

**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 5, 2007

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

Issue Statement

California courts increasingly offer mediation as an alternative to formal adjudication in civil, family law, and juvenile actions and proceedings. The Governor, the Legislature, the State Bar Board of Governors, and local government bodies have traditionally recognized the third week of March as “Mediation Week.” The Judicial Council’s concurrent recognition of Mediation Week will encourage courts to implement and improve mediation programs; promote public access to and use of those programs; and acknowledge the judicial officers, court staff, mediators, and others who make the programs successful.

Recommendation

Staff recommends that the Judicial Council adopt the attached resolution, effective February 23, 2007, recognizing March 18–24, 2007, as Mediation Week.

Rationale for Recommendation

Introduction

Mediation is a process in which a neutral third person facilitates communication between disputants to help them reach a mutually acceptable agreement. 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. As discussed below, California courts increasingly offer mediation in civil, family law, and juvenile actions and proceedings.

Mediation of court actions and proceedings 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 increasing the parties' 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. As a result, mediation may reduce litigants' costs and court workloads, while increasing litigant satisfaction.

The efforts of many dedicated judicial officers, court staff, and mediators have been and remain critical to the success of court mediation programs. Many courts collaborate with other entities, including local government agencies, state and local bar associations, mediation organizations, and individual mediators, to provide mediation programs. These entities and individuals have contributed immeasurably to the planning, implementation, and operation of court mediation programs. Indeed, a substantial number of court program mediations are conducted by mediators who serve pro bono or for nominal compensation.

Informing the public about the nature, availability, and benefits of court mediation programs is important to ensuring their access to and use of these programs. In particular, the Public Trust and Confidence Study recommended that “[f]ormal, court-sanctioned alternatives to court adjudication should be made widely known among recent immigrants and other groups identified in the survey as often unaware of their availability.”¹

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 every year from 1993 through 2006, other than in 2000. 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, and San Mateo; and the Santa Barbara City Council have all recognized Mediation Week in one or more years.

A number of California courts have held Mediation Week events in past years. This year, an ad hoc group of court alternative dispute resolution (ADR) administrators is preparing a set of resource materials that courts might use to develop Mediation Week programs and activities, with the goal of increasing awareness of court mediation programs and the people who make them successful. This group suggested that judicial branch recognition of Mediation Week at the state level would be very beneficial in achieving this goal.

¹ *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).

Judicial Council recognition of Mediation Week will increase the attention focused on mediation in general and will particularly highlight the availability and benefits of court mediation programs.² Judicial Council recognition of Mediation Week will thereby promote public access to and use of those programs. It will also provide those courts that have mediation programs with an opportunity to acknowledge the judicial officers, court staff, and justice partners who make their programs successful and may encourage courts that do not currently have mediation programs to plan and implement them.

Mediation programs for civil cases

California courts have been offering mediation programs for general civil cases since the early 1990s. 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).) An increasing number of courts have been implementing mediation programs for civil cases since that time. Information gathered by staff indicates that 25 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. An additional 8 courts are currently planning mediation or settlement programs.

A recent 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.³ 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 also allocated Judicial Administration Efficiency and Modernization Funds to help superior courts plan, implement, and improve mediation and other settlement programs for civil cases. In fiscal years 2004–2005 and 2005–2006, approximately half of the superior courts received awards to plan a new program, to implement or improve an existing program, or to do both.

² Information about the Judicial Council resolution will be disseminated throughout the judicial branch, to local bar associations, to mediation providers, and to the general public. A particular effort will be made to reach the groups identified in the Public Trust and Confidence Study as unfamiliar with alternatives to adjudication.

³ 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, p. xix–xxii (available online at www.courtinfo.ca.gov/reference/documents/empprept.pdf). The Judicial Council received the CPR Institute of 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.)

Mediation programs for child custody and juvenile dependency cases

Under a 1981 legislative mandate, all trial courts provide child custody mediation in family court cases where child custody or visitation is in dispute. Child custody mediation helps parents develop a parenting plan that resolves custody and visitation issues, and it results in an agreement more than half of the time. This reduces the acrimony that often exists and that can be very detrimental to children and parents when custody and visitation issues are adjudicated, and it allows a more efficient use of judicial resources.⁴

Currently more than 400 court-connected family mediators provide mediation services to families and children in approximately 100,000 cases annually. In the latest survey, reported in 2004, 87 percent of respondents reported that mediation is a good way to come up with a parenting plan and that they would recommend the process to a friend who has a custody or visitation problem.⁵

Mediation is also currently used in about one-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.⁶

Restorative justice in juvenile delinquency proceedings

Mediation is also being used to achieve restorative justice in juvenile delinquency proceedings.⁷ In a recent survey about delinquency court operations, approximately half of the 46 courts that responded indicated that they used restorative justice programs such as victim offender mediation (23 courts), family group conferencing (22 courts), or neighborhood accountability boards (18 courts).⁸

⁴ *Statewide Uniform Statistical Reporting System. 2003 Client Baseline Study Summary Findings, 2004*, p. 5 (available online at www.courtinfo.ca.gov/programs/cfcc/pdffiles/Snapshot2003.pdf).

⁵ *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).

⁶ *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).

⁷ 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, p. 21–22, (available online at www.courtinfo.ca.gov/programs/cfcc/pdffiles/BARJManual3.pdf).

⁸ *2006 Survey of Delinquency Court Operation*, Administrative Office of the Courts, Center for Families, Children & the Courts, data forthcoming, information at: www.courtinfo.ca.gov/programs/cfcc/programs/description/delproj.htm.

Victim Offender Reconciliation Programs (VORPs) provide interested victims an opportunity to meet their offender in a safe and structured setting and engage in a 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 restitution plan for the offender to pay back his or her financial debt.

California's first victim offender mediation program was created in 1982, and at least 20 such programs were operating in the state by 2000. A May 2000 Judicial Council report concerning the study of six VORPs found that participants in those programs generally paid more restitution and were less likely to reoffend than juveniles in comparison groups who did not participate in the program. The study also found high participation and satisfaction rates by victims and offenders and that a high percentage of the mediated agreements were fulfilled. Other reported indicators of program success included the ordering and completion of community service, reduction in case processing time, and satisfaction among mediators and justice system officials.⁹

Alternative Actions Considered

The Judicial Council could elect not to recognize Mediation Week. However, staff believes that recognition of Mediation Week will provide significant benefits without any disadvantages or significant costs.

Comments From Interested Parties

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

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 planning and carrying out these activities. The nature and amount of these costs will depend on the activities that the court elects to hold. AOC staff will also 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

⁹ See *A Summary of the Evaluations of Six California Victim Offender Reconciliation Programs*, Judicial Council of California, Administrative Office of the Courts, Center for Families, Children & the Courts, May 2000, p. 1–2 (available online at www.courtinfo.ca.gov/programs/cfcc/pdffiles/vorp.pdf).



JUDICIAL COUNCIL OF CALIFORNIA

ADMINISTRATIVE OFFICE OF THE COURTS

Resolution

— RECOGNIZING —

Mediation Week

March 18–24, 2007

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

Whereas during the past 25 years, California courts have increasingly encouraged, offered, and provided mediation to assist litigants in resolving civil, family, and juvenile actions and proceedings;

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

Whereas the availability and success of court mediation programs are largely attributable to the efforts of judicial officers, court staff, and the courts' justice partners, including 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 essential 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 week of March 18 through 24, 2007, as Mediation Week, commend the efforts of all those who 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 23rd day of February, 2007.

Attest:

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

WILLIAM C. VICKREY
Administrative Director of the Courts