



# The State Bar of California

## ALTERNATIVE DISPUTE RESOLUTION CERTIFICATION WORKING GROUP

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Date: April 23, 2025

To: ADR Certification Working Group

From: Alan Wiener, Attorney V, Office of Executive Director  
Erika Doherty, Deputy Executive Director

Subject: Recommendation Regarding Baseline Requirements for Mediator Certification

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### EXECUTIVE SUMMARY

The Baseline Mediator Subgroup (Subgroup) was comprised to make recommendations to the Alternative Dispute Resolution Working Group (Working Group) concerning the baseline requirements for certification of mediators as required by [Business and Professions Code section 6173](#).<sup>1</sup> The Subgroup met on March 11, March 26, and April 17, 2025, to discuss and develop its recommendations. The Subgroup's work is ongoing, however; it makes the partial recommendation for baseline certification of mediators set forth below.

### SUBGROUP RECOMMENDATIONS

The Subgroup makes the following recommendations for consideration by the full Working Group at its April 23, 2025, meeting:

To become certified as a mediation practitioner, a mediator must satisfy one the following *training requirements*:

(1) A mediator must have either:

(A) Completed 40 hours of mediation training that meets the requirements of (2) and (3) within the past two years;

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<sup>1</sup> All further references to section are to the Business and Professions Code unless otherwise stated.

(B) Completed 40 hours of mediation training that meets the requirements of (2) and (3) at any time, and completed at least 7 hours of continuing or advanced mediation training covering the Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases and at least one of the other topics listed in (2) or (3) within the past two years; or

(C) Completed at least 25 mediations within the past two years and completed at least 7 hours of continuing or advanced mediation training covering the Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases and at least one of the other topics listed in (2) or (3) within the past two years.

(2) At least 25 of the 40 hours of training required under (1)(A) or (1)(B) must be in the form of a single, comprehensive, mediation training program. The curriculum for this comprehensive training must include:

(A) Conflict, communication, and mediation theory;

(B) Stages of the mediation process;

(C) Mediation and communication skills and techniques;

(D) Mediator ethics;

(E) The law governing mediation, including mediation confidentiality; and

(F) Observation of mediation demonstrations and participation in role-playing.

(3) The 40 hours of mediation training required under (1)(A) or (1)(B) must also include training on:

(A) The Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases;

(B) Cultural and gender issues in mediation; and

(C) Issues concerning the role of mediators in the preparation of mediated agreements.

**NOTES:**

*Because section 6173 requires certified mediators to comply with ethical standards **equivalent to** the Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases, the references to these rules may change when equivalent the ethical standards are developed and named.*

*The Subgroup has not yet formulated a recommendation regarding experience requirements for certification of mediators who have satisfied the training requirements under (a)(1) and (a)(2) above but intends to do so at a future meeting. The Subgroup may also discuss other possible baseline qualification requirements for mediators and will continue to develop ethical standards equivalent to the Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases.*

## **STAFF RECOMMENDATION AND COMMENTS**

Staff joins in the Subgroup Recommendation set forth above, with two qualifications. Staff supports the training requirements in paragraphs (1)(A) and (1)(B) with the condition that an appropriate amount of mediation experience is also required in conjunction with that training. Staff also thinks that the completion of 25 mediations within 2 the past two as set forth in paragraph (1)(C) may be too high a bar for certification under this alternative path and looks forward to hearing Working Group and public comments about this.

## **BACKGROUND:**

The Working Group is charged with developing recommendations for consideration by the Board of Trustees (Board) for the creation of a voluntary certification program for Alternative Dispute Resolution (ADR) firms, providers, and practitioners as required under section 6173.

According to its [charge](#), the Working Group will balance maintaining rigorous professional standards with creating an inclusive program that accommodates the wide variety of ADR firms, providers, and practitioners. The Working Group will develop a comprehensive certification framework that promotes public confidence and consumer protection in ADR services. The Working Group's recommendations to the Board will include, among other topics, State Bar Rules and Procedures regarding qualification requirements, a tiered certification structure, and recommendations regarding program administration.

The Subgroup was comprised to make recommendations to the Working Group concerning the baseline qualifications to become a State Bar certified mediator.

## **DISCUSSION**

The Subgroup conducted its first meeting on March 11, 2025, for approximately 2 hours. Attendees included Working Group members Dana Curtis (Subgroup lead), Claudia Brown Coulter, Jill Kopeikin (arrived 1:30), Mattie Robertson, and Christopher Welch. Subgroup member Nolan Armstrong was absent. Staff Erika Doherty and Alan Wiener also attended.

At the March 11 meeting, the Subgroup discussed and took straw polls on possible requirements for mediator certification listed on a document prepared by the Subgroup lead and taken from the mediator section of the Topics List and the "AI Assisted Draft of Various Organizations Mediator Qualification Requirements." The results of those straw polls were as follows:

The five members of the Subgroup who were present agreed that the following criteria should be included in the requirements for baseline mediator certification. The Subgroup deferred

discussion of specific requirements (e.g., number or hours or level of experience) to a later meeting.

1. Training and development
2. Experience
3. Point systems or alternative qualification paths
4. Application documentation and verification
5. Complaint procedures and remedies
6. Renewal and recertification requirements

The five members of the Subgroup who were present agreed that the following criteria should not be included in the requirements for baseline mediator certification.

1. Age
2. Mentorship and assessment
3. Legal licensure and experience
4. Hearing and decision-making skills/temperament
5. Language skills
6. Availability
7. Marketing/business plan
8. Technology competence
9. Absence of complaints (will discuss further)

One or more members of the Subgroup (numbers in parenthesis) thought that the following criteria should be included in the requirements for baseline mediator certification. The Subgroup agreed to discuss these requirements at a later meeting.

1. General education (2)
2. Other professional experience (non-legal) (2)
3. Specialized knowledge (subject matter expertise) (3)
4. Insurance/indemnity (3)
5. Moral character, criminal convictions, etc. (3)
6. References/recommendations/reputation (2)
7. Professional affiliations (1)
8. Certification levels (1)

On March 19, 2025, the full Working Group discussed the Subgroup's initial recommendations, as well as those of the Baseline Arbitrator Subgroup the latter of which recommended that no requirements beyond those enumerated in section 6173, subdivisions (b)(1)(A), (b)(1)(C), and (b)(1)(D) be required for arbitrators to become certified. At the meeting, the Working Group members took a straw poll to gauge interest in developing recommendations for arbitrator and mediator qualifications beyond those explicitly required in the statute. The straw poll indicated 13 in favor of limiting the baseline requirements to those stated in the statute and 6 in favor of considering additional requirements. Two Working Group members were absent. The Working

Group asked the arbitrator and mediator subgroups to review their initial recommendations in light of the Working Group discussion and the other subgroup's recommendations before the next Working Group meeting.

The Subgroup met for a second time on March 26, 2025, for approximately 90 minutes. Attendees included Dana Curtis (Subgroup lead) and members Nolan Armstrong, Claudia Brown Coulter, Jill Kopeikin, Mattie Robertson, and Christopher Welch. Staff Alan Wiener also attended. The Subgroup discussed the March 26 Working Group proceedings, including the straw poll regarding whether the Working Group should recommend qualifications for baseline certification in addition to those explicitly required by section 6173.

The Subgroup lead observed that only three of the criteria that the Subgroup had, at its March 11 meeting, agreed to recommend or discuss further would require the Subgroup to create detailed recommendations: (1) training and development; (2) experience; and (3) point systems or alternative qualification paths. She pointed out that Complaint Procedures and Remedies are being addressed by another subgroup and that the other criteria could be addressed adequately by standards of conduct or administrative procedures. Several Subgroup members expressed reluctance to develop detailed recommendations for even the three qualifications the Subgroup lead identified without better understanding whether the Legislature intended certification criteria to extend beyond those explicitly identified in section 6173.

The Subgroup lead then informed members that staff was developing a summary of requirements to be appointed to serve as mediators for California Courts, which could facilitate the Subgroup in creating detailed proposals for each of these three proposed requirements. The Subgroup agreed that before its April meeting members would consider this document and come prepared to discuss specific recommendations. Staff agreed to continue working on the summary and send it to the Subgroup before the next meeting.

Subgroup members next discussed whether to use the remaining time on March 26 to develop recommended mediator ethical standards "equivalent to" the California Rules of Conduct for Mediators in Court-Connected Mediation Programs for General Civil Cases set forth in California Rules of Court, rules 3.850 to 3.860<sup>2</sup>, as required by section 6173, subdivision (b)(1)(B). After the Subgroup lead reported that the staff and she had created but not yet sent the Subgroup a redline version of rules 3.850 to 3.860, the Subgroup chose to postpone discussion of mediator ethical standards that would be equivalent to the court rules until its April 17 meeting. Staff agreed to send this redlined document to the Subgroup. Subgroup members agreed to review and prepare to discuss it and any additional recommendations at the April 17 meeting.

The Mediator Baseline Subgroup met for a third time on April 17, 2025, for approximately two hours. Dana Curtis (Subgroup lead) and Working Group members Nolan Armstrong, Claudia

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<sup>2</sup> All further references to rules are to the California Rules of Court unless otherwise stated.

Coulter, Jill Kopeikin, Mattie Robertson, and Christopher Welch attended. Staff Erika Doherty and Alan Wiener also attended.

At the April 17, 2025 meeting, some Subgroup members expressed continuing concern about whether section 6173 allowed baseline qualifications for mediator certification to include requirements in addition to those explicitly enumerated in the statute (e.g., training and experience requirements). Erika Doherty informed the Subgroup that staff has requested input from legislative staff and from the State Bar Office of General Counsel regarding this statutory interpretation question. Subgroup members noted that the statute clearly requires certified mediators to comply with ethical standards equivalent to those set forth in the court rules. The Subgroup therefore agreed to begin by discussing ethical standards and reserve time to discuss other possible requirements for baseline certification of mediators.

Alan Wiener informed the Subgroup that the court rules were deliberately written as “bare minimum” ethical requirements for court-program mediators, and did not conform to higher standards such as the widely accepted Model Standards of Conduct for Mediators promulgated by the American Arbitration Association, the American Bar Association, and the Association for Conflict Resolution. Ms. Curtis described a number of respects in which she thought the requirements in the court rules should perhaps be clarified or augmented for certified mediators including clarification or addition of provisions regarding coercion, withdrawal, social media, confidentiality, disclosure, and solicitation. The Subgroup had a robust discussion about whether mediators should be required to disclose prior mediations that they conducted involving participants in a current mediation, but did not reach a conclusion on this issue.

Approximately halfway through its April 17 meeting, the Subgroup switched to discussing potential training requirements for mediators to become certified. This portion of their discussion focused on whether the Model Qualification Standards for Mediators in Court-Connected Mediation Programs for General Civil Cases (“the court requirements”) that courts are encouraged to use in establishing criteria for mediators to serve on their lists and panels of mediators are appropriate baseline requirements for certification of mediators. Alan Wiener informed the Subgroup that the court requirements were developed by Judicial Council staff with the assistance of a working group that included esteemed mediation trainers, court ADR program staff, and mediators through a process that also included public comment.

The Subgroup had a robust discussion about the 40-hour training requirements in the court requirements. One consideration was whether the 32 hours of training that the court requirements provide must be in the form of a single, comprehensive, mediation training program set too high a bar for mediators serving in community mediation programs funded under the Dispute Resolution Programs Act (DRPA), which only requires 25 hours of training. To address this, the Subgroup reached consensus to reduce the 32 hours in the court requirements to 25 hours. Another consideration, which the Subgroup discussed at length, was whether adopting the court requirements would exclude highly experienced mediators who had not completed 40 hours of training. To address this, the Subgroup reached consensus that

mediators who have completed 25 or more mediations within the past two years and at least 7 hours of specified continuing or advanced training within the last two years should satisfy training and experience requirements for certification. This “alternative path” to certification is embodied in paragraph (1)(C) of the Subgroup’s recommendation.

Thus, the Subgroup ultimately reached consensus upon the training requirements set forth in the Recommendation above. The Subgroup has not yet formulated a recommendation regarding experience requirements for certification of mediators who have satisfied the training requirements under (a)(1) and (a)(2) of their recommendation but intends to do so. The Subgroup may also discuss other potential qualification requirements and will continue to discuss ethical requirement equivalent to those set forth in the California Rules of Court.

**CONCLUSION:**

The Subgroup provides its recommendation to the Working Group with the understanding that it is the Working Group’s recommendations that will ultimately be submitted, by staff, to the Board (with any dissenting views noted in those recommendations). The Subgroup and staff look forward to the Working Group’s consideration of their recommendations on April 23, 2025, and to answering any questions that Working Group members may have.