

West's Annotated California Codes [Currentness](#)

California Rules of Court [\(Refs & Annos\)](#)

Title 3. Civil Rules [\(Refs & Annos\)](#)

Division 8. Alternative Dispute Resolution [\(Refs & Annos\)](#)

▣ [Chapter 3](#). General Rules Relating to Mediation of Civil Cases [\(Refs & Annos\)](#)

→ [Article 2](#). Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases [\(Refs & Annos\)](#)

→ **[Rule 3.850. Purpose and function](#)**

**(a) Standards of conduct**

The rules in this article establish the minimum standards of conduct for mediators in court-connected mediation programs for general civil cases. These rules are intended to guide the conduct of mediators in these programs, to inform and protect participants in these mediation programs, and to promote public confidence in the mediation process and the courts. For mediation to be effective, there must be broad public confidence in the integrity and fairness of the process. Mediators in court-connected programs are responsible to the parties, the public, and the courts for conducting themselves in a manner that merits that confidence.

**(b) Scope and limitations**

These rules are not intended to:

- (1) Establish a ceiling on what is considered good practice in mediation or discourage efforts by courts, mediators, or others to educate mediators about best practices;
- (2) Create a basis for challenging a settlement agreement reached in connection with mediation; or
- (3) Create a basis for a civil cause of action against a mediator.

→ **[Rule 3.851. Application](#)**

**(a) Circumstances applicable**

The rules in this article apply to mediations in which a mediator:

- (1) Has agreed to be included on a superior court's list or panel of mediators for general civil cases and is notified by the court or the parties that he or she has been selected to mediate a case within that court's mediation program; or
- (2) Has agreed to mediate a general civil case pending in a superior court after being notified by the court or the parties that he or she was recommended, selected, or appointed by that court or will be compensated by that court to mediate a case within that court's mediation program. A mediator who is not on a superior court list or panel and who is selected by the parties is not "recommended, selected, or appointed" by the court within the meaning of this subdivision simply because the court approves the parties' agreement to use this mediator or memorializes the parties' selection in a court order.

**(b) Application to listed firms**

If a court's panel or list includes firms that provide mediation services, all mediators affiliated with a listed firm are required to comply with the rules in this article when they are notified by the court or the parties that the firm was selected from the court list to mediate a general civil case within that court's mediation program.

**(c) Time of applicability**

Except as otherwise provided in these rules, the rules in this article apply from the time the mediator agrees to mediate a case until the end of the mediation in that case.

**(d) Inapplicability to judges**

The rules in this article do not apply to judges or other judicial officers while they are serving in a capacity in which they are governed by the Code of Judicial Ethics.

**(e) Inapplicability to settlement conferences**

The rules in this article do not apply to settlement conferences conducted under rule 3.1380.

→ **Rule 3.852. Definitions**

As used in this article, unless the context or subject matter requires otherwise:

- (1) "Mediation" means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.
- (2) "Mediator" means a neutral person who conducts a mediation.
- (3) "Participant" means any individual, entity, or group, other than the mediator taking part in a mediation, including but not limited to attorneys for the parties.
- (4) "Party" means any individual, entity, or group taking part in a mediation that is a plaintiff, a defendant, a cross-complainant, a cross-defendant, a petitioner, a respondent, or an intervenor in the case.

→ **Rule 3.853. Voluntary participation and self-determination**

A mediator must conduct the mediation in a manner that supports the principles of voluntary participation and self-determination by the parties. For this purpose a mediator must:

- (1) Inform the parties, at or before the outset of the first mediation session, that any resolution of the dispute in mediation requires a voluntary agreement of the parties;
- (2) Respect the right of each participant to decide the extent of his or her participation in the mediation, including the right to withdraw from the mediation at any time; and
- (3) Refrain from coercing any party to make a decision or to continue to participate in the mediation.

→ **Rule 3.854. Confidentiality**

**(a) Compliance with confidentiality law**

A mediator must, at all times, comply with the applicable law concerning confidentiality.

**(b) Informing participants of confidentiality**

At or before the outset of the first mediation session, a mediator must provide the participants with a general explanation of the confidentiality of mediation proceedings.

**(c) Confidentiality of separate communications; caucuses**

If, after all the parties have agreed to participate in the mediation process and the mediator has agreed to mediate the case, a mediator speaks separately with one or more participants out of the presence of the other participants, the mediator must first discuss with all participants the mediator's practice regarding confidentiality for separate communications with the participants. Except as required by law, a mediator must not disclose information revealed in confidence during such separate communications unless authorized to do so by the participant or participants who revealed the information.

**(d) Use of confidential information**

A mediator must not use information that is acquired in confidence in the course of a mediation outside the mediation or for personal gain.

→ **Rule 3.855. Impartiality, conflicts of interest, disclosure, and withdrawal**

**(a) Impartiality**

A mediator must maintain impartiality toward all participants in the mediation process at all times.

**(b) Disclosure of matters potentially affecting impartiality**

(1) A mediator must make reasonable efforts to keep informed about matters that reasonably could raise a question about his or her ability to conduct the proceedings impartially, and must disclose these matters to the parties. These matters include:

(A) Past, present, and currently expected interests, relationships, and affiliations of a personal, professional, or financial nature; and

(B) The existence of any grounds for disqualification of a judge specified in [Code of Civil Procedure section 170.1](#).

(2) A mediator's duty to disclose is a continuing obligation, from the inception of the mediation process through its completion. Disclosures required by this rule must be made as soon as practicable after a mediator becomes aware of a matter that must be disclosed. To the extent possible, such disclosures should be made before the first mediation session, but in any event they must be made within the time required by applicable court rules or statutes.

**(c) Proceeding if there are no objections or questions concerning impartiality**

Except as provided in (f), if, after a mediator makes disclosures, no party objects to the mediator and no participant raises any question or concern about the mediator's ability to conduct the mediation impartially, the mediator may proceed.

**(d) Responding to questions or concerns concerning impartiality**

If, after a mediator makes disclosures or at any other point in the mediation process, a participant raises a question or concern about the mediator's ability to conduct the mediation impartially, the mediator must address the question or concern with the participants. Except as provided in (f), if, after the question or concern is addressed, no party objects to the mediator, the mediator may proceed.

**(e) Withdrawal or continuation upon party objection concerning impartiality**

In a two-party mediation, if any party objects to the mediator after the mediator makes disclosures or discusses a participant's question or concern regarding the mediator's ability to conduct the mediation impartially, the mediator must withdraw. In a mediation in which there are more than two parties, the mediator may continue the mediation with the nonobjecting parties, provided that doing so would not violate any other provision of these rules, any law, or any local court rule or program guideline.

**(f) Circumstances requiring mediator recusal despite party consent**

Regardless of the consent of the parties, a mediator either must decline to serve as mediator or, if already serving, must withdraw from the mediation if:

- (1) The mediator cannot maintain impartiality toward all participants in the mediation process; or
- (2) Proceeding with the mediation would jeopardize the integrity of the court or of the mediation process.

**→ [Rule 3.856. Competence](#)****(a) Compliance with court qualifications**

A mediator must comply with experience, training, educational, and other requirements established by the court for appointment and retention.

**(b) Truthful representation of background**

A mediator has a continuing obligation to truthfully represent his or her background to the court and participants. Upon a request by any party, a mediator must provide truthful information regarding his or her experience, training, and education.

**(c) Informing court of public discipline and other matters**

A mediator must also inform the court if:

- (1) Public discipline has been imposed on the mediator by any public disciplinary or professional licensing agency;
- (2) The mediator has resigned his or her membership in the State Bar or another professional licensing agency while disciplinary or criminal charges were pending;
- (3) A felony charge is pending against the mediator;
- (4) The mediator has been convicted of a felony or of a misdemeanor involving moral turpitude; or
- (5) There has been an entry of judgment against the mediator in any civil action for actual fraud or punitive damages.

**(d) Assessment of skills; withdrawal**

A mediator has a continuing obligation to assess whether or not his or her level of skill, knowledge, and ability is sufficient to conduct the mediation effectively. A mediator must decline to serve or withdraw from the mediation if the mediator determines that he or she does not have the level of skill, knowledge, or ability necessary to conduct the mediation effectively.

→ **Rule 3.857. Quality of mediation process**

**(a) Diligence**

A mediator must make reasonable efforts to advance the mediation in a timely manner. If a mediator schedules a mediation for a specific time period, he or she must keep that time period free of other commitments.

**(b) Procedural fairness**

A mediator must conduct the mediation proceedings in a procedurally fair manner. “Procedural fairness” means a balanced process in which each party is given an opportunity to participate and make uncoerced decisions. A mediator is not obligated to ensure the substantive fairness of an agreement reached by the parties.

**(c) Explanation of process**

In addition to the requirements of rule 3.853 (voluntary participation and self-determination), rule 3.854(a) (confidentiality), and (d) of this rule (representation and other professional services), at or before the outset of the mediation the mediator must provide all participants with a general explanation of:

- (1) The nature of the mediation process;
- (2) The procedures to be used; and
- (3) The roles of the mediator, the parties, and the other participants.

**(d) Representation and other professional services**

A mediator must inform all participants, at or before the outset of the first mediation session, that during the mediation he or she will not represent any participant as a lawyer or perform professional services in any capacity other

than as an impartial mediator. Subject to the principles of impartiality and self-determination, a mediator may provide information or opinions that he or she is qualified by training or experience to provide.

**(e) Recommending other services**

A mediator may recommend the use of other services in connection with a mediation and may recommend particular providers of other services. However, a mediator must disclose any related personal or financial interests if recommending the services of specific individuals or organizations.

**(f) Nonparticipants' interests**

A mediator may bring to the attention of the parties the interests of others who are not participating in the mediation but who may be affected by agreements reached as a result of the mediation.

**(g) Combining mediation with other ADR processes**

A mediator must exercise caution in combining mediation with other alternative dispute resolution (ADR) processes and may do so only with the informed consent of the parties and in a manner consistent with any applicable law or court order. The mediator must inform the parties of the general natures of the different processes and the consequences of revealing information during any one process that might be used for decision making in another process, and must give the parties the opportunity to select another neutral for the subsequent process. If the parties consent to a combination of processes, the mediator must clearly inform the participants when the transition from one process to another is occurring.

**(h) Settlement agreements**

Consistent with (d), a mediator may present possible settlement options and terms for discussion. A mediator may also assist the parties in preparing a written settlement agreement, provided that in doing so the mediator confines the assistance to stating the settlement as determined by the parties.

**(i) Discretionary termination and withdrawal**

A mediator may suspend or terminate the mediation or withdraw as mediator when he or she reasonably believes the circumstances require it, including when he or she suspects that:

- (1) The mediation is being used to further illegal conduct;
- (2) A participant is unable to participate meaningfully in negotiations; or
- (3) Continuation of the process would cause significant harm to any participant or a third party.

**(j) Manner of withdrawal**

When a mediator determines that it is necessary to suspend or terminate a mediation or to withdraw, the mediator must do so without violating the obligation of confidentiality and in a manner that will cause the least possible harm to the participants.

→ [Rule 3.858. Marketing](#)

**(a) Truthfulness**

A mediator must be truthful and accurate in marketing his or her mediation services. A mediator is responsible for ensuring that both his or her own marketing activities and any marketing activities carried out on his or her behalf by others comply with this rule.

**(b) Representations concerning court approval**

A mediator may indicate in his or her marketing materials that he or she is a member of a particular court's panel or list but, unless specifically permitted by the court, must not indicate that he or she is approved, endorsed, certified, or licensed by the court.

**(c) Promises, guarantees, and implications of favoritism**

In marketing his or her mediation services, a mediator must not:

- (1) Promise or guarantee results; or
- (2) Make any statement that directly or indirectly implies bias in favor of one party or participant over another.

**(d) Solicitation of business**

A mediator must not solicit business from a participant in a mediation proceeding while that mediation is pending.

→ **[Rule 3.859. Compensation and gifts](#)**

**(a) Compliance with law**

A mediator must comply with any applicable requirements concerning compensation established by statute or the court.

**(b) Disclosure of and compliance with compensation terms**

Before commencing the mediation, the mediator must disclose to the parties in writing any fees, costs, or charges to be paid to the mediator by the parties. A mediator must abide by any agreement that is reached concerning compensation.

**(c) Contingent fees**

The amount or nature of a mediator's fee must not be made contingent on the outcome of the mediation.

**(d) Gifts and favors**

A mediator must not at any time solicit or accept from or give to any participant or affiliate of a participant any gift, bequest, or favor that might reasonably raise a question concerning the mediator's impartiality.

→ **[Rule 3.860. Attendance sheet and agreement to disclosure](#)**

**(a) Attendance sheet**

In each mediation to which these rules apply under rule 3.851(a), the mediator must request that all participants in the mediation complete an attendance sheet stating their names, mailing addresses, and telephone numbers; retain the attendance sheet for at least two years; and submit it to the court on request.

**(b) Agreement to disclosure**

The mediator must agree, in each mediation to which these rules apply under rule 3.851(a), that if an inquiry or a complaint is made about the conduct of the mediator, mediation communications may be disclosed solely for purposes of a complaint procedure conducted pursuant to rule 3.865 to address that complaint or inquiry.

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