

Invitation to Comment

Title	Alternative Dispute Resolution (ADR): <i>Order Appointing Referee</i> (revise form ADR-110)
Summary	<i>Order Appointing Referee</i> (form ADR-110) would be revised to provide a space to conveniently indicate the State Bar membership status of a referee who is a member of the California State Bar.
Source	Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair
Staff	Alan Wiener, 818-558-3051, alan.wiener@jud.ca.gov

Section 638 et seq. of the Code of Civil Procedure addresses references and trials by referees. Section 645.2 provides that the Judicial Council shall adopt rules of court necessary to implement those statutory provisions. The Judicial Council has adopted rules 3.900–3.932 of the California Rules of Court. The Judicial Council has also approved three forms to help litigants, courts, and referees fulfill the requirements of these statutes and rules: *Stipulation or Motion for Order Appointing Referee* (form ADR-109), *Order Appointing Referee* (form ADR-110), and *Report of Referee* (form ADR-111).

Rules 3.902(1) and 3.922(b) of the California Rules of Court require that orders appointing referees under Code of Civil Procedure sections 638 and 639, respectively, must include the name, business address, and telephone number of the referee and, if he or she is a member of the State Bar, the referee’s State Bar number. Rules 3.903 and 3.923 provide that a referee who is a former judicial officer must be an active or inactive member of the State Bar.

Item 3 of the *Order Appointing Referee* (form ADR-110) currently provides spaces for the referee’s name, business address, and telephone number. Item 3.d. currently provides a check box to indicate that the referee is “an active or inactive member of the State Bar” and includes a space for the referee’s State Bar number.

Court ADR program staff have suggested that it would be helpful if the *Order Appointing Referee* more clearly indicated the membership status of referees who are members of the California State Bar. Item 3.d. of the revised order form would provide check boxes to indicate whether such a referee’s membership status is active, inactive, or other. No other changes to the form are proposed.

Attachment

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY Not approved by the Judicial Council Draft Rev. 03-09-10
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	
ORDER APPOINTING REFEREE	CASE NUMBER: _____

THE COURT FINDS:

1. **Section 638 appointment.** A referee is properly appointed under Code of Civil Procedure section 638 because *(check one)*:
 - a. all parties to the action have agreed to the appointment of a referee under section 638.
 - b. the parties entered into a written contract or lease that provides that any controversy arising therefrom shall be heard by a referee.
2. **Section 639 appointment.** A referee is properly appointed under Code of Civil Procedure section 639 because *(check and complete a or b)*:
 - a. **Discovery reference.** It is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation. *(Code Civ. Proc., § 639(a)(5). State the exceptional circumstances specific to the particular case that require the discovery reference, below or in Attachment 2a.)*
 - (1) The trial of an issue of fact requires the examination of a long account. *(Code Civ. Proc., § 639(a)(1).)*
 - (2) The taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect. *(Code Civ. Proc., § 639(a)(2).)*
 - (3) A question of fact, other than on the pleadings, has arisen by motion or otherwise. *(Code Civ. Proc., § 639(a)(3).)*
 - (4) It is necessary for the information of the court in a special proceeding. *(Code Civ. Proc., § 639(a)(4).)*
 - b. **Other reference.** *(Check one or more of the following statutory grounds and state the reason for the appointment below or in Attachment 2b.)*
 - (1) The trial of an issue of fact requires the examination of a long account. *(Code Civ. Proc., § 639(a)(1).)*
 - (2) The taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect. *(Code Civ. Proc., § 639(a)(2).)*
 - (3) A question of fact, other than on the pleadings, has arisen by motion or otherwise. *(Code Civ. Proc., § 639(a)(3).)*
 - (4) It is necessary for the information of the court in a special proceeding. *(Code Civ. Proc., § 639(a)(4).)*
 - c. **Economic inability to pay.** *(Check one.)*
 - (1) No party has established an economic inability to pay a pro rata share of the referee's fees.
 - (2) One or more parties has established an economic inability to pay a pro rata share of the referee's fees and another party has agreed voluntarily to pay that additional share of the referee's fees. *(Complete item 5c(3)(b).)*
 - (a) The following party has established an economic inability to pay a pro rata share of the referee's fee *(name each)*:
 - (b) The following party has agreed voluntarily to pay an additional share of the referee's fee *(name each)*:
 - (3) The referee is being appointed at no cost to the parties.

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THE COURT ORDERS:

3. **Referee.** The following person is appointed as referee. *(The referee's signature indicating consent to serve and certification that he or she is aware of and will comply with the applicable provisions of canon 6 of the Code of Judicial Ethics and the California Rules of Court must be included in the proposed order appointing a referee under Code of Civil Procedure section 638 or attached to the order appointing a referee under section 639. See item 9.)*
- Name:
 - Business address:
 - Telephone number:
 - The referee is a member of the California State Bar. *(A proposed referee who is a former California judicial officer must be an active or inactive member of the State Bar.)*
 - The referee's State Bar number is:
 - The referee's State Bar membership status is *(check one)*:
 - Active
 - Inactive
 - Other *(specify)*:
4. **Scope and subject matter of reference.** The referee is appointed as follows *(check and complete a or b)*:
- Section 638 appointment.** The referee is appointed under Code of Civil Procedure section 638 *(check and complete one)*:
 - to hear and determine any or all of the issues in the action or proceeding, whether of fact or of law, and to report a statement of decision.
 - to ascertain the following facts necessary to enable the court to determine the action or proceeding *(state facts to be ascertained by referee below or in Attachment 4a)*:
 - Section 639 appointment.**
 - The following subject matter or matters are included in the reference *(describe the matter or matters the referee is ordered to consider below or in Attachment 4b)*:
 - Section 639 discovery reference.**
 - The discovery referee is appointed for *(check one)*:
 - The discovery matters identified in (1) above.
 - All discovery purposes in the action.
 - The referee is authorized to set the date, time, and place for all hearings determined by the referee to be necessary; direct the issuance of subpoenas; preside over hearings; take evidence; and rule on objections, motions, and other requests made during the course of the hearing.
5. **Referee's compensation.** *(Check and complete one of the following.)*
- Uncompensated referee.** The referee will not be privately compensated by the parties.
 - Compensation of section 638 referee.**
 - The referee's fees will be paid as agreed by the parties.
 - The parties have not agreed on the payment of the referee's fees and have requested that the matter be resolved by the court. The court orders that the referee's fees be paid as follows *(state the manner of payment determined by the court to be fair and reasonable below or in Attachment 5b)*:

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5. c. **Compensation of section 639 referee.**
- (1) The maximum hourly rate that the referee may charge is *(specify)*:
 - (2) The maximum number of hours for which the referee may charge is *(at the request of any party, state the maximum number of hours for which referee may charge)*:
 - (3) The court orders that the referee's fees be paid or apportioned as follows and reserves jurisdiction to modify this order *(state fair and reasonable apportionment of reference costs below or in Attachment 5c)*:
 - (a) All parties shall pay equal shares of the referee's fees.
 - (b) The parties shall pay equal shares of the referee's fees except that, based on the finding of economic inability set forth in item 2c(2):
 - (i) The following party is not required to pay any portion of the referee's fees *(name of each party excused from paying referee's fees)*:

 - (ii) The following party shall pay the pro rata share of the referee's of the party identified in (i), in addition to his or her own share of the referee's fees *(name of each party who has agreed to pay an additional share of the referee's fees)*:
 - (c) The referee's fees shall be paid as set forth in Attachment 5c.
 - (4) The court will subsequently determine how the referee's fees will be paid, under Code of Civil Procedure section 645.1(b). *(If the issue of economic hardship is raised before the services of a referee appointed under section 639 begin, the court must make a fair and reasonable apportionment of reference costs.)*
6. **Use of court facilities and court personnel.** Court facilities and court personnel *(check and complete one)*:
- a. may not be used without an order of the presiding judge. *(Court facilities and personnel may be used in proceedings before a privately compensated section 638 referee only upon a finding of the presiding judge that the use would further the interest of justice.)*
 - b. may be used as follows *(describe any authorized use of court facilities or court personnel if referee will not be privately compensated or is appointed under section 639)*:
7. **The reference will be conducted in a private facility.** The clerk must post notice that the following person may be contacted to arrange attendance at any proceeding that is open to the public *(complete all of the following)*:
- a. Name:
 - b. Address:
 - c. Telephone:
8. **Referee's report.**
- a. **Time of report.** The referee must report *(check and complete one)*:
 - (1) in writing to the court within 20 days after the hearing, if any, has been concluded and the matter submitted.
 - (2) as follows *(specify other time and manner of reporting directed by the court)*:
 - b. **Manner and contents of report.**
 - (1) **Section 638 referees.** The referee must report in the following manner agreed to by the parties and approved by the court *(describe)*:

 - (2) **Section 639 referees.** The referee must file with the court a report that includes a recommendation on the merits of any disputed issue, a statement of the hours spent and the total fees charged by the referee, and the referee's recommended allocation of payment. The referee must serve the report on all parties.
9. **Certification of referee.** The undersigned consents to serve as referee as provided above and certifies that he or she is aware of and will comply with the applicable provisions of canon 6 of the Code of Judicial Ethics and the California Rules of Court.

_____ (TYPE OR PRINT NAME OF PROPOSED REFEREE)		_____ (SIGNATURE OF PROPOSED REFEREE)
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Date: _____		_____ JUDICIAL OFFICER
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Item SPR10-03 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: _____

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

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

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

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010

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.