

Local Rule 1: Mediation in civil appeals

(a) Mediation Program

To enable efficient case management and more expeditious resolution of appeals, the Court of Appeal, Third Appellate District (Court), has a Mediation Program (Program) for all civil appeals not exempt from the Program. Procedures for mediation and operation of the Program are promulgated by the Court of Appeal Mediation Program Committee (Committee).

(b) Program administration

The Program is administered by the Mediation Program Administrator (Administrator) acting under the direction of the Committee and under the supervision of the Administrative Presiding Justice or a designated Supervising Associate Justice (Presiding Justice).

(c) Civil Appeals exempt from the Program

Any appeal taken from a civil commitment order of the type referenced in rule 8.483(a)(1) of the California Rules of Court, a judgment or order entered in a conservatorship, guardianship, or sterilization proceeding, or of the type referenced in rules 8.700 or 8.710 of the California Rules of Court, is exempt from the Program.

(d) Process prior to referral for assessment

(1) Upon filing a notice of appeal in a civil case not exempt from the Program, the provisions of rules 8.121, 8.124(a)(1), 8.128, and 8.216 of the California Rules of Court, requiring designation of the record, payment of estimated costs of preparation of the record, stipulating to proceeding with the original superior court file, and submission of a proposed briefing schedule, are suspended.

(2) These rules do not prohibit the superior court from collecting its deposit required by section 68926.1 of the Government Code and by rule 8.100(b)(2) of the California Rules of Court.

(3) Upon receiving notice of filing of a civil appeal in a case not exempt from the Program:

(A) The Appellant must file a Civil Case Information Statement form (Form APP-004), as required by rule 8.100(g) of the California Rules of Court, and an Appellant's Civil Appeal Mediation Statement form.

(B) The Respondent must file a Respondent's Civil Appeal Mediation Statement form.

(4) The Appellant's Civil Appeal Mediation Statement form must be served and filed within 15 days after the superior court clerk sends notification of the filing of the

notice of appeal. Failure to timely file either the Appellant's Civil Case Information Statement or the Appellant's Civil Appeal Mediation Statement will result in dismissal of the appeal, without prejudice to reinstatement upon a showing of good cause.

(5) The Respondent's Civil Appeal Mediation Statement must be served and filed within 10 days after the Appellant's Civil Appeal Mediation Statement is filed. Failure to timely file a Respondent's Civil Appeal Mediation Statement will result in a Program selection decision without input from the respondent.

(6) Generally, multiple appeals from the same judgment or a related order are assigned the same appellate case number unless the record for the first notice of appeal has already been filed. (See Advisory Committee Comment to Cal. Rules of Court, rule 8.147.) Subsequent appellant's and respondent's Civil Appeal Mediation Statements will not be required when a second or subsequent notice of appeal has been filed within the same appellate case number.

(7) After Respondent's Civil Appeal Mediation Statement has been filed or was due to be filed, the Administrator shall promptly notify the parties whether the appeal has been selected for the Program.

(e) Process for referral, assessment, and selection for the Program

(1) If a civil appeal is not exempt from the Program, the Presiding Justice may refer the appeal to the Administrator for assessment.

(2) Upon referral for assessment, the Administrator will communicate with counsel and/or non-represented parties to assess whether the appeal is amenable to mediation. Based on the assessment, the Administrator will recommend to the Presiding Justice whether the appeal should be selected for the Program.

(3) The Presiding Justice will then decide whether to select the appeal for the Program.

(f) Stipulation and order for placement in the Program

(1) A civil appeal exempt from, or not selected for, the Program may nonetheless be placed in the Program by stipulation and order.

(2) If an appeal is exempt from the Program, the stipulation must be served on the superior court and filed with the Court within 30 days after filing of the notice of appeal. If an appeal was not selected for the Program, the stipulation must be served on the superior court and filed with the Court within 10 days after notification that the appeal was not selected.

(3) The original signature of at least one party must appear on the stipulation filed in the Court. The signatures of the other parties may be in the form of copies of the signed signature page of the stipulation.

(4) Upon receipt of the stipulation by the superior court, the provisions of rules 8.121, 8.124(a)(1), 8.128, and 8.216 of the California Rules of Court, requiring designation of the record, payment of estimated costs of preparation of the record, stipulating to proceeding with the original superior court file, and submission of a proposed briefing schedule, are suspended.

(5) The Court will decide whether to sign the stipulation and order and place the appeal in the Program.

(6) If the appeal is placed in the Program by stipulation and order, suspension of rules 8.121, 8.124(a)(1), 8.128, and 8.216 of the California Rules of Court will remain in effect until the earlier of completion of mediation, other order of the Court lifting the suspension, or the lapse of a period of nine months from the filing of the stipulation with the Court.

(7) If the proposed stipulation is not approved by the Court and the appeal is not placed in the Program, the Administrator must notify the parties, the superior court, and the Court, in writing, that suspension of rules 8.121, 8.124(a)(1), 8.128, and 8.216 of the California Rules of Court is terminated.

(g) Process following selection decision and prior to mediation

(1) Upon selection of an appeal for the Program

(A) The Court will issue an order directing that the appeal has been selected for the Program.

(B) The Administrator will:

(i) Notify the parties that the appeal will be mediated.

(ii) Assign a mediator to the appeal. The Administrator may replace a selected mediator upon request by a party or the mediator based on good cause.

(iii) Furnish the parties with the name, address, and telephone number of the mediator, and three dates when the mediator is available for the mediation sessions.

(C) Within 10 days after receipt of notice of the dates the mediator is available, the parties must mutually confer and advise the Administrator and the mediator of their scheduling preferences.

(2) Suspension of rules following selection decision

(A) If an appeal is selected for the Program, suspension of rules 8.121, 8.124(a)(1), 8.128, and 8.216 of the California Rules of Court will remain in effect until the earlier of completion of the mediation, other order of the Court lifting the suspension, or the lapse of a period of nine months from the referral of the appeal to the Administrator for assessment as described in subdivision (e) supra.

(B) If an appeal is not selected for the Program, the Court will ~~issue~~ enter an order to this effect, and ~~the~~ The Administrator must notify the parties and the superior court by providing a copy of the Court's order not selecting the case for mediation and in writing that suspension of rules 8.121, 8.124(a)(1), 8.128, and 8.216 of the California Rules of Court is terminated. Upon notification by the Court or the Administrator that an appeal was not selected for the Program, the parties' obligation to comply with the requirements of rules 8.121, 8.124(a)(1), 8.128 and 8.216 of the California Rules of Court commences as if notice of appeal was filed on the date specified in the notification.

(h) Mediation and mediation preparation

(1) Costs and fees for mediation preparation and services

(A) Mediators will not charge the parties any fee for the premediation conference call, the mediator's premediation preparation time, and for the first four hours of the initial mediation session.

(B) Notwithstanding subparagraph (h)(1)(A) above, in exceptional cases, the parties and the mediator may agree before the start of the mediation session, in a writing pursuant to Business and Professions Code section 6148, to a fee to be paid by the parties to the mediator for the mediator's additional preparation time.

(C) Prior to the start of the mediation session, the parties and the mediator may agree, in a writing pursuant to Business and Professions Code section 6148, to a fee to be paid by the parties to the mediator to continue the mediation beyond the initial four hours.

(2) Continuation of mediation sessions

For good cause and with approval of the Administrator, the mediator and the parties may continue a mediation session to a date certain.

(3) Mediator communications with parties and counsel

(A) The mediator may at any time communicate with any counsel or unrepresented parties with or without notice to the other parties or their counsel.

(B) The mediator may require counsel or unrepresented parties to furnish information, documents, records, or other items specified by the mediator.

(4) Full authority to settle

(A) Counsel, parties, and persons with full authority to settle the appeal must personally attend the mediation, unless excused in writing by the mediator for good cause. If any consent to settle is required for any reason, the party or person with that consensual authority must be personally present at the mediation.

(B) If a party has potential insurance coverage applicable to any of the issues in dispute, a representative of each insurance carrier whose policy may apply must attend all mediation sessions in person, with full settlement authority. The party with such potential insurance coverage and that party's counsel shall serve timely notice to each insurance carrier with potential insurance coverage informing the carrier: (i) that appellate mediation has been ordered; (ii) that the carrier must have a representative with full settlement authority attend all mediation sessions in person; and (iii) of the date, time, and place of all mediation sessions. (See *Campagnone v. Enjoyable Pools & Spas Service & Repairs, Inc.* (2008) 163 Cal.App.4th 566.)

(C) The mediator may invite participation by any additional person or entity if the mediator concludes that such participation would facilitate mediation.

(5) Submission of mediation attendance form

Prior to the start of mediation, the parties and the mediator shall submit to the Administrator a Mediation Attendance Form, listing all participants in the mediation.

(6) Completion of mediation

Within 10 days after completion of mediation, the mediator shall submit to the Administrator a Mediator's Statement notifying the Administrator whether an agreement was reached, and the parties and their counsel must separately complete and submit to the Administrator confidential evaluations of the mediation and the mediator on a form provided by the Administrator.

(7) Appeal not resolved by mediation

(A) If completion of mediation does not result in disposition of the appeal or if the parties are unable to resolve the appeal within nine months of referral for assessment or from the filing of a stipulation for mediation as described in this rule, the Administrator must, within 10 days after notice of completion of the mediation or lapse of the nine-month period, notify the parties, the superior court, and the Court, in writing, that suspension of rules 8.121, 8.124(a)(1), 8.128, and 8.216 of the California Rules of Court is terminated.

(B) The parties' obligation to comply with the requirements of rules 8.121, 8.124(a)(1), 8.128 and 8.216 of the California Rules of Court commences as if notice of appeal was filed on the date specified in the notification.

(8) Appeal resolved by mediation

(A) Pursuant to California Rules of Court, rule 8.244(a) and (b), if the mediation results in a disposition of the appeal and the record has not been filed in the Court, the appellant must promptly file a notice of settlement with the Court and, within 45 days thereafter, file an abandonment of the appeal in the superior court.

(B) Pursuant to California Rules of Court, rule 8.244(a) and (c), if the mediation results in a disposition of the appeal and the record has been filed in the Court, the appellant must promptly file a notice of settlement in the Court and must, within 45 days thereafter, serve and file in the Court a request for dismissal of the appeal.

(9) Confidentiality

Except as otherwise provided by law, information disclosed to the mediator, the parties, counsel, or any other participant in the mediation including the Administrator, is confidential.

(10) Ethical Standards

Mediators must adhere to the rules of conduct for mediators in court- sponsored mediation programs for civil cases, as set forth in the California Code of Civil Procedure and the California Rules of Court.

(11) Sanctions

Monetary sanctions may be imposed following a noticed motion by a party seeking sanctions for failure to comply with the rules or upon the Court's own motion.

(Adopted, eff. October 2, 2006. As amended, eff. March 2, 2007; As amended, eff. May 29, 2009; As amended, eff. December 2, 2013.; As amended, eff. May 26, 2017; As amended, eff. May 31, 2019; amended eff. _____.)