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## **NEW JERSEY ADMINISTRATIVE CODE**

### **TITLE 2. AGRICULTURE**

#### **CHAPTER 76. STATE AGRICULTURE DEVELOPMENT COMMITTEE**

##### **SUBCHAPTER 18. AGRICULTURAL MEDIATION PROGRAM**

###### **2:76-18.1 Applicability**

(a) This subchapter establishes procedures to be followed by certified mediators, disputants and State Agriculture Development Committee staff for implementing the New Jersey Agricultural Mediation Program as administered by the State Agriculture Development Committee.

(b) The Committee's Agricultural Mediation Program is a certified mediation program, in that it meets the United States Department of Agriculture-Farm Service Agency's (USDA-FSA's) requirements for certification.

(c) The Committee shall offer the services of the Agricultural Mediation Program to disputants provided there is adequate funding for the program.

###### **2:76-18.2 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Agreement to Mediate" means a document wherein the assigned certified agricultural mediator and disputants are named, the nature of the dispute is identified and the terms and conditions of the mediation proceedings are outlined.

"Certified agricultural mediator" means an impartial third party neutral (mediator) who has satisfied the requirements of the Committee and facilitates communication between disputants for the purpose of assisting them in reaching a mutually acceptable agreement.

"Confidentiality" means the mediator and disputants shall not disclose any written or oral communication divulged during the mediation process, unless it is expressly agreed upon by all parties to a mediation that such communications may be divulged. Unless the participants otherwise consent, no disclosure made by a party shall be admitted as evidence against the party in any such proceeding by independent evidence, and the mediator shall not be called as a witness in any subsequent proceedings.

"Disputant" means any person engaged in a dispute and, during a mediation proceeding, who is a primary decision maker.

"Dispute" means a disagreement between two or more parties who perceive incompatible goals and/or interference from the other party in achieving their goals with respect to one or more of the following issues:

1. Nuisance allegations;
2. Wetlands determinations;
3. Compliance with farm programs, including conservation programs;
4. Agricultural credit;
5. Rural water loan programs;
6. Pesticides;
7. As concerns activities as addressed in the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., and disputes or other matters that could adversely affect a farm's agricultural productivity or viability;
8. Farmer-neighbor disputes--including issues between a farmer and neighbor; and issues between a farmer and local government entity;
9. Lease disputes--including issues related to leasing land, equipment, livestock, storage facilities, farm buildings, solar energy generation facilities, and other farm-related items;
10. Farm transition matters--including transfer and succession issues within a family; between a family, person, or entity and an unrelated person, family, or entity; or that occur prior to, during, or after a farm transition planning or implementation process;
11. Any issues authorized for mediation by Federal agricultural laws or regulations; or
12. Such other issues as the Secretary of Agriculture considers appropriate for better serving the agricultural community and persons eligible for mediation.

"Mediation" means a process including the intake and scheduling of cases, the provision of background information regarding the mediation process, financial advisory and counseling services (as appropriate), and the mediation sessions in which a trained, neutral person assists disputants in voluntarily reaching their own settlement of issues, even for those cases that are resolved prior to a formal mediation session.

#### **2:76-18.3 Certification and assignment of mediators**

- (a) Persons interested in becoming certified agricultural mediators shall contact the Committee in writing.
- (b) In order to be qualified as an agricultural mediator, each mediator shall be certified as having satisfied the requirements of a Committee-approved agricultural mediation training session, which shall be a minimum of 18 hours of core mediator knowledge and skills training, including role-play simulations of mediated disputes, as provided by the Committee.
- (c) The Committee shall certify each mediator who has satisfactorily completed the requirements of the Committee.
- (d) Certified agricultural mediators shall be placed on the Committee's certified list according to where they reside, in alphabetical order based on their last names.

(e) The certified list shall be divided into three regions: Northern New Jersey (representing the counties of Bergen, Essex, Hudson, Passaic, Sussex and Warren), Central New Jersey (representing the counties of Hunterdon, Mercer, Middlesex, Monmouth, Morris, Somerset and Union) and Southern New Jersey (representing the counties of Atlantic, Burlington, Cape May, Camden, Cumberland, Gloucester, Ocean and Salem).

(f) Mediators shall be selected and assigned cases on a rotating basis from the certified list representing the geographic region where the dispute occurs.

1. In the event the selected mediator is unavailable for the assigned mediation, the next mediator on the certified list in the appropriate region shall be assigned to the case.

#### **2:76-18.4 Duties of certified agricultural mediators**

(a) Mediation is a voluntary process for settlement negotiation. In performing his or her duties, an agricultural mediator shall:

1. Act as a third party and not represent any disputant;
2. Not give legal advice in any capacity relating to or in the rendering of services;
3. Not have the power or the authority to compel or enforce settlements;
4. Not have conflicts of interest with respect to matters to be mediated or parties involved in mediation;
5. Not have subpoena power; and
6. Comply with this section.

#### **2:76-18.5 Mediation initiation**

(a) A request for voluntary mediation shall be submitted to the Committee in writing.

(b) In the event that a court of law mandates agricultural mediation, a copy of the document mandating mediation shall be submitted to the Committee by the appropriate court personnel or the disputants.

(c) The Committee shall provide a standard request for voluntary mediation form to mediation requesters which shall require the following information:

1. Requesters' name(s), address(es) and telephone number(s);
2. A brief description of the dispute;
3. The nature of the requesters' relationship to the party(ies) with which the requester(s) has/have a dispute; and
4. The name(s), address(es) and telephone number(s) of the party(ies) with which the requester(s) has/have a dispute.

#### **2:76-18.6 Agreement to Mediate**

(a) Upon receipt of the completed standard form, the Committee shall forward copies of the standard form and an Agreement to Mediate provided by the Committee to the named disputants along with an explanation of the mediation process.

(b) No mediation shall be conducted until all participants sign the Agreement to Mediate as provided by the Committee, and the Committee is in receipt of same.

1. Additional parties may participate in a mediation proceeding by signing the Agreement to Mediate and by obtaining the consent of the parties signing the request for mediation.

2. The Committee shall be in receipt of the revised Agreement to Mediate prior to the commencement of the mediation session.

(c) The Agreement to Mediate shall contain the following:

1. The name of the mediator appointed by the Committee;

2. A brief statement of the issue to be mediated;

3. The names of the disputants;

4. An agreement not to subpoena either the mediator or data gathered for the mediation session to prove facts alleged in an action concerning the same subject matter;

5. A statement waiving participants' rights to take civil action against the Committee and the designated mediator or agent of the mediation program, and release the Committee and its designated mediator from civil liability within the scope of the mediation services; and

6. A statement agreeing to follow the written terms of any settlement agreement arising out of the mediation process.

## **2:76-18.7 Mediation Agreement**

(a) Every mediator retained by the Committee shall enter into a Mediation Agreement with the Committee setting forth the terms and conditions for the mediation services to be provided for each mediation session.

(b) Mediators shall be compensated for their services at an agreed-upon rate which will be reflected in the Mediator Agreement between the mediator and the Committee.

1. Mediators shall receive compensation for travel expenses in an amount not to exceed the amount allowed State employees.

2. Mediators shall be reimbursed for other necessary expenses, including meals, tolls and parking, agreed to by the mediator and the Committee. Any expenses not agreed to by the mediator and the Committee shall not be reimbursed.

3. Mediators shall, at the termination of mediation, file with the Committee a statement on a form approved by the Committee listing the number of hours of mediation conducted, fee totals for mediation services, and any compensation for travel or other reimbursable expenses.

## **2:76-18.8 Mediation proceedings**

(a) Mediation proceedings shall be conducted by the mediator at times and locations which are agreed upon by the parties and the mediator, and coordinated through the Committee.

(b) Mediation proceedings shall commence with an opening statement by the mediator describing the purpose and procedures for the process.

(c) The mediator may hold joint or separate meetings with the disputants, and the mediator may request other persons to participate in the mediation proceedings, upon written consent of the original disputants. Parties may have representatives present at mediation sessions. The mediator shall regulate the proceedings to prevent disruptions, and may terminate mediation sessions in his or her discretion.

(d) Absolute confidentiality of all material and information shall be strictly maintained. All statements made during the mediation process are deemed to be privileged and inadmissible for any purpose in any proceeding, unless it is expressly agreed upon by all parties to a mediation that such communications may be divulged. The parties shall not subpoena or otherwise require the mediator to testify or produce records, reports, notes or other documents reviewed, received, or prepared by the mediator during the course of the mediation process.

(e) No stenographic record or tape recording of the mediation session shall be permitted.

(f) With respect to the parties to the mediation, no mediator shall:

1. Provide legal or other advice to the parties in a mediation proceeding, or offer or deliver services, other than mediation services on any issue raised in the mediation session;
2. Solicit or accept from any person or entity, either directly or indirectly, anything of value;
3. Disclose confidential information gained as a result of his or her service as a mediator, except upon agreement with the parties and the Committee;
4. Use information gained as a result of his or her service as a mediator in any way which could result in the receipt of anything of value by the mediator or any person or organization with which the mediator is associated; and
5. Use or attempt to use his or her position as a mediator to gain unlawful benefits, advantages or privileges for himself or herself, or for others.

(g) A mediator shall disclose to the Committee, and to the parties to a mediation session, every potential conflict of interest and every other matter which may affect the mediator's ability to act in a fair, diligent and impartial manner during the proceeding. A mediator shall withdraw from the proceeding if the mediator is unable to act in a fair and impartial manner.

(h) Interim and final agreements of the parties, if any, shall be reduced to writing and placed on a form provided by the Committee. The mediator shall assist in the preparation of the written agreement. The mediator shall forward the original, executed agreement to the Committee and it is the responsibility of the Committee to distribute copies of the agreements to all parties to the mediation.

(i) If an agreement is not reached, the mediator shall prepare a Notice of Termination of Mediation, on a form provided by the Committee, and have it executed by all parties. The mediator shall forward the

Notice of Termination to the Committee and it is the responsibility of the Committee to distribute copies of the Notice of Termination to all parties to the mediation.

(j) Agreements may provide for continued mediation at a future date. The parties to a mediation proceeding are solely responsible for any agreement reached, and for the enforcement of any agreement. An agreement is subject to applicable laws and court orders, and is subject to the exercise of rights by persons not parties to the agreement. All agreements requiring acceptance by a party not participating in the process shall be considered tentative, non-binding agreements until such acceptance has been obtained.

#### **2:76-18.9 Mediator and disputant withdrawal**

(a) Any party shall have the right, upon written request, to direct the Committee to select a different mediator prior to the initial mediation meeting.

(b) Upon written agreement by the parties and the Committee, the mediation proceedings shall continue with a new mediator.

(c) In the case of a mediation with multiple disputants, a mediation session shall continue if one or more parties withdraw, upon agreement by the remaining parties.

(d) A party or a mediator may withdraw from mediation at any time. The party or mediator shall notify the Committee of his or her withdrawal and set forth the reasons for same.

#### **2:76-18.10 Annual renewal of mediator certification**

(a) The Committee shall annually review and renew the certificates of certified mediators to ensure satisfactory performance of mediation responsibilities and completion of continued training by June 30th of each year.

1. In order to have his or her certification renewed, a certified mediator, if assigned a case(s) during the fiscal year, must have satisfied the requirements of this subchapter, and must have completed continued training pursuant to (c) below.

2. If a certified agricultural mediator has not been assigned a case(s) during the fiscal year, his or her certification shall be renewed, provided they have completed the continued training pursuant to (c) below.

(b) The Committee shall schedule training courses as necessary to maintain a list of certified mediators to satisfy the requests for services.

(c) Continuing training. Commencing in the year following certification as an agricultural mediator, all mediators shall annually complete, in-person or in a virtual setting, four hours of continued training and shall file with the Committee, as appropriate, an annual certification of compliance. This requirement shall be deemed satisfied if the continued training reinforces and/or enhances at least one of the following:

1. Mediation and negotiation concepts and skills;

2. Other professional matters related to mediation, including ethical issues associated with mediation practice, case management skills, conflict management and communication skills, how to conduct mediation in a virtual or hybrid setting, or other matters;
3. Knowledge of agricultural topic areas appropriate to the Agricultural Mediation Program; and
4. Mediation topics covered in a continuing training that satisfies the requirements pursuant to N.J. Court Rule 1:40-12(b).