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Animis Opibusque Parati

The Special ADR Needs of Self-Represented Litigants

By
Helen I. Bendix

If you are bewildered by the title of this article, you are in good company. Self-represented litigants feel the same way when they confront the civil justice system. California superior courts have begun to focus on the special needs of self-represented litigants in connection with court-sponsored alternative dispute resolution (ADR) programs such as mediation. Through grants provided by the Administrative Office of the Courts in 2006 to improve access to civil justice, the Superior Courts of Los Angeles, San Mateo, San Francisco, and Stanislaus Counties surveyed the experiences of self-represented litigants and neutrals in court-sponsored ADR. The concerns identified in the surveys and the initiatives these courts have implemented to address those concerns are recounted in the accompanying articles.

Imagine the plight of a self-represented litigant when a judge asks, “What kind of ADR do you want?” Sometimes a judge will simply order the case to mediation. Many times the self-

represented litigant will not even know what the terms *ADR* and *mediation* mean. Indeed, it is quite common that the self-represented litigant does not speak English and no interpreter is in the courtroom.

Once ordered or referred to an ADR process, the self-represented litigant is expected to be

prepared without any explanation of what goes on at the ADR hearing. At the hearing itself, the self-represented litigant may be squared off against a party with counsel in a forum that the self-represented litigant does not understand. It is not difficult to imagine that self-represented litigants could conclude from these experiences that they are powerless and that the justice system is

not open to all. Similarly, they may perceive settlements produced in this context to be unfair. This is a shame, given that court-sponsored ADR proceedings may be the forum in which self-represented litigants are the least disadvantaged by not having lawyers.

The Judicial Council has awarded special funding to implement mediation and settlement programs in civil cases and to help self-represented litigants effectively participate in the programs. ♡ These articles describe four court projects to address the needs of such litigants.

Neutrals presiding over proceedings with self-represented litigants also face special problems. Self-represented litigants may not understand that neutrals are ethically constrained from giving legal advice. Some neutrals are therefore concerned about professional liability when only one side is represented. Some are concerned about their personal safety if the ADR hearing is not held at the courthouse, given how emotionally entrenched some self-represented litigants can be in their views about their cases.

Because self-represented litigants generally do not understand the legal process, neutrals may have to spend extra time just explaining basic legal concepts and procedures without advancing discussion toward a settlement. This adds to the frustration of opposing counsel and his or her client. As a result, neutrals may find it difficult to maintain neutrality or face challenges regarding the appearance of impropriety.

As shown in the following articles, the information gathered by four different superior courts reveals a common need to provide links to outside resources and for improved informational materials that address the special needs of self-represented litigants in court-sponsored ADR. Just how those courts have responded to this need is also detailed.

By the way, the Latin phrase *animis opibusque parati* means “prepared in minds and resources.” How fitting. 

Helen I. Bendix is a judge of the Superior Court of Los Angeles County and presides over a general civil jurisdiction court. She is chair of the court's Alternative Dispute Resolution Committee, which oversees the largest ADR program in the United States.

Solving Problems for Litigants and Mediators



Julie L. Bronson

By
Julie L. Bronson

The challenges faced by the Superior Court of Los Angeles County's ADR program were similar to those identified in 2004 by the Judicial Council's Task Force on Self-Represented Litigants.

Facing increased numbers of self-represented litigants participating in the court-sponsored ADR program, the court had to confront the basic need by such litigants for an explanation of out-of-court settlement options such as mediation, their procedures, and their potential benefits. In addition, numerous attorney mediators had expressed concerns regarding the provision of ADR services to self-represented litigants. These concerns included professional liability and malpractice insurance coverage, the desire of self-represented litigants to receive legal advice from mediators, and self-represented litigants' lack of preparation for the ADR process.

In fiscal year 2004–2005, the Judicial Council approved a grant for the Superior Court of Los Angeles County's ADR

program to assess the needs of self-represented litigants in alternative dispute resolution and to determine how assistance could be provided to meet the identified needs.

Surveying ADR Participants

To implement the assessment, surveys were designed to solicit information from self-represented litigants, ADR neutrals, and ADR staff about their respective experiences and their suggestions for providing assistance to self-represented litigants participating in court-annexed mediation and arbitration.

Surveys were administered to self-represented litigants by telephone in English and Spanish. Self-represented litigants were contacted upon filing a complaint, upon being referred to the court's ADR program, and after participating in an ADR process. Although 74 percent of the respondents had never participated in the court's ADR program, 66 percent thought ADR would be beneficial. Those surveyed identified areas of needed assistance, including receiving an explanation of the process, receiving suggestions for and having an opportunity to practice case presentation, and learning negotiation skills.

The court's ADR panel members also completed surveys on their experiences in mediating or arbitrating court cases in which at least one party was self-represented. Their surveys identified concerns regarding professional liability and malpractice insurance coverage, self-represented litigants' requests to receive legal advice from the mediators, and the difficulty in sometimes witnessing a less-than-fair settlement simply because a litigant was not knowledgeable about the law.

Court ADR staff assigned to all civil courthouses were requested to complete a brief survey on their experiences with self-represented litigants. Approximately 76 percent of the staff indicated that self-represented litigants were unknowledgeable about the ADR process.

All survey participants were asked to rate the perceived usefulness of a series of statements describing possible remedies for the difficulties encountered by self-represented litigants participating in the court's alternative dispute resolution program. The most popular option was to post a video on the court's Web site on the ADR process, including a mock mediation and arbitration. In general, all survey respondents expressed the need for more educational materials about the ADR process and procedures.

Improving Information About ADR

In an effort to improve educational and informational materials for self-represented litigants, the court's ADR program applied for and received an implementation grant from the Judicial Council. The grant provided funding to revise ADR brochures to reduce the complexity of information and present materials in a clear, concise manner. The goal was to make available educational materials about ADR in plain language that could be understood easily and produced in a variety of media and languages. The major focus of the grant was to develop audiovisual materials explaining how the ADR process works and how to prepare for it.

Video vignettes providing an overview of alternative dispute resolution were created. Using a homeowner-contractor dispute as an example, actors demonstrated four different types of ADR—mediation, arbitration, settlement conference, and neutral evaluation—offered by the court. For each ADR process litigants were provided suggestions for case presentation. The videos can be accessed on the Internet by going to www.lasuperiorcourt.org/adr and clicking on the ADR information link.

The print program brochures were revised to explain the four types of ADR offered by the court to reinforce the video vignettes. The brochures were translated into Spanish, Armenian, Korean, and Tagalog; distributed to all courthouses; and made available to legal service centers. On request, the

video and print materials were made available to the Dispute Resolution Programs Act providers in Los Angeles County.

The issues raised by the court's ADR neutrals and ADR staff in the assessment were addressed by developing and presenting training modules on working with self-represented litigants. The focus of the trainings was to provide a clear understanding of legal information as opposed to legal advice and to develop techniques to minimize common obstacles to working with self-represented litigants.

Although the project goal and objectives were met, the court's ADR department has pursued additional efforts to implement educational materials about alternative dispute resolution. The video script has been translated into Spanish, and a Spanish voice-over will soon be added to the video. Closed-captioning has been identified as an additional feature for the ADR video.

Detailed reports on the assessment and implementation projects are available on the password-protected Serranus Web site at <http://serranus.courtinfo.ca.gov/programs/adr/grants.htm>. 

Julie L. Bronson is the ADR administrator for the Superior Court of Los Angeles County. She has more than 20 years of experience in developing, implementing, and administering comprehensive court-based ADR programs. She has lectured and served as a consultant on ADR programs to other state courts, numerous foreign delegations, and others.

Photos of mediation training sessions, pages 19 and 22, provided by the Superior Courts of San Francisco and Stanislaus Counties.

Bringing Mediation to the Minority Community

By
**Karen Camper and
Julie Dodge**



Karen Camper Julie Dodge

The mediation pilot project of the Superior Court of Stanislaus County is designed to educate self-represented litigants about the court's mediation program, from the simple basics of what

it is to how it can help them. The program's primary focus is on the Hispanic community. In addition to making the public aware of all services available to litigants proceeding without lawyers in our self-help center, our mediation project is working to develop support services for self-represented litigants in small claims and limited jurisdiction civil cases. We have focused our efforts on the Hispanic community in particular because surveys determined that Hispanics make up nearly 40 percent of the county's population yet only about 16 percent of the mediated cases and thus were an underserved minority in Stanislaus County. The mediation center and the self-help center are centrally located in downtown Modesto.

Building Public Awareness

In general, we know that people aren't accustomed to calling someone and receiving help with their disputes—they either do nothing or seek help through the court system. Building public awareness is one of the challenges any mediation program will face. People can be afraid of the unknown or unfamiliar. To overcome this initial obstacle, we have made every effort to develop a solid network among the various Hispanic social service and community support groups. The presentations to these various groups have been effective: the information about the mediation process is well received by the attendees, who, in turn, become an excellent source of referrals to the program. We were very fortunate in hiring a grant coordinator, Carolina Bernal, who is president and chief executive officer of the Hispanic Chamber of Commerce of Stanislaus County and who, in addition, has strong ties within the Hispanic community and is a familiar local television and talk show host, adding an extra benefit for marketing purposes. Through Bernal's talents and contacts, an advisory committee developed a widespread media marketing plan to help get the word out to the community.

Film clips are being produced in both English and Spanish, explaining what mediation is, along with a walk-through of a typical mediation process. This video will be aired on local cable shows and played on video monitors posted in high-volume areas of the courthouse. DVDs will be available for distribution to the public. A mock mediation was conducted at California State University, Stanislaus during Mediation Week in March. Posters in both English and Spanish, ordered from Maryland's Mediation and Conflict Resolution Office, promote mediation as an out-of-court solution to disputes. We have also created public service announcements for airing on the local Hispanic radio station.

One of the hurdles we had to overcome in the public broadcasting arena was that many Hispanic radio or cable shows are broadcast beyond Stanislaus



County lines, which we anticipated would result in more calls to our mediation center. The mediation center staff is bilingual but limited in number, so it was decided to reduce the use of broader-based radio stations. Some people are still drawn in from outside the county, but we direct their calls to our self-help center because it is more adequately staffed with bilingual clerks.

Building Volunteer Staff

A final piece of our mediation project is to seek additional mediation staffing—currently, we have only two full-time mediators—and better access to services in outlying cities throughout Stanislaus County. The Stanislaus County Mediation Center soon will be holding a mediation training workshop conducted by an attorney-mediator. Recruitment for such training is directed at members of the local community who are willing to volunteer for community-based mediation and “day-of-court” mediation. The anticipated increase in staff resources will make more mediators available for local mediation services and services to outlying areas in places such as libraries or service centers.

The Community Responds

The feedback from our mediation center staff is that the concept of mediation is not necessarily well embedded in the community despite the success mediation has had in Stanislaus County. (In 2007, when we started our program, 34

percent of the contested matters set for hearing were referred to mediation; of those, 63 percent reached agreement.) Looking to a strong authority figure to make decisions is a more typical dynamic, meaning that more education about the benefits of a collaborative mediation approach is necessary. Our small claims commissioner talks about the benefits of mediation when she takes the bench and encourages people to use the service.

When mediation is explained to members of the community, the response appears to be positive. In fact, during the last quarter of 2007, 27.5 percent of the mediation cases were opened by Hispanic individuals. This figure indicates that Hispanics are positive about using mediation when it has been explained to them by the case manager at the mediation center. ■

Karen Camper is ADR coordinator for the Superior Court of Stanislaus County's civil unlimited, civil limited, and small claims program and its community-based mediation program. She also oversees the court's small claims advisor program.

Julie Dodge is the managing attorney for the court's self-help center and a family law facilitator. Martin Eichner, director of dispute resolution services for Project Sentinel and the Stanislaus County Mediation Center, contributed to this article.

Drawing on Community Partners and Mediation Advisors

By **Jeniffer Alcantara,**
Judy Louie, and
Jason H. Stein



Jeniffer
Alcantara



Judy Louie



Jason H. Stein

The Superior Court of San Francisco County launched its mediation project for self-represented litigants in November 2007 as part of an effort to make the benefits of mediation available to

litigants without attorneys. Mediation is available to litigants at virtually any time during the life of a civil case, including before a case is filed, any time after the case is filed but before the first hearing, and on site on the day of a court hearing. Since the project's inception its 50 diverse volunteers have mediated more than 220 cases. The project's success is due in large part to the efforts of its community partners, the mediation advisor, the volunteers, and the participants.

Partnering With Others

The project was developed through a partnership between the court's Alternative Dispute Resolution Program, the ACCESS Center, Community Boards of San Francisco, and local law schools. The ADR program manages the development and implementation of the court's civil settlement programs, which include mediation, judicial arbitration, and settlement conferences. The ADR program also provides the oversight and management of the project.

ACCESS, which stands for "Assisting Court Customers With Educational and Self-Help Services," is a court-based program that provides educational and informational legal materials in English, Spanish, and Cantonese. Community Boards is a local program that has been offering conflict resolution services since 1976. As a community-based mediation provider, it helps to effectively manage all of the project's pre-filing mediations and a majority of its prehearing mediations. Law students who have been trained as mediators also help the court provide mediation coverage for every small claims calendar. These partnerships allow mediation services to be offered at multiple locations, including at the courthouse, the ACCESS Center, and Community Boards.

Using a Mediation Advisor

ACCESS staff promote mediation to all interested persons and refer appropriate cases to the mediation advisor, who is located at the ACCESS Center. The mediation advisor provides the assistance that litigants need to understand the legal options in their cases so that they can effectively participate in mediation. The advisor assists litigants in making the arrangements and completing any court forms necessary to continue or dismiss the matter pending a mediation outcome. Since the project's launch, the advisor has made contact with more than 1,200 self-represented litigants, individually or in groups.

Specialized Training for Volunteers

All project volunteers have completed specialized court-sponsored training that was designed to increase mediation participants' level of trust and confidence in the process as well as the court. The training includes a small claims component that addresses, at minimum, how to manage time constraints at day-of mediations, provide information as opposed to giving legal advice, use problem-solving techniques, and write small claims agreements.

The rich diversity of San Francisco presents highly complex issues that must be addressed to ensure meaningful access to the judicial process for all San Franciscans. Court customers speak myriad languages other than English, come from diverse cultural and socioeconomic backgrounds, and span all ages and literacy levels. Thus, project volunteers are also required to complete diversity training to enhance their effectiveness in facilitating communication between self-represented litigants during mediation.

Feedback From Participants

Participants have expressed high levels of satisfaction with the mediators' skills and abilities. One participant commented, "[The mediator] handled all parties with skill and compassion." Another stated, "[The mediator] was very knowledgeable and helped me to understand the court processes." Among other positive comments, one participant noted, "Excellent mediator with ability to root out key issues."

An ADR project assistant aids in project evaluation by coordinating evaluation surveys and compiling the results. The evaluation surveys are an invaluable tool to review the project's progress and assess its success. Thus far the project has received glowing reviews from its participants, including such comments as these:

"I truly believe that the mediation was helpful."

"This deleted the stress I felt from dealing with this issue."

“This was an excellent experience and a speedy resolution to a very complicated case.” 

Jeniffer Alcantara is the ADR administrator for the Superior Court of San Francisco County; Judy Louie has been the director of the court's ACCESS Center since August 2006; and Jason H. Stein is the court's mediation advisor.

Touting Mediation as Part of a Multi-Option Program



By
Lauren Zorfias

Lauren Zorfias

When we contemplated applying for funding to develop and implement settlement support services for self-represented litigants in the Superior Court of San Mateo County, we chose to

focus our efforts broadly in small claims and limited civil cases and more narrowly in the area of unlawful detainer cases. The San Mateo court currently has a robust alternative dispute resolution program that we call our Multi-Option ADR Project, or MAP. MAP has several components, including civil and probate ADR, family law ADR, small claims mediation, judicial

arbitration, and juvenile mediation programs for both dependency and delinquency. In 2007 we released our MAP evaluation report for 2003–2005, which showed that 13 percent of small claims litigants referred themselves to the program; the rest were court referred, generally on the day of trial. Aside from these and other statistics, we studied several aspects of the small claims process, looking at several small claims calendars and the small claims advisor program, which is run one night a week, and interviewing judicial officers, small claims clerks, and the coordinator of the small claims mediation program. We heard a lot of the same feedback: the small claims litigants were not getting enough information about the court process and alternatives to litigation such as mediation. Although the small claims advisor was very helpful, we needed more than the weekly program to reach all of our small claims litigants.

Information and Education

Our plan to address these issues consisted of two basic steps. One was to inform litigants early on that mediation was available. This was done by developing an information sheet that accompanied each small claims filing, advising litigants of the availability and advantages of mediation and what they could expect from the process.

What was most noticeable in our observations of small claims cases was the recurrence of the same basic misunderstandings or questions about the legal process: who can be a party, what is a cause of action, whom do I serve, how do I serve them? So we decided that our second step would be to devise a workshop that introduced the small claims litigant to the court process, answering all these basic questions and, more important, touting the advantages of mediation as well as preparing them for it.

In developing this workshop we enlisted the help of a community-based mediation agency, the Peninsula Conflict Resolution Center (PCRC). Although a special referral is not needed

to use the program, we worked with PCRC to develop a special referral form that litigants can take with them and self-refer to the center. Besides reminding litigants of the workshop's availability, the referral form allows us to track the number of referrals coming directly from the workshop.

The workshop “So You’re Thinking of Filing a Lawsuit?” is offered the first, third, and fifth Monday of every month at 1:30 p.m. It consists of a guided PowerPoint presentation and several handouts. Each participant is given a “pre-evaluation” to test themselves on (and allow us to measure) what they know about the court process and mediation. They are also given an outline of the PowerPoint, a resource packet, and a glossary of legal terms.

In addition to the designated workshop presenter, we often have a judge introduce the session as a “friendly face of the court,” although, of course, the judge does not discuss the specifics of any case. The coordinator of the small claims mediation program often attends and, on occasion, so does a representative from PCRC. At the end of each workshop, the participants are given a “postevaluation” to test what they have learned from the workshop and to obtain their feedback on the workshop.

When we looked at the pool of self-represented litigants filing in limited and unlimited cases, we noted that the large majority were, not surprisingly, defendants. We decided to continue our workshop approach, covering part two of the court process in a workshop titled “I Have a Case in Court—Now What?” This workshop, offered on the second and fourth Mondays of each month, follows the same format as the other, including a PowerPoint presentation, handouts, and a pre- and post-evaluation.

This workshop is a bit lengthier and covers more about what self-represented litigants can expect from the court process now that they are involved in a lawsuit. For example, such topics as filing an answer, case management conferences, and law-and-



motion are discussed. And, as with the first workshop, mediation is suggested as a win-win alternative to the win-lose court process.

Both workshops have been highly successful, starting with an average of 5 participants per session in the first three months and, more recently, jumping to 10 participants per session. The feedback on the evaluations has been highly favorable. Another positive result has been an increase in the number of court-based mediations on both the small claims and civil sides in cases involving self-represented litigants.

Special Focus on Unlawful Detainer

The other area of focus was unlawful detainer. Because of the fast-track nature of these cases, taking the time to set up mediation is often difficult or impossible. In our court we have a weekly pretrial calendar for the unlawful detainer cases that are set for trial. In the past, these cases could involve multiple

“informal” settlement attempts, often direct negotiations between the landlord’s attorney and the self-represented litigant/tenant and, sometimes, a legal aid services attorney. If the parties could not settle, they would meet with a court commissioner in chambers to see if he or she could assist in reaching a settlement. But to self-represented litigants, already distrustful of a system they did not understand, this was not always the best option.

With all these considerations in mind, we instituted a court-based neutral settlement program. On the day of the pretrial calendar, when the calendar is called, the commissioner advises the parties that a neutral settlement officer will meet with them if at least one side in the case is self-represented. The commissioner explains that the settlement officer is in fact a neutral employed by the court but has no decisionmaking power in the case. The parties are also advised that the settlement officer can offer information,

but not legal advice, to either side in the case.

The program started in February 2008, so it is still in its infancy. In the first three weeks there were four qualifying cases, and each settled with all parties expressing that they were very pleased with the program.

Information Available for Other Courts

As we continue these programs, we will gather data and make it available to interested courts. The PowerPoint presentations used in our workshop are available on the court’s Web site at www.sanmateocourt.org/selfhelp and, along with the presenter’s notes, will soon be on the Equal Access page of the California Courts Web site, www.courtinfo.ca.gov. 

Lauren Zorfais is the supervising attorney of the family law facilitator’s office/self-help center at the Superior Court of San Mateo County in Redwood City.