

ADR Program Report

Fiscal Year 2019 (October 1, 2018 through September 30, 2019)

Overview of the Year

In Fiscal year 2019, the ADR Program focused on expanding the volunteer panel, improving our ability to handle ADA Access matters, and reorganizing our internal staffing.

We opened the mediation and ENE panels to new members for the first time since 2015 and selected approximately 60 new panelists. The ENE training occurred in September 2019 and the mediation trainings in October 2019 (which falls in the next fiscal year). We also conducted two specialized ADA Access mediation trainings, one in San Jose attended by 21 mediators in December 2018 and one in San Francisco in February 2019, attended by 26 mediators.

In January 2019, Esther Chung joined the ADR Program staff as Assistant to the Program Counsel, prompting a reorganization of workload with longstanding staff members Claudia Forehand, who was promoted last year to ADR Program Manager, and Alice Fiel, who now serves as the sole ADR Case Administrator.

As set forth in more detail below, although the total number of ADR referrals to all processes decreased slightly, the distribution of referrals among the various ADR options has remained relatively constant. Staff-intensive ADA access cases continue to dominate the ADR docket. The ADR Program also continued to provide special screening of mortgage foreclosure cases and process choice assistance to parties through ADR phone conferences.

Overall Caseload

- *Filings* – During FY 2019, the total number of ADR eligible filings was 4615 cases, a decrease of 235 cases over FY 2018. 3740 cases were subject to the ADR Multi-Option Program (a decrease of 270 cases over FY 2018) and 875 cases were ADA access filings subject to General Order 56 (an increase of 34 cases over FY 2018).
- *ADR Case Referrals* – Referrals to a specific ADR process are not tracked to the fiscal year because of the lead time involved in getting cases referred to a process. The charts included here show the distribution of referrals to the various ADR processes over the last four *calendar* years. The distribution has remained remarkably stable, with mediation continuing to be the preferred option. The settlement conference number for 2018 appears low, but because settlement conference referrals continue to be made

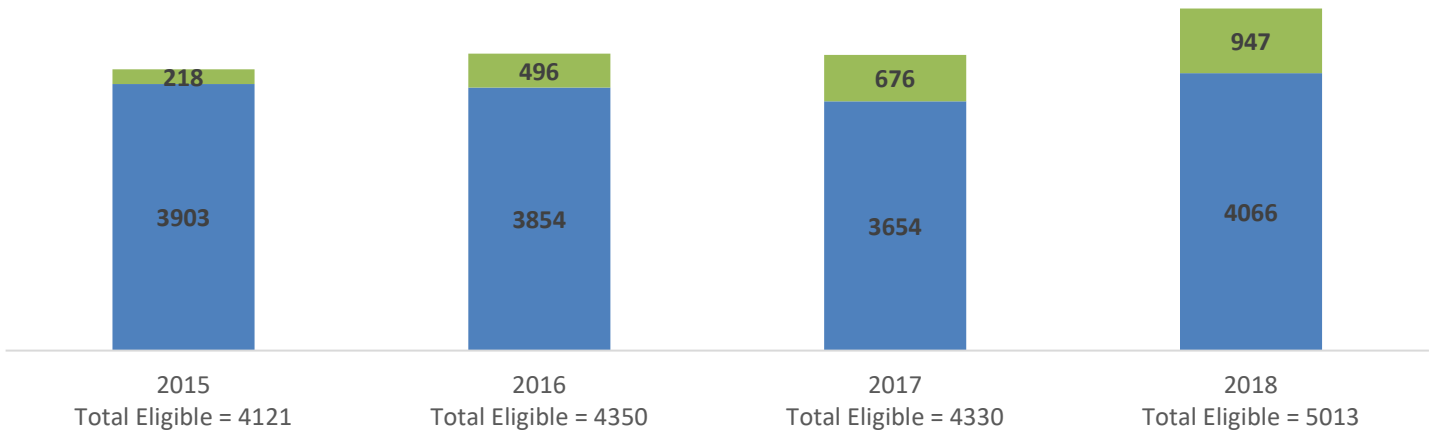
later in the life of the case, the number is likely to continue to rise after the date of this Report.

- *ADR Phone Conferences* – ADR Legal Staff conducted 280 phone conferences in FY 2019, a significant decrease from the 950 phone conferences conducted in FY 2018. This decrease was the result of the change in phone conference procedure implemented by the ADR Local Rules for cases filed beginning May 1, 2018. Calls to assist the parties in choosing an ADR process are now scheduled only at the request of the parties or based on a referral from the assigned judge. Calls may also be set by the ADR Program to resolve problems in cases already referred to an ADR process. Previously, ADR phone conferences were set whenever the parties had not agreed on an ADR process or they preferred an early settlement conference with a magistrate judge.
- *Satisfaction and Settlement Rates* – Surveys show that for cases filed in calendar year 2018, satisfaction levels remain quite high. 94% of the participants in Mediation and ENE report that the processes were fair, 92% say that they would volunteer another case to participate in the program, and 88% report that the benefits outweighed the costs. The settlement rate for Mediation cases filed in calendar year 2018 was approximately 63%, and for ENE cases filed in calendar year 2018 was approximately 37%. These settlement rates are consistent with historical expectations and are remarkably good for an early-ADR, court-annexed program.

Overall Caseload (Cont.)

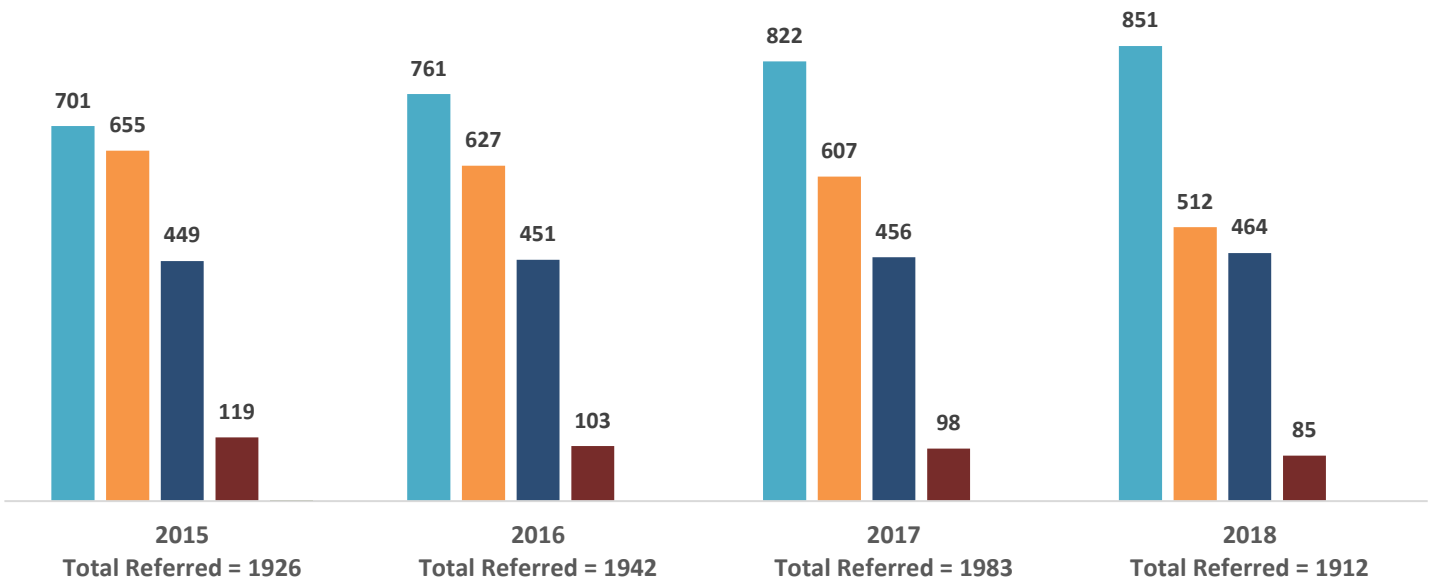
**Total ADR Eligible Cases
(Calendar Year)**

■ All ADRMOP Referral ■ ADA Access Cases



**ADR Referrals
(Calendar Year)**

■ Mediation ■ MJ Settlement Conference ■ Private ADR ■ Early Neutral Evaluation



Overall Caseload (Cont.)

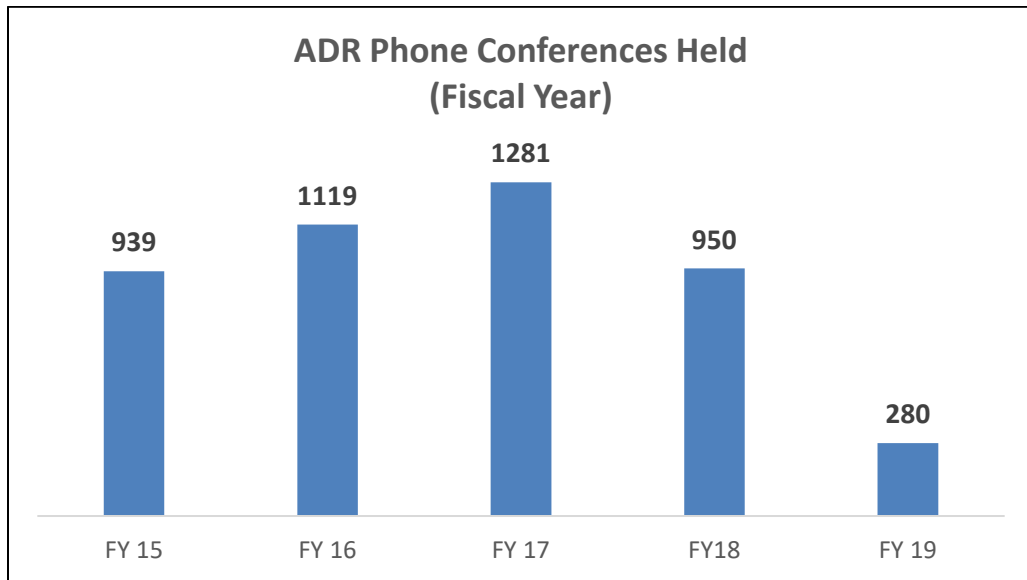
ADR Referrals (Calendar Year)

	2015	2016	2017	2018
Total ADR Eligible Cases	4121	4350	4330	5007
ADA Access Cases	218	496	676	947
ADRMOP Referrals	3903	3854	3654	4060
Total Referred to an ADR Process	1926	1942	1983	1912
Mediation	701 (36%)	761 (39%)	822 (41%)	851 (45%)
Magistrate Judge Settlement Conference	655 (34%)	627 (32%)	607 (31%)	512 (27%)
Private ADR	449 (23%)	451 (23%)	456 (23%)	464 (24%)
Early Neutral Evaluation	119 (6%)	103 (5 %)	98 (5 %)	85 (4%)
Arbitration	2 (<1%)	0 (<1%)	0 (<1%)	0

Notes:

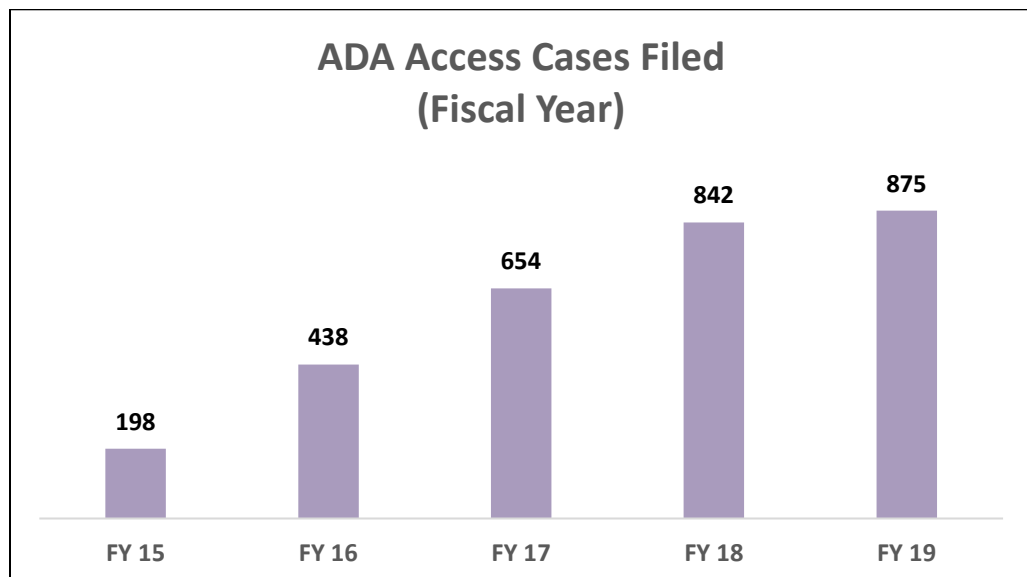
1. These statistics were compiled from the Court's ECF system as of January 23, 2018. While the number of ADR eligible cases is fixed at the end of each calendar year, the number of cases referred to an ADR process and to any particular process may continue to increase.
2. Most cases are not referred until at least 90 – 120 days after filing, and some cases are referred much later. Accordingly, additional referrals for cases filed in 2018 are still expected, particularly with respect to settlement conferences.
3. Multiple ADR sessions may be held in any given case, and this is particularly true of settlement conferences and mediations.

Overall Caseload (Cont.)



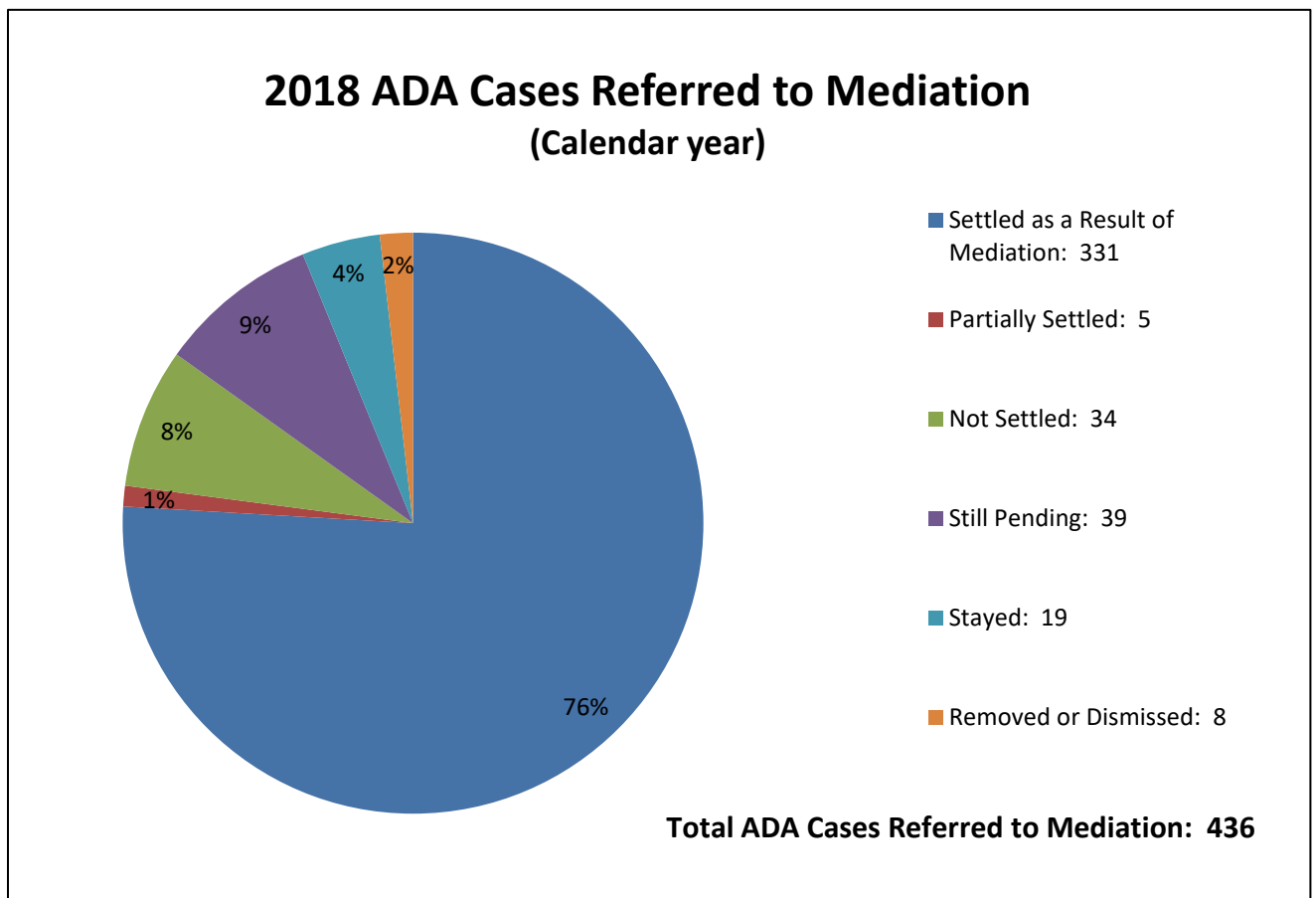
ADA Access Cases

The ADR Program continues to handle the bulk of ADA Access filings under General Order 56. Mediation sessions were conducted in 174 ADA access cases during FY 2019 (an increase of 21 cases over FY 2018). 58 cases were handled by ADR Legal Staff and 116 cases by ADR Program Mediators. During FY 2019, the number of ADA access filings seems to have leveled off, with 875 cases filed in FY 2019, compared to 842 cases filed in FY 2018, to 654 in FY 2017, to 438 in FY 2016, and to 198 in FY 2015.



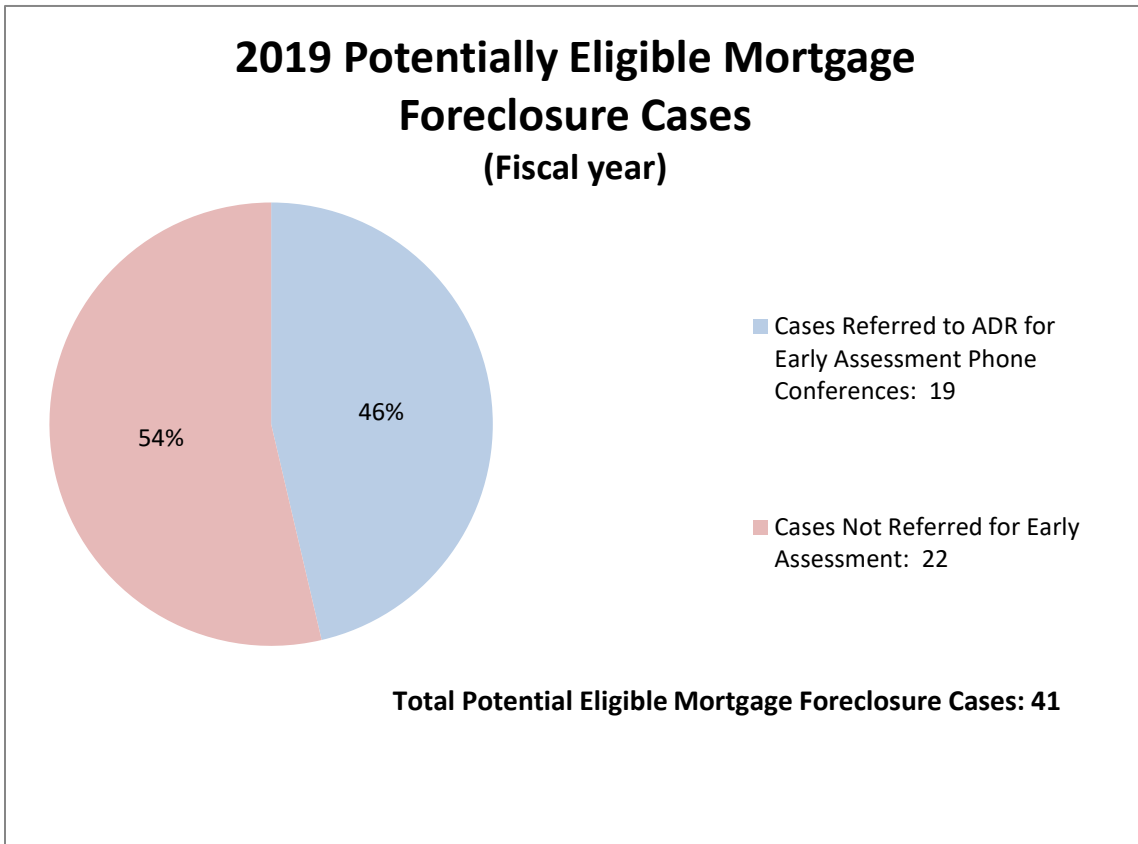
Substantively, the General Order 56 process continues to be a very successful tool for managing ADA cases. For cases filed in calendar year 2018, which are now far enough along to obtain meaningful data, there were a total of 947 ADA access cases filed. Of these, 46% (436 cases) resulted in the filing of a Notice of Need for Mediation.

Of the 436 cases referred to mediation, 331 cases (76%) settled either before a session took place (frequently with substantial mediator involvement) or as a result of the mediation session. 5 cases (1%) partially settled, 34 cases (8%) did not settle, and 39 cases (9%) are still pending in mediation. 19 cases (4%) are stayed due to the pendency of an appeal. The remaining 8 cases (2%) were removed from mediation or dismissed by motion in advance of mediation.

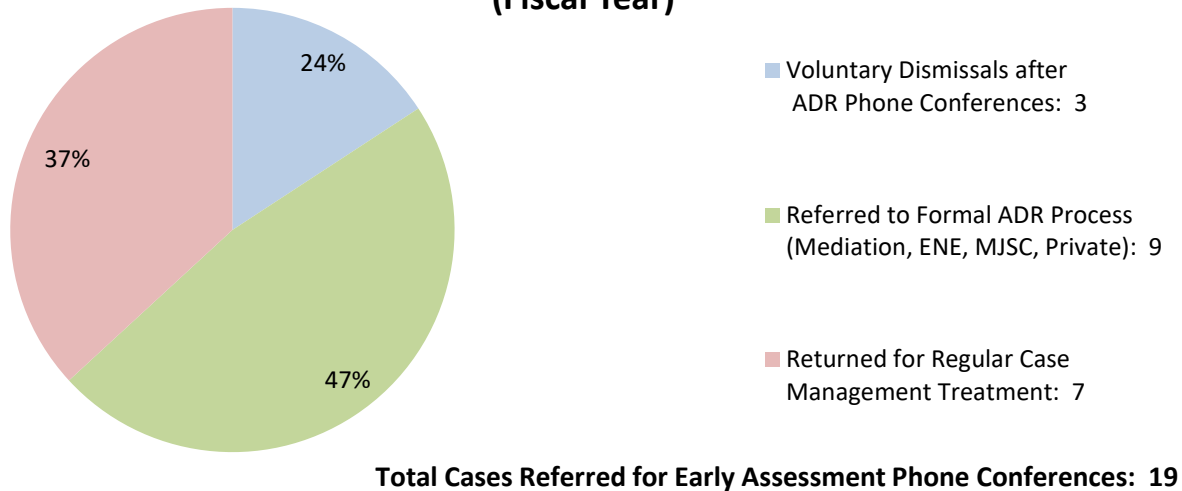


Mortgage Foreclosure Cases

Beginning in 2011, several judges adopted a practice of sending mortgage foreclosure cases to the ADR Program to assess in advance of the usual ADR process selection deadlines whether ADR might assist the parties in resolving the dispute prior to motion practice or other litigation. In FY 2019, the ADR Program continued to run weekly reports to screen for newly filed mortgage foreclosure cases. For each identified case, we sent the assigned judge guidelines for assessing the cases' suitability for early intervention and a sample order referring the case to ADR for a phone conference. In FY 2019, ADR Staff identified 41 potentially eligible mortgage foreclosure cases. Of that group, 19 cases were referred back to us for early assessment phone calls, a significant decrease from the 34 cases referred for early assessment in FY 2018. Most cases resulted in a series of ADR phone conferences monitoring the parties' efforts at loan modification; 3 cases (18%) were dismissed voluntarily after ADR phone conferences, 9 cases were referred to formal ADR processes (6 to mediation, 2 to a settlement conference, and 1 to private ADR). Cases not resolved or referred to a formal ADR process remained subject to the usual ADR Multi-Option Program protocols. Later referrals and dispositions through those protocols are not included in these statistics.



2019 Mortgage Foreclosure Cases Referred for Early Assessment (Fiscal Year)



Mediation Practice Groups

Since 2004, ADR Program Legal Staff have facilitated ongoing, monthly Practice Groups for those mediators willing to commit to regular attendance. In these small group meetings, the mediators present issues and problems that actually arise in their cases for group reflection and discussion, while carefully protecting the confidentiality of the mediation process. In FY 2019, we continued to operate eight groups, in which 122 mediators participated, with Tamara Lange and Howard Herman each leading four groups. In addition, Howard and Tamara facilitate a similar group every month for the Magistrate Judges, focusing on their settlement conference work.

ADR Facilities

During FY 2019, the ADR Program continued to make frequent use of its dedicated conference rooms on the 16th floor of the San Francisco courthouse, and to host ADR sessions in various courtrooms and other spaces within the San Francisco federal building, and, when necessary and facilities were available, to schedule ADR matters in the Oakland and San Jose federal buildings.

In FY 2019, a total of 203 ADR Program sessions were hosted at court facilities.

Additional ADR Unit Activities and Outreach

During FY 2019, Howard Herman continued his longstanding association with the Center for Negotiation and Dispute Resolution at UC Hastings College of the Law. Howard served as one of the lead trainers for the Ninth Circuit's Mediation Skills Training for Judges, on the faculty of the Federal Judicial Center's National Workshop for Magistrate Judges, and on the faculty of an ASEAN-USPTO Workshop on Utilizing ADR in IP Disputes in Manila, Philippines. He also made presentations at the Arizona State Bar Convention, at Pepperdine University's Dispute Resolution Conference, and at the ABA Dispute Resolution Section's Annual Spring Conference.

Tamara Lange served with the Chief Circuit Mediators for the Fifth and Sixth Circuit on a working group for the Federal Judicial Center that identified the key knowledge, skills, and attributes of federal court mediators and drafted a set of mediator competencies for use by the FJC in designing educational programs. In conjunction with the Ninth Circuit Judicial Conference, Tamara was a faculty member for a judicial education program on Mediation Skills for Judges. She also was a guest ethics instructor at Golden Gate University School of Law.