

## 2.4 Possible Action on Recommendation for Baseline Certification Requirements for Mediators and Arbitrators



# The State Bar of California

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OFFICE OF GENERAL COUNSEL

Date: April 23, 2025

To: Alternative Dispute Resolution Certification Working Group

From: Brady Dewar, Assistant General Counsel

Subject: Statutory Analysis of Business and Professions Code Section 6173

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[Business and Professions Code section 6173](#) requires the State Bar to create a voluntary certification program for Alternative Dispute Resolution firms, providers, and practitioners. State Bar staff has created an Alternative Dispute Resolution Certification Working Group (Working Group) to make recommendations regarding the certification program and members that will be presented to the Board of Trustees.

In its initial meetings, the Working Group has expressed varied viewpoints on what the statute requires, permits, and prohibits. To understand what is permissible under the statute, Working Group staff sought advice from the Office of General Counsel (OGC) regarding the statute.

Specifically, OGC received the following questions and advises the following:

1. Question: Does Business and Professions Code section 6173 allow the State Bar to establish requirements for certification in addition to those specifically enumerated in the statute (e.g., adherence to applicable ethical standards and having complaint and remedy procedures as set forth in 6173(b)(1))?

Answer: The State Bar may, but is not required to, include elements or requirements beyond those specifically enumerated, unless such elements/requirements are specifically prohibited (e.g., the State Bar cannot base tiers on subjective assessments of the quality of programs).

2. Question: Does Business and Professions Code section 6173 allow the State Bar to establish training or experiential requirements at the lowest tier of the certification program?

Answer: The statute permits minimum training or experience requirements applicable to all. This is indicated by section (b)(1) which permits the State Bar to set procedures for certification in the first instance (i.e., certification requirements applicable to all tiers).



*The State Bar of California*

# Alternative Dispute Resolution (ADR) Certification Working Group

April 23, 2025

# Baseline Mediator Certification: Proposal

Certification Path	Mediator Subgroup (and Staff) Recommendations
Option 1 (Recent Trainee)	Complete 40 hours of mediation training* within past 2 years
Option 2 (Active Practitioner w/ Training)	Complete 40 hours of mediation training* at any time + 7 hours of continuing/advanced training within past 2 years
Option 3 (Active Practitioner w/ No Training)	Complete at least 25 mediations within past 2 years + 7 hours of continuing/advanced training within past 2 years
*Mediation Training Content Requirements	<p>At least 25 of the 40 hours must be a single comprehensive program.</p> <p>Must cover: conflict theory, mediation stages, mediation and communication skills/techniques, ethics, governing law, observation/role-playing</p> <p>Must include training on: Rules of Conduct, cultural/gender issues, mediator role in agreement preparation</p>
Experience Requirements	No specific recommendation yet (to be formulated at a future meeting); Staff recommends that some mediation experience be required at all levels, but that 25 mediations (option 3) may be too high.



# Baseline Arbitrator Certification: Proposal

	Arbitrator Subgroup Recommendation (Majority)	Staff + 1 Subgroup Member Recommendation
Subgroup-Recommended Requirements	<p>All arbitrators must verify:</p> <ul style="list-style-type: none"> <li>• Compliance with Ethics Standards for Neutral Arbitrators</li> <li>• Having complaint procedures for failure to comply with Ethics Standards</li> <li>• Having procedures to remedy failure to comply with Ethics Standards</li> <li>• Conducting annual review of Ethics Standards and CA Arbitration Act</li> </ul>	<p>All of the Subgroup Alternative Recommended requirements, plus:</p> <ul style="list-style-type: none"> <li>• <b>Option 1:</b> 30 hours basic arbitrator training in last 2 years and minimum 3 arbitrations in last 2 years;</li> <li>• <b>Option 2:</b> 6 hours basic arbitrator training (anytime), 6 hours continuing/advanced training in last 2 years, and minimum 10 arbitrations in last 5 years</li> <li>• <b>Option 3:</b> 6 hours continuing/advanced training in last 2 years and minimum 15 arbitrations at any time</li> </ul>
Subgroup Alternative Recommended Requirements	Above, plus a 2-hour training on Ethics Standards	



# Baseline Certification Combined Proposals

Certification Path	Mediator Requirements	Arbitrator Requirements
<b>Statutory Requirements</b>	<p>All certified mediators must:</p> <ul style="list-style-type: none"> <li>• Comply with Standards equivalent to Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases (Ethics Standards)</li> <li>• Have complaint procedures for failure to comply with Ethics Standards</li> <li>• Have procedures to remedy failure to comply with Ethics Standards</li> </ul>	<p>All certified arbitrators must:</p> <ul style="list-style-type: none"> <li>• Comply with Ethics Standards for Neutral Arbitrators (Ethics Standards)</li> <li>• Have complaint procedures for failure to comply with Ethics Standards</li> <li>• Have procedures to remedy failure to comply with Ethics Standards</li> </ul>
<b>Subgroup Recommendations</b>	<p>Three Paths to Certification*†:</p> <ul style="list-style-type: none"> <li>• Option 1: Complete 40 hours of mediation training within past 2 years</li> <li>• Option 2: Complete 40 hours of mediation training* at any time + 7 hours of continuing/advanced training within past 2 years</li> <li>• Option 3: Complete at least 25 mediations within past 2 years + 7 hours of continuing/advanced training within past 2 years</li> </ul> <p>*Mediation training has required components.</p> <p>†Experience requirements to be discussed/recommended by the Subgroup after further discussion.</p>	<p>Subgroup (Majority):</p> <ul style="list-style-type: none"> <li>• Additional requirement to conduct an annual review of Ethics Standards and CA Arbitration Act</li> <li>• Verify compliance with statutory requirements and annual review of Ethics Standards</li> </ul> <p>Alternative Subgroup (Majority) Recommendation:</p> <ul style="list-style-type: none"> <li>• Above recommendations, plus a 2-hour training on Ethics Standards prior to certification and annually.</li> </ul>
<b>Staff Recommendations</b>	<p>Same as Subgroup Recommendation with some mediation experience required at all levels. Option 3's 25 mediations within the past 2 years (with no 40-hour training) might be too high of an experiential requirement.</p>	<p>All of the Alternative Subgroup (Majority Recommendation), plus:</p> <ul style="list-style-type: none"> <li>• Option 1: 30 hours basic arbitrator training in last 2 years and minimum 3 arbitrations in last 2 years;</li> <li>• Option 2: 6 hours basic arbitrator training (anytime), 6 hours continuing/advanced training in last 2 years, and minimum 10 arbitrations in last 5 years</li> <li>• Option 3: 6 hours continuing/advanced training in last 2 years and minimum 15 arbitrations at any time</li> </ul>

