

## ADR Program Report - Fiscal Year 2015

### Overall Caseload:

- Filings – During FY 2015, 3801 cases were subject to the ADR Multi-Option Program. This is an increase of 238 cases from FY 2014. In addition to the ADR Multi-Option Program cases, 238 ADA access cases were filed during FY 2015. These cases are subject to General Order 56 and are not counted as Multi-Option Program referrals.
- ADR Phone Conferences – ADR Legal Staff conducted 939 phone conferences in FY 2015, a significant increase from the 820 phone conferences conducted in FY 2014. These calls assist the parties in choosing an ADR process or in resolving problems in cases referred to an ADR process. The number of ADR Phone Conferences conducted by program staff continues to increase each year.
- ADR Case Referrals – Referrals to a specific ADR process are not tracked to the fiscal year because of the lead time involved in getting cases referred to a process. The attached charts show the distribution of referrals to the various ADR processes over the last five calendar years. The distribution has remained remarkably stable, with mediation continuing to be the preferred option, although there is also a steady increase in the number of cases being referred to private ADR.
- Satisfaction and Settlement Rates - Surveys of participants in Mediation and ENE processes continue to show that more than 90% of the participants are satisfied with the ADR process and that 84% report the benefits outweigh the costs. Settlement rates for Mediation cases filed in calendar year 2014 were reported by the neutrals at 68%, and in ENE cases at 60%. These settlement rates are generally consistent with the last several years of responses.

### ADA Access Cases:

The ADR Program continues to handle the bulk of ADA Access filings under General Order 56. Mediation sessions were conducted in 98 ADA access cases during FY 2015 (an increase from 78 in FY 2014); 48 cases were handled by ADR Legal Staff and 50 cases by ADR Program Mediators. During FY 2015, we also saw a slight decrease in ADA access filings, dropping to 238 as compared to 243 in FY 2014. It is too early to tell how these cases will progress.

Substantively, the General Order 56 process continues to be a very successful tool for managing ADA cases. For cases filed in calendar year 2014, which are now far enough along to obtain meaningful data, there were a total of 253 ADA access cases filed. Of these, 51% (143 cases) were voluntarily dismissed with no judicial action before a Notice of Need for Mediation was filed (132 cases), dismissed or transferred out of the district before a Notice of Need for Mediation was filed (10 cases), or removed from General Order 56 (1 case). Of the 110 remaining cases, 97 were handled in mediation; with 74 cases settled either before a session took place or as a result of the mediation session, 7 not settled, and 16 cases still pending in mediation. Of the remaining 13 cases, 10 have yet to file a Notice of Need for Mediation, 1 was referred to ENE, 1 to a Settlement Conference with a Magistrate Judge, and 1 to private ADR.

### Mortgage Foreclosure Cases:

Beginning in 2011, several judges adopted a practice of sending mortgage foreclosure cases to the ADR Program for early assessment as to whether ADR might assist the parties in resolving the dispute prior to motions practice or other litigation. In FY 2015, , the ADR Program continued to run weekly reports to screen for newly-filed mortgage foreclosure cases, sending emails to the assigned judge with a copy of Judge Wilken's guidelines for assessing the cases' suitability for early intervention and a sample order referred the case to us for a phone conference. In FY 2015, we handled 143 cases through this program, as compared to 140 cases in FY 2014. Most cases resulted in a series of ADR phone conferences monitoring the parties' efforts at loan modification; 3 cases were formally referred to mediation, 1 to ENE, 1 to a settlement conference and 2 to private ADR.

### ADR Funding and Staffing:

During FY 2015, we continued to suffer from the effects of the reduced national formula for ADR staffing, combined with the overall decreased in Clerk's Office Funding. The ADR Unit continues to attempt to operate at pre-existing service levels with only two attorney mediators and without an administrative assistant, though our caseload level has remained relatively constant. It is unclear whether we will be able to continue to work at the existing pace. In December 2015, the FJC will submit its report on the effectiveness of district court ADR to the Judicial Resources Committee and the Committee on Court Administration and Case Management. There is some possibility that the staffing formula will be revisited in light of that report.

Staff Attorney Daniel Bowling announced that he would retire in November of 2015. As a result of his retirement announcement, the ADR Program sought and hired a new Program Attorney & Mediator, Tamara Lange, who assumed her duties in September.

### ENE and Mediation Panel Trainings

In March, April and May of 2015, the ADR Program conducted training for both its ENE and Mediation panels. 62 neutrals total received training, 41 of whom were brand new to the court's panels (the other 21 were serving on only one of the two panels and received training to serve on the other). Two sessions each of ENE training (one day), and Mediation training (four days each) comprised 10 full days of training, followed by a reception for new and existing panelists.

The trainings were conducted primarily by Howard Herman and Daniel Bowling, with generous assistance from Claudia Bernard at the Ninth Circuit Mediation Office and several volunteers from the court's neutral panels. Sessions were offered in the South Bay, hosted at White and Case and Pillsbury Winthrop Shaw Pittman LLP, and at the San Francisco courthouse. The majority of the new panelists have already received at least one case for the court.

### Mediation Practice Groups and Continuing Education:

Since 2004, ADR Program Legal Staff have facilitated ongoing, monthly Practice Groups for those mediators willing to commit to regular attendance. In these small group meetings, the mediators present issues and problems that actually arise in their cases for group reflection and discussion, while carefully protecting confidentiality of the mediation process. In FY 2015, we continued to operate 9 groups, and incorporated a large portion of our newly trained mediators into these groups, bringing the total number of participants to 138. In addition, Howard Herman facilitates a similar group every other month for the Magistrate Judges focusing on

their settlement conference work, and Daniel Bowling facilitates a group for the Magistrate Judges focusing on mindfulness during settlement proceedings. The department also hosted one brown bag lunch presentation in FY 2015, a presentation on mediation in Australia by the Principal Registrar of the Supreme Court of Western Australia, Michael Gething. Mr. Gething was a guest of the ADR Program for a week-long study visit in June of 2015.

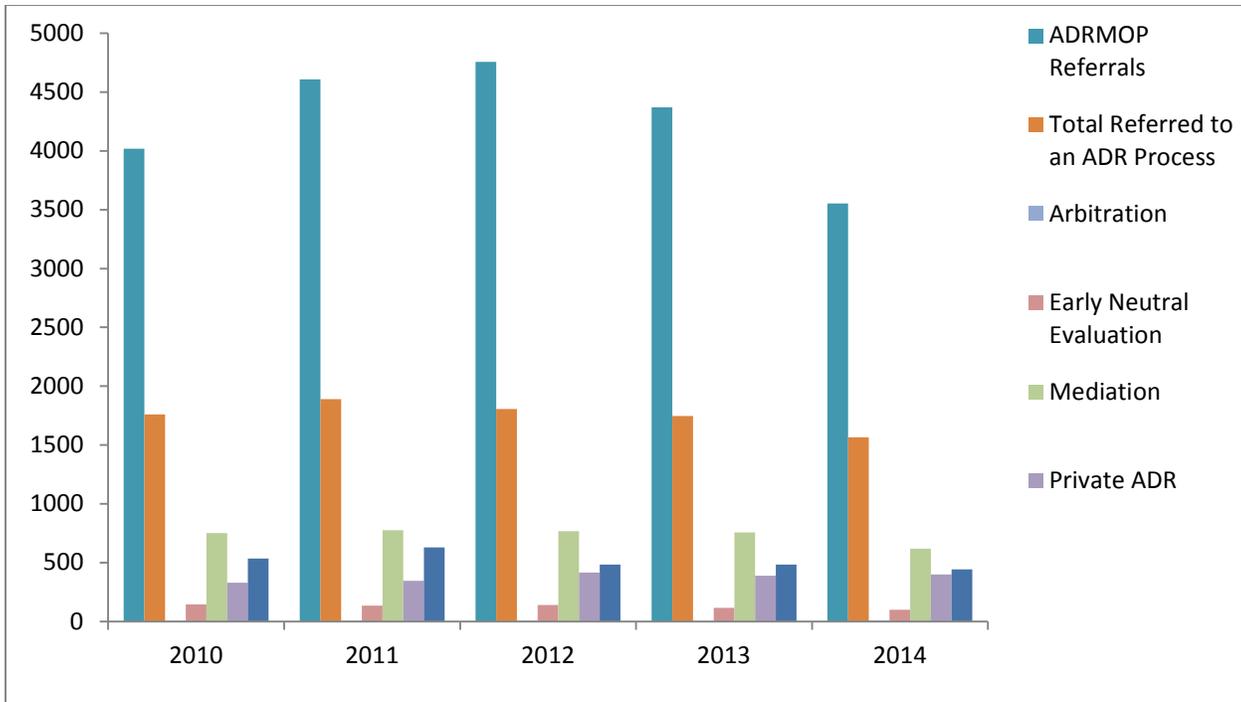
#### ADR Facilities

We have continued to make frequent use of our ADR Conference and Caucus Rooms, , and a variety of other spaces on the other court floors in San Francisco, and, when possible, in both Oakland and San Jose. The need for space for ADR sessions remains constant, and has become markedly more acute now that Courtrooms 17 and 19 have been transferred to the Bankruptcy Court. Fortunately, the Clerk's Office has approved funding to convert our large conference room on the 16th floor into two smaller ones to offset this loss and to utilize our remaining space in the most efficient way possible.

#### Additional ADR Unit Activities, Outreach, and Awards:

During FY 2015, Howard Herman served as Chair-Elect of the ABA Section of Dispute Resolution, and in August 2015 he became the Chair of the Section. He continued his longstanding work as an Adjunct Assistant Professor at UC Hastings College of the Law. Howard also convened the ADR Local Rules Advisory Subcommittee, and oversaw an updated version of the ADR Local Rules which took effect on September 15, 2015.

Daniel Bowling represented the ADR Program and the Court by making presentations to various bar organizations and mediation groups. Daniel continues to serve on the Board of Directors of The Mediation Society of San Francisco and as Chair of the Publications Board for the ABA Section of Dispute Resolution. In October 2015, Daniel received The Mediation Society of San Francisco's award for Outstanding Contribution in the Field of Mediation.



	2010	2011	2012	2013	2014
ADRMOP Referrals	4020	4609	4757	4370	3555
Total Referred to an ADR Process	1760	1891	1807	1746	1564
Arbitration	3 (>1%)	5 (>1%)	4 (>1%)	2 (<1%)	6 (<1%)
Early Neutral Evaluation	145 (8%)	135 (7%)	140 (8%)	115 (7%)	98 (6%)
Mediation	750 (43%)	776 (42%)	766 (42%)	756 (43%)	618 (40%)
Private ADR	328 (19%)	345 (18%)	414 (23%)	389 (22%)	399 (26%)
Magistrate Judge Settlement Conference	534 (30%)	630 (33%)	483 (27%)	484 (28%)	443 (28%)