

ATTACHMENT B: CALIFORNIA CODE OF REGULATIONS TITLE 16, DIVISION 36

§ 3600. Terms and Definitions.

As used in the chapter:

(a) “Act” means the Dispute Resolution Programs Act of 1986, commencing with Section 465 of the California Business and Professions Code.

(b) “Code” means the California Business and Professions Code.

(c) “Department of Consumer Affairs” means the California State Department of Consumer Affairs, located at 1020 N Street, Room 504, Sacramento, California 95814.

(d) “Regulations” refers to California Code of Regulations, Title 16, Chapter 36, commencing with Section 3600.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Section 471.3, Business and Professions Code.

§ 3601. Application of Regulations.

These Regulations apply to dispute resolution services provided pursuant to the Act, to counties that fund dispute resolution programs pursuant to the Act, and to the dispute resolution programs that receive funding pursuant to the Act. These Regulations supplement the requirements of the Act, and must be read, interpreted and applied in conjunction with the Act.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 471 and 471.3, Business and Professions Code.

§ 3602. Dispute Resolution Services.

(a) Dispute resolution services refers to a variety of dispute resolution processes and techniques, both proven and experimental, which are designed to assist parties in resolving disputes without the necessity of formal judicial proceedings, and include:

(1) Conciliation, which means a process of independent communications between the disputants and a neutral person.

(2) Mediation, which means a process in which a neutral person(s) facilitates communication between the disputants to assist them in reaching a reconciliation, settlement, or other understanding.

(3) Arbitration, which means a voluntary adjudicative process in which a neutral person conducts a hearing, receives spoken and/or written evidence from the disputants and their witnesses, and renders a decision that may be binding or nonbinding depending on the consent of the disputants.

(b) “Collateral services,” refers to screening and intake of disputants, preparing for and conducting dispute resolution proceedings, drafting agreements and/or awards, providing information and/or referral services, and conducting follow-up surveys.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.2, 467.3, 467.7, 468.2(c) and (g), 471, 471.3 and 471.5, Business and Professions Code.

§ 3605. Eligibility for Funding.

Every applicant for funding shall comply with all relevant provisions of the Act and shall also meet the eligibility requirements described in this section. Evidence of compliance with each of these requirements shall be submitted to the Board of Supervisors or its designee at the time of application.

(a) Organizational Status.

(1) Every applicant for funding must certify that its status is one of the following:

(A) A distinct, definitive unit of a governmental entity with a separate and identifiable annual budget;
(B) A nonpartisan, nonprofit corporation; or
(C) A distinct, definitive component or project of a nonpartisan, nonprofit corporation with a separate and identifiable annual budget.

(2) A nonpartisan, nonprofit corporation or component thereof must also provide evidence that it:

(A) is exempt from federal taxation under Internal Revenue Code Section 501(c)(3), or

(B) has an application for section 501(c)(3) status currently pending before the Internal Revenue Service.

(b) Primary Purpose.

To satisfy the primary purpose requirement of section 467.2(g) of the Act, a minimum of 51% of the estimated budget for the grant period of any program, project or entity shall be encumbered for the provision of dispute resolution services, as defined in Section 3602 of these Regulations.

(c) Community Support.

Each applicant for funding shall submit letters of support from community organizations, judicial and legal system representatives, administrative agencies, or other appropriate public service organizations in the proposed area of service. Such letters should, if appropriate, attest to the organization's willingness to make referrals to the applicant.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.2, 468, 468.2, 470.2, 471 and 471.3, Business and Professions Code.

§ 3608. Grant Application Requirements.

(a) In addition to the requirements of Section 468.2 of the Act, all applicants shall also provide the following as part of their application for funding:

(1) A description of the applicant's organizational structure, including that of any sponsoring or parent organizations;

(2) A description of the proposed geographic area of service, the service population, and the number of persons the applicant will have the capacity to serve on an annual basis;

(3) A description of the types of disputes to be handled, the types of dispute resolution services to be offered, and any restrictions to be imposed by the program;

(4) A description of any fee schedule to be used;

(5) A list of civic groups, social services agencies, governmental entities, and justice system agencies available to accept and make referrals to the applicant;

(6) A description of the applicant's plans for publicizing its services to potential referral agencies, courts and justice system agencies, and the public;

(7) The applicant's organizational chart, personnel policies, duty statements, and resumes of all professional staff.

(8) A statement that in hiring staff, recruiting volunteers, or rendering services, the applicant will not discriminate with regard to race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation or age.

(b) Pursuant to Section 470.2 of the Code, each applicant shall submit an estimated budget for the grant period. In-kind donations may be reported as anticipated revenue to be derived from 27 sources other than the county revenues generated pursuant to the Act, so long as the requirements of Section 3640 of these Regulations are satisfied.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.1, 467.2, 468, 468.1, 468.2, 468.3, 470.2 and 471.3, Business and Professions Code.

§ 3609. Coordination with Department of Consumer Affairs.

At the time of submission of the application to the Board of Supervisors or its designee, every applicant shall forward to the Department of Consumer Affairs a copy of the application and supporting documentation for its request for funding pursuant to the Act.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 471 and 471.3, Business and Professions Code.

§ 3611. Voluntary Participation by Criminal Defendants.

For the purposes of satisfying the eligibility requirements for funding, applicants who provide dispute resolution services to accused persons or defendants in pending criminal proceedings shall not be deemed to violate Section 467.2(f) of the Code so long as Section 467.7(b) of the Code is satisfied.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.2(f), 467.7(b) and 471.3, Business and Professions Code.

§ 3615. Budgetary Allocations.

For the duration of the grant period, a minimum of 51% of the Grantee's budget for the grant period must be allocated and expended for dispute resolution services, as defined in these Regulations, which may include collateral services, as defined in these Regulations.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.1, 468, 469, 470.1(b), 470.2 and 471.5, Business and Professions Code.

§ 3618. Fees for Service.

(a) Under the Act and these Regulations, a Grantee is not required to charge fees to disputants for dispute resolution services. However, if a Grantee charges fees for its dispute resolution services, such fees must be assessed on a sliding scale basis, according to income and financial need. The Grantee shall fully explain to all disputants, in advance of the services being furnished, the basis for and the amount of any fees and other costs that may be charged.

(b) A Grantee may not assess any fees upon disputants who are indigent. "Indigent" includes persons whose income and resources meet the financial qualifications for federal Supplemental Security Income benefits.

(c) A Grantee is prohibited from charging the following fees:

- (1) contingent fees;
- (2) fees calculated on the basis of the amount in controversy; or
- (3) fees based on the failure or success of the disputants to agree to resolution terms previously designated by one or more of the disputants.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.2(c), 470.1(a) and 471.3, Business and Professions Code.

§ 3620. Services by Neutral Persons.

(a) A Grantee shall ensure that its dispute resolution services are provided by neutral persons.²⁸

(b) An individual shall not function as the neutral person if he or she has any personal bias regarding any particular disputant or the subject matter of the dispute.

(c) An individual shall not function as the neutral person if he or she has a financial interest in the subject matter of the dispute of a financial relationship with any party to the dispute resolution proceeding. The existence of such interests or relationships shall be deemed a conflict of interest.

(d) If, before or during the provision of dispute resolution services, a neutral person has or acquires an actual or apparent conflict of interest, the neutral person shall so inform all of the disputants, and shall disqualify himself or herself as the neutral person unless all of the disputants consent in writing to continue. The Grantee shall replace a disqualified neutral person at no additional cost to any disputant.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.2(b) and (e) and 471.3, Business and Professions Code.

§ 3622. Orientation and Training of Neutral Persons.

(a) Each Grantee shall require that all persons who provide dispute resolution services on its behalf complete a training program. The training must be completed prior to the provision of dispute resolution services by that person.

(b) For purposes of fulfilling the requirements of section 468.2(g) of the Act, each Grantee shall provide an orientation and training program for mediators and other facilitators. The program shall consist of a minimum of 25 hours of classroom and practical training.

(c) The classroom training shall consist of a minimum of 10 hours of lecture and discussion, and shall address the following topics:

(1) The history of dispute resolution as a problem solving technique and its relationship to the traditional justice system;

(2) The Act and these Regulations;

(3) An overview of the structure of the California justice system and the traditional methods of processing civil and criminal cases;

(4) The structure, design, practice, and theory of dispute resolution proceedings and services, as defined, including the varying roles, functions and responsibilities of neutral persons, and the distinction between binding and non binding processes;

(5) Communication skills and techniques, including developing opening statements, building trust, gathering facts, framing issues, taking notes, empowerment tactics, effective listening and clarifications skills. Face-to-face as well as over-the-telephone communication skills shall be addressed;

(6) Problem identification and disagreement management skills, including instruction in the establishment of priorities and areas of agreement and disagreement, and the management of special problems that threaten the process;

(7) Techniques for achieving agreement or settlement, including instruction in creating a climate conducive to resolution, identifying options, reaching consensus, and working toward agreement;

(8) General review of fact patterns present in typical disputes, including landlord-tenant, customer-merchant, and neighbor-neighbor cases;

(9) Administrative and intake skills related to dispute resolution services, including completion of paperwork involved in handling and tracking cases, administrative and reporting forms, correspondence with disputants and referral agencies, agreements to mediate or arbitrate, and the drafting of settlement agreements and awards;

- (10) The role and participation of attorneys and witnesses in dispute resolution proceedings;
 - (11) The organization and administration of dispute resolution programs, including intake procedures, follow-up procedures, and record-keeping; and
 - (12) The necessity of the voluntary and consensual nature of a disputant's participation in any dispute resolution proceedings.
 - (d) The practical training shall consist of a minimum of 10 hours, which shall include role plays of simulated disputes and observations of actual dispute resolution services, including intake procedures as well as actual dispute resolution proceedings.
 - (e) The training shall provide for personal assessment and evaluation of the trainee.
 - (f) Grantees shall provide written verification of the dates and times at which the training was attended and completed to all trainees who satisfactorily complete the required orientation and training program.
 - (g) Any neutral person who has received training which complies substantially with these Regulations, or who has had at least 25 hours of dispute resolution experience prior to his or her provision of dispute resolution services, shall be deemed to have met the orientation and training requirements mandated by these Regulations. Such prior training or experience shall be verified by the program or organization through which it was rendered.
- Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.2(b), 468.2(g), 468.3(b) and 471.3, Business and Professions Code.

§ 3626. Agreements by Disputants.

(a) Oral or Written Agreements.

Agreements reached between disputants as a result of the dispute resolution services may be oral or written.

(b) Presumption of Non-Enforceability.

Under section 467.4 of the Code, such agreements are presumed not enforceable or admissible as evidence in judicial or administrative proceedings.

(c) Option to Make Agreements Enforceable.

Disputants may elect to make their agreements enforceable at law or admissible as evidence at judicial or administrative proceedings. This election may be made at any time. To be enforceable or admissible, an agreement must:

- (1) Be in writing and signed by all disputants, and
- (2) Contain an Enforcement of Agreement Statement that clearly expresses that each disputant intends that the agreement will be enforceable at law and/or admissible as evidence in any judicial or administrative proceeding.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.3(e), 467.4(a), 467.7(a) and 471.3, Business and Professions Code.

§ 3630. Attorney Participation.

(a) Disputants are entitled to be accompanied by an attorney at any dispute resolution session.

(b) Participation by attorneys in dispute resolution proceedings may be restricted by the policy of the Grantee. Such policies shall be clearly explained in the Information Statement provided to disputants.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Section 467.3(c)(2), Business and Professions Code.30

§ 3632. Information and Referral Services.

When the Grantee deems it appropriate or when disputants request it, a Grantee may provide the disputants with information about the services of other agencies. However, no commissions, rebates, or any other form of payment shall be given or received by a Grantee, its staff, or its volunteers for referring disputants to other services or agencies.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Section 465.5, Business and Professions Code.

§ 3635. Follow-up Surveys.

(a) Yearly or on a more frequent basis, Grantees shall conduct follow-up surveys of disputants who have used their services.

(b) The surveys shall request the disputants' evaluations of:

- (1) the dispute resolution services provided by the Grantee;
- (2) the fairness or adequacy of the settlement agreement or award;
- (3) any particular difficulties experienced by the disputant in carrying out and obtaining compliance with the settlement agreement or award;
- (4) the disputant's willingness to use the Grantee's services in the future;
- (5) the disputant's willingness to recommend the Grantee's services to others who are involved in disputes.

(c) The survey results shall be submitted as part of the yearly statistical report to the Board of Supervisors or its designee in compliance with section 471.5 of the Act. Copies of the survey results shall also be forwarded by the Grantees to the Department of Consumer Affairs at the time of submission to the Board of Supervisors or its designee.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 471.3, 471.5(a) and (d), Business and Professions Code.

§ 3640. In-Kind Donations.

(a) In-kind donations, including services of volunteers and materials and/or property, may be reported or credited as revenue or expenditures, if such donations:

- (1) Will be received during the proposed budgetary period;
- (2) Represent necessary and ordinary expenses or services related to the operation and management of the Grantee; and
- (3) Serve a purpose consistent in nature and cost with the Grantee's operation.

(b) In-kind donations must be clearly documented with descriptions of the services or materials donated, the dates received, and the names and addresses of the donors. Volunteer personnel services shall be documented by time sheets signed by the volunteer and verified by the Program Administrator.

(c) For uniform budgeting purposes, standardized values must be used in assessing value to the in-kind donations. The following assessments shall apply:

- (1) Donations of personal property shall be reported at a fair market value, as determined by the Grantee.
- (2) Volunteer personnel services shall be valued at no more than \$25.00 per hour.
- (3) Donated facilities may be valued at no more than \$50.00 per dispute resolution proceeding.
- (d) The following may not be included or credited as in-kind donations:
 - (1) Volunteer time provided by members of the Grantee's board of directors while serving in the capacity as members of the board.³¹

(2) Fringe benefits associated with time donated by volunteers.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 468.2(b), (d) and (f), 468.3, 470.2 and 471.3, Business and Professions Code.

§ 3642. Yearly Fiscal Reports.

(a) The Grantee shall submit a yearly report prepared by an independent accountant that describes and assesses the Grantee's fiscal practices and status. The report shall be delivered to the Board of Supervisors or its designee and to the Department of Consumer Affairs no later than 90 days from the close of the grant period.

(b) Annually or within ninety days of the close of each grant period, the Grantee shall submit to the Board of Supervisors or its designee and to the Department of Consumer Affairs a final reconciliation of actual revenues and expenses compared to the estimated budget for the grant period.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 470.1(b), 471, 471.3 and 471.5, Business and Professions Code.

§ 3644. Record-Keeping Practices.

(a) All records and files maintained pursuant to section 471.5 of the Code shall be retained as follows:

(1) All financial records shall be retained for a minimum of four years after the expiration of the grant period.

(2) Signed personnel time sheets for volunteers and employees shall be maintained for a period of two years.

(3) All other statistical data shall be retained for a period of three years.

(b) All records described in this section shall be made available to the Board of Supervisors or its designee and to the Department of Consumer Affairs upon request.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 471, 471.3 and 471.5, Business and Professions Code.

§ 3648. Personnel Policies.

(a) Each Grantee shall have an employee designated as "Program Administrator." The Program Administrator shall be responsible for overall program management.

(b) Each Grantee shall maintain written job descriptions and job qualifications for all staff and volunteer classifications.

(c) Each Grantee shall maintain a current organizational chart that reflects its organizational structure.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 465, 465.5, 471, 471.3 and 471.5, Business and Professions Code.

§ 3650. Public Education and Relations.

Each Grantee shall maintain an ongoing public relations and information effort to promote its services and resources. These public relations efforts may include newspaper, radio, television and other public media contacts as well as written brochures and handouts.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 465, 465.5, 471 and 471.3, Business and Professions Code.³²

§ 3660. Filing Fee Revenues.

(a) A county shall create a separate interest-bearing account called the Dispute Resolution Program Account for the deposit of revenues generated pursuant to the Act.

(1) All filing fees collected by the county pursuant to the Act shall be deposited into the account.

(2) All interest which accrues to the account shall be deemed part of the account.

(b) Revenues generated pursuant to the Act shall not be used to replace any preexisting allocations of county funds for the provision of dispute resolution services.

(c) Only actual administrative costs may be deducted from the Account to finance a county's administration of the grant program.

(d) Funds generated under the Act shall be used only to fund services authorized by the Act and these Regulations. Such funds shall not be used by a county to fund:

(1) family conciliation court or conciliation and mediation services pursuant to section 4607 or 4351.5 of the Civil Code, or

(2) judicial arbitration pursuant to section 1141.10 et seq. of the Code of Civil Procedure or any other formal or mandatory judicial arbitration program, or

(3) any other programs or services not expressly authorized by the Act or these Regulations.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.1, 468, 469, 470, 470.2, 470.3, 471 and 471.3, Business and Professions Code.

§ 3662. Public Information and Coordination.

(a) Each Board of Supervisors or its designee shall appoint or designate a qualified person to function as the Dispute Resolution Program Coordinator.

(1) The Coordinator shall be the public's contact person and information resource regarding the county's grant solicitation and award procedures, the county's functions and responsibilities under the Act and these Regulations, and the dispute resolution programs and services provided by the county.

(2) The Board of Supervisors or its designee shall notify the Department of Consumer Affairs of the Coordinator's name, address, and telephone number.

(b) Each county shall maintain an ongoing public information and dispute resolution awareness program to disseminate information and materials on the purposes and benefits of dispute resolution services. Such public information shall publicize the availability of services within the county and include the name and telephone number of the Coordinator, the existence and availability of grant monies to fund local programs, and the names and services provided by Grantees in that county.

(c) To assure the neutrality and the absence of any conflict of interest, the Coordinator shall not be administratively, professionally, or financially affiliated with any applicant or Grantee.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 469, 470, 470.3(a), 471 and 471.3, Business and Professions Code.

§ 3665. Competitive Grant Proposal Process.

(a) A Board of Supervisors or its designee shall award grants to dispute resolution programs through a competitive proposal process. The process shall: provide reasonable public notice about the availability of dispute resolution program grants; actively solicit proposals from 33

potential applicants; provide a reasonable period of time in which to respond; and, explain the reasons for selection of each Grantee.

(b) The Board of Supervisors, or its designee, shall review the estimated budget for the grant period submitted by an applicant pursuant to section 3605(b) of these Regulations to assess its accuracy. Such assessment shall include the authority to determine whether the reported estimations are substantiated and justified. In making allocations, the county shall use the facts reported in the applicant's estimated budget as assessed and verified by the county.

(c) Qualified applicants shall be screened by the county according to the following criteria:

(1) The need for the applicant's services in the proposed geographical area and any duplication or overlap among dispute resolution programs in the proposed area of service.

(2) The structure and scope of the services to be provided by the applicant.

(3) The amount of the requested grant.

(4) The reliability of the applicant's other funding sources.

(5) The adequacy and cost of facilities and personnel.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.1, 467.2, 468, 468.3, 470, 470.2 and 471.3, Business and Professions Code.

§ 3670. Grant Award Timeframes.

(a) A Board of Supervisors that increases its civil filing fees pursuant to the Act shall disperse the grant funds to eligible applicants within six months from the effective date of the increase or, if the balance in the account has not yet reached \$15,000, within 90 days after the date that the balance reaches \$15,000.

(b) The Board of Supervisors or its designee shall notify the Department of Consumer Affairs of its selection of any Grantee within 30 days after the selection is made. Notification shall include the name, address, and telephone number of each Grantee, the name of the each Grantees' Program Administrator, and the amount and terms of the grant award.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.1, 469, 470, 470.3 and 471.3, Business and Professions Code.

3675. Reporting to Department of Consumer Affairs.

Within ninety days of each calendar year, the Board of Supervisors or its designee shall provide the Department of Consumer Affairs with a report of its activities pursuant to the Act during the previous calendar year. The report shall include the following:

(a) The amount of revenues that were collected from superior, municipal, and justice court filing fees during the year.

(b) The amount of revenues deposited in and interest accrued on the dispute resolution program account during the year.

(c) An accounting of all disbursements from the dispute resolution program account, including a listing of all grant amounts to Grantees, the dates of disbursements, and all deductions made pursuant to the county's administrative costs.

(d) Any problems encountered in implementing the Act or these Regulations, and any recommendations for rectifying the problems.

(e) Any evaluations or review processes instituted to monitor the services provided by Grantees.

(f) Any evidence of misuse or misappropriation of revenues by Grantees.

(g) Any rules or procedures in addition to the Act and these Regulations that have been invoked by the Board of Supervisors or its designee upon applicants for funding or Grantees.³⁴

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 471 and 471.3, Business and Professions Code.

§ 3680. Local Administrative Policies and Practices.

The Board of Supervisors or its designee shall comply with all standards set forth in the Act and these Regulations. Neither the Board of Supervisors nor its designee shall institute any policies, practices, or procedures that conflict with the Act, these Regulations, or the policies and principles expressed in the Act's statement of legislative intent.

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 471 and 471.3, Business and Professions Code.