

LOS ANGELES SUPERIOR COURT
ADR NEUTRAL RECUSAL & DISQUALIFICATION GUIDELINES

INTRODUCTION

The court-connected neutral¹ may withdraw or be disqualified and removed from a case on the grounds and by the procedures specified below.

The court-connected neutral shall make all reasonable efforts to fulfill his/her case assignment to promote efficiency of ADR case administration and to proceed with the ADR process in a manner that maintains the integrity of the Court.

DEFINITIONS

- **Recusal** – Voluntary disqualification or withdrawal by a neutral.
- **Request for Disqualification** – Party-requested disqualification of a neutral for a specified reason.
- **Peremptory Challenge** – Party-requested disqualification of a neutral without cause.

MEDIATOR

A. *Applicable Standards* — No person should serve as a mediator for the Los Angeles Superior Court ADR program if he/she is in violation of:

1. The standards set forth in Code of Civil Procedure section 170.1;²
2. The standards set forth in California Rules of Court, rule 3.855;
3. Any other applicable standard of professional responsibility or rule of conduct; or
4. Any additional rules or standards adopted by the Court.

B. *Mandatory Grounds for Disqualification**

Pursuant to Cal. Rules of Court, rule 3.855, a mediator must either decline to serve or withdraw from a case if the mediator (or, in certain circumstances, his/her immediate family members):

1. Has personal knowledge of disputed evidentiary facts;
2. Served as a lawyer in the case or in any other case involving the same issues and parties; or served as a lawyer for, or gave advice to, any party in the present case;
3. Has a financial interest in the subject matter in a case or with a party to the dispute;
4. Is a party to the case, or an officer, director, or trustee of a party;
5. Has a familial relationship with an attorney for either side in the case;
6. Is in the private practice of law with a lawyer in the case;
7. Believes his/her recusal would further the interests of justice;
8. Substantially doubts his/her capacity to be impartial or a person aware of the facts might reasonably entertain a doubt that the mediator would be able to be impartial;
9. Has a permanent or temporary physical impairment preventing the mediator from properly conducting the mediation.
10. Believes his/her participation in the case would jeopardize the integrity of the court or the mediation process;

****For a detailed discussion, refer directly to Code Civ. Proc., § 170.1 and Cal. Rules of Court, rule 3.855.***

¹ As used herein, “neutral” means arbitrator or mediator.

² Pursuant to Cal. Rules of Court, rule 3.855, a mediator can be disqualified on the same grounds applicable to judges as set forth in Code Civ. Proc., § 170.1.

C. Mediator Recusal

1. Policy
 - a. A mediator is required to withdraw on objection by one of the parties following the mediator's disclosures or upon independent discovery of circumstances that would call into question the mediator's impartiality.
 - b. A mediator *may* recuse himself/herself due to scheduling conflicts that would prevent the mediator from properly hearing the matter, but such grounds for recusal should not be misused.
2. Procedure
 - a. The mediator must file a Notice of ADR Neutral Recusal (LASC ADR077) with the assigning ADR clerk within five (5) days of assignment to a case or discovery of the conflict. The notice must include a clear explanation of the reason for such recusal without disclosing confidential information, as well as a proof of service to all parties.³ [SEE APPENDIX A]
 - b. The ADR clerk shall assign a new mediator within five (5) days thereafter and inform the parties and the former mediator.

D. Request for Disqualification of Mediator

1. Policy
 - a. If a mediator who should disqualify himself/herself refuses or fails to do so, any party may submit a request to the ADR Department to remove the mediator from the case.
2. Procedure
 - a. The party must submit the Request for Disqualification of ADR Neutral (LASC ADR078), specifying the basis for the disqualification, with a proof of service to all parties and the mediator, to the assigning ADR clerk within five (5) days of learning of the potential conflict or such party shall be deemed to have waived the objection.⁴ [SEE APPENDIX B]
 - b. The ADR clerk shall assign a new mediator within five (5) days thereafter and inform the parties and the former mediator.

ARBITRATOR

A. Applicable Standards — No person should serve as an arbitrator for the Los Angeles Superior Court ADR program if he/she is in violation of:

1. The standards set forth in Code of Civil Procedure section 170.1⁵;
2. Subdivisions (D)(2)(f) and (D)(2)(g) of canon 6 of the Code of Judicial Ethics;
3. The standards set forth in Cal. Rules of Court, rule 3.816;
4. Any other applicable standard of professional responsibility or rule of conduct; or
5. Any additional rules or standards adopted by the Court.

B. Mandatory Grounds for Disqualification**

Pursuant to Code Civ. Proc., § 1141.18 and Cal. Rules of Court, rule 3.816, an arbitrator must either decline to serve or withdraw from a case if the arbitrator (or, in certain circumstances, his/her immediate family members):

1. Has personal knowledge of disputed evidentiary facts;
2. Served as a lawyer in the case or in any other case involving the same issues and parties; or served as a lawyer for, or gave advice to, any party in the present case;

³ See LASC Court Rules, rule 12.6.

⁴ See LASC Court Rules, rule 12.6.

⁵ Pursuant to Code Civ. Proc., §1141.18 and Cal. Rules of Court, rule 3.816, an arbitrator can be disqualified on the same grounds applicable to judges as set forth in Code Civ. Proc., § 170.1.

3. Has a financial interest in the subject matter in a case or with a party to the dispute;
4. Is a party to the case, or an officer, director, or trustee of a party;
5. Has a familial relationship with an attorney for either side in the case;
6. Is in the private practice of law with a lawyer in the case;
7. Believes his/her recusal would further the interests of justice;
8. Substantially doubts his/her capacity to be impartial or a person aware of the facts might reasonably entertain a doubt that the arbitrator would be able to be impartial;
9. Has a permanent or temporary physical impairment preventing the arbitrator from properly conducting the arbitration.

****For a detailed discussion, refer directly to Code Civ. Proc., § 170.1 and Cal. Rules of Court, rule 3.816.**

C. Arbitrator Recusal

1. Policy
 - a. An arbitrator is required to disqualify himself/herself, upon demand of any party made before the conclusion of the arbitration on any of the grounds specified in I(B).
 - b. An arbitrator *may* recuse himself/herself due to scheduling conflicts that would prevent the arbitrator from properly hearing the matter, but such grounds for recusal should not be misused.
2. Procedure
 - a. The arbitrator must file a Notice of ADR Neutral Recusal (LASC ADR077) with the assigning ADR clerk within five (5) days of assignment to a case or discovery of the conflict. The notice must include a clear explanation of the reason for such recusal without disclosing confidential information, as well as a proof of service to all parties.⁶ [SEE APPENDIX A]
 - b. The ADR clerk shall assign a new arbitrator within five (5) days thereafter and inform the parties and the former arbitrator.

D. Request for Disqualification of Arbitrator

1. Policy
 - a. If an arbitrator who should disqualify himself/herself for cause refuses or fails to do so, any party may seek the disqualification of the arbitrator.
2. Procedure
 - a. The party must submit the Request for Disqualification of ADR Neutral (LASC ADR078), specifying the basis for the disqualification, with a proof of service to all parties and the arbitrator, to the assigning ADR clerk within five (5) days of learning of the potential conflict or such party shall be deemed to have waived the objection.⁷ [SEE APPENDIX B]
 - b. Within five (5) days of service, the arbitrator may consent to the disqualification by checking the box indicating so on the Request for Disqualification of ADR Neutral and submitting same, with a proof of service to all parties, to the assigning ADR clerk.
 - c. If the arbitrator does not consent to the disqualification or the requesting party does not hear from the arbitrator, the party may file a motion to disqualify the arbitrator by following the procedure set forth in Code Civ. Proc., § 170.3. The statement of disqualification must be personally served upon the arbitrator, as provided in section 170.3, and a copy should be served upon the assigning ADR clerk.
 - d. The arbitrator may consent to the disqualification or file an answer thereto as provided in Code Civ. Proc., § 170.3, and shall include the assigning ADR clerk in the proof of service thereof.
 - e. If an arbitrator fails to file a timely verified answer to the statement of disqualification within 10 days of service of the statement of disqualification, the arbitrator shall be deemed to have

⁶ See LASC Court Rules, rule 12.6.

⁷ See LASC Court Rules, rule 12.6.

consented to the disqualification but shall not be deemed to have admitted the matters set forth in the statement.

- f. In the absence of an objection contained in the papers filed pursuant to Code Civ. Proc., § 170.3, it will be presumed that the parties have stipulated to the Superior Court judge presiding on the underlying case to determine the question of disqualification.
- g. The moving party shall notify the ADR clerk within 24 hours of a determination by the court that the arbitrator is disqualified.
- h. Upon receipt of notice of voluntary recusal from the arbitrator or of a determination by the court that the arbitrator is disqualified, the ADR clerk shall assign a new arbitrator within five (5) days thereafter and inform the parties and the former arbitrator.

E. *Peremptory Challenge of Arbitrator*

1. Policy
 - a. Pursuant to Code Civ. Proc., § 1141.18, any party may request the disqualification of one assigned arbitrator on the grounds and by the procedures specified in Code Civ. Proc., § 170.6, regardless of whether prejudice exists and without cause in any single action for any reason. In actions where there may be more than one plaintiff or similar party or more than one defendant or similar party appearing in the action, only one peremptory challenge for each side may be made in any one action.
2. Procedure
 - a. The party must submit the Peremptory Challenge of Arbitrator (LASC ADR079), with a proof of service to all parties and the arbitrator, to the assigning ADR clerk within five (5) days after notice of assignment. [SEE APPENDIX C]
 - b. The ADR clerk shall assign a new arbitrator within five (5) days thereafter and inform the parties and the former arbitrator.

REFERENCES — For further information on these and related topics, please see:

1. Code of Civil Procedure section 170.1 et seq.
2. Code of Civil Procedure section 1141.18.
3. California Rules of Court, rule 3.816.
4. California Rules of Court, Code of Judicial Ethics, Canon 6 subdivisions (D)(2)(f) and (D)(2)(g) .
5. California Rules of Court, rules 3.850-3.868.
6. LASC Rules, rule 12.6.