



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION MEDIATOR AND JUDICIAL ARBITRATOR LISTS POLICY

I. Purpose

This document establishes and memorializes the San Diego Superior Court's policy regarding the appointment and service of civil mediators and judicial arbitrators as part of the court's Alternative Dispute Resolution Program.

II. Policy

The court's Civil Alternative Dispute Resolution Program (ADR Program) is designed to help parties resolve their disputes without going to trial. The program includes Civil Mediation and Judicial Arbitration.

A. Civil Mediation Program

Mediation is a confidential, non-binding process in which a trained mediator facilitates communication between disputants and assists parties in reaching a mutually acceptable resolution of all or part of their dispute.

1. The court maintains a Civil Mediator Panel List (Mediator List) of mediators who have met certain minimum qualifications established by law, the California Rules of Court, and court policy. The list is maintained as a public service. Providers on the list are not employed by, under contract with, or otherwise affiliated with the court. The court does not endorse, recommend, or make any warranty as to the qualifications or competency of any provider on the list. Inclusion on the list is based on the representations of the provider. The court assumes no responsibility or liability of any kind for any act or omission of any provider on the list.

2. Requirements to be Included on the Mediator List

a. Education

Applicants must have a Bachelor's Degree from an accredited college or university.

b. Training

Applicants must have completed a minimum of 32 hours of mediator training from a recognized training provider. Mediator training must include:

- At least one introductory mediator training course consisting of 10 hours of classroom training.
- Ten hours of experimental training (i.e., role playing, as outlined by the California Dispute Resolution Programs Act Guidelines).
- Five hours of advanced or specialized training (i.e. bar association or other MCLE or CME programs pertaining to mediation skills).

c. Experience

- Applicants must have mediated or co-mediated at least eight mediations, each of at least two hours in length within the previous three years. Co-mediations with a mediator who is already on the court's Mediator List or co-mediations through a recognized community-based mediation center that utilized a co-mediation model will satisfy this requirement.
- "Mediations" refers to the number of cases mediated, not the number of mediation sessions held.
- Settlement conferences or arbitrations conducted as mediations or that become mediations do not serve to satisfy this requirement.

d. Facilities

- Applicants must maintain a primary mediation practice or primary place of business within San Diego County.
- With the consent of the parties, mediation sessions may be conducted remotely (e.g., via video conference or other means).
- All in-person mediation sessions must be conducted in facilities that are professional and considered appropriate for mediation (e.g., mediation offices, law firms, bar association offices, or other appropriate conference room facilities); personal residences are not appropriate.

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- Mediation locations must accommodate persons with disabilities. Guidance concerning the responsibility of mediators to provide disability accommodation may be found on the following websites:
 - www.eeoc.gov/eeoc/mediation/ada-mediators.cfm.
 - www.eeoc.gov/eeoc/mediation/ada-parties.cfm.
 - Mediators must arrange for their own mediation facilities.
 - Mediations are not to be conducted in counsel's offices unless the parties request or prefer that location.
 - Court facilities may not be used for mediations, unless ordered by the court or requested by the ADR Administrator.
- e. Insurance
- Mediators are encouraged to maintain professional liability insurance coverage, but it is not a requirement for appointment.
- f. References and Reference Letters
- Applicants must provide three professional references.
 - Applicants must provide two reference letters, one of which must be from a party or attorney who appeared before the applicant in a mediation (as an attorney or party).
3. Application Requirements
- a. Applicants must timely submit all application materials.
- b. Applicants must complete and execute Part A of the Application to Serve as a Mediator and/or Arbitrator (SDSC Form #CIV-023).
- c. Applicants must submit a written explanation if they have ever been:
- Charged with, pled guilty or no contest to, or convicted of a felony or misdemeanor.
 - Had judgment entered against them in any civil action for actual fraud or punitive damages.
 - Suspended or subject to disciplinary action as a result of an investigation from any professional organization, public entity, or mediation program, or any other matters enumerated in Cal. Rules of Court, rule 3.856(c).
- d. Applicants must have never been declared a vexatious litigant.
4. Compensation
- Mediators are compensated by the parties as prescribed by the California Rules of Court and San Diego Superior Court Local Rules. Individuals on the Mediator List must agree to abide by the following compensation policy:
- a. Payment and Collection of Fees: Mediators are responsible for the collection of fees and are compensated directly by the parties. The fees and expenses of mediators must be shared equally between the parties, unless otherwise agreed upon and provided to the mediator through written consent. The court will not assist with collection or any fee dispute issues pertaining to mediation under the Civil Mediation Program.
- b. Hourly Rate: Mediators may charge parties a maximum of \$150.00 per hour for each of the first two hours in a limited civil action, or \$250.00 per hour for each of the first two hours in an unlimited civil action. Thereafter (hour three and beyond), the mediator may charge the mediator's regular hourly rate.
- c. Additional Charges: Mediators may not charge parties for preparation or administrative time.
- d. Advanced Deposit of Fees: A mediator may require a deposit of fees, not to exceed the amounts specified above for two hours of mediation in a limited or unlimited civil action.
- e. Cancellation Fees: Mediators may establish their own cancellation fees and policies which must be clearly stated in the Mediator Profile and the Pre-Mediation Notice to parties.
- f. Duty to Disclose Compensation Policy: Mediators must declare their regular, individual hourly rates (for hour three and beyond) and any deposit, cancellation, or other compensation policies in their Mediator Profile and in the Pre-Mediation Notice to the parties.
5. Maintaining Mediator List Status
- a. Compliance
- To remain on the Mediator List, mediators must fully comply with this policy and all other relevant court policies, procedures, local rules, timelines, and guidelines, in addition to relevant California law, including but not limited to those stated in the following:
- Cal. Rules of Court, rules 3.850 et seq. and rule 10.781(b).
 - Code of Civil Procedure § 170.1 as applicable to mediators pursuant to Cal. Rules of Court, rule 3.855.
 - Evidence Code §§ 703.5 and 1115 et seq.

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- San Diego Superior Court Rules, Division II, Rules 2.3.2 and 2.3.2.1.
- b. Continuing Mediation Education (CME)
On or before February 1 of every calendar year, mediators on the Mediator List must provide the ADR Administrator with a declaration (and documentation, if requested) of successful completion of the following CME requirements for the previous calendar year.
- At least four hours of approved CME credits. CME credits must focus on mediation skills, processes, and standards, and at least one of the four hours must focus on ethical issues.
 - One ethics CME credit must be satisfied in a classroom or similar educational setting; remote participation is acceptable if allowed by the provider.
 - Three CME hours may be satisfied in an educational setting or with sufficient recent mediation experience as follows:
 - Two hours of CME credit may be satisfied by facilitating a CME course that is at least two hours in length. At least one hour of the course must focus on ethics while the other hour may focus on mediation skills, processes, and standards.
 - Two hours of CME credit may be satisfied by completing ten or more mediations of general civil cases in the 12 preceding months, each lasting at least two hours in length.
- c. Minimum Number of Mediations
Mediators must have mediated at least one case under the Civil Mediation Program in the past 24 months (the operative date is the date of referral, not the date the case is mediated).
- d. Additional Requirements
- Mandatory Meetings: Mediators must attend any mandatory meetings required by the court.
 - Program Evaluation: Mediators must participate in program evaluation and distribute post-mediation surveys if requested by the court.
 - Mediator Profiles: Mediators must fully comply with Cal. Rules of Court, rule 3.856(b) (Truthful Representation of Background) and agree to authorize the San Diego Superior Court to place the mediator's information on the San Diego Superior Court's website, and on the Mediator List.
 - Marketing: Mediators must fully comply with Cal. Rules of Court, rule 3.858 and specifically refrain from indicating that they are "approved, endorsed, certified, or licensed by the court."
 - Impartiality, Conflicts, Disclosure, Disqualification, and/or Withdrawal: In addition to fully complying with Cal. Rules of Court, rules 3.855, 3.856, 3.857, and 3.859, and Code of Civil Procedure § 170.1 as it relates to mediators, all disclosures, disqualifications, and withdrawals must be documented in writing. Mediators must maintain these writings for four years following completion of a mediation and make them available to the ADR Administrator upon request.
- e. Mediators who fail to satisfy any of these requirements may be removed from the Mediator List and must re-apply to be placed back on the Mediator List.
6. Removal from List
- a. A Mediator on the Mediator List may request to be removed from the list at any time by submitting a written request to the ADR Administrator. All of the mediator's cases must be completed prior to the effective date of the resignation.
 - b. Mediators on the Mediator List serve at the pleasure of the court and may be removed from the list at any time, with or without cause. Failure to comply with applicable law, the California Rules of Court, or court policy, constitutes grounds for removal from the Mediator List. If a mediator is removed, he or she must re-apply to be placed back on the Mediator List.
7. Continuing Duty to Disclose
Any person appointed by the court to serve as a mediator has a continuing duty to disclose to the court any material changes in facts or circumstances that affect the person's eligibility or ability to serve as a mediator. Mediators must notify the ADR Administrator in writing within 10 days if:
- a. Public discipline has been imposed upon the mediator by any public disciplinary or professional licensing agency.
 - b. The mediator has resigned the mediator's membership in the State Bar or other professional licensing agency while disciplinary or criminal charges were pending.
 - c. Mediator has been charged with, plead guilty or no contest to, or has been convicted of a felony or misdemeanor.
 - d. There has been an entry of judgment against the mediator in any civil action for actual fraud or punitive damages.

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- e Mediator has been declared a vexatious litigant.
- f. Mediator has been suspended or subject to disciplinary action as a result of an investigation from any professional organization, public entity, or mediation program.
8. Mediator Selection and Assignment
- a. Mediators – Active/Inactive Status
Mediators who are, or will be, unable to accept assignments for a specific time period, must notify the ADR Administrator to be temporarily placed on an inactivate status during that period. The mediator must contact the ADR Administrator to be returned to the active/eligible list thereafter.
- b. Accepting the Assignment
When a mediator is assigned a case for mediation, the court will issue a Notice of Assignment. Within 10 days of the issuance of the Notice, the assigned mediator must notify the court and the parties and/or counsel if the mediator is unable to accept the assignment. During this period the mediator must:
- Determine Participants / Conflicts of Interest
Mediators must perform a conflict of interest check pursuant to Cal. Rules of Court, rule 3.855 and Code of Civil Procedure § 170.1 concerning matters potentially affecting their impartiality.
 - Determine if there are additional parties, counsel, or other interested persons who may participate in the mediation.
 - Email the ADR Clerk at the court location in which the case was filed, by email at ADR@sdcourt.ca.gov, to request to be removed as the primary mediator from the case.
- c. Alternate Mediators
If the primary mediator is unable to accept the assignment, an alternate mediator will be assigned and a new Notice of Assignment of Mediator will be issued. The alternate mediator will then need to perform the above steps governing Participants/Conflicts of Interest and Competence/Assessment of Skills in order to accept or decline the assignment within 10 days of the issuance of the new Notice. The mediation session will need to be completed within the original assignment timeframe.
9. Scheduling a Mediation Session / Extensions of Time
If the mediator is unable to schedule a session within 120 days of the Notice, the mediator must contact the ADR Clerk at the court location in which the case was filed, by email at ADR@sdcourt.ca.gov, to request a one-time 30-day extension.
10. Conducting the Mediation Session
- a. Pre-Mediation Notice to the Parties
- Once mediation has been scheduled, the mediator must provide a written pre-mediation notice to the parties, which must include the following:
 - Date, time, and location of the mediation.
 - Timeframe for completion of mediation as stated on the Notice of Assignment of Mediator.
 - Required attendance at mediation and mediation brief policy.
 - Required disclosures in accordance with Cal. Rules of Court, rule 3.855 and Code of Civil Procedure § 170.1 to the extent known prior to the mediation.
 - An explanation of mediation confidentiality pursuant to Cal. Rules of Court, rule 3.854, and Evidence Code §§ 703.5 and 1115 et seq.
 - Any fees, costs, or charges to be paid to the mediator in accordance with Cal. Rules of Court, rule 3.859.
 - Mediators are required to provide the parties, counsel, and mediation participants with information required by the California Rules of Court, including but not limited to rules 3.853, 3.854, 3.855, and 3.857.
11. Post-Mediation
Pursuant to Cal. Rules of Court, rule 3.895, and San Diego Superior Court Local Rules, rule 2.3.2, following mediation, a Statement of Agreement/Non-Agreement (Judicial Council Form #ADR-100) must be filed and served within 10 days of either of the following:
- a. The conclusion of the mediation.
- b. The court-ordered deadline for conducting mediation.
12. Complaints
All grievances, complaints, or issues concerning the conduct of mediator on the San Diego Superior Court's Civil Mediator List will follow the procedure established in San Diego Superior Court Local Rules, rule 2.3.2.1.

B. Judicial Arbitration Program

In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding."

1. The court maintains a list of judicial arbitrators who have met the qualifications established by Superior Court Local Rules, Division 2 Chapter 3; Code of Civil Procedure sections 1141.10 et seq.; and this policy. The court provides the Judicial Arbitrator List as a public service. Providers on the list are not employed by, under contract with, or otherwise affiliated with the court. The court does not endorse, recommend, or make any warranty as to the qualifications or competency of any provider on the list. Inclusion on the list is based on the representations of the provider. The court assumes no responsibility or liability of any kind for any act or omission of any provider on the list.
2. Requirements to be Included on Judicial Arbitrator List
 - a. Legal Practice

Applicants must be an active or inactive member of the California State Bar for at least ten years in good standing without any pending disciplinary action.
 - b. Training

There are no minimum training requirements. Applicants must complete training that demonstrates the applicant's qualifications to be included on the Judicial Arbitrator List.
 - c. Experience

There is no minimum number of proceedings that an applicant must have arbitrated to be included on the Judicial Arbitrator List. Applicants are asked to provide the number of proceedings arbitrated, by type of action.
 - d. Facilities
 - Applicants must maintain a place of business within San Diego County at which to conduct arbitration sessions.
 - With the consent of the parties, arbitration sessions may be conducted remotely (e.g., via video conference or other means).
 - All in-person arbitration sessions must be conducted in facilities that are professional and considered appropriate for arbitration (e.g., offices, law firms, bar association offices, or other appropriate conference room facilities); personal residences are not appropriate.
 - Arbitration locations must accommodate persons with disabilities. Guidance concerning the responsibility of arbitrators to provide disability accommodation may be found at the following websites:
 - www.eeoc.gov/eeoc/mediation/ada-mediators.cfm; and
 - www.eeoc.gov/eeoc/mediation/ada-parties.cfm
 - Arbitrators must arrange for their own arbitration facilities.
 - Arbitrations are not to be conducted in counsel's offices unless the parties request or prefer that location.
 - Court facilities may not be used for arbitrations, unless ordered by the court or requested by the ADR Administrator
 - e. Insurance

Arbitrators are encouraged to maintain professional liability insurance coverage, but it is not a requirement for appointment.
3. Application Requirements
 - a. Applicants must timely submit all application materials.
 - b. Applicants must complete and execute Part B of the Application to Serve as Mediator and/or Arbitrator (SDSC Form #CIV-023).
4. Compensation

Arbitrators are compensated by the parties and the court will not assist with collection or any fee dispute issues pertaining to arbitration under the Judicial Arbitration Program. There are no established state or local compensation policies or standards.
5. Removal from List
 - a. An arbitrator on the Judicial Arbitrator List may request to be removed from the list at any time by submitting a written request to the ADR Administrator. All of the arbitrator's cases must be completed prior to the effective date of the resignation.
 - b. Arbitrators on the Judicial Arbitrator List serve at the pleasure of the court and may be removed from the list at any time, with or without cause. Failure to comply with applicable law, the California Rules of Court, or court policy constitutes grounds for removal from the

list. If an arbitrator is removed, the arbitrator must re-apply to be placed back on the Judicial Arbitrator List.

6. Continuing Duty to Disclose

Any person appointed by the court to serve as an arbitrator has a continuing duty to disclose to the court any material changes in facts or circumstances that affect the person's ability to serve as an arbitrator. Arbitrators must notify the ADR Administrator in writing within 10 days if:

- a. Public discipline has been imposed upon the arbitrator by any public disciplinary or professional licensing agency.
- b. The arbitrator has resigned the arbitrator's membership in the State Bar or other professional licensing agency while disciplinary or criminal charges were pending.
- c. The arbitrator has been charged with, plead guilty or no contest to, or has been convicted of a felony or misdemeanor.
- d. There has been an entry of judgment against the arbitrator in any civil action for actual fraud or punitive damages.
- e. The arbitrator has been declared a vexatious litigant.
- f. The arbitrator has been suspended or subject to disciplinary action as a result of an investigation from any professional organization, public entity, or arbitration program.