

California Senate Bill 940

**Presented by
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Meet the Speaker

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SB 940 - Civil Disputes

- Introduced by Senator Tom Umberg on 1/17/24
- Governor Newsom signed it into law on 9/29/24
- The law:
 - Adds Article 10.1 (commencing with Section 6173) to Chapter 4 of Division 3 of the Business and Professions Code (State Bar Act).
 - Adds Sections 1799.208 and 1799.209 to the Civil Code
 - Amends Sections 1281.9, 1282.6, and 1283.05, adds Section 1281.93, and repeals Section 1283.1 of the Code of Civil Procedure, relating to civil disputes.
- Available online at:
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB940

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SECTION 1

Alternative Dispute Resolution Certification Program

Article 10.1 (commencing with Section 6173) is added to Chapter 4 of Division 3 of the Business and Professions Code, to read:

Article 10.1. Alternative Dispute Resolution Certification Program

6173.(a) (1) The State Bar shall **create** a program to certify alternative dispute resolution **firms, providers, or practitioners**.

(2) A program created pursuant to paragraph (1) shall **not require** a firm, provider, or practitioner to be a licensee of the State Bar in order to be certified under the program.

(b) The program shall include, but shall not be limited to, all of the following:

(1) **Procedures** established by the State Bar for a firm, provider, or practitioner to become a certified alternative dispute resolution firm, provider, or practitioner that include, but are not limited to, a requirement that the firm, provider, or practitioner verify all of the following:

SECTION 1

Alternative Dispute Resolution Certification Program

(A) The firm, provider, or practitioner requires, at a minimum, its **arbitrators** to comply with the **Ethics Standards for Neutral Arbitrators in Contractual Arbitration** as adopted by the Judicial Council pursuant to Section 1281.85 of the Code of Civil Procedure.

(B) The firm, provider, or practitioner requires, at a minimum, its **mediators** to comply with ethical standards that are equivalent to the **Rules of Conduct for Mediators in Court-Connected Mediation Programs for General Civil Cases** as provided in Rules 3.850 to 3.860, inclusive, of the California Rules of Court.

(C) The firm, provider, or practitioner **has procedures in place for persons to make complaints** regarding the failure of an arbitrator or mediator of the firm, provider, or practitioner to comply with the standards described in subparagraph (A) or (B), as applicable. For mediators, those complaint procedures shall be substantially **similar to the complaint procedures** specified in Article 3 (commencing with Rule 3.865) of Chapter 3 of Division 8 of Title 3 of the California Rules of Court.

(D) The firm, provider, or practitioner shall have procedures in place to ensure that any arbitrator or mediator who is found to have failed to comply with the standards described in subparagraph (A) or (B), as applicable, shall be removed from the program.

SECTION 1

Tiers for ADR Certification Program

(2) Different **levels or tiers for certification** that meet all of the following requirements:

(A) **Higher levels** or tiers are awarded to firms, providers, or practitioners that demonstrate a higher level of commitment to accountability and consumer protection based on criteria developed by the State Bar.

(B) The levels or tiers **do not reflect an assessment of the quality** of a firm, provider, or practitioner.

(C) The levels or tiers only reference **standards of conduct** described in subparagraph (A) or (B) of paragraph (1), as applicable.

SECTION 1

ADR Certification Program

(3) Authority for the State Bar to **deny or revoke** certification for a failure to meet or maintain certification standards.

(c) (1) The State Bar may **charge** an alternative dispute resolution firm, provider, or practitioner seeking certification pursuant to this section a fee to cover the reasonable costs of administering the program.

(2) The **fee charged** pursuant to paragraph (1) may be **higher in the early years** of the program to reimburse the State Bar for costs related to the planning and establishment of the program, including, but not limited to, technology and preliminary staffing costs.

(3) The State Bar shall **not use** any moneys received from the **annual license fees** collected pursuant to Section 6140 or 6141 for any costs associated with this section.

(d) For purposes of this article:

(1) "Alternative dispute resolution" means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decisionmaking process.

What specific standards of conduct must arbitrators, mediators, and ADR providers comply with, and where can these standards be found?

Ethics Standards for Neutral Arbitrators in Contractual Arbitration

The Ethics Standards for Neutral Arbitrators in Contractual Arbitration were adopted by the Judicial Council effective July, 2002, and further substantially amended and reorganized effective January 1, 2003. Available at

https://www.courts.ca.gov/documents/ethics_standards_neutral_arbitrators.pdf

- Standard 1. Purpose, intent, and construction
- Standard 2. Definitions & Standard 3. Application and effective date
- Standard 4. Duration of duty
- Standard 5. General duty
- Standard 6. Duty to refuse appointment
- Standard 7. Disclosure
- Standard 8. Additional disclosures in consumer arbitrations administered by a provider organization
- Standard 9. Arbitrators' duty to inform themselves about matters to be disclosed
- Standard 10. Disqualification
- Standard 11. Duty to refuse gift, bequest, or favor
- Standard 12. Duties and limitations regarding future professional relationships or employment

Ethics Standards for Neutral Arbitrators in Contractual Arbitration

○ Standard 1. **Purpose, intent, and construction:**

- (a) These standards are adopted under the authority of Code of Civil Procedure section 1281.85 and establish the **minimum standards of conduct for neutral arbitrators** who are subject to these standards. They are intended to guide the conduct of arbitrators, to inform and protect participants in arbitration, and to promote public confidence in the arbitration process.
- (b) For arbitration to be effective there must be broad public confidence in the integrity and fairness of the process. **Arbitrators are responsible to the parties, the other participants, and the public** for conducting themselves in accordance with these standards so as to merit that confidence.
- (d) These standards are **not intended to affect** any existing civil cause of action or create any new civil cause of action.

Governing Rules of Conduct and Ethical Standards for Mediators

- Rules of Conduct for Mediators in Court-Connected Mediation Programs for General Civil Cases (California Rules of Court, rules 3.850–3.860)
- Standards of Practice for California Mediators promulgated by the California Dispute Resolution Council (CDRC)
- Model Standards of Conduct for Mediators jointly promulgated by the AAA, ABA and ACR.

Other Rules

- California Rules of Professional Conduct
- Rule 8.3 CA Rules of Professional Conduct: Reporting Professional Misconduct (Rule Approved by the CA Supreme Court, Effective August 1, 2023)
- Judicial officers governed by the Code of Judicial Ethics
- Settlement conferences are conducted under rule 3.1380

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Rules of Conduct for Mediators in Court-Connected Mediation Programs for General Civil Cases as provided in Rules 3.850 to 3.860, inclusive, of the California Rules of Court

Standards are available at the following link, beginning at Title 3, Division 8, Chapter 3, Article 2:

<https://www.courts.ca.gov/cms/rules/index.cfm?title=three>

Why were the Rules of Conduct for Mediators in Court-Connected Mediation Programs for General Civil Cases referenced in SB-940?

- Participants consider mediators extensions of the court
- Appropriate mediator conduct is vital to ensure public confidence
 - In courts
 - In court mediation programs



Rules of Conduct for Mediators in Court-Connected Mediation Programs for General Civil Cases as provided in Rules 3.850 to 3.860, inclusive, of the California Rules of Court

Article 2. Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases

- [Rule 3.850. Purpose and function](#)
- [Rule 3.851. Application](#)
- [Rule 3.852. Definitions](#)
- [Rule 3.853. Voluntary participation and self-determination](#)
- [Rule 3.854. Confidentiality](#)
- [Rule 3.855. Impartiality, conflicts of interest, disclosure, and withdrawal](#)
- [Rule 3.856. Competence](#)
- [Rule 3.857. Quality of mediation process](#)
- [Rule 3.858. Marketing](#)

Core Ethical Principles

- Voluntary Participation and Self-Determination
- Confidentiality
- Impartiality and Neutrality
- **Competence and Integrity**



Voluntary participation and self-determination

A mediator must conduct the mediation in a manner that supports the principle of voluntary participation and self-determination by the parties. For this purpose a mediator **must**:

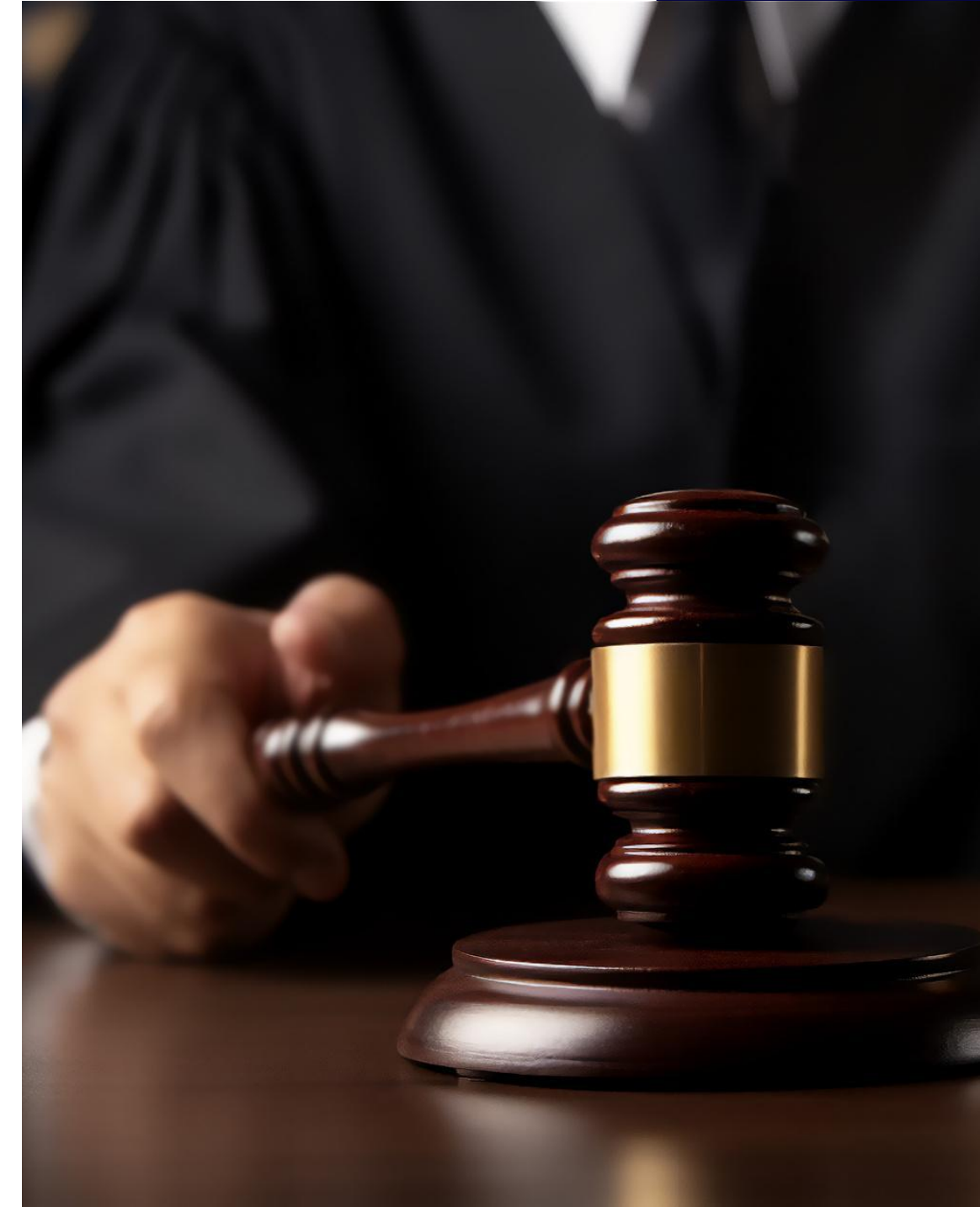
- **Inform the parties**, at or before the outset of the first mediation session, that any resolution of the dispute requires a voluntary agreement of the parties
- **Respect the right of each participant** to decide the extent of his or her participation in the mediation, including the right to withdraw from the mediation at any time; and
- **Refrain from coercing** any party to make a decision or to continue to participate in the mediation

Voluntary participation and self-determination

MEDIATORS must respect the parties rights to:

- Decide whether and how they will participate
- Withdraw from the mediation at any time

**MEDIATORS may encourage the parties to
continue If uncoerced agreement reasonably
appears possible**



Confidentiality

(a) Compliance with confidentiality law

A mediator must, at all times, comply with the applicable law concerning confidentiality.

(b) Informing the parties of confidentiality

At or before the outset of the first mediation session, a mediator must provide the participants with a general explanation of the confidentiality of mediation proceedings.



Confidentiality

(c) Confidentiality of separate communications; caucuses

If, after all the parties have agreed to participate in the mediation process and the mediator has agreed to mediate the case, a mediator speaks separately with one or more participants, the mediator must first discuss with all participants the mediator's practice regarding confidentiality for separate communications with the participants. Except as required by law, a mediator must not disclose information revealed in confidence during such separate communications unless authorized to do so by the participant who revealed the information.

(d) Use of confidential information

A mediator must not use information that is acquired in confidence in the course of a

Mediation Confidentiality

- California Evidence Code, sections 703.5 and 1115–1128
- Select California Cases interpreting those Sections: (See, e.g., Foxgate Homeowners' Association, Inc. v. Bramalea California, Inc. (2001) 26 Cal.4th 1; Rinaker v. Superior Court (1998) 62 Cal.App.4th 155; and Gilbert v. National Corp. for Housing Partnerships (1999) 71 Cal.App.4th 1240.)
- "California Confidential: What happens in mediation may not stay in Mediation" by Ana Sambold (Published in *California Litigation Regarding Mediation Confidentiality* and SB 954 effective 1/2019)

Impartiality and Neutrality

Impartiality, conflicts of interest, disclosure, and withdrawal

(a) Impartiality

A mediator must maintain impartiality toward all participants in the mediation process at all times.

(b) Disclosure of matters potentially affecting impartiality

(1) A mediator must make reasonable efforts to keep informed about matters that reasonably could raise a question about his or her ability to conduct the proceedings impartially, and must disclose these matters to the parties. These matters include:

(A) Past, present, and currently expected interests, relationships, and affiliations of a personal, professional, or financial nature; and

3. **Refrain from coercing** any party to make a decision or to continue to participate in the mediation

Impartiality and Neutrality

(B) The existence of any grounds for disqualification of a judge specified in Code of Civil Procedure section 170.1.

(2) A mediator's duty to disclose is a continuing obligation, from the inception of the mediation process through its completion. Disclosures required by this rule must be made as soon as practicable after a mediator becomes aware of a matter that must be disclosed. To the extent possible, such disclosures should be made before the first mediation session, but in any event they must be made within the time required by applicable court rules or statutes.

(c) Proceeding if there are no objections or questions concerning impartiality

Except as provided in (f), if, after a mediator makes disclosures, no party objects to the mediator and no participant raises any question or concern about the mediator's ability to conduct the mediation impartially, the mediator may proceed.

3. Refrain from coercing any party to make a decision or to continue to participate in the mediation

Impartiality and Neutrality

(f) Circumstances **requiring mediator recusal** despite party consent

Regardless of the consent of the parties, a mediator either must decline to serve as mediator or, if already serving, must withdraw from the mediation if: (1) The mediator cannot maintain impartiality toward all participants in the mediation process; or (2) Proceeding with the mediation would jeopardize the integrity of the court or of the mediation process.

CA Rules of Court, Rule 3.855

Competence

(a) Compliance with court qualifications

A mediator must comply with experience, training, educational, and other requirements established by the court for appointment and retention.

(b) Truthful representation of background

A mediator has a continuing obligation to truthfully represent his or her background to the court and participants. Upon a request by any party, a mediator must provide truthful information regarding his or her experience, training, and education.

(c) Informing court of public discipline and other matters

CA Rules of Court, Rule 3.856

Quality of the Mediation Process

- Mediator must conduct mediation in timely and procedurally fair manner
- “Procedural fairness” = a balanced process in which each party is given opportunity to:
 - Participate
 - Make uncoerced decisions
- Important elements include:
 - Transparency of process
 - Neutral and respectful treatment of participants
 - Opportunity for all participants to be heard

Quality of the Mediation Process

Procedural fairness \neq fairness of the outcome

- Mediator is ***required*** to conduct mediation in procedurally fair manner
- Mediator is ***not required*** to ensure fairness of agreement reached by parties

Complaint procedures for Mediators

Art. 3 (commencing with Rule 3.865) of Chapter 3 of Division 8 of Title 3 of the CA Rules of Court

It covers how to address complaints about court-program mediators. The rules in this article apply to superior courts that:

- Make a list of mediators for civil cases
- Recommend, select, appoint, or compensate a mediator for a civil case

Here are some rules in Article 3:

- Rule 3.865: Application and purpose & Rule 3.866: Definitions
- Rule 3.867: Complaint coordinator
- Rule 3.868: Complaint procedure required
- Rule 3.869: General requirements for complaint procedures and complaint proceedings
- Rule 3.870: Permissible court actions on complaints
- Rule 3.871: Confidentiality of complaint proceedings, information, and records

Some other things to know about Article 3 include:

- Complaint proceedings must be private and confidential.
- Mediators must agree to disclose mediation communications if there is an inquiry or complaint about their conduct.

SB-940 SECTION 1

ADR Certification Program

Key points

- Certification program is **voluntary** for ADR firms, providers and practitioners
- It will apply to lawyers and non-lawyers.
- The certification **is NOT designed to assess the quality** of dispute resolution services. Neutrals do not have to prove their levels of competence, training, or experience to become certified. The levels or tiers only reference standards of conduct.
- The bill authorizes the State Bar to charge **fees** as necessary.
- **Revocation:** Authority for the State Bar to **deny or revoke certification** for a failure to meet or maintain certification standards
- **Solo practitioners:** How can solo practitioners provide credible evidence that they are effectively handling complaints against themselves?

SECTION 2-8

Consumer Arbitration

What Are Consumer Arbitrations?

It refers to arbitration proceedings arising from disputes involving a consumer and a business in which the consumer has entered into an agreement for goods, services, or other benefits primarily for personal, family, or household purposes.

Key Points:

- 1. A consumer is generally an individual who seeks or acquires goods or services for personal, family, or household use, rather than for business or commercial purposes.**
- 2. Scope: The purchase agreement between consumer and businesses typically include pre-dispute arbitration clauses. These clauses are often found in contracts for:**

Consumer Arbitration

How often do consumers win in arbitration?

- **Consumers were more likely to win in arbitration (almost 42 percent) than in court (about 29 percent).**
- **On average, consumers won more money through arbitration (almost \$80,000) than in court (about \$71,000).**
- **Arbitrations on average were resolved faster (321 days) than litigation (439 days).**

SECTION 2

Consumer Contract Locale & Applicable Law

SEC. 2. Section 1799.208 is **added** to the Civil Code, to read:

1799.208.

(a) A **seller** shall **not require** a consumer to agree to a provision that would do either of the following:

(1) Require the consumer to **arbitrate outside** of California **a claim arising** in California.

(2) Require the consumer to arbitrate a controversy **arising in California** under the **substantive law** of a state other than California.

SECTION 2

Consumer Contract Locale & Applicable Law

(b) Any provision of a contract that **violates** subdivision (a) is **voidable** by the consumer, and if a provision is rendered void at the request of the consumer, the matter shall be **adjudicated** in California and **California law** shall govern the dispute.

(c) In addition to injunctive relief and any other remedies available, a court may award a consumer who is enforcing their rights under this section **reasonable attorney's fees** incurred in enforcing those rights.

(d) For purposes of this section, **adjudication** includes **litigation** and arbitration.

(e) This section **applies** to a contract entered into, modified, or **extended** on or **after January 1, 2025**.

SECTION 3

Consumer Arbitration/Small Claims

SEC. 3. Section 1799.209 is added to the Civil Code, to read:

1799.209.

(a) If a **consumer contract** requires a dispute under the contract to be **arbitrated** and the dispute may be adjudicated pursuant to the **Small Claims Act** (Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure), the consumer shall be given the option to have the dispute adjudicated pursuant to that act. (natural persons can claim up to \$12,500 (CCP §1799.209; see CCP §116.221 [eff. 1/1/24])

(b) This section applies to a contract entered into, modified, or extended on or after **January 1, 2025**.

SECTION 4

Disclosures& Solicitation

1281.9 (a) In any arbitration pursuant to an arbitration agreement, when a person is to serve as a neutral arbitrator, **the proposed neutral arbitrator shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial**, including all of the following:

(1) The existence of any ground specified in Section 170.1 for disqualification of a judge:

170.1 (1)(A) “[the arbitrator] has personal knowledge of disputed evidentiary facts concerning the proceeding...”;

170.1 (2)(A) “[the arbitrator] has served as a lawyer in the proceeding, or in any other proceeding involving the same issues ... or gave advice to a party in the present proceeding upon a matter involved in the action or proceeding.” This also covers (i) where the party (or an officer, director, or trustee of a party) was a client of the arbitrator or the arbitrator’s law firm within the past 2 years, and (ii) where a lawyer in the proceeding was in the arbitrator’s law firm within the past 2 years;

170.1 (3)(A) “[the arbitrator, or the arbitrator’s spouse or minor child] has a financial interest in the subject matter in a proceeding or in a party to the proceeding...”;

170.1 (4) “[the arbitrator, or the arbitrator’s spouse], or a person within the third degree of relationship to either of them, or the spouse of such a person, is a party to the proceeding or an officer, director, or trustee of a party;

SECTION 4

Disclosures& Solicitation

1281.9 (a)(1) The existence of any ground specified in Section 170.1 for disqualification of a judge
(continued):

170.1 (6)(A) “(i)...[the arbitrator] believes his or her recusal would further the interests of justice
“(ii)...[the arbitrator] believes there is a substantial doubt as to his or her capacity to be impartial
“(iii) A person aware of the facts might reasonably entertain a doubt that the [arbitrator] would be able to be impartial.”

170.1 (6)(B) “Bias or prejudice toward a lawyer in the proceeding may be grounds for disqualification.”

170.1 (7) “By reason of permanent or temporary physical impairment, the [arbitrator] is unable to properly perceive the evidence or is unable to properly conduct the proceeding.

170.1 (8)(A) “The [arbitrator] has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, **within the last two years** has participated in, discussions regarding prospective employment or service as a dispute resolution neutral or has been engaged in that employment or service, and any of the following applies: (i) The arrangement is, or

SECTION 4

Disclosures & Solicitation

“1281.9 (a)(2) Any matters required to be disclosed by the ethics standards for neutral arbitrators adopted by the Judicial Council pursuant to this chapter.”

This provision refers to the following and has had the force of law in Calif. since 2002:

Ethics Standards for Neutral Arbitrators in Contractual Arbitration

The Ethics Standards for Neutral Arbitrators in Contractual Arbitration were adopted by the Judicial Council effective July, 2002, and further substantially amended and reorganized effective January 1, 2003.

The *Ethics Standards for Neutral Arbitrators in Contractual Arbitration* have been amended, effective July 1, 2014. For more detailed information, please see Item A1 on the Judicial Council's October 25, 2013, agenda, at <http://www.courts.ca.gov/23770.htm>.

SECTION 4

Disclosures & Solicitation

1281.9 (a)(3) The names of the parties to all prior or pending noncollective bargaining cases in which the proposed neutral arbitrator served or is serving as a party arbitrator for a party to the arbitration proceeding or for a lawyer for a party and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys, and the amount of monetary damages awarded, if any. **In order to preserve confidentiality, it shall be sufficient to give the name of any party who is not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.**

1281.9 (a)(4) The names of the parties to all prior or pending noncollective bargaining cases involving a party to the arbitration or lawyer for a party for which the proposed neutral arbitrator served or is serving as neutral arbitrator, and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. **In order to preserve confidentiality, it shall be sufficient to give the name of any party not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.**

1281.9 (a)(5) Any attorney-client relationship the proposed neutral arbitrator has or had with a party or lawyer for a party to the arbitration proceeding.

1281.9 (a)(6). Any professional or significant personal relationship the proposed neutral arbitrator or their spouse or minor child living in the household has or has had with any party to the arbitration proceeding or lawyer for a party.

1281.9 (a)(7). (A) **In a consumer arbitration case, any solicitation made after January 1, 2025, and within the last two years by, or at the direction of, the private arbitration company to a party or lawyer for a party to the consumer arbitration.** (a)(7). (B).

SECTION 4

Disclosures & Solicitation

1281.9(c). For purposes of this section:

1. “Lawyer for a party” includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party.
2. “**Prior cases**” means noncollective bargaining cases in which an arbitration award was rendered within five years prior to the date of the proposed nomination or appointment.

(4) (A) “**Solicitation**” includes either of the following:

- (i) Private **presentations** made to a party or lawyer for a party by the private arbitration company or the arbitrator.
- (ii) Oral or written **discussions, meetings, or negotiations** to designate the private arbitration company or the arbitrator as the arbitration provider or arbitrator for a party in specific contracts.

(B) “**Solicitation**” **does not include any of the following**:

- (i) Advertising directed to the general public.
- (ii) Communications indicating a general willingness to serve as an arbitrator or private arbitration company.
For purposes of this clause, “communications” include, but are not limited to, standard educational materials about alternative dispute resolution or the provider organization.
- (iii) Presentations made by the private arbitration company or the arbitrator at a program or seminar held

SECTION 5

Consumer Arbitration Solicitation

SEC. 5. Section 1281.93 is added to the Code of Civil Procedure, to read:

1281.93.

(a) **During the pendency of the consumer arbitration, a solicitation shall not be made of a party to the arbitration or of a lawyer for a party to the arbitration.**

(b) For purposes of this section:

(1) “Lawyer for a party” has the same meaning as defined in Section 1281.9.

(2) “Solicitation” has the same meaning as defined in Section 1281.9.

1281.9(c)(1) – “‘Lawyer for a party’ includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party.”

SECTION 6

Subpoenas in Arbitration

SEC. 6. Section 1282.6 of the Code of Civil Procedure is amended to read:

1282.6.

(a) A subpoena requiring the attendance of witnesses, and a subpoena duces tecum for the production of books, records, documents, and other evidence, at an arbitration proceeding or a deposition under Sections 1283 and 1283.05 for the purposes of discovery, shall be issued as provided in this section. In addition, **the neutral arbitrator upon their own determination may issue subpoenas for the attendance of witnesses and subpoenas duces tecum** for the production of books, records, documents, and other evidence.

(b) Subpoenas shall be issued, as of course, signed but otherwise in blank, to the party requesting them, by a neutral association, organization, governmental agency, or office if the arbitration agreement provides for administration of the arbitration proceedings by, or under the rules of, a neutral association, organization, governmental agency or office, or by the neutral arbitrator.

(c) The party serving the subpoena shall fill it in before service. Subpoenas shall be served and

SECTION 7

Depositions and Discovery in Arbitration

SEC. 7. Section 1283.05 of the Code of Civil Procedure is amended to read:

1283.05. **Depositions** may be taken and **discovery** obtained in arbitration proceedings as follows:

(a) After the appointment of the arbitrator or arbitrators, the **parties** to the arbitration shall have the **right to take depositions and to obtain discovery** regarding the subject matter of the arbitration, and, to that end, to use and exercise all of the same rights, remedies, and procedures, and be subject to all of the same duties, liabilities, and obligations in the arbitration with respect to the subject matter thereof, as provided in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4, and in Title 4 (commencing with Section 2016.010) of Part 4, **as if the subject matter of the arbitration were pending before a superior court of this state in a civil action** other than a limited civil case, subject to the limitations as to depositions set forth in subdivision (e) of this section.

(b) The **arbitrator** or arbitrators themselves shall have **power**, in addition to the power of determining the merits of the arbitration, **to enforce** the rights, remedies, procedures, duties, liabilities, and obligations of discovery by the imposition of the same terms, conditions, consequences, liabilities, sanctions, and penalties as can be or may be imposed in like

SECTION 7

Depositions and Discovery in Arbitration

(c) The **arbitrator** or arbitrators may consider, determine, and **make such orders** imposing such **terms**, conditions, consequences, liabilities, sanctions, and penalties, whenever necessary or appropriate at any time or stage in the course of the arbitration, and such orders shall be as conclusive, final, **and enforceable as an arbitration award on the merits**, if the making of any such order that is equivalent to an award or correction of an award is subject to the same conditions, if any, as are applicable to the making of an award or correction of an award.

(d) For the purpose of **enforcing the duty to make discovery**, to produce evidence or information, including books and records, and to produce persons to testify at a deposition or at a hearing, and to impose terms, conditions, consequences, liabilities, sanctions, and penalties upon a party for violation of any such duty, such party shall be deemed to include every affiliate of such party as defined in this section. For such purpose:

(1) The personnel of every such **affiliate** shall be deemed to be the officers, directors, managing agents, agents, and employees of such party to the same degree as each of them, respectively, bears such status to such affiliate; and

SECTION 7

Depositions and Discovery in Arbitration

(2) **The files, books, and records of every such affiliate** shall be deemed to be in the possession and control of, and capable of production by, such party. As used in this section, “affiliate” of the party to the arbitration means and includes any party or person for whose immediate benefit the action or proceeding is prosecuted or defended, or an officer, director, superintendent, member, agent, employee, or managing agent of such party or person.

(e) **Depositions** for discovery shall not be taken unless **leave to do so is first granted by the arbitrator** or arbitrators.

SECTION 8

SEC. 8. Section 1283.1 of the Code of Civil Procedure is **repealed**.

1283.1. (a) All of the provisions of Section 1283.05 shall be conclusively deemed to be incorporated into, made a part of, and shall be applicable to, every agreement to arbitrate any dispute, controversy, or issue arising out of or resulting from **any injury to, or death of, a person caused by the wrongful act or neglect of another.**

(b) Only if the parties by their agreement so provide, may the provisions of Section 1283.05 be incorporated into, made a part of, or made applicable to, any other arbitration agreement.

The repeal of CCP §1283.1 means that full rights under the Discovery Act (section 1283.05) are deemed incorporated into every arbitration agreement “as if the subject matter of the arbitration were pending before a superior court of this state in a civil action other than a limited civil case.”

SECTION 9

SEC. 9.

The provisions of this act are **severable**. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

ANY
QUESTIONS?



Thanks for listening!

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