



SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
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PROBATE MEDIATION

Information Sheet for Parties and Counsel

WHAT IS PROBATE MEDIATION?

In probate mediation, the parties work with a mediator to try to resolve their probate disputes without going through litigation and trial.

Probate attorney-mediators usually:

- meet with all parties and counsel in a case;
- listen to each person's concerns;
- help all parties evaluate the strengths and weaknesses of their case;
- when appropriate, help the parties understand each other and communicate with each other;
- provide "reality checks" about the possible outcomes in court and in settlement;
- work with all parties and counsel to create a settlement agreement that is acceptable to everyone.

WHAT TYPES OF PROBATE CASES SHOULD GO TO MEDIATION?

Many probate disputes can be resolved using mediation. These include:

- Decedents' Estates
- Trusts
- Conservatorships
- Guardianships

WHAT ARE THE PROS AND CONS OF PROBATE MEDIATION vs. TRIAL?

Advantages:

- Faster: Mediation can often be completed in one day.
- Less expensive: Parties can save court costs, attorneys fees and witness fees.
- More control: Parties choose their mediator and decide whether or not to settle.
- More private: Mediation takes place in private offices, not public courtrooms. The mediator can meet with the parties in separate rooms or even on different dates.
- Less stressful: Mediation is an informal process. The parties can discuss special concerns about the mediation process with their mediator.
- Focus on family issues, relationships, and practical concerns: Mediation can focus on the key non-legal issues that may be at the heart of the dispute.
- Unique, case-by-case solutions: Mediators can help parties create a settlement agreement that fits their particular situation.

Disadvantages:

- No public trial: Parties do not get their "day in court" or a decision by a judge or jury.
- Costs: If the case doesn't settle in mediation, parties may have to pay for both mediation and trial.

Mediation may be appropriate when the parties:

- Want to work out a solution but need help from a neutral person; or
- Have communication problems or strong emotions that interfere with resolution; or
- Have a continuing business or personal relationship.

Mediation may not be appropriate when the parties:

- Want their public “day in court” or a judicial determination on points of law or fact;
- Lack equal bargaining power or have a history of physical/emotional abuse.

HOW DO I ARRANGE FOR PROBATE MEDIATION?

1. Starting the process:

All parties may file the [Stipulation and Order to Mediation-Probate](#).

OR

At any court hearing, all parties may inform the judge or commissioner that they wish to use probate mediation.

2. Selecting a mediator:

All parties should meet and confer to select a mediator.

You may select a probate mediator from the court’s **Probate Mediation Panel**. This Panel is limited to local, experienced probate attorney-mediators. **Click here** for this list of panel members and their contact information and fees.

OR

All parties may select a mediator who is not on the court’s Probate Mediation Panel. You may select any mediator you wish if all parties agree.

3. Contacting the mediator:

Generally, the petitioner or moving party in the case should contact the mediator to see if he/she can accept the case, but the parties may agree to have any party or counsel make this contact.

Be prepared to send the mediator the Stipulation and Order to Mediation-Probate. Discuss fees, location, scheduling and any other concerns about the case.

4. Scheduling the mediation:

The parties schedule the mediation directly with their mediator without court involvement.

The mediation must be completed by the “return court date” or the date stated for “Mediation to be Completed by” date in the Stipulation and Order to Mediation-Probate.

If more time is needed, the parties must file a Stipulation and Order to Continue Mediation Completion Date.

5. Paying for the mediation:

The parties pay the mediator’s fees and costs directly to the mediator. The court is not involved in mediation fee arrangements in any way. In most cases, the parties split the mediator’s fees and costs.

WHAT HAPPENS AFTER THE MEDIATION?

If the case fully settles at the mediation or before the next hearing date:

Petitioner must file a "Notice of Settlement" (Form CM-200) and serve it on all parties prior to the next scheduled hearing date.

In most situations, one or more of the parties must also file the documents necessary to carry out the settlement (e.g. "Request for Dismissal" of the petition (Form CIV-110), a Withdrawal of Objections or Opposition, and/or an Amendment to the Petition).

For some cases, the Probate Code requires parties to file a petition requesting a court order approving the settlement.

If the case did not settle:

The parties must appear at their next scheduled hearing.

POST-MEDIATION SURVEY:

Within 10 days of the mediation, all parties and counsel must complete the Post-Mediation Survey. **Click here** to complete the survey on-line; **click here** to download a copy.