

### Invitation to Comment

Title	Alternative Dispute Resolution (ADR): Mediator’s Statement of Agreement or Nonagreement and Statistical Reports to Judicial Council (adopt Cal. Rules of Court rules 3.835 and 3.845; amend rule 3.895; repeal rule 3.897; and revise form ADR-100)
Summary	<p>Mediators are required to submit <i>Statement of Agreement or Nonagreement</i> (form ADR-100) to courts following the conclusion of mediations conducted under the Civil Action Mediation Program (CAMP) and under many local mediation programs. New rules 3.835 and 3.845 would make the use of form ADR-100 mandatory whenever a mediator is required to report to the court the status or result of the mediation of a general civil case or a small claims, unlawful detainer, or civil harassment proceeding. The amendments to rule 3.895 would allow courts to require the mediator to file form ADR-100 by a date earlier than 10 days after the conclusion of a CAMP mediation and would require mediators to file a supplemental form ADR-100 if a CAMP mediation has not concluded when the form is initially filed. The repeal of rule 3.897 would end a current requirement that courts submit quarterly statistical reports about CAMP mediations, including the information required on form ADR-100, to the Judicial Council. The revisions to form ADR-100 would, most significantly, delete current items specifying why a mediation did not occur, add items indicating the next session date and estimated completion dates of mediations that have not concluded, and clarify the descriptions of mediations that resulted in partial agreement.</p>
Source	Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair
Staff	Alan Wiener, 818-558-3051, alan.wiener@jud.ca.gov

#### Background

Code of Civil Procedure section 1775 et seq. establishes the Civil Action Mediation Program (CAMP), which is mandatory for the Superior Court of Los Angeles County and applies in other superior courts at the election of the presiding judge. (Code Civ. Proc., § 1775.2.) The CAMP statutes and the California Rules of Court require that mediators in cases assigned to CAMP mediation file *Statement of Agreement or Nonagreement* (form ADR-100) with the court within 10 days after the mediation is concluded. (See Code Civ. Proc., § 1775.9 and Cal. Rules of Ct., rule 3.895.)

At least 11 courts currently assign cases to mediation under the CAMP statutes and at least 9 courts require that mediators file form ADR-100 in civil cases that are assigned to mediation under programs established by local rules.<sup>1</sup> The form therefore appears to be the *de facto* “standard form” by which mediators inform courts of the outcome of court program mediations for civil actions (other than custody and visitation matters).

### **Summary of Proposal**

#### *Adopting rules 3.835 and 3.845*

This proposal would adopt rules 3.835 and 3.845 of the California Rules of Court to make the use of form ADR-100 mandatory whenever a mediator is required to submit a statement or report to the court concerning the status or result of the mediation of a general civil case or a small claims, unlawful detainer, or civil harassment proceeding. Rule 3.845 would also provide that form ADR-100 must not disclose information prohibited from disclosure by the mediation confidentiality provisions of Evidence Code section 1115 et seq.

The proposed rules would not require the filing of any report in mediation programs established by local rule but would require that form ADR-100 be used if a report concerning the status or outcome of the mediation is required by the court. The benefits of requiring the use of form ADR-100 for these purposes would include:

- Reducing uncertainty about the mediation programs and cases in which form ADR-100 must be filed, including uncertainty about whether there is a local form or procedure for mediators to inform the court about the status and results of mediation;
- Promoting consistency in the forms that California courts use for the same or similar purposes;
- Helping to ensure that the information that mediators submit to courts in all mediation programs is consistent with the mediation confidentiality statutes; and
- Promoting the availability of consistent data about the use and results of court-connected mediation programs for civil cases.

<sup>1</sup> Mediators were also required to file form ADR-100 after the conclusion of mediations conducted under legislatively mandated Early Mediation Pilot Programs, which five courts conducted from approximately 2000 through 2004.

### *Amending rule 3.895*

This proposal would also amend rule 3.895 of the California Rules of Court, which pertains to the filing of form ADR-100 in cases assigned to CAMP mediation only. The amendments would provide that:

- The mediator must file form ADR-100 earlier than 10 days after the conclusion of the mediation, if the court so directs;
- Form ADR-100 must advise the court of the status, as well as the result, of the mediation;
- If the mediation has not ended when form ADR-100 is initially filed, the mediator must file a supplemental form ADR-100 within 10 days after the mediation is concluded or by an earlier date that the court may set;
- The mediator must serve form ADR-100 on all parties, as well as file it with the court; and
- Form ADR-100 must not disclose the terms of any agreement or any other communications or conduct that occurred in the course of the mediation, except as allowed in Evidence Code sections 1115–1128.

### *Repealing rule 3.897*

Rule 3.897 of the California Rules of Court requires courts to submit statistical information to the Judicial Council, on a quarterly basis, on form ADR-100 and the *ADR Information Form* (form ADR-101) or in an electronic database that includes all of the information required on those forms. This rule was adopted to implement Code of Civil Procedure section 1775.14, which required the Judicial Council to collect information from the courts that apply the CAMP statutes and to report to the Legislature concerning ADR programs. This proposal would repeal rule 3.897 because the Judicial Council has submitted the required report to the Legislature.

### *Revising form ADR-100*

This proposal would revise form ADR-100, *Statement of Agreement or Nonagreement*. The most significant changes in the revised form would be:

- Specifying, in the introductory note, when the form must be filed and that the mediator must not disclose any confidential communications or conduct in the form.
- Adding a check box item for the mediator to specify if the mediation was not scheduled.

- Deleting current check box items for the mediator to specify whether the mediation did not take place because “[a] party who was ordered to appear at the mediation did not appear” or for an “[o]ther reason,” which mediators are asked to specify without disclosing any confidential information.
- Adding spaces for the mediator to provide the estimated completion date of the mediation and the next mediation session date, when the mediation has not concluded.
- Clarifying the items by which the mediator can indicate that a mediation resulted in partial agreement.
- Revising the proof of service to allow the server to conveniently indicate that form ADR-100 was served on the parties by personal delivery, mail, fax, or electronic delivery.

### **Comments Requested**

Comments are invited on all aspects of the proposed forms, and particularly on whether to retain or remove the check box items on current form ADR-100 that indicate that the mediation did not take place because a party who was ordered to appear did not appear or for another reason.

Attachments

Rules 3.835 and 3.845 of the California Rules of Court would be adopted; rule 3.895 would be amended; and rule 3.897 would be repealed, effective July 1, 2011, to read as follows:

1 Chapter 3. General Rules Relating to Mediation of Civil Cases

2  
3 Article 1. ~~[Reserved]~~ Procedures for All Court Mediation Programs

4  
5 Rule 3.835. Application

6  
7 The rules in this article apply to all court mediation programs for general civil  
8 cases and small claims, unlawful detainer, and civil harassment proceedings,  
9 unless otherwise specified.

10  
11 Rule 3.845. Form of Mediator Statements and Reports

12  
13 If a mediator is required to submit a statement or report to the court concerning the  
14 status or result of the mediation, the statement or report must be submitted on the  
15 Judicial Council *Statement of Agreement or Nonagreement* (form ADR-100). The  
16 *Statement of Agreement or Nonagreement* must not disclose the terms of any  
17 agreement or any other communications or conduct that occurred in the course of  
18 the mediation, except as allowed in Evidence Code sections 1115–1128.

19  
20  
21 Chapter 4. Civil Action Mediation Program Rules

22  
23  
24 Rule 3.895. Filing of statement of agreement or nonagreement by mediator

25  
26 Within 10 days after conclusion of the mediation, or by an earlier date that the  
27 court may set, the mediator must complete, serve on all parties, and file a  
28 statement on *Statement of Agreement or Nonagreement* (form ADR-100), advising  
29 the court of the status of the mediation and whether the mediation ended in full  
30 agreement, partial agreement, or nonagreement, ~~as to the entire case or as to~~  
31 ~~particular parties in the case.~~ If the mediation has not ended when the report is  
32 filed, the mediator must file a supplemental form ADR-100 within 10 days after  
33 the mediation is concluded or by another earlier date that the court may set. The  
34 *Statement of Agreement or Nonagreement* must not disclose the terms of any  
35 agreement or any other communications or conduct that occurred in the course of  
36 the mediation, except as allowed in Evidence Code sections 1115–1128.

1  
2 ~~Rule 3.897. Statistical information~~

3  
4 ~~(a) Quarterly information reports~~

5  
6 ~~Each court must submit quarterly to the Judicial Council pertinent~~  
7 ~~information on:~~

8  
9 ~~(1) The cost and time savings afforded by mediation;~~

10  
11 ~~(2) The effectiveness of mediation in resolving disputes;~~

12  
13 ~~(3) The number of cases referred to mediation;~~

14  
15 ~~(4) The time cases were in mediation; and~~

16  
17 ~~(5) Whether mediation ended in full agreement or nonagreement as to the~~  
18 ~~entire case or as to particular parties in the case.~~

19  
20 ~~(b) Submission of reports to the Judicial Council~~

21  
22 ~~The information required by this rule must be submitted to the Judicial~~  
23 ~~Council either on the *Statement of Agreement or Nonagreement* (form ADR-~~  
24 ~~100) and *ADR Information Form* (form ADR-101) or as an electronic~~  
25 ~~database that includes, at a minimum, all of the information required on these~~  
26 ~~forms. The format of any electronic database used to submit this information~~  
27 ~~must be approved by the Administrative Office of the Courts.~~

28  
29 ~~(c) Parties and mediators to supply information~~

30  
31 ~~Each court must require parties and mediators, as appropriate, to supply~~  
32 ~~pertinent information for the reports required under this rule.~~

33  
34 ~~(d) Alternative reporting method~~

35  
36 ~~On request, a court may report cases in mediation under the rules in this~~  
37 ~~chapter under the appropriate reporting methods for cases stayed for~~  
38 ~~contractual arbitration.~~

MEDIATOR (Name and Address):  TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____	<b>FOR COURT USE ONLY</b>  <b>Not approved by the Judicial Council</b>  Draft Rev. 3-09-10
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
CASE NAME:	
<b>STATEMENT OF AGREEMENT OR NONAGREEMENT</b>  <input type="checkbox"/> First <input type="checkbox"/> Supplemental	
<p><b>The mediator must complete, serve, and file this form:</b></p> <ul style="list-style-type: none"> <li>• <b>Within 10 days after conclusion of the mediation, or by the deadline set by the court, in all cases assigned to mediation under the Civil Action Mediation Program. (Code Civ. Proc., § 1775 et seq.)</b></li> <li>• <b>As required by the court in other mediation programs.</b></li> </ul> <p><b>The mediator must not disclose any settlement terms, confidential communications, or mediation conduct in this form. (Evid. Code, § 1115 et seq.)</b></p>	

1. I was appointed, assigned, or retained as the mediator in this case on (date):

2. The mediation (check one):

- a.  was not scheduled.
- b.  was scheduled but not held.
- c.  was held as follows:
- (1) Session dates (specify all):
- (2) Number of sessions:
- (3) Total length of sessions (hours):

3.  The mediation ended on (date):

- a.  in a full agreement. The case was resolved as to all parties.
- b.  in a partial agreement. (Check one):
- (1)  The case was resolved as to the following parties:
- (2)  Some issues were completely resolved, but all parties will remain in the case.
- c.  in nonagreement.

4.  The mediation has not yet ended. I submit this form to comply with the court's requirement to do so by a specified date. (Complete the items below and file a supplemental Statement of Agreement or Nonagreement within 10 days after the mediation ends.)

- a. The estimated completion date for the mediation is (date):
- b. The next mediation session is scheduled for (date):

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF MEDIATOR)

**PROOF OF SERVICE OF STATEMENT OF AGREEMENT OR NONAGREEMENT**

1. At the time of service I was over 18 years of age and **not a party to this action**.
2. My residence or business address is:
3.  The fax number or electronic service address from which I served the documents is *(complete if service was by fax or electronic service)*:
4. I served the **form ADR-100, Statement of Agreement or Nonagreement** on the person or persons below, as follows:

a. Name of person served	b. Manner of service <i>(specify personal, mail, fax, or electronic)</i>	c. Physical or mailing address, fax number, or electronic service address where person was served	d. Date of service	e. Time of service

5. The documents were served by the following means *(specify)*:
  - a.  **Where personal service is indicated in item 4.b.**, I personally delivered the documents to the persons for whom personal service is indicated, at the addresses listed in item 4.c. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office, or in a visible location in the office between the hours of 9 a.m. and 5 p.m. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of 8 a.m. and 6 p.m.
  - b.  **Where service by mail is indicated in item 4.b.**, I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 4.c. and *(specify one)*:
    - (1)  deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
    - (2)  placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident of or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state)*:
  - c.  **Where fax transmission is indicated in item 4.b.**, based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 4.c. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed, is attached.
  - d.  **Where electronic service is indicated in item 4.b.**, I caused the documents to be served on the persons at the electronic service addresses listed in item 4.c., in accordance with a court order or an agreement of the parties allowing electronic service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)

 \_\_\_\_\_  
 (SIGNATURE OF DECLARANT)

## Item SPR10-02 Response Form

**Title:** **Alternative Dispute Resolution (ADR): Mediator's Statement of Agreement or Nonagreement and Statistical Reports to Judicial Council** (adopt Cal. Rules of Court, rules 3.835 and 3.845; amend rule 3.895; repeal rule 3.897; and revise form ADR-100)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

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\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

**Internet:** <http://www.courtinfo.ca.gov/invitationstocomment/>

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Mail:** Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

**Fax:** (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010</b>
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*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*