



SELECTION OF ADR PANEL MEMBER PRE-ADR DISCOVERY PLAN

SELECTION DUE DATE: _____

CASE NAME: _____ CASE NO: _____

Plaintiff / Plaintiff's counsel / Cross Complainant
(Person filing the lawsuit or counterclaim)

NAME: _____

EMAIL: _____

NAME: _____

EMAIL: _____

Defendant / Defense counsel / Cross Defendant
(Person being sued or countersued)

NAME: _____

EMAIL: _____

NAME: _____

EMAIL: _____

1. CHOOSE ADR PROCESS:

All counsel and parties listed above have agreed to the following ADR process:

- a. ☐ **Mediation** (☐ Court-connected ☐ Private)
- b. ☐ **Arbitration** (☐ Judicial Arbitration (non-binding) ☐ Private (non-binding) ☐ Private (binding))
- c. ☐ **Neutral case evaluation**

2. CHOOSE ADR PANEL MEMBER:

All counsel and parties listed above represent that _____ (panel member) **has been contacted, knows this is a court-connected case, and is willing to:**

- a. Be appointed as mediator, arbitrator, or neutral evaluator in this case, and
- b. Work with the parties to finish ADR before _____ (ADR completion deadline.)

3. LIST PRE-ADR DISCOVERY PLAN:

All counsel and parties listed above have agreed to complete the following discovery BEFORE their first ADR session:

- a. ☐ Written discovery (☐ Additional page(s) attached)
 - i. ☐ Interrogatories to: _____
 - ii. ☐ Request for Production of Documents to: _____
 - iii. ☐ Request for Admissions to: _____
 - iv. ☐ Independent Medical Evaluation of: _____
 - v. ☐ Other: _____
- b. ☐ Deposition of the following parties or witnesses: (☐ Additional page(s) attached)
- c. ☐ No pre-ADR discovery needed
- d. The parties also agree: _____

I _____ REPRESENT THAT ALL COUNSEL AND PARTIES TO THIS CASE AGREE WITH THE INFORMATION LISTED ABOVE, UNDERSTAND WE **MUST PAY THE PANEL MEMBER'S FEES ASSOCIATED WITH ADR SERVICES**, AND KNOW WE MAY BE SUBJECT TO SANCTIONS IF WE DO NOT, WITHOUT GOOD CAUSE, COMPLY WITH THE PRE-ADR DISCOVERY PLAN LISTED ABOVE.

Your Signature

Date

EMAIL THIS FORM TO: ADRWEB@contracosta.courts.ca.gov

OR FAX: 925-608-2109



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA**

Alternative Dispute Resolution Programs Office • P.O. Box 911 • Martinez, CA 94553
(Email) adrweb@contracosta.courts.ca.gov • (Fax) 925-608-2109

HOW MEDIATION WORKS

In mediation, an impartial person (mediator) helps the parties reach a mutually acceptable resolution. The mediator helps the parties communicate so they can settle the dispute themselves. Mediators do not make decisions. Agreements can only be reached if the parties agree.

- ▶ **Choosing a Mediator:** Parties must get a current list of mediators from the ADR Programs office. To see information about our panel members visit, www.cc-courts.org/adr or email adrweb@contracosta.courts.ca.gov. To choose a mediator, one party (such as the plaintiff) may circle the names of panel members they want to choose, or cross off names of panel members they do not want to choose, before sending that list to the other party.
- ▶ **Mediator Style:** Mediators help parties focus on important issues, and often ask for ideas about settling the conflict. Some mediators will tell the parties what they think might happen if the case went to trial. Others help the parties decide for themselves.
- ▶ **Mediation Statement:** Before mediation, each party must write a statement (no more than 5 pages) explaining the dispute. Send this to the other parties and the mediator at least 5 court days before the mediation.
- ▶ **Attendance:** Unless excused by the assigned judge, ALL parties must attend the mediation in person.
- ▶ **Confidentiality:** Mediation gives you an opportunity to talk openly and explore a full range of ideas for resolving your conflict. To encourage this, the information prepared for or discussed in the mediation cannot be used as evidence in court, and the mediator cannot be forced to testify about what happened or was said in the mediation. The mediator will only report to the court whether or not an agreement was reached.
- ▶ **Fees:** Mediators on the Contra Costa Court panel do not charge for the first half hour of scheduling and preparing for mediation. They also do not charge for the first two hours of the mediation session. If the parties choose to continue working with the mediator longer than two hours, they must pay the mediator's regular fees. If the mediator charges a deposit, they must give back whatever is left after counting all the time spent preparing for or doing the mediation. Parties can ask for mediation fees to be waived (cancelled) if their court fees have also been waived.

MEDIATION CHECKLIST

☐ **CHOOSE A MEDIATOR.**

All parties must agree to the same mediator. When you choose a mediator, make sure:

1. The mediator **is informed** that it is a court referred case, will accept the case and does not have a conflict of interest.
2. The mediator can help you finish mediation before the court's **COMPLETION DATE:**
3. You know how the mediator approaches mediation, and what he or she will charge if you need more time.

☐ **RETURN THE SELECTION FORM.**

1. One party must return the *Selection of ADR Panel Member* form.
2. Return the form by Email or Fax by the **SELECTION DUE DATE:**
(Email to request an extension. We must notify the court if your form is not back in time.)

☐ **KEEP THE COURT INFORMED.**

1. **If this case settles** (either before, as a result of, or after mediation); the parties must file the appropriate forms needed to **inform the court clerk, the mediator, and cancel any unnecessary court appearances.**
2. All parties are responsible together for making sure required deadlines are met.
3. You must get court permission to change from mediation to another dispute resolution process.

Superior Court of Contra Costa County

ADR Program

Mediation Worksheet

1. List the details, dates, and events in your dispute. Next to each item note documents and/or persons involved.

2. List your interests or needs in this dispute, including financial and emotional etc. (Do you want an apology?)

3. List the interests or needs of the other people involved. (If you apologized, would it help?)

4. List areas where you agree, or are close to agreement.

5. List all possible ideas you have that might satisfy all sides (consider ideas that do not involve money, be creative).

6. Why is it important for you to resolve this dispute? What will you gain? What will you avoid?

7. Why is it important for the other people involved to resolve this dispute? What will they gain? What will they avoid?

8. List the consequences of not resolving the dispute at mediation (legal costs, loss of time from work and family, emotional stress etc.).

Bring your lists to the mediation and refer to them as you negotiate.



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HOW JUDICIAL ARBITRATION WORKS

In judicial arbitration, an independent attorney serving as an arbitrator reads documents, hears arguments, listens to witnesses under oath, looks at the evidence, and makes a decision about the case. If either party disagrees with the arbitration award, they may file a form to request a new court hearing to review the case.

- ▶ **Choosing an Arbitrator:** Parties must get a current list of arbitrators from the ADR Programs office. To see information about panel members visit, www.cc-courts.org/adrpanel or go to the ADR Programs office in Martinez. To choose an arbitrator, one party (such as the plaintiff) may circle acceptable panel members, and indicate panel members they do not prefer, before sending that list to the other party.
- ▶ **Arbitration Statement:** Before arbitration, each party must write a statement (no more than 5 pages) explaining the dispute. Send this to the arbitrator at least 5 court days before the arbitration.
- ▶ **Awards:** The arbitrator must file the arbitration award (decision) with the court within 10 days of the last hearing. If either party disagrees with the arbitration award, they may ask the court to review the case by filing a request for a new court hearing (called a trial de novo.) The arbitration award becomes a court order unless the parties ask the court to review the case by filing for a trial de novo within 60 days (or another time limit set by the judge.)
- ▶ **Attendance:** As long as all trial attorneys, parties, and other people needed to present the case and answer the arbitrator's questions are included, the parties may choose who will attend arbitration.
- ▶ **Fees:** Judicial arbitrators are allowed to charge \$150 per case or per day for their services. The arbitrator collects this fee from the parties.

JUDICIAL ARBITRATION CHECKLIST



CHOOSE AN ARBITRATOR.

All parties must agree to the same arbitrator. When you choose an arbitrator, make sure:

1. The arbitrator is WILLING AND AVAILABLE TO SERVE and does not have a conflict of interest.
2. The arbitrator can complete the arbitration before the court's **COMPLETION DATE:**



RETURN THE SELECTION FORM.

1. One party must return the *Selection of ADR Panel Member* form.

2. Return the form by Email or Fax by the **SELECTION DUE DATE:**

Please note: The ADR Programs office cannot give any extensions on this deadline. We must tell the court if we do not have your *Selection* form back in time. If you miss this deadline the judge might issue an *Order to Show Cause* so the parties can explain why they did not return the selection form in time.



KEEP THE COURT INFORMED.

1. **If this case settles** (either before, as a result of, or after arbitration); the parties must file the appropriate documents needed to inform the court clerk, and cancel any unnecessary court appearances.
2. All parties are responsible together for making sure required deadlines are met.
3. You must get court permission to change from Judicial Arbitration to another dispute resolution process.
4. If the arbitrator makes an award in this case, and no one files a request for trial de novo (optional Judicial Form ADR-102) within 60 days, or another time limit set by the judge, the arbitration award will be *final* and it will be entered as the judgment in this case.



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HOW NEUTRAL CASE EVALUATION WORKS

This program allows the parties to meet with an independent attorney who will give their opinion about the strengths and weaknesses in the case, and talk about what might happen if the case went to trial. Evaluators can also help people plan for ways to save time and money as they go through the discovery process (sharing information about the case). This program does not include negotiation or settlement discussions. Instead, the parties may use the evaluation information in their own settlement negotiations or another ADR process (such as mediation).

- ▶ **Choosing an Evaluator:** Parties must get a current list of neutral case evaluators from the ADR Programs office. To see information about our panel members visit, www.cc-courts.org/adrpanel or go to the ADR Programs office in Martinez. To choose a neutral case evaluator, one party (such as the plaintiff) may circle the names of panel members they want to choose, or cross off names of panel members they do not want to choose, before sending that list to the other party.
- ▶ **Evaluation Statements:** Before evaluation, each party must submit a statement (no more than 5 pages) that explains their side of the dispute. Send this to the evaluator at least 5 court days before the evaluation conference.
- ▶ **Attendance:** Unless excused by the assigned judge, ALL parties must attend the neutral case evaluation conference.
- ▶ **Fees:** Neutral Case Evaluators on the Contra Costa Court panel do not charge for the first half hour of scheduling and preparing for the evaluation. They also do not charge for the first two hours of the evaluation session. If the parties choose to continue working with the evaluator longer than two hours, they must pay the evaluator's regular fees. If the evaluator charges a deposit, he or she must give back whatever is left after counting all the time spent preparing for or doing the evaluation. Parties can ask for evaluation fees to be waived (cancelled) if their court fees have also been waived.

NEUTRAL CASE EVALUATION CHECKLIST

☐ **CHOOSE AN EVALUATOR.**

All parties must agree to the same evaluator. When you choose an evaluator, make sure:

1. The evaluator is WILLING AND AVAILABLE TO SERVE and does not have a conflict of interest.
2. The evaluator can finish the evaluation before the court's **COMPLETION DATE:**
3. You know what the evaluator will charge if you need more time.

☐ **RETURN THE SELECTION FORM.**

1. One party must prepare the *Selection of ADR Panel Member* form.
2. Return the form by Email or Fax by the **SELECTION DUE DATE:**
(Email to request an extension. We must notify the court if your form is not back in time.)

☐ **KEEP THE COURT INFORMED.**

1. **If this case settles** (either before, as a result of, or after evaluation); the parties must file the appropriate documents needed to inform the court clerk, and cancel any unnecessary court appearances.
2. You must get court permission to change from neutral case evaluation to another dispute resolution process.



CONTRA COSTA COUNTY SUPERIOR COURT ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

All judges in the Civil Trial Delay Reduction Program agree that parties should consider using Alternative Dispute Resolution (ADR) to settle their cases. To tell the court you will use ADR:

- Choose ADR on the *Case Management Form* (CM-110);
- File a *Stipulation and Order to Attend ADR and Continue First Case Management Conference 90-Days* (local court form); or
- Agree to ADR at your first court appearance.

Questions? Email adrweb@contracosta.courts.ca.gov or call (925) 608-2075

MEDIATION

Mediation is often faster and less expensive than going to trial. Mediators help people who have a dispute talk about ways they can settle their case. Parties email, fax or visit the ADR Programs office to get a list of mediators. After parties have agreed on a mediator, they must write a summary (5 pages or less) explaining the facts, legal arguments, and legal authority for their position. They must send this summary to the other parties and the mediator at least 5 court days before mediation starts.

ALL parties and attorneys must go to mediation. Mediation can be held whenever and wherever the parties and the mediator want, as long as they finish before the court deadline. In some kinds of court cases, parties have the chance to mediate in the courthouse on their trial day.

Most mediators begin by talking with the parties together, helping them focus on the important issues. The mediator may also meet with each party alone. Mediators often ask parties for their ideas about how to settle the case. Some mediators tell the parties how much money they think a case is worth, or tell them what they think might happen if the case went to trial. Other mediators help the parties decide these things for themselves. No matter what approach a mediator takes, decisions about settling a case can only be made when all the parties agree.

If the parties go through the court ADR program, mediators do not charge fees for the first half hour spent scheduling or preparing for mediation. They also do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediators regular fees. Some mediators ask for a deposit before mediation starts. Mediators who do this must give back whatever is left after counting the time he or she spent preparing for or doing the mediation. A party whose court fees have been waived (cancelled) may ask if their mediation fees or deposit can be waived.

If parties agree about how they will settle their case, they can choose to keep it private, write it up as a contract, or ask the judge to make it a court order. What parties say and agree to in mediation is confidential (private).

PRIVATE MEDIATION

Private mediation works in the same way as judicial mediation, but the parties do not go through the ADR Programs office. Parties choose a mediator on their own, and pay the mediator's normal fees.

JUDICIAL ARBITRATION (non-binding)

In judicial arbitration, an independent attorney (arbitrator) looks at the evidence, listens to the parties and their witnesses, and decides how the case will be settled. Judicial arbitration is less formal than court. Parties email, fax or visit the ADR Programs office to get a list of arbitrators. If they cannot agree on an arbitrator, the court will assign one. The judge can send cases to arbitration if there is less than \$50,000 in dispute. The person who started the court case can make sure the case goes to arbitration if they agree to limit the amount they are asking for to \$50,000. Parties can also agree they want to use judicial arbitration. The arbitrator must send their decision (award) to the court within 10 days of the last hearing. The award becomes a court judgment unless a party asks the court to review the case within 60 days. Parties must use the ADR-102 form to ask for a new court hearing (called a trial de novo.) Judicial arbitrators charge \$150 per case or per day.

PRIVATE ARBITRATION (non-binding and binding)

Private, non-binding arbitration is the same as judicial arbitration, except that the parties do not go through the ADR Programs office to choose an arbitrator, and the arbitrator's award will not become a judgment of the court unless all parties agree. Parties must pay the arbitrator's normal fees.

Binding arbitration is different from judicial or private non-binding arbitration because the arbitrator's decision is final. Parties give up their right to have a judge review their case later (except for reasons listed in California Code of Civil Procedure, Section 1286.2.) Binding arbitration rules are listed in California Code of Civil Procedure, Sections 1280-1288.8. Parties may also agree any time before the judge has made a decision that ends the case to switch to binding arbitration. Parties choose the arbitrator on their own, and must pay the arbitrator's normal (not \$150) fees.

SETTLEMENT MENTOR CONFERENCE

Settlement mentors are independent, experienced trial attorneys that a judge has assigned to help parties look for ways to settle their case. The conference is free and is held in the courthouse. It is often held on the morning of trial, but it can be scheduled anytime. These conferences usually last two or three hours. Parties do not present evidence and do not call witnesses. Parties can ask the settlement mentor to keep some information confidential (private) from the other party, but not from the judge. The settlement mentor can share any information with the judge, or involve the judge in settlement discussions. All principals, clients, and claims representatives must attend the settlement mentor conference.

NEUTRAL CASE EVALUATION

In neutral case evaluation, an independent attorney (evaluator) reviews documents and listens to each party's side of the case. The evaluator then tells the parties what they think could happen if the case went to trial. Many people use the evaluator's opinion to reach an agreement on their own, or use this information later in mediation or arbitration to settle their case.

Parties email, fax or visit the ADR Programs office to get a list of evaluators. After parties have agreed on an evaluator, they must write a summary (5 pages or less) explaining the facts, legal arguments, and legal authority for their position. They must send this summary to the other parties and the evaluator at least 5 court days before evaluation starts. ALL parties and their attorneys must go to neutral case evaluation. The evaluation can be held whenever and wherever the parties and the evaluator want, as long as they finish before the court deadline. If the parties go through the court's ADR program, evaluators do not charge any fees for the first half hour spent scheduling or preparing for the evaluation conference. They also do not charge fees for the first two hours of the evaluation. If parties need more time, they must pay that evaluators regular fees. Some evaluators ask for a deposit before evaluation starts. Evaluators who do this must give back whatever is left after counting the time he or she spent preparing for or doing the evaluation. A party whose court fees have been waived (cancelled) may ask if their evaluation fees or deposit can be waived.

TEMPORARY JUDGE

Some parties want a trial, but want to choose who will decide the case and when the trial will take place. Parties can agree on an attorney that they want the court to appoint as a temporary judge for their case. (See Article 6, Section 21 of the State Constitution and Rule 2.830 of the California Rules of Court.) Temporary judges have nearly the same authority as a superior court judge to conduct a trial and make decisions. As long as the parties meet the court deadline, they can schedule the trial at their own and the temporary judge's convenience.

Each of the temporary judges on the court's panel has agreed to serve at no charge for up to 5 court days. If the parties need more time, they must pay that person's regular fees. All parties and their lawyers must attend the trial, and provide a copy of all briefs or other court documents to the temporary judge at least two weeks before the trial. These trials are similar to other civil trials, but are usually held outside the court. The temporary judge's decision can be appealed to the superior court. There is no option for a jury trial. The parties must provide their own court reporter.

SPECIAL MASTER

A special master is a private lawyer, retired judge, or other expert appointed by the court to help make day-to-day decisions in a court case. The special master's role can vary, but often includes making decisions that help the discovery (information exchange) process go more smoothly. He or she can make decisions about the facts in the case. Special masters can be especially helpful in complex cases. The trial judge defines what the special master can and cannot do in a court order.

Special masters often issue both interim recommendations and a final report to the parties and the court. If a party objects to what the special master decides or reports to the court, that party can ask the judge to review the matter. In general, the parties choose (by stipulation) whom they want the court to appoint as the special master, but there are times (see California Code of Civil Procedure Section 639), when the court may appoint a special master or referee without the parties' agreement. The parties are responsible to pay the special master's regular fees.

COMMUNITY MEDIATION SERVICES

Mediation Services are available through non-profit community organizations. These low-cost services are provided by trained volunteer mediators. For more information about these programs contact the ADR Program at adrweb@contracosta.courts.ca.gov