



**COURT OF APPEAL
SECOND APPELLATE DISTRICT**

MEDIATOR'S HANDBOOK

Fifth Edition

October 2007

MEDIATION PROGRAM

300 SOUTH SPRING STREET
2ND FLOOR - NORTH TOWER
LOS ANGELES, CALIFORNIA 90013
(213) 830-7136



COURT OF APPEAL
Fifth Edition

**SECOND APPELLATE DISTRICT
300 SOUTH SPRING STREET
2ND FLOOR - NORTH TOWER
LOS ANGELES, CALIFORNIA 90013**

Mediator Handbook
Table of Contents

Mediation Program Information	1
Mandatory Docketing Statement	5
Scheduling Order from Court	7
Preparing for Appellate Mediation	9
Mediation Information Form	12
Mediator Compensation Policy	14
Sample Letter, Pre-Mediation Telephone Conference	15
Confidentiality Agreement	17
Sample Letter Following Pre-Mediation Telephone Conference	18
Sample Stipulation for Dismissal	20
Mediation Evaluation	21
Mediator's Statement	22
Rules of Conduct for Mediators	23



**COURT OF APPEAL
Second Appellate District
300 South Spring Street
2nd Floor - North Tower
Los Angeles, California 90013
Joseph A. Lane, Clerk
(213) 830-7000**

MEDIATION PROGRAM INFORMATION

Opting into the voluntary Mediation Program

The Court of Appeal, Second Appellate District, provides parties the opportunity to participate in its voluntary Mediation Program. If the parties have agreed to opt into the Mediation Program, the court will appoint a mediator from the Mediation Program's roster to conduct a mediation as soon as possible and ideally prior to the time the record is required to be filed.

Mandatory participation once the parties agree to mediate

Although the Mediation Program is voluntary, once the parties agree to participate, it becomes **MANDATORY** that they comply with the procedures set forth in the court's scheduling letter or risk the imposition of sanctions. In particular, all parties and their counsel must attend all mediation sessions in person. If a party is not an individual, then a party representative with full authority to settle all appeals and cross-appeals must attend in person. In cases where insurance coverage may apply, a representative of each carrier with full settlement authority must attend in person.

Intake procedures and timing of the mediation process

The mediation process commences as soon as possible after the filing of the *Notice of Appeal*, to save the parties as much expense and time as possible in record and brief preparation. If the parties have indicated their agreement to mediate on the Mandatory Docketing Statement (MDS), or otherwise choose to participate in the Mediation Program, the Mediation Coordinator (the court's administrator in charge of administering the Mediation Program, including scheduling mediations) will promptly notify counsel of the date and time of the mediation, the appointment of a mediator and

the court's requirements for participation, including providing the mediator with information and assuring that the appropriate individuals appear at the mediation.

Effect of mediation on the timing of the appellate process

Participation in the Mediation Program does not affect the court schedule for preparation of the record or for briefing. Any requests for continuances or stays must be addressed to the court under the local rules. Neither the Mediation Coordinator nor the mediator may approve any continuance.

Additional ways to participate in the Mediation Program

If the parties do not indicate in the MDS their agreement to participate in the Mediation Program, they may do so at a later time in the following ways:

By agreement: If at any point in the appeal process the parties decide to participate in the Mediation Program, counsel may contact the Mediation Coordinator to schedule mediation.

By confidential request: If a party would like to participate in the Program, but is reluctant to contact the other side, counsel may contact the Mediation Coordinator confidentially to discuss the case and request that she contact the other counsel to discuss the possibility of participating in the Program.

By invitation of the court: The Mediation Coordinator may contact counsel to invite parties to participate in the Mediation Program. Participation in the Program is entirely voluntary and any contact initiated by the Mediation Coordinator is intended merely to inform counsel about the program and to offer assistance in settlement.

Mediation

Mediation is an informal, ***confidential*** process in which a neutral party (the mediator) assists the parties to understand their own interests, the interests of the other parties, and the practical and legal realities they all face. The mediator helps the parties explore options and arrive at a mutually acceptable resolution of the dispute. The mediator does not resolve the dispute. The parties do.

The mediators

The court has recruited to its panel experienced mediators and appellate specialists, based on their training, experience and performance. In addition, the court provides its mediators with intensive training in appellate mediation. The Mediation Coordinator matches mediators to specific disputes.

Mediator compensation

Mediators will volunteer a **total** of six hours of time for the mediation, which will **normally** include: (a) two hours of preparation time to conduct pre-mediation conferences and to read and analyze materials provided by counsel in advance of the mediation and (b) four hours of time in mediation sessions.

After a total of six hours of preparation and/or mediation, mediators are permitted to charge the parties for additional mediation services rendered, at their hourly rate, provided all parties agree.

Mediators who intend to request compensation should notify counsel of the policy and their hourly rate in the pre-mediation telephone conferences and should provide written confirmation of the mediator and the parties' agreement regarding fees to counsel prior to the mediation.

Where the mediator anticipates exceeding two hours of preparation time, reducing pro bono mediation hearing time to less than four hours, the mediator should discuss this expectation with counsel during the premeditation conference and confirm the resolution reached in the discussion to counsel in writing. If preparation time exceeds two hours, the mediator should, at the outset of the mediation, inform the participants of the number of pro bono hours available for the mediation session.

Mediation procedures

Pre-mediation telephone conference: Shortly after appointment, the mediator will send a letter to counsel to schedule a telephone conference or separate phone calls with counsel. The purpose of the conference(s) is to handle the logistics of the mediation, to discuss mediator compensation and any potential conflicts of interest and to enhance the probability of resolution by preparing the case for mediation.

The mediation session: All participants must sign a confidentiality agreement. At the end of the mediation, the mediator may distribute evaluation forms to all participants. Parties and counsel should submit the completed forms to the Mediation Coordinator within 10 days of completion of mediation.

After the completion of the mediation: If the matter has resolved, the parties are encouraged to sign a settlement agreement or memorandum of understanding before leaving the mediation session and as soon as the final settlement agreement is executed to

request dismissal of the appeal. Within 10 days, the mediator submits a Mediator's Statement to the Mediation Coordinator. The mediator retains the confidentiality agreement and a copy of any settlement agreement.

Advantages of appellate mediation

- ***Mediation can avoid the risk of reversal.*** Even if you have obtained a judgment in the trial court, there is a significant chance that it may be reversed on appeal and remanded for further, costly proceedings.
- ***Mediation can avoid financial risk.*** A judgment may be worth less than face value if there is a significant risk that the judgment debtor will go bankrupt or if a delayed judgment satisfaction will have adverse effects. In addition, a mediated resolution may avoid or mitigate unfavorable tax effects.
- ***Mediation can bring more satisfactory results.*** Often the trial court judgment does not satisfy even the prevailing party. A mediator can assist the parties to achieve their real interests.
- ***Mediation can save money.*** The mediation process begins at the outset of the appeal. This can save substantial costs of preparing the record and briefs.
- ***Mediation can save time.*** Mediation can resolve a dispute in a matter of days, while an appeal can take months.
- ***Mediation can provide greater client participation.*** Clients often are frustrated by their restricted role in pretrial and trial proceedings. Once the trial record is complete, clients can have greater participation and satisfaction in determining the resolution of their disputes. Often, this aids attorney-client relations.
- ***Mediation can reduce stress.*** Mediation encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Litigation is very stressful. Most people reach a point where they want to get on with their lives, with their businesses, and, sometimes, with their relationship with other parties.

For further information, contact the Mediation Coordinator by phone at 213-830-7136 or by e-mail at Theresa.Carter-Mata@jud.ca.gov.

NAME AND ADDRESS OF SENDER: TEL. NO.
 JOHN A. CLARKE (213) 974-5237
 EXECUTIVE OFFICER/CLERK OF THE SUPERIOR COURT
 111 NORTH HILL STREET
 APPEAL/TRANSCRIPT UNIT, ROOM 111
 LOS ANGELES, CA 90012

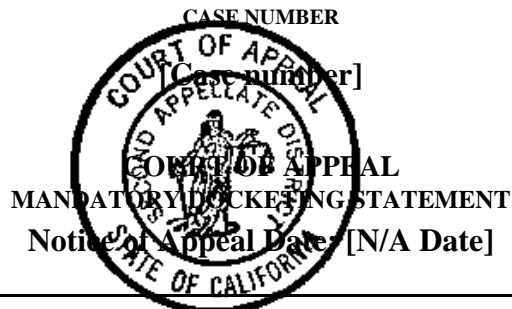
File Stamp

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

[Plaintiff(s)] Plaintiff(s)

vs

[Defendant(s)] Defendant(s)



Notice to Appellant: This form must be returned to the address on the next page within 20 days from the date of this notice. Dated: November 7, 2007

TO: [SEND TO Name]
 [Number, Street, Suite]
 [City, State, ZIP]

You can take steps to reduce delays in the processing of your appeal.

1. **(MANDATORY)** If all parties agree, you may participate in an appellate mediation program administered by the Court of Appeal. *Participation in the mediation program requires the agreement of all parties.*
 - Appellant shall contact all parties to the appeal to determine if the parties agree to participate in a mediation conference program.
 - Check one box in **Section A** on reverse (MANDATORY).
2. **(OPTIONAL)** If you have already designated a Clerk's transcript to be prepared by the Superior Court, you may use this form to elect to proceed with an Appendix in lieu of a Clerk's Transcript (CRC Rule 8.124). (Note: Use of this option voids earlier designations of Clerk's transcript.)
 - Check box in **Section B** on reverse.

Record preparation will not be stayed during the pendency of the mediation program, unless a stipulation signed by all the parties is filed with the Court of Appeal and order is granted.

NOTE: CHANGING YOUR DESIGNATION OF CLERK'S TRANSCRIPT ON APPEAL WILL NOT AFFECT PREVIOUSLY FILED DESIGNATION OF REPORTER'S TRANSCRIPT(S).

See Reverse

Section A — YOU MUST CHECK ONE BOX IN THIS SECTION

- **ALL** PARTIES AGREE TO PARTICIPATE IN A MEDIATION CONFERENCE.
- **Failure to participate in good faith may result in sanctions!**
- Your case will be assigned to a mediator within two weeks.
- **ALL** PARTIES DO *NOT* AGREE TO PARTICIPATE IN A MEDIATION PROGRAM AT THIS TIME.

Section B — *Optional*

- I ELECT TO RE-DESIGNATE THE CLERK’S RECORD ON APPEAL AND PROCEED WITH AN APPENDIX IN LIEU OF CLERK’S TRANSCRIPT PURSUANT TO RULE 8.124, CALIFORNIA RULES OF COURT.

NOTE: CHANGING YOUR DESIGNATION OF CLERK’S TRANSCRIPT ON APPEAL WILL NOT AFFECT PREVIOUSLY FILED DESIGNATION OF REPORTER’S TRANSCRIPT(S).

You MUST sign and return this entire form to the address *below*.

Include Proof of Service to all parties.

Attorney Signature

Date: _____

Attorney Type or Print Name

Name of Party Represented

**RETURN TO:
LOS ANGELES SUPERIOR COURT
CIVIL APPEALS DIVISION
111 NORTH HILL STREET, ROOM 111
LOS ANGELES, CA 90012**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

) B1
)
) (Super.Ct.No.)
) (, Judge)
)
) ORDER SCHEDULING
) MEDIATION CONFERENCE

THE COURT:*

Because all parties have agreed to mediation, the Court orders that the mediation is scheduled for {DATE} at {TIME} at the Court of Appeal, Second Appellate District, Conference Center located on the Second Floor, North Tower, at 300 South Spring Street, Los Angeles, California. The Court has selected {**PARAM: MEDIATOR**} (see contact list) from its panel of trained appellate practitioners and mediators to serve as the mediator in this matter.

It is MANDATORY to comply with the procedures set forth in this order. Failure to do so may result in the imposition of sanctions.

You must review the enclosed materials: *Preparing for Appellate Mediation* and *Contact list*. You must also complete the enclosed *Confidential Mediation Information Form* and mail it, together with the judgment from which the appeal is taken, to the assigned mediator within twenty (20) days from the date this order is filed.

The mediator will contact you to schedule a pre-mediation telephone conference to help prepare for the mediation. Under the Mediation Program policy, the assigned mediator will volunteer a total of six hours of preparation and session time for the mediation. After that, the mediator may charge his or her hourly fee, provided all parties agree.

It is MANDATORY that all named parties and their counsel attend all mediation sessions in person. If a party is not an individual, then a party representative with full authority to settle all appeals and cross-appeals must attend in person. In cases where insurance coverage may apply, a representative of each carrier with full settlement authority must attend in person. Timely attendance and full participation by all concerned are critical to the success of the

mediation. **Failure either to attend or to participate in good faith will likely result in the imposition of sanctions.**

Admin. Presiding Justice

COURT OF APPEAL, SECOND APPELLATE DISTRICT
300 SOUTH SPRING STREET
2ND FLOOR - NORTH TOWER
LOS ANGELES, CALIFORNIA 90013
JOSEPH A. LANE, CLERK
(213) 830-7000

Preparing for Appellate Mediation¹

Preparation is the key to success in mediation, no less than in litigation. This paper suggests matters that parties and counsel may wish to consider before, during, and after mediation. These suggestions are offered by the Mediation Program Mediation Program Coordinator and do not necessarily reflect the views of the court.

Before Mediation

Explain the mediation process.

Discuss with your client the differences between litigation and mediation, and the roles of the parties, counsel, the mediator, and any other participant in the mediation process. While most mediators open the mediation session by giving the participants a “road map” of anticipated procedures, your discussion before the mediation can put the client at ease with the process. A good starting point is a definition of mediation:

Mediation is an informal, confidential process in which a neutral party (the mediator) assists the parties in understanding their own interests, the interests of the other parties, and the practical and legal realities they all face. The mediator helps the parties explore options and arrive at a mutually acceptable resolution of the dispute.²

Help your client understand the client’s interests.³

A successful mediation resolves a dispute by finding a solution that best meets the parties’ individual and joint interests. If you broaden your discussions with your client beyond the legal issues and the *position* the client wishes to take to include the client’s underlying *interests*, you increase the probability of a satisfactory result. Many clients initially focus on positions, e.g., “He should pay for the money I lost when he breached our agreement,” rather than interests. One of the client’s interests may be monetary, but there may be other interests of equal or greater value, like maintaining a favorable personal, employment, or business relationship or ending litigation so the client can get on with his or her life or business. The client’s interests should be prioritized.

Help your client understand the other parties’ interests.

¹ Adapted with permission from Court of Appeal, First Appellate District, *Preparing for Appellate Mediation*. The suggestions contained in this document are offered by the mediation training designers and do not necessarily reflect the views of the court.

² Adapted from Gary Friedman, Esq., Center for Mediation in Law, Mill Valley, California (1998).

³ Interests include a party’s goals and needs.

Other parties also have interests underlying their positions. Those interests may be the same as your client's, e.g., maintaining or improving an ongoing relationship or saving time and money. Even if the other parties' interests differ from your client's, they may not be conflicting. Put your client in the other parties' shoes and try to understand their interests. Prepare questions to ask the other parties to bring out those interests.

Explore options for resolving the dispute.

Once there is an understanding of everyone's interests, explore possible resolutions that will meet those interests. Instead of focusing solely on money, explore with your client creative ways to expand the pie. For example, if it is in the parties' mutual interest to preserve a good business relationship, the respondent may be willing to accept less than the trial judgment for more favorable contract terms. Options should be tested against practical and legal realities. Does a possible resolution meet the interests of the parties? Will a proposed resolution hold up?

Effective preparation also requires thorough discussion of the client's alternative to settlement and the risks involved. What is the likelihood that a judgment will withstand appellate review? What legal and practical problems do you anticipate on appeal? What will it cost in time and money? Often a party that prevails on appeal merely wins an opportunity to return to the trial court and face more expense and delay.

During Mediation

The mediator is likely to follow a similar process that you use in preparing the client: discussing the parties' understanding of the dispute, their interests, and possible resolutions.

Make sure that all decision-makers participate.

Often persons other than the client may have interests that must be considered in the resolution of the dispute. That person may be a spouse, an insurance representative, or a company manager, for example. Mediation is unlikely to be successful without the participation of all persons with authority to resolve the dispute.

Get the client's story out.

After the mediator discusses the process, the parties and their attorneys normally are asked to state their understanding of the dispute to each other and to the mediator. This may be the parties' first opportunity to discuss the dispute directly with one another. While your legal expertise enables you to address legal issues and arguments most effectively, often your client is best able to discuss the history of the dispute and the interests that must be met by an agreement.

Listen.

Careful listening to the discussion of the dispute by the participants usually will bring understanding of the parties' interests and suggest options for resolution. Stress to your client that understanding the other side does not necessarily mean agreement.

Focus on problem solving.

Unlike litigation or arbitration, mediation is designed to be a collaborative process. The parties, with the assistance of the mediator, work together to resolve their dispute in a way that

will best meet their mutual interests. Keep this objective in mind when confronting obstacles to resolution that may arise during the course of the mediation.

After Mediation

Finalize any agreement.

If an agreement, in whole or in part, is reached at the mediation, the mediator or counsel may write down the key points for formal drafting after the session. Be sure that any formal document accurately reflects the agreements reached at mediation and that the document is executed in a timely manner before memories fade or minds change.

File an abandonment of the appeal.

When the case is settled, the appellant should file an abandonment of the appeal. The mediator can provide a simple form for this purpose. *See* CRC 8.244.

**COURT OF APPEAL, SECOND APPELLATE DISTRICT
CONFIDENTIAL MEDIATION INFORMATION FORM**

To be sent to the mediator only – not to be filed with the court.

Case Name(s): _____

Court of Appeal No(s): _____ Date: _____

Los Angeles County Superior Court No.: _____

Submitted on behalf of: Appellant: _____ Respondent: _____

Address: _____

Phone: _____ Fax: _____ E-mail: _____

Cross-appellants(s): _____

Date of judgment or order from which appeal is taken: _____

The judgment or order resulted from:

- Jury trial Court trial Summary judgment Demurrer
 Dismissal Nonsuit Arbitration award Administrative mandamus

Other (*specify*): _____

Summarize the substance of the judgment: _____

A. Please answer the following questions. Attach additional pages, if necessary.

1. Describe the current status of the case: _____

2. Summarize the appellate issues you anticipate and the relief sought: _____

3. Describe any related disputes, including cases pending in this or other courts: _____

4. Describe the status of any present or previous settlement negotiations, including the terms of any offers or demands the parties have exchanged: _____

5. List the names and interests of persons necessary to settle this appeal, whether they are named parties or not, including insurance carries and other entities. (**Attendance by all parties necessary to settle the case is mandatory.**)

6. Attach a copy of judgment or order from which the appeal or cross-appeal is taken.
7. Submit the original of this form and the requested judgment or order to the appointed mediator within ten (10) days of the date of the letter from the court scheduling the mediation.
8. By participating in the mediation process, all parties agree that the court-appointed mediator shall be deemed for all purposes to be a “person presiding at [a] judicial or quasi-judicial proceeding” within the meaning of Evidence code section 703.5, which restricts the competence of such persons to testify regarding what occurs at the mediation.

COURT OF APPEAL

SECOND APPELLATE DISTRICT
300 SOUTH SPRING STREET
2ND FLOOR - NORTH TOWER
LOS ANGELES, CALIFORNIA 90013
JOSEPH A. LANE, CLERK
(213) 830-7000

MEDIATOR COMPENSATION POLICY

Mediators will volunteer a **total** of six hours of time for the mediation, which will **normally** include: (a) two hours of preparation time to conduct pre-mediation conferences and to read and analyze materials provided by counsel in advance of the mediation and (b) four hours of time in mediation sessions.

After a total of six hours of preparation and/or mediation, mediators are permitted to charge the parties for additional mediation services rendered, at their hourly rate, provided all parties agree.

Mediators who intend to request compensation should notify counsel of the policy and their hourly rate in the pre-mediation telephone conferences and should provide written confirmation of the mediator and the parties' agreement regarding fees to counsel prior to the mediation.

Where the mediator anticipates exceeding two hours of preparation time, reducing pro bono mediation hearing time to less than four hours, the mediator should discuss this expectation with counsel during the premeditation conference and confirm the resolution reached in the discussion to counsel in writing. If preparation time exceeds two hours, the mediator should, at the outset of the mediation, inform the participants of the number of pro bono hours available for the mediation session.

**SAMPLE LETTER
PRE-MEDIATION TELEPHONE CONFERENCE**

[Date]

[Counsel Name & Address]

[Counsel Name & Address]

[Case Name]
[Case Number]

Dear Counsel:

As you know, I have been appointed by the Court of Appeal, Second District, Mediation Program to serve as mediator in the above case under the court's Mediation Program. The court has ordered that the mediation be held **[Date]**.

In order to expedite the timely completion of the mediation and to enhance the likelihood of a successful resolution of this matter, I have scheduled a telephone conference with counsel only for **[Date]**, at **[Time]**. If you are not available for this conference, please coordinate your schedule with the other counsel immediately and contact me with three alternative dates and times that all counsel are available. The phone conference, which I will initiate, will last approximately one-half hour, during which we will discuss the following:

- Disclosures of potential conflicts of interest;
- Confidentiality of the mediation process;
- The chances of resolving the case by mediation now, and how to maximize them;
- Other disputes that could be resolved in this mediation;
- Confirm the date, time, location and length of the mediation;
- The parties who must be present;
- Written mediation statements and estimate of the time needed for me to prepare;
- The format of the mediation and role of the mediator;
- Fees; and
- Any questions you have about the Mediation Program.

[If you have no actual conflict of interest but may have a potential conflict of interest, include the following: My conflicts check revealed no actual conflicts of interest. The court has informed you that I [description of the potential conflict]. I do not believe this prior relationship would interfere with my ability to be impartial.]

Since none of you has objected following the court's disclosure, I assume your clients are not concerned. Please let me know immediately if that is not the case.]

I enclose a copy of the court's form confidentiality agreement. Please review it prior to our conference call to determine whether your clients wish to modify the agreement. We will address any requests for modification in our telephone conference.

[If you intend to charge a fee.] Consistent with the Mediation Program's guidelines, I will donate up to six hours of my time, which includes time spent participating in pre-mediation conferences, preparing for the mediation and conducting the mediation. If the case has not resolved after the six hours of *pro bono* preparation and session time expire and the parties agree to continue on a voluntary basis, I will charge my customary hourly fee of \$__ per hour. During the telephone conference, we will estimate what portion of my time will likely be spent in preparation for mediation. We will also discuss your clients' preferences regarding fees during the pre-mediation telephone conference.

[If you do not intend to charge a fee.] I will provide all mediation services *pro bono*.

I look forward to assisting you in this matter and to speaking with you on **[Date]**. In the meantime, I enclose a resume describing my professional experience.

Very truly yours,

[Your Name]

Enclosures

cc: Mediation Program Coordinator (w/o encls.)

**COURT OF APPEAL, SECOND APPELLATE DISTRICT
CONFIDENTIALITY AGREEMENT**

Case Name: _____ Case No _____

Date(s) of Mediation Sessions: _____

Consistent with California Evidence Code sections 703.5 and 1115 through 1128, the participants in the mediation of this case agree that:

1. No written or oral communication made by any party, attorney, mediator, or other participant in any mediation session in this case may be used for any purpose in any pending or future proceeding unless all parties, including the mediator, so agree.
2. Disclosure of information that otherwise is privileged shall not alter its privileged character.
3. The parties shall not subpoena the mediator or any documents submitted to or prepared by the mediator during or in connection with the mediation process. The mediator shall not testify voluntarily on behalf of a party.
4. This agreement shall not render inadmissible a written settlement agreement reached as a result of this mediation in an action to enforce that settlement.

Dated: _____

Mediator

(Party)

(Party)

(Party's Attorney)

(Party's Attorney)

(Party)

(Party)

(Party's Attorney)

(Party's Attorney)

**SAMPLE LETTER
FOLLOWING PRE-MEDIATION TELEPHONE CONFERENCE**

[Date]

[Counsel Name & Address]

[Counsel Name & Address]

[Case Name]
[Case Number]

Dear Counsel:

This letter confirms the following arrangements for the mediation of the above matter:

Date:

Time:

Location:

Participants:

On behalf of [Party Name]

Participants' names

On behalf of [Party Name]

Participants' names

Directions [if applicable]

Mediation Statements [Note: This section reflects agreements made by counsel in the pre-mediation telephone conference. The following is an example of such an agreement.]

You have agreed to provide me and to exchange mediation statements no later than [Date]. The following is a suggested format:

1. A brief summary of the factual background;
2. A brief summary of the procedural background;
3. A statement of issues and arguments on appeal, including standards of review;
4. A summary of the parties' settlement history, including any dates and amounts of settlement proposals;
5. A statement of your client's interests, needs, concerns and priorities regarding settlement;

6. A statement of what you believe to be the interests, needs, concerns and priorities of the other party; and
7. A description of any obstacles to settlement and proposals for overcoming them.

If you want me to review any other information, including briefs, records, transcripts, cases, statutes or other documents, you may include them with the mediation statement and provide the other counsel with copies or a summary of the information you are providing me. You have also agreed that on the same date you may submit confidential mediation statements to me.

Disclosures

[Note: If you addressed the disclosure issue in the initial letter, simply summarize the parties' response as communicated by counsel in the pre-mediation telephone conference, for example, I understand your clients have no objection to my serving as mediator, notwithstanding (describe conflict).]

Fees

[Describe your agreement re fees consistent with the Mediation Program Mediator Compensation Policy (page 11 of this handbook). If you intend to charge, you might say: I will donate up to six hours of my time, including time spent participating in pre-mediation conferences and the mediation session and preparing for mediation, which we estimate will be ____ hours, and time spent in mediation. If after receiving the mediation statements I think you have underestimated the time for preparation, I will let you know immediately. We have also agreed that if the case has not resolved after I have spent six hours of pre-mediation conference time, study time and session time and the parties agree to continue in mediation, the parties will pay my hourly fee of \$____. The parties agree to allocate any fees (describe allocation) _____.]

I look forward to assisting you to settle this case. In the meantime, please call me if you have questions.

Very truly yours,

[Your Name]

cc: Mediation Program Coordinator

**In the Court of Appeal of the State of California
Second Appellate District**

_____,
Plaintiff(s) and

Court of Appeal No. _____
Superior Ct. No. _____

v.

_____,
Defendant(s) and

STIPULATION FOR DISMISSAL

THE PARTIES HEREBY STIPULATE THAT:

1. The appeal(s) filed _____ be dismissed.
2. Each party shall bear his/her/its own costs on appeal.
3. Remittitur to issue forthwith.

Signature: _____
Name: _____
Firm: _____

Party represented:

Dated: _____

Signature: _____
Name: _____
Firm: _____

Party represented:

Dated: _____

IT IS SO ORDERED:

Presiding Justice

Dated: _____

**COURT OF APPEAL, SECOND APPELLATE DISTRICT
MEDIATION EVALUATION**

Please complete this form and return it to:

Theresa Carter-Mata, Mediation Coordinator

Court of Appeal, Second Appellate District

300 South Spring Street

Los Angeles, California 90013

Fax (213) 830-7033 Φ Theresa.Carter-Mata@jud.ca.gov

Today's Date: _____

Case Name: _____

Case No: _____

Your Name: _____

Phone Number: _____

Type of case:

Business/Contract

Insurance

Probate

Construction

Intellectual Property

Prof. Negligence

Employment

Medical Malpractice

Real Estate

Family Law

Personal Injury

Other (*specify*): _____

You are: ___ appellant ___ appellant's attorney ___ respondent ___ respondent's attorney

___ insurance representative ___ other (*specify*) _____

What was the outcome of mediation? (Do not reveal confidential information)

___ Direct result of the mediation process ___ Resolution was unrelated to the mediation process

___ Indirect result of the mediation process ___ Appeal was not resolved

___ Some issues resolved (*how many?* _____) ___ Other (*specify*) _____

This section should be completed by counsel only:

Name of the party you represent: _____

How many months elapsed between filing of the notice of appeal and resolution? _____

The case resolved: ___ Before ___ During record preparation ___ Before ___ During brief preparation

What was the effect of the mediation process on the following (Insert "ND" if no difference):

Attorney's fees: ___ Reduced fees ___ Increased fees By how much? (*estimate*) \$ _____

Other costs: ___ Reduced costs ___ Increased costs By how much? (*estimate*) \$ _____

Court time: ___ Reduced time ___ Increased time By how much? (*estimate*) _____ months

On a scale of 1 (very dissatisfied) to 5 (very satisfied) please rate:

The mediation process: _____ **The mediator (name):** _____

___ Appropriateness of the process for your dispute

___ Impartiality

___ Fairness

___ Temperament

___ Opportunity to participate

___ Knowledge of the mediation process

___ Confidentiality

___ Manner of conducting the mediation process

___ Satisfaction with outcome

___ Knowledge of the subject matter

Would you use this process again? ___ Yes ___ No **Would you use this mediator again?** ___ Yes ___ No

Program administration:

___ Efficiency (*scheduling, etc.*)

___ Courtesy and cooperation

___ Paperwork

Comments on the mediator or the process or suggestions for program improvements:

Court of Appeal, Second Appellate District Mediator's Statement

PLEASE RETURN WITHIN 10 DAYS OF THE COMPLETION OF THE MEDIATION TO:

Theresa Carter-Mata, Mediation Coordinator
Court of Appeal, Second Appellate District
300 South Spring Street
Los Angeles, Ca 90013
Fax (213) 830-7033 ◊ Theresa.Carter-Mata@jud.ca.gov

Please complete this statement without breaching confidentiality.

Mediator's Name: _____ Today's date: _____

Case name: _____ Case no.: _____

Your Name: _____ Phone No: _____

Type of case:

- | | | |
|---|--|---|
| <input type="checkbox"/> Attorney's Fees | <input type="checkbox"/> Family Law | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Business /Contract | <input type="checkbox"/> Health Care | <input type="checkbox"/> Personal Injury |
| <input type="checkbox"/> Construction | <input type="checkbox"/> Housing | <input type="checkbox"/> Probate |
| <input type="checkbox"/> Defamation | <input type="checkbox"/> Insurance | <input type="checkbox"/> Prof. Negligence |
| <input type="checkbox"/> Eminent Domain | <input type="checkbox"/> Intellectual Property | <input type="checkbox"/> Public Entity |
| <input type="checkbox"/> Employment/Labor | <input type="checkbox"/> Landlord/Tenant | <input type="checkbox"/> Real Estate |
| <input type="checkbox"/> Environment | <input type="checkbox"/> Medical Malpractice | <input type="checkbox"/> Securities |

Other (specify): _____

Preparation time (in tenths): _____ hours Total session time (in tenths): _____ hours

No. of sessions: _____ Follow-up time (in tenths): _____ hours

Total mediation fee for all parties (if any): \$ _____ Total expenses (if any): \$ _____

How did the case resolve?

___ Full resolution ___ Resolution of some issues (How many? _____) ___ No resolution

___ Other (specify) _____

If the mediation resolved more than one dispute, check all that were resolved:

___ Another appeal ___ A trial court matter ___ A matter not in litigation

Was your primary style in this case? ___ Facilitative ___ Evaluative ___ Directive

Were counsel: ___ Trial attorneys ___ Appellate attorneys ___ Both

Did you distribute evaluation forms? ___ Yes ___ No

On a scale of 1 (very dissatisfied) to 5 (very satisfied) please rate the court's Mediation Program as to:

___ Efficiency (scheduling, etc.) ___ Paperwork

___ Courtesy and cooperation

Comments on the above, including suggestions for program improvements: _____

Minimum Standards of Conduct for Mediators in Court-Connected Mediation Programs for General Civil Cases

2006 California Rules of Court

Rule 1620. Purpose and function

- (a) The rules in this part establish the minimum standards of conduct for mediators in court-connected mediation programs for general civil cases. These rules are intended to guide the conduct of mediators in these programs, to inform and protect participants in these mediation programs, and to promote public confidence in the mediation process and the courts. For mediation to be effective there must be broad public confidence in the integrity and fairness of the 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.

- (b) These rules are not intended to:
 - (1) Establish a ceiling on what is considered good practice in mediation or discourage efforts by courts, mediators, or others to educate mediators about best practices;

 - (2) Create a basis for challenging a settlement agreement reached in connection with mediation; or

 - (3) Create a basis for a civil cause of action against a mediator.

Rule 1620 adopted effective January 1, 2003.

Drafter's Notes

2002—New rules 1620-1620.9 establish minimum standards of conduct for mediators in court-connected mediation programs for civil cases, and rule 1622 requires that courts establish procedures for handling complaints concerning mediators who are on their lists or whom they recommend, select, appoint, or compensate.

Rule 1620.1. Application

- (a) The rules in this part apply to mediations in which a mediator:
 - (1) Has agreed to be included on a superior court's list or panel of mediators for general civil cases and is notified by the court or the parties that he or

she has been selected to mediate a case within that court's mediation program; and

- (2) Has agreed to mediate a general civil case pending in a superior court after being notified by the court or the parties that he or she was recommended, selected, or appointed by that court or will be compensated by that court to mediate a case within that court's mediation program.
- (b) If a court's panel or list includes firms that provide mediation services, all mediators affiliated with a listed firm are required to comply with the rules in this part when they are notified by the court or the parties that the firm was selected from the court list to mediate a general civil case within that court's mediation program.
- (c) Except as otherwise provided in these rules, the rules in this part apply from the time the mediator agrees to mediate a case until the end of the mediation in that case.
- (d) The rules in this part do not apply to judges or other judicial officers while they are serving in a capacity in which they are governed by the Code of Judicial Ethics.
- (e) The rules in this part do not apply to settlement conferences conducted under rule 222 of the California Rules of Court.

Advisory Committee Comment

Subdivision (d). Although these rules do not apply to them, judicial officers who serve as mediators in their courts' mediation programs are nevertheless encouraged to be familiar with and observe these rules when mediating, particularly the rules concerning subjects not covered in the Code of Judicial Ethics such as voluntary participation and self-determination.

Rule 1620.1 adopted effective January 1, 2003.

Drafter's Notes

2002—See note following rule 1620.

Rule 1620.2. Definitions

As used in this part, unless the context or subject matter otherwise requires:

- (a) **[Mediation]** "Mediation" means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.
- (b) **[Mediator]** "Mediator" means a neutral person who conducts a mediation.
- (c) **[Participant]** "Participant" means any individual, entity, or group, other than the mediator taking part in a mediation, including but not limited to attorneys for the parties.
- (d) **[Party]** "Party" means any individual, entity, or group taking part in a mediation who is a plaintiff, a defendant, a cross-complainant, a cross-defendant, a petitioner, a respondent, or an intervenor in the case.

Advisory Committee Comment

Subdivision (b). This definition departs from the definition of "mediator" in Evidence Code section 1115(b) in that it does not include persons designated by the mediator to assist in the mediation or to communicate with a participant in preparation for the mediation. However, these definitions are applicable only to these rules of conduct and do not limit or expand mediation confidentiality under the Evidence Code or other law.

Subdivision (c). "Participant" includes insurance adjusters, experts, and consultants as well as the parties and their attorneys.

Rule 1620.2 adopted effective January 1, 2003.

Drafter's Notes

2002—See note following rule 1620.

Rule 1620.3. Voluntary participation and self-determination

A mediator must conduct the mediation in a manner that supports the principles of voluntary participation and self-determination by the parties. For this purpose a mediator must:

- (a) Inform the parties, at or before the outset of the first mediation session, that any resolution of the dispute in mediation requires a voluntary agreement of the parties;
- (b) Respect the right of each participant to decide the extent of his or her participation in the mediation, including the right to withdraw from the mediation at any time; and
- (c) Refrain from coercing any party to make a decision or to continue to participate in the mediation.

Advisory Committee Comment

Voluntary participation and self-determination are fundamental principles of mediation that apply both to mediations in which the parties voluntarily elect to mediate and to those in which the parties are required to go to mediation in a mandatory court mediation program or by court order. Although the court may order participants to attend mediation, a mediator may not mandate the extent of their participation in the mediation process or coerce any party to settle the case.

After informing the parties of their choices and the consequences of those choices, a mediator can invoke a broad range of approaches to assist the parties in reaching an agreement without offending the principles of voluntary participation and self-determination, including (1) encouraging the parties to continue participating in the mediation when it reasonably appears to the mediator that the possibility of reaching an uncoerced, consensual agreement has not been exhausted and (2) suggesting that a party consider obtaining professional advice (for example, informing an unrepresented party that he or she may consider obtaining legal advice). Conversely, examples of conduct that violate the principles of voluntary participation and self-determination include coercing a party to continue participating in the mediation after the party has told the mediator that he or she wishes to terminate the mediation, providing an opinion or evaluation of the dispute in a coercive manner or over the objection of the parties, using abusive language, and threatening to make a report to the court about a party's conduct at the mediation.

Rule 1620.3 adopted effective January 1, 2003.

Drafter's Notes

2002—See note following rule 1620.

Rule 1620.4. Confidentiality

- (a) **[Compliance with confidentiality law]** A mediator must, at all times, comply with the applicable law concerning confidentiality.
- (b) **[Informing participants of confidentiality]** At or before the outset of the first mediation session, a mediator must provide the participants with a general explanation of the confidentiality of mediation proceedings.
- (c) **[Confidentiality of separate communications; caucuses]** If, after all the parties have agreed to participate in the mediation process and the mediator has agreed to mediate the case, a mediator speaks separately with one or more participants out of the presence of the other participants, the mediator must first discuss with all participants the mediator's practice regarding confidentiality for separate communications with the participants. Except as required by law, a mediator must not disclose information revealed in confidence during such separate communications unless authorized to do so by the participant or participants who revealed the information.
- (d) **[Use of confidential information]** A mediator must not use information that is acquired in confidence in the course of a mediation outside the mediation or for personal gain.

Advisory Committee Comment

Subdivision (a). The general law concerning mediation confidentiality is found in Evidence Code sections 703.5 and 1115-1128 and in cases interpreting those sections. (See, e.g., *Foxgate Homeowners' Association, Inc. v. Bramalea California, Inc.* (2001) 26 Cal.4th 1; *Rinaker v. Superior Court* (1998) 62 Cal.App.4th 155; and *Gilbert v. National Corp. for Housing Partnerships* (1999) 71 Cal.App.4th 1240.)

Rule 1620.4 adopted effective January 1, 2003.

Drafter's Notes

2002—See note following rule 1620.

Rule 1620.5. Impartiality, conflicts of interest, disclosure, and withdrawal

- (a) **[Impartiality]** A mediator must maintain impartiality toward all participants in the mediation process at all times.

(b) [Disclosure of matters potentially affecting impartiality]

(1) A 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, but are not limited to:

(A) Past, present, and currently expected interests, relationships, and affiliations of a personal, professional, or financial nature; and

(B) The existence of any grounds for disqualification of a judge specified in Code of Civil Procedure section 170.1.

(2) A mediator's duty to disclose is a continuing obligation, from the inception of the mediation process through its completion. Disclosures required by this rule must be made as soon as practicable after a mediator becomes aware of a matter that must be disclosed. To the extent possible, such disclosures should be made before the first mediation session, but in any event they must be made within the time required by applicable court rules or statutes.

(c) [Proceeding if there are no objections or questions concerning

impartiality] Except as provided in subdivision (f) below, if, after a mediator makes disclosures, no party objects to the mediator and no participant raises any question or concern about the mediator's ability to conduct the mediation impartially, the mediator may proceed.

(d) [Responding to questions or concerns concerning impartiality] If, after a mediator makes disclosures or at any other point in the mediation process, a participant raises a question or concern about the mediator's ability to conduct the mediation impartially, the mediator must address the question or concern with the participants. Except as provided in subdivision (f), if, after the question or concern is addressed, no party objects to the mediator, the mediator may proceed.

(e) [Withdrawal or continuation upon party objection concerning

impartiality] In a two-party mediation, if any party objects to the mediator after the mediator makes disclosures or discusses a participant's question or concern regarding the mediator's ability to conduct the mediation impartially, the mediator must withdraw. In a mediation in which there are more than two parties, the mediator may continue the mediation with the nonobjecting parties, provided that doing so would not violate any other provision of these rules, any law, or any local court rule or program guideline.

(f) [Circumstances requiring mediator recusal despite party consent]

Regardless of the consent of the parties, a mediator either must decline to serve as mediator or, if already serving, must withdraw from the mediation if:

- (1) The mediator cannot maintain impartiality toward all participants in the mediation process; or
- (2) Proceeding with the mediation would jeopardize the integrity of the court or of the mediation process.

Advisory Committee Comment

Subdivision (b). This subdivision is intended to provide parties with information they need to help them determine whether a mediator can conduct the mediation impartially. A mediator's overarching duty under this subdivision is to make a "reasonable effort" to identify matters that, in the eyes of a reasonable person, could raise a question about the mediator's ability to conduct the mediation impartially, and to inform the parties about those matters. What constitutes a "reasonable effort" to identify such matters varies depending on the circumstances, including whether the case is scheduled in advance or received on the spot, and the information about the participants and the subject matter that is provided to the mediator by the court and the parties.

The interests, relationships, and affiliations that a mediator may need to disclose under subdivision (b)(1)(A) include but are not limited to: (1) prior, current, or currently expected service as a mediator in another mediation involving any of the participants in the present mediation; (2) prior, current, or currently expected business relationships or transactions between the mediator and any of the participants; and (3) the mediator's ownership of stock or any other significant financial interest involving any participant in the mediation. Currently expected interests, relationships, and affiliations may include, for example, an intention to form a partnership or to enter into a future business relationship with one of the participants in the mediation.

Although subdivision (b)(1) specifies interests, relationships, affiliations, and matters that are grounds for disqualification of a judge under Code of Civil Procedure section 170.1, these are only examples of common matters that reasonably could raise a question about a mediator's ability to conduct the mediation impartially and thus, must be disclosed. The absence of particular interests, relationships, affiliations, and section 170.1 matters does not necessarily mean that there is no matter that could reasonably raise a question about the mediator's ability to conduct the mediation impartially. A mediator must make determinations concerning disclosure on a case-by-case basis, applying the general criteria for disclosure under subdivision (b)(1).

Attorney mediators should be aware that under the section 170.1 standard, they may need to make disclosures when an attorney in their firm is serving or has served as a lawyer for any of the parties in the mediation. Section 170.1 does not specifically address whether a

mediator must disclose when another member of the mediator's dispute resolution services firm is providing or has provided services to any of the parties in the mediation. Therefore, a mediator must evaluate such circumstances under the general criteria for disclosure under subdivision (b)(1)—that is, is it a matter that, in the eyes of a reasonable person, could raise a question about the mediator's ability to conduct the mediation impartially?

If there is a conflict between the mediator's obligation to maintain confidentiality and the mediator's obligation to make a disclosure, the mediator must determine whether he or she can make a general disclosure of the circumstance without revealing any confidential information, or must decline to serve.

Rule 1620.5 adopted effective January 1, 2003.

Drafter's Notes

2002—See note following rule 1620.

Rule 1620.6. Competence

- (a) [**Compliance with court qualifications**] A mediator must comply with experience, training, educational, and other requirements established by the court for appointment and retention.
- (b) [**Truthful representation of background**] A mediator has a continuing obligation to truthfully represent his or her background to the court and participants. Upon a request by any party, a mediator must provide truthful information regarding his or her experience, training, and education.
- (c) [**Informing court of public discipline and other matters**] A mediator must also inform the court if:
 - (1) Public discipline has been imposed on the mediator by any public disciplinary or professional licensing agency;
 - (2) The mediator has resigned his or her membership in the State Bar or another professional licensing agency while disciplinary or criminal charges were pending;
 - (3) A felony charge is pending against the mediator;
 - (4) The mediator has been convicted of a felony or of a misdemeanor involving moral turpitude; or

(5) There has been an entry of judgment against the mediator in any civil action for actual fraud or punitive damages.

(d) **[Assessment of skills; withdrawal]** A mediator has a continuing obligation to assess whether or not his or her level of skill, knowledge, and ability is sufficient to conduct the mediation effectively. A mediator must decline to serve or withdraw from the mediation if the mediator determines that he or she does not have the level of skill, knowledge, or ability necessary to conduct the mediation effectively.

Advisory Committee Comment

Subdivision (d). No particular advanced academic degree or technical or professional experience is a prerequisite for competence as a mediator. Core mediation skills include communicating clearly, listening effectively, facilitating communication among all participants, promoting exploration of mutually acceptable settlement options, and conducting oneself in a neutral manner.

A mediator must consider and weigh a variety of issues in order to assess whether his or her level of skill, knowledge, and ability is sufficient to make him or her effective in a particular mediation. Issues include whether the parties (1) were involved or had input in the selection of the mediator; (2) had access to information about the mediator's background or level of skill, knowledge, and ability; (3) have a specific expectation or perception regarding the mediator's level of skill, knowledge, and ability; (4) have expressed a preference regarding the style of mediation they would like or expect; or (5) have expressed a desire to discuss legal or other professional information, to hear a personal evaluation of or opinion on a set of facts as presented, or to be made aware of the interests of persons who are not represented in mediation.

Rule 1620.6 adopted effective January 1, 2003.

Drafter's Notes

2002—See note following rule 1620.

Rule 1620.7. Quality of mediation process

(a) **[Diligence]** A mediator must make reasonable efforts to advance the mediation in a timely manner. If a mediator schedules a mediation for a specific time period, he or she must keep that time period free of other commitments.

(b) **[Procedural fairness]** A mediator must conduct the mediation proceedings in a procedurally fair manner. "Procedural fairness" means a balanced process in which each party is given an opportunity to participate and make uncoerced

decisions. A mediator is not obligated to ensure the substantive fairness of an agreement reached by the parties.

- (c) **[Explanation of process]** In addition to the requirements of rule 1620.3 (voluntary participation and self-determination), rule 1620.4(a) (confidentiality), and subdivision (d) of this rule (representation and other professional services), at or before the outset of the mediation the mediator must provide all participants with a general explanation of:
- (1) The nature of the mediation process;
 - (2) The procedures to be used; and
 - (3) The roles of the mediator, the parties, and the other participants.
- (d) **[Representation and other professional services]** 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. Subject to the principles of impartiality and self-determination, a mediator may provide information or opinions that he or she is qualified by training or experience to provide.
- (e) **[Recommending other services]** A mediator may recommend the use of other services in connection with a mediation and may recommend particular providers of other services. However, a mediator must disclose any related personal or financial interests if recommending the services of specific individuals or organizations.
- (f) **[Nonparticipants' interests]** A mediator may bring to the attention of the parties the interests of others who are not participating in the mediation but who may be affected by agreements reached as a result of the mediation.
- (g) **[Combining mediation with other ADR processes]** A mediator must exercise caution in combining mediation with other alternative dispute resolution (ADR) processes and may do so only with the informed consent of the parties and in a manner consistent with any applicable law or court order. The mediator must inform the parties of the general natures of the different processes and the consequences of revealing information during any one process that might be used for decision making in another process, and must give the parties the opportunity to select another neutral for the subsequent process. If the parties consent to a combination of processes, the mediator must clearly inform the participants when the transition from one process to another is occurring.

- (h) **[Settlement agreements]** Consistent with subdivision (d), a mediator may present possible settlement options and terms for discussion. A mediator may also assist the parties in preparing a written settlement agreement, provided that in doing so the mediator confines the assistance to stating the settlement as determined by the parties.
- (i) **[Discretionary termination and withdrawal]** A mediator may suspend or terminate the mediation or withdraw as mediator when he or she reasonably believes the circumstances require it, including when 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
 - (3) Continuation of the process would cause significant harm to any participant or a third party.
- (j) **[Manner of withdrawal]** When a mediator determines that it is necessary to suspend or terminate a mediation or to withdraw, the mediator must do so without violating the obligation of confidentiality and in a manner that will cause the least possible harm to the participants.

Advisory Committee Comment

Subdivision (c). The explanation of the mediation process should include a description of the mediator's style of mediation.

Subdivision (d). Subject to the principles of impartiality and self-determination, and if qualified to do so, a mediator may (1) discuss a party's options, including a range of possible outcomes in an adjudicative process; (2) offer a personal evaluation of or opinion on a set of facts as presented, which should be clearly identified as a personal evaluation or opinion; or (3) communicate the mediator's opinion or view of what the law is or how it applies to the subject of the mediation, provided that the mediator does not also advise any participant about how to adhere to the law or on what position the participant should take in light of that opinion.

One question that frequently arises is whether a mediator's assessment of claims, defenses, or possible litigation outcomes constitutes legal advice or the practice of law. Similar questions may arise when accounting, architecture, construction, counseling, medicine, real estate, or other licensed professions are relevant to a mediation. This rule does not determine what constitutes the practice of law or any other licensed profession. A mediator should be cautious when providing any information or opinion related to any field for which a professional license is required, in order to avoid doing so in a manner that may constitute the practice of a profession for which the mediator is not licensed, or in a manner that may violate the regulations of a profession that the mediator is licensed

to practice. A mediator should exercise particular caution when discussing the law with unrepresented parties and should inform such parties that they may seek independent advice from a lawyer.

Subdivision (i). Subdivision (i)(2) is not intended to establish any new responsibility or diminish any existing responsibilities that a mediator may have under, the Americans With Disabilities Act or other similar law, to attempt to accommodate physical or mental disabilities of a participant in mediation.

Rule 1620.7 adopted effective January 1, 2003.

Drafter's Notes

2002—See note following rule 1620.

Rule 1620.8. Marketing

- (a) **[Truthfulness]** A mediator must be truthful and accurate in marketing his or her mediation services. A mediator is responsible for ensuring that both his or her own marketing activities and any marketing activities carried out on his or her behalf by others comply with this rule.
- (b) **[Representations concerning court approval]** A mediator may indicate in his or her marketing materials that he or she is a member of a particular court's panel or list but, unless specifically permitted by the court, must not indicate that he or she is approved, endorsed, certified, or licensed by the court.
- (c) **[Promises, guarantees, and implications of favoritism]** In marketing his or her mediation services, a mediator must not:
 - (1) Promise or guarantee results; or
 - (2) Make any statement that directly or indirectly implies bias in favor of one party or participant over another.
- (d) **[Solicitation of business]** A mediator must not solicit business from a participant in a mediation proceeding while that mediation is pending.

Advisory Committee Comment

Subdivision (d). This rule is not intended to prohibit a mediator from accepting other employment from a participant while a mediation is pending, provided that there was no express solicitation of this business by the mediator and that accepting that employment does not contravene any other provision of these rules, including the obligations to

maintain impartiality, confidentiality, and the integrity of the process. If other employment is accepted from a participant while a mediation is pending, however, the mediator may be required to disclose this to the parties under rule 1620.5.

This rule also is not intended to prohibit a mediator from engaging in general marketing activities. General marketing activities include, but are not limited to, running an advertisement in a newspaper and sending out a general mailing (either of which may be directed to a particular industry or market).

Rule 1620.8 adopted effective January 1, 2003.

Drafter's Notes

2002—See note following rule 1620.

Rule 1620.9. Compensation and gifts

- (a) [**Compliance with law**] A mediator must comply with any applicable requirements concerning compensation established by statute or the court.
- (b) [**Disclosure of and compliance with compensation terms**] 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.
- (c) [**Contingent fees**] The amount or nature of a mediator's fee must not be made contingent upon the outcome of the mediation.
- (d) [**Gifts and favors**] A 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.

Advisory Committee Comment

Subdivision (b). It is good practice to put mediation fee agreements in writing, and mediators are strongly encouraged to do so; however, nothing in this rule is intended to preclude enforcement of a compensation agreement for mediation services that is not in writing.

Subdivision (d). Whether a gift, bequest, or favor "might reasonably raise a question concerning the mediator's impartiality" must be determined on a case-by-case basis. This subdivision is not intended to prohibit a mediator from accepting other employment from any of the participants, consistent with rule 1620.8(d).

Rule 1620.9 adopted effective January 1, 2003.

Drafter's Notes

2002—See note following rule 1620.

Rule 1621. Attendance sheet and agreement to disclosure

- (a) **[Attendance sheet]** In each mediation to which these rules apply under rule 1620.1(a), the mediator must request that all participants in the mediation complete an attendance sheet stating their names, mailing addresses, and telephone numbers; retain the attendance sheet for at least two years; and submit it to the court on request.

- (b) **[Agreement to disclosure]** The mediator must agree, in each mediation to which these rules apply under rule 1620.1(a), that if an inquiry or a complaint is made about the conduct of the mediator, mediation communications may be disclosed solely for purposes of a complaint procedure conducted pursuant to rule 1622 to address that complaint or inquiry.

Rule 1621 adopted effective January 1, 2006

Rule 1622. Complaint procedure required

- (a) Each superior court that makes a list of mediators available to litigants in general civil cases or that recommends, selects, appoints, or compensates a mediator to mediate any general civil case pending in the court must establish procedures for receiving, investigating, and resolving complaints that mediators who are on the court's list or who are recommended, selected, appointed, or compensated by the court failed to comply with the rules of conduct for mediators set forth in this part, when applicable.

(Subd (a) amended effective January 1, 2006.)

- (b) The court may impose additional mediation training requirements on a mediator, reprimand a mediator, remove a mediator from the court's panel or list, or otherwise prohibit a mediator from receiving future mediation referrals from the court if the mediator fails to comply with the rules of conduct for mediators in this part, when applicable.

(Subd (b) amended effective January 1, 2006.)

Rule 1622 amended effective January 1, 2006; adopted effective January 1, 2003.

Advisory Committee Comment

Section 16 of the Standards of Judicial Administration sets out recommendations concerning the procedures that a court should use in receiving, investigating, and resolving complaints against commissioners and referees and may serve as guidance in adopting procedures for receiving, investigating, and resolving complaints against mediators.

Rule 1622 adopted effective January 1, 2003.

Drafter's Notes

2002—See note following rule 1620.

Rule 1622.1. Designation of person to receive inquiries and complaints

In each superior court that is required to establish a complaint procedure under rule 1622, the presiding judge must designate a person who is knowledgeable about mediation to receive and coordinate the investigation of any inquiries or complaints about the conduct of mediators who are subject to rule 1622.

Rule 1622.1 adopted effective January 1, 2006.

Rule 1622.2. Confidentiality of complaint procedures, information, and records

- (a) This rule's requirement that rule 1622 complaint procedures be confidential is intended to:
- (1) Preserve the confidentiality of mediation communications as required by Evidence Code sections 1115-1128;
 - (2) Promote cooperation in the reporting, investigation, and resolution of complaints about mediators on court panels; and
 - (3) Protect mediators against damage to their reputations that might result from unfounded complaints against them.
- (b) All procedures for receiving, investigating, and resolving inquiries or complaints about the conduct of mediators must be designed to preserve the confidentiality of mediation communications, including but not limited to the confidentiality of any communications between the mediator and individual mediation participants or subgroups of mediation participants.

- (c) All communications, inquiries, complaints, investigations, procedures, deliberations, and decisions about the conduct of a mediator under rule 1622 must occur in private and must be kept confidential. No information or records concerning the receipt, investigation, or resolution of an inquiry or a complaint under rule 1622 may be open to the public or disclosed outside the course of the rule 1622 complaint procedure except as provided in (d) or as otherwise required by law.
- (d) The presiding judge or a person designated by the presiding judge for this purpose may, in his or her discretion, authorize the disclosure of information or records concerning rule 1622 complaint procedures that do not reveal any mediation communications, including the name of a mediator against whom action has been taken under rule 1622, the action taken, and the general basis on which the action was taken. In determining whether to authorize the disclosure of information or records under this subdivision, the presiding judge or designee should consider the purposes of the confidentiality of rule 1622 complaint procedures stated in (a)(2) and (a)(3).
- (e) In determining whether the disclosure of information or records concerning rule 1622 complaint procedures is required by law, courts should consider the purposes of the confidentiality of rule 1622 complaint procedures stated in (a). Before the disclosure of information or records concerning procedures under rule 1622 is ordered, notice should be given to any persons whose mediation communications may be revealed.

Rule 1622.2 adopted effective January 1, 2006.

Advisory Committee Comment

See Evidence Code sections 1115 and 1119 concerning the scope and types of mediation communications protected by mediation confidentiality.

Subdivision (b). Private meetings, or "caucuses," between a mediator and subgroups of participants are common in court-connected mediations, and it is frequently understood that these communications will not be disclosed to other participants in the mediation. (See Cal. Rules of Court, rule 1620.4(c).) It is important to protect the confidentiality of these communications in rule 1622 complaint procedures, so that one participant in the mediation does not learn what another participant discussed in confidence with the mediator.

Subdivisions (c)-(e). The provisions of (c)-(e) that authorize the disclosure of information and records related to rule 1622 complaint procedures do not create any new exceptions to mediation confidentiality. Information and records about rule 1622 complaint procedures that would reveal mediation communications should only be publicly disclosed consistent with the statutes and case law governing mediation confidentiality.

Evidence Code sections 915 and 1040 establish procedures and criteria for deciding whether information acquired in confidence by a public employee in the course of his or her duty is subject to disclosure. These sections may be applicable or helpful in determining whether the disclosure of information or records acquired by judicial officers, court staff, and other persons while receiving, investigating, or resolving complaints under rule 1622 is required by law or should be authorized in the discretion of the presiding judge.

Rule 1622.3. Disqualification from subsequently serving as an adjudicator

A person who has participated in or received information about the receipt, investigation or resolution of an inquiry or a complaint under rule 1622 must 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, an arbitrator, a referee, or a juror, or in any other adjudicative capacity, in any court action or proceeding.

Rule 1622.3 adopted effective January 1, 2006.

Rules and Regulations of the State Bar of California

Article I. Classes of Membership—Annual Membership Fees and Penalties

§ 2. Enrollment as an Inactive Member

A. Any member of the State Bar not under suspension, who does not engage in any of the activities listed in subdivision (B) in California, may, upon written request, be enrolled as an inactive member. The secretary or designee may, in any case in which to do otherwise would work an injustice, and subject to any directions which may be given by the board or by its designee permit retroactive enrollment of inactive members.

B. No member of the State Bar practicing law, or occupying a position in the employ of or rendering any legal service for an active member, or occupying a position wherein he or she is called upon in any capacity to give legal advice or counsel or examine the law or pass upon the legal effect of any act, document or law shall be enrolled as an inactive member.

C. Notwithstanding subdivisions (A) and (B) a member serving for a court or any other governmental agency as a referee, hearing officer, court commissioner, temporary judge, arbitrator, mediator or in another similar capacity is eligible for enrollment as an inactive member if he or she does not otherwise engage in any of the activities listed in subdivision (B) or hold himself or herself out as being entitled to practice law.

(Adopted March 18, 2006)