

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIFTH APPELLATE DISTRICT

Order Modifying Revised Local Rule 2 in the Supplement to the California Rules of Court, Local Rules of the Courts of Appeal.

Miscellaneous Order 2011-2

BY THE COURT:

Effective today, the Court of Appeal, Fifth Appellate District, modifies Local Rule 2 “Mediation in Civil Appeals,” as follows:

The Court has established a Judicial Mediation Program to assist parties to resolve appellate disputes in civil cases the Court finds suitable.

(a) **Rule application:** This rule applies to all civil appeals except those under Welfare and Institutions Code sections 300, 601, and 602 and Family Code section 7802, appeals in conservatorship and guardianship matters, and appeals from original proceedings ancillary to a criminal prosecution.

(b) **Questionnaire:** When a notice of appeal in a civil case is filed in any case to which this rule applies, the Clerk will promptly mail to appellant and respondent the non-confidential Civil Appeal Case Screening Questionnaire. [Downloadable form available on the Court’s website <http://www.courts.ca.gov/5dca.htm>.] Within 10 calendar days after the Clerk mails the Civil Appeal Case Screening Questionnaire form, each party must complete, sign, serve and return the Questionnaire to the Court of Appeal.

The Questionnaire will assist the Court in selecting a case for mediation with a sitting justice of this Court. The Court will select a case promptly after the Questionnaire is submitted and before the parties have incurred the expense of record preparation and appellate briefing. The Court recognizes the parties are asked to prepare the Questionnaire very early in the appellate process and may not be able to identify all appellate contentions. The Court will not deem an omission to be a waiver or forfeiture of any claim on appeal.

Failure to timely return the Questionnaire on the appellant’s part ~~will~~may result in dismissal of the appeal, without prejudice to reinstatement on a showing of good cause, or in imposition of monetary sanctions pursuant to subdivision (e).

Failure to return the Questionnaire on the respondent's part ~~will~~may result in the appeal being considered for mediation suitability without input from the respondent, or in imposition of monetary sanctions pursuant to subdivision (e).

(c) Mediation/Settlement Process: (1) Effective upon the filing of any civil notice of appeal to which the rule applies, the provisions of rules 8.121, 8.124 and 8.216 of the California Rules of Court requiring designation of the record, payment of estimated costs for preparation of the record and submission of a proposed briefing schedule are suspended, pending the Court's decision to select or not select the civil appeal for mediation.

These rules do not prohibit the superior court from collecting the deposit required by Government Code section 68926.1 and by California Rules of Court, rule 8.100(b)(2).

(2) Within 14 calendar days after the Court receives the Civil Appeal Case Screening Questionnaires, it will notify the parties whether the Court has or has not selected the civil appeal for mediation. If a civil appeal is selected for mediation, the Court will notify the parties with the name and telephone number of the Justice mediator and a Court contact person, and three dates when the Justice is available for the mediation session. At the same time, the Court will furnish the Justice mediator copies of the Civil Appeal Case Screening Questionnaires. Within 14 calendar days after receipt of the dates the Justice mediator is available, the parties must advise the Court contact person of their scheduling preferences. The Court will promptly select the date for the mediation session and will notify the parties by telephone and in writing.

If a civil appeal is selected for mediation, suspension of rules 8.121, 8.124 and 8.216 of the California Rules of Court will remain in effect until mediation is complete.

If a civil appeal is not selected for mediation, the Court will notify the parties and the superior court, in writing, that the suspension of rules 8.121, 8.124, and 8.216 of the California Rules of Court is terminated. ~~Effective as of the date of this notice, the parties must comply with the requirements of rules 8.121, 8.124 and 8.216 of the California Rules of Court.~~ as if the notice of appeal was filed on the date specified in that notice.

If a civil appeal is not selected for mediation, the parties may thereafter submit a stipulation to mediation within the program. The Court will promptly decide whether or not to accept the case into the mediation program and will notify the parties of its decision.

(3) The Justice mediator may, for good cause, continue a mediation session to a date certain. The Justice may also continue the mediation from time to time to allow further opportunity for negotiation and agreement.

(4) The parties shall submit a CONFIDENTIAL Mediation Statement to the Court at least 7 calendar days before the scheduled mediation. The statement shall provide:

(A) The names of parties and their attorneys.

(B) A statement regarding the existence of any applicable insurance, and, if so, the identity of the carrier, the amount of the applicable insurance policy limits and the nature of any insurance coverage disputes/issues.

(C) A statement indicating whether or not a board, council or other committee must approve any settlement, and, if so, the identity of that body.

(D) The identification of any person not named as a party whose consent is necessary to achieve settlement.

(E) The dates and results of prior arbitration, mediation and most recent settlement discussions.

(F) The dates and amounts of any Code of Civil Procedure section 998 offers.

(G) A statement identifying and discussing in detail all facts and law pertinent to the issues of liability and damages involved in the case as to that party.

(H) An itemization of all economic and noneconomic damages claimed by the plaintiff.

(I) A description of any liens and their amounts.

(J) A statement whether there is any claim for recovery of attorney's fees, and, if so, the amount incurred to date.

(K) A statement of any additional information that might assist the Justice mediator.

(5) All parties and their counsel of record must attend all mediation sessions in person with full settlement authority. If a party is not an individual, then a party representative with full authority to settle all appeals and cross-appeals must attend all mediation sessions in person, in addition to counsel. If a party has potential insurance coverage applicable to any of the issues in dispute, a representative of each insurance carrier whose policy may apply also must attend all mediation sessions in person, with full settlement authority. Any exception to this requirement must be approved in writing by the Justice mediator. The Justice mediator may invite participation by any additional person or entity if the mediator concludes that such participation would facilitate mediation.

(6) If completion of mediation does not result in disposition of the appeal, the Court will immediately notify the parties and the superior court that suspension

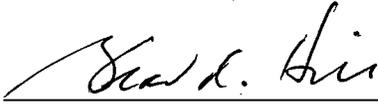
of rules 8.121, 8.124 and 8.216 of the California Rules of Court is terminated. ~~Effective as of the date of this notice, the parties must comply with the requirements of rules 8.121, 8.124 and 8.216 of the California Rules of Court, as if the notice of appeal was filed on the date specified in that notice.~~

(d) **Confidentiality:** Except as otherwise required by law, information disclosed to the Justice mediator, the parties, counsel, or any other participant in the mediation, or in the Mediation Statement, is confidential and must not be disclosed to anyone not participating in the program. The parties are required to sign a confidentiality agreement in a form designated by the Court.

(e) **Sanctions:** Monetary sanctions may be imposed following a noticed motion by a party seeking sanctions for failure to comply with the rules or on the Court's own motion.

(f) **Disqualification of mediator justice:** Any justice who participates in a mediation shall not thereafter participate in the consideration or disposition of the appeal on its merits.

Dated: November 10, 2011


Administrative Presiding Justice