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Resolve Law LA

A VALUABLE ADR PROGRAM THAT PROVIDES MANDATORY SETTLEMENT CONFERENCES AT NO COST TO THE PARTIES

Welcome to the wild world of Resolve Law LA (RLLA). Most of you reading this article have already heard of the Resolve program. In addition, many of you may have already participated in an RLLA Mandatory Settlement Conference (sometimes MSC) program conducted on a Zoom platform.

This valuable program provides a free Mandatory Settlement Conference presided over by two volunteer settlement conference officers, one from the plaintiff's bar and the other a defense practitioner. The settlement conferences, which start at either 9:00 a.m. or 1:30 p.m., last for three hours and are conveniently conducted on an automated Zoom platform set up by the RLLA committee.

A brief history of the program

The RLLA program, just like the preceding Mandatory Settlement Conference and Voluntary Settlement Conference programs, has been created with the cooperation of four founding partners: the Beverly Hills Bar Foundation, the Association of Southern California Defense counsel (ASCDC), the Consumer Attorneys Association of Los Angeles (CAALA), and the Los Angeles chapter of The American Board of Trial Advocates (ABOTA).

The RLLA program for *personal injury* cases referred from judges in the Personal Injury Hub (PI Hub) commenced on June 21, 2021, in response to the Covid pandemic interrupting court-attended settlement conferences. (See Los Angeles Superior Court's Sixth Amended Standing Order Re: Mandatory Settlement Conference.) The RLLA program was expanded to include employment cases on April 1, 2022. (See Los Angeles Superior Court's First Amended Standing Order Re: Employment Case Early Resolution Mandatory Settlement Conference Pilot Program.)

Benefits of the program

The program's primary benefit is the opportunity to resolve your case without

having to incur the cost of a private mediator. Even if the case does not settle at the RLLA MSC, it is valuable to learn how two seasoned plaintiff and defense counsel view your case; their thoughts regarding its strengths and weaknesses; exploration of the claimed economic and non-economic damages; evaluation of the evidence, risks, costs and benefits of proceeding to trial versus settlement.

Success rates

Over 610 cases have been ordered into the RLLA program from the PI Hub in the last year. Over 62% of those cases have settled or are in continuing negotiations. In addition, over 90 cases have been ordered into the RLLA Employment Mandatory Settlement Conference program, of which approximately 61% have settled or are in continuing negotiations.

Getting into the program

Ordered: Cases must be ordered to the program by a judge in the PI Hub or an employment case by the I.C. judge. For employment cases, the court will give preference to cases involving small businesses, short-term employees, failure to hire employees, readily quantifiable damages, cases where the cost of discovery may make the case more difficult to settle or cases requiring less discovery or are otherwise suitable for the program.

Ex parte: Although cases must be ordered into the program, counsel can jointly apply on an ex-parte basis for leave to participate in the program. There is a form available for this application on the Resolve Law Los Angeles website, and it requires all counsel to declare certain items which would make the case appropriate for the program.

Scheduling the MSC: Once the case is ordered into the RLLA program, plaintiff counsel must set up a personal account on the RLLA website and then register the case. (<https://resolvelawla.com>) The case can then be registered for assignment.

After conferring with all other counsel, a date is selected from the available dates on the website. Counsel may not select the settlement officers, as they are randomly assigned based on their availability.

Preparation

Briefs: Under the 6th Amended Standing Order issued by Judge Cowan on June 23, 2021, MSC briefs shall be lodged by each party with the RLLA website (<https://resolvelawla.com>) and served on all parties not less than five court days before the hearing or not less than two court days before the hearing if the MSC is late set. The briefs are limited to five pages, with no more than 10 pages of exhibits.

Who must attend: All plaintiffs must virtually participate in the Zoom hearing pursuant to California Rule of Court 3.1380(b) and Los Angeles Superior Court rule 3.25(d).

The rules require that all persons with full authority, including insurance adjusters, must attend. If an insurance adjuster cannot settle for an amount over the authorized limits, then a person with full authority must be available to join the conference. A judge may excuse a virtual appearance for good cause.

Documents: As noted above, exhibits are limited to 10 pages. Many parties exceed this 10-page limit. The rules allow the settlement officers discretion to ignore documents or briefs that exceed these limits. As a practical matter, it is doubtful any settlement officer would do so.

The Zoom platform allows parties to "share their screen" so it is possible to show the settlement officers any additional documents that may aid in resolving the case. This procedure can be helpful with impeachment documents or something more subtle that strengthens or weakens one side or the other's case.

Technology – using a Zoom platform

Most people who read this article will probably have had experience with a

Zoom conference, whether it be for an MSC, mediation, deposition, family contact, or some other group setting. Specifically, the RLLA Zoom platform has the following features:

Time limits: The Zoom program is scheduled to shut down at the three-hour limit. However, your author has had numerous instances of being able to work past the three-hour time limit until the case resolves.

Breakout rooms: The RLLA Zoom platform typically has three breakout rooms; one for the plaintiff, the defense, and the settlement officers. The system may automatically place everyone in the appropriate breakout rooms.

Shared screen: As was previously noted, any party to the Zoom conference can share their screen with whoever is in the particular breakout room or general session with them if they choose to do so.

Tips for success

The first suggestion is very obvious. Take the proceeding seriously. The MSC is a relatively brief proceeding that can result in having a case resolved or lead to a process that fosters settlement via follow-up contact from your settlement officers. The author has personally been one of the officers on multiple cases where counsel on both sides were genuinely surprised that they were able to achieve a settlement. And I am certain that many other settlement officers have shared this experience.

For the "Plaintiff Team," as in any settlement conference, it is important to provide defense counsel with all the information needed to evaluate the case prior to the conference. In a personal injury matter, it is imperative to timely provide defense counsel with up-to-date medical reports and bills to allow analysis of the information for their insurance carriers or private clients. The goal is to provide ample ammunition for them to obtain appropriate settlement authority.

For the "Defense Team," it is equally important to provide your client or

insurance carrier with all necessary information and analysis for the decision-makers to evaluate the claim before starting the MSC. You want to ensure the appropriate adjuster, supervisor, etc., are present or on standby to get the case settled.

Following up

Many, if not all of the settlement officers, follow up to see if they can continue to help resolve a case that did not settle during the conference. You should be open to working with these volunteers, as they freely take their time to assist in the resolution of your matter.

Confidentiality

RLLA MSCs follow the rule of California Rules of Court, rule 3.1380, subdivision (d). That provision differentiates an MSC settlement officer from a mediator and further explains the rules of confidentiality. It states:

A court must not:

- (1) Appoint a person to conduct a settlement conference under this rule at the same time as that person is serving as a mediator in the same action; or
- (2) Appoint a person to conduct a mediation under this rule.

Regarding MSC confidentiality, the Advisory Committee's Comment to subdivision (d) of the rule states:

Subdivision (d): This provision is not intended to discourage settlement conferences or mediations. However, problems have arisen in several cases, such as *Jeld-Wen v. Superior Court of San Diego County* (2007) 146 Cal.App.4th 536, when distinctions between different ADR processes have been blurred. To prevent confusion about the confidentiality of the proceedings, it is important to clearly distinguish between settlement conferences held under this rule and mediations. The special confidentiality requirements for mediations established by Evidence Code sections 1115-1128 expressly do

not apply to settlement conferences under this rule. This provision is not intended to prohibit a court from appointing a person who has previously served as a mediator in a case to conduct a settlement conference in that case following the conclusion of the mediation.

Becoming an MSC settlement officer

Attorney members of ASCDC, BHBA, CAALA, CELA, Cal-ABOTA, or LACBA with at least 10 years of personal injury litigation experience are eligible to serve as volunteer settlement officers for the personal injury panel. Employment MSC settlement officers need to have at least 10 years of employment litigation experience. Experienced attorneys can register to be a Settlement Officer directly on the RLLA website. (<https://resolvelawla.com>)

Conclusion

The RLLA program is a valuable tool. It assists counsel in timely resolving their client's cases, lessens the caseload of an overburdened court system, and makes justice available on a timelier basis. Accordingly, it is urged that counsel enthusiastically embrace the full advantages of the program.

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