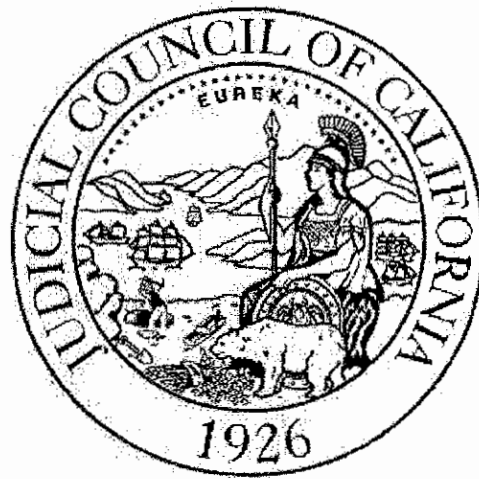


**ALTERNATIVE DISPUTE RESOLUTION
IN CIVIL CASES**



*You
Don't
Have to
Sue*

Here Are Some Other Ways



to Resolve a Civil Dispute

Presented by the
Judicial Council of California
and the
State Bar of California

March 1998

Introduction

Did you know that most civil lawsuits settle without a trial?

And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?

These alternatives to a lawsuit are known as alternative dispute resolution (ADR). The most common forms of ADR are mediation, arbitration, and case evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

ADR is not new. ADR is available in many communities, through dispute resolution programs and private neutrals.

Advantages of ADR

ADR can have a number of advantages over a lawsuit.

- **ADR can be speedier.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money.** Court costs, attorneys fees, and expert fees can be saved.
- **ADR can permit more participation.** The parties may have more chances to tell their side of the story than in court and may have more control over the outcome.

- **ADR can be flexible.** The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.

- **ADR can be cooperative.** This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.

- **ADR can reduce stress.** There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.

- **ADR can be more satisfying.** For all the above reasons, many people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve a dispute, instead of filing a lawsuit. Even when a lawsuit has been filed, the court can refer the dispute to a neutral before the parties' positions harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

Disadvantages of ADR

ADR may not be suitable for every dispute.

- If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.

- There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be

effective if it takes place before the parties have sufficient information to resolve the dispute.

- The neutral may charge a fee for his or her services.
- If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.
- Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

Three Common Types of ADR

This pamphlet describes the forms of ADR most often found in the California state courts and discusses when each may be right for a dispute.

• MEDIATION

In mediation, a neutral (the mediator) assists the parties in reaching a mutually acceptable resolution of their dispute. Unlike lawsuits or some other types of ADR, the mediator does not decide how the dispute is to be resolved. The parties do.

Mediation is a cooperative process, in which the parties work together toward a resolution that tries to meet everyone's interests, instead of working against each other, where at least one party loses. Mediation normally leads to better relations between the parties and to resolutions that hold up. For example, mediation has been very successful in family disputes, particularly with child custody and visitation.

Mediation is particularly effective when the parties have a continuing relationship, like neighbors or business people. Media-

tion also is very effective where personal feelings are getting in the way of a resolution. This is because mediation normally gives the parties a chance to let out their feelings and find out how each other sees things.

Mediation may not be a good idea when one party is unwilling to discuss a resolution or when one party has been a victim of the other or cannot have enough bargaining power in the mediation. However, mediation can be successful for victims seeking restitution from offenders. A mediator can meet with the parties separately when there has been violence between them.

• ARBITRATION

In arbitration, a neutral (the arbitrator) reviews evidence, hears arguments, and makes a decision (award) to resolve the dispute. This is very different from mediation, where the mediator helps the parties reach their own resolution. Arbitration normally is more informal and much speedier and less expensive than a lawsuit. Because of the large number of cases awaiting trial in many courts, a dispute normally can be heard much more quickly by an arbitrator than by a judge. Often a case that may take a week to try in court can be heard by an arbitrator in a matter of hours, because evidence can be submitted by documents (like medical reports and bills and business records), rather than by testimony.

There are two kinds of arbitration in California. Private arbitration, by agreement of the parties involved in the dispute, takes place outside of the courts and, normally, is binding. In most cases "binding" means that the arbitrator's decision (award) is final and there will not be a trial or an appeal of that decision. By contrast, a decision by an arbitrator in a case referred by the courts, known as "judicial arbitration," is not binding, unless the parties agree to be bound. A party who does not like the award may file a request for trial with the court within a specified time. However, if that party does not do better in the trial than in arbitration, he or she may have to pay a penalty.

Arbitration is best for cases where the parties want a decision without the expense of a trial. Arbitration may be better than mediation when the parties have no relationship except for the dispute.

Arbitration may not be a good idea when the parties want to resolve their dispute by themselves, or with the aid of a neutral.

• CASE EVALUATION

In case evaluation, a neutral (the evaluator) gives an opinion on the strengths and weaknesses of each party's evidence and arguments, and makes an evaluation of the case. Each party gets a chance to present the case and hear the other side. This may lead to a settlement, or at least help the parties prepare to resolve the dispute later on.

Case evaluation, like mediation, can come early in the dispute and save time and money.

Case evaluation is most effective when someone has an unrealistic view of the dispute or when the only real issue is what the case is worth, or when there are technical or scientific questions to be worked out.

Case evaluation may not be a good idea when it is too soon to tell what the case is worth or when the dispute is about something besides money, like a neighbor playing loud music late at night.

Additional Information

There are several other types of ADR beside mediation, arbitration, and case evaluation. Some of these are conciliation, settlement conferences, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR types. The important thing is to try to find the type or types of ADR that are

most likely to resolve your dispute.

The selection of a neutral is an important decision. There is no legal requirement that the neutral be licensed or hold any particular certificate. However, some programs have established qualification requirements for neutrals. You may wish to inquire about the qualifications of any neutral you are considering.

Agreements reached through ADR normally are put in writing by the neutral and, if the parties wish, may become binding contracts that can be enforced by a judge.

You may wish to seek the advice of an attorney as to your legal rights and other matters relating to the dispute.

To locate a dispute resolution program or neutral in your community:

- Contact the California Department of Consumer Affairs, Consumer Information Center, toll free, 1-800-952-5210, or
- Contact the local bar association, or
- Look in the Yellow Pages under "Arbitrators" or "Mediators."

There may be a charge for services provided by private arbitrators and mediators.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN <input type="checkbox"/> LODI Branch <input type="checkbox"/> MANTECA Branch <input type="checkbox"/> TRACY Branch <input type="checkbox"/> STOCKTON Branch 315 W. Elm St. 315 E. Center St. 475 E. 10 th St. 222 E. Weber Ave. Lodi, CA 95240 Manteca, CA 95336 Tracy, CA 95376 Stockton, CA 95202	
Plaintiff(s)/Petitioner(s): _____	
Defendant(s)/Respondent(s): _____	CASE NUMBER: _____

STIPULATION AND ORDER TO PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION (ADR)

Pursuant to California Rules of Court §3.726 the parties stipulate that all claims pursuant in this action shall be submitted to (select one):

- | | |
|---|---|
| <input type="checkbox"/> Voluntary Mediation | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Non-Binding Judicial Arbitration CCP 1141.12 | _____ |
| <input type="checkbox"/> Binding Arbitration (private) | _____ |

Case Type: _____

Is the Neutral you selected listed on the Court's Panel of Mediators? Yes No

Neutral's name and telephone number: _____ / (_____) _____

Date/Time of ADR Session: _____ / _____ a.m./p.m. Location of ADR Session: _____

Identify by name ALL individuals (litigants and attorneys) who will attend the ADR session:

Attorneys signing on behalf of their client(s) have been given the authority to stipulate to ADR. Original signatures required.

 Type or print name of Party without attorney Attorney for
 Plaintiff/Petitioner Defendant/Respondent

 (Signature)
 Attorney or Party without attorney

 Type or print name of Party without attorney Attorney for
 Plaintiff/Petitioner Defendant/Respondent

 (Signature)
 Attorney or Party without attorney

 Type or print name of Party without attorney Attorney for
 Plaintiff/Petitioner Defendant/Respondent

 (Signature)
 Attorney or Party without attorney

 Type or print name of Party without attorney Attorney for
 Plaintiff/Petitioner Defendant/Respondent

 (Signature)
 Attorney or Party without attorney

IT IS SO ORDERED: Dated: _____

 Judge of the Superior Court

An ADR Review Hearing is scheduled for _____ at _____ a.m./p.m. in Dept. No. _____.

In the event that the case is resolved and a dismissal-entire action, a notice of settlement or judgment is on file 5 days before the hearing, the ADR Hearing will be dropped and all appearances will be excused.

**COURT SCHEDULE – ATTACHMENT TO NOTICE OF CASE ASSIGNMENT AND NOTICE OF CASE
MANAGEMENT CONFERENCE**

The following is the scheduling information for civil cases in the San Joaquin County Court Branches. If the case already has a number you must call and reserve all types of hearings at the appropriate branch.

STOCKTON BRANCH - (209) 468-2867 (Reservations Only), (209) 468-2933 (General Civil)

CMC	Judge Kronlund	Monday-Friday, 8:45am	Dept 11
	Judge Holland	Monday-Friday, 8:30am	Dept 13
	Judge Coughlan	Monday-Friday, 8:30am	Dept 41
	Judge McNatt	Monday-Friday, 8:30am	Dept 42
	Judge Lofthus	Monday-Friday, 8:30am	Dept 33
Law & Motion	Judge Kronlund	Tuesday-Friday, 9:00am	Dept 11
	Judge Holland	Tuesday-Friday, 9:00am	Dept 13
	Judge Coughlan	Tuesday-Friday, 9:00am	Dept 41
	Judge McNatt	Tuesday-Friday, 9:00am	Dept 42
	Judge Lofthus	Tuesday-Friday, 9:00am	Dept 33
Ex Parte	Judge Kronlund	Monday-Friday, 8:30am and 1:15pm	Dept 11
	Judge Holland	Monday-Friday, 8:15am	Dept 13
	Judge Coughlan	Monday-Friday, 8:15am	Dept 41
	Judge McNatt	Tuesday-Friday, 8:15am and 1:15pm	Dept 42
	Judge Lofthus	Monday-Friday, 8:15am	Dept 33

1. You must:
 - a. **Serve** all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint (CRC 3.110)
 - b. **File and serve** a completed Case Management Conference Statement (use of JC form CM-110 is mandatory) at least 15 days before the Case Management Conference.
 - c. **Meet and Confer**, in person or by telephone, to consider each of the issues identified in CRC 3.727 no later than 30 calendar days before the date set for the Case Management Conference. CRC 3.724.
 - d. **Collection cases** are managed pursuant to CRC 3.740.
2. You may appear in person or by telephone at the Case Management Conference. To make arrangements for telephonic appearance you must call CourtCall, at (310) 572-4670 or (888) 882-6878 at least five (5) court days prior to the hearing.

Visit our website at www.stocktoncourt.org for more information regarding civil cases, local rules and forms.

**CIVIL
MEDIATION
PROGRAM**



Civil Mediation Program

Superior Court of
San Joaquin County
222 E. Weber Avenue
Room 303
Stockton, Ca 95202
(209)468-2878
(209)468-8576 fax
www.stocktoncourt.org

The Civil Mediation Program is a voluntary court-connected program designed to deliver high-quality affordable mediation services to attorneys and litigants in general civil cases. Mediation gives litigants a voice in settlement decisions and thereby allows them to play a more direct role in managing the outcomes of their own cases. The Superior Court of California, County of San Joaquin, is pleased to offer this important and valuable option for resolution of litigation.

What is mediation?

Mediation is an informal, confidential, flexible and non-binding process in which an impartial person called a "mediator" helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to:

- communicate better,
- explore legal and practical settlement options, and
- reach an acceptable solution of the dispute.

The mediator does not decide the dispute, but helps the parties communicate so they can try to settle the dispute themselves. **Mediation leaves control of the outcome with the parties.**

Why mediate?

- Mediation is a voluntary, confidential process.
- Mediators do not give legal advice and will not judge you on your case.
- Mediation could SAVE you TIME and MONEY, if it is used early.
- Mediation reduces conflict and hostility, whereas trials may increase these feelings.
- Mediation provides high satisfaction with results, because you participate and express your personal interests and concerns.

Which cases qualify for Mediation?

All types of general civil cases qualify and may benefit from the mediation process. Parties may request or stipulate to mediation at any point in the case.

Who are the Mediators?

Mediators are experienced attorneys who have completed a Court-approved formal mediation training program. Please contact the Civil Mediation Program Manager or visit the court's website for a list of approved mediators.

Parties mutually agree on a mediator and schedule the mediation session directly with the mediator. If you would like a copy of the San Joaquin County Superior Court's Civil Mediation Panelist List, you may visit the Court's website at www.stocktoncourt.org or contact the Program Manager at (209)468-2878 or sbohrrer@courts.san-joaquin.ca.us.

What are the program procedures? (please refer to Local Rule 3.125 for more detailed procedures)

Payment

The Civil Mediation Program is a voluntary, market rate program. Fees are generally hourly and split equally among the parties. Mediators should be contacted regarding other charges and fee policies. For those parties who might have difficulty paying for mediation services, financial assistance is available through the program after an income-based screening is completed.

Stipulations

In accordance with *Local Rule 3.125H* all parties going to mediation must complete a Stipulation and Order to ADR form and file it at the Clerk's Office. An original and a copy for the court's use shall be submitted. There is no filing fee for the filing of the stipulation. An incomplete stipulation will be returned to the parties by the Clerk's Office.

If filing the Stipulation Prior to an Initial Case Management Conference

To stipulate to mediation prior to the initial case management conference, parties must file a completed stipulation at least 10 days before the scheduled case management conference. The clerk will send notice of a new case management conference date approximately 120 days from the current date to allow time for the mediation process to be completed.

If filing the Stipulation Following a Case Management Conference

When parties come to an agreement at a case management conference to utilize mediation, they have 21 days from the date of the case management conference to file a Stipulation and Order to ADR with the court [*Local Rule 3.125C.1.*].

Post-Mediation Session Evaluations

Local Rule 3.125H.1. requires submission of *Post-Mediation Evaluations* within 10 days of completing any court-connected mediation session regardless of the outcome of the case mediated. Evaluations are to be completed by attorneys and clients. A copy of the Attorney Post-Mediation Survey and Client Post-Mediation Survey are attached to the Civil Mediation Panelist List or can be found on the court's website. Completed evaluations shall be returned to the Project Manager.

For further information, please contact:

- Stephanie Bohrer, Civil Mediation Program Manager, at 209/468-2878 or sbohrer@courts.san-joaquin.ca.us
- The Court website at www.stocktoncourt.org

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. **Jury or nonjury trial**

The party or parties request a jury trial a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. **Trial date**

- a. The trial has been set for (date):
- b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):
- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. **Estimated length of trial**

The party or parties estimate that the trial will take (check one):

- a. days (specify number):
- b. hours (short causes) (specify):

8. **Trial representation (to be answered for each party)**

The party or parties will be represented at trial by the attorney or party listed in the caption by the following:

- a. Attorney:
- b. Firm:
- c. Address:
- d. Telephone number:
- e. E-mail address:
- f. Fax number:
- g. Party represented:

Additional representation is described in Attachment 8.

9. **Preference**

This case is entitled to preference (specify code section):

10. **Alternative dispute resolution (ADR)**

a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

- (1) For parties represented by counsel: Counsel has has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.
- (2) For self-represented parties: Party has has not reviewed the ADR information package identified in rule 3.221.

b. **Referral to judicial arbitration or civil action mediation (if available).**

- (1) This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.
- (2) Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- (3) This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete mediation by (<i>date</i>): <input type="checkbox"/> Mediation completed on (<i>date</i>):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete settlement conference by (<i>date</i>): <input type="checkbox"/> Settlement conference completed on (<i>date</i>):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete neutral evaluation by (<i>date</i>): <input type="checkbox"/> Neutral evaluation completed on (<i>date</i>):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete judicial arbitration by (<i>date</i>): <input type="checkbox"/> Judicial arbitration completed on (<i>date</i>):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete private arbitration by (<i>date</i>): <input type="checkbox"/> Private arbitration completed on (<i>date</i>):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete ADR session by (<i>date</i>): <input type="checkbox"/> ADR completed on (<i>date</i>):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

11. Insurance

- a. Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: Yes No
- c. Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

- Bankruptcy Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. There are companion, underlying, or related cases.
 - (1) Name of case:
 - (2) Name of court:
 - (3) Case number:
 - (4) Status:
- Additional cases are described in Attachment 13a.
- b. A motion to consolidate coordinate will be filed by (*name party*):

14. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

16. Discovery

- a. The party or parties have completed all discovery.
- b. The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
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- c. The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

17. Economic litigation

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.