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# **Mandatory Divorce Mediation: The Impact on The Courts**

by

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## INTRODUCTION

Alternative Dispute Resolution (ADR) is a process of tremendous growth and interest in courts today. The modern inception of ADR in the U.S. court system began in the 1960's. This leaves ADR as a relatively new concept in the time continuum for the U.S. justice system. ADR, because of its novelty, is still controversial in many areas of the country with a growing scope of research being conducted. The purpose of this paper is to review some of the ADR history and research and to establish a design to measure the implications of a form of dispute resolution that was implemented in Cobb County, Georgia in January of 1993.

## HISTORY OF ADR

The inception of dispute resolution into the U.S. court system is relatively new; However, the concept of ADR is not new. The utilization of arbitration (a form of ADR) dates to 602 A.D. and the Kentish laws of Aethelberht which provided for the voluntary referral of disputes to arbitration over compensation for leg injuries. Trial was an expensive and risky affair in the early Middle Ages. Henry I declared that amicable settlement was superior to legal judgment and gave his judges the power to proceed as either mediators or adjudicators. "Lovedays" (jour d'amour) were established for reconciliation. Courts suspended their proceedings to allow members of the community to facilitate settlement at the request of the disputants.<sup>1</sup>

The legal profession evolved separately from these conciliatory traditions and by the middle of the seventeenth century, lawyers were in increasing demand and conciliatory processes were eroding under social and economic changes. However, with the

development of the new American colonies there was an attempt to reinstitutionalize conciliatory processes. Lawyers were prohibited from practicing and the Puritans integrated notions of "Christian brotherly love" into their models of dispute processing. In Georgia, only the barest system of government and a skeletal judiciary existed. Since Georgia was to be "a happy, flourishing colony," it was decreed that it be "free from that pest and scourge of mankind called lawyers."<sup>2</sup> The trust under which the colonies were established was surrendered to the crown in the mid-eighteenth century and lawyers were once again allowed to practice. The lawyers followed much of the English tradition and were, and still are, educated in the tradition that emphasizes the lawyer's role in litigation.<sup>3</sup>

#### **RECENT HISTORY OF ADR**

One of the earliest examples of ADR in U.S. courts appeared in 1969 in Philadelphia, Pennsylvania and Columbus, Ohio. The courts in these cities, together with the courts' prosecutors, developed a mediation program in response to a need for improvements in processing minor criminal matters. Minor criminal dispute cases were clogging the court and adjudication did not seem to work well for these cases. Complainants withdrew their complaints more often than not as trial neared because their opponent was a neighbor, relative, or acquaintance. The complainants were not seeking incarceration or a fine for the harm done to them. They were seeking changed behavior, an apology, or money paid to them as restitution. Participation in these mediation programs was voluntary for disputants and the mediators were trained to help the parties to negotiate a mutually agreed upon resolution to their controversy.<sup>4</sup>

## GOALS OF ADR

The reasons for the nationwide development of ADR programs for both criminal and civil matters have been numerous and complex. ADR programs place less emphasis upon efficiency advantages for the court, such as shortening the lifespan of a case or lessening the amount of judge-time directed to a case. Some programs have been developed by policy makers seeking to remedy the courts' problems with delays, high costs, assembly-line procedures, and citizen dissatisfaction with the quality of justice. Other programs have been developed by individuals and groups outside the justice system who believed mediation and arbitration offered a far more humane and sensible means of settling citizens' disputes. Others take the point of view that the convenience of ADR programs will increase access to justice.<sup>5</sup>

Today, informal dispute resolution processes are established and often mandated by law as institutional reforms designed to alleviate problems caused by the excessive burdens of litigation. In the state of Georgia, the first organizations offering dispute resolution processes began outside the courts. The American Arbitration Association opened its Atlanta office in 1978. In 1979, the United States Department of Justice opened the pilot Neighborhood Justice Center of Atlanta. During the 1980's, law schools began offering courses in ADR theory and skills and local courts began to experiment with court-annexed ADR programs. The Senior Section of the State Bar of Georgia, formed in early 1992, lists the promotion of ADR as one of its goals.<sup>6</sup> In 1994, a Supreme Court Rule was adopted that requires every Georgia attorney to attend a one-time three-hour seminar on ADR. As a result of the 1994 rules, Georgia law schools have incorporated ADR into

curriculum. More and more disputes are being directed toward ADR processes. More courts are expanding their ADR programs under the auspices of a set of rules recommended by a joint Bench/Bar Commission on ADR and approved by the Georgia Supreme Court.<sup>7</sup>

During this same time period, federal legislation establishing the use of dispute resolution in the federal courts was being enacted. In 1988, Congress enacted legislation establishing a court-annexed arbitration experiment in federal district courts. In 1990, Title I of the Judicial Improvements Act required all federal district courts to establish a "civil justice expense and delay reduction plan." The stated purpose of the plan was "to facilitate adjudication of civil cases on the merits, monitor discovery, improve litigation management and to ensure just, speedy, and inexpensive resolutions of civil disputes."<sup>8</sup>

#### **DEFINING ADR**

ADR programs can consist of a variety of different processes that include mediation, arbitration, early neutral evaluation, mini-trials, summary jury trials and other dispute resolution processes. The two most utilized and evaluated processes are arbitration and mediation. More and more courts today are forming programs that are called "court-annexed arbitration" or "court-annexed mediation." Court-annexed arbitration and mediation are variously referred to as "mandatory," "compulsory," or "court-ordered." In court-annexed programs, state statutes or court rules establish the criteria that identify the case litigants that must participate in arbitration as a prerequisite to trial.<sup>9</sup>

Arbitration is a dispute resolution process whereby a neutral third-party is empowered to impose a settlement upon disputing parties following a hearing between the

parties. In most instances arbitrators are attorneys or retired judges with litigation experience because the credibility of the arbitrators is critical for effectiveness in arbitration. Generally, arbitrations are conducted with either one arbitrator or a panel of three, where each party to the case is allowed to present an abbreviated version of their case under informal rules of evidence. The arbitration panel does not discuss the strengths or weaknesses of the case or perform mediation discussions, but simply renders a decision. The arbitration award may be binding or non-binding and the parties may agree before the hearing for the award to be binding. If the parties agree before the hearing for the award to be binding, the parties waive their right to a trial. If the arbitration hearing is non-binding, the decision of the arbitrators may become binding if a party fails to apply for a *trial de novo* within a specified period of time, generally 30 days after the arbitrator's decision is filed with the court.<sup>10</sup> Most court-annexed arbitration programs, however, have disincentives to appeal. Often fees are charged for appeals and there might be potential liability for costs of the arbitration if the appellant does not improve his or her position at trial. Without these disincentives, arbitration could be viewed by attorneys and litigants as another discovery device rather than as a viable technique for ending the dispute.<sup>11</sup>

Arbitration and mediation are two different processes. Some courts may use only one of the two, while others may use a combination of both. Mediation is a process where a neutral third-party attempts to resolve a dispute through a face-to-face meeting between the disputing parties. The mediator is not authorized to impose a settlement upon the parties, but only to facilitate the parties in fashioning a mutually satisfactory resolution. Mediators vary greatly in how assertive they are in suggesting possible resolutions to a controversy and techniques of mediation vary considerably. Some programs use panels

of up to five mediators, while others use a single mediator.<sup>12</sup> The requirements to qualify as a mediator also vary. In some programs the only requirement is to be a member of the community. Other programs require undergraduate or master's degrees in counseling, psychology, accounting or a similar field coupled with mediation training; Still other programs require an attorney or retired judge.

### **PREVIOUS RESEARCH ON ADR**

Research has been conducted on the application of some of the alternative forms of dispute resolution; however, it is questionable whether and how this research can be applied to a new program being developed. One problem is that courts install ADR for various reasons, which might affect the outcomes of a study. The various goals of mediation may include reducing a court's docket, reducing the demand on judicial resources, accelerating the rate of case resolution, reducing the cost of resolving conflicts, increasing the litigant's satisfaction with the court system and improving the relationships between disputing parties.<sup>13</sup> Different courts and different programs may stress one of these goals over others and this will affect the interpretation of the data collected.

Another problem with relying on research data is that ADR is still a fairly new concept. Most of the public and many attorneys are still uneducated as to ADR and distrustful of this process in the courts. In order for these ADR techniques to reach the goals previously mentioned, it is important for the participants to enter the proceedings with an open mind and acceptance of the proceedings.

"Does ADR work?", is one of the major questions anyone would expect studies to answer. The answer might have to include information that shows it works for whom, and

in what ways. In 1991, *The Justice System Journal* published five studies on court-annexed arbitration comparing five different states--Georgia, North Carolina, New Jersey, Hawaii and Colorado. Some of the concerns of administrators in these studies were faster pace to disposition and inexpensive proceedings with no changes in outcomes. The data seems to indicate no change in outcomes but the evidence seems mixed as to other hoped-for efficiencies. Georgia (Fulton County) and North Carolina appeared to experience some decrease in the proportions of cases tried, while New Jersey reported no change. The studies also looked at the satisfaction of the attorneys and the litigants with court-annexed arbitration. Attorney satisfaction was measured in terms of reduced discovery (reported reduced in two states) and the pace to disposition (reported quickened in three states). Attorneys showed an overall satisfaction with the mediation process in Colorado. In North Carolina, attorneys reported a satisfaction that was equivalent to that of regular litigation. Attorneys in Hawaii, however, reported less satisfaction with the mediation than regular litigation.

The satisfaction of litigants was also addressed in some of the studies. The Hawaii study seemed to show that costs may be minimized in court-annexed arbitration. Litigants in New Jersey and Colorado offered a positive review of the system as a whole. Litigants in North Carolina, after experiencing court-annexed arbitration, expressed a higher satisfaction with the system overall than they did upon experiencing regular litigation.<sup>14</sup>

In the summary of these studies, Keith Boyum reports a fair argument that court-annexed arbitration may go some way toward meeting the litigants' expectations. The litigants have their claims processed by an officially-supplied neutral third party in arbitration and they like the experience.



Ultimately an important payoff for court-annexed arbitration may come in terms of overall perceptions of legitimacy and support for the judiciary. If that is true, as I think these studies suggest, the eventual outcomes are as profound as the connection is intimate.<sup>15</sup>

### **PREVIOUS RESEARCH ON DIVORCE MEDIATION**

Mediation has been seen by many as a more suitable process in divorce cases than the adversarial process. Proponents of divorce mediation assert that the adversary system involves debilitating expense and frustrating delays. It fails to address the emotional needs of the parties involved in the divorce. Adversarial methods more often aggravate rather than resolve differences for the parties. An amicable settlement, on the other hand, usually is in the best interests of both parties, where there are children involved.

The hoped for advantages of mediated divorces are: lower cost to parties (\$3,428.00 as compared to a median \$4,350.00 in one study); faster disposition rates (8.5 months as compared to 10 to 11 months in the adversarial process, based on a 1982 study); better compliance with agreements; and an easing of court caseloads that results in court savings.

One shortcoming of divorce mediation is the potential for the exploitation of one party due to unequal bargaining power. If neither party has counsel, the party with the superior negotiating skill or the party who is less vulnerable emotionally may dominate the mediation session. Another problem with divorce mediation is the shortage of qualified mediators. In the initial stages of divorce mediation, the majority of mediators had backgrounds in social work and psychology. These mediators, however, may be unable to advise their clients competently on legal issues that are common in divorce, such as property division, tax consequences, pensions, alimony and other legal issues. One study

concluded that the mediator's actions play a key role in determining the success of the program and that the need for mediator training and experience in divorce mediation is more important than case screening. Educated lawyer-mediators could better compensate for unequal bargaining power in a mediation session.<sup>16</sup> A different study conducted on nonfamily mediations also indicated that settlements are more likely to be reached in cases where the mediator has knowledge and experience about the issues in dispute.<sup>17</sup>

An overview of research results on divorce mediation published in 1985 indicated that whereas successful mediation saved the most time and money, unsuccessful mediation took longer to resolve than a purely adversarial proceeding. The adversarial proceeding took between 10 and 11 months, but unsuccessful mediation averaged 14.2 months to complete. It is worth noting, however, that the instances of relitigation, and thus subsequent expense, were less with the successful mediation. Statistics indicated that 21 percent of those who had successfully mediated returned to court for modifications or enforcement, and only 6 percent returned to court twice. Among the adversarial couples, 36 percent returned to court once and 13 percent returned twice.<sup>18</sup>

Steven Knuppel stated in a 1991 article that perhaps the largest obstacle to divorce mediation is the attitude of the consuming public and the unwillingness to try mediation.<sup>19</sup> The divorce mediation programs with the highest participation rate are compulsory services housed in courts. Studies show that though the public is reluctant to accept divorce mediation, many of those who have participated in the process are pleased with the results. Of the individuals who successfully mediated, 70 percent were "highly satisfied" with the process, 92 percent would recommend it to a friend, and 93 percent would be willing to mediate again. Perhaps even more notable is that of the individuals whose

mediation was not successful, 64 percent would be willing to mediate again and 81 percent would recommend it to a friend.<sup>20</sup>

In an article written in 1994 regarding divorce mediation, there is a more favorable acceptance of the process.<sup>21</sup> This attitudinal change could be for several reasons. This study was conducted in Maine, where divorce mediation became mandatory in 1984 prior to the scheduling of any contested hearing in all cases involving minor children. Therefore, there is a longer time-frame in which mediation has been installed and more participation by the public and bar because of the mandatory mediation requirement. Because the mediation was mandatory, it brought all divorce lawyers into the process and not just the few that were most receptive to mediation. It required the adaptation of all lawyers handling divorce cases and, therefore, involved and educated divorce attorneys as a whole. More than 90 percent of the lawyers for the study believed that mandatory mediation had changed the practice of divorce law in Maine. Many attorneys described movement from initial suspicion and resistance to eventual broad acceptance of mediation. Some attorneys noted that the conversion of skeptical attorneys had been accompanied by a shift away from trial orientation and the adversarial nature of the process and toward settlement and cooperation. It was reported in the study:

We find that lawyers in Maine have generally embraced mediation because it helps them manage problems inherent in divorce practice. Mandated divorce mediation facilitates both settlement negotiation and trial preparation, permits client participation in decision making without requiring lawyers to surrender control, provides a forum for resolving both legal and nonlegal issues, and promotes efficient case management.<sup>22</sup>

Mediation may provide a setting for clients, where anger and feelings about the other spouse can find an outlet. At the same time, the norms of mediation also demand

civility, especially with mediators pushing each side to compromise. Mediation sessions also lend themselves to pursuing those issues that lawyers may view as trivial yet crucial to divorcing parties. Lawyers generally acknowledged the value of mediation in working through property division and visitation arrangements. Divorce agreements resulting from mediation often lead to greater detail within the agreement, which results in fewer modifications and court appearances at later dates.<sup>23</sup>

This review of the literature on divorce mediation points in the direction of success from the viewpoint of both lawyer and the litigant. However, there was not a substantial amount of data regarding the cost and time savings to the courts. Acknowledging that the participants' views of mediation, access to justice, and quality of justice are an important part of court-annexed mediation, we can now examine the advantages of mediation to the courts further.

### HYPOTHESIS

This study is an attempt to examine the cost and time-savings to a Georgia court of general jurisdiction (Cobb County Superior Court) through the use of mediation in divorce cases using another Georgia Court (Gwinnett County Superior Court) as a control. The primary event to be examined is the effect of a January 5, 1993, administrative order in the Cobb County Superior Court referring all domestic actions to mediation filed on or after January 1, 1993. The basis of this order comes from Rule 1.2 of the Uniform Superior Court of Georgia and the case of the *Department of Transportation v. City of Atlanta, et al.* (259, Ga. 305) in order to provide for the speedy, efficient and inexpensive resolution of disputes. The hypothesis is that mandatory court-annexed divorce mediation

will shorten the time to disposition and lower the amount of cases returning to the courts on contempt charges or modifications. If the hypothesis is to be proven true, there should be little or no contrast in the fluctuation of the disposition rates between the two courts before the implementation of mandatory mediation. The disposition rates and after disposition filings should remain fairly stable from the time period starting July of 1992 until the time mandatory mediation is implemented. After the treatment, a difference between the two courts should begin to appear, with the Cobb County Superior Court showing more of a decline in disposition rates and after disposition filing rates.

### RESEARCH DESIGN

To examine the impact of the mandatory mediation, a multiple time-series design is employed. This design is a quasi-experimental research design that is often used in the social sciences to examine change in behavior over time. In this case, a change in policy by the Cobb County Superior Court in which the Court implements mandatory mediation is examined. The multiple time-series design allows the comparison of a single environment with another setting that is similar but has not experienced the same policy change. Therefore, the Cobb County Superior Court can be compared to the Gwinnett County Superior Court, employing the multiple time-series, and discern whether the change in policy has had an advantageous effect on the court in Cobb County.

The multiple time-series design would be diagramed as follows:

$$\begin{array}{ccccccc} O_1 & O_2 & O_3 & X & O_4 & O_5 & O_6 \\ \hline O_1 & O_2 & O_3 & O_4 & O_5 & O_6 & \end{array}$$

where "X" represents the treatment, which is mandatory divorce mediation, and the "O"s represent the observations at equally spaced time intervals. This design should be more

effective in showing the consequences of the policy change than a simple interrupted time series of only Cobb County Superior Court. A single interrupted time-series would be diagramed as follows:

$$O_1 O_2 O_3 X O_4 O_5 O_6$$

Employing the multiple time series design, two general jurisdiction courts in the state of Georgia are examined; the Cobb County Superior Court, which implemented court-annexed mandatory divorce mediation, and the Gwinnett County Superior Court, which approximates the population size, racial composition, and average income level of Cobb County more closely than any other county in Georgia. By comparing the disposition rates and the number of contempt and modifications filed in the Cobb County Superior Court to those in the Gwinnett County Superior Court, a more accurate and reliable research design should be achieved. With the single interrupted time-series, controlling for the confounding variables of history and instrumentation often poses a problem. The multiple time-series should help in controlling for these by holding them constant for both groups. While this design might not eliminate all extraneous variables that would cause a threat to the internal validity of this experiment, it does help in making certain challenges constant for both groups.

The only threat anticipated in terms of internal validity might be one of history. Even though the courts are evenly matched, and there will be before and after treatment data, history could possibly pose a problem. Even though neither court had mandatory mediation before January of 1993, that does not mean that no divorce cases were being mediated after having been filed with the court. Based upon the case processing history of Gwinnett, it is very doubtful, however, that there were enough cases mediated to produce an effect

on the data. If the comparison was with a court in which the history or extent of mediation was not known, there might be a need to control for this or at least take this into consideration when reviewing the data.

As for external validity, care would need to be exercised when applying any findings to other locations. It is possible that findings would be applicable if applied to similar courts with the same approximate population size, racial composition, and average income level. There would be very few courts, if any within the state of Georgia where this would be applicable. However, findings might be generalized to similar metropolitan counties in other states. Because this is a multiple time-series analysis with well-matched control and treatment groups, there is strong internal validity. One should still be conscious, however, of the problems of generalizing any findings to other areas.

### **VARIABLES**

For this study, the treatment group is Cobb County Superior Court domestic cases, with the policy change being mandatory mediation for all domestic actions filed on or after January 1, 1993. The dependent variables will be the time to disposition on all domestic cases filed and the number of post filings -- contempt, modifications, and changes in custody filed. The independent variable will be time.

It is suspected that the relationship will be negative. Mandatory mediation should produce an improvement in case processing time by shortening the time to disposition of domestic cases. Since the time to disposition is the dependent variable, this would be a negative relationship. The time to disposition should decrease with the passage of time after the mandatory mediation is implemented. This would be considered statistically

significant at a -1.96 or less. The other dependent variable, post filings, is also expected to be a negative relationship, with the number decreasing as mandatory mediation is implemented.

The control group is the Gwinnett County Superior Court where there is no mandatory mediation. Unlike the Gwinnett County Superior Court, the Cobb County Superior Court operates a court-annexed mandatory divorce mediation program and thus provides a basis for comparison. For this reason, if mandatory mediation produces improvements in case processing time, then positive changes in the Cobb County Superior Court should be greater than any increase in case processing time in the Gwinnett County Superior Court.

#### **DATA COLLECTION**

The data collection for the multiple time-series begins six months prior to the implementation of the mandatory mediation. Thus, it begins with cases filed on July 1, 1992 in both Cobb County Superior Court and the Gwinnett County Superior Court. The independent variable of time based on monthly observations starting at this time. The time period for observations after treatment (implementation of mandatory mediation) is collected for one year in order to obtain a true statistical reading of the effect of the treatment. This puts the collection of data through December of 1993.

In collecting the data for the dependent variable "days to disposition", neither the Gwinnett County Superior Court or the Cobb County Superior Court had a computer program that calculated the monthly average for the number of days to disposition on domestic cases. Therefore, the number of days to disposition on all domestic cases had



to be calculated, then the mean average for all the cases filed within each month. Instead of calculating the days to disposition for every case filed each month, Krijcie and Morgan's "table for determining sample size from a given population"<sup>24</sup> was utilized. For example, in July 1992, 331 domestic cases were filed in the Cobb County Superior Court. According to Krijcie and Morgan, for a group where  $N=340$ , the sample size needed for a credible representation would be 181; for a group of 320 cases the sample size would be 175. For the study group of 331 cases, data was randomly collected on 178 cases filed in the month of July. The date the case was filed and the date the case was disposed was determined, the difference to obtain the number of days to disposition was calculated, and the average mean for the month was then calculated. This same procedure was followed for each month used in the study. This same process was also used for the Gwinnett County Superior Court cases. The days to disposition were already calculated in the Gwinnett County Superior Court. Thus, the days to disposition on a representative number of cases for each month were collected and then the average mean for each month was calculated. The average mean for the days to disposition became the dependent variable for each month in the time-series.

Collecting the data for the dependent variable of contempt and modifications filed within the courts was a much simpler task. In the Gwinnett County Superior Court, the computer reported the number of contempt, modifications, and changes in custody filed each month. It was only necessary to add these figures to obtain a monthly total. The Cobb County Superior Court did not provide a monthly total. Therefore, as each case was examined and as the "days to disposition" on domestic cases was gathered, a tally of the number of contempt, modifications, and changes in custody filed monthly was also maintained.

## DATA ANALYSIS

The statistical analysis of the data was conducted through SPSS/PC + statistical analysis software. Regression coefficients for both dependent variables were estimated using ordinary least-squares regression (OLS). A Durbin-Watson test was employed to check for auto correlation and each coefficient was tested for significance by the two-tailed t-test. The results are shown in Figures 3,4,5, and 6. Trends in the dependent variable are shown in Figures 1 and 2.

Examining first disposition rates, Figure 1 on page 19 provides a visual picture of any changes that occurred. The disposition rates in the control group, the Gwinnett County Superior Court, appear to be fairly stable across the period of time studied. There seems to be a slight decline in disposition rate beginning with the month of December, 1992, which remains fairly stable through the remainder of the time studied. The statistical analysis in Figure 3 shows these same results when at the intercept, January 1993, the number of days to disposition drops by 8 days (-8.94). From the t score (-1.43) it can be seen that this drop in days to disposition is not significant at the level of -1.96. The measurement of the slope, 2.76, supports the trend seen in Figure 1. This slope measurement shows a long-term increase of 2.76 days.

GWINNETT COUNTY			
Variable	B	T	Sig T
Slope	2.757742	1.656	.1200
Intercept	-8.937229	-1.430	.1746
Month	-2.285714	-1.454	.1681
(Constant)	155.400000	15.271	.0000
R Square		.52148	
Durbin Watson		2.21784	

Figure 3: Days to Disposition

Observing Figure 1 on page 19, it appears that the Cobb County Superior Court had a significant drop in the days to disposition at the time of the implementation of mandatory mediation. The statistical findings in Figure 4 augment this conclusion. The Durbin-Watson score indicates that there is no autocorrelation present and the R Square of .75 indicates that the explanatory power of the bivariate regression model is fairly high. At the intercept, the number of days to disposition dropped by 57 days (-57.44). The *t* ratio in Figure 4, -5.53, far exceeds the needed level of -1.96 to be statistically significant, allowing the conclusion that the implementation of mediation had a significant effect and is statistically significant at the .0001 level. However, as Figure 1 and Figure 4 are examined, it can be seen that after the initial impact at the intercept, the long-term effect is not significant. The slope (.418) does not show a decrease in the number of days to disposition and has a *t* ratio of .151 which is not statistically significant. The slope shows a lesser rate of increase in days to disposition than the slope of The Gwinnett County Superior Court, yet is still statistically insignificant. From these data, it can be concluded that the implementation of mandatory mediation appears to have had a significant short-term effect, but not a significant long-term effect.

COBB COUNTY			
Variable	B	T	Sig T
Slope	.418482	.151	.8820
Intercept	-57.441558	-5.531	.0001
Month	2.885714	1.104	.2881
(Constant)	155.400000	15.271	.0000
R Square		.74981	
Durbin Watson		1.95735	

Figure 4: Days to Disposition

## Domestic Cases

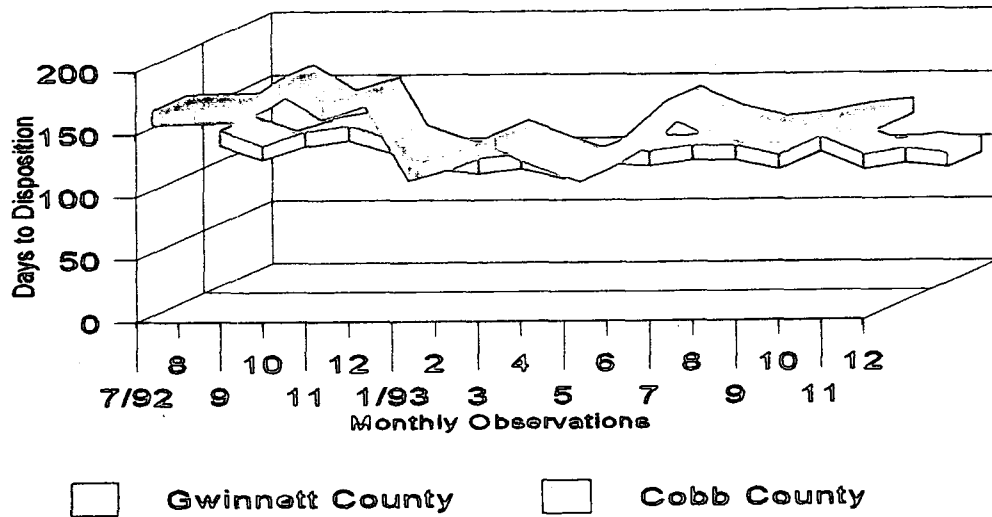


Figure 1

Number of Post Filings in Gwinnett County and Cobb County:  
July 1992 to December 1993.

## Post Filings

Contempts, Modifications, Change of Custody

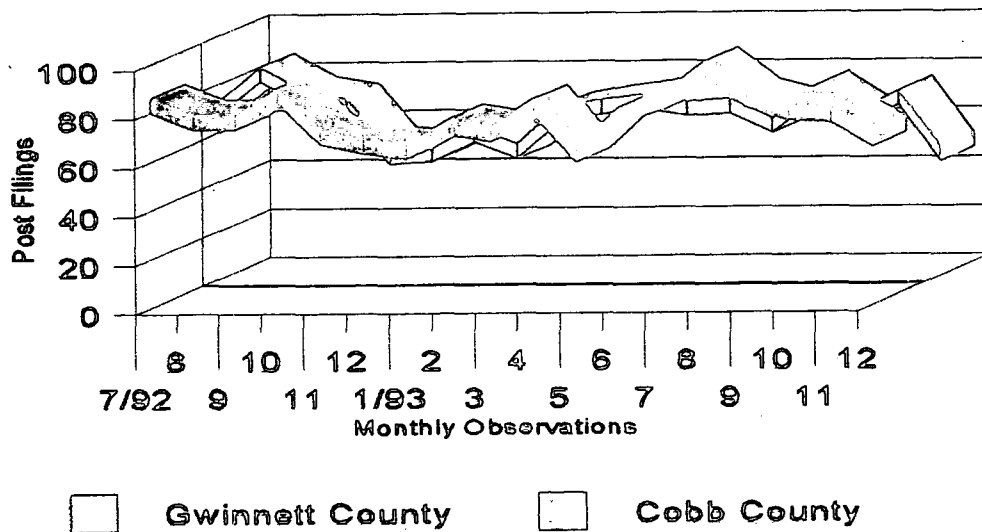


Figure 2

Number of Post Filings in Gwinnett County and Cobb County:  
July 1992 to December 1993.

Analyzing the post filings in Figure 2, the only trend appears to be a decrease in filings around the end of the year and an increase in filings after the summer months. This trend appears similar for both courts. Figures 5 and 6 do show a lesser rate of increase in the number of filings for the Cobb County Superior Court, -2.34 at the intercept in the Cobb County Superior Court compared to 7.02 in the Gwinnett County Superior Court, and a long-term increase of 3.23 in the Cobb County Superior Court compared to 4.96 in the Gwinnett County Superior Court. Neither the short or long-term  $t$  ratios show a significant change (-.021 at the intercept and 1.28 long-term). Even though there is a lesser rate of increase in post filings in the Cobb County Superior Court, it is not enough to be statistically significant and prove the hypothesis that mandatory mediation lowers the number of post filings. There appears to be no significant change in the number of post filings from the data collected. For post filings, however, there should be no change at the intercept at the time of implementation of mediation. The effect of mediation on post filings would be seen at a later date. It would be necessary for cases that had been mediated to be closed and then an interval of time to have elapsed in which to allow time for the filings of modifications and contempt. Changes in the number of post filings would probably not begin to appear before the end of 1993. To obtain a better picture of the effect of mediation on post filings another year or two of data would need to be collected.

GWINNETT COUNTY			
Variable	B	T	Sig T
Slope	4.957002	2.115	.0543
Intercept	7.015971	.776	.4514
Month	-4.729730	-2.120	.0538
(Constant)	85.135135	10.502	.0000
R Square		.30388	
Durbin Watson		1.83643	

Figure 5: Post Filings

COBB COUNTY			
Variable	B	T	Sig T
Slope	3.232943	1.289	.2198
Intercept	-.205569	-.021	.9834
Month	-2.337838	.979	.3453
(Constant)	85.081081	9.810	.0000
R Square		.15332	
Durbin Watson		1.71695	

Figure 6: Post Filings

## CONCLUSIONS

The rationale for the hypothesis of this study was that based on previous research, mandatory mediation in divorce cases seems in most circumstances to benefit all parties involved. The conciliatory nature of mediation seems to induce parties to reach a better

understanding and satisfaction in a settlement agreement. This should lead to less contempt and modification filings after disposition. The data analyzed in this study does not prove this hypothesis. However, due to the time period in which the data were collected, a true conclusion as to the benefit of mediation on post filings can not be reached.

Prior research is a bit obscure when showing the effects of mediation on caseload. The analysis of the data in this study is a bit confusing. There is a definite and significant change in the disposition rate for the Cobb County Superior Court immediately after the implementation of mediation. Table 7 shows the average time to disposition in months. For the first six months after mediation was implemented, the time to disposition in the Cobb County Superior Court dropped by 1.4 months. However, for the second six months the disposition rate goes back up by .8 months, the Gwinnett County Superior Court by .6 months.

	GWINNETT COUNTY	COBB COUNTY
July - December, 1992	3.7 months	5.5 months
January - June, 1993	3.3 months	4.1 months
July - December, 1993	3.9 months	4.9 months

**Figure 7**

Much of the literature on ADR seems to lean towards the idea that more statistically significant effects should be realized in the outcomes of mediation on court processes involving domestic relations cases as ADR programs become more prevalent and the public and bar become more educated and experienced in the ADR processes. This study on the Cobb County Superior Court seems to illustrate an opposite effect. One explanation

for this could be that the implementation of mediation was such an immediate and *radical* change in policy that the bar was in a state of confusion as to how to integrate the process with the law practices. It is possible that when first implemented, the bar and public rushed to settle the cases before they were required to go through the mediation process and pay a mediator. Another possible explanation is an expectation of strict time enforcement for mediation deadlines among the bar and the public. It is possible that just the expectation of strict deadlines forced the parties into earlier disposition of cases. Over time, the possibility of enforcing the strict deadlines becomes apparent to everyone, including the bar and the court. Calendar conflicts, where attorneys are required to be in another court at the time of the mediation, cause the cancellation of scheduled mediations. New dates must be assigned which adds days to the disposition rate.

Another factor that should be considered when measuring the significance of the difference in the case disposition rate is the number of cases filed per judge. Courts which have a large number of cases per judge or a backlog of cases are more likely to realize a significant difference in their disposition rate with the implementation of a program such as mandatory mediation. Neither the Gwinnett County Superior Court or the Cobb County Superior Court could be considered to have a backlog of cases. The implications of this can be seen in Figure 1 where the Gwinnett County Superior Court's average disposition rate is generally lower than the Cobb County Superior Court's disposition rate. The less filings the court has per judge, the faster the rate of disposition should be. In 1993 the Gwinnett County Superior Court had 5,652 domestic cases filed with six superior court judges, an average of 942 cases per judge. The Cobb County Superior Court had 6,824



domestic cases filed with seven superior court judges, an average of 974 cases per judge.<sup>25</sup> Immediately after seeing the significant drop in disposition rate in the Cobb County Superior Court in January of 1993, a check was made to see if an additional superior court judge had been added to the bench in that year. This was not the case, which made the findings for the effect of mediation stronger by eliminating a possible confounding variable.

Just as the study conducted in Maine<sup>26</sup> indicates that a longer time-frame in which mediation has been installed will show a wider degree of participation by the public and bar, a longer time-frame may also present a more certain and explanatory effect of the mandatory mediation on court processes involving domestic relations cases. A more distinct effect may be seen after the mandatory mediation has been in place for 4 or 5 years. This might be necessary to receive a true statistical reading of the effects and anticipated future effect of mandatory mediation on divorce cases. As the public and the bar become more educated, experienced and embracing in the area of mediation, more benefits from mandatory mediation in domestic cases may be realized in the form of reduced number of days to disposition and reduced number of contempt and modifications filed.

Another study implied that one problem with divorce mediation is the shortage of qualified mediators. This study indicated that educated and trained lawyer-mediators could better understand the issues present in a divorce. Based on this study, one might conclude that the quality of mediators might be a contributing variable in the Cobb County study. The goals of mediation might not be obtainable if the mediators are not well

qualified. This does not seem to be the case. Cobb County provided mediation training and qualified professionals as mediators from a variety of backgrounds relating to domestic issues. They required the mediators to complete a minimum of 60 hours of certified training approved by the Superior Court with at least 40 of those hours concentrating specifically on family mediation. To qualify as a mediator, they must either have a bachelor's or advanced degree in social work, mental health, behavioral or social sciences; or be a physician certified to practice adult or child psychiatry; or have a law degree; or be a certified public accountant. The mediator must also have at least four years practical experience in their area of expertise.

Even if some of the court's goals, such as lowering the disposition time and the number of post-filings, are not reached there are still other beneficial results in divorce mediation. The participants' satisfaction with results and the opportunity for more amicable settlements where children are involved are beneficial results that should be considered. These are factors to be considered regardless of the effects of mandatory mediation on court resources. As Douglas Yarn states:

"Justice delayed is justice denied..... From a practical point of view, most lawsuits settle without a trial anyway, so why not provide a way to settle them before the costs and hostilities add up?.....Today, leadership of both the bench and bar support ADR as a fair and efficient way to reduce case backlog, alleviate the pressures on our courts, and settle cases earlier. This has been a relatively recent trend."<sup>27</sup>

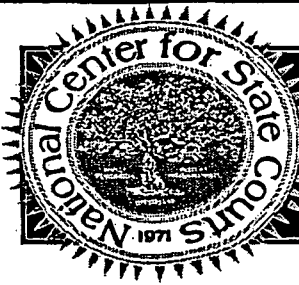
With the progress that has been made in the "relatively recent trend," expect to see some significant effects of court-annexed mediation encompassing all the goals of mediation: reduction of the court's docket, reduction of the demand on judicial resources,

accelerating the rate of case resolution, reducing the cost of resolving conflicts, increasing the litigant's satisfaction with the court system, and improving the relationships between disputing parties.

## ENDNOTES

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