

ADR Program Report - Fiscal Year 2014

Overall Caseload:

- Filings – During FY 2014, 3563 cases were subject to the ADR Multi-Option Program. This is a decrease of 437 cases from FY 2013, which is consistent with the overall decrease in civil filings. In addition to the ADR Multi-Option Program cases, 243 ADA access cases were filed during FY 2014. These cases are subject to General Order 56 and are not counted as Multi-Option Program referrals.
- ADR Phone Conferences – ADR Legal Staff conducted 820 phone conferences in FY 2014, a slight increase from the 792 phone conferences conducted in FY 2013. These calls assist the parties in choosing an ADR process or in resolving problems in cases referred to an ADR process.
- 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.
- 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 the benefits outweigh the costs. Settlement rates for Mediation cases filed in calendar year 2013 were reported by the neutrals at 68%, and in ENE cases at 75%. 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 78 ADA access cases during FY 2014 (a slight increase from 61 in FY 2013); 38 cases were handled by ADR Legal Staff and 40 cases by ADR Program Mediators. During FY 2014, we also saw a slight decrease in ADA access filings, dropping to 243 as compared to 269 in FY 2013. 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 2013, which are now far enough along to obtain meaningful data, there were a total of 249 ADA access cases filed. Of these, 51% were either voluntarily dismissed with no judicial action before a Notice of Need for Mediation was filed (114 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 (2 cases). Of the 123 remaining cases, 108 were handled in mediation; with 67 cases settled either before a session took place or as a result of the mediation session, 13 not settled, and 28 cases still pending in mediation.

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 2014, under Chief Judge Wilken's leadership, 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 Chief 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 2014, we handled 140 cases through this

program, as compared to 146 cases in FY 2013. Most cases resulted in a series of ADR phone conferences monitoring the parties' efforts at loan modification; 11 cases were formally referred to mediation and 1 to ENE.

ADR Funding and Staffing Issues:

During FY 2014, 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.

The Judicial Resources Committee and the Committee on Court Administration and Case Management have asked the FJC to study the effectiveness of ADR in the district courts in order to guide further funding decisions. Howard Herman is serving on the FJC's advisory group for the study. Our court is one of 9 courts being studied intensively, and we hosted researchers from the FJC in July 2014. During their week-long visit, the FJC staff interviewed judges and lawyers about the use and effectiveness of ADR in our court and gathered useful data to include in their study. The FJC's report to the Judicial Conference Committees will be submitted in December 2015.

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 2014, we operated 9 groups, attended by a total of 111 mediators. In addition, Howard Herman facilitates a similar group every other month for the Magistrate Judges focusing on their settlement conference work, and Daniel Bowling has begun a group for the Magistrate Judges focusing on mindfulness during settlement proceedings. The department also hosted two brown bag lunch presentations in FY 2014, covering the following topics: how to work with parties who are righteously indignant, and being mindful of and managing interior dialogue during a mediation. These sessions were attended by over 60 of our neutral panelists.

ADR Facilities

We have continued to make frequent use of our ADR Conference and Caucus Rooms, as well as Courtrooms 17 and 19 on the 16th floor, 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 will become more acute next year when Courtrooms 17 and 19 are slated to be transferred to the Bankruptcy Court.

Additional ADR Unit Activities, Outreach, and Awards:

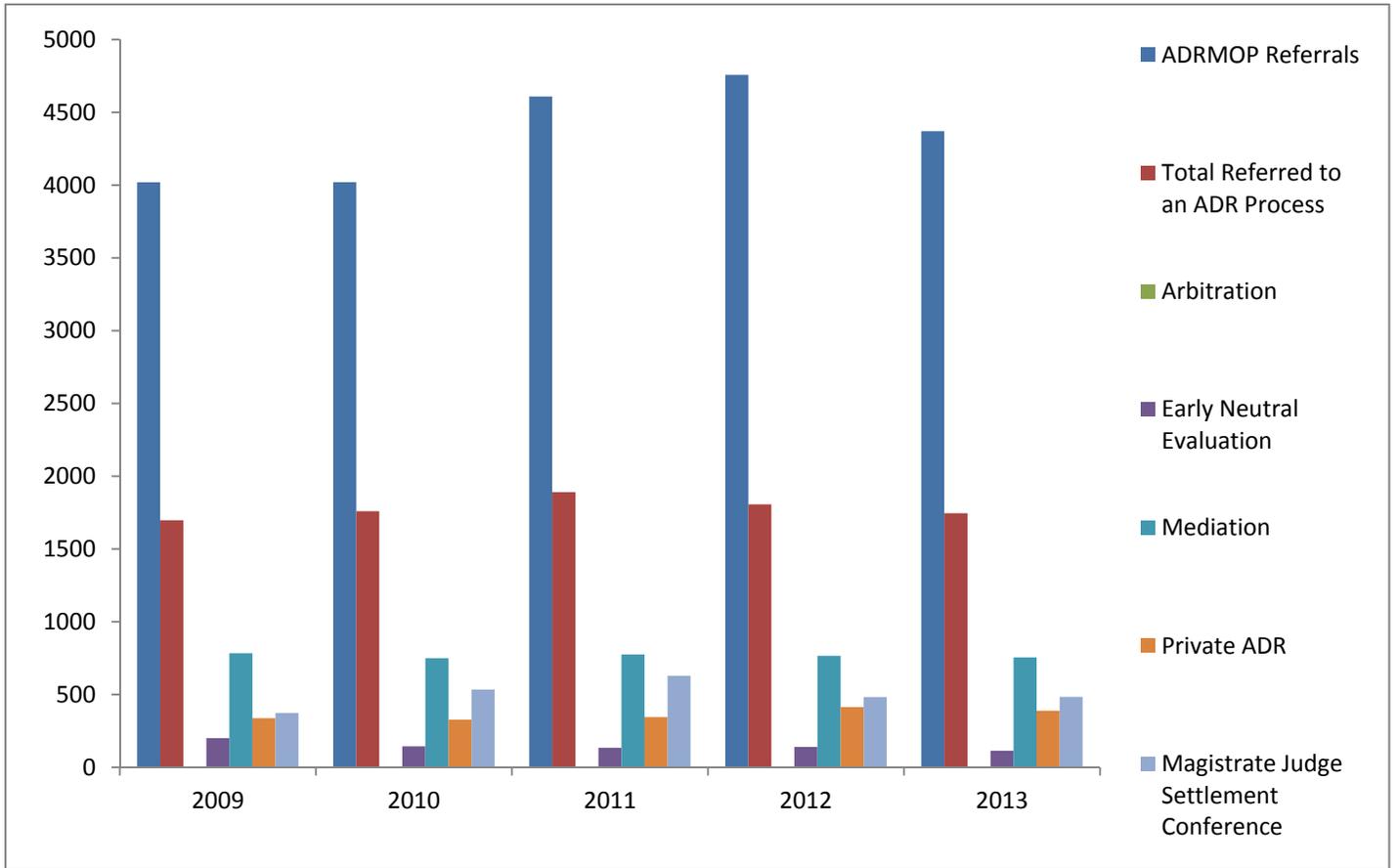
During FY 2014, Howard Herman served on the Executive Committee of the ABA Section of Dispute Resolution, and in August 2014 he was selected as Chair-Elect of the Section. He occasionally assisted other courts with mediation trainings, most notably partnering with Judge Fogel in programs sponsored by the Federal Judicial Center that were held in the Eastern and Southern Districts of New York and the Central District of California. 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, which is currently working on proposed changes to the ADR Local Rules which will be presented to the Court and the public for comment.

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. He also gave a presentation for the Clerk's Office CAND College lecture series during this fiscal year.

Both Howard Herman and Daniel Bowling assisted magistrate judges with particularly complex settlement conferences during this fiscal year. They also facilitated a portion of the Clerk's Office Annual Leadership Retreat.

ADR Case Referrals



	2009	2010	2011	2012	2013
ADRMOP Referrals	4020	4016	4609	4757	4370
Total Referred to an ADR Process	1698	1760	1891	1807	1746
Arbitration	2 (<1%)	3 (<1%)	5 (<1%)	4 (<1%)	2 (<1%)
Early Neutral Evaluation	201 (12%)	145 (8%)	135 (7%)	140 (8%)	115 (7%)
Mediation	784 (46%)	750 (43%)	776 (42%)	766 (42%)	756 (43%)
Private ADR	338 (20%)	328 (19%)	345 (23%)	414 (23%)	389 (22%)
Magistrate Judge Settlement Conference	373 (22%)	534 (30%)	630 (27%)	483 (27%)	484 (28%)