

Third Amended Notice re Procedures in All Cases Referred to ENE or Mediation
and re Pre-Mediation Procedures in Cases Subject to General Order 56

On June 30, 2021, Chief Judge Richard Seeborg approved the following amended procedures applicable to cases referred to ENE or Mediation through the Court's ADR Program:

Videoconference, in-person, and hybrid sessions. The requirement of in-person attendance set forth in ADR L.R. 5-10 and 6-10 is suspended until further notice. Beginning July 1, 2021, all ENE and mediation sessions shall take place by videoconference unless

- (1) all participants agree that some or all participants will attend the session in person, and
- (2) all participants who will attend in person are fully vaccinated against Coronavirus.

The neutral is authorized, but is not required, to collect information on the vaccination status of all participants. If the neutral elects not to collect such information, the ENE or mediation must proceed by videoconference.

For any hybrid in-person/videoconference session, the parties and the neutral must agree in advance who will attend in person and who will join by videoconference and must coordinate the necessary technology independently. If the appointed neutral is available only by videoconference, and the parties and counsel agree that some or all participants should attend in person, the parties may jointly ask the ADR Director to appoint a different neutral. Such requests should be made by email to adr@cand.uscourts.gov, copying all counsel, any self-represented parties, and the neutral.

Court facilities. The San Francisco courthouse has two ADR conference rooms and the San Jose courthouse has a grand jury suite that appointed neutrals may reserve for in-person sessions beginning July 1, 2021. These facilities are not set up to support hybrid proceedings at this time. Courtrooms and attorney lounges are generally in use for trials and cannot be reserved for ADR proceedings at this time.

Safety protocols. ADR participants must follow all safety protocols requested by the court-appointed neutral.

Video requirements. All video participants must have their cameras on throughout the ADR session. Unless excused by the neutral in advance, video participants must each use a separate video camera and connection so that each person appears individually on screen. If multiple video participants will join from the same room, they must share one audio connection to avoid feedback. Unless excused by the neutral, video participants should not wear masks on camera and should join from separate rooms if they are not comfortable being together without masks.

Technological barriers. If technological barriers preclude a party from participating by videoconference, the assigned neutral may authorize telephonic participation for that party or may request approval from the ADR Director to conduct the entire session telephonically. If participating by videoconference would impose an extraordinary or otherwise unjustifiable

hardship for a reason unrelated to technological barriers, a request for relief must be presented to the ADR Magistrate Judge via email to adr_attendance@cand.uscourts.gov at least 14 days in advance of the scheduled session, in accordance with ADR L.R. 5-10(d) and 6-10(d).

Dispute resolution. If the parties disagree about whether some or all participants should attend a mediation or ENE session in person, the neutral is authorized, but is not required, to decide and may require specified participants to attend in person or by videoconference. If the neutral elects not to decide, any party may seek an order from the ADR Magistrate Judge requiring another participant's in-person appearance based on a showing that good cause outweighs any prejudice to other participants. Such requests must be presented to the ADR Magistrate Judge via email to adr_attendance@cand.uscourts.gov at least 14 days in advance of the scheduled session.

On June 30, 2021, Chief Judge Richard Seeborg approved the following procedures applicable to ADA Access cases subject to General Order 56:

In any case subject to General Order 56 involving a physical site, the deadlines for conducting a joint site inspection and settlement meeting are deemed tolled until the site is open to the public or August 1, 2021, whichever is sooner.

The ADR Program will refer a case for mediation if the required Form GO 56-Notice of Need for Mediation and Certification of Counsel (amended June 4, 2020) certifies

- (a) that all required participants attended the joint site inspection and the settlement meeting required by General Order 56 either
 - (i) by videoconference, or
 - (ii) in person, so long as all participants agreed and gathering in person was permitted by applicable state and local laws, and
- (b) that the parties have completed the initial disclosures required by Fed. R. Civ. P. 26(a)(1) and have complied with General Order 56, paragraph 4.

Neither the joint site inspection nor the settlement meeting may be conducted by telephone or email. The parties may by agreement elect to replace the joint site inspection with another process that enables them to obtain and exchange the information needed to prepare effectively to evaluate the case for resolution at the settlement meeting. If the parties elect to replace the joint site inspection with another process, they must attach to the Notice of Need for Mediation and Certification of Counsel a joint letter describing the terms of the parties' agreement and confirming that all requirements of the agreement have been satisfied.

Any request for relief from these procedures must comply with General Order 56, paragraph 3, and, for the convenience of the assigned judge, must attach to the stipulation or administrative motion a copy of this Third Amended Notice.