

ADR Program Report—Fiscal Year 2016

Overall Caseload:

- Filings – During FY 2016, 3828 cases were subject to the ADR Multi-Option Program. This is an increase of 27 cases from FY 2015. In addition to the ADR Multi-Option Program cases, 429 ADA access cases were filed during FY 2016, a significant increase over FY 2015. ADA access cases are subject to General Order 56 and are not counted as Multi-Option Program referrals.
- ADR Phone Conferences – ADR Legal Staff conducted 1116 phone conferences in FY 2016, a significant increase over the 939 phone conferences conducted in FY 2015. 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. The settlement conference percentage appears low, but because settlement conference referrals continue to be made later in the life of the case, the number is likely to continue to rise after the date of this report.
- Satisfaction and Settlement Rates - Surveys of participants in Mediation and ENE processes continue to show that well over 90% of the participants believe these processes to be fair, and that over 80% report the benefits outweigh the costs. The settlement rate for Mediation cases filed in calendar year 2015 was approximately 55%, and for ENE cases files in calendar year 2015 was approximately 32%. These settlement rates are a bit lower than last year, particularly for ENE, but are within historical expectations.

ADA Access Cases:

The ADR Program continues to handle the bulk of ADA Access filings under General Order 56. Mediation sessions were conducted in 63 ADA access cases during FY 2016 (a decrease from 98 in FY 2015); 18 cases were handled by ADR Legal Staff and 45 cases by ADR Program Mediators. During FY 2016, we also saw a dramatic increase in ADA access filings, growing to 429 cases as compared to 238 in FY 2015. This jump in filings began in February 2016, and 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 2015, which are now far enough along to obtain meaningful data, there were a total of 211 ADA access cases filed. Of these, 54% (118 cases) were either voluntarily dismissed with no substantive judicial action before a Notice of Need for Mediation was filed (106 cases) or dismissed or transferred out of the district before a Notice of Need for Mediation was filed (8 cases). Of the 97 remaining cases, 88% (85 cases) were handled in mediation; with 63 cases settled either before a session took place or as a result of the mediation session, 2 cases partially settled, 6 cases not settled, and 14 cases still pending in mediation. Of the remaining 12 cases, 4 have yet to file a Notice of Need for Mediation, 4 were dismissed on motions after the plaintiff died, and 4 were either formally removed from General Order 56 or treated as if the case was not subject to General Order 56.

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 2016, 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 referring the case to ADR for a phone conference. In FY 2016, ADR Legal Staff handled 62 cases through this program, a substantial decrease from the 143 cases referred for early assessment in FY 2015. Most cases resulted in a series of ADR phone conferences monitoring the parties' efforts at loan modification; 13 cases were formally referred to mediation, 1 to ENE, 3 to a settlement conference, and 1 to private ADR.

ADR Funding and Staffing:

During FY 2016, we continued to suffer from the effects of the reduced national formula for ADR staffing. 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 is increasing. It is unclear whether we will be able to continue to work at the existing pace, and we are especially concerned about the dramatic increase in phone conferences and ADA access filings. In December 2016, the FJC is scheduled to submit its long-delayed 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.

Longtime ADR Program Administrator Tim Smagacz left the court in January 2016, and his position has been filled by Erin Hamilton, who assumed her duties in February. ADR Program Attorney & Mediator Tamara Lange has just completed her first year with 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 2016, we continued to operate 9 groups, in which a total of 139 mediators participated, with Tamara Lange now leading the 4 groups previously facilitated by Daniel Bowling. In addition, Howard Herman facilitates a similar group every other month for the Magistrate Judges focusing on their settlement conference work.

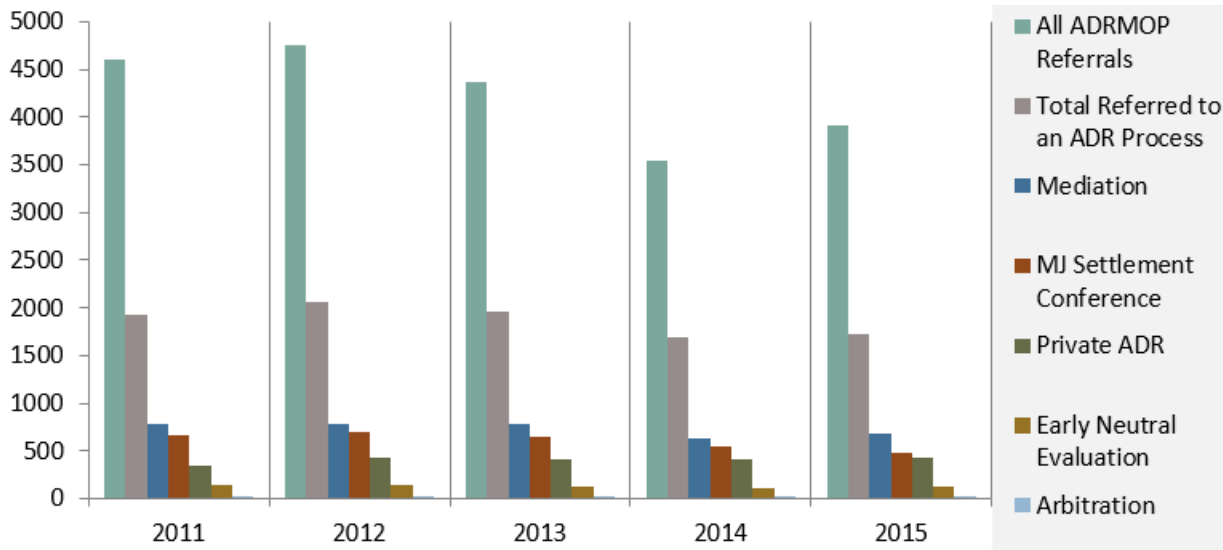
ADR Facilities

We have continued to make frequent use of our dedicated ADR conference rooms in San Francisco. The large ADR conference room on the 16th floor recently has been converted into two smaller rooms, to allow us more flexibility in hosting additional sessions, and we hope renovation of these facilities will be completed by the end of calendar year 2016. We also continue to host ADR sessions in various courtrooms and other spaces within the San Francisco federal building, and, when possible, to schedule ADR matters in courtrooms in both Oakland and San Jose.

Additional ADR Unit Activities, Outreach, and Awards:

During FY 2016, Howard Herman served as Chair of the ABA Section of Dispute Resolution, a substantial commitment of time and resources. He continued his longstanding association with the Center for Negotiation and Dispute Resolution at UC Hastings College of the Law. Howard also served on the faculty of the Federal Judicial Center’s Mediation Training for Judges and presented at the Ninth Circuit Judicial Conference.

Tamara Lange represented the ADR Program and the Court by making presentations to various bar organizations. Tamara also taught Negotiation as an Adjunct Assistant Professor at UC Berkeley Law School.



	2011	2012	2013	2014	2015
ADRMOP Referrals	4609	4757	4370	3549	3905
Total Referred to an ADR Process	1920	2063	1966	1696	1718
Arbitration	5 (<1%)	5 (<1%)	3 (<1%)	6 (<1%)	5 (<1%)
Early Neutral Evaluation	134 (7%)	149 (7%)	118 (6%)	101 (6%)	117 (7%)
Mediation	777 (41%)	785 (38%)	787 (40%)	635 (37.5%)	678 (40%)
Private ADR	347 (18%)	432 (21%)	414 (21%)	414 (24.5%)	434 (25%)
Magistrate Judge Settlement Conference	657 (34%)	692 (34%)	644 (33%)	540 (32%)	484 (28%)