

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Office of the General Counsel
Mary M. Roberts, General Counsel
Heather Anderson, Senior Attorney
Alan Wiener, Attorney, 818-558-3051, alan.wiener@jud.ca.gov

DATE: February 25, 2009

SUBJECT: Mediation Week: Standing Resolution Recognizing the Benefits of
Mediation and Court Mediation Programs (Action Required)

Issue Statement

California courts offer mediation as an alternative to formal adjudication in civil, family, juvenile, and other actions and proceedings. The Governor, the Legislature, the State Bar Board of Governors, and local government bodies traditionally have recognized the third week of March as "Mediation Week." The last two years, the Judicial Council has joined in recognizing Mediation Week. The council's recognition of Mediation Week on an ongoing basis will encourage courts to implement and improve mediation programs, promote public access to and use of those programs, and acknowledge the persons and organizations that have made the programs successful.

Recommendation

Staff recommends that the Judicial Council adopt the attached standing resolution recognizing the third week of every March as Mediation Week.

Rationale for Recommendation

Mediation is a process in which a neutral third person facilitates communication between the parties to a dispute to help them reach a voluntary and mutually acceptable resolution. Mediation is less formal than adjudication and allows the parties a greater opportunity to express the full range of their concerns and to determine the resolution of their disputes. Mediation can thereby preserve and improve personal relationships and reduce and redress the violation of public and private rights.

California courts increasingly encourage and offer mediation for a broad range of issues. Community and court mediation programs for neighborhood, civil, child custody, juvenile dependency, juvenile delinquency, and criminal matters are highlighted below.

Mediation of court cases offers many potential benefits to litigants, the courts, and the public. These include increasing the interested parties' satisfaction with the litigation process and the courts and their voluntary compliance with the terms of resolution. At the same time, mediation may reduce pretrial motions and trials, reduce the time from the filing of an action to disposition, and reduce recidivism and future disputes between parties. Mediation thereby reduces litigants' costs and court workloads, while increasing litigant satisfaction.

The efforts of many dedicated judicial officers, court staff, and justice partners are critical to the success and benefits of court mediation programs. Many courts collaborate with local government agencies, community dispute resolution organizations, state and local bar associations, professional mediators, and mediation organizations to make mediation available. Notably, many court program mediations are conducted by mediators who serve pro bono or for nominal compensation.

Since 1993, many California government officials and agencies have recognized the third week of March as Mediation Week. The Governor has issued a proclamation or letter recognizing Mediation Week almost every year since 1993. The Senate and Assembly have issued at least one joint resolution recognizing Mediation Week, and the Assembly has issued others. The State Bar Board of Governors; the boards of supervisors of the counties of Los Angeles, San Diego, San Mateo, and Stanislaus; and the Santa Barbara City Council all have recognized Mediation Week in one or more years. A number of California courts have previously held Mediation Week events, and some are already planning to do so this year.

The Judicial Council first joined in the recognition of Mediation Week in 2007 and did so again in 2008. Each year, the council adopted a resolution recognizing the benefits and success of court mediation programs, commending the efforts of those who make mediation and mediation programs available to the citizens of California, and encouraging the courts to recognize those individuals and to publicize their mediation programs during Mediation Week. The Administrative Office of the Courts (AOC) encouraged, supported, and publicized court mediation programs and local Mediation Week activities by sending the council's resolution to local bar leaders; through announcements, resources, and articles in *Court News Update (CNU)*, *California Court News (CCN)*, *California Courts Review (CCR)*, and the Serranus ADR Resource Center; by posting new materials on the alternative dispute resolution (ADR) pages on the California Courts Web site; and through news releases issued statewide.

Judicial Council recognition of Mediation Week in 2009 and future years will continue to focus attention on mediation and particularly highlight the availability and benefits of court mediation programs, thereby promoting public access to and use of those programs. It also will provide an annual occasion to acknowledge the judicial officers, court staff, and justice partners who make mediation available and successful.

Community dispute resolution programs and the courts

For more than 30 years, California community dispute resolution organizations have used mediation to address neighborhood disputes involving matters such as fences, trees, parking, pets, noise, property maintenance, harassment, vandalism, and graffiti. These mediations have resolved countless conflicts before they escalated into more serious problems, without the necessity for any legal proceedings.

Community dispute resolution organizations also have been instrumental in the development and success of mediation programs to resolve disputes pending in courts throughout the state. Often in conjunction with local bar associations, these organizations have helped courts establish and operate mediation programs, including training and coordinating volunteer mediators who serve in court programs.

Mediation programs for civil cases

In 1993, the Legislature found and declared that it is in the public interest for mediation to be encouraged and used where appropriate by the courts. (See Code Civ. Proc., § 1775(c).) California superior courts currently offer mediation programs for a variety of civil case types, including limited and unlimited jurisdiction actions and small claims, unlawful detainer, and civil harassment proceedings. The California Courts of Appeal also offer mediation for civil cases in some districts.

An award-winning Judicial Council study found that early mediation of civil cases increases litigant satisfaction with the courts while reducing litigant costs, disposition times, trial rates, and court workloads.¹ In response to this study, the council adopted Standard of Judicial Administration 10.70(a), encouraging all superior courts to implement mediation programs for civil cases as part of their core operations.

To promote this goal, the Judicial Council has allocated money from the Judicial Administration Efficiency and Modernization Fund to help superior courts plan, implement, and improve mediation and other settlement programs for civil cases. In the past four fiscal years, 39 superior courts have been awarded funding to plan or implement

¹ See *Evaluation of the Early Mediation Pilot Programs*, Judicial Council of California, Administrative Office of the Courts, Office of the General Counsel, February 27, 2004, pp. xix–xxii (available online at www.courtinfo.ca.gov/reference/documents/empprept.pdf). The Judicial Council received the Center for Public Resources (CPR) Institute for Dispute Resolution’s Outstanding Practical Achievement Award for the contribution of this report to the field of dispute resolution. (See www.cpradr.org/pressroom/press31.pdf.)

a new program, to improve an existing program, or to do both. This funding currently is being offered for the fifth consecutive year.

The Judicial Council also has allocated money from the Trial Court Improvement Fund for superior court pilot projects to help self-represented litigants participate in mediation and settlement programs for small claims and limited civil cases, in part to address recommendations in the 2005 study of public trust and confidence in the courts.² These pilot projects have included developing and conducting workshops, printed materials, and videos, in multiple languages, to help self-represented litigants participate in mediation. The spring 2008 edition of *California Courts Review* featured a series of articles about these projects and can be accessed at www.courtinfo.ca.gov/reference/documents/CCR_08Spring.pdf.

Mediation programs for child custody and juvenile dependency cases

Mediation is a significant way that the courts provide both fairness and access to parties in highly emotional and potentially volatile child custody and visitation disputes. Under a 1981 legislative mandate, all trial courts must provide child custody mediation in family court cases where child custody or visitation is in dispute.

Rule 5.210 of the California Rules of Court provides that the mediator must facilitate the family's transition and reduce acrimony by helping the parties improve their communication skills, focus on the child's needs and areas of stability, identify the family's strengths, and locate counseling or other services. This rule requires that the mediation process include providing information or education that facilitates the parties' informed and self-determined decision-making and providing assistance in developing a comprehensive parenting plan. This rule also allows the mediator to interview the children, at the mediator's discretion.³

More than 400 court-connected family mediators provide mediation services to families and children in approximately 100,000 cases annually. In the latest survey, 87 percent of respondents reported that mediation is a good way to come up with a parenting plan and

² The Public Trust and Confidence Study recommended, among other things, that "[a]wareness of alternatives to court adjudication needs to be made more widely known among immigrants and people with less than a college education." It also found that high-volume court dockets, like those in small claims matters, leave litigants feeling dissatisfied with their day in court and recommended redesigning these dockets to incorporate procedural fairness criteria, including affording litigants an opportunity to express their point of view. (See *Trust and Confidence in the California Courts*, National Center for State Courts (commissioned by the Administrative Office of the Courts on behalf of the Judicial Council of California), September 2005, pp. 4–5, 20 (available online at www.courtinfo.ca.gov/reference/documents/4_37pubtrust1.pdf.) Mediation and other settlement programs designed to assist self-represented litigants and litigants with limited English proficiency in small claims and limited civil cases incorporate these procedural fairness criteria.

³ There are special protocols and safety measures in situations involving domestic violence or child abuse.

that they would recommend the process to a friend who has a custody or visitation problem.⁴

Mediation also is currently used in about half of California's juvenile dependency courts. In juvenile dependency mediation, a specially trained neutral person helps the family, social worker, attorneys, and other interested parties understand and resolve the problems and concerns in the case. The issues that may be mediated include jurisdiction and petition language, disposition, the child's temporary and permanent placement, services for the family (e.g., counseling, drug or alcohol assessment and treatment, and parenting classes), and exit orders at dismissal.⁵

Restorative justice in juvenile delinquency and criminal matters

The Judicial Council's *Juvenile Delinquency Court Assessment 2008* (JDCA) is a comprehensive study of California's delinquency court system intended to improve both the administration of justice and the lives of youth, victims, and other community members affected by juvenile crime. Victims, youth, parents, and community members reported that they felt excluded from and confused by the court process.⁶ Victims who participated in focus groups were virtually unanimous in their belief that the system is doing a poor job in fulfilling its obligation to them to collect restitution. And, relatively few of the judicial officers and probation officers who responded to surveys reported that they are satisfied with restitution collection in their jurisdictions. In light of these consistent findings, the JDCA recommended that courts should consider examining their restitution processes.⁷

A variety of restorative justice programs that incorporate mediation help to address these concerns and improve public trust and confidence in the courts.⁸ For example, victim-offender mediation allows interested victims to safely meet their offender and engage in a

⁴ *Client Feedback in California Court-Based Child Custody Mediation*, Administrative Office of the Courts, Center for Families, Children & the Courts, 2004, p. 5 (available online at www.courtinfo.ca.gov/programs/cfcc/pdffiles/Clientfdbk.pdf).

⁵ *Court-Based Juvenile Dependency Mediation in California*, Administrative Office of the Courts, Center for Families, Children & the Courts, 2003 (available online at www.courtinfo.ca.gov/programs/cfcc/pdffiles/JDM.pdf).

⁶ *Juvenile Delinquency Court Assessment 2008*, Judicial Council of California, Administrative Office of the Courts, Center for Families, Children, and the Courts (accessible on line at www.courtinfo.ca.gov/programs/cfcc/resources/publications/JuvenileDelinquency.htm), pp. 32–33, 85.

⁷ *Id.*, pp. 35–36.

⁸ Restorative justice, or balanced and restorative justice, is a philosophical framework focused on the belief that crime affects many people—the offender, the victim, and the community—and that justice should be a collaborative process in which all parties have an equal opportunity to have their voices heard and their needs met. See *Balanced and Restorative Justice: An Information Manual for California*, Judicial Council of California, Administrative Office of the Courts, Center for Families, Children & the Courts, 2006, pp. 21–22, (available online at www.courtinfo.ca.gov/programs/ccjp/documents/BARJManual3.pdf).

mediated discussion of the crime. With the assistance of a trained mediator, the victim is able to tell the offender about the crime's physical, emotional, and financial impact; to receive answers to lingering questions about the crime and the offender; and to be directly involved in developing a rehabilitation plan including appropriate provisions for the offender to pay back his or her financial debt to the victim.⁹ A two-year, multisite study of victim-offender mediation found that:

- Ninety-five percent of the mediation sessions resulted in a successfully negotiated restitution agreement to restore the victim's financial losses;
- Victims who met with their offender in the presence of a trained mediator were more likely to be satisfied (79 percent) with the justice system than similar victims who went through the normal court process (57 percent); and
- Offenders who met with their victims were far more likely to successfully complete their restitution obligation (81 percent) than similar offenders who did not participate in mediation (58 percent).¹⁰

In a 2006 survey about delinquency court operations, approximately half of the 46 courts that responded indicated they used restorative justice programs such as victim-offender mediation (23 courts), family group conferencing (22 courts), or neighborhood accountability boards (18 courts).¹¹ Many restorative justice programs generally focus on low-level offenses. But mediation and mediation techniques also are being used to resolve more serious offenses and conflicts involving gangs.

Alternative Actions Considered

The Judicial Council could elect not to recognize Mediation Week. Recognition of Mediation Week, however, will provide significant benefits without any disadvantages or significant costs.

The Judicial Council also could continue to recognize Mediation Week on an annual basis. However, adopting a standing resolution that recognizes the third week of every March as Mediation Week will allow the AOC, individual courts, and their justice partners to anticipate Mediation Week and to plan appropriate events further in advance. A standing resolution will also reduce the efforts and costs associated with the adoption of annual Mediation Week resolutions.

Comments From Interested Parties

The resolution recognizing Mediation Week does not require circulation for comment.

⁹ *Balanced and Restorative Justice: An Information Manual for California*, Judicial Council of California, Administrative Office of the Courts, Center for Families, Children & the Courts (accessible on line at www.courtinfo.ca.gov/programs/cfcc/pdf/files/BARJManual3.pdf), pp. 21–23.

¹⁰ *Id.*, p. 22.

¹¹ Unpublished responses to *2006 Survey of Delinquency Court Operation*, Administrative Office of the Courts, Center for Families, Children & the Courts.

Implementation Requirements and Costs

Judicial Council recognition of Mediation Week will not require any implementation action by the courts. Courts that elect to hold Mediation Week activities will spend some time and may incur some expense doing so. AOC staff also will spend some time planning and promoting Mediation Week activities, but the AOC will not incur any significant new expenses as a result of the Judicial Council's recognition of Mediation Week.

Attachment



JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS

Standing Resolution

RECOGNIZING THE THIRD WEEK OF MARCH AS

Mediation Week

Whereas mediation is a dispute resolution process in which a neutral third person facilitates communication between the parties to a dispute to help them reach a voluntary and mutually acceptable agreement;

Whereas for decades California community dispute resolution organizations have used mediation to resolve countless neighborhood disputes before formal legal proceedings were initiated and have been instrumental in the development and operation of mediation programs to resolve legal proceedings filed with the courts;

Whereas during the past several decades, California trial and appellate courts have increasingly encouraged, offered, and provided mediation to assist litigants in resolving a broad array of disputes that are filed with the courts, including civil, family, juvenile, and criminal matters;

Whereas mediation offers many potential benefits to litigants, the courts, and the public, including increasing participants' satisfaction with the dispute resolution process and outcome, while reducing court filings, pretrial motions and trials, the time from the filing of an action to disposition, court workloads, litigants' costs, future disputes between the parties, and recidivism;

Whereas the availability and success of court mediation programs are largely attributable to the efforts of judicial officers, court staff, and justice partners, including community dispute resolution organizations, local government agencies, state and local bar associations, mediation organizations, and individual mediators, many of whom contribute significant time and resources toward conducting mediations;

Whereas widespread public awareness of the nature, availability, and benefits of mediation and court mediation programs is important to ensuring the use of these programs and access to justice; and

Whereas the Governor and other California state and local officials and agencies traditionally recognize the third week of March as Mediation Week;

Now, therefore, be it resolved that the Judicial Council of California and the Administrative Office of the Courts recognize the third week of every March as Mediation Week, commend the efforts of the individuals and organizations that make mediation and mediation programs available to the citizens of California, and encourage the courts to recognize those individuals and publicize their mediation programs during Mediation Week.

I have hereunto set my hand this 12th day of March, 2009.

Attest:

Proposed

RONALD M. GEORGE
Chief Justice of California and
Chair of the Judicial Council of California

WILLIAM C. VICKREY
Administrative Director of the Courts