CHAPTER 6 – ALTERNATIVE DISPUTE RESOLUTION

RULE 6.0 ALTERNATIVE DISPUTE RESOLUTION (*Effective 5/19/98; Amended 7/1/99 and 7/1/03*)

RULE 6.1 POLICY STATEMENT

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, and voluntary settlement conferences. Therefore, the Court may refer general civil cases to an appropriate form of ADR before they are set for trial, unless there is good cause to dispense with the ADR requirement. (*Effective 5/19/98; Amended 7/1/99 and 7/1/03*)

RULE 6.2 ADR PROCEDURE (all processes except judicial arbitration)

A. Parties may choose any ADR provider they wish, including a provider who is not listed on the Court's ADR Provider List as described below;

B. All parties to an ADR process must participate in good faith;

C. In conducting a session, the ADR provider should require the attendance of persons with full authority to resolve the dispute. The provider should only permit telephone appearances if good cause to waive personal appearance was shown in a timely manner prior to the session;

D. Unless the ADR provider's fees and expenses have been ordered by the Court, the parties and the provider must agree on the fees and expenses. The fees and expenses of the ADR provider shall be borne by the parties equally, unless they agree otherwise.

(*Effective 5/19/98; Amended 7/1/99 and 7/1/03*)

RULE 6.3 ADR PROVIDER LIST

To assist parties and counsel in obtaining access to experienced and affordable Alternative Dispute Resolution providers, the Court shall develop and maintain a list of ADR neutrals pursuant to CRC 1580.1. The list shall include providers in the areas of mediation, neutral case evaluation, private arbitration and judicial arbitration. Eligibility criteria for appointment to the Court ADR panel(s) shall be as required by CRC 1580.1(b), CRC 1600, et. seq., CRC Division VI, and such other criteria as may be established by the Court. The ADR Provider List, including names, qualifications, services provided and fees charged, shall be posted electronically on the court's website and shall be made available in hard copy for public inspection in the office of the ADR program administrator. (*Effective 5/19/98; Amended 7/1/99 and 7/1/03*)

RULE 6.4. DISCLAIMER

Appointment as an ADR panel member does not establish an employment relationship with the Court. The Court and the California Administrative Office of the Courts will not defend or indemnify any ADR panel member in any claim arising from services provided. ADR panel members are strongly encouraged to obtain errors and omissions insurance from a qualified insurance carrier. (*Effective 5/19/98; Amended 7/1/99 and 7/1/03*)

RULE 6.5 ADR ADMINISTRATION COMMITTEE

The presiding judge shall appoint an ADR Administration Committee which shall be composed as set forth in CRC 1603(b) and shall additionally include three or more members chosen by the presiding judge as representatives of ADR providers serving on the Court ADR panel(s). The ADR Administration Committee shall act on behalf of the Court and shall have those powers set forth in CRC 1603(d) and shall have the following authority:

A. to establish criteria for ADR panel eligibility;

B. to recruit and appoint ADR providers to the ADR panels;

C. to deny applications for the ADR panel;

D. to investigate any written complaints received regarding the conduct of ADR panelists and determine appropriate action, including but not limited to: issuing a reprimand, removing an individual from the ADR panel, and/or prohibiting future participation in the ADR panel;

E. to develop informational and educational material concerning the court's ADR panels;

F. to review the administration and operation of the ADR panel list and make recommendations as it deems appropriate to improve the program, promote the ends of justice and serve the needs of the community;

G. to gather statistical and other evaluation information concerning the court's ADR program and ensure reporting requirements to the Judicial Council are met.

(*Effective 5/19/98; Amended 7/1/99 and 7/1/03*)

RULE 6.6 ADR STIPULATIONS

Once all parties have appeared, then all parties may stipulate to an ADR process at any time by completing a written ADR Stipulation form and submitting it the Case Management judge for consideration. To obtain a continuance of an upcoming CMC date based upon an ADR Stipulation for a process other than judicial arbitration, the Stipulation must set forth ADR process agreed to and the date by which the ADR process will be completed.

Parties who have been referred to judicial arbitration may subsequently stipulate to a different form of ADR by submitting a signed ADR stipulation and proposed order vacating judicial arbitration to the Case Management judge. Said stipulation must specify the ADR process agreed to and the date by which the ADR process will be completed. (*Effective 5/19/98; Amended 7/1/99 and 7/1/03*)

RULE 6.7 ADR GRIEVANCE PROCEDURE

A. It is the goal of the Superior Court of California, County of Alameda to encourage excellence and the highest ethical standards in ADR practice. In the event of any grievance regarding the conduct of any ADR panel member, the following procedure shall apply;
B. All complaints must be submitted in writing to the ADR Program Administrator;

C. The ADR Program Administrator will assemble all available information regarding the complaint and refer the complaint file to the ADR Administration Committee for review;

D. If the Committee finds the complaint is frivolous or without merit on its face, no further action will be taken, although a file of the complaint shall be maintained;

E. If the Committee determines an investigation is warranted, it shall establish a subcommittee of its members for such purpose. The subcommittee shall review the complaint, conduct an investigation and make a recommendation for action to the full Committee. A copy of the complaint shall be provided to the affected panel member who shall be allowed an opportunity to respond in writing. Upon the conclusion of the subcommittee's investigation and recommendation, the Committee shall take appropriate action including but not limited to: a reprimand of the panel member, or the suspension or removal of the panel member from the Court's ADR Provider List. The retention of panel members on the ADR Provider List is at the Committee's sole discretion. The decision of the Committee shall be final;

F. Each complainant and affected panelist will be promptly notified in writing of the receipt and of the disposition of the complaint;

G. Except as provided above or as necessitated by an investigation, papers filed and proceedings conducted on a complaint against a panel member shall be kept confidential.

(*Effective 7/1/03*)

RULE 6.8 JUDICIAL ARBITRATION

California Rules of Court 1600 et. seq. and Code of Civil Procedure 1141.10 et. seq. provide a comprehensive set of rules and procedures governing judicial arbitration. The Superior Court of California, County of Alameda Judicial Arbitration Program shall be administered in accordance with the above referenced sections and as more specifically set forth in the Appendix to Chapter 6 of these local rules. Counsel, self-represented parties, and judicial arbitrators are requested to thoroughly familiarize themselves with the procedural requirements and mandatory timeframes specified in the Appendix hereto. (*Effective 7/1/03*)

RULE 6.9 JUDICIAL ARBITRATION ADMINISTRATIVE COMMITTEE

The judicial arbitration administrative committee established by CRC 1603(b) shall be known as and integrated into the Superior Court of California, County of Alameda ADR

Administration Committee. The Committee shall have all the powers and authority set forth in CRC 1603 and Rules 6.4 and 6.7 set forth hereinabove. (*Effective 7/1/03*)

RULE 6.10 JUDICIAL ARBITRATION GRIEVANCE PROCEDURE

The procedure set forth in Rule 6.7 hereinabove shall apply with equal force and effect to any complaints received against any assigned judicial arbitrators. The Committee has all those powers and authority set forth in Rule 6.7 with regard to the discipline and or removal of any judicial arbitrator. The decision of the Committee is final. (*Effective 7/1/03*)

RULE 6.11 SETTLEMENT CONFERENCES - LIMITED JURISDICTION CIVIL CASES

1. **The pretrial settlement conference shall encompass:**

A. Settlement
B. Pretrial Matters
C. Trial Setting, and
D. Referral to Arbitration, if appropriate

2. **Mandatory Hearing:** All cases (except unlawful detainer cases) in which jury trial is demanded shall be scheduled for a pretrial settlement conference within forty-five (45) days. Settlement Conference statements must be filed five (5) days before the settlement conference date.

3. Each plaintiff or party seeking affirmative relief or recovery shall be prepared to make his/her minimum demand and each defendant must come to the pretrial settlement conference prepared to make his/her highest offer.

4. Counsel who attend the conference shall be thoroughly familiar with the case and shall be prepared to discuss it. The attorney responsible for the preparation and trial of the case should attend the conference. The presence of all persons whose consent is necessary for a binding settlement agreement is required. Only extraordinary circumstances shall excuse the nonappearance at the conference of all principals in the action, or in the case of an insured principal, the authorized representative of the insurer other than defense counsel. Violation of this rule may result in the imposition of sanctions, including an award of attorneys' fees and/or costs to opposing parties. Attorneys shall:

A. Have the latest medical and other expert reports,
B. Have a list of all "special damages" together with supporting data, and
C. Inform the court regarding the availability of all witnesses and clients.

5. For a meaningful conference, all attorneys, parties, and principals, or in the case of an insured principal, authorized representative of the insurer other than defense counsel, must agree to participate in good faith. Failure to prepare for, appear at, and participate in a settlement conference, unless good cause is shown for any such failure, may be considered as an unlawful interference with proceedings of the Court and may be punished by contempt or other sanctions.

6. Settlement Conference dates may not be vacated or continued without a showing of good cause, presented to the Court and approved by the Court in writing at least five (5) court days before the settlement conference date. Counsel may stipulate in writing to vacate a settlement conference date and to continue to another date within the 12-month disposition target date established by the Judicial Council standards only upon a showing of good cause and with

written approval by the Court. A stipulation by all parties to a continuance does not constitute good cause. Written notice of motion supported by a declaration showing good cause will be required to vacate and/or to continue settlement conference dates beyond the 12-month disposition target date. Such motions must be heard and approved at least five (5) court days prior to the settlement conference date.

7. The Court will consider the following factors when determining whether or not good cause exists to grant a continuance:

A. The time when the need for the continuance arose, and the diligence of counsel in bringing the need for a continuance to the attention of the Court and opposing counsel at the earliest possible date and in attempting to avoid a continuance;

B. The proximity of the settlement conference, the age of the case, the established time limits for processing cases, and the nature of any previous continuances or prior orders entered in the case;

C. The earliest possible date all parties and the court will be ready to proceed;

D. Whether the continuance may be avoided by approval of telephone standby or other arrangements;

E. The injury, inconvenience, or prejudice caused to the party not requesting the continuance.

8. **Pretrial Settlement Conference Statements:** Counsel shall prepare and submit to the Pretrial Settlement Conference Judge, at least 48 hours before the date set for the conference, a written statement of the factual and legal contentions to be made as to the issues, including an itemization of "special damages" together with supporting data, as follows:

A. A complete statement of the theory of liability or recovery, or lack thereof, and the facts which support the theory; including police reports and any other documents supporting the theory;

B. The nature and extent of injury in personal injury cases including medical reports and an itemized statement of medical specials;

C. A detailed statement as to wage loss including supporting documents;

D. A detailed statement of any other claimed special damages and supporting documents;

E. The highest previous offer and the lowest previous demand;

F. Identity of any lien holders and amounts claimed;

G. Presentation of any special barriers to settlement;

H. Realistic estimate of total number of trial days from time of assignment to trial department until return of verdict, or until conclusion of oral closing arguments in non-jury trial. Copies of written statements and itemization of damages supplied to the Court shall be exchanged among counsel prior to the conference but shall not be filed. Failure to file settlement conference statement may result in the imposition of sanctions.

(*Effective 5/19/98; Amended 7/1/99; Renumbered from Rule 6.5, 7/1/03*)

RULE 6.12 SETTLED CASES

GENERAL JURISDICTION CIVIL CASES

In all cases of settlement before trial, regardless of the method of settlement, counsel must, pursuant to California Rule of Court 225, notify the Court. For cases which have been assigned to a Case Management Department, the Case Management Department must be notified of the settlement. Any case which is settled as described herein shall be continued to a dismissal calendar pursuant to California Rule of Court 225. See Rule 4.19.

LIMITED JURISDICTION CIVIL CASES

Cases referred to arbitration or settlement conferences will be given a final status conference/trial setting date at the time of referral.

1. If the matter is not settled prior to that date, all parties are required to appear. All parties are also required to file a Final Status/Trial Setting Conference Statement at least ten court days prior to the conference date.

2. If the case is settled a notice of settlement with a future dismissal date, stipulated judgment, arbitrator's award or dismissal must be filed with the Court. When the case is settled prior to the final conference and the Court is notified of the settlement, no appearance is required at the Final Status/Trial Setting Conference.

3. In cases referred to arbitration, a copy of dismissal, stipulated judgment or summary judgment must be served upon the Arbitration Administrator of the Superior Court.

(*Effective 5/19/98; Amended 7/1/99; Renumbered from Rule 6.6, 7/1/03*)