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Neutrals working remotely during pandemic may be essential to helping backlogged courts

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Like most companies, the ramifications from the coronavirus rocked Alternative Dispute Resolution companies in California this week. But in interviews, executives from several mediation shops said they are turning to teleconferencing to continue handling some cases.

Major Alternative Dispute Resolution companies in California have closed their offices or significantly curtailed operations and moved to working remotely.

Offices of ADR Services Inc. is closed until April 7, Judicate West until April 3, and Signature Resolutions said it is discouraging people from coming into the office.

“Right now, the business is slow. Everyone is in a state of shock,” ADR Services President Lucie Barron said.

Signature said its mediations were down by half this week, mostly because of last-minute cancellations, according to Dario Higuchi, a managing member at Signature.

With teleconferencing technology, such as Zoom Video Communications already being used by these companies, its role in aiding an already backlogged court system weighted by a pandemic could be elemental. Zoom allows for separate virtual rooms to which the mediator can toggle back and forth between parties.

“I would say that the cases I

have been dealing with, 75% have opted to do virtual,” said Chelsea Mangel, a development manager at ADR Services.

“JAMS already offers several video conferencing services, which have proven to be highly effective in both mediations and arbitrations,” Mark Smalls, JAMS vice president and chief marketing officer, said in a statement. “We are currently utilizing these tools and others with numerous cases and have seen great success enabling parties to participate and engage remotely. Providing access to technology that helps ensure efficient ADR proceedings has always been a priority for JAMS, and we believe that experience will be important during this time.”

A spokesperson for Zoom said the company does not share data on usage.

“As you can imagine, we are heads down supporting new and existing customers, so sorry to say we can’t do interviews right now,” said the spokesperson in an email.

It remains to be seen how amenable parties will be to conducting remote mediations, according to Judge James Steele, a founder of Signature. Steele said it is very challenging to do mediations without everyone physically present.

“If you’ve got six or eight parties it is very difficult to work,” he said.

Several people in the legal community said they expected ADR business to increase dramatically as litigants struggle

to get hearing dates after courts reopen.

“I suspect there will be more work in the alternate dispute resolution area than there was before,” said Steele.

Smalls, of JAMS, said “the COVID-19 pandemic will affect the dispute resolution industry as well as the courts, and it is difficult to tell what the situation will look like once the crisis passes.”

Higuchi, of Signature, said he was focused in the coming days and weeks on making sure clients and neutrals were safe. But he said several neutrals had already canceled summer vacations and offered to work weekends in anticipation of a crush of work after the scare is over.

Mangel said she expected a lot of clients would be looking to move their cases into mediation and the neutrals will be “ready to work.”

“Unfortunately, it is going to be those who can afford it. Those who can afford it, they’ll get siphoned off to the private sector, which will open up the courts,” Steele said.

Phyllis W. Cheng, an ADR Services neutral, convened a meeting with the Central District of California last week, in which the rules on mediations were relaxed, allowing video and teleconferencing. The court’s ADR program is headed by Judge Dolly M. Gee.

Usually parties have to be physically present, but now mediators have more leeway to use alternative platforms like video

and teleconference, according to Cheng.

“What the Central District has done is really good because they are giving mediators more discretion to go forward,” said Cheng. A mediator’s role is especially important now, she said, given the understaffing of judges in the Central District. During emergencies, the court is supposed to have 28 judges, but the Central District only has 18, with the average judge handling more than 500 cases that are not weighted, said Cheng.

Out of the more than 500 cases that were mediated out of the Central District in 2019, 53% settled, said Cheng. So far this year, 139 cases were mediated by private volunteers with about 55% settling, she said.

In the Northern District, the requirement of in-person mediation attendance is suspended until May 1. No in-person mediation sessions shall take place before then. The Southern District of California doesn’t have its own mediation program.

Los Angeles County Superior Court differs as mediations greatly depend on volunteer bar associations.

“Our role as court mediators is a very important role. They say what we do is the equivalent to another judge,” said Cheng.

For now, it is a wait-and-see approach.

“I have never gone through anything like this in my lifetime,” said Cheng. “It is just an unknown going forward.”

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