

Northern District of California Limited Scope Representation Program

The Federal Pro Bono Project is a joint endeavor of the United States District Court for the Northern District of California and the Justice & Diversity Center of The Bar Association of San Francisco. Since 2008, the project has arranged pro bono counsel for unrepresented civil litigants at the request of the court. Placements can embrace a range of services including limited scope representation solely for ADR purposes. These limited scope appointments have been well-received by the bar, the bench and,



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of course, pro se litigants. In the last 10 years, the project has placed over 80 limited scope matters with volunteer attorneys, almost entirely for representation at a mediation or, more commonly, at a settlement conference before a magistrate judge.

Attorneys are eager to engage in limited scope representation in federal court, often accepting a matter within hours of a volunteer posting. Associates at large firms have opportunities in these cases – such as working directly with a client or taking the lead on negotiations – which they may not get otherwise in the early years of their practice. As most limited scope placements in the Northern District involve

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Rick Copeland, Civil Rights Mediator



Rick Copeland is a panel mediator for the Central District of California.

Some alternative dispute resolution providers suggest that mediators trying to build a mediation practice focus on a niche area of the law. Rick Copeland, a panel mediator with the United States District Court for the Central District of California, has done just that – and, in the process, contributed significantly to the ADR Program of the Central District and to the work of that court.

Richard T. “Rick” Copeland was a litigator for 12 years after law school. His practice focused on federal civil rights litigation, primarily involving police misconduct cases brought under 42 U.S.C. §1983. Mr. Copeland attributes his interest and passion in civil rights to studying constitutional law and trying to understand the tension between the rights of individual citizens and the difficulties faced by law enforcement officers in performing their jobs.



Gail Killefer is the ADR program director for the Central District of California.

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Mr. Copeland mediated many of his cases as an advocate and found himself inspired – and motivated – by the mediation process. He returned to law school as a candidate for a master in dispute resolution at the Straus Institute for Dispute Resolution at Pepperdine Law School. When he needed to present a topic for his master's thesis, Mr. Copeland proposed what he knew best – civil rights law.

Mr. Copeland reached out to the ADR Program of the Central District and began an externship there in early 2013. The focus of his externship was to determine whether civil rights cases filed with the court were appropriate for mediation at the early stages of litigation and, if so, what type of civil rights cases were most conducive to mediation.

As part of his thesis project, Mr. Copeland reviewed 135 civil rights cases brought against governmental entities for police misconduct that were filed in 2011 and resolved by March 1, 2013. Of these cases, he defined 17 percent as “major cases” and the remaining 83 percent as “non-major cases.”

“Major cases” were defined as those alleging (1) wrongful death; (2) paralysis to plaintiff; (3) debilitating injury, resulting in legitimate lifetime treatment; and (4) false allegations against a citizen such that the citizen is incarcerated for a period of more than one year.

Of the non-major cases reviewed, Mr. Copeland found that only 42 percent settled. The remaining 58 percent were resolved by way of voluntary dismissal, dispositive motion or trial, thereby consuming considerable court time and resources.

Mr. Copeland learned that the parties used mediation in 37 percent of the non-major cases. He also found that the amount of time to resolve Section 1983 cases involving the City and County of Los Angeles (the entities sued most frequently for civil rights violations in the Central District) was nearly double the average time to resolve other civil cases.

Based upon these findings, Mr. Copeland worked with the ADR Program of the Central District to identify non-major civil rights cases appropriate for “early mediation” by reviewing the court's dockets and contacting counsel once the case was at issue. The project defined “early mediation” as a mediation conducted after the filing of the responsive pleading and before the initial scheduling conference. The ADR Program assigned appropriate cases, in which counsel were willing to participate in an early mediation, to panel mediators with civil rights expertise.

While the project began with promise, over time and with the increase in civil rights filings, counsel became less willing and less able to prepare for early mediation sessions. Mr. Copeland attributes the reluctance to attend early mediations to the increased workload of the defense bar and the heightened expectations of the plaintiff's bar.

Mr. Copeland's study and understanding of outcomes and trends in civil rights cases in the Central District became a powerful tool in his work as a mediator. He can explain the percentage of plaintiff's and defendant's verdicts in each of the Central District's courthouses (Los Angeles, Santa Ana and Riverside) and the range of values of plaintiff's verdicts.

Counsel find Mr. Copeland persuasive with their clients, particularly when he talks about the trends and numbers of recent verdicts in the courthouse. In the last two and a half years, Mr. Copeland has mediated approximately 250 civil rights cases.

Mr. Copeland reports an upward trend of plaintiffs' verdicts in the Central District from mid-2014 through 2017, with an explosion of plaintiff's verdicts in early-to- mid-2017. Specifically, from 2011 to mid-2014, juries awarded plaintiffs verdicts in 9 percent of the trials in non-major cases. That percentage increased to 30 percent between mid-2014 and 2017. Between March and December

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2017, Mr. Copeland reports juries returned verdicts for plaintiffs in 60 percent of the non-major cases tried.

This year, Mr. Copeland finds juries are swinging back to pre-mid 2014 percentages and generally finding for the defense. In those major cases in which plaintiffs prevail, however, the juries are awarding higher numbers. Mr. Copeland notes that plaintiffs are filing more Section 1983 cases in 2018, and there are more civil rights cases filed by self-represented parties.

As many Central District mediators would probably agree, civil rights cases are more difficult to settle at mediation today. For example, of the civil rights cases reported mediated by panel mediators in 2018, the settlement rate is 36 percent. In contrast, panel mediators in the Central District settled 58 percent of the civil cases that they mediated in 2017.

To others who mediate civil rights cases, Mr. Copeland recommends that the mediator avoid putting the parties together in one room. He explains that as these cases usually involve an act of force or a restraint of freedom, it can be stressful for both the plaintiffs and defendants to see each other.

Mr. Copeland's success and experience as a panel mediator has also helped his mediation practice. Mr. Copeland said he is frequently asked to mediate civil rights cases as a private mediator and, with some frequency, counsel in those cases have referred him to counsel in other government agencies and departments. Today, about 90 percent of his mediation caseload involves a government agency.

Developing a successful mediation practice while contributing significantly to the Central District's ADR Program and to the work of the court is definitely what we call a win-win! ●

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