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Free-Hours Rule Seen As an Unfair Burden

Industry Report

Yvonne Darling

NJBIZ Staff

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"I've never heard of a surgeon paying for the first three hours of surgery," says Anju Jessani, referring to a rule that many mediators like her consider unfair.

The issue, according to some in the industry, is a rule that has required mediators on a list for referrals from the civil and family divisions of the state Superior Court to provide three free hours of mediation at the start of each case.

Although a state Supreme Court committee recently decided to reduce the requirement to two hours, Jessani, who is president of the New Jersey Association of Professional Mediators and has a mediation practice in Hoboken and Clinton, believes it should be done away with completely.

"If these mediators were able to bill 30 hours [for example], than two or three free hours is a very nominal investment," she says.

However, the average length of the cases, according to Jessani, is about four hours. In many instances, she says, the mediator ends being able to bill for one hour.

Mediators serve to help settle cases that may not require full hearing before a judge. A roster listing the names of mediators who have completed certain requirements and are eligible to be referred cases by the court is maintained by the state, according to Michelle V. Perone, chief, Civil Court Programs, New Jersey Administrative Office of the Courts.

Perone says she receives complaints daily from mediators because of the free-hours rule, often when parties have reached a settlement or chosen to discontinue mediation within the allotted "free" time, resulting in no pay for the mediators. But, says Perone, the court has a constitutional responsibility not to place the entire financial burden of mediation on the individual parties.

"At first everyone recognized the need for the rule and the benefits. But, after a while it became clear that it shifts the financial burden onto the mediators," says Anthony P. Limitone Jr., president-elect of the mediators' group.

Limitone, a member of the law firm Limitone & Hillenbrand in Morristown, is also a former mediator for the federal Equal Employment Opportunity Commission that enforces antidiscrimination laws in the workplace. He says that within the free hours, mediators are required to set aside one hour for planning and one hour for mediation. It used to be that mediators had one-and-a-half hours to spend on each. Nevertheless, "any good mediator is going to spend more than an hour or so preparing for a session," he says.

Perone points out that being on the roster is voluntary. Some mediators, particularly those just starting their practices, can build a solid client base through their handling of these court-referred cases, she says. Others are on the roster simply because they view it as a public service, she says.

Still, those mediators Perone describes as "well-seasoned" regularly request to have their names dropped from the roster because of the free-hours rule, she said.

Perone says the court is closely monitoring feedback since the three free-hours rule was reduced to two hours in 2006.

"We are taking great pains in dealing with this issue to reduce and alleviate the burden on the mediators. The state Supreme Court has asked the civil and family divisions of the Superior Court to monitor the effectiveness of the rule," factoring in the recent changes, she said.

Jessani says her organization is taking steps to come up with possible alternatives to the rule.

E-mail to ydarling@njbiz.com

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