

Synopsis of Judge White's Recent Article on Court ADR

(Or, "Which is right for your case: court connected "pro bono" mediation, paid mediation, or no mediation?")

An excellent article reviewing the Los Angeles Superior Court's ADR program, by Judge Elizabeth Allen White, appears in the January 2011 edition (pp. 9-10) of the San Fernando Valley Bar Association's monthly publication, available at

<https://www.sfvba.org/UserFiles/File/Valley%20Lawyer/2011/VL%20Jan%20low%20res.pdf>

In the article, Judge White makes the following salient points about court-connected mediation. These points are relevant and important in ascertaining whether a litigated case should be mediated as a part of the court's ADR program, or alternatively, whether paid mediation, or no mediation, is appropriate.

- **Cases are generally *not* "ordered to mediation":** "Based upon the parties' selection, the court issues a Case Management Order 'referring' the parties to the ADR method selected. The word 'refer' is important since the parties may perceive they are being 'ordered' to ADR, despite the judge's use of the term 'referred.' The notion of referral sets the tone for future success of the selected method of ADR. If the parties perceive they are being ordered to mediation, they participate simply to comply with the perceived order and put little effort into the process."
- **Sometimes "Random Select/ Pro Bono" Mediation is inappropriate:** "[W]hen the parties can afford to pay (e.g., large corporate entities or individuals with significant claims), they should be encouraged to use the Party Select Panel or private mediation [among other reasons] to insure they are invested in the process."
- **Mediation may not be appropriate *at all* if a party cannot cooperate or compromise:** "Mediation may not be effective if a party is unwilling to cooperate or compromise or if a party has a significant advantage in power over the other (e.g., a history of abuse or victimization)."
- **If not mediation, other ADR programs of the court may be more appropriate, e.g., Arbitration or Neutral Evaluation.**

This synopsis is provided by David I. Karp, an experienced professional mediator, as a service to litigants and counsel using the Los Angeles Superior Court ADR program, and in particular the court's "Random Select/Pro Bono Mediation Panel." Mr. Karp maintains a private mediation practice focusing on real estate and business matters and also serves the court on its "Random Select/Pro Bono Panel" and "Party Select/Party Pay Panel" to support the judicial system. More information about Mr. Karp and his mediation practice is available on his website at <http://karpmediation.com>.

To discuss whether your matter, which likely has been "referred to mediation," is actually appropriate for the court-connected mediation program selected, please feel free to contact Mr. Karp at david@karpmediation.com or 818-781-1458.