

MEDIATION OF CIVIL CASES



Mediation is a process in which "a neutral third person with no decision making power intervenes in the dispute to help the litigants voluntarily reach their own agreement." [Jeld-Wen, Inc. v. Sup.Ct. (Marlborough Develop. Corp.) (2007) 146 Cal.App.4th 536, 540, 53 Cal.Rptr.3d 115, 117]

Certain programs allow courts to order cases into mediation as an alternative to judicial arbitration. Other programs merely encourage voluntary mediation:

Civil Action Mediation Programs

The Civil Action Mediation Program is a court-ordered program. [Ca Civ Pro §§ 1775-1775.15] (The program does not preempt other existing or future ADR programs in the trial courts; Ca Civ Pro § 1775.13.)

Only Los Angeles County courts are required to participate in the program, although others may elect to do so. [Ca Civ Pro § 1775.2; Ca Rules of Court Rule 3.870] Other counties have elected to participate, including:

- Nevada County courts (see Nevada Coord. Rule 4.00.10.E).
- San Diego County courts
- Shasta County courts (see Shasta Sup.Ct. Rule 5.10(E)).

Cases Affected: Courts may order to mediation any case in which the amount in controversy does not exceed \$50,000 for each plaintiff, without regard to questions of liability, defenses or comparative negligence. [Ca Civ Pro §§ 1775.3, 1775.5; Ca Rules of Court Rule 3.871(a)(1)]

Any other action, regardless of the amount in controversy, may be submitted to mediation if all parties so stipulate. [Ca Rules of Court Rule 3.871(a)(2)--stipulation may be made up to 90 days before trial; see also L.A. Sup.Ct. Rule 12.16--if stipulation precedes first status conference, parties may select mediator from court's list or use a mediator of their own choosing]

Cases Appropriate for Mediation: Amenability to mediation shall be determined on a case-by-case basis, rather than categorically. [Ca Rules of Court Rule 3.871(b)] The court's determination must be made after considering the views expressed by the parties. Generally, such determinations may be made on the basis of the pleadings or other information presented to the court, after considering the views expressed by the parties on amenability of the case to mediation. [Ca Rules of Court Rule 3.871(a)(1)]

Los Angeles Procedure: In Los Angeles, the court determines the suitability of a case for mediation or arbitration. The court confers with counsel as to whether

mediation or arbitration offers the better likelihood of disposition of the case without further proceedings. The court will normally set the dates for completion of the arbitration or mediation and for a further status conference thereafter. [L.A. Sup.Ct. Rule 12.2]

Time for Mediation: There is no fixed time at which mediation may be ordered . . . except that any stipulation to mediation must be filed no later than 90 days before trial unless the court permits a later time. [Ca Rules of Court Rule 3.871(a)(2)]

Generally, submission to mediation does not affect "fast track" time periods for case disposition (Ca Govt § 68600 et seq.). [Ca Rules of Court Rule 3.876(a)] However, if the parties so stipulate in writing, "fast track" deadlines may be extended for up to 90 days to permit mediation. [Ca Rules of Court Rule 3.876(b)]

Selection of The Mediator: Unless the parties stipulate to a mediator, the mediator will be appointed from a panel maintained by the court in consultation with local bar associations and ADR providers. [See Ca Civ Pro § 1775.6; Ca Rules of Court Rule 3.872-3.873; L.A. Sup.Ct. Rule 12.3] Mediators need not be lawyers or judges. But they must have either 25 hours of classroom mediation training or 25 hours of actual "dispute resolution experience" (see 16 Ca Adc § 3622). [Ca Rules of Court Rule 3.872]

The parties may stipulate to selection of a mediator within 15 days after the case is submitted to mediation. If they are unable to agree on a mediator within the 15-day period, the court will "promptly" appoint a mediator. [Ca Rules of Court Rule 3.873] In any event, the mediator must be selected within 30 days after the case is submitted to mediation. [Ca Civ Pro § 1775.6]

A party may request disqualification of the mediator within 5 days after the mediator's appointment on any ground that would disqualify a judge (see Ca Civ Pro § 170.1). [See L.A. Sup.Ct. Rule 12.6] If the mediator refuses to disqualify himself or herself, a party may move the court for an order vacating the appointment. [See Ca Rules of Court Rule 3.816(d)--applicable to arbitrators]

Mediator's Fee: The mediator's fee is paid by the court, not by the parties. Court-appointed mediators are paid the same as court-appointed arbitrators and out of funds available for judicial arbitration (Ca Civ Pro § 1141.28(a)). The mediator's fee is payable upon conclusion of the mediation. [Ca Civ Pro § 1775.8(a)]

Mediators are presently expected to serve for free and to spend no more than 2 hours per session. The mediator generally begins to charge an hourly fee after 2 hours.

Before commencing the mediation, the mediator must disclose to the parties in writing any fees, costs or charges to be paid to the mediator by the parties. A mediator must abide by any agreement that is reached concerning compensation. [Ca Rules of Court Rule 3.859(c)]

Mediation Sessions: The parties must appear in person at the first mediation session and, unless excused by the mediator, at any subsequent session. [Ca Rules of Court Rule 3.874; see also L.A. Sup.Ct. Rule 12.15]

If the party is a corporation or association, it must appear by a representative with

authority to resolve the dispute; if a governmental entity, by a representative with authority to recommend settlement to the elected official or legislative body having authority to settle. [Ca Rules of Court Rule 3.874]

Where a party has insurance coverage, an insurance representative shall also be present at each session unless excused by the mediator. [Ca Rules of Court Rule 3.874]

Mediation Briefs: Ordinarily, a mediation statement or brief is presented to the mediator in advance of the hearing, outlining the procedural posture of the case, disputed and undisputed facts, applicable law, itemized damages, and the settlement picture.

Time For Completion of Mediation: Mediation must be completed within 60 days after reference to the mediator. But for "good cause," the court may extend this period for up to 30 days. [Ca Rules of Court Rule 3.876(b)]

Results of Mediation Reported To Court: Within 10 days after conclusion of the mediation, the mediator must file a "Statement of Agreement or Nonagreement" with the court, advising whether settlement has been reached as to the entire case or as to particular parties. [Ca Civ Pro § 1775.9; Ca Rules of Court Rule 3.875] To assure confidentiality, the mediator may not provide any additional information to the court. [Ca Evid § 1121]

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