Court-Referred Mediation Survey
U. S. District Court of the Eastern District of Missouri

" As courts, our most precious asset is the public's trust. Every program we sponsor or sanction must be designed to inspire and sustain the public's respect and confidence. The public believes that, as courts, our core responsibility is to do justice. The public also believes that the aspect of justice for which we are primarily responsible is process fairness, process integrity. It follows that the characteristic of our ADR programs about which we must be most sensitive is fairness, especially process fairness. This means that in program design and administration our paramount concerns must be with process integrity and quality control."

Wayne D. Brazil, Magistrate Judge for the United States District Court for the Northern District of California

BACKGROUND

The alternative dispute resolution program in the United States District Court for the Eastern District of Missouri began as a Civil Justice Reform Act (CJRA) inspired initiative in October 1994. Mediation and early neutral evaluation are offered as alternatives to formal adjudication and unassisted settlement 1) to help reduce costs of civil litigation, 2) to speed the disposition of cases not requiring a trial, 3) and to enhance parties' satisfaction by offering them more control over the resolution of their dispute. During the life of the Civil Justice Reform Act (through 1998), annual assessment reports produced by the district court collected quantitative information about the numbers of Alternative Dispute Resolution (ADR) referred cases, types of civil suits mediated and the rates of settlement. More recently, similar quantitative ADR data have been compiled and reported quarterly to judges and court staff for internal use. While those data are helpful measures of caseload effects, they do not shed light on questions about the quality of the program as measured by the perceptions of those who participate in a court-ordered ADR process. To assess participant satisfaction, a survey instrument is the best method for capturing information derived from the personal experience of a neutral, attorney or litigant.

PURPOSE OF THE STUDY

Utilizing survey questions developed for and validated in prior federally funded ADR studies, this research probed participants' perceptions about key issues that are reflections of the overall quality of the system. Some of those issues are process fairness, factors contributing to the ADR outcome, effectiveness of the neutral, clarity of ADR rules and procedures, savings of time and expense, adequacy of preparation, comfort with surroundings and fulfillment of participants' expectations. Assessment of the aggregate responses will suggest whether and to what extent ADR is perceived as valuable to the primary constituencies intended to be served by the program. Without identifying any particular ADR neutrals, it will also provide important indicators about the overall skill and professionalism of neutrals who serve as adjuncts of the district court. The data will help identify potential structural and procedural elements of the current ADR program that may require modification. Additionally, lawyers who practice in the district court are likely to benefit from insights of litigants reflecting on their experiences, both positive and negative, in an alternative dispute resolution process. With these various measures of quality, combined with the existing quantitative information, a more complete picture of the performance of the ADR program will emerge. The court then can utilize these data to plan wisely for the future of ADR in this district.

STUDY METHODOLOGY

Strategy

A premium was placed on obtaining a high return rate for the survey. ADR neutrals for the Eastern District of Missouri were asked to serve as distributors and collectors of the surveys. The survey questions focused on mediation, which has been the most widely used ADR process in this district. The key participants in ADR are the attorneys, their clients, and the ADR neutrals. A separate survey was designed for each category of ADR participant. For the sake of efficiency and efficacy of the survey design, many of the survey questions were borrowed and/or adapted from surveys previously administered by the Western District of Missouri, the Northern District Court of California, and the Eastern District of Pennsylvania, as well as State Justice Institute-funded surveys used by the Georgia Office of Dispute Resolution.

Pilot Phase

A pilot of the survey project was undertaken to test the survey construction and the data collection system. The pilot phase began in February 2002 and was completed in March 2002. One draft survey packet (consisting of one draft neutral survey and multiple copies of both the attorney and litigant draft surveys) was distributed to each neutral who agreed to assist in the pilot phase (members of the court's ADR Advisory Committee). These neutrals were asked to provide their feedback on their survey instrument and to solicit feedback from the attorneys and litigants who answered surveys during this phase. A feedback form was attached to each questionnaire for the pilot phase. The surveys were refined based on comments from those who participated in the pilot phase of the project. The revised survey instruments were submitted for review by the Court prior to the formal data collection phase of the study. None of the data collected during the pilot phase was included in the final data analysis for this study.

Data Collection

Once the surveys were refined and approved for this research, Sherry Compton (ADR Coordinator for the Eastern District) sent a letter from Judge Hamilton (Chief Judge at that time) to each certified neutral for the Eastern District that explained the research project and requested information about the number of anticipated mediation conferences during May through July 2002. Survey packets were then mailed to those neutrals who responded.

The neutrals were responsible for handing out and collecting the surveys at the end of the first mediation conference scheduled after they received the surveys. Participants were asked to fill out the surveys before leaving at the conclusion of the mediation conference, seal the surveys in envelopes, and give the envelopes to the neutral, who then mailed the entire set to Sherry Compton. A few of the neutrals indicated that the attorneys and/or litigants mailed their surveys separately. The expectation was that this approach would increase the response rate and thus decrease the time needed to collect sufficient data for this study. This approach also was intended to reduce the complexity of the study without compromising the research goals. At the same time, the potential existed for obtaining survey responses that were influenced by the emotional state of the participants at the conclusion of the mediation conference. The tradeoff for this potential source of bias was a higher rate of return than likely would have been realized if surveys were distributed at a later date, as well as "fresher" memories for the participants about the experience of the mediation conference and the overall ADR process.

Sherry Compton, Michael Penick (Policy & Research Analyst for the Eastern District), and Will Haynes (Consultant) recorded the raw data from the surveys using statistical software located only on their computers in the Eastern District Clerk's Office. The completed surveys were accessible only to these three individuals, all three of whom were certified by the Collaborative Institutional Review Board to conduct human subjects research.

Types of Cases

Each type of civil case eligible for referral to ADR in the Eastern District of Missouri was eligible for inclusion in this study. The approach taken for data collection could have resulted in a "non-normal" distribution of case types in the sample, simply because the sample was designed not to be would not be a true random selection of all cases eligible for ADR referral. In order to compress the timetable for data collection, the sample was defined as those ADR cases that had a mediation conference during the data collection phase for the study, May-July 2002. Midway through the data collection period, a profile of case types in the study was drawn to determine whether the pattern of case types was reasonably representative of the typical population of ADR cases in this district. The profile indicated that a representative pattern of case types was emerging.

Data Analysis

Jim Woodward, Clerk of Court for the Eastern District of Missouri, Professor Susan A. FitzGibbon from the Saint Louis University School of Law, Sherry Compton, Michael Penick and Will Haynes participated in the analysis of the aggregate survey data and the preparation of the final study report. Frequency distributions of survey responses were the main target of the analysis, since the lack of a true random sample made it impractical to employ inferential statistical tests for generalizing results to the total ADR case population in this district. The data were regarded as a snapshot of attitudes and opinions expressed voluntarily by participants surveyed during the study period.

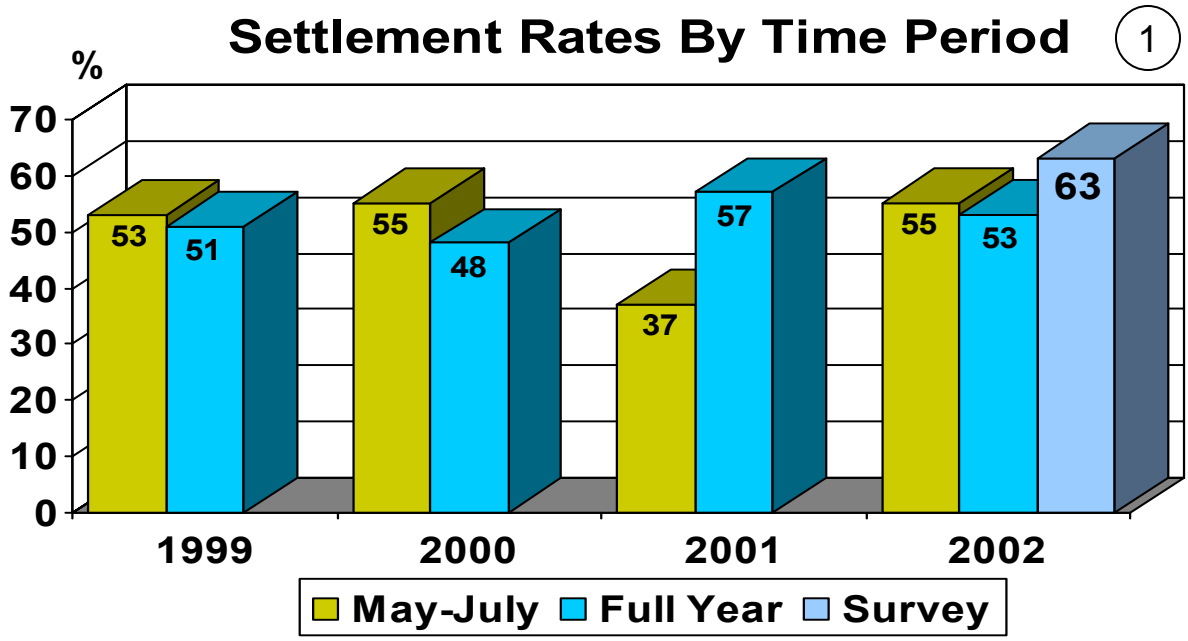
SUMMARY OF SURVEY RESULTS

I. Composition of the Study Sample and Settlement Rate

The survey of neutrals, attorneys and litigants covered the three-month period from May 1, 2002 until July 31, 2002. The Clerk's Office contacted all neutrals on the court's list and encouraged their participation in the survey. Twenty-two neutrals requested survey questionnaires for mediations scheduled during this three-month period. Ninety-three mediation conferences occurred in this three-month period and surveys were distributed to all participants in 59 of these mediations yielding a 63% rate of participation. In these 59 participating conferences, 254 questionnaires were distributed to the attorneys and litigants at the conclusion of the conference and 250 questionnaires were returned, yielding a 98% return rate for the questionnaires distributed.

Of all 93 cases mediated in May, June and July of 2002, 55% settled (51 settled; 42 did not). The annual settlement rate for all cases mediated in 2002 was 53%. In the 59 mediated cases for which the court obtained survey results, there was a higher settlement rate of 63% (37 of 59 cases settled). Neutrals reported that additional sessions with the parties were planned only in two cases.

A review of the number of cases mediated and the settlement rates in previous years shows that the overall settlement rate of 55% for the months of May, June and July in a total of 93 cases generally comports with the number and rates for that period in recent years. In 1999 there were 90 cases of which 53% settled, in 2000 there were 96 cases of which 55% settled and in 2001 there were 86 cases of which 37% settled. The annual settlement rate for these years was: 51% in 1999, 48% in 2000 and 57% in 2001. A fairly consistent pattern of activity and outcomes is evident from this data.



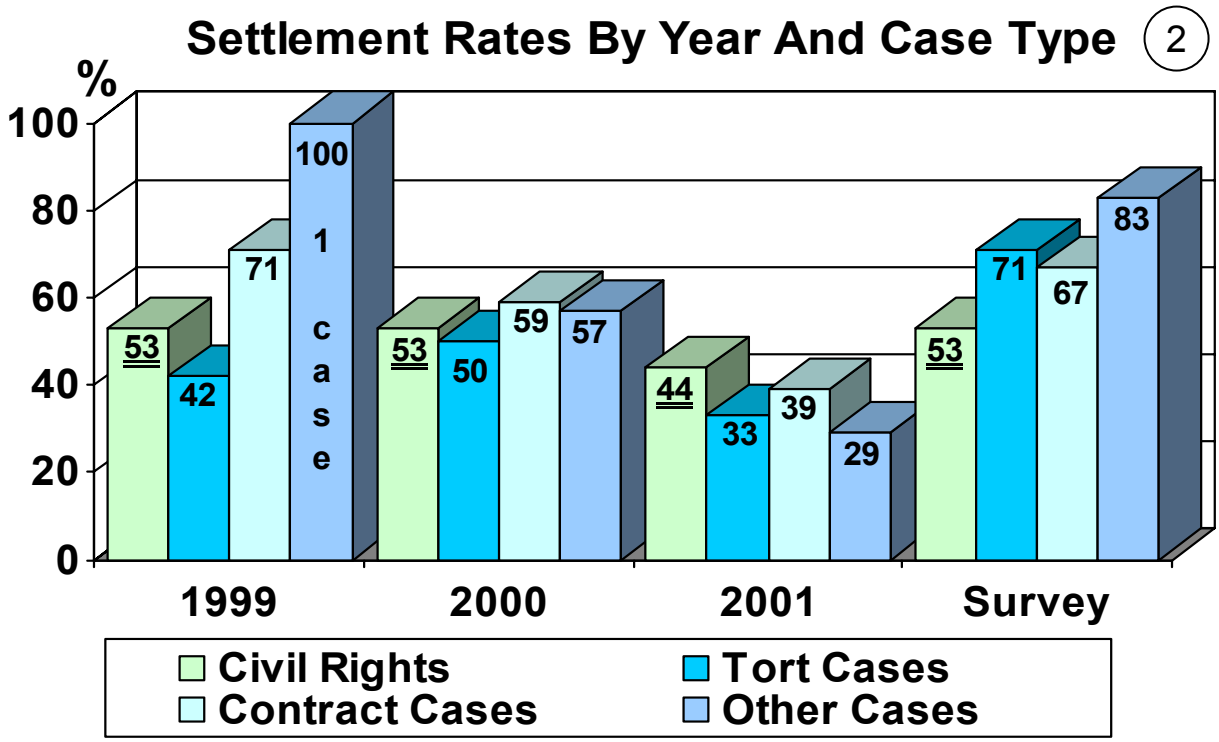
According to the court's records for 2000, 2001 and 2002, a total of 102 neutrals held at least one mediation conference in a case(s) referred by the court and of these, 19 neutrals held 10 or more mediations in this three-year period. It is noteworthy that the court's ADR program design provides for the parties to choose the neutral mediator and the parties make this choice in almost all cases referred to mediation. The higher settlement rate for cases in which the court received survey results, compared to settlements achieved in all cases during the study period, may reflect the fact that the more seasoned neutrals who are regularly selected by the parties to mediate chose to participate in the survey process more than the less experienced mediators did. The fact that 90% of the neutrals participating in the survey reported that they had mediated over 50 cases and 7% of the neutrals reported mediating from 10-50 cases in the past two years supports this possibility.

II. Case Outcome by Case Type

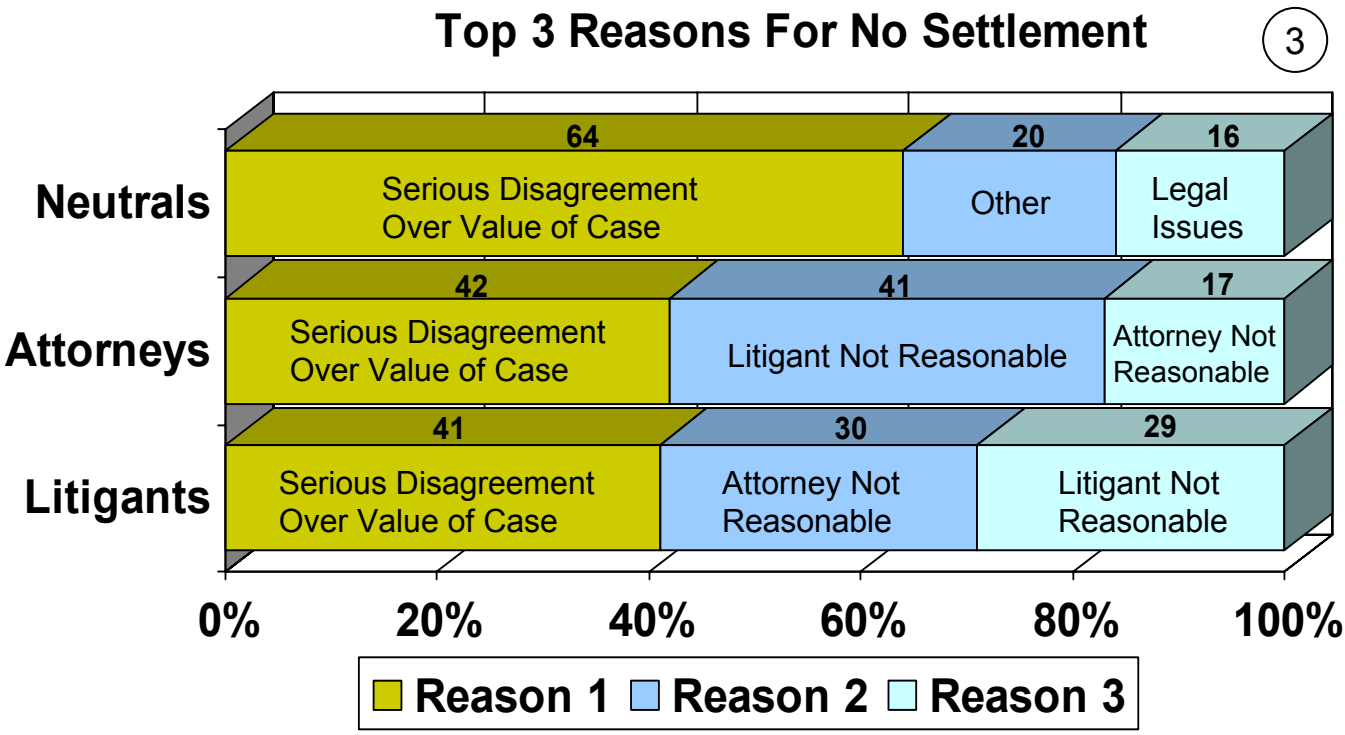
1. Case Types

The survey asked respondents to categorize the cases as: contract, tort, civil rights or other. Based on the responses of neutrals, the survey cases included: 32 civil rights cases, 14 tort cases, 6 contract cases and 6 other cases (and one with no case type listed). The distribution of cases in these categories roughly corresponds to the distribution of cases mediated in recent years. For example, civil rights cases have represented more than half of mediated cases in this same time period in two of the last three years.

The settlement rates for the survey cases varied widely across these categories. Fifty-three percent of civil rights cases settled (17 of 32), 67% of contract cases settled (4 of 6), 71% of tort cases settled (10 of 14) and 83% of the other cases settled (5 of 6). Comparing the number and settlement rates of all mediated cases in these categories for this same time period in the past three years, the survey civil rights cases may be viewed as fitting into a pattern but the other case type settlement rates fluctuate from year to year and thus suggest no pattern. The civil rights cases settled as follows: in 1999 53% settled (26 of 49), in 2000 53% settled (25 of 47) and in 2001 44% settled (16 of 36). The contract case settlement rate was: in 1999 71% (10 of 14), in 2000 59% (10 of 17) and in 2001 39% (7 of 18). The tort case settlement rate was: in 1999 42% (10 of 24), 2000 50% (9 of 18) and in 2001 33% (7 of 21). The other case settlement rate was: 1999 100% (1 of 1), 2000 57% (4 of 7) and in 2001 29% (2 of 7).



The main reason listed by all participants for lack of settlement in the surveyed cases was serious disagreement over the value of the case. From the neutrals' perspective, this reason far outweighed any other. Neutrals listed this factor in 64% of the cases and listed it three times more than any other factor. Additional reasons for lack of settlement listed (in descending order) by neutrals included: "other", the need for resolution of legal issues, essential factual information missing, lack of trust between (among) litigants, and litigant(s) had an unreasonable view of the case or were uncooperative. By contrast, attorneys ranked serious disagreement over the value of the case (in 42% of the cases) almost equally with litigant(s) having an unreasonable view of the case (in 41% of the cases) and cited as a distant third reason, attorney(s) having an unreasonable view of the case (in 17% of the cases). Litigants listed serious disagreement over the value of the case as the top reason (in 41% of the cases), and then nearly equally ranked attorney(s) having an unreasonable view of the case (in 30% of the cases) with litigant(s) having an unreasonable view of the case (in 29% of the cases).



Looking at the reasons listed for lack of settlement by attorneys according to case categories, in addition to serious disagreement over case value and unreasonable views of the case, attorneys also listed lack of essential factual information as a reason for failure to settle in 7% of contract and in 7% of tort cases. In civil rights cases, while the main factors cited were serious disagreement over the value of the case and the litigant(s) unreasonable view of the case, attorneys cited the need to resolve legal issues for lack of settlement in 11% of these cases. Neutrals also cited the need to resolve legal issues in 12.5% of civil rights cases. It is noteworthy that attorneys cited the unresolved legal issue factor only in civil rights cases, which had the lowest settlement rate of the case types. This response could reflect the existence of an unresolved summary judgment motion pending at the time of the mediation conference.

2. Attendance, Preparation and Timing

Because the absence of a person important to the process may also frustrate a resolution in mediation, the survey asked neutrals and attorneys if any person who would have been helpful to the process was missing from the mediation session. Most neutrals (90%) reported that no one was missing but a few neutrals (10%) noted that the following were absent: decision maker with settlement authority (reported once), complainant (reported once) and other essential persons (reported four times). Similarly, only 10% of attorneys reported that helpful persons did not attend the mediation: decision makers with settlement authority (6%), complainants (3%), and other essential persons were missing (2%).

In assessing the outcome of the surveyed cases, it is noteworthy that 98% of the neutrals reported that all parties were well prepared for the mediation. Almost all attorneys (97%) and neutrals (94%) also believed that mediation was appropriate for the case. The "right time" for mediation is often a controversial and debatable subject, especially among attorneys, but attorneys and neutrals overwhelmingly agreed that the mediation of these cases took place at "about the right time" (86% of attorneys and of neutrals). Of the remainder, more attorneys responded that they believed that the timing of mediation was too early (10%) rather than too late (4%). Seventy-two percent of the attorneys also reported that they had previously participated in five or more mediations which reflects experience with mediation and perhaps more comfort with the process. It is fair to conclude that the combination of these factors created a climate most conducive to achieving settlement in mediation.

III. Attorney and Litigant Perceptions of the Role and Effectiveness of the Neutral

1. Expertise and Impartiality

The survey instruments asked a variety of questions designed to elicit attorney and litigant perceptions of the role and effectiveness of the neutrals. Overall the responses were very positive and demonstrated that these neutrals were conducting mediations fairly and competently. It is worth emphasizing that participant responses reflecting satisfaction are not strongly correlated with settlement. The percentage of positive responses reported in this section far exceeds the survey response settlement rate of 63% thus demonstrating satisfaction with and endorsement of the mediation program by many participants whose cases did not settle**.** For example, in cases where no issues were settled, 79% of attorneys and 58% of litigants still reported feeling that the outcome of mediation was either somewhat or very fair overall.

Almost all of the attorneys (97%) and litigants (93%) believed that the neutral had sufficient expertise in the subject matter of the case. Ninety-four percent of the litigants reported that the neutral gave a satisfactory explanation of the mediation process and that the litigants were able to participate in the process as much as they desired. The ability of litigants to participate in the process is a hallmark of mediation and a significant aspect of procedural justice.

An impartial mediator is another one of the key components of mediation. In the survey responses, 95% of attorneys rated the neutrals as unbiased and 96% of litigants reported that the neutrals did not favor one side over the other. Interestingly in response to a similar question, only 68% of litigants found the neutral to be objective and even-handed. In view of the overwhelmingly positive response regarding neutrals' impartiality, this evaluation of the neutrals' even-handedness and objectivity may reflect some disagreement by litigants with the neutrals' questioning of the value of the case rather than suggesting partiality by the neutrals. The existence of party self-determination, another key component of a fair mediation process, was evident as litigants almost unanimously (98%) reported that the neutrals did not apply too much pressure to settle.

2. Effect on Party Communication, Relationships and Resolutions Other than Money

Litigants and attorneys also gave the neutrals high marks for a variety of skills and techniques essential to mediation. Most attorneys (96%) and litigants (81%) agreed that the neutrals had effective listening skills and most litigants (79%) further noted that the neutrals gave them a chance to tell their stories. Ninety percent of attorneys also concluded that the neutrals effectively promoted meaningful dialogue. Most attorneys (85%) reported that the neutrals effectively encouraged the litigants to be realistic about their positions. The majority of litigants (55%) also believed that the neutral had encouraged them to be more realistic about their positions and even more (80%) reported that mediation helped to identify strengths and weaknesses in their case.

Almost one-half of the litigants (48%) believed that the neutral helped to improve communication between the parties. Half of the attorneys (50%) stated that the neutral improved the parties' relationship and another 16% felt that the neutral was somewhat effective in improving the parties' relationship. Only 38% of the litigants reported that the neutral maintained or improved the relationship between the parties. It is noteworthy that 30% of the attorneys stated that improving the parties' relationship did not apply in their case. These mixed and lower percentage responses to the question of whether the neutral facilitated maintaining or improving the party relationship may reflect the fact that the litigants did not have a relationship to improve or maintain as, for example, in the case of an auto accident.

A majority of litigants (63%) reported that the neutral helped identify settlement options. Nearly half of the attorneys said that the neutral helped to identify solutions other than money (48%) and that mediation was somewhat or very helpful in exploring solutions not available at trial (47%). Thirty-nine percent of litigants and 39% of neutrals found mediation somewhat or very helpful in exploring solutions other than money. However, more of the litigants (46%) and of the neutrals (49%) stated that mediation was no help or had no application to exploring solutions other than the payment of money. Similarly, 52% of the attorneys responded that mediation was not helpful or not applicable to explore solutions not available through trial. As noted above, these responses may in part reflect the lack of a relationship between the parties. These responses may also reflect the fact that, in many federal civil cases, parties in settlement negotiations tend to focus exclusively on monetary solutions.

3. Overall Neutral Effectiveness

Significantly almost all attorneys (96%) stated that the neutrals effectively inspired trust, which is vital to the mediation process. Almost three-quarters of the litigants (73%) rated the neutrals as effective and, more significantly, only 7% of litigants rated the neutrals as ineffective. In view of the survey response settlement rate of 63%, these ratings by litigants represent a strong endorsement of and confidence in the neutrals who participate in the court's mediation program.

IV. General Process Perceptions

1. Location, Expectations and Preparation

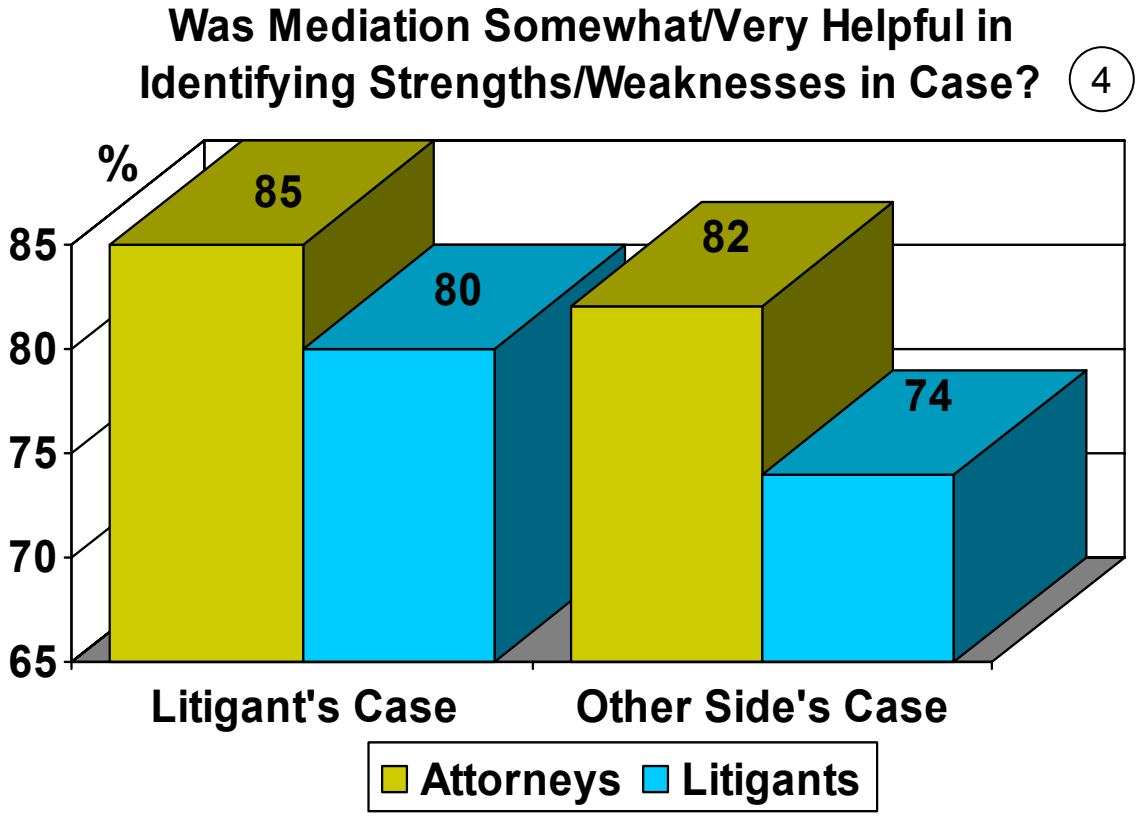
The survey questions also explored the participants' perceptions of how well the process worked. Starting with a very practical issue, the survey showed that most of these mediations (52 of 59) were held in the offices of the neutral. Only three mediation sessions used the courthouse mediation facilities, three were held in the offices of one of the litigants and one took place elsewhere. Most of the attorneys (82%), the majority of litigants (68%) and most of the neutrals (89%)(not surprisingly), were comfortable with the surroundings. However 16% of litigants, 14% of attorneys and 12% of neutrals reported being very uncomfortable with the surroundings. Six of the seven neutrals who reported being very uncomfortable were holding the mediation in their own offices. This suggests the possibility that some participants may have interpreted the question to mean general comfort with the mediation process rather than physical comfort with the conference location.

As to expectations and preparation for the process, all attorneys said that they knew what to expect in mediation and, as previously noted, most of these attorneys (72%) had experience in five or more mediations. Almost all litigants (93%) also reported that they had sufficient information to know what to expect in mediation. And almost all neutrals (98%) stated that the participants were adequately prepared, and that the others were at least somewhat prepared.

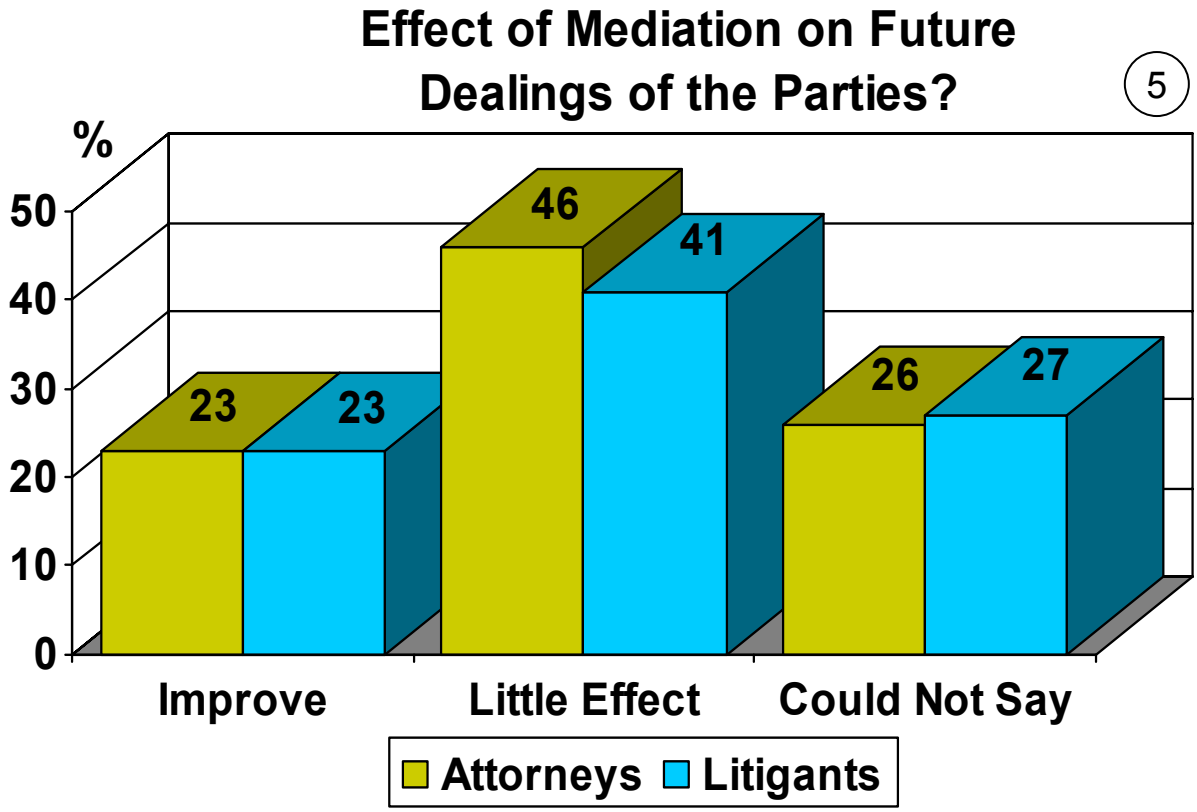
2. Effect on Privacy, Clarifying Issues, Identifying Case Strengths and Weaknesses and on Future Dealings

The mediation process was deemed somewhat or very helpful in keeping the dispute private by the great majority of participants (84% of attorneys, 82% of litigants and 71% of neutrals). The vast majority of participants found that mediation was somewhat or very helpful to clarify issues in the case (86% of attorneys, 80% of litigants and 89% of neutrals) and also to narrow monetary differences in the case (87% of attorneys, 75% of litigants and 82% of neutrals).

Nearly all neutrals (98%) reported that the mediation process was somewhat or very helpful in identifying the strengths and weaknesses in the parties' cases. Most attorneys similarly concluded that the mediation process was somewhat or very helpful in identifying strengths or weaknesses in their case (85%) and in the other side's case (82%). Most litigants concurred that mediation helped identify strengths and weaknesses in their case (80%), while slightly fewer believed the process helped identify strengths and weaknesses in the other side's case (74%).



In response to the question of what effect mediation would have on the future dealings of the parties, about one-quarter of the litigants (23%) and attorneys (23%) thought that mediation would improve the parties' future dealings. But the majority believed that mediation either would have little effect on the future dealings of the parties (41% of litigants and 46% of attorneys) or that they could not say what effect mediation might have on their dealings (27% of litigants and 26% of attorneys). Again this response may reflect the fact that the parties did not have a relationship and will have no future dealings.



3. Perceptions of Fairness and Effect on Cost and Time to Resolve the Case

Focusing on the outcome of the mediation process, most of the attorneys (92%) and litigants (77%) rated the outcome as somewhat or very fair.

In mediation cases in which all issues settled, most of the attorneys (89%) and litigants (75%) reported that mediation would decrease the overall cost of processing the case or have no effect on cost (8% of attorneys and 3% of litigants). In the mediated cases in which no issues settled, nearly two-thirds of the attorneys believed that the mediation either would have no effect (43%) or would decrease (19%) the cost of processing the case. In cases in which no issues settled, 40% of litigants were concerned that mediation would increase the overall cost of processing the case, but almost as many (36%) believed that the mediation either would decrease (18%) or would have no effect (18%) on the cost of processing the case.

Most attorneys (96%) and litigants (83%) in mediations in which all issues were resolved concurred that mediation would decrease the total time needed to process the matter. In cases which achieved no settlement of issues, most attorneys still believed that mediation either would have no effect on (60%) or would decrease (19%) the overall time to process the case. By contrast, litigants in cases which did not settle in mediation were almost evenly split between those who believed that mediation would lengthen the time needed to process the matter (40%) and those who believed that mediation either would shorten the time (22%) or have no effect (20%) on the time spent resolving the case.

In mediation cases in which all issues settled, most attorneys rated the process as very fair (78%) and the rest rated the process as somewhat fair (22%). In the mediation cases in which no issues settled, 19% of the attorneys still rated the process as somewhat or very fair, but the majority (60%) responded that the question was inapplicable. Litigants were evenly split in rating mediation as very fair (46%) or somewhat fair (46%) where all issues were resolved in mediation. This response may reflect the fact that a settlement in mediation is likely the product of a compromise in which neither party walked away with everything he or she wanted or expected. When the mediation resulted in no settlement of issues, the majority of litigants rated the process as either very fair (26%) or somewhat fair (32%), but a few litigants (6%) rated the process somewhat unfair and one-quarter (26%) found the process to be very unfair.

Overall Rating of the Mediation Process?
All Issues Settled

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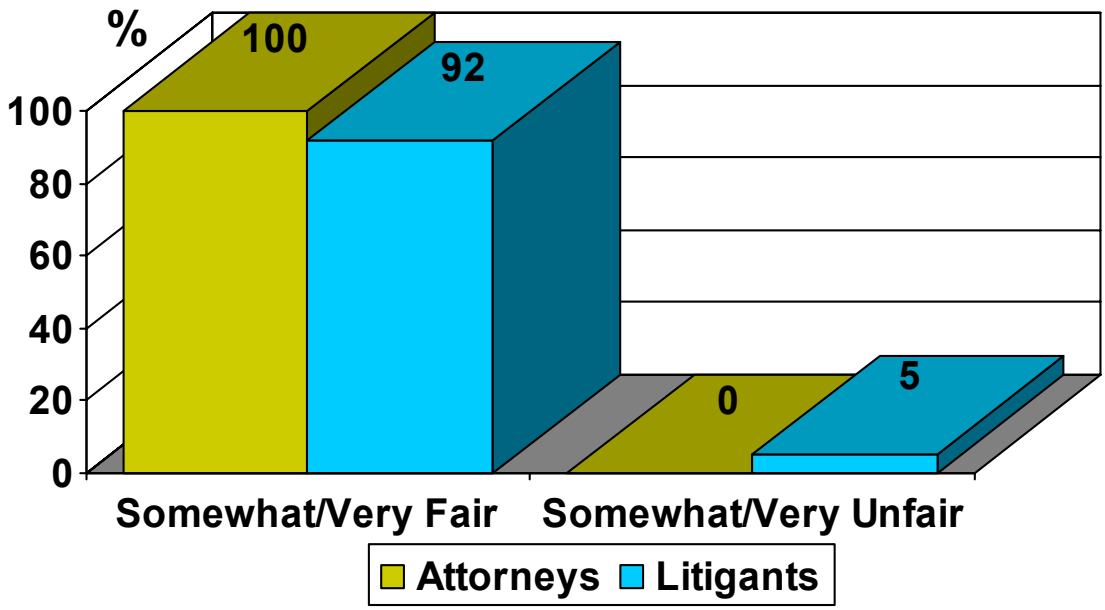

Overall Rating of the Mediation Process?
No Issues Settled

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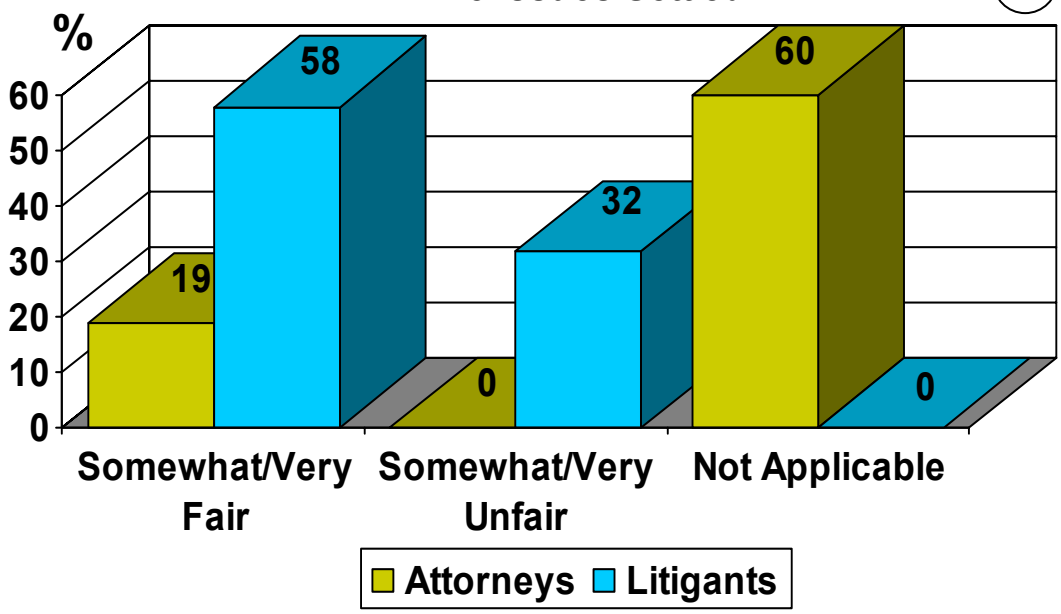
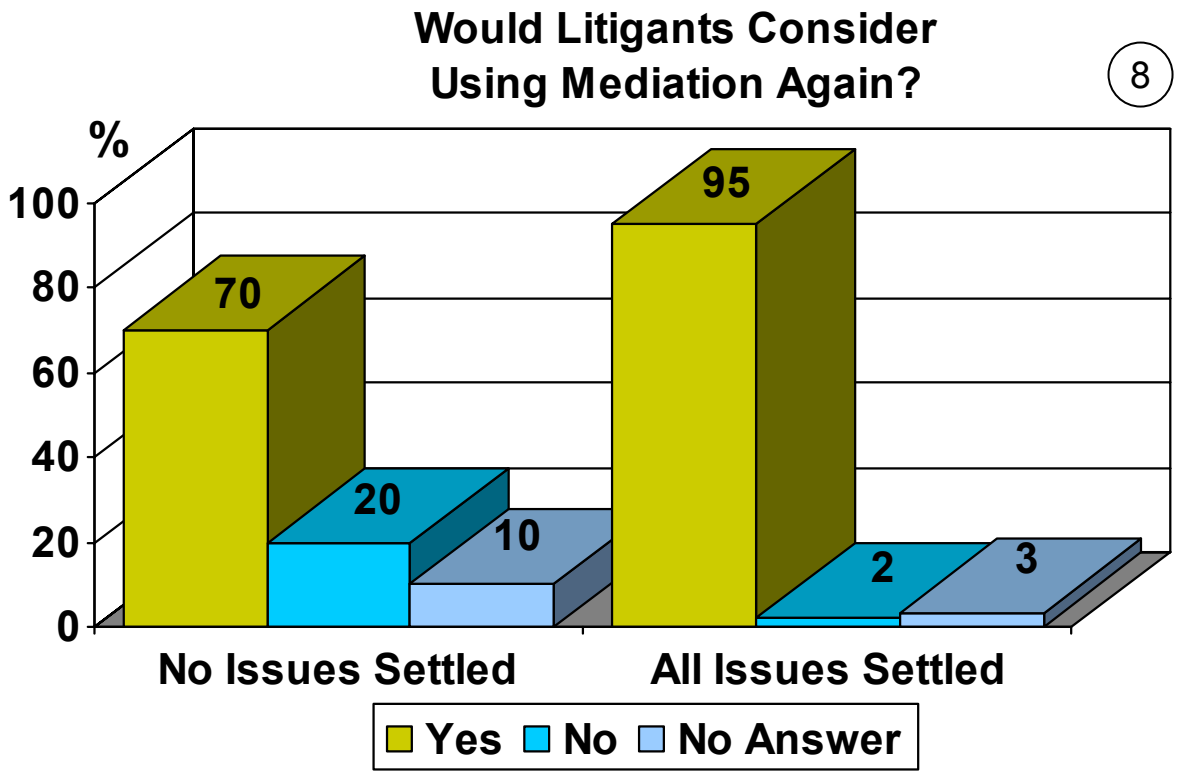


In response to the question of how helpful mediation was in assisting the litigants in the case, most neutrals (85%) and attorneys (79%) found that the process was somewhat or very helpful to the parties and most of the litigants (86%) stated that it was beneficial to attend the mediation. Similarly the majority of litigants (69%) reported that the benefits of attending the mediation outweighed the costs. In cases in which all issues settled, 87% of litigants believed that the benefits outweighed the costs and, in cases in which no issues settled, 50% of litigants believed that the benefits of mediation outweighed the costs.

Finally, and perhaps most significantly, most of the litigants (83%) stated that they would use mediation again. In cases in which all issues settled, 95% of litigants would use mediation again and, in cases in which no issues settled, 70% of litigants would use mediation again. And almost all of the attorneys (94%) concluded that they would recommend mediation to other clients.



CONCLUSION

The survey was designed primarily to assess the perceptions of participating mediators, attorneys and litigants regarding the quality of the court-referred mediation process in the federal district court in the Eastern District of Missouri. Mediation produced settlement in 63% of the 59 cases in which the court obtained survey results. Survey results reflected mediations conducted by well-seasoned neutrals: in the previous two years, 90% of the neutrals had mediated over 50 cases and 7% had mediated 10-50 cases. Sufficient attorney experience with and preparation for mediation coupled with the right timing also contributed to a climate conducive to achieving settlement in mediation. The main reason listed by all participants for lack of settlement in the surveyed cases was serious disagreement over the value of the case, followed by unreasonable attorney(s) or litigant(s) view(s) of the case.

While attorneys reported that the timing of mediation was right for most cases and it is true that federal courts generally refer cases to mediation after allowing time for discovery, the court may wish to consider referring cases earlier in the process. Early referrals could promote earlier settlements, in part because the parties may be less committed to their positions and more amenable to negotiations, and could result in savings in time and costs to the parties, particularly if discovery procedures were reduced. (See 2001 Federal Judicial Center Guide to Judicial Management of Cases in ADR p.14-15).

Attorneys and litigants gave the neutrals high marks for professionalism and effectiveness. The percentage of positive responses on these points exceeded the settlement rate, demonstrating satisfaction with and endorsement of the mediation program even by participants whose cases did not settle. Almost all of the attorneys (97%) and litigants (93%) believed that the neutrals had sufficient expertise in the subject matter of the case. Nearly three-quarters of the litigants (73%) rated the neutrals as effective and only 7% of litigants rated the neutrals as ineffective, clearly demonstrating confidence in the neutrals who participate in the court's mediation program.

Nearly all of the attorneys (95%) also rated the neutrals as unbiased. Litigants almost unanimously reported that the neutrals did not apply too much pressure to settle (98%) and that the neutrals did not favor one side over the other (96%). Almost all attorneys (96%) believed that the neutrals effectively inspired trust which is vital to the mediation process. These responses demonstrate that the court is referring attorneys and litigants to a true mediation process which preserves the neutrality and impartiality of the mediator and the parties' right to self-determination. Attorneys and litigants also reported that mediators explored resolutions other than money, resolutions other than those available at trial, and contributed to improvement of the parties' relationship and future dealings, thus demonstrating that the court's program provides the opportunity for facilitative mediation.

Focusing more broadly on the mediation process, most of the attorneys (92%) and litigants (77%) rated the outcome as somewhat or very fair. Where all issues settled, most attorneys (79%) rated mediation as very fair while litigants split between rating the process as somewhat fair and very fair (46% of each). This difference in perceptions of the degree of fairness between attorneys and litigants may reflect the fact that, even when mediation successfully resolved the case, litigants expected and would have preferred to go to trial. If this assumption is correct, the court may consider the need to educate the public about how rare trials are and why most cases are resolved by agreement.

Most neutrals (85%) and attorneys (79%) reported that the mediation process was somewhat or very helpful to the parties. Most of the litigants (86%) stated that it was beneficial to attend the mediation and the majority of litigants (69%) found that the benefits of attending the mediation outweighed the costs. Finally, and perhaps most significantly, almost all of the attorneys (94%) concluded that they would recommend mediation to other clients and most of the litigants (83%) stated that they would use mediation again.