



Hon. Charles H. Ervin

SIERRA COUNTY SUPERIOR COURT

The new statewide Judges Civil Mediation Program

THE JCMP ALLOWS PARTIES WITH LITTLE OR NO ECONOMIC RESOURCES TO AVAIL THEMSELVES OF A MEDIATION, MOST OFTEN WITH AN ASSIGNED RETIRED JUDGE

Judicial mediation services are now available for certain civil cases in *all* 58 California counties under the newly minted Judges Civil Mediation Program (sometimes referred to herein as JCMP). Subject to each trial court's local financial criteria, the program is not otherwise tethered to filing financial declarations, meeting any minimal or maximal financial criteria, or being subjected to any sliding financial scale of charges or fees.

The Judicial Council of California created the program, and no charges or hourly fees are imposed to access the program. Civil litigants will have access to trained mediators who are retired judges or sitting trial judges.

Early mediation is cost-effective

For nearly a half-century, thousands of litigants who could afford the expense of private mediation services have saved the courts decades of in-courtroom trial time and many millions of dollars in litigation expenses. Successful early mediation outcomes clear trial court dockets at optimal times and eliminate trial court expenses.

Parties who mediate successfully are spared the ongoing grief, aggravation, anxiety, and expense of litigation that overflows into appellate proceedings. The JCMP allows parties with little or no economic resources to avail themselves of a mediation with an assigned retired judge (or a sitting judge in some counties) with JCMP training.

Setting the stage for the Judges Civil Mediation Program (JCMP)

The genesis of the Judges Civil Mediation Program is traceable in part to the COVID-19 pandemic and some painful lessons learned. Beginning in March 2020, stay-at-home orders blanketed the state. The pandemic persisted until mid-2021. During this time, courtrooms were closed, and trial courtroom case backlog numbers grew enormously. At the same time, the private-mediation community took center stage in moving civil cases toward resolution.

Experienced in-person mediators transferred their skills to online video platforms, where mediation sessions evolved into virtual meetings and break-out rooms. The business of resolving cases in virtual-mediation settings grew and flourished for litigants and counsel who could afford them. Financially challenged litigants and their cases were left behind to wait through the delays resulting from the pandemic.

Trial court funding constraints have limited the availability of courtrooms for civil trials for decades. The pandemic collided with an already strained trial court system which, even in good times, had too many cases pending in any individual court, too few available courtrooms for trials assigned out on any given day, and insufficient time to bring all pending cases to trial. This Bermuda triangle of factors has pervaded courtrooms across the state nearly every day.

Except for civil litigants who qualify for case priority under Code of Civil Procedure section 36, most civil cases devolve to the lowest priority for courtroom access. The inevitable result is the de facto equivalent of a total bench recusal and the court being closed to civil trial business.

It so happens that when all the judges of a court have been disqualified or have recused themselves, a court must make an assignment request to the Chief Justice. (Code Civ. Proc., § 170.8.) The Temporary Assigned Judges Program (TAJP) is the vehicle for trial courts to obtain assignment assistance.

Vision of former Chief Justice Tani Cantil-Sakauye to expand access to mediation services

Having led the state judiciary through the pandemic and its aftermath, former Chief Justice Tani Cantil-Sakauye perceived a considerable opportunity for the judicial branch to fill the void for financially challenged civil litigants who would agree to access mediation services during litigated civil-case processes. The Chief Justice can exercise plenary power

to determine judges' eligibility for assignment and assign them to the court statewide. The power derives from article VI, section 6 of the California Constitution. This constitutional provision is the primary authority for the JCMP.

In November 2022, Chief Justice Sakauye authorized the creation of the Judges Civil Mediation Program to be administered through the TAJP. She envisioned the JCMP to increase access to justice without causing expense to litigants who wish to mediate their cases.

JCMP judicial training

Sitting judges or retired judges assigned to the JCMP, whether appointed by the governor or elected by the voters, arrive to the bench with at least 10 years of practicing attorney experience. These judges bring into the mediation arena a wide range of real-time experiences.

Original training for JCMP mediators was led by an attorney with over three decades of distinguished mediation experience and a retired judge with 20 years of bench experience and 15 years of mediation experience. The primary training occurred in two phases starting in December 2022. When graduation happened at the final July 2023 phase, attendees had received over 40 hours of combined in-person instruction and collaborative exercise training. As of May 2025, JCMP trained mediators include one retired Courts of Appeal associate justice, one sitting trial court judge (the author of this article), and 23 retired trial court judges.

Ethics, conduct, and standards for JCMP mediators

The California Rules of Court, rule 3.851 et seq., pertain to procedures for all *court-connected* mediation programs, rules of conduct for the participating mediators, requirements for addressing complaints about the mediators, and setting forth general civil action mediation program rules. However, the rules do not apply to judges or other judicial officers serving in a capacity that

the Code of Judicial Ethics covers. (Cal. Rules of Court, rule 3.851(d).)

Active judges are eligible for assignment through the JCMP if they have been elected or appointed to a judicial position, are not disqualified from acting as a judge according to article VI, section 18 of the California Constitution, and have not been convicted of and/or are not currently charged with a reportable crime under canon 3D(3) of the Code of Judicial Ethics.

A retired judge who has applied to serve on assignment meets the eligibility requirements set by the chief justice for service and has received an acknowledgment of participation in the TAJP is required to comply with provisions of the judicial ethics code, except for canon 4C(2), appointment to governmental positions, and canon 4E, fiduciary activities. Mediation judges enrolled in the JCMP may only perform mediation services by receiving mediation assignments from trial courts or courts of appeal.

Compensation for JCMP mediators

Retired judges serving in the Judges Civil Mediation Program are compensated solely through the Judicial Council of California for their mediation assignment activities. The state pays the entire cost of the mediation judges, including reimbursement for travel expenses. The compensation and travel reimbursement processes and policies for the JCMP judges are the same as those for the TAJP general program.

Active full-time sitting judges performing JCMP services receive their customary salaries. A retired judge sitting on assignment is compensated at a daily rate of 92 percent of the salary of a judge of the court of record to which they are assigned, based on a 250-day year. (Gov. Code, § 68543.5(a).)

JCMP administration

Most of the JCMP procedures mirror those of the larger TAJP program. Courts access the program through online Judicial Resources Network (JRN) portals. Trial court ADR administrators provide either the specific case(s) confirmed for

mediation or a temporary assignment period where the assigned mediation judge would be available to serve as a mediator in their courts. TAJP staff provide the trial court with an assignment order listing the case(s) or the temporary assignment period for the assigned judge to serve as a mediator.

There is an educational webinar for court staff. It provides familiarity with the administrative procedures for the JCMP and the online request system.

Referral procedures for appointment of a JCMP mediator

Any judge or designated trial court administrator from any of the 58 county courts may initiate a request for a JCMP mediator. Trial court judges initiate their referrals to the JCMP via court orders directed to the program. Parties may seek a referral through their assigned trial judge or the trial court's ADR administration.

When the JCMP receives a referral from a superior court judge or the court's ADR program administrator, the TAJP administration contacts an available sitting or retired judge, confirms the judge's availability, and creates an assignment order. The trial court's ADR administrator coordinates the mediation logistics by contacting the parties to select a prospective mediation date, ascertain in-person or Zoom arrangements, set a briefing schedule, and arrange for necessary disclosure documents to be circulated and signed. Litigants or the trial court judge may request the assignment of a specific program mediator judge.

Options for trial courts that lack ADR administration bandwidth or budget capacity

Trial courts with no established ADR administration may reallocate existing staff to manage mediation referrals to JCMP qualified mediators. Trial courts lacking staffing bandwidth or budget capacity may find it more economical to source out all or a portion of the necessary administrative support services.

It is justifiable for courts to pass a fair proportion of their mediation-case

management overhead along to each mediated case. Nominal costs rarely result in pushback. Litigants are generally pleased when cases are resolved, and nominal costs are readily accepted. Even with cases that are not settled, the mediation process simplifies and narrows the issues, facilitating more focused and less costly court proceedings. Various opportunities exist for newly-hatched trial court mediation programs to dovetail with other external mediation resources that offer necessities, flexibility, and the capacity to administer and implement the Judges Civil Mediation Program successfully and economically.

Suppose a court lacks sufficient resources to administer cases assigned to mediation through the JCMP. In those cases, the court should reach out to local mediation service providers to ascertain the availability of auxiliary mediation case administration services. For example, the Los Angeles County Superior Court website contains a Civil Mediation Vendor Resource List. The list includes the names and contact information for additional for fee or not-for-fee mediation service providers to augment the court's ADR resources.

Recommended court procedures and best practices

Trial courts requesting an eligible retired judge from the Judges Civil Mediation Program to serve as a mediator through their court-sponsored mediation program are expected to provide the same general support they provide assigned judges on a trial court judicial assignment from the TAJP. For example, some of this support would include coordination with parties interested in bringing their case to mediation, confirming the judge in the JCMP who will serve as the mediator, coordinating scheduling and logistics for the mediation sessions and providing the necessary forms and information to parties, counsel, and the mediator.

Courts must provide meeting space for in-person mediation or administer remote mediation sessions between the parties and the mediator. Courts with local

requirements or procedures as part of their court-sponsored mediation program must share this information when contacting a potential mediator from the Judges Civil Mediation Program.

It is recommended that courts consider the following practices and procedures that help to ensure a successful mediation through the JCMP:

- The court's program administrator contacts potential mediators to discuss the nature of the case and mediation procedures in the court's program and determine whether the mediator fits the case well.
- The program administrator assists in arranging a pre-mediation session with the mediator and counsel for the parties via video conference by providing an online link, the agenda, and forms for the pre-mediation session.
- At the pre-mediation session, the court administrator has the mediator confirm the parties' pre-mediation agreements, which might include the names of the mediation participants, date of submission and exchange of mediation statements, topics to be addressed in the mediation statements, information to be exchanged in advance of the mediation and preparation of a draft settlement agreement.
- Following the mediation session with the parties, the court administrator asks the mediator to submit a brief report stating whether the case has been settled entirely or partially and, if not, whether the parties are interested in a follow-up mediation session.
- Feedback is solicited from counsel and the parties about their mediation experience.

Case referral history of the JCMP

On January 16, 2024, the Judges Civil Mediation Program went live for online referrals from courts. Statistics available through the end of May 2025 indicate that there have been approximately 115 requests from 18 courts (17 trial courts and the Fourth

District Court of Appeal). An estimated 185 mediations have resulted in approximately 48 settled cases. In one Los Angeles request, the assigned retired-judge mediator handled approximately 20 cases in a one-month assignment.

Most cases to date have been general civil cases with contractual, tort and related causes of action. Some specific case types have been product liability, family law, conservatorship, unlawful detainer, wage and hour, construction defect and complex civil. All feedback has been very positive.

The Los Angeles County Superior Court mediation referral models

At this writing, the Judges Civil Mediation Program has yet to be adopted by the Los Angeles Superior Court. Instead, the court's ADR administration team has established working relationships with private mediation companies, some with below-market mediation fee structures. Judges can suggest or parties can voluntarily proceed to the court's ADR website to arrange a mediation with approved mediation service providers.

Among several resources listed on the court's ADR website, the Mediation Center of Los Angeles (MCLA) Referral Program is a formally contracted nominal fee provider for the referral of unlimited civil cases from participating districts to mediation. MCLA is developing instruction and service partnerships with Legal Aid at Work, headquartered in Los Angeles and San Francisco. (The author is not endorsing MCLA, but merely describing a resource.)

For courts that do not have existing local ADR programs, interested litigants, counsel, bench officers and court administration may visit the Los Angeles County Superior Court website at www.lacourt.org to explore the topics "ADR" and "View all ADR programs" to learn more about the Los Angeles court's mediation models and programs.

The San Diego County Superior Court mediation model

As the third largest superior court in the country, the San Diego County Superior Court provides an excellent example of how courts can fund and construct internal ADR administration structures to support a robust array of ADR options, including a referral process to the Judges Civil Mediation Program. The San Diego court has one dedicated administrator to manage cases referred to the program.

A quick online visit to the San Diego court's website at www.sdcourt.ca.gov and search for the topic: "ADR" will take the viewer to the topic: "Temporary Assigned Judges Civil Mediation Program." There is a dashboard full of information, instructions, procedures, forms, links, and FAQs, which dovetail directly with the Judges Civil Mediation Program.

Conclusion

Litigants, their counsel, and the trial courts should be proactive and promote using the Judges Civil Mediation Program. Courts win with budget savings. Taxpayers win with lowered costs. Litigants win with early and economically mediated final resolutions of their cases. The Judges Civil Mediation Program is poised to become a formidable force in improving access to justice.

Judge Charles H. Ervin presides over all case types in the two-judge Sierra County Superior Court. A 1974 Cornell University graduate with honors in Economics, he studied law diligently before admission to practice law. He was a general practitioner for 26 years before being elected and taking office in January 2011. Judge Ervin is a mediation judge in the Judges Civil Mediation Program. His judicial outreach activities include service on several subcommittees for the Judicial Council of California and the California Judges Association. He also serves on the boards of several charitable non-profits, including the Southern California Mediation Association.