

EFFECTIVENESS OF CASE EVALUATION AND MEDIATION IN MICHIGAN CIRCUIT COURTS

AN OVERVIEW

Prepared by Courtland Consulting for the Michigan Supreme Court, State Court Administrative Office

In late 2011, the State Court Administrative Office (SCAO) released a study of case evaluation and mediation practices in the circuit courts. The study of these two alternative dispute resolution (ADR) processes was requested by the Michigan Supreme Court and conducted by Courtland Consulting, with portions provided by the SCAO. This is an overview of the study's findings and recommendations; the complete report (107 pages) can be located on the SCAO's website.

ADR is actively used in the circuit courts.

Circuit court judges report that they order or refer 90% of tort claims to case evaluation as well as 70% of non-tort civil cases, even though under MCR 2.403 the latter cases are not required to be evaluated. Although mediation is ordered less frequently—judges report ordering about 36% of torts and 30% of non-tort civil cases to mediation—some

Michigan courts are moving away from case evaluation toward a greater use of mediation.

The study concluded that, while both processes have value in prompting case dispositions, mediation was more effective in resolving cases quickly and in producing higher rates of settlement.

STUDY DATA

- Statewide web-based survey of 3,096 attorneys
- Reviews of 396 civil cases in six circuit courts
- Regional focus groups with 47 attorneys
- Statewide web-based survey of 44 circuit court judges
- Interview/survey of court administrators at six circuit courts
- Survey of other states' ADR practices
- Historical review of case evaluation

HIGHLIGHTED MAJOR FINDINGS

Mediation was more effective than case evaluation in achieving settlements.

Based on the case file review of 396 civil cases (tort and non-tort), both case evaluation and mediation are effective in achieving settlements that help prevent cases from going to trial. When neither of the ADR processes was used, fewer than half of the cases (45%) were disposed through a settlement or consent judgment. The majority were disposed through other means, such as dismissal/default, summary disposition, or court verdict.

The use of one or both of the ADR processes significantly increased the percentage of cases in which settlement/consent judgment was achieved (see Figure 1). The effect was particularly strong for cases that used only mediation, where 84% of cases were disposed through settlement/consent judgment, effectively reducing the percentage of cases disposed by other means to just 16%. This settlement rate also was significantly higher than the 62% rate found for cases that used only case evaluation.

Case dispositions occurred more quickly through mediation.

A key evaluation question for this study was whether either ADR process reduces civil case disposition times, defined as the length of time from the filing date to the date

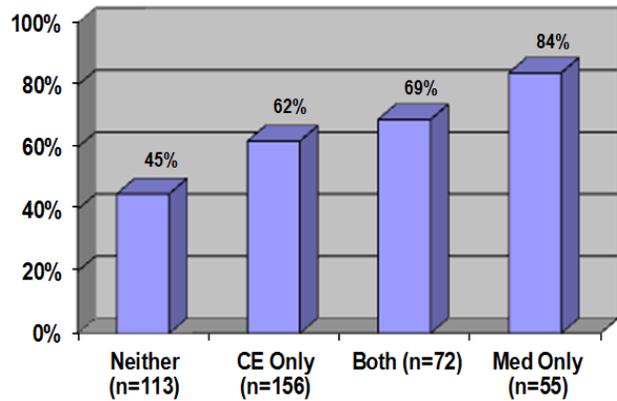


Figure 1: Percentage of civil cases disposed through settlement/consent judgment by type of ADR used.

on which the case closed. As shown in Figure 2, when neither case evaluation nor mediation was used the average length of time to close a case was 322 days. Cases with mediation only were disposed within an average of 295 days, or about a month earlier. The disposition time increased significantly when case evaluation was used—to 463 days when only case evaluation was used and to 489 days if both ADR processes occurred.

Mediation was significantly faster than case evaluation for disposing cases because it was implemented sooner and because cases closed

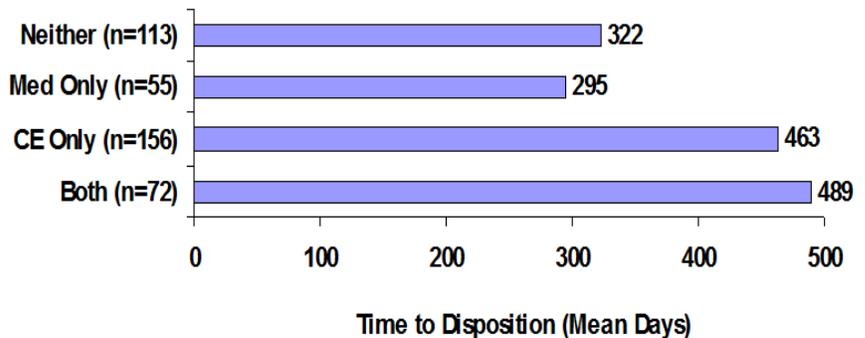


Figure 2: Average number of days to resolve civil cases by type of ADR used.

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more quickly following mediation. When mediation was the only process conducted, the mediation session was held on average 242 days from the date of filing and the cases closed about 53 days after mediation so that the whole process took an average of 295 days to complete. In contrast, when only case evaluation was used, it took 331 days on average just to complete this process and then another 132 days to close the case for a total of 463 days.

Mediation was viewed as reducing costs for both the court and the litigants.

Judges and court administrators generally agreed that using mediation to resolve civil cases reduces costs to the court. Although mediation initially is a more expensive option for litigants, the study found evidence that it can ultimately reduce their overall costs. Over half (54%) of attorneys surveyed said that mediation frequently reduced subsequent litigation costs.

Case evaluation was not generally seen as reducing costs.

The impact of case evaluation on court costs is less clear: 50% of judges said it reduces costs, while 27% said costs are increased and 23% said there was no effect. The study found little evidence that case evaluation either reduces or increases costs substantially for litigants in civil cases. None of the judges reported that it reduces litigants' costs and just 36% of attorneys said case evaluation frequently reduces subsequent litigation costs.

Mediation more often produces results that attorneys seek in using the ADR process.

Table 1 compares attorneys' responses to similar questions about mediation and case evaluation. The percentages represent the attorneys who rated the frequency with which each outcome is achieved as high (often, very often, or always). Attorneys indicated that mediation more often achieves each desired outcome than case evaluation.

Table 1: Attorneys' assessments of case evaluation and mediation

	case evaluation	mediation
Provides a fair valuation	38%	60%
Addresses clients' expectations	44%	67%
Prompts clients to settle	36%	59%
Reduces subsequent litigation costs	36%	54%
Identifies strengths or weaknesses	33%	43%
Raises new legal arguments	2%	8%

The case file review provided further evidence that ADR objectives were better met by mediation than by case evaluation. Where mediation was held, nearly half of the cases (47%) were settled "at the table." An additional 25% settled later without any subsequent court event, for a combined settlement rate of 72%.

In contrast, through case evaluation, settlements resulting from award acceptances occurred in only 2% of the cases within 28 days, and in an additional 20% of the cases

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after 28 days. Settlements occurred in an additional 25% of the cases at amounts not equal to the case evaluation awards without any subsequent court events taking place, for a combined settlement rate of 47%.

Judges and attorneys expressed more favorable views of the effectiveness of mediation compared to case evaluation.

Figure 3 shows for each type of ADR the percentage of judges and attorneys who either agreed or strongly agreed that it is an effective method for resolving civil cases. Judges and attorneys both give high marks to mediation as a means for resolving civil cases. While circuit court judges generally have a high opinion of case evaluation as a means to resolve civil cases, attorneys are less convinced of its effectiveness, with less than half (48%) agreeing that it is effective.

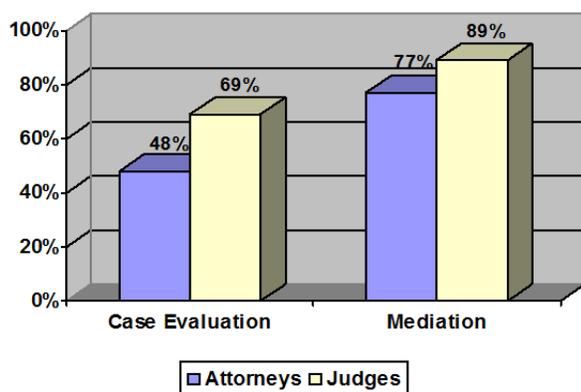


Figure 3: Percentage agreeing that each type of ADR is effective.

Mediation was seen by attorneys to have several advantages over case evaluation, including having the litigants present and the mediator having more time with the case than a case evaluation panel does. Circuit court judges gave higher ratings to mediation than to case evaluation and expressed a willingness to order mediation in place of or prior to case evaluation if it is shown to be more effective. However, there was also support for the continued use of case evaluation.

MAJOR RECOMMENDATIONS

Given the evidence that mediation is generally more effective and preferred over case evaluation, Michigan circuit courts should be encouraged to make mediation available for civil cases. The courts also should not require case evaluation for non-tort civil cases, which do not require case evaluation by statute.

Michigan circuit courts should continue to offer both forms of ADR but provide more flexibility in choosing the most suitable method and timing for the specific case. In many cases, it would be advisable to use mediation prior to case evaluation and to do so early in the case.

The complete report can be found at:

<http://courts.mi.gov/scao/resources/publications/reports/EffectivenessCaseEvalMediation.pdf>

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