



## CIVIL, ESTATES AND FAMILY LAW MEDIATION GUIDELINES

---

### 1. Description.

The Superior Court of California, County of Napa (Court) offers a voluntary mediation program for all civil, estates and family law cases.

Civil, Estates and Family Law Mediation Program information will be provided to counsel and self-represented litigants at the time of filing a new complaint/petition as part of the *Alternative Dispute Resolution (ADR) Information* package

### 2. Eligible Cases.

The mediation program is available as a program for all civil, probate/trusts/estates, guardianship, conservatorships and family law cases. Custody issues in family law cases are mediated through the Court's Family Court Services.

### 3. Initiation of Mediation Process.

Mediation is available on a voluntary basis only. The parties may, at any time, request a referral to the mediation process by filing the *Stipulation to Participate* form. The parties may choose from the Court's mediation panel an available mediator with no apparent conflict of interest at anytime during the adjudication process, provided the mediation is completed as required in section 6.

### 4. Assignment of Mediator.

- a. Upon assignment of the mediation, the mediator must assess whether he or she can mediate the matter assigned. This initial assessment will include a review for conflicts of interest involving the parties/counsel, and an assessment of his or her calendar to determine if the matter can be mediated within the court's time frame.
- b. Within seven days of assignment of the mediation, the mediator must submit to the Clerk's office a completed *Notice of Mediator Acceptance or Recusal* form, specifying whether the mediator accepts the assignment.

### 5. Authority of Mediator.

- a. 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. The mediator may determine whether persons with settlement authority can attend the mediation telephonically. The Court discourages mediators from allowing adjusters to be on telephonic stand-by to review a settlement at the end of the mediation session when they have not been part of the mediation discussions, and instead encourages mediators who allow telephonic participation to require the adjustor to participate for the entire session.

All parties are required to attend the mediation session and every effort should be made to encourage attendance. The court acknowledges that it is standard practice in automobile personal injury cases where liability is not contested for insured defendant drivers to not attend or participate in the mediation. However, in cases where liability is contested or in most other mediation cases, all parties should attend the mediation.

- b. The mediator may require mediation briefs, statements, or other mediation materials. If the mediator requires that materials be sent, he or she should notify the parties directly in writing and include a deadline for service of the materials to all other parties. Mediators and parties shall not submit copies of mediation materials to the Court.

## **6. Timeline to Complete Mediation.**

All mediation activity must be completed within 60 days from the date of referral to mediation, either by the judge at a Case Management Conference or by the date of filing of the *Stipulation Re: Voluntary Mediation*, whichever occurs first. Participation in mediation does not extend any dates or timelines for discovery, filing of motions, or trial dates.

If the mediator cannot complete the mediation within the 60 day limit, the mediator should complete the *Voluntary Mediation Completion Report* and return it to the Clerk's office, so the Court may track scheduling problems.

## **7. Extensions.**

Under the Mediation Program, the mediator does not have any authority to grant an extension of time to mediate. If the parties need more time, they must file a stipulation and order with the Clerk's office to extend the mediation period. The stipulation must include a statement of the facts establishing good cause for the extension, a specific date for the mediation, the signature of the mediator, and a signature line for the judge.

## **8. Ethics and Standards of Practice.**

As a condition of mediation panel membership, mediators must comply with California Rules of Court, rule 3.850 et seq. Pursuant to these rules, there are several issues that must be raised with parties and participants. In addition, each mediator must read the ethical provisions for conduct and be able to independently assess his or her ability to handle each case.

At a minimum, the rules require that several issues be raised with the parties at or before the commencement of the mediation session. The mediator must:

- a. Check his or her records to ensure that there are no conflicts of interest. If a potential conflict does not require immediate recusal, it must be disclosed in writing to the parties before the mediation begins to give them an opportunity to object. (Cal. Rules of Court, rule 3.855; Code Civ. Proc., § 170.1)
- b. Inform the parties at the outset of the first session that any resolution requires the voluntary agreement of the parties. (Cal. Rules of Court, rule 3.853)
- c. Provide the participants with a general explanation of the confidentiality of the mediation proceedings. (Cal. Rules of Court, rule 3.854(b))
- d. Discuss with all participants the mediator's practice regarding confidentiality for separate communications with the participants before speaking separately with one or more participants. (Cal. Rules of Court, rule 3.853(c))
- e. Provide all participants with a general explanation of the nature of the process, the procedures to be used, and the roles of the mediator, the parties, and other participants. (Cal. Rules of Court, rule 3.857(c)) The mediator should also discuss his or her style.
- f. Inform all participants that during the mediation, he or she will not represent any participant as a lawyer or perform professional services in any capacity other than as an impartial mediator. (Cal. Rules of Court, rule 3.857(d))
- g. Disclose any personal or financial interest if recommending other services. (Cal. Rules of Court, rule 3.857(e))
- h. Inform all participants of the mediator's lack of competency to testify in any subsequent legal proceeding pursuant to Evidence Code section 703.5 and the rules governing the confidentiality of mediation proceedings pursuant to Evidence Code section 1115 et seq.

- i. Disclose in writing to the parties any fees, costs, or charges to be paid to the mediator by the parties.
- j. Request all participants complete an attendance sheet stating their names, mailing addresses, and telephone numbers, and retain the sheet for at least two years and submit to the court upon request. (Cal. Rules of Court, rule 3.860(a))

## **9. Conducting the Mediation Session.**

Mediation is defined as a dispute resolution process in which a trained third party neutral (known as a mediator) facilitates communication between disputants, and assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs, and priorities. The mediator is not the decision maker and does not resolve the dispute; the parties do. Mediation is a flexible, informal, and confidential process that can be less stressful than a formalized trial.

A mediator may employ a variety of techniques, styles, and models of mediation during the mediation process in an attempt to reach an informed, voluntary agreement. Appropriate mediator behavior may include, but is not limited to:

- Providing information about the process
- Addressing obstacles to communication
- Assisting the participants in defining the issues
- Exploring alternatives for resolution
- Building the capacity of the parties to make an informed decision

Under the Court's Mediation Program, mediators may offer a personal evaluation or opinion, but only at the parties' request and as a tool used during the mediation. The Court strongly discourages mediators from offering opinions about the case early on in the process.

California Rules of Court, rules 3.856-3.858, provide the following for conduct of a mediation session:

- a. Competence. A mediator must decline to serve or withdraw if the mediator determines that he or she does not have the requisite skill, knowledge, and ability to conduct the mediation effectively.
- b. Mediation Only. Mediation may not be combined with any other Alternative Dispute Resolution process.

- c. Settlement Agreements. A mediator may present possible settlement options and terms for discussion. A mediator may also assist the parties in preparing a written statement, provided that in doing so, the mediator confines the assistance to stating the settlement as determined by the parties.
- d. Termination. A mediator may suspend or terminate the mediation or withdraw as mediator when he or she reasonably believes the circumstances require it, including whether he or she suspects that:
  - The mediation is being used to further illegal conduct.
  - A participant is unable to participate meaningfully in negotiations.
  - Continuation of the process would cause significant harm.

#### **10. Mediator Requirements for Providing Information to the Court.**

A *Voluntary Mediation Completion Report* must be returned to the Court in every case. The *Voluntary Mediation Completion Report* is due ten days after the mediation is completed. If the mediation is not completed within the 60 day limit, the *Voluntary Mediation Completion Report* must be submitted no later than ten days after the date specified in the *Notice of Acceptance* for completion of the mediation.

#### **11. Qualifications and Requirements for Mediation Panel Members.**

- a. Training and Experience. The applicant must have successfully completed at least 30 hours of mediator training from a recognized provider. The 30 hours must include at least one basic/introductory mediator training course consisting of 10 hours of classroom training and 10 hours of experiential training (e.g., role playing) as outlined by the California Dispute Resolution Programs Act (DRPA) guidelines (16 Cal. Code of Reg. section 3622(d)). In addition, applicants must have conducted three mediations of two hours or more during the preceding three years or have shadowed a qualified mediator who meets the qualifications to be on the Napa County mediation panel for three mediations of two hours or more during the preceding three years. For this purpose, mediations refers to the number of cases mediated, not the number of mediation sessions.
- b. In Lieu Experience. In lieu of the training required in subsection a, an applicant may describe his or her experience in conducting mediations that demonstrates his or her abilities and competence in

the field of mediation. A determination as to the applicant's suitability for panel membership shall be made in the court's sole discretion.

- c. Disclosure, Disqualification, and Recordkeeping Requirements.
- i. Applicants must agree to comply at all times with California Code of Civil Procedure section 170.1 and California Rules of Court, rule 10.781(b)(1).
  - ii. All disclosures and disqualifications must be in writing, and the writing must be maintained for four years following completion of the mediation.
  - iii. Mediators must make disclosure and disqualification documents available to the Court upon request.
  - iv. Failure to fulfill these requirements is grounds for the mediator's removal from the program.
- d. Place of Mediation. Mediations should be held at a location and time that is agreeable to the litigants and the mediator and conducted in facilities that are considered professional and appropriate for mediation by the Court (e.g. mediation offices, law firms, or other appropriate conference room facilities).
- e. References. Applicants must provide two references from persons who appeared before the applicant in mediation as a party or attorney.
- f. Criminal/Disciplinary Actions. Applicants must notify the Court and provide a written explanation if the applicant has ever been:
- i. Charged with, pleaded guilty or no contest to, or convicted of a felony or a misdemeanor; or
  - ii. Suspended or subject to disciplinary action as a result of an investigation by any professional organization, public entity, or mediation program.
- The Court will take the explanation and circumstances under consideration as it reviews applications.
- g. Vexatious Litigant. The applicant must not have been declared a vexatious litigant.

- h. Pro Bono Services. Mediators must agree to serve as a mediator on a pro bono basis in at least three cases per 12 month period, not to exceed three hours per case.
- i. Orientation Session. Applicants must attend a program orientation session required by the Court.
- j. Website. Mediators must permit the Court to place mediator information on the Court's website and in the Court's mediator directories and listings.
- k. Advertisement. A mediator may indicate in his or her marketing materials that he or she 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.

## **12. Maintaining Panel Status.**

To maintain status as a member of the mediation panel, mediators must:

- a. Provide the Court with a current and updated address and biographical information, including the address of the ADR firm or agency that handles administration for the mediator and direct contact information for the mediator, including telephone number and e-mail address.
- b. Have mediated at least one case referred under the Mediation Program within the past 24 months, unless otherwise approved by the Court. The operative date to determine mediation will be the date of referral and not the date the case was actually mediated.
- c. Complete four hours of approved continuing education annually focused on mediation skills, process, and standards.
- d. Comply with the Court's procedures regarding mediation timelines, case administration, party notification, post-mediation paperwork, and program evaluation.
- e. 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.
- f. Comply with all statutes, rules of court and ethical standards applicable to mediation.

### **13. Compensation.**

The Court provides no compensation to a mediator. The mediator and parties may agree to a fee for any time incurred after the first three hours of pro bono mediation.

### **14. Panel Description and Lists.**

In accordance with California Rules of Court, rule 10.781(b), the *Mediator Panel Listing*, *Subject Area Experience Listing*, and *Mediator Profiles* are maintained in the clerk's office and on the Court's mediation web pages.

Although the Court will make the mediator profiles and the subject area listing available to the parties to assist in their selection, the Court does not independently examine or guarantee the designation of *subject area experience* or *types of disputes handled* in the *Mediator Profiles* or the *Subject Area Experience Listing*. Mediators are expected to be entirely candid and accurate in the representation of their background and areas of experience.

### **15. Resignation.**

Any mediation panel member may resign at any time by communicating in writing with the Court Executive Officer, with the understanding that all cases referred to the mediator will be completed and all forms and program-related materials will be submitted to the Court.

### **16. Removal.**

- a. It is a goal of the Court to encourage excellence in mediation practice by setting guidelines, policies, and procedures that promote honesty, impartiality, and integrity in mediation. The California Rules of Court outline the Court's expectation that mediators will conduct themselves in accordance with the highest ethical standards. Mediators on the mediation panel will be expected to comply with all requirements outlined by the guidelines, policies, and procedures, and the California Rules of Court.
- b. Mediators serve at the pleasure of the Court and may be removed from the mediation panel at any time at the sole discretion of the Court without cause.
- c. The Court may use informal or formal means to deal with complaints or issues relating to panel members and maintaining excellence in the practice of mediation under the Mediation Program. If a complaint against a mediator is made, the Court will determine whether the mediator will be removed from the active list pending investigation of the complaint.

- d. In the event a mediator does not comply with the provisions of these guidelines, the Court may remove the mediator for noncompliance. Once removed, the mediator will be required to submit a new application when the Court is accepting such applications, and must be approved by the Court and Bar Association ADR Committee in order to again be placed on the mediation panel.