

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

W11-01

Title	Action Requested
Alternative Dispute Resolution (ADR): Mediator's Statement of Agreement or Nonagreement and Statistical Reports to Judicial Council	Review and submit comments by January 24, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rules 3.835 and 3.845; amend rule 3.895; repeal rule 3.897; revise form ADR-100	January 1, 2012
	Contact
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Proposed by
Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair

Summary

Mediators are currently required to submit a *Statement of Agreement or Nonagreement* (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 rule 3.845 would provide that, if 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, the statement or report must be submitted on form ADR-100. The amendments to rule 3.895 would allow courts to require the mediator to file form ADR-100 by a date other 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.

A similar proposal to revise form ADR-100 and adopt, amend, and repeal rules 3.835 and 3.845, 3.895, and 3.897, respectively, of the California Rules of Court was circulated for public comment in spring 2010. This revised proposal is being circulated for comment because the advisory committee made several changes to the proposal in light of the

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

earlier comments received, including deleting items on form ADR-100 that currently prompt the mediator to indicate the type of partial agreement reached in mediation.

Discussion

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 a *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 Court, 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.¹ 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).

Revising form ADR-100

This revised proposal would delete subitems 5.b.(1) and (2) of the current form, which prompt the mediator to indicate whether a partial agreement reached in mediation resolved the case as to specified parties or as to limited issues. These subitems were added to the form in 2002 at the suggestion of court alternative dispute resolution (ADR) staff and the proposal circulated for comment in spring 2010 sought to clarify these subitems, also in response to suggestions from court ADR staff.

Comments concerning the spring 2010 proposal suggested that the subitems for reporting the type of partial agreement be removed from the form instead of clarified. These comments expressed concerns that the subitems may potentially solicit or precipitate inquiries about information that is protected from disclosure by the mediation confidentiality statutes. (See Evid. Code, §§1115–1128.) Based on these comments, the current proposal would delete subitems 5.b.(1) and (2) from the revised form ADR-100.

This revised proposal would also retain the current subitems on the form that require reporting of why a mediation did not take place. Subitems 3.a.(1) and (2) of form ADR-100 currently provide spaces for the mediator to indicate that the mediation did not take

¹ 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.

place because a party who was ordered to appear at the mediation did not appear or for another reason, which mediators are prompted to specify without disclosing any confidential information. The proposed form that was circulated for comment in spring 2010 would have deleted these subitems. After consideration of the comments, the committee now proposes to retain and revise these subitems.

This revised proposal would also modify the instructions on form ADR-100 to highlight that courts may require that a local supplemental form be filed with ADR-100 and add a new check box item (item 5) the mediator to indicate that a supplemental local form is attached. This revision would reflect a change to proposed rule 3.845, which is discussed below.

Other changes in the revised form ADR-100, which are substantially similar to the earlier proposal, would include:

- 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 indicate that the mediation was not scheduled;
- 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; and
- Revising the optional proof of service on the back of the form to allow the server to conveniently indicate that form ADR-100 was served on the parties by personal delivery, mail, fax, or electronic delivery.²

Adopting rules 3.835 and 3.845

This proposal would adopt new rules 3.835 and 3.845 in a new article (article 1) of chapter 3 of title 3 of the California Rules of Court, which would set forth procedures for all trial court mediation programs for general civil cases. Together, these two new rules would provide that, if a mediator is required to submit a statement or report to the court concerning the status or result of the mediation in a general civil case, the statement or report must be submitted on form ADR-100.³ Rule 3.845 would also provide that these

² Because of the large number of changes being proposed to this form, the proposed changes are not highlighted with shading on the revised version of the form attached to this invitation to comment.

³ 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.

forms must not disclose information prohibited from disclosure by the mediation confidentiality provisions of Evidence Code section 1115 et seq. These rules are intended to promote the availability of consistent data about the use and results of court-connected mediation programs for general civil cases and to help ensure that the information mediators submit to courts in these programs is consistent with the mediation confidentiality statutes.

Rules 3.835 and 3.845 of the current proposal each reflect revisions in response to the comments on the earlier proposal. Under the earlier proposal, rule 3.835 would have provided that the rules in proposed new article 1 apply to all court mediation programs for general civil cases *and small claims, unlawful detainer, and civil harassment proceedings*, unless otherwise specified. As currently proposed, rule 3.835 would make the provisions of article 1 applicable only to mediation programs for general civil cases, which, as defined in rule 1.6 of the California Rules of Court, does not include small claims, unlawful detainer, and civil harassment proceedings. The committee made this change in the proposal because it agreed with a comment that the requirements in rule 3.845 would be difficult to implement in mediation programs that are conducted in court on the day of the hearing, as small claims, unlawful detainer, and civil harassment mediation programs commonly are. The committee also concluded it would be more appropriate to consider developing rules and forms specifically for small claims, unlawful detainer, and civil harassment mediation programs rather than to extend the application of rules and forms that were designed for mediation programs for general civil cases to these proceedings.

This revised proposal also modifies rule 3.845 to allow courts to require, by local rule, that the mediator attach a supplemental local form to ADR-100, provided the supplemental form does not request any information that mediators are prohibited from disclosing under the mediation confidentiality provisions of Evidence Code sections 1115–1128. This change was made in response to a comment that some courts ask mediators to report information that helps courts evaluate their mediation programs but that is not requested on form ADR-100.

Amending rule 3.895

This proposal would 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, to give courts more flexibility in setting the deadlines for mediators to report the results of CAMP mediations. Rule 3.895 currently requires the mediator to file form ADR-100 within 10 days after conclusion of the mediation. The amended rule would require mediators to file form ADR-100 within 10 days after the conclusion of the mediation *or by another date set by the court*.

Other amendments to current rule 3.895, which are substantially the same as the previous proposal, would provide that:

- 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 another date set by the court;
- The mediator must serve form ADR-100 on all parties, as well as file it with the court; and
- Form ADR-100 and any supplemental local form 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, like the earlier proposal, would repeal rule 3.897 because the Judicial Council has submitted the required report to the Legislature.

Effective date

The proposed effective date of the changes in this revised proposal is January 1, 2012. This proposed effective date is designed to provide those courts that wish to adopt a local rule requiring mediators to file a supplemental local form with ADR-100 with additional time to develop and adopt such a rule and form.

Comments requested

The committee welcomes comments concerning all aspects of this proposal, but would particularly appreciate comments concerning the following questions:

1. Should the California Rules of Court provide that courts may, by local rule, require mediators to attach a supplemental form to ADR-100 provided the supplemental local form does not request any information that mediators are prohibited from disclosing under the mediation confidentiality provisions of Evidence Code sections 1115–1128?
2. If so, should the instructions on form ADR-100 indicate that the mediator may be required to attach a supplemental local form and should form ADR-100 include a check box for the mediator to indicate that a required supplemental local form is attached?

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 January 1, 2012, 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 cases, as
8 defined in rule 1.6, unless otherwise specified.

9
10 **Rule 3.845. Form of Mediator Statements and Reports**

11
12 If a mediator is required to submit a statement or report to the court concerning the status
13 or result of the mediation, the statement or report must be submitted on the Judicial
14 Council Statement of Agreement or Nonagreement (form ADR-100). A court may
15 require by local rule that the mediator attach a supplemental form to ADR-100 that
16 provides additional information, provided the supplemental form does not request any
17 information that mediators are prohibited from disclosing under Evidence Code sections
18 1115–1128. The mediator’s completed form ADR-100 and any supplemental local form
19 must not disclose the terms of any agreement or any other communications or conduct
20 that occurred in the course of the mediation, except as allowed in Evidence Code sections
21 1115–1128.

22
23
24 **Chapter 4. Civil Action Mediation Program Rules**

25
26 **Rule 3.895. Filing of *Statement of Agreement or Nonagreement* by mediator**

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

1 **Rule 3.897. Statistical information**

2
3 **(a) — Quarterly information reports**

4
5 Each court must submit quarterly to the Judicial Council pertinent information on:

6
7 (1) — The cost and time savings afforded by mediation;

8
9 (2) — The effectiveness of mediation in resolving disputes;

10
11 (3) — The number of cases referred to mediation;

12
13 (4) — The time cases were in mediation; and

14
15 (5) — Whether mediation ended in full agreement or nonagreement as to the entire
16 case or as to particular parties in the case.

17
18 **(b) — Submission of reports to the Judicial Council**

19
20 The information required by this rule must be submitted to the Judicial Council
21 either on the *Statement of Agreement or Nonagreement* (form ADR-100) and *ADR*
22 *Information Form* (form ADR-101) or as an electronic database that includes, at a
23 minimum, all of the information required on these forms. The format of any
24 electronic database used to submit this information must be approved by the
25 Administrative Office of the Courts.

26
27 **(c) — Parties and mediators to supply information**

28
29 Each court must require parties and mediators, as appropriate, to supply pertinent
30 information for the reports required under this rule.

31
32 **(d) — Alternative reporting method**

33
34 On request, a court may report cases in mediation under the rules in this chapter
35 under the appropriate reporting methods for cases stayed for contractual arbitration.

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 *Statement of Agreement or Nonagreement* (form ADR-100) 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 *(check and complete all that apply)*:
 - 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. The email was not returned for invalid email address or another transmission problem.

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 W11-01 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., Monday, January 24, 2011
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