JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair
Anne Ronan, Senior Attorney, 415-865-8933,
anne.ronan@jud.ca.gov
Heather Anderson, Senior Attorney, 415-865-7691,
heather.anderson@jud.ca.gov

DATE: September 8, 2009

SUBJECT: Alternative Dispute Resolution: Qualifications of Mediators in Court-Connected Mediation for General Civil Cases (amend Cal. Rules of Court, rules 3.851, 3.865, and 10.781) (Action Required)

Issue Statement

Many superior courts refer or order general civil cases to mediation, maintain panels of mediators, provide lists of mediators to litigants, or refer general civil cases to specific mediators. While the Judicial Council encourages courts to evaluate the alternative dispute resolution (ADR) training, experience, and skills of those who wish to serve as ADR neutrals, such as mediators, in court-connected ADR programs (see Cal. Rules of Court, rule 3.892, and Cal. Stds. Jud. Admin., std. 10.72(a)), currently there are no statewide standards regarding the qualifications for these mediators and courts are not required to set any minimum qualifications for the mediators in their court-connected mediation programs for general civil cases.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council:

1. Effective January 1, 2010, amend rules 3.851 and 3.865[1] to clarify the application of the rules of conduct and complaint procedures for mediators in court-connected mediation programs for general civil cases by providing that a mediator who is not on a superior court list or panel and who is selected by the parties is not "recommended,

[1] On October 24, 2008, the Judicial Council approved amendments to rule 3.865 that will be amended effective January 1, 2010. The amendments recommended in this report are to the January 1, 2010 version of rule 3.865.

selected, or appointed" by the court within the meaning of these rules simply because the court approves the parties' agreement to use this mediator or memorializes the parties' selection in a court order; and

2. Effective January 1, 2011, amend rule 10.781 to help assure the quality of court-connected mediation programs for general civil cases by providing that a superior court that makes a list of mediators available to litigants in general civil cases or that recommends, selects, appoints, or compensates mediators to mediate any general civil case pending in the court must establish minimum qualifications for those mediators.

The Civil and Small Claims Advisory Committee also recommends that the Administrative Office of the Courts develop model qualification standards, based on the model standards that were included in the proposal that was circulated for comment, to assist courts in establishing local minimum qualifications for their mediators.

The text of the amended rules is attached at pages 7–9.

Rationale for Recommendation

Background
The Judicial Council encourages superior courts to establish mediation programs for civil cases. (See Cal. Stds. Jud. Admin., std. 10.70(a).) As noted above, many courts refer or order civil cases to mediation, maintain panels of mediators, provide lists of mediators to litigants, or refer cases to specific mediators.

The state of California does not currently license, certify, or regulate mediators. To support the quality of court-connected mediation programs and promote public confidence in the mediation process and the courts, the Judicial Council previously adopted rules of conduct governing mediators serving in court-connected mediation programs for general civil cases[2] and procedures for handling complaints about such mediators[3] (see Cal. Rules of Court, rule 3.850 et seq.). While the council encourages courts to evaluate the ADR training, experience, and skills of those who wish to serve as ADR neutrals, such as mediators, in court-connected ADR programs (see Cal. Rules of Court, rule 3.892, and Cal. Stds. Jud. Admin., std. 10.72(a)), there are currently no statewide requirements for the qualifications of mediators in court-connected mediation

[2] Rule 1.6 provides that "General civil case" means "all civil cases except probate, guardianship, conservatorship, juvenile, and family law proceedings (including proceedings under divisions 6-9 of the Family Code, Uniform Parentage Act, Domestic Violence Prevention Act, and Uniform Interstate Family Support Act; freedom from parental custody and control proceedings; and adoption proceedings), small claims proceedings, unlawful detainer proceedings, and 'other civil petitions' described in" rule 1.6(5).
[3] New complaint procedure rules adopted by the Judicial Council in October 2008 will take effect January 1, 2010.

programs for general civil cases[4] and courts are not required to establish any minimum qualifications for the mediators in their programs.

Qualifications of court-program mediators
When the Civil and Small Claims Advisory Committee circulated for public comment a proposal regarding the procedures for handling complaints about court-program mediators, some commentators suggested that the Judicial Council should consider adopting standards for the qualifications of individuals who can serve as mediators for the courts. These commentators suggested that such qualifications, when combined with the rules of conduct and complaint procedures, would create a more comprehensive system for ensuring the quality of court-connected mediation programs for civil cases.

In response to these comments, the committee established a working group to assist in considering whether to propose that the council establish standards for the qualifications of court-program mediators. This working group included superior court judges, court ADR program administrators, community ADR program representatives, dispute resolution educators and trainers, mediators, and attorneys. The working group considered information about the mediator qualification standards that have been established by individual courts for their civil mediation programs, mediator qualification standards set by other states, reports concerning mediator qualifications prepared by both national and state ADR organizations, and other articles and materials concerning such qualifications. The working group also sought public input on whether the council should adopt qualification standards for mediators serving in court mediation programs for civil cases and, if so, what those standards should be.

Based on the input from the working group, the committee recommends that rule 10.781 of the California Rules of Court be amended to include a new provision addressing the qualifications of mediators in court-connected mediation programs for general civil cases. Proposed rule 10.781(a) would not establish a uniform, statewide set of qualifications for mediators. Instead, it would require each court that makes a list of mediators available to litigants in general civil cases or that recommends, selects, appoints, or compensates mediators to mediate any general civil case pending in the court to establish its own minimum qualifications for those mediators. This would ensure that all courts with mediation programs for general civil cases will consider and adopt qualification standards for their court-program mediators, but it would also allow each court to establish standards that reflect its individual program needs and local circumstances. The mediators who would be subject to these local qualification requirements under rule 10.781 are the same mediators who already are required to comply with the statewide rules of conduct for mediators in court-connected mediation programs for general civil cases and who are subject to the procedures that courts must establish for handling

[4] There are statewide minimum qualification requirements for mediators who handle mandatory child custody and visitation mediations (see Fam. Code, §§ 1815–1816, and Cal. Rules of Court, rule 5.210(f)).

complaints that mediators have violated these standards of conduct (see Cal. Rules of Court, rule 3.850 et seq.).

To assist courts in considering appropriate qualifications for their mediators, the committee also recommends that the Administrative Office of the Courts provide courts with a set of model qualification standards for mediators in court-connected mediation programs for general civil cases.

Mediators subject to the rules of conduct, complaint procedures, and qualifications
In response to some of the preliminary public input received on the qualifications proposal, the committee is also proposing a change to rule 3.851, which specifies the mediators who must comply with the rules of conduct, and rule 3.865, which specifies the courts that must have procedures for handling complaints about those mediators. One of the preliminary comments received by the committee concerning the proposed amendment to rule 10.781 suggested that the phrase "Each superior court that . . . recommends, selects, appoints, or compensates mediators" might be read as encompassing situations in which the court approves or enters an order based on the litigants' selection of a private mediator. The committee did not intend that these rules apply to private mediators who are not on a court panel or list and who are selected by the parties without any input from the court. Such mediators do not bear the imprimatur of the court. To clarify this intent, the committee has included language in the proposed amendment to rule 10.781 indicating that a court's approval or memorialization of the litigants' selection of a mediator does not, by itself, constitute recommending, selecting, or appointing the mediator within the meaning of this rule. Since the same language regarding mediators recommended, selected, or appointed by the court also appears in rules 3.851 and 3.865, the committee is proposing similar amendments to these rules.

Alternative Actions Considered
The committee considered, but ultimately rejected, the idea of setting specific qualification requirements, such as the amount of mediation training or experience required to serve as a mediator, on a statewide basis. The committee concluded that the individual circumstances in each court, such as the presence of mediators or mediation trainers in the community, are sufficiently different that each court and its constituent community should determine the appropriate mediator qualification criteria. The committee also heard from many court representatives, when it was gathering preliminary input on whether to propose any qualification standards, that they would only support a model that gave courts the ability to set qualification standards locally.

The committee also considered recommending that the Judicial Council approve a set of model minimum qualification standards for mediators in court-connected mediation programs for civil case, rather than having such model standards issued by the Administrative Office of the Courts. In fact, the proposal that was circulated for public comment proposed a set of model standards for council approval. Following discussion

of this proposal by the council's Rules and Projects Committee, the committee modified the proposal to instead recommend that the Administrative Office of the Courts issue a set of model qualification standards. This approach is more consistent with the approach the council took last year with the mediator complaint procedures, in which the rule of court specifies that each court that has a mediation program for general civil cases must adopt procedures for handling complaints about the mediators who serve in these programs and model local complaint procedures were provided by the Administrative Office of the Courts.

In addition, the committee considered recommending that the proposed amendments to rule 10.871 take effect on January 1, 2010, approximately two months after the council meeting at which this proposal will be considered (in fact, the proposal that was circulated for public comment included this as the proposed effective date). The committee concluded, however, that this would not give courts that do not currently have qualification standards in place sufficient time to implement the requirement to adopt qualifications for their mediators. The committee therefore revised its proposal to recommend a January 1, 2011 effective date, which would give courts considerable lead time to adopt their mediator qualifications.

Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2009 comment cycle. Fourteen individuals or organizations submitted comments on the proposal. Four commentators agreed with the proposal, six agreed with the proposal if modified, one disagreed with the proposal, and three did not indicate their position on the proposal as a whole but provided comments on specific aspects of the proposal. The full text of the comments received and the committee's responses is attached beginning on page 10

Rules 3.851, 3.865, and 10.781

In the proposal that was circulated for public comment, the committee proposed amending the advisory committee comments to rules 3.851, 3.865, and 10.781 to include language clarifying that the rules of conduct, complaint procedures, and qualification requirements do not apply to private mediators who are not on a court panel or list and who are selected by the parties without any input from the court. One commentator suggested that this clarifying language should be included in the rule text, rather than the advisory committee comment. The committee agreed with this suggestion and has revised its proposal to include this language in the rule text.

The same commentator also recommended that the clarifying language not be added to rule 3.851, the rule specifying the application of the rules of conduct for mediators. The commentator suggested that the rules of conduct should apply to all mediators who mediate civil cases, including private mediators. The committee did not agree with this suggestion. The committee's view is that there should be a consistent approach to defining the mediators who are subject to the statewide rules designed to ensure the

quality of mediators in court-connected mediation programs for general civil cases. In particular, the committee believes that it is important that the rules of conduct and the procedures for handling complaints that mediators have violated these standards of conduct apply to the same group of mediators. Otherwise, there will be a group of the mediators who must comply with the rules of conduct but for whom there is no mechanism for enforcing those rules of conduct.

Model qualification standards

As noted above, the proposal that was circulated for public comment included a set of model qualification standards proposed for approval by the Judicial Council. There were many comments on the proposed model standards. Although the committee is no longer recommending these model standards be approved by the council, the public comments were considered by the committee and the committee's responses to these comments are reflected in the attached comment chart. These comments and the committee's responses will be taken into account in developing the model qualification standards court mediators in court-connected mediation programs for general civil cases that will be issued by the Administrative Office of the Courts.

Implementation Requirements and Costs

The proposed amendment to rule 10.781 will require all courts that make a list of mediators available to litigants in general civil cases or that recommend, select, appoint, or compensate mediators to mediate any general civil case pending in the court to establish minimum qualifications for those mediators. Any court that falls within this rule and that has not already established qualification requirements for its court-program mediators will have to develop and adopt qualifications. The committee believes that the burden of implementing this requirement will not be large because most courts with mediation programs have already adopted local qualifications and, for those that have not, the model standards and delayed January 1, 2011 effective date of the amendments to rule 10.781 should ease the burden of developing these local standards.

Attachments

Rules 3.851 and 3.865, of the California Rules of Court are amended, effective January 1, 2010, and rule 10.781 is amended, effective January 1, 2011, to read:

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) – (e) * * *

Rule 3.865. Application and purpose

(a) Application

The rules in this article apply to each superior court that makes a list of mediators available to litigants in general civil cases or that recommends, selects, appoints, or compensates a mediator to mediate any general civil case pending in that court. A court that approves the parties' agreement to use a mediator who is selected by the parties and who is not on the court's list of mediators or that memorializes the parties' agreement in a court order has not thereby recommended, selected, or appointed that mediator within the meaning of this rule.

(b) Purpose

These rules are intended to promote the resolution of complaints that mediators in court-connected mediation programs for civil cases may have violated a provision of the rules of conduct for such mediators in article 2. They are intended to help courts promptly resolve any such complaints in a manner that is respectful and fair to the

complainant and the mediator and consistent with the California mediation confidentiality statutes.

Rule 10.781. Court-related ADR neutrals

(a) Qualifications of mediators for general civil cases

Each superior court that makes a list of mediators available to litigants in general civil cases or that recommends, selects, appoints, or compensates mediators to mediate any general civil case pending in the court must establish minimum qualifications for the mediators eligible to be included on the court's list or to be recommended, selected, appointed, or compensated by the court. A court that approves the parties' agreement to use a mediator who is selected by the parties and who is not on the court's list of mediators or that memorializes the parties' agreement in a court order has not thereby recommended, selected, or appointed that mediator within the meaning of this rule. In establishing these qualifications, courts are encouraged to consider the Model Qualification Standards for Mediators in Court-Connected Mediation Programs for General Civil Cases issued by the Administrative Office of the Courts.

~~(a)~~(b) Lists of neutrals

If a court makes available to litigants a list of ADR neutrals, the list must contain, at a minimum, the following information concerning each neutral listed:

(1) The types of ADR services available from the neutral;

(2) The neutral's resume, including his or her general education and ADR training and experience; and

(3) The fees charged by the neutral for each type of service.

~~(b)~~(c) Requirements to be on lists

In order to be included on a court list of ADR neutrals, an ADR neutral must sign a statement or certificate agreeing to:

(1) Comply with all applicable ethics requirements and rules of court and;

(2) Serve as an ADR neutral on a pro bono or modest-means basis in at least one case per year, not to exceed eight hours, if requested by the court. The court must establish the eligibility requirements for litigants to receive, and the application process for them to request, ADR services on a pro bono or modest-means basis.

~~(c)~~(d) *** * ***

SPR09-01

Alternative Dispute Resolution (ADR): Qualifications of Mediators in Court-Connected Mediation for General Civil Cases (amend Cal. Rules of Court, rule 10.781 and the advisory committee comments to rules 3.851 and 3.865, and approve model qualifications standards for mediators in court-connected mediation programs for general civil cases)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commentators and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
1.	Alternative Dispute Resolution Committee for the Superior Court of Ventura County by Brenda L. McCormick Managing Attorney	A	The Alternative Dispute Resolution Committee for the Superior Court of California, County of Ventura, (ADR Committee) is in agreement with the current proposed changes. See specific comments regarding standard 1 below.	
2.	California Judges Association by Mary E. Wiss President San Francisco	NI	The California Judges Association Committee on Alternative Dispute Resolution has met, reviewed, and discussed the Civil and Small Claims Advisory Committee's proposed amendments to California Rule of Court 10.781. The Committees have also considered the comments to Rule 3.851 and Rule 3.865. These amendments address proposed model qualification standards for mediators in court-connected mediation programs for general civil cases. The Committee has made its report and recommendations to the CJA Executive Committee. We respectfully provide the following comments for consideration by the Civil and Small Claims Advisory Committee. The ADR Committee and individual members provided comments on last year's proposal concerning the development for qualification standards. The Committee also read and considered the State Bar's ADR Committee's letter and its comments. We join the comments made by the State Bar's Committee	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

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List of All Commentators and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			The California Judges Association appreciates the opportunity to comment on the proposal and hopes the Civil and Small Claims Advisory Committee finds these comments helpful. See specific comments below.	
3.	California Protective Parents Association by Connie Valentine Policy Director Davis Center for Judicial Excellence by Jean Taylor President San Rafael Child Abuse Solutions, Inc. by Meera Fox Executive Director	AM	The proposed standards for mediators are embarrassingly low. See specific comments below.	
4.	Michael P. Carbone Mediator, Arbitrator, Referee San Francisco	AM	See specific comments below.	
5.	George S. Cole	N	See specific comments regarding standard 2(c) below.	
6.	Committee on Alternative Dispute Resolution The State Bar of California	NI	The State Bar of California's Committee on Alternative Dispute Resolution (the "ADR Committee") has reviewed and discussed the	

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

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List of All Commentators and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
	by Steven R. Cerveris		Civil and Small Claims Advisory Committee's proposed amendments to California Rule of Court 10.781 and the comments to Rules 3.851 and 3.865 regarding proposed model qualifications standards for mediators in court-connected mediation programs for general civil cases. We respectfully provide the following comments. Having provided extensive comments on last year's related proposal dealing with the potential development of qualification standards, the ADR Committee will confine its comments here to certain specifics in the current proposal. . . . The ADR Committee appreciates the opportunity to comment on this proposal. See specific comments below.	
7.	Suzanne K. Nusbaum Mediator Los Gatos	A	See specific comments below.	
8.	Orange County Bar Association by Michael G. Yoder, President	AM	See specific comments below.	
9.	C. Nancy Sallan, M.A. Saratoga	NI	Most of your guidelines are satisfactory. I want to share a few points with you—as you go forward: See specific comments below.	

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

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List of All Commentators and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
10.	Superior Court of Los Angeles County	A	No additional comment.	No response required.
11.	Superior Court of San Diego County by Michael M. Roddy Executive Officer	AM	See specific comments below.	
12.	Superior Court of San Francisco County by Jeniffer B. Alcantara	AM	See specific comments below.	
13.	Superior Court of Santa Clara County by Elizabeth A.W. Strickland Attorney, Mediator	A	No additional comment.	No response required.
14.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group by Patrick Danna Court Services Analyst	AM	See specific comments below.	

Rules 3.851, 3.865, and 10.781		
Commentator	**Comment**	**Committee Response**
California Judges Association by Mary E. Wiss, President San Francisco	* * * we adopt the State Bar's position that qualification decisions and alternative qualification decisions be made on the local level by each superior court's ADR committee. The culture and practice of ADR differs in each of the counties. The local bench is in a position to understand and set the requirements for its appointed mediators.	Consistent with this comment, proposed rule 10.781 leaves the authority to determine the appropriate qualifications of mediators in a court program with the local court.

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Rules 3.851, 3.865, and 10.781		
Commentator	**Comment**	**Committee Response**
Superior Court of San Diego County by Michael M. Roddy Executive Officer	Although the proposed Advisory Committee Comment provides that "[a] court that approves the parties' agreement to use a mediator who is selected by the parties and who is not on the court's list of mediators or that memorializes such a selection by the parties in a court order has not recommended, selected, or appointed that mediator within the meaning of this rule," in order to address the concern that the proposed language in CRC 3.865 and 10.781 could be read as encompassing situations in which the court approves or enters an order based on the litigants' selection of a private mediator (as frequently occurs in construction defect cases), this clarification should appear in the language of the actual rules in order to have the requisite force and effect, avoid potential ambiguity, and properly limit these rules' application to mediators who serve in court-connected programs. The language contained in the proposed Advisory Committee Comment should therefore be included in Rule 3.865 and Rule 10.781(a) as follows (the proposed Advisory Committee Comment language is added in italics/track changes): Rule 3.865. Application and purpose: **"**The rules in this article apply to each superior court that makes a list of mediators available to litigants in general civil cases or that recommends, selects, appoints, or compensates a mediator to mediate any general civil case pending in that court. *The rules in this article do not apply to a court that approves the parties' agreement to use a mediator who is selected by the parties and who is not on the court's list of mediators or that memorializes such a selection by the parties.* These rules are intended to promote the resolution of complaints that mediators in court-connected mediation programs for civil cases may have violated a provision of the rules of conduct for such mediators in article 2. They are intended to help courts promptly resolve any such complaints in a manner	For the reasons given by the commentator, the committee agrees with the suggestion that the new language clarifying the application of rules 3.865 and 10.781(a) be incorporated into the rule text instead of the advisory committee comments to these rules. However, the committee is also recommending that this language be incorporated into the text of rule 3.851. The committee believes that there should be a consistent approach to defining the mediators who are subject to the statewide rules designed to ensure the quality of mediators in court-connected mediation programs for general civil cases. In particular, the committee believes it is important that the rules of conduct and the procedures for handling complaints that mediators have violated these standards of conduct apply to the same group of mediators. Otherwise, there will be a group of mediators who must comply with the standards of conduct but for whom there is no mechanism for enforcing those standards of conduct.

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Rules 3.851, 3.865, and 10.781		
Commentator	**Comment**	**Committee Response**
	that is respectful and fair to the complainant and the mediator and	
	consistent with the California mediation confidentiality statutes." <u>Rule 10.781(a) Qualifications of mediators for general civil cases</u>: "Each superior court that makes a list of mediators available to litigants in general civil cases or that recommends, selects, appoints, or compensates mediators to mediate any general civil case pending in the court must establish minimum qualifications for the mediators eligible to be included on the court's list or to be recommended, selected, appointed, or compensated by the court. *A court that approves the parties' agreement to use a mediator who is selected by the parties and who is not on the court's list of mediators or that memorializes such a selection by the parties in a court order has not recommended, selected, or appointed that mediator within the meaning of this rule.*" However, the very same proposed Advisory Committee Comment language limiting application to mediators who serve in court programs should ***<u>not</u>*** be included after Rule 3.851 (a), since the application of the minimum standards of conduct for mediators (including confidentiality, impartiality, disclosure and withdrawal, competence, truthful marketing, etc.) should extend to all mediators including "private mediators" handling general civil cases. It should be noted, however, that Rule 3.860 repeatedly references 3.851(a), so in order to reflect consistency and avoid ambiguity, the reference to 3.851(a) in subsections (a) and (b) of Rule 3.860 should be revised to read 3.851(a)***(1)***. This revision would properly limit the Attendance sheet and agreement to disclosure requirement to mediators who have "agreed to be included on a superior court's list or panel of mediators for general civil cases." [CRC 3.851 (a)(1).]	

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Rules 3.851, 3.865, and 10.781		
Commentator	**Comment**	**Committee Response**
Superior Court of San Francisco County by Jeniffer B. Alcantara	Courts that make a list of mediators available to litigants in general civil cases should establish minimum qualification standards for court-connected mediators. As it stands, the proposed changes of Rule 10.781 are reasonable in that the Rule does not make the "Model Qualification Standards for Mediators in Court-Connected Mediation Programs for General Civil Cases" (Model Standards) mandatory.	No response required
Alternative Dispute Resolution Committee for the Superior Court of Ventura County by Brenda L. McCormick Managing Attorney	The ADR Committee supports model standards that are intended to enhance the quality of court-connected mediation programs and promote public confidence in the mediation process. However, this support is limited to model standards, not mandatory rules. Standards provide guidance to the courts but allow the courts to decide how to most effectively implement and maintain quality programs. The ADR Committee over the years has developed standards and procedures for qualifying court-connected mediators for the Ventura Superior Court. These standards and procedures have worked well for the Court in maintaining the quality of the mediator pool. Further, the ADR Committee is concerned that if these standards were mandated all but the larger courts may have difficulty in being able to locate qualified mediation training programs that could affordably provide the continuing education component.	Consistent with this comment, the committee is recommending model standards, not mandatory rules.

Model Standards – General		
Commentator	**Comment**	**Committee Response**
Orange County Bar Association by Michael G. Yoder President	It is suggested that the word "minimum" wherever used in the proposed Model Qualification Standards be replaced with the word "suggested." This is because "minimum" by definition,	The committee considered, but ultimately decided not to make this change. Proposed rule 10.781(a) requires that the courts establish *minimum qualifications* for

Model Standards – General		
Commentator	**Comment**	**Committee Response**
	means "the smallest possible or permissible," and the import of its use by the CJC/AOC will not be lost on courts when developing their respective standards. As to mediation training and experience (as distinct from general education requirements which should be heightened), the proposed Model Qualification Standards, with their depth and detail, are rather rigorous. Despite language contained in Standard 1, that, "[t]hese are model standards; they do not establish mandatory requirements for the courts," characterizing them as the "minimum" may lead some courts to assume that these Model Qualification Standards are the norm, which they are not. Accordingly, any form of Model Qualification Standards should be suggested, to indicate that they are a goal to which a program may aspire, This is because "model" by definition, means "a thing considered as a standard of excellence."	the mediators in their court-connected mediation programs. The model standards are intended to provide the courts with a model set of what those local minimum qualifications for their court-program mediators might be. Therefore, the committee believes that it is appropriate for the model to use the word minimum while at the same time emphasizing in standard 1 and the opening sentences of both standards 2 and 3 that courts are "encouraged," not required, to adopt the minimum qualifications set out in the model standards for their local court-program mediators.

Model Standard 2(a)(1) – General Education		
Commentator	**Comment**	**Committee Response**
California Judges Association by Mary E. Wiss President San Francisco	Finally, on the issue of general education requirements set out in the Model Qualification Standard 2(a)(I) we recommend that this is a matter best handled by each local superior court ADR committee. We support the inclusion of panelists as mediators with varying background, training and experience.	The committee agrees that general education requirements, as well as other minimum mediator qualifications, should be set by the local court. Proposed rule 10.781 leaves the authority to determine the appropriate qualifications of mediators in a court program with the local court. As indicated in standard 1, the proposed standards are model standards that the courts can consider in adopting their local minimum mediator qualifications; the proposed model standards do not establish mandatory requirements for the courts.

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Model Standard 2(a)(1) – General Education		
Commentator	**Comment**	**Committee Response**
California Protective Parents Association by Connie Valentine Policy Director Davis Center for Judicial Excellence by Jean Taylor President San Rafael Child Abuse Solutions, Inc. by Meera Fox Executive Director	A mediator must be required to have graduated from college with a BA or BS degree plus 2 years work experience at minimum as a mediator. An MS or MA degree could substitute for 1 year of work experience. This would be in addition to the 40 hour training.	The committee is not recommending the adoption of any specific mandatory qualification requirements for mediators. As noted above, proposed rule 10.781 leaves the authority to determine the specific qualifications of mediators in a court program with the local court. In terms of the proposed model standards, the committee specifically discussed and decided not to recommend that the model standards suggest mediators have a B.A. The studies that have analyzed the impact of various mediator qualifications have concluded that no particular profession, such as attorneys, or educational degree was consistently associated with available measures of mediator success (settlement rates or participant satisfaction with the mediation). If such educational degree requirements are not associated with mediator success, they would simply serve as barriers that prevent potentially successful mediators from being able to serve in a court program. The committee therefore declined to include such requirements in the recommended model qualification standards.
Committee on Alternative Dispute Resolution The State Bar of California by Steven R. Cerveris	The ADR Committee as a whole fully supports inclusion of panelists with varying life experiences as mediators and the substitution of work (and perhaps volunteer) experience for a graduate degree. Our Committee members have disparate views regarding the proposed minimum education standard of a high school diploma or GED accompanied by four years of subsequent work or volunteer experience. As referenced in the Drafter's Notes, other	No response required. The examples provided in the drafters' notes as circulated for comment may have created the wrong impression. There are many states that do not set general education requirements for mediators,

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Model Standard 2(a)(1) – General Education		
Commentator	**Comment**	**Committee Response**
	states qualify mediators who have a "Bachelor's Degree" (as distinguished from a High School Diploma or GED) and several years of work or volunteer experience. Some ADR Committee members are concerned that the goal of promoting public confidence in court-connected ADR may not be served if California courts permit lower educational entry-level requirements than any other States. Other members feel that the general education standard should be eliminated, or that applicants simply be permitted to satisfy it by providing "other satisfactory evidence of sufficient education, training, skill, and experienced" pursuant to Model Qualifications Standard 4. Several ADR Committee members cited examples of experienced, capable mediators who never attended college or received undergraduate degrees.	including Georgia, Kansas, Kentucky, Maine, Minnesota, Nebraska, New Hampshire, and Oregon. There are others that provide for substituting mediation or work experience for a degree requirement, including Arkansas and Virginia. The committee has revised the drafters' notes to better reflect the diversity of general education requirements in other states.
Superior Court of San Diego County by Michael M. Roddy Executive Officer	General education (Standard 2(a)(1)): The proposed general education requirement of "a high school diploma or GED and at least four years of subsequent work or volunteer experience or four years of college coursework" not only falls below the San Diego Superior Court's current education requirement (bachelor's degree), it also falls below the other states' requirements listed in the Drafter's Notes (New Jersey, North Carolina, and Tennessee), all of which require a bachelor's degree *in addition* to four, five, six years of profession experience. Since the "work experience alternative" is modeled after those states, it should mirror their "work experience alternative," which only applies as a substitute for a graduate degree or a license to practice law as noted in Drafter's Note 2. Proposed general education requirement: *"Have a bachelor's degree from an accredited college or university."*	For the reasons indicated in the response to the comments of the California Protective Parents Association, above, the committee decided not to recommend in the model standards that mediators have a B.A. The proposal would not prevent the Superior Court of San Diego County from maintaining its current requirement that mediators in its program have a bachelor's degree, since, as noted above, under proposed rule 10.781(a), each court would set its own local qualification requirements. Also please see the response to the comments of the Committee on Alternative Dispute Resolution of the State Bar of California. The examples provided in the drafters' notes as circulated for comment may have incorrectly created the impression that all other states require mediators to have a B.A. The

Model Standard 2(a)(1) – General Education		
Commentator	**Comment**	**Committee Response**
		committee has revised the drafters' notes to better reflect the diversity of general education requirements in other states.
Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group by Patrick Danna Court Services Analyst	1. The working group expressed that the minimum qualifications set out in the model rules are inadequate. The other states that we modeled ourselves after require a bachelor's degree. These are general civil cases (not small claims). The working group recommends that a law degree ought to be the minimum, with the ability to make an exception for good cause, and the good cause ought to be a bachelor's degree with 10 years minimum in the professional expertise that is the subject matter of the litigation (e.g., construction, real estate, etc);	Please see response to the comments of the Superior Court of San Diego County, above.

Model Standard 2(a)(2) – Legal education or training		
Commentator	**Comment**	**Committee Response**
Orange County Bar Association by Michael G. Yoder President	Subdivision (a)(2) requires potential court mediators not exempt from its provisions to attend a program which covers the topics "required by the court." Rather than have each court determine these topics, it is suggested they be set forth in order that programs as contemplated by this provision have statewide, that is, county-to-county application. Providing topic detail would avoid situations where the non-exempt would have to attend a number or such programs, or seek to supplement, piecemeal, the content of a previously attended program.	As with all of the proposed model standards, standard 2(a)(2) is simply a recommendation to the courts for what they might adopt as a local qualification requirement; it does not establish a statewide requirement. The committee agrees with the goal of offering a program that would meet local requirements for this legal education in all courts. It is the committee's intent to work with the courts and the Administrative Office of the Courts' Education Division/Center for Judicial Education and Research to create such a program.
Superior Court of San Francisco	Section (a) of Model Standard 2, which requires non-attorney or	As with all of the proposed model standards, standard

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All comments are verbatim unless indicated by an asterisk (*).

Model Standard 2(a)(2) – Legal education or training		
Commentator	**Comment**	**Committee Response**
County by Jeniffer B. Alcantara	non-certified paralegals to complete a program on the court system and civil litigation in addition to Section (d)'s program orientation, may discourage certain groups of people from participating in the court's panel. . . . The non-attorney/non-certified paralegal mediators bring a unique value to the court's panel. It would be unfortunate to have the non-legally-trained mediators drop off from our ADR programs as they struggle to comply with these extra hurdles.	2(a)(2) is simply a recommendation to the courts for what they might adopt as a local qualification requirement; it does not establish a statewide requirement. The committee believes it is important for mediators who are assisting disputants within a court context to have at least a basic understanding of that context. Several California courts already require nonattorney mediators to attend a class on the civil legal system and this does not appear to have inhibited nonattorney mediators from choosing to participate in these programs.

Model Standard 2(b) – Mediation training		
Commentator	**Comment**	**Committee Response**
California Protective Parents Association by Connie Valentine Policy Director Davis Center for Judicial Excellence by Jean Taylor President San Rafael Child Abuse Solutions, Inc. by Meera Fox Executive Director	The 40 hour training needs to be uniform statewide. The mediator must pass a standardized exam at the end of the training.	The model standards do recommend that courts require individuals to have a minimum of 40 hours of mediation training in order to serve in a court-connected mediation program for civil cases. The proposal does not, however, require that every court mandate this level of training. The committee considered but ultimately rejected the idea of setting a statewide minimum mediation training requirement. Both the comments received during this public comment process and those received during the earlier, informal comment process conducted by the committee's mediator qualifications working group strongly support allowing courts to locally determine the specific mediator qualification standards that are appropriate given local circumstances.

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Alternative Dispute Resolution (ADR): Qualifications of Mediators in Court-Connected Mediation for General Civil Cases (amend Cal. Rules of Court, rule 10.781 and the advisory committee comments to rules 3.851 and 3.865, and approve model qualifications standards for mediators in court-connected mediation programs for general civil cases)

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Model Standard 2(b) – Mediation training		
Commentator	**Comment**	**Committee Response**
Suzanne K. Nusbaum Mediator Los Gatos	Model Qualification Standard 2(b) (2) should not require that the training be in the form of a single comprehensive mediation training program. A training program such as that conducted in the U.S. District Court for the Northern District of California should be sufficient. Qualification to serve on a federal Court mediation panel should qualify one to serve on the state panel, if one has additional training provided by the state court in the California superior Court ADR Rules.	As with all of the proposed model standards, standard 2(b)(2) is simply a recommendation to the courts for what they might adopt as a local qualification requirement; it does not establish a statewide requirement. However, as reflected in this standard, the committee believes that it is important that individuals participate in a single, comprehensive mediation training program before serving in a court-connected mediation program for civil cases. Participating in a series of short, more narrowly focused education programs is unlikely to provide individuals with sufficient grounding in mediation and communication theory and practice to enable them to appropriately serve as mediators. Note also, however, that model standard 3 reflects the committee's recommendations that courts provide a mechanism for allowing individuals who do not meet the local qualification standards adopted by the court to otherwise show that they have the skills and experience to serve as a mediator for the court. Thus, if a court adopted these model standards, individuals who had not participated in a single, comprehensive training program would still have the opportunity to show that they were qualified to mediate for the court.
Orange County Bar Association by Michael G. Yoder President	Subdivision (b)(1)(A) and (B) require that, respectively, all or a goodly percentage of necessary training be completed within the past two years. Standing alone, this is a reasonable requirement. It may become problematic; however, when coupled with the additional mediation experience requirements of subdivision (c).	The model standards include provisions that, if adopted by a court, would specifically accommodate individuals who received their basic mediation training more than two years before applying to mediate cases for the court. Standard 2(b)(1)(B) recommends that an individual be considered to have met the mediation training requirement if they

Model Standard 2(b) – Mediation training		
Commentator	**Comment**	**Committee Response**
		completed their 40 hours of training at any time (i.e. more than two years before) and completed at least 7 hours of continuing or advanced mediation training within the past two years.
	Subdivision (b)(2) requires that at least 32 of the 40 hours of training required by subdivision (b)(1)(A) and (B), be in the form of a single comprehensive program. This 32-hour block is of concern, particularly given the additional requirement of subdivision (c)(1), that mediation experience include at least two mentored mediations. The anticipated availability and presence of mentor mediators seem to connote training provided by an organization or agency engaged in providing community mediation. Often times, the training provided in such a setting follows the DRPA model, which still only requires 25 hours. Single programs are available which offer between 32 and 40 hours of recognized training, depending upon the ADR organization assessing them. They are, however, usually provided by private enterprises, often with training locations requiring considerable travel by participants, cost $1,000 or more and provide no mentoring component. Accordingly, it is suggested that this 32-hour block be reduced to 25 hours to better reflect the reality of the past and present availability of neutral education and mentoring opportunities.	As with all of the proposed model standards, standard 2(b)(2) is simply a recommendation to the courts for what they might adopt as a local qualification requirement; it does not establish a statewide requirement. The committee considered but ultimately rejected the idea of recommending that the comprehensive training be only 25 hours in length. The committee concluded that 25 hours was not sufficient time to appropriately cover all of the topics listed under standard 2(b)(2). Many courts offer 32-40 hour mediation training programs at reduced rates for individuals who agree to serve as mediators for the court. While the committee supports the concept of a training model that includes mentored mediations, the committee did not contemplate that the mentored mediations would necessarily be a part of the required mediation training. In several California courts that use a mentored mediation model, court mediation program staff are serving as the mentor mediators and the observed mediations are taking place in the court context, rather than as part of a mediation training program. In mentored mediation models in other states, the mediators are approved by the court and these observed mediations are not necessarily connected with a training program.
C. Nancy Sallan, M.A.	I think that mediators to serve on court appointed panels should	The committee agrees with the commentator that

Model Standard 2(b) – Mediation training		
Commentator	**Comment**	**Committee Response**
Saratoga	have more than 40 hours of training**.** As a non-attorney, with well over 400 hours of mediation training, and practicing mediation for 15 years on various panels, including mediating over 500 cases for the USPS (labor/mgmt) disputes, I am convinced that just because one is an attorney, and takes a 40 hour training course, that person may not make a very good mediator. Most of the court appointed mediators are attorneys. They often have a very hard time being a NEUTRAL who facilitates a reconciling conversation between the parties. More often than not, they may give opinions as to how a judge might rule in the case. **In mediation, it is more important to know how to deal with the conflicted parties, than it is to know the law.** And, to help them craft solutions that work for each of them. Often, attorneys are neither trained, nor comfortable working with both parties at the same time—in a conflicted situation—to facilitate and break through to resolution that is a win-win.	being an attorney does not necessarily equate with being a good mediator. This conclusion is supported by empirical studies that have not found any consistent connection between any particular professional background and mediator success. The committee has reflected this understanding by specifically not including a recommendation that mediators be attorneys in the model standards. The committee also believes that additional mediation training is helpful in growing mediators' skills and professionalism. However, as a recommendation for a minimum qualification, the committee concluded that 40 hours of training is appropriate. This is the amount of training required by the largest number of California courts that have set local mediator training requirements and the largest number of other states and, in the view of the mediator trainers on the committee's mediator qualifications working group, is sufficient to appropriately cover basic mediation and communication theory and practice.

Model Standard 2(c)(1) – Mediation experience – Mentorship Requirement		
Commentator	**Comment**	**Committee Response**
California Judges Association by Mary E. Wiss, President San Francisco	We do make the following comment on proposed Qualification Standard 2(c)(1) and in particular its requirements that mediators be "observed and evaluated by a mentor mediator." The California Judges Association endorses the concept of mentoring by experienced mediators. But, we believe that having a requirement of observation and evaluation would be burdensome,	While the committee believes that the commentator has raised issues that need to be considered in implementing any process for observing and evaluating mediators, the committee does not believe that these issues are insurmountable or that they necessitate eliminating the recommendation that

Model Standard 2(c)(1) – Mediation experience – Mentorship Requirement		
Commentator	**Comment**	**Committee Response**
	threaten the confidentiality of the process, and by the terms of the proposed standard puts the "observed mediator" in the position of being considered not fully qualified. This would be difficult for the clients to accept. It would dilute the goal of promoting confidence in the court-connected mediations. We recommend deleting the "observed and evaluated" requirement.	courts implement such a mentorship process as part of ensuring the quality of the mediators in their programs. As indicated in the drafters' notes, many other states, California community dispute resolution programs, and several California courts have successfully implemented mentorship requirements. The committee believes that evaluation of a potential mediator by a mentor mediator can be a powerful and valuable tool in ensuring that potential mediators have mediation skills a court has concluded are necessary to mediate cases in that court. To address some of the concerns about observed mediators being put in the position of being "less than fully qualified" and in recognition of the fact that many programs use co-mediator/evaluator model, the committee has revised its proposal to recommend that the potential mediator mediate *or co-mediate* two mediations observed or *co-mediated* and evaluated by a mentor mediator. As with all of these model standards, courts are free under rule 10.871 not to adopt a local mentorship requirement if the court concludes that it would be too burdensome or for any other reason.
Committee on Alternative Dispute Resolution The State Bar of California by Steven R. Cerveris	The ADR Committee fully endorses the concept of mentoring new or less experienced court-connected mediators. Many experienced mediators on our Committee have served as mentors, allowing less experienced mediators to observe them in both court-connected and private mediations. Also, one retired judge on the Committee shared with us his experience with a program for the mentoring of new judges by experienced members of the Superior Court bench. This program included meetings, both formal and less formal, to discuss judicial practice and give	No response required.

Model Standard 2(c)(1) – Mediation experience – Mentorship Requirement		
Commentator	**Comment**	**Committee Response**
	advice on these and various administrative issues. The Committee's concern is with the rather narrow definition of mentoring prescribed in proposed Qualification Standard 2(c)(1), specifically, the requirement that mediators be "observed and evaluated by a mentor mediator." The ADR Committee believes that other forms of mentoring should be encouraged and should satisfy this requirement. The ADR Committee also believes that mentoring should be designed to add to the depth of experience of mediator panelists, and not serve as a test of their admission to the panel. We also feel that fulfilling the observation and evaluation requirement, as written, would be financially burdensome on the courts and the volunteer mediators, and may in many cases prove difficult, because clients may be reluctant to have their mediation conducted by someone who is, by the terms of the proposed standards it seems, not yet fully qualified. Indeed, having participants engaged in mediation with a mediator being observed by a more experienced mediator may be antithetical to the goal of promoting public confidence in court-connected ADR. Thus, while supporting the concept of mentoring, the ADR Committee recommends the deletion of the "observed and evaluated" requirement in Standard 2(c)(1).	Please see response to the comments of the California Judges Association. The committee agrees with the commentator that there are other, valuable forms of mentoring that should be encouraged. The committee does not believe, however, that these model standards for local court minimum mediator qualifications are the appropriate place to address those forms of mentoring.
Superior Court of San Diego County by Michael M. Roddy Executive Officer	Mediation experience requirement (Standard 2(c)): The proposed mediation experience requirement that a mediator has "mediated at least two mediations of at least 2 hours in length observed and evaluated by a mentor mediator; and mediated or co-mediated at least 4 additional mediations of at least two hours in lengths within the past two years." The mentor mediator observation and evaluation requirement is overly burdensome and impractical,	In response to this and other comments, and in recognition of the fact that many programs use a co-mediator evaluator model, the committee has revised its proposal to recommend that the potential mediator mediate *or co-mediate* two mediations observed or *co-mediated* and evaluated by a mentor mediator. This would not replace the evaluation component of the

Model Standard 2(c)(1) – Mediation experience – Mentorship Requirement		
Commentator	**Comment**	**Committee Response**
	especially for an experienced mediator who has successfully mediated numerous cases, but where the parties do not consent to "observation" by another Mediator, etc. Proposed revision: the addition of an alternative to (c)(1) and (c)(1), which provides *"or have co-mediated at least 6 mediations with a mentor mediator or mediator on the court's panel within the past two years."* It should be noted that the requirement in Standard 2 (e)(1) that the mediator "[s]ubmit references or evaluation forms from at least three individuals who participated in mediations conducted by or co-mediated by the applicant" would provide sufficient additional information regarding a mediator's experience.	proposed standard, as suggested by the commentator, but it would address some of the perception and consent concerns raised by commentators. The committee does not believe that references from mediation participants can fully substitute for an evaluation by an experienced mentor mediator. Courts would, of course, be free under rule 10.871 not to adopt any local evaluation requirement if the court concludes that it would be too burdensome or for any other reason. If a court does adopt these model standards, under proposed standard 4, it could also waive the evaluation requirement for those mediators who provide evidence of sufficient mediation experience.
Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group by Patrick Danna Court Services Analyst	The working group recommends: •Under (c) Mediation experience, include the phrase, "Court-approved mentor mediator" or words to convey that the mentor mediator must be one who is qualified to be on a court list	Based on this comment, the committee has revised the drafters' notes that follow this standard to indicate that courts that have implemented this type of mentor evaluation requirement typically require that the mentor mediators be approved by the court or have had court ADR program staff serve in this capacity. The committee concluded it would be better to include this in the drafter's notes, rather than the model standard text, because that the details of how to best implement a mentor evaluation requirement should be left to the individual court.

Model Standard 2(c)(2)– Mediation Experience – General		
Commentator	**Comment**	**Committee Response**
George S. Cole	Standard 2(c) appears to create a personification paradox; no	While the committee agrees with the commentator's

Model Standard 2(c)(2)– Mediation Experience – General		
Commentator	**Comment**	**Committee Response**
	mediator-to-be can qualify until she has served as a mediator. There must always be a clear entry path to prevent organizational or bureaucratic arteriosclerosis.	point that there must be a path to enter the mediation profession, the committee does not believe that courts should be obligated to serve as the entry point for those who wish to join the mediation profession. Like the rules of conduct for mediators in court-connected mediation programs for civil cases, the primary purpose of these model standards is to help ensure the quality of the mediation programs offered to litigants by the courts. In this context, the committee concluded that it is appropriate for courts to require those who wish to mediate for a court to have some experience as a mediator. Some courts do offer co-mediation opportunities to help potential mediators meet local experience requirements. But many courts have found a sufficient pool of mediators in their community who meet their experience requirements and are willing to mediate cases for the court without offering such co-mediation opportunities.
Orange County Bar Association by Michael G. Yoder President	In effect, subdivision (c) anticipates that a potential court mediator will have the opportunity to participate in six different mediations, each in EXCESS of two "hours" duration, within the balance of the same two year period remaining after training. This may prove impractical for potential court mediators, for example, of diverse backgrounds or in limited markets. While being mindful of the desire to insure that a potential court mediator's training is recent, it is suggested that "credit" be given for mediations which a potential court mediator may have done while completing the court-required training and/or expanding the two year period to three or four years.	If adopted by a court, standard 2(c) would require that an individual who wishes to serve as a mediator for the court complete their required mediation experience after completing their mediation training. The committee concluded that it was most appropriate that mediations done after being fully trained, not training exercises, be counted toward the requisite mediation experience. If a court adopts these model standards, the mediation experience does not necessarily need to be completed within two years of completing mediation training, however. Standard 2(c) only recommends that potential mediators have mediated or co-mediated at least four mediations of at

Model Standard 2(c)(2)– Mediation Experience – General		
Commentator	**Comment**	**Committee Response**
		least 2 hours in length within the two years before seeking to serve as a mediator for the court. Thus potential mediators may have completed their basic training and mediations under the observation of a mentor mediator at any time.
Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group by Patrick Danna Court Services Analyst	Lessen the need for a new mediator to have extensive mediation experience (currently 4 additional mediations of 2 hours in length within the last 2 years). It becomes a catch 22—can't be a mediator because can't get the experience;	Please see the response to the comments of Mr. Cole above. As indicated in that response, many courts have found a sufficient pool of mediators in their community who meet experience requirements similar to those recommended in standard 2(c) and are willing to mediate cases for the court. If a court concludes that this would be difficult in its particular community, the court is free under rule 10.781(a) to adopt whatever mediation experience requirement it concludes is appropriate for its community. The court could also consider offering newly trained individuals co-mediation opportunities, as some other courts have done.

Model Standard 2(e) – References		
Commentator	**Comment**	**Committee Response**
Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group by Patrick Danna Court Services Analyst	•Separate "(e) References and Informing court of any public discipline or other matters" into two separate headings—one references and the other informing court of discipline—these are separate and distinct topics; •Require disclosure of private discipline as well as public discipline—assuming the Bar does both; and	The committee agrees with this suggestion and has revised the proposal to incorporate this change. The language of proposed standard 2(e)(2) is modeled on rule 3.856(c), part of the Rules of Conduct for Mediators in Court-Connected Mediation Programs

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Model Standard 2(e) – References		
Commentator	**Comment**	**Committee Response**
	•Require disclosure of the entry of any judgment, not only judgments involving actual fraud or punitive damages.	for Civil Cases, which requires those who are already serving as mediators for the courts to inform the court of any such professional discipline or other matter. The committee believes it is important that the rule and model standard address disclosure of the same information and so is not recommending using different language in the model standards at this time. The committee will consider this comment as a suggestion that it consider broadening the information currently required to be disclosed under rule 3.856(c).

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Model Standard 3 – Continuing Eligibility Requirements – General		
Commentator	**Comment**	**Committee Response**
Superior Court of San Francisco County by Jeniffer B. Alcantara	However, the Model Standards do place a heavy burden on ADR Administrators to police continuing requirement. Of particular concern is Standard 3–Continuing Eligibility Requirements. Courts with little or no ADR staffing will likely find it difficult to monitor all court-connected mediators to ensure compliance with the Model Standards each year. Standard 3 would be hard to enforce for courts with little resources. Consequently, there would be little benefit in implementing the Model Standards if the rules could not be enforced by courts.	The committee agrees that monitoring compliance with a continuing mediation education or experience requirement will take court staff time. These requirements also benefit courts, however, by providing greater assurance that mediators who mediate cases for the courts have recent training and experience. Each court will need to weigh for itself whether the benefits of these requirements outweigh the costs of monitoring compliance in deciding whether to adopt a local continuing mediation education or experience requirement.

Model Standard 3(a) – Continuing mediation training		
Commentator	**Comment**	**Committee Response**
Michael P. Carbone Mediator, Arbitrator, Referee San Francisco	I would agree with this proposal if the requirement for continuing education were eliminated. After mediating for almost fifteen years now I have concluded that the best way to learn how to mediate is to do it. Introductory training is good to have but I see no need to keep going back for more. Every mediator needs to develop a style that he or she is comfortable with and that he or she finds to be effective, and it can only be done by handling cases. While I did have some good training, especially when I was starting out, I actually found that some of the other trainings I took later were counterproductive and that I had to "unlearn" some of the things that I had been taught. So I see a requirement for continual training to be of no significant benefit to anyone but the trainers.	The committee believes that continuing mediation training or education is helpful in ensuring that mediators stay abreast of developments in the mediation field, such as changes in the law concerning mediation confidentiality. If adopted by a court, Standard 3 would give mediators great flexibility in selecting appropriate courses, including courses on ethics.

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Model Standard 3(a) – Continuing mediation training		
Commentator	**Comment**	**Committee Response**
	The only exception that I might make would be for training in ethics because the standards can change over time. Other than that, mediation is not like law where there are always recent developments to stay abreast of. And I would support a requirement that mediators must remain active in the field or else be dropped from the panel.	
Superior Court of San Francisco County by Jeniffer B. Alcantara	Another possible deterrent for mediators is Model Standard 3 as it relates to biannually completing 7 hours of continuing mediation training. The non-attorney/non-certified paralegal mediators bring a unique value to the court's panel. It would be unfortunate to have the non-legally-trained mediators drop off from our ADR programs as they struggle to comply with these extra hurdles.	The committee agrees that complying with continuing mediation education requirements will create burdens for mediators. These requirements also benefit courts, however, by providing greater assurance that mediators who mediate cases for the courts have recent training. Each court will need to weigh for itself whether the benefits of these requirements outweigh the costs in deciding whether to adopt a local continuing mediation education requirement.

Model Standard 3(b) – Continuing mediation experience		
Commentator	**Comment**	**Committee Response**
Suzanne K. Nusbaum Mediator Los Gatos	If the rule is meant to ensure that mediation skills are kept up, there is no reason to limit the experience requirement to experience in the state court's mediation program. At a minimum, experience mediating in a federal court-connected ADR program should also be credited. However, if the aim to ensure regular practice, I would recommend that all mediation experience, both court-connected and private mediation be credited. I also recommend that experience serving as a settlement judge pro tem for civil settlements be credited, as the skills used in that form of ADR are transferable to mediation.	Because there are some special requirements, including the standards of conduct for mediators in court-connected mediation programs for civil cases, that apply to mediators who mediate cases in the California state courts, the committee concluded it was appropriate to count only mediations in those courts toward a mediator's continuing experience requirement.

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Model Standard 4 – Alternative qualification		
Commentator	**Comment**	**Committee Response**
California Judges Association by Mary E. Wiss President San Francisco	* * * we adopt the State Bar's position that qualification decisions and alternative qualification decisions be made on the local level by each superior court's ADR committee. The culture and practice of ADR differs in each of the counties. The local bench is in a position to understand and set the requirements for its appointed mediators.	Proposed standard 4, if adopted by a court, does provide for alternative qualification decisions to be made on a local level. At that local level, the committee concluded that it is appropriate to recommend that this authority be given to the local court's ADR administrator because rule 10.783(a) gives the ADR administrator responsibility for "Supervising the development and maintenance of any panels of ADR neutrals maintained by the court." The ADR committee, in contrast, is given more general responsibility for "overseeing the court's alternative dispute resolution programs for general civil cases." In addition, under rule 10.783, every court is required to designate an ADR administrator, while only larger courts are required to have an ADR committee.
Committee on Alternative Dispute Resolution The State Bar of California by Steven R. Cerveris	The ADR Committee endorses providing the various courts the autonomy to establish mediator qualifications for individuals who meet some, but not all, of the initial qualification requirements. We wish simply to offer two amendments to the proposed language for consideration. First, while the ADR Committee infers that mediators who are either existing court panelists or very experienced mediators, or both, could be qualified under this provision without taking the time or going to the expense of completing a 40-hour (usually entry-level) training class, we recommend that a more specific reference to such grounds for alternative qualification be included in the Standard. This might be accomplished by simply adding to the first sentence of Standard 4 the phrase "including, e.g., extensive prior service on the court's panel(s) or in other mediations."	The committee agrees that providing this example may be helpful and has added it to the drafter's notes accompanying this standard.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR09-01

Alternative Dispute Resolution (ADR): Qualifications of Mediators in Court-Connected Mediation for General Civil Cases (amend Cal. Rules of Court, rule 10.781 and the advisory committee comments to rules 3.851 and 3.865, and approve model qualifications standards for mediators in court-connected mediation programs for general civil cases)

All comments are verbatim unless indicated by an asterisk (*).

Model Standard 4 – Alternative qualification		
Commentator	**Comment**	**Committee Response**
	The ADR Committee further recommends that such alternative qualifications decisions be made by each superior court's ADR committee, *see* Cal. Rule Ct. 10.783(b), in those counties that have such committees, perhaps pursuant to an initial recommendation of the ADR program administrator akin to a staff recommendation to an agency board.	Please see response to the comments of the California Judges Association, above.
Superior Court of San Francisco County by Jeniffer B. Alcantara	Additionally, the Model Standards are reasonable in that it allows for the ADR Administrator to consider other satisfactory evidence of sufficient qualifications when an applicant does not meet the threshold for inclusion on the court's panel. This flexibility allows for each court to comply with the Rules while still factoring in its unique needs when deciding whether to include a mediator on its panel.	No response required.

Other Comments		
Commentator	**Comment**	**Committee Response**
California Protective Parents Association by Connie Valentine Policy Director Davis Center for Judicial Excellence by Jean Taylor President San Rafael Child Abuse Solutions, Inc. by Meera Fox	Mediators must be prohibited from making any recommendations. This must apply to all mediation, especially in family court. Mediation is designed to be a confidential process to bring litigants into agreement. All ADR must be completely voluntary. There must be a form for litigants to sign indicating they were not coerced into selecting mediation.	These suggestions are beyond the scope of this proposal, which is focusing only on the qualifications of mediators in court-connected mediation programs for general civil cases.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR09-01

Alternative Dispute Resolution (ADR): Qualifications of Mediators in Court-Connected Mediation for General Civil Cases (amend Cal. Rules of Court, rule 10.781 and the advisory committee comments to rules 3.851 and 3.865, and approve model qualifications standards for mediators in court-connected mediation programs for general civil cases)

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Other Comments		
Commentator	**Comment**	**Committee Response**
Executive Director		
C. Nancy Sallan, M.A. Saratoga	Therefore, I support your being mindful of not letting attorneys determine too much of your guidelines for mediators, nor of having attorneys be the preferred people to do court-based mediations. Suggest you continue to get input from Community programs within California, like Santa Clara County, etc. since they have the programs and training for mediators that represent the true essence of mediation—and the core ethics of the practice.	The working group that assisted the committee in developing this proposal included representatives of community mediation programs, mediator professional associations, and mediation trainers. As noted above, the committee agrees with the commentator that being an attorney does not necessarily equate with being a good mediator and has reflected this understanding by specifically not including in the model standards a recommendation that mediators be attorneys.