MAJOR CIVIL CASE MEDIATION PILOT PROGRAM

17th JUDICIAL CIRCUIT OF ILLINOIS

PRELIMINARY REPORT

Keith Schildt
Principal Investigator

James J. Alfini
Project Director

Patricia Johnson
Research Associate

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College of Law
Northern Illinois University
DeKalb, Illinois

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EXECUTIVE SUMMARY

In early 1993, the 17th Judicial Circuit of Illinois began a pilot program to refer major civil cases to mediation. The program's objective is to divert major civil cases from the traditional litigation process by utilizing mediation as an alternative dispute resolution mechanism. Under a grant from the M. R. Bauer Foundation, the Northern Illinois University College of Law conducted a study to assess the pilot program's impact on major civil case processing. At this juncture, the research strongly suggests that the pilot program has been quite successful.

To ascertain the impact of the pilot program, a research design was structured utilizing survey as well as archival data collection to examine a number of the most significant issues relating to the mediation of major civil cases. These include: the participants' satisfaction with the process and the mediator; perceptions of justice and fairness; settlement rates; the types of cases that are amenable to such a process; the effectiveness of different mediators; and perceptions of cost and pace of case processing.

While this is a report of an ongoing program, analysis at this stage suggests that:

1. In total, 149 cases have thus far been referred to mediation; 107 of these have been mediated with the remainder pending mediation. Approximately 44% of the cases mediated have resulted in a settlement at the mediation conference.

2. Personal injury cases make up the bulk (77%) of the types of cases that have been mediated. It appears that personal injury cases are excellent candidates for resolution through mediation. However, further investigation with a larger sample size of other types of cases is needed to better address this issue.

3. Over 60% of the attorney responses indicated that mediation was effective in identifying realistic resolutions to their cases and helped them understand the opposing parties' position. Interestingly, 36% of the attorneys (and 57% of the parties) involved in mediated cases which settled, in whole or in part, had not been confident prior to the mediation conference that a settlement could be reached.

4. The respondents overwhelmingly believe that mediation is less costly and much faster than traditional case processing.
5. The respondents overwhelmingly feel that the mediation process is fair and the mediators are impartial. Significantly, this is true whether or not a settlement is

reached through mediation.

1. In terms of level of satisfaction with the process, attorneys place greater importance than do parties on case outcome and mediation's ability to identify realistic resolutions. Parties' level of satisfaction tends to be a product of the participatory aspect of mediation and mediator qualities. Neither plaintiffs, defendants, nor their respective counsel show greater or lesser likelihood of being satisfied with the process. Overall all participants are very satisfied with the mediation process.

2. The complexity of the case has no apparent influence on either settlement or levels of satisfaction.

3. The length of time that the case has been in the court system has an impact on settlement but not on levels of satisfaction. The older the case the less likely it is to settle through mediation.

4. The average duration of a mediation conference is 140 minutes (less than 2-1/2 hours), at least half of which is spent caucusing.

Overall, the 17th Judicial Circuit pilot program is meeting expectations. The research shows that participants are very satisfied with the quality, pace, and cost saving aspects of mediation. It also shows that, given the opportunity, both parties and attorneys are very willing to try mediation again. The mediators are perceived to be quite fair and impartial. At the same time, the program is helping to relieve the workload of the judges. This last attribute is still on a small scale, but the potential exists for a much greater impact.

INTRODUCTION

The genesis of the 17th Judicial Circuit's mediation program can be traced back to earlier alternative dispute resolution (ADR) legislation that was enacted approximately ten years ago. In an attempt to reduce congestion in the courts and provide swifter justice for litigants, the Illinois legislature enacted a court-annexed arbitration statute in 1985 and provided a limited appropriation to start an arbitration program in 1987. The new law authorized the Illinois Supreme Court to implement non-binding, mandatory, court-annexed arbitration within the state trial court system.

The Illinois Supreme Court established a special arbitration study committee and subsequently adopted rules for arbitration. In 1987, the Supreme Court Committee chose Winnebago County as the site for a pilot program for mandatory court-annexed arbitration of civil cases falling between small claims and the law division status. This decision was based on various factors, including the cooperation of the local bar, the possibility of producing meaningful statistics due to the county's size, and Chief Judge Harris H. Agnew's willingness to spearhead the effort. The Administrative Office of the Illinois Courts worked in conjunction with the 17th Circuit to establish the arbitration program and provide assistance with the administrative aspects of the program. The Arbitration Program in Winnebago County has been a success, diverting many cases from the court's docket and reducing time to disposition in a significant percentage of cases. It has freed up the time equivalent of one-half of a judge in a Circuit with eight judges allowing the Circuit to use that judge's time elsewhere. The success of the arbitration program set the stage for further alternative dispute

resolution experimentation.

Chief Judge Agnew became Chair of the Supreme Court Committee on ADR, now the Illinois Judicial Conference Committee on ADR. The Committee had been looking at other methods of ADR besides arbitration as possibilities for implementing in the state court system. In an effort to cope with burgeoning court caseloads, committee members were interested in dispute resolution methods that quickened the pace of justice at a reasonable cost. With the objective of disposing of filed cases in a way that is fair and perceived to be satisfactory with less judicial resource input per case, the Committee focused on mediation of major civil cases similar to the model used in West Palm Beach, Florida.

The Committee started searching for a suitable county in which to conduct a pilot mediation program. Once again, they found the 17th Circuit to be receptive. Members of the local bar also were committed to finding better ways to accomplish the goal of prompt justice. The Committee agreed that the willingness of the 17th Circuit to be the trial run for major civil case mediation combined with Judge Agnew's involvement and leadership would once again set the stage for meaningful experimentation in alternative dispute resolution techniques in Winnebago County.

The 17th Circuit is a unified circuit consisting of Winnebago and Boone Counties, Illinois, and is part of the Second Appellate District. The county courthouses are located in

Rockford and Belvidere respectively. The Circuit Court in Winnebago County is a trial court of general jurisdiction for both criminal and civil matters. It is presided over by eight circuit and eleven associate judges. The types of cases heard include: law under $30,000 (with mandatory arbitration), law over $30,000 (with "voluntary" mediation), chancery, miscellaneous remedy, eminent domain, municipal corporation, mental health, small claims, probate, dissolution, family, juvenile, felony, misdemeanor, ordinance violation, and traffic.

In February 1993, the first training of mediators occurred for the pilot program. The thirteen mediators, dubbed the "Pilot 13", were all experienced trial attorneys or retired judges. Each agreed to serve as a mediator for five cases without remuneration. In February 1994, an additional nineteen mediators were trained and are beginning to serve as mediators in the Circuit. The majority of data collected for this evaluation reflects the original "Pilot 13" mediators' efforts. At this juncture, it is not possible to assess any change in findings attributable to the additional nineteen new mediators. Appendix "E" however, reports updated statistics for the pilot program that include the work of the additional mediators.

The pilot program is a voluntary endeavor. The attorneys and parties mutually agree to participate in the mediation session. There appeared to be a general consensus among the "Pilot 13" mediators that for the program to be successful, or at least well received, the parties and attorneys should be allowed to have an opportunity to choose not to participate in the mediation process.

The goals of the pilot mediation program include:

* Diversion of eligible cases to mediation to allow the court to process eligible cases faster than was possible before mediation was implemented, thereby reducing the time these eligible cases must wait for disposition, allowing the court to process the remaining cases faster.
* Improvement or stabilization of the speed of disposition of cases not referred to mediation.
* Reduction of case-processing costs where the mediation process results in a settlement.
* Enhance satisfaction of litigants and lawyers with the mediation process and the overall quality of justice.
* Save parties and attorneys effort, time, and expense in cases referred to mediation.

The primary aim of this evaluation effort is to determine whether these anticipated benefits have occurred without any unacceptable adverse consequences. Possible adverse consequences of the mediation program are that the process may result in dissatisfaction with the quality of justice delivered, that the mediation conferences may be used only as devices for discovery, or, in essence, that the program may be ineffectual and thus add a new layer of complexity, bureaucracy, and inconvenience to the litigation process.

This preliminary evaluation cannot, in and of itself, determine whether court-annexed mediation of major civil cases should be implemented on a state-wide basis. Rather, this report and the findings contained herein are intended to inform interested policy makers. It endeavors to provide policy makers and other interested parties with relevant data that would assist them in making informed policy choices.

MEDIATION PROCESS AND THEORETICAL ANALYSIS

The 17th Judicial Circuit mediation program is administered by the Arbitration Administrator in conjunction with Chief Judge Agnew and the mediators. The mediation conferences are held at the ADR Center located in Stewart Square, Rockford. It has been reported that the ADR Center will move into the courthouse within a few years. Its present location, while only a few blocks away from the courthouse, removes it from the formality of the court building. It will be interesting to see if there are any changes in the perceptions of participants when the Center relocates.

All cases filed in the law division claiming damages in excess of $30,000 are eligible to be referred to mediation by agreement of the parties. Once a case is referred to mediation, the parties have fourteen days to select a mediator from the list of approved mediators. Also within fourteen days of the Order of Referral, the parties are to set a date for the mediation session. If they are unable to agree upon a mediator within twenty-one days of the Order, they can go back and ask the court to select one for them. All mediations are to occur within eight weeks of the date of the Order of Referral and are to be completed within seven weeks of the first mediation. As will be discussed later, this prompt scheduling may facilitate settlement.

The parties' attorneys coordinate date selection with the mediator and the Arbitration Administrator. A summary of the case must be presented by the attorneys to the mediator ten days prior to the mediation session. The parties, attorneys, and any other interested

individuals who might assist in facilitating settlement in the mediation session (e.g. lienholders, governmental officials, and insurance company representatives) must be present or available during the mediation conference. All those present during the mediation session sign a confidentiality agreement.

A major purpose of the pilot mediation program is to settle cases. Secondarily, it is to assist the Committee in determining whether mediation is a plausible option for major civil cases throughout the state. The research was designed and conducted with both thoughts in mind.

Court-annexed mediation may serve a number of functions that may be of benefit to the litigants and judicial system. Those subject cases referred to mediation might compel the litigants and their respective counsel to analyze the merits of their case sooner and through the informal, facilitative process of the mediation conference enable them to reach an agreement to resolve the dispute either by accepting an offer made during the conference or by serving as the basis for a post-conference settlement offer. The most obvious way in which mediation may help reduce the duration of a case in the court system is that if most cases referred to mediation reach an agreement at the mediation conference and if a substantial number of these mediated agreements are reached in less time than it would normally take to resolve them. However, an unsuccessful mediation (i.e. one that did not result in a settlement at the session) should not be viewed too negatively. There are other ways in which mediation can prompt earlier disposition of cases.

Research has shown that the vast majority of civil cases filed throughout the United Sates are disposed of through negotiated settlement or simply wither away for lack of interest, money, or time of the litigants. This predominance of disposition through negotiation does not necessarily mean that settlement occurs shortly after filing the case. Witness the many cases on the 17th Circuit's docket that have been there for many years before a settlement is reached. It is reasonable to assume that many cases reach disposition through negotiated settlement when counsel in the case are forced, for whatever reason, to turn their focus on the merits of the case and assess its strengths and weaknesses as well as its net monetary value. Trial is a rarity. This is probably due to the uneconomical nature of trial. A trial normally results in greater expense for all involved, including the court system, than would a negotiated settlement. Mediation may provide the motivation necessary for litigants and their counsel to focus on the value of their case at an earlier stage.

While there exists some strong motivational factors to facilitate settlement, there are also some potentially serious barriers. The adversarial nature of litigation and its resulting polarized stances taken by the opposing parties coupled with certain cognitive barriers to dispute resolution pose the most serious obstacles to settlement.

The potential beneficial functions of court-annexed mediation offer remedies to these obstacles. A prompt time schedule for the mediation conference provides the necessary motivation for counsel to prepare their cases and present the strengths and weaknesses to their clients, providing them with a realistic view of their cases which may foster settlement

prior to the mediation. If the case is mediated, the conference itself may provide the necessary dose of reality about one's case to initiate movement toward settlement during the conference or shortly thereafter.

The potential effects of mediation on the expense of litigation should not be overlooked or underestimated. Obviously trials are an expensive means to resolve a dispute. The potential for mediation to lessen costs by prompting litigants and their counsel to examine their case sooner should result in savings. Less substantial, but still of importance, savings may also result if the mediation fosters settlement with less expenditure of attorney time than would unassisted negotiation. The evaluation of the 17th Circuit program did obtain attorney perceptions regarding the effect of mediation on matters relating to the expense of litigation and this permits inferences to be drawn from their responses.

Mediation may have the potential to quicken the pace of settlement and lessen the monetary burden on litigants but this in and of itself does not necessarily equate with an increase in the quality of justice. Volumes have been written about this subjective topic. The present evaluation takes a more practical stance on assessing the quality of justice derived from mediation by examining the perceptions of the litigants, their counsel, and the mediators about the fairness of the process and the outcome. Indeed, one of the strengths of this evaluation was its ability to obtain a very good picture of the opinions of the participants in mediation.

METHODOLOGY

The primary data sample for this study consists of all of the 17th Circuit's mediated cases from March 1993 through May 1994. The research includes survey data collection on participants in mediation. The survey data collection focuses on a written questionnaire completed by the participants augmented by a series of face-to-face or telephone interviews. The research also includes archival data collection from the records of the 17th Circuit. Appropriate statistical testing of findings have been done.

The data is used to evaluate and offer a composite picture of the effectiveness of the pilot program. The empirical issues relating to program effectiveness can be divided into the following categories:

1. QUALITY

    * Participants' satisfaction with the process
    * Perceptions of justice and fairness

2. PACE

    * Rates of settlements
    * Effects of case type and complexity
    * Impact on case processing

3. COSTS

    * Legal costs to the parties

4. MEDIATOR STYLES

    * Impact of differing mediator strategies
    * Effect of caucusing
    * Application to future training

These empirical issues represent much of the research on mediation. As such, they reflect the wide range of uses of mediation in dispute resolution. Some of these uses include such diverse topics as family mediation, neighborhood justice centers, and environmental and public policy development. One of the underlying assumptions of this research is that major civil case mediation functions differently than these other uses for mediation. For example, many researchers focusing on neighborhood justice centers have correlated effectiveness with mediation's ability to preserve the ongoing relationship of the disputants. Many of the cases expected in this pilot program will be personal injury cases where an ongoing relationship is not assumed to have a significant impact on the success of the mediation. Another example would be the concern for power imbalances between the disputants. This concern stems from the use of mediation in divorce and other family law matters as well as in environmental policy matters. It is assumed that power imbalances will be no different among the mediated cases in this pilot program than in traditional litigation due to the presence of counsel. Indeed, in only two mediated cases were one of the parties not represented by counsel -- neither of these cases settled during the mediation conference. In interviews with mediators involved in this program, it was mentioned that unrepresented parties may bring with them a set a cognitive biases against settlement -- particularly from a distrust of attorneys and the legal system (the mediators are attorneys or retired judges).

The findings for each of these empirical issues allow us to determine the program's

strengths and weaknesses. It should be noted that the program is a pilot attempt to mediate major civil cases. As such, due to sample size constraints and the ongoing implementation of the program, the findings may not allow for as rigorous an analysis as may be wished. However, the findings should provide a useful measure of the program's effectiveness and hopefully assist the 17th Circuit in the continuing administration of the program.

Research activities initially focused on the development and distribution of valid written questionnaires. The questionnaires were developed after an extensive review of the literature dealing with mediation. Also, a review of other evaluation studies was conducted to help illuminate problems and inadequacies as well as the strengths of these other studies. This review will be drawn upon again when examining the results of this study in light of these other efforts.

The distribution of written questionnaires for the mediated cases began shortly after the program's implementation. The questionnaires are given to participants at the Arbitration/Mediation Center at the conclusion of the mediation conference in a sealed envelope and they were asked to complete and return the questionnaire to the NIU College of Law with the return addressed, stamped envelope provided.

The primary concern, at this juncture, is to get some indication of whether or not the pilot program is effective in terms of number of cases mediated, the types of cases, and the settlement rates. More specifically, how do the participants in mediation perceive the

process in terms of quality, pace, cost, and mediator style? Indications thus far demonstrate that the program is well received. Similar to what much of the literature states, mediation is perceived to be cheaper and faster while still providing justice.

RESULTS OF THE EVALUATION

SETTLEMENT RATES-CASE TYPE

Thus far, 107 cases have been mediated, with 51 of those cases reaching a settlement or partial settlement at the mediation conference for an overall settlement rate of 44%. As can be seen from examining Table 1, the majority of cases that have been mediated are personal injury - auto type cases (58%). The type of cases with the highest settlement rate (57%) is personal injury - other (a catch-all category of non-auto related personal injury cases). Contract related cases appear to be somewhat more difficult to settle through mediation. However, with only 12% of the cases mediated of a contract nature, the apparent difficulty may simply be a function of the small sample size. The other categories of case types have too small of a sample size to accurately analyze their potential for mediated settlement.

TABLE 1 SETTLEMENT RATE BY CASE TYPE

CASE TYPE	TOTAL	Settlement Rate
Contract	13	30%
Wrongful death	4	25%
Product Liability	3	33%
Personal Injury-auto	62	49%
Personal Injury-other	21	57%
Foreclosure-Mechanics Lien	3	00%
Other	1	00%
TOTAL	107	44.00%

SETTLEMENT RATES - AGE OF CASE

Settlement rate can be a function of many things. In Table 1, it appears that personal injury cases are more amenable to settlement through mediation than other types of cases. Other factors can have an impact on settlement. The length of time the case has been in the court system may have an effect on settlement rates. Table 2 depicts settlement rate by the year the case was filed. There is a slight association between the year the case was filed and settlement rate. The older the case the less likely it is to reach a mediated settlement. This may be a product of the time and money invested in the older cases. There was no association between case type and year filed for the mediated cases, which rules out the possible explanation that the older cases were types with lower settlement rates.

TABLE 2 SETTLEMENT RATE BY YEAR CASE FILED

YEAR CASE FILED	TOTAL	SETTLEMENT
1987	2	50.00%
1988	4	25.00%
1989	5	40.00%
1990	16	50.00%
1991	32	31.00%
1992	28	50.00%
1993	20	74.00%
TOTAL	107	44.00%

SETTLEMENT RATES - OTHER FACTORS

Many other possible case attributes may affect settlement rate, these include who the mediator was, who the referring judge was, and, perhaps, even the time of day the case was mediated. As to the last point, one would be hard pressed to theorize why time of day would have an impact. Luckily, no statistical difference exists between morning or afternoon mediation conferences. The more likely attributes would be the mediator and the referring judge for the particular cases. The referring judge is the initial starting point for mediation cases. They are the gatekeepers for the program. The judges' suggestion of mediation to particular participants and not others, perhaps based upon some objective criteria, allows for certain cases to be "volunteered" for mediation. Table 3 summarizes settlement rate by referring judge. As can be gleaned from this data, there exists some association between judge and future mediated settlement potential. Though Judge "A" has the highest associated settlement rate, the differences are not statistically strong enough to suggest that the criteria which Judge "A" uses to persuade parties toward mediation or order parties toward mediation is any different or more successful than the other judges.

TABLE 3 SETTLEMENT RATE BY REFERRING JUDGE

REFERRING JUDGE	TOTAL CASE	SETTLEMENT RATE
A	69	44.00%
B	23	59.00%
C	11	44.00%
D	4	00.00%
TOTALS	107	44.00%

It is very likely that the mediator plays a very important role in the potential for a settlement. Indeed, certain mediators are proving to be more successful at achieving settlements than others. As can be seen in Table 4, four mediators have been involved in more than ten cases with somewhat mixed results. Caution should be taken when examining mediator results with such small sample sizes. However, it would appear that three of the mediators with the most experience (i.e. number of cases mediated) have a greater than average likelihood of getting the case to settle.

TABLE 4 SETTLEMENT RATE BY MEDIATOR

MEDIATOR	TOTAL CASES	SETTLEMENT RATE
"A"	14	50.00%
"B"	13	85.00%
"C"	12	67.00%
"D"	11	36.00%
"E"	9	33.00%
"F"	8	50.00%
"G"	6	33.00%
"H"	5	20.00%
"I"	4	50.00%
"J"	4	50.00%
"K"	4	25.00%
"L"	3	67.00%
"M"	2	50.00%
"N"	2	00.00%
"O"	1	100.00%
"P"	1	100.00%
"Q"	1	100.00%
"R"	1	00.00%
"S"	1	00.00%
"T"	1	00.00%
"U"	1	00.00%
"V"	1	00.00%
"W"	1	00.00%
"X"	1	00.00%
TOTALS	107	44.00%

A tentative conclusion at this stage of the research suggests that three factors -- the type of case, the year it was filed, and who the mediator was -- have the greatest impact on outcome of mediated cases. From a logical standpoint, certain cases may be more amenable to mediated settlements than others, certain mediators may be more adept at achieving settlement than others (see Appendix "B" for a review of mediator styles and tactics), and cases that have been in the court system for a shorter period of time may not have parties so entrenched in their position as to preclude settlement. However, this last point about parties and their counsel becoming entrenched does not seem to function in relation to the amount of discovery completed and settlement. There appears to be no association between the amount of discovery and settlement. That is, the amount of discovery completed does not appear to effect settlement rate. This may have important ramifications for case processing. If the amount of discovery does not impact settlement rate, it would appear prudent and frugal to refer cases to mediation as soon as possible after filing, which is what the data on case year demonstrated. Obviously, a certain amount of time is needed to adequately assess the case and determine its merit. These findings gain anecdotal support from interviews conducted with attorneys involved in mediated cases. As one attorney stated, it "doesn't seem to matter if discovery is almost complete or just starting as long as both sides have been able to evaluate [the] case properly."

The average length of a mediation conference is 140 minutes (two hours, twenty minutes). The overall range is from 50 to 260 minutes for each conference. There is no statistical association between conference length and settlement rate. For over 83% of the conferences,

caucusing represents at least 50% of the conference session, with 41% of the conferences caucusing for over 75% of the session. As was the case with length of conference, no association exists between amount of caucusing and settlement rate.

POST-MEDIATION EFFECTS ON NON-SETTLED CASES

Though settlement rate is one important objective indicator of a program's success, it is important to note that a successful mediation conference does not necessarily mean that settlement occurred at the conference. The mediation conference may have set the stage for future negotiations where an agreement is reached.

This study is attempting to ascertain how effective the program is at settling cases after a mediation conference occurred where no agreement was reached. Two approaches are possible to determine this effectiveness. First, participants can be asked to rate how well the "mediation conference improved the chances that this case will be settled prior to trial?" This can be termed post-mediation expectations. The second approach requires tracking of the cases through the archival computerized records of the circuit. The latter approach is made somewhat difficult by the lack of promptness by which the circuit updates its case data coupled with the lag time of filing the necessary documents by attorneys. Participants' post-mediation expectation responses show that 43% of the attorneys, 26% of the parties, and 53% of the mediators suspect that the conference will improve the likelihood for pre-trial settlement. These responses are interesting, given the findings of research showing that approximately 90% of filed cases never reach trial. The data may be skewed by the subjective

nature of questionnaires. The parties may have an unrealistic appraisal of the worth of their case, which may account for their low rating of post-mediation settlement. It could also be that they simply desire "their day in court." Further, in interviews conducted with both mediators and attorneys who have been involved in mediated cases that did not reach settlement at the session, it was repeatedly mentioned that failure to reach settlement was as one mediator stated, an "honest disagreement over the value of the case." When there exists significant differences in case value, no amount of mediation may be able to move the parties from their position. In these cases the traditional adversarial process appears to be necessary.

OVERCONFIDENCE AS A BARRIER TO SETTLEMENT

One's level of confidence in their case certainly should have an impact on settlement negotiations. Much has recently been written on the effect of overconfidence as a barrier to resolving disputes. Inferences can be drawn from the questionnaires that suggest overconfidence does play a negative role in settling cases. When asked if they "will fare better if this case goes to trial" parties and attorneys agreed 55% and 48% respectively. Of course, this could be a product of either excessively low or high demands by the opposing party. However, in interviews with the mediators it was stressed that many of the mediations that did not result in a settlement were a product of an inability of one or more of the participants to properly assess the value of their case.

PERCEPTIONS OF QUALITY, PACE, AND COST

Perceptions of the participants play an important role in evaluating the program. In the case of post-mediation impact on settlement, those perceptions may not be as accurate as archival data. However, the measurement of the subjective aspects of mediation are best analyzed through examining the perceptions of the participants. Questions and issues surrounding the satisfaction, fairness, and assessments of the overall process as well as perceptions of cost savings and pace of negotiations are best measured with attitudinal surveys.

PACE

When asked to compare the pace of settlement through mediation with the pace of settlement through the standard litigation process, all respondents overwhelmingly felt that mediation was much quicker. Indeed, 95% of the attorneys and 98% of the parties agreed that mediation was a faster route to settlement. The important finding here is that attorneys believed mediation to be quicker. Attorneys should have a much better understanding of pace than do parties because they, obviously, have much more experience with the standard litigation process. It should be noted that many of the parties (approximately 60%) to the mediated cases were representatives of insurance companies. These individuals are assumed to be repeat players in the court system and as such should have some knowledge of the pace of justice in the traditional litigation process.

COST

Parties were asked if they felt "mediation was less costly than had a settlement been reached through litigation." Not one party respondent felt that mediation was more costly. The cost savings aspect of mediation was examined a little differently for attorney responses. Attorneys were asked to estimate the attorney fees and all other legal cost (excluding settlement amounts) that their client would incur for the mediated case and also these same costs had the case been settled by litigation. The modal and mean average cost of mediated settlements was between a range of $5,000 and $9,999, while the modal and mean average cost of the same cases had it been settled through litigation was between $10,000 and $24,999. It would appear that the parties' perceptions of cost savings is accurate based upon the attorney responses, a substantial savings results through mediated settlements. An important and substantial savings in attorney costs is associated with mediation.

QUALITY - PARTICIPANT SATISFACTION

Apparently mediation is a quick and relatively inexpensive means to resolve major civil case disputes. However, parties to a dispute are seeking a fair and just resolution not just a quick fix. The measurements of participant perceptions of the process both in overall satisfaction and specifically the fairness of the process are the most important elements of a successful program. Tables 5, 6, and 7 review the overall satisfaction of participants in the mediation process. Overall satisfaction was measured in four ways. First, respondents were asked if they were "satisfied with the mediation process." The results show that mediators and parties

are more satisfied than attorneys are with the process. However, overall respondents showed high levels of general satisfaction. The lower level of general satisfaction among attorneys was found to be highly correlated with outcome (higher levels of satisfaction were correlated with mediations that resulted in settlement). This same condition was not apparent among the parties nor the mediators. Attorneys may be more results-oriented than parties and mediators. It should also be noted that there existed no statistical difference between plaintiffs and defendants and their respective counsel regarding general satisfaction, nor did the type of case have an impact on general satisfaction.

TABLE 5 GENERAL SATISFACTION WITH PROCESS

PARTICIPANT TYPE	SATISFIED WITH MEDIATION PROCESS	WILLING TO TRY MEDIATION AGAIN
Party	81.00%	73.00%
Attorney	65.00%	87.00%
Mediator	97.00%	(not asked)

Another measure of satisfaction is the likelihood that individuals would want to try the mediation again. As shown in Table 5, attorneys were more likely than parties to want to try mediation again. Parties' lower showing here may be a product of their overall desire not to be involved in a major civil case in the future. When cross-tabulated by occupation, the party results show that those occupations with the higher likelihood of past or future court experiences (e.g. claims representatives of insurance companies) are more likely to want to try mediation again than the one-timers.

Of the cases that reached settlement through mediation, satisfaction with the agreement becomes an important component of overall satisfaction. Table 6 summarizes respondent's satisfaction with the agreement that was reached. Generally, parties were a little more satisfied with the agreement than attorneys. It is unclear why this difference exists. This is especially true when examining the "unsure" response category. Attorneys are far more likely to be unsure if they are satisfied with the agreement reached. Yet, these should be the individuals with the knowledge and experience to compare these outcomes with the traditional process outcomes. Proponents of mediation strongly suggest that mediation is a win-win situation. To test this notion, parties were asked if they felt they were the "loser in the case" and attorneys were asked if "their client was the loser in the case." Table 7 shows that only 8% of the attorneys felt their client was the "loser" and 2% of the parties felt they were the "loser" in the case. It is interesting to note that although the vast majority of the parties were satisfied with the agreement reached, 31% of them were not sure if they were the winner or loser in the case. This may reflect the informal, non-adversarial process of mediation where winning or losing is replaced or muted by the desire to resolve the dispute in a cooperative fashion.

The notion of a cooperative atmosphere during mediation was mentioned quite often during interviews. This is especially true when participants were asked to compare mediation with pre-trial settlement negotiation. Pretrial conferences in the presence of a judge tend to be viewed negatively by the interviewees. They depict pretrial conferences as rushed and fostering bitterness (albeit unwarranted) in the minds of the participants involved in them.

Another factor mentioned that separates pre-trial conferences from mediation conferences is what can be termed the confidentiality factor. As one mediator stated, "In pretrial conferences everybody hears it and you're going to be very guarded as to what you say." The trust accrued to the mediator when discussing confidential matters in caucus provides for a "different dynamic than other settings." One that is "much more effective and probably has a better likelihood of [achieving] some kind of settlement."

TABLE 6 SATISFACTION WITH SETTLEMENT

PARTICIPANT	SATISFIED WITH SETTLEMENT REACHED	NOT SURE IF SATISFIED
Party	90.00%	8.00%
Attorney	79.00%	15.00%

TABLE 7 WAS THERE A "LOSER" IN THE CASE?

PARTICIPANT	THEY OR THEIR CLIENT WERE NOT THE LOSER	THEY WERE NOT SURE
Party	67.00%	31.00%
Attorney	74.00%	19.00%

Overall satisfaction with the process is quite high. Individuals stated that they would likely want to try mediation again regardless if a settlement had been reached or not. Of those cases where a settlement was reached, respondents were very satisfied with the agreement and only a very few felt they were the loser in the situation.

QUALITY - PERCEPTIONS OF JUSTICE AND FAIRNESS

The quality of mediation has at its foundation perceptions of justice and fairness. These perceptions deal with the procedural, corrective, and comparative aspects of mediated justice. Participants were asked to respond to these different aspects of justice. A general question was asked to all participants dealing with the procedural aspects of mediation. Table 8 shows that the overwhelming majority of participants felt that the process was fair. Not one party and only 3% of the attorneys felt that the process was not fair, 9% of the attorneys and 16% of the parties were not sure. With an obvious vested interest in the answer, mediators were almost unanimous in the feeling that the process was fair.

TABLE 8 PROCEDURAL FAIRNESS

PARTICIPANT	PROCESS WAS FAIR	NOT SURE
Party	85.00%	15.00%
Attorney	88.00%	9.00%
Mediator	98.00%	2.00%

If the case settled through mediation, other aspects of justice and fairness can be examined. First, as perceived by the participants, how fair was the settlement? Justice also has a corrective aspect. Was a wrong corrected? Further, if we compare perceptions of justice of mediated settlements with perceptions of justice had the case been litigated, would similar settlements have occurred? The responses to these questions are summarized in Tables 9, 10, and 11. A vast majority of the respondents felt that the agreement reached was

fair (Table 9). Most of the respondents felt that "the issue that initiated this case has been corrected with this settlement" (Table 10). When comparing the results of the mediated settlement with the possible results had the case been litigated, the findings are less conclusive (Table 11). A majority of mediators felt that comparative results would have occurred. For the most part, parties and attorneys are less sure of how comparable are the results. Comparability may be difficult, since most of these were personal injury cases where the expected results, especially in a jury trial are akin to "a roll of the dice." This is certainly true for some parties who do not have the experience to accurately determine if the results are similar.

TABLE 9 PERCEIVED FAIRNESS OF SETTLEMENT

PARTICIPANT	OUTCOME WAS FAIR	NOT SURE
Party	77.00%	19.00%
Attorney	83.00%	13.00%
Mediator	97.00%	3.00%

TABLE 10 CORRECTIVE ASPECTS OF SETTLEMENT

PARTICIPANT TYPE	ISSUE INITIATING THE CASE HAS BEEN CORRECTED	NOT SURE
Party	62.00%	31.00%
Attorney	61.00%	17.00%

TABLE 11 COMPARATIVE ASPECTS OF SETTLEMENT

PARTICIPANT TYPE	LITIGATION WOULD HAVE HAD SAME RESULTS	NOT SURE
Party	35.00%	63.00%
Attorney	50.00%	25.00%
Mediator	72.00%	25.00%

QUALITY - PERCEPTION ABOUT THE MEDIATORS

Last, but certainly not least, perceptions of the quality of the mediation conference may depend a great deal on the mediator. How impartial and fair a mediator appears, how interested in settling the case a mediator appears, and how encouraging a mediator appears are all important questions in evaluating the quality of the mediation experience. Overwhelmingly, both parties and attorneys agreed that the mediator was impartial and fair, 93% and 93% respectively. Similarly, both parties and attorneys agreed that the mediator appeared genuinely interested in the settlement of the case, 92% and 94% respectively.

How encouraging a mediator should be in getting parties to settle and how hard should a mediator push parties to settle poses an interesting problem. The literature on mediation suggests that mediators are merely facilitators, not instigators. According to this line of thought, mediators should not push parties toward settlement. The primary concern is that parties will feel coerced and lose their control over the situation. The findings thus far suggest that this is not relevant to major civil case mediation. First, major civil case mediation differs from other forms of mediation due to the presence of counsel at the

mediation conference. Indeed, in only two instances to date in the pilot program have parties represented themselves at mediation (neither of which resulted in a settlement). Second, 21% of the attorneys felt that the mediator did not push hard enough for settlement and 12% felt that the mediator did not encourage the parties to reach settlement. Though this is highly correlated with outcome (attorneys are more likely to feel this way if a settlement did not occur), it is difficult to determine if this is a product of mediator style or simply the attorney's blaming the mediator wrongly for lack of settlement. Third, while only 7% of the parties felt the mediator did not push hard enough, 14% felt that the mediator did not encourage settlement. At the same time, the vast majority of the parties responded that they felt they were in control (71%) and actively participated (82%) in the attempted mediated resolution of the dispute. This means a majority of the parties felt the mediator did push hard for settlement yet this did not affect the parties' perceptions of control. Indeed, 81% of the parties did not feel coerced to accept a settlement offered to them. It would appear that a more encouraging mediator, one that pushes parties toward settlement, would be accepted by the parties because they would still retain control and actively participate.

A mediator who pushes hard for settlement would probably be accepted by attorneys. A theme throughout the interviews with attorneys who have participated in mediated cases is that the "mediators did not take an active enough role." On at least two occasions, interviewees went so far as to suggest that "mediators need to be more aggressive, mediator[s] who do that are more effective." Attorneys stressed that the mediators need to be more "proactive" and "not just passively shuttle figures back and forth." Attorneys feel that the best mediators are the

ones who force both sides to question their own perception of the case and change their positions as a result. One attorney was especially disgruntled that early on in the conference the mediator stated in joint session that the parties were too far apart and they would not be able to settle. The attorney felt that this thwarted any further communication during the conference.

It was also pointed out in the interview process that the reason mediators are not as proactive and assertive as attorneys and, perhaps, parties would like is due to the training they initially received. As observers at the initial training, the researchers are aware that the mediators had stressed to them the importance of being a facilitator. This may have been construed to mean that they should assume a passive role. This type of reactive or passive mediator style is also prevalent in the academic as well as practitioner literature.

It appears that participants in a mediation would appreciate a more active role for the mediator. This role would be "more effective to help parties accurately assess the 'trialability' of the case, how it will play to a jury, etc." Being agents of reality and communicating that to both sides seems to be the desire of a majority of the participants in this evaluation.

The concept of mediation as a communication tool was evident throughout the interviews. Communication was seen as the product of a cooperative forum where negotiation could informally occur. Discussions that would normally not occur in unassisted negotiation or in pretrial conference occur in mediation because of the confidential nature of the procedure. As one attorney put it, "attorneys are normally very frank with the mediator, it is a way to filter

through to the other side tidbits of information that you want them to know so they can persuade their client to either increase their offer or lower their demand." At other times, an attorney will ask the mediator not to tell the other side certain information.

MEDIATION AS A DISCOVERY TOOL

One of the fears about this type of mediation is that attorneys will use the mediation conference as a discovery vehicle. Respondents overwhelmingly felt that the conference was not being manipulated in this manner. Only 7% of the attorney respondents felt that this was occurring, while only 2% of the mediators had this same feeling. The professionalism and integrity of the local bar is reflected in these responses. Also, the local bar's legal ability is reflected in the perceptions of the parties. Parties stated that their attorney adequately represented them in 95% of the responses. Further, mediators responded that in 80% of the cases, attorneys tended to be of even quality and ability. In follow-up interviews with the mediators, it was stated that they felt that in some instances one side has greater expertise than the other but that it did not have a negative impact on the process. The mediators felt that the cooperative nature of the process dilutes the effect of one side being of greater talent than the other. The biggest stumbling block that unequal caliber played in the process was if an attorney was ill-prepared or lacked the knowledge to fully assess the value of his case.

ROCKFORD'S "VOLUNTARY" PROGRAM

Another fear about the program seems to be a bit more well-founded. The program is intended to be either voluntary or judge ordered. In many instances it would appear that

neither the attorney nor the party desired the case ordered to mediation. In the open ended questions in the party questionnaire and in interviews with attorneys it has been repeatedly stated that they were, in essence, ordered to mediation by the judge or as one party put it: "strongly suggested to try mediation by the judge." However, this is only slightly reflected in the answers given by respondents to the written questionnaire. Interviews with the mediators also reflect this somewhat mandatory aspect of what is, perhaps incorrectly, assumed by the local bar to be a voluntary program. Mediators are troubled with this because they feel they are getting some cases that cannot be resolved through mediation. Mediators feel that the judges need to act more as gatekeepers to the program and screen cases for their appropriateness and ripeness for mediation.

FINDINGS - CONCLUSION

At this point in the research, three conclusions can be drawn from the data. First, settlement seems to be a function of case type, year case filed, and mediator. Recently filed personal injury cases appear to be the most prone to possible settlement through mediation. The function of the mediator needs to be further explored. Some mediators are proving themselves more successful at reaching settlement than others. However, the role of mediation and the mediator on post-conference settlement still needs to be explored. It was thought early on in the research that the threat, if you will, of mediation would help induce parties to reach agreement prior to the mediation. This has proven not to be the case. To date, only four cases settled prior to the mediation session. The post-mediation effect is the one that offers the most promise at this point.

Second, rates of satisfaction are generally consistent between parties and attorneys. Interestingly, the reasons for satisfaction differ. Attorney satisfaction is best explained by a combination of perceptions of procedural fairness, outcome, and the reality check function that mediation serves. Attorneys seem to be outcome and process oriented individuals. They view the process of mediation as fair and appreciate its ability to foster realistic resolutions to disputes. On the other hand, party satisfaction seems to stem from perceptions of the mediator's interest in the resolution of the case and the mediator's impartiality coupled with a sense that they were not forced to reach a settlement at the conference. However, the reality check function of mediation is appreciated by parties as well, which is mostly a product of the number of insurance company representatives in the sample. The obvious difference between parties and attorneys here is that parties do not seem to be as outcome oriented as attorneys as it pertains to being satisfied with the process. Parties seem to be merely satisfied with having an informal, non-binding forum in which to express their side of the case. That outcome is not associated with satisfaction is consistent with some of the recent research on party satisfaction with court-annexed arbitration (see e.g. Lind and Tyler, The Social Psychology of Procedural Justice).

Third, the literature on mediation strongly suggests that successful mediations are most likely to occur when the parties have an ongoing relationship, either personal or business. As can be seen from the data in this study, the majority of cases tended to be of personal injury-auto type nature. It was assumed at the outset that the ongoing relationship element would be missing from this program. However, this has not entirely been the case. In 50% of the responses,

parties stated that they knew the opposing party prior to the case. When correlated to examine these effects on outcome and satisfaction, it was found that there was no association between knowing the opposing party prior to mediation and levels of satisfaction with the process or outcome. This finding apparently seems to contradict the mediation literature.

It should be noted that the case summaries provided to the mediators before the session proved very useful. The most often voiced complaint from mediators was not on the summary's quality but its timeliness. By local rule, the summary should be delivered to the mediator no more than ten days before the session is to occur. A second complaint was length. It appears that mediators prefer a concise statement rather than a lengthy brief.

CONCLUSION

These findings suggest that mediation is cheaper, faster, and equitable. These same conclusions have been drawn by other researchers examining civil case mediation. A recent study of Florida's 13th Judicial Circuit shows very similar results to the ones thus far expressed in this study. The major difference is that, in the circuit in Florida, contract cases were the most amenable to a mediated settlement and personal injury cases the least likely to settle through mediation. The findings contained herein are exactly the opposite. A possible explanation for this difference may be the mediator's qualifications. The mediators for the 17th Circuit's program are, for the most part, practicing attorneys, who have various areas of specialization. This may allow them greater levels of substantive knowledge about one case type as compared to another. Whether this expertise may help foster settlement, deserves future examination because it has ramifications on who should be mediators of major civil cases in general and who should be the possible mediators in any one specific case.

Overall, it appears that the 17th Circuit's Pilot Mediation Program is meeting the needs of the area's legal community and its residents. It is providing an alternative to traditional litigation while demonstrating the viability of mediation. The initial success of mediation coupled with the ongoing arbitration program in the circuit demonstrates that the 17th Circuit continues to be at the forefront of the ADR movement in Illinois.

APPENDIX "A"
QUESTIONNAIRES

Questionnaires for the participants in the mediation sessions were developed after are view of the academic and practitioner literature dealing with ADR. Questionnaires were developed for each category of participant; mediator, attorney, and party. These written questionnaires were distributed to the participants at the conclusion of the mediation session in sealed envelopes containing the questionnaire, a cover sheet, and a stamped envelope. Participants were asked to return the questionnaires to the Northern Illinois University College of Law

The party questionnaire included open-ended questions to provide these participants with the opportunity to express the opinions beyond what was contained in the closed-ended questions. The mediator and attorney questionnaires did not contain this feature because follow-up face-to-face interviews were conducted with a sample of these individuals. This decision was made to keep the attorney and mediator questionnaires as brief as possible in the hopes that it would increase response rate. Face-to-face interviews were decided to be too much of an intrusion into the personal lives of the parties.

Contained in this appendix are copies of the questionnaires used for each category of participant and the results of the questions in summary format. The actual questionnaires are on file with the researcher.

PILOT MEDIATION PROGRAM
17th CIRCUIT COURT
CONFIDENTIAL ATTORNEY QUESTIONNAIRE
WITH FREQUENCY DISTRIBUTIONS

SECTION I. QUESTIONS

All attorney respondents were asked to indicate if they strongly agreed, agreed, neither agree nor disagree, disagree, strongly disagree to fifteen statements that were intended to ascertain their general reaction to the mediation process. The sample size was 124 respondents. Responses are given in percentages and may total higher than 100% due to rounding.

QUESTION 1 "The mediator appeared to be genuinely interested in the settlement of the case" (Intent: Assessment of the mediator)

Strongly Agree	58%
Agree	36%
Neither Agree nor Disagree	5%
Disagree	1%
Strongly Disagree	0%

QUESTION 2 "The mediation process was effective in identifying realistic resolutions to this case" (Intent: Mediation as a 'reality check' for participant)

Strongly Agree	20%
Agree	41%
Neither Agree nor Disagree	26%
Disagree	11%
Strongly Disagree	2%

QUESTION 3 "The mediator did not encourage the parties to reach a settlement" (Intent: Assessment of the mediator)

Strongly Agree	1%
Agree	11%
Neither Agree nor Disagree	19%
Disagree	35%
Strongly Disagree	34%

QIJESTION 4 "The mediation process was ineffective in helping you understand the opposing party's position" (Intent: Mediation as a 'reality check' for participant)

Strongly Agree	2%
Agree	15%
Neither Agree nor Disagree	20%
Disagree	45%
Strongly Disagree	17%

QUESTION 5 "Mediation was inappropriate for this type of case" (Intent: Process Appropriateness)

Strongly Agree	5%
Agree	2%
Neither Agree nor Disagree	8%
Disagree	51%
Strongly Disagree	34%

QUESTION 6 "The mediator was impartial and fair" (Intent: Assessment of mediator)

Strongly Agree	61%
Agree	32%
Neither Agree nor Disagree	5%
Disagree	2%
Strongly Disagree	0%

QUESTION 7 "Opposing counsel appeared to be using the mediation conference as a discovery vehicle" (Intent: Process Appropriateness)

Strongly Agree	1%
Agree	6%
Neither Agree nor Disagree	10%
Disagree	52%
Strongly Disagree	32%

QUESTION 8 "You felt pressured to mediate this case" (Intent: Coercion to mediate)

Strongly Agree	6%
Agree	9%
Neither Agree nor Disagree	10%
Disagree	44%
Strongly Disagree	26%

QUESTION 9 "The legal issues in this case were complex" (Intent: Complexity of matters of law in this case)

Strongly Agree	7%
Agree	14%
Neither Agree nor Disagree	12%
Disagree	38%
Strongly Disagree	30%

QUESTION 10 "You feel that you were in control of the attempted resolution of this case" (Intent: Process control)

Strongly Agree	15%
Agree	46%
Neither Agree nor Disagree	26%
Disagree	11%
Strongly Disagree	1%

QUESTION 11 "You are satisfied with the mediation process" (Intent: Process satisfaction)

Strongly Agree	21%
Agree	44%
Neither Agree nor Disagree	19%
Disagree	14%
Strongly Disagree	3%

QUESTION 12 "The mediator did not push hard enough for settlement" (Intent: Assessment of the mediator)

Strongly Agree	5%
Agree	16%
Neither Agree nor Disagree	15%
Disagree	43%
Strongly Disagree	21%

QUESTION 13 "The mediation process was fair" (Intent: Process satisfaction)

Strongly Agree	30%
Agree	58%
Neither Agree nor Disagree	9%
Disagree	3%
Strongly Disagree	0%

QUESTION 14 "You expect an ongoing business relationship with your client" (Intent: Stability of relationship with client)

Strongly Agree	40%
Agree	39%
Neither Agree nor Disagree	15%
Disagree	5%
Strongly Disagree	1%

QUESTION 15 “It is not likely that you will want to try mediation again" (Intent: Process satisfaction)

Strongly Agree	3%
Agree	3%
Neither Agree nor Disagree	7%
Disagree	54%
Strongly Disagree	53%

SECTION II. All attorney respondents were asked to provide general information about their backgrounds. Sample size was 124 respondents.

QUESTION 16 "Which party did you represent in this case?"

Plaintiff	47%
Defendant	51%
Other	2%

QUESTION 17 "How would you describe your law practice?"

Individual Practice	10%
Firm 2-10 Attorneys	47%
Firm 10+ Attorneys	42%
Corporate Counsel	1%
Other	1%

QUESTION 18 "Approximately how many prior mediated cases have you been involved in?"

This was first	36%
1-4	47%
5-8	10%
9 or more	14%

QUESTION 19 "What is your gender?"

Male	90%
Female	9%
No response	1%

QUESTION 20 "What year were you born?"

Average Year	1951
Modal Year	1953

QUESTION 21 "In what year did you begin practicing law?"

Average Year	1979
Modal Year	1973

QUESTION 22 "How would you categorize your practice?"

No litigation	1%
Some litigation, <25%	7%
25% to 50% litigation	10%
>50% litigation	82%

QUESTION 23 "What was the status of discovery at the time of the mediation conference?"

Not begun	2%
Begun, but not completed	36%
Essentially complete	46%
Completed	16%

QUESTION 24 "Have you been involved in an arbitrated case in this Circuit?"

Yes	86%
No	14%

QUESTION 25 "Did a settlement result at the mediation conference?"

Yes	40%
No	57%
Partially	3%

SECTION III. Attorneys were asked to respond to this section only if a settlement was reached or partially reached at the mediation conference. Sample size was 54 respondents.

QUESTION 26 "You are satisfied with the settlement that was reached" (Intent: Outcome satisfaction)

Strongly Agree	26%
Agree	53%
Neither Agree nor Disagree	15%
Disagree	4%
Strongly Disagree	2%

QUESTION 27 "If this case had been litigated, you believe it would have resulted in approximately the same outcome" (Intent: Outcome satisfaction)

Strongly Agree	8%
Agree	42%
Neither Agree nor Disagree	25%
Disagree	26%
Strongly Disagree	0%

QUESTION 28 "You think the mediation process was a quicker alternative to litigation for this case" (Intent: Perceptions of pace)

Strongly Agree	36%
Agree	59%
Neither Agree nor Disagree	6%
Disagree	0%
Strongly Disagree	0%

QUESTION 29 "Prior to the mediation conference, you were not confident that a mediated settlement could be reached" (Intent: Pre-mediation expectations)

Strongly Agree	2%
Agree	34%
Neither Agree nor Disagree	30%
Disagree	30%
Strongly Disagree	4%

QUESTION 30 "You think the outcome of this dispute was fair" (Intent: Outcome fairness)

Strongly Agree	11%
Agree	72%
Neither Agree nor Disagree	13%
Disagree	4%
Strongly Disagree	0%

QUESTION 31 "You think the parries will comply with the settlement that was reached"(Intent: Perception of compliance)

Strongly Agree	53%
Agree	45%
Neither Agree nor Disagree	2%
Disagree	0%
Strongly Disagree	0%

QUESTION 32 "You feel that your client was the loser in this case" (Intent: Outcome satisfaction)

Strongly Agree	2%
Agree	6%
Neither Agree nor Disagree	19%
Disagree	53%
Strongly Disagree	21%

QUESTION 33 "You feel that the issue that initiated this case has been corrected with this settlement"

Strongly Agree	8%
Agree	53%
Neither Agree nor Disagree	17%
Disagree	19%
Strongly Disagree	4%

QUESTION 34 "Please estimate the attorney fees and all other legal costs (excluding monetary settlement amounts) that your client will incur for this case"

Under $1,000	2%
$1,000 to 2,499	9%
$2,500 to 4,999	21%
$5,000 to 9,999	38%
$10,000 to 24,999	23%
$25,000 to 49,999	4%
>$50,000	4%

QUESTION 35 “Please estimate the attorney fees and all other legal costs (excluding monetary

settlement amount of that your client would have incurred had this case been settled by litigation"

Under $1,000	0%
$1,000 to 2,499	2%
$2,500 to 4,999	4%
$5,000 to 9,999	32%
$10,000 to 24,999	51%
$25,000 to 49,999	8%
>$50,000	4%

SECTION IV. Attorneys were asked to respond to this section only if a settlement was not reached during the mediation conference. Sample size was 70 respondents.

QUESTION 36 "The mediation conference improved the chances that this case will settle prior to trial" (Intent: Post-mediation expectations)

Strongly Agree	6%
Agree	37%
Neither Agree nor Disagree	26%
Disagree	24%
Strongly Disagree	7%

QUESTION 37 "You are confident that your client will fare better if this case goes to trial" (Intent: Overconfidence as a cognitive barrier to resolution)

Strongly Agree	21%
Agree	27%
Neither Agree nor Disagree	41%
Disagree	7%
Strongly Disagree	3%

QUESTION 38 "Prior to the mediation conference, you were confident that a mediated settlement could be reached" (Intent: Pre-mediation expectations)

Strongly Agree	2%
Agree	36%
Neither Agree nor Disagree	24%
Disagree	34%
Strongly Disagree	4%

QUESTION 39 "Please estimate the attorney fees and all other legal costs (excluding any monetary settlement amounts) that your client will incur for this case if it settles prior to trial"

Under $1,000	6%
$1,000 to 2,499	11%
$2,500 to 4,999	14%
$5,000 to 9,999	25%
$10,000 to 24,999	20%
$25,000 to 49,999	14%
>$50,000	8%

OUESTION 40 "Please estimate the attorney fees and all other legal costs (excluding any monetary settlement amounts) that your client will incur of this case goes to trial"

Under $1,000	0%
$1,000 to 2,499	8%
$2,500 to 4,999	11%
$5,000 to 9,999	27%
$10,000 to 24,999	22%
$25,000 to 49,999	13%
>$50,000	18%

PILOT MEDIATION PROGRAM17th CIRCUIT COURT
CONFIDENTIAL PARTY QUESTIONNAIRE
WITH FREQUENCY DISTIUBUTIONS

SECTION I. QUESTIONS

All party respondents were asked to indicate if they strongly agreed, agreed, neither agree nor disagree, disagree, strongly disagree to fifteen statements that were intended to ascertain their general reaction to the mediation process. The sample size was 96 respondents. Responses are given in percentages and may total higher than 100% due to rounding.

QUESTION 1 "The mediator appeared to be genuinely interested in the settlement of the case" (Intent: Assessment of the mediator)

Strongly Agree	50%
Agree	42%
Neither Agree nor Disagree	8%
Disagree	0%
Strongly Disagree	0%

QUESTION 2 "The mediation process was effective in identifying realistic resolutions to this case" (Intent: Mediation as a 'reality check' for participant)

Strongly Agree	23%
Agree	46%
Neither Agree nor Disagree	19%
Disagree	6%
Strongly Disagree	6%

QUESTION 3 "The mediator did not encourage the parties to reach a settlement" (Intent: Assessment of the mediator)

Strongly Agree	5%
Agree	9%
Neither Agree nor Disagree	17%
Disagree	42%
Strongly Disagree	27%

QUESTION 4 "The mediation process was ineffective in helping you understand the opposing party's position" (Intent: Mediation as a 'reality check' for participant)

Strongly Agree	5%
Agree	16%
Neither Agree nor Disagree	19%
Disagree	43%
Strongly Disagree	18%

QUESTION 5 "You felt forced to accept the settlement offered by the opposing party"(Intent: Process Appropriateness)

Strongly Agree	2%
Agree	2%
Neither Agree nor Disagree	16%
Disagree	41%
Strongly Disagree	40%

QUESTION 6 "The mediator was impartial and fair" (Intent: Assessment of mediator)

Strongly Agree	48%
Agree	45%
Neither Agree nor Disagree	6%
Disagree	1%
Strongly Disagree	0%

QUESTION 7 "You feel that you did not actively participate in the attempted resolution of this case" (Intent: Process Appropriateness)

Strongly Agree	2%
Agree	5%
Neither Agree nor Disagree	10%
Disagree	56%
Strongly Disagree	26%

QUESTION 8 "You expect to have future dealings with the opposing party(ies)" (Intent: Relationship with opposing party)

Strongly Agree	15%
Agree	37%
Neither Agree nor Disagree	21%
Disagree	14%
Strongly Disagree	15%

QUESTION 9 "You feel that your attorney adequately represented you" (Intent: Assessment of attorney)

Strongly Agree	51%
Agree	44%
Neither Agree nor Disagree	3%
Disagree	1%
Strongly Disagree	1%

QUESTION 10 "You feel that you were in control of the attempted resolution of this case" (Intent: Process control)

Strongly Agree	16%
Agree	55%
Neither Agree nor Disagree	23%
Disagree	2%
Strongly Disagree	4%

QUESTION 11 "You are satisfied with the mediation process" (Intent: Process satisfaction)

Strongly Agree	28%
Agree	53%
Neither Agree nor Disagree	15%
Disagree	3%
Strongly Disagree	1%

QUESTION 12 "The mediator did not push hard enough for settlement" (Intent: Assessment of the mediator)

Strongly Agree	2%
Agree	5%
Neither Agree nor Disagree	24%
Disagree	50%
Strongly Disagree	19%

QUESTION 13 "The mediation process was fair" (Intent: Process satisfaction)

Strongly Agree	23%
Agree	62%
Neither Agree nor Disagree	16%
Disagree	0%
Strongly Disagree	0%

QUESTION 14 "You knew the opposing party prior to this case" (Intent: Relationship with opposing party)

Strongly Agree	6%
Agree	33%
Neither Agree nor Disagree	12%
Disagree	20%
Strongly Disagree	30%

QUESTION 15 “It is not likely that you will want to try mediation again" (Intent: Process satisfaction)

Strongly Agree	2%
Agree	7%
Neither Agree nor Disagree	18%
Disagree	35%
Strongly Disagree	38%

SECTION II. All party respondents were asked to provide general information about their backgrounds. Sample size was 96 respondents.

QUESTION 16 "Which party were you represent in this case?"

Plaintiff	30%
Defendant	53%
Other	16%

QUESTION 17 "Have you ever been involved in a court case before?"

Yes	66%
No	34%

QUESTION 18 "Approximately how many prior mediated cases have you been involved in?"

This was first	57%
1-4	23%
5-8	14%
9 or more	5%

QUESTION 19 "What is your gender?"

Male	67%
Female	33%

QUESTION 20 "What year were you born?"

Average Year	1949
Modal Year	1947 and 1955

QUESTION 21 "What is your occupation?"

Modal Category	Insurance Claims Adjuster

QUESTION 22 "Are you a party to this suit as a representative of a corporation, company, or organization involved in this case7"

Yes	66%
No	34%

QUESTION 23 "Approximately what is your annual income?"

Under $10,000	5%
$10,000 to 19,999	6%
$20,000 to 29,999	7%
$30,000 to 49,999	47%
$50,000 to 100,000	20%
>$100,000	3%
No Response	8%

QUESTION 24 "How would you describe your race or ethnic origin?"

Caucasian	92%
African-American	4%
Hispanic	1%
Other	1%
No Response	2%

QUESTION 25 "Did a settlement result at the mediation conference?"

Yes	49%
No	50%
Partially	1%

SECTION III. Parties were asked to respond to this section only if a settlement was reached or partially reached at the mediation conference. Sample size was 48 respondents.

QUESTION 26 "You are satisfied with the settlement that was reached" (Intent: Outcome satisfaction)

Strongly Agree	16%
Agree	74%
Neither Agree nor Disagree	8%
Disagree	0%
Strongly Disagree	2%

QUESTION 27 "You would have fared better had this case been litigated" (Intent: Outcome satisfaction)

Strongly Agree	0%
Agree	2%
Neither Agree nor Disagree	63%
Disagree	29%
Strongly Disagree	6%

Question 28 "You think the mediation process was a quicker alternative to litigation for this case" (Intent: Perceptions of pace)

Strongly Agree	46%
Agree	52%
Neither Agree nor Disagree	2%
Disagree	0%
Strongly Disagree	0%

QUESTION 29 "Prior to the mediation conference, you were not confident that a mediated settlement could be reached" (Intent: Pre-mediation expectations)

Strongly Agree	19%
Agree	38%
Neither Agree nor Disagree	23%
Disagree	19%
Strongly Disagree	0%

QUESTION 30 "You think the outcome of this dispute was fair" (Intent: Outcome fairness)

Strongly Agree	19%
Agree	58%
Neither Agree nor Disagree	19%
Disagree	2%
Strongly Disagree	2%

QUESTION 31 "Mediation was less costly than had a settlement been reached through litigation" (Intent: Cost)

Strongly Agree	50%
Agree	46%
Neither Agree nor Disagree	4%
Disagree	0%
Strongly Disagree	0%

QUESTION 32 "You feel that you were the loser in this case" (Intent: Outcome satisfaction)

Strongly Agree	2%
Agree	0%
Neither Agree nor Disagree	31%
Disagree	42%
Strongly Disagree	25%

QUESTION 33 "You feel that the issue that initiated this case has been corrected with this settlement"

Strongly Agree	4%
Agree	58%
Neither Agree nor Disagree	31%
Disagree	2%
Strongly Disagree	4%

QUESTION 34 "Please briefly explain why you decided to try mediation"

Modal Responses: "My attorney suggested it" and "Court ordered"

QUESTION 35 "Please feel free to write any other comments, concerns, or suggestions you have regarding your mediation experience"

Overall comments were very favorable

SECTION IV. Parties were asked to respond to this section only if a settlement was not reached during the mediation conference. Sample size was 48 respondents.

QUESTION 36 "The mediation conference improved the chances that this case will settle prior to trial" (Intent: Post-mediation expectations)

Strongly Agree	11%
Agree	15%
Neither Agree nor Disagree	38%
Disagree	28%
Strongly Disagree	8%

QUESTION 37 "You are confident that you will fare better if this case goes to trial" (Intent: Overconfidence as a cognitive barrier to resolution)

Strongly Agree	19%
Agree	36%
Neither Agree nor Disagree	38%
Disagree	6%
Strongly Disagree	0%

QUESTION 38 "Prior to the mediation conference, you were confident that a mediated settlement could be reached" (Intent: Pre-mediation expectations)

Strongly Agree	4%
Agree	32%
Neither Agree nor Disagree	40%
Disagree	19%
Strongly Disagree	4%

PILOT MEDIATION PROGRAM17th CIRCUIT COURT
CONFIDENTIAL MEDIATOR QUESTIONNAIRE
WITH FREQUENCY DISTRLBUTIONS

SECTION I. QUESTIONS

All mediator respondents were asked to indicate if they strongly agreed, agreed, neither agree nor disagree, disagree, strongly disagree to statements that were intended to ascertain their general reaction to the mediation process. The sample size was 70 respondents. Responses are given in percentages and may total higher than 100% due to rounding.

QUESTION 1 "The attorneys appeared to be genuinely interested in the settlement of the case" (Intent: Assessment of the attorneys)

Strongly Agree	28%
Agree	48%
Neither Agree nor Disagree	16%
Disagree	7%
Strongly Disagree	1%

QUESTION 2 "The mediation process was effective in identifying realistic resolutions to this case" (Intent: Mediation as a reality check' for participant)

Strongly Agree	34%
Agree	49%
Neither Agree nor Disagree	13%
Disagree	4%
Strongly Disagree	0%

QUESTION 3 "The parties appeared to be genuinely interested in the settlement of this case" (Intent: Assessment of the parties)

Strongly Agree	24%
Agree	41%
Neither Agree nor Disagree	20%
Disagree	10%
Strongly Disagree	6%

QUESTION 4 "Counsel appeared to be using the mediation conference as a discovery vehicle" (Intent: Recess appropriateness)

Strongly Agree	1%
Agree	1%
Neither Agree nor Disagree	9%
Disagree	48%
Strongly Disagree	41%

QUESTION 5 "Mediation was inappropriate for this type of case" (Intent: Process Appropriateness)

Strongly Agree	6%
Agree	6%
Neither Agree nor Disagree	1%
Disagree	37%
Strongly Disagree	51%

QUESTION 6 "There appeared to be hostility between the parties" (Intent: Assessment of hostility)

Strongly Agree	9%
Agree	18%
Neither Agree nor Disagree	18%
Disagree	31%
Strongly Disagree	24%

QUESTION 7 "The attorneys appeared to be of even quality and ability" (Intent: Process Appropriateness)

Strongly Agree	14%
Agree	66%
Neither Agree nor Disagree	9%
Disagree	11%
Strongly Disagree	0%

QUESTION 8 "The case summary given to me prior to mediation was not useful" (Intent: Summary assessment)

Strongly Agree	3%
Agree	7%
Neither Agree nor Disagree	7%
Disagree	47%
Strongly Disagree	34%

QUESTION 9 "The legal issues in this case were complex" (Intent: Assessment of complexity of matters of law)

Strongly Agree	1%
Agree	9%
Neither Agree nor Disagree	10%
Disagree	47%
Strongly Disagree	34%

QUESTION 10 "You are satisfied with the mediation process" (Intent: Process satisfaction)

Strongly Agree	35%
Agree	62%
Neither Agree nor Disagree	3%
Disagree	0%
Strongly Disagree	0%

QUESTION 11 "The mediation process was fair" (Intent: Process fairness)

Strongly Agree	39%
Agree	59%
Neither Agree nor Disagree	2%
Disagree	0%
Strongly Disagree	0%

QUESTION 12 Mediators were asked to respond to this question only if a settlement was reached or partially reached through mediation "You believe the settlement reached through mediation would have been approximately the same had this ease been litigated" (Intent: Outcome satisfaction)

Strongly Agree	8%
Agree	64%
Neither Agree nor Disagree	25%
Disagree	3%
Strongly Disagree	0%

QUESTION 13 Mediators were asked to respond to this question only if settlement was reached or partially reached through mediation "The mediation settlement that was reached was fair" (Intent: Process fairness)

Strongly Agree	34%
Agree	63%
Neither Agree nor Disagree	3%
Disagree	0%
Strongly Disagree	0%

QUESTION 14 “Mediators were asked to respond to this question only if a settlement was not reached through mediation "The mediation conference did not improve the chances that this case will settle prior to trial" (Intent: post-mediation expectations)

Strongly Agree	9%
Agree	21%
Neither Agree nor Disagree	18%
Disagree	38%
Strongly Disagree	15%

SECTION II. All mediators were asked to provide answers to the following two questions. Sample size was 70 respondents.

QUESTION 15 "Approximately what percentage of the mediation conference was spent in caucus?"

No caucuses	0%
Less than 10%	0%
10% to 25%	3%
25%, less than 50%	14%
50% to 75%	42%
> than 75%	41%

QUESTION 16 "Did a settlement result at the mediation conference?"

Yes	47%
Partially	4%
No	49%

SECTION III. All mediators were asked to complete this section dealing with specific techniques or tactics that they had used during the mediation conference. Please note that Appendix "B" provides an analysis of mediator tactics using factor analysis. For the sake of brevity here, the tactics techniques have been arranged from most frequently used to least frequently used.

"Avoided taking sides on important issues during joint sessions"
"Tried to gain the trust and confidence of the parties"
"Develop rapport with the parties"
"Kept negotiations focused on the issues"
"Expressed clear rules at the beginning of the conference"
"Attempted to move one or more parties off a committed position"
"Explained the weaknesses of that party's position during caucus"
"Called for frequent caucus"
"Helped devise a framework for negotiations"
"Kept parties at the table negotiating"
"Tried to change the expectations of one or more parties"
"Discussed the costs of continued disagreement"
"Kept the caucuses focused on the impasse issues"
"Clarified the needs of the opposing parties"
"Formulated clear goals before or during the conference"
"Discussed the interests of all parties affected by this dispute"
"Controlled the timing or pace of negotiations"
"Made substantive suggestions for compromise"
"Argued one party’s case to the other during caucus"
"Used humor to lighten the atmosphere"
"Attempted to develop trust between the disputants"
"Helped establish priorities among the issues"
""Assured each party that the other was being honest"
"Attempted to simplify agenda by eliminating or combing issues"
"Expressed pleasure at the progress of negotiations"
""Warned the litigation was not a better way to resolve this case"
"Attempted to serve simple issues first"
"Pressed the parties hard to make compromises"
"Arranged agenda to cover general issues first, specific issues last"
"Told one or more parties that their position was unrealistic"
"Suggested proposals that helped avoid the appearance of defeat on an issue"
"Let everyone blow off steam"
"Helped one or more parties save face"
"Used long mediation session to facilitate compromise"
"Inflated the strength of the other party's case during caucus"
"Controlled the expression of hostility during caucuses"
"Took responsibilities for concessions"
"Discussed other settlements of similar cases"
"Suggested a particular settlement"
"Controlled the expression of hostility during joint sessions"

"Expressed displeasure at the pace of negotiations"

APPENDIX "B"MEDIATOR STYLES AND TACTICS

The data in this Appendix results from a factor analysis of mediator tactics. The mediator tactics specified in the mediator questionnaire borrowed heavily from the work of Camevale, Lim, and McLaughlin (1989) as well as Kressel and Pruit (1985), with some minor changes due to the nature of the dispute being mediated. This was done for two reasons. First, the use of these tactics allows for a reasonable measure of validity to be assumed. That is, these tactics and questions about them have proven useful and reliable in previous research. Second, the results obtained from this research on mediator tactics and styles allows for comparison with these earlier research efforts. The Carnevale, Lim, and McLaughlin research relied heavily on labor, family, and community mediators. One of the underlying assumptions of the research on civil case mediation in the 17th Judicial Circuit of Illinois is that it functions differently than these more traditional uses of mediation. Mediator tactics and styles may also be different from one area of mediation to the other.

The respondents in this study were asked to List the extent to which they used certain tactics. The responses ranged from "did not use at all" to "used very frequently" on a five point scale, with one representing the tactic not used at all and five representing the tactic used very frequently. Table B-l presents ratings of the overall use of mediation tactics. Interestingly, the overall mean use of the mediation tactics in this present research mirrors, for the most part, that of the earlier research efforts of Carnevale, Lim, and McLaughlin (1989).

TABLE B-l OVERALL MEAN USE OF MEDIATOR TACTICS

Mediator Tactic	Mean Use
1. Avoided taking sides on important issues during joint sessions	4.15
2 Tried to gain the trust and confidence of the parties	4.13
3. Developed rapport with the parties	4.11
4. Kept negotiations focused on the issues	3.80
5. Expressed clear rules at the beginning of the conference	3.72
6. Attempted to move one or more parties off a committed position	3.66
7. Explained the weakness of that party's position during caucus	3.65
8. Called for frequent caucus	3.41
9. Helped devise a framework for negotiations	3.39
10. Kept parties at the table negotiating	3.37
11. Tried to change the expectations of one or more parties	3.34
12. Discussed the costs of continued disagreement	3.24
13. Kept the caucuses focused on the impasse issues	3.23
14. Clarified the needs of the opposing parties	3.21
15. Formulated clear goals before or during the conference	3.21
16. Discussed the interests of all parties affected by this dispute	3.20
17. Controlled the timing or pace of negotiations	3.17
18. Made substantive suggestions for compromise	3.13
19. Argued one party's case to the other during caucus	3.04
20. Used humor to lighten the atmosphere	3.01
21. Attempted to develop trust between the disputants	2.99
22. Helped establish priorities among the issues	2.99
23. Assured each party that the other was being honest	2.94
24. Attempted to simplify agenda by eliminating or combing issues	2.92
25. Expressed pleasure at the progress of negotiations	2.89
26. Warned that litigation was not a better way to resolve this dispute	2.77
27. Attempted to settle simple issues first	2.76
28. Pressed the parties hard to make compromise	2.75
29. Arranged agenda to cover general issues first, specific issues last	2.58
30. Told one or more parties that their position was unrealistic	2.41
31. Suggested proposals that helped avoid the appearance of defeat	2.32
32. Let everyone blow off steam	2.31
33. Helped one or more parties save face	2.28
34. Used long mediation session to facilitate compromise	2.27
35. Inflated the strength of the other party’s case during caucus	2.25
36. Controlled the expression of hostility during caucuses	2.24
37. Took responsibility for concessions	2.20
38. Discussed other settlements of similar cases	2.13
39. Suggested a particular settlement	2.10
40. Controlled the expression of hostility during joint sessions	2.03
41. Expressed displeasure at the pace of negotiations	1.56

The data in Table B-l were factor analyzed. Factor analysis refers to a statistical technique whereby a set of variables (in this case mediator tactics) is represented by a smaller number of hypothetical variables or factors (in this case mediator styles or roles). A factor analysis approach is used to address whether the observed correlations among the measured variables can be better explained by the existence of some underlying hypothetical variables.

The results of the factor analysis are expressed in Table B-2. The results show that there appears to be four underlying factors or mediator styles among the mediators in the Pilot Program. Depending on the specific tactics that were used, the mediator styles are classified as either facilitator, Instigator, Evaluator, or Referee.

The Facilitator style of mediator clearly conforms to the traditional role of the mediator as depicted in the literature on mediation. This person sees their role as an orchestrator, a catalyst, aimed at improving the climate between the parties. These individuals do not take a pro-active approach in suggesting a particular solution. Mediators using this style focus on the contextual aspects of the mediation. They attempt to develop trust between the parties and try to arrange the agenda by simplifying and prioritizing the issues. This was the most frequently utilized style.

The Instigator style of mediator is in many ways opposite of the Facilitator. This person takes an active role in trying to resolve the dispute. These individuals will be almost coercive in the techniques. They will suggest a particular solution, tell parties that they are being unrealistic, and will inflate the strength of the other parties case in order to promote a solution. They want closure and will press the parties hard for compromise. The Evaluator is somewhere in between the Facilitator and Instigator in style. This style attempts to control the negotiation process by keeping the parties focused and by using humor to lighten the tension of the session. This person will also make use of some of the Instigator tactics to press for compromises by arguing one party's case to the other during caucus and warning of the pending problems should the case not settle in mediation. Both the Instigator and Evaluator styles were used about as frequently.

The Referee style seems to be a statistical product of a very few cases where there was such hostility between the parties that the mediator spent much of the time trying to control the

hostility rather than trying to bring about closure. Other aspects of this style seem to suggest that mediators utilizing this role failed to express clear rules at the beginning of the session and were negative in comments to the parties about the pace of negotiations. This was the least utilized style.

The factors or roles were correlated with the outcome of the mediation. There was a slight but not statistically significant positive correlation between settlement being reached and the use of the Instigator and Evaluator styles. Inversely, there was a slight but not statistically significant negative correlation between settlements being reached and the use of the Facilitator and Referee styles. This is consistent with the opinions expressed in the interviews with the attorneys in the study's sample. The attorneys seemed to want the mediators to be more pro-active and press the parties for settlement. However, these results should be viewed with caution because of their lack of statistical significance.

TABLE B-2 FACTOR ANALYSIS OF MEDIATION TACTICS

STYLES	LOADINGS
Factor 1: Facilitator	
Kept negotiations focused on the issues	.60519
Clarified the needs of opposing party	.70930
Helped devise a framework for negotiations	.83320
Helped establish priorities among the issues	.74316
Arranged agenda to cover general issues first	.70206
Attempted to develop trust between the parties	.71164
Attempted to settle simple issues first	.65176
Expressed clear rules at the beginning of conference	.66499
Expressed pleasure at the pace of negotiations	.64026
Factor 2: Instigator	
Inflated strength of other party's case during caucus	.49368
Explained weakness of that party's case during caucus	.41301
Used long mediation sessions to facilitate compromise	.57220
Warned that litigation was not a better way	.55217
Told party that their position was unrealistic	.68436
Made substantive suggestion for compromise	.51721
(Did not) attempt to settle simple issues first	-.4267
Discussed other settlements of similar cases	.75475
Tried to change the expectations of one or more parties	.66257
Pressed parties hard to make compromise	.71923
Suggested a particular settlement	.74845
Factor 3: Evaluator	
Kept negotiations focused on the issues	.47553
Explained the weakness of that party's case during caucus	.61417
Warned that litigation was not a better way	.40821
Called for frequent caucuses	.78325
Discussed the costs of continued disagreement	.75176
Used humor to lighten atmosphere	.64408
Controlled the timing and pace of negotiations	.67482
Pressed parties hard to make compromises	.42866
Argued one party’s case to the other during caucus	.65695
Factor 4: Referee	
Expressed displeasure at the pace of negotiations	.68505
Let everyone blow off steam	.58885
(Did not) express clear rules at beginning of session	-.3534
Controlled the expression of hostility during joint session	.73841
Controlled the expression of hostility during caucus	.79020

APPENDIX "C"GENERAL ORDER AND MISCELLANEOUS COURT FORMS

The documents contained in this appendix are derived from the 17th Circuit Court and are being used as part of the mediation program. At this time no local rules have been established for the program. By General Order 3.09, a pilot court-annexed mediation program for major civil cases with claim amounts in excess of $30,000 was established.

During the evaluation process, a good deal of controversy was generated about the ordering of cases to mediation by the judge. The general impression of those responding to the evaluation efforts was that the program should be entirely voluntary. In the text of the evaluative report, this topic is covered in greater detail.

An informational sheet war produced by the ADR Center to explain the mediation process and procedures once a case had been stipulated or ordered to mediation. Also, a copy of General Order 3.09 was available to further explain the process. These documents are included herein.

Additional documents were produced by the Abitration Administrator for the mediation program, these following documents are also included herein:

1. ORDER OF REFERRAL TO COURT-ANNEXED MEDIATION2. CONFIRMATION OF MEDIATION
3. CONFIDENTIALITY AGREEMEMT AND NON-REPRESENTATION ACKNOWLEDGMENT
4. MEDIATION HELD/NO AGREEMENT
5. MEMORANDUM OF AGREEMENT

17TH JUDICIAL CIRCUITMAJOR CIVIL CASE MEDIATION
PILOT PROGRAM

Pursuant to General Order 3.09 parties may stipulate to mediation or the Court may order a case to mediation. The Order of Referral to Court-Annexed Mediation should be prepared and signed. The clerk will retain a copy of the Order for the ADR Center.

The parties should mutually agree upon a mediator within 14 days of the Order. If the parties cannot agree, the Court will appoint one within 21 days of the Order.

Either party may contact the mediator and arrange a mutually convenient time for the mediation session. Either party or the mediator should contact the ADR Center and reserve a room. The ADR Center will send confirmation letters of the date, time and place to all parties involved with copy to the mediator.

Each party will be required to prepare a brief summary of his/her case 10 days prior to the mediation session. Summaries should be sent directly to the mediator for his/her review. THESE WILL BE KEPT CONFIDENTIAL. Names of all participants in the mediation shall be disclosed to the mediator in the summary prior to the session.

At the scheduled mediation the mediator will require every participant to sign a Confidentiality Agreement which Agreement shall be made a part of the court record in the case.

The first mediation conference must be held within 8 weeks of the Order of Referral. Mediation shall be completed within 7 weeks of the first mediation.

Winnebago County mediations will be held at the ADR Center(Arbitration Center), Stewart Square, Suite #25, 308 West State Street, Rockford. IL 61101.

Boone County mediations will be held at the Boone County Courthouse, 601 North Main Street, Belvidere, IL. Boone County mediations may also be held at the ADR Center in Rockford. In any event the ADR Center will make the necessary arrangements.

3.9 Court-Annexed Mediation

In an effort to provide the citizens of the 17th Judicial Circuit with an expeditious and expense saving alternative to traditional litigation in the resolution of controversies, there is hereby established a pilot program of Court-Annexed Mediation of civil cases to operate in this Judicial Circuit.

Mediation under this order involves the confidential process by which a neutral mediator, selected by the parties or appointed by the court, assists the litigants in reaching a mutually acceptable agreement. The role of the mediator is to assist in identifying the issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise, and finding points of agreement as well as legitimate points of disagreement. Any agreement reached by the parties is to be based on the autonomous decisions of the parties and not the decisions of the mediator. It is anticipated that an agreement may not resolve all of the
disputed issues, but the process can reduce points of contention. Parties and their representatives are required to mediate in good faith but are not compelled to reach an agreement

(1) ACTIONS ELIGIBLE FOR COURT-ANNEXED MEDIATION

(A) Referral by judge or by stipulation

Except as hereinafter provided, the judge to whom a matter is assigned may order any contested civil matter asserting a claim having a value, irrespective of defenses or setoffs, in excess of $30,000 referred to mediation. In addition, the parties to any such matter may file a written stipulation to mediate any issue between them at any time. Such stipulation shall be incorporated into the order of referral.

(B) Exclusions from Mediation

Except as otherwise set forth in (1)(A) above, matters as may be specified by administrative order of the chief judge of the circuit shall not be referred to mediation except upon petition of all parties.

(2) SCHEDULING OF MEDIATION

(A) Conference or Hearing Date

Unless otherwise ordered by the court, the first mediation

conference shall be held within eight (8) weeks of the Order of Referral.

At least ten (10) days before the conference, each side shall present to the mediator a brief, written summary of the case containing a list of issues as to each party. If the attorney filing the summary wishes its contents to remain confidential, she/he should advise the mediator in writing at the same time the summary is filed. The summary shall include the facts of the occurrence, opinions on liability, all damages and injury information, and any offers or demands regarding settlement. Names of all participants in the mediation shall be disclosed to the mediator in the summary prior to the session.

(B) Notice of Date, Time and Place

Within 28 days after the Order of Referral, the mediatorshall notify the parties in writing of the date and time of the mediation conference.

Winnebago County mediations will be held at the ADR Center(Arbitration Center), Stewart Square, Suite #25, 308 West State Street, Rockford, IL 61101.

Boone County mediations will be held at the Boone County Courthouse, 601 North Main Street, Belvidere, IL 61008.

(C) Motion to Dispense with Mediation

A party may move, within 14 days after the Order of Referral, to dispense with mediation if:

(1) The issue to be considered has been previously mediated between the same parties pursuant to General Order of the 17th Judicial Circuit;
(2) The issue presents a question of law only;
(3) The order violates Sec. (1)(B) of this General Order
(4) Other good cause is shown.

(D) Motion to Defer Mediation

Within 14 days of the Order of Referral, any party may file a motion with the court to defer the proceeding. The movant shall set the motion to defer for hearing prior to the scheduled date for mediation. Notice of the hearing shall be provided to all interested parties, including any mediator who has been appointed. The motion shall set forth, in detail, the facts and circumstances

supporting the motion. Mediation shall be tolled until disposition of the motion.

(3) MEDIATION RULES AND PROCEDURES

(A) Appointment of the Mediator

(1) Within 14 days of the Order of Referral, the parties may agree upon a stipulation with the court designating:

(a) A certified mediator; or

(b) A mediator who does not meet the certification requirements of these rules but who, in the opinion of the parties and upon review by and approval of the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

(2) If the parties cannot agree upon a mediator within14 days of the Order of Referral, the plaintiff's attorney (or another attorney agreed upon by all attorneys) shall so notify the court within 7 days of the expiration of the period to agree on a mediator, and the court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending.

(B) Compensation Of the Mediator

Each pilot mediator shall agree to mediate five cases without compensation.

Thereafter, the mediator shall be compensated by the parties at the rate of $125 per hour unless otherwise agreed in writing. Each party shall pay a proportionate share of the total charges of the mediator.

(C) Disqualification of a Mediator

Any party may move to enter an order disqualifying a mediator for good cause. If the court rules that a mediator is disqualified from hearing a case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(D) Interim or Emergency Relief

A party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such a motion is pending absent a contrary order of the court or a decision of the mediator to adjourn pending disposition of the motion.

(E) Sanctions for Failure to Appear

If a party fails to appear at a duly noticed mediation conference without good cause, the court upon motion shall impose sanctions, including an award of mediator and attorney fees and other costs, against the party failing toappear. If a party to mediation is a public entity that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. Otherwise, unless stipulated by the parties, or by order of the court, a party is deemed to appear at a mediation conference if the following persons are physically present:

(1) The party or its representative having full authority to settle without further consultation; and

(2) The party's counsel of record, if any; and

(3) A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to negotiate and recommend settlements to the limits of the policy or the most recent demand, whichever is lower without further consultation.

(F) Adjournments

The mediator may adjourn the mediation conference at anytime and may set times for reconvening the adjourned conference notwithstanding Sec.(I) of this General Order. No further notification is required for parties present at the adjourned conference.

(G) Counsel

The mediator shall at all times be in control of the mediation and the procedures to be followed in the mediation. Counsel shall be permitted to communicate privately with their clients.

(H) Communication with Parties

The mediator may meet and consult privately with either party and his/her representative during the mediation session.

(I) Completion of Mediation

Mediation shall be completed within seven (7) weeks of the first mediation conference unless extended by order of the court or by stipulation of the parties.

(J) No Agreement

If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation.

(K) Agreement

If an agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any, at the conclusion of the mediation.

(L) Imposition of Sanctions

In the event of any breach or failure to perform under the agreement, the court upon motion may impose sanctions, including costs, attorney fees, or other appropriate remedies including entry of judgment on the agreement.

(M) Discovery

Discovery may continue throughout mediation.

(N) Confidentiality of Communications

All oral or written communications in a mediation conference, other than executed settlement agreements, shall he exempt from discovery and shall be confidential and inadmissible as evidence in the underlying cause of action unless all parties agree otherwise. Evidence with respect to alleged settlement agreements shall be admissible in proceedings to enforce the settlement. Subject to the foregoing, unless authorized by the parties, the mediator may not disclose any information obtained during the mediation process.

(O) Forms

The following forms shall be used in conjunction with court-annexed mediation:

(1) Order of Referral to Court-Annexed Mediation
(2) Confidentiality Agreement and Nonrepresentation Acknowledgment
(3) Mediation Held/No Agreement Resulted
(4) Memorandum of Agreement
(5) Memorandum of Understanding/Agreement
(6) Order Appointing Mediator
(7) Mediator's Report/Order

(4) MEDIATOR QUALIFICATIONS

(A) Circuit Court Mediators

The chief judge shall maintain a list of mediators who have been certified by the court and who have registered for appointment.

For certification a mediator of circuit court civil matters in excess of $30,000 matters must:

(1) Complete a mediation training program approved by the chief judge of the 17th Judicial Circuit, and
(2) Be a member in good standing of the Illinois Bar with at least seven years of practice or be a retired judge; and
(3) Be of good moral character.

(B) Mediator General Standards

In each case, the mediator shall comply with such general standards as may, from time to time, be established and promulgated in writing by the chief judge of the 17th Judicial Circuit.

(C) Decertification of Mediators

The eligibility of each mediator to retain the status of acertified mediator may be periodically reviewed by the chief judge. Failure to adhere to this General Order governing mediation or the General Standards provided for above may result in the decertification of the mediator.

STATE OF ILLINOISIN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO

Plaintiff (s),

vs.

ORDER OF REFERRAL TO COURT-ANNEXED MEDIATION

Defendant(s).

THIS CAUSE came before the Court pursuant to General Order No. 3.09 of the 17th Judicial Circuit for referral to mediation.

THE COURT HEREBY ORDERS:

1. All parties are required to participate in mediation.

a. The appearance of counsel who will try the case and each party or representatives of each party with full authority to enter into a full and complete compromise and settlement is mandatory. If insurance is involved, an adjuster with authority to negotiate and recommend settlements shall attend. All parties are urged to bring interested individuals who might assist in facilitating settlement to the negotiation session (For example lien holders, governmental officials and others whose approval is necessary or those whore interest may need to be negotiated and compromised).

b. The Court may impose sanctions against parties who do not attend the conference or violate the terms of this Order.

c. At least ten days before the conference, each side shall present to mediator a brief, written summary of the case containing a list of issues as to each party. If the attorney filing the summary wishes its contents to remain confidential, she/he should advise the mediator in writing at the same time the summary is filed. The summary shall include the facts of the occurrence, opinions on liability, all damages and injury information, and any offers or demands regarding settlement. Names of all participants in the mediation shall be disclosed to the mediator in the summary prior to the session.

d. All discussions, representations, and statements made at the mediation conference shall be privileged consistent with the Confidentiality Agreement to be signed on behalf of each party prior to the commencement of the first mediation conference. The Confidentiality Agreement shall be made a part of the court record in the case.

e. The mediator shall serve without compensation during the pilot program up to the time each pilot mediator has mediated five cases. Thereafter, the mediator shall be compensated by the parties at the rate of $125 per hour unless otherwise agreed in writing, and each party shall bear the cost proportionately.

f. The mediator has no power to compel or enforce settlement agreements and does not give legal advice. If a settlement is reached in this case, the attorneys shall reduce the agreement to writing at the conclusion of the mediation.

2. The plaintiff's attorney (or another attorney agreed upon by all attorneys) shall be responsible for obtaining a mediator and scheduling the mediation conference within 14 days of this Order of Referral. The parties shall attempt to agree upon a mediator. A date and time for mediation convenient to all shall be obtained from the mediator.

3. If the parties cannot agree on a mediator within 14 days of the Order of Referral, the responsible attorney shall notify the Court within seven days of the expiration of the 14- day period, and the Court shall appoint a certified mediator selected by rotation.

4. Mediation shall be completed within seven weeks of the first mediation conference unless extended by order of the Court or by stipulation of the parties.

5. This case is set for status_____

19___, at _____ .m.

_____
JUDGE

Dated: _____

Confirmation of Mediation
15-Jul-94

To:

#Error
From:
ADR Center
Re:

#Error#Error

vs.

#Error

This will confirm the mediation of above entitled matter set:
#Error
#Error
at the ADR Center, Stewart Square, Suite 25, 308 West State Street,
Rockford. IL 61101.

Paragraph l (c) of the Order of Referral to Court-Annexed Mediation requires all attorneys of record to prepare a brief case summary to be forwarded directly to the mediator at least ten days prior to the mediation conference.

If you have any questions, please call 987-7739.

STATE OF ILLINOIS IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO

Plaintiffs,

Case No.

vs.

Defendants.

CONFIDENTIALITY AGREEMENT ANDNONREPRESENTATION ACKNOWLEDGEMENT

IT IS HEREBY AGREED by and between the mediation participants , and Mediator, that all matters discussed during any and all mediation sessions shall be confidential and shall not be disclosed by the participants or the mediator in any court of law. It is further acknowledged by the parties to this lawsuit that the Mediator, , and his law firm, , are not representing any party to this lawsuit and are not affording or providing any legal advice to any such party.

Dated:

_____ _____
MEDIATOR

_____ _____

_____ _____

MEDIATION HELD/NO AGREEMENT RESULTED

Date
Case No.

IN THE MATTER OF MEDIATION BETWEEN:

vs.

, Mediator, appeared for mediation at the Alternative Dispute Resolution Center (Arbitration Center of Winnebago County) on , 1994, for their scheduled mediation.

We appreciate their appearance and their good faith effort to attempt mediation of the dispute that exists between them.

Unfortunately, they were unable to resolve their dispute through our services.

_____

MEDIATOR

MEMORANDUM OF AGREEMENT

Date
Case No.

IN THE MATTER OF MEDIATION BETWEEN:

vs.

We, the undersigned, having participated in a mediation session on , 1994, and being satisfied that the provisions of the resolution of our dispute are fair and reasonable, hereby agree to abide by and fulfill the following:

_____ _____

MEDIATOR

_____ _____

_____ _____

APPENDIX "D"
INTERVIEW QUESTIONS

In order to provide some measure of consistency when conducting the face-to-faceinterviews with a sample of the pilot program's participants, a general guideline was developed that was followed during the course of the interview. Those guidelines are contained in this appendix. It should be noted that respondents were always free to provide information that was not part of this structured process.

Interviews were conducted with a sample of the attorneys and with the "Pilot 13"mediators. In an effort to maintain anonymity, the actual respondents are not identified in the text of this report. The actual responses are on file with the researcher. Most of the responses were tape recorded to aid in the transcription process.

The purpose of the interview data was to augment the written questionnaires, which forthe most part were closed-ended, forced-answer questions. The researchers were especially interested in the participants' perceptions on how mediation differs from traditional negotiated settlement processes (e.g. pre-trial conference) as well as a comparison of mediation to arbitration.

17TH JUDICIAL CIRCUIT MAJOR CIVIL CASE MEDIATIONPILOT PROGRAM
ATTORNEY FOLLOW-UP INTERVIEW QUESTIONS
PILOT MEDIATION PROGRAM

Case #_____ [] P [] D

1. a. Was mediation the appropriate method for the resolution of this case' [] Yes [] No Why? Why not?

b. Have you been involved in an arbitrated case in the 17th Circuit? [] Yes [] No If so, please compare your perception of the mediation process to arbitration.

c. Please compare your perception of attempted settlement through mediation as compared to traditional settlement negotiations, esp., pre-trial conferences.

2. a. What were the barriers to the resolution of this conflict?

b. How did the mediation process affect these barriers?(probe, ex) parties too far apart? Personalities of the lawyers? Legal principles to be adjudicated? Psychological barriers: 1) over-confidence, 2) reactive devaluation, 3) loss aversion – take offer now vs. uncertainty of going to trial)

3. What do you believe to be the primary reason a mediated settlement was/was not reached in this case?

4. a. How well of a job did the mediator do? Compare this with your experiences w/judges in pre-trial conferences.

b. What input did the mediator have on the session? How did you respond/handle this?

5. If a settlement was not reached, what impact will the mediation session have on resolving this case in the future?

6. Did opposing counsel take a cooperative or competitive approach to negotiation?

7. Did you take a cooperative or competitive approach to negotiation?

8. Would you like to discuss anything else regarding the mediation program? What recommendations do you have for this mediation program?

17TH JUDICIAL CIRCUIT MAJOR CIVIL CASE MEDIATIONPILOT PROGRAM
MEDIATOR FOLLOW-UP INTERVIEW QUESTIONS
PILOT MEDIATION PROGRAM

Mediator:_____

1. a. Overall, did you feel mediation was the appropriatemethod for the resolution of the cases you have mediated?
[] Yes Why? [] No Why not?

c. Please compare your perception of settlement throughmediation as compared to adjudication, esp. pre-trial conference.

3. What sort of barriers to the resolution of the conflictsexisted? How did the mediation process affect these barriers?
(probe, ex] parties too far apart? Personalities of the lawyers? Legal principles to be adjudicated? Psychological barriers: 1) over-confidence, 2) reactive devaluation, 3) loss aversion)
What do you believe to be the primary reason a mediated settlement was/was not reached in each of the cases?

4. What tactics did you employ to assist the parties reachagreement, was it consistent for each session or did you adapt your style depending on the parties/attorney involved?

5. Overall, how well prepared were the attorneys? Was theirattitude and conduct conducive to resolving this dispute? Were the attorneys of equal experience? Caliber? Did this affect the mediation sessions? If so, how did you handle this? Did they take a cooperative or competitive approach to negotiation?

6. In any of the sessions, did you detect any discomfortbetween the disputants? Attorneys? If yes, how did it affect the session? How did you handle this?

7. Were the summaries furnished to you prior to the session ofhelp to you during the mediation process? How can they be more help? Better? How much time do you usually spend preparing for the sessions?

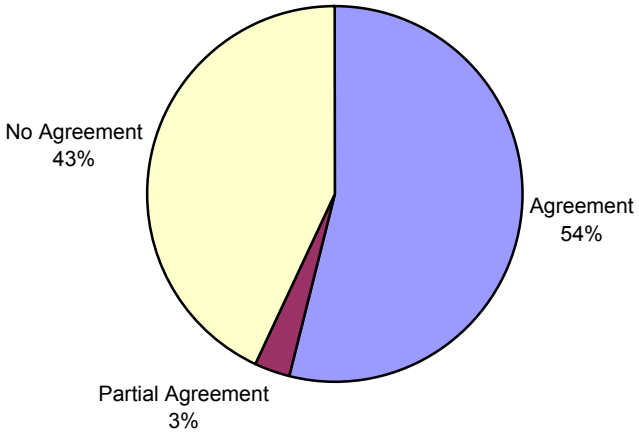
8. Would you like to discuss anything else regarding the mediation process? What recommendations do you have for thismediation program?

Thank you for your time and cooperation!

APPENDIX "E"UPDATED PILOT PROGRAM STATISTICS

REVIEW OF THE 17th JUDICIAL CIRCUITMAJOR CIVIL CASE MEDIATION
PILOT PROGRAM
MARCH 1, 1993 - OCTOBER 5, 1994

Results of Mediated Cases



A total of 147 cases have completed mediation. Figure does not include cases which have met for one mediation and a second mediation session is pending. Also omitted are referrals that have not been heard.