

## SAMPLE COURT ADR RULE

### CALIFORNIA

San Francisco Superior Court

[Rule 12.46](#) – Dependency Mediation Program

**Statewide or local:** Local rule based on statute, [Welfare and Institutions Code 350\(a\)](#).

**Process:** Mediation

**Eligible cases:** All child protection and dependency cases

### Summary:

Referral to mediation under this rule is at the discretion of the court and attendance by attorneys and case workers is mandatory. Referral can be made for any case for any issue and at any stage. No payment is required of the parties.

### What is good about this rule:

- *Allows for mediation at all stages and for all issues:* Studies of dependency mediation programs have found that it is effective at all stages and for all issues affecting dependency.
- *Good attorney responsibilities:* These create expectations of the attorneys and give them guidance regarding their role in the mediation, which creates the framework for a more effective mediation.
- *Good case worker responsibilities:* As with the attorneys, these create expectations of the caseworkers and give them guidance regarding their role in the mediation, which creates the framework for a more effective mediation.
- *Protocols set out for cases involving domestic violence:* These provide guidelines on what should be done to ensure the safety of parties at mediation. Such guidelines should be provided in any program that mediates cases involving domestic violence.
  - ⇒ For another example of a screening protocol, see [Model Court Protocol for Domestic Violence and Child Abuse Screening in Matters Referred to Domestic Relations Mediation](#), Michigan Domestic Violence Prevention and Treatment Board

### Additional points to note:

- The rule requests the mediator to be in the courtroom when the parties present the agreement to the court. The intent is to allow the mediators to follow the mediation through to the end and to give the mediators and family a chance to say good-bye. This should be undertaken with care as it may place the mediator too close to the court to be seen as neutral by all the parties and can lead to improper communication between the mediator and the judge.
- Minors only attend mediation when specifically ordered by the court.
- All cases are ordered to mediation when two involved, but separated parents are both requesting custody of the child and the case is about to be dismissed and transferred to family court to decide the issue of custody. In these cases, the case worker and counsel may be excused from the mediation.

**Further Reading:**

***Qualifications***

[National Standards for Court-Connected Mediation Programs](#), Center for Dispute Settlement

***Ethics***

[National Standards for Court-Connected Mediation Programs](#), Center for Dispute Settlement

[Model Standards of Conduct for Mediators](#), American Arbitration Association, American Bar Association, Association for Conflict Resolution

***Training***

[Guidelines for Implementation of Qualifications Standards for Neutrals](#), Massachusetts Supreme Judicial Court Standing Committee on Dispute Resolution

***Monitoring and Evaluation***

[Monitoring and Evaluating Court-Based Dispute Resolution Programs: A Guide for Judges and Court Managers](#), National Center for State Courts, 1997

## SAN FRANCISCO LOCAL RULE 12 (DEPENDENCY)

*RULE EFFECTIVE JANUARY 1, 2007 (renumbered and modified)*

### **12.46 Mediation Program.**

**A. Authority.** See W&I §350(a) and CRC §5.518.

**B. Referrals to Mediation.**

1. Mediations may be set at any stage, and to discuss any issue, related to a dependency proceeding. The Court retains discretion to refer, or not to refer, a case to mediation.

Attendance at mediation is mandatory. At the time of referring a case to mediation the Court will order the parties to be present and will specifically inform them that a failure to appear may result in orders against their interests being entered. The Court will further advise all counsel and child welfare workers that their failure to appear on time, to be prepared, or to participate in the entire mediation session may result in the Court issuing an Order to Show Cause;

2. Cases are generally referred for mediation at the time of a Court appearance. However, if all parties and counsel agree that mediation would be useful, counsel may request that a mediation be set between status review dates.

In such situations, or in the event of the need for a continuance of a previously scheduled mediation, counsel should contact the mediation office to discuss the proper procedures for setting, or re-scheduling, a mediation date.

3. All cases must be referred for mediation before the case is dismissed with exit orders when either of the following situations exist: 1) both parents have a significant relationship with the minor(s) and the parents are not living together; or 2) when the case is to be dismissed with one, or both, of the parents having custody of the minor(s) and the minor has a significant relationship with a former caretaker.

These cases may be referred to exit order mediation in one of the following ways:

- (a) The HSA Court Office (“court office”), when reviewing reports for upcoming review dates, will identify cases that fit the exit order mediation criteria, and will notify the Court’s calendaring clerk.
- (b) These cases will be automatically scheduled for exit order mediation for the same date and time as the review hearing, as mediator staffing allows.
- (c) Attorneys and child welfare workers will be notified by the assigned mediator that the parties should report directly to mediation rather than to court.

4. Counsel may call the supervising mediator to schedule an exit order mediation in advance of the review hearing.
5. The Court may refer cases directly from the review hearing for an immediate mediation, as mediator staffing allows.
6. The Court may refer cases to exit order mediation from the court review date in the same manner that it refers other cases to mediation.
7. Attorneys and child welfare workers must inform the mediator, and all other parties, if they are opposed to the dismissal of the case. If dismissal of the case is in dispute, all attorneys, parties and child welfare workers must attend the mediation unless specifically excused by the mediator.
8. In those cases in which there is an agreement about the dismissal of the case, the mediator will spend most of the mediation session working with the parents without attorneys or child welfare workers. This private meeting is intended to prepare parents for leaving the dependency system with a parenting plan that they have created together.
9. The child welfare worker and all attorneys, with the exception of minor's counsel, must not attend the exit order mediation unless otherwise prearranged with the mediator.
10. Notwithstanding their lack of participation in person, any attorney or child welfare worker who does not attend the mediation in person must provide the mediator with a number at which he/she can be reached during the mediation session.
11. Parents' counsel must discuss custody and visitation issues with their clients prior to the exit order mediation.
12. If any attorney or child welfare worker willfully fails to attend the mediation, or cannot be reached at the phone number given the mediator, his or her failure to participate will be an implied consent to any agreement reached in his or her absence.
13. Minor's counsel must prepare the exit order forms, except for the custody and visitation issues, and the mailing envelopes in advance of the mediation session.
14. The parties must proceed directly to court following the mediation session.

**C. Scheduling of Mediation Sessions.**

1. Although mediations are generally set for 9:00 a.m. or 1:30 p.m. they can be specially set at earlier or later times to meet the special needs of counsel or parties. However, mediations should *not* be set to begin any later than 9:30 a.m. or 2:00 p.m. , respectively, except in exceptional circumstances, and with advance approval of the mediators.
2. Mediations can be set on any week day, except Wednesdays. In special circumstances, with advance Court and mediation program approval, mediations may also be set on Wednesdays.

**D. Participants Included in Mediation.**

1. The Court will indicate on a Mediation Referral Order who is required,

and who is invited, to attend the mediation session. No person other than those indicated on the Mediation Referral Order may attend the mediation unless there is agreement by *all* parties and counsel to that person's participation.

2. Minors will *not* attend mediation unless specifically ordered by the Court to attend or all parties and counsel agree to the minor's participation. In the event that a minor is ordered to mediation, it is expected that he or she will fully participate in the mediation, except as otherwise arranged by the minor's attorney and the mediators.

**E. Attorney Responsibilities.**

1. Attorneys must fully prepare themselves and their clients for their participation in the mediation *prior* to the session by:
  - a. explaining the mediation process and the commitment of time expected of the mediation participants;
  - b. preparing their clients to directly participate in the mediation;
  - c. familiarizing themselves with the legal and non-legal issues of the case;
  - d. preparing to discuss the case issues with the mediators prior to the mediation;
2. Except in emergency situations, attorneys must be available for the entire mediation session, unless otherwise specifically pre-arranged with the mediators.

3. All parties attending mediation must have the authority to fully negotiate and settle the disputed issues. Attorneys must ensure that their client has such authority and, if not, must arrange for the person with authority to attend the mediation.
4. Minor's counsel must be prepared to discuss any specific service needs of the minor including, but not limited to, educational, emotional, social or medical needs. In addition, minor's counsel must have up-to-date reports from the minor's therapist, teacher, and any other relevant collateral sources regarding their recommendations for services and familial contact.
5. An attorney may participate in mediation only if:
  - a. the attorney's client is present; or
  - b. the other mediation participants agree that the attorney's attendance is of particular benefit to the issues being mediated despite the absence of the attorney's client.

**F. Child Welfare Worker's Responsibilities.**

1. Child welfare workers will prepare themselves for mediation *prior* to the session by:
  - a. talking with their counsel and familiarizing themselves with the legal and non-legal issues of the case;
  - b. telling their counsel if he or she is unable to freely negotiate and make binding agreements so that counsel can arrange for the person with authority to participate in the mediation;
  - c. discussing the case issues with the mediators prior to the mediation;

2. clearing their calendars so that they are available for the entire mediation session, unless otherwise specifically pre-arranged with the mediators.

**G. Confidentiality of Mediation Sessions.**

1. Everything said during the course of a mediation is confidential, with the following exceptions:
  - a. Any information revealed to a mandated reporter that could form the basis of a new petition;
  - b. Any specific threats to injure one's self or another person.
2. Except as noted above, nothing said during the course of the mediation may be used in any social report submitted to the Court, nor may such information be used in any way that otherwise breaches the confidentiality of the mediation session.
3. Information gathered by the mediators in advance of the mediation for the purposes of the mediation is treated with the same confidentiality as the information heard during the mediation.

**H. Cases Involving Allegations of Domestic Violence.**

1. If a case set for mediation involves allegations of domestic violence, the mediators must conduct an assessment and make a determination as to the manner in which to conduct the mediation so as to assure:
  - a. the physical safety of all parties; and
  - b. that the victim parent is not intimidated into settling the case;
2. See Appendix B for the complete Domestic Violence protocols related to dependency mediation.

**I. Reporting the Results of the Mediation to the Court.**

1. Except as specifically set forth in this Section, the mediators must not make any report to the Court as to anything that occurs, or is discussed, during a mediation;
2. If the parties resolve all, or some, of the issues, the mediators will write up the parties' agreement. The written agreement will include the specific terms of the settlement. The mediators must give a copy of the written agreement to each mediation participant after the participants have read and agreed to its terms;
3. The parties will proceed directly to Court following the mediation session to report to the Court either the terms of their agreement, a request for an additional mediation session, or to request that the matter be set for hearing;
4. The mediators will present the Court with the parties' written agreement. If the Court accepts the parties' agreement it will be made a Court order and the written agreement will be placed in the Court file.

- J. Sanctions.** The Court, in its discretion, may order monetary sanctions for failure to comply with these Local Rules. Orders to Show Cause may be issued with regard to an attorney's or child welfare worker's failure to appear on time, to be prepared, or to participate in the entire mediation session.

**Appendix D****DEPENDENCY MEDIATION PROGRAM  
SAN FRANCISCO UNIFIED FAMILY COURT****DOMESTIC VIOLENCE PROTOCOLS  
FOR DEPENDENCY MEDIATION REFERRALS****A. Court Referrals to Mediation in Cases Involving Domestic Violence**

1. Issues to be considered in making referrals
  - a. Extent of physical violence in the case;
  - b. How recently was the last known incident;
  - c. Can the mediation provide adequate protection for the alleged victim?
  - d. The alleged victims willingness to participate in mediation
2. Noting Domestic Violence on Referral Order  
The judicial officer will make a note on the Mediation Referral Order if there are any current or past domestic violence issues, including a notation regarding any current restraining orders.
3. Attendance of Support Person at Mediation
  - a. The referring judicial officer will advise the alleged victim that he or she may bring a support person with them to the mediation.
  - b. The referring judicial officer will explain that a support person's role is limited to a support role only and that person cannot actively participate in the mediation without the consent of all other parties.
  - c. The referring judicial officer will advise the parties that the mediations must meet with the alleged victim and perpetrator separately.

**B. Dependency Mediation Program Domestic Violence Protocols**

1. Case Development
  - a. Case development will include a thorough review of the Court field, specifically targeting any information relating to any domestic violence issues.
  - b. The mediator will talk with all attorneys and the child welfare worker in advance of the mediation about the extent and current status of any violence between the parties, including whether or not there are restraining orders currently in effect.
  - c. During case development the mediator will tell the alleged victim's attorney of his or her client's right to bring a support person to the mediation.
  - d. Based on the information gathered in the domestic violence assessment, the mediator will set up meeting times with the parents that precludes them from seeing each other at all, as is appropriate to the specific case.

## 2. Mediation Process

The mediation process will be conducted in such a way as to protect the physical and emotional safety of all participants, as well as to promote an equal balance of power, as follows:

- a. Victim parents may, at their option, bring support persons to the mediation, with the understanding that the support person is there to provide support only, and it NOT an active participant in the process (unless otherwise agreed to by all participants);
- b. The mediators will initially meet separately with each parent in order to set up a safety plan. The plan will be used to determine:
  - 1) whether or not the alleged victim would be better protected by continuing to meet separately with the mediator or by meeting with the alleged perpetrator during the Court of mediation;
  - 2) how the alleged victim can protect her or himself outside the Courthouse;
  - 3) whether the alleged victim is interested in having a joint meeting that includes the perpetrator. In making that determination the mediators will advise the alleged victim that she or he has an absolute right to decline a joint meeting with the alleged perpetrator.
- c. Each parent's meeting with the mediator will be set up in such a way as to prevent the parents from seeing each other, as may be appropriate to the specific case;
- d. The mediators will assist the alleged victim in creating a safety plan for appearing (or not appearing) in Court and for leaving the Courthouse in a manner that best protects her or his safety;
- e. The mediator will work with the parties to assist them in creating a settlement that promotes the physical and emotional safety of the involved parties and their children.

