



ADR

NEWSLETTER

ALTERNATIVE DISPUTE RESOLUTION in the NINTH CIRCUIT COURTS



SPRING 2017

Ninth Circuit ADR Committee Offers Mediation Skills Training

Many Ninth Circuit judges conduct settlement conferences as part of their responsibilities in the district and bankruptcy courts. Most litigators represent clients in mediation and settlement conferences during their careers, necessitating an understanding of mediation and negotiation skills. This year, the ADR Committee will sponsor training for judges and attorneys on settlement and mediation strategies.

The first training will be held at a workshop on settlement and negotiation strategies to employ during judge-hosted settlement conferences. The program will be part of the Ninth Circuit Judicial Conference in San Francisco on Wednesday, July 19, 2017.

A panel consisting of judges, circuit mediators and volunteer attorney mediators will discuss topics such as the use of pre-settlement phone conferences and the benefit of disclosing settlement conference statements among the parties.

The panel will also explore the timing of joint sessions during the settlement conference and the benefits of monetary evaluations by the judge. Additional topics include the importance of settlement authority among the parties and having other principals available on the telephone.

ADR Committee members in charge of the program content include Magistrate Judges Kendall J. Newman, Bruce G. Macdonald and Jacqueline S. Corley. Ninth Circuit Chief Mediator Claudia L. Bernard is also assisting with the program development. Please plan to attend

the 1.5-hour workshop at the circuit conference and share your suggestions for successful settlement conferences in which you have participated.

Immediately after the circuit conference in San Francisco, the Ninth Circuit Alternative Dispute Resolution Committee will offer a free mediation skills training for magistrate, bankruptcy and Article III judges. The essential tools used during mediation will be taught in an interactive two-day

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ADR Awards Recognize Law School, Court Staff



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Circuit Judge N. Randy Smith with 2016 Robert F. Peckham Award recipient Gail Killefer.

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workshop designed to enhance judges' settlement skills. The workshop is scheduled for **Thursday, July 20, from 2:00 p.m. to 5:00 p.m. and Friday, July 21, from 9:00 a.m. to 3:00 p.m.**

The mediation skills workshop will be held in San Francisco at the James R. Browning United States Courthouse, 95 7th Street.

The training faculty will be highly experienced professional mediators associated with the Ninth Circuit courts. The training topics will be selected from a survey sent to magistrate judges in the fall of 2016. Of the 69 judges who responded to the survey, 80 percent expressed interest in receiving additional mediation skills training. The survey responses included suggestions for training topics such as the benefits of different mediation styles, techniques for bringing entrenched parties to a settlement, dealing with difficult attorney tactics, and how to employ a knowledge of neuroscience to achieve a compromise.

The faculty of professional mediators will focus on practical, time-tested mediation skills to expand judges' settlement conference repertoires. Trainers have identified the following mediation skills on which to concentrate:

- Organizing the settlement conference for maximum effectiveness;
- Using communication skills to create momentum, dissipate participants' anger, and demonstrate understanding;
- Promoting and facilitating interest-based negotiation;
- Facilitating effective positional bargaining;
- Preventing and breaking down impasses; and
- Understanding different mediator styles.

A lunch will be provided to training participants at no charge on Friday, July 21.

If you are interested in participating, please contact Denise Asper, prison litigation project director, in the Office of the Circuit Executive by May 1, 2017 at dasper@ce9.uscourts.gov. The committee is anticipating a large enrollment for the training, so please reserve a spot before May 1, 2017.

Members of the ADR Committee will also conduct mediation skills training at the state-wide meeting of deputy attorneys general in the California's Correctional Law Section. A day-long training session in May will focus on effective communication, deciphering the underlying interests of the parties, the use of apology, and creative, non-monetary remedies.

Jonathan L. Wolff, chief assistant attorney general in the Civil Division, is a member of the ADR Committee. He requested the training for the 90 deputy attorneys general in the correctional section. Ms. Asper, Ms. Bernard, and Howard Herman, ADR Program Director for the Northern District of California, are working with the correctional section to create the training topics and materials. Similar mediation skills training programs have been conducted in Nevada and Arizona for the deputy attorneys general assigned to correctional cases.

If you have questions about these various training programs, please contact either District Judge Andrew P. Gordon, chair of the Ninth Circuit ADR Committee, or Ms. Asper. ●

Free Mediation Skills Training

for Magistrate, Bankruptcy and Article III judges

Thursday, July 20 2:00 p.m. to 5:00 p.m.
Friday, July 21 9:00 a.m. to 3:00 p.m

James R. Browning United States Courthouse, 95 7th Street, San Francisco

To participate, contact Denise Asper by May 1 at dasper@ce9.uscourts.gov.



Professor Susan Nauss Exon and Dean Gilbert A. Holmes accept the 2016 Ninth Circuit ADR Education Award on behalf of the University of La Verne College of Law in Ontario.

The Ninth Circuit Alternative Dispute Resolution Committee recently presented awards recognizing institutional and individual achievements in the ADR field.

ADR Education Award

The University of La Verne College of Law in Ontario, California, was selected as the recipient of the 2016 Ninth Circuit ADR Education Award. The award was presented on February 25, 2017, at the Central District of California’s district conference. Dean Gilbert A. Holmes and Professor Susan Nauss Exon, associate dean for faculty development, accepted the award on behalf of the law school.

Professor Exon administers the law school’s ADR education program, focusing on teaching mediation and



2016 Robert F. Peckham Award recipient Gail Killefer is the ADR Program Director for the United States District Court for the Central District of California.

negotiation. She is the author of “Advanced Guide for Mediators,” published in 2014, which is used for teaching the advanced mediation course at the law school.

Professor Exon’s current research relates to ethics issues in mediation and standards of conduct, as well as the use of apology and forgiveness in mediation settings. She speaks frequently at the national, state, and local levels regarding ADR and has published numerous papers and articles on the topic.

Professor Exon is an active member of the American Bar Association’s Section of Dispute Resolution where she is a member of the Ethical Guidance Committee and a member of the ADR and Practical Problem Solving (LEAPS) Project.

Members of the Ninth Circuit ADR Committee attended the award presentation.

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Robert F. Peckham Award

Also honored at the district conference was ADR Program Director Gail Killefer of the United States District Court for the Central District of California. She received the 2016 Robert F. Peckham Award for Excellence in Alternative Dispute Resolution.

Ms. Killefer has directed the Central District ADR Program since 2010. She is credited with dramatically expanding the program and enhancing its effectiveness. She also manages the district Mediation Panel and serves as a staff mediator for the court.

The Central District of California is one of the largest districts in the country with over 14,500 civil filings last year. The local rules require that parties in each civil case participate in one of three ADR Procedures: 1) a settlement conference with a judge; 2) a mediation session with a member of the court's Mediation Panel; or 3) a private mediation session.

Ms. Killefer serves as a resource for panel mediators and handles issues arising from mediations that they conduct. She acts as the court liaison for grievances filed for violations of the district court ADR requirements. Her accessibility to and relationships with the panel mediators have greatly improved the court's relationship with the Mediation Panel.

Ms. Killefer was also instrumental in implementing several innovative ADR programs targeting common categories of civil cases. These include loan modification mediation; early mediation for non-major civil rights cases; and new procedures for ADA disability access cases.

The Ninth Circuit ADR Committee is proud to acknowledge the University of La Verne College of Law for its outstanding educational efforts, and Ms. Killefer for her innovative and effective administration of the Central District Court's ADR Program. ●

ADR Committee Members

Hon. Andrew P. Gordon
Chair, District Judge, NV

Ms. Denise M. Asper
Prisoner Litigation Project Director, OCE

Ms. Claudia L. Bernard
Chief Circuit Mediator

Hon. Jacqueline Scott Corley
Magistrate Judge, CAN

Hon. Roger L. Efremsky
Chief Bankruptcy Judge, CAN

Hon. Brian D. Lynch
Chief Bankruptcy Judge, WAW

Hon. Bruce Gordon Macdonald
Magistrate Judge, AZ

Hon. Kendall J. Newman
Magistrate Judge, CAE

Hon. Troy L. Nunley
District Judge, CAE

Ms. Elizabeth A. "Libby" Smith
Circuit Executive

Hon. N. Randy Smith
Circuit Judge, Pocatello, ID

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Committee Website and Newsletter Archive

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