

# AGENCY ALTERNATIVES TO FORMAL HEARINGS

## Alternative Dispute Resolution Statutes and Regulations

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# Alternative Dispute Resolution Authorizing Statutes

## *Government Code, Title 2, Division 3, Part 1, Article 5*

### **§ 11420.10. Mediation or arbitration**

(a) An agency, with the consent of all the parties, may refer a dispute that is the subject of an adjudicative proceeding for resolution by any of the following means:

(1) Mediation by a neutral mediator.

(2) Binding arbitration by a neutral arbitrator. An award in a binding arbitration is subject to judicial review in the manner provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

(3) Nonbinding arbitration by a neutral arbitrator. The arbitrator's decision in a nonbinding arbitration is final unless within 30 days after the arbitrator delivers the award to the agency head a party requests that the agency conduct a de novo adjudicative proceeding. If the decision in the de novo proceeding is not more favorable to the party electing the de novo proceeding, the party shall pay the costs and fees specified in Section 1141.21 of the Code of Civil Procedure insofar as applicable in the adjudicative proceeding.

(b) If another statute requires mediation or arbitration in an adjudicative proceeding, that statute prevails over this section.

(c) This section does not apply in an adjudicative proceeding to the extent an agency by regulation provides that this section is not applicable in a proceeding of the agency.

**HISTORY:**

Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.

**Law Revision Commission Comments:**

1995\_The introductory portion of subdivision (a) of § 11420.10 makes clear that alternative dispute resolution is not mandatory, but may only be used if all parties consent. The relative cost of alternative dispute resolution is a factor an agency should consider in determining whether to refer a dispute for alternative resolution proceedings.

Under subdivision (a)(1), the mediator may use any mediation technique.

Subdivision (a)(2) authorizes delegation of the agency's authority to decide, with the consent of all parties.

Subdivision (a)(3) parallels the procedure applicable in judicial arbitration. See Code Civ. Proc. 1141.20-1141.21. The costs and fees specified in § 1141.21 for a civil proceeding may not all be applicable in an adjudicative proceeding, but subdivision (a)(3) requires such costs and fees to be assessed to the extent they are applicable. Subdivision (b) recognizes that some statutes require alternative dispute resolution techniques.

If there is no statute requiring the agency to use mediation or arbitration, this section applies unless the agency makes it inapplicable by regulation under subdivision (c).

### **§ 11420.20. Model regulations for alternative dispute resolution**

(a) The Office of Administrative Hearings shall adopt and promulgate model regulations for alternative dispute resolution under this article. The model regulations govern alternative dispute resolution by an agency under this article,

except to the extent the agency by regulation provides inconsistent rules or provides that the model regulations are not applicable in a proceeding of the agency.

(b) The model regulations shall include provisions for selection and compensation of a mediator or arbitrator, qualifications of a mediator or arbitrator, and confidentiality of the mediation or arbitration proceeding.

*HISTORY:*

Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.

Law Revision Commission Comments:

1995\_ Section 11420.20 provides for regulations to govern the detail of alternative dispute resolution proceedings. In addition to the matters listed in subdivision (b), the regulations may address other issues such as cost allocation, discovery, and enforcement and review of alternative dispute resolutions.

This section does not require each agency to adopt regulations. The model regulations developed by the Office of Administrative Hearings will automatically govern mediation or arbitration for an agency, unless the agency provides otherwise. The agency may choose to preclude mediation or arbitration altogether. Section 11420.10 (ADR authorized). The Office of Administrative Hearings could maintain a roster of neutral mediators and arbitrators who are available for alternative dispute settlement in all administrative agencies.

### **§ 11420.30. Protection of communications**

Notwithstanding any other provision of law, a communication made in alternative dispute resolution under this article is protected to the following extent:

(a) Anything said, any admission made, and any document prepared in the course of, or pursuant to, mediation under this article is a confidential communication, and a party to the mediation has a privilege to refuse to disclose and to prevent another from disclosing the communication, whether in an adjudicative proceeding, civil action, or other proceeding. This subdivision does not limit the admissibility of evidence if all parties to the proceedings consent.

(b) No reference to nonbinding arbitration proceedings, a decision of the arbitrator that is rejected by a party's request for a de novo adjudicative proceeding, the evidence produced, or any other aspect of the arbitration may be made in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose.

(c) No mediator or arbitrator is competent to testify in a subsequent administrative or civil proceeding as to any statement, conduct, decision, or order occurring at, or in conjunction with, the alternative dispute resolution.

(d) Evidence otherwise admissible outside of alternative dispute resolution under this article is not inadmissible or protected from disclosure solely by reason of its introduction or use in alternative dispute resolution under this article.

*HISTORY:*

Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.

Law Revision Commission Comments:

1995\_ The policy of Section 11420.30 is not to restrict access to information but to encourage dispute resolution. Subdivision (a) is analogous to Evidence Code Section 1152.5(a) (mediation). Subdivision (b) is drawn from Code of Civil Procedure Section 1141.25 (arbitration) and California Rules of Court 1616(c) (arbitration). Subdivision (b) protects confidentiality of a proposed decision in nonbinding arbitration that is rejected by a party; it does not protect a decision accepted by the parties in a nonbinding arbitration, nor does it protect an award in a binding arbitration. See also Section 11425.20 (open hearings).

Subdivision (c) is drawn from Evidence Code Section 703.5.

Subdivision (d) is drawn from Evidence Code Section 1152.5(a)(6).

# California Code of Regulations

Title 1. General Provisions  
Division 2. Office of Administrative Hearings  
Chapter 3. Agency Alternatives to Formal Hearings

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## Articles 1 - 3. Model Regulations for Alternative Dispute Resolution

### *Article 1. General Provisions*

#### **§ 1200. Scope**

- (a) This chapter applies to disputes which are the subject of adjudicative proceedings.
- (b) These regulations shall be effective July 1, 1997, and shall be construed to encourage the fair and expeditious resolution of disputes.
- (c) If an agency by regulation provides inconsistent rules or provides that these regulations are not applicable to that agency's proceedings, these regulations will not govern.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Sections 11420.10 and 11420.20, Government Code.

#### **§ 1202. Purpose**

The purpose of Alternative Dispute Resolution (ADR) is to provide a less expensive and more satisfying alternative to administrative adjudication without diminishing the quality of justice or the parties' right to a hearing.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Sections 11420.10 and 11420.20, Government Code.

#### **§ 1204. Definitions**

- (a) "Agency or Agencies" refers to any agency subject to § 11410.20 of the Government Code.
- (b) "Alternative dispute resolution" or "ADR" is a method, procedure, or technique used in lieu of traditional or formal adjudication to voluntarily resolve a dispute. As used in this chapter, ADR refers to mediation, non-binding arbitration, and binding arbitration.
- (c) "Neutral" refers to an impartial third party who functions as a mediator or an arbitrator.

(d) "OAH" refers to the Office of Administrative Hearings in Sacramento which is the organization responsible for the administration of ADR under these regulations.

(e) Unless otherwise specified, all section references are to this Chapter, Title 1, California Code of Regulations, Sections 1200 et seq.

AUTHORITY: Section 11420.20, Government Code.

REFERENCE: Sections 11410.20, 11420.10 and 11420.20, Government Code.

## **§ 1206. Referral to ADR**

### **(a) *Request by Party Other than Agency***

Any party, other than the Agency, interested in resolving a dispute may request ADR by applying to an Agency's Executive Officer, Director, or Agency designee. The application shall contain:

- (1) an election to mediate, to arbitrate, or to use either or both procedures; and
- (2) the names, addresses, telephone and fax numbers or other appropriate electronic communication addresses or numbers of all parties to the dispute and those who represent them, if known.

Filing an application constitutes consent to Agency referral of the dispute to ADR. Filing an application shall not stay any pending proceeding and shall have no effect on any procedural or substantive right of any party to the dispute, except as provided below.

### **(b) *Request by Agency***

Any Agency may refer a matter to ADR with the written consent of each party to the dispute.

### **(c) *Agency Review of Application***

Within ten working days of the receipt of an application from a party requesting ADR, the Executive Officer, Director, or designee of the Agency shall review the application to determine if the dispute is suitable for ADR. If it is determined that the dispute is suitable for ADR, the Agency shall notify each party and shall file a request for ADR with the OAH. If the Agency determines that the dispute is not suitable for ADR, the Agency shall notify each party.

### **(d) *Lack of Consent Not Reported***

A lack of consent by any party or party's representative to one or more ADR processes shall not be reported to any judge, hearing officer or presiding officer to whom the matter is assigned.

### **(e) *Filing with the OAH***

The OAH may establish filing fees or other necessary fees to cover administrative costs. The filing of a request for ADR with the OAH shall not stay any pending proceeding and shall have no effect on any procedural or substantive right of any party to a dispute unless each party agrees otherwise in writing.

AUTHORITY: Section 11420.20, Government Code.

REFERENCE: Sections 11420.10, 11420.20 and 11420.30, Government Code.

## **§ 1208. Standards of Conduct for Neutrals**

Any Neutral participating in mediation or arbitration pursuant to these regulations shall comply in good faith with these standards. A Neutral shall indicate compliance on the Neutral's résumé by appending the Neutral's signature to the sentence "I agree to comply with the California statutes and regulations governing ADR, including Government Code Sections 11420.10 through 11420.30 and regulations 1 CCR 1200 et seq. (Title 1, Division 2, Chapter 3)."

### **(a) Qualifications of a Neutral**

Neutrals shall adhere to the highest standards of integrity, impartiality, and professional competence in rendering their professional service.

(1) *Impartiality & Full Disclosure.* A Neutral shall maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action, and a commitment to serve equally the interests of all participants. No person shall serve as a Neutral in any dispute in which that person, that person's spouse, or immediate family has any financial or personal interest in the result of the mediation or arbitration, except by written consent of all parties. Upon accepting an appointment, the prospective Neutral shall disclose in writing any circumstance likely to create an appearance or presumption of bias or prevent a prompt meeting with the parties.

(2) *Competence.* A Neutral shall decline appointment, withdraw, or request technical assistance when the Neutral decides that a case is beyond the Neutral's competence. A Neutral shall maintain professional competence in mediation and/or arbitration skills including at a minimum:

(A) staying informed of and abiding by laws and regulations relevant to the practice of mediation and/or arbitration;

(B) regularly engaging in educational activities promoting professional growth.

Nothing in this section shall replace, eliminate, or render inapplicable relevant ethical standards, not in conflict with these rules, which may be imposed upon any Neutral by virtue of the Neutral's professional license or association.

### **(b) Responsibilities of a Neutral**

A Neutral shall be truthful in advertising and soliciting ADR services. A Neutral shall make only accurate statements about the mediation and/or arbitration process, its costs and benefits, and the Neutral's qualifications. A Neutral shall be candid, accurate, and fully responsive concerning the Neutral's qualifications, availability, and all other pertinent matters. Upon request, a Neutral shall disclose the extent and nature of the Neutral's training and experience.

### **(c) Fees**

A written agreement regarding payment of mediation or arbitration fees and related costs shall be entered into by the mediator and the parties before commencement of the mediation or arbitration. Parties shall share fees and costs equally unless they agree otherwise. When setting fees, the Neutral shall ensure that they are explicit, fair, and commensurate with the service to be performed. The Neutral shall maintain adequate records to support charges for services and expenses and shall make an accounting to the parties upon

request. A Neutral shall not charge contingent fees or base fees upon the outcome of the mediation or arbitration.

AUTHORITY: Section 11420.20, Government Code.

REFERENCE: Sections 11420.10 and 11420.20, Government Code.

## **§ 1210. Résumés of Neutrals**

### **(a) Content of File**

The OAH shall maintain a file containing the names and résumés of mediators and arbitrators. Information about Neutrals shall be kept on file for a minimum of one year unless the Neutral requests in writing to be removed. Neutrals may update their résumés not more than twice in a 12-month period but must update them annually to remain on file. The file shall contain a disclaimer stating "Inclusion of a résumé in this file does not constitute an endorsement of a Neutral, nor should negative implications be drawn from the fact that a Neutral is not included in this file. Parties are not obligated to choose a Neutral from this file."

### **(b) Content of Résumés**

Résumés shall be submitted on ADR-Résumé2, revision date 8/97, available from the OAH and from the OAH Web Page (<http://www.dgs.ca.gov/oah>). Résumés shall include, as a minimum, qualifications, degrees, experience, areas of specialty, and fees charged. Each résumé shall also contain a signed and dated statement of compliance with these regulations as specified in Section 1208. Résumés shall not be advertisements but factual information pages. The fee schedule specified in the résumé shall be the fees charged for the duration of any mediation or arbitration agreed to while the résumé is on file.

### **(c) Removal of Résumés for Cause**

If a neutral does not comply with Regulation 1208, the OAH ADR administrator may remove the neutral's résumé from the file, provided that the administrator gives the neutral written notice of the intended action and affords the neutral a 10-day opportunity to respond in writing.

### **(d) Fees**

The OAH may establish filing fees or other necessary fees to cover administrative costs of maintaining the file. The amount of such fee, if any, will be available from the OAH with the résumé forms.

AUTHORITY: Section 11420.20, Government Code.

REFERENCE: Section 11420.20, Government Code.

HISTORY: Non-substantive change (date of form amended), effective upon filing, 10-16-97.

## **Article 2. Mediation**

**§ 1212. Mediation; Definition**

Mediation refers to a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is a voluntary, informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable written agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring resolution alternatives.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Sections 11420.10 and 11420.20, Government Code.

**§ 1214. Initiation of Mediation**

Any party to a dispute may initiate mediation by filing a request for mediation as specified in Section 1206.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Sections 11420.10 and 11420.20, Government Code.

**§ 1216. Appointment of Mediator**

The parties may agree on a mediator to assist them in the resolution of their dispute. On occasion, parties may not be able to agree on a mediator. In such a situation, each party may select 5 names either from the résumés on file with the OAH or from another source. If a mediator is chosen from another source, the party selecting that mediator shall provide OAH with a résumé of that mediator. Of the names submitted to the OAH by the parties, a complete list shall be compiled and sent to the parties by the OAH. Each party may strike 3 names and return the list to the OAH within 10 calendar days. If the OAH has not received notice within this period to strike names, the OAH will assume that all names are equally acceptable. On the next working day after the 10-day period, or as soon thereafter as is practicable, the OAH will choose a mediator at random from the remaining list of names. The OAH will then notify the chosen mediator and the parties of the mediator's selection. The chosen mediator shall be sent an acceptance form to sign and return, in which the mediator must agree to abide by the applicable statutes and regulations, as described in Regulation section 1208. The acceptance form shall also state that the mediator foresees no difficulty in completing the mediation according to the schedule set out in these regulations. If, at any time before the end of the 10-day period, the parties agree on a mediator and notify the OAH in writing, that agreed-upon mediator shall be appointed.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Section 11420.20, Government Code.

**§ 1218. Cost of Mediation**

Compensation of the mediator and any other associated costs shall be the responsibility of the parties to the mediation. An agreement regarding compensation and costs shall be reached between the mediator and the parties before the mediation is commenced and shall be memorialized in writing.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Section 11420.20, Government Code.

**§ 1220. Date, Time and Place of Mediation**

In consultation with the parties, the mediator shall fix the date, time and place of each mediation session. The mediation shall be held at any convenient location agreeable to the parties and the mediator. Mediation shall be completed within 60 days of the appointment of the mediator. Statutory, regulatory, and other timelines related to the dispute itself will not be affected unless by stipulation of the parties.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Section 11420.20, Government Code.

**§ 1222. Attendance at Mediation**

All involved parties shall attend the mediation session(s). A party other than a natural person (*e.g.*, a corporate or governmental entity or association) satisfies this attendance requirement by sending a representative familiar with the facts of the case, and that person shall have authority to negotiate and to effectively recommend settlement to the governmental or corporate entity involved. Any party to the mediation may have the assistance of an attorney or other representative. Other persons may attend only with the permission of all parties and with the consent of the mediator.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Section 11420.20, Government Code.

**§ 1224. Statements Before Mediation**

The mediator will determine the manner in which the issues in dispute shall be framed and addressed. The parties should expect that the mediator will request a premediation statement outlining facts, issues, and perspectives in advance of the mediation session. At the discretion of the mediator, such statements or other information may be mutually exchanged by the parties.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Section 11420.20, Government Code.

**§ 1226. Confidentiality**

Confidentiality shall be governed by Government Code Section 11420.30, and Evidence Code Sections 703.5, 1152.5, and 1152.6.

AUTHORITY: Section 11420.20, Government Code.

REFERENCE: Sections 703.5, 1152.5, 1152.6 Evidence Code; Section 11420.30, Government Code.

**§ 1228. Agreements**

Agreements resolving the mediated dispute shall be written, signed, and dated by the parties or an authorized representative of the party or parties.

AUTHORITY: Section 11420.20, Government Code.

REFERENCE: Section 11420.20, Government Code.

**§ 1230. Termination of Mediation**

Any party or the Neutral may terminate the mediation at any time by written notice to the mediator and other parties. If any party or the Neutral terminates the mediation, or if mediation does not result in resolution, the parties shall resume the same status as before mediation and shall proceed as if mediation had not taken place.

AUTHORITY: Section 11420.20, Government Code.

REFERENCE: Sections 11420.10 and 11420.20, Government Code.

***Article 3. Arbitration***

**§ 1232. Arbitration; Definition; General Rules**

(a) Arbitration under these regulations is an adjudicative process in which an arbitrator or panel of arbitrators issues a decision on the merits after a hearing. Except as set forth herein, arbitrations are governed by the Administrative Procedure Act (commencing with Government Code Section 11370), Part I, Division 3, Title 2 of the Government Code.

(b) Before the arbitration the parties shall agree that the decision by the arbitrator(s) is binding or non-binding upon the parties. If the parties select non-binding arbitration, any party may reject the non-binding decision. If a party

rejects the non-binding decision, the parties shall resume the same status as before arbitration and shall proceed as if arbitration had not taken place.

(c) All determinations of time under these regulations are governed by the provisions of Code of Civil Procedure §§ 12a, 12b, 13, 13a, 13b, 1013, 1013a.

(d) The arbitrator shall not engage in private communication with any party upon the merits or substance of the dispute at any time prior to the issuance of the decision.

AUTHORITY: Section 11420.20, Government Code.

REFERENCE: Sections 12a, 12b, 13, 13a, 13b, 1013, 1013a, Code of Civil Procedure; Section 11420.10, Government Code.

### **§ 1234. Agreement to Arbitrate**

At any time prior to a formal administrative hearing, a matter may be referred to arbitration by request, as specified in 1206. The written consent shall indicate whether the arbitration is binding or non-binding. Unless all parties agree to binding arbitration, the arbitration shall be non-binding. The parties may, at any time, by written agreement signed by all parties or their legal representatives, consent to make the arbitration binding.

AUTHORITY: Section 11420.20, Government Code.

REFERENCE: Section 11420.10, Government Code.

### **§ 1236. Selection of Arbitrator**

#### **(a) Selection of Arbitrator by Mutual Agreement**

(1) Once the parties agree to arbitration they shall then confer to select a single arbitrator or, if the parties so agree, a panel of three arbitrators. Unless the parties agree otherwise, selection of the arbitrator(s) shall take place within 21 days of the agreement to arbitrate.

(2) If the parties are unable to agree to a single arbitrator, then each party may agree to select one arbitrator and the selected arbitrators shall then select a third arbitrator who shall act as chair to the arbitration panel.

#### **(b) Selection of Arbitrator with the Assistance of the OAH**

(1) On occasion, parties may not be able to agree on a single arbitrator but may not wish a panel. In such a situation, each party may select 5 names either from the résumés on file with the OAH or from another source. If an arbitrator is chosen from another source, the party selecting that arbitrator shall provide OAH with a résumé of that arbitrator. Of the names submitted to the OAH by the parties, a complete list shall be compiled and sent to the parties by the OAH. Each party may strike 3 names and return the list to the OAH within 10 calendar days. If the OAH has not received notice within this period to strike names, the OAH will assume that all names are equally acceptable. On the next working day after the 10-day period, or as soon thereafter as practicable, the OAH will

choose an arbitrator at random from the remaining list of names. The OAH will then notify the chosen arbitrator and the parties of the arbitrator's selection. The chosen arbitrator will be sent an acceptance form to sign and return, in which the arbitrator must agree to abide by the applicable statutes and regulations, as described in Regulation section 1208. The acceptance form shall also require disclosure of any potential conflicts of interest and any circumstances likely to prevent a prompt hearing.

(2) If, at any time before the end of the 10-day period, the parties agree to an arbitrator and notify the OAH in writing, that agreed-upon arbitrator shall be appointed.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Section 11420.20, Government Code.

### **§ 1238. Costs**

Responsibility for the payment of arbitrator(s) fees and all other costs of the arbitration shall be established by written agreement among the parties and the arbitrator(s), executed not less than ten calendar days before the first scheduled hearing date. If there are rental fees or other costs involved with the hearing, those costs are to be paid by the parties in equal shares, unless the parties agree otherwise. The total estimated fees and costs of the arbitration shall be paid in advance to the arbitrator or placed into an escrow, pursuant to the terms of the written agreement.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Section 11420.20, Government Code.

### **§ 1240. Timing and Scheduling the Hearing**

#### **(a) *Date and Time***

The parties and the arbitrator(s) shall confer and mutually agree on the date(s) and time(s) for hearing. The date of hearing shall be scheduled to commence not more than 120 days after selection of the arbitrator(s). If the case is resolved before the hearing date or if, due to an emergency, a participant cannot attend the arbitration, the parties shall notify the arbitrator(s) immediately upon learning of such settlement or emergency.

#### **(b) *Place***

The hearing may be held at any location within California selected by the arbitrator(s). In selecting a location, the arbitrator(s) shall consider the convenience of the parties and witnesses.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Sections 11420.10 and 11420.20, Government Code.

## **§ 1242. Discovery**

Discovery pursuant to California Government Code Section 11507.6 shall be commenced in arbitration cases by service of requests for discovery. Parties may serve requests for discovery by regular mail or personal delivery, with proof of service, to the last known address of the party served. All discovery shall be concluded no less than 20 calendar days before the arbitration hearing and may not be reopened after commencement of the arbitration hearing except on order of the arbitrator(s) for good cause shown.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Sections 11420.20 and 11507.6, Government Code.

## **§ 1244. Conference Before Arbitration**

The arbitrator(s) shall schedule a brief joint conference with counsel for the parties or with the parties themselves, if they are not represented, at least 15 days before the arbitration hearing to discuss matters such as whether the arbitration will be binding or non-binding, allocation of costs and expenses, the procedures to be followed, whether supplemental written material should be submitted, which witnesses will attend, how testimony will be presented (including expert testimony), and whether and how the arbitration will be recorded. This conference may be by telephone or any other real-time or simultaneous electronic means. The arbitrator's costs associated with conducting the conference shall be allocated among the parties, as determined by the arbitrator.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Section 11420.20, Government Code.

## **§ 1246. Statements Before Arbitration**

### **(a) *Time for Submission***

No later than 10 calendar days before the arbitration hearing, each party shall submit directly to the arbitrator(s), and shall serve on all other parties a written arbitration statement by regular mail, facsimile, or other acceptable electronic means, accompanied by a proof of service.

### **(b) *Content of Statements***

The statements shall be concise and shall:

- (1) Summarize the facts, claims, and defenses;
- (2) Identify the significant contested factual and legal issues, citing authority on the questions of law;
- (3) Identify proposed witnesses; and,
- (4) Identify, by name and title or status, the person(s) who, in addition to counsel, will attend the arbitration as representative(s) of the party.

**(c) *Modification of Requirement by Arbitrator(s).***

After jointly consulting counsel for all parties, or the parties themselves if they are not represented, the arbitrator(s) may modify or dispense with the requirement of written arbitration statements.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Section 11420.20, Government Code.

**§ 1248. Attendance at Arbitration**

Each party and/or the party's counsel shall attend the arbitration hearing. A party other than a natural person (e.g., a corporate or governmental entity or association) satisfies this attendance requirement if represented by a designated legal representative who has immediate access to a representative of the entity. The representative of the entity shall be familiar with the dispute and shall have the power and authority to enter into stipulations and binding agreements on behalf of the entity.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Section 11420.20, Government Code.

**§ 1250. Authority of Arbitrators**

(a) Arbitrators shall be authorized to:

- (1) Administer oaths and affirmations;
- (2) Make reasonable rulings as are necessary for the fair, impartial, and efficient conduct of the hearing including, but not limited to, granting continuances for good cause shown; and,
- (3) Make Statements of Factual and Legal Basis, Orders, and/or Awards, as appropriate.

(b) Failure or refusal of a party to comply with any lawful and duly noticed order of the arbitrator given prior to or at the hearing, including those orders related to fees and costs, shall be cause for holding such party in default. If a party is held in default, the arbitrator shall conduct the hearing according to Regulation 1254.

AUTHORITY: Section 11420.20, Government Code.  
REFERENCE: Section 11420.20, Government Code.

**§ 1252. Procedures at Arbitration**

**(a) *Presumption against Bifurcation***

Except in extraordinary circumstances, the arbitrator(s) shall not bifurcate the arbitration.

(b) **Quorum**

Where a panel of three arbitrators has been selected, any two members of a panel shall constitute a quorum, but the concurrence of a majority of the entire panel shall be required for any action or decision by the panel, unless the parties stipulate otherwise.

(c) **Subpoenas**

Attendance of witnesses and production of documents may be compelled in accordance with California Government Code Sections 11450.05 through 11450.50. Service of subpoenas may be accomplished by personal delivery with proof of service or service by certified mail, return receipt requested, postage prepaid, to the last known address of the subpoenaed party.

(d) **Oath and Cross-Examination**

All testimony shall be taken under oath or affirmation and shall be subject to reasonable cross-examination. Affidavits submitted must comply with California Government Code Section 11514.

(e) **Evidence**

In receiving evidence, the arbitrator(s) shall be guided by California Government Code Section 11513, but shall not thereby be precluded from receiving evidence which the arbitrator(s) consider(s) relevant and trustworthy and which is not privileged.

(f) **Transcript or Recording**

(1) In non-binding arbitration, the proceedings shall not be recorded or reported unless otherwise agreed by all parties.

(2) In binding arbitration, a party may cause a transcript or recording of the proceedings to be made and shall provide a copy to any other party who requests it and who agrees to pay the reasonable costs of having a copy made.

AUTHORITY: Section 11420.20, Government Code.

REFERENCE: Sections 11450.05-11450.50, 11513, 11514, Government Code.

**§ 1254. Defaults**

(a) The absence of a party shall not be grounds for continuance. If a party is not present and that party's absence is not excused, the hearing may proceed and a default entered against the absent party. Statements of Factual and Legal Basis, Orders and/or Awards against a defaulting party may be taken only upon presentation of proof, satisfactory to the arbitrator(s), that reasonably supports such action.

(b) When the matter is heard on a default basis, the party not in default has the burden of proof of affirmative allegations, and affirmative findings shall be based only on the express admissions of the defaulted party, judicially noticeable facts, or on evidence which would support findings of fact in an uncontested civil trial, or any combination thereof.

(c) Default constitutes a waiver of the defaulting party's rights to cross-examine witnesses, or present evidence to controvert the allegations of the complaint or the answer, or otherwise present any evidence.

## **§ 1256. Decision**

### **(a) Form**

The arbitrator(s) shall issue a decision after a completed arbitration hearing under this regulation. The decision shall be issued within 30 days after the matter is submitted and shall contain Statements of Factual and Legal Basis, Orders, and/or Awards, as appropriate. The decision shall be signed by the arbitrator or by at least two members of a panel.

### **(b) Costs**

An arbitrator may not assess the costs of items previously agreed to in the agreement to arbitrate between the parties. Costs not agreed to by contract of the parties may be awarded in the arbitrator's discretion.

### **(c) Filing the Decision**

The arbitrator(s) shall file the decision with the OAH, and serve the decision on all parties, including the Agency head, by regular mail, or personal delivery, with proof of service, within 30 days after the matter is submitted.

### **(d) Effective Date of the Decision**

The arbitrator(s) decision shall become effective 30 days after service of the decision upon the parties.

### **(e) Non-binding Arbitration Decisions**

If no party has filed a demand for proceeding *de novo* pursuant to California Government Code Section 11420.10, subdivision (a)(3), the arbitrator's decision is final.

### **(f) Binding Arbitration Decisions**

In binding arbitrations, the Statements of Factual and Legal Basis, Orders and Awards of the arbitrator(s) shall be final and no proceedings *de novo* are available. Chapter 4 (commencing with Section 1285) of Title 9, Part 3, of the California Code of Civil Procedure shall control the procedures for review of a decision after binding arbitration.

## **§ 1258. Proceeding De Novo**

### **(a) Demand**

Any party to a non-binding arbitration may reject the decision and request a proceeding *de novo* by filing with the OAH and serving on all parties by regular mail, or personal delivery, with proof of service, a demand for proceeding *de novo* within 30 calendar days after service of the decision.

### **(b) Time for Demand**

If any party files with the OAH and serves the other party/parties a demand for proceeding *de novo* within 30 days after service of the arbitrator(s) decision, the action will proceed in the normal course of the administrative proceedings before the respective board/Agency. Failure to file and serve a demand for proceeding *de novo* within this 30 day period waives the right to proceeding *de novo*.

(c) **Disclosure**

The contents of a decision issued after non-binding arbitration shall not be disclosed to any judge who might be assigned the case until the action is final or has otherwise been terminated.

(d) **Evidence**

At the administrative hearing's proceeding *de novo*, no evidence shall be admitted concerning the conduct of the arbitration proceeding, including, but not limited to, the nature of or rulings upon any motions brought during the arbitration process, or the arbitration decision itself, unless:

- (1) The evidence would otherwise be admissible in the hearing under the California Evidence Code; or,
- (2) The parties stipulate otherwise.

AUTHORITY: Section 11420.20, Government Code.

REFERENCE: Sections 11420.10, 11420.20 and 11420.30, Government Code.



# Résumé of Neutral

ADR-résumé2 8/1997 (replaces ADR-résumé1 6/5/97)

Name (include name of firm, if applicable):

**New Résumé**

**Update** (This form must be updated annually; For database purposes, please attach copy of original with deletions circled in red & a copy of update with additions or changes highlighted.)

Address:

Telephone:

FAX:

Other Electronic Addresses or Numbers:

Type of Services Provided (Circle one or both):    **Mediation**    **Arbitration**

## Types of Disputes Previously Mediated

Enter number of cases next to all applicable categories:

- \_\_\_ General
  - \_\_\_ Business/Commercial
  - \_\_\_ Community/Neighborhood
  - \_\_\_ Construction
  - \_\_\_ Employment/Labor Relations
  - \_\_\_ Environmental
  - \_\_\_ Governmental/Public Agency
  - \_\_\_ Medical
  - \_\_\_ Personal Injury
  - \_\_\_ Property/Real Estate
  - \_\_\_ Other
- 

## Types of Disputes Previously Arbitrated

Enter number of cases next to all applicable categories:

- \_\_\_ General
  - \_\_\_ Business/Commercial
  - \_\_\_ Community/Neighborhood
  - \_\_\_ Construction
  - \_\_\_ Employment/Labor Relations
  - \_\_\_ Environmental
  - \_\_\_ Governmental/Public Agency
  - \_\_\_ Medical
  - \_\_\_ Personal Injury
  - \_\_\_ Property/Real Estate
  - \_\_\_ Other
- 

- Have you ever served on an arbitration panel?     Yes     No
- Would you be willing to serve on an arbitration panel?     Yes     No
- Have you ever served on a mediation panel?     Yes     No
- Would you be willing to serve on a mediation panel?     Yes     No

Briefly list any other pertinent information in the space below, including areas of specialty.

Indicate the geographic area where you would be able to serve.

Fees charged for your services:

**Education** (list institutions, degrees, dates):

**Specific ADR training:** List name of trainer or organization, number of hours of mediation, arbitration, or other appropriate training, and date(s):

**List professional licenses or registrations, including expiration dates, if any:**

**Experience:** How long have you been providing ADR (years)?

Mediation \_\_\_\_\_ Arbitration \_\_\_\_\_.

Approximately how many mediations/arbitrations have you conducted?

Mediation \_\_\_\_\_ Arbitration \_\_\_\_\_.

**Relevant organizations, panels, or programs of which you are a member:**  
(e.g., Superior Court Arbitration, American Arbitration Association, Mediation Centers, etc.)

**Mandatory Compliance Statement:**

I agree to comply with the California statutes and regulations governing ADR, including Government Code Sections 11420.10 through 11420.30 and regulations 1 CCR 1200 et seq. (Title 1, Division 2, Chapter 3).

**Neutral's Signature and Date:**

**Neutral's Printed Name:**

# Letter to Interested Neutrals regarding Résumé of Neutral form submission

## *Interested Neutral:*

Enclosed you will find OAH's "Résumé of Neutral" form (ADR-résumé2 8/1997, replacing ADR-résumé1 6/5/97). Please feel free to duplicate this form.

Please answer each question as fully and completely as possible, given the space limitations.

Information on this form may be placed into a database system for searching purposes, so please place all relevant information you wish disseminated in the areas provided. We realize that this may involve some hard decisions about what to list in terms of training, etc., but we are confident that such prioritization will also aid potential parties skimming through pages of Résumé forms.

The completed Résumé form should be submitted to Tanya's attention at the Sacramento Office of Administrative Hearings (OAH) at the above-indicated address accompanied with a \$10 filing fee (checks being made payable to the Office of Administrative Hearings). You must update your Résumé at least once (but not more than twice) a year by submitting a new Résumé form and an update fee of \$10. Please note that changes of address, etc., are considered updates and will require a new form and filing fee.

If you have brochures, mediator/arbitrator bio-sheets, or other information that you regularly distribute to potential clients, you may enclose up to 5 copies of such handouts. We will make them available to parties as requested. At this time, there is no extra charge for sending such additional material with your Résumé or update. OAH will not make additional copies for parties, but will keep one on reserve with your Résumé form. OAH will make photocopies of the Résumé form itself for interested persons.

On the back of this letter is a Notice of Publications, which contains an order form should you wish to receive our regulations and selected statutes in booklet form. Our regulations are also available on the Internet, at the Office of Administrative Hearings' World Wide Web Page, <http://www.dgs.ca.gov/oah>.

Thank you for your interest in serving as a Neutral in state agency disputes.  
If you have any questions, please contact Tanya or myself.

Sincerely,

Heather Cline  
OAH ADR Program  
hcline@dgs.ca.gov

# Notice of Publications

The Office of Administrative Hearings has available the following 1997 publications:

1. **APA w/o LRC** -- Administrative Procedure Act interim hearing regulations and the New Administrative Procedure Act, without Law Revision Commission comments;
2. **APA w/ LRC** -- Administrative Procedure Act interim hearing regulations and the New Administrative Procedure Act, with Law Revision Commission comments;
3. **ADR/DecDec** -- Agency Alternatives to Formal Hearings, which contains Alternative Dispute Resolution regulations and statutes and Declaratory Decisions interim regulations.

The Sacramento office is currently taking orders for these publications.

Cost per publication	Quantity	Cost
APA w/o LRC -- \$4.00 each	X _____	\$ _____
APA w/ LRC -- \$5.00 each	X _____	\$ _____
ADR/DecDec -- \$4.00 each	X _____	\$ _____
<b>Total Cost</b>		\$ _____

Please complete the information below and return this form with your check or money order or, for state agencies only, the agency's billing code, to the Sacramento office [*please note our new address above*], attention Janice Baker.  
 Sorry, Credit cards not accepted.

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Agency: \_\_\_\_\_ Billing Code: \_\_\_\_\_

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

# Appendix of ADR Statutes

## CODE OF CIVIL PROCEDURE

### § 12a. Computation of time; holidays; application of section

If the last day for the performance of any act provided or required by law to be performed within a specified period of time shall be a holiday, then that period is hereby extended to and including the next day which is not a holiday. The term "holiday" as used herein shall mean all day on Saturdays, all holidays specified in Section 6700 and 6701 of the Government Code, other than the holidays specified in subdivisions (c) and (f) of Section 6700 of the Government Code, and, to the extent provided in Section 12b, all days which by terms of Section 12b are required to be considered as holidays. However, for a period of time expiring prior to January 1, 1952, time shall be computed and extended in accordance with the provisions of this section as they existed on January 1, 1951.

This section applies also to Sections 659, 659a, 946, and 974 through 982, inclusive, and the periods of time severally therein prescribed or provided for, and to all other provisions of law, however stated or wherever expressed, providing or requiring an act to be performed on a particular day or within a specified period of time. The mention of these sections is not intended and shall not be construed to exclude the application of this section to any other provisions of law, whether the latter are expressed in this or any other code or statute, ordinance, rule, or regulation.

*HISTORY:*

Added Stats 1933 ch 29 §1. Amended Stats 1951 ch 492 §2; Stats 1955 ch 59 §1; Stats 1961 ch 1370 §1; Stats 1982 ch 838 §2, effective September 10, 1982.

Amended Stats 1994 ch 1011 §2 (SB 1373).

### § 12b. Computation of time; day on which public office closed considered holiday

If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a.

*History:*

Added Stats 1951 ch 655 §25.

### § 13. Holidays; postponing performance

Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

*HISTORY:*

Enacted 1872.

**§ 13a. Special Holidays, optimal performance or postponement**

Any act required by law to be performed on a particular day or within a specified period of time may be performed (but is not hereby required to be performed) on a special holiday as that term is used in Section 6705 of the Government Code, with like effect as if performed on a day which is not a holiday.

*HISTORY:*

Added Stats 1933 ch 29 §2. Amended Stats 1959 ch 594 §1.

**§ 13b. Saturday; optional performance**

Any act required by law to be performed on a particular day or within a specified period may be performed (but is not hereby required to be performed) on a Saturday, with like effect as if performed on a day which is not a holiday.

*HISTORY:*

Added Stats 1961 ch 1370 §2.

**§ 1013. Service by mail, Express Mail or facsimile transmission; procedure; completion of service; extension of time**

(a) In case of service by mail, the notice or other paper must be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail; otherwise at that party's place of residence. The service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended five days, upon service by mail, if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(b) The copy of the notice or other paper served by mail pursuant to this chapter shall bear a notation of the date and place of mailing or be accompanied by an unsigned copy of the affidavit or certificate of mailing.

(c) In case of service by Express Mail, the notice or other paper must be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with Express Mail postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by Express Mail; otherwise at that party's place of residence. In case of service by another method of delivery providing for overnight delivery, the notice or other paper must be deposited in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service; otherwise at that party's place of residence. The service is complete at the time of the deposit, but any period of notice and any

right or duty to do any act or make any response within any period or on a date certain after the service of the document served by Express Mail or other method of delivery providing for overnight delivery shall be extended by two court days, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(d) The copy of the notice or other paper served by Express Mail or another means of delivery providing for overnight delivery pursuant to this chapter shall bear a notation of the date and place of deposit or be accompanied by an unsigned copy of the affidavit or certificate of deposit.

(e) Service by facsimile transmission shall be permitted only where the parties agree and a written confirmation of that agreement is made. The Judicial Council may adopt rules implementing the service of documents by facsimile transmission and may provide a form for the confirmation of the agreement required by this subdivision. In case of service by facsimile transmission, the notice or other paper must be transmitted to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he or she has filed in the cause and served on the party making the service. The service is complete at the time of transmission, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended, after service by facsimile transmission, by two court days, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(f) The copy of the notice or other paper served by facsimile transmission pursuant to this chapter shall bear a notation of the date and place of transmission and the facsimile telephone number to which transmitted or be accompanied by an unsigned copy of the affidavit or certificate of transmission which shall contain the facsimile telephone number to which the notice or other paper was transmitted.

(g) Subdivisions (b), (d), and (f) are directory.

*HISTORY:*

Enacted 1872. Amended Code Amdts 1873-74 ch 383 §138; Stats 1907 ch 327 §3; Stats 1929 ch 480 §1; Stats 1931 ch 739 §2; Stats 1949 ch 456 §3; Stats 1967 ch 169 §6; Stats 1968 ch 166 §1; Stats 1974 ch 281 §1, ch 282 §2, effective May 28, 1974, operative January 1, 1975; Stats 1980 ch 196 §2; Stats 1992 ch 339 §4 (SB 1409); Stats 1995 ch 576 §3.8 (AB 1225).

**§ 1013a. Service by mail; proof**

Proof of service by mail may be made by one of the following methods:

(1) An affidavit setting forth the exact title of the document served and filed in the cause, showing the name and residence or business address of the person making the service, showing that he or she is a resident of or employed in the county where the mailing occurs, that he or she is over the age of 18 years and not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid.

(2) A certificate setting forth the exact title of the document served and filed in the cause, showing the name and business address of the person making the service, showing that he or she is an active member of the State Bar of California and is not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid.

(3) An affidavit setting forth the exact title of the document served and filed in the cause, showing (A) the name and residence or business address of the person making the service, (B) that he or she is a

resident of, or employed in, the county where the mailing occurs, (C) that he or she is over the age of 18 years and not a party to the cause, (D) that he or she is readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service, (E) that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business, (F) the name and address of the person served as shown on the envelope, and the date and place of business where the correspondence was placed for deposit in the United States Postal Service, and (G) that the envelope was sealed and placed for collection and mailing on that date following ordinary business practices. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in the affidavit.

(4) In case of service by the clerk of a court of record, a certificate by that clerk setting forth the exact title of the document served and filed in the cause, showing the name of the clerk and the name of the court of which he or she is the clerk, and that he or she is not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid. This form of proof is sufficient for service of process in which the clerk or deputy clerk signing the certificate places the document for collection and mailing on the date shown thereon, so as to cause it to be mailed in an envelope so sealed and so addressed on that date following standard court practices. Service made pursuant to this paragraph, upon motion of a party served and a finding of good cause by the court, shall be deemed to have occurred on the date of postage cancellation or postage meter imprint as shown on the envelope if that date is more than one day after the date of deposit for mailing contained in the certificate.

*HISTORY:*

Added Stats 1931 ch 739 §3. Amended Stats 1953 ch 1110 §1; Stats 1955 ch 779 §1; Stats 1959 ch 345 §1; Stats 1972 ch 601 §3, ch 1083 §1; Stats 1973 ch 302 §1; Stats 1974 ch 282 §3, effective May 28, 1974; Stats 1980 ch 196 §3; Stats 1987 ch 190 §24; Stats 1988 ch 160 §18; Stats 1995 ch 576 §4 (AB 1225).

## ***EVIDENCE CODE***

### **§ 703.5. *Judges, arbitrators or mediators as witnesses; subsequent civil proceeding***

No person presiding at any judicial or quasi-judicial proceeding, and no arbitrator or mediator, shall be competent to testify, in any subsequent civil proceeding, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure. However, this section does not apply to a mediator with regard to any mediation under Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.

*HISTORY:*

Added Stats 1979 ch 205 §1. Amended Stats 1980 ch 290 §1.

Amended Stats 1988 ch 281 §1; Stats 1990 ch 1491 §13 (AB 3765); Stats 1993 ch 114 §1 (AB 1757), ch 1261 §5 (SB 401); Stats 1994 ch 1269 §7 (AB 2208).

## **§ 1152.5. Mediation**

(a) When a person consults a mediator or mediation service for the purpose of retaining the mediator or mediation service, or when persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a dispute in whole or in part:

(1) Except as otherwise provided in this section, evidence of anything said or of any admission made in the course of a consultation for mediation services or in the course of the mediation is not admissible in evidence or subject to discovery, and disclosure of this evidence shall not be compelled, in any civil action or proceeding in which, pursuant to law, testimony can be compelled to be given.

(2) Except as otherwise provided in this section, unless the document otherwise provides, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence or subject to discovery, and disclosure of such a document shall not be compelled, in any civil action or proceeding in which, pursuant to law, testimony can be compelled to be given.

(3) When a person consults a mediator or mediation service for the purpose of retaining the mediator or mediation service, or when persons agree to conduct or participate in mediation for the sole purpose of compromising, settling, or resolving a dispute, in whole or in part, all communications, negotiations, or settlement discussions by and between participants or mediators in the course of a consultation for mediation services or in the mediation shall remain confidential.

(4) All or part of a communication or document which may be otherwise privileged or confidential may be disclosed if all parties who conduct or otherwise participate in a mediation so consent.

(5) A written settlement agreement, or part thereof, is admissible to show fraud, duress, or illegality if relevant to an issue in dispute.

(6) Evidence otherwise admissible or subject to discovery outside of mediation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation.

(b) This section does not apply where the admissibility of the evidence is governed by Section 1818 or 3177 of the Family Code.

(c) Nothing in this section makes admissible evidence that is inadmissible under Section 1152 or any other statutory provision, including, but not limited to, the sections listed in subdivision (d). Nothing in this section limits the confidentiality provided pursuant to Section 65 of the Labor Code.

(d) If the testimony of a mediator is sought to be compelled in any action or proceeding as to anything said or any admission made in the course of a consultation for mediation services or in the course of the mediation that is inadmissible and not subject to disclosure under this section, the court shall award reasonable attorney's fees and costs to the mediator against the person or persons seeking that testimony.

(e) Paragraph (2) of subdivision (a) does not limit the effect of an agreement not to take a default in a pending civil action.

### *HISTORY:*

Added Stats 1985 ch 731 §1. Amended Stats 1992 ch 163 §73 (AB 2641), operative January 1, 1994; Stats 1993 ch 219 §77.7 (AB 1500), ch 1261 §6 (SB 401); Stats 1994 ch 1269 §8 (AB 2208).

Amended Stats 1996 ch 174 §1 (SB 1522).

## **§ 1152.6. Declaration or findings by mediator other than statement of agreement or nonagreement; filing; prior agreement in writing by all parties required; exception**

A mediator may not file, and a court may not consider, any declaration or finding of any kind by the mediator, other than a required statement of agreement or nonagreement, unless all parties in the mediation expressly agree otherwise in writing prior to commencement of the mediation. However, this section shall not apply to mediation under Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.

*HISTORY:*  
Added Stats 1995 ch 576 §8 (AB 1225).

## **GOVERNMENT CODE**

### **§ 11410.20. Agencies; legislative, judicial and executive branches**

Except as otherwise expressly provided by statute:

- (a) This chapter applies to all agencies of the state.
- (b) This chapter does not apply to the Legislature, the courts or judicial branch, or the Governor or office of the Governor.

*HISTORY:*  
Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.

### **§ 11450.05. Application of article**

- (a) This article applies in an adjudicative proceeding required to be conducted under Chapter 5 (commencing with Section 11500).
- (b) An agency may use the subpoena procedure provided in this article in an adjudicative proceeding not required to be conducted under Chapter 5 (commencing with Section 11500), in which case all the provisions of this article apply including, but not limited to, issuance of a subpoena at the request of a party or by the attorney of record for a party under Section 11450.20.

*HISTORY:*  
Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.

### **§ 11450.10. Issuance**

- (a) Subpoenas and subpoenas duces tecum may be issued for attendance at a hearing and for production of documents at any reasonable time and place or at a hearing.
- (b) The custodian of documents that are the subject of a subpoena duces tecum may satisfy the subpoena by delivery of the documents or a copy of the documents, or by making the documents available for inspection or copying, together with an affidavit in compliance with Section 1561 of the Evidence Code.

*HISTORY:*  
Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.

### **§ 11450.20. Issuer; service**

- (a) Subpoenas and subpoenas duces tecum shall be issued by the agency or presiding officer at the request of a party, or by the attorney of record for a party, in accordance with Sections 1985 to 1985.4, inclusive, of the Code of Civil Procedure.

(b) The process extends to all parts of the state and shall be served in accordance with Sections 1987 and 1988 of the Code of Civil Procedure. A subpoena or subpoena duces tecum may also be delivered by certified mail return receipt requested or by messenger. Service by messenger shall be effected when the witness acknowledges receipt of the subpoena to the sender, by telephone, by mail, or in person, and identifies himself or herself either by reference to date of birth and driver's license number or Department of Motor Vehicles identification number, or the sender may verify receipt of the subpoena by obtaining other identifying information from the recipient. The sender shall make a written notation of the acknowledgment. A subpoena issued and acknowledged pursuant to this section has the same force and effect as a subpoena personally served. Failure to comply with a subpoena issued and acknowledged pursuant to this section may be punished as a contempt and the subpoena may so state. A party requesting a continuance based upon the failure of a witness to appear at the time and place required for the appearance or testimony pursuant to a subpoena, shall prove that the party has complied with this section. The continuance shall only be granted for a period of time that would allow personal service of the subpoena and in no event longer than that allowed by law.

(c) No witness is obliged to attend unless the witness is a resident of the state at the time of service.

*HISTORY:*

Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.

### **§ 11450.30. Objections; protective orders**

(a) A person served with a subpoena or a subpoena duces tecum may object to its terms by a motion for a protective order, including a motion to quash.

(b) The objection shall be resolved by the presiding officer on terms and conditions that the presiding officer declares. The presiding officer may make another order that is appropriate to protect the parties or the witness from unreasonable or oppressive demands, including violations of the right to privacy.

(c) A subpoena or a subpoena duces tecum issued by the agency on its own motion may be quashed by the agency.

*HISTORY:*

Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.

### **§ 11450.40. Witnesses; mileage and fees**

A witness appearing pursuant to a subpoena or a subpoena duces tecum, other than a party, shall receive for the appearance the following mileage and fees, to be paid by the party at whose request the witness is subpoenaed:

(a) The same mileage allowed by law to a witness in a civil case.

(b) The same fees allowed by law to a witness in a civil case. This subdivision does not apply to an officer or employee of the state or a political subdivision of the state.

*HISTORY:*

Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.

## **§ 11450.50. Written Notice**

(a) In the case of the production of a party to the record of a proceeding or of a person for whose benefit a proceeding is prosecuted or defended, the service of a subpoena on the witness is not required if written notice requesting the witness to attend, with the time and place of the hearing, is served on the attorney of the party or person.

(b) Service of written notice to attend under this section shall be made in the manner and is subject to the conditions provided in Section 1987 of the Code of Civil Procedure for service of written notice to attend in a civil action or proceeding.

### *HISTORY:*

Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.

## **§ 11507.6. Request for discovery; statements; writings; investigative reports**

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

### *HISTORY:*

Amended Stats 1995 ch 938 §31 (SB 523), operative July 1, 1997.

### **§ 11513. Evidence; examination of witnesses**

- (a) Oral evidence shall be taken only on oath or affirmation.
- (b) Each party shall have these rights: to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.
- (c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.
- (d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.
- (e) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing .
- (f) The presiding officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

*HISTORY:*

Amended Stats 1995 ch 938 §40 (SB 523), operative July 1, 1997.

### **§ 11514. Affidavits**

- (a) At any time 10 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in subdivision (b). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after request therefor is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.
- (b) The notice referred to in subdivision (a) shall be substantially in the following form:  
The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify (here insert name of proponent or his attorney) at (here insert address) that you wish to cross-examine him. To be effective your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert a date seven days after the date of mailing or delivering the affidavit to the opposing party).

*HISTORY:*

Added Stats 1947 ch 491 §6

### **§ 11520. Defaults and uncontested cases**

- a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits

may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that the respondent is entitled to the agency action sought, the agency may act without taking evidence.

(b) Notwithstanding the default of the respondent, the agency or the administrative law judge, before a proposed decision is issued, has discretion to grant a hearing on reasonable notice to the parties. If the agency and administrative law judge make conflicting orders under this subdivision, the agency's order takes precedence. The administrative law judge may order the respondent, or the respondent's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing.

(c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following:

- (1) Failure of the person to receive notice served pursuant to Section 11505.
- (2) Mistake, inadvertence, surprise, or excusable neglect.

*HISTORY:*

Amended Stats 1995 ch 938 §46 (SB 523), operative July 1, 1997.

## **§ 11523. Judicial review**

Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section, the petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. On request of the petitioner for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to petitioner, within 30 days after the request, which time shall be extended for good cause shown, upon the payment of the fee specified in Section 69950 for the transcript, the cost of preparation of other portions of the record and for certification thereof. Thereafter, the remaining balance of any costs or charges for the preparation of the record shall be assessed against the petitioner whenever the agency prevails on judicial review following trial of the cause. These costs or charges constitute a debt of the petitioner which is collectible by the agency in the same manner as in the case of an obligation under a contract, and no license shall be renewed or reinstated where the petitioner has failed to pay all of these costs or charges. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. Where petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. In the event that the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.

*HISTORY:*

Amended Stats 1995 ch 938 §47 (SB 523), operative July 1, 1997.