JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Mary Ann Grilli and Hon. Michael Nash, Co-chairs
Michelle Gordon, Staff Analyst, 415-865-7569
Melissa Ardaiz, Research Attorney, 415-865-7567

DATE: August 25, 2003

SUBJECT: Juvenile Dependency Mediation Program Requirements (adopt Cal. Rules of Court, rule 1405.5; repeal Cal. Stds. Jud. Admin., § 24.6) (Action Required)

Issue Statement
Proposed rule 1405.5 of the California Rules of Court would require local juvenile dependency mediation programs to adhere to the guidelines currently set forth in section 24.6 of the California Standards of Judicial Administration. The existing standards have improved the quality of dependency mediation practice. They should be mandated to ensure uniform delivery of this high quality of service across the state.

Recommendation
The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2004:

1. Adopt rule 1405.5 of the California Rules of Court to mandate rules of practice and administration for court-connected dependency mediation programs; and
2. Repeal section 24.6 of the California Standards of Judicial Administration.

The text of the proposed rule and repealed standard is attached at pages 7–29.

Rationale for Recommendation
Rule 1405.5 would track the text of section 24.6 of the Standards of Judicial Administration with the following modifications:

1. Adding language in subdivision (a) to explain that the rule is intended to ensure fairness, accountability, and a high quality of service to children and families.

2. Reorganizing subdivision (b)(2)(A)–(D), which lists factors for determining the "safety and best interest of the child," to more accurately reflect Welfare and Institutions Code section 350's emphasis on family preservation and strengthening. The committee also recommends specifying that all the factors must be considered because they are all of equal importance.

3. Adding subdivision (b)(5) to define "protocols" as used in the rule.

4. Adding subdivision (d)(2)(B) to recognize the child's right to participate in the dependency mediation process or to have the child's voice represented by his or her attorney.

5. Adding subdivision (d)(5)(B) to ensure that mediation participants know the mediation sessions are confidential.

6. Deleting subdivision (e)(1)(C) to promote consistency in the qualifications to become a dependency mediator. Subdivision (e)(1)(C) of the existing standard allows mediators to meet the education requirement by having "a background in mediation along with training and/or experience acceptable to the court to be served." This background is not comparable with the requirements in subdivisions (e)(1)(A) and (e)(1)(B) that mediators possess graduate degrees. Deleting subdivision (e)(1)(C) would not burden courts that might have difficulty recruiting mediators who meet the more stringent requirements because new subdivision (f) allows the court to approve case-by-case substitution of education for experience and vice versa.

7. Revising the experience requirements in subdivision (e)(2) to distinguish between experience obtained in court settings and experience obtained in noncourt settings. The proposed rule eliminates the distinction among professions and requires two years of court-based experience regardless of one's profession. If the experience is not court based, then the rule requires three years.

8. Deleting the knowledge requirements in subdivisions (e)(3) and (e)(4) of the version circulated for comment because those areas are adequately addressed by the training requirements in proposed subdivisions (e)(3)(F) and (e)(3)(N).

9. Deleting the requirement for mediators to demonstrate their ability to mediate multiparty, high-conflict cases in subdivision (e)(5) of the version circulated for comment because it is adequately addressed by the training requirements in proposed subdivisions (e)(3)(E) and (e)(3)(I).

10. Deleting subdivision (f) of the version circulated for comment to eliminate the option of substituting 24 hours of training for the 2–3 years' experience or 40 hours' training required by subdivisions (e)(2) and (e)(5) of the version circulated for comment. Twenty-four hours of training is not sufficient. Deleting subdivision (f) of the version circulated for comment is not intended to cause a hardship on smaller courts or courts where resources are limited. This subdivision is now unnecessary because new subdivision (f) allows the court, on a case-by-case basis, to approve substitution of experience for education and education for experience. Because the list of subject areas in subdivision (f) of the version circulated for comment was instructive, however, that list has been transferred to new subdivision (e)(3) to clarify the subject areas in which dependency mediators must have training.

11. Adding language to new subdivision (e)(3) to specify the time frame in which dependency mediators must complete the 40 hours of initial training. Currently practicing dependency mediators must complete the required 40 hours of initial training by January 1, 2006; at least 20 hours of this training must be completed by January 1, 2005. Those beginning practice as dependency mediators must complete the training before, or within 12 months of, beginning practice. No training completed before January 1, 2002 may be used to satisfy these requirements. The training received by dependency mediators may also be used to fulfill the training requirements for child custody evaluators and mediators and vice versa in those subject areas applicable to both disciplines. Individual programs may determine which materials or courses are acceptable and the means by which to obtain the training (e.g., in-person instruction, self-study, online coursework).

12. Revising new subdivision (g) to require 12 hours of continuing education per year, including at least 4 hours specifically related to family violence, rather than the 15 hours per year with 5 hours related to family violence found in section 24.6. This change would make the requirements consistent with the continuing education requirements for other court service providers.

13. Requiring, under new subdivision (g), volunteers, interns, and paraprofessionals to meet the continuing education requirements. The committee recommends holding everyone practicing dependency mediation to the same professional standards. In addition, volunteers, interns, and paraprofessionals need continuing education to ensure they have current training on the legal and practical issues relevant to juvenile dependency and mediation.

14. Adding new subdivision (h) to require volunteers, interns, and paraprofessionals to fulfill the training and continuing education requirements in subdivisions (e)(3) and (g). The new subdivision also requires them to co-mediate with a qualified professional if they lack the necessary training and continuing education. Finally,

these revisions exempt them from the education and experience requirements in subdivisions (e)(1) and (e)(2) because requiring a graduate degree or two to three years' experience would discourage otherwise qualified people from volunteering or interning.

15. Reorganizing the ethical standards in subdivision (i) of the proposed rule to place together those regarding confidentiality.

16. Making various technical and clarifying changes, including the substitution of plain language where necessary, to make the rule clearer and easier to understand.

17. Replacing discretionary language with mandatory language where appropriate.

Alternative Actions Considered

Mandatory requirements are necessary to ensure uniform high quality of service and justice for all parties in juvenile dependency mediation cases statewide. No alternative actions were considered.

Comments From Interested Parties

The invitation to comment on the proposal was circulated in the regular spring cycle from April 17 through July 1, 2003. In addition to the standard mailing list used for soliciting comments, the proposal was sent to all juvenile dependency mediators, coordinators, supervisors and directors, juvenile court presiding judges, and major children's counsel agencies. Staff also consulted with a working group of juvenile dependency mediators, coordinators, and directors from across the state in developing the proposal.

There was a total of 10 commentators.[1] Nine of the 10 either agreed with the proposed rule or agreed if modifications were made. The following subdivisions received the most significant comments:

Subdivision (a)

Two commentators suggested retaining the existing reference to Welfare and Institutions Code section 350. This language was stricken from the version circulated for comment. The reference is significant because section 350 states the purpose of dependency mediation proceedings. One commentator suggested that we include the exact language of section 350. The committee recommends retaining the existing language.

Subdivision (b)(2)(A)-(D)

Two commentators suggested retaining the existing sequence of items because the order in the version circulated for comment substantially shifted the focus of dependency mediation away from emphasizing the preservation and strengthening of the family.

[1] The comments are summarized in the attached chart at pages 30–53.

Although all of the considerations are of equal importance and are not listed in order of priority, the committee recommends listing "family preservation and strengthening" first to be consistent with Welfare and Institutions Code section 350.

Subdivision (d)(2)(B)
Subdivision (d)(2)(B) was added at the request of the Judicial Council's Rules and Projects Committee. As circulated for comment, it gave the child the right to attend the mediation session. Six commentators thought that allowing the child to attend the actual mediation session might be unwise in some cases. They suggested adopting more flexible language that would recognize the child's rights as a party, but not restrict the exercise of those rights to attendance at the mediation session. A dependency attorney noted that allowing a child to "participate" in the process recognizes both a child's right to have a voice in the proceedings and the mediator's responsibility to engage the child in the process in the way most appropriate to the particular proceeding. The committee agrees and has revised the proposed rule to recognize the child's right to participate in the mediation process and to be accompanied by his or her attorney throughout the process.

Subdivision (d)(2)(B) of the version circulated for comment also required the child's attorney to attend the mediation session if the child chose not to attend or was too young to choose to attend. Five commentators suggested requiring the child's attorney to participate rather than attend. Many commentators felt that requiring attorneys to attend every mediation session raised potential practical and financial issues. Requests for more flexibility were based on concerns that the child's attorney's attendance would require the attendance of the other parties' attorneys and that protection of the child's interests or the successful conclusion of the mediation would not always require the attorney's presence.

In response to these comments, the committee recommends permitting the child's attorney to participate in the mediation process, especially if the child makes an informed choice not to participate personally or is unable to make an informed choice whether to participate. Under the proposed rule, the child's attorney will have discretion to participate in a variety of ways to ensure that the child's interests are protected. These may include, but are not limited to, consultation with the mediator before or after the mediation session, attendance at the session, or reviewing the mediation agreement before it is submitted to the court.

Deleted subdivision (f)
The committee requested comments on subdivision (f) of the version circulated for comment, which allowed mediators without dependency experience or training to substitute 24 hours of training within twelve months of employment, because it was unclear for which requirements the 24 hours of training might be substituted. One commentator thought they were meant to substitute for the two to three years' experience required in subdivision (e)(2) and suggested amending subdivision (f) to require 40 hours of training rather than 24. Another commentator suggested deleting subdivision (f)

entirely and also stated that 24 hours of training were an insufficient substitute for the training required in subdivision (e)(5) of the version circulated for comment. The committee agrees that subdivision (f) should be deleted, but recommends incorporating the subject areas listed in subdivision (f) into new subdivision (e)(3)'s 40 hours of training as areas in which dependency mediators must receive training.

New subdivision (g)
One commentator suggested applying the continuing education requirements to volunteers, interns, and paraprofessionals because this education is necessary for the person's own enhancement as well as for the public's benefit and safety. Another commentator thought that 15 hours were too much to ask of volunteers who already donate substantial time without compensation. Three commentators recommended reducing 15 hours of continuing education and 5 hours of family violence training per year to 12 hours and 4 hours, respectively, to be consistent with the training, education, and experience requirements for other court service professionals.

The committee recommends applying the continuing education requirements to volunteers, interns, and paraprofessionals, but reducing the required amount to 12 hours per year, 4 hours of which must cover family violence issues. The Administrative Office of the Courts (AOC) provides various trainings throughout the year, and volunteers, interns, and paraprofessionals may attend. Distance training may also be available.

The commentator who did not agree with the proposal remarked that extensive rules and micromanagement discourage courts from establishing programs that not only may work, but may also improve the standards or rules. Although rule 1405.5 does set certain minimum requirements, it allows each court the flexibility to choose its own program model and establish its own protocols as long as they exceed these minimum levels.

Implementation Requirements and Costs
Costs associated with implementing this rule would vary depending on each county's program model. Most counties currently include the child's attorney in the dependency mediation process. For those that do not, cost and time issues may arise, but those should be minimal given the flexibility the new rule allows. One commentator expressed concern that some courts might lack adequate funds to staff a mediation program or to provide the requisite training. The AOC currently provides several training opportunities for court staff, however, so the cost to the court should be minimal.

Attachments

Rule 1405.5 of the California Rules of Court is adopted, effective January 1, 2004, to read:

Rule 1405.5. Court-connected dependency mediation

(a) [Purpose] This rule establishes mandatory standards of practice and administration for court-connected dependency mediation services in accordance with Welfare and Institutions Code section 350. This rule is intended to ensure fairness, accountability, and a high quality of service to children and families and to improve the safety, confidentiality, and consistency of dependency mediation programs statewide.

(b) [Definitions]

(1) "Dependency mediation" is a confidential process conducted by specially trained, neutral third-party mediators who have no decision-making power. Dependency mediation provides a nonadversarial setting in which a mediator assists the parties in reaching a fully informed and mutually acceptable resolution that focuses on the child's safety and best interest and the safety of all family members. Dependency mediation is concerned with any and all issues related to child protection.

(2) "Safety and best interest of the child" refers to the child's physical, psychological, and emotional well-being. Determining the safety and best interest of the child includes consideration of all of the following:

(A) The preservation and strengthening of the family and family relationships whenever appropriate and possible;

(B) The manner in which the child may be protected from the risk of future abuse or neglect;

(C) The child's need for safety, stability, and permanency; and

(D) The ongoing need of the child to cope with the issues that caused his or her involvement in the juvenile dependency system.

(3) "Safety of family members" refers to the physical, psychological, and emotional well-being of all family members, with consideration of the following:

(A) The role of domestic violence in creating a perceived or actual threat for the victim, and

(B) The ongoing need of family members to feel safe from physical, emotional, and psychological abuse.

(4) "Differential domestic violence assessment" is a process used to assess the nature of any domestic violence issues in the family so that the mediator may conduct the mediation in such a way as to protect any victim of domestic violence from intimidation and to correct for power imbalances created by past violence and the fear of prospective violence.

(5) "Protocols" refer to any local set of rules, policies, and procedures developed and implemented by juvenile dependency mediation programs. All protocols must be developed in accordance with pertinent state laws, California Rules of Court, and local court rules.

(c) [Responsibility for mediation services]

(1) Each court that has a dependency mediation program must ensure that:

(A) Dependency mediators are impartial, are competent, and uphold the standards established by this rule;

(B) Dependency mediators maintain an appropriate focus on issues related to the child's safety and best interest and the safety of all family members;

(C) Dependency mediators provide a forum for all interested persons to develop a plan focused on the best interest of the child, emphasizing family preservation and strengthening and the child's need for permanency;

(D) Dependency mediation services and case management procedures are consistent with applicable state law without compromising each party's right to due process and a timely resolution of the issues;

(E) Dependency mediation services demonstrate accountability by:

(i) Providing for the processing of complaints about a mediator's performance, and

(ii) Participating in any statewide and national data-collection efforts;

(F) The dependency mediation program uses an intake process that screens for and informs the mediator about any restraining orders, domestic violence, or safety-related issues affecting the child or any other party named in the proceedings;

(G) Whenever possible, dependency mediation is conducted in the shared language of the participants. When the participants speak different languages, interpreters, court-certified when possible, should be assigned to translate at the mediation session; and

(H) Dependency mediation services preserve, in accordance with pertinent law, party confidentiality, whether written or oral, by the:

(i) Storage and disposal of records and any personal information accumulated by the mediation program, and

(ii) Management of any new child abuse reports and related documents.

(2) Each dependency mediator must:

(A) Attempt to assist the mediation participants in reaching a settlement of the issues consistent with preserving the safety and best interest of the child, first and foremost, and the safety of all family members and participants.

(B) Discourage participants from blaming the victim and from denying or minimizing allegations of child abuse or violence against any family member.

(C) Be conscious of the values of preserving and strengthening the family as well as the child's need for permanency.

(D) Not make any recommendations or reports of any kind to the court, except for the terms of any agreement reached by the parties.

(E) Treat all mediation participants in a manner that preserves their dignity and self-respect.

(F) Promote a safe and balanced environment for all participants to express and advocate for their positions and interests.

(G) Identify and disclose potential grounds upon which a mediator's impartiality might reasonably be challenged through a procedure that allows for the selection of another mediator within a reasonable time. If a dependency mediation program has only one mediator and the parties are unable to resolve the conflict, the mediator must inform the court.

(H) Identify and immediately disclose to the participants any reasonable concern regarding the mediator's continuing capacity to be impartial, so they can decide whether the mediator should withdraw or continue.

(I) Promote the participants' understanding of the status of the case in relation to the ongoing court process, what the case plan requires of them, and the terms of any agreement reached during the mediation.

(J) Conduct an appropriate review to evaluate the viability of any agreement reached, including the identification of any provision that depends on the action or behavior of any individual who did not participate in creating the agreement.

(d) [Mediation process] The dependency mediation process must be conducted in accordance with pertinent state laws, applicable rules of court, and local protocols. All local protocols must include the following:

(1) The process by which cases are sent to mediation, including:

(A) Who may request mediation;

(B) Who decides which cases are to be sent to mediation;

(C) Whether mediation is voluntary or mandatory;

(D) How mediation appointments are scheduled; and

(E) The consequences, if any, to a party who fails to participate in the mediation process.

(2) A policy on who participates in the mediation, according to the following guidelines:

(A) When at all possible, dependency mediation should include the direct and active participation of the parties, including but not

limited to the child, the parents or legal guardian, a representative of the child protective agency, and, at some stage, their respective attorneys.

(B) The child has a right to participate in the dependency mediation process accompanied by his or her attorney. If the child makes an informed choice not to participate, then the child's attorney may participate. If the child is unable to make an informed choice, then the child's attorney may participate.

(C) Any attorney who has not participated in the mediation must have an opportunity to review and agree to any proposal before it is submitted to the court for approval.

(D) As appropriate, other family members, and any guardian ad litem, Court Appointed Special Advocate (CASA), or other involved person or professional may participate in the mediation.

(E) A mediation participant who has been a victim of violence allegedly perpetrated by another mediation participant has the right to be accompanied by a support person. Unless otherwise invited or ordered to participate under the protocols developed by the court, a support person may not actively participate in the mediation except to be present as a source of emotional support for the alleged victim.

(3) A method by which the mediator may review relevant case information before the mediation.

(4) A protocol for providing mediation in cases in which domestic violence or violence perpetrated by any other mediation participant has, or allegedly has, occurred. This protocol must include specialized procedures designed to protect victims of domestic violence from intimidation by perpetrators. The protocol must also appropriately address all family violence issues by encouraging the incorporation of appropriate safety and treatment interventions in any settlement. The protocol must require:

(A) A review of case-related information before commencing the mediation;

(B) The performance of a differential domestic violence assessment to determine the nature of the violence, for the purposes of:

(i) Assessing the ability of the victim to fully and safely participate and to reach a noncoerced settlement;

(ii) Clarifying the history and dynamics of the domestic violence issue in order to determine the most appropriate manner in which the mediation can proceed; and

(iii) Assisting the parties, attorneys, and other participants in formulating an agreement following a discussion of appropriate safeguards for the safety of the child and family members.

(C) A mediation structure designed to meet the need of the victim of violence for safety and for full and noncoerced participation in the process, which structure must include:

(i) An option for the victim to attend the mediation session without the alleged perpetrator being present; and

(ii) Permission for the victim to have a support person present during the mediation process, whether he or she elects to be seen separately from or together with the alleged perpetrator.

(5) An oral or written orientation that facilitates participants' safe, productive, and informed participation and decision making by educating them about:

(A) The mediation process, the typical participants, the range of disputes that may be discussed, and the typical outcomes of mediation;

(B) The importance of keeping confidential all communications, negotiations, or settlement discussions by and between the participants in the course of mediation;

(C) The mediator's role and any limitations on the confidentiality of the process; and

(D) The right of a participant who has been a victim of violence allegedly perpetrated by another mediation participant to be accompanied by a support person and to have sessions with the mediators separate from the alleged perpetrator.

(6) Protocols related to the inclusion of children in the mediation, including a requirement that the mediator explain in an age appropriate way the

mediation process to a participating child. The following information must be explained to the child:

(A) The options available to the child for his or her participation in the mediation;

(B) What occurs during the mediation process;

(C) The role of the mediator;

(D) What the child may realistically expect from the mediation, and the limits on his or her ability to affect the outcome;

(E) Any limitations on the confidentiality of the process;

(F) The child's absolute right to be accompanied, throughout the mediation, by his or her attorney and other support persons; and

(G) The child's ability to take a break or terminate the mediation session if his or her emotional or physical well-being is threatened.

(7) Policies and procedures for scheduling follow-up mediation sessions.

(8) A procedure for suspending or terminating the process if the mediator determines that mediation cannot be conducted in a safe or an appropriately balanced manner or if any party is unable to participate in an informed manner for any reason, including fear or intimidation.

(9) A procedure for ensuring that each participant clearly understands any agreement reached during the mediation, and a procedure for presenting the agreement to the court for its approval. This procedure must include the requirement that all parties and the attorneys who participate in the agreement review and approve it and indicate their agreement in writing before its submission to the court.

(e) [Education, experience, and training requirements for dependency mediators] Dependency mediators must meet the following minimum qualifications:

(1) Possession of one of the following:

(A) A master's or doctoral degree in psychology, social work, marriage and family therapy, conflict resolution, or another behavioral science

substantially related to family relationships, family violence, child development, or conflict resolution from an accredited college or university; or

(B) A Juris Doctor or bachelor of laws degree with demonstrated experience in the field of juvenile or family law.

(2) At least two years of experience as an attorney, a referee, a judicial officer, or a mediator in juvenile dependency court or domestic relations court, or at least three years of experience in mediation, counseling, psychotherapy, or any combination thereof, preferably in a setting related to juvenile dependency or domestic relations; and

(3) Completion of at least 40 hours of initial dependency mediation training prior to or within 12 months of beginning practice as a dependency mediator. Currently practicing dependency mediators must complete the required 40 hours of initial training by January 1, 2006; at least 20 hours of this training must be completed by January 1, 2005. No training completed before January 1, 2002 may be used to satisfy these requirements. The training must cover the following subject areas:

(A) The dynamics of physical and sexual abuse, exploitation, emotional abuse, endangerment, and neglect of children, and their impacts on children;

(B) Child development and its relevance to the needs of children, to child abuse and neglect, and to child custody and visitation arrangements;

(C) The dynamics of domestic and family violence, its relevance to child abuse and neglect, and its effects on children and adult victims;

(D) Substance abuse and its impact on children;

(E) The roles and participation of parents, other family members, children, attorneys, guardians ad litem, the child welfare agency staff, Court Appointed Special Advocates (CASAs), law enforcement, mediators, the court, and other involved professionals and interested participants in the mediation process;

(F) Juvenile dependency and child welfare systems, including dependency law;

(G) The dynamics of disclosure and recantation and of denial of child abuse and neglect;

(H) Adult and child psychopathology;

(I) The psychology of families, the dynamics of family systems, and the impacts of separation, divorce, and family conflict on children;

(J) Safety and treatment issues related to child abuse, neglect, and family violence;

(K) Available community resources for dealing with domestic and family violence; substance abuse; and housing, educational, medical, and mental health needs in addition to related services for families in the juvenile dependency system, such as regional centers;

(L) The impact that the mediation process can have on children's well-being and behavior, and when and how to involve children in mediation;

(M) Methods to assist parties in developing options for different parenting arrangements that consider the needs of the children and each parent's capacity to parent;

(N) Awareness of differing cultural values, including the dynamics of cross-generational cultural issues and local demographics;

(O) The Americans With Disabilities Act, its requirements, and strategies for handling situations involving disability issues or special needs;

(P) The effect on family dynamics of removal or nonremoval of children from their homes and family members, including the related implications for the mediation process;

(Q) The effect of poverty on family dynamics and parenting; and

(R) An overview of the special needs of dependent children, including their educational, medical, and psychosocial needs, and the resources available to meet those needs.

(f) [Substitution for education or experience] The court, on a case-by- case basis, may approve substitution of experience for the education, or education for the experience, required by subdivisions (e)(1) and (e)(2).

(g) [Continuing education requirements for mediators] In addition to the 40 hours of training required by subdivision (e)(3), all dependency mediators, mediation supervisors, program coordinators and directors, volunteers, interns, and paraprofessionals must participate in at least 12 hours per year of continuing instruction designed to enhance dependency mediation practice, skills, and techniques, including at least 4 hours specifically related to the issue of family violence.

(h) [Volunteers, interns, or paraprofessionals] Dependency mediation programs may use volunteers, interns, or paraprofessionals as mediators, but only if they are supervised by a professional mediator who is qualified to act as a professional dependency mediator as described in subdivision (e). They must meet the training and continuing education requirements in subdivisions (e)(3) and (g) unless they co-mediate with another professional who meets the requirements of this rule. They are exempt from meeting the education and experience requirements in subdivisions (e)(1) and (e)(2).

(i) [Standards of conduct] Mediators must:

(1) Meet the standards of the applicable code of ethics for court employees.

(2) Maintain objectivity, provide information to and gather information from all parties, and be aware of and control their own biases.

(3) Protect the confidentiality of all parties, including the child. Mediators must not release information or make any recommendations about the case to the court or to any individual except as required by statute (for example, the requirement to make mandatory child abuse reports or reports to authorities regarding threats of harm or violence). Any limitations to confidentiality must be clearly explained to all mediation participants before any substantive issues are discussed in the mediation session.

(4) Maintain the confidential relationship between any family member or the child and his or her treating counselor, including the confidentiality of any psychological evaluations.

(5) Decline to provide legal advice.

(6) Consider the health, safety, welfare, and best interest of the child and the safety of all parties and other participants in all phases of the process, and encourage the formulation of settlements that preserve these values.

(7) Operate within the limits of their training and experience, and disclose any limitations or bias that would affect their ability to conduct the mediation.

(8) Not require the child to state a preference for placement.

(9) Disclose to the court, to any participant and to the participant's attorney any conflicts of interest or dual relationships, and not accept any referral except by court order or the parties' stipulation. In the event of a conflict of interest, the mediator must suspend mediation and meet and confer in an effort to resolve the conflict of interest either to the satisfaction of all parties or according to local court rules. The court may order mediation to continue with another mediator or offer the parties an alternative method of resolving the issues in dispute.

(10) Not knowingly assist the parties in reaching an agreement that would be unenforceable for a reason such as fraud, duress, illegality, overreaching, absence of bargaining ability, or unconscionability.

(11) Protect the integrity of the mediation process by terminating the mediation when a party or participant has no genuine interest in resolving the dispute and is abusing the process.

(12) Terminate any session in which an issue of coercion, inability to participate, lack of intention to resolve the issues at hand, or physical or emotional abuse during the mediation session is involved.

Effective January 1, 2004, section 24.6 of the California Standards of Judicial Administration is repealed, as follows:

~~**Sec. 24.6. Uniform standards of practice for court-connected child protection/dependency mediation**~~

~~**(a) [Purpose]** This sets forth standards of practice and administration for court-connected dependency mediation services in accordance with Welfare and Institutions Code section 350.~~

~~**(b) [Definitions]**~~

~~(1) "Dependency mediation" is a confidential process conducted by specially trained, neutral third-party mediators who have no decision-making power. Dependency mediation provides a nonadversarial setting in which a mediator assists the parties in reaching a fully informed and mutually acceptable resolution that focuses on the child's safety and best interest and the safety of all family members. Dependency mediation is concerned with any and all issues related to child protection.~~

~~(2) "Safety and best interest of the child" refers to the child's physical, psychological, and emotional well-being. Determining the safety and best interest of the child includes consideration of the following:~~

~~(A) The ongoing need of the child to cope with the issues that caused his or her involvement in the juvenile dependency system;~~

~~(B) The preservation and strengthening of the family and family relationships whenever appropriate and possible;~~

~~(C) The manner in which the child may be protected from the risk of future abuse or neglect; and~~

~~(D) The child's need for safety, stability, and permanency.~~

~~(3) "Safety of family members" refers to the physical, psychological, and emotional well-being of all family members, with consideration of the following:~~

~~(A) The role of domestic violence in creating a perceived or actual threat for the victim and~~

~~(B) The ongoing need of family members to feel safe from physical, emotional, and psychological abuse.~~

~~(4) "Differential domestic violence assessment" is a process used to assess the nature of any domestic violence issues in the family so that the mediator may conduct the mediation in such a way as to protect any victim of domestic violence from intimidation and to correct for power imbalances created by past violence and feared prospective violence.~~

~~**(c) [Responsibility for mediation services]**~~

~~(1) Each court should ensure that:~~

~~(A) Dependency mediators are impartial, are competent, and uphold the standards of practice contained in this section;~~

~~(B) Dependency mediators maintain an appropriate focus on issues related to the child's safety and best interest and the safety of all family members;~~

~~(C) Dependency mediators provide a forum for all interested persons to develop a plan focused on the best interest of the child, emphasizing family preservation and strengthening and the child's need for permanency;~~

~~(D) Dependency mediation services and case management procedures are consistent with applicable state law without compromising each party's right to due process and a timely resolution of the issues;~~

~~(E) Dependency mediation services demonstrate accountability by:~~

~~(i) Providing for the processing of complaints about a mediator's performance and~~

~~(ii) Participating in any statewide and national data collection efforts;~~

~~(F) The dependency mediation program uses an intake process that screens for and informs the mediator about any restraining orders, domestic violence, or safety-related issues affecting the child or any other party named in the proceedings;~~

~~(G) Whenever possible, dependency mediation should be conducted in the shared language of the participants. When the participants speak different languages, interpreters, court-certified when possible, should be assigned to translate at the mediation session; and~~

~~(H) Dependency mediation services preserve, in accordance with pertinent law, party confidentiality, whether written or oral, by the:~~

~~(i) Storage and disposal of records and any personal information accumulated by the mediation program and~~

~~(ii) Management of any new child abuse reports and related documents.~~

~~(2) Each dependency mediator should:~~

~~(A) Assist the mediation participants in reaching a settlement of the issues that is consistent with preserving the safety and best interest of the child, first and foremost, and the safety of all family members and participants;~~

~~(B) Discourage participants from blaming the victim and from denying or minimizing allegations of child abuse or violence against any family member;~~

~~(C) Be conscious of the values of family preservation and strengthening as well as the child's need for permanency;~~

~~(D) Not make any recommendations or reports of any kind to the court, except as to the terms of any agreement reached by the parties;~~

~~(E) Treat all mediation participants in a manner preserving their dignity and self-respect;~~

~~(F) Ensure a safe and balanced environment for all participants to express and advocate their positions and interests;~~

~~(G) Identify and disclose potential grounds upon which a mediator's impartiality might reasonably be challenged through a procedure that allows for the selection of another mediator within a reasonable time. If a dependency mediation program has only one mediator and the parties are unable to resolve the conflict, the mediator should so inform the court;~~

~~(H) Identify and immediately disclose any reasonable concern regarding the mediator's continuing capacity to be impartial, through a procedure that allows the participants to explore the matter and determine whether the mediator should withdraw or continue;~~

~~(I) Ensure that all participants understand the status of the case in relation to the ongoing court process, what the case plan requires of them, and the terms of any agreement reached during the mediation; and~~

~~(J) Conduct appropriate review to evaluate the viability of any agreement reached, including the identification of any provision that depends on the action or behavior of any individual who did not participate in creating the agreement.~~

~~**(d) [Mediation process]** The dependency mediation process should be conducted in accordance with pertinent state laws, and all applicable rules of court, and should include local protocols. All local protocols should include the following:~~

~~(1) The process by which cases are sent to mediation, including:~~

~~(A) Who may request mediation;~~

~~(B) Who decides which cases are to be sent to mediation;~~

~~(C) Whether mediation is voluntary or mandatory;~~

~~(D) How mediation appointments are scheduled; and~~

~~(E) The consequences, if any, to a party who fails to participate in the mediation session.~~

~~(2) Identification of the participants in the mediation, according to the following guidelines:~~

~~(A) When at all possible, dependency mediation should include the direct and active participation of the parents, a representative of the child protective agency, and, at one stage or another, their respective attorneys.~~

~~(B) As appropriate, the child who is the subject of the proceeding, other family members, and any guardian ad litem, Court Appointed Special Advocate (CASA), or other involved person or professional may participate in the mediation.~~

~~(C) Any attorney who has not participated in the mediation should have an opportunity to review and agree to any proposal before it is submitted to the court for approval.~~

~~(D) A mediation participant who has been a victim of violence allegedly perpetrated by another mediation participant has the right to be accompanied by a support person. Unless otherwise invited or ordered to participate under the protocols developed by the court, such a support person may not actively participate in the mediation except to act as emotional support for the alleged victim.~~

~~(3) A means by which the mediator may review relevant case information before the mediation.~~

~~(4) A protocol for providing mediation in cases in which domestic violence or violence perpetrated by any other mediation participant has, or allegedly has, occurred. Such a protocol should include specialized procedures designed to protect victims of domestic violence from intimidation by perpetrators.~~

~~The protocol should also appropriately address all family violence issues by encouraging the incorporation of appropriate safety and treatment interventions in any settlement. The protocol should include the following:~~

~~(A) A review of case-related information prior to commencing the mediation;~~

~~(B) The performance of a differential domestic violence assessment to determine the nature of the violence, for the purposes of:~~

~~(i) Assessing the ability of the victim to fully and safely participate and to reach a noncoerced settlement;~~

~~(ii) Clarifying the history and dynamics of the domestic violence issue in order to determine the most appropriate manner in which the mediation can proceed;~~

~~(iii) Assisting the parties, attorneys, and other participants in formulating an agreement following a discussion of appropriate safeguards for the safety of the child and family members;~~

~~(C) Structuring the mediation in a manner designed to meet the need of the victim of violence for safety and for full and noncoerced participation in the process, including:~~

~~(i) Giving the victim of violence the option of attending mediation sessions without the alleged perpetrator being present;~~

~~(ii) Permitting the victim to have a support person present during the mediation process, whether he or she elects to be seen separately from or together with the alleged perpetrator; and~~

~~(iii) Identifying the participants as provided in subdivision (d)(2) above.~~

~~(5) The provision of an oral or written orientation that facilitates participants' safe, productive, and informed participation and decision making by educating them about:~~

~~(A) How the mediation process is conducted, who generally participates in the sessions, the range of disputes that may be discussed, and what to expect at the conclusion of mediation;~~

~~(B) The mediator's role and any limitations on the confidentiality of the process; and~~

~~(C) The right of a participant who has been a victim of violence allegedly perpetrated by another mediation participant to be accompanied by a support person and to have sessions with the mediators separate from the alleged perpetrator.~~

~~(6) Protocols related to the inclusion of minors in the mediation, including:~~

~~(A) Criteria for determining whether or not a minor should participate in mediation, including the following:~~

~~(i) The age of the child;~~

~~(ii) The issues to be discussed at the mediation; and~~

~~(iii) The emotional stability of the child and his or her ability to participate without compromising his or her emotional well-being;~~

~~(B) A protocol for a child's involvement, in those cases in which a child participates in the mediation, including a requirement to explain the mediation process to a participating child in an age-appropriate way. The following information should be explained to the child:~~

~~(i) Any options available to the minor for his or her participation in the mediation;~~

~~(ii) What occurs during the mediation process;~~

~~(iii) The role of the mediator;~~

~~(iv) What the child may realistically expect from the mediation, and the limits on his or her ability to affect the outcome;~~

~~(v) Any limitations on the confidentiality of the process;~~

~~(vi) The child's absolute right to be accompanied, throughout the mediation, by his or her attorney and other support persons; and~~

~~(vii) The child's ability to take a break or terminate the mediation session if his or her emotional or physical well-being is threatened.~~

~~(7) Policy and procedures for scheduling follow-up mediation sessions.~~

~~(8) A procedure for suspending or terminating the process if the mediator determines that mediation cannot be conducted in a safe or an appropriately balanced manner or if any party is unable to participate in an informed manner for any reason, including fear or intimidation.~~

~~(9) A procedure for ensuring that each participant clearly understands any agreement reached during the mediation, as well as a procedure for presenting the agreement to the court for its approval. Such procedure should include the requirement that all parties and the attorneys participating in the agreement review and approve it and indicate their agreement in writing prior to its submission to the court.~~

~~**(e) [Training and experience requirements for dependency mediators]** Dependency mediators should meet the following minimum qualifications:~~

~~(1) Possession of one or more of the following:~~

~~(A) A master's or doctoral degree in psychology, social work, marriage and family therapy, conflict resolution, or other behavioral science substantially related to family relationships, family violence, child development, or conflict resolution from an accredited college or university;~~

~~(B) A Juris Doctor degree with demonstrated experience in the field of juvenile or family law; or~~

~~(C) A background in mediation along with training and/or experience acceptable to the court to be served;~~

~~(2) At least three years of experience in mediation, counseling, psychotherapy, or any combination thereof, preferably in a setting related to juvenile dependency court or domestic relations and with the ethnic population to be served; or at least two years of experience as an attorney, a referee, or a judicial officer, practicing in juvenile dependency court or domestic relations with the ethnic population to be served;~~

~~(3) Demonstrated knowledge of the juvenile court dependency system and the child welfare and protection systems, as well as the ability to interpret and apply laws, rules, regulations, and procedures as they relate to the dependency mediation court system and the process in which the mediations are conducted; and~~

~~(4) A minimum of 40 hours of mediation training and demonstrated ability to mediate multiparty, high-conflict cases.~~

~~**(f) [Substitution for training and experience requirements—subsequent training]** Those mediators who do not already possess dependency experience or training may substitute the completion of at least 24 hours of training within 12 months of employment, as follows:~~

~~(1) At least 16 hours of the training should cover the following subject areas:~~

~~(A) The dynamics of physical and sexual abuse, exploitation, emotional abuse, endangerment, and neglect of children, and their impacts on children;~~

~~(B) Child development and its relevance to the needs of children, to child abuse and neglect, and to child custody and visitation arrangements;~~

~~(C) The dynamics of domestic and family violence, its relevance to child abuse and neglect, and its effects on children and adult victims;~~

~~(D) Substance abuse and its impact on children;~~

~~(E) The roles and participation of parents, other family members, children, attorneys, guardians ad litem, the child welfare agency staff, Court Appointed Special Advocates (CASAs), law enforcement, mediators, the court, and other involved professionals and interested participants in the mediation process; and~~

~~(F) Dependency law.~~

~~(2) The remaining eight hours of required training may cover any of the topics above or any of the following:~~

~~(A) The dynamics of disclosure and recantation and of denial of child abuse and neglect;~~

~~(B) Adult and child psychopathology;~~

~~(C) The psychology of families, the dynamics of family systems, and the impacts of separation, divorce, and family conflict on children;~~

~~(D) Safety and treatment issues related to child abuse, neglect, and family violence;~~

~~(E) Available community resources for dealing with domestic and family violence; substance abuse; and housing, educational, medical, and mental health needs in addition to related services for families in the juvenile dependency system, such as regional centers;~~

~~(F) The impacts that the mediation process can have on children's well-being and behavior, and when and how to involve children in mediation;~~

~~(G) Methods to assist parties in developing options for different parenting arrangements that consider the needs of children and each parent's capacity to parent;~~

~~(H) Awareness of differing cultural values, including the dynamics of cross-generational cultural issues;~~

~~(I) The Americans with Disabilities Act, its requirements, and strategies for handling situations involving disability issues or special needs;~~

~~(J) The effect on family dynamics of removal or nonremoval of children from their homes and family members, including the related implications for the mediation process;~~

~~(K) The effect of poverty on family dynamics and parenting; and~~

~~(L) An overview of the special needs of dependent children, including their educational, medical, and psychosocial needs as well as the resources available to meet those needs.~~

~~**(g) [Volunteers, interns, or paraprofessionals]** Dependency mediation programs may use volunteers, interns, or paraprofessionals as mediators, but only if they work with a professional mediator who is qualified to act as a professional dependency mediator as described in subdivision **(**e) of this standard. Any such volunteers, interns, or paraprofessionals should be exempt from the minimum qualification standards numbered **(**e)2 and 3 above.~~

~~**(h) [Substitution for education or experience]** The juvenile dependency court may substitute additional experience for a portion of the education, or additional education for a portion of the experience, required by subdivisions **(**e) and **(**f) above.~~

~~**(i) [Continuing education requirements for mediators and mediation supervisors]** All dependency mediators, mediation supervisors, and program coordinators and directors should participate in at least 15 hours per year of continuing instruction designed to enhance mediation skills and techniques, including at least 5 hours specifically related to the issue of family violence.~~

~~**(j) [Ethics/standards of conduct]** Mediators should**:**~~

~~(1) Meet the practice and ethical standards of the applicable code of ethics for court employees.~~

~~(2) Maintain objectivity, provide information to and gather information from all parties, and control for bias.~~

~~(3) Protect the confidentiality of all parties, including the child. Mediators should not release information or make any recommendations about the case to the court or to any individual except as compelled by statute (for example, the requirement to make mandatory child abuse reports or reports to authorities regarding threats of harm and/or violence). Any limitations to confidentiality should be clearly explained to all mediation participants before any substantive issues are discussed in the mediation session.~~

~~(4) Decline to provide legal advice.~~

~~(5) Strive to maintain the confidential relationship between any family member or the child and his or her treating counselor, including the confidentiality of any psychological evaluations.~~

~~(6) Consider the health, safety, welfare, and best interest of the child and the safety of all parties and other participants in all phases of the process, and encourage the formulation of settlements preserving these values.~~

~~(7) Operate within the limits of his or her training and experience, and disclose any limitations or bias that would affect his or her ability to conduct the mediation.~~

~~(8) Not require the child to state a preference for placement.~~

~~(9) Disclose to the court, to any participant, and to his or her attorney any conflicts of interest or dual relationships, and not accept any referral except by court order or the parties' stipulation. In the event of a conflict of interest, the mediator should suspend mediation and meet and confer in an effort to resolve the conflict of interest either to the satisfaction of all parties or according to local court rules. The court may order mediation to continue with another mediator or offer the parties an alternative method of resolving the issues in dispute.~~

~~(10) Not knowingly assist the parties in reaching an agreement that would be unenforceable for a reason such as fraud, duress, illegality, overreaching, absence of bargaining ability, or unconscionability.~~

~~(11) Protect the integrity of the mediation process by terminating the mediation when a party or participant has no genuine interest in resolving the dispute and is abusing the process.~~

~~(12) Terminate any session in which an issue of coercion, inability to participate, lack of intention to resolve the issues at hand, or physical or emotional abuse during the mediation session is involved.~~

~~**Advisory Committee Comment**~~

~~**2001**—These standards are consistent with the manual *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* and related recommendations of the National Council of Juvenile and Family Court Judges.~~

SPR03-32

Juvenile Dependency Mediation Program Requirements
(adopt Cal. Rules of Court, rule 1405.5; repeal Cal. Stds. Jud. Admin., § 24.6)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Steve Baron Director Superior Court of California, County of Santa Clara	AM	N	1. Subdivision (c)(2)(A). Insert "Attempt to" in front of "Assist the mediation participants in reaching a settlement …" While it is appropriate to require the dependency mediator to "attempt to" do those things, it is simply impossible and inappropriate to require that they accomplish those goals because they do not have absolute control over whether a settlement is reached or the ultimate quality of that settlement. 2. Subdivision (c)(2)(B). This subdivision should read: "Discourage participants from blaming the victim ~~from denying~~ and or minimizing ~~allegations~~ issues of child abuse or violence against any family member in the course of mediation." The purpose of mediation is to encourage free expression. The original language precludes participants from denying, challenging, or presenting alternate descriptions of alleged abuse or family violence. The suggested language allows participants the opportunity to challenge the accuracy of those issues in mediation if they wish to. After such discussion and processing, the mediators can determine if the issues are well established and whether participants are denying or minimizing well supported issues and need to be challenged. 3. Subdivision (c)(2)(F). Replace the word "ensure" with "promote." Subdivision should read "Promote a	1. Agree. Suggested change has been incorporated in the proposal. 2. Original language has been retained. Challenging allegations is more appropriate to do during court proceedings. 3. Agree. Suggested change has been incorporated in the proposal.

 Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Comments that refer to subdivisions (g), (h), (i), and (j) in the version circulated for comment refer to subdivisions (f), (g), (h), and (i), respectively, in the proposed rule.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				safe and balanced environment …" because a mediator cannot guarantee a safe and balanced environment.	
				4. Subdivision (c)(2)(I): This subdivision should read "~~Ensure that all~~ Promote the participants ~~understand~~ understanding of the status of the case … what the case plan requires … and terms of any agreements…." The mediator cannot "ensure" that the participants understand anything, but can make reasonable efforts to help them understand. Also, a discussion and clarification of the entire case plan may not be appropriate because the entire case plan is often not the subject of mediation.	4. Agree. Suggested change has been incorporated in the proposal.
				5. Subdivision (d)(2)(B). Suggest changing first sentence to: "The child has a right to ~~attend~~ participate in the dependency mediation process." "Attend" is more likely to be interpreted as requiring that the child should attend group mediation meetings or meet directly with the perpetrator of the abuse, which may not be appropriate for the child. The suggested language is more appropriate because it allows for some form of participation sometime during the process, i.e. an individual caucus with the mediator.	5. Agree. Using "participate" rather then "attend" provides more flexibility as to how the child's voice is represented throughout the mediation process. Suggested change has been incorporated in the proposal.
				6. Subdivision (d)(2)(D). Change "should" to "must." No agreement should be submitted to the court until	6. Agree. Suggested change has been incorporated in the proposal.

Comments that refer to subdivisions (g), (h), (i), and (j) in the version circulated for comment refer to subdivisions (f), (g), (h), and (i), respectively, in the proposed rule.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				all the parties and their attorneys have had an opportunity to review and approve the agreement because there is no agreement until all the parties and attorneys have reviewed and approved it. To do otherwise undermines the fundamental integrity of the mediation process. Power must be balanced to the extent possible which requires that the participants and their counsel have the right and duty to participate.	
				7. Subdivision (e)(2). Change to "At least ~~three~~ two years of experience in mediation, counseling, psychotherapy, or any combination thereof …." Two years of experience is sufficient.	7. Agree in part. Two years of experience is sufficient if the experience is court based. If experience is not court-based, then three years is necessary.
				8. Subdivision (e)(2). Put "preferably" back where it was deleted so the sentence reads "… preferably in a setting related to juvenile dependency court or domestic relations ...." Sometime we'll find a professional who is an outstanding mediator in another field, who can be readily trained to be a dependency mediator.	8. Agree. Suggested change has been incorporated in the proposal.
				9. Subdivision (e)(2). Change to "… in a setting related to juvenile dependency court or domestic relations court or child abuse and neglect." Adding this expands the areas of experience preferred beyond the limits of court settings—a very appropriate expansion.	9. Agree in principle. Proposed rule will include those with experience in juvenile dependency and domestic relations outside of court settings.

Comments that refer to subdivisions (g), (h), (i), and (j) in the version circulated for comment refer to subdivisions (f), (g), (h), and (i), respectively, in the proposed rule.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				10. Subdivision (e)(2). Insert "court" after "domestic relations." 11. Subdivision (h). Suggest changing to "… must participate in at least ~~15~~ 12 hours per year … including at least ~~5~~ 4 hours specifically related to the issue of family violence" in order to make this requirement for continuing education more consistent wit h the requirements for Family Court Services mediators/investigators. 12. Subdivision (j)(2). Insert "of" after "aware." 13. Subdivision (j)(2). Insert "for" after "control."	10. Agree. Suggested change has been incorporated in the proposal. 11. Agree. Suggested change has been incorporated in the proposal. 12. Agree. Suggested change has been incorporated in the proposal. 13. Addition not necessary.
2.	Ms. Elizabeth Dunn Program Director Dependency Mediation Superior Court of California, County of Alameda	AM	N	1. Subdivision (a). Restore deleted first sentence which reads "This sets forth standards of practice and administration for court-connected dependency mediation services in accordance with Welfare and Institutions Code section 350." This sentence expresses the legislative mandate that underlies the purpose of mediation in dependency proceedings. 2. Subdivision (b)(2)(A) - (D). Restore the original ordering sequence in "determining safety and best interest." Rather than (A), (B), (C), (D), the order should be (C), (D), (A), (B). The original order expresses the legislative mandate which underlies the purpose of mediation in dependency proceedings.	1. Agree. Proposed rule references Welf. & Inst. Code, § 350. 2. Agree in part. Sequence will reflect Welf. & Inst. Code, § 350. However, the order will be changed to (D), (A), (B), (C).

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				3. Subdivision (c)(2)(B). Suggest changing language to: "Discourage participants from blaming the victim and ~~from denying~~ or minimizing ~~allegations~~ issues of child abuse or violence against any family member." This would be a more appropriate way of describing the task. Some participants "deny" for good reason because they did not do what was alleged, etc. and so denying is a starting point for discussion.	3. Original language has been retained. Challenging allegations is more appropriate to do during court proceedings.
				4. Subdivision (d)(2)(B). Suggest changing language to "The child has a right to ~~attend~~ participate in the dependency mediation process. If after being informed of this right, the child chooses not to participate, or is too young to decide, then child's attorney must ~~attend~~ participate." The suggested language recognizes a child's right and recognizes the mediator's responsibility to engage the child in the process in the most appropriate way, so that they participate in decision-making. While the child is a party to the proceedings, not all issues in the actual mediation session are age appropriate for a child, or are critically relevant to the child (e.g. a mediation involving complex aspects of a parent case plan, services, and compliance discussion).	4. Agree. Using "participate" rather then "attend" provides more flexibility as to how the child's voice is represented throughout the mediation process. Suggested change has been incorporated in the proposal.
				5. Subdivision (d)(2)(D). Change "should" to "must." The suggested change recognizes the party's right to representation and recognizes the mediator's	5. Agree. Suggested change has been incorporated in the proposal.

Comments that refer to subdivisions (g), (h), (i), and (j) in the version circulated for comment refer to subdivisions (f), (g), (h), and (i), respectively, in the proposed rule.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				responsibility to engage the attorney in the process in a way that is practical and realistic with individual court protocols. 6. Subdivision (e)(2). Change to "At least ~~three~~ two years experience …." There should be consistent requirements for legal and clinical background. 7. Subdivision (h). Change to "… must participate in at least ~~15~~ 12 hours per year … including ~~5~~ 4 specifically related to the issue of family violence" in order to be consistent with other continuing education requirements in court-related service.	6. Agree in part. Two years of experience is sufficient if the experience is court based. If experience is not court based, then three years is necessary. 7. Agree. Suggested change has been incorporated in the proposal.
3.	Mr. Robert Gerard President Orange County Bar Association	A	Y	1. "The dependency mediation program is under utilized. A significant impediment to implementation is the lack of adequate funds to staff the mediation program and support the diversion of social worker and attorney time to the mediation process. While adoption of standards for the mediation program is laudable and appropriate, it does not address the funding issue."	1. The committee agrees that the funding implications should be considered.
4.	Mr. Scott Jones Manager, Family Court Services Superior Court of California, County of Ventura	A	N	1. Local training costs should be included in state budget reimbursement to local costs.	1. The AOC offers training satisfying rule requirements in several forums annually. Costs associated with training attendance (registration, meals and lodging) are provided at no cost to the trial courts, but rather are absorbed by the Modernization

Comments that refer to subdivisions (g), (h), (i), and (j) in the version circulated for comment refer to subdivisions (f), (g), (h), and (i), respectively, in the proposed rule.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					Fund. The courts will, however, be required to cover travel costs associated with mediator program staff attendance; no additional resources will be provided to the courts to address such costs as part of rule implementation.
5.	Mr. Stephen Love Executive Officer Superior Court of California, County of San Diego	AM	N	1. "Minimal impact at Juvenile. This proposal requests the court refer families to mediation in appropriate cases. It also addresses the role and responsibilities of mediation counselors. Family Court handles mediation referrals from Juvenile Court currently. Juvenile has referred only one or two cases to Family Court for mediation over the past year." 2. Subdivision (b)(1). "Suggest clarification regarding whether this rule applies to Family Group Decision making (aka Family Unity Meetings)." 3. Subdivision (b)(4). Change "feared" to "the fear of." 4. Subdivision (d)(2)(A). Insert "or legal guardian" after "the parents." 5. Subdivision (d)(2)(B). Insert comma after "If."	1. No response required. 2. No clarification is needed because the title explicitly states that the proposed rule only applies to court-connected juvenile dependency mediation programs. It does not apply to other types of dispute resolution. Agree. Suggested change has been incorporated in the proposal. 4. Agree. Suggested change has been incorporated in the proposal. 5. Sentence has been changes and comma

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					is no longer necessary.
				6. Subdivision (d)(2)(B). Change "the" to "a" so it reads "… to decide whether a young child …."	6. Sentence has been deleted from proposal.
				7. Subdivision (d)(2)(B)(iii). Insert "physical health and" before "emotional stability of the child" and insert "physical and" before "emotional well-being."	7. Sentence has been deleted.
				8. Subdivision (d)(5)(B). Insert "confidential" between "keeping" and "all" so that it reads "keeping confidential all communications …" and delete "confidential" in last sentence.	8. Agree. Suggested change has been incorporated in the proposal.
				9. Subdivision (d)(5)(B). Change period to semicolon.	9. Agree. Suggested change has been incorporated in the proposal.
				10. Subdivision (d)(6)(A). Change "Any" to "The."	10. Agree. Suggested change has been incorporated in the proposal.
				11. Subdivision (d)(6)(A). Change "minor" to "child."	11. Agree. Suggested change has been incorporated in the proposal.
				12. Subdivision (d)(9). Change "as well as" to "and."	12. Agree. Suggested change has been incorporated in the proposal.
				13. Subdivision (e)(3). Change "Experience" to "Knowledge of."	13. Subdivision has been deleted from the proposal.
				14. Subdivision (f). "Suggest deleting this	14. Agree. Suggested change has been

Comments that refer to subdivisions (g), (h), (i), and (j) in the version circulated for comment refer to subdivisions (f), (g), (h), and (i), respectively, in the proposed rule.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				subdivision. 24 hours of training is insufficient as a substitution."	incorporated in the proposal. However, the subject areas listed in subdivision (f) will be incorporated into the 40 hours of training required by subdivision (e).
				15. Subdivision (f)(2)(G). Insert "the" between "of" and "children."	15. Subdivision (f) has been deleted. However, (f)(2)(G) has been incorporated in subdivision (e)(3). Suggested change has been incorporated in the proposal.
				16. Subdivision (f)(2)(L). Insert comma after "psychosocial needs."	16. Subdivision (f) has been deleted. However, (f)(2)(L) has been incorporated in subdivision (e)(3). Suggested change has been incorporated in the proposal.
				17. Subdivision (f)(2)(L). Change "as well as" to "and."	17. Subdivision (f) has been deleted. However, (f)(2)(L) has been incorporated in subdivision (e)(3). Suggested change has been incorporated in the proposal.
				18. Subdivision (j)(2). Insert "of" after "aware."	18. Agree. Suggested change has been incorporated in the proposal.
				19. Subdivision (j)(2). Change "one's" to "their."	19. Agree. Suggested change has been incorporated in the proposal.
				20. Subdivision (j)(7). Change "his or her" to "their."	20. Suggested change has been

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					incorporated in the proposal.
6.	Ms. Tricia McCoy Supervising Clerk—Juvenile Division Superior Court of California, County of Kern	AM	N	1. "Our committee agrees with subdivision (d)(2)(B), that the child has a right to attend." 2. Subdivision (d)(2)(B). "Is there a difference between the right to attend vs. the right to participate?" What is the significance of "attend and participate?" 3. Subdivision (d)(2)(B). "Our committee felt that the 'young child' was too vague, what is the significance of 'young'?" 4. Subdivision (d)(2)(B)(i). Need more clarification for "age." Age guidelines would be valuable. Needs a better definition. 5. Subdivision (d)(2)(B)(i). The phrase "the age of the child" should be changed to "the age <u>and maturity</u> of the child."	1. No response required. 2. "Attend" has been replaced with "participate" throughout the subdivision. 3. All references to "young" have been deleted. 4. Criteria related to the "young" child's participation have been deleted. 5. Criteria related to the "young" child's participation have been deleted.
7.	Ms. Honora R. Miller Coordinator, Juvenile Dependency Mediation Pgrm Superior Court of California, County of San Mateo	AM	Y	**General Comments** 1. Background on San Mateo County Juvenile Dependency Mediation Program: A. Relies primarily on volunteer mediators (attorneys, therapists and other professionals). A professional mediator supervises volunteers. B. Volunteers are carefully selected and provided	1. No response required.

Comments that refer to subdivisions (g), (h), (i), and (j) in the version circulated for comment refer to subdivisions (f), (g), (h), and (i), respectively, in the proposed rule.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				with substantial training and supervision and matched to specific mediations. C. Co-mediation model allows for peer-based mentoring and quality control. D. Program does not attempt to settle jurisdictional-type issues. Program addresses what would be considered "dispositional issues." E. Mediations generally address conflicts between the parties, and only occasionally relate to court orders. Therefore the required knowledge of dependency law and process by our volunteer mediators is significantly less than for mediators in other counties who are mediating jurisdictional issues in lieu of litigation. F. Program has had great success in using mediation throughout the life of a dependency case as well as assisting parties prior to filing with the court. G. Concerned that the proposed rule only contemplates volunteer mediators in "some" cases and certain provisions might not allow program model to continue. **Specific Comments** 1. Subdivision (c)(2)(I). Replace "ensure" with "assist." We feel that mediators can "assist" in participants' understanding, but cannot "ensure" it. 2. Subdivision (d)(2)(B). The person who determines whether the child wishes to attend mediation needs	 1. Agree in principle. "Ensure" is replaced with "promote" in the proposal. 2. The existing language clearly states that the child decides whether or not they wish

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				clarification. In our view, the child's attorney should speak for the child as to whether the child wishes to attend and participate in the mediation. 3. Subdivision (d)(2)(B). We suggest the subdivision read "… the child chooses not to attend or is too young to decide, then the child's attorney may attend the mediation, either in lieu of the child or with the child …." In our mediation program attorneys do not normally attend. It is felt by the attorneys that if one attorney participates, then all must participate and what results is a "mediation" of attorneys and not parties. Also, many times the issues mediated do not directly involve the child (e.g. communication and co-parenting issues). We therefore oppose a rule requiring any attorney to participate. 4. Subdivision (h). We suggest a rule that requires continuing education in an amount set by the local court. While we have always required continuing education for our volunteer mediators, 15 hours is too much to ask of those who already donate substantial time without compensation.	to participate in the mediation. If the child is unable to make an informed choice, then the child's attorney makes that determination. 3. Agree in part. In juvenile dependency proceedings, the focus of the mediation should always be on the "best interest of the child." Therefore, the child and or their attorney may participate in the mediation process in the manner in which they choose. 4. The amount of continuing education should be consistent among all mediators, regardless of whether or not they volunteer. However, the proposed rule will designate 12 rather than 15 hours of continuing education.
8.	Ms. Kristin Mateer Dependency Attorney Alameda County Public Defender's Office, Juvenile Dependency Unit			1. Subdivision (d)(2)(B). Change language to the following: "The child has a right to participate in the dependency mediation process. If after being informed of this right, the child chooses not to participate, or is too young to decide, then the child's attorney must participate." While the	1. Agree. Using "participate" rather then "attend" provides more flexibility as to how the child's voice is represented throughout the mediation process. Suggested change has been incorporated in the proposal.

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				then the child's attorney must participate." While the child is a party to the proceedings, not all issues in the actual mediation session are age appropriate for a child, or are critically relevant to the child (for example, a mediation involving complex aspects of a parent's case plan, services, and compliance discussion). The suggested language recognizes a child's right and recognizes the mediator's responsibility to engage the child in the process in the most appropriate way, so that he or she participates in decision-making. Successful mediations do not necessarily require the child or attorney to be present. A case-by-case assessment should be used to determine the necessity of the child's attorney's presence. 2. Subdivision (d)(2)(D). Change language to the following: "Any attorney for a party who has not attended the mediation session ~~should~~ must have an opportunity to review …." The suggested language recognizes the party's right to representation and counsel and recognizes the mediator's responsibility to engage that attorney in the process in a way that is also practical and realistic with individual court protocols.	the proposal. 2. Agree. Suggested change has been incorporated in the proposal.
9.	Hon. Dennis E. Murray Presiding Judge Superior Court of California,	N	N	"The only reason given for making these 'rules' rather than 'standards' is: "Program administrators have come to agree that the standards have improved	Although the proposed rule does set certain minimum requirements (e.g., minimum qualifications, ongoing education and

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	County of Tehama			the dependency mediation practice and that they should be mandated to maintain the high quality of service being delivered." Why does that mean there should only be one way to do things? Rules stifle innovation. Why shouldn't a court be able to come up with, or at least try, variations that better meet the needs of the court litigants and children? If nothing else, extensive rules and micro management discourage courts from enacting programs that not only may work, or at least be better than nothing, but may also be an improvement on the standards/rules. Unfortunately, this advisory committee has, for some time, not been content with giving us detailed 'best practices.' It wants the council to pronounce them as the only practice."	training requirements, and ethical standards of conduct for mediators), it allows each court jurisdiction to set up its own local protocols for procedures such as issues mediated, the process by which cases are sent to mediation, and the duration of the process. Consequently, the rule allows for various mediation models in California.
10.	Ms. Megan G. Orlando President Juvenile Dependency Court Mediators Association (JDCMA)	AM	Y	1. Subdivision (a). Suggests adding the following language: "Each juvenile court shall develop a dependency mediation program to provide a problem-solving forum for all interested persons to develop a plan in the best interest of the child, emphasizing family preservation and strengthening. The Legislature finds that mediation of these matters assists the court in resolving conflict, and helps the court to intervene in a constructive manner in those cases where intervention is necessary. The court shall provide a confidential mediation to develop a plan in the best interests of the child, utilizing resources within the family first and within	1. Agree in principle. Proposed rule will reference Welf. & Inst/ Code, § 350. It is unnecessary to also quote the code.

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				the community if required." The original language of Welfare and Institutions Code Section 350 should be retained and should be set forth in detail.	
				2. Subdivision (a). "Purpose" should be changed to "goal" so that the final sentence of this section reads: Additionally, the goal of this rule is to ..."	2. "Purpose" will be deleted in favor of language stating that "This rule is intended to …"
				3. Subdivision (b)(2)(A)–(D). Rather than (A), (B), (C), (D), the order should be (C), (D), (A), (B). The reorganization substantially changes the focus of dependency mediation into a process primarily focused on "safety." In light of the language of Welfare and Institutions Code section 350, subdivision (b)(2)(A)–(D) should remain as originally ordered to emphasize that dependency mediation is a problem-solving forum focused on the best interest of the child and the preservation and strengthening of the family.	3. Agree in part. Sequence will reflect Welf. & Inst. Code, § 350. However, the order will be changed to (D), (A), (B), (C).
				4. Subdivision (c)(1)(C). Suggests the following revision: "Dependency mediation service shall provide a problem-solving forum for all interested persons to develop a plan focused on the best interest of the child …."	4. Existing language should be retained.

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				5. Subdivision (c)(1)(D). Suggests adding the following language: "The confidential dependency mediation services and case management procedures …." 6. Subdivision (c)(2)(A). Add "Attempt to" in from of "Assist." 7. Subdivision (c)(2)(A). Change "reaching" to "attempting to reach." 8. Subdivision (c)(2)(A). Delete "that is" so it reads " … of the issues consistent with …." 9. Subdivision (c)(2)(A). Delete "and." 10. Subdivision (c)(2)(B). Suggests the following revisions: "Discourage participants from blaming the victim and or minimizing issues of abuse or violence against any family member in the course of the mediation. 11. Subdivision (c)(2)(F). Change "Ensure" to "Promote" so that it reads "Promote a safe and balanced environment …." 12. Subdivision (c)(2)(I): Suggests the following language in lieu of the proposed language:	5. Subdivision (d)(5)(B) discusses the necessity of "confidentiality" throughout the mediation process. Suggested language is unnecessary. 6. Agree. Suggested change has been incorporated in the proposal. 7. Existing language should be retained. 8. Agree. Suggested change has been incorporated in the proposal. 9. Existing language should be retained. 10. Challenging allegations is more appropriate to do during court proceedings. 11. Agree. Suggested change has been incorporated in the proposal. 12. "Ensure" will be replaced with "Promote the participants understanding

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				Make a reasonable effort to educate the participants regarding the status of the case in relation to the ongoing court process, discuss the issues of the case and where appropriate, the case plan; and"	of…" The rest of the existing language has been retained.
				13. Subdivision (d)(2)(B): Suggests the following revisions: "The child has a right to ~~attend~~ participate in the dependency mediation process. If after being informed of this right, the child chooses not to ~~attend~~ participate or is too young to decide, then the child's attorney must ~~attend~~ participate. Requiring attorneys to attend the mediation will impact local programs that exclude attorney participation and could therefore impact program operation costs. In a time of budgetary uncertainty, the mere possibility of increasing program costs can make the viability of the entire dependency mediation program at risk of extinction. Additional money should be earmarked for dependency mediation programs to include minors, minor's counsel, and attorneys for other parties in order to further safeguard the viability of programs. On the other hand, we must also consider the goal of increasing the professional standards of practice for attorney representation of minors and parents in juvenile cases.	13. Agree. Using "participate" rather then "attend" provides more flexibility as to how the child's voice is represented throughout the mediation process. Suggested change has been incorporated in the proposal.
				14. Subdivision (d)(2)(B). Explain the meaning of "participation" by including the following sentence:	14. It is unnecessary to include language that defines "participation."

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				Participation may include minor's counsel discussing the case with the mediator (phone or in-person) and reviewing proposed mediation agreements. "Participation" can be interpreted to include (1) consultation with minor's counsel as to the most appropriate way to include a minor who wishes to be present, and (2) representing the minor's interest when a minor either does not wish to be present or is deemed to be too young or emotionally stable to attend the mediation. "Participation" may be by phone or in-person on the day of the mediation.	
				15. Subdivision (d)(2)(C). Suggests the following language in lieu of the proposed language: "The mediation service and the assigned mediator shall decide, where appropriate, the participation of other family members, other involved persons or professionals interested in the well being of the minor in the mediation. Any guardian ad litem or Court Appointed Special Advocate (CASA) or Support person may be present."	15. Existing language should be retained.
				16. Subdivision (d)(2)(D). Add "directly" before "participated in the mediation."	16. The suggested language is unnecessary.
				17. Subdivision (d)(2)(D). Change "should" to "must."	17. Agree. Suggested change has been incorporated in the proposal.
				18. Subdivision (d)(2)(d). Change "review and agree" to "review, revise, or agree."	18. Existing language should be retained.

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				19. Subdivision (d)(5)(C). Suggests adding the following language: "The mediator's role and any limitations on the confidentiality of the process by the presence of any mandated child abuse reporter, the impact of a criminal case arising from the same circumstances, and or as a result of disclosure of new abuse in mediation after the filing of the dependency case; and"	19. The suggested list of limitations may not be all-inclusive. The committee is concerned about listing only some of limitations. This is a training issue. Existing language should be retained.
				20. Subdivision (d)(9). Suggests the following revisions: "A procedure for ensuring that each participant has a chance to review and discuss with their attorney any agreement reached during the mediation …."	20. The sentence following contains similar language. Therefore, suggested language would be repetitive.
				21. Subdivision (d)(9). Change "participating" to "who participate" so that it reads: "This procedure must include the requirement that all parties and their attorneys who participate in the agreement …."	21. Agree. Suggested change has been incorporated in the proposal.
				22. Subdivision (e)(1)(C). Eliminate subdivision (e)(1)(C) in its entirety. Subdivision (e)(1)(C) allowed the education requirement to be met by "A background in mediation along with training and/or experience acceptable to the court to be served."	22. Agree. Suggested change has been incorporated in the proposal.
				23. Subdivision (e)(4) and (e)(5). Reverse the order of (e)(4) and (e)(5) so that (e)(4) requires "40 hours	23. The order has been retained for organizational purposes.

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				of mediation training …" and (e)(5) requires "demonstrated knowledge of the juvenile court dependency system …."	
				24. Subdivision (f). Change subdivision (f) to subdivision (e)(6) and reorder the remaining subdivisions accordingly.	24. Subdivision (f) has been deleted. However, the subject areas listed in subdivision (f) will be incorporated into the 40 hours of training required by subdivision (e).
				25. Subdivision (f). The title of subdivision (f) should read "[Substitution for experience requirements—subsequent training <u>or knowledge as referred to in (e)(5)]</u>	25. Subdivision (f) has been deleted. However, the subject areas listed in subdivision (f) will be incorporated into the 40 hours of training required by subdivision (e).
				26. Subdivision (f). Subdivision (f) is intended to be a substitution for the 2-3 years of experience required by subdivision (e)(2). 40 "specialized experience hours" would be sufficient to substitute for those who lack 2-3 years of experience. The 40 "specialized experience hours" are not meant to be in lieu of the "40 hours of mediation training" required by subdivision (e)(5). Rather, if someone cannot fulfill the experience requirements listed in (e)(2), he or she must fulfill the 40 hours of "mediation training" in addition to 40 hours of "specialized experience hours" for a total of 80 hours of training.	26. Subdivision (f) has been deleted. Therefore, it is unnecessary to specify what subdivision (f) was intended to be a substitute for.
				27. Subdivisions (f)(1) and (f)(2). Since subdivision	27. Subdivision (f) has been deleted. It is

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				(f) currently only requires 24 hours of substitute training, subdivision (f) must be revised to allow a minimum of 40 "specialized experience hours" as substitution. Suggests the following revisions: Subdivision (f)(1): "At least 24 hours …." Subdivision (f)(2): "The remaining sixteen hours…."	unnecessary to specify the amount of training hours needed in certain subjects.
				28. Subdivision (f)(1). Suggests adding the following language: "At least 16 hours of the training to increase understanding of the unique aspects of child abuse and neglect cases, juvenile law and procedures; The training must cover the following subject areas:"	28. Subdivision (f) has been deleted.
				29. Subdivision (g). Eliminate subdivision (g) in its entirety. Subdivision (g) allowed the juvenile dependency court to "approve substitution of additional experience for a portion of the education, or additional education for a portion of the experience, required by (e) and (f)." Keeping subdivision (g) would create a dangerous clash between professional standards and court administrative convenience. The provision for increased additional forty hours of training to make up for deficits provides a viable alternative without endangering children and families.	29. Since both subdivision (e)(1)(C) and subdivision (f) have been deleted, subdivision (g) has been retained to provide the courts with flexibility. If this subdivision were eliminated, it would work a hardship on smaller courts with limited resources.
				30. Subdivision (h). Suggests expanding the list of	30. Agree in principle. Interns,

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				people who are encompassed within the continuing education requirement so that it reads: "All dependency mediators, intern-mediators, paraprofessionals, mediation supervisors, and program coordinators, program administrators and directors must participate …." Allowing volunteers to mediate child abuse cases without participating in on-going training undermines the entire purpose of establishing minimum levels for training and experience. Moreover, continuing education is necessary for the professional's own enhancement as well as for the benefit and safety of the public. Any claims of increased costs are exaggerated considering that mediators and evaluators in the family context must participate in similar annual requirements.	paraprofessionals, and volunteers who are mediating on their own must meet the continuing education requirements. However, if they are co-mediating with a professional who meets the education, experience, and training requirements of the proposed rule, they are exempt from the continuing education requirement. Proposed rule will reflect this.
				31. Subdivision (h). Change the requisite number of hours from "15" to "12" in continuing education and from "5" to "4" in family violence. The total number of continuing education hours should be 16. Reducing the hours of annual continuing education from 15 to 12 for enhancing dependency mediation practice, skills and techniques, including 4 hours (instead of 5) addressing issues of family violence is in keeping with the similar requirements for evaluators and conciliation mediators.	31. Agree in part. The requisite number of continuing education hours has been changed to 12, including 4 addressing issues of family violence. Therefore, the amount of continuing education required is 12 hours.
				32. Subdivision (h). Suggests adding the following	32. Agree. Suggested change has been

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				language: "… at least 12 hours per year of continuing instruction designed to enhance dependency mediation practice, skills and techniques …."	incorporated in the proposal.
				33. Subdivision (i). Suggests the following revision: "Dependency mediation programs may use volunteers, interns, or paraprofessionals as mediators, but only if they co-mediate with another professional mediator who is qualified to act as a professional dependency mediator as described in subdivision (e) of this rule." Requiring volunteers who do not meet the training and experience requirements to be paired with professional mediators who do meet the criteria is a reasonable way of safeguarding the rights and interest of children and parents. Such safeguards are necessary to protect children who have already suffered abuse, neglect and disruption in their young lives. Since the use of volunteers may be necessary in some counties, given funding difficulties, pairing skilled mediators with volunteer mediators allows for the best of both worlds.	33. Agree in part. If volunteers, interns, or paraprofessionals do not meet the training and continuing education requirements in subdivisions (e)(3) and (h), they must co-mediate with another professional who meets the education, experience, and training requirements of subdivision (e). However, volunteers, interns, and paraprofessionals are exempt from meeting the requirements in (e)(1) and (e)(2).
				34. Subdivision (i). Suggests adding the following language as the last sentence in subdivision (i): "All volunteers, interns, or paraprofessionals must meet the on-going continuing education requirements set forth in subdivision (h)."	34. Agree in principle. Proposed subdivision (h) requires volunteers, interns, and paraprofessionals to meet the continuing education requirements.

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				As stated above, all dependency mediators, whether professional or volunteer, must participate in on-going training on an annual basis.	

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