CIVIL LITIGATION RESOLVED THROUGH MEDIATION

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If your actions inspire others to dream more, learn more, do more and become more, you are a leader.

John Quincy Adams

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Teresa R. Decker

Abstract

The trial courts of California have undergone significant budget cuts over the past several years. The Superior Court of California for the County of Orange (OCSC) has done its best to plan and prepare, not only to ensure resources are used wisely, but to maintain the public's trust and confidence in our judicial system.

Keeping this in mind, OCSC has responded to the severe budget cuts, staff reductions, and expanding workloads by embracing each as an opportunity to be innovative to meet the publics' expectations. Increasingly, court users expect courts to offer a variety of services that will help resolve their problems effectively and efficiently. Alternative Dispute Resolution (ADR) is one of these services that include a variety of processes to resolve disputes outside of litigation. Mediation is a form of ADR and the subject of this paper.

Mediation provides litigants with the opportunity to reach an agreement on their own terms. A mediator guides the litigants by opening the door for communication. The premise is that participating in mediation instead of going to trial is quicker and less expensive.

The purpose of this study was to determine whether the mediation programs facilitated by OCSC are effective and meeting the expectations of court constituents and bench officers. This research focuses on these four questions:

1. Are there specific types of civil cases more likely to be resolved through mediation?
2. What are the distinguishing characteristics of cases that are resolved through mediation in each case type?
3. Is there a time savings in disposition of mediated cases compared to cases that do not use mediation?
4. Do bench officers believe mediation is an effective alternative to litigation?

To answer these questions, research was conducted in the form of literature review, data collection and a survey of civil and small claims bench officers. Case data was retrieved from the court's case management system for the year 2011, according to specific criteria in the form of ad hoc reports. Reports included cases initiated and referred to mediation that were both successful and unsuccessful; cases that reached disposition with or without mediation, and pending cases.

In 2011, approximately 81,926 civil cases were initiated and during this year, 4,781 cases were mediated through free services mainly provided by onsite volunteer

mediators as a result of the California Dispute Resolution Act (DRPA), more than 60% reached a successful outcome. In the unlimited and limited jurisdiction case types, 57% of the cases that were mediated through the court connected program were settled or dismissed. The majority of cases that did not participate in mediation reached some type of disposition, most without any type of hearing other than a case management hearing and approximately four percent remained pending at the time the data for this study was extracted from the case management system.

As a result of the data analysis, findings reflect the case type most likely to settle through mediation is small claims cases (approximately 2,571 in 2011). There were no significant findings that support specific case characteristics, such as case type or representation, lend to successful mediation outcomes at least in the area of small claims and civil harassment cases. Case age was also part of the criteria analyzed. The disparity between case age at time of disposition for cases mediated compared to cases that were not mediated is minimal. Case age is considered from date of initiation until date of disposition. Not taking into consideration small claims cases where mediation usually occurs on the day of trial which is the first hearing in the case, findings did not support mediation is a faster alternative to traditional litigation. The reports maintained for the court connected mediation program did not capture this level of detail.

The bench officers that adjudicate civil and small claims cases were surveyed to gain their perspective on the mediation process. Although the sample size was small and may not represent the view of the entire civil bench, the majority of the responses received did support the notion that mediation is a viable alternative to litigation.

Overall, the data extracted from the case management system is the most telling when determining if a specific case type or whether specific case characteristics play a role in reaching a successful outcome through mediation. The data supports small claims cases and unlimited jurisdiction civil harassment cases will most likely benefit from mediation. Considering the diminished resources for the courts, at the state level and locally, and as OCSC continues to evaluate critical operations – what must go on - this is the perfect opportunity to promote mediation as an alternative in lieu of traditional litigation. OCSC must create an environment where mediation is trusted by court users and encouraged by the bench officers. In order to change the current culture, the recommendations are as follows: consider mandatory mediation in cases most likely to settle (i.e., small claims and civil harassment); create reports to measure the success of the programs; educate bench officers, court staff, justice partners and court users of the benefits of mediation; and actively promote mediation within the communities.

Introduction

The trial courts throughout the State of California are faced with extreme budget reductions due to the economic crises the state has been facing for the past several years. Over the past four years, the California trial courts have endured budget reductions in the amount of $1.2 billion. At the onset of this crisis, the Superior Court of California for the County of Orange (OCSC) took action by planning and preparing for anticipated budget reductions to ensure its vision and goals remain in court leaders' line of sight. The goal of this research is to identify opportunities for improvement in OCSC's civil mediation programs to continue to achieve OCSC's vision, despite ongoing budget cuts.

Today, the court is pushed to its limits. The ongoing budget restraints challenge court leaders to become more creative and innovative in efforts to maintain the public's trust and confidence in the court system. Most courts are doing more with less, and now more than ever, it is imperative for OCSC to use its resources wisely. Throughout this crisis, OCSC has endured furloughs, both mandatory and voluntary, and staff reductions through attrition. The court has maintained over 200 full-time employee position vacancies since 2009. This number continues to grow.

Despite the drastic budget and staff reductions, OCSC has been able to focus on providing quality service to its constituents and justice partners through strategic planning and ongoing reengineering efforts. Efficiencies and cost savings created through technology, reengineering, and cross-training staff have made it possible for the court to continue to weather the storm.

Excluding furloughs, only recently has there been a reduction in service to the public. One of the five justice center locations no longer conducts civil litigation and another is scheduled to close entirely at the end of this fiscal year. The clerk's office at each justice center location closes one hour early each day, and the administration offices at most of the justice centers have closed. In recognition of this reduction in service, OCSC undertook efforts to offset any impact on the public, including making court information, forms, schedules, rules, and self-help information available on the court's website 24 hours a day; permitting users to electronically file (eFile) documents; and keeping courtrooms open until 5 p.m. Continuing to meet the needs of court constituents in this daunting economic environment requires an ongoing emphasis on strategic planning, innovation, and program evaluation by OCSC.

Taking these challenges into consideration, OCSC continues to place great emphasis on meeting the public's expectations, making every effort to minimize the strain of budget reductions on service to the public. One of the many expectations held by OCSC is expressed in the Mission and Vision Statement (See Appendix A). The OCSC Vision statement indicates the highest quality of justice and court system services will be provided to the community through various measures, including a variety of effective dispute resolution forums. One of these dispute resolution forums, and the subject of this research, is the mediation programs offered by the OCSC Civil and Small Claims Unit.

In the 1980s, the California state court system began to incorporate Alternative Dispute Resolution (ADR) programs into its culture as an alternative to litigation and to ensure efficient case management. The OCSC Civil and Small Claims Unit have implemented several ADR programs, such as arbitration, early neutral evaluation, and mediation.

The purpose of this research was to collect information that will enable OCSC to measure the effectiveness of its mediation programs. This information can be used not only to evaluate the level of service currently provided to program participants, but to suggest opportunities for improvement and to assess future quality of service. Additionally, the methodology used to undertake this research may be applied to other ADR programs offered by the OCSC Civil and Small Claims Unit, including arbitration and early neutral evaluation programs.

To determine the effectiveness of the mediation programs in OCSC, and to identify future opportunities for improvement, this research focuses on the following questions:

1. Are there specific types of civil cases more likely to be resolved through mediation?
2. What are the distinguishing characteristics of cases that are resolved through mediation in each case type?
3. Is there a time savings in disposition of mediated cases compared to cases that do not use mediation?
4. Do bench officers believe mediation is an effective alternative to litigation?

To answer these questions, this research undertakes a multi-step approach. First, the research includes a review of the relevant mediation literature, including an overview of its history and purpose, types of mediation, and its uses. Second, the literature review includes an overview of the mediation programs implemented in OCSC. The literature review is then used as the foundation for the collection of data to answer the questions posed above. The methodology portion of the paper details the two methods used to conduct this study, case data

analysis and a survey of the civil bench officers. The methodology is followed by a discussion of the findings that are supported by the data that was collected. Finally, the paper provides the author's conclusions and recommendations for future program improvements and further research based upon the research findings.

Data collected includes civil filing statistics from the court's case management system, the California Case Management System (CCMS V3), for the year 2011, and a survey of judicial officers who adjudicate civil and small claims cases. By analyzing data extracted from V3, this study helps determine whether there are cases better suited for mediation and whether mediated cases reach disposition before the established time frames for cases that are litigated. The survey provides insight to determine whether bench officers believe mediation is an effective alternative to litigation.

Literature Review

The Importance of Mediation as a Dispute Resolution Method

Civil courts are often viewed as overburdened and painstakingly slow. Although OCSC has adopted time standards for processing cases, they are not always possible to meet. Because many cases are filed each year and the number of bench officers and staff to hear and process cases are limited, case management becomes a difficult but essential task. Calendars become bogged down due to limited resources, numerous settings, continuances, and pro se litigants attempting to navigate the process on their own.

This is not new news! In Roscoe Pound's 1906 address to the American Bar Association, he elaborated on some of these very issues of public dissatisfaction with the American legal system (Pound, 1906). Although many of the same reasons for the public's discontent still exist today, we are now more knowledgeable and better equipped to find creative and viable solutions.

Over time, court leaders began to address some of the concerns raised by the public through various court reform efforts. In the 1980s, ADR programs were implemented among the state court systems as a way to ensure efficient case management and as a mechanism for resolving specific types of cases (e.g., minor civil cases, domestic disputes, and minor criminal cases) before reaching trial. Once cases were removed from the litigation track, judicial officers and other court staff were free to focus on more complex cases (Hartley, 2002).

There is a significant amount of literature surrounding ADR. However, for various reasons there is a lack of empirical data to rely on when proposing ADR methods in lieu of litigation. According to a study performed by the Center for Public Resource Institute (CPR) for Dispute Resolution, several reasons for the lack of national data ranged from private ADR with its limited record-keeping to court connected ADR programs or private ADR providers that track limited and or different types of data (Center for Public Resources Institute for Dispute Resolution, 1994). Comparing programs is also difficult because programs vary from county to county and state to state, not only in design, but in name also. "Mediation" in one court may be considered "neutral evaluation" in another court (Kakalik, et al, 1996).

Initially, mediation programs were not considered part of the ADR options. They traditionally existed as community programs utilized prior to filing a formal lawsuit (Hartley, 2002). Mediation was mainly used to preserve relationships within the community and to avoid the costs associated with litigation (Hartley, 2002). Mediation was also a prominent method for settling labor disputes. (Hartley, 2002). Eventually, mediation became an alternative in almost all types of litigation, including personal injury, product liability, and real estate (Gillie, 1987).

According to a report by Eilperin (1990) for the Bureau of National Affairs, Incorporated, from 1987 through 1990 state courts and state legislatures continued to establish ADR programs, usually in conjunction with the courts. The National Center for State Courts surveyed court-adjunct programs in 1988 and estimated there were about 700 ADR programs of one kind or another connected with court operations. A more recent and intensive survey by the Center concluded that at least 11,000 court-adjunct programs were in operation in 1990. Eilperin further indicates that approximately 400 community mediation programs were active with major referral sources such as the courts, law enforcement agencies, and community agencies (Eilperin, 1990).

Mediation is now used frequently in a variety of legal areas, such as: governments; non-profit corporations to resolve landlord-tenant disputes and consumer cases; private-sector programs to resolve commercial claims; and the courts in family law matters, and in many different types of civil cases (Gillie, 1987).

Advantages and Disadvantages of Mediation

Courts promote mediation as a form of settlement under the belief that overall, it saves time, money, produces better results than trial and alleviates heavy case loads. Mediation is valued as a method for courts to screen out cases that do not need much judicial involvement, so resources can be devoted to those cases that require more attention (Lande, 2002). There are several overlapping advantages and disadvantages that support these notions.

Mediation is the great compromise. Resolutions reached during mediation usually last, and prevent future litigation because the parties themselves are the decision makers (Hartley, 2002). Historically, the primary goal of mediation was to preserve relationships between the parties involved in the dispute, emphasizing personal responsibility, keeping the dispute private and within the norms of the community (Hartley, 2002). As a result, the process is less adversarial and formal than either litigation or arbitration. Although there are some similarities, e.g., neutral party listens to each side and a neutral setting, unlike arbitration the rules of evidence and formal court procedures do not apply to mediation (Hartley, 2002). Litigants are unable to present evidence; examine witnesses; or argue their case. The mediator is not a decision maker, and does not issue any type of ruling in a case. Participants can also withdraw at any time (Hartley, 2002).

The mediation process focuses on impartiality, confidentiality and disputant self-determination (Hedeen, 2005). Mediation is a setting where litigants try to reach a mutually acceptable resolution on specific issues or the entire case. A mediator can encourage parties to pinpoint the actual issues and think outside of the box, bringing creativity to the settlement

process (Coulson, 1984). To achieve this goal, a mediator must encourage parties to engage in negotiations (Coulson, 1984). Mediation is also confidential, which may be advantages when a party wants to avoid a public lawsuit. Parties may have an interest in privacy or protecting their reputation over any type of monetary award (Frank & Nakamura, 2012).

Willingness and communication are key to negotiating. Coulson (1984) indicates parties must want to settle. In some cases, tensions run high causing parties or personalities to clash, eliminating any hope of negotiations. Parties must be willing to face their problems. If parties are not willing to participate, there is no chance for fruitful communication. The mediator helps the parties communicate by first gaining their trust and by providing a supportive setting. Coulson (1984) states, “It is difficult to describe the qualities needed to be a successful mediator and the strategies that a mediator must follow to ensure that clients will resolve their disputes.” (p. 12). Mediators must be qualified to ensure parties are on an equal playing field. For example, if one or multiple parties are represented by counsel, an unrepresented party(s) may feel over powered and vulnerable which may place them at a disadvantage. The result may cause negotiations to fail, or a forced settlement. Another drawback is a party can withdraw at any time. A party may not be participating in good faith; agreeing to mediation can be strategic to learn the other side’s case.

Timeliness is another factor. Following the normal course of litigation can take time, especially if one or more parties are self-represented. When a person elects self-representation, the chances for unnecessary delays are increased. In some cases, early resolution while memories are fresh can be beneficial. Mediation opens the door to conversation so parties can

initiate settlement discussions which may lead to an earlier disposition of the case (Hartley, 2002).

Although participating in mediation early on in a case can save time and money, if it is too early, parties may not be ready to settle (Kakalik, et al., 1996). One cause for this is the status of discovery. On one hand, if discovery has been completed and mediation is not successful, a party may feel they are now at a disadvantage because they've shown their cards; on the other hand, if discovery is not completed prior to mediation, a litigant may feel ill-informed because they don't know how strong their case is or the value (Kakalik, et al., 1996).

Cost is also a consideration when choosing mediation over litigation, especially in our current economic environment. In a report conducted on mediation and early neutral evaluation under the Civil Justice Reform Act (CJRA) of 1990, cost of litigation is defined in three ways: hours worked by attorney(s) per litigant; litigant time spent on case; total money spent per party on legal fees, court fees, and discovery costs (Kakalik, et al., 1996). Litigation fees continue to rise to compensate for monetary losses at the local and state levels. Depending on the type of lawsuit and whether counsel is retained, litigation fees can skyrocket. Settlements usually occur well before the stage of litigation is reached because of the cost factor (Hartley, 2002). There are those cases where mediation is not successful or only successful as to specific issues which may cause costs to increase as the case proceeds to trial.

Another factor is familiarity with the judicial system. Typically, the average person's encounter with the court system is for jury duty service or the occasional traffic citation. Navigating through a civil lawsuit is significantly different, especially for individuals who lack

court experience. Even seemingly straight-forward small claims cases can pose a challenge to some which makes alternatives to litigation more appealing. Taking into consideration the overlap of advantages and disadvantages for participating in mediation, success largely depends on the parties' willingness to negotiate and the mediator's ability to facilitate a win-win situation.

Voluntary and Mandatory Mediation

In some jurisdictions mediation can either be voluntary or mandatory. Voluntary mediation requires all parties involved in a case to agree to participate in the mediation process. Participation in mandatory programs is usually pursuant to a state or local rule. There are various view points on whether the outcome of mediation is affected by a program being mandatory or voluntary.

Mediation not only facilitates communication between the parties, but also gives the parties control over their case. Mandating parties to participate in mediation takes away a portion of the control, as well as forces opposing parties who may be unwilling to participate in mediation to work cooperatively with one another. The parties must be willing to embrace the process (Brazil, 1991)

When parties agree to mediate, they are not agreeing to settle, they are agreeing to take part in a structured settlement negotiation process with a neutral expert. Either party has the right to stop the process at any time. In some programs, the mediator may terminate the

process if he or she determines a party is no longer a willing or interested participant (Gillie, 1987).

Because it takes substantial commitment of resources to establish and administer an ADR program, many courts may be reluctant to make a program mandatory without knowing first how much of their program will be used if it is "voluntary" (Brazil, 1991). Magistrate Brazil outlines several obstacles that deter attorneys and or parties from volunteering, including: suspicion when one party suggests ADR, and the other party questions the other's motives; ignorant or uninformed attorney and/or party; resistance to something new; fear of the unknown; loss of control over the case; and reluctance to give up fees, to name a few. He further states that until the legal culture changes and alternative programs become a trusted alternative, the most appropriate approach for courts to take when creating ADR programs is to make the programs "presumptively mandatory" for the case types that are likely to benefit from the particular ADR process in question and to build in a mechanism for exemption upon a showing of good cause (Brazil, 1991).

In 2004, an evaluation of five early mediation programs piloted in California was conducted to report the results of the pilot (Anderson & Pi, 2004). Three of the programs were mandatory and two were voluntary. San Diego, Los Angeles and Fresno Superior Courts hosted the mandatory programs. The study findings support the cases going to trial were reduced by 24 to 30 percent in San Diego and Los Angeles counties, saving a substantial amount of court time (Anderson & Pi, 2004). The study further concluded that early case management and early referrals to mediation play a role in reaching disposition; however, disposition was prolonged in cases when mediation was not successful. Overall, it was

determined a thorough assessment of the case is required, along with early case management and early referral (Anderson & Pi, 2004). The findings also indicate case disposition times were reduced in the courts that had longer disposition time frames to start with (Anderson & Pi, 2004).

Acceptance of alternative options to litigation is important to the success of any type of ADR program. Reluctance to court sponsored or mandatory programs may be mitigated if a thoughtful and practical approach that avoids the obstacles such as those outlined by Magistrate Brazil is taken when creating a program (Siemer, 1991). For example, the court should determine in which type of cases ADR will be most effective and devote resources needed to ensure a successful outcome. Cases should be screened to determine if ADR is appropriate, meaningful statistics to measure and evaluate ADR programs should be in place, tailor special requirements suitable for more complex or larger cases, provide program information for participants, integrate ADR with the litigation process by creating local rules to support the program, establish reasonable time limits, and secure participation by the bench officers (Siemer, 1991).

Participant Satisfaction with Mediation

The usual questions surrounding mediation effectiveness such as, time and money savings and litigant satisfaction, drive most courts when they consider implementing mediation programs. These types of questions often go unanswered because they are based on the assumption all mediation programs are the same (Shack, 2003). Shack asserts the focus of research in mediation effectiveness should shift from whether mediation saves time, reduces costs, and increases satisfaction to under what circumstances is it most likely to do so (Shack,

2003). A survey of 62 mediation studies that evaluated effectiveness of more than 100 court mediation programs was conducted to emphasize the importance of making this shift (Shack, 2003).

These studies came to different conclusions. Some findings indicated mediation does save time, money and increases satisfaction and some found there's a negative effect on time and money (Shack, 2003). The results did not provide the answers to the usual questions, but pointed to the significance of variances in program, case and the process characteristics in determining mediation effectiveness (Shack, 2003).

The studies indicate litigants like mediation and its outcome, and they like it more when the case settles. The combined results of these studies show that 70% of parties are satisfied with the mediation process and a similar number are satisfied with the outcome. Parties to civil mediation compared to other case types are less satisfied. There were too few studies of each type to fully analyze the meaning of these numbers (Shack, 2003).

Twelve out of the thirteen studies that examined the relationship between party satisfaction with the mediation process and the resolution of the case were in agreement that parties were significantly more likely to be satisfied when the case settled (Shack, 2003). There were seventeen of the studies that made comparisons between programs or cases. Only nine studies made comparisons as to whether the programs increased satisfaction or the perception of fairness for mediation participants versus non-participants (Shack, 2003). There was even

less agreement regarding the impact of mediation on the pace and cost of litigation to the court and litigant (Shack, 2003).

An unsuccessful attempt was made to examine the characteristics of the various programs, such as mandatory or voluntary, whether there was a fee or free of charge, and the mediators to reveal the cause for the conflict in findings (Shack, 2003). There was no particular characteristic or program difference that could be attributed to lesser or greater effectiveness in a mediation program partly because the poor design of the study itself and studies lacked information on the various program characteristics that were evaluated (Shack, 2003).

The few studies that conducted comparisons on how case characteristics effect time, money, and satisfaction found more often such differences didn't exist. However, different variables were noted such as time of referral, demographic make-up of litigants, willingness to mediate, and litigant perception regarding the cost of mediation (Shack, 2003).

Shack's survey concludes improvements in research and in the collection of program, case and data analysis are necessary to accurately measure the effectiveness of mediation (Shack, 2003). Four recommendations are made: 1) A better job needs to be done to understand the design and function of a program, especially when being evaluated and compared to traditional litigation methods; 2) More attention should be given to case characteristics, such as complexity, case type, and participants which will assist attorneys and the court when deciding what cases are more likely to benefit from mediation; 3) characteristics,

design and the goal of the program is essential to assess the strength of the program; and 4) improved and consistent data collection methods are necessary to ensure sound and reliable analysis (Schack, 2003). Current studies do not paint an accurate picture of mediation effectiveness because of the variances in program design and processes. Shifting focus to the conditions under which mediation is most effective will improve the likelihood of the courts, attorneys and litigants choosing mediation as a viable option to traditional litigation (Schack, 2003).

The 2004 study of the five California courts Early Mediation Pilot Programs found litigants and attorneys were satisfied with the services provided or the process or both (Anderson & Pi, 2004). The study reflected attorney satisfaction was linked more towards the outcome, whether the case settled and services provided by the court. There was an indication attorneys were also satisfied with the services regardless of the outcome of mediation (Anderson & Pi, 2004). The highest level of satisfaction expressed by litigants and attorneys were with the performance of the mediators and both strongly agreed the process was fair (Anderson & Pi, 2004).

Litigant satisfaction is an important aspect of the success of any ADR program; however, it is particularly important in mediation programs. Dissatisfaction may prevent litigants from opting to use mediation in future cases, or dissuade other litigants from participation. In addition, concerns that arise during the course of mediation may impact the ability of the parties to reach an agreement (Howe & Fiala, 2008).

Lessons Learned from the Literature

There are several important lessons learned from the literature on court-related mediation programs that are applicable to this research. First, due to the lack of empirical information available in the literature pertaining to court-related mediation programs, it is necessary to begin any effort to evaluate OCSC's mediation programs with data collection.

Second, there are a number of perceived advantages associated with mediation, as well as possible disadvantages. It is important to keep these points in mind to the extent that they may be applicable to the OCSC mediation programs. Specifically, the OCSC program may aim to incorporate more advantages into its program while attempting to eliminate or reduce the impact of potential disadvantages. As suggested by the literature, an important factor in considering whether to make mediation mandatory or voluntary is to look at the entire process from program design to the types of cases that may benefit most from mediation.

Last, it is desirable to conduct research that takes into account both procedural and structural factors that may impact participants' satisfaction with the mediation program. This will provide the most holistic view of program effectiveness.

OCSC's Civil and Small Claims Mediation Programs

OCSC serves a diverse population of 3,055,745, as estimated in 2011 by the United States Census Bureau (US Department of Commerce, 2012). OCSC has jurisdiction over criminal, juvenile, civil, family law, probate, and mental health cases. The Civil and Small

Claims Unit, the focus of this research, is structured by four case types: small claims (less than $10,000); limited jurisdiction (less than $25,000); unlimited jurisdiction (more than $25,000); and complex cases. A “complex case” is an action that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties and counsel. Class action, construction defect, and anti-trust or trade regulation claims are examples of case types considered to be complex in nature. Cases designated as complex are beyond the scope of this research.

There are approximately 30 judicial officers that adjudicate civil and small claims cases. Small claims cases are often handled by retired judges sitting on assignment, a commissioner or temporary judge. OCSC facilitates a Temporary Judge Program that provides members of the bar the opportunity to act as settlement officers and or adjudicate specific case types which include small claims cases. Sections 2.810 through 2.819 of the California Rules of Court (See Appendix B) establish eligibility requirements for participation. Limited jurisdiction cases are assigned to bench officers according to venue; unlimited jurisdiction cases are randomly assigned to a judge for all purposes following the one case, one judge model.

At the start of this project, civil and small claims cases were heard by bench officers sitting at four justice center locations. Bench officers at the main justice center hear all three case types; bench officers at the outer or branch locations adjudicate small claims and limited jurisdiction cases only, with exception of civil harassment cases which are unlimited jurisdiction in nature and handled at each location. In October 2012, due to budget constraints, the civil clerk’s office and courtrooms at one of the branch locations closed and cases were merged with

the other locations; of the two remaining branch locations, one will be closed entirely at the end of this fiscal year.

The structure of the Unit is also changing due to the implementation of mandatory electronic filing (eFiling) of civil cases, excluding small claims cases (although the service is available, it is not mandatory) which was effective as of January 2013. The Unit may ultimately be centralized at one or two locations because of the numerous efficiencies created by mandatory eFiling such as: elimination of many manual processes performed by staff, immediate entry of a document into the case management system, the benefit from filing from home or office, and consistency in filing procedures. Various proposals for the future structure of the Unit are currently under consideration.

There are many factors that contribute to delays in the court system. For example, the number of cases filed, the number of hearings set, litigant and witness availability, cost, and court resources. In an effort to manage these delays, time standards were established. "The primary tasks of courts are to determine the matters that come before them, and to make these determinations justly, promptly, and economically" (Klein, 1981).

The California Rules of Court (CRC) and California Civil Code of Procedure (CCP) dictate case management processes in civil cases. The Standards for Proceedings in the Trial Courts, Title 2 of the Standards for Judicial Administration (See Appendix C) establish the standards for civil case dispositions as follows:

Unlimited Jurisdiction

- 75% disposed within 12 months;
- 85% disposed within 18 months; and
- 100% disposed within 24 months.

Limited Jurisdiction

- 90% disposed within 12 months;
- 98% disposed within 18 months; and
- 100% disposed within 24 months.

Small Claims

- 90% within 75 days; and
- 100% within 95 days.

Once a case is initiated, the clock begins to tick. Case age is measured from date of initiation until date of disposition. In limited and unlimited jurisdiction cases, case management begins once a case is initiated. A variety of work queues are established in the court's case management system, V3, to facilitate case management. The burden to take action or move a case along within established time frames initially falls to the plaintiff. If the plaintiff fails to proceed, a hearing is usually set by the court through a work queue in the case management system to find out the status of a case. In unlimited jurisdiction cases, each bench officer's inventory is monitored closely by court clerks and/or courtroom attendants to ensure each case has a pending hearing or disposition. A case management hearing or evaluation conference is set between 120 - 180 days after case initiation. By contrast, for limited jurisdiction cases, a trial date is usually set at the time of the first evaluation conference, if one of the parties has not already submitted a request to schedule a trial date. In small claims cases a trial date is immediately set before a bench officer upon case initiation, and the case is usually adjudicated at that first hearing.

Litigants are informed about ADR programs through various means including: the court website, Self Help Centers, attorneys, local bar associations, and legal aid organizations. In all general civil cases, California Rule of Court 3.221 (See Appendix D) provides that the court must make available to the plaintiff at the time of filing a complaint, an ADR information package, and plaintiff must serve the defendant with the packet together with the complaint.

At one time OCSC provided the plaintiff with an informational packet at the time of filing. However, because of mandatory eFiling, OCSC takes advantage of subsection (b) of the rule, and makes the ADR information available on the court's website. The party must print the information themselves to serve the defendant(s). The packets are also available in the courtroom and at each Self Help Center located within each justice center.

The ADR packet is a four page document which provides litigants with information about the various forms of ADR programs available in civil cases. It describes some of the benefits and disadvantages of ADR. Although ADR packets are not required to be provided to small claims litigants when a claim is filed, under the California Dispute Resolution Act 1986 (CDRPA) (See Appendix E) information about available programs must be made available. Small claims litigants may ask for the information at the time of filing or may also print the information from the court's website.

Many litigants choose ADR in lieu of litigation, most in hopes of saving money and time. Private arbitration has been offered as an option to the parties in limited and unlimited jurisdiction cases since the mid-1980s. Participation is voluntary, all parties must agree, and a fee is usually required. If arbitration is binding, the case is permanently removed from the

court's inventory once a notice is filed indicating the case has been resolved. If arbitration is not binding, parties may request a trial de novo before the trial court judge if they are dissatisfied with the arbitration ruling.

Prior to 2007, the civil ADR processes in OCSC were limited to a county-sponsored mediation program funded by the California Dispute Resolution Program Act 1986 (DRPA), and a mandated judicial arbitration program. DRPA was enacted as a statewide effort for counties to implement dispute resolution programs within their community. At the onset, one such program was developed in Orange County. The Community Service Program (CSP) – Dispute Resolution Services office and Orange County Human Relations, offer mediation services to citizens in and out of court which include small claims litigants, litigants involved in civil harassment and unlawful detainer cases. An office is located in each of the court locations to facilitate mediation. Because the agencies are non-profit relying on Federal, State, County monies and charitable donations, many of the qualified mediators are volunteers. A manager from the Civil and Small Claims Unit is appointed as a liaison, along with a judicial officer sponsor as part of a Small Claims Advisory Committee to facilitate collaboration between the court, program mediators and the Legal Aid Society of Orange County.

Mediation service offered by the DRPA programs through the court usually happens on the day of hearing for small claims cases if the parties agree. There are anywhere from 20 to 35 small claims cases scheduled on calendar on any given day in each courtroom that is assigned to hear these cases. Some cases are taken off calendar because parties do not appear or a case may settle prior to the hearing, and many cases are continued for failure to serve the defendant. At the onset of each calendar, a mediator is present in the courtroom and gives an

announcement informing litigants about the mediation program. When the bench officer calls the case, the parties are given the opportunity to participate in mediation. Parties return to the courtroom at a later time to inform the bench officer of the mediation outcome, successful or unsuccessful. If a settlement is reached, the parties may leave the court with a handwritten stipulation for entry of judgment or the judgment will be mailed to them at a later time. In some cases, settlement terms are conditional and occur over a specified time period agreed to by the parties. Parties involved in civil harassment or unlawful detainer cases may also receive free mediation services through DRPA at the time of the first hearing.

Other forms of ADR were made available by OCSC in 2008, including private mediation (like private arbitration), early neutral evaluation (which is not addressed in this research), and court connected mediation. California Rules of Court 3.835 through 3.898 and Superior Court of California, County of Orange Local Rule 360, establishes the rules and procedures for court mediation programs. (See Appendix F) Private and or court connected mediation program participation must also be agreed upon by all parties involved in a case, and approved by the assigned judicial officer. In limited and unlimited jurisdiction cases, mediation can occur at any stage of a case, depending on when parties stipulate to participate. Parties can submit a stipulation to participate in mediation without a court hearing scheduled or they can appear at a hearing and agree then, either to private or court connected mediation. There is also a local form entitled, “Alternative Dispute Resolution Stipulation” that is available to litigants which makes the process of stipulating to any type of ADR simple. The parties check the appropriate boxes. Once the form is complete, the form is filed with the court.

OCSC provides a list of pre-qualified mediators for the parties to choose from and at a lower fixed cost through the Court Connected Mediation Program. The court connected mediators are highly qualified, and must meet specific criteria; each applicant must be a member of the California State Bar, complete 30 hours of mediation training from a recognized provider, in addition to conducting at minimum eight mediations of two hours or more. The OCSC ADR Committee has final applicant approval. The Rules governing ADR also requires the assignment of a Coordinator to oversee the various programs, monitor compliance and maintain statistics.

Private mediation is also available through private mediators and or private ADR companies, and at a much higher rate. Mediation proceedings are conducted outside of the court. Parties usually select a mediator on their own or through the advice of counsel. Mediation can also take place post-judgment when parties are trying to reach an agreement to satisfy a judgment.

When parties agree to mediation by written stipulation or verbally during their court hearing, the court clerk enters specific language into the minutes and corresponding codes into the case management system to capture the agreement and or outcome. The codes used for three different types of mediation are the same. A successful outcome can refer to a partial settlement of a case where parties reach an agreement on a specific issue or issues which also eliminates costly or lengthy litigation for remaining issues. Other outcomes include dismissal and or judgment of all issues before the court. The different disposition types are also captured in the minutes and in the case management system by using standard phrases and codes.

In spite of diminished resources, OCSC continues to provide alternatives to traditional litigation through its mediation programs. Mediation allows the parties to maintain control over their case and eliminates some of the unknowns of going to trial.

Methods

The primary methods used to conduct this study were 1) a review of civil case data extracted from the court's case management system for the year 2011 to determine how many cases were referred and resolved as a result of mediation and whether specific case types are more likely to settle through mediation; and 2) a survey of civil bench officers conducted through Survey Monkey to gain their perspective about the mediation programs offered through OCSC.

Case Data

OCSC's case management system, V3, was implemented for civil and small claims filings in 2007. The system design was a collaborative effort with other California courts. System functionality, such as the reports offered to evaluate case information, can be very non-specific. Due to the unique data criteria needed for this report and the lack of an existing report that meets these needs, special ad hoc queries were required to pull the necessary data. The data was extracted by analysts from the Planning and Research Department.

The data extracted from V3 included the number of small claims, limited and unlimited jurisdiction civil cases filed in 2011; the number of cases mediated with both successful and unsuccessful outcomes, unmediated cases and the number of cases that reached disposition or

remain pending. Additional criteria for data extraction included: case category (e.g., harassment, unlawful detainer, personal injury, collections, etc.), representation status, number of parties, and case age at time of disposition. A small number of cases in the report were filed in previous years and either referred to mediation in 2011 or reached disposition in 2011.

The data extracted was based on: 1) text entries relating to party information and/or representation manually entered into V3 and 2) minute order codes or text entries for each case that were entered into V3 by the courtroom clerk (i.e., each case had an event before the court and a minute order was prepared to document what occurred). The process to complete minutes is manual which allows for possible clerical error. If the clerk does not enter the correct code or text, data can be inaccurate. The volume and size of courtroom calendars contributes to the probability for errors in the minutes. For example, a small claims calendar can have anywhere from 20 to 35 cases set per day and a minute order must be completed for each case. This is also compounded by other workload that may be required in the courtrooms.

Due to the volume of cases, a random sample of the cases referred to mediation with successful and unsuccessful outcomes was audited to verify accurate minute order entries. The time to review, audit and format the data took approximately 45 hours over the period of several weeks. Unfortunately, the total number of filings did not match, in a separate report, the sum of case dispositions and pending cases. Data is sensitive to when the date each ad hoc report was extracted from V3 as case status can continually change. Another challenge was coordinating with the Planning and Research team to ask questions or request follow-up data because of other workload obligations and competing priorities.

Two annual mediation reports provided by the ADR Coordinator for the year 2011 (See Appendix G) were also reviewed for limited and unlimited jurisdiction case types. This report differs from the ad hoc report as it is based on filed documents instead of minute order entries pursuant to what transpired in court. The coordinator retrieves an ADR filings report from V3 and places the data into a separate database known as Access. The report allows the coordinator to track the number of stipulations to participate in court connected mediation that are filed each month, the outcome, and stage of settlement in a case. The corresponding data was not validated like the minute order based data.

Survey of Bench Officers

A survey entitled, "Perspectives on Mediation" was created through Survey Monkey, and sent to 30 civil bench officers by electronic mail. The purpose of the survey was to ascertain the bench officers' point of view regarding the overall mediation process, specifically their opinion on whether or not mediation is suitable for all or specific civil case types and whether mediation is a viable alternative to litigation to help balance heavy workloads.

The survey consisted of 14 questions drafted with assistance from the Planning and Research Department. The bench officers were given the opportunity to complete the survey anonymously or provide their name. Six of the 14 questions were in Yes or No format, with a comment field; six questions were presented in Likert-Type Scale format. The two remaining questions were open ended to allow for comments.

Before sending the survey to the entire civil panel, a sample survey was discussed with two bench officers, the Chief of Operations Officer, the Civil and Small Claims Unit Manager and

a Deputy Manager to gather feedback. The bench officers were given two weeks to complete the survey and or request a one-on-one meeting to review and answer the questions in person.

Both bench officers commented that they know most about the mediation program associated with their case type assignment. For example, one bench officer hears small claims cases only, so he was most familiar with services offered through DRPA. He was not familiar with the other programs in any great detail and indicated other bench officers may be in the same situation. He suggested posing questions as to each case type, which I incorporated into the survey. Both bench officers also encouraged elimination of ambiguities so that each bench officer interprets the question the same. The other bench officer I met with expressed he is supportive of mediation. However, he was of the opinion if a case was mediated too soon, mediation may not be fruitful. He indicated some discovery should be done in a case so parties have a grasp on the actual issues. He also shared with me his methods when holding settlement conferences, which is another method to resolve cases without litigation. He explains to the parties that they are placing their lives, so to speak, in the hands of non-interested third party, and the outcome is unknown, unlike mediation where the parties are in control. The parties are ultimately the decision makers. Meeting with these two bench officers prior to sending out the survey was beneficial as the setting was very informal so their responses were very candid and enlightening.

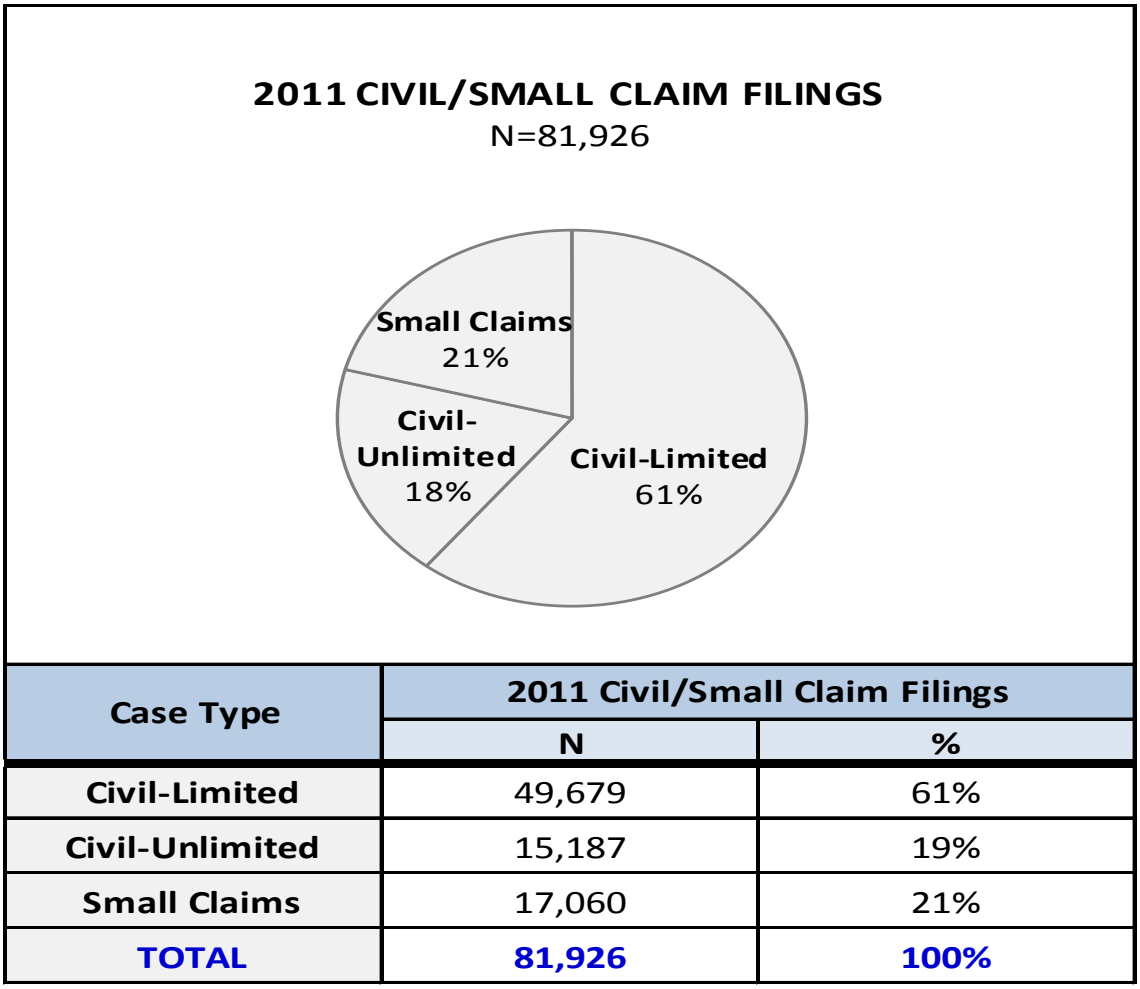
Finalizing the survey questions was challenging when it came time to consider the feedback received from those consulted during the drafting phase. Each person had valuable insight based on his or her own experiences and area of expertise. Multiple versions of the survey were vetted before it was finalized which delayed the process.

Once the time frame for completing the survey expired, the responses were transferred into an excel spreadsheet. Each question was assigned a rating method in order to measure the results, and each bench officer that responded was assigned a number.

Findings

Data Analysis

In 2011, according to the Calendar Year Filings Report drafted by OCSC's Planning and Research Department (See Appendix H), 81,926 civil and small claims cases were filed with the court. The mediation data report extracted from V3 and the Filings Report are both sensitive to the date the report was run. Although most civil cases do not go to trial, all cases filed must eventually have some type of disposition. The number of cases that did not participate in mediation includes cases that reached disposition either by dismissal or judgment. The data shows that most were by dismissal. Some cases in this category had at least one case management hearing prior to disposition. Most cases did not have any other type of hearing. Part of the criteria was to extract cases that reached disposition without any type of hearing outside of a case management conference. The data also includes cases that are coded with incorrect disposition codes. For example, there are cases coded reflecting a disposition was reached after a jury trial or some other hearing was held, "Dispo-After Jury Trial" or "Dispo – After hearing", when in fact no such hearing took place upon review of the case history in V3. These are clerical errors. The breakdown of filings by case type is reflected in Figure 1 below as follows:



Case Type	2011 Civil/Small Claim Filings	
	N	%
Civil-Limited	49,679	61%
Civil-Unlimited	15,187	19%
Small Claims	17,060	21%
TOTAL	**81,926**	**100%**

Figure 1

The number of cases referred to mediation is reflected below in Figure 2. A small number of these cases were filed and may have been referred to mediation in previous years and or mediation did not occur until 2011. This also means cases previously filed may have reached disposition during 2011 as well. Most of these cases participated in the free mediation service provided by the community programs as a result of DRPA.

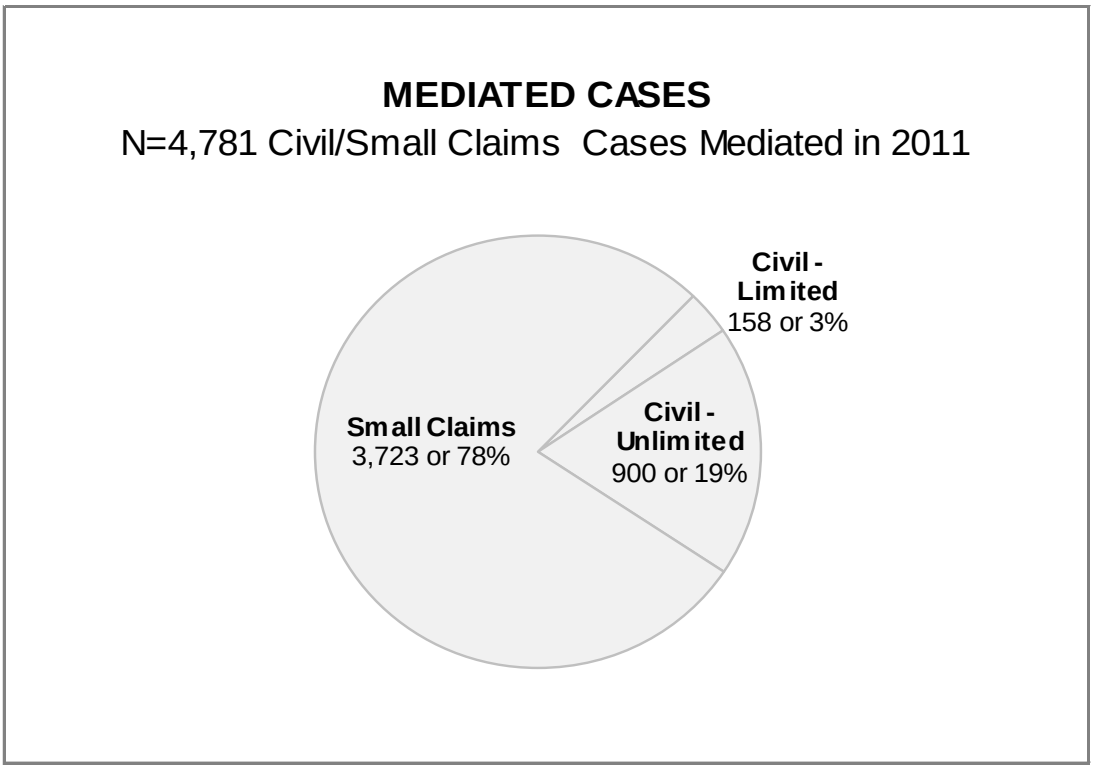


Figure 2

In addition to the cases reflected in Figure 2, according the ADR Mediation Referral report a stipulation to participate in court connected mediation was filed in an additional 51 limited and 397 unlimited cases. The report also indicates 39 cases were settled or dismissed prior to the mediation session. There was no determination made as to the number of cases that participated in private mediation.

Table 1 below reflects the number of cases that were successful or not successful in DRPA mediation by case type: Small Claims, Limited and Unlimited jurisdiction (includes civil harassment cases). The cases reported as *Other* represent cases with minute order errors, or cases with both mediation codes for successful or unsuccessful outcomes. Under the *Other* column, 463 of the cases reported are in unlimited jurisdiction case types. The cases with

minute order errors depict minutes coded incorrectly, not coded, or completed by text entries instead of using designated codes. The cases with both codes, mediation not successful and mediation successful, may represent cases that participated in mediation more than once where mediation was ultimately successful (these were mostly small claims cases) or cases that participated in mediation and parties did not reach an agreement until after judgment was entered. For example, at a post judgment hearing such as a debtor's exam where the prevailing party is trying to ascertain the assets of the debtor, parties agree to participate in mediation and are able to reach an agreement to satisfy the judgment (these were mainly small claims and limited jurisdiction cases).

The *Other* category has prevented an accurate count for the number of cases that were successful or not successful. As it stands, 63% of the cases that participated in mediation had successful outcomes. The majority, 2,571 cases, were in the area of small claims. In limited jurisdiction cases, 65 of the cases that were successful were residential unlawful detainer cases and 343 civil harassment cases, 99%, account for the success rate in unlimited jurisdiction.

When comparing the number of small claims cases reflected in the ad hoc report to the number of cases reported through DRPA statistics (report not included) as referred to mediation, there is a slight variance most likely caused by the cases that fall in the *Other* category. DRPA statistics for mediated small claims trials are obtained through V3; program mediators provide statistics for mediated harassment, other small claims hearings (i.e., motions, debtor exams, etc.), and any other case type.

MEDIATION OUTCOMES

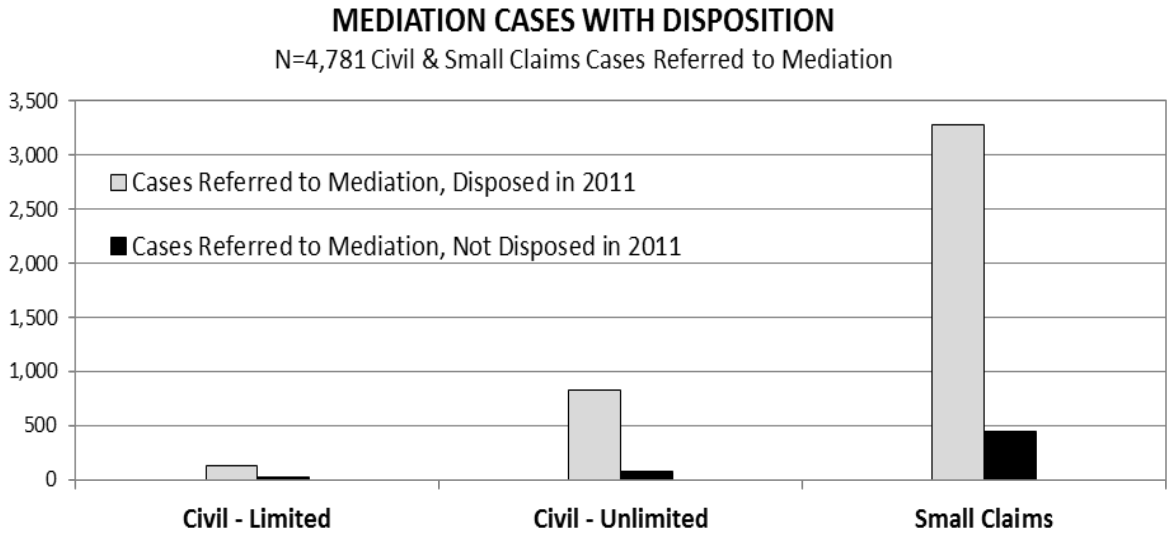
CASE TYPE	MEDIATION SUCCESSFUL/NOT SUCCESSFUL							
	Yes		No		Other		Total	
	N	%	N	%	N	%	N	%
Civil - Limited	101	64%	46	29%	11	7%	158	100%
Civil - Unlimited	344	38%	93	10%	463	51%	900	100%
Small Claims	2,571	69%	1,015	27%	137	4%	3,723	100%
TOTAL	3,016	63%	1,154	24%	611	13%	4,781	100%

Table 1

In Figure 3, the cases are once again broken down by case type to reflect the number of cases that participated in mediation and reached disposition. Overall, more small claims cases participated in mediation and 3,285 reached disposition. However, upon review of the 438 small claims cases that were not disposed, it was determined that mediation was successful in 408 cases as parties entered into conditional settlements which allows for settlement conditions to occur over a specific time period. If the terms of the settlement are upheld, the case will be dismissed or if there is a default in the terms, a judgment will be entered. Either event is considered a disposition. The other 30 cases in question remained pending at the time the data was extracted from V3.

The ADR report reflects that of the 478 cases where stipulations to mediate were filed, 57% of the cases were reported by the mediator(s) on the ADR Completion Report as full

settlements. In 39% of the cases, full settlements were reported and a Notice of Settlement or Dismissal was filed. Another 6% of the cases were reported as settlements or dismissed within 60 days of the mediation session. It can be argued that mediation helped the parties move in the direction of settlement or dismissal even if an agreement was not reached immediately. There is no indication of case age between time of referral and disposition in either of the ADR reports.



CASE TYPE	DISPOSED IN 2011		
	Yes	No	Total
Civil - Limited	133	25	158
Civil - Unlimited	824	76	900
Small Claims	3,285	438	3,723

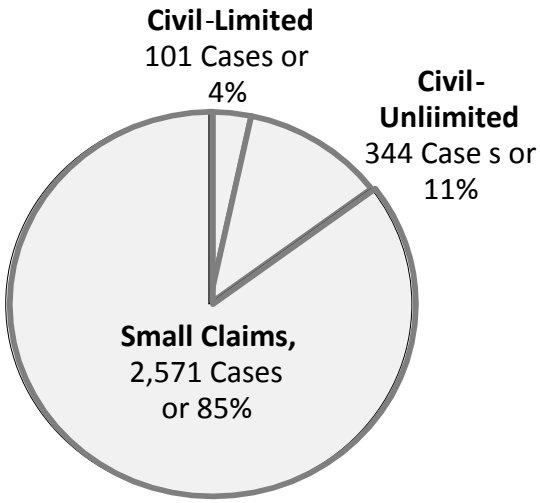
Figure 3

The data reflected in Figure 4 below is filtered to determine whether case category plays a role in the outcome of mediation. There are various case categories in limited and unlimited jurisdiction as indicated. There are also various types of small claims actions; however, for the purpose of this study the small claims cases were not filtered by category. The criteria used to extract data from V3 for small claims cases did not include a request for the claim type. Such a determination would require a manual review of small claims cases. Besides small claims cases, the data again reflects DRPA mediation is beneficial in the civil harassment category, which accounts for the main category of unlimited jurisdiction cases participating in mediation.

Approximately 5% of the 1,872 civil harassment cases filed in 2011 participated in mediation. In civil limited jurisdiction cases, the main category for successful outcomes is unlawful detainer actions. The majority of cases in both these categories are primarily litigated by self-represented parties and mediation is facilitated through DRPA. The service is conveniently available at the time of hearing and free, which can motivate parties to participate.

Also, the nature of the proceeding itself may play a part in the parties desire to mediate. Civil harassment and unlawful detainer cases tend to be charged by emotions and mediation can open a door for the parties to communicate. Some civil harassment cases can involve disputes between neighbors or between roommates where both sides may want to preserve their relationship and reach a fair compromise at the same time. Historically, these types of disagreements created the purpose for mediation, to preserve relationships. Unlawful detainer cases can also be quite stressful, especially in today's economy where people are doing their best to keep their homes. Participating in mediation may provide parties with alternatives. The ADR reports for court connected mediation are silent as to case category.

CASES REFERRED TO MEDIATION WITH SUCCESSFUL OUTCOMES



CIVIL - LIMITED
CASES REFERRED TO MEDIATION WITH SUCCESSFUL OUTCOMES
BREAKDOWN BY CASE CATEGORY

CASE DESCRIPTION	CASE TYPE
	Civil - Limited
UNLAWFUL DETAINER - RESIDENTIAL	65
PI/PD/WD - AUTO	15
RULE 3.740 COLLECTIONS	7
PI/PD/WD - OTHER	4
NON-PI/PD/WD tort - OTHER	3
UNLAWFUL DETAINER - COMMERCIAL	3
BREACH OF CONTRACT/WARRANTY	2
FRAUD	1
OTHER COLLECTIONS	1
TOTAL	101

Figure 4

Tables 2 and 3 below represent other case characteristics considered as well, representation and number of parties in each case. Parties are prohibited from having representation in small claims cases and parties are usually self-represented in civil harassment cases. In limited and unlimited jurisdiction cases, it appears there were 61 cases where the plaintiffs were represented by counsel and 52 cases where defendants had counsel. In 29 of these cases, both sides had representation and mediation was successful. The data reflects most of these represented cases fall under the personal injury category. There is a decrease in the number cases that were unsuccessful when either party was represented. It would seem representation may play a role in the outcome of mediation. The ADR mediation reports are silent as to this information depicted in Tables 2 through 6.

CASES REFERRED TO MEDIATION – SUCCESSFUL OUTCOMES
ATTORNEY REPRESENTATION
N=113 Total Number of Cases with Representation

CASE TYPE	CASES WITH ATTORNEYS		
	Plaintiff Cases	Defendant Cases	TOTAL
Civil - Limited	41	27	68
Civil - Unlimited	20	25	45
Small Claims	0	0	0
TOTAL	**61**	**52**	113

Table 2

CASES REFERRED TO MEDIATION – NOT SUCCESSFUL OUTCOMES
ATTORNEY REPRESENTATION
N=62 Total Number of Cases with Representation

CASE TYPE	CASES WITH ATTORNEYS		
	Plaintiff Cases	Defendant Cases	TOTAL
Civil - Limited	21	21	42
Civil - Unlimited	11	9	20
Small Claims	0	0	0
TOTAL	32	30	62

Table 3

Also evident in Tables 4 and 5 below, is that the majority of cases have only one plaintiff and one defendant regardless of the mediation outcome. However, in small claims cases there were cases with multiple plaintiffs and multiple defendants: 257 cases had at least two plaintiffs and 82 cases had three defendants. It appears the cases with more than two defendants may become difficult to resolve. In limited and unlimited jurisdiction cases the parties are equal on both sides which are consistent with harassment cases. The majority of harassment cases consist of one plaintiff and one defendant.

CASES REFERRED TO MEDIATION - SUCCESSFUL OUTCOMES
BREAKDOWN BY NUMBER OF PARTIES
N = 3,016 Civil and Small Claims Cases Referred to Mediation with Successful Outcomes

CASE TYPE	Number of Plaintiffs on a Case					Number of Defendants on a Case							
	1	2	3	4	TOTAL	1	2	3	4	5	6	8	TOTAL
Civil - Limited	93	8	0	0	101	57	40	4	0	0	0	0	101
Civil - Unlimited	339	4	0	1	344	339	4	1	0	0	0	0	344
Small Claims	2,302	257	8	4	2,571	1,880	581	82	19	5	1	3	2,571
TOTAL	2,734	269	8	5	3,016	2,276	625	87	19	5	1	3	3,016

Table 4

CASES REFERRED TO MEDIATION - NOT SUCCESSFUL OUTCOMES
BREAKDOWN BY NUMBER OF PARTIES
N = 1,154 Civil and Small Claims Cases Referred to Mediation-Not Successful Outcomes

CASE TYPE	Number of Plaintiffs on a Case							Number of Defendants on a Case					
	1	2	3	4	5	6	TOTAL	1	2	3	4	5	TOTAL
Civil - Limited	42	3	0	0	0	1	46	24	14	5	2	1	46
Civil - Unlimited	89	4	0	0	0	0	93	90	3	0	0	0	93
Small Claims	888	121	4	1	1	0	1,015	709	252	34	18	2	1,015
TOTAL	1,019	128	4	1	1	1	1,154	823	269	39	20	3	1,154

Table 5

Another factor considered in determining the effectiveness of mediation is case age at time of disposition which is arguably one of the most important factors. The objective of mediation is not only to provide litigants with an alternative to litigation, but to alleviate court caseloads, ultimately disposing of cases well before established civil disposition time standards. Table 6 below reflects the average case age for cases that did or did not reach disposition with or without mediation.

MEDIATION CASE – AVERAGE CASE AGE

CASE TYPE	AVERAGE CASE AGE (IN DAYS)						
	Disposed in 2011				Not Disposed in 2011		
	No Mediation	Mediation Successful	Mediation Not Successful	Other	Mediation Successful	Mediation Not Successful	Other
Civil - Limited	131	249	255	411	619	407	544
Civil - Unlimited	212	23	41	406	522	355	683
Small Claims	75	74	87	101	80	211	140

Table 6

The first column of Table 6 is represents the average case age in each case type of the 90% civil and small claims cases that reached some type of disposition without a hearing (possibly a case management hearing only) or mediation.

Small claims cases without mediation resolved comparably at the same rate as those that participated in mediation, within 74 – 100 days from date of initiation which is consistent with the first trial date setting. The cases where parties do not agree to mediation proceed to trial the same day as well. The data also indicates there were small claims cases where mediation was not successful and a disposition was not entered on average for 211 days. This exceeds the time standard for disposition for small claims cases. The 211 day average represents 23 cases; three of these cases did not reach disposition for 264 days, 638 days and 630 days respectively. When researched in V3, one case was appealed and in the two others, there was a trial de novo and an appeal in each which prolonged the disposition.

There were 344 unlimited jurisdiction cases that had successful outcomes and reached disposition on average within 23 days. This is consistent with the majority category of unlimited jurisdiction cases that participated in mediation which were civil harassment cases. Civil harassment cases must be heard within 21 -25 days from initiation. There was one civil harassment case that was not successful in mediation and did not reach disposition for 355 days according to the data. When reviewed in V3, the disposition code was not entered timely which is attributed to clerical error. In the limited jurisdiction case type, residential and commercial unlawful detainer cases (57) and personal injury cases (17) were the most successful in mediation and reached disposition on average within 249 days which is within the established time standards.

Survey Results

The sample sizes are small and may not reflect an accurate representation of entire civil panel of bench officers. The survey was sent to 30 judicial officers and nine responded; four bench officers completed the survey anonymously. The purpose of the survey was to gain the bench officers' perspective about mediation in general and whether they feel mediation is a viable alternative to litigation. The survey results are graphed by assigning a number to each bench officer to correspond with the rating established by the scale. Each assigned number is carried over by the same judicial officer to all survey questions analyzed.

Question 1: I actively encourage litigants to seek mediation.

One of the nine bench officers strongly disagreed; seven encourage the use of mediation while R7 may or may not promote mediation.

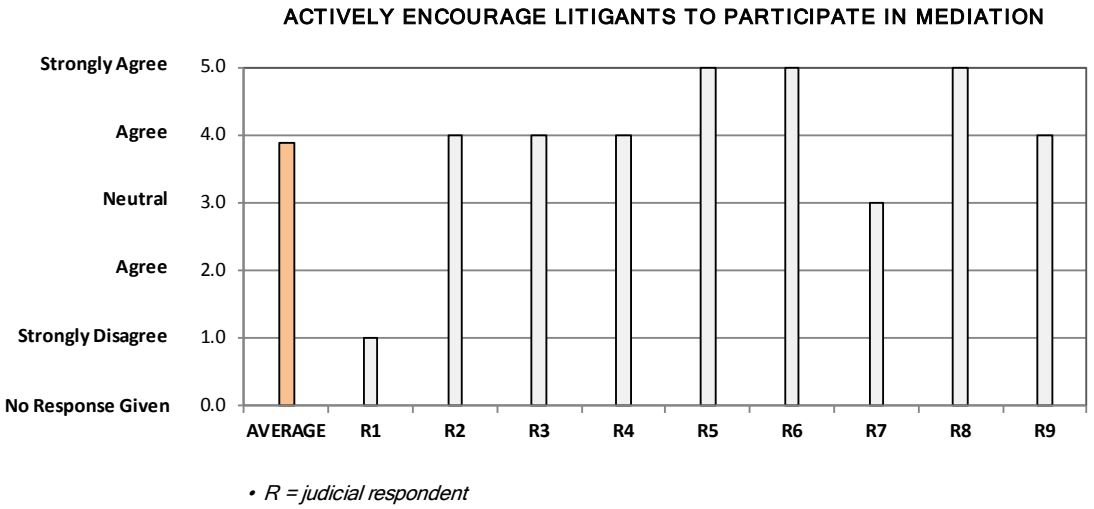


Figure 5

Question 2: Mediation is used often enough today to help resolve cases.

Again, the same bench officer, R1, strongly disagreed which could indicate a number of things. For example, he/she may not be familiar with the mediation programs offered, perhaps another form of ADR is more beneficial or he/she thinks litigation is the preferred method to resolve cases. The others indicate mediation is used often enough. However, while R2, R4 and R6 strongly agree that mediation is used often enough, they did not strongly agree that they actively encourage participation as indicated in Question 2. R7 and R9 are neutral which could mean they are only familiar with the use of mediation in the case type they adjudicate.

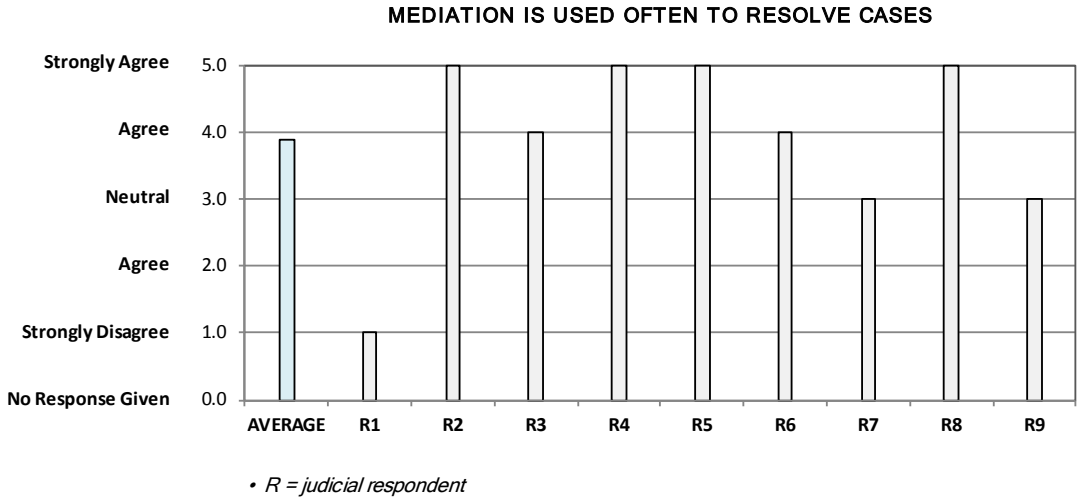
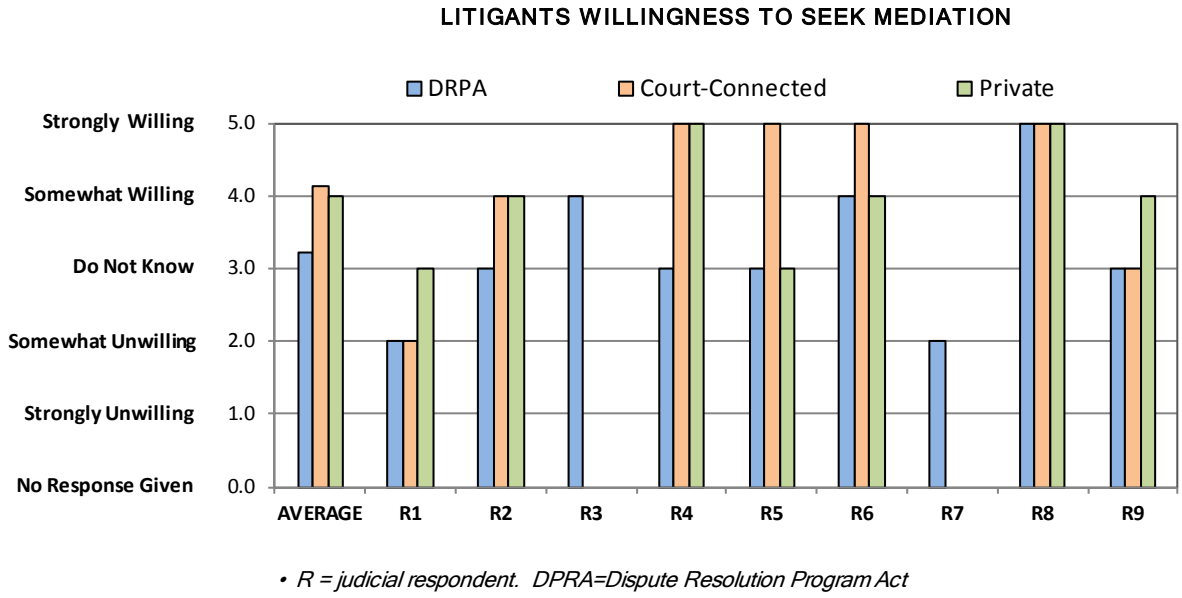


Figure 6

Question 3: Based on your experience, how willing are litigants to seek mediation?

Figure 7 below suggests R4, R5, R5, and R8 indicate litigants are most willing to seek court-connected mediation and two, R4 and R8, indicate private mediation attracts the most

willing litigants. Surprisingly, in the case type with the highest success rate, small claims cases, only one bench officer indicates litigants are the most willing to participate in mediation.

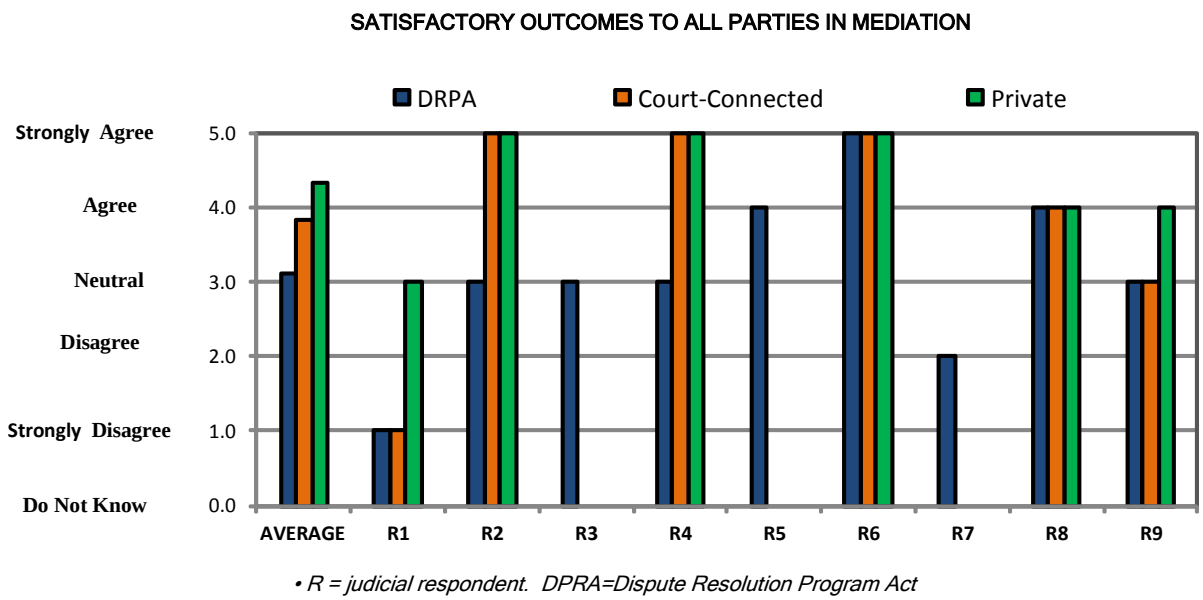


• *R = judicial respondent. DPRA=Dispute Resolution Program Act*

Figure 7

Question 4: Outcomes are usually satisfactory to all parties when mediation is used.

The majority of the bench officers indicate parties are satisfied with mediation outcomes. R1 strongly disagrees in the area of DRPA and court connected mediation.



• R = judicial respondent. DPRA=Dispute Resolution Program Act

Figure 8

Question 5: Based on your experience, do you find the cost of Court-Connected and/or private mediation is a deterrent to litigants?

This Question was posed to solicit a "Yes" or "No" answer and also had a comment field. Seven of the bench officers feel cost is not a deterrent and did not add any comments. R9 marked "Yes"; however, responded, "No" in regards to court connected mediation and "Sometimes" pertaining to private mediation in the comment field.

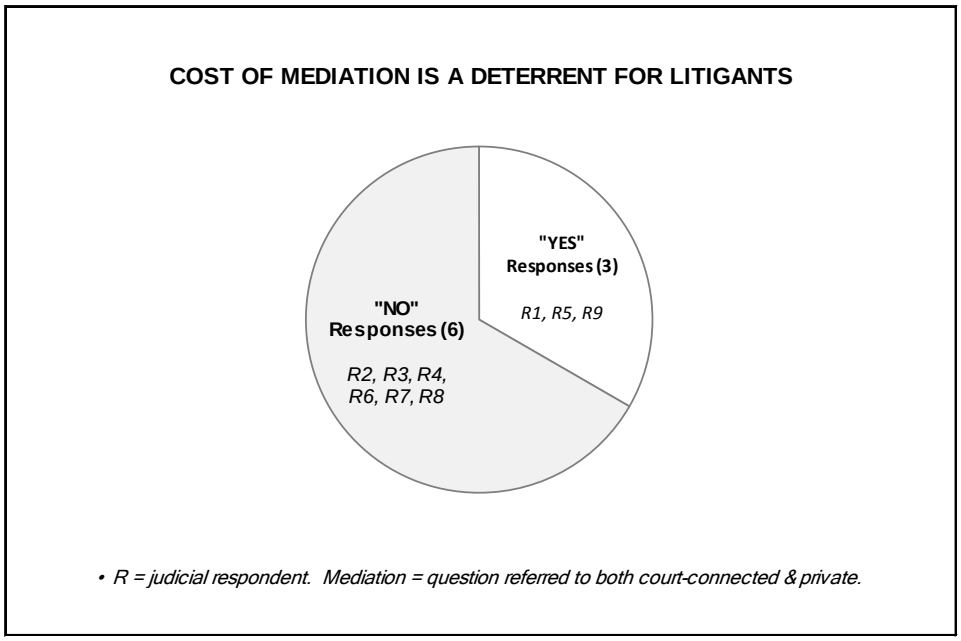


Figure 9

Question 6: In your opinion, is there a type of civil case (e.g., small claims, unlawful detainer, breach of contract, personal injury, etc.) that would most likely reach a satisfactory settlement if mediation was required?

Questions number six and seven were posed as Yes or No questions and included a comment area as well. Seven out of nine bench officers answered Yes to question number six, and the same seven shared their opinion about what case type most likely settle would if mediation were mandatory. The opinions varied from a very general statement, “most cases would settle”, to identifying very specific case types such as: personal injury, medical mal-practice, breach of contract, small claims (identified by two bench officers), business suits and unlawful detainer cases. R6 indicated some case types are extremely difficult to settle and require more time and a mediator with exceptional skills. The two bench officers, R2 and R3

that answered “No” did not add any comments; they may think any type of case can reach a satisfactory settlement through mediation.

Question 7: Other than the specific case types mentioned in question #6 above, have you noticed any characteristics of case that would make them more likely to settle through mediation (e.g., litigant’s past experience with the court, number of parties involved in a case, representation status of litigants, nature of the dispute, or case age)?

Five bench officers answered “No” to this question and did not add any comments. The four that answered “Yes” included comments such as: representation may play a part; cases are more difficult to settle when attorneys are involved on both sides; cases with seasoned attorneys; cases with firm trial dates. R9 commented the cost of litigation drives a case to settle and further stated he or she has seen litigation exceed the amount in controversy.

Question 8: If it was demonstrated that a majority of cases in a particular case type settles through mediation, would you see a benefit in making mediation mandatory?

Seven of the bench officers answered yes. However, one bench officer that answered yes commented that the question did not ask to balance ‘pros’ and ‘cons’ in regards to the benefits of making mediation mandatory in cases that would most likely settle. Other judicial officers, attorneys and litigants may think the same thing. This may be a key point when providing litigants with information about the mediation process.

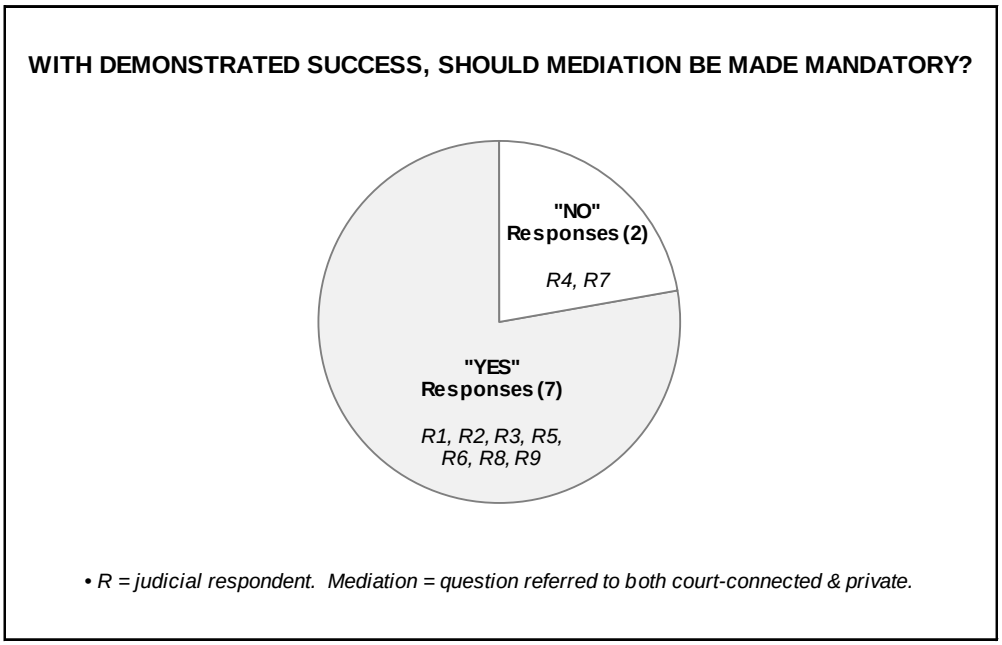


Figure 10

Question 9: How often do you suggest mediation in cases with attorneys?

Five bench officers responded that they suggest mediation in cases when attorneys are involved; three do so in every case. One bench officer indicated that he or she never suggests mediation to attorney cases. This could be because this bench officer handles cases where there is never attorney involvement, such as in small claims cases or he or she may think it is up to the attorney(s) to decide what path the case should take to reach a successful outcome. This question did not allow for comments.

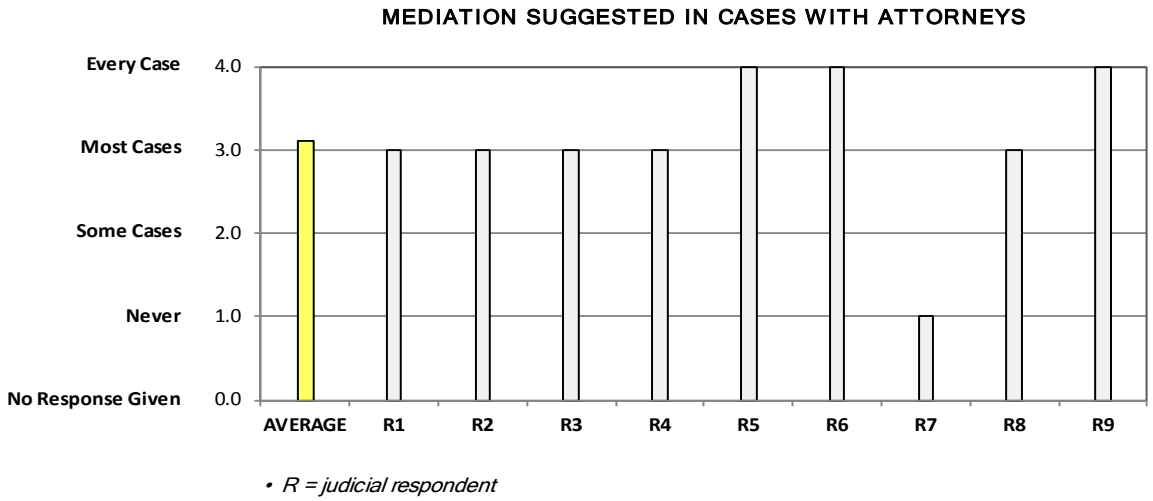


Figure 11

Question 10: How often does your courtroom provide information about mediation?

Four bench officers indicated their courtroom provides mediation information in every case. Although R1 is part of this group whose courtroom provides information in every case, in Question One, he or she strongly disagreed to actively encouraging mediation. The responses could also mean ADR packets may be visible in the courtroom or handed out by courtroom staff with or without direction from the bench officer. Three bench officers answered "Most Cases"; one answered "Some Cases" and again, only one judicial officer responded "Never". In Question One, this judicial officer strongly agreed he or she actively encourages mediation participation; perhaps only in cases where he or she thinks mediation is a viable alternative.

Question 11: Do you see mediation as a cost savings compared to the cost of trial?

This was a “Yes” or “No” question with a comment field. Eight of the bench officers answered in the affirmative; one commented there is a cost savings if the case settles.

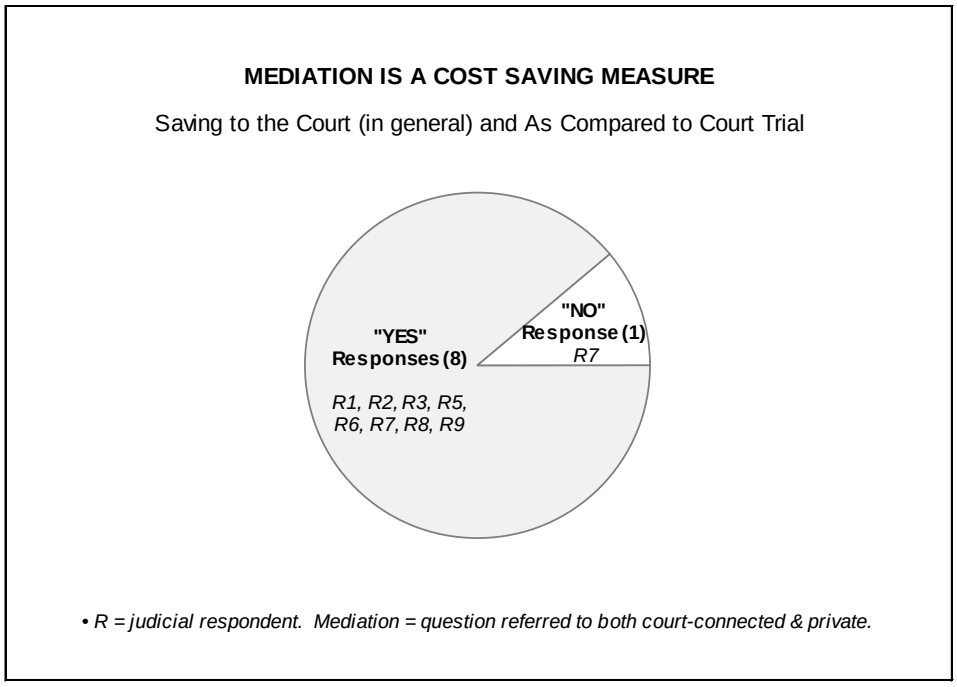


Figure 12

Question 12: Do you see mediation as a cost savings to the court?

This was also a “Yes” or “No” question and the responses were the same as indicated in Question 11, eight of the bench officers answered “Yes”; and the same comment, “only if the case settles” was made by the same judicial officer, R9. The same judicial officer, R7, also answered “No”.

Question 13: What type of feedback if any, do you receive from litigants, attorneys, or mediators about the mediation process (e.g., information provided, mediator selection, quality and or availability, cost, etc.)?

This question provided the opportunity for open ended responses. Eight of the judicial officers provided comments. Four of them indicated feedback is rare, or very little to none is received. Two of the bench officers indicated feedback is usually along the lines of litigants and attorneys expressing their satisfaction with the service, advising the court the case settled, or the mediator did a good job. One comment reflected attorneys want mediation when they are not prepared to try their case within established time standards.

Question 14: Please provide any other comments or feedback related to mediation.

This was the last question in the survey to allow the bench officers to provide additional feedback on the topic. Two comments were received, both which are worth quoting: "The legal process has forgotten that the purpose of litigation is to provide the parties a fair (civil, not violent) and efficient process to resolve their disputes. Mediation is fairer, more efficient and more civil than traditional litigation" and "For mediation to have the highest chance for success, the parties must do sufficient discovery beforehand to know their case, and the mediation should be held early enough that the cost of proceeding toward trial is an incentive to settle." Both lend to supporting mediation as a viable alternative to traditional litigation.

Conclusions and Recommendations

Overall, the data extracted from the case management system is the most telling when determining if a specific case type or whether specific case characteristics play a role in reaching a successful outcome through mediation. The data supports finding that small claims cases and unlimited jurisdiction civil harassment cases will most likely benefit from mediation. In both small claims and civil harassment cases, the majority of the litigants are self-represented. The fact the parties in these types of cases are made aware of mediation at the time of their first hearing and that the services are free is most likely the reason for the success rate compared to limited and unlimited jurisdiction cases where litigants must rely on their own devices to obtain mediation information either through the court's website, the ADR handout, or their attorney, all which may happen when their case is well under way. The data also indicates representation may influence the outcome of mediation as limited and unlimited jurisdiction cases where parties had representation had successful outcomes compared to the number of cases that were not successful.

According to the survey results of the nine civil and small claims bench officers that responded, the majority believe mediation is beneficial. The bench officers expressed different reasons why they feel mediation is beneficial which supports the different advantages gained through participating in mediation.

Considering the diminished resources for the courts, at the state level and locally, and as OCSC continues to evaluate critical operations – what must go on - perhaps this is the perfect opportunity to promote alternatives to traditional litigation by taking a proactive and aggressive

approach to inform court users about the many benefits and advantages of the mediation programs.

Conclusion #1

The data extracted from the case management system reflects small claims cases have the most successful outcomes in mediation. Because of the nature of the proceedings and the fact that mediation services are free of charge most likely contribute to the high success rate. Although the court will provide ADR information if asked for, it is unknown whether small claims litigants are aware of the opportunity until the day of their first hearing. The majority of small claims cases are resolved within established time standards with or without mediation. However, if mediation were not offered in small claims cases, the calendars would become quite congested, and or continuance rates may rise as the assigned bench officers would be forced to hear all cases scheduled on any given day.

Recommendation #1

1A) Implement mandatory mediation in small claims cases. In lieu of scheduling a trial date at the time of case initiation, schedule the parties for a mediation appointment. If mediation is successful, parties can leave the court with a signed stipulated judgment by the judicial officer assigned to the small claims calendar. If mediation is not successful, the case will be scheduled for trial through OCSC's online reservation system; or

1B) At the time of case initiation, schedule the trial date within the 70 day time requirement, and a mediation appointment prior to the trial date. Again, if mediation is

successful, parties will leave the court with a signed stipulated judgment by the judicial officer assigned to the small claims calendar. If mediation is not successful, the trial date will remain.

Based on the high success rate for small claims cases that are disposed of as a result of mediation, requiring mandatory mediation may alleviate heavy calendars and eliminate work performed by court staff, such as scheduling, calendar preparation, and after court tasks.

Conclusion #2

There's an indication civil harassment cases may also benefit from mediation. Civil harassment cases, like small claims cases, are litigated by self-represented parties in most instances. The nature of civil harassment cases vary, many involve family members, neighbors, roommates or business partners. In these types of cases, the parties may just need an opportunity to be heard. Participating in mediation will provide this opportunity and give the parties a chance to reach an agreement and preserve relationships which is historically the basis for mediation. Other harassment cases can be much more serious where there's a greater threat of violence such as stalking, work place violence or bullying allegations where mediation is not an option.

Recommendation #2

This recommendation is similar to Option 1B above. The civil harassment cases usually follow a two-step process. A case is initiated, a brief ex parte hearing is held in order for the court to decide whether temporary protective orders will be granted pending a hearing which

must be set between 21 – 25 days for determination of issuing permanent protective orders. The bench officer will determine whether mediation is appropriate based on the issues, and schedule a mediation appointment prior to the hearing date. If mediation is successful, parties will leave the court with a signed stipulated order or possibly a dismissal order. If mediation is not successful, any temporary orders will remain in effect until the parties appear for hearing.

The above options will require development of a local court rule requiring mandatory mediation prior to trial and or hearing; coordination with CSP - DRPA mediators as their workload will increase or in the alternative, expand the court-connected mediation or temporary judge programs to provide participants volunteer opportunities in a mediator capacity. Another alternative is to partner with local colleges to create a volunteer intern program in the mediation field. There are several different types of mandatory programs to model.

In the District of Columbia, Multi-door Courthouse, there are three types of mandatory programs that are authorized by court rules and court orders, no statutory authority. Previous voluntary arbitration options were underutilized. Parties are required to complete an evaluation form which is evaluated to determine which program the case will proceed under (Brazil, 1991). In Florida state courts, court –directed mediation and arbitration are authorized by statute, and the trial judge has the discretion to refer a case to ADR. Mediation has been very successful (Brazil, 1991). In the Eastern District of Michigan, there is the Wayne County Mediation Program. Founded in 1971, and is overseen by an independent non-profit group, the Mediation Tribunal Association (MTA). The program is governed by statewide court rules and by local rule in federal court. Mandatory participation was unsuccessfully challenged in federal court on Constitutional grounds. There are no jurisdictional limits and the litigants have the right to a trial

de novo. Mediation is reported as successful (Brazil, 1991). The important factor is to form a program that will allow OCSC to utilize its resources efficiently; implement tools to measure the success of the program(s); allow for flexibility, judicial discretion and 'opt-out' criteria; and most importantly, remain focused on public service and administering justice in a fair and effective manner.

Conclusion No. 3

In order to evaluate and measure the success of the mediation programs offered by OCSC, a greater emphasis must be placed on the data and statistics currently captured for the programs. The data retrieved for this study was obtained by special request through the analysts that are part of the Planning and Research Department for the court by providing specific criteria and parameters for the data extraction from V3. The criteria used are not gathered routinely for reporting court connected and or DRPA mediation statistics. These reports provide a general overview of the number of cases that are referred and respective outcomes, but do not take into account case age, representation or other case characteristics that may be helpful towards defining and sustaining successful programs and to ensure effective case management.

Another issue involves the large number of cases under the *Other* category (Table 1) in the Ad Hoc report where the outcome of mediation could not be determined without significant manual research. The data must be accessible on the front end without special requests or criteria and it must be reliable in order to make informed evidence based decisions surrounding

the program. Reliable data will also ensure OCSC is maintaining the trust and confidence of court constituents.

Recommendation No. 3

Develop meaningful reports directly from the case management system that will automatically capture cases at the time of referral through completion without the necessity of any ad hoc reports or transfer of information to a secondary data base. This will require collaboration between the bench officers, mediators, court leaders, and the ADR Coordinator to determine what type of information is needed to ensure the programs are operating at their full potential. Reports will also prove useful in the area of case management. The objective of case management is to ensure cases are resolved within the established time standards. The data analyzed to determine whether the cases mediated are meeting the prescribed standards compared to cases that follow the traditional path of litigation indicate established guidelines are being met in the majority of small claims cases and in the harassment category of cases. This information was not available in the reports for court connected mediation. Knowing the stage in a case when mediation referrals are most successful and the case age at time of disposition in mediated cases within each case type and category may be useful when determining when to refer a case to mediation.

The study of the Early Mediation Pilot Programs in the five California courts suggests court workloads were reduced by early mediation allowing bench officers to focus on cases that required their attention (Anderson & Pi, 2004). By analyzing our workload more closely to

determine which cases will most likely benefit from mediation and providing that opportunity may create the same workload savings for OCSC.

In addition to reporting, court staff must have a thorough understanding of OCSC's vision of providing alternatives to traditional litigation to its constituents. This can be accomplished by providing specific training on the various ADR programs, minutes and data entry. Providing additional training will establish accountability and enable staff to share their knowledge about ADR with court users. As indicated by the research, litigant satisfaction often relies on the program structure. OCSC already has a solid foundation to build upon.

Conclusion No. 4

The number of the civil and small claims bench officers that responded to the survey is a small sample and may not be an inclusive representation of the view of the entire bench; however, the majority of the answers were positive and supportive of mediation. Some of the answers may be attributed to the particular case type the bench officer handles. For example, one bench officer answered he or she never offers mediation to attorneys; perhaps this bench officer hears small claims cases where there is no attorney involvement. Also, the answers show support to make mediation mandatory for case types most likely to settle an option to consider. In order to promote a culture of acceptance of ADR alternatives in lieu of traditional litigation, an in depth inquiry may be useful to determine what the actual level of interest and support is from the OCSC bench officers and leaders, before utilizing resources to improve or expand the various programs.

Marketing is another factor to consider especially in light of mandatory eFiling where parties and attorneys are left to their own devices to obtain information about the mediation programs offered by OCSC. At case initiation through eFiling, the plaintiff is required to go to the court's website, print and serve the ADR packet on the defendant. There's no guarantee this occurs. This may account for low participation in limited and unlimited jurisdiction case types. Upon visiting the court's web page, ADR information is not readily available from the home page. It took several attempts before finding where the ADR information was located. A person unfamiliar with the website and new to the court system will probably experience a greater level of frustration.

Recommendation No. 4

OCSC should take a proactive approach in promoting ADR by providing information to court users, including small claims litigants, at the time of case initiation, instead of defaulting to the section of the Rule of Court that permits ADR information to be provided through the court's website. Providing information and assistance at the front end will also assist litigants navigate through the court system.

OCSC should create a marketing plan to inform the community, court users, paralegal and local bar associations of the many advantages of participating in mediation. Educating attorneys and gaining their buy-in will help create a climate of acceptance of the ADR alternatives offered by OCSC.

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Appendix A: Mission and Vision Statement

Superior Court of California for the County of Orange

Mission

Serve the public by administering justice and resolving disputes under the law, thereby protecting the rights and liberties guaranteed by the Constitutions of California and of the United States.

Vision Statement

The Superior Court of Orange County will provide the highest quality of justice and court system services to the community by:

- Being accessible, convenient, and understandable
- Providing a variety of appropriate and effective dispute resolution forums
- Maintaining a professional, appropriate environment where skilled judges and court staff treat all people equally and respectfully
- Using advanced technology to support the Court and serve the public
- Actively educating the public about the appropriate role and functions of courts and the services provided
- Expanding partnerships between the justice system and community including legal, business, law enforcement, and other entities to advance justice and promote the welfare of all people
- Responding to the needs and being representative of Orange County's diverse community

Appendix B: Excerpts from California Rules of Court 2.810 – 2.813

2013 California Rules of Court

Rule 2.810. Temporary judges appointed by the trial courts

(a) Scope of rule

Rules 2.810-2.819 apply to attorneys who serve as court-appointed temporary judges in the trial courts. The rules do not apply to subordinate judicial officers or to attorneys designated by the courts to serve as temporary judges at the parties' request.

(b) Definition of "court-appointed temporary judge"

A "court-appointed temporary judge" means an attorney who has satisfied the requirements for appointment under rule 2.812 and has been appointed by the court to serve as a temporary judge in that court.

(c) Appointment of attorneys as temporary judges

Trial courts may appoint an attorney as a temporary judge only if the attorney has satisfied the requirements of rule 2.812.

Rule 2.811. Court appointment of temporary judges

(a) Purpose of court appointment

The purpose of court appointment of attorneys as temporary judges is to assist the public by providing the court with a panel of trained, qualified, and experienced attorneys who may serve as temporary judges at the discretion of the court if the court needs judicial assistance that it cannot provide using its full-time judicial officers.

Rule 2.812. Requirements for court appointment of an attorney to serve as a temporary judge

(a) Experience required for appointment and service

The presiding judge may not appoint an attorney to serve as a temporary judge unless the attorney has been admitted to practice as a member of the State Bar of California for at least 10 years before the appointment. However, for good cause, the presiding judge may permit an attorney who has been admitted to practice for at least 5 years to serve as a temporary judge.

(b) Conditions for appointment by the court

The presiding judge may appoint an attorney to serve as a temporary judge only if the attorney:

(1) Is a member in good standing of the State Bar and has no disciplinary action pending;

(2) Has not pled guilty or no contest to a felony, or has not been convicted of a felony that has not been reversed;

(3) Has satisfied the education and training requirements in (c);

(4) Has satisfied all other general conditions that the court may establish for appointment of an attorney as a temporary judge in that court; and

(5) Has satisfied any additional conditions that the court may require for an attorney to be appointed as a temporary judge for a particular assignment or type of case in that court.

(c) Education and training requirements

The presiding judge may appoint an attorney to serve as a temporary judge only if the following minimum training requirements are satisfied:

(1) *Mandatory training on bench conduct and demeanor*

Before appointment, the attorney must have attended and successfully completed, within the previous three years, a course of at least 3 hours' duration on the subjects identified in rule 2.813(a) approved by the court in which the attorney will serve. This course must be taken in person and be taught by a qualified judicial officer.

(2) *Mandatory training in ethics*

Before appointment, the attorney must have attended and successfully completed, within the previous three years, a course of at least 3 hours' duration on the subjects identified in rule 2.813(b) approved by the court in which the attorney will serve. This course may be taken by any means approved by the court, including in-person, by broadcast with participation, or online.

(3) *Substantive training*

Before appointment, the attorney must have attended and successfully completed, within the previous three years, a course on the substantive law in each subject area in which the attorney will serve as a temporary judge. These courses may be taken by any means approved by the court, including in-person, by broadcast with participation, or online. The substantive courses have the following minimum requirements:

(A) *Small claims*

An attorney serving as a temporary judge in small claims cases must have attended and successfully completed, within the previous three years, a course of at least 3 hours' duration on the subjects identified in rule 2.813(c) approved by the court in which the attorney will serve.

(C) *Other subject areas*

If the court assigns attorneys to serve as temporary judges in other substantive areas such as civil law, family law, juvenile law, unlawful detainers, or case management, the court must determine what additional training is required and what additional courses are required before an attorney may serve as a temporary judge in each of those subject areas. The training required in each area must be of at least 3 hours' duration. The court may also require that an attorney possess additional years of practical experience in each substantive area before being assigned to serve as a temporary judge in that subject area.

(D) *Settlement*

An attorney need not be a temporary judge to assist the court in settlement conferences. However, an attorney assisting the court with settlement conferences who performs any judicial function, such as entering a settlement on the record under Code of Civil Procedure section 664.6, must be a qualified temporary judge who has satisfied the training requirements under (c)(1) and (c)(2) of this rule.

(E) The substantive training requirements in (3)(A)-(C) do not apply to courts in which temporary judges are used fewer than 10 times altogether in a calendar year.

Rule 2.813. Contents of training programs

(a) Bench conduct

Before the court may appoint an attorney to serve as a temporary judge in any type of case, the attorney must have received training under rule 2.812(c) (1) in the following subjects:

(1) Bench conduct, demeanor, and decorum;

(2) Access, fairness, and elimination of bias; and

(3) Adjudicating cases involving self-represented parties.

(b) Ethics

Before the court may appoint an attorney to serve as a temporary judge in any type of case, the attorney must have received ethics training under rule 2.812(c) (2) in the following subjects:

(1) Judicial ethics generally;

(2) Conflicts;

(3) Disclosures, disqualifications, and limitations on appearances; and

(4) Ex parte communications.

(c) Small claims

Before the court may appoint an attorney to serve as a temporary judge in small claims cases, the attorney must have received training under rule 2.812(c) (3) (A) in the following subjects:

(1) Small claims procedures and practices;

(2) Consumer sales;

(3) Vehicular sales, leasing, and repairs;

(4) Credit and financing transactions;

(5) Professional and occupational licensing;

(6) Tenant rent deposit law;

(7) Contract, warranty, tort, and negotiable instruments law; and

(8) Other subjects deemed appropriate by the presiding judge based on local needs and conditions.

In addition, an attorney serving as a temporary judge in small claims cases must be familiar with the publications identified in Code of Civil Procedure section 116.930.

Appendix C: Excerpts from the Standards for Judicial Administration

Standards for Judicial Administration

Title 1. Standards for All Courts [Reserved]

Title 2. Standards for Proceedings in the Trial Courts

Standard 2.1. Case management and delay reduction-statement of general principles

(a) Elimination of all unnecessary delays

Trial courts should be guided by the general principle that from the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery, preparation, and court events is unacceptable and should be eliminated.

(b) Court responsible for the pace of litigation

To enable the just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.

(c) Presiding judge's role

The presiding judge of each court should take an active role in advancing the goals of delay reduction and in formulating and implementing local rules and procedures to accomplish the following:

(I) The expeditious and timely resolution of cases, after full and careful consideration consistent with the ends of justice;

(2) The identification and elimination of local rules, forms, practices, and procedures that are obstacles to delay reduction, are inconsistent with

statewide case management rules, or prevent the court from effectively managing its cases;

(3) The formulation and implementation of a system of tracking cases from filing to disposition; and

(4) The training of judges and nonjudicial administrative personnel in delay reduction rules and procedures adopted in the local jurisdiction.

Standard 2.2. Trial court case disposition time goals

(a) Trial Court Delay Reduction Act

The recommended goals for case disposition time in the trial courts in this standard are adopted under Government Code sections 68603 and 68620.

(b) Statement of purpose

The recommended time goals are intended to guide the trial courts in applying the policies and principles of standard 2.1. They are administrative, justice-oriented guidelines to be used in the management of the courts. They are intended to improve the administration of justice by encouraging prompt disposition of all matters coming before the courts. The goals apply to all cases filed and are not meant to create deadlines for individual cases. Through its case management practices, a court may achieve or exceed the goals stated in this standard for the overall disposition of cases. The goals should be applied in a fair, practical, and flexible manner. They are not to be used as the basis for sanctions against any court or judge.

(c) Definition

The definition of "general civil case" in rule 1.6 applies to this section. It includes both unlimited and limited civil cases.

(d) Civil cases-processing time goals

The goal of each trial court should be to process general civil cases so that all cases are disposed of within two years of filing.

(e) Civil cases-rate of disposition

Each trial court should dispose of at least as many civil cases as are filed each year and, if necessary to meet the case-processing goal in (d), dispose of more cases

than are filed. As the court disposes of inactive cases, it should identify active cases that may require judicial attention.

(I) General civil cases-case disposition time goals

The goal of each trial court should be to manage general civil cases, except those exempt under (g), so that they meet the following case disposition time goals:

(1) *Unlimited civil cases;*

The goal of each trial court should be to manage unlimited civil cases from filing so that:

(A) 75 percent are disposed of within 12 months;

(B) 85 percent are disposed of within 18 months; and

(C) 100 percent are disposed of within 24 months.

(2) *Limited civil cases:*

The goal of each trial court should be to manage limited civil cases from filing so that:

(A) 90 percent are disposed of within 12 months;

(B) 98 percent are disposed of within 18 months; and

(C) 100 percent are disposed of within 24 months.

(3) *Individualized case management*

The goals in (1) and (2) are guidelines for the court's disposition of all unlimited and limited civil cases filed in that court. In managing individual civil cases, the court must consider each case on its merits. To enable the fair and efficient resolution of civil cases, each case should be set for trial as soon as appropriate for that individual case consistent with rule 3.729.

(g) Exceptional civil cases

A general civil case that meets the criteria in rules 3.715 and 3.400 and that involves exceptional circumstances or will require continuing review is exempt from the time goals in (d) and (f). Every exceptional case should be monitored to ensure its timely disposition consistent with the exceptional circumstances, with the goal of disposing of the case within three years.

(h) Small claims cases

The goals for small claims cases are:

(1) 90 percent disposed of within 75 days after filing; and

(2) 100 percent disposed of within 95 days after filing.

(i) Unlawful detainer cases

The goals for unlawful detainer cases are:

(1) 90 percent disposed of within 30 days after filing; and

(2) 100 percent disposed of within 45 days after filing.

(n) Cases removed from court's control excluded from computation of time

If a case is removed from the court's control, the period of time until the case is restored to court control should be excluded from the case disposition time goals. The matters that remove a case from the court's control for the purposes of this section include:

(1) Civil cases:

(A) The filing of a notice of conditional settlement under rule 3.1385;

(B) An automatic stay resulting from the filing of an action in a federal bankruptcy court;

(C) The removal of the case to federal court;

(D) An order of a federal court or higher state court staying the case;

(E) An order staying the case based on proceedings in a court of equal standing in another jurisdiction;

(F) The pendency of contractual arbitration under Code of Civil Procedure section 1281.4;

(G) The pendency of attorney fee arbitration under Business and Professions Code section 6201;

(H) A stay by the reporting court for active military duty or incarceration; and

(I) For 180 days, the exemption for uninsured motorist cases under rule 3.712(b).

(o) Problems

A court that finds its ability to comply with these goals impeded by a rule of court or statute should notify the Judicial Council.

Appendix D: California Rule of Court 3.221

2013 California Rules of Court
Title 3: Civil Rules
Division 3: Filing and Service
Chapter 3. Papers to Be Served

Rule 3.221. Information about alternative dispute resolution

(a) Court to provide information package

Each court must make available to the plaintiff, at the time the complaint is filed in all general civil cases, an alternative dispute resolution (ADR) information package that includes, at a minimum, all of the following:

(1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes. The Administrative Office of the Courts has prepared model language that the courts may use to provide this information.

(2) Information about the ADR programs available in that court, including citations to any applicable local court rules and directions for contacting any court staff responsible for providing parties with assistance regarding ADR. .

(3) In counties that are participating in the Dispute Resolution Programs Act (DRPA), information about the availability of local dispute resolution programs funded under the DRPA. This information may take the form of a list of the applicable programs or directions for contacting the county's DRPA coordinator.

(4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.

(b) Court may make package available on Web site

A court may make the ADR information package available on its Web site as long

as paper copies are also made available in the clerk's office.

(c) Plaintiff to serve information package

In all general civil cases, the plaintiff must serve a copy of the ADR information package on each defendant together with the complaint. Cross-complainants must serve a copy of the ADR information package on any new parties to the action together with the cross-complaint.

Appendix E: Excerpts from the California Dispute Resolution Program Act 19

California Dispute Resolution Programs Act: Regulations

Issued by:
CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS
Dispute Resolution Office
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DISPUTE RESOLUTION PROGRAMS ACT - REGULATIONS
TITLE 16, DIVISION 36. DISPUTE RESOLUTION ADVISORY COUNCIL
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DISPUTE RESOLUTION PROGRAMS ACT - REGULATIONS
TITLE 16, DIVISION 36. DISPUTE RESOLUTION ADVISORY COUNCIL
ARTICLE 1. GENERAL PROVISIONS
Section 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.

Section 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.

Section 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.

ARTICLE 2. GENERAL ELIGIBILITY AND APPLICATION REQUIREMENTS

Section 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.

(b) Primary Purpose.

To satisfy the primary purpose requirement of section 407.2(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.

ARTICLE 3. GRANTEE OPERATIONS, TRAINING AND SERVICE STANDARDS

Section 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.

Section 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.

Section 3620. Services by Neutral Persons

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

(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.

Section 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.

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.

Section 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.

Section 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.

Section 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.

Appendix F: Excerpts from California Rules of Court 3.835 – 3.898 And OCSC Local Rule 360

2013 California Rules of Court
Title 3: Civil Rules
Division 8: Alternative Dispute Resolution
Chapter 3: General Rules Relating to Mediation of Civil Cases

Rule 3.835. Application

The rules in this article apply to all court mediation programs for general civil cases, as defined in rule 1.6, unless otherwise specified.

Rule 3.845. Form of mediator statements and reports

If a mediator is required to submit a statement or report to the court concerning the status or result of the mediation, the statement or report must be submitted on the Judicial Council *Statement of Agreement or Nonagreement* (form ADR-100). The mediator's completed form ADR-100 must not disclose the terms of any agreement or any other communications or conduct that occurred in the course of the mediation, except as allowed in Evidence Code sections 1115-1128.

Rule 3.850. Purpose and function

(a) Standards of conduct

The rules in this article establish the minimum standards of conduct for mediators in court-connected mediation programs for general civil cases. These rules are intended to guide the conduct of mediators in these programs, to inform and protect participants in these mediation programs, and to promote public confidence in the mediation process and the courts. For mediation to be effective, there must be broad public confidence in the integrity and fairness of the process. Mediators in court-connected programs are responsible to the parties, the public, and the courts for conducting themselves in a manner that merits that confidence.

(b) Scope and limitations

These rules are not intended to:

(1) Establish a ceiling on what is considered good practice in mediation or discourage efforts by courts, mediators, or others to educate mediators about best practices;

(2) Create a basis for challenging a settlement agreement reached in connection with mediation; or

(3) Create a basis for a civil cause of action against a mediator.

Rule 3.851. Application

(a) Circumstances applicable

The rules in this article apply to mediations in which a mediator:

(1) Has agreed to be included on a superior court's list or panel of mediators for general civil cases and is notified by the court or the parties that he or she has been selected to mediate a case within that court's mediation program; or

(2) Has agreed to mediate a general civil case pending in a superior court after being notified by the court or the parties that he or she was recommended, selected, or appointed by that court or will be compensated by that court to mediate a case within that court's mediation program. A mediator who is not on a superior court list or panel and who is selected by the parties is not "recommended, selected, or appointed" by the court within the meaning of this subdivision simply because the court approves the parties' agreement to use this mediator or memorializes the parties' selection in a court order.

(b) Application to listed firms

If a court's panel or list includes firms that provide mediation services, all mediators affiliated with a listed firm are required to comply with the rules in this article when they are notified by the court or the parties that the firm was selected from the court list to mediate a general civil case within that court's mediation program.

(c) Time of applicability

Except as otherwise provided in these rules, the rules in this article apply from the time the mediator agrees to mediate a case until the end of the mediation in that case.

(d) Inapplicability to judges

The rules in this article do not apply to judges or other judicial officers while they are serving in a capacity in which they are governed by the Code of Judicial Ethics.

(e) Inapplicability to settlement conferences

The rules in this article do not apply to settlement conferences conducted under rule 3.1380.

Rule 3.852. Definitions

As used in this article, unless the context or subject matter requires otherwise:

(1) "Mediation" means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.

(2) "Mediator" means a neutral person who conducts a mediation.

(3) "Participant" means any individual, entity, or group, other than the mediator taking part in a mediation, including but not limited to attorneys for the parties.

(4) "Party" means any individual, entity, or group taking part in a mediation that is a plaintiff, a defendant, a cross-complainant, a cross-defendant, a petitioner, a respondent, or an intervenor in the case.

Rule 3.853. Voluntary participation and self-determination

A mediator must conduct the mediation in a manner that supports the principles of voluntary participation and self-determination by the parties. For this purpose a mediator must:

(1) Inform the parties, at or before the outset of the first mediation session, that any resolution of the dispute in mediation requires a voluntary agreement of the parties;

(2) Respect the right of each participant to decide the extent of his or her participation in the mediation, including the right to withdraw from the mediation at any time; and

(3) Refrain from coercing any party to make a decision or to continue to participate in the mediation.

Rule 3.854. Confidentiality

(a) Compliance with confidentiality law A mediator must, at all times, comply with the applicable law concerning confidentiality.

(b) Informing participants of confidentiality

At or before the outset of the first mediation session, a mediator must provide the participants with a general explanation of the confidentiality of mediation proceedings.

(c) Confidentiality of separate communications; caucuses

If, after all the parties have agreed to participate in the mediation process and the mediator has agreed to mediate the case, a mediator speaks separately with one or more participants out of the presence of the other participants, the mediator must first discuss with all participants the mediator's practice regarding confidentiality for separate communications with the participants. Except as required by law, a mediator must not disclose information revealed in confidence during such separate communications unless authorized to do so by the participant or participants who revealed the information.

(d) Use of confidential information

A mediator must not use information that is acquired in confidence in the course of a mediation outside the mediation or for personal gain.

Rule 3.855. Impartiality, conflicts of interest, disclosure, and withdrawal

(a) Impartiality

A mediator must maintain impartiality toward all participants in the mediation process at all times.

(b) Disclosure of matters potentially affecting impartiality

(1) A mediator must make reasonable efforts to keep informed about matters that reasonably could raise a question about his or her ability to conduct the proceedings impartially, and must disclose these matters to the parties. These matters include:

(A) Past, present, and currently expected interests, relationships, and affiliations of a personal, professional, or financial nature; and

(B) The existence of any grounds for disqualification of a judge specified in Code of Civil Procedure section 170.1.

(2) A mediator's duty to disclose is a continuing obligation, from the inception of the mediation process through its completion. Disclosures required by this rule must be made as soon as practicable after a mediator becomes aware of a matter that must be disclosed. To the extent possible, such disclosures should be made before the first mediation session, but in any event they must be made within the time required by applicable court rules or statutes.

(c) Proceeding if there are no objections or questions concerning impartiality

Except as provided in (f), if, after a mediator makes disclosures, no party objects to the mediator and no participant raises any question or concern about the mediator's ability to conduct the mediation impartially, the mediator may proceed.

(d) Responding to questions or concerns concerning impartiality

If, after a mediator makes disclosures or at any other point in the mediation process, a participant raises a question or concern about the mediator's ability to conduct the mediation impartially, the mediator must address the question or concern with the participants. Except as provided in (f), if, after the question or concern is addressed, no party objects to the mediator, the mediator may proceed.

(e) Withdrawal or continuation upon party objection concerning impartiality

In a two-party mediation, if any party objects to the mediator after the mediator makes disclosures or discusses a participant's question or concern regarding the mediator's ability to conduct the mediation impartially, the mediator must withdraw. In a mediation in which there are more than two parties, the mediator may continue the mediation with the nonobjecting parties, provided that doing so would not violate any other provision of these rules, any law, or any local court rule or program guideline.

(f) Circumstances requiring mediator recusal despite party consent

Regardless of the consent of the parties, a mediator either must decline to serve as mediator or, if already serving, must withdraw from the mediation if:

(1) The mediator cannot maintain impartiality toward all participants in the mediation process; or

(2) Proceeding with the mediation would jeopardize the integrity of the court or of the mediation process.

Rule 3.856. Competence

(a) Compliance with court qualifications

A mediator must comply with experience, training, educational, and other requirements established by the court for appointment and retention.

(b) Truthful representation of background

A mediator has a continuing obligation to truthfully represent his or her background to the court and participants. Upon a request by any party, a mediator must provide truthful information regarding his or her experience, training, and education.

(c) Informing court of public discipline and other matters

A mediator must also inform the court if:

(1) Public discipline has been imposed on the mediator by any public disciplinary or professional licensing agency;

(2) The mediator has resigned his or her membership in the State Bar or another professional licensing agency while disciplinary or criminal charges were pending;

(3) A felony charge is pending against the mediator;

(4) The mediator has been convicted of a felony or of a misdemeanor involving moral turpitude; or

(5) There has been an entry of judgment against the mediator in any civil action for actual fraud or punitive damages.

(d) Assessment of skills; withdrawal

A mediator has a continuing obligation to assess whether or not his or her level of skill, knowledge, and ability is sufficient to conduct the mediation effectively. A mediator must decline to serve or withdraw from the mediation if the mediator determines that he or she does not have the level of skill, knowledge, or ability necessary to conduct the mediation effectively.

Rule 3.857. Quality of mediation process

(a) Diligence

A mediator must make reasonable efforts to advance the mediation in a timely manner. If a mediator schedules a mediation for a specific time period, he or she must keep that time period free of other commitments.

(b) Procedural fairness

A mediator must conduct the mediation proceedings in a procedurally fair manner. "Procedural fairness" means a balanced process in which each party is given an opportunity to participate and make uncoerced decisions. A mediator is not obligated to ensure the substantive fairness of an agreement reached by the parties.

(c) Explanation of process

In addition to the requirements of rule 3.853 (voluntary participation and self-determination), rule 3.854(a) (confidentiality), and (d) of this rule (representation and other professional services), at or before the outset of the mediation the mediator must provide all participants with a general explanation of:

(1) The nature of the mediation process;

(2) The procedures to be used; and

(3) The roles of the mediator, the parties, and the other participants.

(d) Representation and other professional services

A mediator must inform all participants, at or before the outset of the first mediation session, that during the mediation he or she will not represent any participant as a lawyer or perform professional services in any capacity other than as an impartial mediator. Subject to the principles of impartiality and self-determination, a mediator may provide information or opinions that he or she is qualified by training or experience to provide.

(e) Recommending other services

A mediator may recommend the use of other services in connection with a mediation and may recommend particular providers of other services. However, a mediator must disclose any related personal or financial interests if recommending the services of specific individuals or organizations.

(f) Nonparticipants' interests

A mediator may bring to the attention of the parties the interests of others who are not participating in the mediation but who may be affected by agreements reached as a result of the mediation.

(g) Combining mediation with other ADR processes

A mediator must exercise caution in combining mediation with other alternative dispute resolution (ADR) processes and may do so only with the informed consent of the parties and in a manner consistent with any applicable law or court order. The mediator must inform the parties of the general natures of the different processes and the consequences of revealing information during any one process that might be used for decision making in another process, and must give the parties the opportunity to select another neutral for the subsequent process. If the parties consent to a combination of processes, the mediator must clearly inform the participants when the transition from one process to another is occurring.

(h) Settlement agreements

Consistent with (d), a mediator may present possible settlement options and terms for discussion. A mediator may also assist the parties in preparing a written settlement agreement, provided that in doing so the mediator confines the assistance to stating the settlement as determined by the parties.

(i) Discretionary termination and withdrawal

A mediator may suspend or terminate the mediation or withdraw as mediator when he or she reasonably believes the circumstances require it, including when he or she suspects that:

(1) The mediation is being used to further illegal conduct;

(2) A participant is unable to participate meaningfully in negotiations; or

(3) Continuation of the process would cause significant harm to any participant or a third party.

(j) Manner of withdrawal

When a mediator determines that it is necessary to suspend or terminate a mediation or to withdraw, the mediator must do so without violating the obligation of confidentiality and in a manner that will cause the least possible harm to the participants.

Rule 3.859. Compensation and gifts

(a) Compliance with law

A mediator must comply with any applicable requirements concerning compensation established by statute or the court.

(b) Disclosure of and compliance with compensation terms

Before commencing the mediation, the mediator must disclose to the parties in writing any fees, costs, or charges to be paid to the mediator by the parties. A mediator must abide by any agreement that is reached concerning compensation.

(c) Contingent fees

The amount or nature of a mediator's fee must not be made contingent on the outcome of the mediation.

(d) Gifts and favors

A mediator must not at any time solicit or accept from or give to any participant or affiliate of a participant any gift, bequest, or favor that might reasonably raise a question concerning the mediator's impartiality.

Rule 3.865. Application and purpose

(a) Application

The rules in this article apply to each superior court that makes a list of mediators available to litigants in general civil cases or that recommends, selects, appoints, or compensates a mediator to mediate any general civil case pending in that court. A court that approves the parties' agreement to use a mediator who is selected by the parties and who is not on the court's list of mediators or that memorializes the parties' agreement in a court order has not thereby recommended, selected, or appointed that mediator within the meaning of this rule.

(b) Purpose

These rules are intended to promote the resolution of complaints that mediators in court-connected mediation programs for civil cases may have violated a provision of the rules of conduct for such mediators in article 2. They are intended to help courts promptly resolve any such complaints in a manner that is respectful and fair to the

complainant and the mediator and consistent with the California mediation confidentiality statutes.

Rule 3.890. Application

The rules in this chapter implement the Civil Action Mediation Act, Code of Civil Procedure section 1775 et seq. Under section 1775.2, they apply in the Superior Court of California, County of Los Angeles and in other courts that elect to apply the act.

Rule 3.891. Actions subject to mediation

(a) Actions that may be submitted to mediation

The following actions may be submitted to mediation under these provisions:

(1) *By court order*

Any action in which the amount in controversy, independent of the merits of liability, defenses, or comparative negligence, does not exceed $50,000 for each plaintiff. The court must determine the amount in controversy under Code of Civil Procedure section 1775.5. Determinations to send a case to mediation must be made by the court after consideration of the expressed views of the parties on the amenability of the case to mediation. The court must not require the parties or their counsel to personally appear in court for a conference held solely to determine whether to send their case to mediation.

(2) *By stipulation*

Any other action, regardless of the amount of controversy, in which all parties stipulate to such mediation. The stipulation must be filed not later than 90 days before trial unless the court permits a later time.

(b) Case-by-case determination

Amenability of a particular action for mediation must be determined on a case-by-case basis, rather than categorically.

Rule 3.892. Panels of mediators

Each court, in consultation with local bar associations, ADR providers, and associations of providers, must identify persons who may be appointed as mediators. The court must consider the criteria in standard 10.72 of the Standards of Judicial Administration and

California Code of Regulations, title 16, section 3622, relating to the Dispute Resolution Program Act.

Rule 3.893. Selection of mediators

The parties may stipulate to any mediator, whether or not the person selected is among those identified under rule 3.892, within 15 days of the date an action is submitted to mediation. If the parties do not stipulate to a mediator, the court must promptly assign a mediator to the action from those identified under rule 3.892.

Rule 3.894. Attendance, participant lists, and mediation statements

(a) Attendance

(1) All parties and attorneys of record must attend all mediation sessions in person unless excused or permitted to attend by telephone as provided in (3). If a party is not a natural person, a representative of that party with authority to resolve the dispute or, in the case of a governmental entity that requires an agreement to be approved by an elected official or a legislative body, a representative with authority to recommend such agreement, must attend all mediation sessions in person, unless excused or permitted to attend by telephone as provided in (3).

(2) If any party is insured under a policy of insurance that provides or may provide coverage for a claim that is a subject of the action, a representative of the insurer with authority to settle or recommend settlement of the claim must attend all mediation sessions in person, unless excused or permitted to attend by telephone as provided in (3).

(3) The mediator may excuse a party, attorney, or representative from the requirement to attend a mediation session under (1) or (2) or permit attendance by telephone. The party, attorney, or representative who is excused or permitted to attend by telephone must promptly send a letter or an electronic communication to the mediator and to all parties confirming the excuse or permission.

(4) Each party may have counsel present at all mediation sessions that concern the party.

(b) Participant lists and mediation statements

(1) At least five court days before the first mediation session, each party must serve a list of its mediation participants on the mediator and all other parties. The list must include the names of all parties, attorneys, representatives of a

party that is not a natural person, insurance representatives, and other persons who will attend the mediation with or on behalf of that party. A party must promptly serve a supplemental list if the party subsequently determines that other persons will attend the mediation with or on behalf of the party.

(2) The mediator may request that each party submit a short mediation statement providing information about the issues in dispute and possible resolutions of those issues and other information or documents that may appear helpful to resolve the dispute.

Rule 3.895. Filing of Statement of Agreement or Nonagreement by mediator

Within 10 days after conclusion of the mediation, or by another date set by the court, the mediator must complete, serve on all parties, and file a *Statement of Agreement or Nonagreement* (form ADR-100). If the mediation has not ended when the report is filed, the mediator must file a supplemental form ADR-100 within 10 days after the mediation is concluded or by another date set by the court. The completed form ADR-100 must not disclose the terms of any agreement or any other communications or conduct that occurred in the course of the mediation, except as allowed in Evidence Code sections 1115-1128.

Rule 3.896. Coordination with Trial Court Delay Reduction Act

(a) Effect of mediation on time standards

Submission of an action to mediation under the rules in this chapter does not affect time periods specified in the Trial Court Delay Reduction Act (Gov. Code, § 68600 et seq.), except as provided in this rule.

(b) Exception to delay reduction time standards

On written stipulation of the parties filed with the court, the court may order an exception of up to 90 days to the delay reduction time standards to permit mediation of an action. The court must coordinate the timing of the exception period with its delay reduction calendar.

(c) Time for completion of mediation

Mediation must be completed within 60 days of a reference to a mediator, but that period may be extended by the court for up to 30 days on a showing of good cause.

(d) Restraint in discovery

The parties should exercise restraint in discovery while a case is in mediation. In appropriate cases to accommodate that objective, the court may issue a protective order under Code of Civil Procedure section 2017(c) and related provisions.

Rule 3.897. Statistical information [Repealed]

Rule 3.898. Educational material

Each court must make available educational material, adopted by the Judicial Council, or from other sources, describing available ADR processes in the community.

Local Rule 360

Division 3: Civil Rules

Chapter 4: All Civil Cases

Rule 360: Alternative Dispute Resolution (ADR)

A. Available ADR Programs

The Superior Court of California, County of Orange, encourages and supports the use of Alternative Dispute Resolution (ADR) in all civil cases. The Court recognizes the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. It is the Court's expectation that litigants will utilize the Court's mediation, arbitration, and early neutral evaluation programs as a means of case settlement before trial.

B. ADR Administrator

An Administrative Civil Manager will serve as the Alternative Dispute Resolution (ADR) Administrator, supervise the selection of arbitrators, mediators, and neutral evaluators for the Court's panels, generally supervise the operation of the
ADR programs, and employ such staff as are necessary to fulfill this responsibility.

C. Arbitration and Mediation Committee

The Arbitration and Mediation Committee of the Court will have the duties and responsibilities of an ADR Committee as specified by California Rules of Court, rule 10.783.

D. Judicial Arbitration

1. Authority

a. The Superior Court is authorized to refer civil actions, except those heard in the Small Claims Court, to judicial arbitration pursuant to Code of Civil Procedure section 1141.11(a).

b. Any at-issue limited civil case may be referred to judicial arbitration if the Court determines arbitration to be in the interest of justice.

2. Referral to Arbitration

a. Any case will be submitted to arbitration pursuant to this rule upon the order of the Court where, in the opinion of the Court, the amount in controversy does not exceed fifty thousand dollars ($50,000) for each plaintiff, which order will not be appealable. The provisions of this rule do not apply to any action exempt from arbitration pursuant to California Rules of Court, rule 3.811.

b. Any at-issue limited or unlimited civil case may be referred to judicial arbitration, regardless of the amount in controversy, upon:

1) Stipulation of the parties. Counsel may stipulate, at any time after the filing of the complaint, to a waiver of Government Code section 68616(g) for the purpose of allowing the court to order the case into arbitration, pursuant to Code of Civil Procedure sections 1141.10, et seq. or 1280, et seq., at an earlier date; or

2) Filing of an election by all plaintiffs in which each plaintiff agrees that the arbitration award will not exceed $50,000 as to that plaintiff.

3. Determination of Amount in Controversy

The amount in controversy in each case will be determined by the Court and the case referred to arbitration upon receipt of stipulation by counsel or by order of the Court at any conference at which all parties have been ordered or noticed to appear. The determination of the amount in controversy will be without prejudice to any finding on the value of the case by an arbitrator or in a subsequent trial de novo. The determination must be based on the total amount of damages; questions of liability or comparative negligence or other defenses may not be considered.

4. Administration of Program

Any case referred to arbitration must be submitted to the Superior Court Judicial Arbitration Program and is subject to all rules set forth herein.

5. Panel of Arbitrators

a. The ADR Administrator will maintain a current list of arbitrators composed of active members of the California State Bar who have qualified to act as such.

b. The Court will have a list of arbitrators for personal injury cases and such additional panels as the Presiding Judge may determine are needed.

6. Appointment of Arbitrators

The appointment of arbitrators by the ADR Administrator will be at random and will be governed by the following procedures:

a. The parties may stipulate to an arbitrator within 10 days after the case is ordered to arbitration by submitting a written stipulation for the arbitrator of their choice to the ADR Administrator.

b. If no stipulation for an arbitrator is received within 10 days after the case is ordered to arbitration, the ADR Administrator will appoint an arbitrator at random from the panel of arbitrators.

7. Arbitrator’s Duties and Responsibilities

a. Disqualification

It is the duty of the arbitrator to determine whether any cause exists for his/her disqualification in the case upon any of the grounds set forth in Code of Civil Procedure section 170.l governing the disqualification of judges. If any member of the arbitrator's law firm would be disqualified under subdivision (a)(2) of section 170.l, the arbitrator is disqualified. The arbitrator must promptly notify the ADR Administrator of any grounds for disqualification known to him/her, and another arbitrator will be appointed as provided in these rules.

b. Hearings, Notice, When and Where Held

Within 15 days after the appointment of the arbitrator, the arbitrator must set the time, date, and place of the arbitration hearing and notify each party and the ADR Administrator in writing of the time, date, and place set. The arbitrator must serve a "Notice of Alternative Dispute Resolution (ADR) Session" upon all counsel of record and self-represented parties at least 30 days prior to the hearing date. The original notice

must be filed with the ADR Administrator. The hearings must be scheduled to take place not sooner than 35 days and not later than 90 days from the date of the assignment of the case to the arbitrator, including any time due to continuances; provided, however, for good cause shown the Court may extend the time for arbitration.
The arbitrator must set the hearing at a convenient date, time and place in the County of Orange. The hearing may not be set on Saturdays, Sundays, or legal holidays without a stipulation of all parties and the arbitrator. The hearing may be held in a location outside Orange County upon stipulation of all parties and the arbitrator.
If the arbitrator cannot hold a hearing within the time limitations set forth supra, a notification must be submitted to the ADR Administrator who will return the case to the list of cases pending appointment of an arbitrator and will appoint a new arbitrator pursuant to section D.6 of this Rule.

8. Continuances

An Arbitration Hearing date may be continued:

a. By written stipulation, signed by all parties, with the consent of the assigned arbitrator. The original copy of the stipulation must be filed with the ADR Administrator. The new hearing date must be set within 90 days from the date the arbitrator was appointed.

b. By noticed motion, if the desired hearing date exceeds 90 days from the date the arbitrator was appointed. A written declaration must be submitted concurrently with the motion stating the reason for the extended setting. Such motions must be set for hearing before the judicial officer who signed the Arbitration Referral order.

c. By written stipulation of all parties, and approval by the Court, if the hearing date exceeds 90 days from the date the arbitrator was appointed. A written declaration must be submitted concurrently with the stipulation, stating the reason for the delayed setting. The stipulation must be filed with the ADR Administrator.

The stipulation must be titled "Stipulation and Order for Continuance of Arbitration" and include, below the attorney signatures, the language "IT IS SO ORDERED", followed by a date and signature line for the judge who signed the Arbitration Referral Order.

9. Communication with the Arbitrator
Disclosure of any offers of settlement made by any party may not be made to the arbitrator prior to the filing of the award. There may not be any ex parte communication by counsel or the parties with the arbitrator except for the purposes of scheduling the arbitration hearing or requesting a continuance.

10. Discovery

The parties to the arbitration have the right to conduct discovery, and to that end may exercise all of the same rights, remedies and procedures, and will be subject to all of the same duties, liabilities, and obligations as provided in Part 4, Title 3, Chapter 3 of the Code of Civil Procedure for unlimited civil cases, and as provided in Part 1, Title 1, Chapter 5.1 of the Code of Civil Procedure for limited cases, except that all arbitration discovery must be completed no later than 15 days prior to the date set for the arbitration hearing unless the Court, upon a showing of good cause, makes an order granting an extension of the time within which discovery must be completed. The parties may also stipulate to an extension of time.

11. Rules of Evidence at Hearing, Conduct of Hearing; The Award; Attorneys Fees;

Entry of Judgment; Motion to Vacate; Arbitrator Fees
California Rules of Court, rules 3.810 et seq. are applicable to this Judicial Arbitration Program in its entirety.

12. Trial de Novo

a. Within 30 days after the arbitration award is filed, any party may request a trial de novo by filing with the ADR Administrator a request for trial, with proof of service of a copy upon all other parties appearing in the case. The 30 day period within which to request trial may not be extended.

b. Upon filing a request for trial de novo after arbitration the case will be returned to the judicial officer who signed the original Arbitration Referral order.

c. The case will be tried as though no arbitration proceedings had occurred. No reference may be made during the trial to the arbitration award, to the fact that there had been arbitration proceedings, to the evidence adduced at the arbitration hearing, or to any other aspect of the arbitration proceedings, and none of the foregoing may be used for any purpose at the trial.

d. If a party has requested a trial de novo after arbitration, the request may not be withdrawn except by a written stipulation, signed by all parties appearing in the case, expressly agreeing that a non-appealable judgment may be entered on the arbitration award.

E. Civil Mediation Program

The Superior Court of California, County of Orange, offers a voluntary civil mediation program for all civil cases.

1. Initiation of Mediation

Mediation is available on a voluntary basis only. The parties may file an Alternative Dispute Resolution (ADR) Stipulation form, and complete and submit an Alternative Dispute Resolution (ADR) Neutral Selection and Party List form. The Superior Court maintains a panel of court-approved mediators who have satisfied training and experience requirements established by the Court and who must adhere to minimum standards of practice pursuant to California Rules of Court, rule 3.850 et seq., and other program policies, guidelines and procedures. The parties may choose from the Court's Civil Mediation Panel an available mediator and an alternate mediator with no apparent conflict of interest. The parties must make the selection of a mediator on the Alternative Dispute Resolution (ADR) Neutral Selection and Party List form.

2. Attendance at Case Management Conference

If the parties file the Alternative Dispute Resolution (ADR) Stipulation form with the Clerk's Office at least 10 days before the Case Management Conference, then no appearance will be necessary at that hearing. In such case, the parties must request that the Case Management Conference be taken off calendar.

3. Payment of Mediators

a. Mediators must be compensated directly by the parties. The fees and expenses of mediators must be shared equally between the parties, unless otherwise agreed by all the parties.

b. Mediators on the Superior Court's Panel have agreed to charge $300 for up to the first two hours and their individual rate per hour thereafter. Mediators may not charge the parties for preparation or administrative time, but may require that fees be deposited in advance of the mediation session.

c. The Superior Court will establish a pro bono/modest means procedure that will be available to qualified parties.

4. Timing of Mediation and Trial Dates
The parties must complete the mediation process within 90 days of the date of referral. If the parties request an extension of time for mediation, they must file a stipulation showing good cause and indicating the date of the future mediation session, which stipulation must be approved by the Court.

5. Attendance at Mediation

All parties, their counsel, and persons with full authority to settle the case must personally attend the mediation, unless excused by the mediator for good cause. If any consent to settle is required for any reason, the person with consent authority must be personally present at the mediation.

F. Early Neutral Evaluation

The Superior Court of California, County of Orange, offers a voluntary Early Neutral Evaluation (ENE) program for all civil cases.

1. Initiation of ENE

ENE is available on a voluntary basis only. The parties may file an Alternative Dispute Resolution (ADR) Stipulation form, and complete and submit an Alternative Dispute Resolution (ADR) Neutral Selection and Party List form. The Superior Court maintains a panel of court-approved evaluators who have satisfied training and experience requirements established by the Court and who must adhere to minimum standards of practice pursuant to program policies, guidelines and procedures. The parties may choose from the Court's Neutral Evaluation Panel an available evaluator and an alternate evaluator with no apparent conflict of interest.

The parties must make the selection of an evaluator on the Alternative Dispute Resolution (ADR) Neutral Selection and Party List form.

2. Attendance at Case Management Conference

If the parties stipulate and file the Alternative Dispute Resolution (ADR) Stipulation form with the Clerk's Office at least 10 days before the Case Management Conference, then no appearance will be necessary at that hearing. In such case, the parties must request that the Case Management Conference be taken off calendar.

3. Payment of Evaluators

a. Evaluators must be compensated directly by the parties. The fees and expenses of evaluators must be shared equally between the parties, unless otherwise agreed.

b. Evaluators on the Superior Court's Panel have agreed to charge $300 for up to the first three hours and their individual rate per hour thereafter. Evaluators may not charge the parties for preparation or administrative time, including the time required to prepare the written evaluation, but may require that fees be deposited in advance of the evaluation session.

c. The Superior Court will establish a pro bono/modest means procedure that will be available to qualified parties.

4. Timing of ENE and Trial Dates

The parties must complete the ENE process within 90 days of the date of referral. If the parties request an extension of time for the ENE, they must file a stipulation showing good cause and indicating the date of the future ENE session, which stipulation must be approved by the Court.

5. Attendance at ENE Session

All parties, their counsel, and persons with full authority to settle the case must personally attend the ENE session, unless excused by the evaluator for good cause. If any consent to settle is required for any reason, the person with the consent authority must be personally present at the ENE session.
(Adopted effective May 1, 1997; renumbered effective July 1, 1998; revised effective July 1, 1999, January 1, 2007, January 1, 2008, July 1, 2008, July 1, 2009)

Appendix G: 2011 Court Connected Mediation Annual Reports

Superior Court of California, County of Orange
Alternative Dispute Resolution Referrals: 2011

	Civil Mediation (Unlimited)	Civil Mediation (Limited)	Early Neutral Evaluation	Total
January	30	5	0	40
February	33	9	0	46
March	42	7	0	50
April	39	8	0	49
May	42	5	0	49
June	36	2	0	42
July	28	6	1	36
August	33	3	0	39
September	31	3	0	35
October	30	1	0	34
November	17	2	0	20
December	36	0	0	38
Total	**397**	**51**	**1**	**478***

***the column reflecting Judicial Arbitration referrals (29) was removed the purpose of this study.

Created: 3/15/13

Superior Court of California, County of Orange
Cases Referred to Mediation: January – December 2011

	Number of Cases	% of Cases Stipulating to Mediation	% of Cases with Mediation Session Held
Cases Stipulating to Mediation	**448**		
Mediation Sessions Held	**237**	**52.9%**	
Full Settlement reported by Mediator on ADR Completion Report	136	30.4%	57.4%
Full Settlement reported and Settlement or Dismissal Filed	93	20.8%	39.2%
Full Settlement not reported and Settlement or Dismissal filed within 60 days of Session	16	3.6%	6.8%
Subtotal: Settlement/Dismissal Filed, Mediation Sessions Held	**109**	**24.3%**	**46.0%**
Settlement or Dismissal filed before Mediation Session	39	8.7%	
Total: All of Settlements or Dismissals Filed	**148**	**33.0%**	

Created: 3/15/13

Appendix H: 2011 Annual Filings Report

OC COURTS

Orange County Superior Court

2011 CALENDAR YEAR FILINGS REPORT

	Filings Jan-Dec CY2011	Filings Jan-Dec CY 2010	% Change
Criminal			
Infractions and Minor Misdemeanors	460,867	495,707	-7.0%
Misdemeanors	51,196	55,044	-7.0%
Felony (Complaints)	13,760	14,853	-7.4%
Felony HTA (Informations & Indictments)	2,213	2,161	2.4%
Civil	**81,926**	**92,417**	**-11.4%**
Civil Limited (excluding Small Claims)	49,679	57,510	-13.6%
Civil Unlimited	15,187	16,391	-7.3%
Small Claims	17,060	18,516	-7.9%
Family Law	**27,755**	**27,978**	**-0.8%**
Child Support	9,240	9,686	-4.6%
Domestic Violence	5,134	5,064	1.4%
Dissolutions	11,743	11,731	**0.1%**
Parentage	1,638	1,497	9.4%
Juvenile	**12,667**	**13,244**	**-4.4%**
Juvenile-Delinquency (Orig./Subsequent)	5,326	5,762	-7.6%
Juvenile-Delinquency (Supplemental)	1,709	1,689	1.2%
Juvenile- Traffic/Minor Offense	3,604	3,686	-2.2%
Juvenile- Dependency (Orig./Subsequent)	1,599	1,668	-4.1%
Juvenile Dependency (Supplemental)	108	114	-5.3%
Adoptions	321	325	-1.2%
Probate & Mental Health	**7,666**	**7,697**	**-0.4%**
Probate and Guardianship	5,915	5,620	5.2%
Mental Health	1,751	2,077	-15.7%
TOTAL FILINGS (Excludes Felony HTA)	**655,837**	**706,940**	**-7.2%**