

10 Suggestions for Los Angeles Superior Court-Connected Civil Mediations
By David I. Karp, Attorney/Mediator

The following suggestions have been prepared by the writer, after completion of more than 300 court-connected mediations, to assist attorneys (and their clients) with matters before the Los Angeles Superior Court.

1. **Understand the reasons for court-connected mediation.** CCP § 1775 provides the legislative findings and declarations in support of court-annexed mediation. In essence, peaceful, appropriate and cost-effective alternative dispute resolution opportunities are in the best interests of the courts. CCP § 1775 (f).
2. **Understand the composition of the Party Pay Panel.** According to the Los Angeles Superior Court's website ("LASC website") at <http://lasuperiorcourt.org/adr>, "[t]he Party Pay Panel consists of Neutrals who have achieved a specified level of experience in court-connected cases. The parties (collectively) may be charged \$150.00 per hour for the first three (3) hours of hearing time. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the mediator if the parties consent in writing."
3. **Understand the composition of the Pro Bono Panel.** The LASC website states: "The Pro Bono Panel consists of trained Neutrals who have not yet gained the experience to qualify for the Party Pay Panel and experienced Neutrals who make themselves available pro bono."
4. **Understand what "Pro Bono" really means.** "Pro Bono" means providing mediator services without fee or expectation of fee to either "(a) persons who are indigent or of limited means or (b) charitable, religious, civic, community, governmental, and educational organizations in matters designed primarily to address the economic, health, and social needs of persons who are indigent or of limited means." See, Bus. & Prof. Code § 6072(d); A.B.A. Model Rules of Professional Conduct, Rule 6.1(a)(1), 6.1(a)(2).
5. **Understand the court's view of why mediators participate in the court's mediation program.** Whether volunteering on the Pro Bono Panel or providing discounted services on the Party Pay panel, mediators participate and "donate [or discount] their time to the courts as a way of supporting the judicial system," according to the LASC website.
6. **Understand why mediators sometimes feel abused on the Pro Bono Panel.** From the experienced mediator's perspective, the Pro Bono Panel was not designed to manage the litigation budget of parties or insurers who are not indigent or of limited means. As to them, paid mediation is appropriate for experienced mediators who nevertheless offer their services pro bono to others.
7. **Understand the assignment process of court-connected mediators.** Effective August 1, 2008, parties may select Party Pay Mediators from the court's online list. On

the other hand, Pro Bono Mediators are assigned randomly by the ADR office staff. In either case, court-connected mediators choose how many assignments they are willing to accept from the court per month. Once the allocated number of assignments has been made, that mediator is no longer available for court-connected mediation. The relevant question, then, is whether the court-connected mediator has any remaining openings with the ADR office that month. Attorneys that utilize the Party Pay Panel of court-connected mediators should contact the ADR office first, before contacting the mediator, and seek and obtain an appointment of the sought mediator if still available. Sometimes attorneys conduct an online search at the LASC website and then contact the mediator first to see if he or she has availability on his or her calendar. That process side-steps the question of whether the court can appoint the matter to the mediator whose allotment may have been filled already. Contacting the LASC panel mediator directly first is thus incorrect for court-connected mediation. Many mediators so contacted will construe the contact as a request for private mediation.

8. **Help the mediator to convene the mediation.** Cooperatively work with opposing counsel to obtain dates and times for the mediation and communicate such dates and times to the court appointed mediator sooner rather than later so that the mediator can manage his or her calendar, particularly in light of competing demands, desires and commitments for private mediation or other things. Realize also that a volunteer mediator will often seek to minimize the cost of volunteering. Asking the volunteer mediator to travel unnecessarily and/or to pay for parking may cause unwelcome out of pocket costs which sometimes undermine the spirit of volunteerism.

9. **Provide briefs if requested and interpreters if appropriate.** A well drawn mediation brief in the form requested by the mediator reciprocates for the investment the mediator is making in the process, and an interpreter for simultaneous translation shows the mediator respect for the importance of well understood nuanced communication at the mediation table. Both will help the process immensely.

10. **Use the mediator's time wisely.** Most case are not ordered to mediation; they are referred either because the amount in controversy exceeds \$50,000 and the court does not have jurisdiction to order it (CCP §1775.5) or because the court gets funding for every voluntary submission to court-connected mediation. If, for instance, the parties are absolutely intransigent and “will never settle,” (or at least will not settle at a court-connected mediation), discuss this with the mediator and see if the process can be tweaked or the mediation postponed or avoided. But do not wait until the last minute to cancel the mediation or continue it to another time, or there may be no court-connected mediation at all: “If the litigants request a continuance within 2 days of the ADR hearing, the neutral has no obligation to accommodate the request for a continuance and the ADR office will not appoint another neutral.” ([LASC] Policy for Continuance of court ADR Hearing dated August 7, 2003.)

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