

Brief History of San Mateo County's MAP Family Law ADR Program

The Family Law ADR program initially began in May of 1996 as part of the Family Law Section of the San Mateo County Bar Association. The Multi-Option ADR Project assumed leadership of the program in February of 2000. The current program coordinator, Monica Rands Preuss, oversees the program, which provides an opportunity for parties to use mediation or arbitration as an alternative to going to court.

The Family Law program has two components: a panel of private neutrals that provide mediation and arbitration; and on-site mediation and settlement conferencing by the staff attorney-mediator.

An Advisory Committee assists with program planning, policy and community outreach. Past projects include the creation of a local form, "Notice of ADR Options" in 2004, and the revision of the local rules for family law during the transition to a direct calendar system.

The court's ADR web site was created and went live in 2005. From this site, users may download the ADR program registration form, view a series of topics in the "Frequently Asked Questions" section, and search the ADR panel database by name, location, fee, etc.

LOCAL RULES. Superior Court of California, County of San Mateo

Division V
FAMILY LAW DEPARTMENT

Rule 5.5 Alternative Dispute Resolution

A. ADR Policy: California Rules of Court and the Family Law Act strongly encourage alternative dispute resolution (ADR) of family matters. The Family Law Department recognizes that formal litigation of legal claims and disputes is expensive and time consuming. The goals of this Court are: to reduce hostilities between the parties; facilitate the early resolution of issues; and provide parties with an opportunity to maximize their satisfaction with the resolution of their case. It is therefore the policy of this Court to promote and encourage the parties to settle their disputes by the use of appropriate dispute resolution options which include mediation, arbitration, collaborative law, court supervised settlement conferences and/or judicial case management.

B. Requirements for filing and service of the Notice of ADR Options In Family Law Actions: Each party to a family law action shall be informed of the alternatives to litigation to resolve their disputed issues. Notice shall be in the form of an information sheet entitled "Notice of ADR Options" (hereinafter "Notice") (see Appendix 6). All parties and counsel shall file and have the Notice served on the other party with any Petition or Response under the Family Law Act or Uniform Parentage Act, Order to Show Cause, Response to Order to Show Cause, Notice of Motion, Response to Notice of Motion, or other family law pleading which will result in a court hearing or trial, unless a Notice has previously been filed within the past 180 days. A Proof of Service shall be filed with the Court.

- (1) Exceptions: This rule shall not apply to domestic violence cases filed under Family Code 6200 et seq, nor to Title IV-D child support actions involving the Department of Child Support pursuant to Family Code §§17400 and 17406 and/or those actions filed by the local child support agency pursuant to Family Code §4900 et seq. This rule shall not apply to Motions to Withdraw or to matters pending before a private judge. The Notice shall not be served on an employee pension benefit plan.

C. Except for ex parte motions or an initial order to show cause filed with a petition, no hearing or trial date shall be set by the Clerk of the Court until the moving party has complied with filing and service of the Notice as set forth in this Rule.

D. The Court's ADR Program shall maintain a list of attorneys who possess the qualifications related to this Rule.

(Adopted, effective January 1, 2000) (Renumbered (*formerly Rule 5.4(c)*)) and Amended, effective January 1, 2004) (Amended, effective July 1, 2004)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:		CASE NUMBER:

The San Mateo County Superior Court recommends ADR options

“Alternative” or “Appropriate Dispute Resolution” (ADR) is a general term for methods of resolving a dispute without going through the formal court process. ADR can save you time, money, and increase your overall satisfaction with the outcome of your case.

ADR can be used at any point in your case to resolve disputes regarding property division, child support, spousal support, paternity, child custody, parenting plans, and many other family law issues.

Did you know that the vast majority of cases filed in court (95-98%) do not go to trial? Most cases are settled or decided in some other way. But in many cases, the settlement comes only after considerable resources have been expended. This is why the San Mateo County Superior Court supports the use of dispute resolution alternatives at the earliest possible time. Local Rule 5.5(A) states:

California Rules of Court and the Family Law Act strongly encourage alternative dispute resolution (ADR) of family matters. The Family Law Department recognizes that formal litigation of legal claims and disputes is expensive and time consuming. The goals of this Court are: to reduce hostilities between the parties; facilitate the early resolution of issues; and provide parties with an opportunity to maximize their satisfaction with the resolution of their case. It is therefore the policy of this Court to promote and encourage the parties to settle their disputes by the use of appropriate dispute resolution options which include mediation, arbitration, collaborative practice, court supervised settlement conferences and/or judicial case management.

The court strongly encourages the use of ADR but does not favor any particular form of ADR, endorse any particular attorney, nor guarantee the outcome in any particular case.

Instructions: All parties and counsel shall read the Notice, sign on page three, and have this Notice served on the other party with any Petition or Response under the Family Law Act, Uniform Parentage Act, Order to Show Cause, Response to Order to Show Cause, Notice of Motion, Response to Notice of Motion, or any other family law pleading which will result in a court hearing or trial unless a Notice has previously been filed within the past 180 days. A proof of service shall be filed with the Court. (Local Rule 5.5)(B)

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

DESCRIPTION OF SERVICES AND COST:

The Court manages a panel of attorneys with special training in mediation and arbitration and a commitment to finding alternatives to formal litigation. The attorneys who serve on the ADR panel have agreed to offer participants a 90-minute session for \$100 (\$50 per party). Additional sessions are available at the attorney's market rate. For more information call the ADR office at: (650)599-1238, or visit the website at: www.sanmateocourt.org/adr/familylaw

- **Mediation**

Mediation through the ADR program is voluntary. A neutral attorney called a "mediator" meets with parties and/or their attorneys to assist them in reaching an agreement. The mediator facilitates communication between the participants, clarifies issues, explores each party's needs and interests, and helps the participants to consider options for settlement.

The parties may resolve a single issue or the entire case. The agreements reached in mediation are not limited by the results available under the law so mediated solutions can more easily accommodate the circumstances of individual cases. An agreement reached in mediation is binding once it is turned into a court order and signed by the Judge. You cannot be forced to accept a decision in mediation and participating in mediation does not impact your right to a court hearing. If an agreement is not reached you may continue through the court system.

Mediation is private and confidential. The sessions are conducted in the mediator's office. Anything spoken or written during mediation by any of the participants is confidential and may not be disclosed to the Court or any other person without the consent of the participants.

- **Arbitration**

Arbitration is private and less formal than a court trial. In arbitration, a neutral attorney called the "arbitrator" makes a decision based on the information presented by both sides. The arbitrator then prepares a written decision and sends it to both parties and the Court. The court's ADR program offers binding arbitration with a neutral serving as a temporary judge. Binding means there is no right to appeal and you will accept the arbitrator's decision as final.

- **Collaborative Law**

In the collaborative process, you and the other party each have a private attorney and make a commitment to resolve your disputes without going to court. Similar to mediation, collaborative practice operates in the spirit of honesty and cooperation. In the collaborative process, both parties together with the professionals (attorneys, mental health and financial experts) work as a team to resolve disputes respectfully with an emphasis on financial responsibility and cooperative co-parenting. Collaborative Practice San Mateo County is a private organization of professionals specially trained in collaborative practice. For more information, fees or a list of professionals, please see the web site at <http://www.collaborative-law.com/> or call (650) 590-2288.

<p>Instructions: All parties and counsel shall read the Notice, sign on page three, and have this Notice served on the other party with any Petition or Response under the Family Law Act, Uniform Parentage Act, Order to Show Cause, Response to Order to Show Cause, Notice of Motion, Response to Notice of Motion, or any other family law pleading which will result in a court hearing or trial unless a Notice has previously been filed within the past 180 days. A proof of service shall be filed with the Court. (Local Rule 5.5)(B)</p>

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

FAMILY COURT SERVICES MEDIATION:

The Court encourages the use of the ADR options described above to resolve custody and parenting plan disputes. However, if you do not reach an agreement on these issues, California law requires you to meet with Family Court Services (FCS) before submitting these issues to a Judge. FCS will first attempt to settle the issues through mediation, however, if no agreement is reached then the FCS counselor will prepare a written recommendation to the Court based upon the best interests of the child(ren). FCS mediation is not confidential and does not address your property or financial disputes. There is no fee for mediation with FCS.

DOMESTIC VIOLENCE AND ADR:

ADR is most effective when parties are able to communicate and solve problems without fear or intimidation. For this reason when there is a history of domestic violence in a relationship, ADR may not be appropriate.

The undersigned certifies that s/he has read this Notice in compliance with San Mateo County Local Rule 5.5.	
Date:	Date:
_____	_____
Signature of Petitioner	Signature of Respondent
Attorney certification of compliance with San Mateo County Local Rule 5.5:	
Date:	Date:
_____	_____
Signature of Attorney for Petitioner	Signature of Attorney for Respondent

Instructions: All parties and counsel shall read the Notice, sign on page three, and have this Notice served on the other party with any Petition or Response under the Family Law Act, Uniform Parentage Act, Order to Show Cause, Response to Order to Show Cause, Notice of Motion, Response to Notice of Motion, or any other family law pleading which will result in a court hearing or trial unless a Notice has previously been filed within the past 180 days. A proof of service shall be filed with the Court. (Local Rule 5.5)(B)

Sample Scripts for Bench Officers

- Bench officers provide the most vital link to ADR by suggesting to parties and counsel that they consider ADR options. There are several ways to do this, including:
 - Individually, bench officers may refer on a case-by-case basis, as the need for ADR becomes apparent. This works well on the status conference calendars, for example. (See Tab 3 “Courtroom Procedures.”)
 - Some bench officers give a standard admonition at the beginning of every calendar along with their opening remarks. This works well during law and motion calendars. A sample edited from a prior supervising family law judge is set forth on the next page:

OPENING REMARKS FOR AN OSC CALENDAR

"Good morning, everyone. Welcome to our Family law law and motion calendar...

I have carefully read all the papers timely filed with the Court. Please do not repeat to me what you have already told me in written form.

For those who are represented by attorneys, I want to remind counsel of our Local Court Rule requirement that you meet and confer prior to the court hearing your case. If you have not yet had this opportunity, please set out into the hallway and do so now. We will pass your case until this requirement has been satisfied.

If you are here on cases involving contested issues of custody and/or visitation, please be aware that those issues must be mediated prior to the Court hearing them. We have M____. _____ (FCS' representative) of Family Court Services present with us to assist with day-of-court mediations. We have limited availability for day-of-court mediations. If you have not already been through Family Court Services and do not receive a day-of-court mediation, your case will be continued for a brief time period so that you can go through mediation and the Court can receive a written report from Family Court Services.

Finally, I want to make sure that everyone is aware of a program that we have here in San Mateo County known as the Family Law ADR Program. [Hold up brochure.] This is a program run by a partnership among the Court, the Bar Association, and the Community. ADR stands for alternative dispute resolution, or as others call it, appropriate dispute resolution. This program offers you the trained services of a mediator or arbitrator at a very reasonable cost to assist you in resolving in an informal setting outside of court as many of the issues involved in your case as you desire to submit to ADR.

I bring this program to your attention this morning for two reasons: First, I personally am a very strong believer that, as a general rule, parties to family law proceedings are in a better position than is the Court to craft the best resolution of the issues in their case. Parties who settle their cases are usually more satisfied with the results. Second, you are here today on very limited issues. I have the legal ability to determine only those issues properly presented by the papers filed with the Court. I find that as people start talking about some of the issues in their case, they frequently desire to discuss the bigger picture. I cannot hear all of those issues this morning, but this program does offer you the opportunity to settle your entire case. I highly recommend ADR to you and invite you to pick up one of these brochures. If, after reading the brochure you'd like to be referred to ADR, please let me or my staff know."

TOP REASONS TO RECOMMEND ADR

The following excerpts may be helpful in formulating your own comments when suggesting ADR.

Below are the typical reasons why mediation or another form of dispute resolution may be more case appropriate than litigation as excerpted from CJER's "Judge's Guide to ADR":

- Parties in ADR can keep their dispute private.
- Parties who use ADR may resolve their case more quickly than parties who litigate.
- ADR can be scheduled at the convenience of the parties and counsel.
- Parties are able to tell their side of the story fully, and feel they have an outlet for their frustration, anger, or pain.
- Parties have more control over the resolution process.
- If litigated, fees and costs may be high relative to the amount in controversy.
- Remedies and results can be tailored to parties' needs and interests without the limited parameters imposed by litigation.

ADVANTAGES TO CHOOSING MEDIATION EARLY

A 2005 State Judiciary Institute study compared two demographically comparable counties in Virginia, one where parties were screened and referred to family mediation *prior to or at the time of their first hearing*, and the other where parties weren't offered mediation until *after the first hearing*. The study found that early referrals to mediation result in great benefit to both the parties and the court. Notably:

- There were significantly fewer numbers of hearings when parties went to mediation early in the case.
- The overall time that a case remained in the court (measured from the initial petition through judgment) was less for parties that used mediation.
- Fewer cases needed to be adjudicated when the parties opted for mediation.

OVERCOMING RESISTANCE TO ADR

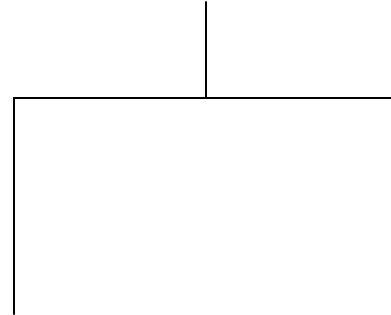
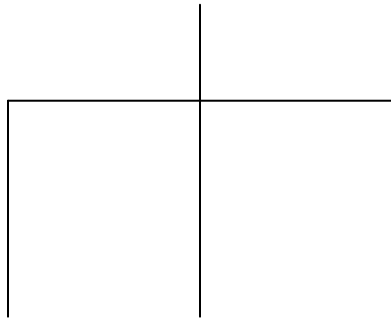
Sometimes a bench referral to ADR is met with some resistance. Once parties and counsel have the judge's ear, there is reluctance to let go. The following are some suggestions on how to deal with this from one of our former civil case management judges:

- "Disregard for the most part comments such as, 'This case won't settle and we want it set for trial.' My experience is that this is almost always posturing and statistics show that cases do settle."
- "Mediation is probably the best form of ADR available for most cases."
- "Don't buy the excuse that the dispute is not suitable for mediation without very close scrutiny."
- "Don't forget that ADR works and saves judges many hours of subsequent labor. Actively encourage it."
- "The program is voluntary but you can mandate that parties meet with ADR staff to consider ADR options. Generally, judges get a commitment in court to try some form of ADR and leave it to staff to work out the details and to answer questions."

Consensual Processes vs. Adjudicatory Processes

Consensual Processes

Adjudicatory Processes



Negotiation

Mediation

Collaboration

Private Judge

Litigation

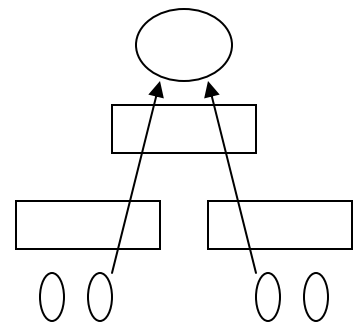
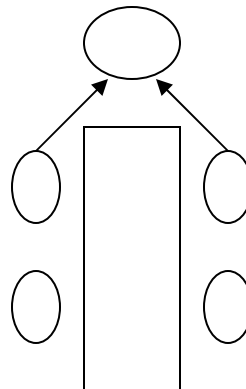
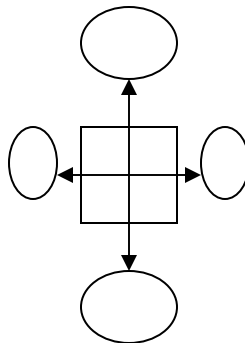
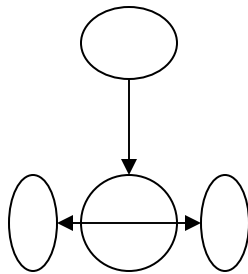
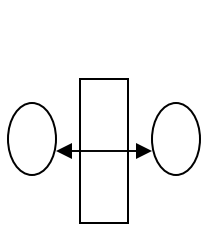
One-to-one
communication

Facilitated
negotiation

Interest based
negotiation

Private third-party
decision-making

Formal
third-party
Decision-making



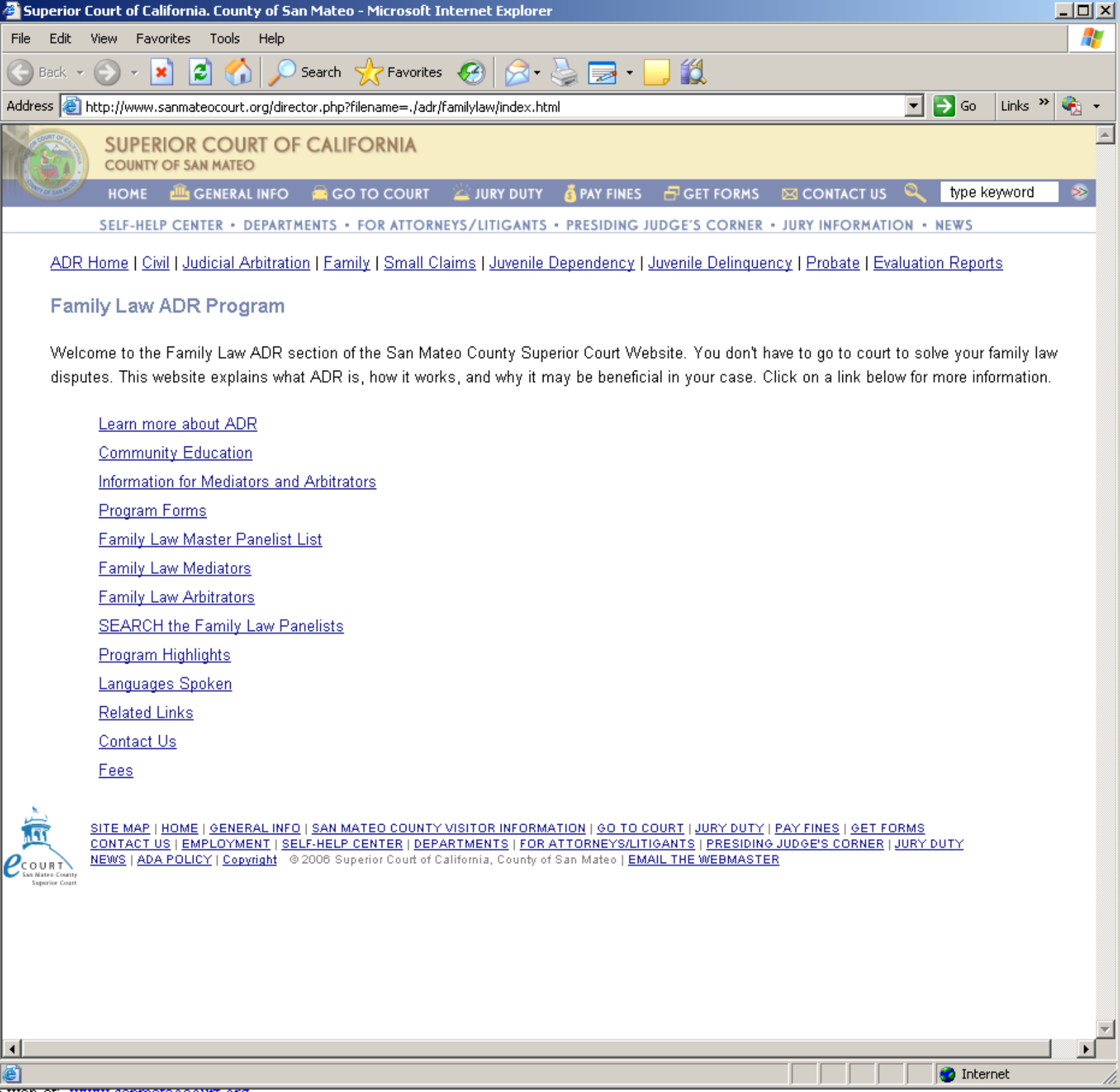
Parties retain control of outcome in the process

Parties retain control of the outcome but yield to assistance in the management of the process

Parties retain control of the outcome but yield to assistance in the management of the process

Parties give up control of the outcome and the conducting (but not the structuring) of the process

Parties give up control of *both* the outcome and the process



SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN MATEO

[ADR Home](#) | [Civil](#) | [Judicial Arbitration](#) | [Family](#) | [Small Claims](#) | [Juvenile Dependency](#) | [Juvenile Delinquency](#) | [Probate](#) | [Evaluation Reports](#)

Family Law ADR Program

Welcome to the Family Law ADR section of the San Mateo County Superior Court Website. You don't have to go to court to solve your family law disputes. This website explains what ADR is, how it works, and why it may be beneficial in your case. Click on a link below for more information.

- [Learn more about ADR](#)
- [Community Education](#)
- [Information for Mediators and Arbitrators](#)
- [Program Forms](#)
- [Family Law Master Panelist List](#)
- [Family Law Mediators](#)
- [Family Law Arbitrators](#)
- [SEARCH the Family Law Panelists](#)
- [Program Highlights](#)
- [Languages Spoken](#)
- [Related Links](#)
- [Contact Us](#)
- [Fees](#)



[ADR Home](#) | [Civil](#) | [Judicial Arbitration](#) | [Family](#) | [Small Claims](#) | [Juvenile Dependency](#) | [Juvenile Delinquency](#) | [Probate](#) | [Evaluation Reports](#)

Family Law ADR Program

Learn more about ADR

You don't have to go to court to solve your Family Law disputes. This section will tell you more about mediation and arbitration in family law cases.

Frequently Asked Questions

[What is ADR?](#)

[What is mediation?](#)

[How does mediation work?](#)

[Is mediation the same as "arbitration"?](#)

[What issues can mediation or arbitration help me with?](#)

[How do I ask for mediation or arbitration?](#)

[What if I have a court case already?](#)

[What is Collaborative Practice?](#)

[Do I need a lawyer?](#)

[How much does it cost?](#)

[How long does it take?](#)

[Where do I go for mediation \(or arbitration\)?](#)

[Who chooses the mediator \(or arbitrator\)?](#)

[How do I get ready for mediation?](#)

[Does the law require the use of ADR?](#)

[What if I don't feel safe meeting with the other party?](#)

[The judge referred me and the other parent to Family Court Services for mediation. Is this the same as the Family Law ADR program?](#)

[Do I have to go to court?](#)

[Why should I try ADR?](#)

What is ADR?

- ADR stands for Alternative Dispute Resolution, some people call it "Appropriate" Dispute Resolution. It just means finding a different way to resolve your dispute without going through the court process. There are different kinds of ADR. Our program uses mediation and arbitration.

[SITE MAP](#) | [HOME](#) | [GENERAL INFO](#) | [SAN MATEO COUNTY VISITOR INFORMATION](#) | [GO TO COURT](#) | [JURY DUTY](#) | [PAY FINES](#) | [GET FORMS](#)
[CONTACT US](#) | [EMPLOYMENT](#) | [SELF-HELP CENTER](#) | [DEPARTMENTS](#) | [FOR ATTORNEYS/LITIGANTS](#) | [PRESIDING JUDGE'S CORNER](#) | [JURY DUTY](#)
[NEWS](#) | [ADA POLICY](#) | [Copyright](#) © 2006 Superior Court of California, County of San Mateo | [EMAIL THE WEBMASTER](#)

[ADR Home](#) | [Civil](#) | [Judicial Arbitration](#) | [Family](#) | [Small Claims](#) | [Juvenile Dependency](#) | [Juvenile Delinquency](#) | [Probate](#) | [Evaluation Reports](#)

Family Law ADR Program

Program Forms

- [Registration Form](#)
- [Client Evaluation Form](#)
- [Attorney Evaluation Form](#)
- [Evaluation By Neutral](#)
- [Notice of ADR Form](#)

Registration Form

To schedule a mediation or arbitration session with a member of the ADR panel, [download the Registration Form](#) and mail it to:

Family Law ADR Program
400 County Center
Redwood City, CA 94063



Multi-Option ADR Project
FAMILY LAW ADR PROGRAM

*Domestic Violence Protocol
and Screening Guidelines*

2004

Multi-Option ADR Project
FAMILY LAW ADR PROGRAM

Monica Rands-Preuss, Program Coordinator

2004 ADVISORY COMMITTEE:

Robert Bruening

Lynda Burton

Elaine Fraser

Timothy Martin

Bonnie Miller

George Richardson

Gretchen Wallacker

Paul Walti

Charles Webb

Timothy Wright

Hon Rosemary Pfeiffer, Family Law Supervising Judge

Hon. Richard Dubois

Hon. Susan Greenberg

Hon. Kathleen McKenna

Hon. Joseph Scott

I. Summary/Guiding Principles

- A. This Protocol shall serve as a guide for the conduct of mediations that are referred through the Family Law ADR Program (the “Program”) of the Multi-Option ADR Project (MAP). The Program has created this protocol with an understanding that not all cases are suitable or appropriate for mediation. ~~There is a duty to screen for domestic violence and when identified, to determine whether mediation is appropriate.~~ Screening and assessment for domestic violence should not be the sole ~~is a~~ responsibility ~~of the mediator, but one that is~~ shared by all partners in the mediation process, including the Program staff, the mediator, lawyers representing the parties, and the court when making a referral.
- B. Domestic Violence occurs when one partner in an intimate relationship controls or attempts to control the other through force, intimidation, threat of abuse, or actual abuse. ~~_[should we include statutory definition/cites, or “as further defined in applicable state law”?]-_~~ Domestic violence itself should never be mediated.
- C. It is understood that there is an inherent imbalance of power in cases involving domestic violence. When this imbalance is sufficient to compromise a party’s ability to make decisions and exercise self-determination, the Court should refrain from referring cases to the Program.
- D. A mediator shall not mediate a case referred from the Program which has been identified to include domestic violence without adequate training and experience.
- ~~E.~~ ~~E.~~ ~~[whether/how to incorporate language from Model standards, ie: “All mediators shall~~ review and to their best ability ~~comply with the Model Standards of Practice for Family and Divorce Mediation, particularly those sections concerning domestic violence. to the extent possible...”?] Standard X (include in its entirety, with/without modifications, restate or refer to, ie: and Standards II A(2), (A)(4-7), III (C), VII (C), VIII~~

II. Pre-Mediation Safeguards

- A. Upon referral to the Program, staff will review and assess all case-related information available for evidence of domestic violence.

- B. The assessment by Program staff may include a review of the court's civil and criminal database(s) and/or the family law court file(s) to determine the case history, whether or not each party is currently represented, and the existence of any civil Domestic Violence Prevention Act restraining order and/or criminal No Contact or No Harassment restraining orders. Collateral sources may also be contacted (examples include attorneys for the parties, social workers, referral sources, and probation officers).
- C. ~~[Every party, or Where the referral is from a source other than the court and neither party is represented,]~~ Unless both parties are represented, Program staff shall also attempt to contact each party to screen for domestic violence and when identified, determine the nature and history of violence through a differential domestic violence assessment.
- ~~D.~~ D. A differential domestic violence assessment is necessary to determine the different levels and forms of abuse and how the nature of the abuse may have affected the relationship so that the mediators may deal with the family in the most appropriate manner. ~~[A sample of screening tools, or the screening questionnaire, is included in the Appendix ??]~~
- E. Factors to be considered may include but are not limited to the severity, frequency and type of violence (physical, emotional, sexual, economic), the impact of the abuse on the party (present level of fear or concern), and the party's perceived ability to communicate on an equal basis in mediation.
- F. The purpose of the screening and assessment is for the Program to determine whether or not mediation is a safe and appropriate alternative. This may involve referring each party to an advocate or attorney so they may fully consider the benefits and potential dangers of mediation, and consider all of their options in determining how to proceed with their case.
- G. If Program staff deems it appropriate to proceed with a referral, the assigned mediator shall be informed of the domestic violence history and background information obtained by staff.

- H. Once a referral has been made to a member of the panel, it shall be and remain within the mediator's discretion to decide whether or not the mediation should go forward. Mediators will need to make their own assessment of the case and of their individual preparedness including their ability to provide adequate safeguards for mediations where there has been any domestic violence identified. Mediators may refer a case back to the Program for re-assessment and are encouraged to consult with Program staff prior to proceeding with the mediation.
- I. The purpose of the mediator's screening and assessment is to evaluate a victim's ability to negotiate, the level of an abuser's denial, and any control issues. Considerations include whether each party:
 - i) can make a decision to enter mediation freely without coercion;
 - ii) can provide full disclosure during mediation without feeling afraid or endangered;
 - iii) is aware that she/he can withdraw from mediation at any time and do so without retribution;
 - iv) can recognize that the other party has rights and needs separate from her/his own;
 - v) recognized mediation outcomes are to be agreed upon voluntarily;
 - vi) neither party is cognitively or emotionally impaired;
 - vii) neither party lacks capacity due to alcohol or drugs.

HJ. Mediation should not occur in any situation where there are safety or significant control or intimidation issues. Examples include but are not limited to:

- i) Abusive party discounts their partner and refuses to acknowledge how his/her behavior affects the other party;
- ii) Either party continues to violate the mediation ground rules;
- iii) Abuse and/or control are central to the relationship to such an extent that the parties are unable to differentiate their interests;
- iv) A party fears retribution;
- v) Abuse is ongoing between mediation sessions;
- vi) Either client is carrying a weapon or attempts to mediate while drinking or using drugs;
- vii) Suicide fantasies or those of killing the victim or children;

III. Mediation Safeguards

- A. Program staff shall inform any party where domestic violence has been identified that he/she has a right to be accompanied by a support person or to request separate mediation modifications. The support person may not actively participate in the mediation except to act as emotional support

for the party. The presence of the support person does not waive the confidentiality of the mediation.

- B. If mediation is to proceed where domestic violence has been identified, process protections must be employed. Mediators should consider making modifications to standard mediation practice to safeguard the parties and attempt to balance power. Techniques designed to address the power imbalance and to afford those who have experienced domestic violence a safe environment in which to mediate may include:

- a) Use of appropriate location that provides security for all participants;
- ii) Use of separate entrances, different arrival and departure times (such that the victim leaves first), escorts to transportation;
- iii) Create ground rules (respectful and appropriate use of language and gestures, no interrupting, no touching of other person);
- iv) Choose the topic;
- v) Decide who will speak;
- vi) Control the length of time each party will speak;
- vii) Allow and time each person's response;
- viii) Determine which spouse may present a proposal to the other;
- ix) Present an interpretation of what the spouse said;
- x) End the discussion;
- xi) Write down the agreement;
- xii) Conducting separate sessions or frequent use of caucuses to allow mediator to give/get feedback on safety issues/concerns.

IV. Post Mediation Safeguards

A. While mediating, the mediator should be monitoring for signs of abuse and terminate the mediation when necessary. (Examples include: fearful body language, one party dominating the discussion, difficulty expressing needs, put downs, etc.)

B. When terminating a session, mediators should consider employing adequate safeguards.

APPENDIX

Selected Resources

Campbell, Jacquelyn C, Ph.D., R.N., *Danger Assessment* (2003)

Chance, Chester B., & Gerencser, Alison E., *Screening Family Mediation for Domestic Violence*, 70 Fla. Bar J. 54 (April 1996)

Dunnigan, Alana, *Restoring Power to the Powerless: The Need to Reform California's Mandatory Mediation for Victims of Domestic Violence*, 37 U.S.F. L. Rev. 1031 (Winter 2003)

Firestone, Gregory, Hon. Raymond T. McNeal, & Hon. Hugh E. Starnes: *Case Study in Mediation: Mediating Judicial Policy: Successful Mediation of a Family Court Rule on Domestic Violence and Mediation*, 42 Fam. Ct. Rev. 128 (Jan. 2004)

Gerencser, Alison E., *Family Mediation: Screening for Domestic Abuse*, 23 Fla. St. U. L. Rev. 43 (Summer 1995)

Model Code on Domestic & Family Violence, Section 407, National Council of Juvenile and Family Court Judges, Family Violence Department (FVD), (1994)

Model Standards of Practice for Family and Divorce Mediation, Developed by the Symposium on Standards of Practice, August 2000 (ABA, SPIDR, AFCC, AFM)

New York State Unified Court System, Division of Court Operations, Office of ADR Programs, *Family court Custody and Visitation Mediation Domestic Violence Screening Tool* (2003)

Rimelspach, Rene, *Mediating Family Disputes in a World with Domestic Violence: How to Devise a Safe and Effective Court-Connected Mediation Program*, featured article on www.mediate.com (2001)

Utzig, Kara C., *Entering the Debate on Spousal Abuse Divorce Mediation: Safely Managing Divorce Mediation When Domestic Violence is Discovered*, 7 CIRCLES Bu. W. J.L. & Soc. Pol 51 (Spring 1999)

Ver Steegh, Nancy, *Yes, No, and Maybe: Informed Decision Making About Divorce Mediation in the Presence of Domestic Violence*, 9 Wm. & Mary J. of Women & L. 145 (Winter 2003).

Waits, Kathleen, *Symposium on Reconceptualizing Violence Against Women by Intimate Partners: Critical Issues: Battered Women and Family Lawyers: The Need for an Identification Protocol*, 58 Alb. L. Rev. 1027 (Spring 1995)

Zylstra, Alexandria, *Mediation and Domestic Violence: A Practical Screening Method for Mediators and Mediation Program Administrators*, 2001 J. Disp. Resol. 253

Referring a Case to ADR

- The Family Law ADR Coordinator is available to screen cases and make referrals, conduct on-site mediations and conferences, and respond to inquiries about ADR and case management options either in person, by telephone, or in writing.
- Referrals from the bench are encouraged. The Family Law ADR Coordinator or staff is available during status conference, OSC, and short cause calendars to consult with attorneys and/or parties about their options for resolving the case, and to schedule a mediation or arbitration.
- The ADR Program has selected a group of qualified family law attorneys to serve as neutrals on the mediation and arbitration panel. ADR staff provides case development and screening prior to selecting a neutral. Participants pay a reduced rate of \$100 (\$50 per party) for the first 90 minutes.
- On-site mediation and conferencing with the attorney staff mediator is also available. Counsel may schedule mediation directly with staff in advance of an OSC, short cause, status or settlement conference. On-site mediation services are free of charge.
- The Family Law ADR Coordinator also maintains a list of experts (accountants, appraisers, vocational evaluators, etc.), as well as sample stipulation forms and orders to assist the court, parties, and counsel.
- Unlike civil matters, cases referred to the family law ADR program are not required by statute to report the outcome to the court. However, program staff monitor and track ADR referrals including entry into the court's Internal Case Management System (ICMS) and MAP's internal Data Tracking and Analysis System (DTAS). Inquiries as to the status of a referral are welcomed.

**MAP FAMILY LAW ADR PROGRAM
COMPLAINT PROCEDURE PROTOCOLS**

EFFECTIVE: JULY 1, 2004

(Revised April 6, 2007)

In accordance with program policy and California Rule of Court §3.865, the MAP Family Law ADR Program ("Family Law Program") has established the following guidelines for processing complaints from ADR session participants that involve Family Law Program panelists:

1. Any complaints brought against the program or its panelists must be submitted in writing to the Family Law ADR Program Coordinator ("Coordinator"). Complaints may be submitted through program evaluation forms or by letter.
2. The Coordinator will review all evaluation forms and other written feedback received by the program from the public. If a complaint or series of complaints have been raised about a particular panelist, the Coordinator will contact ADR session participants and the panelist in question in order to further assess the alleged conduct.
3. If the complaint arises from a mediation session, the Coordinator will gather information only as to the alleged conduct of the mediation panelist. In accordance with California Evidence Code §§11115 et seq., the Coordinator will refrain from inquiring as to direct communications among mediation session participants.
4. Every effort will be made to first seek informal solutions to complaints. The majority of concerns raised in evaluation forms are successfully handled in this manner by the program.
5. The Coordinator will review the complaint and investigation information with the ADR Director ("Director") to determine whether or not further investigation and/or disciplinary action may be appropriate.
6. If the Director and the Coordinator feel the complaint rises to the level of possible disciplinary action, the Director may convene a three-member subcommittee of the MAP Family Law ADR Advisory Committee to serve as the Family Law Program Review Board ("FLPRB") to conduct a hearing. FLPRB will be comprised of members of the MAP Family Law ADR Advisory Committee Subcommittee on Standards.
7. The Coordinator will send the panelist written notice of the date, time and place of the FLPRB hearing and the complaint asserted against him/her no less than twenty days prior to said hearing. The hearing may be noticed less than twenty days if the conduct under review immediately endangers the public interest.
8. The FLPRB will have jurisdiction to hear all matters involving suspension or removal under Item 4 of the "Resignation, Suspension and Removal From Multi-Option ADR Panel" protocols.
9. The FLPRB will render its decision within forty-five days from the date that the notice of suspension or removal was first given to the panelist, unless said time is extended with the panelist's consent.
10. Any panelist may appeal the decision of the FLPRB to the Family Law Advisory Committee as a whole within ten days of being notified of suspension or removal.
11. Except for those complaints appealed to the Family Law Advisory Committee, complaints received by program staff will be kept confidential and will not be discussed with non-ADR program court staff or court trial judges.

Participation in the San Mateo Superior Court's Family Law ADR Program rests solely within the Court's discretion and at the Court's pleasure.

**Unlawful Detainer Mediation Project
January 1, 2007- September 30, 2007**

90 cases referred to mediation

88% 79 cases resolved with Mediated Agreements.
12% 11 cases mediated but did not resolve. Proceeded to trial.

Of the 88% (79) cases which resolved with Mediated Agreements:

73% 58 cases settled without immediate judgment for possession/eviction.
27% 21 cases settled with stipulations to judgments for possession

Of the 58 cases where the parties came to mediated agreements without seeking immediate judgments for possession/eviction, a variety of settlement options were utilized including:

86% provided extra time for the tenant to move out or preserved the tenancies.
60% resolved all future issues involving security deposits.
40% involved the landlord waiving all rents due or reducing rents.
45% provided for tenants to pay monies owed through agreed upon installment payments without a civil judgment.

Of the 21 cases where the parties came to agreements involving stipulations to judgments for possession creative options still were included in the mediated agreements:

86% provided a stay of execution, stipulated date/extra time for tenants to move out.
33% resolved or waived security deposit issues (no additional court litigation).
29% provided for reduced rents or all rents waived.
29% provided for installment payments of monies owed by tenants.
19% provided for set asides of judgments, satisfaction of judgments or no money judgments upon compliance with terms of the settlements.

Satisfaction Surveys

To evaluate the effectiveness and impact of the services provided, the Unlawful Detainer Mediation Project has collected feedback from both plaintiffs and defendants by means of “Satisfaction Surveys” which are distributed when each mediation session is completed, regardless of whether a settlement was reached or not. Completion of the surveys is voluntary. Self-addressed stamped envelopes are provided, and party identification is optional.

Of the 35 surveys returned for the period January 1, 2007- September 30, 2007:

- 86%** responded that the Unlawful Detainer pre-trial mediation session helped them settle their case.
- 89%** of all litigants (whether their cases settled or not) responded that if they had to appear in court again on a similar matter, they would want mediation services again.

Of the 86% (30) which found the mediation session helpful in settling their case:

- 100%** indicated that they were **“Satisfied” or “Very Satisfied”** with the terms of the settlement.

These surveys included comments such as:

- “Mediation is a much better process than court for evictions.”- tenant
- “Very helpful.” -tenant
- “This is a great way to resolve matters.” - tenant
- “I was very impressed with the process.” - tenant
- “Very good. Great understanding of the issues.” -attorney representing landlord
- “We were very pleased. I would like to learn more about other help you provide for people that can’t afford attorneys.” - tenant
- “The mediator kept the session on track and in focus. She was throughout the session very thorough.”- landlord

Focus Group sessions and interviews with the court representatives found that the Unlawful Detainer Mediation Project:

- Improves fairness and access for the litigants.
- Increases efficiency of the operation of the court by saving the court time.
- Saves paperwork for the court personnel.
- Calms angry litigants.
- Helps parties focus on relevant issues and solutions.
- Helps parties be better prepared to represent themselves.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF BUTTE	(Court Use Only)
PLAINTIFF(S)/PETITIONER(S):	
DEFENDANT(S)/RESPONDENT(S):	
STIPULATED AGREEMENT	Case Number: _____

PREMISES LOCATED AT: _____, County of Butte

This stipulated agreement, which is not a judgment, shall be filed, and admissible and binding in court. No judgment shall be entered until and unless Defendant(s) default on any term herein. If Defendant(s) perform all of the obligations of this stipulated agreement, Plaintiff(s) shall file a Request for Dismissal, Entire Action (Judicial Council form #982(a)(5)) within forty-five (45) days of the file date of this Stipulated Agreement or not later than _____ and the case will be dismissed. A dismissal of this action, by any party(s) or the court, shall result in there being no prevailing party. **If Defendant(s) default, Plaintiff(s), by order of the court, shall have judgment entered as set forth herein, upon ex parte application by written declaration accompanied by form of judgment to the court setting forth the default of the Defendant(s).** **This matter is set for review on _____.** **If neither party appears, and Plaintiff(s) has not filed a Request for Dismissal, Entire Action, the court will dismiss the case. TIME IS OF THE ESSENCE.**

- 1. Defendant(s) maintains possession of the premises pending compliance with the following terms checked.
- 2. Defendant(s) maintains possession of the premises from _____ to _____.
- 3. Defendant(s) shall pay to Plaintiff(s), in certified funds, the amount of \$ _____ on or before _____.
- 4. Defendant(s) shall pay the following rent: _____.
- 5. Plaintiff(s) shall reduce rent as follows, _____.
- 6. Plaintiff(s) waives all rent and rental damages due from Defendant(s) through _____.
- 7. The following repairs will be made by Plaintiff(s)/Defendant(s): _____.
- 8. All parties shall bear their own attorney's fees and costs.
- 9. Defendant(s) shall surrender possession of the subject premises to Plaintiff(s) on or before _____.
- 10. Defendant(s) will turn in keys to Plaintiff/Agent by (date/time) _____.
- 11. Defendant(s) shall pay to Plaintiff(s) attorney's fees of \$ _____ and costs of _____.
- 12. Rent and rental damages shall be prorated to and not accrue beyond actual surrender date of premises.
- 13. Plaintiff(s) shall retain Defendant(s)' Security Deposit and Defendant(s) waives any further accounting of same.
- 14. The defendant's security deposit will be handled pursuant to Civil Code Sec. 1950.5.
- 15. In consideration of the terms of this Stipulated Agreement, Defendant(s) herein waives any further stays of execution or the right to petition for relief from forfeiture pursuant to Code of Civil Procedure §1179.

If defendant(s) defaults as to any terms of this stipulated agreement, judgment shall include the following:

- 16. Immediate forfeiture of the subject Rental Agreement.
- 17. Plaintiff(s) shall immediately have possession of the subject premises upon ex parte application and order as stated above.
- 18. (a) Plaintiff will send notice of Ex parte Application for Default to Defendant on day of filing.
- (b) Defendant(s) waives all rights to notice of Ex parte Application for Default and Entry of Judgment.
- 19. Judgment amounts shall enter, as set forth by application and order, for unpaid rental damages owed to Plaintiff(s) (plus interest at the legal rate).
- 20. Judgment shall include the herein agreed upon costs of \$ _____ and attorney's fees of \$ _____.
- 21. Plaintiff(s) may apply the Security Deposit toward any/all judgment amounts.
- 22. Judgment shall enter for those amounts still due from those amounts set forth in the Stipulated Agreements.
- 23. A Prejudgment Claim to Right of Possession was served and filed with the Court.
- 24. Other terms and conditions are set forth and incorporated herein. (See page 2)

DATE: _____ Plaintiff(s) _____ Defendant(s) _____

Attorney's approval as to form: _____

IT IS SO ORDERED: _____ DATE: _____
 Judge / Commissioner of the Superior Court

INCORPORATED ADDITIONAL TERMS AND CONDITIONS

- 25. During the period of time prior to Defendant(s) complete compliance of all terms agreed to by the parties herein, Defendant(s) shall, within two weeks of any change of residence, deliver in writing to Plaintiff or Plaintiff's agent, Defendant(s)' then current new telephone number and address, both residential and postal.
- 26. This is a full and mutual release of all other claims between these parties arising out of this tenancy, and includes all claims known and unknown (except for any claims of these parties regarding the disposition of the security deposits and claims thereunder), and the parties specifically waive all rights under California Civil Code §1542, which reads as follows:
"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of the executing the releases, which if known by him must have materially affected his settlement with the debtor."

INCORPORATED ADDITIONAL TERMS AND CONDITIONS

- 27. _____

_____.

- 28. _____

_____.

- 29. _____

_____.

- 30. Other terms and conditions are set forth and incorporated herein. (See attachments, if any).

Initials: Plaintiff(s): _____ Defendant(s): _____

F:\FORMS\Stipulated Agreement UD Mediation revised.wpd (revised 1/31/08)