

**Frequently Asked Questions
About the Office of Mediation and Arbitration and Rule 170**

Q. What is the Office of Mediation and Arbitration?

A. Senate Bill 170, effective July 1, 2007 established the Office of Mediation and Arbitration and made a one-time appropriation to open and staff the office. After one-year, the Legislature expects the office to be self-funded. The intent of this legislation is to promote access to justice and to assist the judicial branch in making the dispute resolution process less adversarial, more cost-effective and as efficient as possible.

Q. What is the current Rule 170 program? What is the proposed change?

A. The existing Rule 170 program uses volunteer, lawyer mediators and is currently mandatory in five counties. The Advisory Committee on Alternative Dispute Resolution Services chaired by Senior Associate Justice Linda S. Dalianis and composed of members of the Bar, ADR professionals, lawmakers, and court administrators, recommended adoption of a new statewide market-based program. In that program, qualified mediators would pay a \$200 fee to be included on a court list of mediators, who would charge clients market-rate fees for their services. The Supreme Court Advisory Committee on Rules held a public hearing in June 2007 and recommended that the Supreme Court adopt the ADR committee's market-based plan. A comment period followed, during which members of the Bar have expressed support both for the market-based plan and for maintaining the all-volunteer program. At the request of the Bar Association and the Bar's Committee on Cooperation with the Courts, the comment period has been extended to October 1.

Q. What is the status of the proposed change in the Rule 170?

A. The Supreme Court is currently reviewing written comments and proposals made during discussions with Bar leaders and practitioners. A "hybrid" plan, has been proposed which would establish a market-rate system in conjunction with the already established volunteer aspect of the existing program so lawyers who wish to continue volunteering their time can do so. Mediations would be scheduled by the presiding judge at the structuring conference. Attorneys and parties will agree on whether the case will be assigned to a volunteer mediator, or a market-rate mediator. The presiding judge will also set a deadline by which mediation (or arbitration) must be completed.

Q. Will attorneys and parties be required to accept a mediator from the court's list?

A. No. The attorneys and parties can elect not to use the court's Rule 170 program and pick their own mediator. However, they will be required to participate in some form of ADR which they can arrange themselves.

Q. Why is the court requesting mediators to pay \$200 to be on a list of mediators?

A. The Judicial Branch supports numerous ADR programs which serve the public and in which attorneys participate every day. Until legislation established the Office of Mediation and Arbitration on July 1, 2007, there was no fulltime central office or director to oversee ADR programs, collect data, review mediator qualifications and track the programs' success. The Advisory Committee on ADR Services determined a rostering fee paid by mediators would directly support the Office of Mediation and Arbitration, which the legislature said must be self-funded after the first year of operation.

In exchange for the \$200 rostering fee, lawyers would receive a full-day of CLE training and credits. The Judicial Branch hopes to sponsor mediation training.

Q. How would the “hybrid plan” work?

A. Under the “hybrid” plan, all lawyer and non-lawyer mediators would pay \$200.00 annually to be on the official court-sanctioned mediator list which will be posted, with their biographical information and rates, on the Judicial Branch website. These fees will be used to support the administration of Office of Mediation and Arbitration, and to support all ADR programs administered through the Judicial Branch as needed.

Q. Can I mediate as a volunteer only?

A. Yes. However, in order to help support the Office of Mediation and Arbitration, volunteers would still pay the \$200 fee for inclusion on the court-mediator list. They would also have to meet training requirements, but would receive CLE credit in return.

Q. What are the training requirements for CURRENT Rule 170 mediators?

A. Mediators already on the Court's roster of Rule 170 would have to participate in an eight-hour, court-sponsored refresher training. After the first year, mediators on the court list will have to complete eight hours of refresher training annually.

Q. What are the training requirements for NEW 170 mediators?

A. Private training for new mediators should be a **minimum of 20 hours** after which the new mediators will be subject to the annual eight-hour refresher training requirement. To be approved for the court list, the new mediators will send an application for review by the ADR office and provide and proof of completion of training requirements.

Q. Will a new system improve scheduling and tracking of cases?

A. Yes. Scheduling of mediation will take place at the structuring conference where counsel or *pro se* parties will agree on the choice of mediator and the time frame for mediation and whether the mediation shall be in the volunteer 170 program or the market-rate 170 program. The Court shall then notify the mediator of his or her selection

by the parties and counsel and then the mediator and counsel and the parties shall schedule the time and location for mediation.

Q. Will I still have to do all the mediations in a courthouse?

A. No. Under the “hybrid” system, Rule 170 mediations could be conducted at the mediator’s office, or some other mutually agreeable location. The courthouse would still be available if parties, counsel and the mediator choose to have it held there.

Q. Under the new system, what is the process for reporting the status of a mediated case to the court?

A. The mediator will file a mediation report with the Court, within three days of the mediation session, which explains the status of the mediation, whether it is on-going, whether the case has settled, or whether the case should be returned to the trial docket. If the case has settled, the mediation report shall indicate when the Court may expect a settlement agreement and the case docket will be marked to reflect the intent to file that agreement. If the case has not settled, the court shall schedule the matter for a status conference within 30 days of receipt of the mediation report.

Q. How will the quality of the new program and the mediators be evaluated?

A. At the conclusion of the mediation process, whether the matter has settled or not, the parties and counsel will be asked to fill out confidential mediation questionnaires which shall be submitted to the clerks and forwarded to Karen Borgstrom at the OMA for processing. The purpose of these questionnaires is to monitor the program and the mediators to ensure that accountability of the program to its users, to ensure adherence to all ethical standards required for mediators, and to ensure that the training protocols are being observed, and to be able to address any problems with either the program or individual mediators

Q. Will there be other forms of dispute resolution available through the 170 program?

A. Yes. A similar protocol will be applicable to arbitration as an alternate choice of dispute resolution. However, the training requirements for arbitrators will be substantially different and will be geared toward those standards recognized in the industry as appropriate for certified arbitrators.