

DIGEST

Civil Action Mediation

Amends CALIFORNIA CODE OF CIVIL PROCEDURE sections 1775 and 1775.5 and deletes sections 1775.8, 1775.13, and 1775.14.

This code section applies to the Civil Courts of Los Angeles County and Counties who choose to adopt the Title.

This amendment deletes the 'pilot project' references to Civil Mediation and deletes the references to the nonexistent allocation of judicial funds to pay for the costs of mediation. The CCP is amended to read that the cost of mediation, including mediator costs, in cases where the amount in controversy is over \$25,000 and the parties stipulate to mediation, shall be shared between the parties. The Court shall maintain a list of mediators' fees and qualifications for informational purposes made available to the public. Further, this amendment changes the amount in controversy that the Los Angeles Superior Court can order a civil action to mediation, from under \$50,000 to under \$25,000.

TEXT OF PROPOSED CHANGE

Propose that California Code of Civil Procedure sections 1775 and 1775.5 be amended and 1775.8, 1775.13, and 1775.14 be deleted as follows:

1775. The Legislature finds and declares that:

(a) The peaceful resolution of disputes in a fair, timely, appropriate, and cost-effective manner is an essential function of the judicial branch of state government under Article VI of the California Constitution.

(b) In the case of many disputes, litigation culminating in a trial is costly, time consuming, and stressful for the parties involved. Many disputes can be resolved in a fair and equitable manner through less formal processes.

(c) Alternative processes for reducing the cost, time, and stress of dispute resolution, such as mediation, have been effectively used in California and elsewhere. In appropriate cases mediation provides parties with a simplified and economical procedure for obtaining prompt and equitable resolution of their disputes and a greater opportunity to participate directly in resolving these disputes. Mediation may also assist to reduce the backlog of cases burdening the judicial system. It is in the public interest for mediation to be encouraged and used where appropriate by the courts.

(d) Mediation and similar alternative processes can have the greatest benefit for the parties in a civil action when used early, before substantial discovery and other litigation costs have been incurred. Where appropriate, participants in disputes should be encouraged to utilize mediation and other alternatives to trial for resolving their differences in the early stages of a civil action.

(e) ~~As a pilot project~~ In Los Angeles County and in other counties which elect to apply this title, courts should be able to refer

cases to appropriate dispute resolution processes such as judicial arbitration and mediation as an alternative to trial, consistent with the parties' right to obtain a trial if a dispute is not resolved through an alternative process.

(f) The purpose of this title is to encourage the use of court-annexed alternative dispute resolution methods in general, and mediation in particular. It is estimated that the average cost to the court for processing a civil case of the kind described in Section 1775.3 through judgment is three thousand nine hundred forty-three dollars (\$3,943) for each judge day, and that a substantial portion of this cost can be saved if these cases are resolved before trial.

~~The Judicial Council, through the Administrative Office of the Courts, shall conduct a survey to determine the number of cases resolved by alternative dispute resolution authorized by this title, and shall estimate the resulting savings realized by the courts and the parties. The results of the survey shall be included in the report submitted pursuant to Section 1775.14. The programs authorized by this title shall be deemed successful if they result in estimated savings of at least two hundred fifty thousand dollars (\$250,000) to the courts and corresponding savings to the parties.~~

1775.5. The court shall not order ~~any unlimited jurisdiction~~ a case into mediation where the amount in controversy exceeds ~~fifty thousand dollars (\$50,000)~~ twenty five thousand dollars (\$25,000). ~~The determination of the amount in controversy shall be made in the same manner as provided in Section 1141.16 and, in making this determination, the court shall not consider the merits of questions of liability, defenses, or comparative negligence.~~

In unlimited jurisdiction cases where the amount in controversy exceeds \$25,000, the cost of mediation including the compensation of mediators, shall be shared between the parties, unless the parties stipulate otherwise. The method of selection and qualification of the mediator shall be as the parties determine. To assist the parties in selecting a mediator, the Superior Court may maintain a list of mediators who have complied with the Court's mediator requirements for unlimited jurisdiction actions. The listing will include information about qualifications, mediation fees and shall be readily available to the public in order to select a mediator. The Court will provide this list for informational purposes only.

1775.8.

(a) ~~The compensation of court appointed mediators shall be the same as the compensation of arbitrators pursuant to Section 1141.18, except that no compensation shall be paid prior to the filing of a statement of nonagreement by the mediator pursuant to Section 1775.9 or prior to settlement of the action by the parties.~~

~~—(b) All administrative costs of mediation, including compensation of mediators, shall be paid in the same manner as for arbitration pursuant to Section 1141.28. Funds allocated for the payment of arbitrators under the judicial arbitration program shall be equally available for the payment of mediators under this title.~~

~~1775.13.~~

~~It is the intent of the Legislature that nothing in this title be construed to preempt other current or future alternative~~

~~dispute resolution programs operating in the trial courts.~~

1775.14.

~~(a) On or before January 1, 1998, the Judicial Council shall submit a report to the Legislature concerning court alternative dispute resolution programs. This report shall include, but not be limited to, a review of programs operated in Los Angeles County and other courts that have elected to apply this title, and shall examine, among other things, the effect of this title on the judicial arbitration programs of courts that have participated in that program.~~

~~—(b) The Judicial Council shall, by rule, require that each court applying this title file with the Judicial Council data that will enable the Judicial Council to submit the report required by subdivision (a).~~

Proponent: Beverly Hills Bar Association

STATEMENT OF REASONS

Existing Law: Existing law was a pilot project to encourage greater use of mediation in the Civil Courts of Los Angeles County and Counties who choose to adopt the Title. The Title had a repeal date of January 1, 1999 however the repealer was repealed operative January 1, 1999. Some of the provisions of the Pilot Program are no longer applicable, given the current state of mediation practice and the budgetary constraints of the court.

The Effect of this Amendment:

This amendment will require the litigants, who are not ordered to mediation by the court, to share the costs of mediation in unlimited jurisdiction cases where the amount in controversy is over \$25,000.

Court Ordered Mediations for cases *under* \$25,000

Current law: Los Angeles Superior Court (LASC) Court-annexed Alternative Dispute Resolution (ADR) program provides that litigants who are *ordered* to mediation do not pay any costs associated with a 3 hour mediation.

This amendment would still allow the court to *order* the litigants to mediation and not require the litigants to share the cost of mediation, except that the amount in controversy of those ordered cases would change to under \$25,000, rather than under \$50,000. This change is consistent with the limited and unlimited jurisdictional requirement that presently exists.

Litigants, who stipulate to mediation, will share the cost of mediation for cases *over* \$25,000

Current law: Los Angeles Superior Court cannot order cases to mediation where the amount in controversy is in excess of \$50,000, however the Court offers the litigants the option to stipulate to mediation. These litigants, who stipulate to mediation, are afforded a 3 hour mediation at no cost by the LASC ADR Court-annexed program, which maintains a roster of 1800 mediators, who the

court has deemed qualified and who are required to give three hours at no charge.¹ The LASC Court-annexed program, for cases where the parties stipulate to mediation, is funded by the Dispute Resolution Program Act.

This amendment would end free mediations, for those litigants who are not court ordered, and make available public funds to support those under funded Court-annexed ADR programs where the litigants have been ordered to mediation. Further, this amendment will maximize the litigants' choice of the mediator which will enhance litigants' satisfaction and investment in the process of mediation and achieve success.

1. Free up Public Funds for Other ADR Court Programs and Indigents

The Los Angeles Superior Court ADR program, whose priority is to provide mediation to litigants who stipulate to mediation rather than court ordered, is funded in part by public funds of the Dispute Resolution Program Act.² LASC Court-annexed program receives \$574,000³ per year to service litigants who stipulate to mediation and who could have resolved the dispute long before reaching the courthouse steps.

Court-annexed ADR programs that receive DRPA funds should service a wide variety of limited and unlimited jurisdiction cases, including civil harassment, small claims, family law, juvenile delinquency, juvenile dependency and probate cases and to service the indigents. There are approximately 417,000 cases filed each year in Los Angeles County, which makes up about 30% of the State's total of filed cases.⁴ Of those only 47,000 are unlimited jurisdiction cases, where annually 32,000 are stipulating to mediation and receiving a 3 hour free mediation funded by DRPA funds.⁵ The remaining 370,000 cases or 89% fall under small claims, family law, probate, and limited civil jurisdiction. The Center for Dispute Settlement-The Institute of Judicial Administration has promulgated National Standard for Court-Connected Mediation Programs. The National Standards suggest that in allocating public funds to mediation, a court should give priority for funding to certain types of cases such as family/child custody and minor criminal matters.⁶ However, LASC gives priority to 11% of its cases, which are not ordered to mediation, and involve torts and contract disputes rather than the most needed family/ child custody and minor criminal matters.⁷ It would be a wiser use of any public funds for LASC Court- annexed ADR program to direct DRPA funds toward the 89% of the remaining cases which consists of family, small claims, juvenile issues and minor criminal matters.

¹ LASC Request for Proposal of DRPA funds submitted to Los Angeles County for 2003-2006, page 21.

² LASC Request for Proposal of DRPA funds submitted to Los Angeles County for 2003-2006, page 5 section D.

³ DRPA FY 2006-2007 Funding Recommendations from Los Angeles County.

⁴ 2007 Court Statistics, Judicial Council of California, Total Civil Filings by County and Case Type for FY2006.

⁵ 2007 Court Statistics, Judicial Council of California, Total Civil Filings by County and Case Type for FY2006 and LASC Request for Proposal of DRPA funds submitted to Los Angeles County for 2003-2006, page 24.

⁶ The Center for Dispute Settlement-The Institute of Judicial Administration: National Standard for Court-Connected Mediation Programs.

⁷ LASC Request for Proposal of DRPA funds submitted to Los Angeles County for 2003-2006, page 5 section B, C, D. The Center for Dispute Settlement-The Institute of Judicial Administration: National Standard for Court-Connected Mediation Programs.

2. Litigants Sharing the Costs of Mediation will enhance Party Satisfaction and Investment in the Process of Mediation

The National Standards for Court-Connected Mediation Programs has endorsed maximizing the parties' choice in order to enhance party satisfaction and investment in the process of mediation. In order to achieve this, the National Standards favors "permitting parties to choose their own mediator as an alternative to mediators on the court's staff, in a program, or on a roster."⁸ The National Standards recognize that "while there may be risks to allowing parties to choose their own mediator as an alternative to a mediator who has been found qualified by the court, the advantages outweigh the disadvantages in most circumstances."⁹

The lack of the litigants' investment in the process of mediation is evident, when the Los Angeles Superior Court has indicated that only 25% or 6000 of their cases settle through their Court-annexed ADR program.¹⁰ Further the National Standards has recognized that "the most short-sighted of the available options [for courts] is the exclusive reliance on volunteers. Not only does it risk the demise of programs, or at the very least, a severe dilution of quality, after initial enthusiasm has waned and volunteer mediators want to be compensated; it also denigrates what should be a profession with continuing commitment to improving skills, into a hobby."¹¹ If the litigants share the cost of mediation, they will retain mediators who have a continuing commitment to improving their skills, the litigants will become invested in the process, take mediation seriously which will achieve success in resolving disputes.

FISCAL IMPACT STATEMENT:

None. This amendment will free up DRPA funds to be used for court ordered mediation programs.

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⁸ The Center for Dispute Settlement-The Institute of Judicial Administration: National Standard for Court-Connected Mediation Programs.

⁹ The Center for Dispute Settlement-The Institute of Judicial Administration: National Standard for Court-Connected Mediation Programs.

¹⁰ LASC Request for Proposal of DRPA funds submitted to Los Angeles County for 2003-2006, page 11.

¹¹ The Center for Dispute Settlement-The Institute of Judicial Administration: National Standard for Court-Connected Mediation Programs.