



## COMPARISON OF METHODS FOR RESOLVING ELDER CARE DISPUTES

	<b>Mediation</b>	<b>Aging Life Care Manager</b>	<b>Attorneys</b>	<b>Court Appointed Conservator</b>
<b>Definitions</b>	<p>Elder care mediation is a voluntary way for people to talk and listen to each with the help of a mediator as a neutral facilitator. The participants attempt to resolve their conflicts during a mediated or facilitated discussion. Participants in mediation may include the elder and/or an elder’s surrogate, family members such as the elder’s adult children, and caregivers. Participants may bring experts into the mediation -- such as care managers, financial advisors and medical experts -- in order for the family to obtain information and learn about options and available resources in order to make informed decisions.</p> <p>The mediator helps participants communicate their needs and express their concerns, propose and vet options, develop plans, and make decisions.</p>	<p>Care management involves identification of needs and planning, locating, arranging, coordinating and monitoring of services and resources that address identified needs. Aging Life Care Managers work with older adults, their families and caregivers and may provide short or long-term services, ranging from a one-time consultation to on-going oversight of an elder’s care to help coordinating medical care and being the eyes and ears of family members who don’t live near their aging loved one.</p>	<p>An attorney is a licensed professional who provides legal advice and assistance to advance a client’s interests.</p> <p>While an attorney may act as a counselor or advisor who explains the law and the pros and cons of various options, or as an advocate who advances a client’s position, or both, the attorney cannot ethically represent a family in dispute since his ultimate job is to advance the position of one of the parties – the one he actually represents.</p>	<p>A person who is “competent” has the ability to choose someone to make health care decisions on their behalf if and when they cannot make decisions themselves.</p> <p>A person may also choose someone to handle their finances and manage their assets should they be unable to do so.</p> <p>If no one has been selected (or the selected person refuses to serve, or a challenge by a third party to the selected agent succeeds), the Probate Court usually appoints a private conservator.</p> <p>A Conservator of the Person is appointed by the Probate Court to be the decision-maker with respect to the health and welfare of a person. A Conservator of the Estate, also appointed by the Probate Court, becomes responsible for the management of the conservatee’s assets.</p>

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<b>Approach</b>	<p>The mediator treats everyone in a fair and equal manner. The mediator may establish the procedure to ensure each participant gets an opportunity to participate fully in the process, and that all participants listen and consider all other participants' positions.</p> <p>The mediator must establish trust and neutrality, and provide a safe environment within which the conversation will take place.</p>	<p>Focus is on a comprehensive assessment of the elder's condition, needs, living environment, resources, values and preferences. The care manager also provides information about available resources to meet the elder's needs.</p>	<p>The focus is on the client's legal rights and interests only.</p> <p>The client may be a non-conserved elder, a conservator or a conservatee.</p>	<p>The focus is on making the best possible decisions with respect to the health care needs or finances of the elder, ensuring that, to the extent possible, the elder's wishes are accomplished and preventing physical or financial abuse of the elder.</p> <p>The conservator's actions are subject to court review.</p>

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<b>Decision Making</b>	<p>To the extent possible, the elder participates in order to voice his or her preferences concerning care, finances, living situation, etc. All other participants are afforded the opportunity to voice concerns or preferences regarding the issues that are the focus of the mediation. The participants as a group explore and discuss options and make family decisions that work best for the elder and the family as a whole.</p> <p>An attorney, conservator, health care agent or other legal surrogate may represent an elder’s best interests in a mediation when there is a lack of capacity, physical ability or willingness to participate.</p>	<p>Aging life care managers educate about options, make recommendations and may provide and/or arrange and monitor services Professional associations such as the National Assn. of Aging Life Care Managers, NASW, ANA, and NCOA establish standards of practice for their members. Some “care managers” have little or no professional training or affiliation.</p> <p>Irrespective of what family member hires and pays the care manager, the care manager’s “client” is the elder. Families or relevant others may be included in the decision process as appropriate, but the care manager will give priority to the elder’s needs and wishes.</p>	<p>An attorney advises and explains legal options, and with authority from the client, pursues a legal course of action.</p> <p>The client may be the elder or a legal surrogate acting on behalf of the elder.</p>	<p>A conservator is responsible for making decisions within the limits of the powers (full or limited) granted by the Probate Court over an individual’s healthcare or finances.</p> <p>A conservator will consider prior preferences of the conservatee when they are known or can be discovered. A conservator is responsible for making decisions as a fiduciary (acting solely for the benefit of the conservatee) and is under no obligation to take into consideration the opinions or suggestions of family members.</p> <p>The Probate Court oversees all conservatorships, makes all orders, and is the ultimate decision maker.</p>

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Scope of Service	The mediator ensures that each participant has the opportunity to communicate to the fullest extent possible without undue influence or pressure from anyone. Mediation is a voluntary process, and participants make decisions as a group. Before, during or in between mediation sessions, participants have the opportunity to consult with experts to help them make informed decisions.	Care managers may be called on to conduct an assessment, or may also provide planning, monitoring and on-going oversight. Some care management businesses and agencies also provide direct services such as home care, mental health or social services supports for clients and caregivers.	<p>If the client hires the attorney, the relationship is voluntary until the client terminates the relationship.</p> <p>If the Probate Court appoints the attorney (e.g., a Probate Volunteer Panel Attorney is appointed for a proposed conservatee), the relationship is involuntary and lasts until the work needed is completed.</p>	<p>If the elder or the family hires a professional fiduciary to act as a trustee, the relationship is voluntary.</p> <p>If the Probate Court appoints a conservator, the relationship is involuntary, and the services are generally long-term (lifetime) and expensive.</p>
Confidentiality	With some limited exceptions, the mediation process is <i>strictly confidential</i> and neither statements nor documents can be used in any subsequent court or administrative proceeding.	<p>Care management consultations and on-going sessions are private. Information may be shared with others if informed consent is given.</p> <p>Aging Life Care Managers may be mandated reporters (depending on their discipline; e.g., social work, nursing, etc.) who must report any reasonable suspicion of abuse to appropriate agencies, to ensure the protection of the elder.</p>	<p>An attorney has a duty to keep strictly confidential all communications with a client.</p> <p>The attorney-client privilege is protected by California law and the California Bar Code of Professional Conduct.</p>	A professional or family appointed conservator must report certain private facts and information to the Court which oversees the care and/or finances of the conservatee.

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<b>Cost</b>	<p>Private mediators charge a fee. The fee is usually split by the participants in the mediation or may be paid from a family trust. Some mediators charge by the hour, while others charge per day or half-day. Some mediators charge a flat fee that covers all of their services irrespective of the length of the mediation.</p> <p>There are community based mediation programs that provide volunteer mediators at no charge for a limited number of hours.</p>	<p>Aging Life Care Managers charge fees and mostly bill privately for services. Some long-term care insurance plans and employee assistance programs cover some services. The initial assessment and proposed care plan is often a flat fee, with fees charged hourly once the plan is put into effect.</p> <p>Care management may also be available through non-profit agencies and publicly funded programs for eligible clients.</p>	<p>Attorney’s fees are usually hourly (with a substantial upfront retainer) and governed by factors set forth in the Probate Code. Each family member may hire a separate lawyer.</p> <p>There are community service programs that provide attorneys at low or no cost depending on the financial resources of the client.</p>	<p>Fees must be court-approved before they can be paid by the estate or supervised trust, based on factors set out in court rules. Fee rates vary in different counties, but, as a rule, private fiduciaries charge substantial hourly fees.</p> <p>If there is no ability to pay, a public guardian may be appointed at no cost.</p>

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<b>Resolution</b>	<p>Participants in a mediation make all decisions together and determine if and when they have reached an agreement. Agreements are often put into writing.</p>	<p>The Aging Life Care Manager manages the care plan.</p> <p>Care management assessments can cover medical, psychological, cognitive, and functional aspects of older adults. Based on the assessment, the care manager then customizes solutions that fit the client's needs, abilities, and resources. The care plan is updated regularly as the elder's needs and abilities change.</p>	<p>If a conflict is submitted to court for adjudication, the judge or a jury decides which party will win and which will lose; there is no middle ground.</p> <p>Before trial, the Court can compel the parties to mediate or to attend a settlement conference. The court cannot compel the parties to settle, but failing a settlement, the court will make the ultimate decision. Judges don't generally make a customized plan for a family which takes into consideration the needs and desires of the various family members. Instead, the court agrees with one party or the other, or renders a decision the court decides is in the elder's best interests.</p>	<p>The professional fiduciary continues to serve as long as there is need and the conservatee is alive. If the professional fiduciary dies or retires, the court will appoint a successor.</p>

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