



AN ANALYSIS
OF
THE
ORLEANS PARISH CIVIL DISTRICT COURT
PILOT MEDIATION PROGRAM

Timothy F. Averill
Deputy Judicial Administrator
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Submitted to the Institute for
Court Management of
The National Center For State Courts
in fulfillment of the requirements
of Phase III of the
Court Executive Development Program
April, 1994

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CAVEAT

This paper has been submitted to the Institute for Court Management of the National Center for State Courts in fulfillment of the requirements of Phase III of the Court Executive Development Program.

The opinions expressed in this paper are solely those of the author. The opinions may not represent the opinions, positions, or policies of the Justices of the Louisiana Supreme Court, the judges of Orleans Parish Civil District Court, the members of the Judicial Council of Louisiana, the members of the Alternative Dispute Resolution Task Force, or the Louisiana Supreme Court Judicial Administrator and his staff.

TABLE OF CONTENTS

	<u>Page</u>
Acknowledgements	vi
Chapter 1 Introduction	1
Chapter 2 Introduction to Mediation	5
Chapter 3 History of the Pilot Mediation Program	10
Chapter 4 Research Methodology	21
Chapter 5 Review of Referrals by Case Type and Success Rates	27
Chapter 6 The Approved List of Mediators	35
Chapter 7 The Reasonableness of Mediation Costs	40
Chapter 8 Participant Perceptions of the Fairness of Mediation	46
Chapter 9 Participant Satisfaction	51
Chapter 10 Conclusion	58

LIST OF TABLES

		<u>Page</u>
Table 1	Breakdown of Mediation Appointments	37
Table 2	Participant Comments on the Issue of Costs	41
Table 3	Negative Participant Comments on Fairness	48
Table 4	Participant Comments regarding Benefits of Mediation and User Satisfaction	57

SCHEMATICS

		<u>Page</u>
Figure 1	Survey Responses	62
Figure 2	Types of Cases Being Referred to Mediation	63
Figure 3	Percentages of Successful/Unsuccessful Mediations	64
Figure 4	Success Rates Per Case Type	65
Figure 5	Effectiveness of Mediation in Bringing the Sides Together	66
Figure 6	Analysis of Approved List of Mediators	67
Figure 7	Reasonableness of Mediation Costs	68
Figure 8	Perceptions Regarding the Fairness of Mediation	69
Figure 9	Participant Satisfaction with Agreements Reached in or as a Result of Mediation	70
Figure 10	Recommending Mediation to Others	71
Figure 11	Using Mediation Again	72
Figure 12	Participant Satisfaction with Mediation, as Compared to Other Court Experiences	73
Figure 12A	Lawyer Satisfaction with Mediation, as Compared to Other Court Experiences	74
Figure 12B	Litigant Satisfaction with Mediation, as Compared to Other Court Experiences	75
Figure 12C	Results of Comparative Satisfaction Analysis	76

EXHIBITS

- | | |
|------------|---|
| Exhibit 1 | 1991 House Resolution |
| Exhibit 2 | Issue Packet |
| Exhibit 3 | Decision Packet |
| Exhibit 4 | ADR Task Force Report to the Louisiana Legislature |
| Exhibit 5 | 1992 House Concurrent Resolution |
| Exhibit 6 | Louisiana Supreme Court Resolution Authorizing
Implementation of the Pilot Program |
| Exhibit 7 | Form Correspondence |
| Exhibit 8 | Motion and Order of Referral for Mediation |
| Exhibit 9 | Mediator Application Form |
| Exhibit 10 | Monthly Reporting Form |
| Exhibit 11 | Civil District Court Pilot Mediation Program Rules |
| Exhibit 12 | Amendment to Pilot Mediation Program Rules |
| Exhibit 13 | Survey Forms |
| Exhibit 14 | Filings by Case Type in CDC in 1993 |

ACKNOWLEDGEMENTS

I would like to thank my lovely wife, Johanna, who offered support and understanding during my work on this paper. I would also like to thank my three sons, Matthew, Jared, and Andre, for understanding that sometimes their father must miss trips or playtime because of work. The lost time will be made up.

This paper could not have been completed without the invaluable assistance of fellow employee Douglas Bullock, our computer specialist; my secretary, Betsy Gundorf; and Tad Lynn, a Loyola Law School student and volunteer who assists with the pilot mediation program. Tad assisted with the file review and the surveys. Thank you all.

I would also like to thank the Justices of the Louisiana Supreme Court and the members of the Alternative Dispute Resolution Task Force for offering continued support and encouragement.

Finally, I wish to offer special thanks to the Louisiana Supreme Court Judicial Administrator, Dr. Hugh Collins, and Dr. Gene Flango, my ICM advisor, for their advice, encouragement, and continuing support.

CHAPTER 1

INTRODUCTION

Civil District Court for the Parish of Orleans (CDC) is a trial court of general civil jurisdiction located in New Orleans, Louisiana.¹ The court has fourteen judges and divisions. Two divisions of CDC handle only domestic matters. For reasons which will be discussed in the body of this paper, the domestic divisions of court are not included in this analysis.

As its name indicates, the jurisdiction of CDC is limited to civil cases and controversies. As such, cases and controversies in CDC range from the simplest of fender benders to the most complex construction litigation, and a myriad of cases and controversies which fall somewhere in between these two extremes. A separate trial court, the Criminal District Court for the Parish of Orleans, maintains exclusive criminal jurisdiction for offenses committed within the parish of Orleans, unless jurisdiction is vested by law in another court.² Forty other trial courts of general jurisdiction, called "district courts," exist in Louisiana.³ All of these courts have both

1 LSA-R.S. 13:1136, et seq.

2 LSA-R.S. 13:1335, et seq.

3 LSA-R.S. 13:471, et seq.

civil and criminal jurisdiction. Orleans Parish is unique in maintaining two general jurisdiction trial courts with separate civil and criminal jurisdiction.

On September 1, 1993, a one-year pilot mediation program began in CDC.⁴ From its inception, the program has generated a tremendous amount of interest from the academic and research communities, the organized bar, litigants, and persons who wish to become mediators and/or mediate in the pilot program.

Given the interest in the pilot program, this paper has been structured with the following objectives in mind:

⁴ A pilot mediation program also exists in the First City Court of the City of New Orleans. First City Court is a limited jurisdiction court which has civil jurisdiction in cases and controversies where the amount in dispute does not exceed \$20,000. LSA-R.S. 13:2151D. However, as of the publication date of this paper, this author has been able to ascertain that only two cases in First City Court have been referred to mediation. As a result, this analysis focuses singularly on the CDC program.

While a number of reasons probably contribute to the limited usage of the pilot program in First City Court, this author suspects one major reason relates to the swiftness of the litigation process in that court. There is very little delay in getting cases tried in First City Court. Thus, absent court compulsion, litigants may not have the impetus to mediate, since they can procure a trial date almost immediately. To wit, two of the major contributing factors which provide the impetus for the creation of court-annexed alternative dispute resolution programs, court congestion and delay, are absent in First City Court.

- 1) to introduce readers to the increasingly popular alternative dispute resolution mechanism of mediation;
- 2) to present a short history of the CDC pilot program;
- 3) to explain the major features of the pilot program, as well as to briefly discuss the underlying reasons the pilot program is structured as it is;
- 4) to objectively evaluate qualitative aspects of the program, such as user satisfaction and fairness; and
- 5) to objectively evaluate certain quantitative aspects of the program, such as the number and types of cases being referred to mediation, use of the approved list of mediators, and "success rates" of referred cases.

As shown in greater detail in the body of this paper, the pilot program has been well received by users, and has generated high marks in terms of user satisfaction and fairness. Nonetheless, changes can be made to improve the program. Perhaps this paper can be used to effectuate further improvements,⁵ and

⁵ The pilot mediation program concludes on August 31, 1994. However, it can be extended for an additional year by further order of Civil District Court.

will be considered if and when statewide enabling legislation concerning mediation is contemplated in Louisiana. This paper may also provide some small measure of guidance to persons and entities who wish to create and evaluate court-connected ADR programs in the future.

CHAPTER 2

INTRODUCTION TO MEDIATION

"Law-suits consume time, and money, and rest, and friends."⁶

As is evidenced by this rather depressing, but in the minds of some, accurate quotation, observers of legal systems have expressed dissatisfaction with lawsuits, litigation, and the adversarial system of dispensing justice for many years. The consideration of alternative methods for resolving disputes can perhaps be traced to concerns articulated by Roscoe Pound in a 1906 critique of American justice:

First, overcrowding, delay, and cost continue to plague the nation's courtrooms. Second, many observers of legal processes believe that formal, adversary-style adjudication is inappropriate in a variety of civil and criminal matters. Third, citizens too often view courts as intimidating, unfair and incapable of yielding equitable outcomes.⁷

Beginning in the early 1970's, state legislatures began addressing such concerns by sanctioning alternative methods of

⁶ Proverb. HERBERT, Jacula Prudentum (1651).

⁷ Craig A. McEwen and Richard J. Maiman, Small Claims Mediation in Maine: An Empirical Assessment, 33 Maine L. Rev. 237 (1981); citing, Pound, The Causes of Popular Dissatisfaction with the Administration of Justice, 8 Baylor L. Rev. 1 (1956).

resolving legal disputes.⁸ Mediation is one of these "alternative" processes.⁹

Mediation can be defined as "a consensual process in which a neutral person helps the disputing parties reach their own resolution to the dispute."¹⁰ A mediator, in contrast to an arbitrator or a judge, has no power to impose an outcome on the parties; the mediator's primary function consists of assisting the parties to reach their own agreement.¹¹ Thus, the process of mediation "empowers the parties by enabling them to be the ultimate decisionmakers, and it allows the parties to reach agreements that take into account important facts that are often ignored in judicial decisionmaking."¹² As a result, mediated agreements often result in higher degrees of compliance

8 Note, Mandatory Mediation and Summary Jury Trial: Guidelines for Ensuring Fair and Effective Processes, 103 Harv. L. Rev. 1086, 1087 (1990).

9 Other ADR processes include, but are not limited to, arbitration, summary jury trials, early neutral evaluation, and private judging.

10 National Center for State Courts, National Symposium on Court-Connected Dispute Resolution Research 5 (1994).

11 Stephen B. Goldberg, et al, Dispute Resolution 91 (1985).

12 Joshua D. Rosenberg, In Defense of Mediation, 33 Ariz. L. Rev. 467 (1991).

than decisions reached through formal adjudication.¹³ Because of its participatory and consensual nature, mediation contrasts sharply with adjudication, which has been said to be founded on authority and the imposition of judgment.¹⁴

Some readers may not be familiar with the procedures used in mediation. The typical mediation session has been described in the following manner:

Mediation sessions typically occur in a conference room in a neutral setting. The mediator, who may or may not be a lawyer, invites the participants in and seats them, usually so that the parties are closest to the mediator. . . . No robes, stenographers, court officers, news reporters, or public observers intrude upon the private session. Often lasting one to four hours, a mediation session tends to be guided by the mediator firmly but informally, without formal rules of evidence or procedure. The parties and their lawyers may work with the mediator to shape some of the ground rules and the scheduling and function of future sessions. Mediation sessions frequently move between joint sessions with all parties present to separate caucuses between each party (sometimes with attorney) and mediator. A session typically concludes with an agreement to schedule another session with a particular agenda and often some "homework" (for example, consideration of new settlement alternatives with counsel or information gathering) or drafting of a tentative agreement. Of course,

¹³ See, e.g., Goldberg, supra note 11, at 529-530.

¹⁴ McEwen, supra note 7, at 238.

it may also conclude with the recognition that further mediation would be unproductive.

During this process, a mediator assists parties in discussing points of difference and agreement, in clarifying interests, in identifying alternative resolutions, and in accepting compromise, leaving to them the decision to accept or reject a settlement. Although some mediators are more aggressive than others in suggesting outcomes, their strongest control is over the process.

Mediation typically involves several overlapping stages: introduction of the process by the mediator; presentation of viewpoints by each of the parties; expression of emotions by parties; caucusing to discuss confidential information; exploration of alternative resolutions; and forging an agreement, when possible.¹⁵

The mediation process is viewed by many as more personalized, humane, and pleasant than adjudication.¹⁶

Mediation can be accomplished on a purely private and voluntary basis, or through a "court" annexed program. The CDC pilot mediation program is considered a court-annexed program, because it involves the judicial referral of cases to mediation, while preserving the rights of the parties to proceed to trial if

15 Nancy H. Rogers and Craig A. McEwen, Mediation: Law, Policy, and Practice, §2.2 (1989).

16 Jessica Pearson, An Evaluation of Alternatives to Court Adjudication, 7 Just. Sys. J. 420, 426 (1982).

they do not reach agreement.¹⁷ Court annexed mediation programs can be structured as purely voluntary programs, in which all parties must consent before a case can be referred to mediation, or as mandatory programs, in which cases can be referred to mediation in the absence of a formal request by any party, and even in the face of objections to referral by all parties. As will be discussed further infra, the CDC program is structured as a "semi-voluntary" program.¹⁸ That is, participating judges may order cases to mediation if at least one party requests such a referral, but judges may not order cases into mediation in the absence of a request for referral from any party.

¹⁷ Note, supra note 8 at 1087, f.n. 10.

¹⁸ Others might also call the CDC program a "semi-mandatory" one.

CHAPTER 3

HISTORY OF THE PILOT MEDIATION PROGRAM

For purposes of this paper, the pilot program had its inception in the 1991 Regular Session of the Louisiana Legislature, when the House of Representatives passed a Resolution concerning the development and possible implementation of an alternative dispute resolution pilot program in the City of New Orleans. (Exhibit 1). The resolution created a ten-member task force, composed of the following representative members and staff:

House Civil Law and Procedure Committee	Rep. Naomi Farve Rep. Mitchell J. Landrieu
Judicial Council of Louisiana	Judge Niles A. Hellmers, First City Court of the City of New Orleans Judge Okla Jones, II, Orleans Parish Civil District Court
Louisiana State Bar Association	Mr. Robert E. Leake, Jr. Mr. Danny G. Shaw
Louis Martinet Society	Ms. Angelique Reed Mr. James A. Gray, II
Louisiana Trial Lawyers Association	Mr. Robert W. Thomas

American Arbitration
Association

Mr. Lloyd N. Shields

Louisiana Supreme Court /
Judicial Council Liaison
to the Task Force

Mr. Timothy F. Averill¹⁹

The task force met throughout 1991 and 1992.²⁰ The first few meetings of the task force concerned the scope of the future pilot program, as well as its administration. Task force members initially discussed whether the intent of the resolution was to create a pilot program limited to mediation or whether other forms of alternate dispute resolution might have been contemplated. A consensus was reached that the resolution contemplated institution of a pilot program limited to mediation.²¹

¹⁹ Retired Judge John Ballard, Tulane Law School adjunct professor William Pitts, and Loyola University Professor of Law Bobby Harges, all of whom are experienced mediators, have also rendered invaluable assistance to the pilot program and are considered as ex-officio task force members.

²⁰ Prior to the promulgation of the 1991 resolution, the Louisiana House of Representatives, Civil Law and Procedure Committee, through its Subcommittee on Alternative Dispute Resolution, studied alternative dispute resolution mechanisms in furtherance of its apparent intention of recommending alternatives for resolving disputes in civil cases. The 1991 resolution apparently arose out of that study.

²¹ As will be discussed further, the ADR pilot program ultimately implemented was limited to mediation.

Thereafter, the task force focused upon the following major issues:

- (1) Whether the pilot program should be court administered or independently administered;
- (2) How the program would be funded; and
- (3) At what point in the litigation process would it be most appropriate to institute mediation.

In February of 1992, a three page "issue packet" was circulated to members of the task force concerning the scope, administration and cost of the future pilot program. (Exhibit 2). Task force members were invited to circulate comments to the other members. The task force also obtained the advices of South Texas College of Law Professor Kimberlee Kovach, an expert in alternative dispute resolution. Professor Kovach spoke about the history of alternative dispute resolution and offered advice based upon her knowledge of ADR both in Texas and throughout the United States. At a meeting in early 1992, the task force decided it would recommend that the pilot program not be limited to any particular type of civil case, with the exception of

domestic matters, for which mediation is already an alternative.²²

A more detailed decision packet was then circulated to the task force members. This assemblage addressed such issues as the scope and administration of the pilot program, whether mediation should be voluntary or mandatory, funding for the program, the payment of mediators, the qualifications of mediators, mediator training, and implementation of the pilot program. (Exhibit 3). After circulating comments among themselves, the task force met again and made tentative decisions concerning the parameters of the pilot program.

Thereafter, during the 1992 Regular Session of the Louisiana Legislature, the task force testified before the Louisiana House of Representatives, Civil Law and Procedure Committee, and proposed a plan for implementing a pilot mediation program in Orleans Parish. (Exhibit 4). After considering the testimony of task force members, as well as the task force report, which outlined the parameters of the proposed pilot program, the House of Representatives promulgated a second resolution concerning the program. The resolution asked the

²² See, e.g., LSA-R.S. 9:351, et seq.

Louisiana Supreme Court to authorize implementation of the program. (Exhibit 5). Thereafter, by resolution dated September 3, 1992, the Louisiana Supreme Court authorized the establishment and implementation of the pilot mediation program, specifically finding that the proposed pilot program "would advance the administration of justice in Louisiana." (Exhibit 6).

The task force then began circulating draft court rules in accordance with the recommendations it had previously made to the House Civil Law and Procedure Committee. After the task force prepared an acceptable draft of proposed court rules, members began meeting with the judges of Civil District Court. From the beginning, the CDC judges were receptive to the pilot mediation program, and were virtually amenable to all of the task force proposals, with the exception of the task force recommendation that the program be limited to only four divisions of court. The CDC judges thought it would be more appropriate if all twelve civil divisions of court were allowed to participate. The draft proposal was amended to accommodate the judges' request. However, in light of the task force's concern that the number of mediated cases be kept to a manageable number, the draft rules were amended to provide that any case filed after January 1, 1992 would be eligible for mediation.

In addition to preparing court rules, the task force prepared a number of form documents for use in the pilot program:

(1) A form correspondence which the judges and their staff could forward to lawyers and litigants, once issue is joined in cases within their divisions. The form letter encourages participation in the pilot program. (Exhibit 7).

(2) A form Motion and Order of Referral for Mediation which parties might use in any case they wish to have mediated. (Exhibit 8).

(3) An application form to be completed by persons wishing to be approved to mediate in the pilot program. (Exhibit 9).

(4) A monthly statistical reporting form to be used by judges and their staff for reporting cases which have been referred to mediation. (Exhibit 10).

After further discussions and interchanges with the judges of Civil District Court, the pilot program was ultimately implemented through court rule on July 27, 1993. (Exhibit 11) .

Significant features of the program are discussed in the following paragraphs.

(1) Scope of the Program. As promulgated through Orleans Parish Civil District Court Rule 18, and at the suggestion of the task force, participation in the pilot program is "semi-voluntary". That is, judges may order the parties to mediate if any party requests mediation. Through written motion, any other party may then oppose the order and urge that the case not be mediated. The court then considers oppositions to mediation upon the merits, and may retract the mediation order for good cause shown.

The task force found itself faced with three choices in this regard:

- (1) recommending that the program be voluntary;
- (2) recommending that the program be semi-voluntary; or
- (3) recommending that the program be mandatory.

The task force decided against recommending a voluntary program out of concern that there would be few cases in which all parties

would voluntarily participate.²³ Further, a completely voluntary program would not allow the court to refer cases in circumstances where mediation would clearly be beneficial, in the absence of agreement by all parties. Conversely, the task force decided against a mandatory program out of concern that cases which are inappropriate for mediation might be ordered into mediation over the objection of all parties. The task force wanted to minimize the prospects that litigants would have negative feelings about the pilot program, and mediation in general, because they were forced to mediate a case which was inappropriate for mediation. In the opinion of the task force, a semi-voluntary program stood the best chance of successfully balancing the wishes of those who wanted their case mediated against the wishes of those who did not think their particular case should be mediated.

(2) Eligible mediators. Both attorneys and non-attorneys are allowed to mediate in the pilot program. The rules require that persons wishing to mediate successfully complete at least a sixteen hour mediation training program.

²³ Other voluntary mediation programs "frequently fail to attract sizable numbers of disputants. . . ." For example, "[f]ully half the disputants offered free mediation services to resolve contested child custody and visitation matters in the Denver Custody Mediation Project rejected the offer." Pearson, supra note 16, at 427.

Pursuant to the rules, the task force has developed an approved list of mediators. All persons who wish to be considered for placement on the approved list are required to submit an application, resume, and fee schedule to the task force and must certify that they have successfully completed an approved course in mediator training. The task force subsequently determined that any mediator training course which has been approved for continuing legal education credit in Louisiana would constitute "approved training" for purposes of the pilot program.

(3) Choosing a mediator. The rules encourage the parties to choose their own mediator. If the parties cannot reach agreement on a mediator within fifteen court days after notice of the Order of Referral, the court then appoints a mediator from the approved list. Copies of the approved list are maintained in Civil District Court, and two complete copies are maintained in the office of the Louisiana Supreme Court Judicial Administrator.

(4) Costs of mediation. The costs of mediation initially are to be borne by the parties, unless the parties agree otherwise, and are ultimately to be taxed as costs of litigation in the event mediation does not resolve the dispute.

As a condition precedent to placement on the approved list, mediators must agree to mediate ten percent (10%) of their cases without charging a fee.

All parties who apply to mediate are required to list their fee schedules on the application. In choosing this course, the task force was guided by the fact that the Legislature had not appropriated funds for the work of the task force, or for the pilot program itself.

(5) The Mediation Process and the Mediator's Role.

Administration of the pilot program was a major concern of the task force, since the task force did not want to burden the CDC judges with unnecessary additional administrative responsibilities. As a result, the task force decided the majority of the administrative burden should fall upon the appointed mediators. The rules were structured in furtherance of this decision. The participating judges have little involvement in the mediation process subsequent to ordering mediation. After the mediator is appointed, he/she coordinates with the parties and schedules mediation sessions as appropriate. After mediation is concluded, the mediator reports back to the court, advising as to whether or not the case concluded in mediation.

(6) Confidentiality. The mediator is obligated to maintain the confidentiality of mediation proceedings; further, those proceedings, including statements made by any party, attorney or other participants, are privileged in all respects.

(7) Time Limits for Concluding Mediation. Finally, in keeping with a goal of mediation, that of resolving disputes more expeditiously, the rules provide for the completion of mediation within 90 days of service of the Order of Referral for Mediation, unless the time period is extended by the presiding judge or by stipulation of all parties.

Since the inception of the program, two minor amendments to the rules have been made. Section 3 of the rules was amended to delete the Federal Mediation and Conciliation Service from the list of approved mediation training providers, since that entity does not normally offer mediation training to private individuals. Secondly, Section 8 was amended to require mediators to file a copy of the notice of their acceptance of mediation appointments with the Louisiana Supreme Court Judicial Administrator's Office. The purpose of this second amendment was to allow for statistical recordkeeping regarding the number of cases being mediated. (Exhibit 12).

CHAPTER 4
RESEARCH METHODOLOGY

The Center for Dispute Resolution and the Institute of Judicial Administration developed, with State Justice Institute support, sixteen "Standards for Court-Connected Mediation Programs." The sixteenth standard, entitled "Evaluation," suggests, inter alia, that courts should evaluate their programs on a periodic basis. In conducting research for this paper, this author was guided by the following commentary to Standard 16.1:

The process of evaluation can have a number of goals: (1) to determine whether a program should be continued or discontinued; (2) to garner public or funding support for a program; (3) to assist in adjusting and improving a program; (4) to meet the requirements of a granting agency; and (5) to advance general knowledge about dispute resolution.

* * *

[D]isputants' perceptions of the legitimacy and fairness of the process are among the important elements of evaluation. . . . Exclusive focus on efficiency measures, such as time and numbers of settlements, can have deleterious effects, such as increasing inappropriate pressures to settle in mediation and creating inferior forms of justice.

Evaluation should not be understood to involve the collection and analysis of quantitative data only. Qualitative data gathered through observations or open-ended interviews, for example, may provide special

insights about the character and quality of mediation services.

Courts also should keep in mind that program evaluation can range from rigorous collection and analysis of a comprehensive empirical data base that may or may not compare "experimental" and control groups, and include rich observations and accounts of what mediators do, to periodic review of data collected on a regular, ongoing basis in individual case files.²⁴

Although a major portion of this evaluation is qualitative in nature, as it assesses user perceptions of fairness and satisfaction, some quantitative assessments have been made. For example, an attempt has been made to assess the extent to which mediation has contributed to the settlement of disputes which have been referred to mediation. Notwithstanding the aforementioned cautionary commentary regarding the danger of overemphasizing "efficiency" measures, settlement rates were ascertained for two main reasons:

- 1) persons interested in the future of the pilot program would also be interested in settlement rates; and
- 2) the continuation of ADR programs such as the CDC pilot program are hard to justify if they hinder, rather

²⁴ Center for Dispute Resolution and Institute of Judicial Administration, Standards for Court-Connected Mediation Programs, §16.1 (Borrowing citations omitted).

than expedite, dispute resolution.²⁵

In light of the above and foregoing, and further, in light of assessments of public interest in certain issues,²⁶ this author hoped to accomplish the following research goals:

- 1) To determine the number and types of cases being mediated;
- 2) To determine the extent to which mediation has been effective in settling disputes;
- 3) To determine the extent to which lawyer and litigant participants believe the mediation process is fair;
- 4) To analyze user satisfaction with mediation;
- 5) To analyze the extent to which participants believe mediation costs are reasonable; and

²⁵ See, e.g., Note, supra note 8, at 1102.

²⁶ For example, many people have asked about the "approved list" of mediators.

6) To review and determine the number and qualifications of approved mediators, as well as any trends which have developed concerning the appointment of mediators.

Those research goals were accomplished through the following procedures:

- (1) A review of the approved list of mediators;
- (2) A review of statistics forwarded by the CDC judges and by persons who have mediated in the pilot program;
- (3) A file review of cases referred to mediation; and
- (4) A "telephone survey" of both lawyers and litigants who have participated in mediation under the auspices of the pilot program.

Two different survey forms were prepared: one version was prepared for lawyers who participate in mediation with their clients, and a second version was prepared for participating clients. (Exhibit 13) For purposes of this study, both lawyers and their clients were considered to be "participants" in mediation. As will be discussed further, attempts were made to

contact and survey only persons who participated in completed mediations. As of the publication date of this analysis, this author has been able to ascertain that thirty-seven mediations have been completed. Survey responses were procured from this pool of cases. At least one survey was procured for each case in which the mediation process was completed.

The names and telephone numbers of attorneys were ascertained from a review of the case files. Attorneys were then contacted and asked to respond to the survey. If the telephone numbers of litigants could not be ascertained from the case files, the attorneys were asked to provide the names and telephone numbers of their clients. Attempts were then made to contact the litigants. Eighty-three (83) telephone surveys were completed. Figure 1 breaks down the number of survey responses between lawyers and litigants. As the table indicates, many more lawyer responses were gathered than litigant responses. The reasons for the lower litigant response rate include the following:

- 1) In unsuccessful mediations, cases are referred back to the trial docket and, as a result, some lawyers asked that their clients not be contacted;

2) Some participants could not be contacted, either because they do not have a telephone, maintain unlisted phone numbers, or have moved; and

3) On two occasions, litigant participants were contacted, but one litigant refused to respond, and another did not appear to understand the survey. That interview was terminated.

CHAPTER 5

REVIEW OF REFERRALS BY CASE TYPE, AND SUCCESS RATES

The number and type of cases being referred to mediation in the CDC pilot mediation program are depicted in Figure 2. By comparison, Exhibit 14 lists filings by case type in Civil District Court for 1993. Not surprisingly, personal injury cases constitute 62% of all cases referred into the pilot program,²⁷ as tort suits represented 53.5% of all non-domestic civil filings in CDC in 1993.

Since the pilot program is ongoing, a number of cases which have been referred to mediation have not been completed. To assess the number of completed mediations, the case files were reviewed. If the case files contained a motion for referral and dispositive pleadings, such as a motion to dismiss, or a letter from the mediator informing the court that the mediation had been concluded, either successfully or unsuccessfully, the participants were contacted. If a file contained a motion for referral, followed by additional substantive or procedural pleadings, such as discovery requests, or a motion to set for

²⁷ This figure was derived by adding vehicular, maritime, and other personal injury cases, and then dividing that number by the total number of referred cases.

trial, these participants were also contacted. As to this latter category of cases, later filed pleadings were viewed as indicative of an unsuccessful mediation.

Figure 3 depicts the number of completed mediations, as well as "success rates" for completed mediations. For the vast majority of cases, "success" was determined by whether or not the parties resolved their differences in mediation. If they did, the mediation was considered successful: if they did not, the mediation was considered unsuccessful.

Responses to two survey items were also used to determine whether the mediation was successful or unsuccessful. On page 2 of the surveys, participants were asked the extent to which they agreed or disagreed with the assertion that "the length of time required to resolve the dispute was reasonable." In the seventh survey item, participants were asked to describe their level of satisfaction with any agreements reached through mediation. In 34 of the 37 cases, survey responses to these two items were dispositive as to the success or failure of the mediation.

In three cases, the determination was more problematic. In two of these cases, the litigation did not settle at the

mediation. However, in each case, the litigation settled within a week or two of the mediation, survey responses indicated mediation had helped bring the parties together, and at least one participant in each case indicated, independently of the survey inquiries, that mediation played a role in the settlement of the case. As a result, these two cases were counted as "successful" mediations.

The third case settled three weeks after mediation. Although the parties indicated mediation contributed to the settlement of their differences, this mediation was considered unsuccessful for two reasons:

- a) the three week delay between mediation and settlement was more significant than the delay in the other two cases, and allowed for other intervening causes to influence the settlement;
- b) some would contest the inclusion, in mediation "success" calculations, of any case in which agreement was not actually reached at the mediation; the categorization of this third case as

"unsuccessful" will presumably serve to mute such objections.²⁸

As Figure 3 indicates, 54% of completed mediations have been deemed "successful" in that the parties resolved their differences in mediation, or shortly thereafter, with mediation cited as a contributing factor in the settlement. This figure compares favorably to recent empirical studies. In its recent report on court connected dispute resolution research, the National Center for State Courts (NCSC) discussed a study of Florida's Thirteenth Judicial District, where select major civil cases were ordered to mediation. The NCSC noted "[i]t is unclear from the [Florida] report . . . what the average settlement rate . . . was, but it reportedly was over 50 percent."²⁹ Similarly, in that same report, NCSC cites to a study of mediation in Hennepin County, Minnesota, where cases over \$50,000 in which discovery was complete and where serious settlement

28 In a fourth case, information was received to the effect that the case settled the night before mediation. While the contacted party indicated the prospect of having to mediate played a role in settlement, mediation in that case was beneficial only because it worked like a firm and impending trial date; i.e., the pressures of impending trial dates cause settlements. Thus, since the case was not mediated, nor could it be said that the process of mediation helped the parties resolve their differences, the case was not counted as either a successful or unsuccessful mediation, or as a completed mediation.

29 National Center for State Courts, supra note 10 at 6-9.

discussions had been conducted were assigned either to a control group, which could not be referred to mediation, or to an experimental group, which could be referred to mediation. The NCSC reports that "[i]n Hennepin County, 62 percent of the cases referred to mediation settled, and 46 percent of the cases that were mediated settled."³⁰

Finally, in an often cited case study involving small claims mediation in Maine, 66% of mediated cases ended with an agreement.³¹ A credible argument can nonetheless be made to the effect that the CDC pilot program's 54% settlement rate compares favorably to the Maine study. In the Maine study, referral to mediation was apparently accomplished on a voluntary basis; as such, the cases presumably could not be mediated without the parties' consent. Secondly, small claims are viewed as simpler than the more complicated, multi-party cases often seen in general jurisdiction trial courts. Finally, the jurisdictional ceiling of the Maine small claims court at the time of the study was \$800; to the contrary, there is no monetary ceiling on cases filed in Civil District Court.³² To put the

30 Id. Presumably, the distinction between cases "referred to mediation" and cases actually mediated is intended to capture cases such as the one cited in footnote 28, supra.

31 McEwen, supra note 7 at 249-250.

32 Id. at 243-249.

distinction into perspective, few would quibble with the general assertion that it is easier to successfully mediate a dispute between two parties when the amount in dispute is \$200, as opposed to mediating a dispute between three or more parties where the monetary dispute involves \$200,000 or even \$2,000,000.

Figure 4 attempts to ascertain variances in settlement rates by case type. While the preliminary findings do not permit definitive conclusions, interesting trends appear to be developing. For example, mediation in eight out of eleven (72.8%) motor vehicle personal injury cases was successful. This figure may be contrasted with traffic accident cases in the Maine small claims mediation study, where 41% of those cases settled.³³ Also of interesting note is the fact that one malpractice case has been mediated, unsuccessfully. Literature and research findings indicate some types of cases are less conducive to mediation than others. This may ultimately be true of malpractice cases, where the parties may become entrenched in their positions, and are unable to see, or even accept, the other sides' position, or the advantages of compromise.³⁴ Apparently, settlement rates for medical malpractice and product

³³ Id. at 250.

³⁴ National Center For State Courts, supra note 10, at 10; Cf., Lon L. Fuller, Mediation - Its Forms and Functions, 44 S. Cal L. Rev. 305, 328 (1971).

liability cases were lower than for other cases in the Florida study.³⁵ Nonetheless, it has been suggested that since these cases can be very costly to litigants, mediation may still be advantageous, despite lower success rates.³⁶

Finally, an attempt has been made to develop an ancillary measure of "success." Survey Inquiry 6F asks participants to assess the extent to which they agree, or disagree, with the assertion that mediation helped bring the sides together. The responses are tabulated in Figure 5. Not surprisingly, 95.3% of participants in successful mediations felt the mediation process helped bring the sides together.

More important are the responses from participants in the unsuccessful mediations. In those cases, 35% of the participants at least somewhat agreed that the process helped bring the sides together. While it may be unfair to label mediations as successful in such circumstances, a compelling argument can be made that mediation in such circumstances was not unfruitful. To the contrary, an ancillary positive benefit to

³⁵ NCSC, supra note 10 at 10-11.

³⁶ Id.

the parties and the justice system has been realized, since mediation helped bring the disputing parties closer to resolving their dispute, and may ultimately contribute to settlement of the dispute, and the diminution of legal and judicial expenditures.

CHAPTER 6

THE APPROVED LIST OF MEDIATORS

A historical review of events leading up to the commencement of the pilot program indicates the Alternative Dispute Resolution Task Force was concerned with having enough qualified mediators to handle mediation referrals. It appears, in retrospect, that the task force underestimated the desire of persons, and in particular, attorneys, to mediate in the pilot program. As of the publication date of this report, 159 persons have been approved to mediate in the pilot program, and 11 more persons await approval by the task force.

Figure 6 offers a breakdown of the approved list by profession and occupation. As indicated, the vast majority of mediators are attorneys.³⁷ Nonetheless, 24 approved mediators

³⁷ In the opinion of this author, the interest attorneys have in being placed on the approved list may stem, in large part, from three major factors: the financial gains which can be realized by mediating cases, a desire to participate in a process which requires consensus building and facilitation, and a generalized dissatisfaction with the practice of law, and with adversarial litigation in particular. With regard to the issue of lawyer dissatisfaction, see, e.g., Karen E. Klages, Career Dissatisfaction Increases, 15 Bar Leader 8 (Nov.-Dec. 1990). In this article, the author discusses surveys conducted in 1984, and again in 1990, by the ABA Young Lawyers Division. Comparing the two surveys, the author notes: "Across the board, regardless of job setting, 20 percent fewer lawyers in 1990 said they are 'very satisfied' with their current job as compared to 1984. Accompanying this is an overall increase in dissatisfaction." Id.

are non-attorneys. While the only qualification required for placement on the approved list is 16 hours of mediator training, the credentials of the mediators, as evidenced by Figure 6, are impeccable. In addition, 49 of the 159 approved mediators (30.8%) had conducted mediations prior to their placement on the approved list. It appears quite clear that a "good" problem has developed; that is, the willingness of persons to act as mediators is outpacing the number of cases which are being referred to mediation.

In determining that qualified non-attorneys should also be allowed to mediate, the pilot program rules were structured in accordance with Standard 6.1 of the Standards for Court-Connected Mediation Programs, which reads, in pertinent part, as follows:

Qualifications of mediators to whom the courts refer cases should be based on their skills. Different categories of cases may require different types and levels of skills. Skills can be acquired through training and/or experience. No particular academic degree should be considered a requisite for service as a mediator in cases referred by the court.

An interesting trend has developed with regard to the appointment of mediators in the pilot mediation program. Of the 68 cases where mediators have been named, all of the appointees have been attorneys.

Table 1

Breakdown of Mediation Appointments

Number of persons appointed to mediate	68
Number of attorneys appointed	68
Number of non-attorneys appointed	0

In a completely random appointment system, one would have expected that perhaps ten of the appointments would have gone to non-attorneys. However, appointments in the program are not accomplished randomly. In the pilot program, participants, virtually all of whom have retained counsel, are encouraged to pick their own mediator. In the absence of agreement by the parties, the rules allow the judge to pick the mediator. The limited empirical evidence available in Louisiana appears to indicate that while it is theoretically advantageous to allow non-attorneys to be placed on the approved list, the reality of the situation is that, if given a choice, attorneys and judges will choose attorneys to mediate in court-annexed programs, to the virtual exclusion of non-attorneys.³⁸

³⁸ This author wishes to emphasize that he does not, and will not, question the wisdom of mediator appointments in the pilot program; the conclusion reached is purely an empirical one, and is based solely on data available to date.

It also appears quite clear that the "law of diminishing returns" has set in regarding the approved list. It would appear unrealistic to assume that lawyers and their clients would have the time or inclination to sift through 159 applications and resumes in an attempt to procure the "best" mediator. Furthermore, it would appear unrealistic to assume that meaningful, substantive distinctions between mediators can be made, given the huge list.

Finally, the large number of approved mediators does not allow for meaningful participation by all persons who wish to mediate. As noted, the desire of persons to be placed on the approved list is presently outpacing the number of cases being referred to mediation. In addition, many mediators have been appointed to mediate more than one case. In the 68 cases where mediators have been named, appointments have gone to some 27 different mediators, and to a private mediation service that utilizes only attorneys to conduct mediations. Thus, given present trends, it appears likely that no more than fifty (50) mediators, out of a pool of 160 or so, will actually be appointed to mediate in the pilot program.

Both short and long-term solutions to this problem exist. One immediate solution would be for the task force to

discontinue approving mediators for placement on the approved list. If the program is extended for a second year, and/or if enabling legislation is enacted, separate approved lists could perhaps be generated based upon the value of the case, and the experience of the mediator. For example, less experienced mediators might be asked to accept placement on an approved list for cases which have a lower monetary value, while reserving the most complicated and serious cases for the more experienced mediators. Finally, consideration might be given to raising the mediation training requirement from sixteen (16) hours to as many as forty (40) hours.

CHAPTER 7

THE REASONABLENESS OF MEDIATION COSTS

As discussed previously, the pilot program rules provide that the parties, absent another agreement, are to split the costs of mediation. Figure 7 depicts participants' views as to the reasonableness of the costs of mediation. Standard 13 of the Standards For Court-Connected Mediation Programs suggests that when mediation is mandatory, mediation costs should be publicly funded, through legislative appropriation, or by additional filing fees. Because of the finite term of the pilot program, and because no legislative appropriation was made to fund the pilot program, the task force viewed participant funding as the most viable alternative.

Participants' views regarding this issue were depicted for both successful and unsuccessful mediations. In successful mediations, 67.5% of participants "strongly agreed" that mediation costs were reasonable. This favorable figure drops only slightly in unsuccessful mediations, to 57.6%. In successful mediations, 97.5% of participants at least somewhat agreed that costs were reasonable; in unsuccessful mediations, that figure drops to a still favorable rate of 78.8%. However, there appears to be a correlation between unsuccessful mediations and participant views regarding the reasonableness of costs. In unsuccessful mediations, 21.2% of participants, who expressed an

opinion, at least somewhat disagreed that costs were reasonable, while in successful mediations, only 2.5% expressed disagreement with the assertion that costs were reasonable.

The research data appears to indicate that participant funding of court-annexed mediation is a viable alternative to public funding, and does not, at least in the CDC pilot program, elicit strong opposition.³⁹ A number of interesting comments were volunteered by participants on the issue of mediation costs. Table 2, which follows, condenses these views:

Table 2
Participant Comments on the Issue of Costs

- 10 - suggested mediation saves litigants money.
 - 2 - suggested mediation is a waste of money when the case does not settle.
 - 1 - suggested mediation costs are miniscule, compared to trial costs.
 - 1 - did not think he/she should be required to pay the costs of mediation.
 - 1 - questioned the fairness of having the plaintiff pay any share of the mediation costs, since defendants will pay for mediation most of the time, if the plaintiff suggests mediation.
 - 1 - suggested the major benefit of mediation is its potential to save trial preparation time and trial expenses - this participant further suggested his/her satisfaction with mediation would decrease if mediation were accomplished after the expenditure of trial preparation time and trial expenses.
-

³⁹ Assessments of user satisfaction, which also impact the "cost" issue, will be discussed further infra.

Although this study does not attempt to evaluate the extent to which mediation saves litigants money, assuming such an evaluation can realistically be made, a number of participants apparently think mediation does, in fact, save them money. Monetary savings to litigants, in the event of a successful mediation, includes savings in attorney trial preparation time, travel expenses, witness fees, deposition costs, and jury costs.

Two "program specific" issues should perhaps be addressed relative to the matter of costs. The first concerns the matter of in forma pauperis cases. Section 4 of the rules requires that mediators agree to mediate 10% of their cases without charging a fee: "[t]hus, in forma pauperis proceedings may also be subject to mediation." The rules appear to imply, at least, that mediators should provide pro bono mediation services in cases where either party is indigent. At least two completed cases in the pilot program were designated as in forma pauperis cases. However, in these cases, the mediator apparently did not provide mediation services on a pro bono basis, owing to the fact that at least one of the parties was not indigent. Presumably, one or more of the solvent parties agreed to pay all or a portion of the mediator's fee, and/or the mediator's fee was absorbed in the mediated settlement.

This scenario raises a conflict between two different provisions of Section 4 of the CDC rules. One provision of Section 4 allows the parties to make other arrangements concerning the payment of fees, thus arguably sanctioning the payment of fees by solvent parties in pauper cases. On the other hand, the pro bono provisions of Section 4 imply that mediators should not charge a fee in pauper cases. In light of this conflict, two possibilities for a solution exist:

- 1) the rules could be amended to clearly require that no mediation fee may be charged in cases where any party is indigent; or
- 2) the rules could be amended to allow solvent parties to pay at least a portion of the costs of mediation, in the event they move to refer a pauper case to mediation, or join in a motion to refer.

In addition, given the large number of available mediators, as compared to referred cases, some benefit may be realized by amending the rules to require mediators to agree to mediate a certain number of cases without charging a fee, rather than expressing the pro bono obligation in terms of percentages.

In this regard, the rules could easily be amended to require mediators to provide one or two pro bono mediations per calendar year. Such an amendment would perhaps be preferable to the present language, which requires mediators to provide free mediation services in 10% of what, for the vast majority of mediators, will be a miniscule mediation caseload.

Finally, an issue has arisen concerning mediation costs in the "lesser value" disputes in CDC. As structured and sanctioned in the rules, the fee schedules of mediators are contained in their applications. Theoretically, these fee schedules remain the same, whether the case is worth \$10,000 or \$1,000,000. On the other hand, the First City Court pilot mediation rules place a \$300 cap on mediation costs, in recognition of the \$20,000 jurisdictional ceiling in that court.⁴⁰

During the file reviews for this project, this author reviewed a case where a controversy developed over the mediator's fee. One party refused to go forward, arguing the mediator's fee was excessive, given the case was a "simple" matter that would

⁴⁰ As noted, the First City Court pilot program is not analyzed in this paper.

take a minimal amount of time to mediate. The matter was not mediated, and was tried instead.⁴¹

In light of the potential for future disputes of this nature, a solution is recommended. The rules could perhaps be amended to place a "cap" on mediator fees in cases where the parties certify that the controversy has a certain monetary value. An amendment to the rules could be structured to provide for a maximum hourly fee of \$75, up to a maximum amount of \$300, in cases where the value of the case is \$20,000 or less. For cases with an agreed upon value ranging from \$20,000 to \$50,000, the cap might reasonably be placed at \$100 per hour, up to a maximum of \$500.

⁴¹ Since the case was not mediated, the case was not counted as either a successful or unsuccessful mediation, and no attempt was made to survey the litigants.

CHAPTER 8

PARTICIPANT PERCEPTIONS OF THE FAIRNESS OF MEDIATION

Some of the benefits of mediation, such as its informality and lack of formal procedures, raise important concerns relative to fairness. One commentator has reviewed and commented upon this issue at some length:

Because it is not tightly bound by rules of procedure, substantive law, and precedent, the question of whether the process is fair and productive of just results is presented. Because mediation represents an "alternative" to the adversarial system, it lacks the precise and perfected checks and balances that are the principal benefit of the adversary process. The purposeful "alegal" character of mediation creates a constant risk of dominance by the more knowledgeable, powerful, or less emotional party.

* * *

Adversarial traditions and litigation provide a structure for resolving disputes within an exacting set of procedures that have been tested and refined to achieve fairness. Mediation, as an alternative to the adversarial system, is less hemmed in by rules of procedure, substantive law, and precedent. It lacks the precise and perfected checks and balances that are the principal benefit of the adversary process. . . . The private nature of most mediation proceedings also precludes any meaningful public view of the process or evaluation of the result unless a problem of public dimension arises later.⁴²

The term "fairness", in the context of court-connected mediation, may "translate[] roughly as the preservation of free choice

⁴² J. Folberg and A. Taylor, Mediation (1984), reprinted in Dispute Resolution, supra note 11, at 113-114.

between settlement and adjudication."⁴³ Stated another way, a factor which would presumably negatively impact participants' views of the fairness of mediation would be the extent to which they felt they were "coerced" by the mediator into settling the case.⁴⁴

In an attempt to gauge this important issue, survey participants were asked to assess the extent to which they agreed, or disagreed, with the assertion that the mediation process was fair. The results of the inquiry are tabulated at Figure 8. As indicated, 82.9% of participants agreed that the process was fair, and 12.2% of the participants were somewhat in agreement that the process was fair. On the negative side, 4.9% of participants were at least somewhat in disagreement that the process was fair.

These figures are comparable with another empirical study on the issue of fairness. In the Hennepin County, Minnesota mediation study, approximately 75% of both litigants and attorneys viewed mediation to be fair.⁴⁵ This data appears to legitimate the CDC pilot program as a "fair" program in which the mediators are successfully insuring that they are viewed as "unbiased facilitators" in the mediation process.

43 Rogers, supra note 15 at 4.

44 Note, supra note 8 at 1098-1099.

45 NCSC, supra note 10 at 9.

The surveys, while reflecting positively on the pilot program as a whole relative to the issue of fairness, nonetheless offer subtle indication of some dissatisfaction among participants. Because some of the causes of the negative comments may be correctable, some discussion of the comments, as well as suggestions for improvement, may be in order. Table 3 synthesizes the more important "negative" comments which impact upon the issue of fairness.

Table 3

Negative Participant Comments on Fairness

- | | |
|---|--|
| 2 | Suggested the parties were ordered to mediate over all of their objections |
| 2 | Perceived the mediator as biased against him/her |
| 1 | Felt he/she was pressured to settle |
| 3 | Mentioned that the opposing sides' client did not attend the mediation |
| 1 | Suggested the parties were given a "hard sell" on one particular mediator |
| 2 | Suggested the parties did not participate in good faith |
-

The first and fifth comments appear to indicate that the spirit and intent of the pilot program rules may not have been followed. As noted, the intent of the task force in recommending

a semi-voluntary program was to prevent cases from being referred to mediation when no party wishes to mediate. Furthermore, the rules were structured to allow the parties the freedom to choose their own mediator. These problems can hopefully be addressed through additional training and education. The second negative comment, concerning perceived bias, perhaps can also be addressed through mediation training and education. Preventing conscious and/or unconscious mediator coercion can be accomplished through continuing mediator education, and the promulgation of ethical standards for mediators.⁴⁶

The failure of clients to attend mediation, or to participate in good faith, appears to violate the spirit, if not the actual language, of the pilot program rules. One of the major benefits of mediation is its participatory nature. If one of the parties does not attend, this benefit is lost; in addition, the other party might justifiably feel the process is unfair. Eliminating or reducing future problems of this nature can perhaps be accomplished through the following:

- 1) amending the rules to require all parties to attend mediation, preferably in person, but at a minimum, by telephone; and

⁴⁶ Note, supra note 8 at 1098-1099.

- 2) amending the rules to require participation "in good faith" or "meaningful participation," perhaps coupled with the prospect of sanctions in cases where such participation is lacking.⁴⁷

⁴⁷ Id. at 1096-1097; see also, John R. Van Winkle, Mediation: An Analysis of Indiana's Court-Annexed Mediation Rule, 25 Ind. L. Rev. 957, 966 (1992).

CHAPTER 9

PARTICIPANT SATISFACTION

Because mediation is viewed as "user friendly," court-annexed mediation programs should generate high levels of user satisfaction. Certainly a forceful argument can be made that the continued existence of programs like the CDC pilot program would be hard to justify if participants did not like mediation, would not use it again, and were not satisfied with mediated settlements. To evaluate this issue, four different measures of user satisfaction were assessed. Each will be discussed separately.

SATISFACTION WITH AGREEMENTS

REACHED IN, OR AS A RESULT OF MEDIATION

The extent to which participants were satisfied with agreements reached in, or as a result of, mediation are tabulated in Figure 9. A vast majority of these participants (94.9%) were at least somewhat satisfied with their agreements. In the Maine small claims study, 67.1% of mediation litigants viewed their settlements as "fair."⁴⁸ In a study of Denver custody

⁴⁸ McEwen, supra note 7 at 257-259. Conversely, approximately one-third of the mediation litigants in the Maine study viewed their settlement as "unfair." Id. at 259.

mediations, 69% of successful mediation clients reported satisfaction with their case outcome, while 73% of mediation participants in a Brooklyn dispute resolution project expressed satisfaction with their case outcomes.⁴⁹

RECOMMENDING MEDIATION TO OTHERS

Participants were asked to assess the extent to which they agreed, or disagreed, with the assertion that they would recommend mediation to others with similar problems. The responses are tabulated in Figure 10. Because of the potential for a variance in responses based upon the success of mediation, the responses were differentiated based upon whether or not the mediation was successful. A vast majority of participants in successful mediations (88.1%) strongly agreed with the assertion; a surprisingly large number of participants in unsuccessful mediations (78.4%) agreed, or strongly agreed, with the assertion.⁵⁰ There is an expected variance between successful and unsuccessful participants with regard to negative responses to the assertion; while no participants in successful mediations

⁴⁹ Pearson, supra note 16 at 432.

⁵⁰ A possible explanation for a portion of the very strong responses on the part of participants in unsuccessful mediations is discussed further, infra.

expressed disagreement with the assertion, 8.1% of participants in unsuccessful mediations strongly disagreed with the assertion.

USING MEDIATION AGAIN

Participants were then asked the extent to which they agreed, or disagreed, with the assertion that they would use mediation again. The responses are tabulated in Figure 11. There appears to be little variance in the strength of responses based upon whether or not the mediation was successful. A large majority of participants in successful mediations (90.5%) strongly agreed that they would use mediation again; similarly, 94.7% of participants in unsuccessful mediations at least somewhat agreed with the assertion.⁵¹

Some of the participant comments appear to soften the strength of the aforementioned responses. At least two lawyer participants indicated their response to this inquiry was based on the presumption that they had assessed the case as one which would be appropriate for mediation. These types of comments are consistent with research findings which indicate some types of

⁵¹ Id.

cases are more amenable to resolution by mediation than others.⁵²

COMPARATIVE SATISFACTION

Participants were asked, in the final survey inquiry, to compare their level of satisfaction with the mediation experience to other court experiences. Because of expected wide variances in court experience between lawyers and non-lawyers, the aggregate calculations, which were initially broken down between participation in successful or unsuccessful mediations, were then broken down further so as to allow for comparisons between lawyer and non-lawyers responses. The results are depicted in Figures 12, 12(A) and 12(B), and summarized in Figure 12(C).

Overall, 65.8% of participants, who were able to express an opinion, were at least somewhat more satisfied with mediation than with other court experiences. When this aggregate figure is broken down, however, variances occur based upon whether or not the mediation was successful. With regard to lawyers, 77.8% who participated in successful mediations were at least somewhat more satisfied with mediation; this figure drops to 53.3% in unsuccessful mediations. Interestingly, those variances are similar with regard to litigants; 75% of litigants in successful

⁵² NCSC, supra note 10 at 10.

mediations were at least somewhat more satisfied with mediation; this figure drops to 57.1% for litigants who participate in unsuccessful mediations.

Dissatisfaction with mediation also appears to be "result driven", especially with regard to lawyers. While no lawyers in successful mediations were dissatisfied with mediation, 20% of lawyers who participated in unsuccessful mediations were at least somewhat more dissatisfied with the mediation experience. Variances were not as great among litigants. No litigants in unsuccessful mediations were dissatisfied with their mediation experience, while one litigant (8.3%) in a successful mediation expressed dissatisfaction with the mediation experience.⁵³

Responses to this inquiry served to uncover an unexpected source of possible contamination, with respect to measures of satisfaction. Apparently, some participants had previously participated in private, voluntary mediations in Louisiana, or perhaps in the neighboring states of Florida and Texas. When four of these participants were asked to respond to the last survey inquiry, they took pains to note that their

⁵³ This seemingly incongruous result was caused by the perception of a participant that he/she was pressured to settle.

responses were "case driven;" that is, they were responding based upon their experience in the pilot program. In three of the cases, the participants indicated their level of satisfaction with mediation, in general, was higher.

Given the above and foregoing, it is possible that the extremely strong levels of satisfaction evidenced by the responses to survey inquiries 6(H) and 6(I) (Figures 10 and 11) may have been positively influenced by other mediation experiences.⁵⁴ Even assuming that one accepts this as a possibility, however, that view should not serve to diminish the strength of the responses to these research inquiries. That is to say, even considering this possibility, a large majority of participants, all of whom considered their CDC experience when responding to these inquiries, would recommend mediation to others, and would also use mediation again.

Finally, a number of insightful participant comments were relevant to the issue of user satisfaction. Since the comments are instructive and help explain why mediation is becoming a popular alternative to adjudication, some of them have been summarized in Table 4. The comments may also be helpful to

⁵⁴ One might also argue that responses to the last inquiry might underestimate the levels of overall satisfaction that participants feel with mediation.

lawyers or litigants who may be considering mediation as an alternative method of dispute resolution.

Table 4

Participant Comments Regarding Benefits of Mediation
and User Satisfaction

- | | |
|---|--|
| 2 | Suggested a benefit is realized by allowing the lawyers and litigants to "eyeball" each other well in advance of trial |
| 4 | Suggested a benefit is realized when litigants hear the other sides' positions and demands |
| 1 | Suggested mediation helps deserving litigants by offering a quicker resolution, as opposed to waiting years for a firm trial date |
| 2 | Suggested mediation allows litigants to "vent" their frustrations and otherwise explain their side of the story |
| 2 | Suggested mediation is a beneficial "client education" tool |
| 2 | Suggested mediation brings out information above and beyond what is attainable in discovery - this aids in settlement negotiations |
| 2 | Suggested the mediation process allows participants to choose a mediator with expertise, particularly in some of the less well known areas of law, such as construction litigation |
| 2 | Suggested mediation compels not only the lawyer, but his/her client as well, to become part of the dispute resolution process |
| 1 | Noted that from a psychological standpoint, mediation allows everyone to go home as a "winner" |
| 1 | Suggested the informality of mediation is preferable for litigants, as compared to the formality of litigation |
| 1 | Suggested mediation is less hostile and contentious than litigation |

CHAPTER 10

CONCLUSION

The preliminary research findings outlined in this analysis bode well for the future of mediation in civil cases in Louisiana. Among the research findings are the following:

- 1) More than 50% of completed mediations in the CDC program have been successful; 35% of all participants in unsuccessful mediations nonetheless felt that mediation at least helped somewhat to bring the sides together;
- 2) The pilot program has generated a tremendous amount of interest from persons who wish to mediate, as evidenced by the 159-person approved list of mediators;
- 3) In large measure, participants view the costs of mediation as reasonable; furthermore, the fact that participants must share the costs of mediation does not appear to have had a negative impact on user satisfaction;
- 4) An overwhelming majority of participants view the mediation process as fair;

- 5) An overwhelming majority of participants (94.9%) in successful mediations are at least somewhat satisfied with agreements reached in, or as a result of mediation;
- 6) After completing mediation under the auspices of the pilot mediation program, a large majority of participants would recommend mediation to others, and would use mediation again; and
- 7) Approximately two-thirds of the sampled participants are at least somewhat more satisfied with mediation than with other court experiences.

No program is perfect, however, and the CDC pilot program is no exception. The following short and long range recommendations may help improve court-annexed mediation efforts in Louisiana:

- 1) in the event statewide enabling legislation is enacted, consideration should be given to establishing a statewide mediation agency that would have at least the following responsibilities:

- a) developing continuing mediation education programs for judges, lawyers, and mediators;
 - b) evaluating and approving mediators;
 - c) evaluating qualitative and quantitative aspects of mediation;
 - d) recommending ethical guidelines for mediators;
 - e) establishing mediator qualifications;
- 2) amending the pilot program rules to add provisions which would require client participation, as well as good faith participation, in mediation;
 - 3) amending the pilot program rules to provide for a cap on mediator fees for cases in which the amount in dispute is relatively small;
 - 4) clarifying the pro bono provisions in the rules; and
 - 5) addressing the "approved list" problem by:

- a) discontinuing the present practice of approving persons for placement on the approved list of mediators; and
- b) creating separate approved lists based upon the amount in dispute, thereby reserving the most complex, high value cases for the most experienced and proven mediators, while allowing the less experienced mediators to gain experience by mediating cases which have a lower monetary value.

Figure 1

Number of survey responses:	83
Number of responses from Lawyers:	59
Number of responses from Litigants:	24

Survey Responses

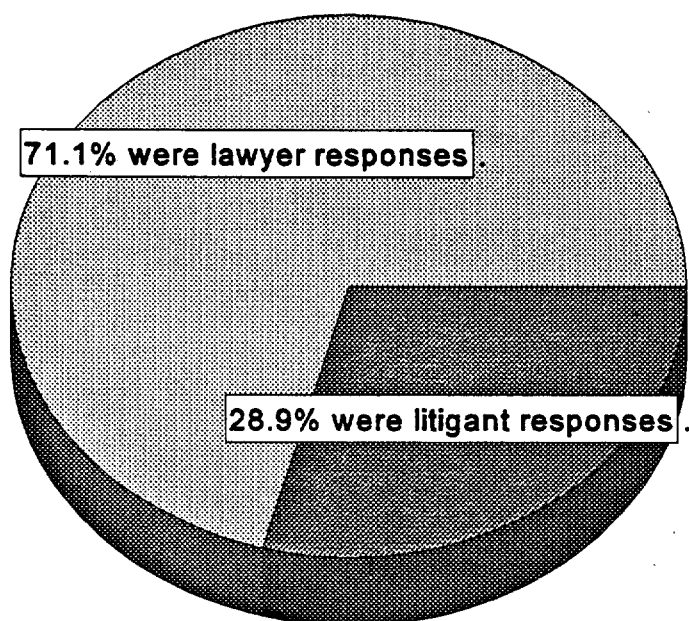


Figure 2

Types of cases being referred to mediation.

Motor Vehicle Personal Injury	25
Other Personal Injury	22
Breach of Contract	6
Construction	4
Property	3
Breach of Fiduciary Duty	2
Discrimination	2
Malpractice	2
Maritime Personal Injury	2
Product Liability	2
Wrongful Death	2
Executory Process	1
Landlord/Tenant	1
Open Account	1
Subrogation	1
Succession	1
Worker's Compensation	1
Wrongful School Expulsion	1
Total	79

Cases Referred To Mediation

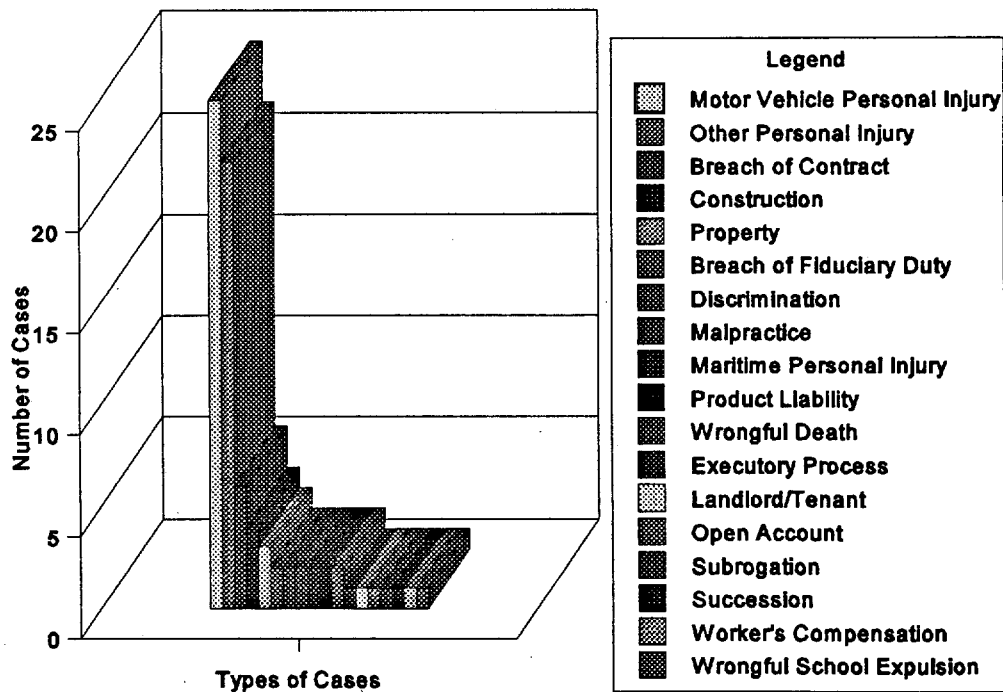


Figure 3

Number of completed mediation cases:	37
Number of successful mediations:	20
Number of unsuccessful mediations:	17

Completed Mediation Percentages

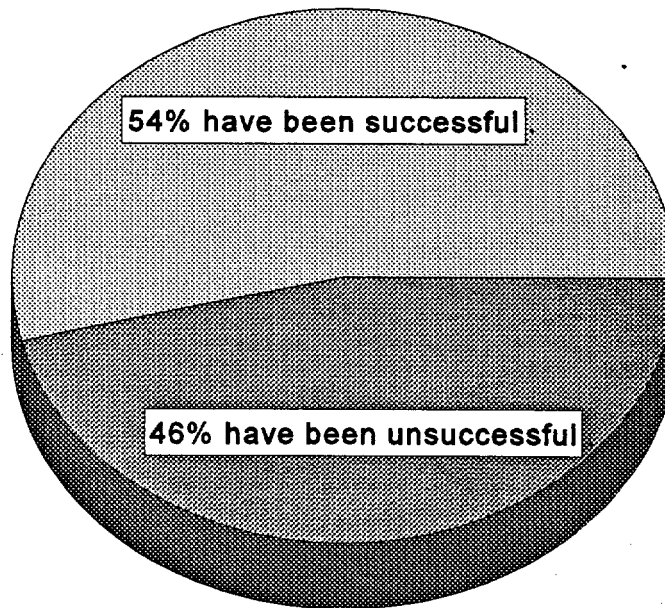


Figure 4

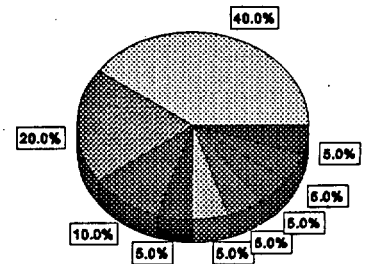
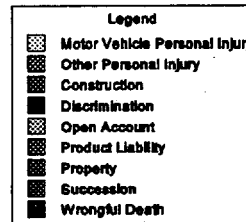
Success Rates Per Case Type

of Mediations Completed
37

I. Successful Mediations

Motor Vehicle Personal Injury	8
Other Personal Injury	4
Construction	2
Discrimination	1
Open Account	1
Product Liability	1
Property	1
Succession	1
Wrongful Death	1
Total	20

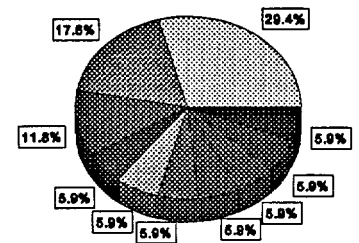
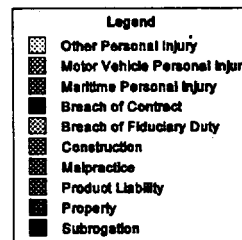
Successful Mediations



II. Unsuccessful Mediations

Other Personal Injury	5
Motor Vehicle Personal Injury	3
Maritime Personal Injury	2
Breach of Contract	1
Breach of Fiduciary Duty	1
Construction	1
Malpractice	1
Product Liability	1
Property	1
Subrogation	1
Total	17

Unsuccessful Mediations



Summary

8 out of 11	motor vehicle personal injury cases have been successfully mediated.
0 out of 2	maritime personal injury cases have been successfully mediated.
4 out of 9	other personal injury cases have been successfully mediated.
1 out of 1	succession cases have been successfully mediated.
2 out of 3	construction cases have been successfully mediated.
1 out of 1	discrimination cases have been successfully mediated.
1 out of 2	product liability cases have been successfully mediated.
1 out of 2	property cases have been successfully mediated.
0 out of 1	malpractice cases have been successfully mediated.
0 out of 1	breach of contract cases have been successfully mediated.
1 out of 1	open account cases have been successfully mediated.
1 out of 1	wrongful death cases have been successfully mediated.
0 out of 1	breach of fiduciary duty cases have been successfully mediated.
0 out of 1	subrogation cases have been successfully mediated.

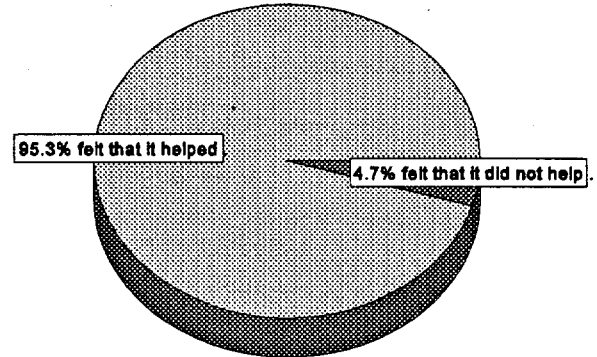
Figure 5

Did the mediation process help bring the sides together?

I. Successful Mediations

# Who Strongly Agreed:	36
# Who Somewhat Agreed:	5
# Who Somewhat Disagreed:	<u>2</u>
Total:	43

% That Felt Mediation Did/Did Not Help



II. Unsuccessful Mediations

# Who Strongly Agreed:	2
# Who Somewhat Agreed:	11
# Who Had No Opinion:	3
# Who Somewhat Disagreed:	9
# Who Disagreed:	5
# Who Strongly Disagreed:	<u>10</u>
Total: (37 with opinions):	40

% That Felt Mediation Did/Did Not Help

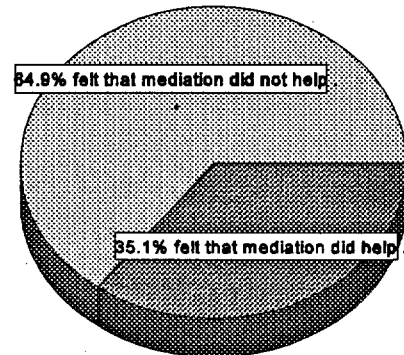


Figure 6

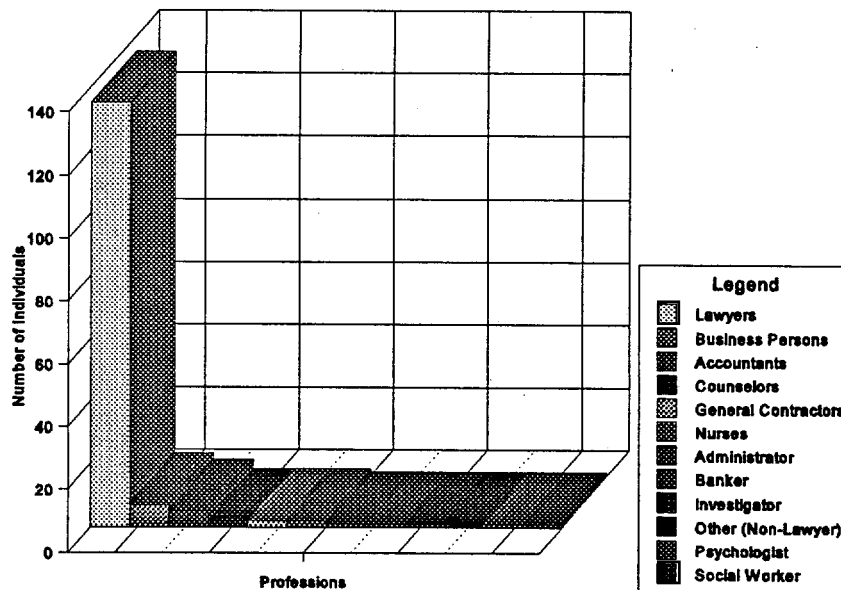
Analysis of Approved List of Mediators

159 Approved Mediators

Breakdown of Approved List By Profession/Occupation

135	Lawyers
7	Business Persons
5	Accountants
2	Counselors
2	General Contractors
2	Nurses
1	Administrator
1	Banker
1	Investigator
1	Psychologist
1	Social Worker
1	Other (Non-Lawyer)

Breakdown of Approved Mediator List



Discussion

Lawyers constitute 85% of the approved mediators.

Of 68 cases in which a mediator has been named, 100% of the mediators are lawyers.

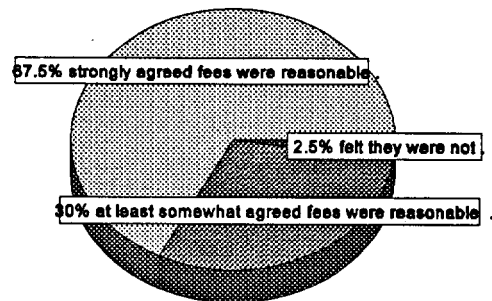
Figure 7

Did the participants view the costs of mediation as reasonable?

I. Successful Mediations

# Who Strongly Agreed:	27
# Who Somewhat Agreed:	12
# Who Had No Opinion:	3
# Who Somewhat Disagreed:	1
Total (40 with opinions):	43

% That Felt Mediation Costs Were Reasonable/Unreasonable



II. Unsuccessful Mediations

# Who Strongly Agreed:	16
# Who Agreed:	3
# Who Somewhat Agreed:	7
# Who Had No Opinion:	7
# Who Somewhat Disagreed:	2
# Who Disagreed:	1
# Who Strongly Disagreed:	4
Total (33 with opinions):	40

% That Felt Mediation Costs Were Reasonable/Unreasonable

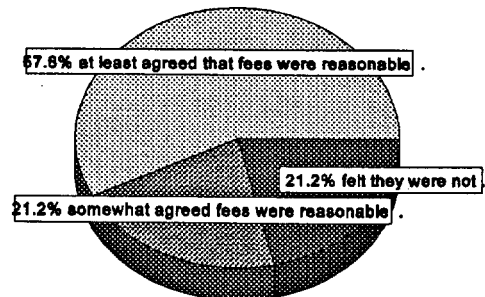


Figure 8

Do the participants view the mediation process as fair?

Number who "strongly agreed" that the process was fair:	62
Number who "agreed" that the process was fair:	6
Number who "somewhat" agreed that the process was fair:	10
Number who had no opinion on the fairness of the process:	1
Number who "somewhat disagreed" that the process was fair:	2
Number who "strongly disagreed" that the process was fair:	<u>2</u>
Total: (82 with opinions)	83

82.9% of the participants, who had an opinion, agreed that the process was fair.

12.2% of the participants, who had an opinion, somewhat agreed that the process was fair.

95.1% of the participants, who had an opinion, are at least somewhat in agreement that the process was fair.

2.4% of the participants, who had an opinion, somewhat disagreed that the process was fair.

2.4% of the participants, who had an opinion, strongly disagreed that the process was fair.

4.9% of the participants, who had an opinion, at least somewhat disagree that the process was fair.

% of Participants Who Agree/Disagree

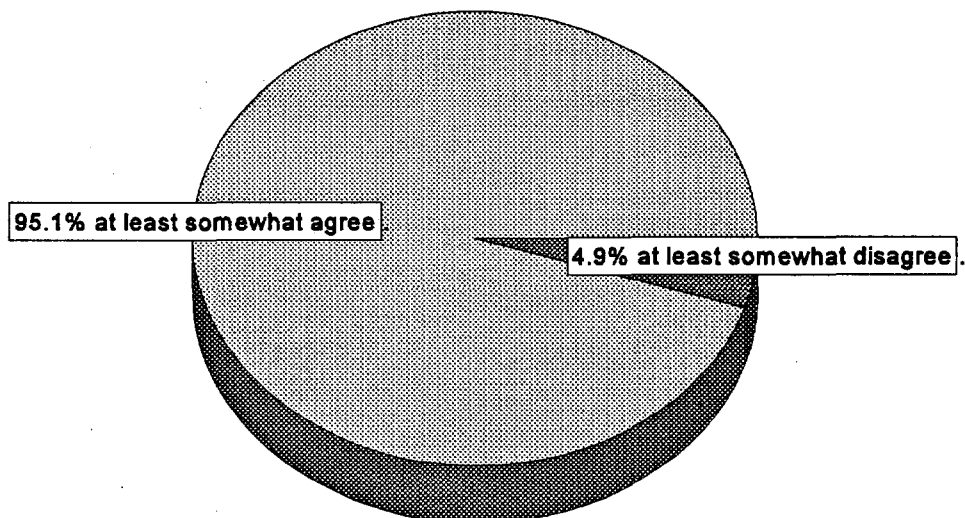
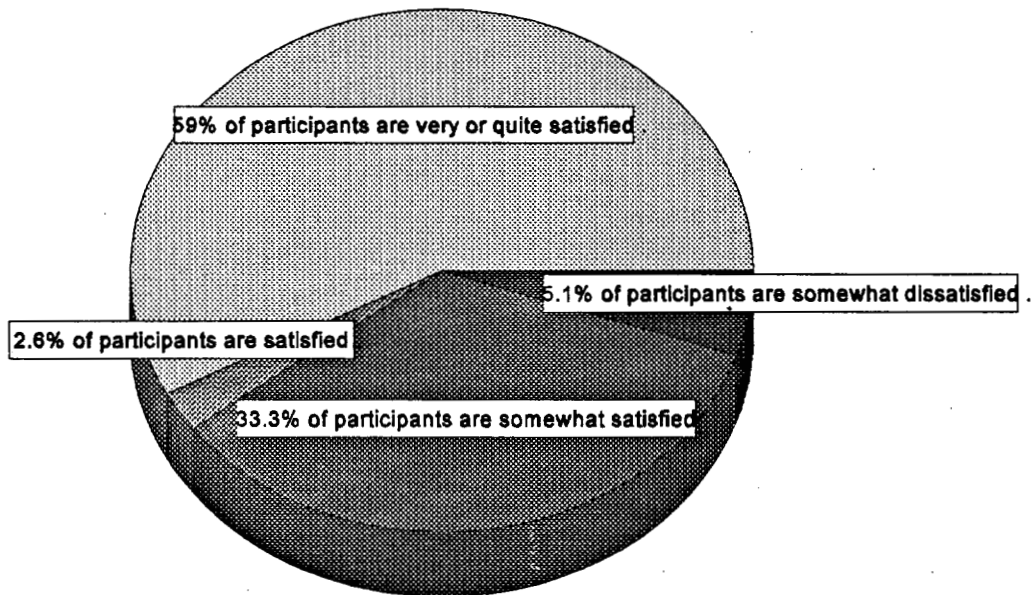


Figure 9

To what extent are participants satisfied with agreements reached in or as a result of mediation?

Number who were "very satisfied" with the agreements reached:	22
Number who were "quite satisfied" with the agreements reached:	1
Number who were "satisfied" with the agreements reached:	1
Number who were "somewhat satisfied" with the agreements reached:	13
Number who had no opinion:	4
Number who were "somewhat dissatisfied" with the agreements reached:	<u>2</u>
Total: (39 with opinions)	43

% of Participants Who Are Satisfied Or Dissatisfied With Agreements Reached



Summary

94.9% of participants who had an opinion were at least somewhat satisfied with the agreements reached in or as a result of mediation.

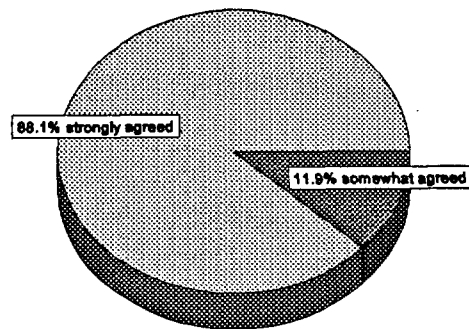
Figure 10

Would participants recommend mediation to others with similar problems?

I. Successful Mediations

# Who Strongly Agreed:	37
# Who Somewhat Agreed:	5
# Who Had No Opinion:	<u>1</u>
Total (42 with opinions):	43

Recommendation Of Mediation



II. Unsuccessful Mediations

# Who Strongly Agreed:	26
# Who Agreed:	3
# Who Somewhat Agreed:	5
# Who Had No Opinion:	3
# Who Somewhat Disagreed:	1
# Who Strongly Disagreed:	<u>2</u>
Total (37 with opinions):	40

Recommendation Of Mediation

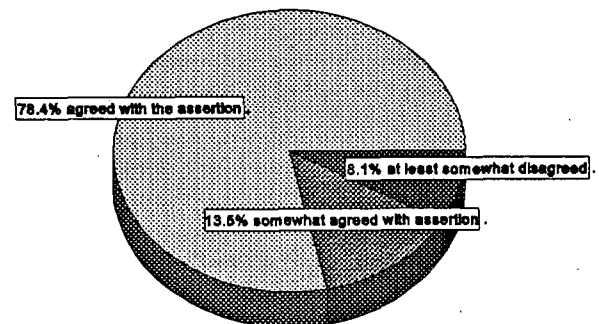


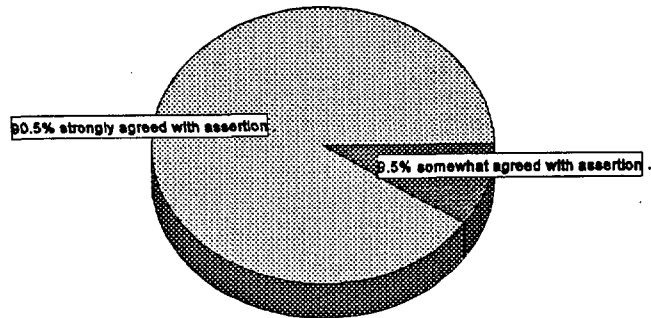
Figure 11

Would participants use mediation again to settle a dispute?

I. Successful Mediations

# Who Strongly Agreed:	38
# Who Somewhat Agreed:	4
# Who Had No Opinion:	<u>1</u>
Total (42 with opinions):	43

% Who Would Use Mediation Again



II. Unsuccessful Mediations

# Who Strongly Agreed:	28
# Who Agreed:	4
# Who Somewhat Agreed:	4
# Who Had No Opinion:	2
# Who Somewhat Disagreed:	1
# Who Disagreed:	<u>1</u>
Total (38 with opinions):	40

% Who Would Use Mediation Again

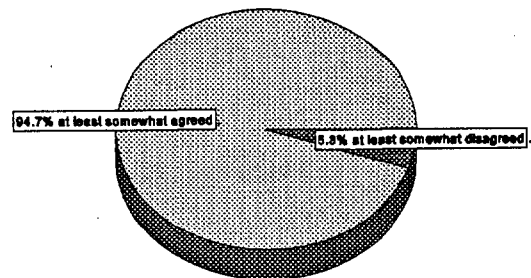


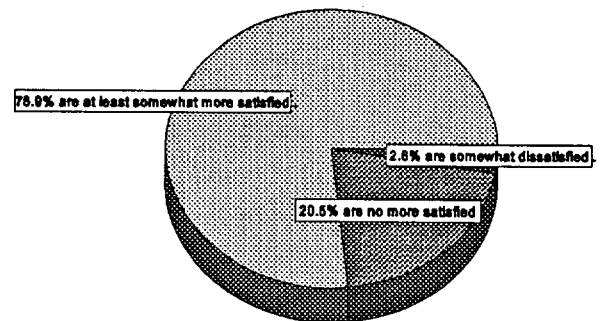
Figure 12

How satisfied are participants with mediation, as compared to their other court experiences?

I. Successful Mediations

# Who Are Much More Satisfied:	15
# Who Are Somewhat More Satisfied:	15
# Who Are No More Satisfied:	8
# Who Are Somewhat Dissatisfied:	1
# With No Other Court Experience:	2
# With No Opinion:	<u>2</u>
Total (39 with opinions):	43

Levels Of Satisfaction With Mediation



II. Unsuccessful Mediations

# Who Are Much More Satisfied:	7
# Who Are More Satisfied:	2
# Who Are Somewhat More Satisfied:	11
# Who Are No More Satisfied:	11
# Who Are Somewhat Dissatisfied:	2
# Who Are Dissatisfied:	1
# Who Are Very Dissatisfied:	3
# With No Other Court Experience:	<u>3</u>
Total (37 with opinions):	40

% Who Are Satisfied With Mediation

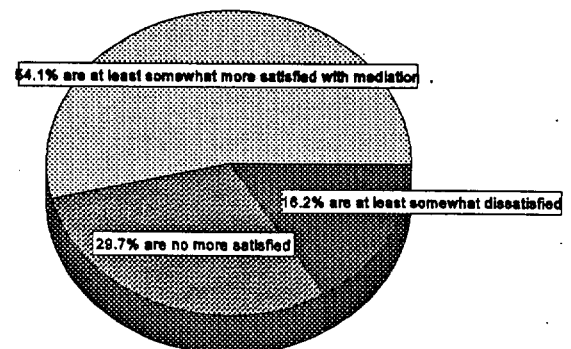


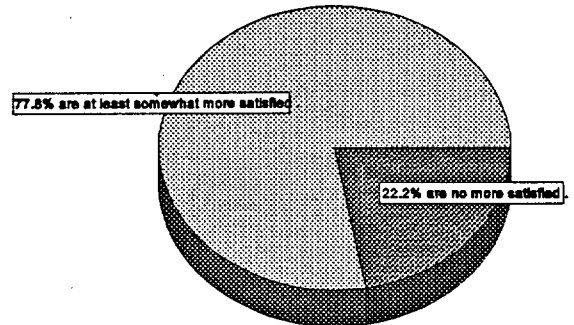
Figure 12(A)

How satisfied are lawyers with mediation, as compared to their other court experiences?

I. Successful Mediations

# Who Are Much More Satisfied:	8
# Who Are Somewhat More Satisfied:	13
# Who Are No More Satisfied:	6
# With No Opinion:	2
Total (27 with opinions):	29

Levels Of Satisfaction With Mediation



II. Unsuccessful Mediations

# Who Are Much More Satisfied:	5
# Who Are More Satisfied:	1
# Who Are Somewhat More Satisfied:	10
# Who Are No More Satisfied:	8
# Who Are Somewhat Dissatisfied:	2
# Who Are Dissatisfied:	1
# Who Are Very Dissatisfied:	3
Total (30 with opinions):	30

% Who Are At Least Somewhat More Satisfied With Mediation

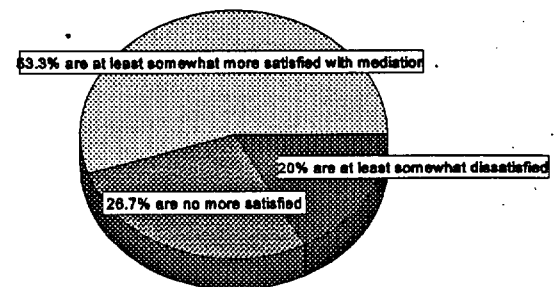


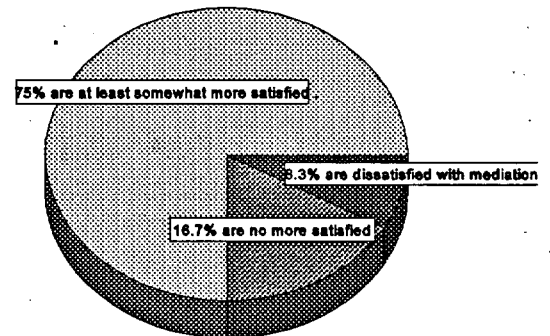
Figure 12(B)

How satisfied are litigants with mediation, as compared to their other court experiences?

I. Successful Mediations

# Who Are Much More Satisfied:	7
# Who Are Somewhat More Satisfied:	2
# Who Are No More Satisfied:	2
# Who Are Somewhat Dissatisfied:	1
# With No Other Court Experience:	<u>2</u>
Total (12 with opinions):	14

Levels Of Satisfaction With Mediation



II. Unsuccessful Mediations

# Who Are Much More Satisfied:	2
# Who Are More Satisfied:	1
# Who Are Somewhat More Satisfied:	1
# Who Are No More Satisfied:	3
# With No Other Court Experience:	<u>3</u>
Total (7 with opinions):	10

% Who Are At Least Somewhat More Satisfied With Mediation

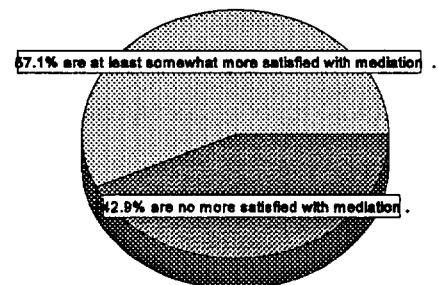


Figure 12(C)

Results of Comparative Satisfaction Analysis

I. Overall Results

- (A) 65.8% of all participants who could express an opinion were at least somewhat more satisfied with their mediation experience, as compared to other court experiences.
- (B) Of those participants in successful mediations who could express an opinion, 76.9% were at least somewhat more satisfied with their mediation experience, as compared to other court experiences.
- (C) Of those participants in unsuccessful mediations who could express an opinion, 54.1% were at least somewhat more satisfied with their mediation experience.
 - 29.7% of participants in unsuccessful mediations felt their mediation experience was about the same as their other court experiences.
 - 16.2% of participants in unsuccessful mediations felt their mediation experience was at least somewhat less satisfactory than their other court experiences.

II. Lawyer Results

- (A) - 77.8% of lawyers who participated in successful mediations felt their mediation experience was at least somewhat more satisfactory than other court experiences.
 - 22.2% of lawyers who participated in successful mediations felt their mediation experience was about the same as their other court experiences.
- (B) - 53.3% of lawyers who participated in unsuccessful mediations felt their mediation experience was at least somewhat more satisfactory than other court experiences.
 - 26.7% of lawyers who participated in unsuccessful mediations felt their mediation experience was about the same as their other court experiences.
 - 20% of lawyers who participated in unsuccessful mediations felt their mediation experience was somewhat less satisfactory than their other court experiences.

III. Litigant Results

(A) Of those litigants in successful mediations who could express an opinion, 75% were at least somewhat more satisfied with their mediation experience, as compared to other court experiences.

- 16.7% of those litigants felt their mediation experience was about the same as their other court experiences.

- 8.3% of those litigants were somewhat dissatisfied with their mediation experience, as compared to other court experiences.

(B) Of those litigants in unsuccessful mediations who could express an opinion, 57.1% were at least somewhat more satisfied with their mediation experience, as compared to other court experiences.

- 42.9% of those litigants felt their mediation experience was about the same as their other court experiences.



HLS 91-1403

Regular Session, 1991

HOUSE RESOLUTION NO. 32

BY REPRESENTATIVES WARREN AND LANDRIEU

**ORIGINAL
H R**

CIVIL LAW: Urges and requests the Judicial Council and the State Bar Assn. to supervise a task force in developing a plan for alternative dispute resolution in New Orleans

1 A RESOLUTION

2 To urge and request the Judicial Council, together with the Louisiana
3 State Bar Association and other interested parties, to supervise
4 and oversee the work of a task force to develop a plan to
5 implement a pilot program of alternative dispute resolution in
6 the city of New Orleans, including disputes in the areas of tort
7 law, landlord and tenant relations, and retail sales disputes.

8 WHEREAS, if mediation were instituted as a method of settling
9 disputes in civil matters, it would relieve docket overcrowding,
10 expedite the resolution of cases, and reduce the costs of litigation,
11 by eliminating lengthy judge and jury trials; and

12 WHEREAS, in states in which mediation of civil disputes has been
13 instituted, there is less docket overcrowding, disputes are resolved
14 expeditiously, and the costs of litigation have been substantially
15 reduced.

16 THEREFORE BE IT RESOLVED that the House of Representatives of
17 the Legislature of Louisiana does hereby urge and request the
18 Judicial Council together with the Louisiana State Bar Association to
19 supervise and oversee the work of a task force to develop a plan to
20 implement a pilot program in the city of New Orleans in which
21 mediation is used as a method of dispute resolution.

Page 1 of 3

ORIGINAL

HLS 91-1403

1 BE IT FURTHER RESOLVED that the task force shall consist of
2 members selected as follows: two members of the House Civil Law and
3 Procedure Committee, to be designated by the speaker of the House of
4 Representatives; two members to be designated by the chairman of the
5 Judicial Council of Louisiana; two members to be designated by the
6 president of the Louisiana State Bar Association; two members of the
7 Louis Martinette Society, to be designated by the president thereof;
8 one member of the Louisiana Trial Lawyers' Association, to be
9 designated by the president thereof; one member of the American
10 Arbitration Association, to be designated by the president thereof.

11 BE IT FURTHER RESOLVED that the task force members appointed by
12 the Judicial Council, together with those appointed by the Bar
13 Association, shall call the organizational meeting at which the task
14 force shall determine its own rules of order and provide for its own
15 officers, including a chairman and vice chairman.

16 BE IT FURTHER RESOLVED that the task force may request and
17 utilize assistance of the Committee on Dispute Resolution of the
18 American Bar Association and from any and all sources, public and
19 private, including but not limited to state agencies, business,
20 labor, private research agencies, individuals, and organizations.

21 BE IT FURTHER RESOLVED that the task force is urged to notify
22 the House Committee on Civil Law and Procedure of all meetings and
23 submit a report of its progress with respect to a plan of
24 implementation of a pilot program to the House Committee on Civil Law
25 and Procedure no later than thirty days before the convening of the
26 1992 Regular Session of the Legislature.

Page 2 of 3

ORIGINAL

HLS 91-1403

DIGEST

The digest printed below was prepared by House Legislative Services.
It constitutes no part of the bill.

Varran, Landrieu**Resolution****HR No.**

Urges and requests the Judicial Council and the Louisiana State Bar Association to supervise and oversee the work of a task force to develop a plan to implement a pilot program in the city of New Orleans in which mediation is used as a method of dispute resolution.

Page 3 of 3

ORIGINAL

EXHIBIT II

ISSUE 1
SCOPE OF THE PROGRAM

Preliminary Comment:

It appears to be the general consensus of the Task Force that the mediation pilot program should not be limited to a particular type of case, but rather, should be available for any type of case where mediation might be an appropriate vehicle for resolving the disputes at issue.

COMMENTS:

Please distribute your comments to the other Task Force members by February 19, 1992.

NAME

ISSUE 2
ADMINISTRATION OF THE PROGRAM

Preliminary Comment:

A majority of the Task Force members who have commented on this issue appear to favor a court administrated mediation program. That is, the Orleans Parish courts would be involved in determining which cases should be mediated, and in scheduling cases for mediation. Please note, however, that opposition to a court-administered program has been voiced.

COMMENTS:

Please distribute your comments to the other Task Force members by February 19, 1992.

NAME

ISSUE 3
COSTS OF THE PROGRAM

Preliminary Comment:

A majority of the Task Force members who have commented on this issue appear to agree that the cost of mediation should be allocated between the parties.

COMMENTS:

Please distribute your comments to the other Task Force members by February 19, 1992.

NAME

4254G

EXHIBIT III

DECISION PACKET

ISSUE 1

SCOPE AND ADMINISTRATION OF THE PROGRAM

- A. Should the Orleans Parish courts schedule cases for mediation, and otherwise exercise hands-on supervision of the program?

_____ Yes _____ No Other _____

COMMENTS:

- B. Should the courts' role be limited to simply ordering mediation and waiting for the results?

_____ Yes _____ No

COMMENTS:

Please distribute your comments to the other Task Force members so that the members receive your votes and comments prior to Friday, March 13, 1992.

NAME

C. Who should have overall administrative responsibility for the pilot program?

____ Each judge should be responsible for supervising the program in his/her division

____ Someone should be hired to superintend the program

____ Other

COMMENTS:

D. Which Orleans Parish courts should participate in the pilot program?

____ Civil District Court only

____ Civil District Court and First and Second City Courts only

____ Other

COMMENTS:

Please distribute your comments to the other Task Force members so that the members receive your votes and comments prior to Friday, March 13, 1992.

NAME

ISSUE 2
GETTING THE PARTIES TO MEDIATE

A. Should mediation be voluntary or mandatory?

Voluntary _____ Mandatory _____ Other _____

COMMENTS:

B. Should one party be able to compel mediation?

_____ Yes _____ No Other _____

COMMENTS:

C. Should the judges be able to order mediation without input from any of the parties?

_____ Yes _____ No Other _____

COMMENTS:

Please distribute your comments to the other Task Force members so that the members receive your votes and comments prior to Friday, March 13, 1992.

NAME

ISSUE 3
WHICH CASES SHOULD BE MEDIATED?

- A. Should the judges have sole authority to determine which cases should be mediated?

_____ Yes _____ No Other _____

COMMENTS:

- B. Should the pilot program be structured so that mediation is used for a minor random sampling of the 30,000 annual filings in Civil District Court (for example, one percent of the filings could be randomly selected (300 filings per year))?

_____ Yes _____ No Other _____

COMMENTS:

- C. Should the pilot program be limited to one division of court?

_____ Yes _____ No Other _____

COMMENTS:

Please distribute your comments to the other Task Force members so that the members receive your votes and comments prior to Friday, March 13, 1992.

NAME

**ISSUE 4
COSTS**

A: How should the mediation program be funded?

- ☐ A \$10.00 filing fee charge
- ☐ Allocation of costs between the parties
- ☐ Other

COMMENTS:

B. Should legislation be filed in the 1992 legislative session to make the cost of mediation an assessable cost in proceedings in Orleans Parish?

☐ Yes ☐ No ☐ Other

COMMENTS:

Please distribute your comments to the other Task Force members so that the members receive your votes and comments prior to Friday, March 13, 1992.

NAME

C. How should mediators be paid?

- ☐ The program should be completely voluntary (i.e., no mediation fee would be assessed)
- ☐ The mediator's fee should be staggered according to the nature of the case and/or its estimated value
- ☐ Another entity, such as the LSBA, should monitor mediator fees
- ☐ The courts should place a cap on mediation fees
- ☐ Mediators should be able to charge whatever price the market will bear
- ☐ Other

COMMENTS:

Please distribute your comments to the other Task Force members so that the members receive your votes and comments prior to Friday, March 13, 1992.

NAME

ISSUE 5

WHO SHOULD MEDIATE DISPUTES IN THE PILOT PROGRAM?

- A. Should the judges have sole authority to utilize mediators from an "approved list" which they have prepared, and/or have authority to utilize an independent agency such as the American Arbitration Association?

_____ Yes _____ No Other _____

COMMENTS:

- B. Should all mediators be experienced attorneys (i.e., may non-attorneys mediate)?

_____ Yes _____ No Other _____

COMMENTS:

- C. Should another entity, such as the Louisiana State Bar Association, superintend the procurement of mediators?

_____ Yes _____ No Other _____

COMMENTS:

Please distribute your comments to the other Task Force members so that the members receive your votes and comments prior to Friday, March 13, 1992.

NAME

ISSUE 6
NOTIFICATION OF THE AVAILABILITY OF MEDIATION

A. At what point in a proceeding should the parties be notified of the availability or necessity of mediation?

_____ In a cover letter forwarded with the petition?

_____ After issue is joined?

_____ When a motion to set for trial has been filed?

_____ Other

COMMENTS:

Please distribute your comments to the other Task Force members so that the members receive your votes and comments prior to Friday, March 13, 1992.

NAME

**ISSUE 7
TRAINING**

A. To what extent should mediators be trained prior to mediating in the Orleans Parish courts?

___ A two-day training program should be mandatory

___ A 40 hour training program should be mandatory

___ Other

COMMENTS:

Please distribute your comments to the other Task Force members so that the members receive your votes and comments prior to Friday, March 13, 1992.

NAME

**ISSUE 8
IMPLEMENTATION**

- A. Should the Task Force ask the Supreme Court to authorize a mediation program in the Orleans Parish courts?

_____ Yes _____ No Other _____

COMMENTS:

- B. Should legislation be prepared which would allow for mediation in the Orleans Parish courts?

_____ Yes _____ No Other _____

COMMENTS:

- C. Should the pilot program be implemented through promulgation of a rule of court?

_____ Yes _____ No Other _____

COMMENTS:

Please distribute your comments to the other Task Force members so that the members receive your votes and comments prior to Friday, March 13, 1992.

NAME

MISCELLANEOUS COMMENTS

Please feel free to circulate any other comments you may have concerning the pilot program to the other members of the Task Force.

Please distribute your comments to the other Task Force members so that the members receive your votes and comments prior to Friday, March 13, 1992.

NAME

EXHIBIT IV

REPORT

TO: LOUISIANA HOUSE OF REPRESENTATIVES, CIVIL LAW & PROCEDURE COMMITTEE
FROM: ALTERNATIVE DISPUTE RESOLUTION TASK FORCE

During the 1991 Regular Session of the Louisiana Legislature, the House of Representatives passed Resolution 32, relative to the development of a plan of alternative dispute resolution in the New Orleans courts. As proposed, the resolution created a ten-member Task Force. The Task Force consists of the following members and interested parties:

House Civil Law & Procedure Committee	Honorable Naomi White Warren Honorable Mitchell J. Landrieu
Judicial Council of Louisiana	Honorable Niles A. Hellmers Honorable Okla Jones, II
Louisiana State Bar Association	Mr. Robert E. Leake, Jr. Mr. Danny G. Shaw
Louis Martinet Society	Ms. Angelique Reed Mr. James A. Gray, II
Louisiana Trial Lawyers Assn.	Mr. Robert W. Thomas
American Arbitration Association	Mr. Lloyd N. Shields
Staff, Judicial Council	Mr. Timothy F. Averill
Interested Party	Retired First Judicial District Court Judge John R. Ballard

Once constituted, the Task Force met on five occasions. The Task Force also received assistance from South Texas College of Law Professor Kimberlee Kovach, an expert in alternative dispute resolution. Professor Kovach spoke about the history of alternative dispute resolution and offered advice based upon her extensive knowledge of ADR, both in Texas and throughout the United States.

After much thought, discussion, and exchange of ideas, the Task Force reached a consensus concerning the implementation of an ADR pilot program in the Orleans Parish courts. The parameters of the program are discussed with particularity in the following paragraphs.

I. SCOPE OF THE PILOT PROGRAM

The Task Force decided to limit the pilot program to mediation only, as that appears to have been the intent of the House of Representatives when it passed House Resolution 32. The pilot mediation program would not be limited to any particular type of case, but would not be used for domestic matters, since mediation is already a legally sanctioned form of dispute resolution for those types of cases.

As the Civil Law and Procedure Committee is no doubt aware, mediation is a non-binding form of dispute resolution. Thus, appointed mediators in the pilot program would have no power to impose a settlement. Rather, the appointed mediators will be attempting to assist the parties in reaching their own settlement.

II. IMPLEMENTATION

Since the pilot program might be deemed "experimental", the Task Force has decided, subject to approval by the House Civil Law and Procedure Committee, to ask the Louisiana Supreme Court to authorize the program. Once authorization has been granted, the Task Force anticipates that the program will be implemented through local rules of court. Because of the experimental nature of the program, the Task Force decided not to request that enabling legislation be submitted at this time. After a period of experimentation, legislation may be appropriate.

III. PARTICIPATING COURTS

The Task Force decided Orleans Parish Civil District Court and First City Court would be asked to participate in the program. Four of the twelve divisions of Civil District Court will be asked to participate and one section of First City Court will also be asked to participate. It was assumed by the members of the Task Force that if the pilot program is successful, it would be expanded to all divisions and sections of Orleans Parish Civil District Court and First and Second City Courts.

IV. COST OF THE PROGRAM

Funding concerns took up a large portion of the Task Force's discussion time. It was ultimately decided that the cost of mediation in particular cases would be allocated between the parties. Since Orleans Parish First City Court has a jurisdictional ceiling of \$10,000, it was decided that the mediation fee in First City Court could in no event exceed \$300. While no specific agreement was reached with regard to mediation fees in Civil District Court, it is anticipated that mediators would forward their proposed fee schedules to Civil District Court and/or to the Task Force in advance of their appointment. The parties engaged in mediation would thus be aware of the fee at the time mediation was agreed upon or ordered. There was some discussion concerning the placement of a "cap" on Civil District Court mediation fees,

but that issue could not be definitively resolved. Finally, the Task Force decided all approved mediators would be asked to mediate 10% of their assigned cases without charging a fee, so that lawsuits filed in forma pauperis would also be subject to mediation.

V. INSTITUTION OF MEDIATION

The Task Force decided it would be appropriate to institute a semi-mandatory, or "opt-in" mediation program. As proposed, the Task Force would develop a form letter which would be forwarded to all parties after issue is joined in litigation allotted to the participating divisions/sections of court. The form letter would advise litigants of the mediation program and would encourage participation. Any party would then have the right to voluntarily request mediation. Upon receiving such a request from any party, the court would order mediation.

If no party requested mediation, the judge could then issue an order of mediation in any case he/she thought appropriate. Any party could then oppose the order and request that the case not be mediated. The court would consider any opposition to mediation upon the merits.

The Task Force is hopeful that this type of program will encourage those litigants who wish to participate to do so. Additionally, an "opt-in" program would enable the court to order mediation in appropriate cases, but would allow the court to retract the order of mediation when any of the affected parties offer cogent opposition.

VI. ADMINISTRATION OF THE PROGRAM

Administration of the program was a major concern of the Task Force members, since the Task Force did not want to burden the Orleans courts with additional administrative responsibilities. The Task Force decided the majority of the administrative burden should fall upon the appointed mediators. The judges would basically be limited to ordering mediation. After ordering mediation, the participating judges would then simply wait for results. The mediator would schedule the mediation and would report to the court. Any administrative costs incurred by the mediator would, of course, be borne by the parties. It is also anticipated that statistics concerning the success of the pilot program will be kept.

VII. WHO WILL BE MEDIATING

The Task Force decided the group of eligible mediators should not be limited to attorneys. Experienced non-attorneys would also be allowed to mediate. The Task Force anticipates it will be accepting resumés from those persons interested in mediating. The Task Force will then develop an "approved list" of mediators for use by the judges.

Parties choosing to mediate would, however, be free to choose their own mediator independently of the approved list. This would include any mediator approved by an independent agency such as the American Arbitration Association.

VIII. TRAINING

As a threshold requirement for mediating in the Orleans Parish courts, the Task Force decided to require those wishing to participate to have attended, at the least, a 16 hour mediation training program.

IX. LENGTH OF THE PILOT PROGRAM

The Task Force anticipates the pilot program will last for one year. If not enough mediations have been performed to make an adequate assessment of the program, the Task Force anticipates that it will request a one-year extension of the program. At the end of the term of the pilot program, the Task Force anticipates reporting back to the House Civil Law and Procedure Committee relative to the program's success.

CONCLUSION

Subsequent to approval of this report by the House Civil Law and Procedure Committee, the Task Force anticipates that it will proceed with its plan of asking the Louisiana Supreme Court to authorize the pilot program. The members of the Task Force would be happy to meet with, or testify before, the House Civil Law and Procedure Committee concerning the proposed pilot program.

0413F

Regular Session, 1992

HOUSE CONCURRENT RESOLUTION NO. 76

BY REPRESENTATIVE WARREN

KFL
6
A213

CIVIL LAW: Urges and requests the state supreme court to adopt rules for the implementation of a pilot program of alternative dispute resolution in the city of New Orleans and the task force to continue its work

A CONCURRENT RESOLUTION

To urge and request the state supreme court to authorize implementation of a pilot program of alternative dispute resolution in the city of New Orleans and to urge and request the task force to continue its work.

WHEREAS, pursuant to House Resolution No. 32 of the 1991 Regular Session, the Judicial Council, together with the Louisiana State Bar Association and other interested parties, supervised the work of a task force to develop a plan to implement a pilot program of alternative dispute resolution in the city of New Orleans; and

WHEREAS, the task force consists of two members of the House Civil Law and Procedure Committee, two members of the Judicial Council of Louisiana, two members of the Louisiana State Bar Association, two members of the Louis Martinet Society, one member of the Louisiana Trial Lawyers Association, one member of the American Arbitration Association, and other interested parties; and

WHEREAS, the task force met on five separate occasions and received assistance from Kimberlee Kovach, an expert in alternative dispute resolution and professor of law at South Texas College of Law, which assistance was made possible by the American Bar Association, Special Committee on Alternative Dispute Resolution; and

1 WHEREAS, after much discussion and exchange of ideas, the task
2 force reached a consensus concerning the implementation of an
3 alternative dispute resolution pilot program in the Orleans Parish
4 courts; and

5 WHEREAS, the task force decided to limit the pilot program to
6 mediation, which is a nonbinding form of dispute resolution wherein
7 the appointed mediator attempts to assist the parties in reaching
8 their own settlement; and

9 WHEREAS, due to the experimental nature of the pilot program,
10 the task force is of the opinion that the state supreme court should
11 authorize such program, and once authorized, the task force
12 anticipates that the program will be implemented through local rules
13 of court; and

14 WHEREAS, the task force decided that the Orleans Parish Civil
15 District Court and First City Court should participate in the
16 program, more specifically, four of the twelve divisions of the Civil
17 District Court and one section of the First City Court, and if
18 successful, all divisions and sections thereof; and

19 WHEREAS, the task force decided to limit the mediator's fee to
20 three hundred dollars in cases arising out of the First City Court
21 and imposed no limitation on the fee of mediators in cases arising
22 out of the Orleans Parish Civil District Court, which fees are to be
23 allocated between the parties; and

24 WHEREAS, the task force decided that in order to inform parties
25 of the option to mediate their disputes, it is anticipated that a
26 letter will be forwarded to all parties after the case is assigned to
27 a participating division, advising and encouraging the parties to
28 participate in mediation; however, if no parties request mediation,
29 the judge could order the parties to submit thereto unless objection
30 is made by either party, in which case the judge will decide the
31 issue of whether to mediate on the merits; and

32 WHEREAS, the task force decided not to limit eligible mediators
33 to attorneys, but also experienced nonattorneys, all of whom should
34 submit their resume to the task force who will develop an approved

1 list of mediators for use by the courts and by the parties, who are
2 also free to select a mediator of their choice; and

3 WHEREAS, the task force decided to require those wishing to
4 participate as mediators to have completed a minimum of sixteen hours
5 of mediation training; and

6 WHEREAS, the task force anticipates the pilot program will last
7 one year, with an option to extend the pilot program into a second
8 year.

9 THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does
10 hereby urge and request the state supreme court to authorize
11 implementation of a pilot program of alternative dispute resolution
12 in the city of New Orleans through local rules of court adopted by
13 the Orleans Parish Civil District Court and the First City Court, not
14 inconsistent with the provisions hereof.

15 BE IT FURTHER RESOLVED that the Legislature of Louisiana does
16 hereby urge and request the Alternative Dispute Resolution Task Force
17 created pursuant to House Resolution No. 32 of the 1991 Regular
18 Session to continue its work toward implementing a pilot program in
19 New Orleans and supervise its inception.

DIGEST

The digest printed below was prepared by House Legislative Services.
It constitutes no part of the bill.

Warren

Concurrent Resolution

HCR No. 76

Urges and requests the state supreme court to authorize the Orleans Parish Civil District Court and the First City Court to adopt rules for the implementation of a pilot program of alternative dispute resolution in the city of New Orleans and further urges the task force established by HR No. 32 of 1991 to continue its work.

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law & Procedure to the original concurrent resolution

1. Provides for the state supreme court to authorize the Orleans Parish Civil District Court and the First City Court to adopt local rules of court for the implementation of the pilot program in lieu of the state supreme court

adopting specific rules for the implementation of such
program.



RESOLUTION

WHEREAS, the Alternative Dispute Resolution Task Force was convened under the auspices of House Resolution 32 of the 1991 Regular Session of the Louisiana Legislature; and

WHEREAS, the Task Force has outlined a proposal for a pilot mediation program to be implemented in Orleans Parish Civil District Court and Orleans Parish First City Court; and

WHEREAS, the parameters of the proposed pilot program have been reviewed and passed favorably upon by the Louisiana Legislature, as evidenced by its passage of House Concurrent Resolution 76 of 1992; and


WHEREAS, the Louisiana Legislature and the Task Force have asked this Court to authorize the establishment and implementation of the pilot mediation program; and

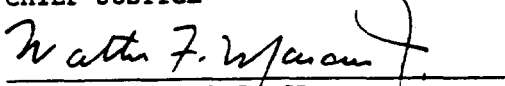
WHEREAS, the Court has reviewed the report of the Alternative Dispute Resolution Task Force, prepared for the Louisiana House of Representatives, Civil Law and Procedure Committee; and

WHEREAS, the Court finds that the proposed pilot program would advance the administration of justice in Louisiana;

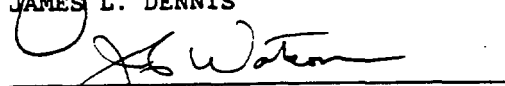
NOW THEREFORE, be it resolved that the Louisiana Supreme Court hereby authorizes the establishment and implementation of a pilot mediation program for Orleans Parish Civil District Court and Orleans Parish First City Court.

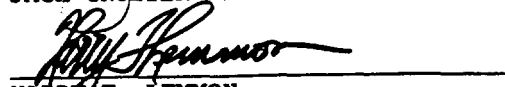
Approved this 3rd day of September, 1992.


PASCAL F. CALOGERO, JR.
CHIEF JUSTICE


WALTER F. MARCUS, JR.


JAMES L. DENNIS


JACK CROZIER WATSON


HARRY T. LEMMON


LUTHER F. COLE


PIKE HALL, JR.

A TRUE COPY:

Clerk's Office, New Orleans, Louisiana
September 3, 1992



John Tarleton Olivier
Deputy Clerk, Supreme Court of Louisiana

EXHIBIT VII



FORM LETTER INFORMING LITIGANTS OF PILOT MEDIATION PROGRAM
CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

(DATE)

Dear _____:

The Court would like to inform you of its recent adoption of a pilot mediation program. Mediation is an alternative dispute resolution mechanism in which the parties attempt to resolve their differences with the assistance of a trained third party facilitator: a mediator. The chief function of court appointed mediators in the pilot program is to encourage and assist the parties in reaching a consensual settlement. However, mediators may not compel the parties to enter into a settlement.

Mediation has been an effective tool for resolving disputes in many other jurisdictions throughout the country. The Court hopes the pilot mediation program will be successful in disposing of cases at an earlier stage in the litigation process and in reducing litigation costs.

The purpose of this correspondence is to encourage your participation in the pilot program. The Alternative Dispute Resolution Task Force, created by House Resolution No. 32 of the 1991 Regular Session of the Legislature, has developed an

approved list of qualified mediators for appointment in the pilot program. Parties choosing to mediate are encouraged to choose their own mediator from the approved list, or independently of that list, should they so choose.

All litigants are entitled to review the approved list, as well as the fee schedule and resume of any prospective mediator. The cost of mediation will initially be divided equally by the parties and ultimately will be taxed as a cost of litigation.

Enclosed with this correspondence is a copy of recently promulgated Rule 18 of the Rules of the Civil District Court for the Parish of Orleans, which outlines the parameters of the pilot program. Also enclosed is a draft copy of a pleading styled "Motion and Order of Referral for Mediation" which may be used by any party to request mediation.

Once again, on behalf of the Court, I respectfully request that you consider participating in this innovative new Court program. Please contact the undersigned should you have any questions or concerns about the pilot program.

Sincerely,

Clerk, Division ____

EXHIBIT VIII

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

VERSUS

•
•
* NO. _____
*
*
* * * * *

MOTION AND ORDER OF REFERRAL FOR MEDIATION

_____, _____ herein,
moves the Court to order mediation herein under Rule 18 of this
Court.

Respectfully submitted

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served
upon _____, on
this ____ day of _____, 1993.

ORDER

Considering the motion of _____
that this cause be referred to mediation under Rule 18 of this
Court, copy annexed, let this cause be referred to mediation.

Any party who wishes to object to having this litigation
mediated may do so, through motion filed within 10 court days of
notice of this Order. For good cause shown, the Court may, in
its discretion, retract this Order of Referral for Mediation.

The parties to this litigation may choose their own mediator, provided the name, address and telephone number of the mediator is provided to the Court within 15 court days of notice of this Order. If no mediator has been selected by the parties by that date, the Court shall appoint a mediator for this case.

Referral to mediation is not a substitute for trial and the case will be tried if not settled.

New Orleans, Louisiana, this _____ day of _____,
1993.

JUDGE

/0726F

APPLICATION FOR APPOINTMENT AS MEDIATOR

NAME:

ADDRESS:

TELEPHONE NO.: HOME:

OFFICE:

EDUCATIONAL BACKGROUND:

LSBA BAR NO. (if attorney):

EMPLOYMENT EXPERIENCE:

MEDIATION TRAINING AND CERTIFICATION:

TRAINING PROVIDER:

PLACE WHERE TRAINED:

NO. OF HOURS OF TRAINING (16 minimum):

(Please attach copy of Certificate of Completion to this Application)

MEDIATION EXPERIENCE (include Types of Cases):

FEE SCHEDULE:

Submission of this Application indicates that the Applicant has read the Rules of Orleans Parish Civil District Court/First City Court concerning the Pilot Program in Mediation and agrees to abide by and comply with those Rules.

SIGNATURE

A \$25.00 Application fee must accompany this application. Please make check payable to the "Alternative Dispute Resolution Task Force."

CIVIL DISTRICT COURT/FIRST CITY COURT PILOT MEDIATION PROGRAM

PLEASE RETURN ON OR BEFORE THE 10th OF EACH MONTH TO:

JUDICIAL ADMINISTRATOR
SUPREME COURT OF LOUISIANA
301 Loyola Avenue, Room 109
New Orleans, LA. 70112-1887
Attention: Tim Averill

REPORT OF CASES REFERRED TO MEDIATION, OR CONCLUDED SUBSEQUENT TO REFERRAL

as of the first day of _____, 199__

JUDGE: _____ DIVISION/SECTION: _____

The following is a list of all cases which, as of the first day of each month, have either been referred to mediation, or after having previously been referred to mediation, concluded.

Cases Referred to Mediation

<u>Case Name</u>	<u>Docket No.</u>	<u>Date Mediation Ordered</u>
------------------	-------------------	---------------------------------------

Referred Cases which have been Concluded

<u>Case Name</u>	<u>Docket No.</u>	<u>Date Mediation Concluded*</u>
------------------	-------------------	--

CLERK OF COURT

*Cases that have been referred to Mediation can be concluded in one of two ways:

- (1) The mediator informs the Court that the mediation process is concluded and the case did, or did not, settle, or
- (2) The Court retracts the Order of Referral for Mediation. (See, CDC/First city Court Rules, §§2, 8(d)).



CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

ORDER

Pursuant to House Concurrent Resolution No. 76 of 1992, a Resolution of the Louisiana Supreme Court dated September 3, 1992, and the inherent power of this Court, Rule 13 of the Rules of the Civil District Court for the Parish of Orleans is hereby enacted as follows:

Rule 13. Pilot Mediation Program.

Section 1. Scope of the Program.

A pilot mediation program is hereby adopted, in accordance with House Concurrent Resolution No. 76 of 1992 and a Resolution of the Louisiana Supreme Court dated September 3, 1992. Mediation is an alternative dispute resolution mechanism wherein the parties attempt to resolve their differences with the assistance of a trained third party facilitator: a mediator. The procedure is non-binding and shall not prejudice any party's right to full judicial process. The pilot program will commence on September 1, 1993 and terminate on August 31, 1994, unless otherwise extended by Order of this Court. Any case filed after January 1, 1992 may be mediated. All 12 Divisions of Civil District Court will be participating in the pilot program. The program shall not apply to domestic matters.

Section 2. Institution of Mediation.

A form letter will be forwarded to all parties after issue is joined. The form letter will advise litigants of the mediation program and will encourage participation. Any party shall then have the right to request mediation. Upon receiving such a request from any party, the Court shall enter an Order of Referral for Mediation.

Any party may then oppose the Order and urge that the case not be mediated. Such opposition shall be registered by written motion, specifying the reasons for the opposition, filed within ten court days of notice of the Order of Referral for Mediation. The Court shall consider any opposition to mediation upon the merits, and may retract the Order of Referral for Mediation for good cause shown.

Section 3. Qualifications of Mediators.

The Alternative Dispute Resolution Task Force, created by House Resolution No. 32 of the 1991 Regular Session of the Legislature, will develop an approved list of mediators for use by the judges in appointing mediators.

Both attorneys and non-attorneys are eligible to mediate in the pilot program. However, in order to qualify for appointment in the pilot program, interested persons must have participated in and successfully completed a mediator training and certification course of at least sixteen hours credit sponsored by the Louisiana State Bar Association Continuing Legal Education Committee, the American Arbitration Association, the Federal Mediation and Conciliation Service, or any other provider certified by the Task Force. All persons who wish to be considered for placement on the approved list shall submit an application, resume, and fee schedule to the Task Force and shall certify that they have successfully completed an approved course in mediator training and certification.

Parties choosing to mediate are encouraged to choose their own mediator from the approved list, or independently of that list. In the event the parties agree upon a mediator, the name, address, and telephone number of the agreed upon mediator shall be provided to the judge within fifteen court days after notice of the Order of Referral for Mediation. If no mediator has been selected by the parties within the fifteen court day time limit, the Court shall appoint a mediator from the approved list.

Section 4. Costs of Mediation. Any person who applies to be placed on the approved list for the pilot program must forward a resume and a statement of his/her fee schedule in advance of consideration of his/her placement on the approved list. Both the fee schedule and the resume shall be made available to the participating judges and to the parties to the litigation. If the parties agree upon a mediator who is not on the approved list, the mediator's fee schedule shall be agreed upon by the parties in writing.

The cost of the mediation shall initially be borne equally by the parties, unless the parties agree otherwise, and shall ultimately be taxed as costs of litigation in the event the mediation does not resolve the dispute. At the close of mediation, whether or not successful, the parties shall pay the mediator's fee per the fee schedule on file, or as agreed upon, and the amount of the fee shall be certified by the mediator and placed in the record of the action. All court filings made by the mediator shall be accepted by the Clerk without any filing fee.

As a condition precedent to placement on the approved list, eligible mediators shall agree to mediate 10% of their assigned cases without charging a fee. Thus, in forma pauperis proceedings may also be subject to mediation.

Section 5. The Mediation Process. After mediation is ordered, the appointed mediator shall coordinate with the parties and schedule mediation sessions as appropriate. The mediator shall report back to the Court within the time limits noted in Section 7, advising the Court whether the litigation has been settled.

Section 6. Confidentiality. Mediators shall preserve and maintain the confidentiality of mediation proceedings. They shall keep confidential from opposing parties any information obtained in individual caucuses unless the party or parties to a caucus permit disclosure. They shall maintain confidentiality in

the storage and disposal of records and shall render anonymous all identifying information when materials are used for research, training or statistical compilations.

Further, all proceedings of the mediation, including statements made by any party, attorney or other participant, are privileged in all respects. The proceedings may not be reported, recorded, placed into evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest. The mediator shall not be named as a witness, nor may the mediator's records be subpoenaed or used as evidence, nor may the mediator's deposition be taken, or any other discovery had against the mediator.

Section 7. Time of Mediation. Mediation shall be completed within 90 days of notice of the Order of Referral for Mediation unless extended by Order of the Court or by stipulation of all parties.

Section 8. Duties of the Mediator.

(a) The mediator shall file with the Court notice of his/her acceptance of the appointment.

(b) The mediator shall encourage and assist the parties in reaching a settlement of their dispute but may not compel or coerce the parties to enter into a settlement agreement.

(c) Unless expressly authorized by the disclosing party, the mediator may not disclose to either party information given in confidence by the other and shall at all times maintain confidentiality with respect to communications relating to the subject matter of the dispute.

(d) Unless the parties agree otherwise, all matters, including the conduct and demeanor of the parties and their counsel during the settlement process, are confidential and may never be disclosed to anyone, including the appointing Court. The mediator shall be limited to informing the Court whether or not the case settled.

Section 9. Effect of Written Settlement Agreement. If the parties reach a mediated settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract. Unless the settlement agreement provides for confidentiality, upon the application of any party thereto, the Court may in its discretion incorporate the terms of the agreement in a decree.

New Orleans, Louisiana, this _____ day of _____, 1993.

FOR THE COURT:

LOUIS A. DIROSA
CHIEF JUDGE

*July 27, 1993
Certified To be a
True, Certified copy
of a Rule of Court.
Civil District Court.
Parish of Orleans*

*Richard J. Harvey
Duty Judge*

EXHIBIT XII

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

ORDER

Pursuant to House Concurrent Resolution No. 76 of 1992, a Resolution of the Louisiana Supreme Court dated September 3, 1992, and the inherent power of this Court, and considering the need to amend Rule 18 of the Rules of the Civil District Court for the Parish of Orleans, Rule 18, Sections 3 and 8(a) are hereby amended as follows:

Rule 18. Pilot Mediation Program.

Section 3. Qualifications of Mediators.

Both attorneys and non-attorneys are eligible to mediate in the pilot program. However, in order to qualify for appointment in the pilot program, interested persons must have participated in and successfully completed a mediator training and certification course of at least sixteen hours credit sponsored by the Louisiana State Bar Association Continuing Legal Education Committee, the American Arbitration Association, or any other provider certified by the Task Force.

Section 8. Duties of the Mediator.

(a) The mediator shall file with the Court notice of his/her acceptance of the appointment. A copy of the notice of acceptance shall also be transmitted to the Louisiana Supreme Court Judicial Administrator's office.

New Orleans, Louisiana, this _____ day of _____,

1993.

FOR THE COURT:

LOUIS A. DIROSA
CHIEF JUDGE

EXHIBIT XIII

**CIVIL DISTRICT COURT/FIRST CITY COURT PILOT MEDIATION PROGRAM
EVALUATION FORM**

1. Type of Case Mediated (Personal Injury, Contract, etc.).

2. Were you a plaintiff or defendant in this dispute?

☐ Plaintiff Other (explain) _____
☐ Defendant _____

3. Who described the mediation process to you?

☐ Mediator ☐ Judge
☐ Court Staff ☐ An Attorney
☐ No one
☐ Other (explain) _____

4. How was the determination made that the case would be mediated?

☐ Voluntary agreement by all parties.
☐ The filing of a Motion for Referral by
 ☐ Plaintiff ☐ Defendant
☐ Suggestion by judge or other court staff.
☐ Other (explain) _____

5. How was a mediator chosen for your case?

☐ The parties agreed upon a mediator from the approved list.
☐ The judge appointed a mediator for us from the approved list.
☐ The parties agreed upon a mediator who was not on the approved list.
☐ Other (explain) _____

6. Which box best describes the extent of your agreement or disagreement with the following assertions.

	Strongly Agree	Somewhat Agree	No Opinion	Somewhat Disagree	Strongly Disagree
A. The mediation process was fair.	()	()	()	()	()
B. I understood the mediation process.	()	()	()	()	()
C. The mediator gave me enough time to say what I wanted to say.	()	()	()	()	()
D. The mediator explained the confidentiality rules of the mediation process to me.	()	()	()	()	()

	Strongly Agree	Somewhat Agree	No Opinion	Somewhat Disagree	Strongly Disagree
E. The length of time required to resolve the dispute was reasonable.	()	()	()	()	()
F. The mediation process helped bring the sides together.	()	()	()	()	()
G. The costs of mediation were reasonable.	()	()	()	()	()
H. I would recommend mediation to others with similar problems.	()	()	()	()	()
I. I would use mediation again to settle a dispute.	()	()	()	()	()

7. Which box best describes your level of satisfaction with any agreement(s) reached through mediation.

Very Satisfied	Somewhat Satisfied	No Opinion	Somewhat Dissatisfied	Very Dissatisfied	No Agreement(s) Reached
()	()	()	()	()	()

8. Which box best describes your level of satisfaction with the mediation experience, as compared to your other court experiences.

Much More Satisfied	Somewhat More Satisfied	About the Same	Somewhat Dissatisfied	Very Dissatisfied	No Other Court Experience
()	()	()	()	()	()

I would be interested in any additional comments or suggestions you wish to make regarding the pilot mediation program.

ALL INFORMATION IS TO BE USED FOR RESEARCH AND EVALUATION PURPOSES. THE IDENTITY OF THE PERSON WHO COMPLETED THIS SURVEY WILL NOT BE DIVULGED.
THANK YOU FOR YOUR TIME AND ASSISTANCE.

CIVIL DISTRICT COURT/FIRST CITY COURT PILOT MEDIATION PROGRAM
EVALUATION FORM
(LAWYER)

1. Type of Case Mediated (Personal Injury, Contract, etc.).

2. Did you represent the plaintiff(s) or defendant(s) in this dispute?

_____ Plaintiff Other (explain) _____
_____ Defendant _____

3. Who described the mediation process to you?

_____ Mediator _____ Judge
_____ Court Staff _____ An Attorney
_____ No one
_____ Other (explain) _____

4. How was the determination made that the case would be mediated?

_____ Voluntary agreement by all parties.
_____ The filing of a Motion for Referral by
 _____ Plaintiff _____ Defendant
_____ Suggestion by judge or other court staff.
_____ Other (explain) _____

5. How was a mediator chosen for your case?

_____ The parties agreed upon a mediator from the approved list.
_____ The judge appointed a mediator for us from the approved list.
_____ The parties agreed upon a mediator who was not on the approved list.
_____ Other (explain) _____

6. Which box best describes the extent of your agreement or disagreement with the following assertions.

	Strongly Agree	Somewhat Agree	No Opinion	Somewhat Disagree	Strongly Disagree
A. The mediation process was fair.	()	()	()	()	()
B. I understood the mediation process.	()	()	()	()	()
C. The mediator gave me enough time to say what I wanted to say.	()	()	()	()	()
D. The mediator explained the confidentiality rules of the mediation process to me.	()	()	()	()	()

	Strongly Agree	Somewhat Agree	No Opinion	Somewhat Disagree	Strongly Disagree
E. The length of time required to resolve the dispute was reasonable.	()	()	()	()	()
F. The mediation process helped bring the sides together.	()	()	()	()	()
G. The costs of mediation were reasonable.	()	()	()	()	()
H. I would recommend mediation to others with similar problems.	()	()	()	()	()
I. I would use mediation again to settle a dispute.	()	()	()	()	()
7. Which box best describes your level of satisfaction with any agreement(s) reached through mediation.					
Very Satisfied	Somewhat Satisfied	No Opinion	Somewhat Dissatisfied	Very Dissatisfied	No Agreement(s) Reached
()	()	()	()	()	()
8. Which box best describes your level of satisfaction with the mediation experience, as compared to your other court experiences.					
Much More Satisfied	Somewhat More Satisfied	About the Same	Somewhat Dissatisfied	Very Dissatisfied	No Other Court Experience
()	()	()	()	()	()
I would be interested in any additional comments or suggestions you wish to make regarding the pilot mediation program.					

ALL INFORMATION IS TO BE USED FOR RESEARCH AND EVALUATION PURPOSES. THE IDENTITY OF THE PERSON WHO COMPLETED THIS SURVEY WILL NOT BE DIVULGED.
THANK YOU FOR YOUR TIME AND ASSISTANCE.

03/24/04

PAGE: 1

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
TOTALS FOR 1975 BROKEN DOWN BY CASE TYPE

SIMPLE POSSESSION (NO WILL)	760
PETITION TO PROBATE WILL (WITH ADMINISTRATION)	574
PETITION TO PROBATE WILL (WITHOUT ADMINISTRATION)	664
PETITION TO SEARCH FOR WILL	26
OTHER (PROBATE)	645
OPEN ACCOUNT	234
BREACH OF CONTRACT	232
SUIT ON NOTE	934
SUIT ON NOTE WITH FORECLOSURE OF CHATTEL MTS.	266
SUIT FOR EARNED WAGES	19
SUIT FOR ACCOUNTING	5
OTHER (CONTRACT)	368
INJUNCTION	131
DECLARATORY JUDGEMENT	40
JUDICIAL REVIEW ZONING	3
MANDAMUS (NON-REAL ESTATE)	66
ELECTION SUIT	3
MINOR'S SETTLEMENT	60
CONCURSUS	33
PETITION FOR DISCOVERY	393
PETITION FOR WRIT OF SEQUESTRATION	22
PETITION TO MAKE JUDGEMENT EXECUTORY	235
TAX SUIT	854
PETITION TO BECOME NOTARY	225
OTHER (SPECIAL PROCEEDING)	153
MOTOR VEHICLE	3,499
MOTOR VEHICLE PRODUCT LIABILITY	61
PRODUCT LIABILITY-OTHER	72
MEDICAL MALPRACTICE	162

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
TOTALS FOR 1975 BROKEN DOWN BY CASE TYPE

PREMISES (LIABILITY FOR CONDITION)	1,111
MARINE	186
INTENTIONAL TORT	126
DEFAMATION	30
OTHER (TORTS - PERSONAL INJURY)	4,465
SEPARATION	0
DIVORCE	2,682
ANNULMENT	5
CUSTODY (NOT FILED WITH SEPARATION OR DIVORCE)	170
DISAVOWMENT OF PATERNITY	9
SUIT TO ESTABLISH PATERNITY	2,402
NAME CHANGE	119
EMANCIPATION	8
INTERDICTION	67
COMMITMENT	0
PETITION TO APPOINT CURATOR	3
PARTITION OF COMMUNITY (SEPARATE ACTION)	40
MARITAL AGREEMENT	16
PETITION TO MAKE JUDGEMENT (DOMESTIC)	8
OTHER (STATUS & DOMESTIC)	176
JOINT PETITION FOR WORKMEN'S COMPENSATION	4
JUDICIAL REVIEW	49
WORKMEN'S COMPENSATION	10
OTHER (LABOR)	55
SUIT ON NOTE WITH FORECLOSURE OF MORTGAGE	1,235
SUIT TO RESCIND SALE OF FOR REFUND OF PURCH. PRICE	19
SUIT FOR SPECIFIC PERFORMANCE	7
DECLARATORY JUDGMENT	5
RENT AND/OR EVICTION	60

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
TOTALS FOR 1993 BROKEN DOWN BY CASE TYPE

EXPROPRIATION				5
MANDAMUS TO CANCEL MORTGAGE				19
OTHER (IMMOVABLE PROPERTY)				39
PAYING CASES TOTAL				17,231
PAUPER CASES TOTAL				2,433
GOVERNMENT CASES TOTAL				4,101
OTHER CASES TOTAL				1
PROBATE	2,639	9300037	9323796	
CONTRACT	2,025	9300061	9323207	
SPECIAL PROCEEDING	2,221	9300066	9323848	
TORTS	9,712	9300027	9323866	
STATUS & DOMESTIC	5,705	9300001	9323800	
PATERNITY	0	9300001	9323738	
LABOR	118	9300553	9323798	
IMMOVABLE PROPERTY	1,442	9300031	9325732	