

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
New Rule: Early Mandatory Mediation Requirement

1 (a) Scope. This rule applies if a case schedule or court order requires mediation. On a
2 party's motion for good cause or on its own initiative, the court may order any parties to mediate
3 pursuant to this rule even where not otherwise required.

4 (b) Qualified Mediators.

5 (1) Judges shall be considered qualified mediators. They may serve as a mediator by
6 agreement.

7 (2) The court shall maintain a list of other qualified mediators and has discretion to
8 modify the list. A person seeking to be on the list of qualified mediators agrees to follow the
9 procedures of this rule if appointed and to accept appointment to one mediation per calendar year
10 on a pro bono basis. Refusal to accept a pro bono appointment may result in removal from the
11 list. A qualified mediator shall demonstrate:

12 (A) Completion of mediation training; or

13 (B) Experience mediating at least five matters as a mediator.

14 (3) The list of qualified mediators must include the following for each mediator:

15 (A) Name;

16 (B) Physical and electronic mail addresses;

17 (C) Telephone number;

18 (D) Fee schedule;

19 (E) Whether the mediator is qualified by training, experience or both; and

20 (F) Preferred legal subject matters, if any.

21 (4) Each court by county shall establish a recommended fee schedule for assigned
22 mediators and update it annually.

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1 (5) No person who has provided mediation services for an action shall serve as an
2 arbitrator of that action. No person who has been engaged as an arbitrator in an action shall
3 serve as a mediator for that action.

4 **(c) Selection of Mediator.**

5 (1) *Joint Selection of Mediator.* Parties may by agreement select any person as mediator,
6 even if not on the court’s list of qualified mediators. If the parties jointly select a mediator, the
7 plaintiff shall file a notice of joint selection of mediator that includes the name and contact
8 information of the mediator jointly selected, and serve a copy upon the mediator.

9 (2) *Assignment of Mediator.* If the plaintiff fails to file the notice of joint selection of
10 mediator by a deadline provided by a case schedule or court order, the court shall promptly
11 assign a mediator from the approved list and notify the mediator and the parties of the
12 assignment. If the mediator is unable to serve, the mediator shall so notify the court within five
13 days and the court shall appoint a new mediator.

14 (3) *Pro Bono Mediator.* A party who believes that any party is unable to afford
15 mediation may file a motion requesting assignment of a *pro bono* mediator by a deadline
16 provided by a case schedule or court order. If the court approves the request for a *pro bono*
17 mediator, the court shall promptly assign a mediator on a *pro bono* basis.

18 **(d) Mediation Procedure, Attendance.**

19 (1) *Mediation Procedure.* The mediator has authority to determine the procedure of the
20 mediation, for example its form, length, and content. The mediator shall consult the suggested
21 best mediation practices and confer with the parties to learn their needs, preferences and
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Date:

Attorney for Plaintiff

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(Signature)

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(f) Mediator Compensation. The parties shall pay the mediator's reasonable fees unless a court order provides otherwise. Unless otherwise ordered by the court or agreed by the parties, each party is responsible for his, her or its proportional share of the reasonable mediation fee.

The court has authority to resolve in its discretion any fee dispute upon motion of any party, including the reasonableness of the mediation fee.

(g) Extension of Applicable Deadline for Specific Objectives. If any party in good faith believes that completion of specific discovery or exchange of specific information is necessary before mediation, and if that specific discovery or exchange of specific information is not likely to be completed within applicable deadlines, then that party may seek to extend the mediation deadline by raising the issue at the Initial Discovery Conference and incorporating the same into the Discovery Plan and Status Report. The court may extend an applicable deadline for mediation by a maximum of 60 days in such circumstances and incorporate any such extension into the Case Schedule. The availability of this extension is without prejudice to an extension of, or exemption from, any case schedule otherwise available.

(h) Sanctions for Failure to Comply. The court, upon motion or upon its own initiative, may impose an appropriate sanction on any party or attorney for refusal to participate in mediation or comply with any of the requirements of this rule, for willful delay in completing

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1 mediation or for participation in bad faith. The sanction may include, but is not limited to, an
2 order to pay a fee sufficient to deter the conduct and an order to pay to the other party or parties
3 the amount of the reasonable expenses incurred because of the sanctionable conduct. The court
4 shall not entertain any motion with respect to this subsection unless the parties have conferred
5 with respect to the motion. The moving party shall arrange for a mutually convenient conference
6 in person or by telephone. The court may apply sanctions if the court finds that any party or its
7 counsel, upon whom a motion with respect to matters covered by such rules has been served, has
8 willfully refused or failed to confer in good faith. Any motion seeking sanctions under this
9 subsection shall include a certification that the conference requirements of this rule have been
10 met.
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