

## Law School Mediation Clinic Aids Court

Students at the University of the Pacific's McGeorge School of Law are mediating some of the many prisoner civil rights cases filed each year with the United States District Court for the Eastern District of California.



*Magistrate Judge Kendall J. Newman and ADR Program Director Sujean Park work with student mediators in the Eastern District of California*

Most of California's state prisons are located within the Eastern District, resulting in a disproportionately high number of 42 U.S.C. Section 1983 cases brought by inmates. In fiscal year 2012, the court received a staggering 1,283 prisoner civil rights petitions, which comprised 23 percent of its total civil caseload. Due largely to prisoner litigation, the Eastern District reported the second highest weighted filings per judgeship of any court in the nation.

To help lessen the Eastern District's workload, two professors at the law school started the Prisoner Civil Rights Mediation Clinic in 2009. Each summer, Professor Dorothy S. Landsberg, who serves as clinical director, and Professor Michael Colatrella, Jr., who teaches mediation, select four to six students to participate in the clinic. Applicants must have previously completed a dispute resolution-related course, such as mediation or alternative dispute resolution. Selected students begin the school year learning basic Section 1983 law, reviewing the fundamentals of the facilitative mediation model, and developing the interviewing skills necessary for a court neutral. As part of their preparations, students also are required to take a tour of Folsom State Prison and/or California State Prison-Sacramento.

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## FJC Begins New Evaluation of ADR Programs

The Federal Judicial Center has finalized its research design and begun its study of alternative dispute resolution programs in the district courts. Donna J. Stienstra, senior researcher at the FJC, is leading this effort. The U.S. Judicial Conference's committees on Judicial Resources, and on Court Administration and Case Management requested the study in order to help them understand the use of ADR in the district courts, and to evaluate funding formulas for courts with employees dedicated to ADR programs.



*Howard Herman is director of the ADR Program for the Northern District of California*

The committees asked the FJC to examine the following questions:

- (1) What types of ADR programs have the courts established?
- (2) Are there any benefits from court-sponsored ADR programs?
- (3) Do these benefits warrant the costs of ADR programs?
- (4) What is the experience of attorneys, clients, neutrals and judges participating in ADR proceedings? and
- (5) With the goal of establishing best practices or profiles of model programs, what are the characteristics of effective ADR programs?

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# Ninth Circuit ADR Education Award Winners

"Not unto ourselves alone are we born" is the motto for Willamette University College of Law, the winner of the 2012 ADR Education Award. Willamette's Center for Dispute Resolution offers a mediation certificate program for its law students and trains practitioners in the community. Willamette also offers an LL.M. in Dispute Resolution. Negotiation courses begin in the law students' first year, and an array of mediation courses are available for second

year students. Third year courses include conflict theory, advanced negotiation, the psychology of negotiation, and cross-cultural dispute resolution. The Center's Director, Richard Birke, specializes in the impact of neuroscience and psychology on negotiated settlements.

Clinical professors and law students are dedicated to providing pro bono mediation services, including hundreds of small claims and housing disputes at the Marion County Circuit Court. Faculty and student mediators also spent six months facilitating the resolution of a 30-year environmental dispute, resulting in the creation of a 35,000 acre federal wilderness area. Willamette University College of Law exemplifies a dedication to integration of conflict resolution training in a law school curriculum, and it now joins the list of other exemplary ADR Education Award winners within the Ninth Circuit.

The 2008 Award winner was the UNLV Boyd School of Law. The Director of the Saltman Center for Conflict Resolution, Jean Sternlight indicated that "receiving the Ninth Circuit's ADR Education Award in 2008 has been very important to the development of the Saltman Center for Conflict Resolution at UNLV. We aspire to connect theory and practice in our teaching, drawing on multiple disciplines to help students effectively represent their clients in a broad array of processes. To be recognized for this strength by the judiciary has helped us attract additional students to our programs."

This award was created by the Ninth Circuit Judicial Council in 2004 to recognize ABA-accredited law schools in the Ninth Circuit that have demonstrated a commitment to advancing education in the field of ADR. Recipients to date are:

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## ADR Committee Members



Hon. Valerie P. Cooke, *Chair, Magistrate Judge, NV*  
Hon. Jan M. Adler, *Magistrate Judge, CAS*  
Hon. Ann L. Aiken, *Chief District Judge, OR*  
Ms. Denise M. Asper, *Prisoner Litigation Project Director, OCE*  
Ms. Claudia L. Bernard, *Chief Circuit Mediator*  
Ms. Cathy A. Catterson,  
*Circuit and Court of Appeals Executive*  
Mr. Howard Herman, *Director of ADR Programs, CAN*  
Hon. Leslie E. Kobayashi, *District Judge, HI*  
Hon. Ricardo S. Martinez, *District Judge, WAW*  
Hon. Richard Neiter, *Bankruptcy Judge, CAC*  
Hon. Kendall J. Newman, *Magistrate Judge, CAE*  
Ms. Elizabeth "Libby" A. Smith,  
*District and Bankruptcy Court Clerk, ID*  
Hon. N. Randy Smith, *Circuit Judge*  
Hon. Christina A. Snyder, *District Judge, CAC*  
Jonathan L. Wolff, *Esq.,*  
*Senior Assistant Attorney General, CA*

Employing a co-mediation model, students would mediate each case with Magistrate Judge Craig M. Kellison. Sujean Park, the court's ADR program director, screens the cases for the clinic program. Ms. Park receives recommendations for potentially appropriate cases from all judges' staff as well as potential cases identified by the state.

After a case is selected and the mediation date is set, the students review the case file and set up an interview with the plaintiff to take place at least one week prior to the mediation. Teams of two students conduct the interviews in person when possible, but otherwise via video conference or telephone. The interviews usually take approximately one hour.

**...the rapport that the students develop with the prisoner during the initial interview and during the mediation session has contributed to settling some difficult cases.**

The students confirm that the prisoner knows a mediation session has been scheduled and try to answer any questions about the process. As the interview proceeds, students talk to the plaintiff inmate about the nature of his or her claims, identify the most important concerns, and assess the degree of flexibility the plaintiff has in settlement. Students are particularly careful to identify themselves as co-mediators with Judge Kellison.

After the interview, the students write a "Pre-Mediation Bench Memorandum." These memos contain not only a summary of the interview but also a list of the parties involved, a summary of the complaint, the procedural history of the case, the applicable legal standards, the relief plaintiff is requesting and the restitution amount plaintiff owes (if available). The memo is emailed to Judge Kellison a few days before the mediation for his review.

The two students who conducted the interview and prepared the memo then co-mediate the case with Judge Kellison. Although Judge Kellison takes the lead in these mediation sessions, he gives students increasing responsibility for asking questions and actively participating in the mediation as the students' skill levels develop over the course of the year and the judge becomes more comfortable with their abilities. Judge Kellison reports that the rapport that the students develop with the prisoner during the initial interview and during the mediation session has contributed to settling some difficult cases.

After each mediation session, the students prepare a confidential debriefing report for the clinic. The debriefing report is not shared with Judge Kellison but is shared among the clinic instructors and other law students for class discussion. The debriefing reports summarize the mediation, describe any obstacles to resolution, discuss the least and most effective settlement techniques used, and explore lessons learned from the mediation.

The clinic recently completed its third year of operation, during which students worked with another judicial officer for the first time. Magistrate Judge Kendall J. Newman mediated two cases in the second semester of this most recent year, and the feedback was overwhelmingly positive.

The students reported that it was helpful to work with multiple mediators, as each judge employs different techniques and mediation styles. In the future, the clinic plans to continue using more than one mediator so the students have a range of experiences from which to observe and learn.

The clinic's overall settlement rate for the three years it has been conducting mediation sessions is 56 percent. The students working with Judges Kellison and Newman have settled 25 of 45 cases. ●

An advisory group, convened in November 2012 to begin the process, consists of District Judge Amy J. St. Eve, Northern District of Illinois; District Judge Douglas P. Woodlock, District of Massachusetts; Magistrate Judge Robert Levy, Eastern District of New York; James G. Woodward, clerk of court, Eastern District of Missouri; Susie Boring-Headlee, ADR coordinator, District of Idaho; Craig A. McEwen, professor, Bowdoin College; Roselle Wissler, research director, Arizona State University; and myself.

The advisory group further refined the JRC and CACM questions and focused on these issues:

- (1) Whether there is value added to the courts' mission by using various ADR processes and delivery systems;
- (2) Whether judges refer certain types of cases to ADR;
- (3) Whether litigants are more or less satisfied when required to use ADR; and
- (4) Whether the experience of litigants and judges differs in courts with active administration of their ADR program.

The FJC's study design consists of deep descriptions of the varying ADR programs in approximately 10 courts, rather than attempting to capture program descriptions from all district courts across the country. The FJC has broadly identified four types of management and administrative support systems for ADR programs: courts with professional, full-time ADR program administrators who also provide some direct service; courts with designated judges or clerk's office staff who provide some management support for a panel of non-judge neutrals; courts that authorize ADR services but provide little support for an ADR program; and courts that rely principally on settlement assistance provided by judges. The FJC will likely study two or three courts from each group.

The research mechanisms will include surveys of participants; interviews with key players in each

court to understand history, context, values, goals, and changes made over time; and analysis of docket data in order to understand what happens in ADR and non-ADR cases. Data will relate to current and recent cases.

The current provisional timetable calls for the selection of district courts for inclusion in the study by May 1, 2013, with coding of docket data to be completed by August 30, 2013. The FJC will administer questionnaires and conduct interviews with district courts during the period of May through December 2013. A preliminary oral report will be delivered to Judicial Resources, and Court Administration and Case Management committees in June 2014, and the final written study will be submitted in December 2014. ●

## **EDUCATION AWARDS** *continued from page 2*

2012 - Willamette University College of Law

2011 - Gould School of Law, University of Southern California

2010 - University of Washington School of Law

2009 - Stanford Law School, Gould Center

2008 - William S. Boyd School of Law, University of Nevada

2007 - University of California Hastings' College of the Law

2006 - Pepperdine University School of Law

2005 - Arizona State University College of Law ●



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