



SUPERIOR COURT STATE OF CALIFORNIA COUNTY OF ALAMEDA

Alternative Dispute Resolution (ADR) Program
24405 Amador Street • Hayward, CA 94544

Email: adrprogram@alameda.courts.ca.gov • Phone: (510) 891-6055
Fax: (510) 267-5727 • Website: www.alameda.courts.ca.gov/adr

Thank you for your interest in serving as a mediator on the Alameda County Superior Court's Mediation Panel. Please carefully read the following information before completing the online application for consideration to join the panel.

Alameda County Superior Court requires that all panel members have the minimum qualifications listed on the page titled Court Mediation Panel Qualifications of this document.

If selected, the information you provide will appear as a profile on the ADR Program website and be available to the public. The content will include:

- Contact information
- Training and continuing education history
- Areas of expertise
- Professional and background summary
- Fee requirements

To access the existing panel and review the mediator information published, please visit the ADR Program website at www.alameda.courts.ca.gov/adr and click on the Mediation Panel link.

Should you have any questions regarding this application, please email your inquiry to adrprogram@alameda.courts.ca.gov.

Sincerely,

ADR Program Administrator

ALAMEDA COUNTY SUPERIOR COURT
MEDIATION PANEL INFORMATION

Mediation seeks to resolve disputes through an informal conversation guided by an impartial, trained, experienced, court-approved mediator. Mediation allows the parties to retain control of the process. Mediation can be a faster and less expensive process than trial. All written and oral communications prepared before or during the mediation is confidential. (Evidence Code § 1115-1129).

All parties, attorneys, and any other person(s) necessary for the complete and final resolution of all claims in the dispute must attend the mediation. Both parties and the mediator must agree on the location and time. The mediation must be completed before the completion deadline date. Once the parties have scheduled a mediation session with the mediator, the mediator must submit the Notice of Date, Time and Place of the Mediation Form to the ADR Program Office. The mediator can email, fax, or mail this notice.

A mediator selected and appointed through the court's mediation program is required to provide preparation time and the first two hours of mediation *pro bono*. Preparation time includes scheduling, initiating necessary paperwork, reading mediation statements, and communicating with parties.

A court mediation session may be extended beyond the initial two-hour session if each party signs a written agreement to extend the session *and* agrees to pay the mediator's hourly rate for any time beyond the preparation and initial two hours. The mediator's hourly rate must be posted on the mediator's profile on the ADR Program website and shall be disclosed in the written agreement signed by all parties prior to the commencement of the mediation.

A mediator may request that a reasonable and fully refundable deposit be submitted prior to the commencement of the mediation. The deposit anticipates the possibility the mediation may not conclude within the donated preparation time and two hours of mediation time and that the parties may wish to engage the mediator further at an hourly rate. Any deposit must be promptly returned if there is no agreement to extend the mediation beyond the *pro bono* two hours, or the full amount of the deposit is not used by any additional mediation time.

Each party must provide the mediator and all other parties a mediation statement at least one week before the scheduled mediation. Mediation statements outline the details of the dispute and must be clear, concise, and no longer than five pages. The statement should only include those documents you think are essential to resolve the dispute. Any documents or communications prepared for or during a mediation are subject to the confidentiality provisions set forth in Evidence Code § 1115-1129.

At the conclusion of the mediation, the mediator must submit the Notice of Mediator's Report Form to the ADR Program Office. The mediator can email, fax, or mail this notice. The parties must also immediately notify the court when the case settles. (Cal. Rules of Court, rule 3.1385).

AVAILABLE MEDIATION PROGRAMS

COURT MEDIATION PROGRAM

Any civil matter may be referred to the Court Mediation Program by the judicial officer managing the matter. Parties can also stipulate to Court Mediation by submitting an ADR Stipulation Form. Note: All stipulations to this program will first go to the judicial officer for review. If a stipulation is granted, the referral will go to the ADR office. The ADR office will send a confirmation of the referral to the selected panel mediator.

Should the mediator have any questions about the referral, s/he should contact the ADR office.

Under this program, mediators do not charge fees for preparation and the first two hours of mediation. If parties need additional time, they may be required to pay the mediator's regular fees. The parties may be required to post a refundable deposit for time beyond the two hours if requested by the mediator.

PRIVATE MEDIATION

Parties can be either referred to or stipulate to Private Mediation. This type of mediation requires parties to pay the mediator's regular fees.

CIVIL ACTION MEDIATION

Most civil matters where the amount of damages is \$50,000 or less may be *ordered* to the Civil Action Mediation Program by the judicial officer managing the matter.

Under this program, mediators do not charge fees for preparation and the first two hours of mediation. If parties need additional time, they may be required to pay the mediator's regular fees. No deposit can be required before completing two hours of mediation if the parties are ordered to participate in the Civil Action Mediation Program. (Code of Civil Procedure § 1775.8).

DAY OF COURT MEDIATION

The Day of Court Mediation Program provides mediation services in the following civil matters: small claims, unlawful detainers, and requests for civil harassment restraining orders. Mediators offer free mediation to litigants as a public service. The judicial officer presiding over the matter may refer the matter to the Day of Court program in consultation with the parties on the day of trial or settlement conference.

For questions about the available mediation programs, please email adrprogram@alameda.courts.ca.gov.

COURT MEDIATION PANEL QUALIFICATIONS

I. TRAINING

- A. Panel mediators must have completed at least 40 hours of mediation training, including a single 40-hour course, **OR**
- B. Qualify as a mediator for the United States District Court for the Northern District of California or any superior court in a neighboring county, **OR**
- C. Be deemed to have sufficient training within the discretion of the court.

II. EXPERIENCE

- A. Panel mediators must have conducted:
 - i. At least five civil mediations of either limited or unlimited jurisdiction of at least two hours in length, **OR**
 - ii. Ten small claims, civil harassment, or unlawful detainers day-of-court mediations referred by the court provided that the applicant also submits a letter of recommendation from the mediation program that supervises the day-of-court mediations, verifying that the applicant has demonstrated excellent mediation skills.

III. PANEL MEMBERS INDICATING AN EXPERTISE IN PROBATE

- A. To qualify as a mediator in probate matters, the applicant must:
 - i. **EITHER:**
 - 1. Be an attorney with five years substantial substantive probate practice (75% of practice dedicated to general probate/ trusts /conservatorship /guardianship /elder law practice), **OR**
 - 2. Have mediated fifteen cases in the previous five years in the areas of probate, trusts, conservatorships or guardianships
 - ii. Complete six hours of specialized probate mediation training.
 - iii. Complete two hours of continuing education in probate mediation every two years (such continuing education may be counted as part of the six hours of the general continuing mediation education).

IV. COMPLIANCE AND CONTINUING EDUCATION

- A. Panel mediators must:
 - i. Comply with all applicable ethical standards for neutrals.
 - ii. Comply with all applicable California Rules of Court and the Mediation Guidelines.
 - iii. Comply with minimum qualifications.

V. STATEMENT OF COURT DISCRETION

It is within the discretion of the court to deem the education, experience, and prior training of a mediator sufficient to join the court mediation panel.

For questions about these requirements, please contact the ADR Program office at (510) 891-6055 or adrprogram@alameda.courts.ca.gov.

ETHICAL AND PRACTICE STANDARDS FOR ADR PANEL MEMBERS

Mediators must act in a way that promotes public confidence in the integrity and fairness of the ADR process. Mediators in court-connected programs are responsible to the parties, the public, and the courts for conducting themselves in a manner that merits that confidence. Individuals serving on the court's mediation panel must be familiar with and observe all state or federal regulations, California Court Rules, Local Court Rules, and ADR-specific practice requirements. Minimum standards of conduct for mediators in court-connected mediation programs for general civil cases are described in Cal. Rules of Court, rules 3.850 - 3.860.

VOLUNTARY PARTICIPATION AND SELF-DETERMINATION

The mediator must inform the parties, at or before the beginning of the first mediation session, that any resolution of the dispute in mediation requires a voluntary agreement. The mediator must conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices regarding process and outcome. Parties may exercise self-determination at any stage of a mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.

CONFIDENTIALITY

The mediator must always comply with the applicable law concerning confidentiality. The mediator must also provide the participants with a general explanation of the confidentiality of mediation proceedings. For participants to feel free to discuss openly and in good faith, all written and oral communications prepared before or during the mediation are confidential. Mediation material cannot be "discovered" or compelled as evidence and is inadmissible in any non-criminal legal proceeding unless all participants expressly agree. The mediator must not use information acquired in confidence in the course of mediation outside the mediation or for personal gain. Mediation confidentiality regulations are set forth in Evidence Code § 1115-1129.

IMPARTIALITY, CONFLICTS OF INTEREST, DISCLOSURES, AND WITHDRAWAL

The mediator must decline a mediation if the mediator cannot conduct it impartially and avoid conduct that gives partiality. The mediator must not act with partiality or prejudice based on any participant's characteristics, background, values, and beliefs, or performance at a mediation, or any other reason. The mediator must neither give nor accept a gift, favor, loan, or another item of value that raises a question about the mediator's actual or perceived impartiality.

The mediator must avoid any actual or perceived conflict of interest during and after the mediation.

The mediator must make reasonable efforts to keep informed about matters that reasonably could raise a question about his or her ability to conduct the proceedings impartially and must disclose these matters to the parties. These matters include past, present, and currently expected interests, relationships, and affiliations of a personal, professional, or financial nature.

If the mediator is unable to conduct a mediation impartially, the mediator must withdraw.

MEDIATOR'S ROLE AND LEGAL ADVICE

The mediator must ensure that the parties understand that the mediator's role is that of a neutral intermediary, not representative of or advocate for any party. The mediator explains to the parties that the mediator's objective is to help them reach a constructive and fair agreement among themselves. The mediator must not offer legal advice to a party, make legal rulings, analyze the legal issues and strengths or weaknesses of either party's case, or represent either party. The mediator has no obligation or duty to the legal outcomes of any matters discussed with the parties inside or outside the mediation session.

COMPETENCE

The mediator should only mediate when s/he has the necessary competence to satisfy the parties' reasonable expectations. The mediator must comply with experience, training, educational, and other requirements established by the court for appointment and retention. The mediator should attend educational programs and related activities to maintain and enhance the mediator's knowledge and skills related to mediation. During the course of mediation, a mediator must determine whether s/he cannot conduct the mediation competently. In such a case, the mediator must discuss that determination with the parties as soon as is practicable and take appropriate steps to address the situation. The mediator must also inform the court of any public discipline and other matters.

QUALITY OF THE PROCESS

The mediator must make reasonable efforts to advance the mediation in a manner that promotes diligence, timeliness, safety, party participation, procedural fairness, party competency, and mutual respect. The mediator must conduct the mediation proceedings in a procedurally fair manner. "Procedural fairness" means a balanced process in which each party can participate and make uncoerced decisions. The mediator is not obligated to ensure the substantive fairness of an agreement reached by the parties. The mediator must provide all participants with a general explanation of the mediation process. The mediator must inform all participants that during the mediation, s/he will only act in the capacity of an impartial mediator. The mediator may recommend, when appropriate, that parties consider resolving their dispute through other ADR processes. The mediator may present possible settlement options and terms for discussion. The mediator may also assist the parties in preparing a written settlement agreement provided that the mediator confines the assistance to stating the settlement as determined by the parties.

ADVERTISING AND SOLICITATION

The mediator must be truthful and accurate in marketing his or her mediation services and not be misleading when advertising, soliciting, or otherwise communicating the mediator's qualifications, experience, services, and fees. The mediator may indicate on his or her marketing materials that s/he is a member of a particular court's panel or list but, unless expressly permitted by the court, must not indicate that s/he is approved, endorsed, certified, or licensed by the court. The mediator must not include any promises about the outcome of mediation or make any statement that directly or indirectly implies bias in favor of one party or participant over another. The mediator must not solicit business from a participant in a mediation proceeding while that mediation is pending.

COMPENSATION AND GIFTS

The mediator must comply with any applicable requirements concerning compensation established by statute or the court. Before commencing the mediation, the mediator must disclose to the parties in writing accurate and complete information about mediation fees, expenses, and any other actual or potential charges that may be incurred in connection with a mediation. The mediator must abide by any agreement that is reached concerning compensation. The mediator should not enter into a fee agreement, which is contingent upon the result of the mediation or amount of the settlement. The mediator must not at any time solicit or accept from or give to any participant or affiliate of a participant any gift, bequest, or favor that might reasonably raise a question concerning the mediator's impartiality.

ADVANCEMENT OF MEDIATION PRACTICE

The mediator must act in a manner that advances the practice of mediation. The mediator fosters diversity within the field of mediation. The mediator strives to make mediation accessible to those who elect to use it, participates in research when given the opportunity, engages in outreach and education efforts to assist the public in developing an improved understanding of mediation, and assists newer mediators through training, mentoring and networking. The mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators, and work together with other mediators to improve the profession and better serve people in conflict.

ADR FORMS AND AGREEMENT TO DISCLOSURE

The mediator must request that all participants in the mediation complete an attendance sheet stating their names, mailing addresses, and telephone numbers. The mediator must retain the attendance sheet for at least two years and submit it to the court on request. The mediator must also complete and submit the Notice of Date, Time and Place of the Mediation Form and Notice of Mediator's Report Form to the ADR Program office. The mediator must agree that if an inquiry or a complaint is made about his or her conduct, mediation communications may be disclosed solely for purposes of a complaint procedure conducted according to Cal. Rules of Court, rule 3.865, and Local Rules 3.750 and 3.760 to address that complaint or inquiry.

References

- Rules of Conduct for Mediators in Court-Connected Mediation Programs for General Civil Cases (Cal. Rules of Court, rules 3.850-3.860).
- American Bar Association. "Model Standards of Conduct for Mediators." 2005 (Rev. 2009).
- JAMS Mediation, Arbitration, ADR Services. "Mediators Ethics Guidelines." <https://www.jamsadr.com/mediators-ethics/>

MEDIATION PANEL APPLICATION

Name: _____

Please read and initial each statement below.

- _____ I certify that I meet the requirements to serve as a mediator on the Mediation Panel of the Alameda County Superior Court.
- _____ I agree to abide by the ethical principles established by Cal. Rules of Court, rules 3.850 -3.860, and any standards of conduct established by the court.
- _____ I certify:
- _____ There are no matters about which I am required to inform the court pursuant to Cal. Rules of Court, rule 3.856(c).
- _____ I have mailed, emailed, or faxed a detailed description of all matters about which I am required to inform the court pursuant to Cal. Rules of Court, rule 3.856(c), to the ADR Program Office.
- _____ I agree to provide all scheduling and preparation time and 2 hours of mediation time *pro bono* on every Court Mediation and Civil Action Mediation case accepted. I also agree to complete, serve as appropriate, and return all required case information forms, including the Notice of Date, Time, and Place of the Mediation and the Notice of Mediator's Report.
- _____ I agree to accept at least three mediation cases per year through the Day of Court Mediation, Civil Action Mediation, or Court Mediation Program.
- _____ I understand inclusion on a court list of ADR neutrals and eligibility to be recommended or appointed by the court to serve as a neutral are privileges that are revocable and confer no vested right on the neutral. (Cal. Rules of Court, rule 10.781(d)).

Dated: _____

Signature: _____

Please save or print this page and send it via email, mail, or fax to the ADR Program Office upon completing your online application. Consideration of your application is contingent upon receipt of this form.

To continue with your application, please click on the web address below (you may also copy and paste the web address into your browser). Click on the "New Application" link at the bottom of the webpage.

<http://apps2.alameda.courts.ca.gov/adr/MediatorApplication.aspx>