

WHO SAYS COURT-CONNECTED MEDIATION IS LEGAL?

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INTRODUCTION

Does the Superior Court of California have inherent authority to refer civil cases to a mediation program? Well, yes and no.

Broad authority exists for the court to manage its calendar in an efficient manner to eliminate unnecessary delays. In particular, mediation is specifically authorized to help achieve these and other goals. Further, the court is required to take appropriate actions to assure litigants are prepared to proceed. The use of mediation is widely recognized as an important tool in preparing for the disposition of civil cases in an efficient, effective, and fair manner.

Also, with regard to certain neighborhood public enforcement cases, any case where a party is a public entity may be submitted by the court to mediation.

Thus, the court does have inherent authority to refer civil cases to mediation.

But, limitations on this authority include a prohibition on requiring parties to attend a “private” mediation and to pay the costs. Also, in general, no referral to mediation can occur prior to Case Management Conference.

References for the court’s authority to refer civil cases to mediation include the following.

CALIFORNIA RULES OF COURT

The Superior Court, through the California Rules of Court, has inherent authority to manage its operations.

“Superior courts should implement mediation programs for civil cases as part of their core operations” (Cal. Rules of Court, Standards of Judicial Administration, Std. 10.70(a)) and “promote the development, implementation, maintenance, and expansion of successful mediation and other alternative dispute resolution (ADR) programs” (Cal. Rules of Court, Standards of Judicial Administration, Std. 10.70(b)).

Specifically, the court is charged to “secure the fair, timely, and efficient disposition of every civil case” (Cal. Rules of Court, rule 3.700). Further, “it is the responsibility of judges to achieve a just and effective resolution of each general civil case through active management and supervision of the pace of litigation” (Cal. Rules of Court, rule 3.713(c)). The purpose of Superior Court management “enables the trial courts to operate in an efficient, effective, and accountable manner” (Cal. Rules of Court, rule 10.601(a)(3)), with the goal to “manage the day-to-day operations with sufficient flexibility to meet the needs of those served by the courts” (Cal. Rules of Court, rule

10.601(b)(1)), and to “develop and implement processes and procedures to improve court operations and responsiveness to the public” (Cal. Rules of Court, rule 10.601(b)(6)).

The general principle of case management and delay reduction is the “elimination of all unnecessary delays” (Cal. Rules of Court, Standards of Judicial Administration, Std.2.1 (a)). Further, the general principles of trial management standards require that “judges should take appropriate action to ensure that all parties are prepared to proceed” (Cal. Rules of Court, Standards of Judicial Administration, Std.2.20 (a)).

It has been well documented through numerous court-sponsored mediation programs that the use of mediation is effective in meeting all of these objectives, including reductions in trial rates, case disposition time, and the courts’ workload, as well as increases in litigant satisfaction with the court’s services and decreases in litigant costs. (Jud. Council of Cal., Admin. Off. of Cts., Rep. on Evaluation of the Early Mediation Pilot Programs, p. xix.)

The court has the authority to “decide whether to assign the case to an alternative dispute resolution process” (Cal. Rules of Court, rule 3.722(a)), or to decide if “the case should be referred to . . . any other form of alternative dispute resolution (ADR) process (Cal. Rules of Court, rule 3.727(6)). A case management order may include “referral of the case to judicial arbitration or other dispute resolution process.” (Cal. Rules of Court, rule 3.728(1)). Although mediation requires “voluntary participation and self-determination” (Cal. Rules of Court, rule 3.853), “the court may order participants to attend mediation” (Advisory Committee Comment, California Rules of Court, rule 3.853).

TRIAL COURT DELAY REDUCTION ACT

These same objectives are also delineated in the Trial Court Delay Reduction Act, Government Code sections 68600 et seq.

Specifically, “judges shall have the responsibility to eliminate delay in the progress and ultimate resolution of litigation, to assume and maintain control over the pace of litigation, to actively manage the processing of litigation from commencement to disposition, and to compel attorneys and litigants to prepare and resolve all litigation without delay” (Gov. Code sec. 68607).

Judges shall also “establish procedures for early identification of cases within the program which may be protracted and for giving those cases special administrative and judicial attention as appropriate, including special assignment” (Gov. Code sec. 68607 (c)), and to “establish procedures for early identification and timely and appropriate handling of cases within the program which may be amenable to settlement or other alternative dispute techniques” (Gov. Code sec. 68607(d)).

Further, “judges are encouraged to impose sanctions to achieve the purposes of this article” (Gov. Code sec. 68608(b)).

However, no status conference, or similar event ... may be required to be conducted sooner than 30 days after service of the first responsive pleadings” (Gov. Code sec. 68616(e)).

MEDIATION PILOT PROGRAM

These principles are further confirmed by the Legislature in Code of Civil Procedure sections 1775 et seq.

There, the Legislature found that “alternative processes for reducing cost, time, and stress of dispute resolution, such as mediation, have been effectively used in California and elsewhere It is in the public interest for mediation to be encouraged and used where appropriate by the courts.” (Code Civ. Proc. sec. 1775(c)).

In furtherance of this finding, “Courts should be able to refer cases to appropriate dispute resolution processes such as judicial arbitration and mediation as an alternative to trial” (Code Civ. Proc. sec. 1775(e)). “The purpose of this title is to encourage the use of court-annexed alternative dispute resolution methods in general, and mediation in particular” (Code Civ. Proc. sec. 1775(f)). “All at-issue civil actions in which (judicial) arbitration is otherwise required pursuant to Section 1141.11 ... may be submitted to mediation” (Code Civ. Proc. sec. 1775.3(a)).

Further, “any civil action otherwise within the scope of this title in which a party to the action is a public agency or public entity may be submitted to mediation” (Code Civ. Proc. sec. 1775.3(b)).

A court of any county, at the option of the presiding judge, may elect whether or not to apply this title” (Code Civ. Proc. sec. 1775.2(b)).

CASE LAW

The court’s authority is not, however, without limitations. Although there is authority for the court to refer cases to mediation, “a trial court exceeds its authority by mandating that the parties attend and pay for private mediation over their objection” (*Jeld-Wen v. Superior Court* (2007) 146 Cal.App.4th 536).

CONCLUSION

Mediation, by its nature, is a voluntary process. However, the court does have authority to refer certain civil cases to mediation. The systems design of a dispute resolution program incorporating court rules and procedures, the identification of appropriate referrals, the timing of the referral and mediation, and the needs of the parties is the key to implementing an effective mediation program.

BIO

Ed Johnson is an attorney-mediator, specializing in the systems design of court-connected and community-based mediation programs. He has been a mediation consultant to the California Superior Court for the Counties of Fresno, Monterey, Inyo, and Mariposa, and is currently developing a court-community mediation collaborative for the Tuolumne Superior Court. Mr. Johnson is a mediation panel member for the U.S. Institute for Environmental Conflict Resolution, and the founding executive director for the Foothills Community Mediation Center operating out of Mariposa, CA. He can be reached at edjohnson@sierratel.com, 559-760-7659, or visit www.mediate.com/EJohnson.