

**JUDICIAL COUNCIL OF CALIFORNIA**  
**ADMINISTRATIVE OFFICE OF THE COURTS**  
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San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee  
Hon. Elihu Berle, Chair  
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DATE: September 27, 2005

SUBJECT: Alternative Dispute Resolution: Recommendations About Alternative  
Dispute Resolution Programs and Referrals to Dispute Resolution Neutrals  
(amend Cal. Stds. Jud. Admin., §§ 32 and 33; adopt § 32.1) (Action  
Required)

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Issue Statement

In February 2004, when the Judicial Council received the report *Evaluation of the Early Mediation Pilot Programs*, it directed the Civil and Small Claims Advisory Committee to consider a proposal for a standard of judicial administration encouraging all trial courts to implement mediation programs for civil cases as part of their core operations. Sections 32 and 33 of the Standards of Judicial Administration currently contain recommendations to the courts related to alternative dispute resolution (ADR) programs, and thus are the logical sections where such a new provision might be added. However, sections 32 and 33 were originally adopted in 1992 and are now outdated in several respects.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2006:

1. Amend section 32 of the California Standards of Judicial Administration to encourage all superior courts to: (a) implement mediation programs for civil cases as part of their core operations; (b) promote the development, implementation, maintenance, and expansion of successful ADR programs by engaging in specified activities; and (c) coordinate their ADR activities with each other and with professional and community-based organizations.
2. Amend section 33 of the California Standards of Judicial Administration to: (a) eliminate outdated references to forming committees to evaluate ADR providers; (b) add evaluation of an ADR neutral's skills to the factors

considered by a court screening potential neutrals; and (c) add adherence to applicable standards of conduct to the factors the court considers in continuing to refer cases to a specific ADR neutral.

3. Adopt new section 32.1 of the California Standards of Judicial Administration to encourage courts that are not required to form ADR committees to do so.

The text of the proposed amendments and addition to the standards is attached at pages 6–7.

### Rationale for Recommendation

The Civil and Small Claims Advisory Committee recommends amending sections 32 and 33 to encourage all trial courts to implement mediation and other ADR programs and to reflect changes in court structure and administration since these sections were adopted. The committee also proposes nonsubstantive amendments to these sections and the adoption of section 32.1 to simplify the existing sections and make the provisions concerning ADR committees and the criteria for referrals to ADR neutrals easier to identify.

### *Section 32*

As discussed in the February 2004 report *Evaluation of the Early Mediation Pilot Programs*,<sup>1</sup> legislation enacted in 1999 and 2000 required the Judicial Council to establish and evaluate early mediation pilot programs for general civil cases in five superior courts.<sup>2</sup> The study of these early mediation programs found that they resulted in substantial benefits for both litigants and the courts, including reductions in trial rates, case disposition time, and the courts' workload, increased attorney satisfaction with the courts' services, and lowered litigant costs in cases that resolved at mediation in some or all of the participating courts. Based on the positive results of these pilot programs, the council directed the Civil and Small Claims Advisory Committee to consider a proposal for a standard of judicial administration encouraging all trial courts to implement mediation programs for civil cases as part of their core operations. The committee has considered this proposal and recommends incorporating a new provision encouraging courts to implement such programs into section 32 of the Standards of Judicial Administration.

The committee also recommends, now that all of the trial courts have been unified, that the outdated references in section 32 to coordination between municipal and superior courts within a county be deleted and this section retooled to encourage superior courts to develop, implement, maintain, and expand successful mediation and settlement programs. The types of activities that section 32 currently encourages courts to coordinate would

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<sup>1</sup> This study is available under the reference link at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov).

<sup>2</sup> Title 11.5 of the Code of Civil Procedure, section 1730 et seq. (Stats. 1999, ch. 67, § 4 (Assem. Bill 1105 and Stats. 2000, ch. 127, § 3)). This legislation was automatically repealed effective January 1, 2004, under a sunset provision in Code of Civil Procedure section 1743.

also be appropriate activities for promoting the development, implementation, maintenance, and expansion of such programs. In addition, since courts may benefit from coordinating their ADR activities with other superior courts or with professional and community-based organizations, the committee is also recommending amending section 32(b) to promote such inter-court and inter-organization coordination.

### *Sections 32.1 and 33*

Section 33 of the Standards of Judicial Administration currently encourages all courts to form committees to evaluate the qualifications of potential ADR providers and to base continuing referrals to these providers on indicators of client satisfaction, settlement rate, and continuing education. After section 33 was adopted, rule 1580.3 of the California Rules of Court was amended to address the formation and responsibilities of ADR committees. Rule 1580.3(b) provides that each superior court that has 18 or more authorized judges *must* have an ADR committee and that any other court may establish one. This rule also specifies the membership of the committee and makes the committee responsible for overseeing the court's ADR programs for general civil cases.

To reflect this new rule, the Civil and Small Claims Advisory Committee recommends that the standards be amended to eliminate the outdated references that encourage all trial courts to form committees to evaluate ADR providers. In place of these references, the committee recommends a new provision that only encourages those courts that are not already *required* to do so to form ADR committees. The committee also recommends that this provision be moved to a new, separate section—section 32.1—to make the provisions concerning ADR committees and the criteria for referrals to ADR neutrals easier to identify. In addition, the committee recommends that section 33 be amended to encourage courts to evaluate the skills, as well as the training and experience, of potential ADR neutrals and to consider adherence to applicable standards of conduct as an additional criterion for continuing referrals to neutrals. The committee believes that both a potential neutral's ADR skills and a neutral's record of adherence to standards of practice are important factors for a court to consider when making ADR referrals.

### Alternative Actions Considered

The committee considered whether any of the criteria for referring cases to an ADR neutral should be set forth in the California Rules of Court, rather than in the Standards of Judicial Administration, and specifically solicited comments on this issue. Ultimately, the committee decided not to recommend a rule establishing statewide qualification requirements for ADR neutrals at this time. The majority of the commentators who shared their views on this issue suggested that it is preferable to address the qualifications in the standards.

### Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2005 comment cycle.

Eleven individuals or organizations submitted comments on this proposal.<sup>3</sup> Three commentators agreed with the proposal, seven agreed with the proposal only if modified and one disagreed with the proposal.

Judge Long from the Superior Court of Ventura County disagreed with the proposal and expressed concern about it inhibiting courts' flexibility to implement programs that are most appropriate for their local environment. Because the Standards of Judicial Administration are recommendations, not mandatory requirements, the committee does not believe that these proposed amendments will inhibit the courts' flexibility; the proposed standards do not restrict the courts' freedom to determine what ADR program, if any, is most appropriate in their local environment.

Mr. Ronald Sargis of the California Association of Collectors' Executive Committee expressed concern that the proposed new provision in section 32(a) encouraging all superior courts to implement mediation programs for civil cases might result in cases that would not benefit from mediation inappropriately being forced to participate in mediation. Mr. Sargis recommended that section 32 be amended to specifically exclude limited civil cases that will not benefit from mediation. As reflected in section 32(b)(1), the committee is specifically recommending that courts develop appropriate criteria for which cases should be referred to ADR. In response to Mr. Sargis's comments, the committee has revised this provision of the proposal to further clarify that these criteria should include whether the parties are likely to benefit from the use of the ADR process.

Ms. Mimi Lyster, Director of ADR Programs for the Superior Court of Contra Costa County, recommended that section 32(b) be amended to include collaborating with community dispute resolution providers among those activities a court should undertake to promote ADR programs. The committee agrees with the general concept that courts should collaborate with such organizations where appropriate, but believes that this is best addressed in section 32(c), which addresses coordinating with such organizations. The committee has therefore revised section 32(c) to urge that courts also consider coordinating the administration of their ADR programs with such organizations.

Two commentators, Mr. Stephen Love, Executive Officer of the Superior Court of San Diego County Court, and Mr. Ira Spiro, Chair of the State Bar of California's Committee on Alternative Dispute Resolution, suggested that an ADR neutral's "skills" should not be included in section 33 among the factors recommend for courts to use in evaluating that neutral. Mr. Spiro noted that the evaluation of a neutral's skills can be very subjective and that client satisfaction is really the best assessment of these skills. Another commentator, Mr. John Toker, Mediation Program Administrator for the Court of Appeal, First Appellate District, also noted that evaluation of neutrals' skills is more subjective than evaluation of their training and experience, but he supported including

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<sup>3</sup> The full text of the comments and the committee responses are set forth on the accompanying chart starting on page 8.

this as an evaluation factor and noted that his program interviews those familiar with a potential neutral's practice to help assess the neutral's skills. The committee believes that a person's skills as a neutral are important in determining whether that person is likely to perform well as a neutral. A person can have participated in ADR training and yet lack important ADR process skills. The committee therefore believes that it is appropriate for a court to separately consider a person's ADR skills in deciding whether to include that person on its panel of neutrals or otherwise refer cases to that person, and recommends that this factor remain in section 33. In addition, as was noted above, these are only recommended criteria for evaluating ADR neutrals; courts that do not wish to evaluate a neutral's skills are not required to do so by this section.

Mr. Michael McCabe suggested that section 33(a) should be amended to clarify that the factors for evaluating potential ADR neutrals are not limited to legal training, experience, and skills. He also similarly suggested that section 33(b) should be amended to clarify the nature of the continuing education that is to be considered as a factor for continuing referrals to a neutral. In response to these comments, the committee revised its proposal to clarify that it is the neutral's *ADR* training, experience, and skills and continuing *ADR* education that should be considered.

Ms. Tina Rasnow, Senior Attorney/Coordinator for the Superior Court of Ventura County, suggested that ethics training that includes cultural competence issues should be required and that there should be a statewide rule. As noted above, however, other commentators, including Mr. Love and Mr. Toker, recommended against addressing neutral qualifications in rules rather than in the standards. Under the proposed standards, courts would be free to require neutrals on their panels to participate in ethics or cross-cultural training.

Mr. Dean Zipser, President of the Orange County Bar Association, suggested that section 33(a) should be amended to provide that the ADR committees recommended in section 32.1 are responsible for evaluating potential neutrals. While these committees could be tasked with this function under either Rule 1580.1 or section 32.1, not all courts are required or may choose to form such committees. Therefore, the committee believes the section 32.1 should not suggest that this function be performed only by such committees.

#### Implementation Requirements and Costs

Since the Standards of Judicial Administration are recommendations, these proposed amendments do not create any mandatory obligations that would impose implementation requirements or costs on the courts. Courts that choose to implement or expand ADR programs or form new ADR committees would likely incur some new associated costs.

#### Attachments

Sections 32 and 33 of the California Standards of Judicial Administration are amended and section 32.1 is adopted, effective January 1, 2006, to read:

1 **Sec. 32. Implementation and coordination of mediation and other alternative**  
2 **dispute resolution (ADR) programs**

3  
4 **(a) [Implementation of mediation programs for civil cases]** Superior courts  
5 should implement mediation programs for civil cases as part of their core  
6 operations.

7  
8 **(b) [Promotion of ADR programs]** ~~Trial~~ Superior courts should ~~coordinate~~  
9 promote the development, implementation, maintenance, and expansion of  
10 successful mediation and other alternative dispute resolution (ADR) programs,  
11 through activities that include as follows:

12  
13 (1) ~~Jointly establish~~ Establishing appropriate criteria for determining which  
14 cases should be referred to ADR, and ~~which types of~~ what ADR processes  
15 are appropriate for those cases. These criteria should include whether the  
16 parties are likely to benefit from the use of the ADR process.

17  
18 (2) ~~Jointly develop~~ Developing, ~~refine~~ refining, and use using lists of  
19 qualified ADR ~~providers~~ neutrals.

20  
21 (3) ~~Jointly adopt~~ Adopting appropriate criteria for referring appropriate cases  
22 to qualified ADR neutrals ~~providers and coordinate referrals.~~

23  
24 (4) ~~Jointly develop~~ Developing ADR information and ~~provide~~ providing  
25 educational programs for parties who are not represented by counsel.

26  
27 (5) ~~Coordinate~~ Providing ADR education for ~~judges~~ judicial officers.

28  
29 (6) ~~Explore joint funding of ADR.~~

30  
31 **(c) [Coordination of ADR programs]** Superior courts should coordinate ADR  
32 promotional activities and explore joint funding and administration of ADR  
33 programs with each other and with professional and community-based  
34 organizations.

35  
36  
37 **Sec. 32.1. ADR committees**

38  
39 Courts that are not required and that do not elect to have an ADR administrative  
40 committee as provided in rule 1580.3 of the California Rules of Court should form  
41 committees of judges, attorneys, alternative dispute resolution (ADR) neutrals, and

1 county ADR administrators, if any, to oversee the court's ADR programs and panels of  
2 neutrals for general civil cases.

3  
4  
5 **Sec. 33. Criteria for referring cases to dispute resolution ~~providers~~ neutrals**

6  
7 (a) [~~Initial considerations~~ **Training, experience, and skills**] Initially, Courts  
8 should form ~~committees of judges, attorneys, alternative dispute resolution (ADR)~~  
9 ~~providers, and county ADR administrators, if any, to evaluate the~~ ADR training, and  
10 experience, and skills of potential ~~providers of ADR services~~ neutrals.

11  
12 (b) [~~Long term criteria~~ **Additional considerations for continuing referrals**]  
13 After a court has sufficient experience with an ADR ~~provider~~ neutral, ~~continuing~~  
14 ~~referrals to that provider should be based on~~ the court should also consider  
15 indicators of client satisfaction, settlement rate, and continuing ADR education, of  
16 the provider and adherence to applicable standards of conduct in determining  
17 whether to continue referrals to that neutral. ~~Performance based testing should be~~  
18 ~~considered.~~

19  
20  
21 **Advisory Committee Comment**

22  
23 Although settlement rate is an important indicator of a ~~provider's~~ neutral's effectiveness, it  
24 should be borne in mind that some disputes will not resolve, despite the best efforts of a  
25 skilled ~~provider~~ neutral. ~~Providers~~ Neutrals should not feel pressure to achieve a high  
26 settlement rate through resolutions that may not be in the interest of one or more parties.  
27 Accordingly, settlement rate should be used with caution as a criterion for court referral of  
28 disputes to ~~providers~~ neutrals.

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Alternative Dispute Resolution(ADR): Recommendations About ADR Programs and Referrals to Dispute Resolution Neutrals  
(amend Cal. Stds. Jud. Admin., §§ 32 and 33; adopt § 32.1)

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
1.	Mr. Michael D. Belote California Advocates, Inc. Sacramento	A	Y	Agree.	No response needed.
2.	Hon. David Long Judge Superior Court of Ventura County Ventura	N	N	Do not agree with proposed changes.  Each county and court should have the flexibility under CRC and Standards of Judicial Administration to implement, or not, that which they perceive is in the best interests of their local court systems.	This proposal will not alter the courts' flexibility to implement the ADR programs that they perceive to be most appropriate for their local systems. The Standards of Judicial Administration set out recommendations for the courts, they do not establish mandatory requirements for the courts.
3.	Superior Court of Los Angeles County Los Angeles	A	Y	Agree with proposed changes.	No response needed.
4.	Mr. Stephen V. Love Executive Officer Superior Court of San Diego County San Diego	AM	Y	Agree with proposed changes only if modified.  1) Sec. 33(a). Delete the requirement to evaluate the skills of potential providers of ADR services.	The committee believes that a person's skills as a neutral are an important factor in determining whether that person is likely to perform well as a neutral. A person can have participated in ADR training and yet lack certain ADR process skills. It is therefore appropriate for a court to separately consider a person's ADR skills in deciding whether to refer cases to

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				<p>Response to the two questions: Question 1. No. If there are additional factors, which the courts can consider, they can be included in the applicable section of the Standards of Judicial Administration. Question 2. No. The Standards of Judicial Administration offer guidance in these matters, but the courts that deal with these situations on an as-needed basis should consider the individual circumstances in each.</p>	<p>that person. There are a variety of ways that these skills can be evaluated, including performance-based testing (which is referenced in the current standard), peer review, interviews with those who have previously used the neutral’s services (see comments of Mr. John Toker below), and staff observation.</p> <p>No response needed.</p>
5.	<p>Ms. Mimi Lyster                      ADR Programs Director                      Superior Court of Contra Costa                      County                      Martinez</p>	AM	N	<p>Agree with the proposed changes only if modified.</p> <p>Recommend revising section 32(b)(6) as follows:</p> <p>Collaborating with community mediation providers to offer, as appropriate, in-court or court-referred mediation services for other case types such as small claims, probate, unlawful</p>	<p>The committee agrees with the concept that courts should collaborate with community mediation providers where</p>

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				<p>detainer, civil harassment, guardianship, victim-offender restitution cases.</p>	<p>appropriate. However, the topic of working with such organizations is already addressed in section 32(c). The committee has revised subdivision (c) to encompass not only coordinating funding of ADR programs, but also coordinating administration of those programs.</p>
6.	<p>Mr. Michael McCabe Mediator ADR Services, Inc.</p>	AM	N	<p>Agree with the proposed changes only if modified:</p> <p><u>Comment on proposed section 33(a):</u> 33 should make it clear that the “training, experience, and skills” are not limited to legal training, experience, and skill. This work is essentially about relationships, not law; and the training, experience, and skills should be focused there.</p> <p><u>Comment on proposed section 33(b):</u> Suggest moving “settlement rate” to the last position of the indicators referenced, and changing the language to read: “. . . continuing referrals. . . should be based on indicators of client satisfaction, continuing education <u>in relational arts as well as law</u>, adherence to applicable standards of <u>professional</u> conduct, and settlement <u>experience</u>.”</p> <p>I do appreciate and approve of the Advisory Comment but know from experience that it is</p>	<p>The committee has revised this section of the proposal to clarify that the court should evaluate potential neutral’s <i>ADR</i> training, experience, and skills.</p> <p>The committee has revised this section of the proposal to refer to continuing <i>ADR</i> education, but declined to make the other suggested changes. The committee agrees that a neutral’s settlement rate should not be overemphasized in determining future referrals. However, the committee was concerned that placing the reference to settlement rates at the end of the sentence might actually increase the</p>

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				<p>the rule itself which will be considered rather than the comment. And I know that I regularly help parties view their cases more pragmatically; and whether the case settles at the mediation session or not, I know that I significantly increase the likelihood that it will settle sooner rather than later. This may not show up in “settlement rate” calculations, if the measure is “Did the case settle at mediation?” This is why “client satisfaction” is such an important criterion.</p>	<p>emphasis on this factor. The committee was also concerned that changing section 33 to refer to standards of “professional” conduct might encourage readers to believe that applicable standards would be found in the rules of professional conduct for attorneys. The standards of conduct for court-connected mediators in civil cases are part of the California Rules of Court (rules 1621 et seq.) and the standards for judicial arbitrators and referees are part of the Code of Judicial Ethics.</p>
7.	<p>Ms. Tina Rasnow Senior Attorney/Coordinator Superior Court of Ventura County Ventura</p>	AM	N	<p>Support the expansion of ADR use, but there should be ethics training including cultural competence issues. Should be statewide rule.</p>	<p>The committee is not recommending adoption of a rule establishing statewide training requirements for ADR neutrals at this time. The majority of the commentators who shared their views on whether these issues should be addressed by rule or by standard of judicial administration suggested that standards of judicial administration were preferable. Under this proposal, courts would be free to require neutrals on their panels to participate in ethics or cross-cultural training.</p>

Alternative Dispute Resolution(ADR): Recommendations About ADR Programs and Referrals to Dispute Resolution Neutrals  
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8.	Mr. Ronald Sargis California Association of Collectors Executive Committee Sacramento	AM	Y	<p>The members of California Association of Collectors have long worked with the courts and Judicial Council to develop procedures and rules to hasten the litigation process. What has been discovered is that there are certain cases for which ADR requirements or status conferences have the opposite effect and delay the resolution. These cases are ones in which there is no bona fide dispute or a party has a perceived economic advantage to foster delay. Unfortunately, the proposal that all courts should implement mediation programs for civil cases could have the reverse effect of decreasing the resolution of a significant number of limited civil cases.</p> <p>Survey data indicate that suit was commenced on only .485 percent of the collection accounts. This reflects the very selective process by which a collection agency evaluates claims for filing suit. In determining to file suit, a collection agency considers the time and expense. As status conferences, mediations, and other ADR requirements are added, the cost for the collection agency increases. If the costs which must be recovered are too great in light of the amount of debt from which the collection agency will get paid for its services, then the suit will not be filed. Since cases filed by California Association of Collectors members</p>	<p>The committee has revised section 32(b)(1) to further clarify that the criteria courts should establish for referring cases to ADR should include whether the parties are likely to benefit from use of the ADR process. Please note that this proposal will not require any court to implement a mediation program or require that any cases be referred to or participate in mediation. The Standards of Judicial Administration set out recommendations for the courts, they do not establish mandatory requirements for the courts. Even if a court chooses to follow this proposal's recommendation to implement a mediation program for civil cases, there is no requirement that such a court establish a program in which judges would order cases to mediation; many courts have implemented voluntary programs in which participation in mediation is at the option of the litigants. Whether courts implement a mandatory or voluntary mediation program, this proposal would encourage those courts to establish</p>

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				<p>alone represent approximately 50 percent of the total limited civil filings, if fewer of these cases are filed because of new ADR-related costs, the courts could lose a large amount of fee revenue.</p> <p>The expansion of ADR should be carefully crafted to direct only cases susceptible to such resolution into that process.</p> <p>Suggested modifications to section 32 include:</p> <p>(a) Trial Court should implement mediation programs for civil cases and exclude classes of cases within the Limited Civil Jurisdiction for which mediation is not appropriate as part of their core operations.</p> <p>(b) Exclude classes of cases within the Limited Civil Jurisdiction for which mediation and ADR are not appropriate and provide for those cases to promptly proceed to trial setting.</p>	<p>appropriate criteria for determining which cases to refer to mediation or any other ADR process, including, as indicated above, whether the parties are likely to benefit from use of the ADR process.</p>
9.	<p>Mr. Ira Spiro Chair, 2004-2005 The State Bar of California Committee on Alternative Dispute Resolution San Francisco</p>	AM	Y	<p>This proposal takes a positive step in encouraging trial courts to implement mediation programs for civil cases as part of their core operations. Requiring the formation of ADR Administrative Committees to oversee the courts' ADR programs is another positive step. In addition, we recommend that the courts be encouraged to hire an ADR coordinator or</p>	<p>No response needed.</p> <p>The committee agrees. This issue is addressed by rule 1580.3, which requires the presiding judge in each trial court to designate the clerk or executive officer, or another court</p>

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				<p>administrator whenever possible.</p> <p>We agree that courts should consider the training and experience of potential providers of ADR services to determine whether cases should be referred to them initially. We are doubtful, however, that the courts should be encouraged to evaluate “skills” because this is a much more subjective standard. Training and experience can be looked at quantitatively based upon hours of training, provider information, and numbers and types of cases. Skill is much more difficult to describe or determine, and may be assessed differently by different observers. The best assessment of skill is already contained in the considerations for continuing referrals which rely, in part, upon indicators of client satisfaction and settlement rate.</p>	<p>employee who is knowledgeable about ADR processes, to serve as ADR program administrator.</p> <p>The committee believes that a person’s skills as a neutral are an important factor in determining whether that person is likely to perform well as a neutral. A person can have participated in ADR training and yet lack certain ADR process skills. It is therefore appropriate for a court to separately consider a person’s ADR skills in deciding whether to refer cases to that person. There are a variety of ways that these skills can be evaluated, including performance-based testing (which is referenced in the current standard), peer review, interviews with those who have previously used the neutral’s services (see comments of Mr. John Toker below) and staff observation.</p>
10.	Mr. John Toker Mediation Program Administrator Court of Appeal, First Appellate District San Francisco	A	N	<p>I agree with the proposed changes.</p> <p>Re section 33(a), suggesting that courts should evaluate the skills of potential providers of ADR services—while an evaluation of skills is more subjective than an assessment of training and</p>	No response needed.

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Alternative Dispute Resolution(ADR): Recommendations About ADR Programs and Referrals to Dispute Resolution Neutrals  
(amend Cal. Stds. Jud. Admin., §§ 32 and 33; adopt § 32.1)

	Commentator	Position	Comment on behalf of group?	Comment	Proposed Committee Response
				<p>experience, it would be short-sighted for courts not to consider demonstrated abilities. Well-trained, experienced providers can lack the process skills to be effective in mediation. Applicants to serve as mediators for the First District’s mediation program are required to identify persons familiar with their mediation skills. Those persons are interviewed at length as to their knowledge of the applicant’s skills, including perceived strengths and weaknesses. An applicant’s reputation as an effective mediator also is considered. Finally, potential providers are observed for their skills in role play and other aspects of this court’s mediator training.</p> <p>As to section 33(b), concerning continuing referrals to mediators, the First District’s mediation program considers client satisfaction and settlement rates and provides three forms of continuing education.</p> <p>Criteria for including or retaining a neutral on a court’s ADR panel should not be set forth in mandatory state rules but should remain in the judicial administration standards for the guidance of the courts. The proposed amendments of section 33 well serve this purpose. In particular, since the standards are not mandatory, there appears to be no drawback in suggesting that courts should evaluate a</p>	

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Alternative Dispute Resolution(ADR): Recommendations About ADR Programs and Referrals to Dispute Resolution Neutrals  
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				<p>potential provider’s skills, as well as training and experience.</p> <p>Please note that this is my response alone and does not necessarily represent the views of the First District Court of Appeal.</p>	
11.	Mr. Dean Zipser President Orange County Bar Association Irvine	AM	Y	<p>Agree with proposed changes, only if modified.</p> <p>Comments: that section 33(a) should be amended to provide ADR Committees formed in section will evaluate neutrals, rather than making that evaluation solely the responsibility of the courts.</p>	<p>The committee does not recommend such an amendment. Standard 33 would not inhibit a court from performing this evaluation function through its ADR Committee. In fact, both rule 1580.1 and section 32.1 provides that such committees, if formed, are responsible for overseeing the court’s alternative dispute resolution programs for general civil cases. However, not all courts are required or may choose to form such committees. Therefore, some courts will need to perform this evaluation function in other ways.</p>