



CENTURION MEDIATION LLC

2008 Changed the Scenery of Mediation in Southern California Superior Courts

By Elizabeth A. Moreno, Esq.

Mediation has gone through significant developments in 2008. The days where anyone could attend a 30 hour training course to be deemed a 'certified mediator' and be appointed to a court panel are fading. For 2008, two Southern California courts have adopted qualifications which state that only experienced and qualified attorneys can be on the civil court annexed mediator panel. With the stricter qualifications, these courts have provided that mediators are compensated. The only court that is holding fast to the no charge mediator panel is Los Angeles Superior Court, but this was heavily challenged in 2008 and free mediation for all may be quickly fading.

Orange County began 2008 with its Civil Mediation Pilot Program that went into effect for all civil cases filed at the Central Justice Center. This is a voluntary program which means that the parties stipulate to mediation and must file ADR Form 'Stipulation to Participate in ADR' to access a mediator from the court panel. The mediators on the court panel are attorneys who have substantial training and experience in mediating litigated cases. Mediators must have been practicing attorneys for ten years and engage in continuing mediator education. If the parties stipulate to mediation, no appearance at the Case Management Conference is necessary. A mediator from the court panel charges \$300 for the first two hours and after the completion of two hours, the mediator charges his or her market rate. All parties, their counsel and person with full authority to settle the case must personally attend the mediation unless excused by the mediator.

This year marks the beginning of Riverside Superior Court's Civil Mediation Program. This program is expected to get underway in late January or early February, 2009. Riverside is different from Orange County, in that Riverside adopted the Civil Mediation Act (CCP section 1775) which allows the court to order the parties to go to mediation where the amount in controversy of a civil case is under \$50,000. These cases are entitled to three hours of mediation at no cost to litigants who select a mediator from the court's panel. However, the

mediator does not go uncompensated, the court will compensate the mediator \$150 for the first three (3) hours. If the parties want the mediation to continue after the completion of the third hour, they will enter into a private fee arrangement with the mediator. For cases that exceed \$50,000, the litigants have a choice of using the Civil Mediation Panel or select a private mediator not affiliated with the court's panel and pay the mediator's market rate. Similar to Orange County, the mediator on the court's panel must have been a practicing attorney for ten years, have substantial training and experience as a mediator and engage in continuing mediator education. Both Orange County and Riverside County Superior Courts, require that the mediation be held in their respective counties, unless otherwise agreed upon by the parties.

Both Orange and Riverside Counties mandate that all parties and attorneys must attend all mediation sessions, unless excused by the mediator beforehand. Riverside adds an additional requirement that five court days before the mediation that each party serve a list of participants of the mediation and a 1 page statement of the case on all other parties and the mediator. During the time that a matter has been referred to mediation, both Orange and Riverside Counties frown upon discovery.

Los Angeles was under a lot of heat in 2008 from various Bar and mediator groups to make changes in the court panel. Prior to 2008, as long as you attended a 30 hour training course, you were deemed a 'certified mediator' for LASC court annexed panels and could mediate any litigated case. That has changed, with stricter qualifications which have resulted in a decrease of mediators on the no charge LASC mediator panel. LASC now requires 40 hours of mediation training, mediation experience, references, and continuing education or training annually. However, to be a mediator on the LASC court panel it is not necessary to be an attorney, non attorneys are welcome as mediators.

With the mandates of stricter requirements, mediators have demanded that some type of compensation be instituted for cases where the controversy exceeds \$50,000, except for those parties who are of limited means and indigent. However, Los Angeles County will not relinquish the no charge panel because in doing so, it will have to determine whether the parties are of limited means and indigent. According to the court, it is easier to give free mediator services to all rather than take on the administrative burden to determine the financial need of a party. In response the LASC has placated the mediators temporarily by changing the label of the civil mediation panels to 'Random Selection' and 'Self-Selection.' The label change finally describes the nature of the panels. If a party wants to engage a particular mediator at a reduced rate of \$150 per hour for the first three hours, the party self select the mediator from the self-selection panel. If a party wants a mediator randomly assigned, the party will receive a mediator not of his/her choice but for no charge for the first three hours. Parties will find the

same mediators listed on the Random Selection and Self Selection panels, because LASC requires that the mediator mediate Random selected cases as a condition of being on the Self-selection panel. A party may get a lucky draw and get the mediator of they would have chosen from the self selected list but do not count on it. There are over 800 mediators on the random selection panel and the odds are slim that a party will get their ideal mediator for free. Thankfully the term 'pro bono' panel has been done away with. The term pro bono was a misnomer because the parties who used this panel were not indigent and not of limited means, to satisfy the pro bono requirement.

On a State wide basis, mediator qualification requirements are coming under serious review. The Administrative Office of the Courts working group has put out for comment this past year a set of draft model qualifications standards for mediators serving in mediation programs for civil cases in California Courts. It is anticipated that there will be a Model set of Qualification Standards for Mediators in California Courts in the near future.

This year, Uniform Complaint Procedures in Court-Connected Mediation programs will be adopted. In 2008, the Small Claims and Civil Advisory committee of the Judicial Council recommended that the Judicial Council adopt as of July 1, 2009 rules establishing a uniform complaint procedure which are procedures for addressing complaints about mediators in Court-Connected Mediation Programs for Civil Cases. These will Revise and expand the general requirements concerning superior court procedures for addressing complaints about court-program mediators which will help to ensure that these complaints are addressed in a manner that is fair and respectful to the complainant and the mediator and consistent with the mediation confidentiality laws. This will ultimately help to ensure the quality of court mediation programs and public confidence in the mediation process and the courts.

Is the future of court connected mediator panels being foretold? Will courts follow Riverside and Orange Superior Courts with qualified and experienced mediators for a fraction of the cost of private mediators and ADR providers? Is the LASC free mediator panel in civil cases on its way out? Only time will tell.

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