

ATTACHMENT A:

BUSINESS AND PROFESSIONS CODE SECTION 465-465.5

465. The Legislature hereby finds and declares all of the following:

(a) The resolution of many disputes can be unnecessarily costly, time-consuming, and complex when achieved through formal court proceedings where the parties are adversaries and are subjected to formalized procedures.

(b) To achieve more effective and efficient dispute resolution in a complex society, greater use of alternatives to the courts, such as mediation, conciliation, and arbitration should be encouraged. Community dispute resolution programs and increased use of other alternatives to the formal judicial system may offer less threatening and more flexible forums for persons of all ethnic, racial, and socioeconomic backgrounds. These alternatives, among other things, can assist in the resolution of disputes between neighbors, some domestic disputes, consumer-merchant disputes, and other kinds of disputes in which the parties have continuing relationships. A noncoercive dispute resolution forum in the community may also provide a valuable prevention and early intervention problem-solving resource to the community.

(c) Local resources, including volunteers reflective of the diversity of the community and available public buildings should be utilized to achieve more accessible, cost-effective resolutions of disputes. Additional financial resources are needed to expand, stabilize, and improve existing programs and entities which sponsor alternative dispute resolution.

(d) Courts, prosecuting authorities, law enforcement agencies, and administrative agencies should encourage greater use of alternative dispute resolution techniques whenever the administration of justice will be improved.

(e) Counties should consider increasing the use of alternative dispute resolution in their operations as plans for court reform are developed and implemented.

(f) The Judicial Council should consider, in redrafting or updating any of the official pleading forms used in the trial courts of this state, the inclusion of information on options for alternative dispute resolution.

465.5. It is the intent of the Legislature to permit counties to accomplish all of the following:

(a) Encouragement and support of the development and use of alternative dispute resolution techniques.

(b) Encouragement and support of community participation in the development, administration, and oversight of local programs designed to facilitate the informal resolution of disputes among members of the community.

(c) Development of structures for dispute resolution that may serve as models for resolution programs in other communities.

(d) Education of communities with regard to the availability and benefits of alternative dispute resolution techniques.

(e) Encouragement of courts, prosecuting authorities, public defenders, law enforcement agencies, and administrative agencies to work in cooperation with, and to make referrals to, dispute

resolution programs.

At the time that the state assumes the responsibility for the funding of California trial courts, consideration shall be given to the Dispute Resolution Advisory Council's evaluation of the effectiveness of alternative dispute resolution programs and the feasibility of the operation of a statewide program of grants, with the intention of funding alternative dispute resolution programs on a statewide basis.

466. As used in this chapter:

(a) "Dispute resolution" includes, but is not limited to, mediation, conciliation, and arbitration.

(b) "Program" means an entity that provides dispute resolution.

(c) "Advisory Council" means the Dispute Resolution Advisory Council.

467. (a) There is in the Division of Consumer Services of the Department of Consumer Affairs a Dispute Resolution Advisory Council. The advisory council shall complete the duties required by this chapter no later than January 1, 1989.

(b) The advisory council shall consist of seven persons, five of whom shall be appointed by the Governor. One member shall be appointed by the Senate Rules Committee, and one member shall be appointed by the Speaker of the Assembly. At least four of the persons appointed to the advisory council shall be active members of the State Bar of California, and at least four persons appointed to the advisory council shall have a minimum of two years of direct experience in utilizing dispute resolution techniques. The members of the advisory council shall reflect the racial, ethnic, sexual, and geographic diversity of the State of California.

(c) The members of the advisory council shall not receive a salary for their services but shall be reimbursed for their actual and necessary travel and other expenses incurred in the performance of their duties.

467.1. (a) A program funded pursuant to this chapter shall be operated pursuant to contract with the county and shall comply with all of the requirements of this chapter and the rules and regulations of the advisory council.

(b) Counties may establish a program of grants to public entities and nonpartisan nonprofit corporations for the establishment and continuance of programs to be operated under the requirements of this chapter and the standards developed by the advisory council. The board of supervisors of a county in which, because of the county's size, the distribution authorized by Section 470.5 is insufficient to establish a county program may enter into an agreement with the board of supervisors of one or more other such counties to establish a program authorized by this chapter on a regional basis.

467.2. A program shall not be eligible for funding under this chapter unless it meets all of the following requirements:

(a) Compliance with this chapter and the applicable rules and regulations of the advisory council.

(b) Provision of neutral persons adequately trained in conflict resolution techniques as required by the rules and regulations promulgated by the advisory council pursuant to Section 471.

(c) Provision of dispute resolution, on a sliding scale basis, and without cost to indigents.

(d) Provision that, upon consent of the parties, a written agreement or an award resolving a dispute will be issued setting out a settlement of the issues involved in the dispute and the future responsibilities of each party.

(e) Provision of neutral procedures applicable equally to all participants without any special benefit or consideration given to persons or entities providing funding for the programs.

(f) Provision that participation in the program is voluntary and that the parties are not coerced to enter dispute resolution.

(g) Provision of alternative dispute resolution is the primary purpose of the program.

(h) Programs operated by counties that receive funding under this chapter shall be operated primarily for the purposes of dispute resolution, consistent with the purposes of this chapter.

467.3. Programs funded pursuant to this chapter shall provide persons indicating an intention to utilize the dispute resolution process with a written statement prior to the dispute resolution proceeding, in language easy to read and understand, stating all of the following:

(a) The nature of the dispute.

(b) The nature of the dispute resolution process.

(c) The rights and obligations of the parties, including, but not limited to, all of the following:

(1) The right to call and examine witnesses.

(2) The right of the parties to be accompanied by counsel, who may participate as permitted under the rules and procedures of the program.

(d) The procedures under which the dispute resolution will be conducted.

(e) If the parties enter into arbitration, whether the dispute resolution process will be binding.

467.4. (a) An agreement resolving a dispute entered into with the assistance of a program shall not be enforceable in a court nor shall it be admissible as evidence in any judicial or administrative proceeding, unless the consent of the parties or the agreement includes a provision that clearly states the intention of the parties that the agreement or any resulting award shall be so enforceable or admissible as evidence.

(b) The parties may agree in writing to toll the applicable statute of limitations during the pendency of the dispute resolution process.

467.5. Notwithstanding the express application of Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code to mediations, all proceedings conducted by a program funded pursuant to this chapter, including, but not limited to, arbitrations and conciliations, are subject to Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code.

467.6. Each program shall maintain those statistical records required by Section 471.5, and as may be required by the county. The records shall maintain the confidentiality and anonymity of the parties.

467.7. (a) Unless the parties have agreed to a binding award,

nothing in this chapter shall be construed to prohibit any person who voluntarily enters the dispute resolution process from revoking his or her consent, withdrawing from dispute resolution, and seeking judicial or administrative redress.

(b) In cases in which a criminal complaint has been filed by a prosecutor, other than for an infraction, the advice of counsel shall be obtained before any dispute resolution process is initiated. Nothing in this subdivision shall be construed to preclude a defendant from knowingly and voluntarily waiving the right to counsel. A defendant who indicates a desire to waive the right to counsel shall be encouraged to consult with the public defender or private counsel before waiving that right.

468. All funds available to a county for the purposes of this chapter shall be utilized for projects proposed by eligible programs.

468.1. Programs shall be selected for funding by a county from the applications submitted therefor.

468.2. Applications submitted for funding shall include, but need not be limited to, all of the following information:

(a) Evidence of compliance with Sections 467.2, 467.3, and 467.4.

(b) A description of the proposed community area of service, cost of the principal components of operation, and any other characteristics, as determined by rules of the advisory council.

(c) A description of available dispute resolution services and facilities within the defined geographical area.

(d) A description of the applicant's proposed program, by type and purpose, including evidence of community support, the present availability of resources, and the applicant's administrative capability.

(e) A description of existing or planned cooperation between the applicant and local human service and justice system agencies.

(f) A demonstrated effort on the part of the applicant to show the manner in which funds that may be awarded under this program may be coordinated or consolidated with other local, state, or federal funds available for the activities described in Sections 467.2, 467.3, and 467.4.

(g) An explanation of the methods to be used for selecting and training mediators and other facilitators used in the dispute resolution process.

(h) Such additional information as may be required by the county.

468.3. Data supplied by each applicant shall be used to assign relative funding priority on the basis of criteria developed by the advisory council. The criteria may include, but shall not be limited to, all of the following, in addition to the criteria set forth in Section 468.2:

(a) Unit cost, according to the type and scope of the proposed program.

(b) Quality and validity of the program.

(c) Number of participants who may be served.

(d) Administrative capability.

(e) Community support factors.

469. Upon the approval of the county, funds available for the purposes of this chapter shall be used for the costs of operation of approved programs. Not more than 10 percent of funds available for

the purposes of this chapter shall be used to finance the administration of the program by a county with a population of 500,000 or more persons, and no more than 20 percent may be so used if its population is less than that amount. All moneys allocated for the purposes of this chapter shall be apportioned and distributed to programs in the county, taking into account the relative population and needs of a community as well as the availability of existing dispute resolution facilities offering alternatives to the formal judicial system. If any program receives funding from any other county fee enhancements collected for the purpose of funding alternative dispute resolution services, the county shall consider that fact in determining the appropriate level of funding for a particular program. The methods of payment or reimbursement for dispute resolution costs shall be specified by the county and may vary among programs. All such arrangements shall conform to the regulations of the advisory council.

470. A county may accept and disburse funds from any public or private source for the purposes of this chapter.

470.1. (a) A grant recipient may accept funds from any public or private source for the purposes of this chapter.

(b) A county and its representatives may inspect, examine, and audit the fiscal affairs of the programs and the projects funded under this chapter.

(c) Programs shall, whenever reasonably possible, make use of public facilities at free or nominal costs.

470.2. A county's share of the funding pursuant to this chapter shall not exceed 50 percent of the approved estimated cost of the program.

470.5. (a) On and after January 1, 2006, as described in Section 68085.1 of the Government Code, the Administrative Office of the Courts shall make monthly distributions from superior court filing fees for the support of dispute resolution programs under this chapter in each county that has acted to establish a program. The amount distributed in each county shall be equal to the following:

(1) From each first paper filing fee collected by the court as provided under Section 70611 or 70612, subdivision (a) of Section 70613, subdivision (a) of Section 70614, or Section 70670 of the Government Code, and each first paper or petition filing fee collected by the court in a probate matter as provided under Section 70650, 70651, 70652, 70653, or 70655 of the Government Code, the same amount as was required to be collected for the support of dispute resolution programs in that county as of December 31, 2005, when a fee was collected for the filing of a first paper in a civil action under Section 26820.4 of the Government Code.

(2) From each first paper filing fee in a limited civil case collected by the court as provided under subdivision (b) of Section 70613 or subdivision (b) of Section 70614 of the Government Code, and each first paper or petition filing fee collected by the court in a probate matter as provided under Section 70654, 70656, or 70658 of the Government Code, the same amount as was required to be collected for the support of dispute resolution programs in that county as of December 31, 2005, when a fee was collected for the filing of a first paper in a civil action under Section 72055 of the Government Code where the amount demanded, excluding attorney's fees and costs, was

ten thousand dollars (\$10,000) or less.

(b) Distributions under this section shall be used only for the support of dispute resolution programs authorized by this chapter. The county shall deposit the amounts distributed under this section in an account created and maintained for this purpose by the county. Records of these distributions shall be available for inspection by the public upon request.

(c) After January 1, 2006, a county that does not already have a distribution from superior court filing fees under this section and that establishes a dispute resolution program authorized by this chapter may approve a distribution under this section. A county that already has a distribution under this section may change the amount of the distribution. The total amount to be distributed for the support of dispute resolution programs under this section may not exceed eight dollars (\$8) per filing fee.

(d) The county may make changes under subdivision (c) to be effective January 1 or July 1 of any year, on and after January 1, 2006. The county shall provide the Administrative Office of the Courts with a copy of the action of the board of supervisors that establishes the change at least 15 days before the date that the change goes into effect.

470.6. A county may carry over moneys received from distributions under Section 470.5 and from the fees for the support of dispute resolution programs authorized by this chapter that were added to fees for filing a first paper in a civil action in superior court under the laws in effect before January 1, 2006.

471. (a) The advisory council shall adopt rules and regulations to effectuate the purposes of this chapter, including, but not limited to, guidelines to be used by the programs for the recruitment and training of persons conducting dispute resolution, and provisions for periodic monitoring and evaluation of the programs funded pursuant to this chapter. The advisory council shall establish guidelines to evaluate the performance of participating programs, which shall include analysis of court caseload reduction, cost savings to the state, the efficacy of the programs, and the feasibility of operation of a statewide program of grants at the time the state assumes the responsibility for the funding of trial courts.

(b) The advisory council shall adopt temporary guidelines within six months of its initial meeting. The adoption of these temporary guidelines shall not be subject to the procedures specified in Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

Upon the adoption of the temporary guidelines, counties may award grants pursuant to this chapter. Programs funded pursuant to this chapter shall comply with the temporary guidelines, the requirements of this chapter and, when adopted, the formal rules and regulations.

(c) Formal rules and regulations implementing this chapter shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code and, upon adoption, shall supersede the temporary guidelines adopted pursuant to subdivision (b).

(d) On and after January 1, 1989, or such earlier date as the advisory council completes its duties pursuant to this chapter, the Division of Consumer Services of the Department of Consumer Affairs shall periodically review the effectiveness of the rules and regulations adopted pursuant to this chapter and adopt changes

thereto as necessary. It also shall monitor and evaluate the programs funded pursuant to this chapter as to their compliance with those rules and regulations.

(e) The Director of Consumer Affairs shall administer and enforce this chapter and the rules and regulations adopted pursuant to this chapter, and in so doing may exercise any power conferred under Chapter 4 (commencing with Section 300).

471.3. The rules and regulations adopted by the advisory council pursuant to Section 471 shall be formulated to promote statewide uniformity with the guidelines contained in those rules and regulations.

471.5. Each program funded pursuant to this chapter shall annually provide the county with statistical data regarding its operating budget; the number of referrals, categories, or types of cases referred to the program; the number of persons served by the program; the number of disputes resolved; the nature of the disputes resolved; rates of compliance; the number of persons utilizing the process more than once; the duration of and the estimated costs of the hearings conducted by the programs; and any other information that the county may require. The data shall maintain the confidentiality and anonymity of the persons employing the dispute resolution process.