



## **Mediation Rules and Procedures**

*(Revised November 5, 2008)*

Mediation is a less intrusive, less expensive alternative means to resolving a dispute wherein parties agree to meet with an unbiased mediator who works with the parties to find a mutually agreeable solution. Although both/all parties present their sides of the disagreement, mediation is a non-binding process. Settlement negotiations should have taken place long before the mediation occurs. Such settlement negotiations, more often than not, have reached a stalemate prior to seeking the assistance of mediation.

### **Agreement to Mediate and Initiation of Mediation**

**All parties in an action must agree to participate in mediation before the case is submitted to the office of the RCBA Dispute Resolution Service (DRS).** The Joint Request for Hearing and Agreement form incorporates all of the RCBA Dispute Resolution Service Mediation Rules and Procedures set forth herein.

Once all parties in an action have agreed to participate in the DRS mediation, the initiating party returns the joint request for hearing form to: RCBA Dispute Resolution Service, 4129 Main Street, Suite 100, Riverside, California 92501. The form must be filled out completely, including complete address information, telephone and fax numbers for all attorneys, pro pers, and insurance companies involved.

Although the form includes a space for a brief statement of facts, do not submit additional material to the DRS office. The assigned mediator may request specific information as the mediator deems fit from each party prior to the mediation conference.

### **Payment of Fees and Cancellation Fees**

**The cost of the mediation is \$200.00 per hour**, divided equally between the parties. (If any party pays DRS the estimated fees on behalf of any other party or parties, any issue of reimbursement between such parties will be a matter between the parties, not involving DRS.) Services for which fees are incurred include all time spent on the case, whether spent prior to, during, or after the mediation hearing. **Fees include mediator's time spent reading briefs, performing research, and any follow-up work the parties may request.**

**For each mediation, the parties will submit to the DRS office a check for their share of the required fee, based upon either:**

- (a) **an initial estimate of four (4) hours (i.e., their share of \$800), or**
- (b) **a greater amount if it is estimated that the mediation will require more than four hours.**

Payment is required before selection and assignment of a mediator, and before a conflicts check is performed. **Checks shall be made payable to "RCBA Dispute Resolution Service".**

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If the mediation is canceled after work begins on the case but two weeks before the mediation takes place, DRS will retain a cancellation fee of \$100.00 and will return the balance of the pre-paid fee to the parties.

If the mediation is canceled less than two weeks before the mediation takes place, DRS will retain a cancellation fee of \$200.00. If cancellation is less than 24 hours prior to the mediation, there will be no refund.

**Rush Fee:** If parties request a mediation date be set up in less than two weeks, they will be asked to submit a minimum deposit equivalent to four (4) hours or \$800. **The deposit will be non-refundable.**

### **Adjustment of Fees**

If the entire mediation process requires fewer than the four hours paid for, the parties will receive their portion of a refund. (Note: This does not apply to cases where a rush fee was paid.)

Should the mediation last longer than the estimated length for said mediation, then all parties shall be jointly responsible to pay any deficiency to DRS.

Failure to pay the mediation fee in accordance with the Rules and Procedures set forth herein shall subject all parties to be responsible for collection costs plus attorney's fees.

### **Assignment of Mediator**

After the mediation agreement form and payment have been received by the RCBA Dispute Resolution Service office, the case is reviewed and either accepted or rejected for mediation. If rejected, the parties will receive a refund.

If accepted, the case is reviewed by the mediation coordinator who assigns the case to an attorney whose area of expertise most closely fits the subject matter of the case submitted for mediation, ***unless the parties have previously agreed to have the matter mediated by a specific mediator affiliated with DRS.*** The mediation coordinator will contact the parties to schedule the date, time and location of the mediation.

More often than not, the mediation will take place at the Riverside County Bar Association building. Additional rooms are available if parties and their attorneys need to confer in private. Occasionally, a mediator may request that the mediation take place at his/her office.

The mediation coordinator shall confirm the scheduling of the mediation by letter to the parties and the mediator. The mediator may notify parties separately if they should submit briefs, documents or other materials directly to the mediator. The type and extent of additional materials the mediator may request are within the discretion of the mediator.

### **Mediation**

All parties involved shall attend the mediation. This includes not only the Plaintiff, Plaintiff's Counsel,

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the Defendant, Defendant's Counsel, but any insurance company representative with authority to resolve the dispute or any financial backer involved.

The mediation process is generally informal. Typically the mediator requests both parties to summarize their position in the presence of all involved.

The mediator may at times meet privately in a confidential conference with any and all parties in the mediation. The mediator will not disclose any information received in such a confidential conference without the permission of the party making the disclosure.

The mediator shall not reveal to third parties information provided by participants without the consent of all participants. However, without disclosing participants' names or other identifying information, the mediator may consult with colleagues about this matter, and may describe this matter in publications about mediation.

All information pertaining to the issue(s) being mediated shall be fully disclosed by the parties involved. In the event that any of the parties is unsure about the advisability of disclosure of sensitive information, it is critical to the effectiveness of the mediation process that this be discussed with the mediator in a confidential conference. The mediator may request copies of all pertinent information.

Should experts such as appraisers, accountants, etc., be required in determining a solution to the conflict(s) in mediation, the information obtained from such persons shall be gathered in a manner mutually agreed upon by the parties.

In that mediation is a procedure for reaching settlement of a dispute between the parties either in litigation or likely to be litigated, California Evidence Code Section 1152.2 shall apply to any mediation conducted through RCBA Dispute Resolution Service. This law provides that communications made in the course of mediation are inadmissible as evidence in later litigation. Participants understand that information disclosed in mediation may be useful to the other participants in litigation, even if not admitted in evidence.

The parties shall be prohibited from calling either the mediator, or any officer or agent thereof, as a witness in litigation of any description in which they are called upon to testify as to any matter regarding the mediation proceeding. The parties will also be prohibited from requiring the production in court of any records or document made by the mediator. The mediator cannot and will not offer any legal advice or opinion to any party at any time.

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