

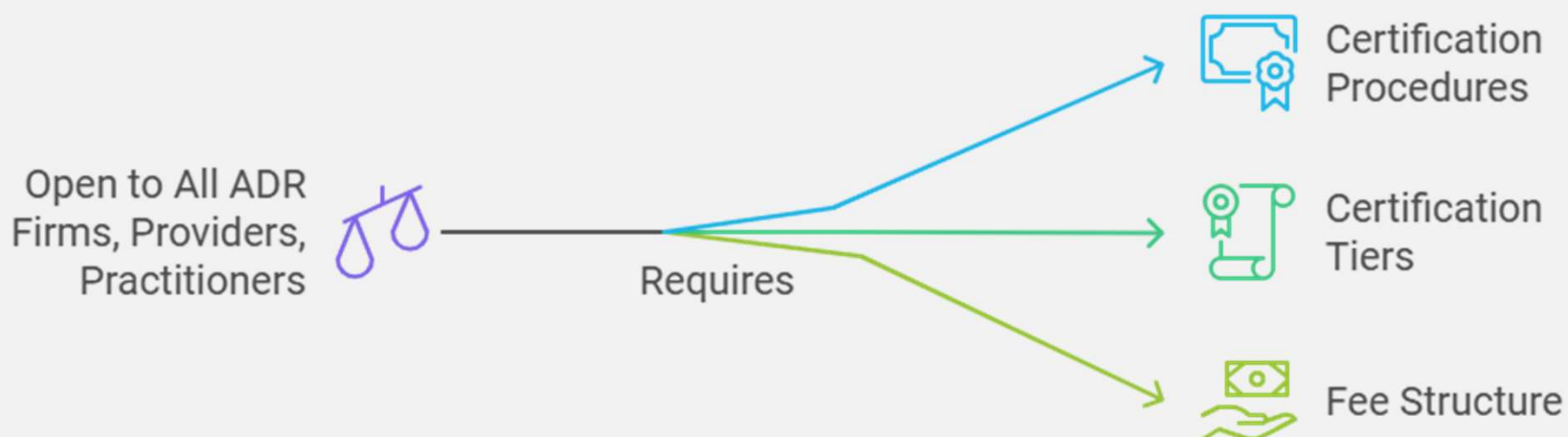


The State Bar *of California*

Alternative Dispute Resolution (ADR) Certification Working Group

February 12, 2025

State Bar Certification Program Requirements (Bus. & Prof. Code, § 6173)





Eligibility for Certification

- ADR firms, providers, and practitioners
- State Bar licensure is not required





Alternative Dispute Resolution is Broadly Defined

Includes:

- Arbitration
- Mediation
- Conciliation
- Other nonjudicial ADR processes that involve a neutral party in the decisionmaking process, potentially including:
 - Reference
 - Private trials
 - Neutral evaluation





Minimum Requirements for Certification

Adherence to ethical standards

- Arbitrators must comply with Ethics Standards for Neutral Arbitrators in Contractual Arbitration (adopted by the Judicial Council pursuant to Code Civ. Proc., § 1281.85)
- Mediators must comply with ethical standards equivalent to Rules of Conduct for Mediators in Court-Connected Mediation Programs for General Civil Cases (Cal. Rules of Court, rules 3.850-3.860)





Minimum Requirements for Certification

Complaint and Remedial Procedures

- A certified firm, provider, or practitioner must have procedures for making complaints regarding failure of an arbitrator or mediator to comply with the applicable ethical standards
 - For mediators, the complaint procedures must be substantially similar to those in rule 3.865 et seq., California Rules of Court
- A certified firm, provider, or practitioner must have procedures to remedy failures of arbitrators or mediators to comply with the specified standards



The certification program must include different levels or tiers that meet all of the following requirements:



Higher tiers demonstrate higher level of commitment to accountability and consumer protection



Tiers do not reflect an assessment of the quality of a firm, provider, or practitioner



Tiers only reference the standards of conduct referred to in the statute



Certification Fees



The State Bar may charge fees to cover the reasonable costs of administering the program



Fees may be higher in early years to cover costs for planning and establishing the program (technology, staffing)



Annual attorney license fees may not be used for any costs of the program



TOPICS FOR WORKING GROUP CONSIDERATION

- ADR processes to address
- Certification of practitioners
 - Ethical standards
 - Other qualification requirements
- Certification of firms
 - Ethical standards
 - Other qualification requirements
- Tiered certification structure
- Program administration



TOPICS FOR WORKING GROUP CONSIDERATION

ADR PROCESSES TO ADDRESS

- Statute specifies:
 - Arbitration
 - Mediation
 - Conciliation
- Other processes to consider:
 - Med-Arb
 - Neutral evaluation
 - Ombuds
 - Private judging
 - Reference, general and special



TOPICS FOR WORKING GROUP CONSIDERATION

CERTIFICATION OF PRACTITIONERS

- **Arbitration**
 - **Mediation**
 - **Conciliation**
 - **Other ADR processes**
- What ethical standards?
 - Referred to in statute
 - Other existing models
 - What other qualification requirements?
 - Level of education (e.g., diploma, equivalency, or degree)?
 - ADR process training and experience?
 - Continuing Education?
 - References?
 - Written exam?
 - Observation/performance assessment?
 - Background check?
 - How should these requirements apply to baseline certification and tiers, and to initial certification and recertification?



TOPICS FOR WORKING GROUP CONSIDERATION

DEFINITION OF PROVIDER

- “Provider” is not defined in the statute
- Could “provider” be interpreted to encompass both “firm” and “practitioner”?
- Can “firm” and “provider” be collectively referred to as “provider organizations” to better distinguish between organizations and individual practitioners?



TOPICS FOR WORKING GROUP CONSIDERATION

CERTIFICATION OF FIRMS

- What ethical standards for organizations?
- What other qualification requirements for organizations (baseline and tiers)
 - Relationship to certification of their panelists
- How should these requirements apply to baseline certification and tiers, and to initial certification and recertification?



TOPICS FOR WORKING GROUP CONSIDERATION

COMPLAINTS AND REMEDIES

- Are any existing models adequate or adaptable?
 - Requirements for Addressing Complaints About Court-Program Mediators (Cal. Rules of Court, rules 3.865 et seq.)
- Are different complaint processes and remedies necessary for different types of ADR?
- What will be the confidentiality of complaint processes and outcomes?
- Should individual practitioners address complaints about themselves?
- Should firms address complaints about themselves or their panelists?



TOPICS FOR WORKING GROUP CONSIDERATION

CERTIFICATION TIERS

- Criteria that demonstrate a higher level of commitment to accountability and consumer protection, but do not reflect a quality assessment.
- Should the tiers be different across different ADR and entity types?
- Are any existing models adequate or adaptable?



TOPICS FOR WORKING GROUP CONSIDERATION

CERTIFICATION PROGRAM ADMINISTRATION

- Application process
- Decisionmaker, process, and timeline
- Certification fees (initial and renewal)
- Duration of certification and renewal
- Evidence of certification; different types and limitations on use
- Review of decisions

