

Court Annexed Mediation By The Numbers

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INTRODUCTION¹

This piece is intended as an extended companion piece to the article addressing court annexed mediation programs in New York's four federal district courts. It is essentially a reference piece, meant to provide statistical information that helps describe and evaluate court annexed mediation programs, and focuses on certain State and Federal courts that collect usable data related to their programs.

Since programs can vary widely in the type of data they keep, comparisons between programs can be difficult. However, even a cursory data review shows that court mediation programs can be enormously successful, typically resolving more than 50% of cases sent to mediation. This reduces court case loads and allows for party-directed resolutions of disputes more quickly, and at far less cost, than through the typical litigation process. In addition, and maybe surprisingly, the data from mandatory mediation programs – where the parties have no choice in opting for mediation - show high success rates. In fact, these programs have been so successful that some courts have fundamentally changed the traditional litigation process to make mediation the default process for almost all civil cases as soon as they enter the court system.

Scope and Data

This report analyzes 12 court-annexed mediation programs. It includes four state programs - Colorado, Florida, Maryland, and Texas – and eight federal district court programs in California, New York, and Ohio. These jurisdictions were chosen for the simple reason that they had accessible data. Wherever available, the report includes basic rule-making information, case referral data and success rates.

Sources of data vary. They include published court reports, conversations with ADR administrators, and online materials. In all instances, I try to make clear the data's source.

One example of where data comparisons may be limited is in how jurisdictions define mediation "success." For example, some jurisdictions deem a mediation successful only when a case is settled at the mediation. However, others include cases resolved within 30 or 60 days after the last mediation session, and/or before the first mediation session occurs. Some courts, like the Northern District of California, keep data on party satisfaction. Where possible, the definition of success for a jurisdiction is included in the program description. Given the differences in how courts define success, normalizing all the data is difficult. However, as noted above, the consistently high success rates across programs is clearly significant.

Programs often differ in how they use mediation. The "mandatory" or "automatic" programs have made mediation the default process for most cases when they enter the system. Other court annexed programs allow for mediation only when the parties agree to it, or when the court orders parties to mediation.

In general, the data shows that court annexed mediation programs work, and that court programs which automatically send cases to mediation work extremely well. Some have now been in operation for over a decade, and even if not perfect, provide a means of resolving disputes that reduces court caseloads, saves litigants time and money, and creates a process for litigants to resolve disputes in a manner typically unavailable in the courtroom.

Presentation Summary

To assist the reader, the following is a summary of the information provided for each program. I have tried to be consistent in how data is presented. However, the presentation is sometimes determined by the type of data a particular court system keeps and how they present that data.

- 1. Local Rule/Legislative Background** – Indicates whether the program was implemented through a local court rule developed by the court, or via legislation.
- 2. Eligible Cases** – Describes the kinds of civil cases eligible for mediation. Most programs have some limitations.
- 3. Referral** – Describes method of referral. For example, some cases may fall within a subject matter where all such cases are automatically sent to mediation; others may be ordered to mediation by a judge, or the parties may agree. The referral methods are not mutually exclusive.
- 4. Breakdown** – Indicates the number of cases within a particular subject matter area and/or court (e.g. District Court, Family Court, Civil Court, Small Claims Court, etc.) that went to mediation in a particular year.
- 5. Definition of Success** – Indicates how the court defines whether a mediation is successful.
- 6. Success Rates** – Indicates the success rate for cases sent to mediation, in accordance with how the court defines success.

CALIFORNIA

Central District of California <https://www.cacd.uscourts.gov/attorneys/adr>

Local Rule Background

In October 2001, Local Rule 16-15 became effective in the U.S. District Court of the Central District of California.² Rule 16-15 requires all civil cases to participate in one of three ADR processes; 1) a settlement conference before a magistrate or district judge, 2) an appearance before a neutral selected from the Court's Mediation Panel, or 3) a private dispute resolution proceeding.³

General Order 11-10, issued August 15, 2011, states that, except for certain enumerated exceptions noted below, all civil cases assigned to judges participating in the Court-Directed ADR Program are presumptively referred to either the Mediation Panel or private dispute resolution process.⁴ At present 21 out of 22 active District Court judges participate in the ADR program.⁵ Judges who do not participate in the program can still refer cases to mediation.

Eligible Cases

All civil disputes are eligible for ADR, except for a) habeas corpus and extraordinary writs, b) immigration and naturalization, c) prisoner civil rights, d) social security, and e) petitions to enforce IRS summonses.⁶

Referral (Automatic and Discretionary)

- All civil cases assigned to judges participating in the Court-Directed ADR Program are presumptively referred to either the Mediation Panel or private mediation.⁷
- Referral by judge pursuant to LR 16-15.⁸
- Parties may stipulate to mediation.

Breakdown⁹

2016: 2,932 cases referred (424 to Magistrate Judge for settlement conference, 1,386 to Court Mediation Panel, and 1114 to private mediation).

2015: 2,630 cases referred (372 to Magistrate Judge for settlement conference, 1,290 to Court Mediation Panel, and 968 to private mediation).

2014: 2,426 cases referred (366 referred to Magistrate judge for settlement conference, 1,186 cases were referred to Court Mediation Panel, and 874 to private mediation).

2013: 2,244 cases referred (1130 to Court Mediation Panel, 737 to private mediation, and 377 to Magistrate Judge).

2012: 2,320 cases referred (1025 to Court Mediation Panel, 859 to private mediation, and 436 to Magistrate judge).

2011: 1358 cases referred (863 to Court Mediation Panel and 439 to Private Mediation) [Note: no magistrate information for 2010 or 2011].

2010: 928 cases referred (663 to Court Mediation Panel and 265 to private mediation).

June, 2010 – June 2011: 1,096 cases referred to ADR¹⁰ (1,072 to Court Mediation Panel and 24 to Prisoner Mediation)

Definition of Success

Cases settled before the first mediation session or within 60 days after the last mediation session.

Success Rate

Cases referred to Mediation Panel.¹¹

2016: Of the 1,386 cases referred to the Mediation Panel, Panel Mediators conducted mediations in 677 cases and settled, or partially settled, 342 cases, for a settlement rate of 50.5%. Of the 335 cases mediated by a Panel Mediator that did not settle at the mediation session, 43 cases settled within 60 days *after* the mediation session. These settlements increase the settlement rate of the Panel Mediators to 56.9%.

In addition, 425 cases referred to the Mediation Panel settled before the mediation session took place. If this category is included, the total settlement rate for all cases referred to the Mediation Panel is 58%, whether or not a mediation ever took place.

2015: Of the 1,290 cases referred to the Mediation Panel, Panel Mediators conducted mediations in 671 cases, and settled or partially settled 353 cases, for a settlement rate of 52.6%. Of the 318 cases mediated by a Panel Mediator that did not settle at the mediation session, 34 cases settled within 60 days after the mediation session. These settlements increase the settlement rate of the Panel Mediators to 57.7%.

In addition, 300 cases referred to the Mediation Panel settled before the mediation session took place. If this category is included in the settlement rate, the Mediation Panel's settlement rate increases to 70.7%.

If one includes all the cases sent to the Mediation Panel (1,290), whether a mediation occurred or not, 53% of those cases were resolved either before or within 60 days after the mediation session.

2014: Of the 1,186 cases referred to the Mediation Panel, Mediators conducted mediations in 592 cases, and settled or partially settled 304 cases, for a settlement rate of 51.3%. Of the 288 cases that did not settle at the mediation, 27 cases settled within 60 days after the mediation session. Additionally, 296 cases referred to the Mediation Panel settled before the mediation session took place. If these two categories are in the Mediation Panel's settlement rate, the settlement rate increases to 70.6%.

2013: Of the 2,243 cases referred to the Mediation Panel, 528 were mediated and 243 were settled.

2012: Of the 2,320 cases referred to the Mediation Panel, 466 were mediated and 227 were settled.

2011: Of the 1,359 cases referred to Mediation Panel 402 were mediated and 173 were settled.

2010: Of the 928 cases referred to Mediation Panel 222 were mediated and 87 were settled.

Satisfaction Rates¹²

For Calendar Year 2016, surveys completed by 101 mediation participants in 2016 show that 89% of the responding participants were satisfied with the outcome of the mediation process conducted by Panel Mediators: 59% were "very satisfied," 30% were "satisfied," 6% were "dissatisfied," and 5% were "very dissatisfied."

Of 97 responses, nearly 89% found that the benefits of the mediation outweighed the costs, and approximately 11% found that the benefits did not outweigh the costs.

Of 99 responses, approximately 63% of the respondents found that the procedures used in the mediation process were "very fair," 32% described the procedures as "fair," 4% described the procedures as "unfair," and 1% described the procedures as "very unfair."

Of 99 responses, 67% of the respondents rated the mediator "excellent," 17% rated the mediator "very good," 11% rated the mediator "satisfactory," 3% rated the mediator "unsatisfactory," and 1% rated the mediator "terrible."

Northern District of California <http://www.cand.uscourts.gov/adr>

Local Rule Background

Since January 1, 2009, most civil cases are automatically referred to the Alternative Dispute Resolution Multi-Option Program (ADRMOP) under the Northern District of California ADR Local Rule 3-2.¹³ The ADRMOP initially offered four specific ADR options: mediation, early neutral evaluation, arbitration, and settlement conference with magistrate judges. Referred cases are presumptively required to participate in one non-binding ADR option.

In September of 2015, the Court adopted an ADR local rule that removed arbitration as one of the processes in the mediation process. Less than 1% of cases were choosing non-binding arbitration up to this point, and thus it did not make sense to keep it. Most settlements can be achieved through mediation, early neutral evaluation or settlement conferences with magistrate judges.¹⁴

Northern District of California ADR Local Rule 6-2 grants judges the authority to refer any civil action to mediation.¹⁵

Eligible Cases

All civil disputes.¹⁶

Referral (Automatic and Discretionary)

Most civil cases are automatically referred upon filing to the ADRMOP. Parties can stipulate to a specific ADR process; if necessary, ADR staff will hold a phone conference with the parties, and may suggest a specific process to judge.¹⁷

Referral specifically to mediation by judge. Parties may stipulate to mediation or move unilaterally for mediation under L.R. 7.¹⁸

Breakdown

FY 2016:¹⁹ During FY 2016, 3828 cases were subject to the ADR Multi-Option Program, an increase of 27 cases from FY 2015. In addition to the ADR Multi-Option Program cases, 429 ADA access cases were filed during FY 2016, a significant increase over FY 2015. ADA access cases are subject to General Order 56 and are not counted as Multi-Option Program referrals.²⁰

FY 2015:²¹ 3,801 cases subject to ADR Multi-Option Program. 143 Mortgage foreclosure cases.

FY 2014:²² 78 ADA access cases; slight decrease in ADA access filings, dropping to 243. 140 Mortgage foreclosure cases. 3,555 ADRMOP referrals. 1564 cases referred to ADR process. 6 cases referred to arbitration, 98 cases to early neutral evaluation, 618 cases to mediation, 399 to private ADR, and 443 to magistrate judge settlement conference.

FY 2013:²³ 269 ADA Cases. Referrals to a specific ADR process are not tracked to the fiscal year because of the lead time involved in referring cases to a process. 146 cases mortgage foreclosure cases. 4,370 cases referred to ADRMOP. 1,746 cases referred to a specific ADR process, 2 referred to arbitration, 115 to early neutral evaluation, 756 to mediation, 389 to private ADR, and 484 to Magistrate Judge Settlement Conference.

FY 2012:²⁴ 4,757 cases referred to ADRMOP. 1,807 of these 4,757 cases were referred to a specific ADR process. 766 (42%) of all cases referred to a specific ADR process were referred to mediation.

FY 2011:²⁵ 4,609 cases referred to ADRMOP. 1,891 of these 4,609 cases were referred to a specific ADR process. 776 (42%) of all cases referred to a specific ADR process were referred to mediation.

FY 2010:²⁶ 4,016 cases referred to ADRMOP. 1,760 of these 4,016 cases were referred to a specific ADR process. 750 (43%) of all cases referred to a specific ADR process were referred to mediation.

Definition of Success

Cases that settle at or prior to mediation.

Satisfaction and Success Rates

FY 2017

Surveys continue to show that over 95% of the participants in Mediation and ENE report that the processes were fair, and that over 85% report the benefits outweighed the costs. The settlement rate for Mediation cases filed in calendar year 2016 was approximately 55%, and for ENE cases files in calendar year 2016 was approximately 40%. These settlement rates are consistent with historical expectations and are remarkably good for an early-ADR, court-annexed program.

FY2016

Surveys of participants in Mediation and ENE processes continue to show that well over 90% of the participants believe these processes to be fair, and that over 80% believe the benefits to outweigh the costs. These percentages have been relatively consistent for past 10 years or more.²⁷ The settlement rate for Mediation cases filed in calendar year 2015 was approximately 55%; for ENE cases files in calendar year 2015, approximately 32%.

These settlement rates are a bit lower than last year, particularly for ENE, but are within historical expectations.

Mediation and ENE processes continue to show that more than 90% of participants are satisfied with the ADR process and that the benefits outweigh the costs. Settlement rates for Mediation cases filed in 2013 were reported by neutrals at 68%, and in ENE cases at 75%. Quite consistent.

FY 2015

Surveys of participants in Mediation and ENE processes continue to show that more than 90% of the participants are satisfied with the ADR process and that 84% report the benefits outweigh the costs. Settlement rates for Mediation cases filed in calendar year 2014 were reported by the neutrals at 68%, and in ENE cases at 60%. These settlement rates are generally consistent with the last several years of responses.

FY 2013

Of the 249 ADA cases filed, 51% were either voluntarily dismissed with no judicial action before a Notice of Need for Mediation was filed, dismissed or transferred out of the district before a notice of need for mediation was filed (10 cases), or removed from General Order 56 (2 cases). Of the 123 remaining cases, 108 were handled in mediation, 67 cases settled either before a session took place or as a result of the mediation session, 13 did not settle, and 28 were still pending by the conclusion of the term.

COLORADO <https://www.courts.state.co.us/Administration/Unit.cfm?Unit=odr>

Legislative Background

In 1983, the Colorado Legislature passed the Colorado Dispute Resolution Act (“CDRA”) to provide a forum for persons to resolve disputes through ADR.²⁸ The Act granted civil trial judges the statutory authority to refer cases to ADR processes, including mediation services. The Act established the Office of Dispute Resolution (“ODR”) in the judicial department to assist the court in designing, implementing and administering dispute resolution programs.

The Colorado State Court System consists of 22 judicial circuits that encompass Colorado’s 64 counties.²⁹ The funding for the Office of Dispute Resolution is the responsibility of the state.³⁰

Eligible Cases

All cases are eligible, with the exception of disputes involving domestic violence where the victim is unwilling to participate in mediation.³¹

Breakdown

2015-2016:³² 8,125 cases were reported from Colorado's 22 judicial districts as having been referred to ADR. Mediation Services constituted approximately 98% of ODR's services.

The breakdown of the 8,125 cases is as follows:

Domestic-Initial Filings (3,784), Domestic-Modifications (2,266), Dependency and Neglect (390), Child Support Enforcement (174), Juvenile (116), District Civil (169), County Civil (563), Criminal (4), Probate (22), Collections (7), Small Claims (560), Restraining Orders (6), HOA (5), Other (59).

2014-2015³³: 7,699 cases were reported from Colorado's 22 judicial districts as having been referred to ADR. Mediation Services constituted approximately 98% of ODR's services.

The breakdown of the 7,699 cases is as follows:

Domestic-Initial Filings (3,691), Domestic-Modifications (2,102), Dependency and Neglect (353), Child Support Enforcement (306), Juvenile (132), District Civil (152), County Civil (447), Criminal (37), Probate (20), Collections (3), Small Claims (399), Restraining Orders (4), HOA (4), Other (49).

2013-2014³⁴: 7,885 cases were reported from Colorado's 22 judicial districts as having been referred to ADR. Of these 7,885 cases, ODR provided a mediation service to 7,624 (approximately 97%).

The breakdown of the 7,885 cases provided with mediation services is as follows:

Domestic Relations-Initial Filing (3,814), Domestic Relations-Modifications (2,069), County Civil (655), Child Support Enforcement (436), Dependency and Neglect (366), District Civil (231), Juvenile (197), Criminal (JD4 only) (54), Probate (20), Other (21), Collections (12), Small claims (9), Restraining Orders (1).

2012-2013³⁵: 7,890 cases were reported from Colorado's 22 judicial districts as having been referred to ADR. Of these, 7,890 cases, ODR provided a mediation service to 7,786 (approximately 99%).

The breakdown of the 7,786 cases provided with mediation services is as follows:

Domestic Relations-Initial Filing 3,765, Domestic Relations-Modifications 2,311, Child Support Enforcement (469), Dependency & Neglect (320), Juvenile (219), District Civil

(223), County Civil (354), Collections (4), Probate (21), Small Claims (3), Criminal (JD4 Only) (76), Restraining Order (JD4 only) (4), Other (17).

2011-2012³⁶: 8,136 were reported from Colorado's 22 judicial districts as having been referred to ADR. Of these 7,890 cases, ODR provided a mediation service to 7,989 (approximately 98%).

The breakdown of the 7,989 cases provided with a mediation service:
Domestic Relations-Initial Filing (4,248), Domestic Relations- Modifications (2324), Child Support Enforcement (270), Dependency & Neglect (286), Juvenile (189), District Civil (207), County Civil (361), Collections (5), Probate (16), Small Claims (7), Criminal (37), Restraining Orders (10), Other (8).

Definition of Success

Colorado ODR defines success as an ADR process that results in a complete or partial resolution of a matter at the time of service. Cases not completely or partially resolved at the time of service are not included, even if the parties may have settled subsequent to the ADR service.³⁷

“In cases where ADR was not provided, it was for a variety of reasons, including settlement prior to ADR service, refusal by one party, decision to use another provider, and other.”³⁸

Success Rate

2015-2016³⁹ Of the 8,125 cases reported, 4,650 (57.2%) were completely or partially resolved. 2,178 (26.8%) were not. Cases that left with a proposed, but not finalized, agreement totaled 463 (5.7%). 70 cases (0.9%) were deemed inappropriate for ADR. 225 (2.8%) were current ongoing cases . Cases in which ADR was not provided totaled 539 (6.6%).

By Case Type only for 2015-2016⁴⁰Domestic-Initial Filings: 61.7% (2234/3784/), Domestic-Modifications: 51.1% (1158/2,266), Dependency and Neglect: 66.7% (260/390), Child Support Enforcement: 66.1% (115/174), Juvenile: 63.8% (74/116), District Civil: 38.5% (65/169), County Civil: 45.5% (256/563), Criminal: 100% (4/4), Probate: 54.5% (12/22), Collections: 57.1% (4/7), Small Claims: 59.3% (332/560), Restraining Orders: 66.7% (4/6), HOA:40% (2/5), Other: 50.8% (30/59).

2014-2015⁴¹: Of the 7,699 cases reported, 4,830 (62.7%) were completely or partially resolved. 2,036 (26.4%) were not. Cases that left with a proposed, but not finalized, agreement totaled 543 (7.1%). Cases in which ADR was not provided totaled 76 (1.0%). 214 (2.8%) were current ongoing cases.

2013-2014⁴²: Of the 7,885 cases reported, 4,591 (58.2%) were completely or partially resolved. 1,831 (23.2%) were not. Cases that left with a proposed, but not finalized, agreement totaled 589 (approximately 7.5%). Cases in which ADR was not provided totaled 557, or approximately 7.1%.

2012-2013⁴³: Of the 7,890 reported cases, 4,600 (58.3%) were completely or partially resolved. 1,726 (21.9%) were not. Cases that left with a proposed, but not finalized, agreement totaled 678, or approximately 8.6%. Cases in which an ADR service was not provided totaled 579, or approximately 7.3%.

2011-2012⁴⁴: Of the 8,136 cases reported, 4,707 (57.9%) were completely or partially resolved. 1,811 (22.3%) were not. Cases that left with a proposed, but not finalized, agreement totaled 709, or approximately 8.7%. Cases in which an ADR service was not provided totaled 578, or approximately 7.1%.

FLORIDA

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099/0044/0044.html

Legislative Background

On January 1, 1988, revisions to Chapter 44, Florida Statutes, titled “Mediation Alternatives to Judicial Action,” were implemented.⁴⁵ This legislation granted civil trial judges the statutory authority to refer cases to mediation or arbitration, subject to rules and procedures established by the Supreme Court of Florida.

The Florida State Court System consists of 20 judicial circuits that encompass Florida’s 67 counties.⁴⁶ Prior to July 2004, ADR programs in Florida were funded by the counties. Through a constitutional amendment implemented on July 1, 2004, funding for the state court system became the responsibility of the state.⁴⁷ The goal was for litigants to have generally uniform access to “essential” services, regardless of where they live in the state. Included among those “essential” services are court-connected mediation and arbitration. This goal has not been fully realized yet for ADR services, because there has not yet been full funding for implementation.⁴⁸

Eligible Cases

All civil cases may be court ordered to mediation under Florida Statutes 44.102(b). All family cases may be referred, with the exception of disputes involving domestic violence where the victim is unwilling to participate in mediation, and where the courts finds that the history of domestic violence would compromise the mediation process.⁴⁹

Referral

Referral by judge.⁵⁰ Referral upon motion by one party in certain circumstances.⁵¹

Breakdown⁵²

2014-2015: county small claims (59,412), evictions-residential (5,642), evictions-commercial (187), other county civil (1,790), family-joint income combined (31,163), family court dependency (6,432), other mediation order (12,652), arbitration orders (9,280).

2013-2014: county small claims (48,050), evictions-residential (6,188), evictions-commercial (144), other county civil (2,131), family-joint income combined (32,343), family court dependency (5,842), other mediation order (13,075), arbitration orders (427).

2013-2012: county small claims (46,472), evictions-residential (5,762), evictions-commercial (161), other county civil (2,632), family-joint income combined (30,951), family court dependency (5,135), other mediation order (13,706), arbitration orders (370).

2011-2012: county small claims (46,871), evictions-residential (5,643), evictions-commercial (150), other county civil (3,475), family-joint income combined (32,958), family court dependency (4,764), other mediation order (16,171), arbitration orders (889).

2010-2011: county small claims (45,738), evictions-residential (5,115), evictions-commercial (122), other county civil (4,366), family-joint income combined (32,318), family court dependency (4,589), other mediation order (17,406), arbitration orders (291).

2009-2010: county small claims (60,149), evictions-residential (5,079), evictions-commercial (117), other county civil (4,269), family-joint income combined (30,222), family court dependency (4,384), other mediation order (16,701), arbitration orders (1,097).

Over the past seven years, court filing fees were raised for all jurisdictions and increased especially in small claims courts. This led to a decrease in the number of cases referred to mediation, since, as the above data shows, a majority of cases referred to mediation were from small claims courts. In the family area, the Family Court dependency mediations, which deal with neglect of children, increased steadily between 2009-10 and 2014-15.

In 2011, Florida adopted appellate mediator certification as a 5th area of certification. This was the first time in Florida history that appellate mediation was made available as add-on certification. Statewide rules also were adopted establishing mediator qualifications on the local level. The Florida courts refers about 125,000 cases a year to mediation. However, courts addressing claims with higher jurisdictional amounts than those described here do not keep data on cases referred to mediation, so the number could be much greater.⁵³

Definition of Success

Success is not measured by settlement. “We don’t want people defaulting to your area if they think this area settles 50%, this one 60% and so on and so forth.” Success is measured by how many case and programs are able to be mediated with the available funds.⁵⁴

Success Rate⁵⁵

2014-2015: Of the 126,558 cases reported, 64,278 were completely or partially resolved.

2013-2014: Of the 79,091 cases reported, 60,455 were completely or partially resolved.

2013-2012: Of the 105,189 cases reported, 61,055 were completely or partially resolved.

2011-2012: Of the 110,921 cases reported, 62,588 were completely or partially resolved.

2010-2011: Of the 109,945 cases reported 63,309 were completely or partially resolved.

2009-2010: Of the 122,018 cases reported, 70,623 are completely or partially resolved.

MARYLAND <https://www.courts.state.md.us/district/adr/home>

Legislative Background

Maryland courts that have mediation/ADR programs include the District Court of Maryland, Circuit Courts, and the Court of Special Appeals.

<u>Case Type</u>	<u>Legal Outcomes of the ADR and Control Case</u>			
	<u>Total Number</u>	<u>Negotiated Agreement</u>	<u>Trial Verdict</u>	<u>Other</u>
<u>All cases</u>	<u>197</u>	<u>67 (34%)</u>	<u>108 (54.8%)</u>	<u>22 (11.2%)</u>
<u>All ADR</u>	<u>96</u>	<u>51 (53.1%)</u>	<u>38 (39.6%)</u>	<u>7 (15.8%)</u>
<u>All control cases</u>	<u>101</u>	<u>16 (15.8%)</u>	<u>70 (69.3%)</u>	<u>15 (14.9%)</u>
<u>All Montgomery County cases</u>	<u>83</u>	<u>31 (37.3%)</u>	<u>48 (57.8%)</u>	<u>4 (4.8%)</u>
<u>All Baltimore City Cases</u>	<u>114</u>	<u>36 (31.6%)</u>	<u>60 (52.6%)</u>	<u>18 (15.8%)</u>
<u>Montgomery County</u>	<u>45</u>	<u>21 (46.7%)</u>	<u>21 (46.7%)</u>	<u>3 (5.9%)</u>

<u>Treatment</u>				
Montgomery	38	10 (26.3%)	27 (71.1%)	1 (2.6%)
<u>County Control</u>				
Baltimore City	51	30 (58.8%)	17 (33.3%)	4 (7.8%)
<u>Treatment</u>				
Baltimore City	63	6 (9.5%)	43 (68.3%)	14 (22.2%)
<u>Control</u>				

“This table outlines the legal outcomes of the cases that are included in this study. It reports that 53% of ADR cases reached a negotiated agreement through the process, while 16% of control cases reached a negotiated agreement on their own. In the analysis, there is a control for whether an agreement was reached in order to isolate the effect of ADR regardless of whether participants were able to reach an agreement.”⁵⁶

Success Rate and Definition of Success

34% of all cases reached a negotiated agreement; 53.1% of those came from those participating in mediation, and 15.8% from the control group. 54.8% of all cases went to trial verdict; 35% of those came from those who participated in mediation, while 65% came from the control group.

“Participants who went through ADR are more likely than those who went through the traditional court process to report⁵⁷:

- 1) an improved relationship attitude toward the other participant measured from before the intervention to three to six months later.
- 2) That the outcome was working satisfaction with the outcome and satisfaction with the judicial system three to six months after the intervention.”

NEW YORK

Eastern District of New York

<https://www.nyed.uscourts.gov/alternative-dispute-resolution>

The Eastern District of New York has two ADR programs, one focused on mediation and the other on arbitration. Due to interesting data relating to the arbitration program, rules and data for both programs follow below.

EDNY MEDIATION

Local Rule Background

Eastern District of New York Local Rule 83.8 grants judges the authority to refer any civil dispute to mediation.⁵⁸

Eligible Cases

All civil disputes are eligible.⁵⁹

Referral

Referral by judge or magistrate judge pursuant to LR 83.8.⁶⁰
Parties may stipulate to mediation, subject to the availability of qualified mediators.⁶¹

Breakdown

2015 – 2016⁶²: 221 cases were referred to mediation. Of those, mediation was completed in 149 cases. 67% of those were settled as a result of mediation. This settlement rate does not reflect cases that were resolved after litigation resumed. Of the remaining 72 cases where mediation did not occur, 24 settled prior to mediation, and 10 cases did not proceed to mediation due to a stay of proceedings or other motion. 38 cases referred to the mediation program are still pending.

Of the 221 cases referred into the mediation program, 30% were referred to the Hurricane Sandy Mediation Panel. In 2014, the EDNY directed all Hurricane Sandy cases to mediation. This was the first automatic referral to mediation ever instituted by the court. Between July 1, 2015 and June 30, 2016, 80% of the Hurricane Sandy matters referred to mediation were settled. “Based upon the high rate of settlement, the automatic referral of Hurricane Sandy matters to mediation proved to be an effective and efficient way to resolve the large number of disputes arising from damage caused by the storm.”⁶³

[Note: reports unavailable for 2013-2015]

2012-2013⁶⁴: 166 were referred to mediation.
Civil rights (52), Torts (23), Contracts (27), Intellectual Property (8), Labor (39), Other (17).

2011-2012⁶⁵: 153 cases were referred to mediation.
Civil Rights (44), Torts (23), Contracts (25), Intellectual Property (4), Labor (30), Other (22).

2009-2010⁶⁶: 140 cases were referred to mediation.
Civil Rights (38), Torts (12), Contract (16), Intellectual Property (3), Labor (12), Other (7).

Definition of Success

The E.D.N.Y. defines a successful mediation as one that settled as a result of mediation. See Breakdown for 2015-16, above.

Success Rate

FY 2015-2016:⁶⁷ See, “Breakdown, 2015 – 2016,” above.

FY 2012-2013⁶⁸: Mediation was completed in 117 of 166 cases. Of these cases 67 (57%) were settled as a result of mediation. This number does not reflect cases that settled after they returned to the court.

FY 2011-2012⁶⁹: Mediation was completed in 95 of 153 cases. Of these cases, 61 (64%) were settled as a result of mediation. This number does not reflect cases that settled after they returned to the court.

FY 2009-2010⁷⁰: Mediation was completed in 54 of 140 cases. Of these cases, 38 cases (70%) were settled as a result of mediation. This number does not reflect cases that settled after they returned to the court.

Party Satisfaction⁷¹

A review of the post-mediation evaluations revealed the following data:

72% of respondents indicated that the mediation session had been helpful.

93% of respondents indicated that they would recommend their mediator to other litigants.

87% of respondents indicated that their mediator was well prepared.

80% of respondents indicated that the mediator was able to help the parties engage in a meaningful discussion of the case.

83% of respondents indicated satisfaction with the mediator’s knowledge of the law.

EDNY ARBITRATION⁷²

Local Rule Background

As per Local Civil Rule 83.7(d), the EDNY Arbitration Clerk designates all civil cases for compulsory arbitration (excluding social security cases, tax matters, prisoners’ civil rights cases and any action based on an alleged violation of a right secured by the Constitution of the United States or where jurisdiction is based in whole or in part on Title 28, U.S.C. § 1343), wherein money damages only are being sought in an amount not in excess of \$150,000.00, exclusive of interest and costs.

Results

One hundred and twenty-nine (129) cases were referred to the EDNY court-annexed arbitration program between July 1, 2015 and June 30, 2016. Ninety-seven percent (97%) of cases are referred into the arbitration program by the EDNY Arbitration Clerk, who screens each civil case filed in the EDNY for eligibility for the arbitration program. The remaining 3% of referrals to arbitration are issued by Magistrate Judges on a case-by-case basis.

Of the cases referred to the program where an arbitration hearing was scheduled, 65% were voluntarily dismissed prior to the administration of the arbitration hearing. As of the publication of this report, 33% of cases are still pending and 2% of cases have proceeded to an arbitration hearing.

Northern District of New York <http://www.nynd.uscourts.gov/adr-program>

Local Rule Background

N.D.N.Y. Local Rule 83.11-3(a) & (b) grants judges the authority to refer any civil case to mediation.⁷³

The United States District Court for the Northern District of New York has adopted, by General Order, a Two-Year Pilot Mandatory Mediation Plan, effective January 1, 2014.⁷⁴ Accordingly, civil actions pending or commenced on and after January 1, 2014 are presumptively referred to mediation, with few exceptions.

Eligible Cases

All civil cases are presumptively required to participate in mediation, with the exception of:

(a) Habeas Corpus and extraordinary writs, (b) applications to vacate a sentence, (c) Social Security appeals, (d) Bankruptcy appeals, (e) cases implicating issues of public policy, exclusively or predominantly, (f) IRS summons enforcement actions, (g) Government foreclosure actions, (h) civil asset forfeiture actions, (i) prisoner civil rights actions, (j) civilian Pro Se actions (these actions may be referred to the Court's Assisted Mediation Program); and (k) any action to enforce a government summons, subpoena or civil investigative demand.⁷⁵

Any civil case may otherwise be referred to mediation.⁷⁶

Referral (Automatic and Discretionary)

Civil actions pending or commenced on and after January 1, 2014 are presumptively

referred to mediation, with the above exceptions.⁷⁷

A judge may refer any civil case to mediation. Parties may stipulate to mediation.⁷⁸

Breakdown

January 2014-January 2016⁷⁹: 479 cases referred to ADR

Civil Rights: Employment cases (100 or 21%), Civil Rights: Other civil rights (78 or 16%), Torts: Other Personal Injury (35 or 7%), Contract: Other Contract cases (34 or 7%), Contract: Insurance cases (30 or 6%), Civil Rights: American w/disabilities (28 or 6%), Torts: Personal Injury Product Liability (24 or 5%), Tort: Motor Vehicle cases (21 or 4%), Labor: Fair Labor Standards Act (18 or 4 %), Other Statutes: Other Statutory actions (12 or 3%), Property Rights: Trademark cases (8 or 2%), Labor: Employee Retirement Income Security Act (8 or 2%), Other Statutes: consumer credit (8 or 2%), Torts: Property Damage Product Liability cases (7 or 1%), Torts: Personal Injury Medical Malpractice (7 or 1%), Torts: Federal Employers Liability cases (5 or 1%), Property Rights: Copyright cases (5 or 1%), Torts: Other Fraud cases (4 or 1%), Prisoner Petitions: Civil Rights cases (3 or 1%), Labor: Other labor litigation cases (3 or 1%),Torts: Assault Libel & Slander cases (3 or 1%), Labor: Family and Medical Leave Act (2 or >1%), Torts: Health Care/Pharmaceutical (2 or >1%), Contract: Franchise (2 or >1%), Other Statutes: Securities/Commodities/Exchange (2 or >1%), Other Statutes: Commerce cases (2 or >1%).

June 2010 – June 2011⁸⁰: 270 cases referred to ADR

Mediation (177), Settlement Conferences (55), Early Neutral Evaluation (27), Pro Se Mediation (11).

Definition of Success

The number of cases settled before the need to go to trial. “We look at settlement versus non settlement” (Nicole Eallonardo).⁸¹

Success Rate

With implementation of the January 1, 2014, mandatory mediation program, even existing cases from 2010 eligible for the program went into it. The data therefore shows a huge influx of cases.

2014-2016⁸²:

Cases settled through Mandatory Mediation: 173 (36%)

Cases not settled through Mandatory Mediation: 268 (56%)

Cases where Mandatory Mediation has begun but has not yet been completed during this time frame: 38 (8%)

173 cases that settled:⁸³

Civil rights: employment cases (37 or 21%), civil rights: other civil rights cases (22 or 13%), Contract: other contract cases (15 or 9%), Labor: Fair Labor Standards Act (10 or 6%), civil rights: Americans w/disabilities (10 or 6%), contract: insurance cases (10 or 6%), Torts: Motor Vehicle cases (10 or 6%), Torts (personal injury product liability (9 or 5%), torts: other personal injury cases (8 or 5%), Other Statutes: other statutory cases (6 or 3%), property rights: trademark cases (4 or 2%), labor: employee retirement income security act (4 or 2%), torts: personal injury medical malpractice cases (3 or 2%), other statutes: consumer credit (2 or 1%), property rights: copyright cases (2 or 1%), prisoner petitions: civil rights cases (2 or 1%), other statutes: securities/commodities/exchange cases (1 or 1% cases), labor: other labor litigation cases (1 or 1%), labor: family and Medical Leave Act (1 or 1%), Contract: Franchise cases (1 or 1%), Other Statutes: Commerce cases (1 or 1%), Torts: Assault Libel & Slander cases (1 or 1%), Torts: Federal Employers Liability cases (1 or 1%), Torts: health care/pharmaceutical cases (1 or 1%), Torts: property damage product liability cases (1 or 1%), Torts: other fraud cases (1 or 1%).

268 cases that didn't settle:⁸⁴

Civil rights employment cases (55 or 21%), civil rights: other civil rights cases (53 or 20%), torts: other personal injury (25 or 9%), contract: insurance cases (18 or 7%), contract: other contract (17 or 6%), civil rights: American w/disabilities (16 or 6%), torts: personal injury product liability (13 or 5%), torts: motor vehicles (10 or 4%), labor: fair labor standards act (6 or 2%), torts: property damage product liability (5 or 2%), other statutes: other statutory actions (5 or 2%), torts: personal injury medical malpractice (4 or 1%), other statutes: consumer credit (4 or 1%), labor: employee retirement income security act (4 or 1%), torts: federal employers liability cases (3 or 1%), torts: other fraud cases (3 or 1%), labor :other labor litigation (2 or 1%), property rights: trademark cases (2 or 1%), property rights: copyrights (2 or 1%), torts: assault libel, slander (2 or 1%), other statutes: securities/commodities/exchange (1 or >1%), contract: franchise (1 or >1%), labor: family and medical leave act (1 or >1%), torts: health care/pharmaceutical (1 or >1%), prisoner petitions: civil rights cases (1 or >1%), other statutes: commerce (1 or >1%).

Southern District of New York <http://www.nysd.uscourts.gov/mediation>

Local Rule Background

Southern District of New York Local Rule 83.9 grants judges the authority to refer civil cases to mediation.⁸⁵ The new §1983 Plan automatically refers to mediation most §1983 cases filed against the City of New York and New York City Police Department.⁸⁶

Effective January 3, 2011, the S.D.N.Y. by Standing Administrative Order automatically refers all employment discrimination cases, except cases brought under the Fair Labor Standards Act, to mediation.⁸⁷

Eligible Cases

All civil cases other than social security, habeas corpus, and tax cases may be referred to mediation.⁸⁸

Referral (Automatic and Discretionary)

Automatic referral for non-*pro se* employment cases, and certain §1983 cases, against the City of New York and the New York City Police Department.⁸⁹

Referral by judge. Parties may also stipulate to mediation.⁹⁰

Breakdown

2015:⁹¹ 1,094 cases referred to mediation (Full breakdown provided below under Success Rates for 2015)

2014: 1,011 referred to mediation

§1983 Plan: 382

Automatic employment: 357

Civil: Not Pro Se Employment: 223

Pro Se Employment: 49

2013:⁹² 911 referred

Automatic Referral: Employment (347), §1983 Plan (418)

Referral by Individual Judges: General Civil (113), Pro Se Employment (33)

2012:⁹³ 953 referred to mediation

Automatic Referral: Employment (321), §1983 Plan (449)

Referral by Individual Judges: General Civil (136), Pro Se Employment (47)

2011:⁹⁴ 557 referred to mediation

Automatic Referral: Employment (364), §1983 Plan (2)

Referral by Individual Judges: General Civil (168), Pro Se Employment (23)

Definition of Success

The S.D.N.Y. defines success as a mediation that results in a full or partial settlement at the end of the mediation service, or a case referred to mediation that settles before the initial mediation session.

Success Rate (cases with five or more referrals)

2015:⁹⁵ (Number of case referrals in parentheses)

Judge-Referred Employment: 45% (49)

Automatic Employment: 46% (325)
Pro Se Employment: 66% (104)
Judge-referred (non-pro se employment): 63%
Local Civil Rule 83.10 (the § 1983 Plan): 64% (376)
Trademark: 86% (7)
Prisoner Civil Rights: 67% (12)
Personal Injury Non-Motor Vehicle: 63% (11)
Personal Injury Motor Vehicle: 55% (11)
Labor: 64% (64)
Insurance: 67% (8)
ERISA: 43% (8)
Copyright: 67% (7)
Contract: 50% (28)
Civil Rights: 78% (48)

2014:⁹⁶ Of the cases referred in 2014, 828 have closed with the following rates of settlement: automatic employment (50%), Pro Se Employment (68%), referrals from individual judges (non pro-se employment) (65%), 1983 Plan (76%).

§1983 Plan: total closing reports (319), total successful outcomes (226), full settlement (124), partial settlement (4), settled before first mediation session (98), no settlement (69), parties refused (2), case removed by judge (23).

Automatic Employment: total closing reports (303), total successful outcomes (147), full settlement (124), partial settlement (0), settled before first mediation session (23), no settlement (146), parties refused (1), case removed by judge (9).

Civil Not Pro Se Employment: total closing reports (181), total successful outcomes (115), full settlement (84), partial settlement (5), settled before first mediation session (26), no settlement (61), parties refused (0), case removed by judge (0).

Pro Se Employment: total closing reports (28), total successful outcomes (17), full settlement (15), partial settlement (0), settled before the first mediation session (2), no settlement (7), parties refused (10) case removed by judge (3).

2013:⁹⁷ 310 cases achieved full settlement through mediation, partial settlement through mediation, or settlement before initial mediation session.

Automatic Referral

§1983 Plan

Total Closing Reports: 233
Total Successful Outcomes: 160
Success Rate: 69%

Employment

Total Closing Reports: 209
Total Successful Outcomes: 91
Success Rate: 44%

Referral by Individual Judges

General Civil

Total Closing Reports: 79
Total Successful Outcomes: 47
Success Rate: 60%

Pro Se Employment

Total Closing Reports: 17
Total Successful Outcomes: 12
Success Rate: 70%

2012:⁹⁸ 451 cases achieved full settlement through mediation, partial settlement through mediation, or settlement before initial mediation session.

Automatic Referral

§1983 Plan

Total Closing Reports: 382
Total Successful Outcomes: 266
Success Rate: 70%

Employment

Total Closing Reports: 278
Total Successful Outcomes: 104
Success Rate: 37%

Referral by Individual Judges

General Civil

Total Closing Reports: 119
Total Successful Outcomes: 63
Success Rate: 53%

Pro Se Employment

Total Closing Reports: 40
Total Successful Outcomes: 18
Success Rate: 45%

2011⁹⁹: 241 cases achieved full settlement through mediation, partial settlement through mediation, or settlement before initial mediation session.

Automatic Referral

§1983 Plan

Total Closing Reports: 2
Total Successful Outcomes: 2
Success Rate: 100%

Employment

Total Closing Reports: 307
Total Successful Outcomes: 131
Success Rate: 43%

Referral by Individual Judges

General Civil

Total Closing Reports: 146
Total Successful Outcomes: 95
Success Rate: 65%

Pro Se Employment

Total Closing Reports: 20
Total Successful Outcomes: 13
Success Rate: 65%

Western District of New York

<http://www.nywd.uscourts.gov/alternative-dispute-resolution>

Legislative Background

In December 2005, the District Judges for the Western District of New York authorized the implementation of a pilot ADR program to operate from January 1, 2006 through December 31, 2006. The pilot ADR program was extended annually for years 2007, 2008, and 2009, and has now been extended indefinitely by Standing Order dated January 21, 2010.¹⁰⁰

All new civil cases filed in, or transferred to, the Court are referred automatically to mediation, unless expressly exempt by the ADR Plan.¹⁰¹

Eligible Cases

All civil cases filed on or after January 1, 2006, with the exception of: habeas corpus and extraordinary writs; applications to vacate a sentence; Social Security appeals; bankruptcy appeals; cases implicating issues of public policy, exclusively or predominantly; IRS summons enforcement actions; government foreclosure actions; civil asset forfeiture actions; and prisoner civil rights actions.¹⁰²

Mediation is the only ADR process. There is no arbitration or early evaluation. There are mini-trials.

Referral (Automatic and Discretionary)

Automatic referral for civil cases filed after January 1, 2006, with limited exceptions.¹⁰³

Referral by judge for all other civil cases not automatically referred. Parties may stipulate to mediation.

Breakdown

No breakdown by NY case type, due to lack of statistical numbers.

1200 of 1800 civil cases referred. (Exceptions: social security appeals; cases where prisoners claiming guards beat them; excessive force cases; prisoner civil rights cases)

2200 new cases actually filed each year (civil and criminal). Of these, 1800 are civil.

3000 cases currently pending.

June, 2010-June, 2011:¹⁰⁴ 695 cases referred to ADR.
Mediation (695)

Totals: 2006-2014:

5725 Civil Cases referred to mediation since January 1st 2006.

913 from Rochester (Rochester only became part of ADR program in 2012).

4812 from Buffalo

Every civil case automatically gets referred to mediation.

Definition of Success

Settlement either before first mediation or within 60 days of last mediation.

Success Rate

Of the 5725, 3011 reached resolution in mediation process. 1563 of 3011 were considered to be in most intensive category. Many cases settled midway, which may

reflect the influence and productivity associated with mediation. Of the 1563, 1121 were settled and 442 did not settle, for a settlement rate of 71.2%.

OHIO

Northern District of Ohio

<http://www.ohnd.uscourts.gov/alternative-dispute-resolution>

Local Rule Background

A multi-door ADR program has been in place in the Northern District of Ohio since 1992. The Northern District of Ohio's local ADR rules are set forth in 16.4 through 16.7 of the N.D. Ohio, Local Civil Rules.¹⁰⁵ The N.D. Ohio offers five ADR processes: Early Neutral Evaluation, Mediation, Arbitration, Summary Jury Trial, and Summary Bench Trial.

The Uniform Mediation Act (UMA) adopted by the State of Ohio effective Oct. 29, 2005, largely governs confidentiality and is found in the Ohio Revised Code Sections 2710.01-2710.10.¹⁰⁶ The Northern District of Ohio rules make the UMA applicable to its ADR Program.

Eligible Cases

Any civil case may be referred to mediation when: 1) the status of discovery is such that the parties are generally aware of the strengths and weaknesses of the case, or 2) at any earlier time by agreement of the parties and approval of the court.¹⁰⁷

Referral

Referral by judge in consultation with parties pending status of discovery.¹⁰⁸
Referral by judge on motion by one of the parties pending status of discovery.¹⁰⁹
Parties may stipulate to mediation.¹¹⁰

Breakdown

June 2010 – June 2011:¹¹¹ 290 cases referred to ADR
Mediation (187), Settlement Conferences (99), Summary Jury and Bench Trial (2), Early Neutral Evaluation (1), Arbitration (1)¹¹²

Since January 1, 1992 7,743 cases have been referred to the ADR program and 7,603 have been completed. The number of cases referred to ADR decreased about 27% from 308 in 2014 to 226 in 2015. During 2015, 137 cases were referred to Mediation, one to Early Neutral Evaluation (ENE) and 88 to settlement conferences. Of the 7,572 cases completing ADR since 1992, approximately 34% were resolved through ADR.

Cases Resolved Through ADR, 1992-2015

Withdrawn Prior to ADR	479	6%
Settled Prior to ADR	1,235	16%
Settled Through ADR	2,552	34%
Returned to Chambers	3,306	44%
Total	7,572	

Definition of Success

No standard definition.

Success Rate¹¹³

Of the completed 7,743 cases, 3,817 or 50% were resolved prior to or through ADR proceeding.

16% were resolved after the actions were referred to ADR but before the ADR proceedings took place, e.g. default judgments and dismissed actions.

6% were withdrawn from the process prior to the ADR proceedings being conducted for various reasons including: remands of actions to a state court, automatic bankruptcy stays, parties filing non-consent to voluntary arbitration, or the return of actions to chambers for ruling on dispositive motions.

44% were returned to chambers for post-ADR settlement negotiations and further case processing.

The number of cases referred to judicial officers to conduct ADR proceedings has increased steadily since 1992 when only 2.2% of referrals were made to judicial officers. In 2015, nearly 90% of the ADR referrals were made to judicial officers/. As a result of this trend, and upon the recommendation of the Attorney Advisory Group, the Court downsized the Panels of Neutrals to 95 members effective January, 2015 in order to provide Panel members with more frequent referrals and assist them in maintaining their ADR skills.¹¹⁴

Southern District of Ohio

<http://www.ohsd.uscourts.gov/adr-district-court-mediation>

Local Rule Background

Southern District of Ohio Local Rule 16.3 grants judges the authority to refer civil cases to an ADR process, with limited exceptions.¹¹⁵

The Uniform Mediation Act (UMA) was adopted by the State of Ohio, effective as of Oct. 29, 2005. The Act largely governs confidentiality and is found in the Ohio Revised Code Sections 2710.01-2710.10.¹¹⁶

The S.D. Ohio adopted Supplemental Procedures for Alternative Dispute Resolution for civil cases effective February 21, 2013.¹¹⁷

Eligible Cases

Under Rule 16.3, all civil disputes may be referred/consented to mediation with the exception of cases exempted from initial disclosure by Fed. R. Civ. P. 26(a)(1)-(ii), (iii), (iv), (vii), and (viii). These are respectively: i) an action for review on an administrative record, ii) forfeiture actions in rem arising from federal statute, iii) petitions for habeas corpus or any other proceeding to challenge a criminal conviction or sentence, iv) actions brought without an attorney by a person in custody of the US, a state or state subdivision, v) an action to enforce or quash an administrative summons or subpoena, vi) an action by the U.S. to recover benefit payments, vii) an action by the U.S. to collect a student loan guaranteed by the U.S., viii) a proceeding ancillary to a proceeding in another court, and ix) an action to enforce an arbitration award.

The Supplemental Procedures for ADR list only five exceptions: (a) forfeiture actions in rem, (b) petitions for Habeas Corpus, (c) pro se prisoner, (d) action by U.S. to collect student loan, and proceeding ancillary to proceeding in another court.

Referral

Referral by judge. Parties may also stipulate to mediation.¹¹⁸

Breakdown

June 2010 – June 2011:¹¹⁹ 664 cases referred to ADR
Mediation (299), Settlement Week Mediation (365)

Success Rate

Currently unavailable.

Definition of Success

Currently Unavailable.

Texas

[Note: information provided only for Harris County, which has a population of 4.5 million people]

Legislative Background

The 1987 Texas Alternative Dispute Resolution Act (the “Act”) provides a general framework for ADR use in Texas. The full text of the Act is codified as Chapter 154 of the Texas Civil Practice and Remedies Code.¹²⁰ Chapter 154 of the Act lists five nonexclusive, available ADR procedures: mediation, mini-trial, moderated settlement conference, summary jury trial, and nonbinding arbitration.¹²¹

Chapter 152 of the Texas Civil Practice and Remedies Code establishes a county-by-county system for the creation, funding and administration of an “alternative dispute resolution system.”¹²² As of January 2012, Texas has 254 counties served by 449 trial courts of general jurisdiction.¹²³ Funding for ADR centers falls under the county’s responsibilities and is provided by a court cost assessed against civil cases filed in the county courts and district courts residing in that county.¹²⁴

Eligible Cases

All civil disputes. Criminal cases may be referred upon request by the State and with consent of the victim and defendant.¹²⁵

Referral

Referral by judge for civil cases. Parties may stipulate to mediation.¹²⁶

Harris County Breakdown¹²⁷

2015: Total number of cases (4,200), Mediations Scheduled (2,461).

Of the 4200 total cases: Community (2,256) family (645), litigation (1,271), CPS (28)
Of the 2,461 scheduled Mediations: community (1,695), family (367), litigation (374), CPS (25)

For community Referral, 38 cases not in litigation were referred. For Family Referral, 54 Cases exceeded DRC guidelines. For Litigation Referral, 6 cases exceeded DRC guidelines.

2014: Total number of cases (4,159), Mediations Scheduled (2,786).

Of the 4,159 total cases: Community (2,223), Family (543), Litigation (1,362), CPS (31)
Of the 2,786 scheduled Mediations: community (1,981), family (355), litigation (420), CPS (30)

2013: Total number of cases (4,784), Mediations Scheduled (3,502).

Of the 4,784 total cases: community (2,857), family (397), litigation (1,485), CPS (45).
Of the 3,502 scheduled Mediations: community (2,640), family (320), litigation (504), CPS (38).

2012: Total number of cases (5,087), Mediations Scheduled (3,520).

Of the 5,087 total cases: community (2,746), family (538), juvenile (1), litigation (1,737), CPS (55), truancy (10).

Of the 3,520 scheduled Mediations: community (2,529), family (356), juvenile (0), litigation (564), CPS (61), truancy (10).

For Community Referrals, 85 cases were not court referrals.

For Family Referrals, 96 referred cases either exceeded DRC financial guidelines or parties failed to schedule.

For Litigation Referrals, 481 referred cases either exceeded DRC financial guidelines or parties failed to schedule.

2011: Total number of cases (4,891), Mediations Scheduled (3,658)

Of the total 4,891 cases: Community (2,728), Family (625), Juvenile (3), Litigation (1,373), CPS (151), Truancy (11).

Of the 3,658 scheduled Mediations breakdown: Community (2,580), Family (383), Juvenile (3), Litigation (533), CPS (148), Truancy (11).

Harris County Success Rate

2015: Cases Closed (2,550 or 59%), Mediations Held (2,147)

Of the 2,550 total cases closed: community (1,731 or 60%), family (417 or 63%), litigation (377 or 51%), CPS (25 or 50%).

Of the 2,147 Mediations held: community (1,508), family (312), litigation (304), CPS (20)

Mediations settled (1,267): community (909), family (193), litigation (155), CPS (10)

Mediations impasse (868): community (597), family (115), litigation (146), CPS (10)

Mediations continued (9): community (2), family (4), litigation (3), CPS (0)

Arbitrations held (3)

Cases pending next period (1,650): community (525), family (228), litigation (894), CPS (3)

2014: Cases Closed (2,855 or 64%), Mediations Held (2,409)

Community (2018 or 66%), Family (384 or 67%), Litigation 424 (53%), CPS (29 or 72%).

Mediations Held breakdown: community 1,738, family 295, litigation 348, CPS 26

Mediations Settled (1,535): community 1,142, family 192, litigation 181, CPS 18

Mediations Impasse (860): community 594, family 96, litigation 163, CPS 7

Mediations Continued (14): community 2, family 7, litigation 4, CPS 1

Arbitrations Held (2)

Cases pending next period: 1,304 (community 205, family 159, litigation 938, and CPS 2)

2013: Cases Closed (3,963 or 60%), Mediations Held (2,901)

Of the 3,962 total cases closed: community (2,691 or 60%), family (318 or 63%), litigation (916 or 56%), CPS (38 or 63%).

Of the 2,901 Mediations Held: community (2,237,) family (255), litigation (380), CPS (27)

Mediations Settled (1,732): community (1,346), family (156), litigation (211), CPS (17)

Mediations Impasse (1,150): community (884), family (91), litigation (165), CPS (10)

Mediations Continued (19): community (7), family (8), litigation (4), CPS (0)

Arbitration held (2)

Cases Pending next period(821): community (166), family (79), litigation (569,) CPS (7)

2012: Cases Closed (4,148), Mediations Held (2,911)

Of the 4,148 total cases closed: community (2,606 or 61%), family (440 or 70%), juvenile (0), litigation (1,041 or 60%), CPS (51 or 71%), Truancy (10 or 100%).

Of the 2,911 Mediations held Breakdown: community (2,123), family (307), juvenile (0), litigation (419), CPS (19), truancy (10)

Mediations Settled (1,776): community (1,282), family (207), juvenile (0), litigation (247), CPS (30), truancy (10)

Mediations Impasse (1,101): community (833), family (88), juvenile (0), litigation (168), CPS (12), truancy (0)

Mediations Continued (34): community (8), family (12), juvenile (0), litigation (4), CPS (10), truancy (0)

Arbitration held (0)

Cases Pending next period (939): community (140), family (98), juvenile (1), litigation (696), CPS (4), truancy (0)

2011: Cases Closed (4,264), Mediations Held (3,004)

Of the 4,264 total cases closed: community (2,621 or 61%), family (538 or 62%), juvenile (3 or 100%), litigation (952 or 57%), CPS (139 or 65%), truancy (11 or 100%)

Of the 3,004 Mediations held Breakdown: community (2,096), family (349), juvenile (3), Litigation (427), CPS (116), truancy (11).

Mediations Settled (1,804): Community (1,272), family (208), juvenile (3), litigation (238), CPS (70), truancy (11)

Mediations Impasse (1,171): community (821), family (130), juvenile (0), litigation (183), CPS (37), truancy (0)

Mediations continued (29): community (3), family (11), juvenile (0), litigation (6), CPS (9), truancy (0)

Arbitrations Held (2)

Cases Pending next Period(627): community (107), family (87), juvenile (0), litigation (421), CPS (12, truancy (0)

SUMMARY OF FINDINGS

The reported data makes clear that court-annexed mediation programs can be highly successful, resolving 50% – 60% of mediated cases, and even more in some instances. Furthermore, these results often do not include cases referred to mediation that are resolved before any additional court process, or within a short time after the last mediation session. Where such data is kept, it shows satisfaction with the mediation process and/or generally positive outcomes.

Perhaps counterintuitively, automatic/mandatory programs, where cases go directly to mediation by court rule and without input from the parties, often have high success rates. In other words, parties agreeing to mediate as a prerequisite for mediation does not necessarily correlate to program success. Making the parties walk through the door may be more important than waiting for them to say that they are ready. Many attorneys and parties would be hesitant to raise mediation on their own, fearing it would be a sign of weakness to the opposing side. However, automatically sending cases to mediation overcomes that hurdle.

Reasonable opt-out provisions seem to be standard in automatic programs, and certain classes of cases may be excluded. Any needed discovery can be completed before an actual mediation session is scheduled.

Dispute resolution process can take many forms, and all courts have rules as to what litigants are required to do. Party choice is rarely a feature of court rules. Discovery, once seen as the province of a litigator's skill, is increasingly governed by mandatory rules that dictate what parties must produce.¹²⁸ The experience with

automatic mediation programs seems similar. Once enacted, these programs become part of the standard dispute resolution process, optimizing efficiency and more quickly resolving matters that otherwise might require more time and costs for judiciary, attorneys, and litigants.

Payment of mediators is an important issue to address, and the information contained here shows that some court-annexed mediation programs provide for payment while others do not.

Alternative dispute resolution (ADR), in particular mediation, has become a fixture in many federal and state courts. About 30 years after the federal courts began experimenting with ADR, more than one third of federal trial courts authorize multiple forms of ADR, and all federal courts authorize some form of ADR.¹²⁹

A 2011 report, “ADR in the Federal District Courts: An Initial Report,” prepared by Donna Stienstra of the Federal Judicial Center, found that mediation is authorized by 63 of the 94 districts, and that mediation was by far the most court authorized and elected ADR process in the nation.¹³⁰

Court annexed mediation appears to be at a crossroads. As noted in the Introduction, the main purpose of this report is to report data relating to court-annexed mediation programs. The data clearly shows that court annexed mediation programs work. They can quickly and at relatively low cost resolve enormous numbers of cases, and the details have largely been figured out as to how to make them work. The procedures have been figured out, the necessary forms exist, the administrative

Endnotes

¹ I want to thank Thomas Decina, Elizabeth Heifitz, and Nicholas Denny for research assistance, Russ Bleemer for a thoughtful read-through, and Lucas Kwong for copy-editing.

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³ C.D.C.A. Local Rule 16-15.4.

⁴ General Order 11-10, §5, available at <http://www.cacd.uscourts.gov/sites/default/files/general-orders/GO-11-10.pdf>.

⁵ Email from Gail Killefer, ADR Program Director for the CACD, March 5, 2018.

⁶ General Order 11-10, §4.5.

⁷ General Order 11-10, §5.

⁸ C.D.C.A. Local Rule 16-15.3.

⁹ Annual Reports: available at <https://www.cacd.uscourts.gov/attorneys/adr>

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¹³ N.D.C.A. ADR Local Rule 3-2 & 6-2 available at

<http://www.cand.uscourts.gov/localrules/ADR>.

¹⁴ Interview with Howard Herman, June 2016. The local rule can be found at

<http://www.cand.uscourts.gov/localrules/ADR>

¹⁵ N.D.C.A. Local Rule 6-2.

¹⁶ N.D.C.A. Local Rule 3-2 & 6-2.

¹⁷ N.D.C.A. Local Rule 3-2 & 6-2.

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²² <http://www.cand.uscourts.gov/adr/annualreports>.

²³ <http://www.cand.uscourts.gov/adr/annualreports>.

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²⁶ N.D.C.A. ADR Annual Report 2013.

²⁷ Interview with Howard Herman, ADR Program Director, June 2016.

²⁸ Colorado Revised Statutes §13-22-301 et seq., available at

www.courts.state.co.us/userfiles/File/ODR/CRS_13_22_301_1.doc.

²⁹ Office of Dispute Resolution Programs/Services

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³⁰ Colorado Revised Statutes §13-22-310.

³¹ Colorado Revised Statutes §13-22-311.

³²

https://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2016/FY%202016%20Annual%20Statistical%20Report.pdf.

³³ Table 34: ADR Services Provided by Case Type and Disposition Percentage for FY 2015

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- ³⁸ *Id.*
- ³⁹ Judicial Branch Annual Statistical Report, Fiscal Year 2016, Colorado Courts, p. 92, found at:
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- ⁴⁵ Chapter 44, Mediation Alternatives to Judicial Action, available at
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- ⁴⁹ Mediation Alternatives to Judicial Action, 44.102(2)(c).
- ⁵⁰ Mediation Alternatives to Judicial Action, 44.102(2) (b).
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- ⁵² <http://www.flcourts.org/publications-reports-stats/statistics/uniform-data-reporting.stml#ADR>.
- ⁵³ Conversation between Elizabeth Heifetz and Kimberly Kosch, Senior Court Operations Consultant at FL Dispute Resolution Center, June 2016. Further information about the Florida program can be found at: <http://www.flcourts.org/resources-and-services/alternative-dispute-resolution/information-consumers/mediation-florida.stml>
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- ⁵⁶ Impact of Alternative Dispute Resolution on Responsibility, Empowerment, Resolution, and Satisfaction with the Judiciary: Comparison of Short and Long Term Outcomes in District Court Civil Cases, February 2016. (Available at Administrative Office of the Courts, Courts Operations Funding from the State Justice Institute, Grant Number SJI-13-N-028)
- ⁵⁷ Impact of Alternative Dispute Resolution on Responsibility, Empowerment, Resolution, and Satisfaction with the Judiciary. Comparison of Short- and Long Term Outcome District Court

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⁶⁰ E.D.N.Y. Local Civil Rule 83.8(b)(1).

⁶¹ E.D.N.Y. Local Civil Rule 83.8(b)(1).

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⁶³ *Id.*

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⁶⁷ EDNY FY 2016 ADR Report.

⁶⁸ E.D.N.Y. 2012-2013 Mediation Report.

⁶⁹ E.D.N.Y. 2011-2012 Mediation Report.

⁷⁰ E.D.N.Y. 2009-2010 Mediation Report.

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⁷² All Arbitration information taken from EDNY FY 2016 ADR Report.

⁷³ N.D.N.Y. Local Rule 83.11, available at http://www.nynd.uscourts.gov/sites/nynd/files/Local_ADR_Rules.pdf.

⁷⁴ General Order #47, http://www.nynd.uscourts.gov/sites/nynd/files/general-ordes/GO47_2.pdf.

⁷⁵ General Order # 47, § 2.1.

⁷⁶ N.D.N.Y. Local ADR Rules, 83.11-3(a).

⁷⁷ General Order # 47, § 2.1.

⁷⁸ N.D.N.Y. Local ADR Rules, 83.11-3(a).

⁷⁹ <http://www.nynd.uscourts.gov/pilot-mandatory-mediation-program-statistics>.

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⁸¹ Conversation between Elizabeth Heifetz and Nicole Eallonardo, ADR Coordinator Northern District of NY, June, 2016).

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⁸³ <http://www.nynd.uscourts.gov/pilot-mandatory-mediation-program-statistics>.

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⁸⁵ S.D.N.Y. Local Civil Rule 83.9, available at <http://www.nysd.uscourts.gov/rules/rules.pdf>.

⁸⁶ Plan for Certain § 1983 Cases Against the City of New York, available at <http://www.nysd.uscourts.gov/rules/1983%20Revised%20Plan%20and%20Exhibits.6.10.14.pdf>.

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⁹² S.D.N.Y. Mediation Program Annual Report 2013, available at http://www.nysd.uscourts.gov/docs/mediation/Annual_Report_2013.pdf

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¹⁰⁰ W.D.N.Y. ADR Plan, available at

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¹⁰³ W.D.N.Y. ADR Plan Section 2.1 A & C.

¹⁰⁴ Table, “ADR in the Federal District Courts: An Initial Report,” Federal Judicial Center (Nov. 16, 2011), available at [http://www.fjc.gov/public/pdf.nsf/lookup/adr2011.pdf/\\$file/adr2011.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/adr2011.pdf/$file/adr2011.pdf).

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¹⁰⁷ N.D. Ohio Local Rule 16.6(a) & 16.6(b)(1), available at

http://www.ohnd.uscourts.gov/assets/Rules_and_Orders/Local_Civil_Rules/Rule166.pdf.

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¹²⁴ Texas Civil Practice and Remedies Code, Section 152.004(a).

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¹²⁶ Texas Civil Practice and Remedies Code, Section 152.003(a).

¹²⁷ All Harris County information provided by Nicholas Hall, Executive Director of the Harris County Dispute Resolution Center.

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¹³⁰ Alternative Dispute Resolution Now an Established Practice in District Courts, available at <http://news.uscourts.gov/alternative-dispute-resolution-now-established-practice-federal-courts> (Because ADR statistics are not published nationally, and the total number of ADR or mediation referrals in a given year is unknown. The above statistics were compiled by the Administrative Office of U.S. Courts. Districts seeking supplemental funding for ADR staff submit a request that includes the number of cases referred to ADR the previous year. The statistics are comprised of ADR data submitted by 49 district courts requesting additional funding.)