

the Center *for*
Conflict Resolution

**MEDIATOR
MANUAL**

Updated Oct 2009

Bringing Peace, Creating Peacemakers

TABLE OF CONTENTS

SECTION I – CENTER FOR CONFLICT RESOLUTION

Vision, History & Purposes	2
CCR Contact Information	3

SECTION II – THE CCR COURT PROGRAM

Background	4
Partnership with Pepperdine University	5
Scheduling and Absences	6
Sample Court Calendar	7
Court Policies for CCR Volunteers.....	8
Conflict of Interest	11
Refrain from Proselytizing	12
Court Personnel	13
Specific Court Information	14

SECTION III – MEDIATING FOR CCR IN SMALL CLAIMS COURT

Mediator Etiquette.....	16
Introducing Mediation	18
Sample Introductory Speeches.....	20
Opening Statement.....	24
Policy on Legal Representation	26
Small Claims Mediation & Caucuses.....	27
5 Rules of Thumb for Small Claims Mediations	29
Mediation Checklist	31
Questions and Answers.....	32
CCR Forms and Court Documents FAQs	34
Case Types	40

SECTION IV – THE AGREEMENT

The Language of Drafting	41
Writing Settlement Agreements	46
Agreement Writing for Small Claims Cases	48
Problem Areas.....	50
Suggestions.....	52
Do's and Don'ts.....	53
Checklist for Agreements	54
Other Ways to Settle the Dispute	55
Samples of Completed Paperwork.....	57

SECTION V – MEDIATION RESOURCES

Related Articles	
Mediator Standards	

Vision Statement

The Center for Conflict Resolution is a premier provider of Alternative Dispute Resolution (ADR) and conflict management resources, attending especially to the needs of the Christian community, and separately, the needs of the judicial community. CCR provides the services of the highest professional quality at the lowest possible cost to all that seek assistance in the interest of bringing peace and creating peacemakers.

History

CCR is a non-profit organization, founded in 1982 by a group of Christian attorneys to provide an alternative to litigation for those in the midst of conflict. CCR operates under a Board of Directors, Executive Director, Office Staff, and Community Mediators.

What is CCR?

- A Place for Mediators to
 - Encourage
 - Learn
 - Serve
 - Network
- A Place for Fractured Relationships to Find Healing Through
 - Modeling peacemaking principles
 - Modeling true community
 - High quality, effective conflict resolution processes

Bringing Peace

- Non-Sectarian Court Mediation Program
 - Non-sectarian mediation for Small Claims and Municipal Court matters in LA County
 - Using a diverse group of trained mediators
 - Utilizing a non-sectarian court mediation process
 - Mediations conducted in courthouses
- Non-Sectarian Community Mediation (for those not professing Christianity)
 - Using a diverse group of trained mediators
 - Utilizing a non-sectarian mediation process
 - Mediations conducted in the CCR office or other appropriate locations
- Scripture Based Mediation (for those professing Christianity)
 - Mediation integrating biblical principles
 - Using a diverse group of trained mediators who profess the Christian faith
- Conflict Consulting – Informal process of conflict resolution by coaching

Creating Peacemakers

- Training – 32 hours of negotiation and mediation skills
- Continuing education opportunities for mediators
- Seminars and training in personal peacemaking skills
- Mentoring and hands-on mediation experiences
- Standards of participation and conduct for all conciliators

Center for Conflict Resolution

Address:

Center for Conflict Resolution
7806 Reseda Blvd
Reseda, CA 91335

Telephone:

(818) 705-1090

Facsimile:

(818) 668-3094

E-mail:

chris@ccr4peace.org
Gillian@ccr4peace.org
Office@ccr4peace.org

Hours:

9:00 a.m. – 4:00 p.m. Monday through Friday, also by appointment. Excluding the following holidays:

New Year's Day	Labor Day
Martin L. King, Jr.'s Birthday	Thanksgiving Day
Presidents' Day	Day after Thanksgiving
Memorial Day	Christmas Eve Day
Independence Day	Christmas Day

Personnel:

Tim Pownall, Executive Director
Chris Welch, Director
Gillian Massey, Program Assistant

Resources For Volunteer Court Mediators:

- Negotiation and mediation training
- Mentoring program for new mediators
- Bi-monthly mediator networking/training meetings
- Court mediation case files and blank forms
- Library of mediation and conflict resolution resources

Background on The CCR Court Program

CCR was founded in 1982 with a mission statement of “bringing peace, creating peacemakers.” It was founded by a group of Christian attorneys to provide an alternative to litigation for the Christian community. Over the years CCR has refined and focused its energy in two specific areas. The main program works within the Christian community to provide an understanding of how to remain a productive and viable community even in the midst of conflict. CCR provides training in-group facilitation, personal peacemaking skills and in mediation skills to encourage “in-house” mediation within each church or organization.

The second program is the Small Claims Court Mediation Program, a non-sectarian mediation service that seeks to reduce overburdened small claims court calendars by providing mediators to assist litigants in resolving their disputes. CCR serves the courts by providing mediators at every calendar period to assist claimants and defendants in resolving their disputes without having to appear before the judge.

CCR has received funding from the County of Los Angeles under the Dispute Resolution Programs Act since 1988. Since that time CCR has expanded its efforts to 4 court jurisdictions within Los Angeles County; including Van Nuys, Torrance, Santa Monica, and Chatsworth. Since 1992 the Center has averaged over 1,000 cases mediated per year.

Since beginning of its grant funding with the County of Los Angeles, CCR has been ranked as one of the top performers among the grant recipients (including LA County Bar Association) for the greatest number of cases resolved at the lowest cost to the County. The average success rate for cases attempted in mediation by CCR has been 75% over 10+ years in service.

Because of CCR’s consistent and diligent service, Pepperdine University has been partnering with CCR since 1987 to provide training in collaborative negotiation and mediation skills. Pepperdine’s Straus Institute for Dispute Resolution was recently ranked #1 in ADR training schools by U.S. News and World Report. CCR is confident that success within each program is related to the excellent training and hands-on experience given to new mediators.

CCR’s goal is to serve the courts by providing ADR for cases better served by mediation and to empower the parties to use a more productive manner of dispute resolution the next time a conflict arises.

Pepperdine University Clinic Student Information

CCR has partnered with Pepperdine University's Straus Institute for Dispute Resolution to train students in court mediation.

Experienced mediators can expect to be observed by and sometimes co-mediate with Pepperdine students.

After observations and, perhaps, co-mediation experiences with CCR mediators, Pepperdine students then gain valuable "hands-on" mediation experience by mediating cases on their own in various Los Angeles County Small Claims Courts through CCR.

Scheduling and Absences

CCR staffs are responsible for scheduling mediators in the Small Claims courts. Most court volunteers are usually assigned to a five-hour docket once a week (including travel time) and can expect the same schedule each month. Others are substitutes for regular mediators.

While last minute absences due to unexpected circumstances are understandable, your cooperation in informing the CCR office of your absences a minimum of two days ahead of time is appreciated. This allows CCR to contact and schedule substitutes. Please contact the CCR office if you are not going to be able to cover your particular docket.

CCR Small Claims Court Calendar
Jul-07

	Monday	Tuesday	Wednesday	Thursday	Friday
	2	3	4	5	6
AM	Chatsworth F43 Torrance B Van Nuy 114 Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Van Nuy 114	Chatsworth F43 Van Nuy 114
PM	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Santa Monica O Van Nuy 114	Van Nuy 114 Van Nuy 114
	9	10	11	12	13
AM	Chatsworth F43 Torrance B Van Nuy 114 Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Van Nuy 114
PM	Chatsworth F43 Torrance B Van Nuy 114 Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Santa Monica O Torrance B Van Nuy 114 Van Nuy 114	Chatsworth F43 Santa Monica O Van Nuy 114 Van Nuy 114	Van Nuy 114 Van Nuy 114
	16	17	18	19	20
AM	Chatsworth F43 Torrance B Van Nuy 114 Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Van Nuy 114
PM	Chatsworth F43 Torrance B Van Nuy 114 Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Santa Monica O Torrance B Van Nuy 114 Van Nuy 114	Van Nuy 114 Chatsworth F43 Santa Monica O Van Nuy 114 Van Nuy 114	Van Nuy 114 Van Nuy 114
	23	24	25	26	27
AM	Chatsworth F43 Torrance B Van Nuy 114 Van Nuy 114 Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114 Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Van Nuy 114
PM	Chatsworth F43 Torrance B Van Nuy 114 Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114	Van Nuy 114 Van Nuy 114
	30	31			
AM	Chatsworth F43 Torrance B Van Nuy 114 Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114			
PM	Chatsworth F43 Torrance B Van Nuy 114 Van Nuy 114	Chatsworth F43 Torrance B Van Nuy 114			

AM court starts at 8:30 AM, PM court starts at 1:30 PM, Night Court starts at 6:30 PM
 † Pepperdine Clinic Student
 ‡ Night Court

Court Policies for CCR Court Volunteers

The purpose for discussing the Policies of the Court is so that volunteers may be properly informed as to what is considered appropriate behavior, dress, and dealing with the confidential nature which may be part of their assignment. The following list is not intended to cover every possible situation that may arise and you are encouraged to communicate with the CCR office if you need further clarification.

General Conduct and Personal Appearance

CCR court volunteers conduct themselves at all times in a professional and courteous manner that reflects positively on themselves and the Court.

CCR court volunteers are asked to be groomed in a business-like manner that is appropriate to their level of responsibility. The following would be inappropriate:

- Excessive make-up and jewelry;
- Extreme dress, such as shorts, sheer or low-cut blouses, tank tops, mini-skirts, or sandals;
- Sport team hats or gang-related clothing;
- T-shirts with offensive statements or pictures on them.

Code of Ethics

A fair and independent court system is essential to the administration of justice in a democratic society. Proper conduct by Court employees and CCR volunteers inspires public confidence and trust in the courts and conveys the values of impartiality, equity, and fairness that bring integrity to the Court's work. To advance these values and to achieve justice, we believe certain moral principles should govern all that we do.

A code of ethics cannot possibly anticipate every moral dilemma and ethical choice that may arise in the execution of one's day-to-day professional responsibilities. Personal discretion in the interpretation of this Code of Ethics is both necessary and desirable. We who believe in it will continue to cultivate within ourselves the moral sensibilities that will inform and enliven our consciences and make us true servants of justice.

Use of Personal Vehicle

CCR Volunteers are asked to use their own personal vehicles and are responsible for maintaining a current valid California driver's license (Class C).

Parking

Parking is available for all CCR volunteer court mediators while they are actively participating in the court mediation program.

Documents

CCR volunteer mediators are prohibited from signing any official Court document(s), except all CCR forms.

Volunteers who come in contact with any document(s) in which they have a personal or professional interest are to notify the Executive Director. Such contact constitutes a conflict of interest and is prohibited.

Confidential and Sensitive Information

The unauthorized dissemination of information of a confidential or sensitive nature is prohibited. Removing files or documents from the premises of the Court without proper authorization is prohibited and punishable by law. Volunteers are to refrain from publishing any data gathered during their assignment in the form of press releases, opinions, or feature articles, except with the prior written consent of the CCR and the County Public Affairs Administrator.

Contacts from News Media

All contacts from the news media, (radio, print, or TV) shall be referred immediately to the Executive Director of CCR prior to any discussion with those parties.

Legal Issues – Giving Advice, Receiving Gifts, or Solicitation

CCR volunteers are absolutely prohibited from giving any legal advice or legal referrals to Court customers, even though customers may request such information. (However, mediators often refer the public to the Small Claims Court Clerks or Small Claims Advisors).

CCR volunteers are prohibited from accepting any gift or item of value from any individual or organization.

There will be no solicitation, charging, requesting, or accepting of any fee (reward or payment) for services rendered.

Possession or Consumption of Illegal Drugs or Alcohol

Possession, consumption, or being under the influence of illegal drugs and/or alcohol on Court (County) property is prohibited.

Personal Safety

If CCR volunteers or individuals with whom they are working are injured during Court hours, they are asked to notify the appropriate Court personnel and CCR Executive Director immediately.

All CCR volunteers are covered under the Los Angeles County's American International Group Life Insurance Plan (AIGLIFE) and are not eligible to receive Workers' Compensation.

Reporting of Absences and Departure

CCR volunteers who are unable to come to their appointed court dockets are expected to call and inform the CCR office a minimum of two days prior to their start time. Those with prior obligations, such as medical appointments, vacations, or other planned absence, are asked to contact the CCR office at least two days in advance regarding the reason for their absence and the duration of the anticipated absence.

Volunteers are asked to give a minimum of one-month notice to the CCR Executive Director when they expect to end their participation in the program.

Volunteer Identification Badges

All CCR court volunteer mediators are to wear their "Volunteer Photo Identification Badges" (if provided by CCR) in a conspicuous location when working in the Courts. Upon the completion of your participation in the program, the photo ID badges are to be returned to the CCR office.

Harassment

Harassment of a sexual, physical, or emotional nature is prohibited by law. Generally, harassment includes unwelcome sexual advances, requests for sexual favors, and any other verbal or physical conduct or communication that creates an intimidating, hostile, or offensive environment.

Volunteers are requested to immediately notify the CCR office of any incidents of harassment.

Volunteer Obligation

Any CCR volunteer arrested by law during the course of their assignment must report the matter to the CCR Executive Director for review and necessary follow up.

Failure to comply with the "Court Policies for CCR Court Volunteers" will result in immediate dismissal from volunteer program.

Conflict of Interest Policy for Volunteers

Volunteer or staff mediators affiliated with the Center for Conflict Resolution (CCR), should be free of any interest or any appearance of interest in the outcome of matters in which they mediate. If a CCR mediator has an equity, ownership, partnership, or other interest in a mediation, he/she should excuse him/herself from consideration of the matter. Similarly, CCR mediators may not mediate in cases in which members of their family may be interested, however remote the relationship may be.

Even the appearance of conflict of interest should be avoided.

Agreement to Refrain from Proselytizing while Participating in the Court Annexed Mediation Program

Volunteer or staff mediators affiliated with the Center for Conflict Resolution should refrain from any statements and/or behavior that would be construed as inducing parties to convert one's faith or any reference made to a person's religious belief and/or practice. The Center for Conflict Resolution strictly adheres to the recognition of the division between church and state within the auspices of any court jurisdiction or court-referred action.

The Center for Conflict Resolution does not condone the practice of witnessing and or the sharing of one's faith while engaged in dispute resolution involving court-annexed causes of action. Any volunteer and/or staff mediator affiliated with the Center for Conflict Resolution violating this policy shall be subject to termination.

Court Personnel

Bench Officer: Any officer who sits on the bench, whether a commissioner, judge or judge pro tem, is sometimes referred to as a “bench officer.” The officer may be appointed, elected or borrowed. The officer is one of the following:

- **Commissioner** - An administrator appointed by the government or the courts to administer the laws relating to a government agency or court. A commissioner is a part of a government or court commission. May also be appointed by a presiding judge of the court.
- **Judge** - Judge, Justice and Court are commonly used synonymously or interchangeably.
 - **Judge 1** is a public officer appointed to oversee and to administer the law in a court of justice; in some courts is called a magistrate or justice; the chief member of a court who has control of the proceedings and the decisions about questions of law or discretion.
 - **Judge 2** is a public official endowed with the authority to hear, preside over and decide legal matters brought in court. Judges are to be impartial, and are appointed or elected depending on the jurisdiction.
 - **Judge 3** is elected or appointed by the Governor. These judges work as judges until they retire or expire.
- **Judge Pro Tem** - Pro tem (“for the time”) judges are lawyers who have been in practice for at least five years. They volunteer their services in Small Claims court. They only have “judge authority” when presiding in the courtroom. They often depend on the clerk and/or bailiff to manage the courtroom procedures.

Some bench officers may be very helpful and talkative after court sessions end, but they are not the ones to approach about courtroom procedures.

The Bailiff: The Bailiff is a uniformed and armed sheriff’s deputy. He/she keeps order in the courtroom and often gives instructions to the litigants. If you need to ask a question or get information to the court, the bailiff will usually come to you if you can get his/her attention by raising your hand or approaching the “fence” unobtrusively. Any paperwork such as dismissal forms are best handed to the bailiff, as he/she is the one who moves around the room as needed.

The Clerk: The Clerk is dressed in street clothes and usually sits at a desk near the judge’s bench. The clerk is the one who “runs” the courtroom. He/she keeps track of the cases and their disposition. The clerk should be quite knowledgeable and may be willing to answer questions; however, during court proceedings, the bailiff is the one to approach. The clerk may be very helpful before and after court is in session.



As a new mediator in a courtroom, you should introduce yourself to the bailiff or the clerk (do not enter the “fence” unless invited) before court is actually in session. When the doors are unlocked to the courtroom, the bailiff usually is available to speak with you. Just walk up and introduce yourself. You should ask about the procedure for making your introductory speech in that courtroom and ask where you should sit. After your first time there, just be sure the clerk or bailiff is aware of your presence and your purpose before court is in session.

Specific Court Information

All small claims courts are in the Los Angeles Superior Court system. Additional helpful information can be found on the Superior Court website: www.lasuperiorcourt.org

North Valley District Chatsworth Courthouse

9425 Penfield Avenue
Division F43
Chatsworth, CA 91311
(818) 576-8470
Judge/Commissioner: Martin Green
Clerk: Milo Brown
Bailiff:
Mediation Hours: M, T, Th. 8:30AM-11:30AM, 1:30PM-4:45PM;

- Public parking is available adjacent to (north of) the courthouse facility. There is no charge to park.

Northwest District Van Nuys Courthouse East

6230 Sylmar Ave., Van Nuys, CA 91401
(818) 374-2695 Division Z, 3rd floor
Mediation Hours: M-F 8:30AM-11:30AM, 1:30PM-4:45PM (except Z on Friday AM)

	<u>Division Z (East)</u>	<u>Division 103 (West)</u>	D
Commissioner:	Mina Fried	Vites	
Clerk:	Jill Szramkowski	Tracey	
Bailiff:	Deputy Green		

- Parking in the public parking structure on Sylmar Avenue between Calvert and Delano Street is free for mediators. Tell the Parking Attendant you are a volunteer mediator.
- Division Z is on the 3rd floor of the old Superior Court building (known as Van Nuys East, the shorter of the 2 towers). Mediation Room available on the 2nd floor. It is located in a room towards the back of the cafeteria which has a San Fernando Bar Association emblem located on it. Just ask any bailiff posted outside the cafeteria to help you gain access.
- Division 103 is Small Claims night court. Night court is held every 3rd Thursday of the month at 5:30 PM.

**Southwest District
Torrance Courthouse**

Mailing address:
825 Maple Avenue
Division 8
Torrance, CA 90503-5058

(310) 798-6882

Commissioner: Doug Carnahan

Clerk: Gypsy

Bailiff: John Takishura

Mediation Hours: M-W 8:30AM-12:00PM, 1:30-4:00PM

Small claims location:
Municipal Court Annex
3221 Torrance Blvd.

- Location – The Small Claims Division is in the main court building on Maple Avenue. Division 8 is located on the 4th floor.
- Parking – free parking is available around the main courthouse.

Santa Monica Courthouse

1725 Main Street

Department Q

Santa Monica, CA 90401

(310)260-3799

Judge/Commissioner: Varies

Clerk: Gail Block

Mediation Hours: T, W, Th,. 1:30 PM- 4:30 PM

- Public parking lot adjoining the east side of the courthouse. Take a ticket and park anywhere in lot.
- Parking validations may be obtained in Room 232 with Becky.
- Small Claims court takes place in Division Q. Refer to CAMP's Small Claims Court Procedures page for more details on Court proceedings
- Mediations look as though they will be able to happen in either Division T or in an adjacent hallway.

Mediator Etiquette

It is our intention to help you become the best mediator possible. And here are some very basic, commonsense ideas to assist you. Please feel free to call us with any additional points you may have picked up in your mediation practice.

If you are an observer, a mediator or a co-mediator:

1. Arrive ahead of time so you can greet your clients in a relaxed manner.
2. Professional dress helps to establish the appropriate atmosphere.
3. Helping your clients arrive at their best agreement may or may not meet your expectation of the outcome. Clients first!

As an observer: If you wish to observe a mediation session, please remember:

1. You must not interfere with the mediation process, EVER. This includes keeping your body language as well as your eye and head movements to an absolute minimum.
2. If you wish to take notes of any kind, be sure the mediator gets permission from the disputants FIRST.
3. When the mediation has concluded, thank the disputants for allowing you to observe the process. Do not offer any suggestions or make any verbal observations to the disputants or the mediator. Schedule time after the mediation to discuss your observations or ask your questions.

As a mediator:

1. If an observer is present, be sure to get the clients' permission first. If they do not want an observer, the observer leaves. Even if they have consented to the observer over the phone, the client has the right/option to change her/his mind.
2. If there is a co-mediator, make sure you have clearly defined your individual responsibilities BEFORE the clients arrive. Then make sure both you and the co-mediator stick to the agreement. Try not to switch roles during the process; that is too confusing to the clients, and their needs come first.

As a co-mediator:

1. Be sure you and your co-mediator have complementary styles. You may find an area of disagreement through the mediation process. SAVE it until you can speak about it privately.
2. Take the time to prepare with your co-mediator ahead of time. This is not the place to "fly by the seat of your pants/skirt"!
3. Decide which co-mediator will contact both clients and then brief his/her co-mediator about the case.
4. Decide how the mediation responsibilities will be divided before the clients arrive and stick to your own task.
5. Discuss how you will change strategies within the mediation session. Cover all the options, such as: how do I interrupt you if necessary without disrupting the communication between the clients.
6. Make sure both mediators have had a chance to speak early in the mediation process. This will allow each of you to have time to gather thoughts and will allow the clients a chance to get familiar with your style and tone of speech. The more comfortable the clients feel and the sooner they feel that way, the quicker the real issues can be brought to light.

7. Be willing to acknowledge that each mediator has strengths and weaknesses and be willing to support each other in the strong points and learn new skills from each other in the process.
8. Time set aside after the mediation is a great learning process for all.

Whether you serve as an observer, co-mediator or mediator, the paramount goal is to create empathy, recognition and improve communication between the clients. Our opinions do not count. Our judgments cannot be accurate. Manipulation and control are inappropriate behaviors.

The mediation process is an ongoing journey, learning ways to speak up, speak out, speak clearly and to look upon those in conflict across a respectful distance. There is an amazing opportunity for each of us to learn from our clients, from each other, from the process.

Introducing Mediation to Small Claims Court Disputants

As part of our agreement to offer mediation services in Small Claims Court, we are allowed a few minutes either before or after the calendar is called to explain mediation. Mediators must be prepared with a short speech about mediation to share with the courtroom audience. This is the way the litigants learn that there is a free service available for them and probably the first time that they have ever heard of the process. The number of parties that agree to mediate is directly proportional to the quality of the mediator's opening speech. This speech is a "sales pitch" for mediation.

Many of the court staff are very supportive of the mediation process. They will give you support by introducing you or by emphasizing some of the points you make in your opening speech. When you finish your cases, ask the bailiff or clerk if anyone else is interested in mediation. Often the bailiff or clerk will make an announcement that you are available, or even recruit more cases for you. (In some courts, the judge may direct ALL contested cases to mediation before he or she will hear them.)

In composing your speech, it is good to keep in mind that many of the litigants do not have English as their first language. Simple sentences and simple words (not legal terms) are helpful in getting your message across. Body language and movement while the speech is being given can add flair to the presentation. Litigants have their disputes on their minds, so the mediator must work to capture their attention. A conversational approach seems to help involve the litigants, e.g., using questions that may or may not require a show of hands, etc. This court "convening" speech begins the process of cultivating rapport and trust between the parties and the mediator that must be present for mediation to succeed. It is important for the mediator to be comfortable with the speech and its content -- to really believe what he/she is presenting so that the fact that the mediator is "sold" on mediation comes through to the litigants.

The following list of suggestions can be incorporated into opening speeches. Items in bold type are musts for your opening in the courtroom. You should design a speech that you are comfortable with and can deliver in a relaxed manner while maintaining eye contact with the audience. As you have opportunity to give your speech over time, you will constantly make changes that "fit" the speech to you and to your style. Following the list, there are several sample speeches. It's fine to use parts or all of other mediators' speeches if they feel right for you!

1. **Introduce yourself...** Good morning, my name is _____ and I am a volunteer mediator today.
2. **This is a free service paid for by the county of Los Angeles.** Funds for this program are generated from court filing fees.
3. **A mediator is an impartial person to help the parties communicate and reach a settlement of your dispute.** I am not a judge and I do not give legal advice. I have been trained to help people negotiate a settlement.
4. If you mediate today, **you stay in control of your dispute.** I will help you "talk-it-out" with the other side and see if you can reach agreement. About 75% of the cases that are mediated reach a mutually satisfactory settlement.
5. **If we don't reach agreement you may return to the courtroom and see the judge today.** Your case will be set aside while you are working with the mediator and will be called again if you do not settle.

6. Almost everyone is nervous in front of the judge. If you don't like speaking in front of an audience and want to avoid having to publicly explain your case, try mediation.
7. Why the plaintiff should avoid going in front of the judge:
 - a. The plaintiff has the burden of proof. This means that they must prove their case to the satisfaction of the judge.
 - b. If a plaintiff loses, they do not have the right to appeal.
 - c. Receiving a judgment does not mean that you receive money today. Today you have the defendant here and you can probably work out terms that are agreeable to both of you. I'm here to assist you at this time.
8. Why the defendant should avoid going in front of the judge:
 - a. If you know you are going to lose because you owe the plaintiff something, work out a payment schedule to avoid a judgment on your record.
 - b. If a judgment is awarded to the plaintiff, your credit rating may be damaged.
 - c. As a defendant you have the right to appeal a judgment, but appeals take time and energy and may be expensive if you use an attorney. Appeals are rarely successful.
9. **If we reach a settlement today I will help you write an agreement that can be legally binding.**
10. **Mediation is voluntary.** I will assist you if you need help asking the other party to mediate.
11. When the parties reach a face to face agreement as to the details, time, and amount of the settlement, there is more likely to be compliance with the agreement.
12. **While you exchange evidence, I will be in the rear of the room or in the hallway and I will be happy to answer any of your questions regarding mediation.**
13. Are there any questions?
14. Would you please raise your hand if you are interested in mediating your case?

Introduction to Courtroom Speech #1

"Good morning, ladies and gentlemen. My name is _____, and I am a volunteer mediator. You have two choices today. You can either stay here and take your chances with the Judge; or you can try to settle your dispute with my assistance in mediation. If you choose to stay here, you have no power in the courtroom. The judge has all the power and you will do as you are told. If you come into mediation, you will have the power to control the outcome of your dispute."

"If you stay here, everything in this courtroom is public record; if the Judge rules against you, that ruling will stay on your credit rating for the next seven years. Each time you need to obtain new credit, rent an apartment, buy a car, apply for a loan, you may be required to explain why a civil judgment was entered against you. Even if you quickly pay the judgment, that will not erase the mark on your personal or business credit history. The damage has been done."

"If you are the plaintiff, you may believe that you are 100% correct in your cause of action, and that you can't lose. However, there is no such thing as 100% certainty in this courtroom."

"As your mediator, I do not take sides. I do not pressure you, or make decisions for you, or tell you what should be done. Plaintiffs and Defendants, working together with my assistance, can arrive at their own settlement decision."

"Mediation works in most of the cases to be presented here today. This service costs you nothing. In the event you are not satisfied with mediation, you retain your right to return to the court and have the Judge hear your case. This court knows if you are with the mediator, and will not pass you by, because you are attempting to settle your dispute."

"I strongly suggest that you consider and try mediation. Feel free to approach me after the Calendar has been called, and ask me any questions you may have about your situation, mediation, or the process of dispute settlement. There is no charge for this service. I will be able to talk to you in the hallway outside this courtroom, or in the conference room on a first come, first served basis."

Introduction to Courtroom Speech #2

"Hello. My name is _____, and I am a volunteer mediator for this courtroom today.

This is a **voluntary, free service** paid for by the county of Los Angeles.

I am here to help those of you with **contested cases** – where both the plaintiff and defendant are present. Mediation is your last chance to work out something before you go to the judge and let the judge decide.

How many of you are familiar with mediation? In mediation, the mediator is not a judge. The mediator does not decide the case. Rather, **the mediator is an impartial person who helps the parties communicate and try to reach a settlement.** I may be able to help you find a solution you may not have thought of yet.

How many of you think you will win today? How many will lose? In contested cases, there will be as many losers as winners.

Why would you want to consider mediation?

- **YOU decide**, you stay in control, you have the power, you agree to what you think is fair. If you go to the judge, you lose that control/power. You're at the mercy of the judge's decision. You're at risk.
- Because mediation is voluntary, it's a **SUCCESSFUL** process. Over 75% of the cases that are mediated are settled by the parties themselves.
- For those of you who are **PLAINTIFFS**:
 - You may not have the **evidence** you need to prove your case in front of the judge.
 - There is no **cash register** here. If you win, you still need to take action to collect your money, which will take more time and hassle. Collection can cost more than the judgment.
 - You may be **more likely to be paid** if you and the defendant can work out terms that are agreeable to both of you in mediation, than if a judge orders payment.
- For those of you who are **DEFENDANTS**:
 - Mediation is **creative**. Maybe the case can be settled for **something other than money**. Or, if you owe plaintiff, you can work out a **payment schedule**.
 - Mediation is **confidential**. There is **no public record**. You can avoid a judgment, which stays on credit record for a minimum of 7 years. Even if you pay the judgment quickly, your credit rating will be damaged.

You have nothing to lose in trying mediation. If you think you're wasting your time, you may stop the mediation at any time & see the judge. If you don't reach agreement, you may return to the courtroom and see the judge today.

If you reach a **settlement in mediation** today, I will help you to write an agreement that can be legally binding. I can also help you complete the **dismissal form** for the plaintiff to dismiss the case today.

Do you have any questions? If you have any other questions, I will be out in the hallway when you exchange evidence.

Mediations will be done on a **first come, first served** basis.

Please **raise your hand** if you are interested in mediating your case."

Introduction to Courtroom Speech #3

- “Good afternoon! My name is _____ and I am a volunteer mediator. I am here to help those of you with the contested cases (where both the plaintiff and the defendant are present) find a solution that you may not have thought of yet.
- I do not make decisions for you. What I do is help you explore options so that you stay in control of the end result. Our goal is to find a solution that both parties can agree to.
- In fact, our preference would be that all the parties in contested cases would go out in the hallway, exchange evidence, and talk about how they can settle their case. If you can do that, then I have agreement forms and dismissal forms and I can help you write up an agreement that will include the details you might have forgotten. Please let me know if you reach an agreement. I will interrupt an incomplete mediation in order to help you write it up. You are the stars of the system and I want to give you priority.
- For the rest of you who need a neutral person in order to begin to talk to the other party, you will find that mediation costs you nothing and has great benefits for both sides.
 - If you are the plaintiff, mediation may be better for you because it is not unusual for money to change hands at the end of mediation. If you stay in court, even if you get a judgment, you will only have a piece of paper. Also, the defendant may be more likely to pay you or pay you more quickly if he or she agrees to the payment.
 - If you are the defendant, mediation makes sense because it is confidential. That means that when you and the plaintiff reach an agreement, it is not part of the public record. The credit reporting agencies will not have access to the agreement, as they do when a judge renders a judgment. Also, defendants, if you are in a situation where you cannot pay the amount you owe right now, but you agree that you owe some money, we will work towards a payment amount and payment schedule which will make it possible for both sides to agree.
- Perhaps your dispute could be settled for something other than money. The court can only deal with money, but in mediation we can consider other options. I want you to start thinking about what else could you offer to help find a settlement? I had one settlement where a man asked to remove a carpet he had installed in a place that owed him money. Another garage repair situation worked when the plaintiff agreed he would never come back to that place of business again. No money was exchanged in either case.
- Is there anyone here who is already close to an agreement? I can take you first. Who else is interested in mediation, if the other party is interested? Please sign up on the sheet posted on the door in the hall.
- You should know that mediation is voluntary (both sides have to be willing to participate). Because it is voluntary, mediation results in a high rate of success in both reaching agreements and in those agreements being kept. Plaintiffs, you are more likely to receive a complete payment if you participate in mediation, than if the judge decrees a payment. And because it is voluntary, any of the sides, including the mediator, can call a halt to the mediation at any time. The process has to be making progress in order to continue. If we are able to find an agreement, and we do most of the time, the case will be dismissed and you will not see the judge. If we are not successful, you may still go before the judge and allow him or her to make the decision for you. You can retain some control over the outcome if you choose mediation.
- Thank you for your attention. Are there any questions?”

Introduction to Courtroom Speech #4

"Good morning. My name is _____ and I am your volunteer mediator today. My services are free to you -- the County of Los Angeles provides this mediation program for you. The Court system believes in the benefits of mediation, and so do I.

We like to be independent, to take control of our own lives and our own business. Most of the time, we can take care of our problems the way we think is best for us. Right? But when you have a dispute or an argument with someone, and you can't work it out together, you may bring it to court, like today. Well, when you bring that problem to the judge, what you are doing is asking the judge to make your decision FOR you -- you're asking him to tell you what to do. And the hard part is, you have to do what he says, even if you don't like his answer! When the judge hears your case, both sides will have just a few minutes to talk to him. You can't talk to each other, just to the judge. The judge will listen and be as fair as he can be according to the law, but it is his job to say, "You win," and "You lose." Whether you like it or not, you have to obey the judge!

In cases where both plaintiff and defendant are here, half of you are going to lose! That's a fact, so let me tell you a little about what happens in winning and losing. If you are the plaintiff and you lose, your case is over. You lose the time you have spent, the court fees you have paid, and you get nothing for your trouble. If you win, you don't get money today; what you get is a piece of paper called a judgment. It says, "You win so much money." And it may not be as much money as you asked for, too! So, you have to wait a while to try to collect that money, and even then it may take a lot of effort and even more money to get what you won. So it's another big hassle, even if you win. If you are the defendant, and you win, that's pretty good. It's over. But if you lose as the defendant, you have to pay the money the judge tells you to pay. AND that court judgment against you will be on your credit record for at least seven years, maybe the rest of your life, even if you pay it off quickly! That bad credit mark can make it very difficult for you to borrow money, or to change apartments, buy a car, all kinds of things. You will always have to be explaining why someone had to take you to court to get the money you owed them. So you are in for some really big hassles.

Now let me tell you how mediation can be a much better way to solve your argument. In mediation we will sit down together in private -- plaintiff, defendant and mediator -- and talk things out. You talk to each other, not just to the judge, and to me. I am not a judge, and I won't tell you who wins and loses. I will help you think about ways to settle your argument, and help you make an agreement that you BOTH think is fair. If you come to an agreement, we will write that up into a legal contract. You can tell the judge to dismiss your case, and you can feel good that you handled your own problem by yourselves! If you are not able to come to an agreement that you both feel good about, you will not lose your chance in court. You can go right back in to see the judge TODAY and let him decide who wins and who loses.

When you go out into the hall to exchange evidence, I will be there (or in the back of the courtroom) and I will be happy to answer any questions you may have about mediation. I will be happy to help you settle your case before you see the judge. Mediation will be done on a first come, first served basis. I will also put a list outside the courtroom door for you to sign up on. Whether you decide to try mediation or not, I wish all of you good luck!"

Opening Statement for Small Claims Court Mediations

The court “convening speech” is your advertisement and sales pitch for mediation, but when the parties are ready to try mediation, there must be an opening statement given to educate participants about the process. The CCR Information Statement (on the back of the Small Claims Agreement form) provides some of the basic necessities of the statement. Some additional points need to be included in the opening statement.

1. Introduction

- a. Names of mediator and parties
- b. Have parties read and sign Information Statement. You may want to provide a brief explanation or overview of the statement. Example:

“This government agency that funds our mediation program has told us that all disputants receiving our services need to sign this information statement.

“The purpose is to make sure you understand certain things about the services we provide. For example:

- We provide mediation services. A mediator does not decide the case like a judge, does not give legal advice like an attorney, and does not have any interest in the outcome of the process. Instead, a mediator is a neutral person who helps both parties talk through their dispute to help them find a solution.
- This is a free service.
- This process is voluntary. Either party or the mediator can stop it at any time.
- Any statements made in mediation are confidential and, if you end up going to court later, you can’t be forced to testify later about what was said here.
- You can have witnesses talk in the mediation.
- Most people in small claims court don’t have a lawyer present, but if you do, the lawyer can participate in the mediation.
- If you reach an agreement, you can both agree that your agreement can be given to the court. (Just the *written agreement*. What is *said* in mediation is still confidential.) This can be helpful, either to enforce the agreement later or to use it as evidence that an agreement had been made in mediation.

“We encourage you to read and need you to sign this form before we start the mediation.”

2. Role of Mediator

- a. Not a judge or decision maker
- b. Not a legal advisor (even if mediator is an attorney)
- c. Neutral/impartial
- d. Note-taker

3. Role of Parties

- a. Help mediator and each other understand their “stories”
- b. Be honest and open to get best results
- c. Keep open minds
- d. Be patient with the process
- e. Take notes if you have comments instead of interrupting

4. Description of the Process

- a. Take turns telling the story
- b. Define issues
- c. Private meetings with mediator (caucus)
- d. Chance to control information
- e. Explain confidentiality so info is not revealed without permission
- f. Generating and evaluating solutions
- g. Aim is to reach written agreement.

5. Logistics and Ground Rules

- a. No interruptions
- b. No insults

Here are a few ideas that may save time:

1. A list can be posted outside the mediation room door for interested parties to sign up for mediation while the mediator is busy. The mediator can then call the parties' names when ready for the next case.
2. If there are several cases interested immediately, the mediator can gather them in one room and give the opening statement and information to all parties at once instead of going through that process separately with each case
3. Parties to each case can be given the Information Statement while they are waiting their turn to mediate.
4. In some courts, the judge may tell everyone in contested cases that they **MUST** try mediation before he will hear their case. It may be helpful to ask the litigants if any of them have already come to an agreement, only needing to finalize the details and document their agreement. These partial mediations will probably take less time than full mediations, and may be resolved quickly.

CCR Policy on Legal Representation in Small Claims Court Mediation

It is the policy of CCR to allow attorney participation in the mediation of a Small Claims dispute if:

1. the attorney is the plaintiff or defendant in the case; or
2. the attorney is a witness for one of the parties and limits his/her participation to that of a witness; or
3. the parties agree that the attorney(s) may participate and the parties agree to the nature of that participation.

Mediation is based on the principle of self-determination by the parties, and relies on the parties to reach a voluntary, consensual agreement. Responsibility for the resolution of a dispute rests with the parties. (California Dispute Resolution Council Standards of Practice for California Mediators, Adopted 1998, January 2001 edition.)

Therefore, it is the *preference* of CCR that the parties actively participate in the mediation process and that the attorney representatives limit their participation to providing legal advice to their client and otherwise assisting their client to make an informed decision.

However, if the parties agree that the attorney may actively negotiate on behalf of the attorney's client or otherwise represent the client in mediation, this will be allowed.

The mediator may ask the attorney to leave or may terminate the mediation if, in the mediator's judgment, the attorney's participation is adversely impacting the mediation process.

Small Claims Mediation and Caucuses

Beginning the Mediation

After the parties sign the Information Statement, make a short statement about how the mediation will be conducted. Use whatever ground rules you are comfortable with to help the parties be attentive and productive participants in the process.

Opening Statements of the Parties

The parties are aware of the facts of the conflict so ask for a short statement to help you understand what is happening. Consider gathering details as needed after each side has had a chance to speak. Usually, we start with the plaintiff and hear their side of the story. Then the defendant is offered an opportunity to share their side of the dispute. Be sure to be an attentive listener. There is a time pressure in Small Claims court mediation that needs to be defused as much as possible.

Defining Issues and Setting an Agenda

Small Claims court mediations are not fundamentally different from other mediations. Defining the issues and setting the agenda are as important in Small Claims court as they are for any mediation. One of the main reasons the mediation process is so effective is that there are prescribed stages to follow that work. The time constraints of the Small Claims court environment may focus the issues on what damages are being claimed. Beware, the underlying non-monetary issues will probably be driving the dispute. The underlying issue(s) can be resolved or at least acknowledged.

You may need to caucus to ask questions about issues prior to placing them on the agenda. This may be very important because, in the court setting, we should not bias either party's legal position.

Using Caucuses

Be sure to explain to the parties what a caucus is and how it might be used. Simply put, a caucus is a time-out from joint conversation so that the mediator can check in with each side privately. Caucusing can be helpful to interrupt unproductive arguing, to do reality testing, and to consider offers and counter-offers. Some mediators prefer extensive use of caucusing. Others use them extremely sparingly. It is important to give each party equal time in private to guard the mediator's neutrality.

Problem Solving and Negotiation of Settlement

A collaborative or interest-based approach to resolving the issues yields the highest level of party satisfaction. However, if the parties can be satisfied by a distributive bargaining process to determine the monetary damages, don't fight it; settle, and write it up!

A caucus may be very helpful to move parties from a fixed position by questioning a party's belief in their position. **Do not give legal advice or predict how the judge will rule.**

If the parties reach an agreement, the case is dismissed. If the defendant later defaults, the normal process is for the plaintiff to re-file in Small Claims court, pay court fees, appear before a judge or other bench officer, and get a judgment.

Writing the Agreement

Small Claims court mediated agreements are usually short. You only need to include the important terms, as the parties know the details. Keep it clear and simple. Use the language of the parties.

Mediators should encourage the parties to sign the box at the bottom of the Small Claims Agreement to waive confidentiality as to the written settlement agreement only. (The words spoken by the parties in mediation are still protected and cannot be disclosed.)

5 Suggested “Rules of Thumb” for Effective Mediation in Small Claims Court

1. Generally, try not to evaluate the legal merits of cases or predict court outcomes.

Why?

- The mediator may be wrong. If case subsequently goes to court and the judge rules differently, the mediator loses credibility. (This is a higher risk in a court with a judge pro tem than with a commissioner or judge; it is hard to accurately predict what a judge pro tem will do.)
- The mediation process may be compromised. By giving an assessment of the legal merits of the claims, the mediator substantially increases the likelihood that one or more of the parties feel that the process is unfair or biased. The mediation shifts from a focus on process to a focus on substance – at a cost to the process.
- The mediator may be engaging in the unauthorized practice of law. It is not lawful for the mediator to apply knowledge of the law to the specific facts of the underlying dispute. (This is a big temptation for most law students.)

2. Generally, follow a more facilitative approach.

- It's better for a party to reach his/her own conclusions regarding the merits of the case, or for a party to consider what might or might not happen in court. Ask questions instead of making statements.
- Follow the parties lead whether to have a narrow focus (on the legal issues involved) or whether to also include other non-legal issues as well (or sometimes in lieu of legal issues – such as where the relational issues are at the core of the dispute).

3. Remember to provide a FAIR PROCESS.

- Respectfully listen to both parties.
- Give each side a reasonable amount of time to tell their story.
- If the mediator looks at written information presented by one party, the mediator needs to look at written information presented by the other. Or better yet, the mediator could direct this information sharing to the parties – making sure that they review each other's information. It matters more what they think than what the mediator thinks.
- If the mediator caucuses with one side, the mediator should caucus with the other.
- After the mediation or court proceedings conclude, the mediator should maintain the appearance of neutrality (for example, to not discuss the case with one party while the other is still around).
- Generally, people will be satisfied if they feel the process is fair, even if they are not happy with the outcome.

4. Take time to find out what the parties want.

The mediator should not presume that the case is all about the legal issues presented. It may be helpful to ask the parties at the outset, "What are your expectations or hopes for this meeting?" It will be good for the mediator to find out if:

- A party comes into mediation with an expectation of a distributive bargaining process – starting with a wide settlement range and working toward a financial compromise – to work out a deal.
- A party wants the opportunity to tell a lengthy story (or go through a lot of evidence) that he/she will not have time to tell (or show) in court.
- A party wants you to tell him/her that he/she is "right."
- A party simply wants to talk with the other party (small claims "divorce")
- A party wants to talk about non-legal interests – have a broader discussion than the legal issues on the table.
- A party expects to get nowhere – perhaps has a huge issue with not trusting the other party.
- A party wants to get nowhere - A party is using the mediation process to manipulate.
- A party just wants to get back to court.
- Etc.

5. If it appears that parties really want a judgment, an authoritative legal evaluation and/or vindication (their "day in court") refer them to court.

- A good mediator won't get too wrapped up in his/her own resolution rate or other definition of "successful mediation."
- It is possible that even if the mediator helps the parties reach a negotiated settlement, one or more of the parties will not be satisfied because what he/she really wants is for someone with legal authority to say, "You are right." A mediator cannot give that vindication. Maybe the party needs his/her "day in court" to experience closure.
- This is especially important to consider where the commissioner is mandating mediation. If the judge requires the parties to meet with the mediator and if the mediator is overly concerned about keeping the parties in mediation, the process may not feel voluntary at all. People need to understand that their participation in mediation really is voluntary, despite the fact that the judge required that they meet with the mediator. If, after the mediator has made a reasonable effort to convince a party to participate in mediation, that party is still adamant about not mediating, the case needs to be referred back to court.
- Also consider timing. The most appropriate solution may be for the parties to continue the case to collect more information, prepare better, etc. Suggesting the option of a continuance (in caucus – to avoid the appearance of bias) may be more helpful to the resolution of the case than pushing it into a mediated settlement.

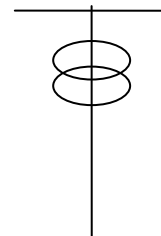
Mediation Checklist

Some mediators, especially new ones, find it helpful (and comforting) to have some form of written guide, reminders, or checklist to refer to during the mediation session. Below is the “cheat sheet” used by one CCR mediator.

The opening is in more detail since it is a monologue. The process steps are adapted from a 12-step model taught by one professor at Pepperdine. If you don't know what to do, go back to the process. The strange diagram is a reminder of the format for taking notes -- parties' concerns on opposite sides of the page, agreed upon areas circled in the middle. The reminders are often keys to successful mediations.

Opening

- Names – Introductions
- Congratulations on coming to mediation
- Time constraints – take whatever time needed, but be efficient
- Paperwork – Have clients read and sign Info Statement, start Intake Form (more paperwork later)
- Neutral/Impartial - If you feel I am not, say so
- Confidentiality
- Talk openly (say what's really important to you)
- May need separate meetings (caucus)
- Aim = agreement – listen then design, not battle
- No interruptions, no personal insults
- Any questions?
- Go ahead?



Process

- Learn each party's concerns, interests (personal, process, substance)
- Summarize – what do parties agree on?
- Identify the issues (visual) - go from positions to concerns to questions
- Agenda – order in which to deal with issues/questions
- Identify options – negotiate
- Caucus?
- Reach and write agreement
- Test agreement – what happens if...?

Reminders

- Ask yourself – What is driving this case or person?
- Provide Leadership + Relationship + Creativity

Questions and Answers About Small Claims Mediation

These are common questions asked by disputants and suggested answers by mediators.

“Will I lose my place in line?”

The court knows you are with the mediator. The only way you can miss your trial today is if the court calendar is too full and the court has to reschedule cases that are not heard. If at any time you want to terminate the mediation, you may do so; and wait your turn for trial.

“What if the other side doesn’t want to mediate?”

Let me see what I can do to bring the two of you together in an attempt to resolve this conflict.

“If we settle today, when do I get paid?”

In our mediation, we will make that one of the agenda items, including how much is owed and how it is going to be paid. These are the decisions that the two of you will have to make. As your mediator, I can’t make those decisions for you.

“I don’t trust them. How can I be certain they will live up to the settlement?”

You really are in the same position, regardless of how this dispute is resolved. If you have a Judgment and they don’t pay, you will have to come back to court. If you have a private agreement between the parties and they don’t pay; you again will be required to bring them back to court to collect. We know that the rate of compliance is much higher in a negotiated settlement than it is in adjudicated decision.

“I don’t know what I should do, can you help me?”

I can only help you, in terms of mediation, if the other side is willing to talk and participate in a joint attempt at finding a solution to your problem. Let me talk to them and see what their wishes are in this matter.

“Do you mean you are a volunteer... You don’t get paid for this?”

I believe it is important to do this community service for several reasons... I believe it is important to “put a few things back” in society... I believe that mediation is infinitely more practical, suitable, faster, and less expensive than litigation. (Feel free to list the reasons why you have chosen to volunteer at the Small Claims court as a mediator).

“Is the decision we reach enforceable in court?”

We can help you write a settlement agreement between the two of you, and you can agree that it can be disclosed and enforced in court.

Additional comments regarding enforceability:

The compliance rate of mediated agreement is almost two times higher than compliance with litigated judgments. The number of mediated settlements which “bounce” are very small in comparison to the total number of cases that mediators help resolve.

You may tell the parties in dispute that the **Settlement Agreement is enforceable, especially if the bottom box is signed, but with the caution that it is not as binding as a Judgment.** Without a judgment, they would still need to return to court, and they can never be sure exactly what the judge will do. (See discussion next page.)

Discussion: Is the Settlement Agreement Enforceable?

This is a more in-depth discussion regarding the nature of the settlement agreement for mediators.

There is considerable debate within the mediation community as to the binding nature of the Settlement Agreement. One position says that because of confidentiality, the Settlement Agreement may not be introduced into evidence to be enforced by a court. Others say that the Settlement Agreement is a simple contract, and that if that simple contract is broken, either party has the right to bring that matter to court for resolution.

California Evidence Code

The California Evidence Code provides significant confidentiality protection in mediation, regarding what is said and what is written.

Under California Evidence Code section 1123, a written settlement agreement can be admissible in court or disclosed if the agreement says it is admissible or subject to disclosure, or if the agreement provides that it is enforceable or binding, or if all parties expressly agree in writing or orally (under certain circumstances) that it can be disclosed. (See language in text box below.)

California Evidence Code

1123. Written settlements reached through mediation

A written settlement agreement prepared in the course of, or pursuant to, a mediation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if the agreement is signed by the settling parties and any of the following conditions are satisfied:

- (a) The agreement provides that it is admissible or subject to disclosure, or words to that effect.
- (b) The agreement provides that it is enforceable or binding or words to that effect.
- (c) All parties to the agreement expressly agree in writing, or orally in accordance with Section 1118, to its disclosure.
- (d) The agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

CCR Small Claims Agreement Form Language

CCR's current Small Claims Agreement Form allows the parties to indicate, by signing, that they both agree that the Agreement is subject to disclosure and admissible as evidence and/or enforceable as determined by the court. If the parties do not sign the box, it is possible that a judge may still take the Agreement into evidence, but it is not clear what the judge will do.

Mediators should encourage the parties to sign the box at the bottom of the Small Claims Agreement to waive confidentiality as to the written settlement agreement only. The words spoken by the parties in mediation are still protected and cannot be disclosed.

If this box is signed by the parties, there is no question that a judge can receive this document. Parties can then either seek to enforce the contract as written or to use it as evidence that an agreement had been reached in mediation.

CCR Forms and Court Documents Frequently Asked Questions (FAQs)

When should I fill out the required CCR forms?

Completing paperwork will be part of the process right from the start since the first thing that needs to happen to begin mediation is for all parties involved to read and sign the Information Statement.

Some mediators use the CCR Intake Sheet as a means to put the parties at ease, find out their names, and generally break the ice. One disadvantage of delaying the completion of the paperwork until late in the process is that there are problems caused by a failed mediation. If the mediation does not result in an agreement, one or both parties may not want to take the time to complete the evaluation forms, in their headlong rush to get to court. In that case, there has been a mediation without fully knowing who the participants have been. That, of course, does make the recording of the mediation very difficult.

Practically speaking, there is no right or wrong time in which to introduce or complete the paperwork. This is a judgment call which reflects the attitude of the parties, the pace of the mediation, the preference of the mediator, the press of other parties waiting for your assistance, and the amount of pressure from the judge to complete the mediation.

How do I complete the required forms?

Information Sheet

The Information Sheet must be reviewed and signed by each party as they enter mediation. The information sheet highlights facts about the mediation process as well as specific information about confidentiality in mediation.

It is recommended that you read and clearly understand the information contained in this document.

It may be helpful to have some extra photocopies of the Information Sheet on hand. These can be used as "reading" copies for people to review before they sign the original triplicate form. (Some mediators find it helpful to simply tear apart the 3 pages from a used Agreement form to use as "reading" copies of the Information Statement. Other mediators put their "reading" copies in clear page protectors.

Intake Sheet

This is the linkage between CCR and the County of Los Angeles. It is from these forms that the County verifies that CCR is operating in compliance with their contract. Some mediators complete the Intake Forms from the information obtained on the "Notice to Defendant" form while other facilitators complete the Intake Form at the beginning of the mediation session. This practice of early completion of the Intake Form gives the mediator the information needed by the County in the event there is no agreement.

1. Fill in the **Date**, the **Case Number** and write in the **Courthouse**.
Every case in the court system is tracked by case number. Without a case number, there simply is no way to find the specific case to dismiss or amend. Therefore, it is imperative that an extra measure of care be taken when copying a case number onto any document. This number can be found on court paperwork which at least one of the disputants should have on hand.
2. The **Disposition** section of the form lists several options for your selection. Please check each box for **Case Opened**, **Case Closed**, **Proceeding: Initiated**, and one of the following: **Resolved**, **Partially Resolved** or **Unresolved**.
 - a. **Case Opened** and **Initiated** – refers to the parties agreeing to attempt to resolve their dispute using our services. The parties do this every time they sign the Information Statement and allow us to conduct a mediation. For each proceeding initiated, the mediator should obtain enough information to complete the “case summary” and should be able to reasonably ask the parties to complete an evaluation. If neither party agrees to mediation or if only one party wants mediation, you do not need to submit paperwork for that case to CCR.
 - b. **Case Closed** – refers to the termination of mediation either by reaching agreement or parties opting to return to court. Small Claims mediations almost always become case closed on the same day that the case opens.
 - c. **Resolved** – refers to parties coming to an agreement, either verbal or written, as a result of our services. If the mediation results in a settlement, check off this option.
 - d. **Partially Resolved** – refers to parties coming to partial agreement as a result of our services. Typically, you would check this option if the parties agree to request a continuance while they gather more information, seek to involve a party not present or simply dismiss the case without further action. Partial resolutions must still be documented in a written agreement.
 - e. **Unresolved** – checked if the parties do not reach resolution and return to court.
3. Fill out the applicable **Plaintiff** and **Defendant** section. If there are multiple plaintiffs and defendants, please use the additional space provided on the back of the form.
4. Check the **Case Type**.

These categories have been assigned by the County of Los Angeles. They represent the broad spectrum of disputes that have been presented to the court. There will be cases which do not cleanly fall into one specific category; in this situation use the most prevalent or predominant factor in your determination of case type. Please check only one category. See the Case Type Guide included at the end of this section for examples.
5. Check the **Type of Service**. You should only select **Mediation** for the Small Claims Court Program.
6. Check **Yes** for the **Case Filed in Court** section. You should also check **Small Claims** for the next part of this section as well unless you are participating in a Municipal or Superior Court case.
7. Note how long the mediation lasted in **Mediation Duration**. Round to the nearest quarter hour.

8. **Pro-pers** are parties who are not represented by counsel (all parties in Small Claims Court since attorney representation is not allowed). Indicate the number of unrepresented parties on each side. (The totals for Plaintiff and Defendant should match the total number of names listed and the demographic information noted in the box.)
9. The demographics box should be completed using the information given by the parties in the Evaluation Forms. **(Do not estimate demographic information for the parties. Only record what they report about themselves.** If clients do not mark a category, indicate Decline to State on the Intake form.) Please check a Gender, Age, Monthly Income, and Ethnic Background category for each participant in the mediation. The number of marks for each category should equal the number of people who participated in the mediation. **Please disregard the Supervisorial District section.**
10. In the **Amount in Dispute** section, please list the dollar amount requested by the plaintiff. This may be found in the "Notice to the Defendant" form (pink). The amount is listed halfway down the page, under 1. "Plaintiff's Claim."

In **Case Summary**, please provide a brief narrative of the case. 2-3 sentences is usually sufficient to give a feel for the nature of the dispute.

There is a limited amount of space on the front side of the intake form for your comments regarding the dynamics of the mediation. If a settlement was reached, a copy of that settlement will be included with the case file which is sent to the CCR office. Therefore, the case summary should include the what, why, who, when, how and where of the dispute and settlement. If another CCR mediator picked up the case file, he or she should be able to develop a sense of the dynamics of the case.

11. Please write your name legibly at the bottom of the form where indicated.
12. On the back of the Intake, indicate with your initials that these items were given to the parties: **Info Statement, Confidentiality Statement/Agreement, and Follow-up surveys.**
13. **Fees Collected** is always checked No because CCR's program is free to the public.
14. **Referral Source** will almost always be marked as Small Claims Day-of-Trial.
15. **Case Type (Ltd or UnLtd)** will be completed by CCR staff when it applies.

Small Claims Agreement

This document is used to record the parties' settlement agreement. The white copy (original signature) goes to CCR, the yellow to the Plaintiff, and the pink copy is sent to the Defendant. Please print legibly and press hard while writing on this triplicate form. Please enter the appropriate information for **Case # _____, Plaintiff, Defendant, CCR Mediator, and Case Dismissed.** Please include all pertinent details of the agreement, including telephone numbers, addresses, and payment schedules/methods. Read the agreement to the parties, making sure that the agreement is clear to both sides, and then have all participants sign the agreement form.

Although it is the parties' choice whether to sign the bottom box, we encourage every party to do so. This makes it clear that a judge can receive a copy of the document if at some point one or both of the parties want to present it in court. In signing this box, the parties waive confidentiality as to the written small claims agreement. (Please see page 31 for discussion on enforceability of settlement agreements.)

Types of Dismissal:

- a) **With Prejudice** - This option prejudices the plaintiff's case to the extent that the court will no longer have jurisdiction to hear this matter if the plaintiff attempted to bring this case back to trial. Generally, this type of dismissal would be used when the plaintiff had been satisfied, and all the issues in the case had been settled. This option may be used when the plaintiff has been fully paid by the defendant in cash or other acceptable method, with the mediator as a witness to the payment. Or, the plaintiff might opt for this form of dismissal if there was no money involved in the settlement agreement. There have been cases where the matter was resolved with an apology and the case was settled between the parties. A Dismissal with Prejudice generally is a benefit for the defendant in that they cannot be sued for the same dispute. Conversely, a Dismissal with Prejudice is an enhancement to both parties as a symbol that the dispute truly is ended. This option, when properly used by the mediator, is a powerful tool for permanent resolution. Experience would indicate that less than 15% of cases are dismissed with prejudice. **So, ask yourself if you are intending to end the plaintiff's rights before you select this option.**
- b) **Without Prejudice** - This option allows the plaintiff to return to court on the matter, should the defendant fail to comply with the agreement. It protects the plaintiff and gives the defendant an incentive to comply. It should be used in at least 95% of the cases because disputes are not resolved until the final checks are cashed or good received, long after the day in court.

Evaluations

Please ask each participant in the mediation to complete an evaluation form to let us know their thoughts regarding the mediation process. Los Angeles County requires that each participant in mediation be asked to complete an evaluation. As a practicing mediator, you will be repeatedly asked similar questions about the parties' compliance in completing these evaluation forms. Here are the questions, and some suggested answers.

"Why do I have to answer all these questions?"

The County needs the information to help them better understand who is using the court system.

"Where does this information go... Who is going to see this?"

The County needs to have the portion about income and ethnic background completed because they are building a demographic profile on the ethnic backgrounds of the users of the court system. However, before that information is sent to the County, all identifying information is removed. The responses are kept confidential.

"Why do I have to tell them how much money I make?"

The County is building a demographic profile on the broad economic make-up of the users of the court system. The identifying information is kept confidential.

"I can't answer this question about the fairness of the agreement... What should I put... I don't know if it was fair?"

This is an opportunity to relate thoughts and impressions of the mediation process, the mediator, and the service in general.

"You did a good job... This is a great service... How long have you been providing it?"

CCR has been in the court system since 1988. We generally feel that mediation produces a more lasting and satisfactory result for both parties in these disputes. Please feel free to make any of your thoughts known on the bottom of the evaluation form.

Dismissal Form

Approximately 60% of the time, the clerk of the court will include a typed Dismissal Form in the paperwork that is given to the plaintiff. This form dismisses the plaintiff's suit. The form will be stapled to the Plaintiff's Claim Form, and should be used for a dismissal if it is legible. If needed, a Dismissal Form may be obtained from the clerk or the bailiff.

When a settlement has been reached, please have the Plaintiff complete the dismissal. Please fill in the appropriate information accurately, including the case number, plaintiff(s)'s name, defendant(s)'s name, the date on which the case has been set for trial (usually the date of that day), and the type of dismissal. If you have multiple plaintiffs and defendants, list them in the same order as they are named on the plaintiff(s)'s claim. Please submit the completed Dismissal Form to the clerk of the court as soon as the case is completed.

***** NOTE*****

THERE IS A LARGE BLANK BOX IN THE MIDDLE OF THE DISMISSAL FORM. NOTHING IS TO BE WRITTEN IN THIS AREA!

If one of the parties completes a "Party Representative Declaration Form" documenting that they are representing a company or another individual, please turn this in to the clerk with the Dismissal Form. CCR does not need a copy of this form.

Monthly Activity Report

After you have completed the Intake Forms, you will need to log each case on the Monthly Activity Report. This record only requires the names of the parties and the hours that you spent at the courthouse. The main purpose of this form, which is reported to the County of Los Angeles, is to record the number of hours each volunteer court mediator donates to mediation. On the right side of the form is the location where you will log the time spent in the courthouse. **(It is appropriate for volunteer mediators to report all the hours they devote to this program. Thus, please list all orientation or training time provided by CCR.)** Please send your Monthly Activity Reports to the CCR office along with your cases. A completed example is included in the Sample Forms section of the Mediator Manual.

Where do I get my supply of forms refilled and what if I run out of forms while at court?

CCR office staff are very responsive in providing forms and return envelopes. (Pepperdine students can get forms from Jim Stott's office in the Straus Institute.) Please keep track of your inventory of these forms and anticipate your need for replenishing them in sufficient time to allow the staff to mail you new forms. Experience has taught many mediators to keep one complete set of forms separate in their briefcase. If they run out of forms while at court, they use these forms as masters and make copies on the public copy machine in the courthouse.

What is the filing sequence for the forms?

Please see the example in the Sample Forms section of the Mediator Manual. The sequence is Intake, Agreement/Information Statement, Plaintiff's Evaluation, Defendant's Evaluation, and any other pertinent paperwork that may offer vital information about the case. Some additional information might include an extra copy of the Plaintiff's Claim. The goal here is not to overload the office with paperwork, but to compile an inclusive packet of information. After your case packet has been completed, staple the four or five pieces of paperwork together, log your hours and cases on the Activity Report, and mail the entire set of mediated case histories and Monthly Activity Report to the CCR office.

How often do I need to send my paperwork to the office?

The CCR office must report all case information by the 25th day of the following month. It is important that the cases be received by the end of each month to meet this deadline. The staff sincerely appreciates your cooperation in this matter.

What copies do I need to keep for my files?

Some mediators keep no records of their mediations at home. The main reason for this is the consideration of adequate storage facilities. Secondly, there really is no reason to keep copies of your mediated cases at home. If a need arises that one of the parties needs to speak with you, the office can arrange to send you the case file, or refresh your memory as to the specifics of the case. Some of our mediators write the settlement agreement in a notebook, and thus have an index of their cases. There is no right or wrong decision in this area, but we don't want you to make unnecessary work for yourself.

A Word of Caution

The filing process in the court system is a matter of public record. Anyone has the right to visit the courtroom and see who the litigants are on a given day. This public aspect must not interfere with the specific confidentiality requirement imposed as a basic tenet of mediation. While the parties cannot keep the general public from knowing that they have gone to court, this publicity does not extend to the settlement agreement. It is not necessary to write any portion of the terms of the settlement agreement on the Dismissal Form. Please keep in mind that what happened in your mediation is confidential. If you feel compelled to discuss a case with a colleague or family member, please remember that you may not disclose the names of the parties, nor identify them in any way. There may be a time in which you wish to share your joy or enthusiasm for a rewarding settlement in a difficult mediation. Experience has shown that this disclosure to a friend or family member is only confidential when you remain vague about the details, so as to protect the identity of the parties and their mutual settlement agreement.

Small Claims Case Type Guide

Category	Types of Cases
Accident/Personal Injury	Auto accidents, products, liability, malpractice, slip and fall accidents
Business/Business	Corporation issues, partnership issues, royalties, representative, copyright, division of profits payment, debts, bankruptcy, contractors, subcontractors, real property
Consumer/Merchant	Consumer goods, auto and other repairs, real estate transactions, misrepresentation, product complaint, repairs, banks, collections (debtor-creditor)
Criminal	
Youth	Victim restitution, traffic citations
Citation/Infraction	
Misdemeanor	Victim restitution
Other	
Family/Domestic-Household	Roommate, family relations, friends, marriage dissolution (not to include custody issues), husband/wife, parent/child, siblings
Government/Public Agency	City, county, federal, social services, immigration, intergovernmental disputes, public policy, school boards, governing boards
Landlord/Tenant	Unlawful detainer Notices: 3-Day Pay/Quit, 30-Day Vacate, 30-Day Change/Terms – Rent increases, Change in rules, Harassment, Security deposits, Refund amount disputes, maintenance/repairs, habitability standards, rent withholding, repair and deduct, illegal entry, parking garages, late charges/fines/fees, lockout, lease agreements
Neighbor/Neighbor	Trees, noise, barking dog, neighbor-community, property line, fences, parking, trash, maintenance of property, drugs, gangs, property damage (non-auto), harassment
Organizational	Disputes within an organization
Schools	Teacher-student, parent-teacher, student-student, administration-faculty
Workplace-Related	Salary, working conditions, disputes between employees, discrimination, Workers' Compensation, sexual harassment, harassment

The Language of Drafting

1) Introduction

- a) The three Ps of drafting are PREDICT, PROVIDE, and PROTECT:
 - i) PREDICT what may happen;
 - ii) PROVIDE for that contingency; and
 - iii) PROTECT client with a remedy.
- b) Whether you are drafting from scratch or adapting a model or form to fit your needs, the language you use reflects your command of the three Ps. Drafting is not a passive process, a matter of filling in the blanks. You must constantly talk back to the draft, asking whether the language clearly, directly, and completely states the agreement.

2) Drafting

a) USE THE PRESENT TENSE

Contracts describe events that will take place in the future. Yet because the parties see a contract as continuously speaking, the drafter should write the contract in the present tense. For example:

If any party to this agreement shall die, then...

can be rewritten to provide:

If any party to this agreement dies, then...

b) USE THE ACTIVE VOICE

- i) Contractual obligations require that a person do something or refrain from doing something. Who is that person? When drafters use the active voice, the name of the actor is clear. For example, who is required to do something in this lease provision?

The premises shall be kept in good repair.

It is not clear whether this is the obligation of the tenant or the landlord. When rewritten in the active voice, the provision clearly indicates the person who is obligated:

The tenant shall keep the premises in good repair.

Or

The landlord shall keep the premises in good repair.

- ii) An agreement can bind only the parties to it, not third parties. When the drafter writes the agreement in the active voice, the persons who are obligated stand out. For example:

The apartment shall be occupied by no person other than the tenant, his spouse, children, and temporary guests, without the written consent of the landlord.

This provision can be rewritten in the active voice as:

No person other than the tenant, his spouse, children, and temporary guests shall occupy the apartment without the written consent of the landlord.

Avoid commitments dependent on actions of third parties who are not parties to the agreement. Examples: collection or credit organizations, insurance companies.

c) THE LANGUAGE OF AGREEMENT

- i) Once the caption or transitional words have incorporated language of agreement, the text does not need to restate the fact that the parties have made an agreement. Consideration is found in the mutual promises contained in the agreement. The fact of agreement does not have to be repeated throughout. For example:

Landlord and tenant agree that tenant shall pay each month in advance...

It is mutually agreed by and between the parties to this agreement that tenant shall pay each month in advance...

In consideration of the mutual promises herein contained, tenant agrees to pay each month in advance...

These provisions can be re-written as:

Tenant shall pay each month in advance...

d) LANGUAGE OF OBLIGATION, AUTHORIZATION, AND CONDITION PRECEDENT

- i) Language of Obligation

When a party undertakes an obligation, the drafter should use the word shall to state the duty. Note that if the drafter writes in the present tense, there will be no confusion between shall indicating the future and shall indicating obligation. In thinking whether shall is used in the sense of obligation, try substituting the phrase "has the duty to." If the substitution works, then shall is used correctly. For example:

Seller shall deliver 30 widgets, each of which shall not exceed 20 pounds in weight.

The first *shall* is correct: seller "has the duty to" deliver 30 widgets. The second *shall* is incorrect; it makes no sense to state that each widget "has the duty to" not exceed 20 pounds. This obligation can be rewritten as:

Seller shall deliver 30 widgets, each not exceeding 20 pounds in weight.

- ii) Language of Authorization

When a party does not undertake an obligation, but exercises a right or privilege, the drafter should use the word may. In thinking whether may is used in the sense of authorization, try substituting the phrase "is authorized to." For example:

If Buyer fails to make any payment on time, Seller shall send a Notice of Default.

There is no obligation on the part of Seller to send a notice. If there were an obligation on the part of Seller, then Buyer would have a remedy for breach. But it is absurd to think of Buyer suing Seller for failure to send notice! Because the action is discretionary on the part of Seller, the provision may be rewritten as:

If Buyer fails to make any payment on time, Seller may send a Notice of Default.

iii) Language of Condition Precedent

The drafter may wish to make clear that a party is required to do something before taking some further action. In this case, a party is not required to do something because of an obligation to the other party but because the action is a condition precedent. To indicate that the action is required, the word *must* may be used. For example:

If Buyer fails to make any payment on time, Seller must send a Notice of Default before seeking any remedy.

In thinking whether *must* is used in the sense of condition precedent, try asking whether the party “has to do X before Y will happen.” For example:

Seller shall deliver on the first day of each month. If Buyer is dissatisfied with Seller’s performance on any particular month, Buyer shall notify seller on or before the 10th day of that month.

Buyer has no duty to notify Seller. Rather, Buyer has to give timely notice when complaining of unsatisfactory performance. Sending the notice is not an obligation but a condition precedent. The sentence can be rewritten as:

If Buyer is dissatisfied with Seller’s performance in any particular month, Buyer must notify Seller on or before the 10th day of that month.

e) FLESHING OUT THE AGREEMENT

i) Completeness

The art of drafting involves deciding when to be general and when to be specific. When drafters use the passive voice, the details of what the actor must do are often obscured. For example:

The premises shall be kept in good repair.

Because this provision does not obligate a person to do something, the reader does not think about what that person is obligated to do. In the active voice, the actor is identified:

The tenant shall keep the premises in good repair.

Now the lack of detail stands out – exactly what is the tenant’s obligation? The drafter must continually ask, “What does that mean?” The drafter may choose not to define a term for fear of leaving something out. Courts often invoke the maxim *expressio unius est exclusio alterius*, the expression of one is to the exclusion of others. A drafter who believes that a provision should be made more specific might consider a definitional provision. To make clear that the list is not to be considered exhaustive, use language such as “including but not limited to.” For example:

In this agreement, good repair includes but is not limited to...

ii) Declarations

Declarations do not state obligations of the parties. They provide answers to the question of “What if?” For example:

If weather, fire, or an Act of God shall render the premises uninhabitable, this lease shall terminate.

This declaration should be rewritten in the present tense. If the drafter reserves shall for obligations, it does not make sense that weather and fire are under an obligation. Also, the drafter wants to avoid the ambiguity that “shall terminate” means termination at a later time. Presumably, immediate termination is contemplated. This provision may be rewritten as:

If weather, fire, or an Act of God renders the premises uninhabitable, this lease terminates.

Sometimes drafters use the word deemed as a convention to indicate declaration. For example:

Notice shall be deemed effective if delivered in writing to either party at the address set forth below.

If shall means “has the duty to,” this provision makes no sense. The word deemed may be deleted and the declarative verb is substituted.

Notice is effective if delivered in writing to either party at the address set forth below.

Note that this provision is written in the passive voice. This use of the passive is acceptable, for the actor is not known: it may be either of the parties. The provision could be rewritten in the active voice as:

A party gives effective notice by delivering the notice in writing to the other party at the address set forth below.

iii) Remedies

Every time the agreement states an obligation, the drafter should ask, “What happens if the party doesn’t do it?” The answer to this question may indicate the need to state further obligations or to impose a sanction for breach. For example:

Tenant shall pay the rent on the first day of the month at the office of the manager.

This provision states three obligations of the tenant:

- (1) To pay rent;
- (2) To pay it on the first day of the month; and
- (3) To pay it at the office of the manager.

The drafter should consider the effect of breach of each of these obligations. What happens if:

- (1) The tenant does not pay at all;
- (2) The tenant pays, but not on the first day of the month; or

(3) The tenant pays, but at a place other than the office of the manager.

iv) Cross References

When using a phrase such as “*set forth below*,” the drafter should make sure the information is in fact stated in another provision. Rather than relying on a mental note, the drafter might indicate a specific paragraph, leaving the space blank until the agreement is completed. For example:

Notice is effective if delivered in writing to either party at the address set forth in paragraph _____

In the final proofing, the blank space will be a reminder to cross check the agreement to be sure that the referenced provision has been added.

f) SUMMARY

- i) Draft in the present tense.
- ii) Draft in the active voice – Who is obligated to do something or refrain from doing something?
- iii) Delete unnecessary language of agreement.
- iv) State obligations with the word *shall*. When you have used *shall*, ask if you can substitute “*has duty to*.”
- v) State authorization with the word *may*. When you have used *may*, ask if you can substitute, “*is authorized to*.”
- vi) State conditions precedent with the word *must*. When you have used *must*, ask if you can substitute “*has to do X before Y will happen*.”
- vii) Consider whether you have used a term that requires greater specificity. Predict whether the term may cause problems in the future.
- viii) Constantly ask “What if...” Provide for the significant contingencies.
- ix) When you have stated an obligation, ask “What happens if the obligor doesn’t do it?” Protect the obligee by stating a remedy in the contract.
- x) Cross-check the agreement for internal references. Make sure the references are consistent.

Writing Settlement Agreements

The following ideas are offered as suggestions when writing agreements. The proper structure of the agreement is important, as it is the only record that CCR has that the parties reached an agreement. The agreement should reflect a sense of balance to the parties. If successful, everyone should walk away feeling as though they accomplished something and the written agreement should reflect those feelings of agreement.

The following are suggestions relating to the order in which the elements of the agreement should be recorded:

1. List first those items that require **both** parties to do something. This instills a sense of balance and justice signifying that there are no winners or losers.
2. List next the **individual obligations**, incurred by the respective individuals. Remember to categorize the elements, listing first those categories which appear **least** threatening to the party undertaking the action. This is done to cushion somewhat the most “painful” issues, i.e., payment of money, return of valuable property, etc., by placing them at the end of the agreement.
3. Categorize the agreement according to which party has agreed to do something for the other; then, list the elements of the agreement, alternating between what Mr. A has agreed to do for Mr. B and vice versa.
 - a. *Mr. A agrees to park his car in the street when Mr. B. is home.*
 - b. *Mr. B agrees to use earphones when listening to music after 9:00 p.m.*
 - c. *Mr. A agrees to talk to Mr. B directly before contacting any third parties to state his concerns regarding the noise coming from Mr. B's apartment.*
 - d. *Mr. B agrees to notify Mr. A at least 48 hours prior to having a party.*

Thus the written agreement should reflect a sense of **balance** thereby leaving the parties with a sense of achievement and they are more likely to abide by the written agreement.

The following are suggestions regarding the **format** of the agreement:

1. Separate the elements of the agreement; assign a different number of each. Do not write a narrative.
2. Avoid using “respondent” and “complainant.” Use *Mr.*, *Mrs.*, or *Ms. Jones* (use *Mrs. Carlson* and *Mr. Dudek* but not ***Mary Carlson*** and ***Mr. Dudek***).
3. Write out all dates and dollar amounts, for example if someone is to *pay \$20.00 in cash or money order by February 10, 2000:*

Correct: Mr. Roberts agrees to pay Mrs. Kluge Twenty Dollars (\$20.00) in cash or money order by February 10, 2000.

Incorrect: Mr. Roberts agrees to pay Mrs. Kluge \$20 by 2/10/00.

4. If someone is to make a payment at a specific place and time, record it; do not use the phrase “to be provided at a time and place agreed to.”

5. Do not make criminals out of the parties.

Correct: Mrs. Pfeiffer will pay Mr. Ray Forty Dollars (\$40.00) in cash or money order for replacement of the window that was broken on January 29, 2000.

Incorrect: Mrs. Pfeiffer will pay Mr. Ray Forty Dollars (\$40.00) for the window she broke when she threw a rock through it on January 29, 2000.

6. Avoid adverbs like “satisfactorily.” One may ask, “Satisfactorily to whom?”
7. When referring to matters involving the exchange of money, indicate the incident or date on which the action occurred for which the money is being paid. Also, the form of payment and to whom payment is made should be noted. For example:

Randy Tinti agrees to pay Jane Smith Eighty Dollars (\$80.00) in cash, certified check, or money order for the Sylvania color TV damaged on December 14, 1999 and presently in Jane Smith's possession.

Payment will be mailed or delivered to the California Mediation Center, 313 Chandler Street, Los Angeles, California 90065 on or before February 23, 2000.

8. If parties agree to obtain support from local social service agencies, the agreement should reflect that referral.

Andy Harding will contact John Smith, Counselor, at the Alcohol and Drug Abuse Center, 112 Central Avenue, Los Angeles, California 90065 no later than Monday, November 3, 1999 to arrange for an appointment for the purposes of counseling.

9. Normally, you may want the parties present to assist in writing up the agreement. Before the parties sign the agreement, read it to them to be certain they know what they are agreeing to sign. Make sure the agreement is legible. After the agreement is signed, the hearing can then be terminated.

Agreement Writing for Small Claims Court Cases

Plain language

Write in language that is easily understood by the parties. Use short sentences. Agreements should not test the readers' mental agility. Follow standard English format: subject, verb, then object. "*Sam wrote six demand letters.*" Writing issues are particularly important because of the literacy issues that you face. Occasionally, one of the parties may not be able to read (often a party does not read well or their primary language is not English). In these cases, be sure the agreement is explained thoroughly and is clearly understood by the parties.

Positive phrases in the active voice, present or future tense

"Paul Payne and Doug Dover will contact each other if there is a problem."

Respectfully consistent

Use the parties' names so they are not confused when they re-read or share the agreement with their family. "*Ms. Wright and Mr. Jones...*" or "*Mary Wright and Bob Jones...*" not "*Mary Wright and Mr. Jones...*"

Neutral language

Keep language neutral and avoid judgmental or blaming phrases. This agreement will be read in the future and should not cause embarrassment, defensiveness, or anger.

Impartial and balanced

Keep the playing field as even as possible. The agreement should reflect the participation of both parties. Strive for an equal number of agreements from each side. When the mediation is finished, each party should have a feeling of responsibility and of achievement.

Avoid ambiguity

Language that is ambiguous has definitional problems. For example, what does the following mean:

Sam shall satisfactorily perform his job.
John Smith will perform to Sam Smith's satisfaction.
Doug Dover will not harass Paul Payne.
Doug Dover will present a job well done.
Sam Smith will not be late.
John will provide the car registration soon.
Bob will deliver the car immediately.

Passive vs. active

The passive voice is useful to eliminate reference to actors when stating what has happened in a non-judgmental or non-blaming way. However, the active voice should be used for terms of the agreement. When creating a neutral statement, use the passive voice. "*The parties agreed to mediation to settle the issues regarding the plaintiff's nose that was broken*" rather than "*The parties mediated to settle the issues arising from John breaking Sam's nose.*" Using the passive voice actually takes more words and hides the actor. "*All provisions of the aforementioned lien*

will be disclosed.” Who is to do what? Try “John will fax a copy of the contractor’s lien to Sam at (310) 446-7594 by March 31, 1999.”

Clear and comprehensive

Due to time constraints, written agreements for Small Claims Court are usually brief. You only need to include the important terms as the parties know the details. Keep it clear and simple while including all of the important terms. If the parties agree to decide a term in the future, include language about that agreement. What important items do you feel have been excluded from “*Mr. Craig Smith agrees to pay Ben Turner eight hundred and eighty four dollars and thirteen cents to pay off all debt and interest and to dismiss the case number 01V12876.*”

Empowered and creative

Points of agreement should be suggested by the parties with limited input from the mediator. If the mediator suggests the solutions, the parties have limited buy-in. Aim for mutual assent, consensus, or a meeting of the minds to create points of agreement, then assist with clarifying the language. Aggressive mediation techniques are interpreted as coercive. The parties may sign an agreement suggested by the mediator but will they honor terms they have not offered?

Binding and enforceable

Predict whether the clause or term may cause problems in the future. Avoid terms that are difficult to define. Is there sufficient detail to insure that non-performance can be determined by the parties? “*Homer will furnish Sam a copy of the car registration.*” When must Homer comply? Is the language specific enough for a judge to enforce the agreement with a judgment? Writing amounts followed by numbers in parenthesis assists the reader. Ask yourself if there could be more than one interpretation regarding performance. Does the language create loopholes?

Further communication

The agreement creates a new relationship between the parties. Help them think of ways in which they can communicate regarding problems that may arise. Be sure they know how to contact each other by phone, mail, in person, through a friend or a relative, etc.

Legibility

Print or write clearly with adequate pressure to ensure copies two and three of CCR’s three-part form can be read. Use active voice. When one of the parties calls the CCR office about their case, a legible copy on file aids the office in assisting the caller.

Number points of the agreement

Rather than writing a narrative, try to separate points as clear thoughts. It may help to write the agreement leaving blank lines between the clauses. This will allow you to insert any clarifying language the parties may suggest as you read them the agreement. Then number the points as you re-read the agreement to the parties.

Confusion regarding the amount of the settlement

Begin with the total amount of the agreement, “*John Murphy will pay Sam O’Neil three thousand eight hundred dollars (\$3,800.00) in full settlement of court case #01V01349.*” Then explain the payment plan, “*John Murphy will make three hundred and eighty dollar (\$380.00) payments by the first of each month for ten (10) months starting on the first day of April 1999.*”

Agreement Writing Problem Areas

Using plaintiff (Π) and defendant (Δ) instead of parties' names

Be sure not to switch plaintiff and defendant. "*Plaintiff agrees to pay defendant...*" when it should be "*Defendant agrees to pay plaintiff...*" This mistake cannot occur when the parties' names are used instead of plaintiff, defendant, or a symbol.

Clauses regarding breach of the agreement

To encourage defendants to honor the mediation agreement mediators sometimes suggest a clause that offers a disincentive to breach. Here are some suggested "DO's" and "DON'Ts"

DO:

- **Do include language, where helpful to the parties, reminding them that plaintiff can re-file the claim if payment is not received.**
Example: "*If defendant does not comply with this agreement, plaintiff may re-file the claim for the amounts owed, including court costs.*"
- **Do include an "acceleration clause" for installment payments.**
Example: "*If any payment is not made as scheduled, the full remaining amount will be due and payable immediately.*"
- Also consider:
 - Adding interest to amounts owed.
 - Including a statement in which the parties **recognize the full amount of the pre-mediation debt** while agreeing to settle for a lesser amount provided that the defendant lives up to the agreement.

DON'T:

- **Don't include language that would require the plaintiff to re-file** – unless this is what the plaintiff wants.
Example: "*If payment is not received by (date), plaintiff will re-file his claim for (\$_____).*"
The plaintiff may prefer to keep his/her options open. You don't want to limit the amount of the re-file claim, because the plaintiff may incur additional damages by the time he or she re-files.
- **Don't include language that promises what the judge will do.**
Example: "*When plaintiff re-files Plaintiff will be entitled to that entire amount.*"
- **Don't include language about "penalty" or "penalties".**
Example: "*If the payment is more than 10 days late, there will be a penalty of an additional \$100.*"
Penalties are void and unenforceable in contracts.
- **Don't include a reference to "liquidated damages."**
Example: "*Failure to pay in a timely manner will cause liquidated damages of \$600.*"

Although a liquidated damages provision can be enforceable under certain circumstances, it is not appropriate or necessary in most small claims cases. The term "liquidated damages" is typically understood to refer to the total amount owed for breach of contract or a particular contract provision. It is often used where actual damages are difficult to determine, which is typically not the case in small claims court.

- **Don't include language that might lead the plaintiff to believe that he/she can return to court and collect \$ without re-filing.**
Examples: "*If the deadline is not met, the plaintiff may bring case back to court for immediate payment of full amount.*" This example is both ambiguous and misleading. It is better to say that the plaintiff can re-file for the amounts owed.
- **Don't include language that is ambiguous.**

Example: *“If payment is late, the original amount of the suit goes into effect – \$5,000.”* It is not clear what “goes into effect” means. Again, it’s better to say that the plaintiff can re-file for the amounts owed.

When a party receives money

It should be carefully noted in the agreement when a party receives monetary compensation during or at the end of the mediation. Include how payment was made:

- When a personal or business check is received write the number of the check. “Paul Payne received a two hundred fifty dollar check (\$250), number 4231, from Dan Dover.” Add additional language as needed for clarity.
- When cash is received you may want to ask someone from the court (bailiff, clerk, or bench officer) to witness receipt of the money when the mediation session is over. “Defendant paid first payment today of \$250.00. Rec'd. J.B. (initials of mediator).” This is not as complete as “Plaintiff received defendant’s first payment of \$250.00 in cash at the conclusion of the mediation session. Witnessed by John Strong, Court Bailiff.”

When the mediation agreement includes transfer of property

The transfer of property to another party creates a writing challenge. Money is relatively simple, cash or check. Encourage the parties to transfer the property as soon as possible. Use concrete terms for when, where, how and who will transfer the property. *“Defendant will immediately transfer ownership of his 1983 Ford Fiesta Vehicle ID#2K4FE7834G3476382 to plaintiff.”* The word “immediately” is ambiguous. A better phrase might read, *“Dan Dover will deliver his Ford Fiesta Vehicle ID#2K4FE7834G3476382 to Paul Payne by 6:00 p.m. today, March 30, 1998.”*

- Property instead of money damages: Asking the plaintiff to accept property instead of money is risky. Property to be transferred, unlike money, comes in different states of repair and working order. When a plaintiff asks for property from the defendant there will probably be better acceptance than when the defendant offers property instead of money. It is usually best to put as few conditions as possible on the transfer. Transfer of property in an “as is” condition is the most expedient. Help the parties create precise language to avoid problems during the transfer. Check and recheck to be sure they both understand and agree to the language. Terms like “good condition” or “in working order” are definable in certain industries but not usually understood by the parties.
- Return of property that is valuable to the other party: If the plaintiff just wants the property back and doesn’t care about the current condition an “as is” clause is easy to write. If the property is requested for its value the condition of the property may be very important. It is critical to listen to the parties in regards to their expectations. Several statements will probably be needed for clarity. You may need language that reassures the plaintiff. What must the defendant do to protect the property prior to transfer?

Post Dating Checks

Do not include language that requires a defendant to post date a check. Checks are negotiable instruments that may be redeemed by the payee upon receipt. If the payer does not have sufficient funds in their account to honor the check they have committed a fraud. Some business defendants ask for post-dated checks as a sign of good will. They may intend to honor the date on the check. However, there have been situations where plaintiffs have caused defendants problems by cashing post-dated checks before the agreed upon date. Mediators should avoid writing agreements that condone or encourage poor business practices or fraud.

Suggestions for Mediated Written Agreements

1. **WRITE IN LANGUAGE AND SENTENCE STRUCTURE THAT PARTIES CAN EASILY READ AND UNDERSTAND.** Be sensitive to the needs of parties who don't read very well or don't have a good command of English.
2. **DO NOT REFER TO THE PARTIES AS "COMPLAINANT" OR "RESPONDENT" IN THE AGREEMENT. USE THE NAMES THEY HAVE USED THROUGHOUT THE MEDIATION SESSION.** If the agreement is going to be forwarded to a referring court you may want to use full legal names throughout.
3. **HAVE ONLY ONE AGREEMENT IN EACH NUMBERED STATEMENT, AND NEVER MAKE THE AGREEMENT CONDITIONAL ON AN ACT OF THE OTHER PARTY.**
4. **HAVE EACH PARTY TO THE DISPUTE AGREE TO EACH INDIVIDUAL CLAUSE.** Do not write, "*we agree to,*" but rather "*John agrees to,*" and in a separate item, "*Mary agrees to.*"
5. **IF PAYMENTS ARE PART OF THE AGREEMENT, BE SPECIFIC ABOUT WHERE AND HOW THEY ARE TO BE MADE.** In general, it is not a good idea to have payment made by personal check. Ask the parties to use certified checks, money orders, or cash with appropriate receipts when possible.
6. **BE AS SPECIFIC AS POSSIBLE IN WORDING AGREEMENTS ABOUT FUTURE BEHAVIORS.** Avoid phrases such as "*will not harass*" since they may be understood differently by each party and lead to further disagreement.
7. **ATTEMPT TO BALANCE THE AGREEMENT AS MUCH AS POSSIBLE.** If the situation is one-sided, you can balance clauses by asking one party to agree to accept what the other is agreeing to do. (e.g. Mr. Jones agrees to accept this method of payment.)
8. **REMEMBER THAT THE AGREEMENT BELONGS TO THE PARTIES.** Use their word choice when it is clear and mutually understood. Check the wording of each item with each of the parties to make sure you are writing what they agree to.
9. **CONSIDER WHAT THE IMPACT OF THE WORDING OF THE AGREEMENT WILL BE IF PARTIES READ IT A MONTH AFTER THE MEDIATION SESSION.** Have you written a clause that implies guilt or blame? Will all the clauses be clear to the parties and to anyone else to whom the agreement is shown?
10. **NEVER ALLOW A PARTY TO AGREE TO ADMIT GUILT OR BLAME. NEVER ALLOW A PARTY TO GIVE UP HIS OR HER RIGHT TO LEGAL ADVICE. NEVER ALLOW A PARTY TO AGREE TO WITHDRAW A CRIMINAL COMPLAINT, UNLESS THE COURT HAS SPECIFICALLY EMPOWERED YOU TO DO THIS.**

Do's and Don'ts of Agreement Writing

DON'T

1. Identify parties as claimant and respondent or disputant.
2. Put admissions of guilt in the agreement.
3. Write vague agreements especially around method of debt payment. Don't rely on personal checks.
4. Use numbers for dates (e.g. 10/9/99) or dollar amounts.

DO

1. Identify parties by full names (check for spelling).
2. Identify clearly and concisely what must be done, when it must be done, and who must do it.
3. Specify Payment Arrangements
4. Prescribe payment method.
 - a. Explain how payment will be made (e.g., by cash, money order, or certified check.)
 - b. Clarify whether the date of payment is the date for one party to send the money (e.g. payment to be postmarked by ___) or the date for the other party to receive it (e.g., payment to be delivered by ___).
 - c. Identify total amount to be paid.
 - d. Clearly explain installment payment arrangements.
5. Write out dates and dollar amounts (e.g. *October 9, 1999; twenty-five dollars [\$25.00]*).

Checklist for Small Claims Court Agreements

Goal: To assist the community and the courts by helping parties create an agreement that will finish their old business and empower them to create their future relationship.

Names of the parties (Full legal name):

Using the parties' names rather than the Π and Δ avoids confusion and helps demonstrate that you value the parties as individuals.

Reason for mediation (topic sentence):

Use neutral objective language. *"The parties entered into mediation to resolve the issues that are related to the car accident that occurred on May 7, 1999."*

Non-terms to include (regrets, apology):

Mediator: *"May I include that you have both offered regrets that the accident occurred?" "May I state that Mary Fong has accepted Robert Lee's apology?" "May I note that both of you would like to continue your business relationship?" "May I include in the agreement that you are both willing to end this dispute?"*

Documentation of partial agreement:

What was accomplished in mediation? What will the parties do next?

Terms of agreement (who, what, when, where, and how):

Who has agreed to do what, how is the party to perform, when is performance due? When possible, balance the concessions. *"Sam Nelson agrees to mail Howard Jones a \$1,200.00 money order no later than April 30, 1999. Howard Jones will file the form that dismisses this suit without prejudice."*

Case dismissed with or without prejudice?

Almost every case should be dismissed without prejudice. Without prejudice, the plaintiff may refile for breach. With prejudice, the plaintiff may not refile the case even if the defendant breaches the agreement.

Provision for default or breach:

What happens if the parties do not fulfill the terms of the agreement? *"Howard Chin will phone Richard Sims if there is a problem with performance." "Howard Chin will phone Richard Sims when he moves and furnishes his new address and phone number" or "If non-performance cannot be resolved by Howard Chin and Richard Sims, Howard Chin (Π) may refile the case and sue for any amounts owed and court costs, as if the parties had not entered into mediation."*

Signatures and date

Signatures to seal agreement in first box. Mediator must sign too. Parties have the option of signing in bottom box. If they do, their agreement becomes subject to disclosure and may become admissible as evidence and/or enforceable in court.

Other Ways to Settle the Dispute

Important Note:

If the mediation results in the parties' agreement to handle the dispute **other than by dismissal** that day - such as by **continuance**, taking the case **off calendar**, or **stipulated judgment** - this is a mediated resolution that should be documented for CCR purposes.

Please have the parties complete a Small Claims Agreement (e.g., "The parties agree to continue the case."). An Intake Sheet (e.g., "partial resolution") and evaluations should be completed as well.

Continuances

In simple terms, a Continuance is a postponement of today's trial to a specific date in the future. Either party has the option of seeking a Continuance. The court policy is that the judge must approve all Continuances. However, some clerks and judges routinely approve a request for Continuance, while other judges thoroughly examine the reasons for the request. Generally, the court will grant a continuance that has been requested by the mediator. Each time a Continuance is requested, it is recorded on the back of the paperwork associated with that case. Understandably, each granted Continuance ultimately delays the process within the court system.

The application of the Continuance is a well-used tool with many experienced mediators. This method of settlement may be used if the parties have agreed to a settlement, but need a fixed period of time in which to conclude their agreement. For example, if the defendant agreed to pay the plaintiff a certain amount of money within 30 days, this case might be continued for 30 or 40 days. This process makes it clear to the defendant that if the money is not paid to the plaintiff by the agreed upon date, that the case will go to trial a few days later. If the plaintiff is paid, neither side need to come to court and the matter is automatically dismissed without prejudice. This settlement option is not as clean as a dismissal. However, some plaintiffs are not comfortable with a dismissal, because they would need to start the entire process over if the defendant did not make the payment. The court will generally grant a Continuance up to about 60 days. There are some judges and clerks who will show a certain amount of resentment at a request over 30 days. The clerk or the judge determines each application for a Continuance.

There are specific cases in which a Continuance is routinely granted without application. These have to do with one party having not been given sufficient notice about the trial date. These Continuances are not to be confused with those used as a settlement tool. However, be aware that if the case has been continued more than once, you may not be able to get a Continuance the second or third time. If that happens, the plaintiff is left with no choice but to Dismiss without Prejudice and file again, if necessary.

Take the Case Off the Calendar

Until recently, this procedure was another option for dispute resolution. It was somewhat like a Continuance, except that there was no specific date of trial. Again, if the parties had reached a settlement and neither came to court — the matter simply disappeared. Because of the increasing caseload, the clerks and judges have concluded that this process is not productive because of the extensive manpower requirement needed to keep these cases "active."

Stipulated Judgment

An agreement that is reached in mediation is not recorded by the court. All the court sees is that the case was either dismissed or continued. The parties to the mediation have reached an agreement which frequently could not be imposed by the judge. The parties' resolved conflict is written down in the Settlement Agreement. Some plaintiffs do not feel that the Settlement Agreement protects them. Other plaintiffs, particularly large corporations or public utilities, have rigid policies that mandate a Stipulated Judgment.

There are several significant ramifications if this method of resolution is used. First, a Stipulated Judgment is a Judgment, which means that the defendant is going to have that Judgment recorded on their credit report. Second, a defendant may not appeal a Stipulated Judgment, for the reason that they agreed to it in court. Third, while the plaintiff may feel that the Stipulated Judgment is going to protect their ability to enforce the Judgment, the matter of collection is still the plaintiff's responsibility. Many mediators feel that the Stipulated Judgment does the defendant considerable harm, while not really enhancing the plaintiff's ability to collect. This dynamic may be used by the mediator, as an inducement to perhaps cause the Defendant to offer a higher monthly payment if there is no Stipulated Judgment.

CENTER FOR CONFLICT RESOLUTION

Month: April 2005

MONTHLY ACTIVITY REPORT

Name: John A. Doe

Note: Please indicate time of arrival and departure from the courthouse. We need total amount of time at the courthouse, not time spent on cases. In the case column, list the name of the case (i.e. Jones/Smith). PLEASE SIGN AT THE BOTTOM! Thank You!

DATE	CASES	IN	OUT	TOTAL
3/20/04	CCR Orientation	3:00	5:00	2.0
4/15/04	Goodman/Ellington & Rivers Thompson/Jackson Martinez/Brown	8:30 AM	12:30 PM	4.0
4/18/04	Lee/Chang Lazara/LeFever Galleher/Courtney	8:00 AM	11:30 AM	3.5
4/25/04	No Cases	8:30 AM	10:00 AM	1.5
4/27/04	Panay/Iwaz (co-mediated with Sharon) Sanders/Walsh	8:30 AM	10:30 AM	2.0

TOTAL HOURS: 13

I hereby certify that I have spent the above time performing the above tasks.

John A. Doe
CCR Mediator

CCR Supervisor

Example

California Academy of Mediation Professionals
(CAMP)

Center for Conflict Resolution
(CCR)

SMALL CLAIMS INFORMATION/CONFIDENTIALITY STATEMENT

The Small Claims Court Mediation Program of the Center for Conflict Resolution (CCR) and The California Academy of Mediation Professionals (CAMP) provides disputing parties with an effective alternative to going before the judge. As a free service, CAMP/CCR provides trained, neutral mediators who help the parties talk through their dispute to find a solution to which both parties can agree. If the parties reach a settlement, the case is normally dismissed without the need for a court hearing. The undersigned parties agree to enter discussions and negotiations in an attempt to resolve their dispute. In order to promote communication among the parties and the mediator and to facilitate settlement of the dispute, all parties agree as follows:

1. The parties consent to the appointment of Chris Welch, a mediator for the CAMP/CCR, to act as mediator in this matter. CAMP/CCR is a non-profit organization funded by a grant from the Los Angeles County Dispute Resolution Program.
2. Participation in this dispute resolution process is voluntary and may be terminated by any party or by the mediator at any time.
3. Mediation is a voluntary process for settlement negotiation. In this context, mediators act as impartial third parties exclusively and will not give legal advice. Each party agrees and acknowledges that no attorney-client third party relationship is created between the party and CAMP/CCR or any of the mediators or any other person associated with CAMP/CCR.
4. In order to preserve the confidentiality of this mediation, CAMP/CCR and the parties to this mediation agree that the provisions of California Evidence Code Sections 703.5 and 1115 through 1128 and California Code of Civil Procedure Section 1775.10 applies to this mediation.

This means that, all communications, negotiations, or settlement discussions by and between participants in the course of this mediation shall remain confidential. No writings, evidence of anything said, or admission made for the purpose of, in the course of, or pursuant to this mediation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other non criminal proceedings in which, pursuant to law, testimony can be compelled to be given. However, each party further understands and acknowledges that evidence presented during this mediation may be verified outside of the mediation process and used as evidence in subsequent legal proceedings.
5. The mediator shall act as an advocate for the resolution of this dispute and shall use his/her best good faith efforts to assist the parties in reaching a mutually acceptable agreement. Each party agrees that the mediator and CAMP/CCR have no liability for any act or omission in connection with this mediation.
6. This Mediation/Confidentiality Agreement shall be admissible in any subsequent proceeding to prove the existence of the agreement and/or enforce said agreement.
7. The neutral person (mediator) has no conflict of interest in this case.
8. For certifiable low-income disputants and per contractor's fee policy, fees may not be assessed to certain disputants. If fees are charged, a copy of the sliding scale is available.
9. Disputants may elect to make their written settlement agreements enforceable or admissible at law.
10. Disputants may offer the testimony of witnesses.
11. Disputants may be represented by counsel during the proceedings, subject to the grantees policy and court rules governing such representation.
12. The mediator has the authority to terminate the dispute resolution proceeding if at any time he/she concludes that any disputant is uninformed or does not understand his/her rights or potential obligations; and it is the mediator's duty to encourage such a disputant to seek qualified legal, financial, or other professional advice.
13. Should a party have a complaint, comment, or concern about the mediation services offered or the mediator, he/she should contact:

Cynthia Greer
California Academy of Mediation Professionals
16501 Ventura Blvd., Suite 606
Encino, CA 91436
Phone: (818) 377-7250 Fax: (818) 784-1836
Email: cgreer@mediate.com

W. Timothy Pownall
Center for Conflict Resolution
7806 Reseda Blvd.
Reseda, CA 91335
Phone: (818) 705-1090 Fax: (818) 705-1091
E-mail: office@ccr4peace.org

By signing this agreement, the parties acknowledge that they have read and understand the information contained herein, acknowledge that California Evidence Code Sections 703.5 and 1115 through 1128 and California Code of Civil Procedure Section 1775.10 applies to this mediation, and acknowledge that it is the intention of the parties that any written settlement agreement prepared in the course of or pursuant to this mediation be admissible, once signed by the settling parties, as provided in the California Evidence Code.

Case Number: 07V00001

Date: 7/1/07

Party Name Jane Doe
Rich Big

Party Signature Jane Doe
Rich Big

Mediator(s) Name Chris Welch

Mediator(s) Signature Chris Welch

California Academy of Mediation Professionals
(CAMP)

Center for Conflict Resolution
(CCR)

SMALL CLAIMS AGREEMENT

CASE #: 07V00001

PLAINTIFF (IT) Jane Doe DBA Jane's Shoes and

DEFENDANT (Δ) Rich Big

THE UNDERSIGNED PARTIES, ON THIS 7th DAY OF July, 2007 HAVE AGREED TO THE FOLLOWING SETTLEMENT OF THEIR DISPUTE:

Defendant, Rich Big, agrees to pay Plaintiff, Jane Doe, \$1,800.00 (One Thousand Eight Hundred Dollars)

The balance will be paid in two (2) installments.

July 31st 2007 (\$900) Nine-Hundred Dollars

Aug 15th 2007 (Nine-Hundred Dollars) \$900.00

Both Payments will be sent to:
Jane Doe dba Jane's Shoes
1111 Reseda Blvd
Reseda, CA 91335

Payments will be in the form of a Cashier's Check. Postmarked by the above date(s).

Case dismissed: Without prejudice With prejudice

THIS SETTLEMENT IS BINDING ON THE PARTIES IN COURT PURSUANT TO CALIFORNIA EVIDENCE CODE SECTION 1119. THE PARTIES ACKNOWLEDGE THAT THE FOREGOING TERMS ACCURATELY REFLECT THEIR SETTLEMENT AGREEMENT. THE PARTIES FURTHER AGREE TO ABIDE BY THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. BY SIGNING BELOW, THE PARTIES EXPRESSLY AGREE THAT THIS WRITTEN SETTLEMENT MAY BE DISCLOSED IN A COURT OF LAW. UPON DISCLOSURE, THIS AGREEMENT MAY BE ADMITTED AS EVIDENCE AND/OR ENFORCED AS DETERMINED TO BE APPROPRIATE BY THE COURT.

Party Name <u>Jane Doe & Rich Big Δ</u>	Party Signature <u>Jane Doe Rich Big</u>
Mediator(s) Name <u>Chris Welch</u>	Mediator(s) Signature <u>Chris Welch</u>

California Academy of Mediation Professionals
16501 Ventura Blvd., Suite 606 • Encino, California 91436
Tel: 818-377-7250 • Fax: 818-784-1836 • Email: ccr@mediatrz.com

Center for Conflict Resolution
7806 Reseda Blvd., Reseda, California 91335
Tel: 818-705-1090 • Fax: 818-705-1091 • Email: office@ccr4peace.org