

Invitation to Comment

Title	Alternative Dispute Resolution: Mandatory Settlement Conferences (amend Cal. Rules of Court, rule 3.1380)
Summary	This proposal would clarify that courts have the authority to set more than one settlement conference. It would also prohibit courts from appointing a person to conduct a settlement conference under this rule at the same time as that person is serving as a mediator in the same action or from appointing a person to conduct a mediation under the rule authorizing mandatory settlement conferences.
Source	Civil and Small Claims Advisory Committee Hon. Lee Edmon, Chair
Staff	Heather Anderson, ADR Subcommittee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>In a recent case, <i>Jeld-Wen v. Superior Court of San Diego County</i> (2007) 146 Cal.App.4th 536, the Court of Appeal, Fourth Appellate District considered the validity of a case management order in a complex case that appointed an individual as the “Mediator and/or MSC [Mandatory Settlement Conference] Judge” to “mediate and conduct settlement conferences” for up to a maximum of 100 hours at the parties’ expense. Among the arguments made by the petitioner in opposition to this order was that the California Rule of Court regarding settlement conferences, rule 3.1380, authorizes courts to set only a single mandatory settlement conference in a case. While the appellate court’s decision overturning the case management order in <i>Jeld-Wen</i> was not specifically based on this interpretation of rule 3.1380, the opinion has raised concerns that rule 3.1380 could be read as authorizing only a single settlement conference in a case.</p> <p>To address these concerns, this proposal would amend rule 3.1380 to clarify that courts have the authority to set more than one settlement conference in a case. This is consistent with both current practice and with the historical intent of rule 3.1380. Many courts currently offer early settlement conference programs as well as settlement conferences close to the date of trial. Many also offer additional settlement conference opportunities if a trial date is reset in a case. Before 2001, rule 3.1380 authorized courts to set a mandatory settlement conference before trial and also specifically authorized courts to set other or additional settlement conferences. In 2001, this rule was amended as part of a comprehensive revision of the rules and forms relating to case management. The 2001 amendments eliminated both the specific references to setting a conference before trial and to</p>

setting other or additional conferences. Nothing in the history of this amendment, however, indicates that the intent was to eliminate courts' authority to set more than one mandatory settlement conference in a case.

The *Jeld-Wen* case also illustrates how mixing different alternative dispute resolution (ADR) processes can cause confusion for both parties and the courts. In *Jeld-Wen*, the case management order appointed one individual to simultaneously serve as a mediator and as a settlement conference judge. Because there are different authorities relating to these different ADR processes, the appellate court had to decide which process was being ordered before it could determine the validity of the order. Other recent cases involving disputes about the confidentiality of ADR discussions also stemmed from court orders that similarly mixed mediation and other ADR processes (see *Foxgate Homeowners' Ass'n, Inc. v. Bramalea California* (2001) 26 Cal.4th 1 [the case management order appointed one person to conduct both discovery reference and mediation] and *Doe 1 v. Superior Court* (2005) 132 Cal.App.4th 1160 [the case management order appointed a judge for both mediation and settlement purposes]). Lack of clarity about what ADR process is being conducted can be particularly problematic in context of confidentiality because Evidence Code sections 1115–1128 establish a comprehensive set of confidentiality requirements for mediation but expressly exclude settlement conferences under rule 3.1380 from coverage by these confidentiality requirements.

This proposal would help eliminate this type of confusion by prohibiting courts from appointing a person to conduct a settlement conference under this rule at the same time that the person is serving as a mediator in the same action. The proposed amendment would also prohibit a court from appointing a person to conduct a mediation under the authority of the settlement conference rule. The language proposed is similar to that already in rules 3.900 and 3.920 that prohibits a court from appointing a person to conduct a mediation under the auspices of the Code of Civil Procedure sections that authorize the appointment of referees. An advisory committee comment would clarify that this prohibition is not intended to prohibit a court from appointing a person who previously served as a mediator in a case to conduct a settlement conference in that case after the mediation has ended.

Attachment

Rule 3.1380 of the California Rules of Court would be amended, effective January 1, 2008, to read:

1 **Rule 3.1380. Mandatory settlement conferences**

2
3 **(a) ~~Settlement~~ Setting conferences**

4
5 On the court's own motion or at the request of any party, the court may set a
6 one or more mandatory settlement conferences.

7
8 **(b) * * ***

9
10 **(c) Settlement conference statement**

11
12 No later than five court days before the initial date set for the settlement
13 conference, each party must submit to the court and serve on each party a
14 mandatory settlement conference statement containing:

- 15
16 (1) A good faith settlement demand;
17
18 (2) An itemization of economic and noneconomic damages by each
19 plaintiff;
20
21 (3) A good faith offer of settlement by each defendant; and
22
23 (4) A statement identifying and discussing in detail all facts and law
24 pertinent to the issues of liability and damages involved in the case as to
25 that party.

26
27 The settlement conference statement must comply with any additional
28 requirement imposed by local rule.

29
30 **(d) Restrictions on appointments**

31
32 A court must not:

- 33
34 (1) Appoint a person to conduct a settlement conference under this rule at
35 the same time as that person is serving as a mediator in the same action;
36 or
37
38 (2) Appoint a person to conduct a mediation under this rule.

Advisory Committee Comment

1
2
3
4
5
6
7
8
9

Subdivision (d) To prevent confusion about the confidentiality of the proceedings, it is important to clearly distinguish between settlement conferences held under this rule and mediations. The special confidentiality requirements for mediations established by Evidence Code sections 1115–1128 expressly do not apply to settlement conferences under this rule. This provision is not intended to prohibit a court from appointing a person who has previously served as a mediator in a case to conduct a settlement conference in that case following the conclusion of the mediation.

Item SPR07-12 Response Form

Title: Alternative Dispute Resolution: Mandatory Settlement Conferences (amend Cal. Rules of Court, rule 3.1380)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Camilla Kieliger
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 20, 2007
--

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action.*