

### CHAPTER 3 ALTERNATIVE DISPUTE RESOLUTION (ADR)

**ADR Policy Statement.** It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution (“ADR”) in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court’s expectation that litigants will utilize some form of ADR – i.e., the court’s mediation and arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

#### **Rule 2.3.1**

##### **Judicial Arbitration**

**A. Submission to Arbitration.** The court elects to come within the provisions of Code of Civil Procedure section 1141.11 et seq. regarding judicial arbitration of all at-issue civil actions which are not exempt. All actions submitted to arbitration pursuant to these sections will be subject to the provisions contained therein, as well as rules of procedure set forth in the California Rules of Court, rule 3.810 et seq., and in these rules.

**B. Policy.** It is the policy of the court to discourage any unnecessary delay in civil actions. Continuances are discouraged and timely resolution of all actions, including matters submitted to any form of ADR, is encouraged.

After a case is “at issue,” the court may order it to judicial arbitration. Counsel must be prepared to discuss whether the arbitration will be binding or non-binding, and to select an arbitrator. Dismissal of all unserved, non-appearing, and fictitiously named parties will also be addressed. The court will propose dates to exchange information concerning expert witnesses and their discoverable reports and writings in accordance with rule 2.3.3. Although the demand requirement under Code of Civil Procedure section 2034.210, et seq. may be dispensed with at this hearing, all other provisions of section 2034.210 et seq. and rule 2.3.3 will be strictly enforced.

**C. Exemption from Arbitration.** Matters which are exempt from judicial arbitration are set forth in the California Rules of Court, rule 3.811, and Code of Civil Procedure section 1141.11.

Unless otherwise ordered by the court, the following categories of actions are also exempt from arbitration, as provided by the California Rules of Court, rule 3.811, and will be set directly for trial:

1. Civil actions in which no jury trial is demanded and the estimated time for trial is one day or less;
2. Civil actions in which any party is not represented by counsel;
3. Civil actions for which there will be an expedited jury trial;
4. Civil actions in which the parties stipulate to attend mediation; and
5. Collection Cases as defined by California Rules of Court, rule 3.740.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2004; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2018)

#### **Rule 2.3.2**

##### **Arbitration Procedures**

Arbitration rules of procedure are set forth in the California Rules of Court, rule 3.810 et seq., and in these rules.

**A. Appointment of Arbitrator.** At the Case Management Conference, the parties must stipulate to the appointment of any arbitrator on the list of superior court arbitrators. If the parties do not stipulate, the judge who ordered the case to judicial arbitration will appoint the arbitrator. The appointment of an arbitrator will be effective immediately and will extend for 90 days. Before any person may be appointed as an arbitrator, that person must provide a statement on a form provided by the court that they have read and will comply with the provisions of rule 2.3.1, subdivision A.

**B. Continuances.** The court discourages continuances. Rules regarding continuances of arbitration hearings are set forth in the California Rules of Court. Rules regarding the completion of cases within 90 days and the reappointment of an arbitrator for good cause are set forth in the California Rules of Court. If a continuance is denied or 90 days have elapsed from the time of appointment, it is mandatory that all parties appear before the judge who ordered the case to judicial arbitration. If it appears to the court that a request for continuance is not made with good cause, the court may impose monetary sanctions upon the requesting party.

**C. Conduct of the Arbitration Hearing.** The arbitration hearing must be conducted as follows:

1. The arbitrator must administer the oath;
2. Counsel and the arbitrator are to be formally addressed as Mr., Mrs., Miss, or Ms. during the hearing;
3. At the time of the arbitration hearing, or at any other time designated by the arbitrator, each attorney must submit to the arbitrator (not the court) the following, unless excused from doing so by the arbitrator:
  - a. Copies of any offered pleading, arranged chronologically and appropriately highlighted;
  - b. Copies of any offered deposition transcript or record appropriately highlighted;
  - c. An arbitration brief consisting of:
    - (1) A concise statement of facts;
    - (2) Legal and factual contentions of each party;

(3) A statement of damages sought to be awarded including the amount claimed, medical expenses, and property damage;

(4) Copies of medical reports and bills;

(5) Copies of appraisals/repair estimates; and

(6) Copies of repair bills.

d. If the arbitration award is not filed within 10 days after the arbitration hearing, or an extension of 20 days is not granted pursuant to the California Rules of Court, rule 3.825(b), either party may notify the arbitration department. The arbitrator will then be requested to submit the award or appear before the judge who ordered the case to judicial arbitration to show cause why rule 3.825(b) of the California Rules of Court was not satisfied.

(Adopted 1/1/1998; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008)

### **Rule 2.3.3**

#### **Exchange of Experts After Arbitration**

Failure to comply with this rule may result in a party's inability to call one or more expert witnesses at trial, or subject the noncomplying party to monetary sanctions.

Pursuant to the stipulation of the parties at the Case Management Conference, exchange of experts after arbitration must be made according to the following schedule:

**A. Initial Exchange.** Within 15 days of the date of any method of service of a trial de novo request, pursuant to Code of Civil Procedure sections 2034.260 and 2034.270 each party must personally serve on all other parties a designation of expert witnesses who will be relied upon at the trial de novo, along with all discoverable reports and writings, if any, of those experts. However, service by mail of the above designation is permitted if made within 10 days of service of the trial de novo request. Parties will be permitted to designate only those experts they in fact intend to call at trial. It is the policy of the courts that parties are limited to one expert per side per field of expertise, pursuant to Evidence Code section 723 and rule 2.1.11, absent a court order to the contrary.

**B. Supplemental Exchange.** Any supplemental designation of experts must be personally served within five days of any personal service of the opponent's initial list, or within 10 days of any mail service of the opponent's initial list.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2010)

### **Rule 2.3.4**

#### **Request for Trial De Novo**

A request for trial de novo must be filed in the civil business office pursuant to Code of Civil Procedure section 1141.20 and the case will be set for trial.

Withdrawal of Trial de Novo Requests. If a party has requested trial de novo, the request may be withdrawn by a written stipulation, signed by counsel for all parties appearing in the case, that the award may be ordered as a judgment.

(Adopted 1/1/1998; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006; Rev. 1/1/2010)

### **Rule 2.3.5**

#### **Prohibition Against Post Arbitration Discovery**

Stipulations for post arbitration discovery pursuant to Code of Civil Procedure section 1141.24 will be recognized by the court, provided that no such stipulation modifies, extends, or avoids any procedure or deadline established by these rules or order of the court. Expert discovery is not within the prohibition of post arbitration discovery codified under Code of Civil Procedure section 1141.24, but is subject to the applicable rules and orders of the court.

(Adopted 1/1/1998; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2010)

### **Rule 2.3.6**

#### **Monetary Sanctions**

In addition to the provisions of the California Rules of Court, rule 3.829, regarding notification of settlement, failure of the parties to notify the arbitrator and the court of a continuance or their inability to proceed at least two court days prior to the time set for the arbitration hearing may, upon written notice given by the court, result in an order to show cause why the parties should not pay \$150 or other sanctions.

(Adopted 1/1/1998; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008)

### **Rule 2.3.7**

#### **Civil Mediation Program**

All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the Civil Mediation Program.

**A. Stipulation to Mediation.** At any time prior to the Case Management Conference, parties may stipulate to mediation. The stipulation must include the name, address and phone number of the mediator and one alternate mediator, or parties may utilize the Stipulation to Use ADR (SDSC Form CIV-359). If the stipulation is granted, Assignment of Mediator notices will be issued.

**B. Case Management Conference.** If parties do not stipulate to mediation prior to the Case Management Conference, the judge will encourage all parties to consider mediation or other ADR options. If the court determines a mediator would assist in the resolution of a case, parties will be asked to stipulate to mediation which will be reflected on the Case Management Conference's Minute Order.

**C. Panel of Mediators.** Parties may select any mediator to mediate their matter. The 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 and procedures.

**D. Payment of Mediators.** Mediators must be compensated directly by the parties. The fees and expenses of mediators must be shared equally between the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to charge \$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, and their regular hourly rate thereafter for court-referred mediation.

Mediators on the court's approved panel may not charge parties for preparation or administrative time, but may require that fees be deposited in advance of the mediation session and may have cancellation fees and policies.

Parties may also utilize the services of mediators who are not on the court's approved panel. They will be charged the mediator's regular hourly rate and any other fees in accordance with the mediator's policies.

**E. Selection of Mediators.** Parties are encouraged to make their selection at or before the time of the Case Management Conference. Parties may utilize the on-line mediator search and submit their Mediator Selection Form (SDSC CIV-005) via e-mail within five court days of the Case Management Conference. If they are unable to make a selection, the case may be referred back to the court for the setting of a future hearing. If parties agree on a mediator and alternate and notify the court before the hearing, the hearing will be vacated.

**F. Timing of Mediation and Trial Dates.** Cases will be referred to mediation for up to 120 days. At the time of the Case Management Conference, tentative trial dates will also be given. If the mediation has ended in non-agreement, the court will confirm the trial dates given. If parties request an extension of time for mediation, they must file a stipulation indicating the date of the future mediation session. Alternatively, they may contact the mediator to request an extension in 30-day increments which will be subject to approval by the court. In all cases, a Reappointment of Mediator notice will be generated if the extension is approved.

**G. 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 court or the mediator for good cause. If any consent to settle is required for any reason, the party with the consent authority must be personally present at the mediation. (Adopted 2/28/2000; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2013; Rev. 1/1/2014)

### **Rule 2.3.8**

#### **Mediator Complaint Procedure**

Pursuant to California Rules of Court, rule 3.865 et seq., the San Diego Superior Court maintains the following Mediator Complaint Procedure:

**A.** All grievances, complaints or issues concerning the conduct of a mediator on the San Diego Superior Court's Civil Mediation Panel must be referred initially to the ADR Administrator, who has been designated as the Complaint Coordinator. Contact information for the ADR Administrator can be obtained by calling the court's Mediation Program Office at (619) 450-7300 and/or by accessing the court's ADR webpage at the following link: <http://www.sdcourt.ca.gov/adr>.

**B.** After sending the complainant a written acknowledgment that the court has received the complaint, the ADR Administrator will conduct a preliminary review of the complaint to determine whether or not the complaint can be resolved informally and closed. If the complaint is resolved informally or closed after preliminary review, the ADR Administrator will send the complainant written notification that the complaint has been informally resolved and/or closed.

**C.** If the ADR Administrator initiates a complaint against a Mediator on the Court's Panel, the complaint will be referred to the Chair(s) of the Bench ADR Committee, who will determine if the complaint can be summarily resolved and closed or if the complaint must be further investigated.

**D.** If it is determined that further investigation is warranted, the ADR Administrator will send the mediator written notice of the complaint, and the mediator will have 20 days from the mailing of said notice to provide the court with a written response. The Chair(s) of the ADR Committee will designate an individual who has experience as a mediator and who is familiar with the rules of conduct for mediators set forth in California Rules of Court, rule 3.850 et seq., or will establish a complaint committee that has at least one such individual as a member, to conduct the investigation and prepare a written recommendation concerning court action on the complaint. The Chair(s) of the ADR Committee and/or their designee may determine that the mediator will be removed from the active/eligible list pending the final decision on the complaint.

**E.** The final decision on the complaint will be made by the Presiding Judge or his or her designee, who did not conduct the investigation, and the final decision will be communicated to both the complainant and the mediator in writing. The final decision-maker may take one or more of the following action(s): direct that no action be taken on the complaint; counsel, admonish, or reprimand the mediator; impose additional training requirements as a condition of the mediator remaining on the court's panel; temporarily suspend the mediator from the court's panel

or otherwise temporarily prohibit the mediator from receiving future mediation referrals from the court; and/or permanently remove the mediator from the court's panel or otherwise permanently prohibit the mediator from receiving future mediation referrals from the court.

The final decision is in the sole discretion of the final decision-maker and is not subject to any subsequent review or appeal. Ultimately, mediators on the court's Civil Mediation Panel may be temporarily or permanently removed from the panel at any time at the sole discretion of the court without cause.

**F.** All court communications and/or proceedings relative to complaints against mediators on the court's Civil Mediation Panel will occur in private and be kept confidential except as required by law and except for authorized disclosures as follows: after the decision on a complaint against a mediator has been made, the Presiding Judge or his or her designee may authorize the disclosure of information or records concerning the complaint proceeding that do not reveal any mediation communications. The disclosures that may be authorized include the name of the mediator against whom action is being taken, the action taken and the general basis on which the action was taken.

**G.** A person who has participated in a complaint proceeding or otherwise received information that is publicly disclosed will not subsequently hear or determine any contested issue of law, fact, or procedure concerning the dispute that was the subject of the underlying mediation or any other dispute that arises from the mediation as a judge, arbitrator, referee, or juror, or in any other adjudicative capacity, in any court action or proceeding.

(Adopted 1/1/2010; Rev. 1/1/2012)