

## New Jersey Rule Excerpts N.J. Rules of Court, 1969

### 1:2-1 -Proceedings in Open Court; Robes

- (a) **Open Court Requirement.** All trials, hearings of motions and other applications, first appearances, pretrial conferences, arraignments, sentencing conferences (except with members of the probation department) and appeals shall be conducted in open court unless otherwise provided by rule or statute.
- (b) \* \* \* .
- (c) **Sealing; Settlement Conferences.** If a proceeding is required to be conducted in open court, no record of any portion thereof shall be sealed by order of the court except for good cause shown, as defined by R. 1:38-11(b), which shall be set forth on the record. *Settlement conferences may be heard at the bench or in chambers* [Emphasis Added].
- (d) \* \* \*

**Note:** Source – R.R. 1:28-6, 3:5-1 (first clause), 4:29-5, 4:118-5, 7:7-1, 8:13-7(c); amended July 14, 1992 to be effective September 1, 1992; amended July 16, 2009 to be effective September 1, 2009; amended July 27, 2018 to be effective September 1, 2018; text redesignated as paragraphs (a) (c) and (d) with captions added and text of paragraph (d) amended, and new paragraph (b) adopted July 30, 2021 to be effective September 1, 2021; paragraph (b) caption amended August 5, 2022 to be effective September 1, 2022.

### 1:40-2 -Modes and Definitions of CDR

Complementary Dispute Resolution (CDR) Programs 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 neutral panel, 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 third party, 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,"** which includes mediation, is a process by which a neutral third party facilitates communication between parties in an effort to promote settlement without imposition of the facilitator's own judgment regarding the issues in dispute.
- (d) **"Hybrid Process"** means and includes:
- (1A) **Mediation-arbitration:** A process by which, after an initial mediation, unresolved issues are then arbitrated.
  - (1B) **Arbitration-mediation:** A process by which, after initial arbitration proceedings, but before the award is delivered, the parties are jointly given the opportunity to mediate a resolution. If successful, the mediated settlement is executed by the parties and the arbitration award is disregarded. If unsuccessful, the arbitration award is delivered to the parties.

- (3) **Mini-trial:** A process by which the parties present their legal and factual contentions 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 Third Party":** A "neutral third party" is an individual who provides a CDR process. Neutral third parties serving as mediators must comply with the requirements of R. 1:40-12. Neutral third parties serving as other than mediators, that is, who are conducting Arbitrations, Settlement Proceedings, Summary Jury Trials, Early Neutral Evaluations, or Neutral Fact Finding processes, are not required to comply with the requirements of R. 1:40-12.
- (g) **"Roster Mediator; Non-Roster Mediator":** A roster mediator is an individual included on any roster of mediators maintained by the Administrative Office of the Courts or an Assignment Judge. A non-roster mediator is an individual who provides mediation, but is not listed on any roster of mediators maintained by the Administrative Office of the Courts or an Assignment Judge. The parties may agree to use a roster mediator or a non-roster mediator.

**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; subparagraphs (a)(2) and (b)(2) amended, paragraph (c) amended, subparagraph (d)(1) redesignated as subparagraph (d)(1)(A), new subparagraph (d)(1)(B) adopted, subparagraph (d)(2) amended, paragraph (f) amended and new paragraph (g) adopted July 27, 2015 to be effective September 1, 2015.

## 1:40-4 -Mediation – General Rules

- (c) **Evidentiary Privilege.** A mediation communication is not subject to discovery or admissible in evidence in any subsequent proceeding except as provided by the New Jersey Uniform Mediation Act, N.J.S.A. 2A:23C-1 to -13. A party may, however, establish the substance of the mediation communication in any such proceeding by independent evidence.

(d) **Confidentiality.** Unless the participants in a mediation agree otherwise or to the extent disclosure is permitted by this rule, no party, mediator, or other participant in a mediation may disclose any mediation communication to anyone who was not a participant in the mediation. A mediator may disclose a mediation communication to prevent harm to others to the extent such mediation communication would be admissible in a court proceeding. A mediator has the duty to disclose to a proper authority information obtained at a mediation session if required by law or if the mediator has a reasonable belief that such disclosure will prevent a participant from committing a criminal or illegal act likely to result in death or serious bodily harm. No mediator may appear as counsel for any person in the same or any related matter. A lawyer representing a client at a mediation session shall be governed by the provisions of RPC 1.6.

**Note:** Adopted July 14, 1992 to be effective September 1, 1992; paragraph (c)(3) amended and paragraph (c)(4) adopted June 28, 1996 to be effective September 1, 1996; paragraphs (a) and (c)(2) amended and paragraph (c)(3)(v) adopted July 10, 1998 to be effective September 1, 1998; caption amended, paragraph (a) amended and redesignated as paragraphs (a) and (b), paragraphs (b), (c), (d), (e), and (f) amended and redesignated as paragraphs (c), (d), (e), (f), and (g) July 5, 2000 to be effective September 5, 2000; paragraphs (d)(2) and (d)(3) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended July 27, 2006 to be effective September 1, 2006; new paragraph (c) adopted, former paragraph (c) redesignated as paragraph (d) and amended, former paragraph (d) redesignated as paragraph (e), new paragraph (f) adopted, former paragraph (e) redesignated as paragraph (g) and amended, former paragraph (f) redesignated as paragraph (h), and former paragraph (g) redesignated as paragraph (i) June 15, 2007 to be effective September 1, 2007; paragraph (b) amended and new subparagraph (f)(3) adopted July 16, 2009 to be effective September 1, 2009; paragraph (b) amended, subparagraph (e)(1) deleted, subparagraphs (e)(2), (e)(3) and (e)(4) amended and redesignated as subparagraphs (e)(1), (e)(2) and (e)(3), subparagraphs (f)(1) and (f)(3) amended, paragraph (g) amended, subparagraphs (h)(1) and (h)(2) amended, and paragraph (i) amended July 27, 2015 to be effective September 1, 2015; paragraph (b) amended July 28, 2017 to be effective September 1, 2017.

#### **4:5B –Case Management; Conferences**

##### **4:5B-3 –Settlement; Conferences**

The court may conduct a settlement conference or schedule any other settlement event in any civil action on its or a party's request. Except in Track IV cases, there shall be no more than one court-initiated or court-mandated settlement conference or other settlement event prior to the trial

date. Notwithstanding the conduct of a settlement conference or other settlement event as herein provided, a second settlement conference may be conducted on the trial date and immediately prior to the commencement of trial, provided that trial shall then forthwith proceed if settlement is not reached. The settlement conference need not be conducted by the designated pretrial judge.

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

## Rules of Professional Conduct (New Jersey) -- Excerpts

### RPC 1.0 -Terminology

- (e) **"Informed consent"** denotes the **agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.** [Emphasis added.]
- (h) **"Reasonable"** or **"reasonably"** when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.
- (i) **"Reasonable belief"** or **"reasonably believes"** when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
- (j) **"Reasonably should know"** when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.
- (n) **"Tribunal"** denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

**Note:** Adopted November 17, 2003 to be effective January 1, 2004; paragraph (o) amended and new paragraph (p) adopted August 1, 2016 to be effective September 1, 2016.

### RPC 1.2 -Scope of Representation and Allocation of Authority Between Client and Lawyer

- (a) A lawyer shall abide by a client's decisions concerning the scope and objectives of representation, subject to paragraphs (c) and (d), and as required by RPC 1.4 shall consult with the client about the means to pursue them. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. **A lawyer shall abide by a client's decision whether to settle a matter.** In a criminal case, the lawyer shall consult with the client and, following consultation, shall abide by the client's

decision on the plea to be entered, jury trial, and whether the client will testify. [Emphasis Added.]

- (b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
- (d) A lawyer shall not counsel or assist a client in conduct that the lawyer knows is illegal, criminal or fraudulent, or in the preparation of a written instrument containing terms the lawyer knows are expressly prohibited by law, but a lawyer may counsel or assist a client in a good faith effort to determine the validity, scope, meaning or application of the law.

A lawyer may counsel a client regarding New Jersey's marijuana laws or the marijuana laws of other states, provided the lawyer meets the requirements of those states, and may assist the client to engage in conduct that the lawyer reasonably believes is authorized by those laws. The lawyer shall also advise the client regarding related federal law and policy.

**Note:** Adopted July 12, 1984 to be effective September 10, 1984; caption amended, paragraphs (a) and (c) amended, and paragraph (e) deleted and redesignated as RPC 1.4(d) November 17, 2003 to be effective January 1, 2004; paragraph (d) amended August 1, 2016 to be effective September 1, 2016; paragraph (d) amended November 17, 2020 to be effective immediately.

#### **RPC 1.4 -Communication**

- (a) A lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer.
- (b) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (c) **A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.** [Emphasis added.]
- (d) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall advise the client of the relevant limitations on the lawyer's conduct.

**Note:** Adopted July 12, 1984 to be effective September 10, 1984; new paragraphs (a) and (d) adopted and former paragraphs (a) and (b) redesignated as paragraphs (b) and (c) November 17, 2003 to be effective January 1, 2004.

## **RPC 1.6 -Confidentiality of Information**

- (a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for (1) disclosures that are impliedly authorized in order to carry out the representation, (2) disclosures of information that is generally known, and (3) as stated in paragraphs (b), (c), and (d).
- (b) A lawyer shall reveal such information to the proper authorities, as soon as, and to the extent the lawyer reasonably believes necessary, to prevent the client or another person:
  - (1) from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm or substantial injury to the financial interest or property of another; or
  - (2) from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to perpetrate a fraud upon a tribunal.
- (c) If a lawyer reveals information pursuant to RPC 1.6(b), the lawyer also may reveal the information to the person threatened to the extent the lawyer reasonably believes is necessary to protect that person from death, substantial bodily harm, substantial financial injury, or substantial property loss.
- (d) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
  - (1) to rectify the consequences of a client's criminal, illegal or fraudulent act in the furtherance of which the lawyer's services had been used;
  - (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, or to establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer based upon the conduct in which the client was involved; or



- (3) to prevent the client from causing death or substantial bodily harm to himself or herself;
  - (4) to comply with other law; or
  - (5) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership, or resulting from the sale of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client. Any information so disclosed may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest.
- (e) Reasonable belief for purposes of RPC 1.6 is the belief or conclusion of a reasonable lawyer that is based upon information that has some foundation in fact and constitutes prima facie evidence of the matters referred to in subsections (b), (c), or (d).
- (f) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

**Official Comment (August 1, 2016)**

Paragraph (d)(5) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering merger, or a lawyer is considering the purchase of a law practice. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits

disclosure unless the client or former client gives informed written consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

Any information disclosed pursuant to paragraph (d)(5) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (d)(5) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (d)(5). Paragraph (d)(5) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

Paragraph (f) requires a lawyer to act competently to safeguard information, including electronically stored information, relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons or entities who are participating in the representation of the client or who are subject to the lawyer's supervision. The unauthorized access to, or the inadvertent or unauthorized disclosure of, confidential information relating to the representation of a client does not constitute a violation of paragraph (f) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent in writing to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules.

#### **Official Comment (September 1, 2018)**

The Court adopts the comment in the Restatement (Third) of the Law Governing Lawyers on confidential information, which states:

Whether information is "generally known" depends on all circumstances relevant in obtaining the information. Information contained in books or records in public libraries, public-record depositories such as government

offices, or in publicly accessible electronic-data storage is generally known if the particular information is obtainable through publicly available indexes and similar methods of access. Information is not generally known when a person interested in knowing the information could obtain it only by means of special knowledge or substantial difficulty or expense. Special knowledge includes information about the whereabouts or identity of a person or other source from which the information can be acquired, if those facts are not themselves generally known.

**Note:** Adopted July 12, 1984 to be effective September 10, 1984; paragraphs (a) and (b) amended, new paragraph (c) added, former paragraph (c) redesignated as paragraph (d), and former paragraph (d) amended and redesignated as paragraph (e) November 17, 2003 to be effective January 1, 2004; former subparagraph (d)(3) redesignated as subparagraph (d)(4) and new subparagraph (d)(3) adopted July 19, 2012 to be effective September 4, 2012; new subparagraph (d)(5) and new paragraph (f) adopted, and Official Comment added, August 1, 2016 to be effective September 1, 2016; paragraphs (a) and (b) amended, and additional Official Comment added July 27, 2018, to be effective September 1, 2018.

## **RPC 2.1 -Advisor**

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations, such as moral, economic, social and political facts, that may be relevant to the client's situation.

**Note:** Adopted July 12, 1984 to be effective September 10, 1984.

## **RPC 2.4 -Lawyer Serving as Third-Party Neutral**

- (a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator, or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.
- (b) A lawyer serving as a third-party neutral shall inform the parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

**Note:** Adopted November 17, 2003 to be effective January 1, 2004.

### **RPC 3.1 -Meritorious Claims and Contentions**

A lawyer shall not bring or defend a proceeding, nor assert or controvert an issue therein unless the lawyer knows or reasonably believes that there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law, or the establishment of new law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

**Note:** Adopted July 12, 1984 to be effective September 10, 1984; amended November 17, 2003 to be effective January 1, 2004.

### **RPC 3.3 -Candor Toward the Tribunal**

- (a) A lawyer shall not knowingly:
  - (1) make a false statement of material fact or law to a tribunal;
  - (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act by the client;
  - (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;
  - (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures; or
  - (5) fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal, except that it shall not be a breach of this rule if the disclosure is protected by a recognized privilege or is otherwise prohibited by law.
- (b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.

- (c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.
- (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse.

**Note:** Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended November 17, 2003 to be effective January 1, 2004.

### **RPC 3.4 -Fairness to Opposing Party and Counsel**

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value, or counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure make frivolous discovery requests or fail to make reasonably diligent efforts to comply with legally proper discovery requests by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
  - (1) the person is a relative or an employee or other agent of a client; and
  - (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

- (g) present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter.

**Note:** Adopted July 12, 1984, to be effective September 10, 1984; paragraph (g) adopted July 18, 1990, to be effective September 4, 1990.

#### **RPC 4.1 -Truthfulness in Statements to Others**

- (a) In representing a client a lawyer shall not knowingly:
  - (1) make a false statement of material fact or law to a third person; or
  - (2) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.
- (b) The duties stated in this Rule apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.

**Note:** Adopted July 12, 1984 to be effective September 10, 1984.

## **Standards of Conduct for Court-Connected Mediators**

The Standards of Conduct for Court-Connected Mediators are reproduced in a separate document.

Standards to become familiar with:

- I Self-Determination
- II Impartiality
- V Confidentiality
- VI Quality of Process

## **Uniform Mediation Act – New Jersey**

The New Jersey Uniform Mediation Act is reproduced in a separate document.

Sections with which to become familiar:

- 4 Privilege against disclosure; admissibility; discovery.
- 5 Waiver and preclusion of privilege.
- 6 Exceptions to privilege.
- 7 Prohibited mediator reports.
- 8 Confidentiality.

## **N.J. Rules of Evidence -- Excerpts**

### **N.J.R.E. 408. Settlement Offers and Negotiations**

When a claim is disputed as to validity or amount, evidence of statements or conduct by parties or their attorneys in settlement negotiations, with or without a mediator present, including offers of compromise or any payment in settlement of a related claim, is not admissible either to prove or disprove the validity or amount of the disputed claim. Such evidence shall not be excluded when offered for another purpose; and evidence otherwise admissible shall not be excluded merely because it was disclosed during settlement negotiations.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; amended September 15, 1998 to be effective July 1, 1999; amended September 16, 2019 to be effective July 1, 2020.

### **N.J.R.E. 519. Mediator Privilege**

(a) **N.J.S. 2A:23C-4** provides:

- a. Except as otherwise provided in section 6 of P.L. 2004, c. 157 (N.J.S. 2A:23C- 6), a mediation communication is privileged as provided in subsection b. of this section and shall not be subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section 5 of P.L. 2004, c. 157 (N.J.S. 2A:23C-5).
- b. In a proceeding, the following privileges shall apply:
  - (1) a mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.
  - (2) a mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.
  - (3) a nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.



- c. Evidence or information that is otherwise admissible or subject to discovery shall not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

(b) **N.J.S. 2A:23C-5** provides:

- a. A privilege under section 4 of P.L. 2004, c. 157 (N.J.S. 2A:23C-4) may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:
  - (1) in the case of the privilege of a mediator, it is expressly waived by the mediator; and
  - (2) in the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.
- b. A person who discloses or makes a representation about a mediation communication that prejudices another person in a proceeding is precluded from asserting a privilege under section 4 of P.L. 2004, c. 157 (N.J.S. 2A:23C-4), but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.
- c. A person who intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under section 4 of P.L. 2004, c. 157 (N.J.S. 2A:23C-4).

(c) **N.J.S. 2A:23C-6** provides:

- a. There is no privilege under section 4 of P.L. 2004, c. 157 (N.J.S. 2A:23C-4) for a mediation communication that is:
  - (1) in an agreement evidenced by a record signed by all parties to the agreement;
  - (2) made during a session of a mediation that is open, or is required by law to be open, to the public;
  - (3) a threat or statement of a plan to inflict bodily injury or commit a crime;
  - (4) intentionally used to plan a crime, attempt to commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

- (5) sought or offered to prove or disprove a claim or complaint filed against a mediator arising out of a mediation;
  - (6) except as otherwise provided in subsection c., sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or
  - (7) sought or offered to prove or disprove child abuse or neglect in a proceeding in which the Division of Youth and Family Services in the Department of Human Services is a party, unless the Division of Youth and Family Services participates in the mediation.
- b. There is no privilege under section 4 of P.L. 2004, c. 157 (N.J.S. 2A:23C-4) if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:
- (1) a court proceeding involving a crime as defined in the "New Jersey Code of Criminal Justice," N.J.S. 2C:1-1 et seq.; or
  - (2) except as otherwise provided in subsection c., a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.
- c. A mediator may not be compelled to provide evidence of a mediation communication referred to in paragraph (6) of subsection a. or paragraph (2) of subsection b.
- d. If a mediation communication is not privileged under subsection a. or b., only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection a. or b. does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.
- (d) **N.J.S. 2A:23C-7** provides:
- a. Except as required in subsection b., a mediator may not make a report, assessment, evaluation, recommendation, finding, or other oral or written communication regarding a mediation to a court, administrative agency, or

other authority that may make a ruling on the dispute that is the subject of the mediation.

- b. A mediator may disclose:
  - (1) whether the mediation occurred or has terminated, whether a settlement was reached, and attendance; or
  - (2) a mediation communication as permitted under section 6 of P.L. 2004, c. 157 (N.J.S. 2A:23C-6).
- c. A communication made in violation of subsection a. may not be considered by a court, administrative agency, or arbitrator.

(e) **N.J.S. 2A:23C-8** provides:

Unless made during a session of a mediation which is open, or is required by law to be open, to the public, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this State.

**NOTE:** Adopted September 17, 2007 to be effective July 1, 2008.