

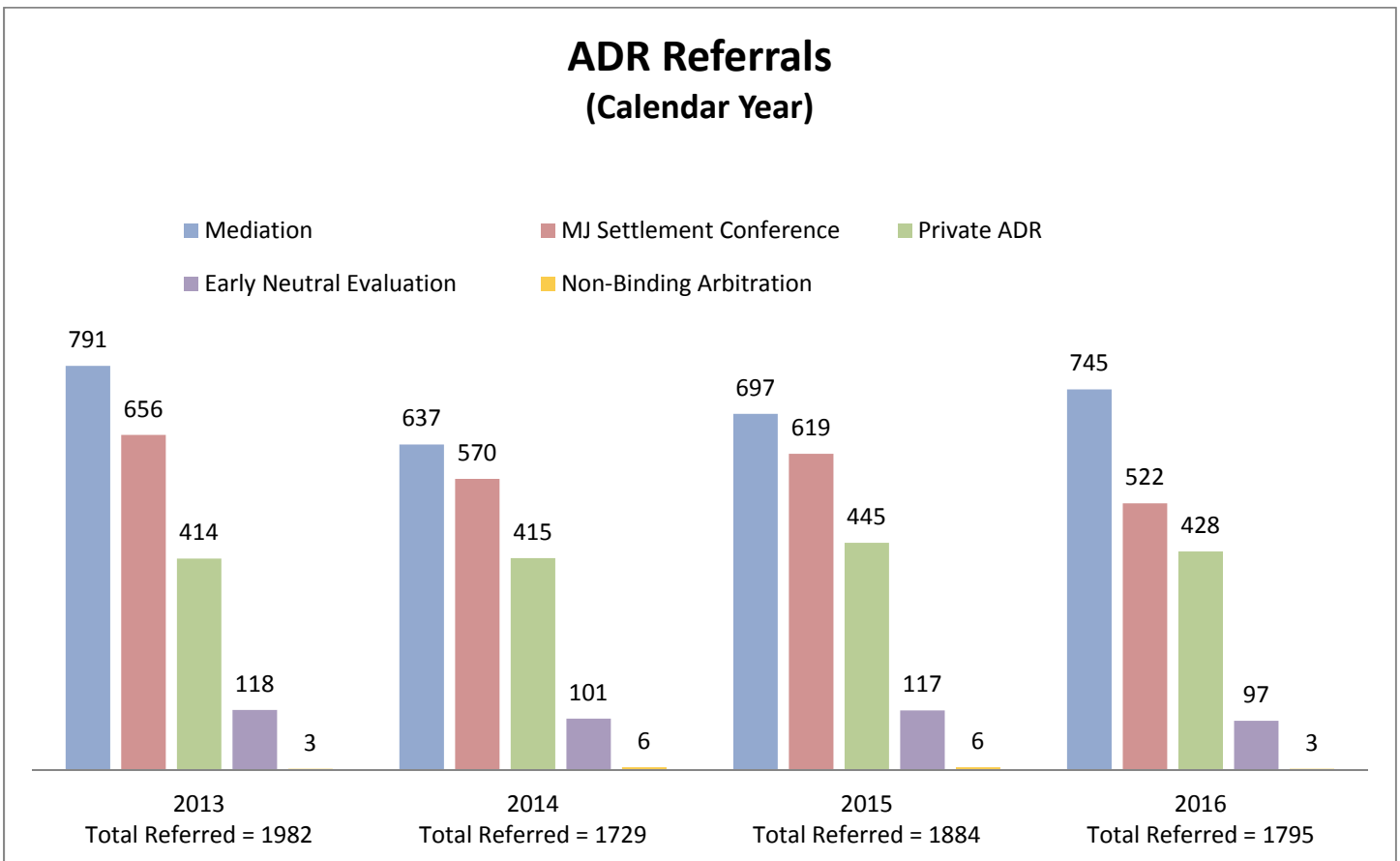
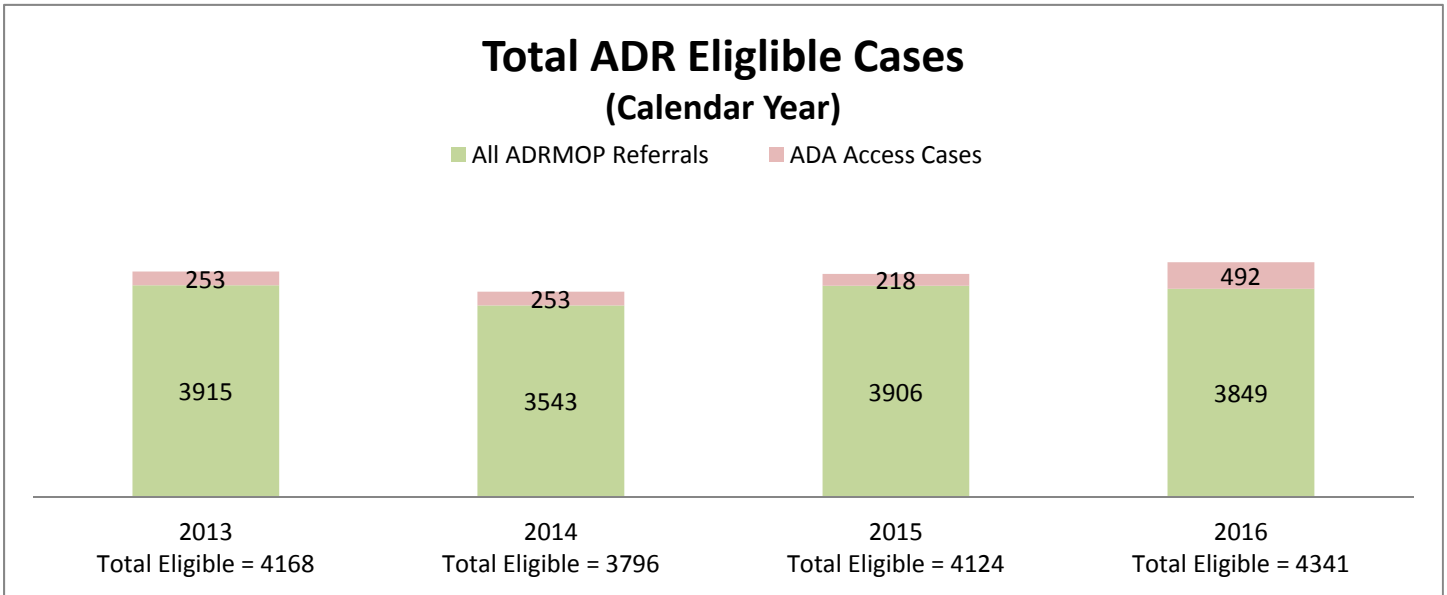
ADR Program Report

Fiscal Year 2017 (October 1, 2016 through September 30, 2017)

Overall Caseload

- Filings – During FY 2017, 3790 cases were subject to the ADR Multi-Option Program. This is a decrease of 38 cases from FY 2016. In addition to the ADR Multi-Option Program cases, 654 ADA access cases were filed during FY 2017, a significant increase over the 429 ADA access cases filed in FY 2016, and an overwhelming increase over the 198 ADA access cases filed in FY 2015. ADA access cases are subject to General Order 56 and are not counted as Multi-Option Program referrals.
- 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 charts included here show the distribution of referrals to the various ADR processes over the last four *calendar* years. The distribution has remained remarkably stable, with mediation continuing to be the preferred option. The settlement conference number for 2016 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.
- ADR Phone Conferences – ADR Legal Staff conducted 1281 phone conferences in FY 2017, a significant increase over the 1119 phone conferences conducted in FY 2016, and a substantial 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. Most calls are scheduled in response to counsel filing a Notice of Need for ADR Phone Conference either because they have not agreed on an ADR process by the deadline or because they prefer an early settlement conference with a magistrate judge.
- Satisfaction and Settlement Rates – Surveys continue to show that over 95% of the participants in Mediation and ENE report that the processes were fair, and that over 85% report the benefits outweighed the costs. The settlement rate for Mediation cases filed in calendar year 2016 was approximately 55%, and for ENE cases files in calendar year 2016 was approximately 40%. These settlement rates are consistent with historical expectations and are remarkably good for an early-ADR, court-annexed program.

Overall Caseload (Cont.)



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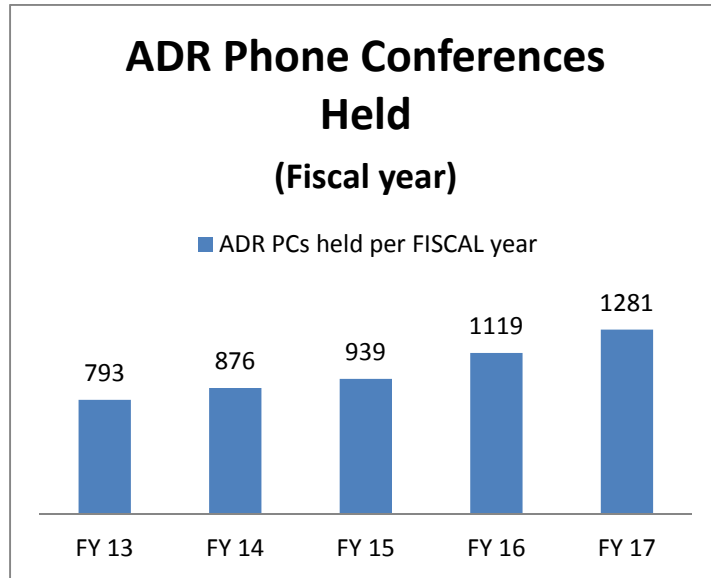
ADR Referrals (Calendar Year)

| | 2013 | 2014 | 2015 | 2016 |
|--|-----------|-----------|-----------|-----------|
| Total ADR Eligible Cases | 4168 | 3796 | 4124 | 4341 |
| ADA Access Cases | 253 | 253 | 218 | 492 |
| ADRMOP Referrals | 3915 | 3543 | 3906 | 3849 |
| Total Referred to an ADR Process | 1982 | 1729 | 1884 | 1795 |
| Mediation | 791 (40%) | 637 (37%) | 697 (37%) | 745 (42%) |
| Magistrate Judge Settlement Conference | 656 (33%) | 570 (33%) | 619 (33%) | 522 (29%) |
| Private ADR | 414 (21%) | 415 (24%) | 445 (24%) | 428 (24%) |
| Early Neutral Evaluation | 118(6%) | 101 (6%) | 117 (6 %) | 97 (5 %) |
| Arbitration | 3 (<1%) | 6 (<1%) | 6 (<1%) | 3 (<1%) |

Notes:

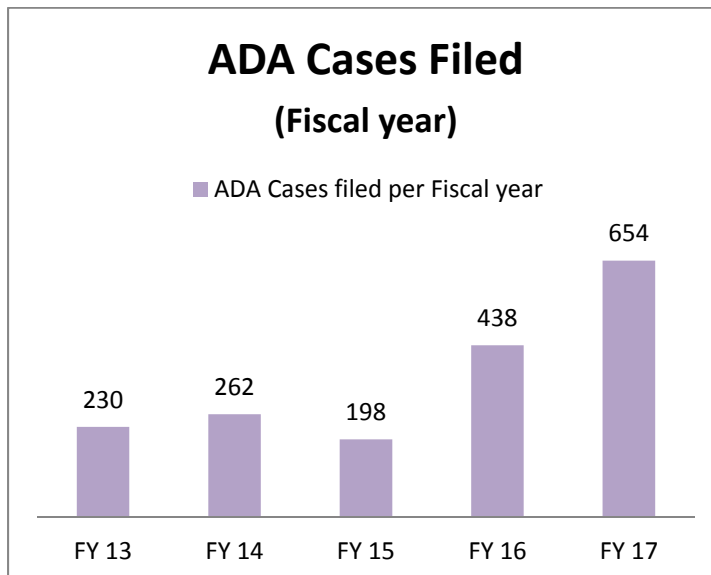
1. These statistics were compiled from the Court's ECF system as of November 16, 2017. While the number of ADR eligible cases is fixed at the end of each calendar year, the number of cases referred to an ADR process and to any particular process may continue to increase.
2. Most cases are not referred until at least 90-120 days after filing, and some cases are referred much later. Accordingly, additional referrals for cases filed in 2016 are still expected, particularly with respect to settlement conferences.
3. Multiple ADR sessions may be held in any given case, and this is particularly true of settlement conferences and mediations.

Overall Caseload (Cont.)

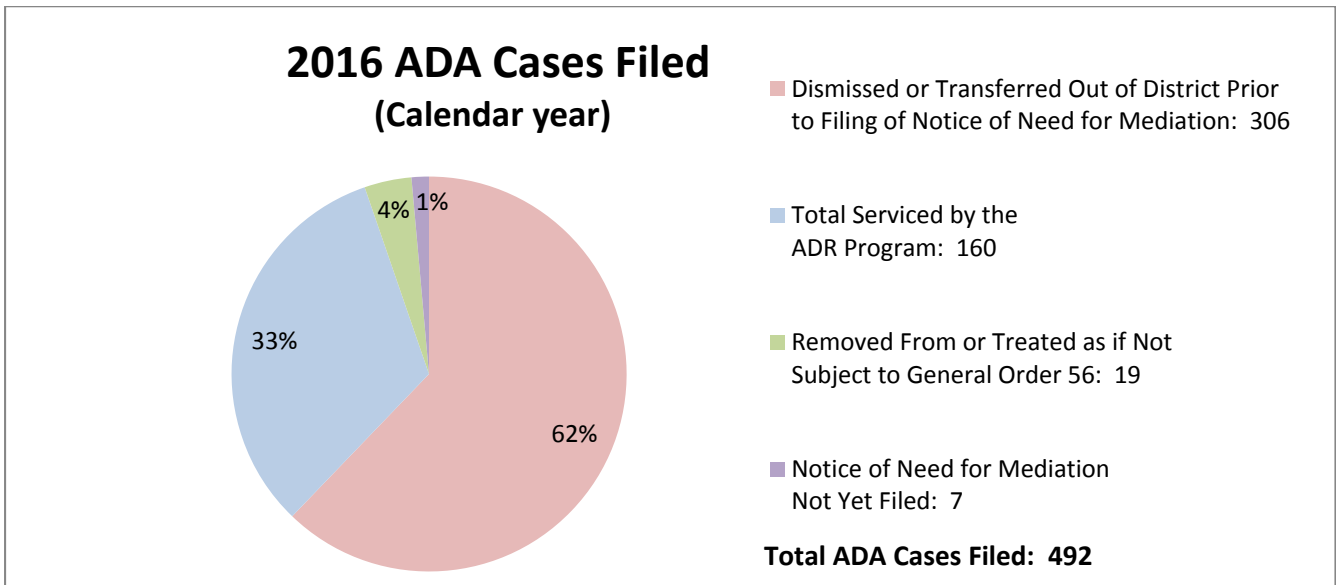


ADA Access Cases

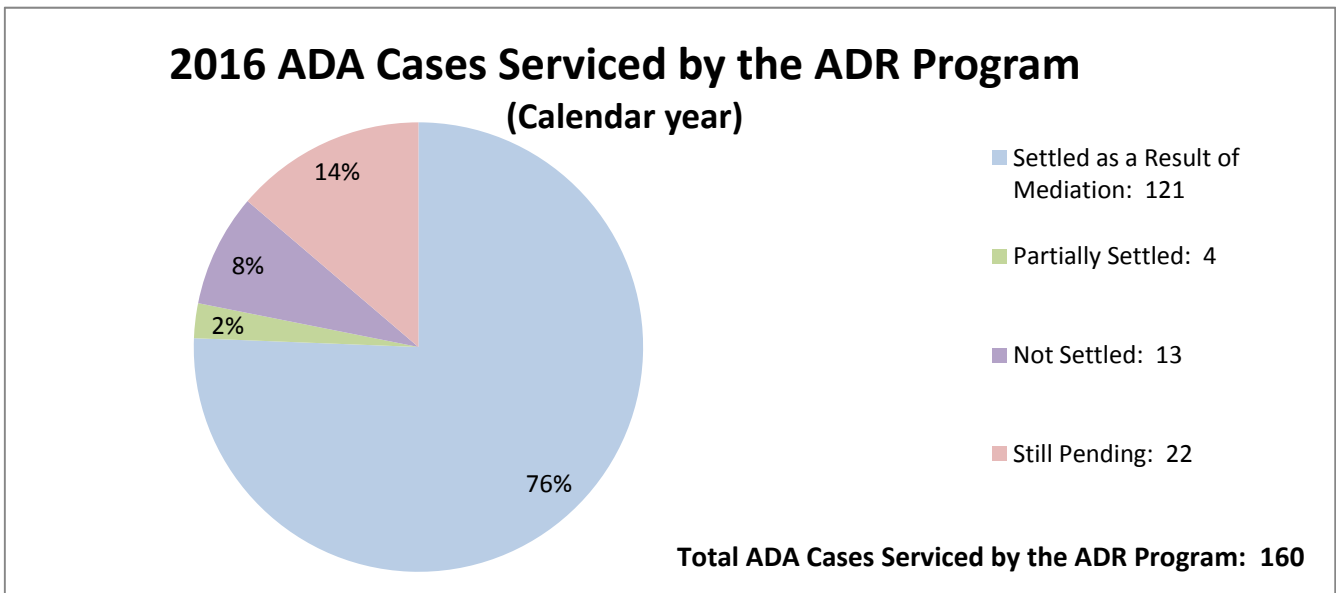
The ADR Program continues to handle the bulk of ADA Access filings under General Order 56. Mediation sessions were conducted in 84 ADA access cases during FY 2017, an increase of 21 over the 63 cases with mediation sessions conducted in FY 2016. 29 cases were handled by ADR Legal Staff and 55 cases by ADR Program Mediators. During FY 2017, we also saw a dramatic increase in ADA access filings, with 654 cases as compared to 429 in FY 2016, and to 198 in FY 2015.



Substantively, the General Order 56 process continues to be a very successful tool for managing ADA cases. For cases filed in calendar year 2016, which are now far enough along to obtain meaningful data, there were a total of 492 ADA access cases filed. Of these, 62% (306 cases) either were dismissed voluntarily with no substantive judicial action before the parties filed a Notice of Need for Mediation (289 cases) or were dismissed or transferred out of the district before the parties filed a Notice of Need for Mediation (17 cases).



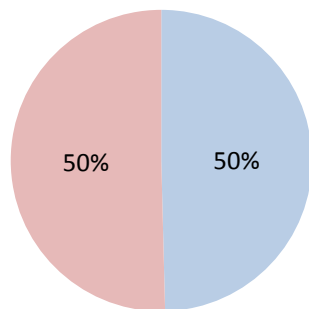
Of the 186 remaining cases, 86% (160 cases) were handled in mediation; with 121 cases settled either before a session took place or as a result of the mediation session. Four cases partially settled, 13 cases did not settle, and 22 cases are still pending in mediation. Of the remaining 26 cases, seven still await the filing of a Notice of Need for Mediation, and 19 either were removed from General Order 56 or were treated as if 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 to assess in advance of the usual ADR process selection deadlines whether ADR might assist the parties in resolving the dispute prior to motion practice or other litigation. In FY 2017, the ADR Program continued to run weekly reports to screen for newly filed mortgage foreclosure cases. For each identified case, we sent the assigned judge guidelines for assessing the cases' suitability for early intervention and a sample order referring the case to ADR for a phone conference. In FY 2017, ADR Staff identified 125 potentially eligible mortgage foreclosure cases. Of that group, 62 cases were referred back to us for early assessment phone calls, the same number referred for early assessment in FY 2016. Most cases resulted in a series of ADR phone conferences monitoring the parties' efforts at loan modification; 15 cases (24%) were dismissed voluntarily after ADR phone conferences, two cases were referred to formal mediation, none to ENE, one to a settlement conference, and one to private ADR. Cases not resolved or referred to a formal ADR process remained subject to the usual ADR Multi-Option Program protocols. Later referrals and dispositions through those protocols are not included in these statistics.

2017 Potentially Eligible Mortgage Foreclosure Cases (Fiscal year)

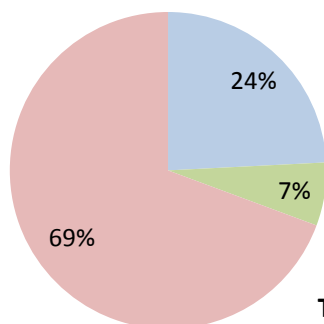


■ Cases Referred to ADR for Early Assessment Phone Conferences: 62

■ Cases Not Referred for Early Assessment: 63

Total Potential Eligible Mortgage Foreclosure Cases: 125

2017 Mortgage Foreclosure Cases Referred for Early Assessment (Fiscal Year)



■ Voluntary Dismissals after ADR Phone Conferences: 15

■ Referred to Formal ADR Process (Mediation, ENE, MJSC, Private): 4

■ Returned for Regular Case Management Treatment: 43

Total Cases Referred for Early Assessment Phone Conferences: 62

ADR Funding and Staffing

During FY 2017, we continued to suffer from the effects cutbacks made five years ago due to sequestration and the reduced national formula for ADR staffing. The ADR Unit continues to provide all services previously offered with only two attorney mediators (rather than three) and without an administrative assistant, though our workload has increased substantially year over year. Without increased staffing, it does not appear that we will be able to provide the full complement of ADR Program services in FY 2018. This longstanding problem has been compounded by the dramatic increase in phone conferences and ADA access filings.

In April 2017, the FJC submitted 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. The results of the study of our district were overwhelmingly positive. A Subcommittee of the Committee on Court Administration and Case Management has been formed to make recommendations about best practices in light of the FJC report, but it is doubtful that the staffing formula will be revisited in the near future.

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 the confidentiality of the mediation process. In FY 2017, we continued to operate nine groups, in which 132 mediators participated, with Tamara Lange leading four groups, and Howard Herman leading five groups. In addition, Howard and Tamara facilitate a similar group every month for the Magistrate Judges, focusing on their settlement conference work.

In FY 2017, the ADR Program offered additional continuing education programs for mediators and ENE evaluators, with sessions offered in both San Francisco and Palo Alto. In April 2017, Howard and Tamara led a workshop entitled “Advanced Mediation Skills: Using Caucus to Maximum Advantage” for a total of 55 attendees. In May 2017, Howard moderated a discussion with panelists Daralyn Durie, Tamara Lange, and Patrick Robbins, entitled “Advanced ENE Skills: Figuring Out What Participants Really Want,” attended by 36 of our neutrals.

ADR Facilities

During FY 2017, the Court completed a renovation of our dedicated ADR conference rooms on the 16th floor of the San Francisco courthouse. We continue to make frequent use of these facilities. 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.

In FY 2017, a total of 196 ADR Program sessions were hosted at court facilities.

Additional ADR Unit Activities and Outreach

During FY 2017, Howard Herman continued his service in the leadership of the ABA Section of Dispute Resolution, as Immediate Past Chair, and his 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 annual Magistrate Judge Trainings and its revamped Case Management Training for District Judges. At the request of the Ninth Circuit ADR Committee, he co-developed and co-led a mediation training for judges throughout the Ninth Circuit and a mediation advocacy training for the California Attorney General's Correctional Law Section. In addition, Howard co-developed and co-led a segment of an innovative program on the judiciary's role in promoting civil discourse presented jointly by the Federal Judicial Center and the Justice Anthony M. Kennedy Library and Learning Center in Sacramento. Tamara Lange participated as faculty in these last three programs.

In addition, Tamara was Co-Chair of the planning committee that organized the Federal Judicial Center's bi-annual Conference for Federal Mediators. She was an invited speaker at the annual Northwest Dispute Resolution Conference in Seattle, and she presented with Magistrate Judge Donna Ryu at the ABA Section of Dispute Resolution Annual Spring Conference. Tamara also taught Negotiation at Berkeley Law.