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'Paltry' pay proposal for unpaid mediators panned

By John M. Covalesski

One hundred bucks an hour may not be enough to stem the flow of mediators leaving the state courts' mediation program for civil cases.

That's the prognosis from veteran mediators to word the New Jersey Supreme Court's Committee on Complementary Dispute Resolution and a prestigious panel of judges are recommending mediators be paid \$100 an hour for the first three hours of their work, which now must be provided gratis.

Generally, mediators view the \$100 proposal as paltry and no panacea for many who believe they have been treated unfairly.

Mediators for years have decried that do-it-for-free mandate, which is taking its toll on those willing to remain in the program.

About 80 mediators, or close to 15 percent, have left the program, leaving 565 active participants.

Lawyers who mediate both part-time and full-time doubt the \$100 per hour proposal, if approved by the Supreme Court, is enough to make a difference.

"This is a low number. The courts have been taking advantage of the mediator community for 10 years and \$100 is not that much of an improvement," said Hanan M. Isaacs, a Princeton attorney who's a former member of the Complementary Dispute Resolution Committee and past president of the New Jersey Association of Professional Mediators.

"It's a finger in the dike, and while it may stem the flow out somewhat it's not going to attract a huge number of new people to the program," asserted Isaacs, who charges \$375 an hour for mediation.

The program's current number of active mediators has been stable the past few years, while the bulk of those who have left cited the three-hour rule as their reason, according to Michelle V. Perone, chief of the Administrative Office of the Courts civil court programs. She added that people who departed for that reason have said they wouldn't return until the rule is changed.

After the first three hours, mediators can charge their hourly rate, which range from \$100 to \$450 and average \$250.

The state's professional mediators association estimates its members collectively lose about \$2 million a year because of the rule, according to its president-elect, Anthony P. Limitone Jr. of Limitone & Hillenbrand in Morristown.

Isaacs, who handles about 30 state cases annually, estimates losing \$30,000 a year.

John E. Sands, a full-time workplace dispute mediator in West Orange, also considers \$100 too low.

"This is an implicit assumption that mediators are the candy-stripers of the legal profession. That's not true; we provide a valuable service," he said.

Isaacs noted the AOC has been treating the mediation program like a *pro bono* matter even when the cases can involve well-financed parties who don't need the free service.

"There could conceivably be an Exxon v. Mobil type of case in which the attorneys get paid vast amounts and the mediators get nothing," he said.

"I question whether this is too little to make the difference it should make," added Edward J. Bergman of Bergman & Barrett in Skillman. He said while the \$100 hourly rate will help defray overhead costs, it may not be that much help to lawyer-mediators with high costs.

Dead end

Mediators also complain the AOC is sending parties to mediation who have no intention to resolve their case that way.

"Many of the state cases coming to my office are only there because the parties had to come, and they had planned to leave as soon as the three hours were up," Sands said. "Even if they had been required to spend money, this would be a waste of their time."

Sands added the AOC isn't screening the readiness of cases for mediation.

"In many employment cases, the issues are emotional and you have to take time to let claimants download their frustrations and know they have been heard," he said.

"You always get a certain percentage that opts out no matter where they are after three hours," Bergman noted.

Perone said parties in Lemon Law cases are so disinclined to go through full mediation that many mediators decline those cases.

Limitone said the \$100 an hour will make a difference simply by attaching a value on the first stages of mediation. "It's human nature that when people pay for something, they value it more, and when you value something you are more likely to pursue it," he theorized.

The \$100 proposal, which has been endorsed by both the Complementary Dispute Resolution Committee and the Conference of Civil Presiding Judges, also must be approved by the Judicial Council before going before the Supreme Court.