediation process for optimal effectiveness; consider nature of the case, amount in controversy, needs & personalities of both counsel and parties. If appropriate, conduct confidential caucus to discuss with counsel.	
	10. If a party requests adjournment of Mediation Session, calendar and confirm rescheduled date.	MTB 3, 4, 27-32

MEDIATION SESSION

	1. Note Session Start time.	MTB 38
	2. Make introductions- counsel, parties, titles, affiliations.	
	3. If not previously addressed, consider holding brief caucus with each counsel to discuss customizing mediation process for optimal effectiveness. Consider nature of the case, amount in controversy, needs and personalities of both counsel and parties.	
	4. Present Mediator Disclosure/Opening Statement. Discuss confidentiality. Review session process.	R.1:40-4(d), 4(g)
	5. Conduct mediation session. [Joint, confidential caucus, joint reconvening, OR as otherwise appropriate]	R. 1:40-4(g); MTB 9
	6. Note Session End Time.	

Settlement Achieved

	1. Assure that all parties understand terms of settlement.	MTB 61
	2. Have counsel draft resolution agreement.	R.1:40-4(i) MTB 63
	3. Have all parties and counsel sign resolution agreement.	MTB 62, 63
	4. Copy original, keep one and submit copies to each party.	R.1:40-4(i)

Settlement Not Achieved

	1. Discuss continuation of mediation and schedule a 2 nd mediation session. Session should be scheduled adequately prior to Discovery End Date (DED).	MTB 10
	2. Facilitate a discovery case management schedule. Encourage counsel to file a Stipulation of Discovery Schedule/Case Management Consent Order with Court.	MTB 11
	3. Schedule status conference call pre 2nd session.	
	4. Confirm 2nd mediation session schedule OR confirm opt-out.	MTB 9

**POST-SESSION
Mediation Continuation**

	1. Prepare post-mediation analysis for file.	
	2. Send continuation schedule to counsel.	
	3. Calendar status conference, 2nd session and reserve conference room.	
	4. Conduct status conference call pre 2 nd session.	
	Mediation Completion	
	1. If successful, follow up with thank you/ congratulations.	
	2. If unsuccessful, confirm opt- out election, remind counsel that mediation can be reconvened at any time prior to trial.	MTB 9
	3. Submit Completion of Mediation Form to CDR coordinator. Completion Form must be submitted prior to Discovery End Date!	R.1:40-4(i), 6(f); www.njcourts.com (form online)
	4. Complete on-line evaluation forms at www.njcourts.com.	www.njcourts.com
	5. Request attorneys/parties to complete respective surveys on line. (Consider having computer & internet available for survey completion at session venue.)	www.njcourts.com
	6. Submit Invoice to parties.	App XXVI

***Civil Mediation Resources**, including Court Rule 1:40, *Guidelines for the Compensation of Mediators*- Appendix XXVI (App), *Mediator's Tool Box: A Case Management Guide for Presumptive Roster Mediators* (MTB) and contact information for the Mediator Facilitating Committee, can be found at www.njcourts.com. **PLEASE AVOID CONTACTING COURT STAFF!**

This Mediator Check List for Rule 1:40 Mediations is a project of the NJSBA Dispute Resolution Section under Laura A. Kaster, Chair. The List was created by experienced mediator/attorneys as a "Suggested Practice" resource. Acknowledging the subject matter diversity of referred mediations, differences in mediator style, and the complexity of factors unique to each civil matter, we present this resource as a guide only, to be utilized and customized as appropriate.

NJSBA-Dispute Resolution Section, White Paper Committee

N. Janine Dickey, Esq., APM, Chair

Members:

Copeland Bertsche, Esq.

Anna Delio, Esq.

Bruce Goldstein, Esq.

Rene Hollyer, Esq.

Gene Truncellito, Esq.