

# ALTERNATIVE RESOLUTION CENTERS (ARC)

## MEDIATION RULES

1. **Agreement of the Parties.** These Rules shall apply whenever the parties have agreed to mediate in accordance with ARC Mediation Rules and /or whenever the parties retain the mediation through ARC.
2. **Initiation of Mediation.** The parties may initiate a mediation by executing an ARC Stipulation for Mediation; or, having agreed to submit a dispute to mediation, they may request, either orally or in writing, that ARC arrange for the mediation.
3. **Selection of the Mediator.** ARC shall maintain a special panel of neutrals qualified to serve as mediators. If the parties mutually select a mediator on the ARC panel or mutually agree to a method for selecting a mediator from the panel, the mediator selected shall be appointed or the method agreed upon utilized. Otherwise, ARC will appoint a qualifying panel member to serve. A single mediator shall be appointed unless the parties agree otherwise.
4. **Qualifications of Mediator.** The parties may require that the proposed mediator be a retired judge or a qualified attorney mediator. Prior to accepting an appointment, the proposed mediator shall immediately disclose to ARC any information that would constitute grounds for disqualification under California Code of Civil Procedure (CCP) sec. 170.1 and any circumstance likely to prevent a prompt meeting with the parties. Upon receiving such information, ARC shall either replace the mediator or immediately communicate the information to the parties for their comments. If the parties disagree as to whether the mediator shall serve, ARC will appoint another mediator. ARC is authorized to appoint another mediator if the appointed mediator is unable to serve promptly.
5. **Vacancies.** If a proposed mediator is unwilling or unable to serve, ARC will appoint another mediator unless the parties agree otherwise.
6. **Representation.** Any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to ARC in advance of the first mediation session.
7. **Time and Place of Mediation.** After consulting with the parties and the mediator, ARC shall fix the date and time of the first mediation session. The mediator shall fix the date and time of any additional mediation sessions after conferring with the ARC Administrator.

The parties shall select a mutually agreeable place for the mediation, provided the site is acceptable to the mediator. If the place is not designated at least three (3) days before the date scheduled for mediation, ARC may determine the site, which determination shall be final.

8. **Identification of Matters in Dispute.** Except as otherwise agreed by the parties and the mediator, each party should provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved at least three (3) days prior to the first scheduled mediation session. Such memoranda may be mutually exchanged by the parties.

At or before the first session, the parties are expected to produce all information reasonably required for the mediator to understand the issues presented.

9. **Authority of the Mediator.** Expect as otherwise agreed by the parties, the mediator does not have authority to impose a settlement on the parties, but will attempt to help them reach a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and assume the expenses of obtaining such advice.

10. **Privacy.** Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

11. **Applicable Statutes/Confidentiality.** Mediation related communication between the mediator and any participant before or after the mediation or in private caucus during the mediation shall be confidential. The mediation is conducted pursuant to California Evidence Code § 703.5, 1115-1128, 1152 and other sections or successor sections of the California Evidence Code and any federal law counterparts, if applicable, governing, among other things, the confidentiality of mediation proceedings.

Subject to certain limited exceptions set forth in the Evidence Code and case law, statements made during the mediation are confidential and are not admissible in any subsequent proceeding. However, written or oral agreements reached by the parties in the course of mediation may, under certain circumstances, be admissible in a subsequent proceeding.

The participants agree that the mediator may consult with colleagues about this matter and may describe this matter to colleagues for informational or educational purposes so long as the mediator does not disclose the participants' names or any other information which would specifically identify the participants.

12. **No Stenographic Record.** There shall be no stenographic record of the mediation process, except to memorialize a settlement.

13. **Termination of Mediation.** The mediation shall be terminated by the execution of a settlement agreement by the parties or as provided in California Evidence Code sec. 1125.

14. **Limited Liability, Release and Indemnification.** Neither ARC nor any mediator shall be liable to any party for any claim arising out of the failure to reach agreement or the decision to enter into any agreement or any other aspect of the mediation process. No representation is made that the participants will reach an agreement on any of the issues, disputes or controversies discussed in the mediation. Any party who brings any claim, action or proceeding of any nature against ARC and/or the mediator or who seeks to have the mediator testify shall be responsible to indemnify ARC and the Mediator for any expenses, loss or damage incurred, including, without limitation, attorneys' fees and expenses incurred in connection with such claim, action or proceeding brought by such party.

15. **Interpretation and Application of Rules.** The mediator shall interpret and apply these Rules insofar as they relate to the mediator's duties and responsibilities. All other Rules shall be interpreted and applied by ARC.

16. **Fees and Expenses.** A non-refundable administration/filing fee per party is charged when the first session of a mediation is scheduled.

The compensation of the mediator shall be at the usual hourly rate established by ARC for his/her services and shall include all the time spent on the case, including, but not limited to, the reading of memoranda, review of records, research, and deliberation time. Unless modified by prior mutual agreement of the parties, counsel and/or claims representatives, each party shall bear his/her pro rata share of the mediator's fees. The hourly fee for the scheduled time shall be paid in advance as a retainer fee and shall be applied toward any final billing. All statements rendered by ARC shall be due and payable upon receipt. ARC's agreement to render services is not only with the party, but also with the attorney or other representative in attendance at the hearing.

Each party shall pay its own attorneys fees and any other expenses of the mediation incurred for its own benefit, unless otherwise agreed by the parties.

17. **Continuance, Cancellation and Refund Policy.** The parties may stipulate to a continuance of a mediation session. CONTINUANCES ARE STRONGLY DISFAVORED. If a mediation session is cancelled or continued more than 14 days before the scheduled session, the retainer fee will be refunded, less any time expended in preparation for the session. However, if the matter continued or cancelled is scheduled for 8 hours or longer, a minimum of thirty (30) days advance notice is required to receive a refund. If the retainer fee had not yet been paid, it becomes due and payable upon notice of the continuation or cancellation.