

Mediator Checklist

- ✓ Review, update and correct your online profile and contact information.
- ✓ Determine if there are any conflicts of interest. If so, contact the parties and let them know. This is an ongoing duty. (Cal. Rules of Court, Rule 3.855.)
- ✓ Complete and file a Notice of ADR hearing and serve a copy on all parties. Mediation must be completed by the court-ordered completion date (usually 90 days).
- ✓ If a party requests a continuance more than two days before the scheduled mediation session date, accommodate the change if you reasonably can. Send out an amended Notice of ADR Hearing.
- ✓ If all required parties are not present at the mediation, terminate the session.
- ✓ Greet the parties and explain the mediation process, including: 1) voluntary participation and self-determination, 2) mediator non-representation of parties, 3) the process and procedures used, and 4) the roles of the participants.
- ✓ Explain the rules of confidentiality and have all parties sign the Acknowledgment of Confidentiality.
- ✓ Explain the 2-hour time limit and discuss the options for continuing past that point, including the Stipulation re Fee for Service. Disclose your private rate.
- ✓ File a Statement of Agreement or Nonagreement with the ADR Unit (and serve a copy on all parties) within ten (10) days of the mediation termination or completion.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL MEDIATION PROGRAM GUIDELINES

1. Description.

The Court is happy to offer a voluntary civil mediation program for all limited and unlimited civil cases. These guidelines do not apply to the Elder Abuse/Guardianship pilot project.

Mediation is a flexible, informal, and confidential process that can be faster, easier, and less stressful than a formalized trial. In mediation, a trained and neutral person called a “mediator” helps people talk to each other to see whether they can work out their dispute for themselves, on terms that they choose.

The court will provide an Alternative Dispute Resolution (ADR) Information Package with mediation information when a new civil complaint is filed. The plaintiff must serve the ADR Information Package on all parties with the summons and complaint or cross-complaint. (Cal. Rules of Court, rule 3.221(c).)

2. Initiation of Mediation.

Parties may start the mediation program by filing the Alternative Dispute Resolution (ADR) Stipulation form or contacting a mediator from the Court’s Mediator list.

3. Notice of Mediation.

Mediators must serve all parties with:

- a. A Notice of ADR Session including the date, time, and location of the hearing, and the date by which the mediation must be completed.
- b. The mediator’s procedures regarding briefs and other materials
- c. The fee structure, including the reduced rate of \$300.00 for up to the first two hours, any required deposit (and the terms for refunding the deposit), and the mediator’s hourly market rate after two hours.

4. Ethics and Standards of Practice.

Mediators must strictly comply with the statewide rules of conduct, including rules governing competence, impartiality, and confidentiality. (See Cal. Rules of Court, rule 3.850 et seq.) In addition, mediators must:

- a. Disclose **before mediation starts, in writing**, any matters that reasonably could raise a question about his or her ability to conduct the proceeding impartially.
- b. Inform all participants that the mediator may not testify in subsequent civil cases (Evid. Code, § 703.5) and that mediation must be kept confidential (Evid. Code, § 1115 et seq.)

5. Mediation Facilities.

Mediators must arrange for each session to be conducted in a professional and appropriate facility that can accommodate persons with disabilities.

More information about accommodating persons with disabilities is available at:

http://www.eeoc.gov/mediate/ada/ada_mediators.html

http://www.eeoc.gov/mediate/ada/ada_parties.html

6. Conducting the Mediation Session

Mediators may use different techniques to help the parties reach an informed, voluntary agreement. They may provide information about the process, address communication obstacles, help the parties define the issues, explore resolution alternatives, and build the parties' capacities to make an informed decision.

Mediators may require the parties to provide mediation briefs or other materials. Mediators must give written notice to the parties of what brief or material is requested and when it is due.

Generally, "[a]ll parties, their counsel, and persons with full authority to settle the case must personally attend the mediation . . ." (Local Rule 360.) For good cause only, mediators may excuse participants or allow them to appear telephonically. Mediators should exercise caution about allowing persons with settlement authority to appear by telephone only to review settlement terms.

Mediators may offer a personal evaluation or opinion **only** at the parties' request. Mediators should not offer opinions too early in the process.

Mediators must strictly comply with the statewide rules for conducting mediation. (See Cal. Rules of Court, rules 3.856 – 3.858.)

7. Statement of Agreement or Nonagreement

Mediators must return a Statement of Agreement or Nonagreement to the Court within 10 days after completion of each mediation.

8. Mediator Qualifications and Requirements

To qualify for the civil mediation panel, an applicant must satisfy the following requirements:

- a. **California Bar Membership.** The applicant must be a member in good standing of the California Bar for a minimum of ten (10) years.
- b. **Training.** The applicant must have successfully completed at least thirty (30) hours of mediator training from a recognized provider. The thirty (30) hours must include:
 - At least one basic/introductory mediator training course consisting of ten (10) hours of classroom training and ten (10) hours of experiential training (e.g., role playing) as outlined by the California Dispute Resolution Programs Act (DRPA) guidelines; and
 - At least five (5) hours of advanced training or specialized training.
- c. **Experience.** The applicant must have conducted at least eight (8) mediations of two (2) hours or more in duration during the past three (3) years. Specifically:
 - 1) At least four (4) of the eight (8) mediations need to be general civil cases (i.e., breach of contract, construction, consumer-merchant, debtor-creditor, employment, homeowners association, neighborhood conflicts, personal injury, real estate). Only two (2) mediations in each of the following categories may apply towards the experience requirement:
 - Small Claims and Small Claims appeals
 - Family law, including: child custody, child support, property division, debt division, alimony, visitation or parent plans, parent-teen

- Victim offender issues
 - Criminal diversion
 - Juvenile dependency
 - Probate
 - Settlement conferences conducted as mediations
- 2) Only “co-mediations” conducted through a recognized community based mediation center that utilizes a “co-mediation model” may be applied toward the experience requirement.
 - 3) Arbitrations that become mediations or “med-arb” may not be included.
 - 4) “Mediations” refers to the number of cases mediated, not the number of mediation sessions.
- d. **Disclosure, Disqualifications and Record Keeping Requirements.**
- 1) Applicants must agree to comply at all times with California Code of Civil Procedure §170.1 and California Rules of Court rule 10.781(b)(1).
 - 2) All disclosures and disqualifications must be in writing, maintained for four (4) years following mediation completion, and disclosed to the Court upon request.
- e. **References.** Applicants must provide three references. Two references must be from a person who appeared before the applicant in a mediation (as a party or attorney). The third reference may be from a person who is familiar with the applicant’s mediation skills.
- g. **Criminal/Disciplinary Actions.** Applicants must notify the Court and provide a written explanation if the applicant has ever been:
- 1) charged with, pleaded guilty or no contest to, or convicted of, a felony or a misdemeanor; or
 - 2) suspended or subject to disciplinary action as a result of an investigation from any professional organization, public entity or mediation program.
- The Court will take the explanation and circumstances under consideration as it reviews the applications.
- h. **Vexatious Litigant.** The applicant must not have been declared a vexatious litigant.
- i. **Insurance.** The applicant must have or agree to obtain professional liability insurance covering services as a mediator and to name the Court as an additional insured.
- j. **Pro Bono Services.** Mediators must agree to serve as a mediator on a pro bono or modest-means basis in at least one case per year, not to exceed eight (8) hours, if requested by the Court. (Cal. Rules of Court, rule 10.781(b)(2)).
- k. **Web Site.** Mediators must permit the court to place mediator information on the court’s web site, and in the Court’s mediator directories and listings.
- m. **Advertisement.** A mediator may indicate in his or her marketing materials that she or he is a member of the Court’s panel, but may not indicate that he or she is approved, endorsed, certified or licensed by the Court.

9. Maintaining Panel Status

To maintain status as a Civil Mediation Panel member, mediators must:

- a. Maintain a mediation practice.
- b. Provide the court with current biographical and contact information, including a phone number and email address for the mediator personally and for his or her firm or administrative staff.
- c. Have mediated at least one case referred under the Civil Mediation Program within the past 24 months. The operative date to determine mediation will be the date of referral and not the date the case was actually mediated.
- d. Complete four (4) hours of approved continuing education annually focused on mediation skills, process and standards. At least one hour of continuing education should focus on disclosure and disqualification issues.
- e. Comply with the court's procedures regarding mediation timelines, case administration, party notification, post mediation paperwork and program evaluation.
- f. Promptly notify the court in writing if declared a vexatious litigant, the subject of any criminal proceedings (except infractions) or of any proposed or pending disciplinary action by any professional organization, public entity, or mediation program.
- g. File a Certificate of Insurance by January 15 of each year.

10. Compensation

- a. All mediators on the Civil Mediation Panel must abide by the following payment schedule:
 - \$300.00 for up to the first two (2) hours of the mediation session (the "initial period"); and
 - the mediator's individual hourly rate for mediation services beyond the initial period.
- b. The \$300.00 fee for the initial period applies to actual mediation session hours, including any supplemental discussions between the mediator and one or more of the parties during this period. Mediators may not charge any additional fees for intake, scheduling, administration, preparation, case evaluation or brief review time or for the securing of mediation facilities associated with the initial period. Violation of this provision may result in the immediate removal of the mediator from the Civil Mediation Panel.
- c. Mediators may not require more than the \$300 fee for the initial period as a deposit prior to beginning the mediation session. Mediators may retain this deposit if the cancellation was made less than two (2) court days prior to the scheduled date for the initial period.
- d. Mediators will be compensated directly by the parties. The fees and expenses of the mediator must be shared equally by the parties, unless otherwise agreed by the parties. Mediators will be responsible for the collection of fees. The court will not assist with collection or other fee dispute issues pertaining to mediation under the Civil Mediation Program.
- e. Mediators must declare their individual hourly rates and any deposit or cancellation policies in their mediator profile. In addition, parties must be notified in writing upon receiving a referral from the court and prior to the beginning of the first mediation session of the mediator's hourly rate and any deposit, cancellation or other policies.

11. Case Limits

The Court may impose case limits under the Civil Mediation Program depending on the mediator's caseload. In no instance will a mediator be assigned more than 100 active cases at any one time.

12. Panel Descriptions and Lists

The court will maintain the Mediator Panel Listing and Mediator Profiles on the Court's ADR web pages and in binders in the civil courtrooms. (See Cal. Rules Court, rule 10.781(a).) The court does not review, confirm, or guarantee the mediators' representations of their background and areas of experience.

13. Resignation

Any civil mediation panel member may resign at any time by sending written notice to the ADR Administrator. Resigning mediators still must complete any mediations already referred to them and submit all required materials to the Court.

14. Removal

- a. The Court encourages excellence in mediation by promoting honesty, impartiality and integrity. Mediators on the civil mediation panel must comply with all requirements outlined by these Guidelines, the Court's Policies and Procedures, and the California Rules of Court.
- b. The Court may use informal or formal means to deal with complaints or issues relating to mediator. If a complaint against a mediator is made, the Court will determine in its sole discretion whether to remove the mediator from the panel pending investigation.
- c. Mediators serve at the pleasure of the Court and may be removed from the civil mediation panel at any time at the sole discretion of the Court without cause.
- d. Any mediator removed from the panel may rejoin the panel only by submitting a new application and being approved by the ADR Committee.