

**Superior Court of California  
County of San Diego**

**Civil Mediation Program**  
**Mediator Manual**

**February 26, 2020  
(Revised)**

## TABLE OF CONTENTS

<b>I.</b>	<b>General Information .....</b>	<b>1</b>
	A. ADR Policy/Information	
	B. Cases Eligible for the Civil Mediation Program	
	C. Case Management Conference	
	D. Mediation Program Office	
<b>II.</b>	<b>Civil Mediation Panel.....</b>	<b>2</b>
	A. Application	
	B. Initial Eligibility Requirements	
	C. Maintaining Panel Status	
	1. Compliance	
	2. Contact Information	
	3. Minimum Mediations	
	4. CME	
	5. Notification regarding Competence	
	6. Insurance	
	7. Mandatory Meetings	
	8. Program Evaluation	
	9. Mediator Profiles and Lists	
	10. Marketing	
	11. Impartiality, Conflicts, Disclosure, Disqualification and Withdrawal	
	D. Resignation	
	E. Mediator Complaint Procedure	
<b>III.</b>	<b>Mediator Selection and Assignment.....</b>	<b>7</b>
	A. Mediator Selection	
	B. Notice of Assignment	
	C. Accepting the Assignment/Conflicts Check	
<b>IV.</b>	<b>Scheduling the Mediation Session / Extensions of Time.....</b>	<b>9</b>
<b>V.</b>	<b>Conducting the Mediation Session.....</b>	<b>10</b>
	A. Pre-Mediation Notice to the Parties	
	B. Ethical Standards and Rules of Conduct	
	C. Mediation Style	
	D. Mediation Location	
	E. Attendance at Mediation and Procedure for Mediation Briefs	
<b>VI.</b>	<b>Compensation.....</b>	<b>14</b>
	A. Reduced Hourly Rate	
	B. Additional Charges	
	C. Deposit and Cancellation Fees	
	D. Payment and Collection of Fees	
	E. Compensation Disclosure	
<b>VII.</b>	<b>Post-Mediation.....</b>	<b>15</b>
	A. Statement of Agreement/Non-Agreement (ADR-100)	
	B. Attendance Sheet for Court-Program Mediation of Civil Case (ADR-107)	
<b>VIII.</b>	<b>Declaration.....</b>	<b>16</b>

## **I. General Information**

### **A. ADR Policy / Information**

“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 ADR 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, voluntary settlement, and arbitration programs or other available private ADR options as a mechanism for case settlement before trial.” [Local Rules, Division II, Chapter3.]

In accordance with California Rules of Court, rule 3.221, the court makes available to the plaintiff, at the time the complaint is filed in all general civil cases, an alternative dispute resolution (ADR) information package, which the plaintiff must serve on each defendant along with the complaint.

Additional ADR information is available on the court’s ADR webpage at the following link: <http://www.sdcourt.ca.gov/adr>

### **B. Cases Eligible for the 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.” [See Local Rule 2.3.2.]

### **C. Case Management Conference**

In general civil cases, a Case Management Conference (CMC) is held approximately 150 days after the filing of the complaint. At any time prior to or during the Case Management Conference (CMC), parties may agree to stipulate to mediation. If parties do not stipulate to mediation prior to the CMC, the judge will encourage all parties to consider mediation or other ADR options during the CMC. If it is determined that a mediator could assist in the resolution of a case, parties will be asked to stipulate to mediation which will be reflected on the CMC Minute Order.

If the stipulation is approved, an order referring the case to mediation will be issued. Cases are generally referred to mediation for 90 days, but additional time may be permitted by the court. If parties elect to use the court’s Civil Mediation Program, they must complete and file a Mediator Selection Form (CIV-005) within 5 court days of their CMC, and thereafter, a Notice of Assignment of Mediator will be issued and the mediator will contact all parties to schedule the mediation session(s).

**D. Mediation Program Office**

The Court maintains a Mediation Program Office, located in the Central Division, to which all general inquiries concerning mediation and the Civil Mediation Program should be directed.

Mediation Program Office  
Hall of Justice, Rm. 225  
330 W. Broadway  
San Diego, CA 92101  
(619) 450-7478  
(619) 450-7355 (fax)

It should be noted that staff at the Mediation Program Office cannot give legal advice and may not be able to answer certain case-specific questions. Communications concerning non-routine matters, including but not limited to complaints against a mediator, should be directed to the Court's ADR Clerk via e-mail at [mediator@sdcourt.ca.gov](mailto:mediator@sdcourt.ca.gov).

**II. Civil Mediation Panel**

**A. Application**

When the court is accepting applications to serve on the court's Civil Mediation Panel, application materials and relevant deadlines will be available on the court's ADR webpage at the following link: <http://www.sdcourt.ca.gov/adr>. Successful applicants will be placed on the eligible mediator list following the submission of all required paperwork.

**B. Initial Eligibility Requirements**

In order to qualify for the court's Civil Mediation Panel, in addition to timely submitting all application materials, applicants must meet all of the following minimum requirements, unless it is determined by the Chair(s) of the ADR Committee or their designee, in their sole discretion, that an applicant has presented other satisfactory evidence of sufficient education, training, skills and experience to alternatively qualify for the court's Civil Mediation Panel.

**1. Minimum Education and Training Requirements**

- a. A bachelor's degree from an accredited college or university;  
*and*
- b. At least thirty-two (32) hours of mediator training from a recognized training provider, or other equivalent training the court deems to meet this Education Requirement.

The mediator training must include at least one basic/introductory mediator training course consisting of ten (10) hours of classroom training, ten (10) hours of experiential training (e.g., role playing, as outlined by the California Dispute Resolution Programs Act

guidelines), and 5 hours of advanced training or specialized training (i.e. bar association or other MCLE or CME programs pertaining to mediation skills).

**2. Minimum Experience Requirements**

Must have mediated or co-mediated at least six mediations of at least two hours in length. Co-mediations with a mediator who is already on the court's panel or co-mediations through a recognized community based mediation center that utilized a co-mediation model would serve to satisfy this minimum requirement. "Mediations" refers to number of cases mediated, not number of mediation sessions. Settlement conferences or arbitrations conducted as mediations or that become mediations do not serve to satisfy this requirement.

**3. Additional Requirements**

- a. Maintain a primary mediation practice or primary place of business within San Diego County.
- b. Complete and fully execute the Mediator Application (SDSC Form CIV-023), which includes but is not limited to a section requiring applicants to provide the court with at least two professional reference letters, one of which must be from a party or attorney who appeared before you in mediation
- c. Provide a written explanation for the court's consideration if you have ever been 1) charged with, pleaded guilty or no contest to, or convicted of, the violation of a felony or misdemeanor; or 2) suspended or subject to disciplinary action as a result of an investigation from any professional organization, public entity or mediation program in addition to providing a written explanation relative to any other matters enumerated in California Rules of Court, rule 3.856.
- d. Have never been declared a vexatious litigant; and
- e. Have read and agreed to comply with all provisions of the Mediator Manual, including but not limited to the provisions included in the following section entitled "Maintaining Panel Status."

**C. Maintaining Panel Status**

The San Diego Superior Court encourages excellence in mediation practice and has established guidelines, policies and procedures that incorporate and often go beyond the Rules of Conduct for Mediators in the California Rules of Court, rule 3.850 et seq. in order to further promote public confidence in the Court's Civil Mediation Program.

Although mediators on the Court's Panel serve at the pleasure of the court and may be temporarily or permanently removed from the panel at any

time at the sole discretion of the court without cause, it is noted that failure to fully comply with relevant California statutes or Rules of Court, San Diego Superior Court Rules, and/or written requirements or policies and procedures of the San Diego Superior Court's Civil Mediation Program would constitute grounds for temporary or permanent removal from the Court's panel. If a Mediator is temporarily removed, he or she may have to re-apply in order to be returned to the active/eligible list.

### **1. Compliance**

Mediators must fully comply with all 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:

- California Rules of Court, rules 3.850 et seq. and 10.781(b)
- California Code of Civil Procedure 170.1 as applicable to mediators pursuant to CRC 3.855
- California Evidence Code sections 703.5 and 1115 et seq.
- San Diego Superior Court Rules, Division II, Rules 2.3.2 and 2.3.2.1
- The Mediator Manual
- Mediator Updates (that outline new policies or requirements)
- Any special mailing to panelists that outlines new requirements or expectations

### **2. Contact Information**

Maintain a primary mediation practice or primary place of business within San Diego County and provide and update the Mediation Program Office with current contact information, which includes a physical address (no P.O. Box addresses, please), phone number and e-mail address, and if applicable the San Diego County address of the ADR firm or agency that handles administration for the mediator.

### **3. Minimum Mediations**

Have mediated at least one case referred under the Civil Mediation Program in the past 24 months (the operative dates shall be the date of referral, not the date the case is actually mediated).

Mediators who fail to satisfy the minimum mediations requirement will be removed from the active panel list for at least 12 months and must apply for reinstatement. Applications for reinstatement will be reviewed on a case-by-case basis, but at a minimum, applicants will be required to (1) have mediated or co-mediated a minimum of two mediations of at least two hours in length during the calendar year following the removal date; and (2) provide a reference from at least one party or attorney who appeared before them in one of those mediations.

#### **4. CME**

Complete at least four (4) hours of approved Continuing Mediation Education (CME) credits annually. The CME must focus on mediation skills, process and standards, and at least one of the four hours must focus on ethical issues.

The one (1) ethics CME credit must be satisfied in a classroom or similar educational setting whereas the three (3) CME hours that focus on mediation skills, process, and standards may be satisfied in an educational setting or with sufficient recent mediation experience as follows: completing ten or more mediations of general civil cases in the 12 preceding months, which lasted at least two (2) hours in length.

CME Credits may also be satisfied by facilitating a CME course that is at least two (2) hours in length. At least one (1) hour of the course must focus on ethics while the other hour may focus on mediation skills, process and standards.

On or before February 1, provide the Mediation Program Office with a declaration (and documentation if requested) of your successful completion of the CME requirement for the previous calendar year.

#### **5. Notification regarding Competence**

Notify the ADR Administrator in writing within ten (10) days if: (a) public discipline has been imposed upon you by any public disciplinary or professional licensing agency; (2) you have resigned your membership with the State Bar or other professional licensing agency while disciplinary or criminal charges were pending; (3) a felony charge is pending against you; (4) you have been convicted of a felony or of a misdemeanor involving moral turpitude; and/or (5) there has been an entry of judgment against you in any civil action for actual fraud or punitive damages. [See CRC 3.856(c).]

In addition to the matters specified in CRC 3.856(c), notify the ADR Administrator in writing within ten (10) days if: (1) you are declared a vexatious litigant; (2) you have been charged with, plead guilty or no contest to, or have been convicted of, a felony or misdemeanor; and/or (3) you have been suspended or subject to disciplinary action as a result of an investigation from any professional organization, public entity or mediation program.

## **6. Insurance**

Agree to either (1) obtain and maintain insurance covering services as a mediator and to name the Superior Court as an additional insured; or (2) waive any and all claims against the Superior Court in connection with mediating court-referred mediations and to indemnify and hold the court harmless as set forth below.

Mediators choosing to proceed with the purchase of insurance must file their Certificate of Insurance by February 1 of each year, or within 30 days of acquiring insurance.

For mediators who (1) are not insured; (2) have a policy that does not name the San Diego Superior Court as an additional insured; and/or (3) did not timely file a certificate of insurance naming the court as an additional insured, the following will apply:

The mediator shall indemnify, defend and hold harmless the Superior Court and its officers, agents and employees, to the extent permitted by applicable law, from and against any and all claims, liabilities and losses whatsoever (including, but not limited to, damages to property and injuries to or death of persons, court costs and attorney fees) occurring or resulting to any and all persons, firms, corporations or other third parties arising out of or in connection with the mediator's performance and/or services provided as a mediator under this program, notwithstanding the form in which any such action is brought (e.g.: tort, contract, or otherwise), to the extent that all such claims, liabilities and losses arise directly or indirectly from acts, errors, or omissions that constitute negligence, willful misconduct, or violations of law or policy, by the mediator or his or her agents. This shall not apply to injuries or damage for which the Court has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct. The duty of a mediator to indemnify shall include the duty to defend as set forth in section 2778 of the California Civil Code.

## **7. Mandatory Meetings**

Attend any mandatory meetings required by the court.

## **8. Program Evaluation**

Participate in program evaluation and distribute post-mediation surveys if requested by the court.

## **9. Mediator Profiles and Lists**

Fully comply with CRC 3.856(b) (truthful representation of background) and agree to authorize the court to place mediator information on the

court's web site, and in mediator lists maintained by the court including but not limited to the Mediator Profiles, the Mediation Panel Lists, and the lists of available mediators.

The mediator will notify the ADR Administrator in writing of any updates needed to their profiles. The mediator will keep any necessary records of requested changes.

#### **10. Marketing**

Fully comply with CRC 3.858 and specifically refrain from indicating that you are "approved, endorsed, certified, or licensed by the court."

#### **11. Impartiality, Conflicts, Disclosure, Disqualification and Withdrawal**

In addition to fully complying with California Rules of Court, rules 3.855, 3.856, 3.857, and 3.859, and CCP section 170.1 as it relates to mediators, all disclosures, disqualifications, and withdrawals must be documented in writing. Mediators must maintain these writings for four (4) years following completion of the mediation and make them available to the ADR Administrator upon request.

#### **D. Resignation**

Any panel member may resign at any time by communicating in writing with the ADR Clerk, provided that all cases referred to the mediator are completed and all forms/program-related materials have been submitted prior to the effective date of the resignation.

#### **E. Mediator Complaint Procedure**

Pursuant to California Rules of Court 3.865 et seq., the San Diego Court Superior Court has adopted a Mediator Complaint Procedure as stated in San Diego Superior Court Rule 2.3.2.1.

### **III. Mediator Selection and Assignment**

#### **A. Mediator Selection**

Parties and/or attorneys may review the on-line Mediator Search, the Civil Mediation Panel List, the Available Mediator List, and individual Mediator Profiles containing the ADR training, experience, expertise, and fee information for each mediator on the Court's Panel, which are maintained on-line on the court's ADR webpage or in hard copy at the Mediation Program Office in the Central Division or the Civil Business Office at the other court locations. Mediators must promptly notify the Mediation Program Office of any changes or updates to this

information.

A list of mediators currently available for assignment can be obtained on-line or from the Mediation Program Office at the Central Division or the Civil Business Office at other court locations. Mediators planning to be out of town or unable to accept assignments for a specific time period, must promptly notify the Mediation Program Office of their request to be temporarily inactivated and must again contact the Mediation Program Office in order to be returned to the active/eligible list thereafter.

Parties select one primary mediator and one alternate mediator using the Mediator Selection Form (SDSC Form CIV-005), which is also available on the court's ADR webpage and in the courtroom during the CMC. The Mediator Selection Form may be e-mailed or hand delivered to the Court within 5 court days of the CMC. The alternate mediator will be assigned in a matter in the event the primary mediator is unable to serve. Mediators may not arrange their own alternates for matters they cannot mediate.

#### **B. Notice of Assignment**

Mediators may receive cases as follows: after parties stipulate to mediation at the Case Management Conference; after parties file a stipulation before or after the CMC; or if the primary mediator declines assignment or is otherwise not eligible for assignment and the alternate mediator is assigned.

Following the parties' selection of a mediator, a Notice of Assignment of Mediator will be issued to the mediator assigned to the case and served on the parties and/or counsel listed therein. The notice includes the name address, and telephone number of the mediator assigned to the case, the effective date of the assignment, and the timeframe in which the mediation must be completed.

#### **C. Accepting the Assignment/Conflicts Check**

Within 10 days of the issuance of the Notice of Assignment of Mediator, the assigned Mediator must notify the Court and the parties and/or counsel if they are unable to accept the assignment for any reason, including but not limited to the following:

##### **1. Determining Participants**

Since the Notice of Assignment may not list all persons associated with the case (i.e., those with settlement authority, represented parties), Mediators must determine if there are additional parties, counsel or other interested persons who may participate in the mediation.

##### **2. Conflicts Check**

Mediators must perform a conflict of interest check relative to all mediation participants in accordance with CRC 3.855 and CCP §170.1 relative to matters potentially affecting their impartiality.

### 3. Case Limits

Mediators are limited to 125 active cases at any one time and may have other, self-imposed caseload limitations.

### 4. Competence

In accordance with CRC 3.856(d), Mediators should assess at this point, as well as throughout the process, whether or not their level of skill, knowledge and ability is sufficient to conduct the mediation effectively. If the primary mediator declines the assignment, the alternate mediator will be assigned a new Notice of Assignment of Mediator will be issued. The alternate mediator will then have to perform the above steps in order to accept or decline the assignment within 10 days of the issuance of the new Notice of Assignment of Mediator (it should be noted that the mediation session will have to be completed within the original assignment timeframe).

## IV. Scheduling the Mediation Session / Extensions of Time

Within 20 days of the issuance of the Notice of Assignment of Mediator, the assigned mediator must contact all parties, counsel and other interested parties who may participate in the mediation to schedule the mediation session. It is recommended that the mediation session be scheduled as early as possible in order to permit additional mediation sessions or rescheduling as necessary within the timeframe ordered by the Court.

If the mediator cannot schedule the session within the initial time frame because the parties cannot agree on a date or the scheduled mediation must be rescheduled, or if the mediator is having difficulty making contact with the parties, the Mediator must either contact the ADR Clerk at the court location in which the case was filed (see below table) to request a one-time informal 30-day extension or file the Statement of Agreement/Non-Agreement noting why the mediation was not held (the filing of the Statement of Agreement/Non-Agreement will result in the case being removed from mediation). In addition, the parties may contact the ADR Clerk to request that an alternate mediator be assigned (if an alternate mediator is not assigned, the Mediator initially assigned must still file a Statement of Agreement/Non-Agreement noting that the mediation was not held).

Central	Mediation Program Office <a href="#">330 West Broadway, Room 225</a> <a href="#">San Diego, CA 92101</a>	(619) 450-7478
North County	Civil Business Office <a href="#">325 South Melrose Drive, Suite 1000</a> <a href="#">Vista, CA 92081</a>	(760) 201-8204

The Mediator does not have any authority to grant an extension of time to mediate. However, prior to the expiration of timeframe ordered by the Court, the mediator may contact the ADR Clerk with a proposed new date and request a one-time informal 30-day extension, which may be denied. The parties may also request an extension of

time by filing with the IC department a stipulation to extend mediation that includes the new mediation date. If an extension is granted, a Notice of Reassignment of Mediator will be issued.

## **V. Conducting the Mediation Session**

### **A. Pre-Mediation Notice to the Parties**

Once the mediation has been scheduled, the Mediator must provide a written pre-mediation notice to the parties, which must include the following: (1) date, time and location of the mediation; (2) timeframe for completion of mediation as stated on the Notice of Assignment of Mediator; (3) required attendance at mediation and mediation brief policy; (4) required disclosures in accordance with California Rules of Court, rule 3.855 and Code of Civil Procedure, §170.1 to the extent known prior to the mediation; (5) an explanation of mediation confidentiality pursuant to the Evidence Code, §§ 703.5 and 1115 et seq.; and (6) any fees, costs or charges to be paid to the mediator in accordance with CRC 3.859.

Although Mediators are required to provide the parties, counsel and mediation participants, at or before the outset of the mediation, with specified information concerning voluntariness and self-determination, confidentiality, matters potentially affecting impartiality, and representation and other professional services in accordance with the California Rules of Court, including but not limited to rules 3.853, 3.854, 3.855, and 3.857, Mediators are encouraged to include this information, to the extent possible, in the pre-mediation notice. [See subsection entitled “Ethical Standards and Rules of Conduct.”]

### **B. Ethical Standards and Rules of Conduct**

In addition to the Pre-Mediation Notice, all Panel Mediators must adhere to the Rules of Conduct for Mediators in Court Connected Mediation Programs for Civil Cases as stated in the California Rules of Court, rules 3.850 et seq.

It is especially noted that disclosure of matters *potentially* affecting a Mediator’s impartiality [see CRC 3.855] and a Mediator’s assessment of whether or not his or her level of skill, knowledge, and ability is sufficient to conduct the mediation effectively [CRC 3.856] are *continuing obligations* which may require the Mediator’s withdrawal or recusal. Whether or not such disclosures and/or assessments require a Mediator’s withdrawal or recusal, such disclosures and assessments, as well as any objections or questions raised regarding a Mediator’s impartiality or competence must be documented in writing and maintained by the Mediator for four (4) years following completion of the mediation. Mediators must make this documentation available to the Court upon request.

Although Mediators must fully familiarize themselves with the Rules of Conduct as stated in CRC 3.850 et seq., the following issues/rules are highlighted here:

**1. Voluntary participation and self-determination**

The mediator must inform the parties at the outset of the first session that any resolution requires the voluntary agreement of the parties. (CRC 3.853.)

**2. Confidentiality**

At or before the first session, a mediator must provide the participants a general explanation of the confidentiality of the mediation proceedings. (CRC 3.854(b).) If the mediator speaks separately with one or more participants, the mediator must first discuss with all participants the mediator's practice re: confidentiality for separate communications with the participants. (CRC 3.854(c).)

**3. Mediation Process**

At or before the outset of the mediation, the mediator must provide all participants with a general explanation of the nature of the process, the procedures to be used, the roles of the mediator, the parties and other participants. (CRC 3.857(c).) A Mediator should also discuss his or her style. A mediator must inform all participants, at or before the outset of the first mediation session, 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. (CRC 3.857(d).)

**4. Recommending other services**

A mediator must disclose any personal or financial interest if recommending other services. (CRC 3.857(e).)

**5. Compensation**

Before commencing mediation, a mediator must disclose in writing to the parties any fees, costs or charges to be paid to the mediator by the parties. (CRC 3.859.)

**6. Diligence**

A Mediator must make reasonable efforts to advance the mediation in a timely manner and must make the time available to conduct the mediation (i.e., no double booking, cancellations, etc. In the case of an emergency, please call the Mediation Program Office). (CRC 3.857(a).)

**7. Mediation only**

Although CRC 3.857(g) provides that a mediator "must exercise caution" in combining mediation with other ADR processes and may do so with the informed consent of the parties, Panel Mediators are *prohibited* from

combining mediation with any other ADR process, regardless of the consent of the parties.

## **8. Settlement Agreements**

A Mediator may present possible settlement options and terms for discussion. A mediator may also assist the parties in preparing a written settlement, *provided* that in doing so, the mediator confines the assistance to stating the settlement as determined by the parties. (CRC 3.857 (h).)

## **9. Termination**

The 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: (1) the mediation is being used to further illegal conduct; (2) a participant is unable to participate meaningfully in negotiations; or (c) continuation of the process would cause significant harm to any participant or third party. (CRC 3.857(i).)

## **10. Marketing**

Mediators must be truthful and accurate in marketing. Although Panel Mediators may indicate that they are a member of the San Diego Superior Court's Civil Mediation Panel, in accordance with CRC 3.858, Panel Mediators are *prohibited* by the Court from indicating in their marketing materials that they are approved, endorsed, certified, licensed or sponsored by the court while on the court's panel and thereafter.

## **C. Mediation Style**

Mediation is a party-centered process based on the principles of self-determination and confidentiality. The parties retain the right to determine the type of mediation session they want, and whether or not they choose to resolve the case in mediation. In an attempt to reach an informed, voluntary agreement, it is appropriate for a mediator to provide information about the process, address obstacles in communication, assist the participants in defining the issues, provide impartial substantive information, exploring alternatives for resolution, and build the capacity of the parties to make an informed decision.

A mediator may employ a variety of mediation styles during the mediation process, including facilitative, evaluative, and/or transformative. It should be noted, however, that Panel Mediators may *only* offer a personal evaluation or opinion 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, and it should be noted that pursuant to Evidence Code §1121, "[n]either a mediator or anyone else may submit to a court..., and a court...may not consider, any report assessment, evaluation, recommendation, or finding of any kind by the mediator concerning a mediation ... other than a report that is mandated by court rule or other law and that states only whether an agreement was reached, unless all parties to the mediation expressly agree otherwise in

writing, or orally in accordance with Section 1118 [oral agreement recorded by a court reporter].

**D. Mediation Location**

All mediation sessions will be conducted in facilities that are professional and considered appropriate for mediation (i.e., mediation offices, law firms, bar association offices or other appropriate conference room facilities). Mediators must ensure that the mediation location can accommodate persons with disabilities. Written guidance concerning the responsibility of mediators to provide disability accommodation can be found at:

<http://www.eeoc.gov/eeoc/mediation/ada-mediators.cfm> and  
<http://www.eeoc.gov/eeoc/mediation/ada-parties.cfm>

Mediators will arrange 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. Attendance at Mediation and Procedure for Mediation Briefs**

Local Rule 2.3.2(G) provides that “[a]ll parties, their counsel and persons with full authority to settle the case must personally attend the mediation, unless excused by the court 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.” (Emphasis added.)

The court grants to the mediator authority to excuse participants for good cause. It also grants to the mediator authority to determine if 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 adjuster to participate for the entire session.

The court delegates its authority to mediators to require mediation briefs, statements or other mediation materials. If the mediator requires any mediation materials, the mediator must notify the parties of the policy in the pre-mediation notice and remind parties that the IC department and/or the Mediation Program Office should not receive copies of pre-mediation materials pursuant to mediation confidentiality provisions.

## **VI. Compensation**

Panel Mediators must abide by the following compensation parameters:

### **A. Reduced Hourly Rate**

Mediators may charge a maximum of \$150.00 per hour for the first 2 hours in a limited civil action, or \$250.00 per hour for the first 2 hours in an unlimited civil action. Thereafter (hour 3 and beyond), the mediator may charge his or her regular hourly rate. The \$150.00 per hour for a limited civil action or \$250.00 per hour for an unlimited civil action rate applies to actual mediation session hours and supplemental mediation discussions between the mediator and one or more of the parties.

### **B. Additional Charges**

Mediators will not be compensated for any additional hourly fees or charges related to the first two hours of the mediation, including but not limited to intake, scheduling, administration, preparation, file or brief review, case evaluation, and/or securing an appropriate mediation facility.

### **C. Deposit and Cancellation Fees**

A mediator may collect a non-refundable deposit or cancellation fee not to exceed a total of \$300 for the first two (2) hours in a limited civil action or \$500 for the first two hours in an unlimited civil action, and the mediator's regular, individual hourly rate thereafter, provided that any such deposit and cancellation fees are clearly stated in the Mediator's Profile and in the Pre-Mediation Notice to the Parties (see Section V. A., above) and provided that any unused portion of such deposit or cancellation fees beyond the first two hours is refunded to the parties.

### **D. Payment and Collection of Fees**

Mediators will be compensated directly by the parties. The fees and expenses of mediators must be shared equally between the parties, unless otherwise agreed. 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. Compensation Disclosure**

Mediators must declare their regular, individual hourly rates (for hour 3 and beyond) and any deposit, cancellation or other compensation policies in their Mediator Profile and in the Pre-Mediation Notice to the parties (see Section V.A., above).

## **VII. Post-Mediation**

The following forms are available on the Judicial Council's website at the following link: <http://www.courts.ca.gov/forms>.

### **A. Statement of Agreement/Non-Agreement (ADR-100)**

The Statement of Agreement/Non-Agreement must be returned to *the court location in which the case was filed* within 10 (ten) days of the conclusion of the mediation, or within ten (10) days of the conclusion of the timeframe ordered by the court to complete the mediation if the mediation did not take place or has not ended.

No other information may be communicated to the court on the Statement of Agreement/Non-Agreement, pursuant to confidentiality protections. [See Evidence Code, §1121.] Any additional information should be communicated to the Mediation Program Office and not to the assigned judge.

### **B. Attendance Sheet for Court-Program Mediation of Civil Case (ADR-107)**

All participants, including but not limited to all parties, counsel, persons with settlement authority and insurance adjusters, must provide their names, mailing addresses and telephone numbers on the Attendance Sheet. Mediators must retain the Attendance Sheet for at least two years, and submit it to the court on request.

**VIII. Declaration**

I, \_\_\_\_\_ declare that:

I have read and agree to abide by the Rules of Court for Mediators as set forth in California Rules of Court, rules 3.800 and 3.850 et seq.

I have read and agree to abide by CCP §170.1, E.C. §703.5, and E.C. §1115 et seq.

I have read and agree to abide by the provisions of the San Diego Superior Court's Mediator Manual.

Date: \_\_\_\_\_

Print name: \_\_\_\_\_

Signature: \_\_\_\_\_