



# SCMA

Southern California Mediation Association

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April 22, 2010

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Dear Assembly Member Beall:

The Southern California Mediation Association (SCMA) is a non-profit organization with a database of over 500 members who are professional neutrals engaged in the many forms of dispute resolution. For over twenty (20) years, SCMA's mission has been to promote the development and support of mediation through education, dialogue and outreach to mediators and the community.

As its President, and at the request of both its Board and membership, I write to express SCMA's strong opposition to AB 2475 in its present form. As you are aware, in Howard v. Drapkin (1990), 222 Cal. App. 3d 843, 851-860, the appellate court extended "absolute quasi-judicial immunity... to neutral third persons who are engaged in mediation, conciliation, evaluation, or similar dispute resolution efforts." (*Id.* at 851,860). Because of this common law quasi-judicial immunity established almost twenty years ago, the Los Angeles Superior Court has been able to conduct the *largest Alternative Dispute Resolution (ADR) program in the country.* (Many of our members participate in this program.) During fiscal year July 1, 2008 to June 30, 2009, it referred 17,508 matters to arbitration, mediation, neutral evaluation, retired judge pro bono settlement conferences, and voluntary settlement conferences with a 68% resolution

**SCMA Administration**

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rate. (See Exhibit 1.) The vast majority of these conflict resolution processes were handled by volunteers who donated three hours or more of their time to the court and to the parties for *each* matter the neutral handled. In addition, these statistics do *not* include the many, many thousands of court cases handled by private mediators. They also do not include the thousands of appellate court mediations handled both on a volunteer and private basis throughout the state each year.

The draft legislation, if passed in its present form, will have a immensely significant impact upon, if not eviscerate, ADR as it now exists in California, both through its court programs and privately. It will devastate not only the Los Angeles Superior Court<sup>1</sup> (and Second Appellate District) ADR programs (including private mediations) but the ADR program in each of the other 57 county superior and five (5) appellate district courts throughout the state. It will also have a very momentous and serious impact on private mediations held both in litigated and non-litigated cases. No neutral will be willing to volunteer his/her time (or mediate a matter privately) in exchange for the possibility of being named a defendant in a lawsuit. Further, it will also have a substantial negative impact on *pro bono* and community mediations where free or low-cost mediation will not be available due to the exposure and/or the cost of insurance for that exposure.

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<sup>1</sup> This result will be particularly troublesome since under the Civil Action Mediation Program, Code of Civil Procedure §1775.2, mediation is mandatory for the Los Angeles Superior Court. It will be impossible to comply with this statute without mediators.

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Moreover, in light of the state Judiciary's budget crisis in which the courts are furloughing its employees one day a month, and many counties including Los Angeles are laying off employees and closing courtrooms, ADR is more crucial than ever: it reduces the ever increasing backlog of cases (due to less staff to handle them) through informal resolution of the court case. Again, AB 2475, in its present form, will exacerbate the crisis in the courts; ADR- both in the courts and privately- depends on mediators, and other neutrals who will gravely hesitate, if not refuse altogether, to participate without quasi-judicial immunity. The already overburdened judiciary will crumble under the additional weight of having to try all of the cases because very few, if any, mediators will agree to take the risks associated with mediating these cases.

It is our understanding that AB 2475 arose out of a situation involving a family law evaluator. We believe that such "evaluators" do not qualify as and are not dispute resolution neutrals (e.g., a mediator) because otherwise, the "evaluator" would be bound by mediation confidentiality (Foxgate Homeowner's Association v. Bramalea California, Inc. (2001) 26 Cal 4<sup>th</sup>, 1, 14, and California *Evidence Code* Sections 115 et. seq.) and would never be able to submit any sort of recommendations to a court. Rather, a true neutral who is bound by mediation confidentiality may only advise a court whether or not a case settled: no more. (See Judicial Council of California ADR Form 100).

May we respectfully suggest that the wording of AB 2475 be amended and narrowed to address the very particular situation which we understand it attempts to

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address: non-mediator family law evaluators who are providing substantive recommendations to the court.

I and others within SCMA would be most happy to assist your staff in developing proper wording that would attain both the results you desire - to which SCMA has no objection - and at the same time, avoid both eviscerating ADR throughout the state and the protections to which true neutrals (who are bound by mediation confidentiality) need to protect the process. In conflict resolution terminology, the appropriate amending language would be a "win-win" for all concerned.

If you have any questions, please do not hesitate to contact me.

Very truly yours



Phyllis G. Pollack  
President

**COUNTYWIDE SUMMARY**

FY July 2008 - June 2009

PROGRAMS	REFERRALS	CASES OPENED	CASES CLOSED	TOTAL RESOLVED	RESOLUTION RATE
<b>CIVIL</b>					
<b>Arbitration</b>					
General Jurisdiction	55	75	78	50	64%
Limited Jurisdiction	486	300	288	169	59%
<b>Mediation</b>					
General Jurisdiction	12574	11,350	10,911	7,550	69%
Limited Jurisdiction	2885	2,110	2,118	1,425	67%
<b>Neutral Evaluation</b>	103	107	97	63	65%
<b>Retired Judge Pro Bono Settlement Conference</b>					
General Jurisdiction	49	92	38	23	61%
Limited Jurisdiction	8	0	0	0	0%
<b>Civil Harassment Mediation</b>	74	101	107	82	77%
<b>Small Claims</b>					
Limited Jurisdiction	0	15	15	14	93%
<b>Voluntary Settlement Conference</b>					
General Jurisdiction	269	149	33	17	52%
Limited Jurisdiction	117	90	31	16	52%
<b>FAMILY LAW</b>					
Arbitration	5	1	0	0	0%
Mediation	348	307	172	114	66%
Settlement Conference	450	379	429	267	62%
CPA Mediation	0	0	0	0	0%
<b>PROBATE</b>					
Mediation	85	75	45	32	71%
Settlement Conference	63	59	52	38	73%
<b>TOTAL</b>	<b>17,508</b>	<b>15,151</b>	<b>14,362</b>	<b>9,822</b>	<b>68%</b>