

Rule 360. Alternative Dispute Resolution (ADR)

A. Available ADR Programs

The Superior Court of California, County of Orange, encourages and supports the use of Alternative Dispute Resolution (ADR) in all civil cases. The Court recognizes the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. It is the Court's expectation that litigants will utilize the Court's mediation ~~and, arbitration, and early neutral evaluation~~ programs as a means of case settlement before trial.

B. ADR Administrator

~~An Administrative~~ Civil ~~Manager Operations staff member~~ will serve as the Alternative Dispute Resolution (ADR) Administrator, supervise the selection of arbitrators ~~and, mediators, and neutral evaluators~~ for the Court's panels, generally supervise the operation of the ADR programs, and employ such staff as are necessary to fulfill this responsibility.

C. ~~Arbitration and Mediation~~ ADR Committee

The ~~ADR Arbitration and Mediation~~ Committee of the Court will have the duties and responsibilities ~~of an ADR Committee~~ as specified by California Rules of Court, rule 10.783.

D. Judicial Arbitration

1. Authority

- a. The Superior Court is authorized to refer civil actions, except those heard in the Small Claims Court, to judicial arbitration pursuant to Code of Civil Procedure section 1141.11(a).
- b. Any at-issue limited civil case may be referred to judicial arbitration if the Court determines arbitration to be in the interest of justice.

2. Referral to Arbitration

- a. Any case will be submitted to arbitration pursuant to this rule upon the order of the Court where, in the opinion of the Court, the amount in controversy does not exceed fifty thousand dollars (\$50,000) for each plaintiff, which order will not be appealable. The provisions of this rule do not apply to any action exempt from arbitration pursuant to California Rules of Court, rule 3.811.

b. Any at-issue limited or unlimited civil case may be referred to judicial arbitration, regardless of the amount in controversy, upon:

- 1) Stipulation of the parties. Counsel may stipulate, at any time after the filing of the complaint, to a waiver of Government Code section 68616(g) for the purpose of allowing the court to order the case into arbitration, pursuant to Code of Civil Procedure sections 1141.10, et seq. or 1280, et seq., at an earlier date; or
- 2) Filing of an election by all plaintiffs in which each plaintiff agrees that the arbitration award will not exceed \$50,000 as to that plaintiff.

3. Determination of Amount in Controversy

The amount in controversy in each case will be determined by the Court and the case referred to arbitration upon receipt of stipulation by counsel or by order of the Court at any conference at which all parties have been ordered or noticed to appear. The determination of the amount in controversy will be without prejudice to any finding on the value of the case by an arbitrator or in a subsequent trial de novo. The determination must be based on the total amount of damages; questions of liability or comparative negligence or other defenses may not be considered.

4. Administration of Program

Any case referred to arbitration must be submitted to the Superior Court Judicial Arbitration Program and is subject to all rules set forth herein.

5. Panel of Arbitrators

- a. The ADR Administrator will maintain a current list of arbitrators composed of active members of the California State Bar who have qualified to act as such.
- b. The Court will have a list of arbitrators for personal injury cases and such additional panels as the Presiding Judge may determine are needed.

6. Appointment of Arbitrators

The appointment of arbitrators by the ADR Administrator will be at random and will be governed by the following procedures:

- a. The parties may stipulate to an arbitrator within 10 days after the case is ordered to arbitration by submitting a written stipulation for the arbitrator of their choice to the ADR Administrator.
- b. If no stipulation for an arbitrator is received within 10 days after the case is ordered to arbitration, the ADR Administrator will appoint an arbitrator at random from the panel of arbitrators.

7. Arbitrator's Duties and Responsibilities

a. Disqualification

It is the duty of the arbitrator to determine whether any cause exists for his/her disqualification in the case upon any of the grounds set forth in Code of Civil Procedure section 170.1 governing the disqualification of judges. If any member of the arbitrator's law firm would be disqualified under subdivision (a)(2) of section 170.1, the arbitrator is disqualified. The arbitrator must promptly notify the ADR Administrator of any grounds for disqualification known to him/her, and another arbitrator will be appointed as provided in these rules.

b. Hearings, Notice, When and Where Held

Within 15 days after the appointment of the arbitrator, the arbitrator must set the time, date, and place of the arbitration hearing and notify each party and the ADR Administrator in writing of the time, date, and place set. The arbitrator must serve a "Notice of Alternative Dispute Resolution (ADR) Session" upon all counsel of record and self-represented parties at least 30 days prior to the hearing date. The original notice must be filed with the ADR Administrator. The hearings must be scheduled to take place not sooner than 35 days and not later than 90 days from the date of the assignment of the case to the arbitrator, including any time due to continuances; provided, however, for good cause shown the Court may extend the time for arbitration.

The arbitrator must set the hearing at a convenient date, time and place in the County of Orange. The hearing may not be set on Saturdays, Sundays, or legal holidays without a stipulation of all parties and the arbitrator. The hearing may be held in a location outside Orange County upon stipulation of all parties and the arbitrator.

If the arbitrator cannot hold a hearing within the time limitations set forth supra, a notification must be submitted to the ADR Administrator who will return the case to the list of cases pending appointment of an

arbitrator and will appoint a new arbitrator pursuant to section D.6 of this Rule.

8. Continuances

An Arbitration Hearing date may be continued:

- a. By written stipulation, signed by all parties, with the consent of the assigned arbitrator. The original copy of the stipulation must be filed with the ADR Administrator. The new hearing date must be set within 90 days from the date the arbitrator was appointed.
- b. By noticed motion, if the desired hearing date exceeds 90 days from the date the arbitrator was appointed. A written declaration must be submitted concurrently with the motion stating the reason for the extended setting. Such motions must be set for hearing before the judicial officer who signed the Arbitration Referral order.
- c. By written stipulation of all parties, and approval by the Court, if the hearing date exceeds 90 days from the date the arbitrator was appointed. A written declaration must be submitted concurrently with the stipulation, stating the reason for the delayed setting. The stipulation must be filed with the ADR Administrator.

The stipulation must be titled "Stipulation and Order for Continuance of Arbitration" and include, below the attorney signatures, the language "IT IS SO ORDERED", followed by a date and signature line for the judge who signed the Arbitration Referral Order.

9. Communication with the Arbitrator

Disclosure of any offers of settlement made by any party may not be made to the arbitrator prior to the filing of the award. There may not be any ex parte communication by counsel or the parties with the arbitrator except for the purposes of scheduling the arbitration hearing or requesting a continuance.

10. Discovery

The parties to the arbitration have the right to conduct discovery, and to that end may exercise all of the same rights, remedies and procedures, and will be subject to all of the same duties, liabilities, and obligations as provided in Part 4, Title 3, Chapter 3 of the Code of Civil Procedure for unlimited civil cases, and as provided in Part 1, Title 1, Chapter 5.1 of the Code of Civil Procedure for limited cases, except that all arbitration discovery must be completed no later than 15 days prior to the date set for

the arbitration hearing unless the Court, upon a showing of good cause, makes an order granting an extension of the time within which discovery must be completed. The parties may also stipulate to an extension of time.

11. Rules of Evidence at Hearing, Conduct of Hearing; The Award; Attorneys Fees; Entry of Judgment; Motion to Vacate; Arbitrator Fees

California Rules of Court, rules 3.810 et seq. are applicable to this Judicial Arbitration Program in its entirety.

12. Trial de Novo

- a. Within 30 days after the arbitration award is filed, any party may request a trial de novo by filing with the ADR Administrator a request for trial, with proof of service of a copy upon all other parties appearing in the case. The 30 day period within which to request trial may not be extended.
- b. Upon filing a request for trial de novo after arbitration the case will be returned to the judicial officer who signed the original Arbitration Referral order.
- c. The case will be tried as though no arbitration proceedings had occurred. No reference may be made during the trial to the arbitration award, to the fact that there had been arbitration proceedings, to the evidence adduced at the arbitration hearing, or to any other aspect of the arbitration proceedings, and none of the foregoing may be used for any purpose at the trial.
- d. If a party has requested a trial de novo after arbitration, the request may not be withdrawn except by a written stipulation, signed by all parties appearing in the case, expressly agreeing that a nonappealable judgment may be entered on the arbitration award.

E. Civil Mediation Program

The Superior Court of California, County of Orange, offers a voluntary civil mediation program for ~~all~~ general civil cases.

1. Initiation of Mediation

Mediation is available on a voluntary basis only. The parties may file an Alternative Dispute Resolution (ADR) Stipulation form, and complete and submit an Alternative Dispute Resolution (ADR) Neutral Selection and Party List form. The Superior Court maintains a panel of court-approved mediators who have satisfied training and experience requirements established by the Court and who

must adhere to minimum standards of practice pursuant to California Rules of Court, rule 3.850 et seq., and other program policies, guidelines and procedures. The parties may choose from the Court's Civil Mediation Panel an available mediator and an alternate mediator with no apparent conflict of interest. The parties must make the selection of a mediator on the Alternative Dispute Resolution (ADR) Neutral Selection and Party List form.

2. Attendance at Case Management Conference

If the parties file the Alternative Dispute Resolution (ADR) Stipulation form with the Clerk's Office at least 10 days before the Case Management Conference, then no appearance will be necessary at that hearing. In such case, the parties must request that the Case Management Conference be taken off calendar.

3. Payment of Mediators

- a. Mediators must be compensated directly by the parties. The fees and expenses of mediators must be shared equally between the parties, unless otherwise agreed by all the parties.
- b. Mediators on the Superior Court's Panel have agreed to charge \$300 for up to the first two hours and their individual rate per hour thereafter. Mediators may not charge the parties for preparation or administrative time, but may require that fees be deposited in advance of the mediation session.
- c. The Superior Court will establish a pro bono/modest means procedure that will be available to qualified parties.

4. Timing of Mediation and Trial Dates

The parties must complete the mediation process within 90 days of the date of referral. If the parties request an extension of time for mediation, they must file a stipulation showing good cause and indicating the date of the future mediation session, which stipulation must be approved by the Court.

5. Attendance at Mediation

All parties, their counsel, and persons with full authority to settle the case must personally attend the mediation, unless excused by the mediator for good cause. If any consent to settle is required for any reason, the person with consent authority must be personally present at the mediation.

6. Complaints

a. Application

The rules in this section establish the court's procedures for receiving, investigating, and resolving complaints about mediators in the court's mediation program for general civil cases, as required by rule 3.868 of the California Rules of Court. Nothing in these rules should be interpreted in a manner inconsistent with rules 3.865–3.872 of the California Rules of Court or as limiting the court's inherent or other authority, in its sole and absolute discretion, to determine who may be included on or removed from its list of mediators or who may be recommended, selected, appointed, or compensated as a mediator by the court.; These rules also do not limit the court's authority to follow other procedures or take other actions to ensure the quality of mediators who serve in the court's mediation program in contexts other than when addressing a complaint. The failure to follow a requirement or procedure in these rules will not invalidate any action taken by the court in addressing a complaint.

b. Definitions

As used in this chapter:

- (1) “The rules of conduct” means the Rules of Conduct for Mediators in Court- Connected Mediation Programs for Civil Cases set out in rules 3.850–3.860 of the California Rules of Court.
- (2) “Court-program mediator” means a mediator who:
 1. Has agreed to be included on the court's list or panel of mediators for general civil cases and is notified by the court or the parties that he or she has been selected to mediate a case within the court's mediation program; or
 2. Has agreed to mediate a general civil case in the court's mediation program after being notified by the court or the parties that he or she was recommended, selected, or appointed by the court or will be compensated by the court to mediate that case.
- (3) “Inquiry” means an unwritten communication presented to the court's complaint coordinator indicating that a mediator may have violated a provision of the rules of conduct.
- (4) “Complaint” means a written communication presented to the court's complaint coordinator indicating that a mediator may have violated a provision of the rules of conduct.

- (5) “Complainant” means the person who makes or presents a complaint.
- (6) “Complaint coordinator” means the person designated by the presiding judge to receive complaints and inquiries about the conduct of mediators.
- (7) “Complaint proceeding” means all of the proceedings that take place as part of presenting, receiving, reviewing, responding to, investigating, and acting on any specific inquiry or complaint.
- (8) “Mediation communication” means any statement that is made or any writing that is prepared for the purpose of, in the course of, or pursuant to a mediation or a mediation consultation, as defined in Evidence Code section 1115, and includes any communications, negotiations, and settlement discussions between participants in the course of a mediation or a mediation consultation.

c. Confidentiality

(1) Preserving the confidentiality of mediation communications

All complaint proceedings will be conducted in a manner that preserves the confidentiality of mediation communications, including but not limited to the confidentiality of any communications between the mediator and individual mediation participants or subgroups of mediation participants.

(2) Confidentiality of complaint proceedings

All complaint proceedings will occur in private and will be kept confidential. No information or records concerning the receipt, investigation, or resolution of an inquiry or a complaint will be open to the public or disclosed outside the course of the complaint proceeding except as provided in rule 3.871(d) of the California Rules of Court or as otherwise required by law.

d. Submission of inquiries and complaints to the complaint coordinator

All inquiries and complaints should be submitted or referred to the complaint coordinator.

e. Addressing inquiries

If the complaint coordinator receives an inquiry, the coordinator must inform the person making the inquiry that the complaint procedure provides for investigation of written complaints only and that the person should submit a written complaint if he or she wants the court to conduct an investigation or take action. If the person does not submit a complaint, the complaint coordinator may prepare a written summary of the inquiry.

f. Acknowledgment and preliminary review of complaints

(1) Acknowledgment of complaints

When the complaint coordinator receives a complaint, the coordinator will send the complainant a written acknowledgment of this receipt.

(2) Preliminary review of complaints

1. The complaint coordinator will review each complaint to determine whether it warrants investigation or can be promptly, informally, and amicably resolved or closed. The coordinator may:

a. Informally contact the complainant to obtain clarification or additional information or to provide information that may address the complainant's concern.

b. Communicate informally with the mediator to obtain the mediator's perspectives.

2. If it appears to the complaint coordinator that the mediator may have violated a provision of the rules of conduct, the complaint coordinator must inform the mediator about the complaint and give the mediator an opportunity to provide an informal response.

3. The complaint coordinator may close a complaint without initiating an investigation if:

a. The complaint is withdrawn by the complainant;

b. No violation of the rules of conduct appears to have occurred or the complaint is without sufficient merit to warrant an investigation;

- c. The conduct alleged would constitute a very minor violation of the rules of conduct, the coordinator has discussed the complaint with the mediator, and the mediator has provided an acceptable explanation or response; or
- d. The complainant, the mediator, and the complaint coordinator have agreed on a resolution to the complaint.

(3) Notification of closure

If the complaint coordinator closes a complaint without initiating an investigation, the coordinator must send the complainant notice of this action.

g. Appointing an investigator or a complaint committee

The presiding judge will appoint an investigator who has experience as a mediator and is familiar with the rules of conduct, or a complaint committee that includes at least one such individual, to investigate and make recommendations concerning any complaint that is not resolved or closed by the complaint coordinator as a result of the preliminary review.

h. Investigations

(1) Application

The procedures in this rule apply only if a complaint is not resolved or closed through the preliminary review or if the complaint coordinator initiates an investigation under (3).

(2) Referral of a complaint for investigation

If a complaint is not closed as a result of the preliminary review, the complaint coordinator will refer it to the investigator or complaint committee for investigation.

(3) The complaint coordinator will provide the investigator or complaint committee with a summary of the preliminary review that includes:

1. A copy of the complaint;

2. A copy or summary of any response from the mediator;
3. A list of any violations of the rules of conduct that it appears may have occurred; and
4. Copies of any previous complaints about the mediator and any written summaries of inquiries that are relevant to the current complaint.

(4) Initiation by the complaint coordinator

The complaint coordinator may initiate an investigation based on information received from any source, including an inquiry, indicating that a mediator may have violated a provision of the rules of conduct. To initiate the investigation, the complaint coordinator must refer the information received to an investigator or complaint committee with a list of the violations of the rules of conduct that it appears may have occurred.

(5) Mediator's notice and opportunity to respond

1. The investigator or complaint committee must provide the mediator with a copy of the materials provided to the investigator or complaint committee by the complaint coordinator under (2) or (3).
2. The mediator will be given an opportunity to respond to the complaint and the list of apparent violations.

(6) Preparing report and recommendation

The investigator or complaint committee will conduct the investigation that the investigator or complaint committee considers appropriate. Thereafter, the investigator or complaint committee will prepare a written report that summarizes the investigation and states the investigator's or complaint committee's recommendation concerning the final decision on the complaint. The investigator or complaint committee may recommend one or more actions that are permissible under rule 3.870 of the California Rules of Court.

(7) Informing mediator of recommendation

The investigator or complaint committee may inform the mediator of its recommendation and inquire whether the

mediator accepts that recommendation. If the mediator accepts the recommendation, the investigator's or complaint committee's report must indicate this.

(8) Submitting report and recommendation

The investigator or complaint committee must submit its report and recommendation to the complaint coordinator. The complaint coordinator must promptly forward a copy of the report and recommendation to the presiding judge or to his or her designee.

i. Final decision on a complaint that was investigated

(1) Responsibility for final decision

The presiding judge is responsible for making the final decision about the action to be taken on any complaint that was investigated or for designating another judicial officer or a committee that includes a judicial officer to perform this function.

(2) Acting on recommendation

1. Within 30 days after the investigator's or complaint committee's recommendation is forwarded to the presiding judge or the presiding judge's designee, the presiding judge or designee may submit to the complaint coordinator a decision:

a. Affirmatively adopting the investigator's or complaint committee's recommendation as the final decision on the complaint; or

b. Directing a different action that is permissible under rule 3.870 of the California Rules of Court.

2. If the presiding judge or his or her designee does not submit a decision within 30 days after the complaint committee's recommendation is forwarded, as provided in (1), the investigator's or complaint committee's recommendation will become the final decision on the complaint.

(3) Notification of final action

The complaint coordinator must promptly notify the complainant and the mediator in writing of the final action taken by the court on the complaint.

(4) Authorized disclosures

After the decision on a complaint, the presiding judge, or a person whom the presiding judge designates to do so, may authorize the public disclosure of information or records concerning the complaint proceeding that do not reveal any mediation communications. The disclosures that may be authorized under this subdivision include the name of a mediator against whom action has been taken, the action taken, and the general basis on which the action was taken. In determining whether to authorize the disclosure of information or records under this subdivision, the presiding judge or designee should consider the purposes of the confidentiality of complaint proceedings stated in rule 3.871 of the California Rules of Court.

j. Interim suspension pending a final decision on a complaint

If the preliminary review or the investigation indicates that a mediator may pose a threat of harm to mediation participants or to the integrity of the court's mediation program, the presiding judge or the other judicial officer or committee designated by the presiding judge to make the final decision about the action to be taken on any complaint may suspend the mediator from the court's panel or list pending final decision on the complaint. The complaint coordinator may make a recommendation to the presiding judge or the designee regarding such a suspension.

F. Early Neutral Evaluation

~~The Superior Court of California, County of Orange, offers a voluntary Early Neutral Evaluation (ENE) program for all civil cases.~~

~~1. — Initiation of ENE~~

~~ENE is available on a voluntary basis only. The parties may file an Alternative Dispute Resolution (ADR) Stipulation form, and complete and submit an Alternative Dispute Resolution (ADR) Neutral Selection and Party List form. The Superior Court maintains a panel of court-approved evaluators who have satisfied training and experience requirements~~

~~established by the Court and who must adhere to minimum standards of practice pursuant to program policies, guidelines and procedures. The parties may choose from the Court's Neutral Evaluation Panel an available evaluator and an alternate evaluator with no apparent conflict of interest. The parties must make the selection of an evaluator on the Alternative Dispute Resolution (ADR) Neutral Selection and Party List form.~~

~~2. — Attendance at Case Management Conference~~

~~If the parties stipulate and file the Alternative Dispute Resolution (ADR) Stipulation form with the Clerk's Office at least 10 days before the Case Management Conference, then no appearance will be necessary at that hearing. In such case, the parties must request that the Case Management Conference be taken off calendar.~~

~~3. — Payment of Evaluators~~

~~a. Evaluators must be compensated directly by the parties. The fees and expenses of evaluators must be shared equally between the parties, unless otherwise agreed.~~

~~b. Evaluators on the Superior Court's Panel have agreed to charge \$300 for up to the first three hours and their individual rate per hour thereafter. Evaluators may not charge the parties for preparation or administrative time, including the time required to prepare the written evaluation, but may require that fees be deposited in advance of the evaluation session.~~

~~c. The Superior Court will establish a pro bono/modest means procedure that will be available to qualified parties.~~

~~4. — Timing of ENE and Trial Dates~~

~~The parties must complete the ENE process within 90 days of the date of referral. If the parties request an extension of time for the ENE, they must file a stipulation showing good cause and indicating the date of the future ENE session, which stipulation must be approved by the Court.~~

~~5. — Attendance at ENE Session~~

~~All parties, their counsel, and persons with full authority to settle the case must personally attend the ENE session, unless excused by the evaluator for good cause. If any consent to settle is required for any reason, the person with the consent authority must be personally present at the ENE session.~~

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