

Prominent Mediator Quits L.A. Court's Panel

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Rolling Hills Estates mediator Ivan K. Stevenson said he cut back his pro bono work in July 2004 from 15 cases a month to just one.

"I was just getting so sick and tired of seeing the same insurance carriers over and over again," Stevenson said. "The experiment has long proven that mediation works, but the court has abused what authority it was given. This is now the time when this has got to come to a halt."

Los Angeles professional mediator Alan Saler, who left the pro bono panel four weeks ago, said mediators in Ventura, San Diego and other counties have raised similar issues regarding pro bono work, but because Los Angeles is the largest court system in the state, the scope of the problem is much greater there.

Though other counties have created their own panels based on the Los Angeles pilot program, each has crafted its own pay schedules and pro bono offers, Saler said.

"The notion that there needs to be a completely pro bono system just isn't true," he said. "The court has decided that it's going to be the marketing and business generator for us. But I can market myself just fine."

"This is not a competitive marketplace. It's a rigged marketplace."

Saler said he's handled a number of pro bono cases that exceeded \$50,000 in value.

Recently, he said, he mediated a personal-injury case among four parties, including a large insurance defense carrier, valued between \$250,000 and \$500,000, according to the parties.

The workers' compensation carrier had paid out \$100,000 in medical bills and lost wages. Though Saler spent four hours preparing and mediating the matter, the parties weren't ready to settle, he said.

Last year, Saler said, he handled an employment case involving a policy worth between \$2 million and \$3 million, with an initial demand from the plaintiff for more than \$5 million.

The parties included a major multistate law firm and two prominent plaintiffs' lawyers, he said. Despite four hours of preparation and four hours of mediation, Saler said the case wasn't even ready to settle.

He declined to name the parties or give exact dollar amounts of the claims, citing confidentiality.

The mediators deny the charges that their complaints about the court's service are born out of a desire to earn market rates for services they are providing free.

"We don't want to step away from pro bono," Kichaven said to those who say mediators are being selfish. "But we would like to in cases where it's not appropriate. And mediators want to be acknowledged and respected as legitimate professionals."

The experiment, which some say is causing an open revolt among mediators, was a joint venture of the Legislature, private arbiters, bar associations and the courts to improve introduction of media-

tion as a simpler and less-expensive means to resolve disputes and lessen the burden and cost of time-consuming trials on courts.

The program mandated that judges order cases with values of less than \$50,000 to the mediation panel, based on the understanding that many of these cases were small-claims matters brought by parties without sufficient funds to weather a trial.

In cases valued at more than \$50,000, the judge can refer cases to mediation but cannot order the parties there unless the parties expressly request it.

"But judges are ordering big cases there all the time," Stevenson said.

Deep-pocketed clients and lawyers have no incentive to pay for a service they can get from the court free, and judges are more than happy to push potentially costly cases off their calendars, he said.

Deborah Rothman, chair of the Beverly Hills Bar Association ADR section, also believes the system needs to be "tweaked."

"I see a court that is desperately strapped for cash and whose efficient funding requires that a vast number of cases settle before trial," Rothman said.

Parachini said the court was not aware of any judges ordering cases of more than \$50,000 to mediation, and he re-emphasized the lack of restriction on who could use the pro bono mediators.

"The statute doesn't say anything about the financial circumstance of the litigant," he said. "Even if they could afford a different venue, they have the same right to avail themselves of court services."

Parachini said the court simply was interpreting the statute governing the program as it reads and would comply with any changes the Legislature deemed appropriate.

"We know that issue [of mediation abuse] is out there, but the court's in no position to change the system," he said. "We don't have the power to change statutory law."

Sherman Oaks mediation attorney Charles Parselle acknowledged the court's defense but said mediators have to stand up against their exploitation.

"It's true the Legislature didn't establish a means test [for litigants], but the Legislature could never have believed in a million years that huge law firms would ever actually get into the pro bono system," Parselle said.

"The court is not actually breaking the letter of the law," he said, "but it is violating the spirit of the law."

Parselle, who recently wrote MacLaughlin asking the court to limit pro bono mediation to cases of less than \$50,000 and improve compensation of neutrals to reflect current economic realities, said the outdated system has hamstrung mediators in the open market.

Last year, Parselle said, 36,000 cases were mediated pro bono. At a midrange price of \$200 per hour for the requisite 3-3.5 hours required per case on the mediation panel, that commitment accounts for 126,000 hours and \$25 million in

income that mediators have to eat.

"These policies were developed years ago," Kichaven agreed. "The nature of the economy has changed. The volume of cases has grown. The question now is whether the policies developed are still appropriate."

Rothman added, "Mediators are no more selfish than judges or attorneys, all of whom have bills to pay and expect to be compensated for their work."

Additionally, the program was never intended to be free for all litigants, they say.

Originally, the system was based on premises that pro bono services would be provided only for "indigents," while others would pay for the services "on a sliding scale basis," Parselle said.

But budget cuts changed all that.

Parachini confirmed that the pilot program called for set fees but that a county budget crisis in 1993 resulted in policies going away with fees for court-ordered arbitration.

"Accordingly, when the ADR program came formally online in 1994, the fee restriction came along with it, and the arbitrators were unpaid," he said.

Some mediators also claim the court is taking advantage of state funding earmarked for community assistance groups and smaller pro bono mediation services for the poor.

Fifteen organizations are receiving Dispute Resolutions Programs Act funding in Los Angeles County, including Loyola Law School, the Korean American Coalition and the Martin Luther King Legacy Association. Together, they split \$2.8 million in fiscal year 2004-05 and will split \$2.1 million this year.

"But there's a shark in the fish tank called the Los Angeles Superior Court that gobbles up 25 percent of all DRPA funding," Parselle said.

Last year, the court received \$655,675 of the \$2.8 million, the largest of any group, according to estimates.

"We have scarce public resources," Kichaven added. "There are crying needs for these public monies."

MacLaughlin said he doesn't see any basis for concerns that the court somehow is making life difficult for smaller pro bono mediators.

"Remember, some of that money comes from money paid by the courts in the first place," he said. "Filing fees [from litigants] go into the DRPA money."

Thus far rebuffed by the court, Kichaven, Parselle and other mediators who say they're disrespected and frustrated vow to continue to fight perceived abuses of the court's pro bono mediation program by wealthy litigants.

However, Parselle said, "mediators don't know what to do."

"If they feel the court's program has been too successful, they should talk to the Legislature about it," MacLaughlin responded. "But I think [the Legislature is] more interested in us providing greater access to the public than less access."

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