

RESOLUTION 03-03-08

DIGEST

Code of Civil Procedure: Civil Action-Related Mediation

Amends Code of Civil Procedure sections 1775, 1775.8, 1775.13 and 1775.14 to make a pilot mediation project permanent, and provide for compensation of mediators.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found. [Resolution 4-05-07, which was withdrawn, sought to revoke eligibility for DRPA funding for Court-ordered mediation].

Reasons:

This resolution amends Code of Civil Procedure sections 1775, 1775.8, 1775.13 and 1775.14 to make a pilot mediation project permanent, and provide for compensation of mediators. This resolution should be approved in principle because mediation is a proven, trusted, highly valued method of resolving litigated cases; the pilot project has been highly successful and should be made permanent; and the existing statutes are silent as to who is to bear the cost of mediation in stipulated mediations in court cases.

The proposed amendments are applicable only to courts in Los Angeles County and such other counties that elect to participate in the former “pilot” mediation project.

These amendments provide that the parties who stipulate to mediation of their cases without being ordered by a court to do so, are to pay the costs thereof, including the compensation of mediators, in such manner as they may determine among themselves. As recommended by the National Standards for Court-Connected Mediation Programs, the courts will make available for indigents and those with limited means, pro bono or reduced price mediation services provided by mediators in accordance with the provisions of California Rules of Court, rule 10.781(b)(2).

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend California Code of Civil Procedure sections 1775, 1775.8, 1775.13, and 1775.14 to read as follows:

- 1 §1775
- 2 The Legislature finds and declares that:
- 3 (a) The peaceful resolution of disputes in a fair, timely, appropriate, and cost-
- 4 effective manner is an essential function of the judicial branch of state government under
- 5 Article VI of the California Constitution.
- 6 (b) In the case of many disputes, litigation culminating in a trial is costly, time
- 7 consuming, and stressful for the parties involved. Many disputes can be resolved in a fair
- 8 and equitable manner through less formal processes.

9 (c) Alternative processes for reducing the cost, time, and stress of dispute
10 resolution, such as mediation, have been effectively used in California and elsewhere. In
11 appropriate cases mediation provides parties with a simplified and economical procedure
12 for obtaining prompt and equitable resolution of their disputes and a greater opportunity to
13 participate directly in resolving these disputes.

14 Mediation may also assist to reduce the backlog of cases burdening the judicial
15 system. It is in the public interest for mediation to be encouraged and used where
16 appropriate by the courts.

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

22 (e) ~~As a pilot project in~~ In Los Angeles County and in other counties which elect to
23 apply this title, courts should be able to refer cases to appropriate dispute resolution
24 processes such as judicial arbitration and mediation as an alternative to trial, consistent
25 with the parties' right to obtain a trial if a dispute is not resolved through an alternative
26 process.

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

33 The Judicial Council, through the Administrative Office of the Courts, shall
34 conduct a survey to determine the number of cases resolved by alternative dispute
35 resolution authorized by this title, and shall estimate the resulting savings realized by the
36 courts and the parties. The results of the survey shall be included in the report submitted
37 pursuant to Section 1775.14. The programs authorized by this title shall be deemed
38 successful if they result in estimated savings of at least two hundred fifty thousand dollars
39 (\$250,000) to the courts and corresponding savings to the parties.

40
41 §1775.8

42 (a) The compensation of court-appointed mediators, for cases where the court
43 has power to order and orders into mediation pursuant to section 1775.3, shall be the same
44 as the compensation of arbitrators pursuant to Section 1141.18, except that no
45 compensation shall be paid prior to the filing of a statement of nonagreement by the
46 mediator pursuant to Section 1775.9 or prior to settlement of the action by the parties.

47 (b) All administrative costs of mediation ordered pursuant to Section 1775.3,
48 including compensation of mediators, shall be paid in the same manner as for arbitration
49 pursuant to Section 1141.28. Funds allocated for the payment of arbitrators under the
50 judicial arbitration program shall be equally available for the payment of mediators under
51 this title.

52 (c) In any proceeding where mediation is not ordered pursuant to section 1775.3
53 and the parties stipulate to mediation, the parties will bear the cost of mediation, including
54 the compensation of mediators. The parties will determine how the costs of mediation are

55 shared. The court shall take steps to make mediation available to parties with limited
56 means as set forth in the rules adopted by the Judicial Council, concerning trial courts
57 alternative dispute resolution programs. The court shall establish the eligibility
58 requirements for parties to receive, and the application process for the parties to request,
59 mediation service on a pro bono or modest-means basis.

60
61 §1775.13

62 It is the intent of the Legislature that nothing in this title be construed to preempt
63 other current or future alternative dispute resolution programs operating in the trial courts,
64 except for programs pursuant to this Title 11.6.

65
66 §1775.14

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

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

(Proposed new language underlined; language to be deleted stricken.)

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 existing law is silent as to who will bear the cost of mediation in any proceeding where the parties are not court ordered and stipulate to mediation.

This Resolution: This amendment will require the parties, who are not ordered by the court to mediation, to share the costs of mediation as agreed upon by the parties. It also provides that if parties lack the means to share in the cost of mediation, mediation services may be provided on a pro bono or modest means basis as presently set forth in California Rule of Court 10.781(b)(2).

The Problem: There is no set law as to who will pay the cost of mediation if the parties choose to stipulate to mediation. In Los Angeles Superior Court, [where it is mandated to follow CCP section 1775] the parties, who are not court ordered, are afforded three hours of mediation at no cost by the LASC ADR Court-annexed program, despite the parties' financial means.

Riverside County Superior Court has adopted CCP section 1775 and sections 1141.10 et. seq.(Judicial Arbitration). However, there is no local rule specifying who bears the cost of mediation in cases that are not court ordered and the parties stipulate to mediation.

Other counties, such as Orange County and San Diego County, which have not elected to adopt CCP section 1775 have adopted a program where the parties who stipulate to mediation fund their own mediation in all cases whether limited or unlimited jurisdiction. For those parties who stipulate to mediation but cannot afford to pay for mediation, these courts have a provision, consistent with California Rule of Court 10.781(b)(2), to provide mediation services for indigents and those with limited means.

Whether or not the courts have elected to apply CCP section 1775, there are no set provisions as to compensation of mediators in cases where the parties have not been court ordered and have stipulated to mediation. It is time that there is one consistent provision regarding compensation of mediators where parties are not court ordered and have stipulated to mediation.

This provision will not be a burden on any party and will ensure that all parties have access to Justice. The National Standards for Court-Connected Mediation Programs recognizes that where a court suggests (rather than orders) mediation, it should take steps to make mediation available to indigent parties through encouraging mediators to provide a portion of their services on a free or reduced fee basis. This proposed amendment will require that mediators provide pro bono services as set forth in California Rule of Court 10.781(b)(2). The courts will maintain a mediator roster for those parties with limited means who cannot afford to share in the cost of mediation. For those parties who can afford it, they will obtain their own private mediator and use the commercial market of mediators.

IMPACT STATEMENT:

This Resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Elizabeth A. Moreno, 6080 Center Drive, Ste. 600, Los Angeles, CA 90045, 310.444.3804, emoreno@eampc.com.

RESPONSIBLE FLOOR DELEGATE: Michael White

COUNTERARGUMENTS

SAN DIEGO COUNTY BAR ASSOCIATION

The statutes being amended by this resolution were enacted to govern a pilot mediation program in Los Angeles County; they are not suitable for all counties, or for on-going permanent law. The resolution would require expenditures of time and money by the Judicial Council, by the courts, and by the persons who serve as mediators, which may not be feasible or acceptable. The Conference should have the benefit of the Judicial Council report to the Legislature, required by section 1775.14, before adding amendments to the statutes governing this pilot program.

SANTA CLARA COUNTY BAR ASSOCIATION

The proposed new language would require both parties to share the cost of a mediator. This proposed amendment would permit one or the other party to pay the full cost, where they determine such an arrangement is appropriate:

§ 1775.8(c)

In any proceeding where mediation is not ordered pursuant to section 1775.3 and the parties stipulate to mediation, the parties will bear the cost of mediation, including the compensation of the mediators. The parties will determine how the costs of mediation are ~~shared~~ borne. The court shall take steps to make mediation available to parties with limited means as set forth in the rules adopted by the Judicial Council concerning trial courts' alternative dispute resolution programs. The court shall establish the eligibility requirements for parties to receive, and the application process for the parties to request, mediation service on a pro bono or modest-means basis.