

# NORTH CAROLINA DISPUTE RESOLUTION COMMISSION- MPA STUDENT EVALUATION

This paper represents work done by UNC-Chapel Hill Master of Public Administration students. It is not a formal report of the School of Government, nor is it the work of School of Government faculty.

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THE UNIVERSITY  
of NORTH CAROLINA  
at CHAPEL HILL



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## Executive Summary

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This research study evaluated the North Carolina Dispute Resolution Commission's (NCDRC) Mediated Settlement Conference Program (MSCP) for civil superior court cases. Specifically, it examined the role mediation plays in encouraging the settlement of superior court cases earlier in the litigation process and clarified the outcome of cases reported as concluded without participating in mediation.

The study's data came from an original survey of attorneys in Civil Superior Court Districts: 8A (Lenoir Co.), 10 (Wake Co.), 11B (Johnston Co.), and 18 (Guilford Co.). The research team distributed two different surveys to address the two following areas of interest identified by the NCDRC:

1. Cases designated as reaching an impasse during mediation ("Not Resolved with ADR Conference"), but going on to reach a final resolution
2. Cases designated as not participating in mediation ("Disposed without ADR")

The project team identified relevant cases using the North Carolina Administrative Office of the Courts' (NCAOC) CaseWise case management software. The team sent 1,480 surveys to attorneys in cases fitting study selection criteria and received responses from 702 (just under 50%). Survey results indicated:

- ✓ **Mediation Impasse** - Attorneys reported that 68.6% of cases settled after reaching an impasse in mediation. 74% of attorneys involved in settled cases believed mediation contributed to the eventual settlement.
- ✓ **Disposed without ADR** – In 11.2% of cases, a mediation conference *had* actually occurred, and frequently led to settlement (56% of cases that went to mediation settled). Overall, 68.4% of these cases settled by agreement of the parties either during or outside of mediation, while another 14.7% were resolved by order of the court.

Responses to open-ended evaluation questions bolster these findings. Of lawyers choosing to write comments on the survey, 73% gave positive feedback about the mandatory mediation program.

Despite the positive impact of mediation, the team identified a critical need for improved record keeping procedures in the superior court system. The team found that 7.3% of "Impasse" cases were improperly categorized, and that 11.2% of "Disposed without ADR" cases actually *had* gone to mediation.

Overall, the research suggests two key findings:

1. At least in the four districts studied, mandatory mediation is having a larger positive impact than is captured in current NCDRC statistics.
2. Updating recordkeeping policies and procedures could lead to the availability of better data in the future.



## I. Introduction

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The North Carolina General Assembly established the Mediated Settlement Conference Program (MSCP), now supported by the North Carolina Dispute Resolution Commission (NCDRC), as a pilot program in 1991, “to facilitate the settlement of superior civil court civil actions” (GS § 7A-38.1). Facilitating early settlement would potentially increase efficiency in the court system and allow for cost-savings. A study completed by the then Institute of Government at UNC-Chapel Hill concluded that the pilot program met the goals laid out in the initial legislation. The program expanded statewide in 1996. In 2006, new MSCP rules required all eligible superior civil court cases to participate in mediation (certain limited exceptions apply, see Mediated Settlement Conference Rule 1.C.(6)).

Currently, the MSCP is in its 20<sup>th</sup> year of operation and in Fiscal Year 2011, 9,302 cases were ordered to mediated settlement. The system operates on a party-pay model, meaning individual parties must retain and pay a Commission-approved mediator. The mediator then meets with the parties to facilitate discussion and assist them in reaching their own agreement, in an effort to help them settle the case without the need for protracted litigation or a trial. Mediators are responsible for submitting a “Report of Mediator” to the courts to track the mediation process.<sup>1</sup>

Since 1996, no additional program evaluations have studied the role of mediation in encouraging parties to settle. However, the Administrative Office of the Courts’ Court Programs and Management Services Division collects and publishes yearly aggregate data gathered from “Report of Mediator” forms in its *Mediated Settlement Conference (MSC) Statistical Report*.<sup>2</sup> The report tracks numerous statistics, including the number of cases settled in mediation, the number reaching impasse in mediation (recorded as “Not Resolved with ADR Conference”), and the number not completing mediation for unknown reasons (“Disposed without ADR”). In Fiscal Year 2011, these statistics indicated that mediation results in a settlement in less than half of all cases statewide.

Despite this, the NCDRC hears positive anecdotal reports from litigants, court staff, attorneys, and judges regarding the effectiveness of mediation. The NCDRC believes several factors may cause the *MSC Statistical Report* to under-represent the effectiveness of mediation, including:

- ✓ Cases listed as “Disposed without ADR” may have settled during mediation, but the “Report of Mediator” was not properly filed.
- ✓ Cases listed as “Disposed without ADR” may have settled after being ordered to mediation, but before the mediation conference was actually held.
- ✓ Cases that reached an impasse during mediation may have gone on to settle, owing in large part to the influence of issues discussed during mediation.

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<sup>1</sup> See Appendix for *Report of Mediator*

<sup>2</sup> See Appendix for *Mediated Settlement Conference (MSC) Statistical Report FY 2010/11*

## II. Methodology

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In order to understand more fully the role that mediation plays in encouraging case settlement, the project team developed two survey instruments in conjunction with the NCDRC (one to ask about cases that reached impasse in mediation and one for cases “Disposed without ADR”). The team distributed these surveys to lawyers involved in relevant superior court civil cases filed during Fiscal Year 2010 and Fiscal Year 2011.

### A. Case Selection

To select lawyers for the survey sample, the team first identified relevant cases using data available in the North Carolina CaseWise case management database. Because many superior court districts do not use CaseWise, or do not use standardized codes to represent case outcomes, the team was unable to select cases from all North Carolina superior court districts. The final survey sample represents cases from Guilford, Johnston, Lenoir, and Wake counties. The team selected these counties based on three criteria:

1. High quality record-keeping in CaseWise (for a more accurate starting sample)
2. Even balance between rural and urban
3. Local court staff’s willingness to help with the study

Ultimately, the sample is not representative of North Carolina as a whole. However, selecting districts with strong record keeping practices and an even urban-rural split provided accurate data for drawing the sample, as well as diversity in district characteristics.

As a second step in selecting survey participants, the team identified the lead attorney representing both the plaintiff and the defendant in selected cases. Using records from the CaseWise system, and a contact list provided by the NC Bar Association, the team gathered attorney email addresses for survey distribution.

Two additional factors limited the size and scope of the final contact list. First, in many cases, the team was unable to locate an attorney’s email address and, therefore, unable to contact the attorney. Second, many lawyers selected as a part of the sample had worked on multiple cases during the period under consideration. To prevent overburdening attorneys, the team chose to limit the total number of surveys to three per lawyer. In situations where a lawyer was involved in more than three cases, the team randomly chose three cases, with a preference given to cases in either Lenoir or Johnston counties (since the number of available cases in those counties was already extremely low).

Overall, the team identified 1090 cases fitting the selection criteria for the study. After limiting the number of surveys an attorney could receive to three, the team sent surveys to at least one attorney in 950 (87%) of those cases. Table 1 shows the number of

available cases and the number of cases in which the team was able to contact at least one attorney, broken out by county and case type.

| <b>Table 1 - Case Selection Statistics</b> |                    |                  |                 |                  |
|--|--------------------|------------------|-----------------|------------------|
| <b>Impasse</b>                             |                    |                  |                 |                  |
|  |                    | <b>Available</b> | <b>Surveyed</b> | <b>Surveyed%</b> |
|  | Guilford           | 310              | 256             | 83%              |
|  | Johnston           | 54               | 52              | 96%              |
|  | Lenoir             | 11               | 11              | 100%             |
|  | Wake               | 212              | 192             | 91%              |
|  | <b>Total</b>       | <b>587</b>       | <b>511</b>      | <b>87%</b>       |
| <b>Disposed w/out ADR</b>                  |                    |                  |                 |                  |
|  |                    | <b>Available</b> | <b>Surveyed</b> | <b>Surveyed%</b> |
|  | Guilford           | 246              | 203             | 83%              |
|  | Johnston           | 19               | 16              | 84%              |
|  | Lenoir             | 15               | 15              | 100%             |
|  | Wake               | 219              | 205             | 94%              |
|  | <b>Total</b>       | <b>503</b>       | <b>439</b>      | <b>87%</b>       |
|  | <b>Grand Total</b> | <b>1090</b>      | <b>950</b>      | <b>87%</b>       |

Ultimately, because the team was able to contact both attorneys in a large number of cases, the team distributed 1480 surveys. 774 surveys involved cases that had reached an impasse during mediation, while the remaining 706 involved cases recorded as “Disposed without ADR.” The team distributed these 1480 surveys to 947 different attorneys, meaning each attorney involved in the study received an average of 1.56 surveys.

## **B. Survey Development and Distribution**

The research team worked closely with the NCDRC to develop two independent survey instruments (one for “Impasse” cases, one for “Disposed without ADR” cases) that would gather meaningful data about attorney’s experiences with mandatory mediation.<sup>3</sup> The team piloted the surveys with several attorneys and mediators and incorporated their comments and suggestions into the final instruments. Finally, the team created an online version of the surveys using Qualtrics survey software to allow for ease and accuracy in data collection.

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<sup>3</sup> See appendix for a full copy of each survey instrument.

The NCDRC contacted judges in the four superior court districts involved with the study to get permission and approval for distribution of the surveys. The team distributed the surveys via email, including a statement from each attorney's local superior court judge requesting cooperation with the study. The email informed attorneys that the research team and the NCDRC would keep their responses anonymous, and that the team was researching aggregate trends, not the outcome of particular cases. The team gave lawyers two weeks to complete the surveys, and sent a reminder email to all attorneys after the first of the two weeks had elapsed.

### III. Quantitative Results

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#### A. Survey Descriptions and Response Rates

The “Impasse” survey asked lawyers several questions about the mediation process, the eventual outcome of the case, and their feelings about the helpfulness of mediation in general. The project team distributed the survey to 774 lawyers, and received responses from 392 (a response rate of 51%).

The “Disposed without ADR” survey asked lawyers about the outcome of the case, whether the parties had held a mediated settlement conference, and how they felt about the role of mediation. Of the 706 surveys the project team sent, lawyers completed 310 surveys (a response rate of 44%).

The following descriptive statistics shed light on outcome trends for cases in each category, as well as lawyer’s opinions about the mandatory mediation process.

#### B. Miscategorized Cases

During the process of selecting relevant cases from CaseWise, the NCDRC staff expressed concern that district court staff may have been improperly categorizing some cases in the CaseWise management system. To address this, the first question in the “Impasse” survey asked lawyers to confirm that their case had reached an impasse during mediation and had later gone on to reach final resolution. As shown in Table 2, survey responses indicate that court staff properly categorized 92.7% of the cases, with 7.3% improperly categorized in the CaseWise record-keeping system.

|                          | <b>N</b> | <b>Percent</b> |
|--------------------------|----------|----------------|
| Properly Categorized     | 357      | 92.7%          |
| Not Properly Categorized | 28       | 7.3%           |
| No Response <sup>4</sup> | 7        |                |

The “Disposed without ADR” survey also checked for improperly categorized cases. The survey asked lawyers whose cases were not pending in court if the parties had participated in a mediated settlement conference. Approximately 88.8% of respondents said the parties had not held a mediated settlement conference for the referenced case, as shown in Table 3. However, in 11.2% of the cases, a mediated settlement conference

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<sup>4</sup> Question response tables include a “no response” category. The most common reason for a question being left unanswered is that the survey did not ask attorneys to answer questions that were not relevant to their particular case. In addition, attorneys may have elected not to answer certain questions, or may have started the survey but not fully completed it.

had occurred. In many of these cases, mediators may simply have neglected to file the “report of mediator” form.

**Table 3: Disposed without ADR Cases Properly Categorized**

|                          | <b>N</b> | <b>Percent</b> |
|--------------------------|----------|----------------|
| Properly Categorized     | 261      | 88.8%          |
| Not Properly Categorized | 33       | 11.2%          |
| No Response              | 16       |                |

### **C. Final Outcome of “Impasse” Cases**

The NCDRC suggested that many cases categorized as “Impasse” cases had gone on to settle after mediation. For cases that reached an impasse during mediation and later went on to reach final resolution, the survey asked lawyers to report the final outcome of the case. In 68.6% of cases, the case later settled by agreement of the parties, despite having reached an impasse in mediation, as shown in Table 4.

**Table 4 – Impasse Cases by Final Outcome**

|                                  | <b>N</b> | <b>Percent</b> |
|----------------------------------|----------|----------------|
| Resolved by agreement of parties | 240      | 68.6%          |
| Resolved by order of court       | 82       | 23.4%          |
| Bankruptcy - related resolution  | 5        | 1.4%           |
| Other                            | 23       | 6.6%           |
| No Response                      | 42       |                |

The majority of those cases reported as having reached “other” outcomes fell into one of three categories:

1. Voluntarily dismissed (usually to be re-filed)
2. Reached a verdict at trial, and subsequently settled
3. Resolved through arbitration

### **D. Final Outcome of “Disposed without ADR” Cases**

The NCDRC was also interested in knowing the outcome of cases court staff had categorized as “Disposed without ADR.” The survey asked lawyers about the outcome of cases fitting this description. As shown in Table 5, the majority (68.4%) of the cases were resolved by agreement of the parties.

**Table 5: Disposed without ADR Cases by Final Outcome**

|                                  | <b>N</b> | <b>Percent</b> |
|----------------------------------|----------|----------------|
| Resolved by agreement of parties | 210      | 68.4%          |
| Resolved by order of the court   | 45       | 14.7%          |
| Bankruptcy-related resolution    | 5        | 1.6%           |
| Case still pending in court      | 4        | 1.3%           |
| Other                            | 43       | 14.0%          |
| No Response                      | 3        |                |

The majority of those cases reported as having reached “other” outcomes fell into one of three categories:

1. Voluntarily dismissed (intention to re-file mentioned less often for these cases)
2. Default judgment
3. Attorney did not know the outcome of the case

#### **E. Outcome of Mediation in “Disposed without ADR” Cases**

The Dispute Resolution Commission was also interested in knowing the outcome of the 33 “Disposed without ADR” cases that *had* actually gone to mediation. As shown in Table 6, parties in 58.1% of those cases reached an agreement during the mediation. Mediation resulted in an impasse 32.3% of the time.

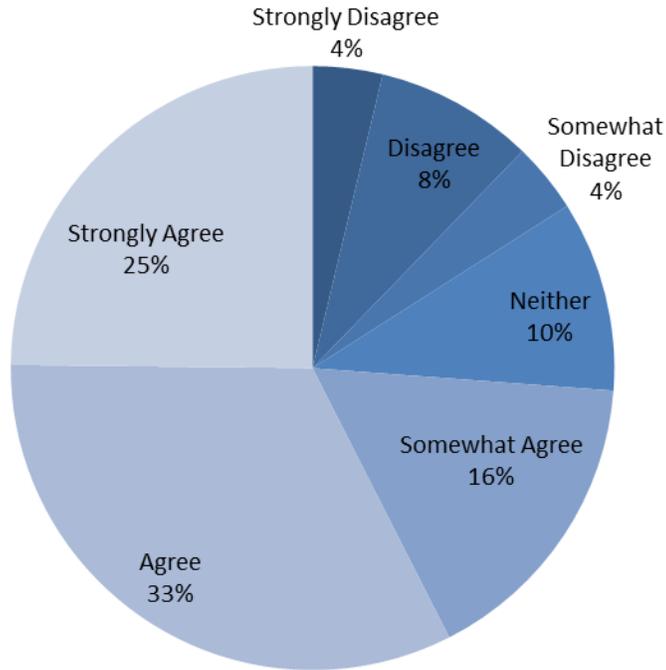
**Table 6: Results of Mediation**

|               |     |       |
|---------------|-----|-------|
| Case resolved | 18  | 58.1% |
| Impasse       | 10  | 32.3% |
| Other         | 3   | 9.7%  |
| No Response   | 279 |       |

#### **F. Mediation Helpfulness**

A crucial hypothesis of the NCDRC was that, despite the fact many mediated cases reached an impasse, the mediation process played a role in encouraging final settlement. Therefore, both the “Impasse” and “Disposed without ADR” surveys asked lawyers dealing with cases that had been through mediation whether they agreed that the process was helpful in reaching final settlement of the case, regardless of the outcome of mediation itself. As shown in Figure 1, responses indicate that 74% of lawyers strongly agreed, agreed, or somewhat agreed that the mediation process had contributed to the final settlement of the case in question. There was little difference between the two surveys in overall rates of agreement.

**Figure 1 – Agreement that Mediation Encouraged Later Settlement**



**G. Time to Settle**

The NCDRC was also interested in knowing the amount of time that generally elapsed between the mediated settlement conference and eventual settlement in cases that settled after an impasse. Consequently, in cases that reached a settlement agreement after mediation impasse, the “Impasse” survey asked lawyers to report the amount of time elapsed between the mediated settlement conference and the eventual settlement agreement. As shown in Table 7, elapsed times varied significantly, from under 2 weeks to over 8 weeks, with 20.9% of respondents indicating their case settled just before the trial, regardless of the amount of time elapsed.

| <b>Table 7 – Number of Cases by Settlement Time</b> |          |                |
|---|----------|----------------|
|   | <b>N</b> | <b>Percent</b> |
| Less than 2 weeks                                   | 26       | 9.9%           |
| 2-4 weeks   | 49       | 18.6%          |
| 4-8 weeks   | 64       | 24.3%          |
| More than 8 weeks                                   | 69       | 26.2%          |
| Just before trial (regardless of time)              | 55       | 20.9%          |
| No Response   | 129      |                |

## H. Mediator Follow-up

The final factor the NCDRC wanted to consider was the ongoing role mediators played in the resolution of cases that had reached impasse. The “Impasse” survey’s final questions asked lawyers whether or not the mediator had contacted them after the mediation impasse and, if so, if they found the mediator’s contact helpful. Although mediators followed-up in less than 25% of cases, the majority of lawyers found their input to be helpful when they chose to follow-up, as shown in Tables 8 and 9.

**Table 8 – Number of Cases by Mediator Follow-Up**

|                      | <b>N</b> | <b>Percent</b> |
|----------------------|----------|----------------|
| Mediator Followed Up | 51       | 24.1%          |
| Mediator Didn't      | 161      | 75.9%          |
| Don't Recall         | 51       |                |
| No Response          | 129      |                |

**Table 9 – Number of Cases by Follow-Up Helpfulness**

|             | <b>N</b> | <b>Percent</b> |
|-------------|----------|----------------|
| Helpful     | 36       | 78.3%          |
| Not helpful | 10       | 21.7%          |
| Not sure    | 5        |                |
| No Response | 341      |                |

## IV. Qualitative Results

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While the surveys primarily consisted of multiple-choice questions, each survey offered respondents two opportunities to provide comments. In each survey, the questionnaire asked respondents to:

- ✓ Explain their level of agreement with the statement “The mediation process contributed to the final settlement of this case.”
- ✓ Share any other comments regarding the Mediated Settlement Conference Program.

Many respondents did not submit comments to one or both of these items, but the comments received provided praise, criticism, and constructive suggestions.

### A. Opinions of Mediation Contributing to Final Settlement

A total of 72 respondents chose to answer this question. The submitted responses provided various comments, which generally fit one of 5 general themes, broken out in Table 10.

| <b>Theme</b>   | <b>N</b> | <b>Percent</b> |
|--|----------|----------------|
| General positive views of MSC  | 14       | 19.4%          |
| MSC allowed parties to hear each other, helping decision-making      | 17       | 23.6%          |
| MSC set terms of later settlement agreements                         | 9        | 12.5%          |
| General negative views of MSC  | 18       | 25.0%          |
| MSC failed due to unique circumstances beyond the scope of mediation | 8        | 11.1%          |
| Other  | 6        | 8.3%           |

The majority of these open-ended responses were positive. Attorneys generally appreciated the opportunity for parties to share information and build a foundation for future settlement. Representative quotes include:

- ✓ “The mediation brought the disputed issues into focus.”
- ✓ “The mediation brought long standing disagreements of the parties to verbalization.”

Negative responses often pointed out: the mediator was ineffective, the parties were entrenched, or representatives of insurance companies or government agencies often do not possess full settlement authority. Representative quotes include:

- ✓ “Both parties were frustrated with the mediator, who refused to relay the offers we wanted made.”
- ✓ “Insurance company does not send adjusters with authority or experience on the case. Insurance companies hire retired adjusters to attend the mediation only to comply with the rule.”

Overall, the attorney’s comments indicated mediation was contributing to final settlement in the ways the NCDRC suspected – by bringing issues out on the table, starting a discussion about settlement possibilities, and encouraging the making and consideration of offers.

## B. General Comments

Seventy-five respondents chose to offer general comments about the program. The responses generally fit into 4 themes, broken out in Table 11:

| <b>Theme</b>                  | <b>N</b> | <b>Percent</b> |
|-------------------------------|----------|----------------|
| General positive views of MRC | 55       | 73.3%          |
| Suggestions for improvement   | 15       | 20.0%          |
| General negative views of MRC | 2        | 2.7%           |
| Other                         | 3        | 4.0%           |

The overwhelming majority of these responses were extremely positive. Representative responses include:

- ✓ “I believe the program is very beneficial”
- ✓ “NECESSARY, EXCELLENT AND BENEFICIAL PROGRAM”
- ✓ “I generally am positive about mediation and the mediators I have worked with. I have clients with business in many states and NC mediation process seems to get more cases resolved than in other states”.
- ✓ “Excellent program. Allows most if not all cases to settle prior to trial”
- ✓ “Court-ordered mediation is now an essential aspect of the litigation process. Because so many cases settle at mediation, many aspects of a case, including discovery, are planned around it. While impasses and trials will always occur and be necessary, mediation is a great service to litigants.”

Many lawyers provided suggestions for improving the Program. The most frequent suggestion was that institutional parties, such as government agencies and insurance companies, should be required to send representatives with sufficient authority to negotiate in good faith. Without such a requirement, lawyers felt mediation with a low-level representative of a major organization is an expensive waste of time. One respondent stated,

“I think the mediation process generally works very well. In my opinion, the biggest problem with the process is that institutional parties, for example the NC Department of Transportation, rarely come to the mediations with a representative who has the authority to settle the case; instead, they can merely recommend a settlement to a review board.”

One attorney offered a very in-depth description of the program, as well as his or her suggestions for improvement, writing,

“... In my 40+ years in combined private practice and as in-house counsel for 14 of those years I can think of nothing more beneficial to the dispute resolution process than

the advent and use of mediation. ... I think it is a mistake to force early mediation in some cases, just as I think fast tracking is a mistake for many cases. ...I find many attorneys do not take mediation very seriously and very few provide materials to the mediator in advance as Mediators always tell us who provides information to them. I do think model settlement agreements with "standard" Ts and Cs should be developed by the AOC to deal with the problem of preparing complex unambiguous settlement agreements after a long day of mediation. (Note the number of suits involving mediated settlement agreements.) Also, as many cases settle weeks and months after a good airing of both sides positions at mediation, I think it would be wise to monitor the delayed impact of mediation. Lastly, I think the best mediators are those who will work hard, demonstrate they do know the facts, have a good grasp of the law, and be persistent in pushing the parties--most of whom really do want to get their disputes resolved. I do realize it is not the duty of the mediator to be judge or jury, but a mediator who will not take the time to understand the facts or the law has very little credibility with the clients or the attorneys. It is not enough for a mediator simply to say that settlement is better than trial, even if it is true. "

Two of the attorneys with negative opinions about the program questioned the abilities of court appointed mediators. One response states, "In my experience, court ordered mediators are weak, at best. The only productive mediations I have participated in are the ones where counsel agrees on a mediator."

## V. Limitations

Although the project team made every effort to ensure their research was as representative as possible of North Carolina lawyer's experience with mandatory mediated settlement in civil superior court, several aspects of the study limit its generalizability to North Carolina as a whole:

- ✓ The study included cases from only four districts, so it is limited in its geographic representativeness of the state. However, as discussed above, the districts selected for the study maintained the best court records and represented an even urban-rural split to incorporate state diversity.
- ✓ The team did not contact lawyers whose email address they could not locate and several attorneys had difficulties with the online form. Therefore, the research may under-represent the experiences of certain demographics.
- ✓ The team limited the number of surveys a given attorney could receive to three, causing the study results to under-represent the experiences of attorneys with high caseloads.

In order to check for bias introduced by the under-representation of attorneys with higher mediation caseloads, the surveys asked lawyers to report how many of their cases had gone to mandatory mediation during the last year. After collapsing this caseload data into three categories ("low," "medium," and "high") of approximately equal size, the team conducted statistical tests to see if an attorney's caseload influenced their responses to survey questions. These tests revealed no statistical evidence that the under-representation of attorneys with high caseloads had biased the survey in any way. Table 12 is included as a representative statistical test for the caseload question. It shows the opinion of lawyers as to whether mediation contributed to the final resolution of cases in the "Impasse" category, organized by attorney caseload. As shown in the table, there is no discernible pattern in the results.

**Table 12 - Opinion of Mediation Helpfulness by Caseload**

|   |          | Caseload   |            |            | Total       |
|---|----------|------------|------------|------------|-------------|
|   |          | Lo         | Med        | Hi         |             |
| <b>Mediation contributed to final resolution in this case</b> | Disagree | 13<br>19%  | 8<br>12%   | 10<br>20%  | 31<br>17%   |
|   | Neither  | 6<br>9%    | 5<br>7%    | 5<br>10%   | 16<br>9%    |
|   | Agree    | 50<br>72%  | 54<br>81%  | 36<br>71%  | 140<br>75%  |
| <b>Total</b>  |          | 69<br>100% | 67<br>100% | 51<br>100% | 187<br>100% |

*Gamma = -.004 (sig. = .975)*

## VI. Conclusion & Recommendations

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The research team believes the findings above provide two key takeaways. First, the evidence from the four counties studied suggests mandatory mediation is having a larger positive impact on case resolution than the number captured in the *MSC Statistical Report*. More than half of cases in the study that reached an impasse during mediation went on to settle, and a large majority of attorneys in those cases agreed that the mediation process influenced the final decision to settle. Moreover, many cases documented in court records as “Disposed without ADR” had actually settled before or during mediation. These findings are bolstered by a large number of positive comments from attorneys about the mediation process.

Secondly, the project team recommends that the Administrative Office of the Courts and the Dispute Resolution Commission evaluate and update their record-keeping procedures and that the NCDRC encourage mediators to consistently file post-mediation reports with the Commission. Several aspects of the study led the team to draw this conclusion:

- ✓ “Impasse” mediation survey revealed 7.3% of cases were miscategorized
- ✓ “Disposed without ADR” survey revealed that 11.2% of cases *had* gone to mediated settlement conference.
- ✓ Incomplete and inconsistent data in the online CaseWise management system prevented the team from conducting the survey in all superior court districts

The “Report of Mediator” form and the CaseWise system are potentially powerful tools for collection of statistics across a wide range of court functions, but they can only function properly when implemented well. Inconsistent use of these tools undermines the ability of the NCDRC to see how effective its work has been in North Carolina. Updating policies and procedures, encouraging better mediator reporting, and providing additional training to court staff may lead to the collection of better data, for the purposes of historical accuracy, and for statistical analysis.

Overall, this study suggests that the mandatory mediation process is helping to expedite the settlement of significant numbers of cases filed in North Carolina’s civil superior courts and that some of these settlements are not being reflected in information collected by the NCAOC. Moreover, it appears that attorneys largely approve of the process and find it useful as a settlement tool. With additional resources and better starting data (specifically, data on all court districts), future studies could confirm the generalizability of these findings.

**Appendix**

**A. Report of Mediator in Superior Court Civil Action**

| <b>STATE OF NORTH CAROLINA</b>   |  | File No. _____   |      |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|--|--|--|------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| _____ County   |  | In The General Court Of Justice<br>Superior Court Division |      |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Name Of Plaintiff(s)   | <p><b>REPORT OF<br/>MEDIATOR IN SUPERIOR<br/>COURT CIVIL ACTION</b></p> <p style="font-size: small;">G.S. 7A-38.1; Rules 6.B.(4) Of Mediated Settlement Conferences</p> <p style="font-size: x-small;">Telephone No. _____ FAX No. (if applicable) _____</p> |  |      |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| <b>VERSUS</b>  |  |  |      |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Name Of Defendant(s)   |  |  |      |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Name And Address Of Mediator   |  |  |      |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| <p>1. The undersigned mediator reports the following results of a mediated settlement conference either <input type="checkbox"/> ordered or <input type="checkbox"/> voluntarily conducted in this case:</p> <p style="margin-left: 20px;">a. Conference <input type="checkbox"/> was held. <input type="checkbox"/> was not held.</p> <p style="margin-left: 20px;">b. If held, date conference was completed: _____</p> <p style="margin-left: 20px;">c. If not held, the reasons were: _____</p> <p>2. If the case was reported settled prior to or during a recess of the conference, provide the name of the person(s) who reported the case settled: _____</p> <p>3. The parties reached an: <input type="checkbox"/> agreement on all issues. <input type="checkbox"/> impasse.</p> <p>4. <input type="checkbox"/> If the case was settled, then, as required by MSC Rule 6.B.(4)(b), mediator has advised the parties that MSC Rule 4.C. requires that closing documents be filed with the court within 30 days of settlement (or 90 days if a State or political subdivision is involved) or before expiration of the mediation deadline, whichever is longer. The following closing document is to be filed:</p> <p style="margin-left: 20px;">a. <input type="checkbox"/> consent judgment. <input type="checkbox"/> voluntary dismissal with prejudice. <input type="checkbox"/> voluntary dismissal without prejudice.</p> <p style="margin-left: 20px;">b. Name, address, email and telephone number of party or attorney who is to file the closing document:</p> <p style="margin-left: 40px;">Name: _____</p> <p style="margin-left: 40px;">Address: _____</p> <p style="margin-left: 40px;">Telephone number: ( ____ ) ____ - _____ Email Address: _____</p> <p>5. Names of those who attended the conference: <span style="float: right; font-size: x-small;">Affiliation (e.g., party, attorney, insurance company representative, lien holder or other).</span></p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <thead> <tr> <th style="width: 70%; font-size: x-small;">Name</th> <th style="width: 30%; font-size: x-small;">Affiliation (e.g., party, attorney, insurance company representative, lien holder or other).</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> </tbody> </table> |  |  | Name | Affiliation (e.g., party, attorney, insurance company representative, lien holder or other). |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Name   | Affiliation (e.g., party, attorney, insurance company representative, lien holder or other).   |  |      |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| Original-File Copy - Senior Resident Superior Court Judge or his/her designee Copy-Plaintiff Copy-Defendant  |  |  |      |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| AOC-CV-813, Rev. 1/12<br>© 2012 Administrative Office of the Courts  |  |  |      |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |



## B. Mediated Settlement Conference (MRC) Statistical Report

### MEDIATED SETTLEMENT CONFERENCE (MSC) STATISTICAL REPORT July 1, 2010 through June 30, 2011

| Districts | Cases Entering Mediated Settlement Conference |                |  |                     | Resolution of Cases Attending ADR Conference |  |                                  |                          |                      | Cases Not Attending ADR Conference |    |     | End Pending |     |
|-----------|---|----------------|--|---------------------|--|--|----------------------------------|--------------------------|----------------------|------------------------------------|----|-----|-------------|-----|
|           | Begin Pending                                 | Ordered to MSC | Ordered or Submitted to Other Settlement Procedure | Total Cases Pending | Resolved with ADR Conference                 | Reported Settled prior to or during ADR recess | Not Resolved with ADR Conference | Ordered Removed from ADR | Disposed without ADR | Cases Completing Process           |    |     |             |     |
| 1         | 92  | 148            | 9  | 249                 | 63   | 50%  | 24                               | 19%                      | 40                   | 31%                                | 3  | 32  | 162         | 87  |
| 2         | 188   | 80             | 0  | 268                 | 16   | 30%  | 16                               | 30%                      | 21                   | 40%                                | 0  | 49  | 102         | 166 |
| 3B        | 457   | 179            | 0  | 636                 | 67   | 44%  | 17                               | 11%                      | 67                   | 44%                                | 0  | 9   | 160         | 476 |
| 4A        | 304   | 102            | 0  | 406                 | 29   | 63%  | 0                                | 0%                       | 17                   | 37%                                | 0  | 22  | 68          | 338 |
| 4B        | 0   | 109            | 0  | 109                 | 22   | 63%  | 0                                | 0%                       | 13                   | 37%                                | 1  | 2   | 38          | 71  |
| 5         | 830   | 393            | 0  | 1,223               | 66   | 57%  | 0                                | 0%                       | 50                   | 43%                                | 3  | 253 | 372         | 851 |
| 6A        | 18  | 14             | 0  | 32                  | 6  | 86%  | 1                                | 14%                      | 0                    | 0%                                 | 0  | 23  | 30          | 2   |
| 6B        | 42  | 53             | 0  | 95                  | 45   | 100%   | 0                                | 0%                       | 0                    | 0%                                 | 0  | 0   | 45          | 50  |
| 7A        | 283   | 126            | 25   | 434                 | 16   | 28%  | 32                               | 55%                      | 10                   | 17%                                | 4  | 9   | 71          | 363 |
| 7B        | 91  | 179            | 0  | 270                 | 50   | 38%  | 38                               | 29%                      | 44                   | 33%                                | 1  | 15  | 148         | 122 |
| 7C        | 37  | 28             | 0  | 65                  | 15   | 47%  | 6                                | 19%                      | 11                   | 34%                                | 3  | 5   | 40          | 25  |
| 8A        | 31  | 43             | 1  | 75                  | 10   | 63%  | 0                                | 0%                       | 6                    | 38%                                | 3  | 17  | 36          | 39  |
| 8B        | 211   | 249            | 1  | 461                 | 49   | 47%  | 10                               | 10%                      | 46                   | 44%                                | 5  | 179 | 289         | 172 |
| 9         | 90  | 127            | 0  | 217                 | 54   | 62%  | 10                               | 11%                      | 23                   | 26%                                | 0  | 42  | 129         | 88  |
| 9A        | 33  | 38             | 0  | 71                  | 7  | 64%  | 1                                | 9%                       | 3                    | 27%                                | 7  | 4   | 22          | 49  |
| 10        | 365   | 957            | 0  | 1,322               | 326  | 58%  | 21                               | 4%                       | 217                  | 38%                                | 25 | 386 | 975         | 347 |
| 11A       | 88  | 197            | 3  | 288                 | 68   | 35%  | 78                               | 40%                      | 48                   | 25%                                | 2  | 0   | 196         | 92  |
| 11B       | 157   | 449            | 0  | 606                 | 63   | 48%  | 21                               | 16%                      | 47                   | 36%                                | 7  | 186 | 324         | 282 |
| 12        | 74  | 374            | 0  | 448                 | 121  | 34%  | 167                              | 47%                      | 65                   | 18%                                | 34 | 0   | 387         | 61  |
| 13A*      | 229   | 66             | 0  | 295                 | 17   | 50%  | 2                                | 6%                       | 15                   | 44%                                | 0  | 32  | 66          | 229 |
| 14        | 288   | 367            | 0  | 655                 | 122  | 52%  | 37                               | 16%                      | 75                   | 32%                                | 1  | 146 | 381         | 274 |
| 15A       | 109   | 129            | 0  | 238                 | 32   | 30%  | 26                               | 24%                      | 50                   | 46%                                | 7  | 0   | 115         | 123 |
| 15B       | 209   | 209            | 4  | 422                 | 62   | 49%  | 25                               | 20%                      | 40                   | 31%                                | 8  | 84  | 219         | 203 |
| 16A       | 18  | 40             | 0  | 58                  | 6  | 35%  | 3                                | 18%                      | 8                    | 47%                                | 1  | 6   | 24          | 34  |

**MEDIATED SETTLEMENT CONFERENCE (MSC) STATISTICAL REPORT**

July 1, 2010 through June 30, 2011

| Districts    | Cases Entering Mediated Settlement Conference |                |  |                     | Resolution of Cases Attending ADR Conference |  |                                  |                          |                      |                          | Cases Not Attending ADR Conference |               |                |  |
|--------------|---|----------------|--|---------------------|--|--|----------------------------------|--------------------------|----------------------|--------------------------|------------------------------------|---------------|----------------|--|
|              | Begin Pending                                 | Ordered to MSC | Ordered or Submitted to Other Settlement Procedure | Total Cases Pending | Resolved with ADR Conference                 | Reported Settled prior to or during ADR recess | Not Resolved with ADR Conference | Ordered Removed from ADR | Disposed without ADR | Cases Completing Process | End Pending                        | Begin Pending | Ordered to MSC | Ordered or Submitted to Other Settlement Procedure |
| 17A          | 44  | 66             | 1  | 111                 | 21   | 39%  | 12                               | 22%                      | 21                   | 39%                      | 4                                  | 6             | 64             | 47   |
| 19A          | 114   | 162            | 0  | 276                 | 45   | 42%  | 21                               | 19%                      | 42                   | 39%                      | 2                                  | 40            | 150            | 126  |
| 19B          | 77  | 150            | 0  | 227                 | 63   | 38%  | 41                               | 24%                      | 64                   | 38%                      | 4                                  | 5             | 177            | 50   |
| 19C          | 82  | 130            | 0  | 212                 | 38   | 37%  | 24                               | 23%                      | 41                   | 40%                      | 1                                  | 21            | 125            | 87   |
| 19D          | 320   | 109            | 2  | 431                 | 29   | 46%  | 9                                | 14%                      | 25                   | 40%                      | 4                                  | 24            | 91             | 340  |
| 20A          | 63  | 78             | 0  | 141                 | 26   | 33%  | 25                               | 32%                      | 27                   | 35%                      | 0                                  | 7             | 85             | 56   |
| 20B          | 90  | 220            | 0  | 310                 | 88   | 57%  | 9                                | 6%                       | 57                   | 37%                      | 1                                  | 24            | 179            | 131  |
| 21           | 986   | 350            | 5  | 1,341               | 130  | 50%  | 38                               | 15%                      | 90                   | 35%                      | 0                                  | 16            | 274            | 1,067  |
| 22A          | 724   | 253            | 48   | 1,025               | 76   | 48%  | 23                               | 14%                      | 61                   | 38%                      | 0                                  | 48            | 208            | 817  |
| 22B          | 417   | 112            | 0  | 529                 | 41   | 47%  | 17                               | 20%                      | 29                   | 33%                      | 2                                  | 7             | 96             | 433  |
| 23           | 39  | 113            | 0  | 152                 | 40   | 50%  | 9                                | 11%                      | 31                   | 39%                      | 3                                  | 20            | 103            | 49   |
| 24           | 141   | 127            | 0  | 268                 | 48   | 44%  | 14                               | 13%                      | 46                   | 43%                      | 2                                  | 19            | 129            | 139  |
| 25A*         | 0   | 57             | 0  | 57                  | 4  | 29%  | 0                                | 0%                       | 10                   | 71%                      | 0                                  | 3             | 17             | 40   |
| 25B          | 200   | 173            | 1  | 374                 | 35   | 21%  | 94                               | 57%                      | 36                   | 22%                      | 9                                  | 0             | 174            | 200  |
| 26           | 630   | 1,557          | 45   | 2,232               | 430  | 36%  | 330                              | 28%                      | 440                  | 37%                      | 8                                  | 204           | 1,412          | 820  |
| 27A^         | 200   | 170            | 0  | 370                 | 49   | 36%  | 28                               | 20%                      | 60                   | 44%                      | 2                                  | 32            | 171            | 199  |
| 27B          | 81  | 132            | 3  | 216                 | 49   | 53%  | 6                                | 7%                       | 37                   | 40%                      | 0                                  | 22            | 114            | 102  |
| 28           | 395   | 230            | 6  | 631                 | 146  | 74%  | 20                               | 10%                      | 30                   | 15%                      | 7                                  | 20            | 223            | 408  |
| 29A          | 62  | 109            | 0  | 171                 | 17   | 71%  | 0                                | 0%                       | 7                    | 29%                      | 4                                  | 21            | 49             | 122  |
| 29B          | 173   | 141            | 2  | 316                 | 37   | 37%  | 44                               | 44%                      | 18                   | 18%                      | 4                                  | 18            | 121            | 195  |
| 30A          | 124   | 105            | 0  | 229                 | 17   | 44%  | 0                                | 0%                       | 22                   | 56%                      | 12                                 | 78            | 129            | 100  |
| 30B          | 161   | 102            | 0  | 263                 | 24   | 39%  | 0                                | 0%                       | 37                   | 61%                      | 0                                  | 4             | 65             | 198  |
| <b>TOTAL</b> | <b>9,367</b>                                  | <b>9,302</b>   | <b>156</b>   | <b>18,825</b>       | <b>2,785</b>                                 | <b>45%</b>                                     | <b>1,299</b>                     | <b>21%</b>               | <b>2,147</b>         | <b>34%</b>               | <b>184</b>                         | <b>2,140</b>  | <b>8,555</b>   | <b>10,270</b>                                      |

\* District reflects Jan-Jun 2011 only

**MEDIATED SETTLEMENT CONFERENCE (MSC) STATISTICAL REPORT**  
**July 1, 2010 through June 30, 2011**

| Districts | Cases Entering Mediated Settlement Conference |                |  | Resolution of Cases Attending ADR Conference |                              |  |                                  | Cases Not Attending ADR Conference |                      |                          |             |
|-----------|---|----------------|--|--|------------------------------|--|----------------------------------|------------------------------------|----------------------|--------------------------|-------------|
|           | Begin Pending                                 | Ordered to MSC | Ordered or Submitted to Other Settlement Procedure | Total Cases Pending                          | Resolved with ADR Conference | Reported Settled prior to or during ADR recess | Not Resolved with ADR Conference | Ordered Removed from ADR           | Disposed without ADR | Cases Completing Process | End Pending |
|           |   |                |  |  |                              |  |                                  |                                    |                      |                          |             |

\* District adjusted begin pending number after local audit.

Data not available for districts :: 3A, 13B, 16B, 17B, 18

### C. Mediation Impasse Survey

Local court staff collects statistics on the superior court Mediated Settlement Conference Program. One of the items they track are cases reported as having reached an impasse in mediation. Many of these cases eventually go on to settle without the need for a trial. Court officials and others are interested in learning what role mediation played, if any, in the ultimate settlement of cases that reached an impasse in mediation. You have received this survey because one of your cases was reported by court staff in this district as having reached an impasse in mediation for either FY 2009/10 or 2010/11. We are asking for your help in providing information about the ultimate outcome of that case and what role mediation played, if any, in that outcome. Please respond to a survey for each case listed in the email (no more than 3). Each response should take no more than 2-3 minutes of your time. Survey responses will be confidential - we are only interested in aggregate trends, not the results of particular cases.

1. Please refer to your records for case: [Case Name (Case Number)]. Our records indicate that this case reached an impasse (failed to settle) during mediated settlement, but has since been closed. Is this information correct?
  - Yes, this case reached an impasse during mediation, but is now closed
  - No, this case is still pending in court or this case did not reach an impasse during mediation
  
2. How was this case resolved?
  - By order of the court, e.g., trial, summary judgment
  - By agreement of the parties, e.g., a consent judgment or voluntary dismissal was filed
  - By stay or permanent injunction related to a bankruptcy filing
  - Other, please explain \_\_\_\_\_
  
3. Please indicate if you agree or disagree with the following statement: "Though there was an impasse at the conference, the mediation process contributed to the final settlement of this case."
  - Strongly Disagree
  - Disagree
  - Somewhat Disagree
  - Neither Agree nor Disagree
  - Somewhat Agree
  - Agree
  - Strongly Agree

4. If you would like, please briefly explain your rating above:
5. Approximately how soon after mediated settlement did your case settle?
- Less than 2 weeks
  - 2-4 weeks
  - More than 4 weeks, but less than 8 weeks
  - 8 weeks or more
  - Just before trial, regardless of time elapsed
6. Did your mediator contact you at any time after impasse to encourage you to talk further with the opposing party or to suggest that mediation be reconvened?
- Yes
  - No
  - I do not recall
7. Did you find the mediator's intervention post-impasse helpful?
- Yes
  - No
  - Not Sure
8. Did you represent the plaintiff or the defendant in this case?
- Plaintiff
  - Defendant
9. Approximately how many of your civil cases were mediated during the past year (March 1, 2011 to March 1, 2012)?
10. Please use this space to share any other comments you may have about the superior court Mediated Settlement Conference Program:

#### **D. Disposed w/o ADR Survey**

Local court staff collects statistics on the superior court Mediated Settlement Conference Program. When court staff do not receive a report on the outcome of mediation in a case that has been closed, the case is coded as "Disposed Without ADR." This survey is intended to clarify the outcome in cases reported as "Disposed Without ADR," and to determine whether a mediation was actually held in the case. You have received this survey because one of your cases was categorized as "Disposed Without ADR" during either FY 2009/10 or 2010/11. Please respond to a survey for each case listed in the email (no more than 3). Each response should take no more than 2-3 minutes of your time. Survey responses will be confidential - we are only interested in aggregate trends, not the results of particular cases.

1. Please refer to your records for case: [Case Name (Case Number)]. Our records indicate that this case was reported "Disposed Without ADR." Please choose from the following to describe the outcome of this case:
  - Case settled by agreement of the parties (i.e., consent judgment or voluntary dismissal was filed)
  - Case concluded by order of the court (i.e., trial, summary judgment)
  - A court ordered a stay or permanent injunction related to a bankruptcy filing
  - This case is still pending in the courts
  - Other, please explain \_\_\_\_\_
  
2. Was a mediated settlement conference held in this case?
  - Yes
  - No
  
3. Please select the outcome of the mediated settlement conference from the following list:
  - A final agreement and a voluntary dismissal or consent judgment
  - An impasse
  - Other, please explain \_\_\_\_\_

4. Regardless of the outcome of mediation (i.e., whether the case settled at conference or reached an impasse) please indicate whether you agree or disagree with the following statement: "The mediation process contributed to the final settlement of this case."

- Strongly Disagree
- Disagree
- Somewhat Disagree
- Neither Agree nor Disagree
- Somewhat Agree
- Agree
- Strongly Agree

5. If you would like, please briefly explain your rating above:

6. Did you represent the plaintiff or the defendant in this case?

- Plaintiff
- Defendant

7. Approximately how many of your civil cases were mediated during the past year (March 1, 2011 to March 1, 2012)?

8. Please use this space to share any other comments you may have about the superior court Mediated Settlement Conference Program:

## E. Disposed without Alternative Dispute Resolution Survey Qualitative Data

Q5. If you would like, please briefly explain your rating above.

- ✓ Plaintiff's lowest demand at mediation was \$1.75 million. Defendants highest offer was \$10,000. Defendants then filed for summary judgment, which was granted.
- ✓ Yes, other side learning important facts in mediation
- ✓ This was a commercial case in which the defendants and their counsel asserted outrageous claims and counterclaims. A second suit was filed as there were multiple dealings between the commercial parties. Depositions and discovery revealed written agreements and proof and that there was no substance to the defenses and that defendants were refusing to produce key documents that proved there was no substance to their claims and defenses. However, it was not until mediation when a strong mediator played "devil's advocate" to both sides and tested the positions of both sides that the defendants and their counsel agreed defendants needed to pay the commercial debt as they had agreed to do in written documents.

Q8. Please use this space to share any other comments you may have about the superior court Mediated Settlement Conference Program.

- ✓ Court-ordered mediation is now an essential aspect of the litigation process. Because so many cases settle at mediation, many aspects of a case, including discovery, are planned around it. While impasses and trials will always occur and be necessary, mediation is a great service to litigants.
- ✓ I think mediation is vital
- ✓ Excellent program. Allows most if not all cases to settle prior to trial
- ✓ important to our system
- ✓ Extremely useful.
- ✓ It works. I suggest that attorneys who are not certified be encourage to serve as well.
- ✓ My experience is as a business attorney who does both commercial litigation and transaction law to keep client out of the Court system. In my 40+ years in combined private practice and as in-house counsel for 14 of those years I can think of nothing more beneficial to the dispute resolution process than the advent and use of mediation. I often suggest pre-suit mediation or early mediation after suit is filed. I think it is a mistake to force early mediation in some cases, just as I think fast tracking is a mistake for many cases. My approach to mediation, I feel, gives my clients an advantage: I always prepare a packet for the Mediator, I do a detailed summary, a time line, a damages sheet, and I attach key documents and pleadings. Even if the Mediator does not read them, I do this to force myself to prepare thoroughly as I know this will be perhaps the best opportunity for my client to get whatever my client is going to get. I find many attorneys do not take mediation very seriously and very few provide materials to the mediator in advance as Mediators always tell us who provides information to them. I do think model settlement agreements with "standard" Ts and Cs should be developed by the AOC to deal with the problem of preparing complex unambiguous settlement agreements after a long day of mediation. (Note the number of suits involving mediated

settlement agreements.) Also, as many cases settle weeks and months after a good airing of both sides positions at mediation, I think it would be wise to monitor the delayed impact of mediation. Lastly, I think the best mediators are those who will work hard, demonstrate they do know the facts, have a good grasp of the law, and be persistent in pushing the parties--most of whom really do want to get their disputes resolved. I do realize it is not the duty of the mediator to be judge or jury, but a mediator who will not take the time to understand the facts or the law has very little credibility with the clients or the attorneys. It is not enough for a mediator simply to say that settlement is better than trial, even if it is true.

## F. Mediation Impasse Survey Qualitative Data

Q4. If you would like, please briefly explain your rating above:

- ✓ The mediation was helpful if only in bring the matter to a head, but ultimately it was not settled, it had to be resolved by an adversarial proceeding (arbitration)
- ✓ Case has not settled. Please disregard my response to the following question as the survey insists upon a response.
- ✓ Insurance company does not send adjusters with authority or experience on the case. Insurance companies hire retired adjusters to attend the mediation only to comply with the rule.
- ✓ It did not settle, and the mediation was a waste of time, as State Farm does not pay reasonable value on any claim involving a joint, i.e, shoulder, knee or spine.
- ✓ This was a matter where two defendants were represented by insurance companies. At mediation, the carriers could not agree on which of their clients was more at fault. Plaintiff posited that as the negligence claim made them jointly and severally liable, the barking about who was dirtier was irrelevant. The case settled 6 weeks later, as we were preparing for trial.
- ✓ With good mediators, a dialogue is created between or among the parties such that, even when the case impasses at formal mediation, the lawyers frequently continue talking afterwards, and frequently settle the case.
- ✓ Not fault of mediator. Too many unresolved issues at time.
- ✓ The parties had to agree on the specific language for the settlement documents.
- ✓ The case was dismissed because had to add a party.
- ✓ Case dismissed because of parting of ways by attorney and client.
- ✓ plaintiff decided for personal reasons to dismiss the case.
- ✓ This case had difficult issues and a disagreement between counsel and plaintiff ultimately led to plaintiff's counsel withdrawing.
- ✓ we had to try it
- ✓ [Case did not settle, but I can't complete the survey without choosing one of the options in the next question]
- ✓ The plaintiff took a voluntary dismissal following the mediation. The mediation assisted in this result because, during the mediation, the parties thoroughly discussed the merits of the case and that the defendants would be seeking summary judgment following the mediation. The plaintiff took a voluntary dismissal rather than going through with the summary judgment hearing. They later re-filed the case in another county.
- ✓ Mediation explored issues to be discussed at trial that were further discussed between the parties after the impasse.
- ✓ The mediation brought the disputed issues into focus.
- ✓ Framework for resolution was discussed at mediation.
- ✓ The mediator closed the gap considerably and the case eventually settled in between the range when the impasse was declared.
- ✓ The parties made significant progress during mediation and it set the stage for the final resolution on the eve of trial.

- ✓ Collection case. Would have settled with or without mediation. I believe mediation assisted the parties in reaching agreeable terms.
- ✓ Plaintiff ended up taking the exact offer that was made at mediation. The process probably assisted the attorney with explaining to Plaintiff the true value of her case in the months following mediation.
- ✓ These parties would have never voluntarily communicated without mandatory mediation.
- ✓ The parties re-engaged the services of the mediator, Tom Duncan, who conducted a second mediation and was able to assist the parties in reaching a resolution.
- ✓ The mediator -- a retired Superior Court judge -- succeeded in bringing the parties into a range of settlement offers that accurately reflected the case's value. After the mediation, the parties continued to negotiate within the same range and eventually reached an agreement.
- ✓ The plaintiff took a dismissal without prejudice, and is planning on re-filing. No settlement.
- ✓ The mediation was effective in setting parameters for both sides. The case settled within those parameters later.
- ✓ There was little or no movement by the plaintiff to resolve the case at mediation. I do think that the mediation was a process that started the dialogue that ultimately settled the case. I think the plaintiff also learned through the mediation that a full blown trial was going to cost a lot more than what was at issue monetarily in the case, and would subject the plaintiff, a retired physician, from having to testify and endure a 3 day jury trial. I am not sure the plaintiff fully appreciated these things until the mediation took place.
- ✓ The Defendant filed bankruptcy 6-7 months after the Mediation. He always maintained he had no money and nothing would be accomplished by Mediation. / / We find that Mediation is most of the time not good for collection cases as the Defendants do not have any money, most of the time they cannot pay and probably do not pay the Mediators.
- ✓ Defendant would not really mediate and filed bankruptcy a month later
- ✓ We got close at mediation and then settled a few days after mediation.
- ✓ The agreement that we ultimately reached was the last proposal made during mediation. I think the mediator did a good job pointing out the challenges for each party to prevail and the benefits of having a resolution before trial.
- ✓ The adjuster needed to get more authority to settle.
- ✓ The mediator we selected was not helpful in resolving the case. Several months after the mediation ended -- and after spending a considerable amount of money on depositions and other discovery -- the parties were able to reach a settlement on their own.
- ✓ Mediation never was going to work in this case. The parties were fighting on principle. The only reason my client settled is because a pre-trial motion was granted which tanked our case (very much by surprise - would have been difficult to anticipate in mediation).
- ✓ We had a significant disagreement with the insurance company over the causation of the plaintiff's injuries. The failure of the mediation was a foregone conclusion.

- ✓ Both parties were frustrated with the mediator, who refused to relay the offers we wanted made.
- ✓ We should have scheduled a full day of mediation. I believe that a full day would have gotten the case resolved at mediation. The mediator was making headway, but had to leave for another appointment.
- ✓ mediator was not very proactive
- ✓ The verdict weighed more heavily on the final settlement than anything else.
- ✓ Case was actually tried.
- ✓ At mediation, an issue was raised that appropriately needed a little investigation. There was an oral agreement that if the issue was found to be as represented, the case would be resolved in a particular way. Unfortunately, that was not reduced to writing, and though the facts were found to be as represented, additional conditions were added by a party which took several weeks to resolve. In hindsight, a conditional resolution should have been documented, instead of declaring an impasse in these circumstances. I have learned a lesson from this.
- ✓ This case was an eminent domain action filed against our client by the NCDOT. The case involved some complicated legal issues, some of which could be resolved and/or mitigated outside of court. In the end, the parties could not come to an agreement as to the sole issue of just compensation. The issue of just compensation owed to our client for the NCDOT's taking of its private property for public use was resolved by a jury of twelve in Wake County. Please note that the responses to Issue 1 below are not applicable if the case does not settle out of court (i.e., the legal dispute is resolved by jury trial). To complete the survey, I selected "8 weeks or more."
- ✓ It provided an opportunity for each side to take the "measure" of the other. To include the strength of their case, their level of objectivity, and their willingness to see it through trial.
- ✓ In this case, there was a Trial and a verdict rendered by the jury. After the verdict, but before post-trial motions and before judgment was entered, the parties reached a settlement.
- ✓ Mediation showed the unwillingness of Defendant to compromise so the Plaintiff folded.
- ✓ Mediation revealed weaknesses in Plaintiff's case that resulted in Plaintiff dismissing the case.
- ✓ The Mediation brought out the fact that the Defendant claimed his brother made all the charges and owed the money. Brother was back in Iran and client decided not to send a witness, so we had to dismiss.
- ✓ a great deal of information gained at mediation which enabled the parties to better evaluate the strengths and weaknesses of their positions. This led to a resolution shortly (a few weeks) thereafter.
- ✓ mediation clarified defenses and trial risks for plaintiff and plaintiff's attorney
- ✓ Some discovery was conducted after the mediation and that seemed to help our opponents see the light.
- ✓ The mediation isolated the true issues and allowed the Plaintiff to feel that he'd had his day in court to some extent. This facilitated settlement of the case when the matter was actually called for trial.

- ✓ To be honest, I just don't remember.
- ✓ After mediation, the plaintiff was too scared to take the risk of trial.
- ✓ It gave the plaintiff a perspective on what he would face in court and what the real value of his claim was.
- ✓ On eve of trial, a consent judgment and settlement agreement were concluded on terms substantially consistent with plaintiff's final demand at mediation
- ✓ The mediation laid the groundwork for the settlement.
- ✓ This is true for most cases. Mediation requires the parties to exam their cases, go back and re-evaluate their strengths and weaknesses. Once the dust settles, settlement discussions often resume in some fashion.
- ✓ We received information at mediation that caused additional analysis and ultimately a settlement.
- ✓ The offer made at the mediation conference was accepted within a few days after the conference.
- ✓ We reached a tentative settlement at the mediation, but one party later refused to settle on the agreed terms. A further compromise and settlement was reached at the pre-trial conference.
- ✓ The impasse was due in large part to a coverage issue/dec action. The ultimate settlement was within \$5000 of the settlement proposed at impasse.
- ✓ This case only settled after a full trial and jury verdict. The mediation did not advance the settlement at all because the defendants were immovable until the jury verdict.
- ✓ Even when cases don't settle at mediation, the conference gets the parties thinking about all the different issues in the case and oftentimes "primes the pump" for a later settlement.
- ✓ It was good for my client to have the opportunity to state her side of the story to the other party.
- ✓ Although significant time was spent on further discovery and preparation for trial, the settlement positions of the parties at the Mediated Settlement Conference established a framework within which the case was settled.
- ✓ The mediation brought long standing disagreements of the parties to verbalization
- ✓ experienced attorneys continued to negotiate after mediation
- ✓ The mediation process allowed parties on both sides to focus on the key issues of the case. The process also allowed us the opportunity to raise issues that the opposing party had not considered in estimating the monetary value of the case. In the end, the case settled the week before trial. The action items that resulted from the mediation process helped to inform the ultimate settlement of this case.

Q10. Please use this space to share any other comments you may have about the superior court Mediated Settlement Conference Program

- ✓ this case went to trial
- ✓ The court should not appoint mediators because many mediators on the court appointed list do not know what they are doing. The parties should have more than 20 days to select a mediator by consent and the court should not be so militant about appointing

mediators on their own (or, there should be more stringent requirements for being a court appointed mediator.)

- ✓ In my experience, court ordered mediators are weak, at best. The only productive mediations I have participated in are the ones where counsel agrees on a mediator.
- ✓ Mediator should have authority to excuse named defendant as long as insurance representative attends. Alternatively, the rules should provide that individual defendants need not attend as long as they are represented at the conference. Although most lawyers I work with will agree to excuse the defendants, those that refuse this courtesy create hard feelings and really do not help their clients.
- ✓ Mediation should require parties to attend with actual authority. Mediator should have power to enter sanctions such as costs if one party does not attend. Workers compensation carriers should be required to attend.
- ✓ Although I think it is a great program, I also think it is a racket. The mediators have closed ranks and placed unreasonable restrictions on who can mediate case. They have effectively cornered the market. So, opposing counsel and I cannot choose a practicing lawyer who may have a very detailed understanding of our issue, instead we have to choose someone whose practice almost solely consists of mediating. In my humble opinion, the mediator "lobby" should not control who I choose to mediate my cases. If opposing counsel and I can agree on a mediator, regardless of whether they are a "certified" mediator, we should have the right to make that choice.
- ✓ works best when the parties "have skin in the game." Works less so when insurance companies are involved.
- ✓ This Program is the best thing to happen in litigation since the adoption of the Rules of Civil Procedure - as long as you pick a good mediator. A good mediator does more than a carrier pigeon, but less than a judge; admittedly, it is a delicate balance. S/he needs to ask questions that make the parties and lawyers think, hard, about their case - and press the lawyers, hard, on value and odds at trial. At appropriate times, a good mediator needs to express opinions; I am aware that this is considered a no-no by some people; they're wrong. Being a good mediator is a damn tough job - and good mediators are priceless. Mediation is the only chance the parties have to craft their own solution, and options are pretty much wide-open; at trial, 12 people off the street give it their best shot, but their options are limited. I simply can't say enough good things about the Program - as long as you have a good mediator!
- ✓ In general I think mediations are very useful. I think it should be easier to opt out of mediation, though, in cases where it is just a waste of time.
- ✓ Mediation is a helpful process except in motor vehicle negligence cases. With rare exceptions, mediation in motor vehicle negligence cases defended by a liability carrier are an unjustified cost.
- ✓ A party should be able to opt out of mediation where it is apparent that it would be a waste of time. For instance, in many cases involving certain liability insurance carriers.
- ✓ works best when the parties have "skin in the game." Is much less effective when insurance companies are involved. Too often at mediation the carriers' counsel are not well prepared, don't understand the issues (in environmental or construction cases in particular), have not done enough discovery to be able to evaluate their carrier's risk, or

want to argue about tangential issues. The timing of mediation involving insurance companies has to be perfect.

- ✓ Only civil law attorneys should mediate civil law cases. I mediated a case yesterday w/ a court appointed attorney who contributed absolutely nothing to the mediation process b/c she practiced family law. She was no more qualified to mediate a civil negligence case than I would be to mediate a divorce case. Experience matters. It's the only thing that matters. You can't take a class and then expect to be able to bring anything useful into a mediation. I had a court appointed mediator ask me one time "so, how much did you ask for in the Complaint?". I didn't know whether to laugh or to cry. If you don't get why that's funny, ask a civil attorney- the only person who would be qualified to mediate a civil case.
- ✓ Greetings: The program is very useful; but, the parties have to select their own mediators to get the most benefit from the program.
- ✓ Often times cases are denied due to liability disputes and/or offers have been made prior to mediation with no chance of additional monies being offered. Under either of these scenarios both parties typically agree that mediation is an unnecessary expense. We wish the Court would allow the parties to opt out of mediation under either of these circumstances.
- ✓ I think the mediation process generally works very well. In my opinion, the biggest problem with the process is that institutional parties, for example the NC Department of Transportation, rarely come to the mediations with a representative who has the authority to settle the case; instead, they can merely recommend a settlement to a review board.
- ✓ Mediation is a great tool for settling cases. Most of my cases settle at mediation.
- ✓ Generally it is good if both sides are well represented.
- ✓ I think it continues to be an effective tool for resolving cases.
- ✓ I think Mediation is very effective.
- ✓ A worthy exercise. Should be implemented in District as well.
- ✓ I think the program is very effective in resolving cases.
- ✓ Mediation never hurts a case and oftens helps. It is difficult to deal with the cost of mediation in lower value cases with Allstate and Nationwide as defendants because they never offer much more in a mediation. I have noticed that mediators are raising their fees to in general \$200 or \$250 an hour plus administrative time. In smaller cases insurance companies just use mediation as an excuse to finally make an offer. The case could have resolved for the same offer before mediation with greater benefit to the client. However, it is hard to know if the offer would ever have come without mediation. In larger cases I think mediation is a helpful exercise.
- ✓ Very effective in getting cases resolved.
- ✓ In my opinion, the superior court Mediated Settlement Conference Program has proved to be a valuable tool in resolving many cases that may not have settled had the real parties involved not had the opportunity to hear from the other parties' attorney, and look at the case from a different perspective.
- ✓ Very effective in getting cases resolved.
- ✓ I think it is very effective

- ✓ I believe the program is very beneficial
- ✓ I believe it works extremely well.
- ✓ I fully support it and believe it is a great help in resolving cases
- ✓ I fully support mediation and believe it is a great help in resolving cases
- ✓ It is VERY IMPORTANT for this program to continue. Although I believe statistically a smaller percentage of cases settle the day of mediation, as compared to perhaps 7 years ago, I still believe many cases settle in the 30 days or so after the mediation due to the efforts made that day.
- ✓ I think it is very effective.
- ✓ I find the Superior Court Mediated Settlement Conference Program to be extremely effective, especially as to business disputes. It is a very good tool for the parties to explore business alternatives to litigation, as well as to reach compromises that make economic sense.
- ✓ I think it's a great. In a lot of (maybe even most) cases, there is some way to reach a settlement that both parties are comfortable with, and the number of cases that settle at mediation doesn't accurately reflect the success of the program. Mediation is a huge benefit in that it can jump-start negotiations where no one has made an offer or facilitate movement when negotiations have stalled. In those situations, the parties may leave without a resolution and find that they're able to reach an agreement without returning to mediation. Giving the parties the ability to work out their case outside mediation is, to me, an even greater accomplishment than settling during the conference.
- ✓ Good program.
- ✓ I think it is very effective.
- ✓ It works well when the parties are prepared.
- ✓ Great program. Most of my cases are resolved at mediation or in subsequent settlement discussions that follow an unsuccessful mediation. It is the one process that gets the parties talking to each other.
- ✓ NECESSARY, EXCELLENT AND BENEFICIAL PROGRAM.
- ✓ it works well. Best results if mediation is within 2 months of trial date.
- ✓ I have found it to be a wonderful tool in bringing cases to an efficient resolution.
- ✓ The mediated settlement conference program is a great tool for managing the overloaded dockets of our Superior Courts. The mandatory program encourages all parties to civil actions filed in Superior Court to take a close look at the strengths and weaknesses of their respective cases. A key component to a successful mediation, however, is having an effective mediator who is knowledgeable about the issues in dispute and the relevant laws that will be applied if the case goes to trial.
- ✓ Many of my cases resolve at mediation or because of progress made at mediation. I appreciate this process.
- ✓ Mediation is a great part of the litigation process.
- ✓ It "gets the ball rolling," which is a very good thing. However, more often than not, defendants are looking for a "bargain" at mediation and really don't get serious until trial is scheduled.
- ✓ Our mediation program is critical. I cannot imagine the practice of law without it. People are so used to it by now that sadly they generally wait until mediation to talk settlement

which is not good. If we were to get rid of required mediation, it would greatly slow progress and clog our court dockets. The other jurisdictions that I am in that do not have mandatory mediation are missing out. In those cases, neither side wants to be the first to "blink" and ask for mediation which is horrible.

- ✓ IT IS AN EXCELLENT PROGRAM AND PROBABLY CONTRIBUTES TO THE RESOLUTION OF MORE CASES AND THE SAVING OF MORE MONEY FOR THE COURTS AND PARTIES, THAN ANY ONE OTHER FACTOR IN THE CIVIL SYSTEM.
- ✓ it is a great program, and has been true asset in NC practice
- ✓ Mediation is the only way to go. It is so expensive to litigate that mediation solves that problem. However, the underlying reason that mediation is successful is parties want to see each other in an atmosphere less formal than a deposition or motions hearing.
- ✓ I think it is working quite well.
- ✓ it is helpful overall. Cases that do not settle at mediation often settle later, as the issues and positions revisited.
- ✓ this case would not have resolved without mediation - the mediator was a neutral third party that the plaintiff believed
- ✓ Should definitely be continued
- ✓ I generally am positive about mediation and the mediators I have worked with. I have clients with business in many states and NC mediation process seems to get more cases resolved than in other states.
- ✓ Based on my experience as a trial attorney and as a Mediator, the Mediated Settlement Conference Program continues to be successful in providing attorneys and their clients with an opportunity to take a realistic look at their cases and make an informed decision as to whether a case should be settled on a compromise basis. Most of the cases I have been involved in have settled at mediation or shortly thereafter.
- ✓ It is a valued system - utilized and seemingly universally appreciated by all practitioners and parties.
- ✓ very useful
- ✓ I find that the mediated settlement conference are extremely beneficial in that they force the parties to concentrate on that particular case which without too much distraction from other matters. I have actually been proposing mediation in other matters such as UIM arbitration cases as I find that settlements are more difficult when the messages have to be relayed to several different parties/clients than instantaneously at a mediation.
- ✓ It is a good program and should remain in place.
- ✓ The program works and it provides the clients with an opportunity to hear and to try to understand cases beyond what the lawyers may have to say.
- ✓ I strongly support the program
- ✓ I think it is an excellent program. It encourages both plaintiffs and defendants to resolve cases before trial. It also helps to educate the general public about the civil procedure process. I think it helps both plaintiff and defendant to hear opinions from someone other than their attorney. Depending on who the mediator is, it can also help the attorneys.
- ✓ I fully support the Mediated Settlement Conference Program.
- ✓ I consider the Program useful and beneficial to dispute resolution, and helpful to inform litigation parties to the strengths and weaknesses of their respective cases.

- ✓ The mediated settlement conference program is a great tool for managing the overloaded dockets of our Superior Courts. The mandatory program encourages all parties to civil actions filed in Superior Court to take a close look at the strengths and weaknesses of their respective cases. A key component to a successful mediation, however, is having an effective mediator who is knowledgeable about the issues in dispute and the relevant laws that will be applied if the case goes to trial.