

## **APPENDIX XXVI**

### **GUIDELINES FOR THE COMPENSATION OF MEDIATORS SERVING IN THE CIVIL AND FAMILY ECONOMIC MEDIATION PROGRAM**

These guidelines apply to the compensation that may be charged by all mediators serving in the Statewide Mediation Program for Civil, General Equity, and Probate cases, and, where applicable, to mediators serving in the Family Economic Mediation Program.

1. **First Two Hours Free:** Mediators shall serve free for two hours in a mediation that is court-ordered. The two free hours shall be divided equally between (a) reasonable preparation time, administrative tasks, the organizational telephonic conference, and (b) an initial mediation session. Travel time may not be included as part of the free first two hours.

2. **Time Spent Before Initial Mediation Session:** At the beginning of the initial mediation session, the mediator shall disclose to the parties the amount of time the mediator has spent in handling the case thus far and must announce when the free mediation time will be over. If the amount of time spent by the mediator will exceed two hours and if the mediator intends to charge the parties for that additional time should they agree to continue with mediation on a paying basis, then the mediator must advise the parties of this fact prior to commencing the initial mediation session.

3. **Substitute Mediators:** In the event that the court-appointed mediator has a conflict of interest or is otherwise unable to serve, the court shall appoint a substitute mediator who is bound by all of the provisions of the court order, including providing the first two hours of service free.

4. **Alternate Mediators:** In the Civil/General Equity/Probate Mediation Program, if the parties select an alternate mediator from the approved roster, other than the mediator appointed by the court, that mediator may charge a negotiated rate fee and need not provide the first two hours of service free.

5. **Cost of Organizational Conference Call:** The out-of-pocket cost of the organizational conference call shall be shared equally by the parties, unless expenses have been waived or reallocated in accordance with Guideline 9 below.

6. **Non-Party Participation:** If a non-party is invited to participate in the mediation, which participation must be agreed to by the parties and the mediator, the mediator shall obtain the participating non-party's written consent as to confidentiality and any other matters requested by the parties, as facilitated by the mediator.

7. **Continuing the Mediation:** At the expiration of the free first two hours as previously defined, including at least a one hour in-person mediation session, any party may elect not to continue with the mediation, which decision must be immediately communicated orally or in writing to the mediator and all parties. In such situation, despite the fact that one or more parties have opted out of mediation, mediation can continue as to those parties desiring to continue to the extent that the mediation can be meaningful without participation by the party or parties that opted out. Only those parties who continue with the mediation beyond the free first two hours shall be responsible for payment of the mediator's fee and expenses. All parties opting to continue mediation after the first two hours as previously defined, shall thereafter equally share the fees of the mediator at the mediator's market rate.

8. **Newly Added Parties:** The free first two hours are not extended by reason of the addition of a new party to the case. If a new party enters the case after the expiration of the two free hours, that party may agree to participate in the mediation on the same terms as the rest of the parties on a fee-sharing basis.

9. **Allocation of Mediation Fees and Expenses:** The parties who participate in mediation beyond the "free hours" component shall share the costs and fees of the mediator (a) equally, (b) as determined by the mediator, or (c) as otherwise agreed, subject to an application to the court for an equitable reallocation of the fees. The

mediator shall waive the share of the fee allocable to an indigent party as defined in R. 1:13-2(a).

10. Mediator's Expenses: Unless the parties otherwise agree in advance following full disclosure, mediators may not charge for travel costs or time, use or rental of facilities, paralegal expenses, food, photocopying, postage, conference calls or other expenses. Note: The parties are responsible for the organizational conference call as provided in Guideline 5 above.

11. Failure to Appear or Cancel Timely: Parties who previously agreed to continue in mediation and were duly provided with notice of the mediation session but who failed to appear for the mediation session or who cancel the mediation session less than 24 hours in advance are nonetheless responsible for payment of their share of the mediator fees and expenses as allocated pursuant to Guideline 9 above. In the event that a mediation session is canceled because of a party's nonappearance or untimely cancellation, the mediator still may charge a fee; such fee may either be agreed on by the parties in advance or, if not, it shall be the mediator's usual charge for one hour's service and shall be charged to the party who failed to appear or who cancelled untimely.

12. Submission of Mediator's Bills: In the absence of other payment arrangements, mediators should bill the parties following each mediation session for which payment is due. Generally, a mediation session should not begin unless the parties are current in their payments for previous sessions. No retainer fee or advance may be requested by the mediator at any time. Counsel have a responsibility to facilitate prompt payment of mediator fees.

13. Location of Mediation Sessions: Mediators shall provide space for mediation sessions without charge, unless either the facilities will not accommodate the number of participants or appropriate multiple breakout rooms, or there are other special needs or circumstances. In such event, the parties will be responsible for appropriate facility arrangements for the mediation sessions. Unless the parties agree otherwise, mediation sessions shall be held in neutral facilities and not in the offices of an attorney representing one of the parties. The site of the mediation session shall be in the county of venue or in a contiguous county in reasonable proximity and not more than 40 miles to the parties or to the courthouse of venue, unless all parties consent otherwise.

14. Pre-mediation Submissions and Preparation: Mediators can limit the length of the parties' pre-mediation submissions. If a party exceeds the limitations, the mediator has the discretion not to consider any excess materials unless otherwise agreed between the mediator and parties. The amount of time that the mediator spends in pre-mediation preparation should be reasonable in light of the complexity of the issues and the amount at stake. In a complex case, if the parties agree that it is reasonable that preparation, initial administration and the organizational telephone conference should exceed one hour, they may agree to compensate the mediator for such time in excess of one hour before an in-person mediation session is held.

15. Collection of Unpaid Mediator's Bill/Failure to Mediate in Accordance with Order: If the court receives a written report (sent to the CDR Point Person in the county of venue or to the assigned judge in the Family Part) that a mediator has not been timely paid or that the mediator and/or a party has incurred unnecessary costs or expenses due to the failure of a party and/or counsel to participate in the mediation process in accordance with the Order of Referral to Mediation, the court will issue a sua sponte Order to Show Cause why the mediator's bill should not be paid or why a consequence, e.g., imposition of costs or fees, should not be imposed by the court.

Note: Appendix XXVI adopted July 27, 2006 to be effective September 1, 2006; Guideline 15 amended June 15, 2007 to be effective September 1, 2007; caption and introductory text amended, and Guidelines 2, 4, 9, 12, and 15 amended July 16, 2009 to be effective September 1, 2009.