

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: November 26, 2013 **Approximate Start Time:** 1:30 p.m. **Approximate Length:** 1 hour

Presentation Title: Fee for Small Claims Mediation **Department:** Resolution Services

Presenters: Lauren Mac Neill, Director

Other Invitees: None

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

That the Board approve a fee to be charged to parties for mediation of Small Claims cases referred from Clackamas County Circuit Court or Clackamas County Justice Court and provided by Resolution Services. Specifically, we request that the Board set the following fees:

\$50 per side - For matters less than or equal to \$2500.00; and
 \$90 per side – For matters greater than \$2500.00 (and up to \$10,000.00).
 (Fee waivers available if the parties' court filing fees were waived due to indigence.)

EXECUTIVE SUMMARY (why and why now):

Small claims mediation is a valuable community service and needs to have a stable funding source.

Mediation of small claims cases has long been offered in both Multnomah (since 1989) and Washington (since 1996) counties, as well as a total of 21 counties statewide. These services are highly regarded by the participants, and result in the majority of cases being settled in mediation, resulting in greater party satisfaction and compliance. After much consideration, and upon the recommendation of our Advisory Committee, Resolution Services and the Clackamas County Circuit Court agreed to pilot a small claims mediation program in Clackamas County. Thus, for a 6 month period (March – August 2012), half of the small claims actions filed in Clackamas County Circuit Court were referred to mediation and half were sent directly to trial.

The pilot project was highly successful. The majority of the cases were resolved in mediation, which significantly reduced the number of cases going before a judge. The Circuit Court affirmed that mediation had very much helped their docket, as they had previously eliminated night court (which used to hear small claims matters) and had to incorporate small claims into an already full docket. Given this, a Supplementary Local Rule was enacted in February of this year requiring all parties to a small claims action to mediate in advance of trial. Since the inception of small claims mediation, of the 596 total cases referred, 70% (417) were resolved at the mediation stage, with only 30% (179) moving on to trial.

In addition to the Circuit Court, the Clackamas County Justice Court is obliged by statute to receive small claims matters (ORS 55.011). Parties who file at Justice Court pay a lower filing fee (\$28) than at Circuit Court (\$53 for matters where the amount in controversy is less than or equal to \$2500, and \$95 for matters where the amount in controversy is greater than \$2500), but may appeal their case to Circuit Court. Justice Court agreed to fund Resolution Services for FY 12-13 for the provision of mediation services, and we prepared our budget with that plan. Justice Court presumed that due to their lower filing fee, over time, more and more of the small claims cases would be filed at Justice Court. Over the course of the fiscal year, Justice Court experienced some delays, and thus did not begin referring cases to mediation until April 2013. Since that time, they have had few filings, and have only referred 9 cases to Resolution Services.

Clackamas County Circuit Court also explored the possibility of assessing a fee at the courthouse in addition to the court filing fee to fund mediation services. After some research, they determined that the circuit court is statutorily prohibited from assessing a separate fee (see ORS 21.100¹ and ORS 46.570), and they do not have any other available funds for this purpose.

Our Advisory Committee established a subcommittee to explore options for funding small claims mediation, and has made the recommendation that Resolution Services seek to establish a fee. They further recommended that the fee not exceed the amount of the Circuit Court filing fee, and that the fee allow for adjustments for indigent parties.

Justice Court is in a position to be able to cover the costs of mediation services in small claims cases, but to-date the majority of cases are still being filed at Circuit Court. Thus, we believe that the most effective way to fund these services is through a user fee.

With Small Claims Mediation services available, County residents are benefiting by seeing their issues fully addressed and reaching mutually agreeable settlements in the majority of cases. Unlike the adversarial process of trial, disputants in small claims mediation are assisted by mediators who guide parties through identification of all issues related to a dispute, helping them share information and build understanding for one another's concerns and needs. Mediators assist parties in reaching durable agreements that satisfy their needs and interests. Studies show that compliance (for example, payment of a settlement obligation) is greater if an agreement is reached in mediation versus having the court decide the outcome of the case. These mutually agreeable solutions help to end disputes fully and efficiently, resulting in safer and healthier communities

FINANCIAL IMPLICATIONS (current year and ongoing):

We set 8 to 10 small claims mediation cases per week, and we have costs associated with running this service. We did not receive the \$30,000 budgeted from Justice Court

¹ "Unless otherwise specifically provided by statute, the filing fee for an action or proceeding is the only fee or charge that may be collected for the filing, whether by court or any other public body, as defined by ORS 174.109.

for our FY12-13 budget. We want to ensure sustainable funding for these services for this FY and into the future.

These services are very cost effective in that we use trained volunteer mediators to provide the mediation sessions, with oversight by staff Mediation Coordinators. The estimate for one year of staff time to manage Small Claims mediation services is \$54,709. This covers volunteer training, scheduling, and coordination, in addition to coordinating cases with the courts, and notably does not include materials or administrative overhead.

Small Claims Mediation services are very beneficial to Clackamas County and its residents. These services increase public safety, enhance healthy communities, and support people who gain conflict resolution skills and follow through with their commitments. But, these services need to be paid for. If the funding challenge is not addressed, these services will cease to exist. By charging a user fee to county citizens and businesses, the program will be funded by those who use it, and expenses covered for staffing and volunteer coordination.

LEGAL/POLICY REQUIREMENTS:

Local Supplemental Rule has been changed to require mediation for all small claims cases filed in circuit courts. (SLR 12.005(1)).

PUBLIC/GOVERNMENTAL PARTICIPATION:

Clackamas County Resolution Services worked with our Advisory Committee, the Circuit Court, and the Justice Court in developing small claims mediation.

OPTIONS:

Option A: The Board adopts a fee (\$50 or \$90) per side (plaintiff and defendant) for Small Claims mediation. Either referring court may elect to cover this fee for the cases it refers via intergovernmental agreement. Pros: The people using the services pay for them. Proposed fees are sufficient to fund the service. Cons: Likely resistance, especially from those who are used to "free" mediation in other jurisdictions. More administrative work in collecting fees.

Option B: The Board authorizes the use of general fund dollars to cover Small Claims mediation services (regardless of referring court). Pro: There will be no additional charge to parties beyond their court filing fee, which is collected at court. Con: Philosophical considerations regarding the appropriate cost-sharing between the county and the court (state).

Option C: The Board sets a lower fee (perhaps \$25 and \$45 per party) and authorizes general fund money to cover the remainder of the cost for Small Claims Mediation. Pro: Allows residents access to services at a lower cost. Cons: Likely resistance but perhaps less so at the full fee of Option A, especially from those who are used to "free" mediation in other jurisdictions. More administrative work in collecting fees.

Option D: The Board provides support for an exploration of the feasibility of a legislative agenda item supporting a statutory fee for small claims mediation statewide. Pro: May be a more effective method of funding the service long term. May help other jurisdictions maintain or establish programs. Con: Is a longer-term solution, does not solve immediate funding need.

RECOMMENDATION:

We recommend that the Board of County Commissioners establish a fee of \$50 or \$90 per side for Small Claims Mediation. (Option A)

ATTACHMENTS:

None

SUBMITTED BY:

Lauren MacNeill, Director Approval

County Administrator Approval



For information on this issue or copies of attachments, please contact
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