



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

MULTI OPTION ADR PROJECT

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**NEUTRAL EVALUATION PROCESS GUIDELINES**

**1. Description**

In Neutral Evaluation (NE), the parties and their counsel present summaries of their cases in a confidential session and receive a non-binding evaluation by an experienced neutral lawyer who has obtained subject matter expertise. Where appropriate, and if requested by the parties, and following completion of the evaluation process, the evaluator may also help identify areas of agreement, provide case-planning guidance and/or offer settlement assistance.

Parties shall only participate in neutral evaluation if they are represented by counsel. In addition, neutral evaluations conducted under the auspices of the MAP program may only be handled by attorneys or retired judges.

**2. Referral by Stipulation and Order**

In appropriate civil cases, parties may voluntarily choose NE as an aid to dispute resolution. The parties shall file a *Stipulation and Order to ADR*, notifying the court of their decision to proceed with neutral evaluation, the name of the evaluator and the date of the NE session. All NE sessions shall be completed prior to the mandatory settlement conference. Upon receipt of a Stipulation to NE, the court will issue an order, which will incorporate these guidelines by reference.

**3. Evaluator's Qualifications and Compensation**

Neutral evaluators on the MAP panel have a minimum of ten years legal experience and have completed the MAP-provided training in the NE process. Parties are responsible for researching the background and expertise of the neutrals and are encouraged to contact a neutral's references. Upon request, the panelists will provide information that may assist the parties in making a selection, including information regarding subject matter expertise. Parties make arrangements for compensating the neutral directly with the neutral. If parties need financial assistance in paying for the neutral evaluation session, they should contact the ADR staff.

**4. Timing and Scheduling of the NE Session**

Promptly after being chosen for a case, the evaluator shall arrange for the pre-session phone conference and shall schedule the date and place of the NE session.

## **5. Prohibition Against *Ex Parte* Communication**

Unless otherwise agreed to by the parties, counsel and neutral evaluator, and except with respect to scheduling matters, there should be no *ex parte* communications between parties or counsel and the evaluator until after the evaluator has committed his or her evaluation to a writing or all parties have agreed that *ex parte* communications with the evaluator may occur.

## **6. Telephone Conference Before NE Session**

The evaluator should schedule a brief joint telephone conference with counsel before the NE session to discuss matters such as: (1) the scheduling of the NE session; (2) the procedures to be followed; (3) the nature of the case; and (4) which individuals will attend the session. An additional brief telephone conference may be required after the written NE statements are submitted.

## **7. Written NE Statements**

- A. Time for Submission.** No later than five (5) court days before the first NE session, each party shall submit directly to the evaluator, and shall serve on all other parties, a written NE Statement.
- B. Prohibition Against Filing.** The statements shall *not* be filed with the court and the court shall not have access to them.
- C. Content of Statement.** The statements may be in any format (pleading, letter, outline) as long as the content is presented in a clear and concise manner. Unless all parties and the evaluator reach a different agreement, each NE statement shall include the following:
- a. Identification of, by name and title or status:
    - i. The person(s) with decision-making authority, who, in addition to counsel, will attend the NE session as representative(s) of the party; and
    - ii. Persons connected with a party opponent (including an insurer representative) whose presence might substantially improve the utility of the NE session or the prospects for settlement.
  - b. Candid responses from both Plaintiff(s) and Defendants(s) to each of the following:
    - i. State briefly of the facts of the case;
    - ii. Delineate what each plaintiff must show or prove in order to prevail and how plaintiff intends to show or prove it;
    - iii. Delineate what each defendant must show or prove in order to prevail and how defendant intends to show or prove it;

- iv. State exactly what types and amounts of damages are being claimed;
  - v. Give your opinion as to the highest and lowest range of damages that might reasonably be found for each separate item of damages being claimed, and explain why;
  - vi. Identify any unusual procedural or other issues which may have an effect on the case, such as discovery or evidentiary problems, related claims, third party liens, etc.
- c. Present legal or factual issues whose early resolution would reduce significantly the scope of the dispute.
  - d. Provide highlighted copies of relevant documents, the availability of which would materially advance the purposes of the evaluation session (e.g. contracts out of which the action(s) arose, accident reports, medical reports, invoices evidencing special damages, etc.).

## **8. Attendance at Session**

**A. Parties.** The parties themselves and their counsel are expected to attend the NE session, unless all parties and the evaluator specifically agree otherwise before the session. This requirement reflects the court's view that the principal values of NE include affording litigants opportunities to: (1) articulate directly to other parties and a neutral their positions and interests, (2) hear, first hand, their opponent's version of the matters in dispute, and (3) obtain a neutral assessment of the merits of the case and the relative strengths and weaknesses of each party's legal positions.

- a. **Corporation or Other Entity.** A party other than a natural person (*e.g.*, a corporation, partnership, limited liability company or an association) satisfies this attendance expectation if represented by a person (other than outside counsel) who has authority to settle and who is knowledgeable about the facts of the case.
- b. **Government Entity.** A party that is a government or governmental agency shall send a representative knowledgeable about the facts of the case and the governmental unit's position and who has, to the greatest extent feasible, authority to settle. If the government brings the action on behalf of one or more individuals, at least one such individual also shall attend.
- c. **Counsel.** Each party must be represented at the NE session by the lawyer who will be primarily responsible for handling the matter at trial, unless the evaluator approves representation by a substitute lawyer.

## **9. Components of NE Session**

**A. Confidentiality.** No evaluation may go forward unless and until the parties and

their attorneys enter into a written confidentiality agreement. The evaluator will require the parties and all persons attending the NE session to sign a confidentiality agreement, using either a form provided by MAP or one containing similar provisions.

**B. Non-Applicability of Rules of Evidence.** The session shall be informal. Rules of evidence shall not apply and there shall be no formal examination or cross-examination of witnesses.

**C. Stipulations.** Nothing in this section shall be construed to prohibit parties from entering into written agreements resolving some or all of the case or entering into and filing procedural or factual stipulations based on suggestions or agreements made in connection with a NE session.

**D. Procedures.** The neutral evaluator shall:

- a. Permit each party (through counsel or otherwise), orally and/or through documents or other media, to present his or her claims or defenses and to describe the principal evidence on which they are based. The neutral evaluator may help the parties identify areas of agreement and, where feasible, enter into stipulations; and
- b. Prepare an evaluation which:
  - i. Assesses the relative strengths and weaknesses of the parties' contentions and evidence, and explains the reasoning that supports these assessments;
  - ii. Estimates, where feasible, the likelihood of liability and the monetary range of damages; and
  - iii. Helps the parties assess litigation costs realistically; and
  - iv. **Shall be in writing unless all parties expressly agree otherwise.**

**E. Case Management Plan and/or Settlement Discussions.** Following the evaluation process, if the parties agree, the evaluator may:

- a. Help the parties develop a case management plan; and/or
- b. Help the parties explore the possibility of settling the case.

A case management plan may:

- a. Help the parties devise a plan for sharing the important information and/or conducting the key discovery that will equip them as expeditiously as possible to enter meaningful settlement discussions or to position the case

for disposition by other means; and/or

- b. Determine whether some form of follow up to the session would contribute to the case development process or to settlement.

#### **10. Settlement Discussions**

The parties are encouraged to discuss with each other and the evaluator, before the session (and preferably during the pre-session phone conference mentioned in Guideline No. 4), whether they may want the NE session to include the possibility of settlement discussions instead of or in addition to a formal evaluation by the evaluator.

If all parties would like to enter into settlement discussions during the NE session and/or after the evaluation has been presented, they may agree to do so. However, regardless of whether the parties decide to enter into settlement discussions, the evaluation shall be presented on demand by any party.

#### **11. Submission of Post-Session Evaluation Forms**

In accordance with *Local Rule 2.3(i)(5)*, the neutral evaluator and all attorneys and clients shall complete and submit evaluation forms to the MAP offices within 10 days of the NE session.