

# ADR Program Report

## Fiscal Year 2018 (October 1, 2017 through September 30, 2018)

### Overview of the Year

Fiscal year 2018 saw the first major change in ADR Program practices in several years. To increase efficiency and to improve the workload for ADR attorneys and staff, effective May 1, 2018, the ADR Local Rules were amended to shift most early discussions with counsel about ADR options and timing from a required ADR phone conference conducted by the ADR legal staff to the initial case management conference conducted by the assigned judge. This change was necessitated by a continued lack of national funding for ADR at a time when ADR workload in our court is increasing.

As set forth in more detail below, although the total number of ADR referrals has increased only slightly and the distribution of referrals among the various ADR options has remained relatively constant, staff intensive ADA access cases continue to dominate the ADR docket. The ADR Program also continued to provide special screening of mortgage foreclosure cases and all of its other services.

In September 2018, ADR Program Manager Erin Hamilton, left to become the court's Jury Administrator. Long time ADR Case Administrator Claudia Forehand has since been promoted to the Program Manager position.

In August 2018, ADR Program Director Howard Herman was selected to receive the Ninth Circuit ADR Committee's Robert F. Peckham Award for Excellence in ADR. Howard was one of the inaugural recipients of this award in 2002, and this is the first time a district has been acknowledged twice.

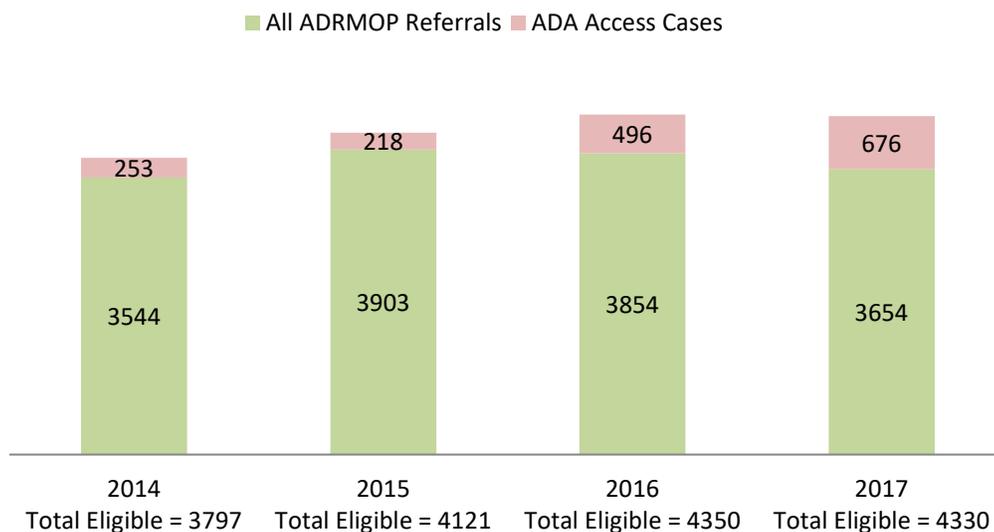
### Overall Caseload

- Filings – During FY 2018, the total number of ADR eligible filings was 4850 cases, an increase of 407 cases over FY 2017. 4010 cases were subject to the ADR Multi-Option Program (an increase of 219 cases over FY 2017) and 841 cases were ADA access filings subject to General Order 56 (an increase of 188 cases over FY 2017).
- 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 2017 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.

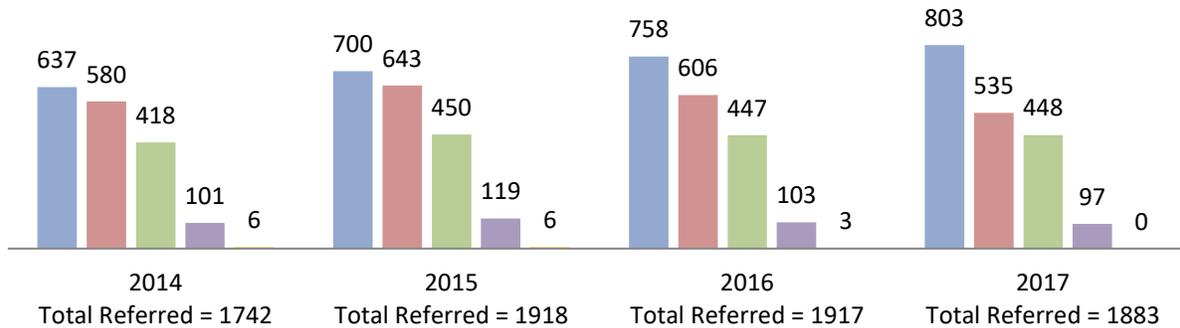
- ADR Phone Conferences*** – ADR Legal Staff conducted 950 phone conferences in FY 2018, a significant decrease from the 1281 phone conferences conducted in FY 2017. This decrease was the result of the change in phone conference procedure implemented by the ADR Local Rules for cases filed beginning May 1, 2018. Calls to assist the parties in choosing an ADR process are now scheduled only at the request of the parties or based on a referral from the assigned judge. Calls may also be set by the ADR Program to resolve problems in cases already referred to an ADR process. Previously, ADR phone conferences were set whenever the parties had not agreed on an ADR process or they preferred an early settlement conference with a magistrate judge.
- Satisfaction and Settlement Rates*** – Surveys show that for cases filed in calendar year 2017, satisfaction levels remain quite high. 89% of the participants in Mediation and ENE report that the processes were fair, and 77% report the benefits outweighed the costs. The settlement rate for Mediation cases filed in calendar year 2017 was approximately 63%, and for ENE cases files in calendar year 2017 was approximately 40%. These settlement rates are consistent with historical expectations and are remarkably good for an early-ADR, court-annexed program.

### Total ADR Eligible Cases (Calendar Year)



## ADR Referrals (Calendar Year)

- Mediation
- MJ Settlement Conference
- Private ADR
- Early Neutral Evaluation
- Non-Binding Arbitration



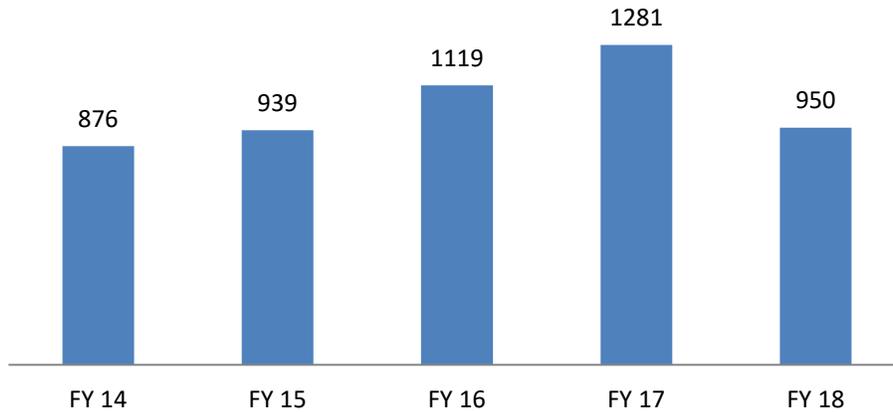
	2014	2015	2016	2017
<b>Total ADR Eligible Cases</b>	3797	4121	4350	4330
<b>ADA Access Cases</b>	253	218	496	676
<b>ADRMOP Referrals</b>	3544	3903	3854	3654
<b>Total Referred to an ADR Process</b>	1742	1918	1917	1883
<b>Mediation</b>	637 (37%)	700 (37%)	758 (40%)	803 (43%)
<b>Magistrate Judge Settlement Conference</b>	580 (33%)	643 (33%)	606 (32%)	535 (28%)
<b>Private ADR</b>	418 (41%)	450 (24%)	447 (23%)	448 (24%)
<b>Early Neutral Evaluation</b>	101(6%)	119 (6%)	103 (5 %)	97 (5 %)
<b>Arbitration</b>	6 (<1%)	6 (<1%)	3 (<1%)	0 (<1%)

**Notes:**

1. These statistics were compiled from the Court’s ECF system as of December 10, 2018. 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.)**

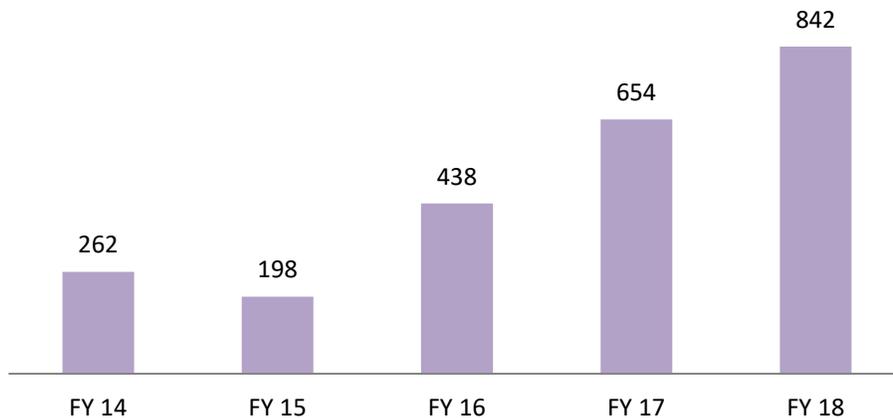
### **ADR Phone Conferences Held (Fiscal year)**



## **ADA Access Cases**

The ADR Program continues to handle the bulk of ADA Access filings under General Order 56. Mediation sessions were conducted in 153 ADA access cases during FY 2018, an increase of 69 over the 84 cases with mediation sessions conducted in FY 2017. 38 cases were handled by ADR Legal Staff and 115 cases by ADR Program Mediators. During FY 2018, the dramatic increase in ADA access filings continued, with 842 cases filed in FY 2018, as compared to 654 in FY 2017, 438 in FY 2016, and 198 in FY 2015.

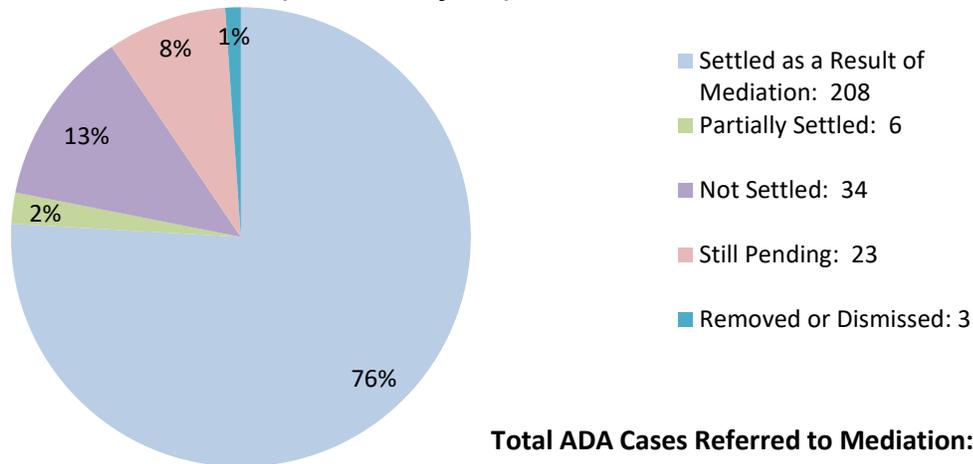
### **ADA Cases Filed (Fiscal year)**



Substantively, the General Order 56 process continues to be a very successful tool for managing ADA cases. For cases filed in calendar year 2017, which are now far enough along to obtain meaningful data, there were a total of 676 ADA access cases filed. Of these, 40% (274 cases) resulted in the filing of a Notice of Need for Mediation.

Of the 274 cases referred to mediation, 208 cases (76%) settled either before a session took place or as a result of the mediation session. 6 cases (2%) partially settled, 34 cases (13%) did not settle, and 23 cases (8%) are still pending in mediation. The remaining 3 cases (1%) were removed from mediation or dismissed by motion in advance of mediation.

**2017 ADA Cases Referred to Mediation  
(Calendar year)**



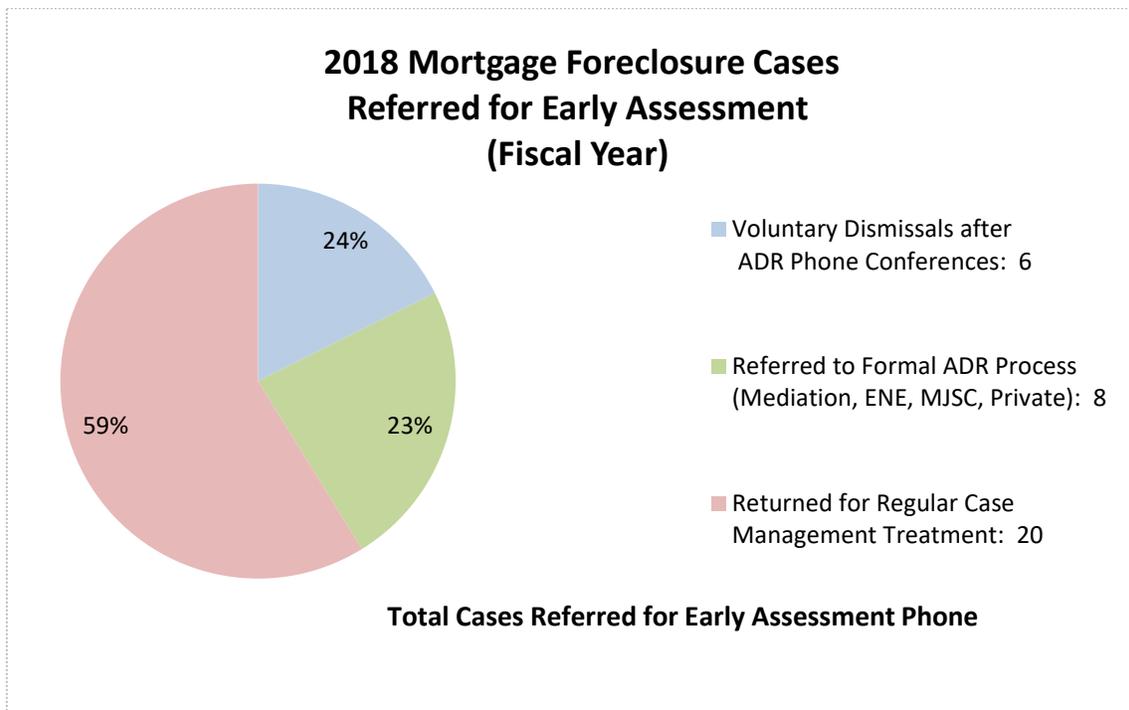
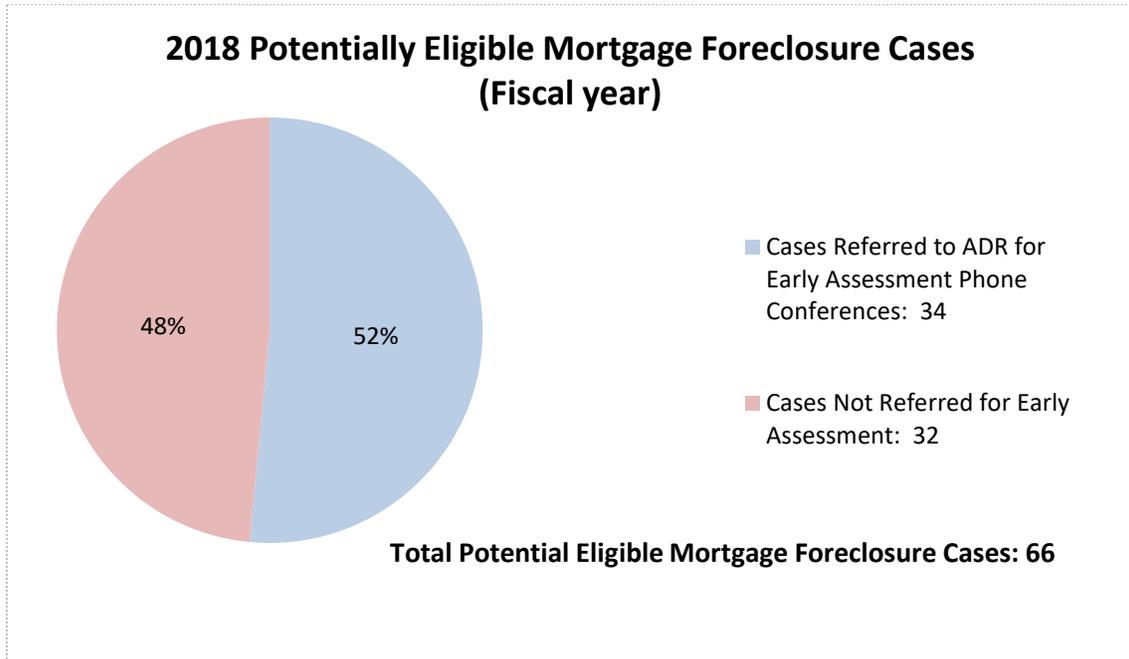
### **Mortgage Foreclosure Cases**

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 2018, 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 2018, ADR Staff identified 66 potentially eligible mortgage foreclosure cases. Of that group, 34 cases were referred back to us for early assessment phone calls, a significant decrease from the 62 cases referred for early assessment in FY 2017.

Most cases resulted in a series of ADR phone conferences monitoring the parties' efforts at loan modification; 6 cases (18%) were dismissed voluntarily after ADR phone conferences, 8 cases were referred to formal ADR processes 6 to mediation and 2 to a settlement conference. 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.



## **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 2018, we continued to operate nine groups, in which 122 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 June, 2018, the ADR Program offered an additional continuing education program for mediators and ENE evaluators: “What Neutrals Need to Know About the 2018 Amendments to the ADR Local Rules,” which was attended by neutrals.

## **ADR Facilities**

During FY 2018, the ADR Program continued to make frequent use of its dedicated conference rooms on the 16th floor of the San Francisco courthouse, and 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 2018, a total of 213 ADR Program sessions were hosted at court facilities.

## **Additional ADR Unit Activities and Outreach**

During FY 2018, Howard Herman 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 National Mediation Skills Workshop for Federal Judges; was the keynote speaker for an ADR training for the Eastern District of Missouri in St. Louis; and led a lunchtime discussion for the Mediation Society of San Francisco.

Tamara Lange served as faculty for the ABA's 15th Annual Mediation and Advocacy Skills Institute at Pepperdine University, taught negotiations at Berkeley Law, participated in the Federal Judicial Center's Attorney Competencies Working Group, and was both co-chair for the planning committee and a presenter at the Federal Judicial Center’s bi-annual Conference for Federal Mediators.