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The Honorable Helen I. Bendix, Chair
COURT ADR COMMITTEE
LOS ANGELES COUNTY SUPERIOR COURT
111 North Hill Street, Room 113
Los Angeles, California 90012

Ms. Julie Bronson, ADR Administrator
LOS ANGELES COUNTY SUPERIOR COURT
111 North Hill Street, Room 113
Los Angeles, California 90012

RE: REFERRAL OF CASES IN EXCESS OF \$50,000.00 TO THE ADR PROGRAM

Dear Judge Bendix and Ms. Bronson:

During a meeting I had last week with another Los Angeles mediator whom I greatly respect, she told me that she had written a letter objecting to the Court's practice of referring cases to the ADR Program with an amount in controversy in excess of \$50,000.00. In fact, she told me that she had recused herself on that basis from a case to which she had been appointed by the ADR office. (For convenience, in the balance of this letter, I'll refer to these cases as "large cases.")

Although my friend initially said that her reason for objecting to the Court's referral of large cases to the ADR Program is that the statute under which the Program was formed did not allow for this and, therefore, such referrals are illegal, it soon became clear that her actual objection is economic and based upon her belief that the referral of large cases to the Program reduces the number of cases that are available for which mediators will be privately hired and paid. She stated that this is unfair because the mediators who provide services to the Program are not reasonably compensated for their services. I strongly disagree.

I currently divide my time between mediating and practicing transactional law. (My *curriculum vitae* is enclosed for your convenience.) As I am still building my mediation practice, I accept as many as fifteen assignments each month from the *pro bono* and party pay panels. I believe the large number of mediations I do for the Superior Court makes me well-qualified to comment on the value of the Program to those of us who participate in it and why the Court should or should not change the way cases are referred to the Program.

The substantial difficulty for anyone who wishes to build a practice mediating litigated cases is that litigators are not willing to hire a mediator unless they have already worked with him or her and observed the mediator's skills firsthand or heard about the mediator from a trusted colleague. Even experienced mediators need a constant flow of new clients and want to meet litigators they haven't been exposed to before. In either of these cases, the Court's ADR Program provides an excellent opportunity for the mediator to achieve the goal of getting in front of litigators and demonstrating their skills. This is the true *quid pro quo* that those of us who participate in the Program receive in exchange for our time and effort.

Now, why wouldn't this goal be accomplished if the Program was limited to cases under the \$50,000.00 limit? Because, given the economics of life today and life in California in particular, many of the most interesting cases would be completely eliminated from the Program if the \$50,000.00 limit was observed. Medical malpractice, real estate and several other areas of the law rarely see a case where the amount in controversy is claimed to be under \$50,000.00 even if the settlement we achieve at the mediation is far less than that amount. Many mediators like me, who do a large number of *pro bono* mediations, would be disheartened and would substantially reduce the number of these mediations we do if the only cases we saw were cases in which the amount in controversy was under \$50,000.00.

Another point I don't want to ignore is that for many of us, the service we provide to the Program is our only opportunity to do something of a *pro bono* nature for the community. Perhaps some of us forget the true meaning of *pro bono publico*. During my conversation with my friend, she pointed out that the parties to large cases can well afford to pay a mediator. I believe, however, that this confuses the purpose of the Program, which I understand to be to relieve the Court and, therefore, the public, of the expense of a trial if a settlement is achieved through the Program. While the parties also benefit when a settlement is achieved, the Program's greatest benefit is for the public and that is why we mediate these cases. And when the system works well, everyone benefits: the public, which saves the cost of a trial; the court, which has more time for other matters; the parties, who achieve a meeting of the minds instead of leaving their fate in the hands of a jury; the attorneys, who don't have to risk a loss at trial; and the mediator, who comes away from the mediation having demonstrated his or her prowess to the attorneys and, perhaps, having gained a new client for the next private mediation.

My friend's complaint that the law under which the Program was established does not allow for large cases to be referred to *pro bono* mediation does not bother me as I do not believe that the legislative intent behind the law would have prevented the Court from following the protocol it now uses. Nevertheless, as a mediator, I always look for solutions that are acceptable to everyone and that may solve other problems in the bargain. In this case, because the Program has now established the Party Pay panel, I wonder whether the Court might consider referring the large cases to the Party Pay panel rather than the *pro bono* panel. The additional problem I refer to that this procedure would address is that many attorneys do not treat *pro bono*, court-mandated mediations with the serious attitude with which they approach private (*i.e.*, paid) mediations. By referring large cases to the Party Pay panel, the Court would assure the attorneys that they are getting mediators with better credentials while assuring the mediators that the attorneys will take their obligations more seriously.

I am grateful for the opportunity the ADR Program has given me to develop my private mediation practice and to fulfill my desire to provide *pro bono* services to my community. If there is any way that I can assist you or the Program in the future, I hope you will not hesitate to call on me.

Sincerely,

Susan Keenberg

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enclosure