

**Mediation of Civil Cases  
in Hennepin County:  
An Evaluation**

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# Executive Summary

This report is an evaluation of a pilot program in mediation of large general civil cases in Hennepin county. Nearly 1200 cases were randomly assigned to one of two groups: an experimental group, where cases could be referred to mediation by the judge, and a control group, where referral to mediation was not allowed. Cases in either group could be referred to the long-standing arbitration program or handled judicially.

Cases were tracked throughout their processing in order to calculate trial rates and disposition time, and surveys of a sample of attorneys and litigants involved in the three types of case processing were completed.

Mediation was successful in about two-thirds of cases referred, while arbitration was successful in 62% of cases referred. Of those cases that were actually mediated, about 46% were disposed at mediation and required no further negotiation or court intervention.

Mediation had positive effects on the processing of cases by improving the overall time to disposition for cases. Although mediation cases themselves were not processed particularly quickly, they provided another case "track" so that the cases that were reserved for arbitration or judicial handling could be processed more quickly. This led to an overall reduction in the median time to disposition for cases in the experimental group, which were eligible for referral to mediation.

Trial rates did not decline as a result of mediation, and in fact were higher for those cases where mediation was an option. The amount of judicial effort expended per case, as measured by the average number of court appearances and the percentage of cases which required court activity, seemed to be reduced by the introduction of mediation as an alternative. The experimental group cases required less judicial intervention, on average,

than the control group cases, although the differences were rather modest. Reasons for this are advanced in the analysis and discussion below, and are most likely related to the reallocation of judicial resources to cases not referred to mediation.

Mediation was found to improve litigant and attorney satisfaction levels with the handling of their case. Litigants reported greater satisfaction with ADR processes than with judicial processing of their case, and tended to view the ADR process as more fair and efficient. Attorneys were more favorable than litigants toward the traditional judicial process, and less favorable toward ADR techniques. They also tended to substantially under-estimate their clients' satisfaction with mediation and arbitration and over-estimate their clients' satisfaction with the judicial process.

Satisfaction with the mediation process was found to be highly dependent on the outcome of the case and the relative level of reluctance or enthusiasm to engage in mediation at the time of referral. If a participant was enthusiastic about mediation, and the case was settled, the satisfaction level was very high. This suggests that it may be prudent to be somewhat selective in referring cases to mediation and that it may be useful to promote the value of mediation.

It is clear from the analysis that costs of litigation can be saved if the case is settled at mediation. If a case is mediated and does not settle, however, costs are often increased.

The general conclusion from this evaluation is that mediation, or any other alternative dispute resolution technique, should not be regarded as a panacea for problems associated with increased litigation or other increased resource demands on the courts. Nevertheless, it does appear that mediation can be useful in enhancing the disposition of civil cases if used properly. The caseload can be processed more efficiently, judge time can be reserved for cases which truly require judicial intervention, and the needs of individual

cases and issues can be more appropriately met.

It is also clear from these results that there remains a need for aggressive and effective case management practices. Recalcitrant attorneys and litigants must be held to an established schedule of dispute resolution enforced by the court. A recent comparative analysis of research on ADR programs<sup>1</sup> in several states concluded that caseload management practices, involving structured procedures and routine enforcement of deadlines, are the most important factors in efficient case processing, regardless of whether ADR or traditional judicial resolution methods are used. Reports from mediation organizations concerning difficulties of timely scheduling of mediation sessions, median times between referral and mediation of 130 days during the pilot period, and the fact that 16 cases remain pending after two years suggest that more stringent oversight and management of the processing of these cases could produce even more favorable results.

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<sup>1</sup> Hanson, Roger; Geoff Gallas and Susan Keilitz. 1988. "The Role of Management in State Court-Annexed Arbitration." *State Court Journal*. Pp. 14-19.



# Chapter 1. Introduction

In 1987, the Minnesota legislature authorized a pilot program for non-binding alternative dispute resolution (ADR) in general civil cases involving more than \$50,000 in Hennepin county.<sup>2</sup>

The statute specified that various forms of ADR could be experimented with, including private trials, neutral expert fact-finding, mediation, mini-trials and other techniques so long as they emphasized "early and inexpensive exchange of information and case evaluation in order to facilitate settlement."

The state court administrator was directed to report on the effectiveness of the pilot program by January 15, 1991.

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<sup>2</sup> M. S. § 484.74.

## Chapter 2. Pilot Project Description

The pilot program was implemented in April, 1988. It was determined that all judges assigned to the civil block system would be involved in the program. Additionally, in order to conduct a good evaluation by minimizing the number of experimental "treatments" and to maintain administrative control over the program, the project focused on mediation as the primary dispute resolution technique. Two mediation organizations were designated for referrals of cases:

1. Mediation Center - a non-profit organization established in 1982 by the Hennepin County Bar Association to promote, facilitate and train in the use of mediation to resolve disputes, and located in the Midway area of St. Paul.
2. Americord, Inc. - a for-profit dispute resolution organization located in downtown Minneapolis.

In addition, retired judges were designated as potential mediators and judges were authorized to refer cases to them. A third dispute resolution organization, Equilaw, was also designated for referral.

Hennepin county operates the civil calendar under a "block" system, where cases are assigned to a judge at the time of initial filing. The judge maintains responsibility for that case throughout its processing. In 1988, there were about thirty judges assigned to the civil block, and each judge had about 280 cases assigned.

## Goals and Objectives

Although the enabling legislation did not specify particular goals toward which the project would be directed, it was determined that the following goals were important.

1. To process cases through the system more quickly by enhancing the chances for earlier settlement of cases, and reducing the caseload assigned to judges.
2. To maintain or improve litigant satisfaction levels with the system and with the quality of justice rendered.
3. To reduce the costs of litigation.

## Pilot Program Administration

Cases became eligible for referral to mediation upon the filing of a note of issue/certificate of readiness.<sup>3</sup> The specific types of cases to be included were contract disputes, mechanics liens, personal injury, property damage, wrongful death and medical malpractice.

Referral to mediation, and selection of the mediation organization or individual mediator, was left to the discretion of the individual judge. A one-day orientation session was organized with presentations by Mediation Center, Americord, and Mediation, Inc., an organization which has developed and operated a mediation program in Broward county, Florida. Subsequently, three workshops on the mediation process were held for the judges. These workshops outlined the differences between mediation and arbitration, and discussed criteria for referring cases to mediation.

There undoubtedly was some variation between individual judges in terms of how

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<sup>3</sup> Rule 4.01, Special Rules of Practice, Fourth Judicial District. The filing of this document indicates that all essential parties have been served, the case is at issue, serious settlement negotiations have been conducted, and that all necessary discovery has been completed.

cases were screened for referral to ADR and, once referred, how cases were tracked. Some judges held settlement or pre-trial conferences prior to referral, and asked the parties whether the case should be referred and where it should go. More often, however, judges simply referred cases, choosing to decide later whether to withdraw a referral where one or both of the parties objected. The study design did not control for these factors. With thirty-plus judges on civil block assignment, the individual variations are multitudinous, and would require a much more extensive and restrictive design than that employed here.

Following receipt of the order referring the case to mediation, the mediator (or mediation organization) became responsible for scheduling the mediation sessions with the parties so that the mediation could be completed within 60 days of the order. If a certificate of non-readiness was filed with the assignment office, the mediation was to be scheduled after the ninety-day waiting period. Samples of applicable forms are contained in Appendix B.

The mediators, or mediation organizations, took responsibility for all scheduling and tracking of cases. It soon became apparent that some difficulty was encountered in arranging mediation sessions within the sixty-day period (or 150 days where a certificate of non-readiness was filed). Cases were mediated in a median<sup>4</sup> time of 130 days from the note of issue/certificate of readiness.<sup>5</sup> Only 5% of mediated cases were mediated within 60 days of the note of issue, and only 65% were mediated within 150 days from the note of issue. This means that more than one-third of the cases took more than five months just to get the parties to the mediation table.

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<sup>4</sup> The median is midpoint; 50% of the cases take longer and 50% take shorter.

<sup>5</sup> The average time was 154 days, the minimum was 42 days, and the maximum was 503 days.

Compared to the arbitration program, however, this timing does not seem unusual. Arbitrated cases took a median time of 130 days as well to reach the arbitration table.<sup>6</sup>

There were some slight differences between the mediation organizations in the length of time of time it took to mediate cases. Mediation Center took a median time of 124 days to get to the first mediation session, while Americord took 136 days and other mediators took 112 days.

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<sup>6</sup> The average was 146 days, the minimum was 35 days, and the maximum was 639 days.

# Chapter 3. Evaluation Research Design

Cases reaching note of issue and involving more than \$50,000 during an eight-month period, from April 1, 1988 through November 30, 1988, were selected for inclusion in the study. Under the block system, cases are assigned to an individual judge at filing. Upon receipt of a note of issue/certificate of readiness, the assignment office randomly assigned cases to one of two groups, the experimental or control group.

Cases assigned to the experimental group were eligible for mediation under the pilot program. Judges could assign the case to a mediator or mediation organization. They also could assign the case to arbitration<sup>7</sup>, a choice that had been available to them for some time. Or they could keep the case to settle and/or try themselves.

Cases assigned to the control group were ineligible for mediation.<sup>8</sup> They could only be referred to arbitration, or handled by the judge.

Thus the only difference between the control and experimental groups of cases lies in the procedure of random assignment. This procedure controlled for selection biases and allowed an unconfounded measure of the impact of mediation, as an option in the processing of civil cases, in relation to case processing time, judge time, and litigant satisfaction as outlined in the project goals above.

The central question addressed in this evaluation design is a real-world one: Can

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<sup>7</sup> The Hennepin county arbitration program is court-annexed and non-binding. Practicing attorneys serve as arbitrators under the program. The program is often referred to as a "med-arb" program, rather than a strict arbitration program, in that the arbitrators encourage the parties to reach an agreement, rather than pronouncing judgment after hearing the evidence.

<sup>8</sup> In one instance, a judge insisted that a control group case be assigned to mediation. This case was removed from the sample.

mediation, as an alternative option in dispute resolution, improve the processing of civil cases?

### Data Collection

Cases were tracked through the court system and mediation process from note of issue to disposition. Upon reaching note of issue, the assignment office randomly assigned cases to either the control or experimental group and forwarded referral forms to the judge's chambers. Following referral, the form was forwarded to the evaluation office and was used to initiate a "case" in the evaluation data base. Data on case processing and date of significant events were obtained from the State Judicial Information System (SJIS).

Participant opinion questionnaires were distributed to a sample of litigants and attorneys for cases handled by mediation, arbitration, or judicially.<sup>9</sup> All mediation cases were placed in the sample along with 300 arbitration and 200 judicial cases. Since some cases settled prior to any court or ADR activity, questionnaires were distributed to participants in a total of 561 cases (182 mediation, 209 arbitration, and 170 judicial). This sample represented 47% of the pilot project cases.

The questionnaires contained questions regarding litigant satisfaction, costs, and nature of the dispute. Attorney names and addresses were obtained from the "case card" at the district court assignment office. The case cards contained the litigant names, as part of the case title, but no addresses. Litigant questionnaires were therefore sent to the litigant in care of the attorney, with instructions to either forward the questionnaire or provide the evaluation office with the address of the litigant.

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<sup>9</sup> By "judicially", we mean that the cases were processed traditionally, by a judge, without use of ADR.

The "total design method"<sup>10</sup> was used. After two weeks from the first mailing, a reminder postcard was mailed. After another two weeks, an additional questionnaire and cover letter were mailed.

In many cases, due to delay in obtaining information on dispositions, these questionnaires were mailed some weeks after the case was actually disposed. Litigants, in particular, were often difficult to locate, even for the attorneys who represented them. In several instances, the attorney of record had changed during the proceedings or the case file had been archived by the law firm, and the attorney recalled little about the case.

Despite the problems in locating the proper attorneys and clients, and focusing their attention on the right case, an overall response rate of 43% was attained. For attorneys alone, 59% returned the questionnaire, while 26% of litigants returned the questionnaire. Approximately 25% of the attorneys were unreachable at the recorded address on the case card. Removing these from the sample increases the response rate to 56% overall, 73% for attorneys and 38% for litigants.

Since questionnaires for mediation cases were distributed at the last mediation session, if possible, the response rate for mediation cases is somewhat higher.<sup>11</sup> At least one questionnaire was received from 73% of mediated cases, 58% of the arbitrated cases, and 42% of the cases which went to court.

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<sup>10</sup> Don A. Dillman. 1978. *Mail and Telephone Surveys: The Total Design Method*. New York: John Wiley and Sons.

<sup>11</sup> This proved to be an unworkable procedure, however, because distribution was not done in every case, and there were no means of checking for return of the questionnaires if participants chose to take them along to complete later. Also, several questionnaires were received without any case identifying information. Consequently, questionnaires were mailed to some mediation participants.



# Chapter 4. Caseload Overview

## Description of Project Cases

A total of 1186 cases were included in the study, 596 in the experimental group and 590 in the control group. Of these cases, the vast majority (68%) were personal injury cases, while 22% were contract cases, as shown in Figure 1.

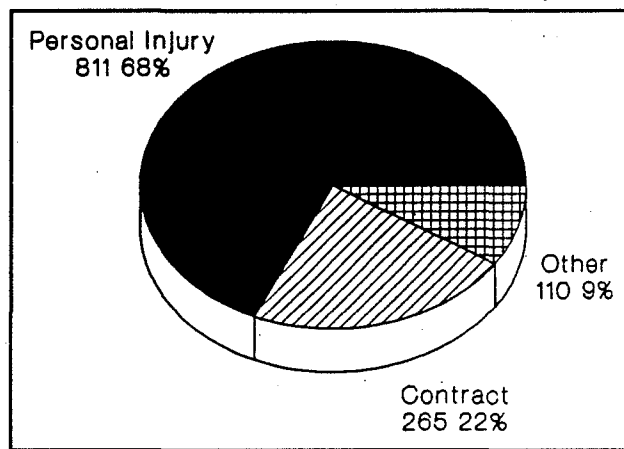


Figure 1. Case Types Involved in Pilot

Approximately 22% of the cases in the study were referred to mediation, as shown in Figure 2. About one-half of the cases in the study were referred to arbitration. About 48% of

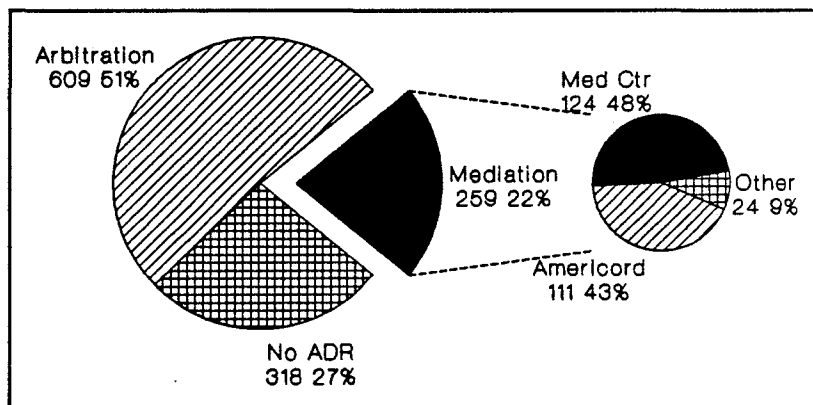


Figure 2. Referral of Cases to ADR

the mediation referrals were to Mediation Center, 43% were to Americord, and 9% were to retired judges acting as mediators.

While Figure 2 includes all cases involved in the study, regardless of whether they were assigned to the control group or experimental group, Figure 3 breaks out referrals by group.

For the experimental group, 43% of the cases were actually referred to mediation,

while 34% of the cases were referred to arbitration. For the control group cases, 69% were referred to arbitration. Thus, 77% of the experimental group cases were referred to ADR procedures and 23% were retained for judicial processing.

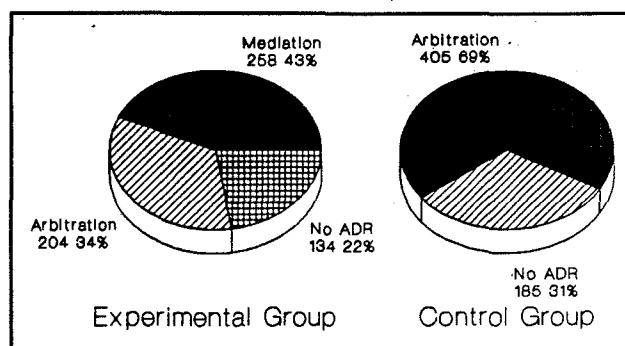


Figure 3. Case Referrals by Group

There were some differences in the types of cases referred to the various ADR organizations, as shown in Figure 4. The "other mediators" were more likely to receive a contract or other dispute than a personal injury case, while Mediation Center, Americord, and the arbitration program handled mostly personal injury cases.<sup>12</sup> More than two-thirds of the cases involved in the program were personal injury cases, while 22% were contract cases.

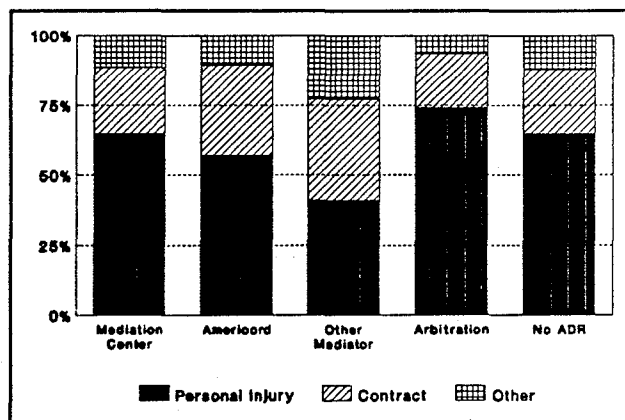


Figure 4. Case Type by Organization

<sup>12</sup> "Other" cases include property damage, mechanics lien, wrongful death, medical malpractice and miscellaneous cases.

## Type of Disposition

It was necessary to develop some operational definitions of a "disposition" by mediation or arbitration. A case referred to mediation might settle prior to the actual mediation session. In this situation, the "threat" of mediation can be assumed to have caused the parties to settle. Or, a case might be mediated, but not settled at mediation. If the case settles after mediation, what part did mediation play in the settlement? Should the case be counted as a disposition by mediation, or not?

For purposes of this study, a disposition by mediation included four categories of cases:

1. Cases referred to mediation, but disposed prior to mediation, without any court activity.
2. Cases referred to mediation, disposed prior to mediation, with court activity.
3. Cases disposed by mediation.
4. Cases mediated, no settlement agreement reached, and disposed after mediation, without court activity.

If a case was mediated, but later required court activity for disposition, the case was not counted as an ADR disposition. Table I

shows the dispositions by type. Of the mediation cases that were

successfully disposed by mediation, 57% were disposed of by mediation only, 27% were disposed of prior to being

Table I. Dispositions by Mediation and Arbitration.

Category	Mediation		Arbitration	
	Number	Pct	Number	Pct
Before ADR, no court activity	22	15%	49	14%
Before ADR, court activity	18	12%	64	18%
At ADR	84	57%	249	69%
After ADR, no court activity	23	16%	N/A	
Total	147	100%	362	100%

mediated, and 16% were disposed of following mediation but without any court activity.

For arbitration cases, a similar definition of disposition was used:

1. Cases referred to arbitration, but disposed prior to arbitration, without any court activity.
2. Cases referred to arbitration, disposed prior to arbitration, with court activity.
3. Cases disposed by arbitration.

Arbitration cases in which a note of issue was filed subsequent to the arbitration award were not counted as an arbitration success. In many instances, the arbitration award, since it is non-binding, is used in further negotiations between the parties. Thus a greater proportion of arbitration cases have a subsequent note of issue filed and may come back before the judge for additional discussions. Of those cases disposed by arbitration, about 31% were resolved prior to being arbitrated, and about 69% were disposed of by arbitration.

### Current Status of Cases

It was not possible to wait for all cases involved in the pilot project to be disposed of prior to completing this report. Currently, there remain 43 cases out of 1186 (4%) which have not yet been disposed. This includes 16 mediation cases, 13 arbitration cases and 14 cases which are being handled judicially. These

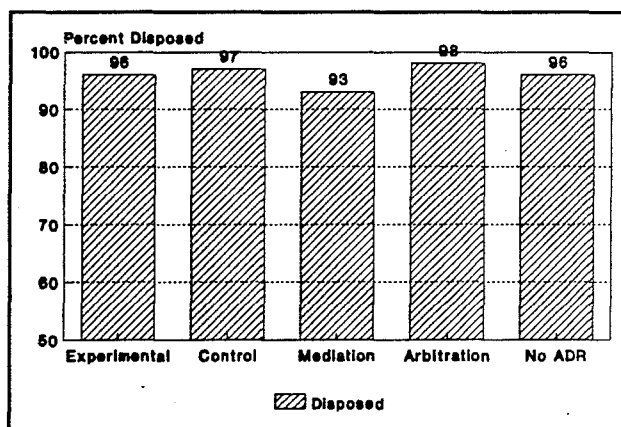


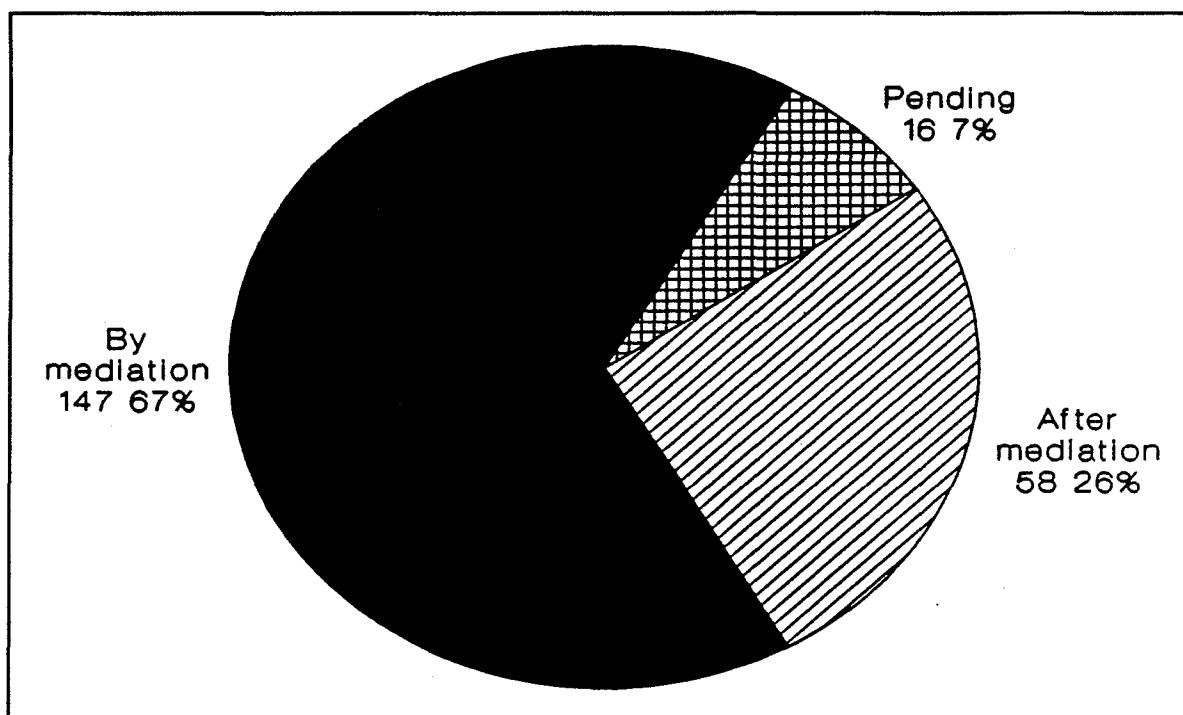
Figure 5. Current Status of Cases

cases remain pending more than two years after reaching note of issue. Figure 5 shows the percentage of cases disposed by group and type of ADR. A higher percentage of cases have been disposed of in the control group, where mediation was not an option, than in

the experimental group. Similarly, higher proportions of arbitration cases and judicial cases than mediation cases have been disposed.

## Chapter 5. Effects of the Program

### Success Rates



**Figure 6. Success Rate for Mediation.**

Using the definition of success outlined in the previous chapter produces a total success rate of 67% for mediation cases, as shown in Figure 6. That is, approximately two-thirds of cases referred to mediation were successfully resolved without requiring further judicial intervention. As discussed earlier, about 7% of mediation cases remain pending, and about 26%, to date, required further court action before disposition.

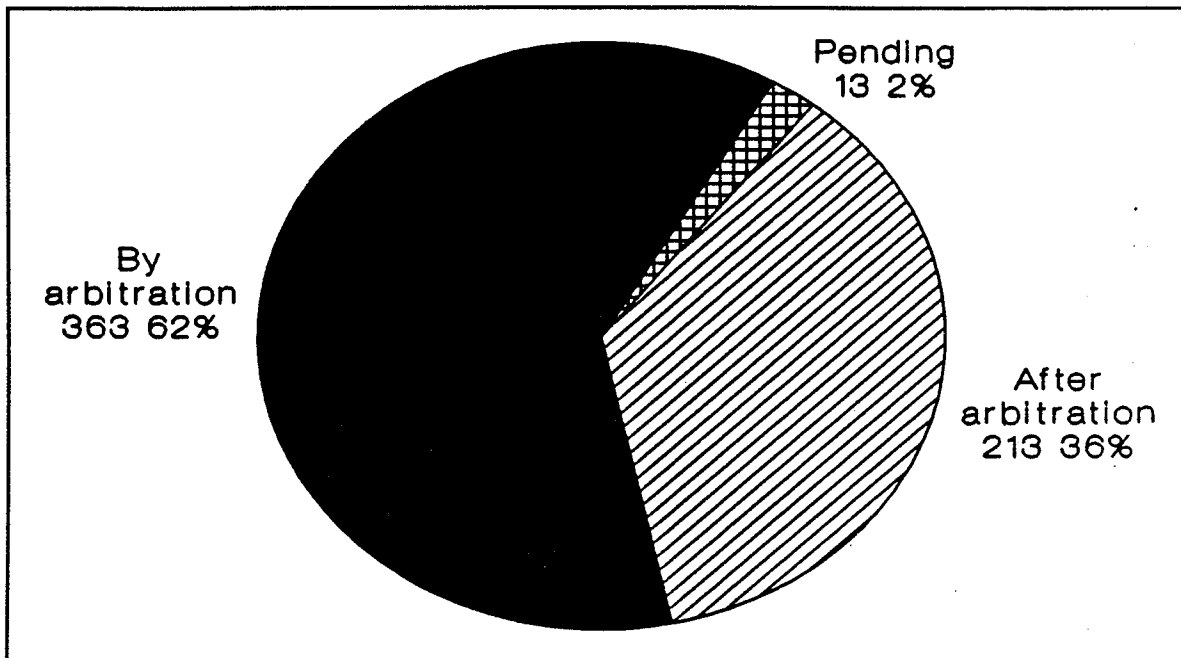


Figure 7. Success Rate for Arbitration.

Arbitration cases had a slightly lower rate of success according to the definition. During the pilot, only 62% of arbitration cases were disposed without requiring further judicial intervention.<sup>13</sup> Only 2% of arbitration cases remain pending, however.

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<sup>13</sup> This study was not designed to be a comparison of the relative efficiency of mediation and arbitration in settling cases, and the above results should not be interpreted in that sense. Since case assignments to mediation and arbitration were not randomized, the presence of selection bias as an explanation of the observed patterns can not be ruled out. It is possible that more difficult cases were referred to mediation, or to arbitration. The data are presented in this way in order to understand some of the differences between mediation and arbitration, and to illustrate how "success" in case settlement was defined.

## Time to Disposition

It appears that mediation did have a positive impact on the timely processing of cases. As shown in Table II, the cases in the experimental group were disposed of in a median<sup>14</sup> time of 232 days, while the control group cases took 252 days.<sup>15</sup> In the experimental group, mediation cases and judicial cases took the same median amount of time to disposition (251 days), while arbitration cases took only 212 days. In the control group, arbitration cases were completed in 243 days, while judicial cases took 264 days.

Overall, mediation cases took 251 days, arbitration cases took 234 days, and judicial cases took 254 days.

In both the experimental and control groups, arbitration cases took the least amount of time and were responsible for reducing the aggregate medians. Judicially-handled cases

**Table II. Median Days From Note of Issue to Disposition.**

Case Type	N of Cases	Median
Experimental Group:	570	232
Mediation	205	251
Mediation Ctr.	101	223
Americord	86	266
Other Mediators	18	199
Arbitration	194	212
Judicial	172	251
Control Group:	573	252
Arbitration	382	243
Judicial	190	264

<sup>14</sup> The median is the number at which 50% of the cases take longer and 50% take shorter time to disposition. It is the midpoint, and is distinguished from the mean, which is the arithmetic average of all cases.

<sup>15</sup> One caveat is that there remain more cases pending from the experimental group than the control group. However, as these cases are disposed, the median will not change greatly, since it is not susceptible to extreme values.



and mediation cases took approximately the same amount of time. Arbitration cases in the experimental group took considerably less time than arbitration cases in the control group, which tends to support the view, expressed informally by some judges, that some of the more difficult ADR cases in the experimental group were referred to mediation, while similar cases were referred to arbitration in the control group, since mediation was not an option. These results also tend to support the view that making available several alternative methods of dispute resolution permits differentiation in the handling of cases in order to better match the technique to the needs of individual cases.

### Rates of Trial

While a change in trial rate was not established as a goal of the project, trial rates experienced during the pilot study were examined. Most ADR proponents suggest that mediation is unlikely to reduce the number of cases going to

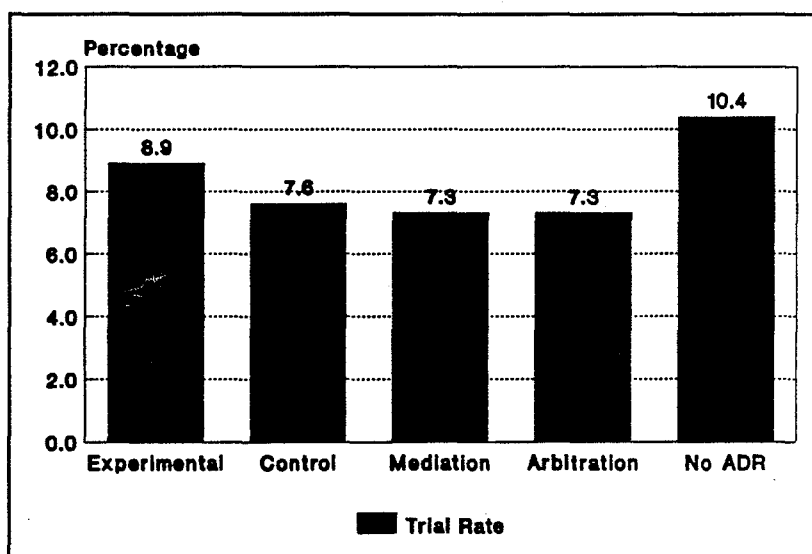


Figure 8. Trial Rates.

trial, but will dispose of those cases which would settle ultimately at an earlier point, with more satisfaction to the parties and, hopefully, at less cost. As indicated in Figure 8, the trial rate in mediation cases is the same as that for arbitration cases, and the trial rate for judicial cases is the highest (10.4%). The rate of trial for cases in the experimental group was higher than that for the control group (8.9% vs. 7.6%), as shown in Figure 8. Despite the availability and use of mediation for the cases in the experimental group, a higher

proportion of these cases went to trial.<sup>16</sup> Thus the introduction of a "mediation track" for cases did not seem to have reduced the rate of trial.<sup>17</sup> This seems to confirm the view that the introduction of ADR processes is unlikely to change trial rates.

The rate of disposition by trial also varied for arbitration and judicial cases between the control and experimental

Table III. Trial Rates for Experimental and Control Group Cases.

	Mediation	Arbitration	Judicial	Total
Experimental Group	7.3	8.1	11.7	8.9
Control Group		7.0	9.1	7.6
Total	7.3	7.3	10.4	8.3

groups, as shown in Table III. Trial rates for arbitration and judicial cases were higher in the experimental group. Unfortunately, we have no data with which to further examine this finding. One possible explanation for the difference in trial rates for the judicial cases is that judges likely do not refer a case to ADR, particularly mediation, since mediation means additional out-of-pocket expense for the parties, if the case is expected to go to trial anyway. Having not referred a case to ADR further establishes the conception of the case as solvable only by trial. Thus there may be less of an effort to settle these particular cases. With other cases having been referred to mediation and arbitration, judges may have had more available time to try these cases.

<sup>16</sup> It is also likely, since more experimental group cases are not yet resolved, that the disparity in trial rates between the two groups will become greater.

<sup>17</sup> Since cases were assigned to the control and experimental groups randomly, there should be no systematic differences between the groups in terms of case complexity, or predilection for trial.

## Judicial Time

One of the stated goals of the pilot project was to assess whether the use of mediation, by judicial referral, conserves judicial time for use in other matters which need to be handled judicially. By referring cases out of the court system to mediation, is judge time saved?

There are a number of ways of approaching this question. One possibility is to look at the number of cases disposed of by mediation. Since judges did not handle these cases, the judicial workload is reduced. As indicated earlier in the report, mediation was successful in 67% of cases and arbitration was successful in 62% of cases. But many cases settle anyway, without any kind of judicial intervention. How many of the mediated cases would have settled with little or no judicial intervention? Also, do cases which come back to court following an unsuccessful mediation take longer to adjudicate or settle, and does the additional time offset any efficiencies gained by mediating some cases? To test these hypotheses, we compiled data on court appearances for each case, in order to compare the relative level of judicial intervention between the control and experimental group cases.

For experimental group cases, an average of 1.10 court appearances per case have been made to date, while an average of 1.17 court appearances have been made for each control group cases.<sup>18</sup> In the experimental group, 53% of all cases required some type of judicial activity, while 60% of all cases in the control group required some judicial activity.

Thus it does appear from these results that mediation saved some judge time.

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<sup>18</sup> A court appearance is counted here as a hearing, pre-trial or settlement conference, court trial session, or jury trial session. Thus a three-day trial is counted as three court appearances.

Judicial intervention was required on seven percent fewer cases in the experimental group, where mediation was an option.

### Litigant and Attorney Satisfaction

The participants in all types of cases generally reported high levels of satisfaction with the processing of their case, and the majority saw the system as fair and efficient. Differences were noted between participants in mediation, arbitration, and adjudication, however, and the outcome of mediation seemed to greatly affect the ratings of mediation.

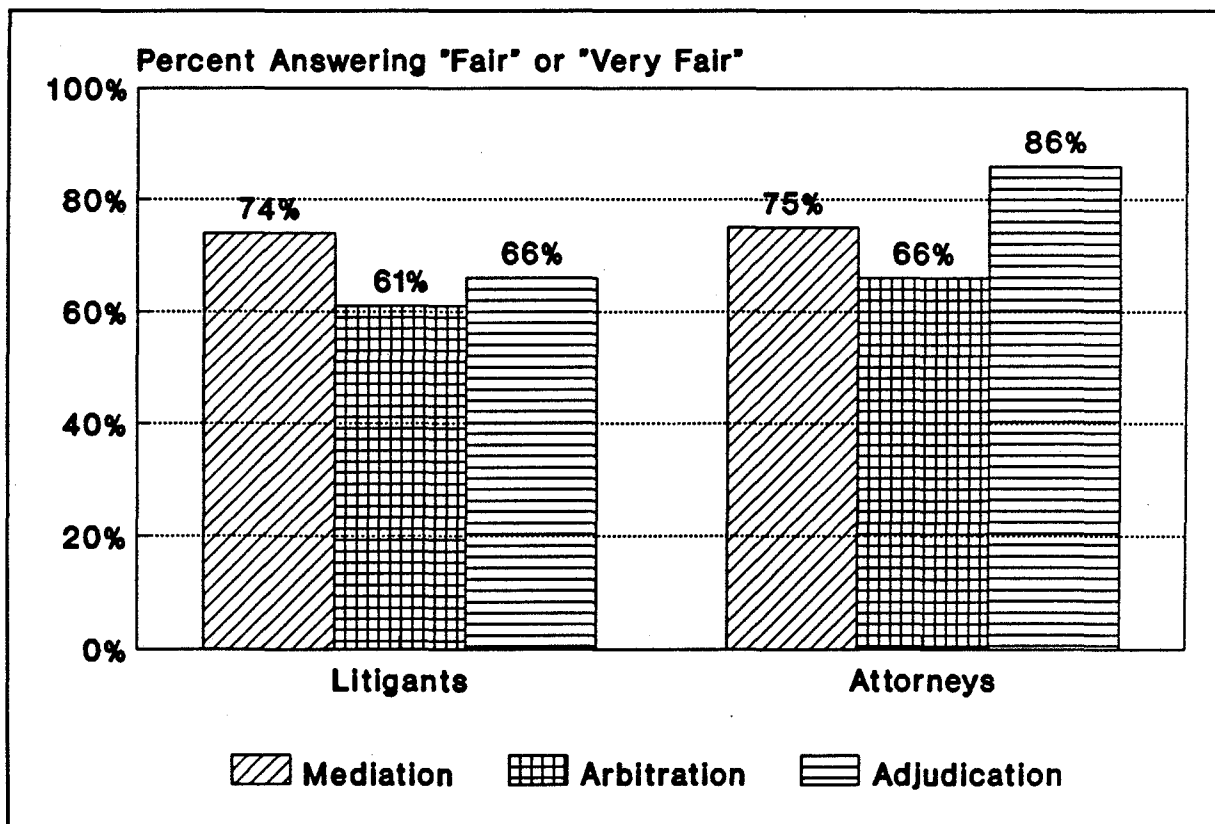


Figure 9. Is the process fair?

Participants' ratings of the level of fairness in processing their case are shown in Figure 9. Litigants and attorneys viewed mediation and arbitration quite similarly but differed in their view of judicially-handled cases. Attorneys overwhelmingly viewed the traditional court process as fair, while litigants were decidedly less favorable.

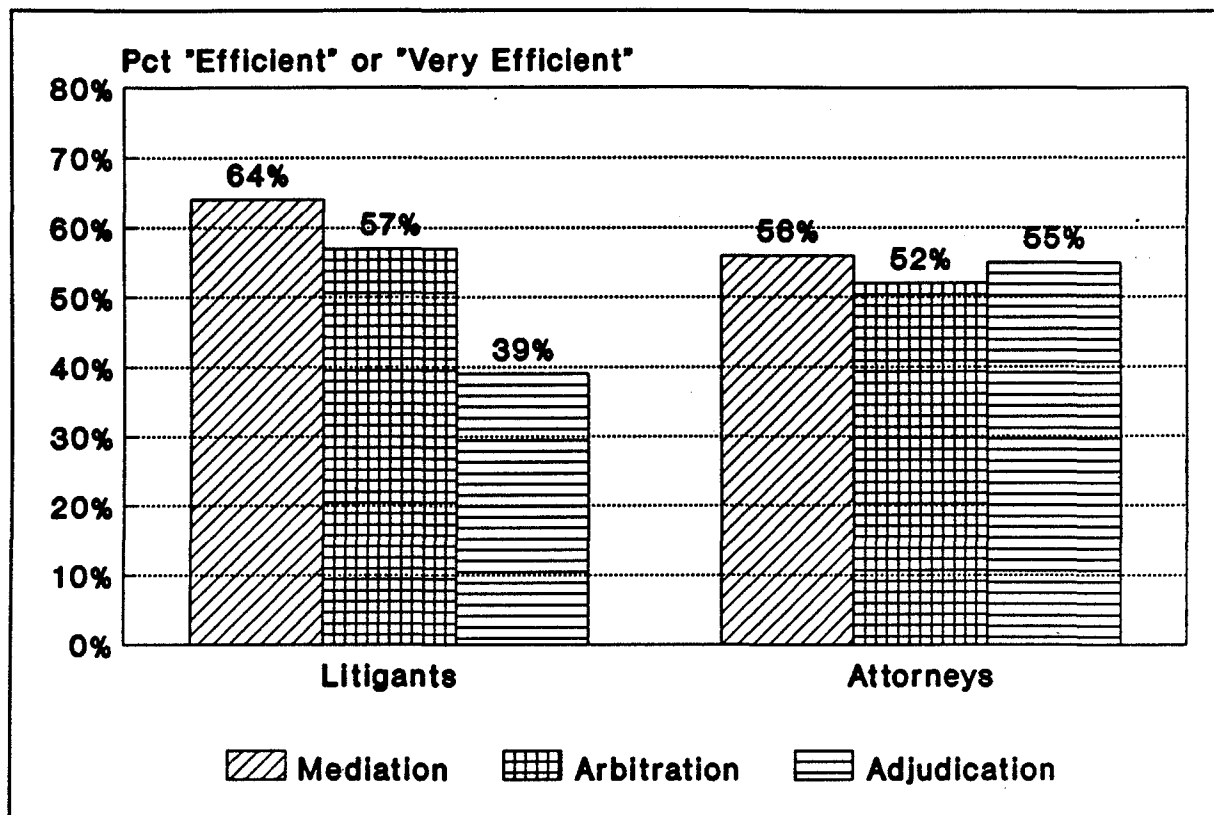
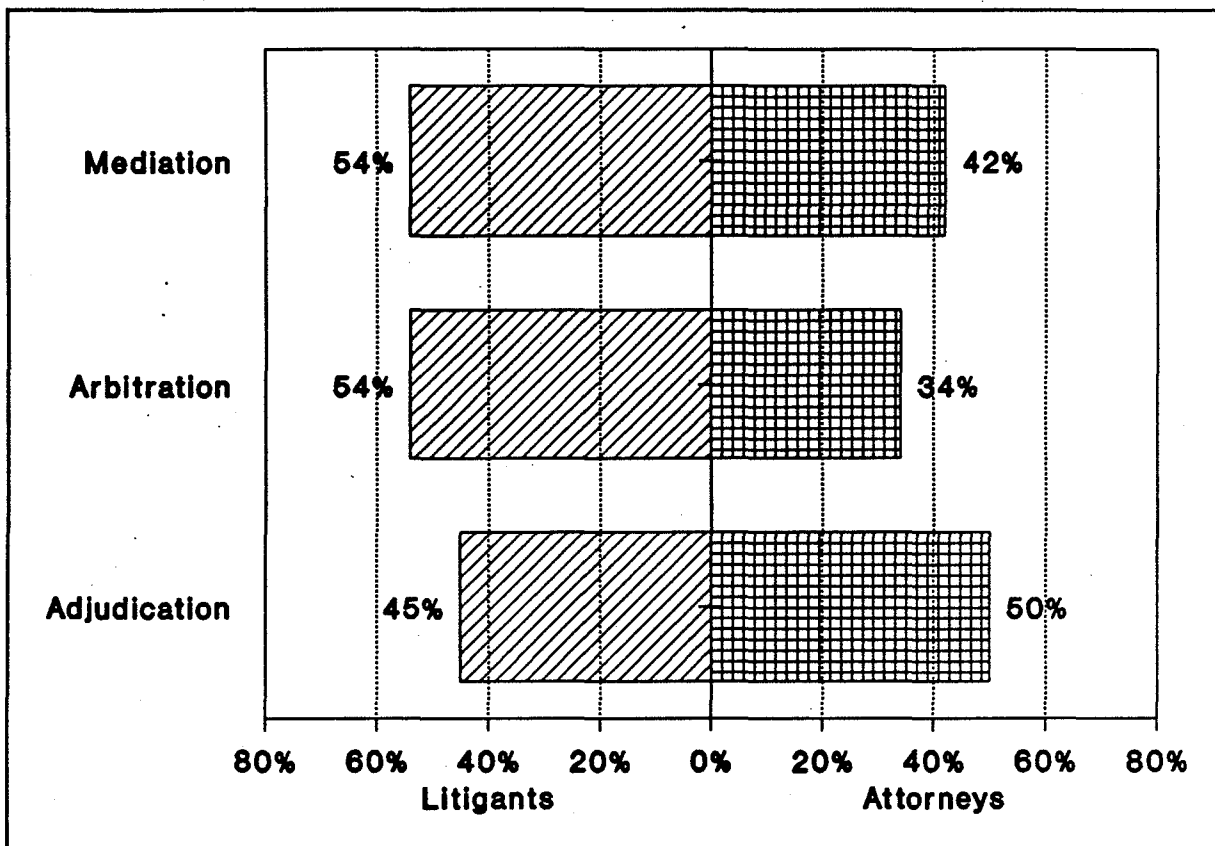


Figure 10. Is the process efficient?

Figure 10 shows the participants' attitudes toward the efficiency of the ADR or judicial process. Most viewed the process as relatively efficient, with one exception. Litigants were not particularly enamored with the judicial process; only 39% of litigants thought it was efficient. Litigants involved in mediation cases were more likely to view the process as efficient.

We also asked participants about their satisfaction with the handling of their case. Litigants were asked how satisfied they were and attorneys were asked how satisfied they felt their clients were. These results are shown in Figure 11.

Interestingly, for both mediation and arbitration, litigants were more satisfied than attorneys thought they were. Fifty-four (54%) percent of litigants reported they were satisfied with the handling of their case, while attorneys thought their clients were satisfied



**Figure 11.** How satisfied is the client? (Percent Answering "Satisfied" or "Very Satisfied")

in only 42% of mediation and 34% of arbitration cases. For judicially-handled cases, the results are opposite. The attorneys overestimated their clients' satisfaction. While attorneys thought their clients were satisfied 50% of the time, clients reported satisfaction only 45% of the time. Clients were also much more likely to report dissatisfaction in judicially-handled cases than in arbitrated or mediated cases.

Litigants and attorneys involved in mediation were the most likely to feel that they had gotten an adequate opportunity to express their view, as shown in Figure 12, although the vast majority of litigants and attorneys

involved in cases handled by each of the three methods felt that they had an adequate opportunity for expression.

Another measure of satisfaction with the process is presented in Figure 13.

Attorneys and litigants were asked whether they felt the other side had heard their view. Interestingly, attorneys and litigants differ in terms of whether ADR or judicial processing provides

the best forum for this aspect of negotiation. Litigants were slightly more likely in ADR cases to feel that their view had been heard, while attorneys were slightly more likely in judicially-handled cases to feel that their side's view had been heard.

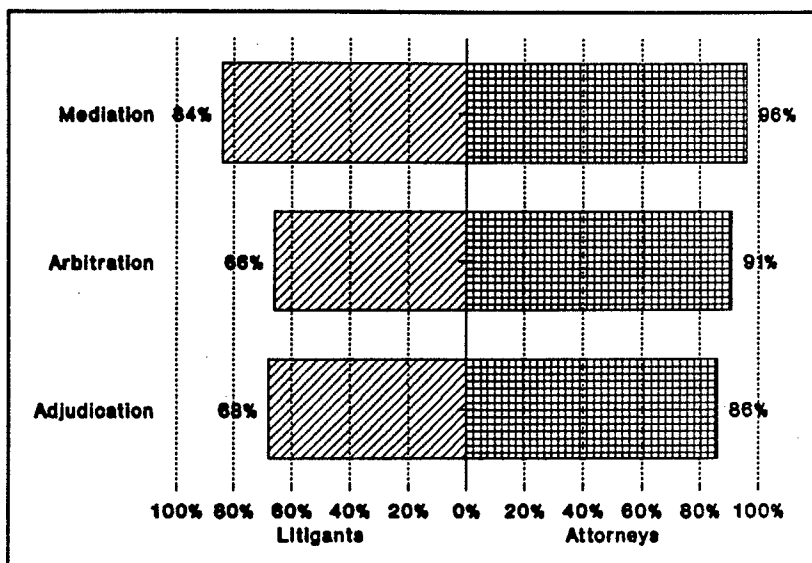


Figure 12. Were you given an adequate opportunity to express your view?

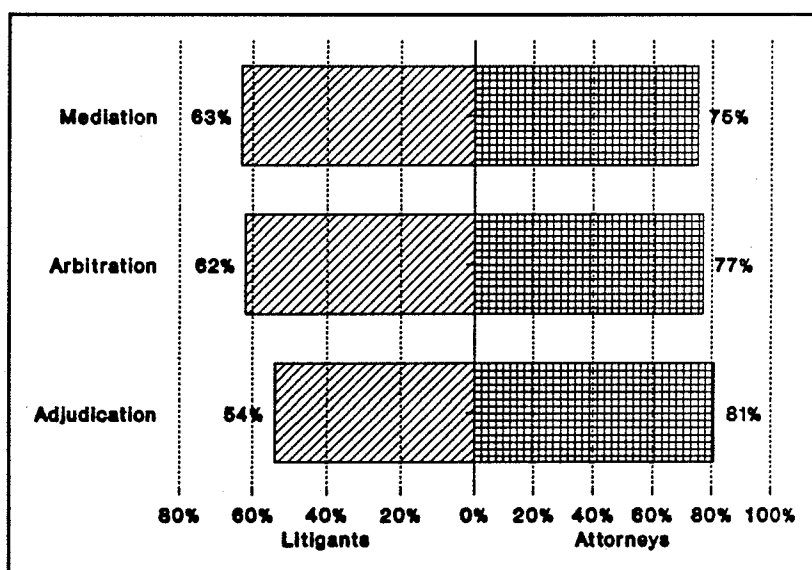


Figure 13. Do you believe the other side heard your point of view in this case?

## Outcome of Case and Rating of Mediation

The level of satisfaction with a dispute resolution technique - mediation, arbitration, or adjudication - is highly dependent on the outcome of the case. Some examples from participants involved in mediation are presented here to illustrate this phenomenon. We earlier indicated that the success rate for mediation is approximately 67%. That is, 67% of cases referred to mediation are settled without further court intervention following mediation. This success rate includes cases that are settled prior to mediation and cases settled after mediation, as well as cases settled at the mediation session. The following compares responses from participants in cases actually mediated and settled at mediation with responses from participants in cases that were mediated but not settled at mediation.

Figure 14 displays the percentage of litigants and attorneys who rated mediation as "fair" or "very fair", broken out by whether the case they were involved in was settled by mediation or not. Both litigants and attorneys were more likely to see the mediation process as fair if their case settled by

mediation, although the majority of those whose cases did not settle also saw the process as fair.

Participants whose case was settled by mediation were much more likely to see the mediation process as efficient, as shown in Figure 15. Less than a majority of those

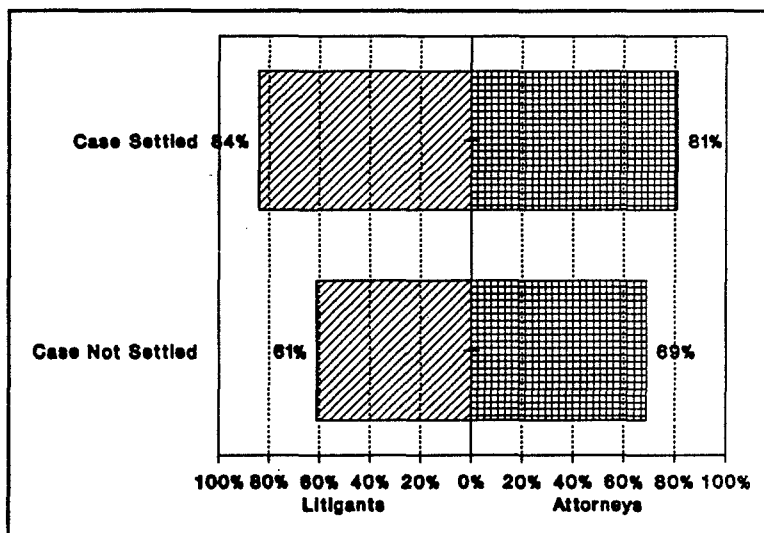


Figure 14. Participants' Ranking of Mediation as "Fair" or "Very Fair".



involved in cases that did not settle rated the mediation process as efficient.

These results beg an additional question: Does the failure to settle a case cause a more negative opinion of mediation, or does a prior negative opinion of mediation cause the case not to settle?

Respondents were asked about their initial reaction when their case had been referred to mediation. Overall, about 32% of attorneys and litigants indicated that they were initially reluctant about participating in mediation. When these results were broken out by whether or not the case settled, and compared with reported satisfaction levels, a very distinct pattern emerged. Litigants and attorneys who reported that they were reluctant to participate in mediation were much less likely to be satisfied with mediation regardless of whether the case settled. Conversely, litigants and attorneys who reported that they were enthusiastic about participating in mediation were more likely to be satisfied with mediation, particularly if the case settled. Ninety percent (90%) of litigants and 86% of attorneys who reported being enthusiastic about mediation, and whose case settled, reported satisfaction with the process.

For cases that did not settle, participants were asked whether they thought the case was capable of being settled through mediation, and why, in their view, the case did not settle. A majority of participants (53% of litigants, 58% of attorneys) involved in cases

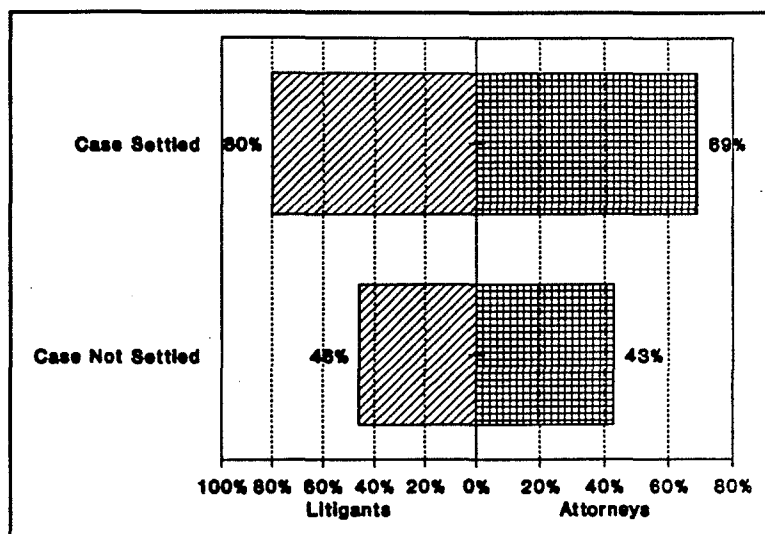


Figure 15. Participants' Rankings of Mediation as "Efficient" or "Very Efficient".

which did not settle reported that the case was not capable of being settled by mediation. The most common reason given for the case being incapable of settlement was that one or both parties were not interested in mediating the case. More than two-thirds of litigants and attorneys involved in unsettled cases who reported that they were not enthusiastic about participating in mediation also reported that they felt the case was incapable of settlement through mediation.

Thus it appears that *a priori* participant attitudes toward mediation are an important determinant of whether the case will settle and whether participants will be satisfied with the process. It would seem important to consider these attitudes when referring cases to mediation and to work to enhance positive images toward mediation as a dispute resolution technique.

Participants involved in cases which did not settle were also asked whether moderate or substantial progress was made toward settlement as a result of mediation. Seventy-six percent (76%) of litigants and 64% of attorneys involved in cases which did not settle indicated that no progress was made in resolving the case.

### Costs of Litigation

Mediator costs were set at a \$100 administrative fee plus \$125 per hour of mediation, including up to three hours of preparation time. The administrative fee was levied only if a case was actually mediated; if a case settled prior to mediation, no fee was incurred. Typically, costs were split by the parties.

Mediation sessions took an average of three to six hours - less if the case obviously was not going to settle - and therefore the average total costs were about \$700-\$800 per case.<sup>19</sup>

We asked litigants and attorneys about costs in several different ways, including whether they thought the mediator costs were too high, whether litigation costs were saved because of mediation, whether attorneys spent less time on the case, and whether mediation would impact total time billed to the client. One of the three goals of the project was to reduce the costs to clients.

Like judgments about the fairness, effectiveness, or satisfaction with mediation, opinions about the costs of mediation were found to be dependent on whether the case settled or not, and, by extension, on the participants' orientation toward mediation at the time of referral.

Figure 16 reports the percentage of respondents who felt that mediator costs were too high. Only 32% of litigants involved in cases which settled felt that the mediator costs were too high while 54% of those involved in cases which did not settle felt the mediator costs were too high.

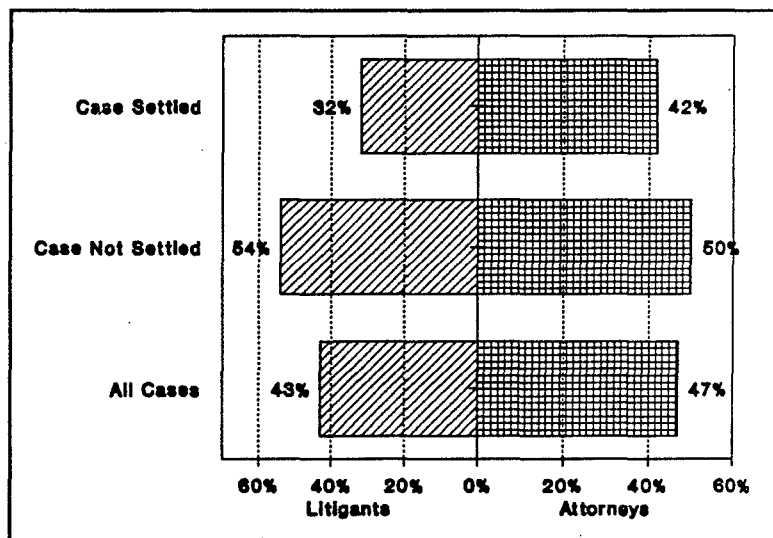


Figure 16. Do you think mediator costs are too high, too low or just about right? (Percent answering "Too High").

<sup>19</sup> Personal communication from Nancy Welsh of Mediation Center, February 21, 1991, and Maron Fenico of Americord, February 22, 1991.

Some judges expressed reluctance to refer cases to mediation if the amount in dispute was too small; the case may not have been "worth" sending to mediation.<sup>20</sup>

Litigants were also asked whether they felt mediation would save them any money. These results were highly dependent on the outcome of the case, as shown in Figure 17. For settled cases, 43% of litigants felt that they saved money by mediating the case, while 62% of those involved in cases which

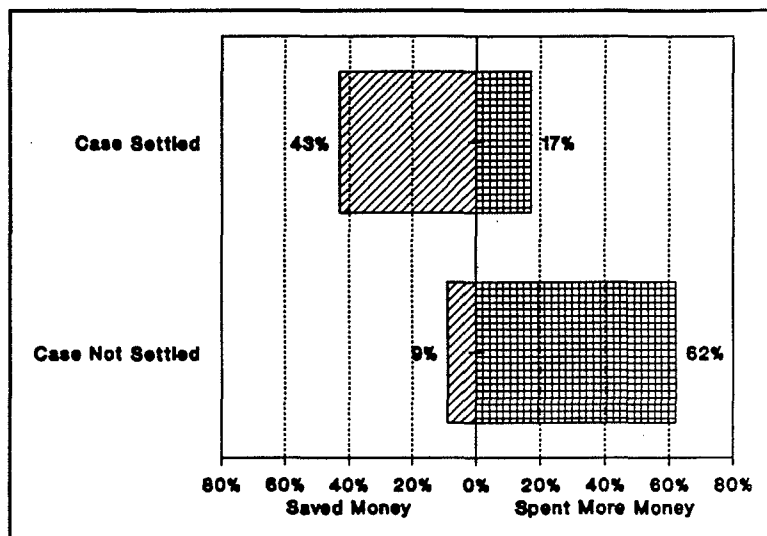


Figure 17. Did you (or your company) save money or spend additional money on this case by participating in mediation? (Responses by litigants)

were not settled reported that they will spend more money in pursuing the case.

Attorneys involved in cases which were not settled were more likely to report that they would spend more time on the cases than they otherwise would have spent on it, as shown in Figure 18.

Litigants and attorneys were also asked whether mediation programs generally increase or decrease time billed to clients. Opinions on this issue are highly related to experience with mediation, as shown in Figure 19, which displays results obtained from litigants. For cases that settled by mediation, a majority of litigants (56%) indicated that mediation decreases time billed. For cases that did not settle, a majority (61%) indicated

<sup>20</sup> Despite the fact that the program was supposed to only include cases involving more than \$50,000, this criterion is determined at the point of the filing of the complaint. Complaints generally do not indicate the exact amount in dispute, but only state that the amount is in excess of \$50,000.

that mediation increases time billed. Similar results were obtained from attorneys involved in mediation cases, although attorneys were somewhat less convinced of the savings benefits of mediation regardless of whether their cases settled.

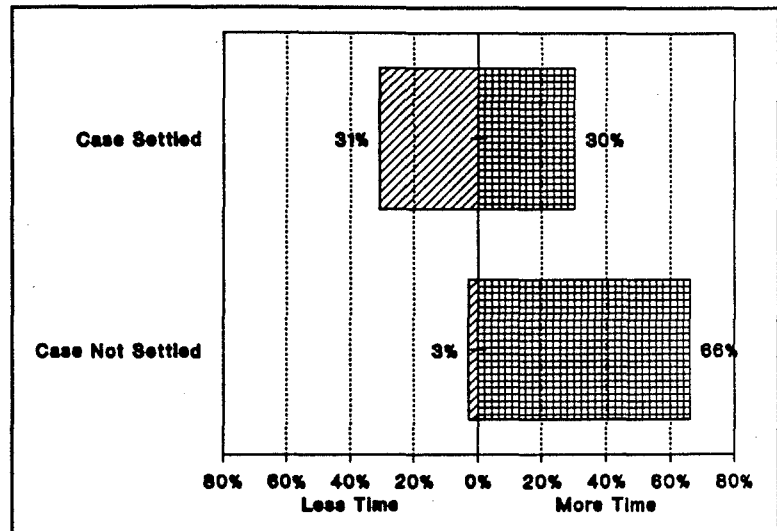


Figure 18. Has mediation had any effect on the amount of time you spent on this particular case? (Attorney responses)

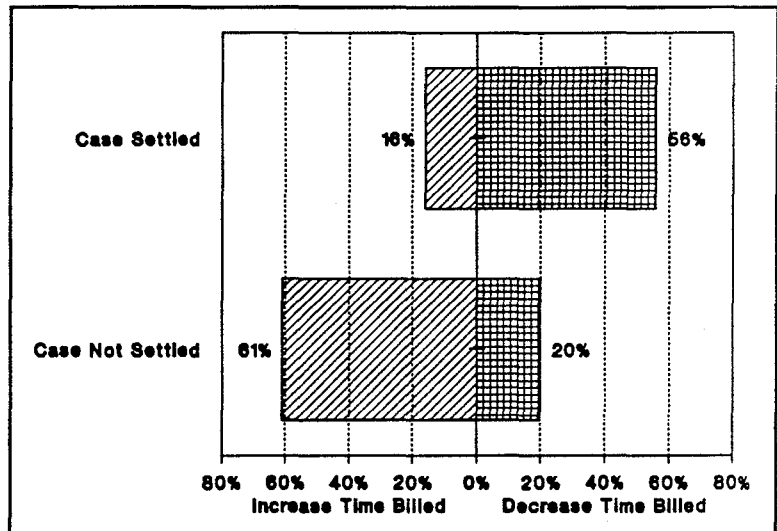


Figure 19. Generally, do you think that mediation programs reduce or increase time billed to clients in cases such as this one, compared to the normal adjudicative process? (Litigant responses).

## Chapter 6. Conclusions

This evaluation has produced some expected and some unexpected results and conclusions regarding the mediation pilot program in Hennepin county. There was a great deal of selectivity on the part of judges in referring cases to mediation. Only 43% of those cases eligible for mediation were referred. This led to an extension of the pilot program for two months in order to get an adequate number of cases for analysis.

Mediation was successful in about two-thirds of cases referred, while arbitration was successful in 62% of cases referred. Of those cases that were actually mediated, about 46% were disposed at mediation and required no further negotiation or court intervention.

Mediation had positive effects on the processing of cases by improving the overall time to disposition for cases. Although mediation cases themselves were not processed particularly quickly, they provided another case "track" so that the cases that were reserved for arbitration or judicial handling could be processed more quickly. This led to an overall reduction in the median time to disposition for cases in the experimental group, which were eligible for referral to mediation.

Trial rates did not decline as a result of mediation, and in fact were higher for those cases where mediation was an option. The amount of judicial effort expended per case, as measured by the average number of court appearances and the percentage of cases which required court activity, seemed to be reduced by the introduction of mediation as an alternative. The experimental group cases required less judicial intervention, on average, than the control group cases, although the differences were rather modest. Reasons for this were advanced in the analysis and discussion above, and are most likely related to the reallocation of judicial resources to cases not referred to mediation.

Mediation was found to improve litigant and attorney satisfaction levels with the handling of their case. Litigants involved in ADR cases reported greater satisfaction with the processing of their case, and were more likely to view the ADR process as fair and efficient. Attorneys were more likely than litigants to be favorable toward the adjudicative process, and less likely to be favorable toward ADR techniques. They also tended to substantially under-estimate their clients' satisfaction with mediation and arbitration and over-estimate their clients' satisfaction with the adjudicative process. This finding may reflect ingrained and learned notions of proper dispute resolution forums and techniques; over time, with increased exposure to ADR techniques, these impressions might be subject to change.

Satisfaction with the mediation process was found to be highly dependent on the outcome of the case and the reluctance or enthusiasm to engage in mediation at the time of referral. If a participant was enthusiastic about mediation, and the case was settled, the satisfaction level was very high. This suggests that it may be prudent to be somewhat selective in referring cases to mediation and that it may be useful to promote the value of mediation.

It is clear from the analysis that costs of litigation can be saved if the case is settled at mediation. If a case is mediated and does not settle, however, a majority of litigants and attorneys report increased costs.

The general conclusion from this evaluation is that mediation, or any other alternative dispute resolution technique, should not be regarded as a panacea for the problems associated with increased litigation or other increased resource demands on the courts. Nevertheless, it does appear that mediation can be useful in enhancing the disposition of civil cases if used properly. The caseload can be processed more efficiently,

judge time can be reserved for cases which truly require judicial intervention, and the needs of individual cases and issues can be more appropriately met.

It is also clear from these results that there remains a need for aggressive and effective case management practices. Recalcitrant attorneys and litigants must be held to an established schedule of dispute resolution enforced by the court. A recent comparative analysis of research on ADR programs<sup>21</sup> in several states concluded that caseload management practices, involving structured procedures and routine enforcement of deadlines, are the most important factors in efficient case processing, regardless of whether ADR or traditional judicial resolution methods are used. Reports from mediation organizations concerning difficulties of timely scheduling of mediation sessions, median times between referral and mediation of 130 days during the pilot period, and the fact that 16 cases remain pending after two years suggest that more stringent oversight and management of the processing of these cases could produce even more favorable results.

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<sup>21</sup> Hanson, Roger; Geoff Gallas and Susan Keilitz. 1988. "The Role of Management in State Court-Annexed Arbitration." *State Court Journal*. Pp. 14-19.



# Appendices

## Appendix A. Survey Questionnaires

Only the mediation questionnaires are reproduced here. The arbitration questionnaires were identical to these with the word "arbitration" substituted for "mediation." The questionnaires distributed to judicially-handled cases were also identical but with references to ADR removed, and questions which pertained only to ADR cases removed.

HC Case Number \_\_\_\_\_

SJIS Number 2701- \_ - \_ - \_ - \_ - \_ - \_

Date \_\_\_\_\_

Return to:  
Research & Planning  
Minnesota Supreme Court  
1745 University Ave. W.  
St. Paul, MN 55104

**Hennepin County  
General Civil Mediation  
Evaluation Form for Litigants**

Please circle the response which most closely represents your opinion. There are no right or wrong answers; your personal opinion is requested. If you are returning this form by mail, please write your name on the return envelope - NOT ON THIS FORM.

1. Are you a plaintiff (i.e., bringing the action) or a defendant in this case? (If you are not directly involved in the case, with which side are you associated?)

- 1 PLAINTIFF
- 2 DEFENDANT

2. Prior to this case, had you ever participated in mediation before?

- 1 YES
- 2 NO

2a. If YES, in how many cases? \_\_\_\_\_

3. When your attorney first told you that the judge had ordered this case to mediation, what was your initial feeling about participating in mediation?

- 1 VERY RELUCTANT
- 2 SOMEWHAT RELUCTANT
- 3 NO PARTICULAR FEELINGS ONE WAY OR ANOTHER
- 4 SOMEWHAT ENTHUSIASTIC
- 5 VERY ENTHUSIASTIC

4. Were you given an adequate opportunity to express your view in the mediation of this case?

- 1 YES
- 2 NO
- 3 SOMEWHAT

5. Do you believe the other side heard your point of view in this case?

- 1 YES
- 2 NO
- 3 SOMEWHAT

6. What is your opinion of the ability of the mediation process to handle your case fairly?

- 1 VERY FAIR
- 2 FAIR
- 3 NEITHER FAIR NOR UNFAIR
- 4 UNFAIR
- 5 VERY UNFAIR

7. What is your opinion of the ability of the mediation process to handle your case efficiently?

- 1 VERY EFFICIENT
- 2 EFFICIENT
- 3 NEITHER EFFICIENT NOR INEFFICIENT
- 4 INEFFICIENT
- 5 VERY INEFFICIENT

8. Was there a fair result in your case, or did someone get an advantage?

- 1 RESULT WAS FAIR
- 2 MY SIDE GOT AN ADVANTAGE
- 3 OTHER SIDE GOT AN ADVANTAGE

9. If this case did not settle, was progress made toward settlement?

- 1 YES, SIGNIFICANT PROGRESS
- 2 YES, MODERATE PROGRESS
- 3 NO, NO PROGRESS

10. Do you think the mediator costs are too high, too low, or just about right?

- 1 TOO HIGH
- 2 TOO LOW
- 3 ABOUT RIGHT

11. Has your attitude toward the other party changed since mediation?

- 1 YES, FEEL MORE POSITIVE
- 2 YES, FEEL MORE NEGATIVE
- 3 NO, NO CHANGE

12. Was the mediator fair and impartial in dealing with this case?

- 1 YES
- 2 NO
- 3 SOMEWHAT

13. In general, how satisfied are you with the mediation process?

- 1 VERY SATISFIED
- 2 SATISFIED
- 3 NEITHER SATISFIED NOR DISSATISFIED
- 4 DISSATISFIED
- 5 VERY DISSATISFIED

14. Would you recommend mediation to a friend involved in a legal dispute?

- 1 YES
- 2 NO

15. Will you (or your firm) have saved money or spent additional money on this case by participating in mediation?

- 1 Saved money
- 2 Spent additional money
- 3 Spent about the same amount of money
- 4 Don't know

16. Generally, do you think that mediation programs reduce or increase time billed to clients in cases such as this one, compared to the normal adjudicative process?

- 1 INCREASE TIME BILLED
- 2 DECREASE TIME BILLED
- 3 HAVE NO EFFECT ON TIME BILLED

17. Do you feel you understand the other side's position any better after mediation?

- 1 YES
- 2 NO

18. Do you feel the other side understands your position any better after mediation?

- 1 YES
- 2 NO

19. Generally, do you think that mediation is a good process for solving disputes?

- 1 YES
- 2 NO

20. Whom are you representing in this case?

- 1 YOURSELF
- 2 A CORPORATION OR OTHER ORGANIZATION
- 3 AN INSURANCE COMPANY
- 4 A FRIEND, FAMILY MEMBER, OR ACQUAINTANCE

21. Did you or the organization you represent have a prior relationship with the other side in this case?

- 1 YES
- 2 NO

21a. If YES, what was the nature of that relationship?

- 1 ON-GOING ECONOMIC RELATIONSHIP (E.G., SUPPLIER-CUSTOMER)
- 2 BUSINESS PARTNERSHIP
- 3 EMPLOYER-EMPLOYEE RELATIONSHIP
- 4 OTHER (specify) \_\_\_\_\_

22. If the case did not settle, do you believe this case was capable of being settled through mediation?

- 1 YES
- 2 NO

22a. IF YES, why didn't the case settle? (Circle all that apply)

- 1 PARTY NOT INTERESTED IN MEDIATING
- 2 ORGANIZATIONAL FORCES BEHIND PARTY PRECLUDED NEGOTIATION
- 3 PARTY WANTED DAY IN COURT
- 4 MEDIATOR WAS INEXPERT
- 5 OTHER (specify) \_\_\_\_\_

23. On the following scale, please indicate to what extent you believe the following factors represent the underlying basis of this dispute.

	Not Important				Very Important
a. Recovery of money	1	2	3	4	5
b. Punishment of defendant	1	2	3	4	5
c. Establish precedent	1	2	3	4	5
d. Enforce law or contract	1	2	3	4	5
e. Vindication	1	2	3	4	5
f. Protect or establish rights	1	2	3	4	5
g. Maintain integrity	1	2	3	4	5
h. Maintain self-respect	1	2	3	4	5
i. Change power relationship	1	2	3	4	5
j. Other _____	1	2	3	4	5

24. At this point in the case, whether or not the case has settled, please indicate, in your own opinion, the extent to which each of these underlying bases of the dispute have been resolved in this case.

	Resolved to mutual satisfaction	Issue not add- ressed in talks	Remains an open issue	Issue no longer important	Not appl- icable
a. Recovery of money	1	2	3	4	5
b. Punishment of defendant	1	2	3	4	5
c. Establish precedent	1	2	3	4	5
d. Enforce law or contract	1	2	3	4	5
e. Vindication	1	2	3	4	5
f. Protect or establish rights	1	2	3	4	5
g. Maintain integrity	1	2	3	4	5
h. Maintain self-respect	1	2	3	4	5
i. Change power relationship	1	2	3	4	5
j. Other _____	1	2	3	4	5

We would like to know a little more about you. Please answer the following questions. Your answers will be strictly confidential.

25. In what year were you born? \_\_\_\_\_

26. What is your sex?

- 1 MALE
- 2 FEMALE

27. What is your occupation (not the company you work for, rather what do you do?)  
\_\_\_\_\_

28. What is your approximate yearly family income from all sources?

- 1 LESS THAN \$10,000
- 2 MORE THAN \$10,000 BUT LESS THAN \$20,000
- 3 MORE THAN \$20,000 BUT LESS THAN \$30,000
- 4 MORE THAN \$30,000 BUT LESS THAN \$40,000
- 5 MORE THAN \$40,000 BUT LESS THAN \$50,000
- 6 MORE THAN \$50,000 BUT LESS THAN \$100,000
- 7 \$100,000 OR MORE

Please answer the following questions. Write on the back of these forms, if necessary.

29. What types of cases do you think are appropriate for mediation? Which types are not appropriate for mediation?

30. What suggestions would you make for improvement of the mediation program?

31. Any other comments you wish to make. (Including elaborations on previous answers).





7. Prior to this case, had you encountered the mediator in any professional capacity?

- 1 YES, MORE THAN ONCE
- 2 YES, ONCE
- 3 NEVER

7a. If YES, do you think this affected the mediation of this case, or not?

- 1 HELPED THE MEDIATION OF THIS CASE
- 2 HINDERED THE MEDIATION OF THIS CASE
- 3 NEITHER HELPED NOR HINDERED THE MEDIATION OF THIS CASE

8. Do you think that mediators for this program should also be able to practice law privately, or not?

- 1 YES
- 2 NO

8a. If YES, do you think their private practice should be restricted in any way? (Circle all that apply)

- 1 NO, THEY SHOULD NOT BE RESTRICTED
- 2 YES, THEY SHOULD NOT PRACTICE IN HENNEPIN COUNTY
- 3 YES, THEY SHOULD NOT PRACTICE IN GENERAL CIVIL CASES
- 4 YES, OTHER (specify) \_\_\_\_\_

9. During this mediation, would you say you were at all reticent to discuss the case or negotiating tactics with the mediator, because you later might oppose this person in another case?

- 1 YES, VERY RETICENT
- 2 YES, SOMEWHAT RETICENT
- 3 NO, NOT RETICENT AT ALL

10. What is your opinion of the ability of the mediation process to handle your case fairly?

- 1 VERY FAIR
- 2 FAIR
- 3 NEITHER FAIR NOR UNFAIR
- 4 UNFAIR
- 5 VERY UNFAIR

11. What is your opinion of the ability of the mediation process to handle your case efficiently?

- 1 VERY EFFICIENT
- 2 EFFICIENT
- 3 NEITHER EFFICIENT NOR INEFFICIENT
- 4 INEFFICIENT
- 5 VERY INEFFICIENT

12. Was there a fair result in your case, or did someone get an advantage?

- 1 RESULT WAS FAIR
- 2 MY SIDE GOT AN ADVANTAGE
- 3 OTHER SIDE GOT AN ADVANTAGE

13. If this case did not settle, was progress made toward settlement?

- 1 YES, SIGNIFICANT PROGRESS
- 2 YES, MODERATE PROGRESS
- 3 NO, NO PROGRESS

14. Do you think the mediator costs are too high, too low, or just about right?

- 1 TOO HIGH
- 2 TOO LOW
- 3 ABOUT RIGHT

15. Has your attitude toward the other party changed since mediation?

- 1 YES, FEEL MORE POSITIVE
- 2 YES, FEEL MORE NEGATIVE
- 3 NO, NO CHANGE

18. Was the mediator fair and impartial in dealing with this case?

- 1 YES
- 2 NO
- 3 SOMEWHAT

19. In general, how satisfied are you with the mediation process?

- 1 VERY SATISFIED
- 2 SATISFIED
- 3 NEITHER SATISFIED NOR DISSATISFIED
- 4 DISSATISFIED
- 5 VERY DISSATISFIED

20. Would you recommend mediation to another client involved in a legal dispute?

- 1 YES
- 2 NO
- 3 PERHAPS

21. Has mediation had any effect on the amount of time you spent on this particular case?

- 1 NO, NO EFFECT
- 2 YES, SPENT LESS TIME
- 3 YES, SPENT MORE TIME

22. Generally, do you think that mediation programs reduce or increase time billed to clients in cases such as this one, compared to the normal adjudicative process?

- 1 INCREASE TIME BILLED
- 2 DECREASE TIME BILLED
- 3 HAVE NO EFFECT ON TIME BILLED

23. In general, how satisfied would you say your client is with the mediation process?

- 1 VERY SATISFIED
- 2 SATISFIED
- 3 NEITHER SATISFIED NOR DISSATISFIED
- 4 DISSATISFIED
- 5 VERY DISSATISFIED

24. Do you think mediation should begin prior to note of issue?

- 1 YES
- 2 NO

24a. Why or why not?

25. Do you feel you understand the other side's position any better after mediation?

- 1 YES
- 2 NO

26. Do you feel the other side understands your position any better after mediation?

- 1 YES
- 2 NO

27. Generally, do you think that mediation is a good process for solving disputes?

- 1 YES
- 2 NO

28. What is your fee arrangement for this case?

- 1 CONTINGENCY
- 2 HOURLY
- 3 FIXED AMOUNT
- 4 OTHER (PLEASE SPECIFY) \_\_\_\_\_

29. If the case did not settle, do you believe this case was capable of being settled through mediation?

- 1 YES  
2 NO

29a. IF YES, why didn't the case settle? (Circle all that apply)

- 1 PARTY NOT INTERESTED IN MEDIATING  
2 ORGANIZATIONAL FORCES BEHIND PARTY PRECLUDED NEGOTIATION  
3 PARTY WANTED DAY IN COURT  
4 MEDIATOR WAS INEXPERT  
5 OTHER (specify) \_\_\_\_\_

30. On the following scale, please indicate to what extent you believe the following factors represent the underlying basis of this dispute.

	Not Important				Very Important
a. Recovery of money	1	2	3	4	5
b. Punishment of defendant	1	2	3	4	5
c. Establish precedent	1	2	3	4	5
d. Enforce law or contract	1	2	3	4	5
e. Vindication	1	2	3	4	5
f. Protect or establish rights	1	2	3	4	5
g. Maintain integrity	1	2	3	4	5
h. Maintain self-respect	1	2	3	4	5
i. Change power relationship	1	2	3	4	5
j. Other _____	1	2	3	4	5

31. At this point in the case, whether or not the case has settled, please indicate, in your own opinion, the extent to which each of these underlying bases of the dispute have been resolved in this case.

	Resolved to mutual satisfaction	Issue not add- ressed in talks	Remains an open issue	Issue no longer important	Not appl- icable
a. Recovery of money	1	2	3	4	5
b. Punishment of defendant	1	2	3	4	5
c. Establish precedent	1	2	3	4	5
d. Enforce law or contract	1	2	3	4	5
e. Vindication	1	2	3	4	5
f. Protect or establish rights	1	2	3	4	5
g. Maintain integrity	1	2	3	4	5
h. Maintain self-respect	1	2	3	4	5
i. Change power relationship	1	2	3	4	5
j. Other _____	1	2	3	4	5

We would like to know a little more about you. Please answer the following questions. Your answers will be strictly confidential.

32. In what year were you born? \_\_\_\_\_

33. What is your sex?

- 1 MALE
- 2 FEMALE

34. What is your approximate yearly family income from all sources?

- 1 LESS THAN \$10,000
- 2 MORE THAN \$10,000 BUT LESS THAN \$20,000
- 3 MORE THAN \$20,000 BUT LESS THAN \$30,000
- 4 MORE THAN \$30,000 BUT LESS THAN \$40,000
- 5 MORE THAN \$40,000 BUT LESS THAN \$50,000
- 6 MORE THAN \$50,000 BUT LESS THAN \$100,000
- 7 \$100,000 OR MORE

Please answer the following questions. Write on the back of these forms, if necessary.

35. What types of cases do you think are appropriate for mediation? Which types are not appropriate for mediation?

36. What suggestions would you make for improvement of the mediation program?

37. Any other comments you wish to make. (Including elaborations on previous answers).

**Appendix B. Referral to Mediation - Sample Judicial Order**

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Plaintiff,

vs.

MEDIATION ORDER  
Court File No.

Defendant.

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UPON THE MOTION OF THE COURT, IT IS HEREBY ORDERED THAT:

1. This case is set for mediation, which shall be completed (either because a settlement has been reached or impasse has been declared) within 60 days of the date of this Order if no Certificate of Non-Readiness is filed or within 60 days of the expiration of the period of non-readiness.
2. The Court appoints MEDIATION CENTER as this Court's Mediator to attempt to achieve a settlement of the issues in this case.
3. The general rules governing the mediation of this case shall be as follows:
  - a. This mediation is mandatory. The mediation conference(s) shall be attended by the persons with authority to enter into a full and complete compromise and settlement of the case, including, but not limited to, the attorneys who will try the case, the parties involved in the litigation and claims adjusters. The participants in the mediation shall be prepared to spend as much time as necessary to settle the case or until an impasse is declared by the Mediator.
  - b. Within eight (8) days of the date of this Order, the parties shall complete and send to MEDIATION CENTER the attached information sheet which requests a brief written summary of the facts, the issues to be resolved, settlement discussions to date and the obstacles to settlement. Attorneys for corporate parties will state the name and general job description of the employee or agent who will represent the corporate party. All discussions, representations and statements made during the mediation shall be privileged as settlement negotiations, and nothing related to the mediation, including the Mediator's thoughts, impressions or notes, shall be admitted at trial or subject to discovery.

- c. The appointment of a qualified individual to mediate this case shall be done by MEDIATION CENTER. If any party objects to the individual thus appointed, such party shall send a written objection to MEDIATION CENTER within five (5) days of the notice of the appointment. A copy of the objection must also be furnished to this Court and other attorneys of record within the five day period. The absence of a timely written objection shall constitute consent to the appointment.
- d. Scheduling of the mediation shall be done by MEDIATION CENTER. Once the date and time for the mediation are set, a continuance shall not be granted except for the most extraordinary and unforeseeable events. MEDIATION CENTER must receive a written request for a continuance and reasons therefor within six days of the date of the scheduling notice. A copy of the request must also be furnished to other attorneys of record within the six day period. A request for continuance and any other correspondence shall be sent to MEDIATION CENTER.
- e. The fee for the mediation shall consist of a \$100 administrative fee and \$125 per hour of the mediation conference(s) and outside preparation time, such outside time not to exceed three (3) hours. This fee shall be paid to MEDIATION CENTER at the completion of the mediation. The fee shall be borne equally by the parties or as follows \_\_\_\_\_.
4. If any party objects to this Order, a written objection and reasons therefor must be submitted to this Court within six (6) days of the date of this Order. A copy of such objection also shall be furnished to other attorneys of record and MEDIATION CENTER within the six day period.
5. Counsel shall immediately notify the undersigned judge in writing of any final disposition and of the date of such final disposition of this case prior to the commencement of the mediation. Notification also shall be provided to MEDIATION CENTER.
6. Failure to comply with any part of this Order shall subject the parties to appropriate sanctions to include the assessment of costs against the delinquent party, dismissal, or other relief as the Court may deem appropriate.

BY THE COURT:

Dated:

cc: Assignment Office  
\_\_\_\_\_  
Mediator

\_\_\_\_\_  
Judge of District Court  
Phone:

MEDIATION CENTER  
1821 University Avenue  
Suite 445-N  
St. Paul, MN 55104  
(612) 644-1453

FOR USE IN CONFIDENTIAL  
SETTLEMENT NEGOTIATIONS  
ONLY

CONFIDENTIAL INFORMATION SHEET

Case Name: \_\_\_\_\_

Court File: \_\_\_\_\_

1. Briefly summarize the facts which led to this dispute.

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2. Briefly summarize the issues which must be resolved in order to settle this case.

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3. Briefly describe your settlement discussions to date, including the most recent demand and offer.

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4. Briefly summarize any obstacles to settlement.

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5. List name of the persons who will attend the mediation with you. In almost all cases the party must attend the mediation along with counsel. (If applicable, list the name and general job description of any employee(s) or agent(s) who will represent a corporate party or insurer.)

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Name of person completing this form

Address

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Phone Number

RETURN FORM TO: MEDIATION CENTER  
Suite 445 North  
1821 University Ave.  
St. Paul, MN 55104  
(612) 644-1453

This form need not be served on the Court or other parties. It is intended to be, and will be treated as, a confidential communication between you and the mediator.

