



## Getting Out of Line

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By Mike Rosen

Los Angeles arbiter and mediator Barbara Reeves Neal was accustomed to seeing her clients withdraw their cases from the court's trial calendar when they decided to settle. But recently two of her cases went "off calendar" when her clients learned their trial dates would be delayed due to court budget cuts. The defendants also indefinitely postponed any talk of settlement, preferring a wait-and-see approach.

"When a defendant isn't faced with a trial date, it becomes easier to just put it in the bottom drawer and avoid dealing with it," says Neal, who works for the private Judicial Arbitration and Mediation Services (JAMS). "The threat of trial is a helpful force in encouraging parties to settle."

The current fiscal crisis in California has led to \$350 million in permanent budget cuts for the state's court system. Judicial staff is being laid off, some courtrooms are closing, and the wait time to trial for civil cases is expected to grow to five years - or longer.

Although common logic suggests that public and private alternative dispute resolution (ADR) services will spike in popularity as frustrated parties seek other options, the reality is less clear: A backlog of civil cases may embolden some defendants to avoid settlement efforts entirely. At the same time, state courts are being forced to cut back their publicly funded ADR programs.

"[Public] ADR is a strange thing, because at once it's part of the problem, in that it's an additional expense that courts can't afford," says Robyn Crowther, a civil litigator with Caldwell Leslie & Proctor in Los Angeles, "but it could also be part of the solution, in that it could help reduce [judicial] caseloads."

Many neutrals expect to see an eventual uptick in the use of private ADR companies as parties tire of long waits for court time.

Some ADR specialists are already seeing such an effect. William "Bill" Eddy, senior family mediator at the National Conflict Resolution Center in San Diego, has noticed that more new clients are expressing frustration with the three- to four-month delays in family court caused by the initial round of court budget cuts announced in March. Eddy's overall mediation caseload, however, has not risen, suggesting that some Californians are opting to live with their problems rather than pursue legal remedies. On the other hand, certain issues where both parties need closure quickly - like insurance claims and real estate disputes - will be increasingly settled through ADR, specialists believe.

"As this drags on, people will be more willing to arbitrate claims that previously they thought were important to have before a jury," says Mia Blackler, a shareholder in Buchalter Nemer who works with its litigation and labor and employment practice groups.

A 2008 study of the U.S. Department of Justice found that 65 percent of cases settled when ADR was used, compared to only 29 percent using traditional litigation methods. Despite its success rate, ADR has historically been underutilized: About 3.3 percent of cases employed ADR, according to the DOJ study, and a 1997 report found that private ADR caseloads accounted for just 5.4 percent of California's total civil disputes. In Los Angeles Superior Court, less than 10 percent of eligible cases went through the court's ADR option last year.

Those figures could be changing now that ADR holds out hope of a faster, cheaper alternative to a court date that might be years away. Experts point out that ADR has some limitations: Agreements from closed-doors settlement conferences cannot be cited as legal precedent, and certain types of remedies - such as writs of attachment or injunctions - can be obtained only through the courts. Still, mediation and arbitration are sure to see plenty of overflow from California's underfunded and overloaded courts.