

Sonoma Superior Court Civil ADR Program

Complaint Procedure Protocols

(Effective: January 1, 2010)

Pursuant to California Rule of Court §3.865, the following rules constitute complaint procedures protocols for cases conducted under the auspices of the court's Civil ADR Program ("Program") in which panel mediators ("Mediators") have been used. Nothing in these rules should be interpreted in a manner inconsistent with Rules 3.865–3.862 of the California Rules of Court or as limiting the court's inherent or other authority, in its sole and absolute discretion, to determine who may be included on or removed from its list of ADR Program Coordinators or who may be recommended, selected, appointed, or compensated as a ADR Program Coordinator by the court. These rules also do not limit the court's authority to follow other procedures or take other actions to ensure the quality of ADR Program Coordinators who serve in the court's mediation program in contexts other than when addressing a complaint. The failure to follow a requirement or procedure in these rules will not invalidate any action taken by the court in addressing a complaint.

Section 1: All grievances, complaints or issues concerning the conduct of a Mediator on the Court's Panel, indicating that a Mediator may have violated a provision of the Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases set out in rules 3.850–3.860 of the California Rules of Court must be submitted in writing and be referred initially to the ADR Program Coordinator, who will act as the Complaint Coordinator and who will send the complainant a written acknowledgement of this receipt.

Section 2: In consultation with the Supervising Civil Judge, if the ADR Program Coordinator determines the complaint or issue can be resolved informally, the ADR Program Coordinator will do so. The ADR Program Coordinator may close a complaint without initiating an investigation if: (a) the complaint is withdrawn by the complainant; (b) no violation of the rules of conduct appears to have occurred or the complaint is without sufficient merit to warrant an investigation; (c) the conduct alleged would constitute a very minor violation of the rules of conduct, the coordinator has discussed the complaint with the Mediator, and the Mediator has provided an acceptable explanation or response; or (d) the complainant, the Mediator, and the ADR Program Coordinator have agreed on a resolution to the complaint. If the ADR Program Coordinator closes a complaint without initiating an investigation, the Coordinator must send the complainant notice of this action.

If the ADR Program Coordinator and/or the Supervising Civil Judge determine that the complaint or issue cannot be resolved informally, or if the ADR Program Coordinator or Supervising Civil Judge initiate a complaint against a Mediator on the Court's Panel, the complaint or issue will be referred to the ADR Program Advisory Committee ("Advisory Committee"), who will determine if the complaint or issue can be summarily resolved and closed or if the complaint must be further investigated.

Section 3: If the Advisory Committee determines that a complaint requires further investigation, Committee members may conduct such an investigation with reference to the Rules of Conduct

for Mediators set forth in CRC §3.850 et seq. Committee members may determine that the Mediator will be removed from the active/eligible list pending the final decision. If it is determined that further investigation is warranted, the ADR Program Coordinator will then send the complainant a written acknowledgment that the Program has received the complaint and that it is under investigation, and give the Mediator written notice of the complaint and an opportunity to respond in writing.

Section 4: The final decision on the complaint will be made by the Presiding Judge or his or her designee, provided that the final decision-maker did not conduct the investigation, and the final decision will be communicated to both the complainant and the Mediator in writing. The final decision-maker may take one or more of the following action(s):

- *Direct that no action be taken on the complaint;*
- *Admonish or reprimand the Mediator;*
- *Impose additional training requirements as a condition of the Mediator remaining on the Court's Panel;*
- *Temporarily suspend the Mediator from the Court's Panel or otherwise prohibit the Mediator from receiving future mediation referrals from the court; and/or*
- *Permanently remove the Mediator from the Court's Panel or otherwise permanently prohibit the Mediator from receiving future mediation referrals from the court.*

The final decision is in the sole discretion of the final decision-maker and is not subject to any subsequent review or appeal. *Ultimately, mediators on the Court's Panel may be temporarily or permanently removed from the panel at any time at the sole discretion of the court without cause.*

Section 5: All court communications and/or proceedings relative to complaints against Mediators on the Court's Panel will occur in private and be kept confidential, except as required by law, and except for authorized disclosures as follows: After the decision on a complaint against a Mediator has been made, Committee members may authorize the disclosure of information or records concerning the complaint proceeding that do not reveal any mediation communications. The disclosures that may be authorized include the name of the Mediator against whom action is being taken, the action taken and the general basis on which the action was taken (in accordance with California Rules of Court, Rule 3.871[d]).

Section 6: A person who has participated in a complaint proceeding or otherwise received information that is not publicly disclosed will not subsequently hear or determine any contested issue of law, fact, or procedure concerning the dispute that was the subject of the underlying mediation or any other dispute that arises from the mediation as a judge, arbitrator, referee, or juror, or in any other adjudicative capacity, in any court action or proceeding (in accordance with California Rules of Court, Rule 3.872).