

31st Edition · JUNE 2016



Bankruptcy Mediation News

Mediation Program Contact Information

Program Administration

Judge Barry Russell
Program Administrator

Susan M. Doherty, Esq.
Program Coordinator

Tina M. Yepes
Program Analyst

Program Advisory Board

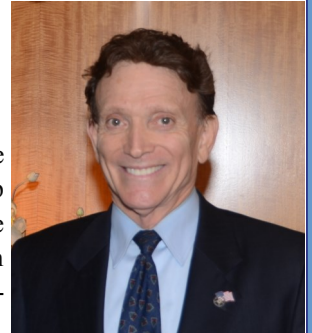
Hon. Dorothy W. Nelson
Senior Judge
Ninth Circuit Court of
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Pasadena, CA

Donna J. Stienstra
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A Word From The Administrator . . .

The Court's ADR Program is now 21 years old! We established the Program in 1995 to provide the public with effective and reliable help in resolving disputes without the time and expense of litigation. We have 190 panel members, many of whom have been with the Program since its inception. We are very proud of our entire panel and enormously grateful for your ongoing assistance!



Chief Judge Sheri Bluebond served on our ADR panel from 1995 until her appointment to the bench in 2001. This edition includes a charming story she wrote entitled "The Power of Mediation," which proves that "mediation is a powerful tool that can be employed to advantage in a wide variety of contexts." Also included are two short articles from Benjamin S. Seigel, Esq. entitled "Mediation or Meditation: Where the Two Intersect" and "Mediation Can Resolve Deadlocks in Business Negotiations." Ben has been a panel member since the Program began and is a frequent contributor to our Newsletter. I invite everyone to submit articles that may be of interest to your ADR colleagues.

The Ninth Circuit ADR Committee invited us this past year to provide the Committee with information about our Program for its fall meeting. This was the first year the Committee extended the invitation to include the Circuit's Bankruptcy Courts in addition to the District Courts. We were delighted to participate and a copy of our report is included in this edition.

The ADR Program staff has continued to work diligently with the Court's Information & Technology Department on revamping the Program's technology. For example, they added a mediator search feature and online panel membership application to the Court's website and replaced the software program used to track data from questionnaires completed by participants after mediation conferences. They have also totally upgraded the software used to track all mediation assignments. This is the third upgrade since 1995 and allows our Program to remain current in our ever-changing technological world.

Finally, the Bar Advisory Board provided our judges with suggestions for improvements to various aspects of court management, including mediation. The Board noted that mediations involving *pro se* litigants are more difficult than when all parties are represented by counsel, especially when the matters involve complex facts and uncertainty about the applicable law. The Board suggested that judges emphasize to *pro se* litigants that they must respond to the mediators' information requests, sign the Initial Confidentiality Agreements, timely submit mediation statements, and appear at the mediation conference. If you have encountered problems in this area, please send me a written description of the specific difficulties you have faced. I am developing written guidelines for the judges to distribute to all *pro se* litigants regarding the ADR Program and procedures and would greatly appreciate your input.

As always, I look forward to receiving your feedback on the Program. Please send any comments and suggestions to me in writing c/o the United States Bankruptcy Court, 255 East Temple Street, Room 1660, Los Angeles, CA 90012. Thank you!

Central District of California Bankruptcy Court Mediation Program Statistical Report

The Central District of California Bankruptcy Court established its Bankruptcy ADR Program in 1995 to provide the public with effective and reliable assistance in resolving disputes without the time and expense associated with litigation. The ADR Program entered in its 20th year in 2015 and remains the largest and most robust bankruptcy mediation program in the nation.

In the Central District, Third Amended General Order No. 95-01 governs the ADR Program. The focus of the Program is a Court-sponsored mediation panel, which consists of attorneys and non-attorney professionals such as accountants, real estate brokers, physicians, and professional mediators. The panel currently has 190 members and the Court continues to add new members on an ongoing basis as mediators who joined the panel at its inception in 1995 retire.

All issues which arise in bankruptcy cases are eligible for referral to the Program and all 24 of the bankruptcy judges in the Central District's five divisional offices assign matters to the panel. During the annual reporting period of July 1, 2014 – June 30, 2015, the number of matters assigned to the Program remained relatively steady despite the reduction in case filings. During this time period, 215 matters were assigned, 195 were concluded and 69% of the concluded matters settled.

From the Program's inception in 1995 through mid-October 2015, the judges have assigned 5,404 matters to mediation; 5,304 of those matters have concluded and 3,335 of the concluded matters settled. The settlement rate has held steady over the years at a very favorable rate of 63%.

The following charts display the matters assigned to the Program by Bankruptcy Code chapter and the distribution of mediation matters within the Court's five divisions.

Figure 1

United States Bankruptcy Court – Central District of California
Mediation Matters by Chapter: 1995-2015

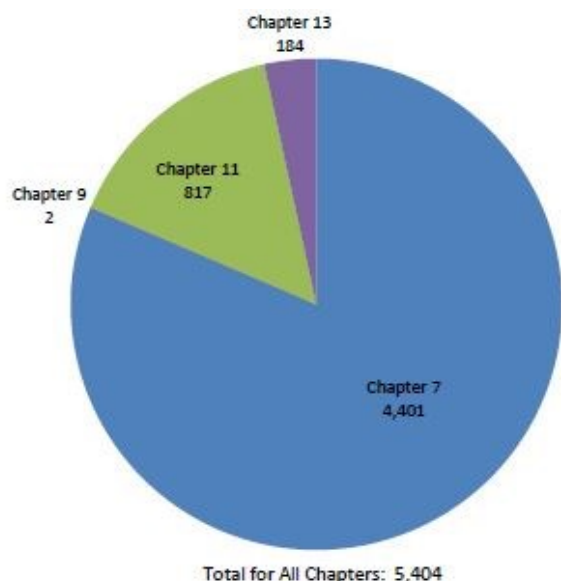
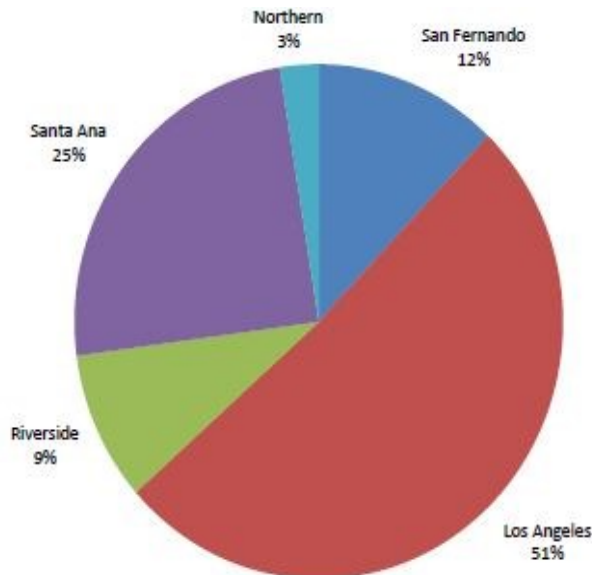


Figure 2

United States Bankruptcy Court – Central District of California
Mediation Matters by Division: 1995-2015



In addition, the Program continues to solicit feedback about its effectiveness by way of a comprehensive questionnaire which is sent to all of the parties and attorneys who attend mediation conferences. A customized statistics software program is used to analyze the data from the questionnaires. The results of the analysis for 2015 indicate that approximately 89% of the respondents were satisfied with the mediation process, approximately 88% would use the Program again, and approximately 92% would use the same mediator again. These percentages, which have held steady over the years, reflect the public's continuing high regard for the Program.

MEDIATOR SPOTLIGHT

"[JUDITH RUNYON] did an excellent job and was very comfortable in coordinating the proceedings. She was active and kept things moving."



"[LEONARD L. GUMPORT] was outstanding as mediator. Fair, focused, realistic, helpful, prepared, knowledgeable about the mediation process and he listened well. We participated in two other mediations and he was by far the most effective and qualified mediator."



"A great job by [BYRON Z. MOLDO]. He let my client, an attorney, speak and address the issues. Helped put the fear of god in the defendant which led to an acceptable settlement."



"[DAVID GOULD] artfully handled the emotional strains related to the case. The parties were both motivated to settle."



"[LESLIE A. COHEN] did a good job with the issues presented. I think this is an effective and worthwhile program. I was very satisfied with the mediator and the process."



"[DAVID W. MEADOWS] did his usual exemplary job. The debtor had tried to resolve this matter pre-bankruptcy and failed. As a result, he & his family members (who had also been sued by the trustee) were very angry and stubborn, so it was hard to mediate, much less settle. Mr. Meadows' careful preparation, realistic assessment of the case and winning manner gained the parties' confidence & trust, and the case settled in 3 hrs."



"[CHRISTOPHER L. BLANK] was great! He was very articulate and explicit when explaining matters pertaining to bankruptcy, bankruptcy law, and the trial and mediation process. He made sure we understood and were okay with the information he provided. A great mediator, and I'm sure a great attorney."

"[JOEL B. WEINBERG] was qualified and knowledgeable; also available and accommodating. He did a good job. Would use him again."



"[ALLAN ICKOWITZ] spent the time necessary and made the resources of his firm available to make the process as meaningful as possible. He and his firm were gracious to all who attended. These cases were difficult to resolve and he did an excellent job."





The Power of Mediation

By: Chief Judge Sheri Bluebond

One Sunday morning, while preparing breakfast, I heard a commotion coming from the room in which our 9-year old twins were playing on their respective computers. Sobbing and name-calling signaled that a threshold had been crossed between boisterous play and impending melee. Parental intervention was required.

I entered the room and made an initial assessment. The gist of the dispute, as I learned from the combatants, concerned the parties' respective obligations under an oral agreement to purchase and furnish a castle in an online computer game known as "Animal Jam."

After conferring briefly with each child and sending up a few trial balloon resolutions that were promptly torpedoed, I identified the situation as a perfect opportunity for my husband, who had recently completed a mediation training course, to hone his chops as a mediator.

I found him working outside on a project and asked whether he was willing to undertake a challenging mediation assignment. I explained that there were 2 parties -- both of whom were emotional, irrational, and immature -- and outlined the case as presented by each and the (unsuccessful) efforts I had made so far to bring about a resolution. To his credit, he rose to the challenge and went inside to meet with the parties. He closed the door behind him and went to work.

Perhaps thirty to forty-five minutes later, I gingerly opened the door to ask whether anyone would like to eat the breakfast that I had prepared. My husband, seated in the center of the room, asked each child in turn whether he/she would like to take a break or keep working. Both children responded that they would like to keep working.

Several minutes later, my daughter emerged and sat down to eat her breakfast while my husband remained in caucus with my son -- who is by nature the less reasonable and more demanding of the two.

Knowing that my son becomes even more selfish and unreasonable than usual when he is hungry, I entered the room and placed cinnamon toast, turkey sausage and a glass of orange juice in front of him, ignoring his protestations that he wasn't hungry and wouldn't eat. Perhaps the orange juice that he drank at my husband's insistence helped because my husband announced shortly thereafter that he had successfully resolved the dispute.

My son agreed to compensate my daughter for the economic damage she had suffered as a proximate result of his breach of contract by playing her version of the game long enough to win for her account a specified number of gems, which serve as the currency in Animal Jam. Both children were satisfied with this result, and peaceful relations resumed. (Of course, in less than an hour, they were again at each other's throats but, at our house, that's about par for the course.)

For me, this incident served to illustrate two important points: (1) my husband, Brad Smith, is a wonderful mediator and a terrific father; and (2) mediation is a versatile tool that can be employed to advantage in a wide variety of contexts. I am and will continue to be a huge fan -- of both my husband and the mediation process.



Mediation or Meditation: Where the Two Intersect

By: Benjamin S. Seigel, Esq.¹⁾

Mediation is a form of alternative dispute resolution that has become increasingly important as a way to settle litigation. Litigation today is expensive and acrimonious. Due to budget cuts, courts are scheduling hearings and trial often years away from the filing of a complaint. Mediation is a relatively inexpensive process and a mediation session can often result in a settlement in a day.

Meditation, as defined by Wikipedia, is a practice in which an individual trains the mind or induces a mode of consciousness, either to realize some benefit or as an end in itself. The two concepts may be very closely related. An example can be found in a recent matter based on a true story with the facts changed a bit to protect the confidentiality of the mediation process.

Mediation or Meditation: Where the Two Intersect

(cont'd from page 4)

Charles and Harry were engaged in a dispute about Harry's claim that Charles had sold Harry a defective product and Harry wanted his money back. Charles suggested that they engage in mediation to assist in reaching a resolution. Harry, who was unfamiliar with legal matters in general and mediation in particular, thought Charles had suggested "meditation."

They agreed to take the matter to the pastor of the church they both attended and a meeting was arranged. They each presented their side of the story and Harry asked when they were going to meditate. Charles and the pastor, with puzzled looks, asked Harry if he meant "mediate." Harry said he was confused because he thought they were going to think about the problem and reach a resolution by going into some kind of process that would lead to a settlement and he thought that was meditation.

Maybe the two processes are not so far apart because they both require a way of thinking that removes from the process the anger and egocentric feelings that usually accompany disputes. In mediation, the parties' goal is to reach a resolution that both can live with and go on about their lives. In meditation, the goal is to achieve peace of mind.

After discussing the mediation versus meditation philosophy, the pastor suggested that Harry and Charles go into separate rooms and think in a meditative way about how to resolve the dispute. They did so and returned an hour later. Each told the pastor they had given a lot of thought to the matter and after a brief discussion they agreed that Charles would replace the defective product with a new one and give Harry a refund for part of the purchase price to make up for the inconvenience.

Maybe mediation and meditation are not so different.



Mediation Can Resolve Deadlocks in Business Negotiations

By: Benjamin S. Seigel, Esq.

We think of mediation as an expedited and relatively inexpensive process to resolve disputes in litigation. However, mediation can also be a useful process in resolving deadlocks in business negotiations.

As an example taken from a real life transaction with the names changed and the facts greatly simplified, Big Company, Inc. was interested in acquiring ownership of the assets of Small Company, Inc., the stock of which was owned by two individuals, Sam and Harry, each holding a 50% interest. Big's president, Bob, contacted Sam and Harry and expressed his company's interest in an acquisition.

Sam and Harry agreed to consider an offer. The parties entered into a confidentiality and non-disclosure agreement which enabled Big to see all of Small's financial information, tour its facilities and review its assets. Big proposed an offer to purchase all of Small's assets based on Small's most recent financial statement's book value of those assets of \$5 million payable in cash at the closing. From the purchase price, Small's liabilities would be paid, leaving \$3 million in cash to be distributed to Sam and Harry.

Sam and Harry countered at \$8 million as the value of the assets to be purchased, based on their perception that the value of Small's goodwill was in excess of \$3 million. After weeks of negotiations, the parties were deadlocked in spite of Big's offer being increased to \$5.5 million and Small's counter-offer being lowered to \$7.5 million: \$2 million apart. Neither side would budge a penny. Experts were retained by both sides but the expert opinions were also \$2 million apart. Both sides wanted to close the deal and all other details were agreed to. However, the value issue could not be resolved.

Big's in-house counsel suggested the parties engage a mediator to assist in breaking the deadlock. A mediator was selected and accepted by both sides. In confidential discussions, the mediator learned that Sam and Harry were both in poor health and their conditions were the principal motivation for wanting to sell.

(cont'd on page 8)

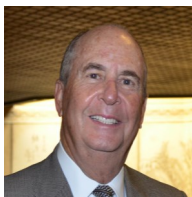
Annual Luncheons Honor Mediators



Amy Ghosh



Jason Wallach



Robert Greenfield



Robert Saint-Aubin



Jerry Seelig



Holly Walker



J. Scott Bovitz

On October 16, 2014 and November 18, 2015, the Central District's Bankruptcy Court and District Court co-hosted Annual Appreciation Luncheons to honor the Courts' mediators for the 2013-2014 and 2014-2015 terms and to congratulate them for their dedication and generous service in the ADR field. Over 100 guests attended each of these events, including Bankruptcy Judges Neil Bason, Sheri Bluebond, Julia Brand, Sandra Klein, Robert Kwan, Richard Neiter, Ernest Robles, and Barry Russell; Clerk of Court Kathleen Campbell; and Chief Deputies Steve Sloniker (Administration) and Benjamin Varela (Operations).

Judge Russell spoke at the events and recognized the outstanding achievements of many of our mediators for their service during these terms, including Franklin Adams, Christopher Blank, James Dumas, Jr., Barry Glaser, David Gould, Leonard Gumport, James Hayes, Jr., Jeanne Jorgensen, David Meadows, Ronald Michelman, Judith Runyon, and Kimberly Winick. We look forward to seeing you at this year's luncheon! We will email you a **SAVE THE DATE** note as soon as the date is determined.



David Guess



Rose Nazarian



Shirlee Fuqua



Scott Lee



Eric Israel



Lana Borsook



Michael White



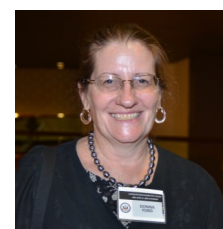
Peter Gurfein



Elmer Dean Martin III



Nicholas Nassif



Donna Ford

(Cont'd on pages 7 & 8)

(Cont'd from page 6)

Annual Luncheons Honor Mediators**Longest mediation conference (settled):**

John Graham, 21 hours (2014)

Lawrence Peitzman, 13 hours (2015)

Shortest mediation conference (settled):

Kathy Phelps, 1 hour (2014)

Barry Glaser, 1 hour (2015)

Conference involving largest amount of money (settled):

John Graham, \$50 million (2014)

David Gould, \$28 million (2015)

Conference with the most attendees:

John Graham, 12 attendees (2014)

Leonard Gumpert, 12 attendees (2015)

Most frequently chosen mediator:Entire Central District: Jason Pomerantz (2014)
Franklin Adams (2015)San Fernando Division: M. Jonathan Hayes (2014)
M. Jonathan Hayes &
Alan Nahmias (2015)Los Angeles Division: Jason Pomerantz (2014)
Dennis McGoldrick,
David Meadows &
Lawrence Peitzman (2015)

Riverside Division: Franklin Adams (2014 & 2015)

Santa Ana Division: Christopher Blank (2014)
Franklin Adams (2015)

Northern Division: William Beall (2014 & 2015)

Most conferences settled in mediation:Entire Central District: Jason Pomerantz (2014)
Lawrence Peitzman (2015)San Fernando Division: M. Jonathan Hayes (2014)
Alan Nahmias (2015)Los Angeles Division: Jason Pomerantz (2014)
Lawrence Peitzman (2015)

Riverside Division: Franklin Adams (2014 & 2015)

Santa Ana Division: Vincent Coscino (2014)
William Burd, Thomas Casey,
David Guess, David Meadows &
Laurel Zaeske (2015)Northern Division: William Beall (2014)
David Meadows (2015)

John Graham



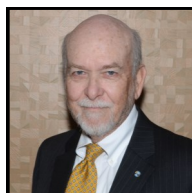
Lawrence Peitzman



Kathy Phelps



Barry Glaser



David Gould



Dennis McGoldrick



Jason Pomerantz



Franklin Adams



Christopher Blank



M. Jonathan Hayes



David Meadows



Laurel Zaeske



William Beall



Vincent Coscino



Alan Nahmias



Thomas Casey

MAILING COURTESY COPIES OF MEDIATION PLEADINGS TO JUDGES

A courtesy copy of the Mediator's Certificate Regarding Conclusion of Mediation Assignment (Form 706) must be mailed to the judge to whom the bankruptcy case and/or adversary proceeding is assigned. The last two letters of the case number specify the judge's name. The judges' names and division locations are:

LOS ANGELES DIVISION

NB = Judge Neil W. Bason
 BB = Chief Judge Sheri Bluebond
 WB = Judge Julia W. Brand
 TD = Judge Thomas B. Donovan
 SK = Judge Sandra R. Klein
 RK = Judge Robert N. Kwan
 RN = Judge Richard M. Neiter
 ER = Judge Ernest M. Robles
 BR = Judge Barry Russell
 DS = Judge Deborah J. Saltzman
 VZ = Judge Vincent P. Zurzolo

RIVERSIDE DIVISION

MH = Judge Mark D. Houle
 WJ = Judge Wayne E. Johnson
 MJ = Judge Meredith A. Jury
 SY = Judge Scott H. Yun

**SAN FERNANDO VALLEY
DIVISION**

AA = Judge Alan M. Ahart
 MB = Judge Martin R. Barash
 VK = Judge Victoria S. Kaufman
 GM = Judge Geraldine Mund
 MT = Judge Maureen A. Tighe

SANTA ANA DIVISION

TA = Judge Theodor C. Albert
 CB = Judge Catherine E. Bauer
 SC = Judge Scott C. Clarkson
 ES = Judge Erithe A. Smith
 MW = Judge Mark S. Wallace

NORTHERN DIVISION

PC = Judge Peter H. Carroll
 RR = Judge Robin L. Riblet

Mediation Can Resolve Deadlocks in Business Negotiations (cont'd from page 5)

The mediator learned from Big that its reason for wanting to acquire the assets was to enhance its balance sheet because it was negotiating with Bigger Company, Inc. to merge and the acquisition of Small's assets would increase the value of their interest. Neither side knew the motivation of the other. Without disclosing the motivations, the mediator was able to convince each side to move toward a middle ground and a compromised purchase price was agreed to.

Once the mediator learned the motivation of each side, he was able to use his training and experience to convince both sides to reach an agreement. Perhaps without the mediation, one side or the other might have given in or further discussion might have achieved a compromise. However, with the assistance of the mediator, both sides achieved their respective objectives and the sale was closed.



1) Benjamin S. Seigel is Of Counsel to Greenberg & Bass. He serves as a mediator for the Central District Bankruptcy Court, the U.S. District Court for the Central District of California, and as a panel mediator for Judicate West and the American Mediation Association, Inc. He can be reached at 818-382-6200 or benseigel@msn.com. His mediation website is benseigelmediation.com.

Annual Luncheon Photos (cont'd from page 7)



George Schulman



Daniel Spitzer



Stephen Biegenzahn



Alan Ramos



Thomas Tarter



Howard Steinberg



David Reeder



Joseph Markowitz

**CONTACT INFORMATION FOR MEDIATION
TRAINING PROGRAMS**

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www.law.pepperdine.edu/straus

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Santa Monica, CA 90405
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(310) 399-5906 (fax)
www.kennethcloke.com
Email: kcloke@aol.com

LACBA
Center for Civic Mediation
261 S. Figueroa Street
Suite 310
Los Angeles, CA 90012
(213) 833-6718 (fax)
www.centerforcivicmediation.org
Email:
amartin@centerforcivicmediation.org

Ventura Center for Dispute
Settlement
4001 Mission Oaks Blvd., Suite L
Camarillo, CA 93012
(805) 384-1313 (tel)
(805) 384-1333 (fax)
www.vcds.bz
Email: vcds@vcds.bz

PROGRAM STATISTICS

Number of Matters Assigned

5,571

Number of Matters Concluded

5,484

Number of Matters Settled

3,436

Overall Settlement Rate

63%

**Bankruptcy Mediation News
JUNE 2016**

**United States Bankruptcy Court
Edward R. Roybal Federal Building
255 East Temple Street, Suite 1660
Los Angeles, CA 90012**

TO:

www.cacb.uscourts.gov