

BENEFIT OR BURDEN
an evaluation of the
MANDATORY SETTLEMENT CONFERENCE
PROGRAM
of the
SUPERIOR COURT FOR PIERCE COUNTY
WASHINGTON

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ABSTRACT

In June 1990 Superior Court for Pierce County instituted mandatory settlement conferences for all dissolution cases within which the parenting plan was not at issue. This rule was passed in the hope that fewer cases would end up being tried, saving litigant, attorney, and court time and expense. Judges surveyed as part of the evaluation project indicated that they would consider a decrease in trial rate and time to disposition as success markers, as well as an increase in litigant and lawyer satisfaction.

This evaluation project tested whether or not cases in compliance with the rule are more likely to settle, than those not in compliance. It examined whether or not settlement conferences result in fewer trials, less time between filing and disposition, and whether or not persons participating are more satisfied with the system and/or the process.

Two methods were employed to evaluate the mandatory settlement program. To ascertain satisfaction rates, questionnaires were sent to litigants and attorneys in 36 cases which met the stated criteria, had requested a trial date, and asked for a settlement conference, and to litigants and counsel in an equal number of control cases. To determine relative disposition time and trial rate, data was taken from the state computer system and entered into a software program and analyzed.

The research revealed that the Pierce County mandatory settlement conference rule is meeting none of the objectives set forth by the judiciary. The trial rate is 56% higher for cases holding a settlement conference and time from filing to disposition is 84 days longer. Litigants and lawyers are less satisfied with the results of the case and litigants are less likely to believe they have been treated fairly. However judges and lawyers surveyed informally like settlement conferences and believe they work when other attempts at settlement fail.

My recommendation is that we do not enforce the mandatory nature of the rule, but that we continue to offer it as a service. This should require less judicial time than forcing every case through a settlement conference. The program should continue to be administered as it is. I believe we should survey litigants and lawyers going through the process to determine the reasons they chose to have a settlement conference, for instance case complexity, and ask for any suggestions they might have to improve the program.

INTRODUCTION

Building a Service Excellent Court was the theme of the Phase II Seminar facilitated by the Institute for Court Management in the Summer of 1991. In these financially strapped times service to court users becomes an even greater challenge.

It is not required that one be an financial wizard to know that the economy is foundering. Corporations are downsizing and citizens are being put out of work by the thousands. Things seem to cost more, so those of us who are working are less likely to buy and this reduces corporate profits. People who do not work and corporations that do not profit pay no taxes. Less tax revenue has meant fewer dollars to go around the public sector. The recent reduction in interest rates, while a boon the those buying a home, has greatly reduced interest income from investments by all entities, including governments.

In the court system less revenue has meant fewer relative resources to cope with an ever growing case load. Traditional means of case processing mean longer waits for trials and a system that is less responsive to user needs. This challenge has been met in many courts by increasing reliance on existing methods of alternative dispute resolution, such as arbitration, and the introduction of others, such as mandatory settlement conferences.

Pierce County is the second largest county in the state of Washington, with a population, as of the last census, of

586,000. Pierce County is, however, 38th out of 39 counties in per capita income, so is always looking for ways to make better use of limited resources. Superior Court for Pierce County has 18 judges and 5 commissioners, for a total of 23 judicial positions. Between June 4, 1990 and June 4, 1991 4347 dissolutions were filed, 2062, or 47%, of these were dissolutions without children. Dissolution cases without children have no priority, so are set in the same manner as all other cases. Which means as soon as the judge's calendar can accommodate a one or two day trial. Waiting six months to a year for a resolution of a dissolution is difficult on the litigants. It became apparent that an alternative means of resolving dissolutions was needed.

In June of 1990, Superior Court in Pierce County adopted a local court rule, a copy of which is provided as appendix page 33, in response to a recommendation by the Family Law Section of the local bar association. The rule stated that settlement conferences would be mandatory in all dissolution cases where children were not involved. This evaluation project tests the effects of this rule.

It was anticipated that mandatory settlement conferences would decrease the trial rate for dissolution cases and thereby reduce court congestion. Congestion being defined as too many cases waiting for trial before too few judges on any given day. It was decided that initially only cases where parenting plans were not at issue would be subject to the rule, as it was

believed that cases without disagreement over children would be more amenable to settlement.

The judges involved in formulating the rule wanted attorneys to not be able to set a trial date unless a settlement conference had been held. That proposal was not made part of the rule because of attorney objections. The attorneys on the committee pointed out that in order to be ready to do a settlement conference discovery, each party's knowledge of the other side's case, would have to be nearly complete. To wait to set trial until discovery was finished would necessitate trials being set far into the future. The judges agreed to allow trial dates to be set prior to settlement conference, but required that the conference be held at least 60 days prior to the trial date so the court would know, for calendar management purposes, if cases were likely to be tried.

Since the stated goals of trial reduction seemed quite limited, the judges and commissioners were asked to help determine other ways to measure the success of the rule. Questionnaires were circulated to the judiciary asking that they rate the importance of certain criteria as measurements of program success. The judges considered trial rate, case age at disposition, and litigant and lawyer satisfaction.

The judiciary determined that settlement conferences should result in greater litigant and lawyer satisfaction which would be determined by questionnaires. Satisfaction was rated on two criteria: "Are you satisfied with the results of this case?" and

"Do you believe you were treated fairly?" Additionally, participants were asked whether or not they felt their case took "too much, too little or about the right amount of time."

The other success criteria were an expected reduction in trial rate and time from filing to trial. These were measured and analyzed from data extracted from the state computer system.

Results obtained from the questionnaires and statistical measurement were surprising. Trial rate was not reduced, nor was time from filing to trial for the cases having gone through settlement conference. Lawyers and litigants were generally less satisfied in all respects if they had requested a settlement conference. Except for the trial rate, which this report writer did not expect to be reduced, these results are the exact opposite of those expected.

REVIEW OF RELEVANT LITERATURE

A review of relevant literature should accomplish three things. It should point out areas considered in previous research to aid in designing the current project, provide yardsticks against which to measure project results and suggest future directions. All of the reviewed articles and books fell into one of these indicated categories. There is a plethora of material on alternate dispute resolution, that is ways of resolving conflict short of trial. The challenge in reviewing literature on this subject is not what can be found but which to use and which to exclude. Again, the questions to be answered are: What areas should be evaluated to determine whether or not a project has been a success, what results might be expected based on statistics from other research, and what is suggested for adoption or retention by Pierce County based on the experiences of others.

The Committee on Alternative Dispute Resolutions, Report to the Membership, of the Conference of State Court Administrators is a general overview which recognizes the benefits of alternative dispute resolution while mentioning several points which must be considered. From this paper came the idea that the court should maintain responsibility for alternative dispute programs and that not all cases in all jurisdictions should be treated the same. The report asserts that any program should include resources to monitor effectiveness and recommends comparison of program results with

results obtained by traditional means. This helped determine the direction of the Pierce County evaluation project.

Three articles review effectiveness of methods of dispute resolution based on, among other things, litigant satisfaction rates. Expected satisfaction rates and testing methods for the Pierce County project were developed from these articles.

"Divorce Mediation: An overview of Research Results" by Jessica Pearson and Nancy Thoennes, 19 Columbia Journal of Law and Social Problems 451-484 (1985) discusses two major research projects and covers immediate as well as long term effects of mediation. These research projects were designed to test for attainment of mediation goals such as improving perceptions of fairness and enhancing client satisfaction with the process and the outcome. This article influenced me to test for perception of fairness as a basis for comparison.

Robert Emery and Melissa Wyer wrote "Divorce Mediation" which appears in 42 American Psychologist 472-480 (May 19, 1987). They determined litigants generally are more satisfied with mediation than adversarial proceedings and that there appears to be less relitigation, that is post-resolution court hearings, for mediated cases. The authors' research also suggests that mandatory programs are better utilized than voluntary.

Clarke, Donnelly and Grove in "Court Ordered Arbitration in North Carolina: Case Outcomes and Litigant Satisfaction", reported in 14 The Justice System Journal 154-184 (1991), compared program cases and non-program cases and contrast these groups with a pre-

program group. Litigants on the whole were more satisfied with arbitration, were more favorable as to the outcome of the case and satisfied with procedures than those following standard civil procedures. This article also touched on attorney satisfaction and found them to be just as happy with arbitration as with more traditional means of dispute resolution.

Judges and commissioners who preside over settlement conferences should not preside over any subsequent trial. That is the gist of Stephen Weller's "The Perils and Promise of One-Party Discussions," The Judges' Journal, Summer 1991. He also warns of the possible coercive power of the judiciary. It was with this in mind that recommendations are made in the conclusion that Pierce County Superior Court continue existing administrative policies, one of which is that the settlement conference judge does not preside over and subsequent trial, and that the court do an in depth survey to determine why litigants feel they have been treated unfairly.

Madelyn Mays project, reported in Mandatory Settlement Conference Program - Domestic Relations and written when she first become court administrator for Kitsap County, had goals similar to the Pierce County program, specifically to reduce case processing time. This evaluation project was considered because of its locality. It was believed that information from an adjacent county could be relevant to Pierce County. Though no statistics were available, the judges were pleased with the results of the project and Ms. Mays believed that early intervention probably led to

earlier resolution. Initially, this was expected to be the case in Pierce County as well.

A statewide mandatory mediation program in Maine is reviewed in "Mandatory Mediation of Divorce: Maine's Experience, Maine Lawyer's Review, 25 (September 1985) by Lincoln Clark and Jane Orbeton. The main conclusion drawn from this article was that, with this mandatory program, 18% of cases which go through mandatory mediation are subsequently tried. That may be low by Maine standards, but it is far above the 5% average trial rate for civil cases in Washington State (See page 44). It is noteworthy, however, that the trial rate in Pierce County for cases which held a settlement conference is 18.75%. Perhaps, based on Maine's experience, trial rate may be expected to remain high for those cases which go through mandatory programs.

Genevra Kay Loveland, in her article "Across the Divide: Bench-Bar Perspective on Delay Reduction in California," State Court Journal, Fall 1991 18-26, reveals the differing opinions expressed by judges and lawyers about a delay reduction program in California. Basically lawyers were not nearly so happy as judges with the program. Negative attorney opinions increased in direct proportion to feelings that no real effort had been made to include the bar in planning the program. Over half the attorneys felt that strict adherence to time standards would be less fair and just. This article convinced me that Pierce County should actively seek the opinions of the users in testing the effectiveness of the settlement conference program.

Maurice Rosenberg's book The Pretrial Conference and Effective Justice, a Controlled Test in Personal Injury Litigation, New York, NY:Columbia University Press discusses a two year test in New Jersey. Mandatory pretrial conferences in personal injury cases did not, in New Jersey test, result in any time savings. There were not fewer or shorter trials. Additionally, mandatory pretrials did not result in earlier settlement for those cases which settled short of trial.

From this, however, the author does not draw the conclusion that pretrials should be scrapped. In fact, he says efficiency alone should not be the deciding factor but he does estimate that switching from mandatory to voluntary settlement conferences would result in a time savings in that locale equivalent to 2.5 judges. Rosenberg states that indicated improvement in the quality of trials should weigh heavily. He also postulates that settlements resulting from pretrial conferences are probably of higher quality as well. This influenced my recommendation that we continue the settlement conferences.

Rosenberg mentions attorney objections to the courts interference in areas previously the purview of the bar as one reason attorneys may not like programs instituted by the court, but indicates that some attorney objection comes from the suggestion that pretrial conferences do not do what they are designed to do. This information helped convince me to use lawyers surveys in this project and to recommend that we initiate some method for ongoing user evaluation.

The foregoing research refined the following evaluation project by affecting areas to be evaluated and expectations of project results. This project will contrast and compare lawyer/litigant satisfaction for cases which have requested settlement conferences and those which have not. Time from filing to disposition and trial rates will also be compared.

A reduction in trial rate was not expected and this research validates that. Conversely, an expected reduction in time from filing to disposition was anticipated for those cases attending a settlement conference was supported by Ms. Mays work but refuted by the experiences in New Jersey and Maine.

Recommendations for future research and for the settlement conference process itself were also determined in part by this literature review.

METHODOLOGY

Two methods were chosen to evaluate the mandatory settlement conference program. Questionnaires were designed and sent out to discover how the users of the system felt. Case data drawn from court records was used to measure the trial rate and case age at disposition.

To determine what criteria to use in the evaluation of the mandatory settlement conference rule, judicial questionnaires were designed based on informal discussions with members of the bar and the bench as to what was the hope behind instituting the mandatory settlement conference rule. The questionnaires were first pre-tested on the three-member executive committee, all of whom had no suggestions or comments about the content or form of the questionnaire. The questionnaire and explanatory memorandum (page 38 & 39) were then circulated to all 18 judges and 5 commissioners. Nineteen out of the 23, or 83%, of the judicial officers returned questionnaires. The judges and commissioners were asked to answer six specific questions and asked for comments. Before the judicial questionnaire was designed, it was discovered that not all judicial officers used the same method of settlement conference. A question on the survey therefore was written to determine whether the majority of the judges used a mediation type conference or a format which more closely resembled arbitration. Of the 19 responses, only four said they practiced mediation type settlement conferences. Since there

this factor in the questionnaire responses, the effectiveness of the different types of settlement conferences was not considered for this project, but is recommended as a topic for future research.

The questionnaire asked the judges/commissioners if the mandatory settlement conference program should be considered a success if it: Reduced trial rate by at least 10%, reduced case age (counted from filing) at disposition by at least 30 days, and/or resulted in a 10% increase in satisfaction expressed by lawyers and litigants as to the results of the case and the system. A final question asked for other considerations. Some of the judicial officers wanted additional or more stringent criteria, such as reducing the trial rate by 20% or 50% and reducing case age at disposition by 90 days. One judge flatly stated that settlement conferences were a waste of time and that pretrial conferences worked better, but the majority of the judges agreed with the stated criteria. A copy of the questionnaire with cumulative responses shown may be found in the appendix at page 40.

The questionnaire for lawyers and litigants was designed based on the answers received from the bench. A blank copy of the questionnaire is located on page 43. The questionnaire was first pretested on administrative staff to see if questions were clear and capable of eliciting appropriate responses, then sent with an accompanying letter (pages 41 & 42) to each litigant and attorney in the 36 cases which had requested a settlement

conference and to attorneys and litigants in a control group of equal number. The questionnaire was designed to test user satisfaction. Satisfaction was divided into three categories: Perception of case processing time, satisfaction with the results of the case and perception of fairness. Responses from each group in each category were tallied separately and compared. All lawyers were also compared against all litigants in the three categories of satisfaction.

The response rate to the questionnaires varied between litigants and attorneys more than it varied between settlement conference and non-settlement conference categories in both groups. This was expected as most of the attorneys are in and out of the administrator's office and are well known to the report writer and vice versa. Attorney questionnaires were returned at a rate of 45% in the group requesting settlement conferences, and returned at a rate of 48% in the group not requesting a conference. Litigants returned their questionnaires at the rate of 33% for those requesting settlement conferences and 26% for those who did not.

To analyze case records and test against the judicial criteria, data was downloaded from the state computer system to software on a personal computer. The subject cases were dissolution cases without children, with a trial date. From these were segregated cases which had requested a settlement conference and cases where a conference had actually been held. Time from filing to disposition/resolution and trial rate, the

number of cases actually being tried expressed as a percentage of the total number of cases under consideration, were calculated for each group and compared with the others. Complete data tables are located in the appendix on pages 45 through 47.

As case data began to deviate from stated objectives, informal interviews were conducted with certain judges and lawyers to ascertain how each group felt about settlement conferences. No actual data was kept, but all spoken to believed settlement conferences almost always were beneficial. When presented with statistics to the contrary, both groups explained the increased trial rate and lengthening on disposition time by suggesting that it was the more complex cases that were brought in for settlement conference. Complex cases would naturally be less likely to settle and take longer to work out.

There were 313 cases in the subject group, representing dissolution cases, without children, filed between 6/04/90 and 6/05/91 with a trial date set. For that same time span, there were a total of 2,062 domestic cases without children. The 313, or 15% of the population, were chosen for the sample group because our settlement conference rule specifically requires that a settlement conference be set within 20 days of trial assignment, so only cases which had set a trial date were used for the sample. A copy of the applicable rule, PCLSPR 94.04 appears in the appendix at page 33. Additionally, in all of the cases where a settlement conference had been requested, a trial date had been set. The 313 subject files, including those

requesting a settlement conference, do not constitute a sample in the traditional sense. They were not chosen at random, and, in fact, represent the population of eligible cases which have a trial date set.

The Office of the Administrator for the Courts (OAC) assisted with data compilation by providing a download of case data. A computer analyst helped transfer the data received from OAC to a P.C. data base, and devised data collection forms in the software. The report writer created reports and revised the computer data collection forms as needed. Questionnaire data was compiled and analyzed by hand. The computer data was downloaded January 28, 1992, so all case information is as of that date. The questionnaires were sent out approximately 45 days before analysis.

The data gathered from the state computer system is accurate. There was no dependence on subjective interpretation of data (i.e., entering a disposition/resolution code at the completion of a case), but rather document codes, such as DCD (Decree of Dissolution) which are always entered the same way were used to obtain answers to statistical questions. The only computer data which may be inaccurate is the trial rate. It is conceivable that a trial may not have been entered as such. This is not considered especially significant as it would increase trial rate if in error, and the notable factor about trial rate of the subject cases is that it is so high.

Standard deviation was calculated for case age statistics. The deviation from the mean is around 100 for each of the three areas calculated, settlement conference requested, conference held and not requested. This would indicate that case age is dependant on varying factors. In other words, each case is unique.

The responses to the questionnaires are necessarily the subjective opinions of those surveyed. The statistical compilations of questionnaire responses are accurate representations of those opinions.

There were no obstacles presented in this evaluation project which were not fairly easily resolved.

FINDINGS

Survey and case data statistics were represented graphically as well as in table form for ease of understanding. Cumulative answers to survey questions were compiled and depicted in two ways. The answers to the question about the perception of time a case took were depicted on a pie graph in order to illustrate the spread of opinion among litigants and lawyer groups, and also on a bar graph to allow comparison among groups. All other data was displayed on bar graphs because of the bar graph's ability to display differences. Case age for each group was determined to be the average case age. Trial rate was determined by percentage.

The judiciary indicated that settlement conferences should result in a 10% increase in satisfaction expressed by lawyers and litigants. The three satisfaction criteria, perception of case processing time, satisfaction with results and perception of fairness, were tallied and compared separately.

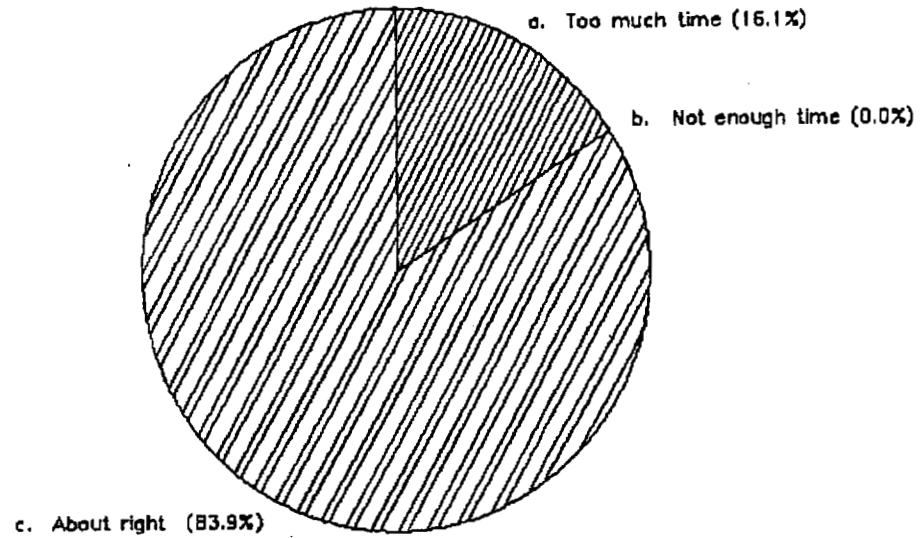
In cases where a settlement conference was requested, 16% percent of the attorneys believed that their case took too much time, contrasted with 9% in the control group. 84% of the attorneys in the former group believed the case had taken about the right amount of time, compared to 88% in the control group (Page 18 & Page 21, figure 3).

Of the litigants in cases where settlement conferences had been requested, 74% believed their case took too long and 22% felt the time was about right. This is contrasted by the control

PERCEPTION OF TIME TAKEN

LAWYERS RESPONSES

Requesting Settlement Conference



Not Requesting Settlement Conference

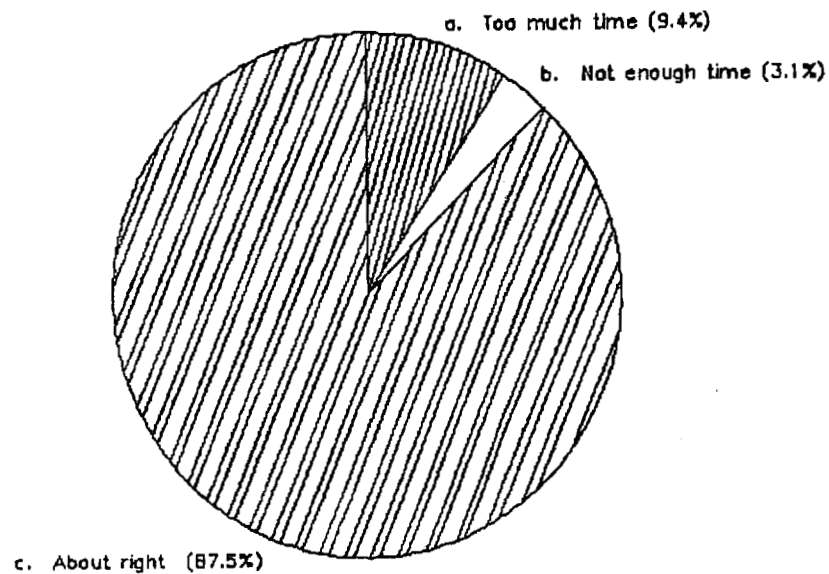


FIGURE 1

group where only 39% felt the case took too long and 61% felt the time was about right (Page 20 & page 21, figure 4).

Generally, the litigants were far more likely to say the case took too long than the lawyers (Page 22). This difference in perspective is illustrated by the following comments on the time perception question. A lawyer wrote, having checked "about the right amount of time," "The case took just over a year." A litigant penned, having checked "Took too much time", "Why does it take almost a year to get a trial date for a divorce?"

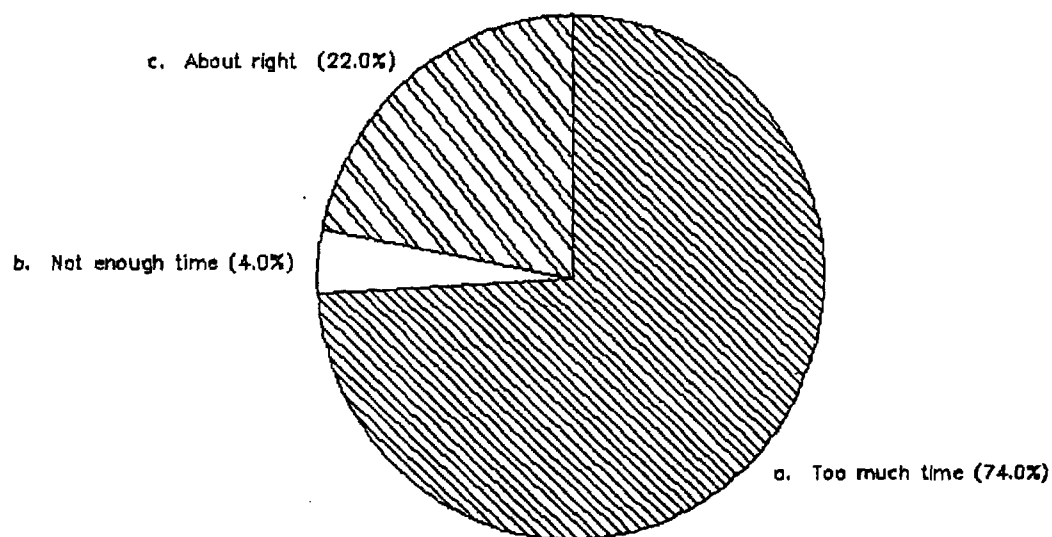
Attorneys in the settlement conference group felt less often satisfied with the results of the case by a rate of 87% verses 96% for the control group. One hundred percent of the responding attorneys who had requested settlement conference believed they were treated fairly, and 96.8% of the lawyers in the control group agreed (Page 21, Figure 3). This percentage drop represents only one lawyer, so may not be particularly significant.

Litigants in the group of cases requesting settlement conferences were satisfied with the results of the case 61% of the time. 82% of the litigants in the control group were satisfied with the results. The control group felt they were treated fairly by a rate of 88%, while only 65% of the settlement conference group felt they had been fairly treated (Page 21, figure 4).

PERCEPTION OF TIME TAKEN

LITIGANT RESPONSES

Requesting Settlement Conference



Not Requesting Settlement Conference

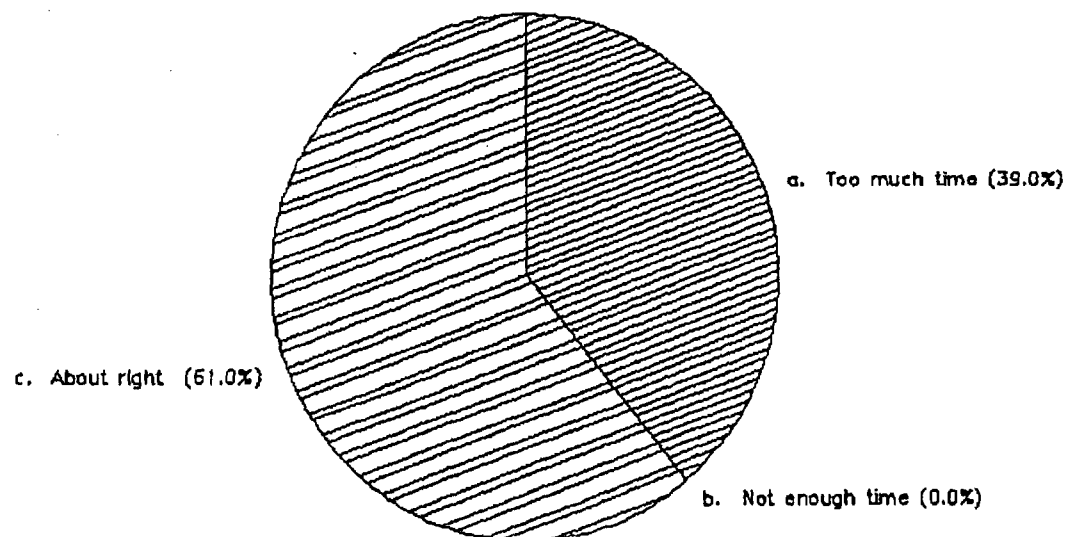
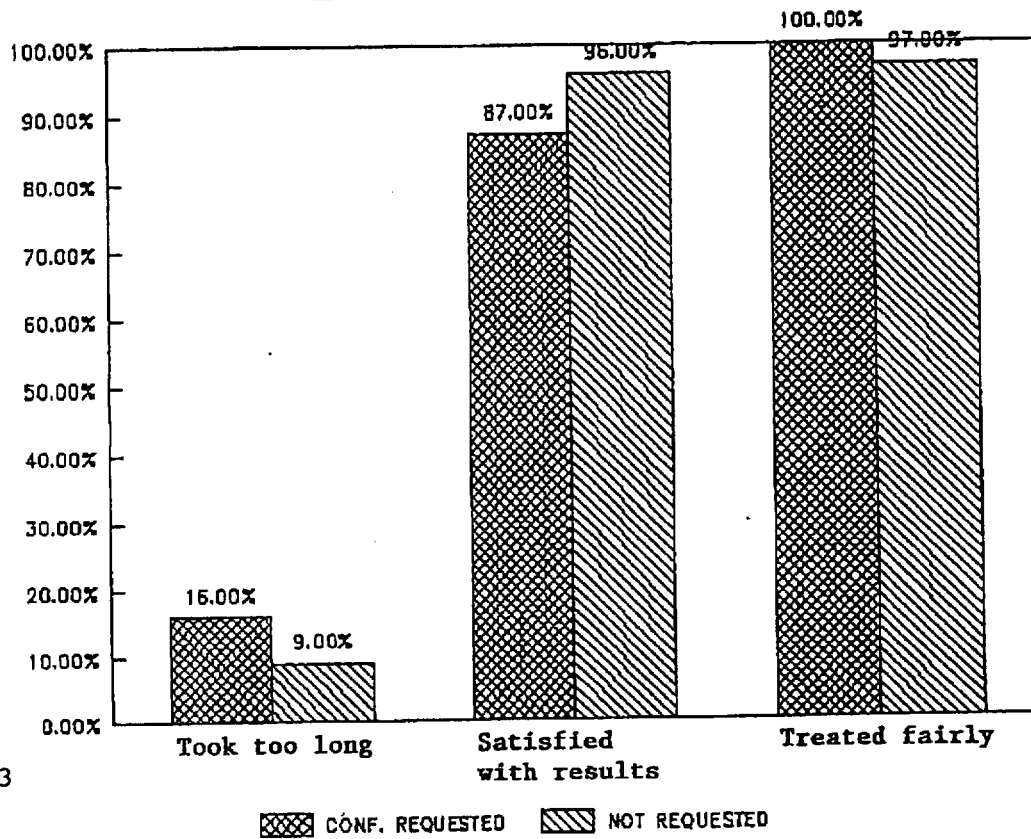


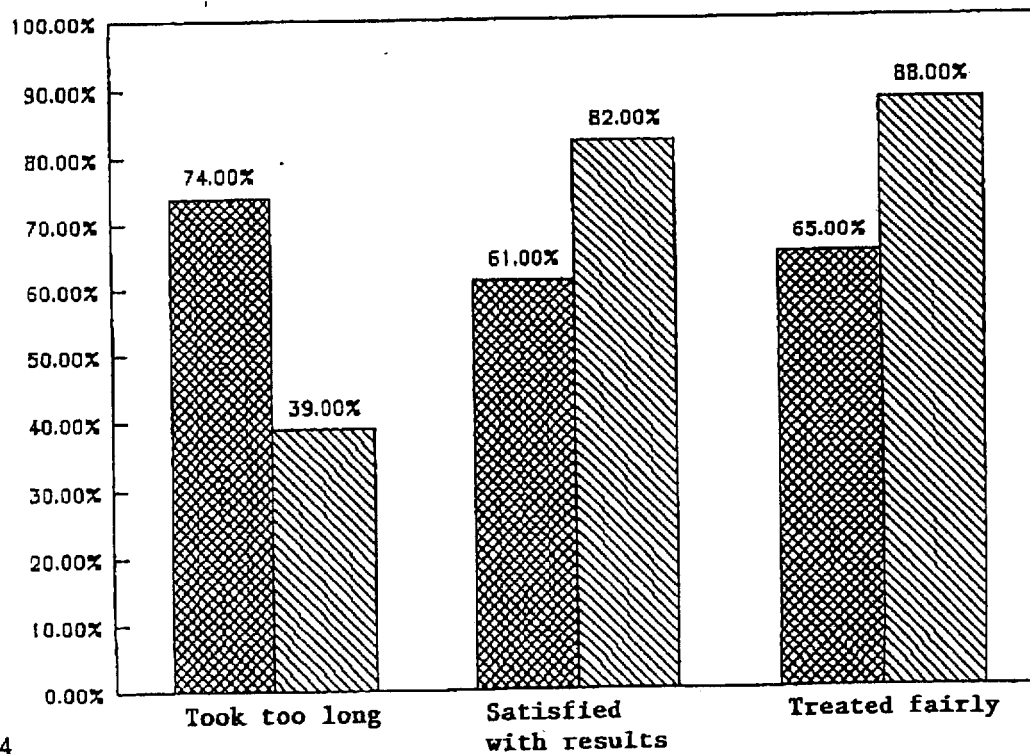
FIGURE 2

CUMULATIVE QUESTIONNAIRE RESULTS

LAWYER PERCEPTIONS

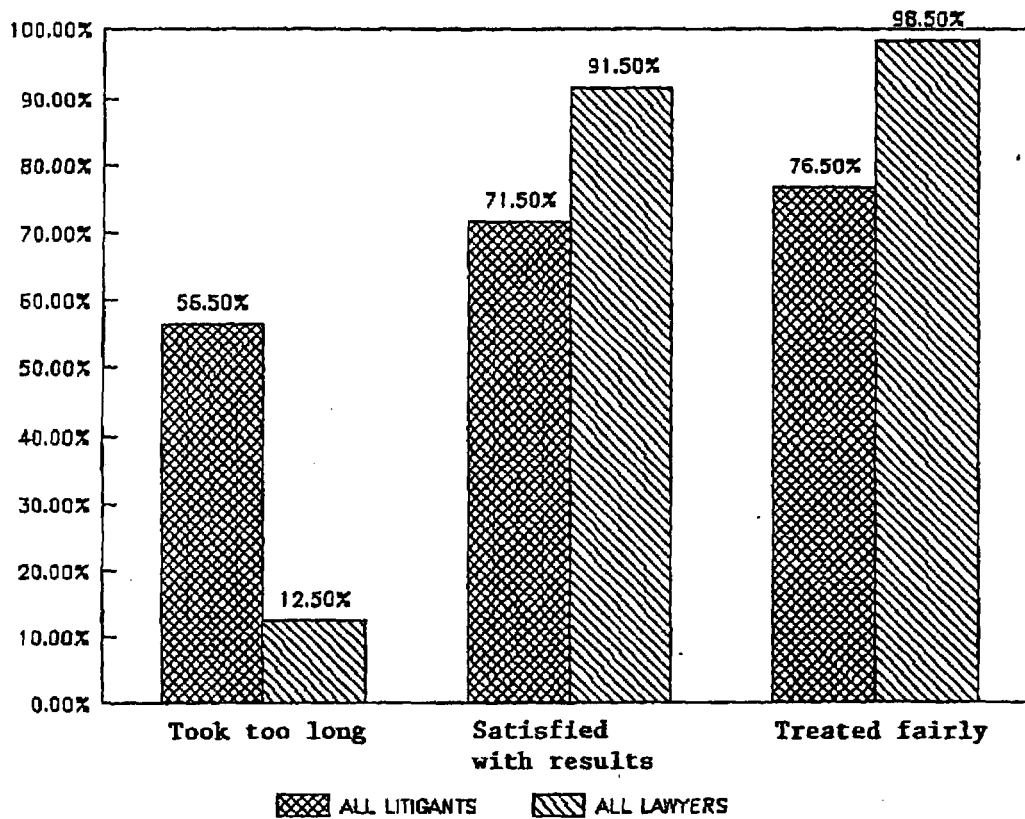


LITIGANT PERCEPTIONS



CUMULATIVE QUESTIONNAIRE RESULTS COMPARED

LITIGANT/LAWYER PERCEPTIONS



Comparing litigants to lawyers: A larger percentage of litigants felt the cases had taken too long. A smaller percentage were satisfied with the results or felt they had been fairly treated.

The data above show that the goal of greater satisfaction with settlement conferences has not been met. Lawyers and litigants were more likely to believe the case took too long and were far more dissatisfied with the results of the case if they had requested a settlement conference than if they had not. Almost three times as many litigants thought they had been treated unfairly among the group requesting conference than among the group that did not.

Some of this dissatisfaction may be explained by the type of settlement conference generally practiced in Pierce County. Since most of the bench use an arbitration style of conference, where the judicial officer listens to both counsel and then states what he/she believes would be the result of the case, perhaps litigants do not feel they have been heard. At least, in a trial, litigants are able to testify. This may apply to a lesser degree to the attorneys as well. Maybe the attorneys do not really feel they had enough time to fully present all aspects of their case.

The judiciary wanted case age reduced by at least 30 days and at least a 10% reduction in trial rate. Case age at resolution averaged 342.12 days for cases requesting a conference and 361.56 days for cases holding a conference compared to 277.38 days for cases where a conference had not been requested (Page 24, figure 6). Trial rate for cases not requesting a conference was 11.47%. For cases requesting a conference the rate rose only slightly to 12%, but cases showing a conference had been held

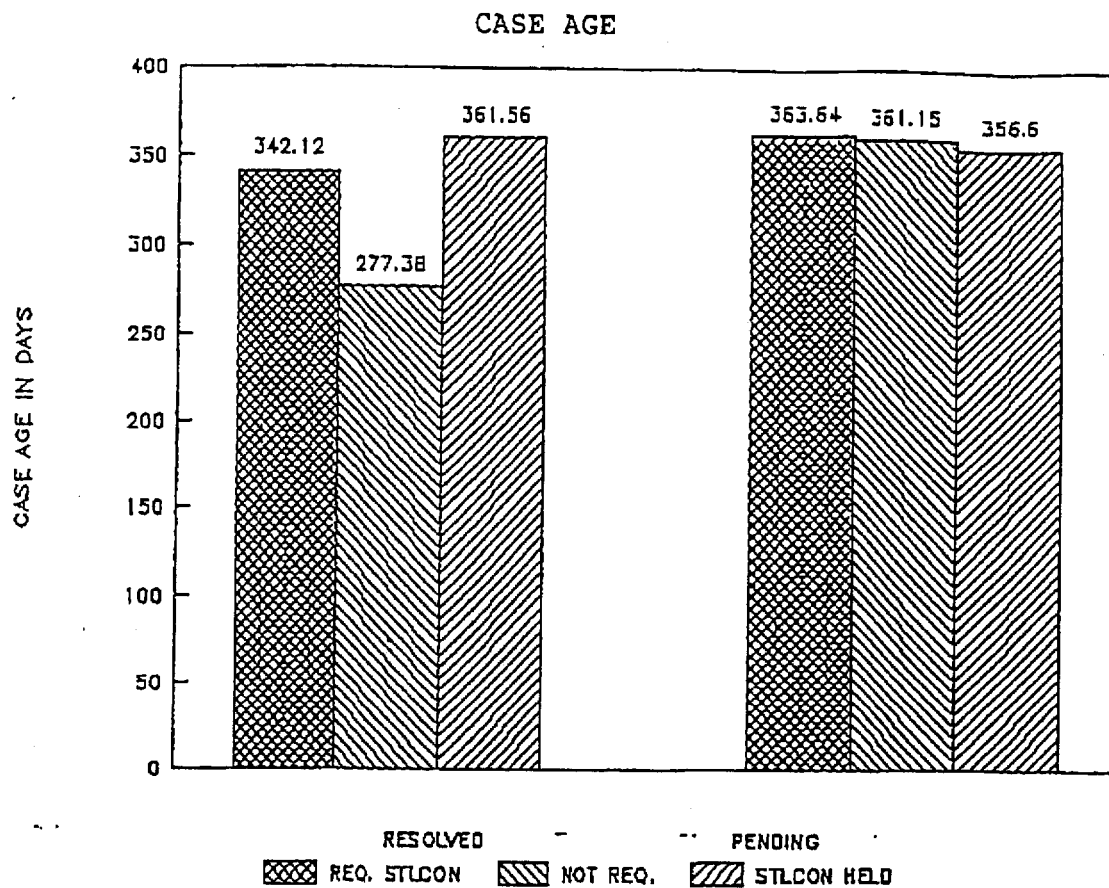


FIGURE 6

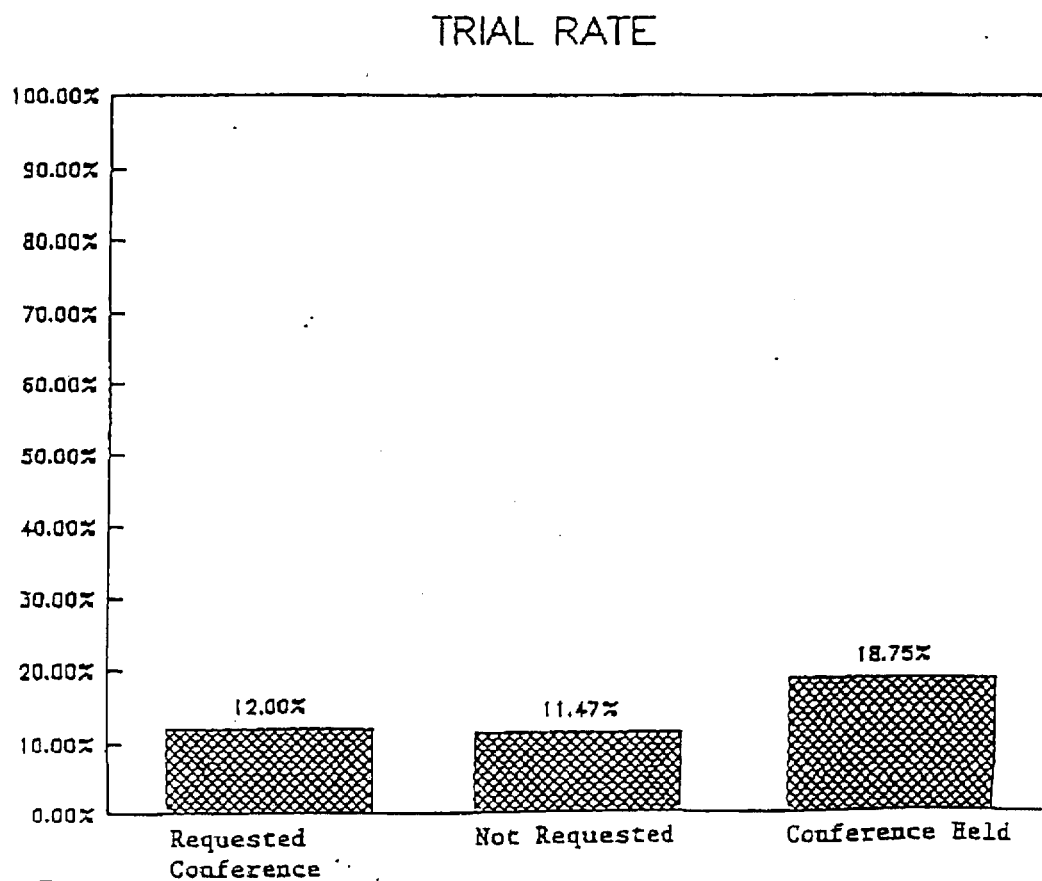


FIGURE 7

were tried at a rate of 18.75% (Page 24, figure 7). Neither case age nor trial rate was reduced.

The overall trial rate is high when compared to the state average of 5%. Washington State statistics from 1986 through 1990 are on page 44. It should be noted, however, that the trial rate was computed only on the 313 subject cases which had set a trial date. Of those only the 208 resolved cases were used in calculations.. If the trial rate had been computed for all 2,062 eligible cases it would be much lower. Assuming a resolution rate of 66.5% at the time of calculation (the resolution rate of the subject cases), the trial rate would be less than 2% for the 2,062 eligible cases. It is possible that some cases were tried without showing a trial date, but there would have been very few.

Trial rate was not expected to decrease, but neither was it expected to be so high. Part of the reason for the high trial rate for cases which held a settlement conference may be that lawyers tend to bring the more complex or highly contested cases to the judiciary in the hopes of settling. Perhaps the trial rate for these cases would be even higher without judicial intervention. Perhaps the judges and lawyers who believe that certain cases would not settle short of trial without a settlement conference are right. There is currently no way to identify case complexity, so there is no way to test this theory.

Case age also may reflect the more complicated cases being the ones most likely to request a settlement conference. Since the mandatory nature of the rule was not being enforced, perhaps

only the most difficult cases were brought to the bench for settlement. If the lawyers could have settled the case earlier and without judicial help, they surely would have.

There were a total of 105 or 33.5% of the 313 analyzed cases unresolved as of the time of compilation. This compares to a 20% pending rate in the population of all eligible domestic cases. The average pending case age for the subject group is 361.41 days. With one-third of the subject cases as yet unresolved, the trial rates could change a great deal as these cases are resolved by trial or settlement. It is obvious that case age at disposition will lengthen as these currently pending cases become resolved.

CONCLUSIONS

Has the mandatory settlement conference rule in Pierce County met the goals and objectives set by the judiciary? The survey results seem to indicate no. Settlement conferences did not reduce time from filing to disposition, did not result in fewer trials, and did not increase satisfaction levels of litigants.

It was expected based on expressed beliefs and earlier research that although settlement conferences may not reduce trial rate, they DO result in earlier dispositions. One author believed that to be the case in her jurisdiction.¹ Case processing time in Pierce County is actually far greater for those cases which held a settlement conference and the trial rate is higher.

Additionally, based on previous research, it was anticipated that settlement conferences would result in greater litigant and lawyer satisfaction.² That was not the case. In no area was satisfaction greater for those litigants or lawyers who had requested a settlement conference, except one more attorney in the settlement conference group felt fairly treated.

Even though none of the stated criteria were meant, it does not seem advisable to scrap the settlement conference rule on the basis of these findings. A two year test of pretrial conferences in New Jersey showed a similar lack of time savings and reduction in case age. Even so, the reporter of the test results did not suggest abandoning the concept because there was an indicated

increase in the quality of trials and, he extrapolated, probably in settlements resulting from pretrials as well. Lawyers who have prepared for a pretrial hearing are better prepared for trial and present less extraneous and repetitive evidence. Pretrial improves the settlement process by increasing the level of mutual knowledge of litigants.³

My recommendation, based on the findings of this project and previous research, would be that we continue our policies in some respects: Judicial officers, other than the assigned trial judge, should conduct the conference.⁴ The court retain responsibility for the conferences as recommended in the report to Conference of State Court Administrators (COSCA).⁵

In other areas, I recommend change: There is evidence that mandatory programs engender higher participation,⁶ but there are reasons not to make a program mandatory. Our litigant and lawyer satisfaction rate was lower for those cases requesting settlement conference. There is also evidence that lawyers for various reasons do not like the court intervening in case management.⁷

In Maine, where arbitration is mandatory for all dissolution cases, the trial rate was shown to be 18% in the report by Clark and Orbeton.⁸ The trial rate in Pierce County for cases which have been through a settlement conference is even a little higher, and is very high compared to the state average trial rate of 5% for civil cases. Though there may be legitimate reasons why the trial rate is high, it does not seem advisable to enforce

mandatory settlement conferences, when the results clearly do not support the stated objectives.

A further argument for a voluntary program is the numbers of cases requesting settlement conferences. Only 36 out of the 313 cases subject to the mandatory settlement conference rule requested the required conference, while 62 dissolution cases filed during the same period which, for one reason or another, were not subject to the rule requested a conference. These rates of utilization indicate that we already have a nearly volunteer program, perhaps it is wisest to keep it so.

Lawyers and judges, spoken to informally, believe that settlement conferences work in the large majority of cases. Informal interviews indicate that many cases would not have settled without the settlement conference. These are reasons to continue the program, even though objectives were not met. If the people involved believe that something is working, perhaps the statistics do not tell the whole story.

Lawyers and judges postulate that cases which come to settlement conference take longer and go to trial more often because these are the more complex cases. This is further support to allow lawyers and litigants to choose which cases are appropriate for settlement conference. Only those cases which cannot be settled by parties and counsel will be brought to the court. The court will not be interfering where it is not needed, and can use limited resources elsewhere.

Settlement conferences should continue to be offered as a service the court will provide for those who wish to take advantage of it. The conferences should continue to be randomly assigned to all judicial officers, so that one or two do not end up with more than they can handle. The court should make no attempt, however, to enforce with sanctions a program which statistically is not meeting its objectives.

Any future program should be statistically monitored and litigants and lawyers who participate should be polled as to their opinions.⁹ A more extensive evaluation than was possible here is recommended. Interview or survey questions should be designed to test the theory that complex cases are more likely to choose to meet with the judiciary before trial. Controls should be initiated to test the effectiveness of the various types of settlement conferences. Lawyers and litigants should be encouraged to suggest how the program might be improved. Lawyers perceptions of the program will be influenced by how much input they believe they had.¹⁰ I will propose meeting with the family law section of the bar to get opinions of this report, its implications and how to proceed from here.

Courts are being challenged not only by a decrease in relative resources but by the proliferation of private dispute resolution providers. Increasingly, we are not the only game in town. In Washington State an organization called JAMS (Judicial Arbitration & Mediation Service) in which retired judges act as arbiters is finding larger and larger participation. More and

more lawyers look to this service or to court supported arbitration as a more efficient way to get conflicts resolved. The court is perceived as cumbersome and time consuming. Each step the court takes to be more cumbersome and time consuming, each extra hearing or procedure we force on lawyers and litigants will make the court a less attractive place to solve problems. This is reality. The court must find innovative ways of being useful or face the possibility that Superior Court will be left to felons and those who cannot afford to go elsewhere. Building a Service Excellent Court has become a mandate.

APPENDICES

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informal and may be upon oral testimony or upon the preplacement report and petitioners' sworn statement in the discretion of the Civil Division. If the court determines that a formal hearing is required, it shall be at such time and upon such notice as it shall direct.

(e) Supporting Documents. No decree of adoption will be signed unless accompanied by written findings of fact and conclusions of law as required by CR 52(a) (2) (B).

[Adopted effective June 1, 1990; amended effective June 3, 1991.]

PCLSPR 94.04 - FAMILY LAW PROCEEDINGS

(a) Uncontested Applications for Marital Dissolution, Decree of Invalidity or Separation.

(1) Uncontested/Default Dissolutions for non pro-se litigants are conducted Monday through Friday commencing at 3:00 p.m. The moving party shall docket these matters by filing a Note for Commissioner's Calendar on a date approved by the Clerk's Office.

(2) Pro Se Uncontested/Default Dissolutions are conducted every Friday commencing at 9:30 a.m. The moving party shall docket these matters by filing a Note for Commissioner's Calendar on a date approved by the Clerk's Office.

(3) Decree or Order. A decree or order shall contain all of the information required by statute.

(4) Presentation of Papers. At the time of hearing upon any uncontested dissolution, invalidity or separate maintenance case, the attorney for the applicant for the dissolution, invalidity or separate maintenance (or the applicant, if pro se) shall present to the court for signature appropriate findings of fact, conclusions of law and decree, and shall immediately after signature by the Court, file the same with the clerk in open court; PROVIDED, that for good cause shown, the court may extend the time for presentation of such findings of fact, conclusions of law and decree.

(5) Reconciliation - Amended Petition. In all dissolution actions where the parties have reconciled, and the reconciliation fails to accomplish its purpose, an amended petition must be served in the manner of original process and filed and no dissolution decree shall be granted until the time for answering such amended petition has expired.

(b) Contested Matters. In all final hearings or trials in dissolution, invalidity or separation cases, each party shall file and serve on the opposing party on a pretrial information form approved by the Court. Such information shall be verified under oath. 33

(c) Family Law Show Cause Matters.

(1) How Initiated. Except for modifications, all motions and returns on order to show cause shall be docketed by filing a Note for Commissioner's Calendar and shall be heard on the basis of affidavit and/or declaration only. These hearings are conducted every Monday through Thursday commencing a 9:30 a.m.

(2) Notice and Hearing. Copies of the motion, Note for Commissioner's Calendar, together with all supporting documents including affidavits, declarations and certified statements must be served on all parties and the Commissioner's Docket Clerk at least six (6) court days before the hearing. Response documents including briefs, if any, must be filed with the clerk and copies served on all parties and the Commissioner's Docket Clerk no later than 12:00 noon two (2) court days prior to the hearing time; and documents in strict reply thereto shall be similarly filed and served no later than 12:00 noon of the court day prior to the hearing.

(3) Confirmations. The moving party must confirm with the Commissioner's Docket Clerk in person or by telephone by noon two (2) court days prior to the hearing; otherwise the matter will be stricken unless an agreed order is to be entered.

(4) Courtroom Assigned. The Commissioner's Docket Clerk shall post outside the courtroom of Civil Division A (Room 100) and Civil Division B (Room 117) which court has been assigned to hear all confirmed motions prior to each morning's docket.

(5) Signing of Court Order. At the conclusion of all family law show cause matters, all counsel or pro se parties involved shall remain in attendance upon the court until the appropriate order has been settled, signed, or a date certain for presentment has been set.

(6) Limits of Argument. On hearing of all family law show cause matters, the court shall direct counsel or pro se parties to appropriate issues and shall place strict limits on the time for argument.

(7) Child Support. In any proceeding in which child support is at issue, support shall be determined and ordered according to the alternative economic table set forth as Appendix A.

(d) Petitions for Modification of Decrees of Dissolution, Invalidity, Separation or Orders of Child Support.

(1) How Initiated. Every proceeding to change or modify any final order, judgment or decree in any dissolution, annulment or separate maintenance action, with regard to maintenance, provisions for separate maintenance, or the care,

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custody, control, or parenting plan of minor children of the parties, shall be initiated by the filing of a verified Petition for Modification, a Uniform Child Custody Jurisdiction Declaration, a certified copy of the existing decree from another county, or foreign decrees entitled to full faith and credit, or a true copy of the previous decree. All motions for modification shall be docketed by filing a Note for Commissioner's Calendar and shall be heard on the basis of affidavit and/or declaration only. These hearings are conducted every Monday through Thursday commencing at 9:30 a.m.

(2) Modification of Temporary Orders. Temporary orders may be modified by motion based upon a change of circumstances. Modification of agreed temporary support orders need not be based upon a change of circumstances.

(3) Notice and Hearing. Copies of the motion, Note for Commissioner's Calendar, together with all supporting documents including affidavits and certified statements must be served on all parties and on the Commissioner's Docket Clerk at least six (6) court days before the date of the hearing. Response documents including briefs, if any, must be filed with the clerk and copies served on all parties and the Commissioner's Docket Clerk no later than by noon two (2) court days prior to the hearing time; and documents in strict reply thereto shall be similarly filed and served no later than 12:00 noon of the court day prior to the hearing.

(4) Confirmations. The moving party must confirm with the Commissioner's Docket Clerk in person or by telephone by noon two (2) court days prior to the hearing; otherwise the matter will be stricken unless an agreed order is to be entered.

(5) Courtroom Assigned. The Commissioner's Docket Clerk shall post outside the courtroom of Civil Division A (Room 100) and Civil Division B (Room 117) which court has been assigned to hear all confirmed motions prior to each mornings docket.

(6) Entry of Decree by Default. No decree of modification of support, visitation, custody or parenting plan shall be entered by default unless the adverse party was served with at least 20 days (60 days if out of state) notice of proceedings together with copies of pleadings.

(e) Settlement Conferences

(1) Designated Commissioner. The commissioner presiding over the Civil Division B shall be designated as the settlement commissioner to hear family law cases. Other judges, commissioners and attorneys may be designated as additional settlement commissioners or judges.

(2) Settlement Procedure.

(i) Conference Required. All family law matters which are set for trial shall be set for settlement conference, except cases wherein parenting plans or child custody is at issue and a guardian ad litem has been appointed. These latter cases involving parenting or custody of children may be set for settlement conference upon the stipulation of all parties. No matter where a settlement conference is required may proceed to trial without the parties having first participated in the settlement conference, unless a signed waiver is in the file.

(ii) Waiver. Upon the filing and presentation of an affidavit or declaration setting forth facts sufficient to show that a settlement conference is not warranted or would be unduly burdensome, the court may order a waiver of the conference. The conference may also be waived if all counsel and their clients sign a stipulated waiver.

(iii) Scheduling the Conference. The parties, pro se or through their attorneys, shall obtain a settlement conference date from the Commissioners' Docket Clerk, which shall keep the calendar. A settlement conference date shall be obtained within 20 days of trial assignment. The day obtained for the settlement conference shall be more than 20 days before the trial date.

(3) Requirements. The attorney, or party, shall prepare a pretrial information form, in content and form as approved by the court, and submit the same to the settlement judge or settlement commissioner not later than two (2) working days prior to the conference. This form may be supplemented but not substituted.

Failure to supply the settlement judge with the appropriate forms in a timely manner may result in the imposition of sanctions as the settlement judge or settlement commissioner may deem appropriate.

(4) Parties to be Present. The parties shall, in all settlement conferences, be available, and the settlement judge or settlement commissioner shall decide whether the parties shall be present in the conference room.

Attendance of a party may be excused where, by reason of health, residency in another state or other good and sufficient reason, such attendance would be unduly burdensome.

Failure of a party or attorney to attend the settlement conference (unless excused) may result in the imposition of terms and sanctions as the settlement judge or settlement commissioner may deem appropriate.

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(5) Proceedings Privileged. Proceedings of the conference shall be privileged and not reported or recorded. No

party shall be bound by any admission, statement or proposal which is not part of a settlement agreement. In the case of a full or partial agreement, the terms thereof shall be reduced to an executed document or placed on the record.

(6) Continuances of Settlement Conference.

Continuances of settlement conferences may be authorized by the settlement judge or settlement commissioner for good cause shown, upon timely application.

(7) Judge or Commissioner Disqualified. A

commissioner or a judge presiding over a settlement conference shall be disqualified from acting as a judge or commissioner as to those matters at issue at the settlement conference, unless all parties agree in writing that the judge or commissioner may hear the matter.

(f) Guardians ad Litem in Child Custody Cases: Limitations on Appointments, Hours and Fees.

(1) Limitation on Appointments. Appointments of guardians ad litem in cases involving the residential placement of minor children shall be limited to those individuals appearing on the Guardian ad Litem Advisory Committee Appointment List administered through the Commissioners' Docket Clerk.

(2) Limitation on Hours and Fees.

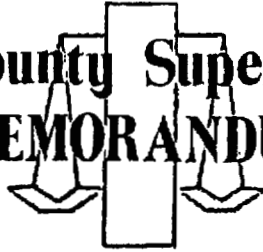
(i) Any individual accepting an appointment shall not charge in excess of 25 hours at \$50.00 per hour without prior court approval of additional work. A guardian ad litem may request a retainer fee of \$350.00 to begin the investigation, and the party or parties obligated to pay the guardian ad litem fee shall then pay this retainer in full. The guardian ad litem's time shall be applied to this retainer at the rate of \$50.00 per hour, and when the retainer is exhausted, the guardian ad litem may request a minimum payment of \$50.00 per month on further hours of service, which the party responsible for the fee shall then pay.

(ii) Any individual accepting an appointment to perform a court-ordered psychiatric, psychological or other mental health evaluation shall not charge in excess of \$500.00 without prior court approval of additional work.

[Adopted effective June 1, 1990; amended effective June 3, 1991.]

Dist. 11/4/91

**Pierce County Superior Court
MEMORANDUM**



TO: ALL JUDGES AND COMMISSIONERS
FROM: ALISON SONNTAG *[Signature]*
RE: QUESTIONNAIRE FOR PHASE III PROJECT
DATE: November 4, 1991

Please fill out and return the attached questionnaire at your earliest convenience. I need your input to determine the success criteria for evaluation of the mandatory settlement conference rule.

The executive committee has already completed an earlier version of this questionnaire. If you have any questions, give me a call.

Thanks very much for your help.

JUDGE'S/COMMISSIONER'S SURVEY QUESTIONNAIRE

Limiting settlement conferences to only two basic types, which of the following more closely matches your concept of a settlement conference?

_____ 1) The judge/commissioner assists the parties in reaching a mutually acceptable agreement.

or

_____ 2) The judge/commissioner listens as both sides represent their respective positions, then tells them how he/she would rule on the case.

Please answer following question, putting a check mark by as many or as few of those which you believe should be considered as success criteria for the mandatory settlement conference rule.

The mandatory settlement conference program should be considered successful if it:

_____ 1) Reduces the trial rate by at least 10%.

_____ 2) Reduces case age at disposition by at least 30 days.

_____ 3) Results in at least a 10% increase in litigants and lawyers expressing satisfaction with the results of the case.

_____ 4) Results in at least a 10% increase in litigants and lawyers expressing satisfaction with their treatment by the court system.

_____ 5) Other (Please specify) _____

JUDGE'S/COMMISSIONER'S SURVEY QUESTIONNAIRE
Cumulative Results

Limiting settlement conferences to only two basic types, which of the following more closely matches your concept of a settlement conference?

4 1) The judge/commissioner assists the parties in reaching a mutually acceptable agreement. *(One judicial officer would prefer this method, but does not feel there is time.)*

or

14 2) The judge/commissioner listens as both sides represent their respective positions, then tells them how he/she would rule on the case. *(Two judicial officers use either method depending upon circumstances.)*

Please answer following question, putting a check mark by as many or as few of those which you believe should be considered as success criteria for the mandatory settlement conference rule.

The mandatory settlement conference program should be considered successful if it:

14 1) Reduces the trial rate by at least 10%. *(One judicial officer said 20%, and one said 50%.)*

11 2) Reduces case age at disposition by at least 30 days. *(One judicial officer suggested 90 days.)*

11 3) Results in at least a 10% increase in litigants and lawyers expressing satisfaction with the results of the case.

13 4) Results in at least a 10% increase in litigants and lawyers expressing satisfaction with their treatment by the court system.

5 5) Other (Please specify) _____

-
1. *Ninety percent of cases (except custody) resolved within six months.*
 2. *Reduces attorneys fees.*
 3. *Results is disposition both sides find satisfactory.*
 4. *If more cases settle than before*
 5. *Issues limited for trial, trial time reduced, attorneys better prepared for trial.*

One judicial officer flatly stated that settlement conferences were a waste of time, and said he believed that pretrial conferences worked better.

Note: Not all judicial officers answered all questions.

March 26, 1992

1~

re: 2~

Dear Counsel:

This case was selected from among cases filed between June 1990 and June 1991 as meeting certain criteria. Questionnaires are being sent to attorneys and litigants in these cases. This questionnaire is designed to test your satisfaction with the process and the results in the case underlined above. Other questions will help categorize your responses.

Please answer the attached questionnaire and return it in the enclosed envelope. This questionnaire is part of a project created to find out from the people who actually use the court system how good a job you think we are doing. The information obtained by this questionnaire will be used to improve our process. Your opinions are important to this project and your input valued.

If I have enclosed a letter for your client, please forward it if you have an address. If you do not, please return the litigant questionnaire to me when you return your own.

If you have any questions, or if you would like to be interviewed in more depth, please call me at (206)596-2990. I truly appreciate your help.

Sincerely,

Alison Sonntag

Superior Court
of the
State of Washington
for Pierce County

ALISON SONNTAG, CALENDAR COORDINATOR
(206)596-2990
SCAN 236-2990

534 COUNTY-CITY BUILDING
930 TACOMA AVENUE SOUTH
TACOMA, WASHINGTON 98402

March 26, 1992

1~

re: 2~

Dear Court User:

Your name was randomly selected as a recent user of the Superior Court system to receive the attached questionnaire. This questionnaire is designed to test your satisfaction with the process and the results in the case underlined above. Other questions will help categorize your responses.

Please answer the attached questionnaire and return it in the enclosed envelope. This questionnaire is part of a project created to find out from the people who actually use the court system how good a job you think we are doing. The information obtained by this questionnaire will be used to improve our process. Your opinions are important to this project and your input valued.

If you have any questions, or if you would like to be interviewed in more depth, please call me at (206)596-2990. I truly appreciate your help.

Sincerely,

Alison Sonntag

QUESTIONNAIRE

- 1) Thinking about the time it took for this case to proceed through the court system, do you believe this case:

_____ a. took too much time.
_____ b. took too little time.
_____ c. took about the right amount of time.

Comments _____

- 2) Are you satisfied with the results of this case?

_____ Yes
_____ No

Comments _____

- 3) Do you believe you were treated fairly?

_____ Yes
_____ No

Comments _____

- 4) This case resolved by:

Settlement Conference with judge _____

Other settlement _____ Trial _____

Other _____ Not resolved _____
(Please state)

- 5) (Attorneys, do not respond to the following question unless you are one of the litigants in this case.)

I was represented by an attorney in this matter.

_____ Yes
_____ No

WASHINGTON STATE STATISTICS

The Superior Courts Civil Activity, 1986-1990

	1986	1987	% Chg	1988	% Chg	1989	% Chg	1990	% Chg
FILINGS									
Torts	19,515	8,007	-59.0%	8,746	9.2%	10,146	16.0%	10,147	0.0%
Commercial	15,571	14,352	-7.8%	13,970	-2.7%	13,633	-2.4%	14,129	3.6%
Property Rights	12,203	13,719	12.4%	15,107	10.1%	15,758	4.3%	15,436	-2.0%
Domestic Relations	43,647	46,114	5.7%	44,251	-4.0%	47,226	6.7%	49,485	4.8%
Admin. Law Review	868	1,102	27.0%	1,244	12.9%	1,588	27.7%	1,397	-12.0%
Other Petitions/Complaints	15,460	17,532	13.4%	21,837	24.6%	23,264	6.5%	25,308	8.8%
Lower Court Appeals	635	656	3.3%	733	11.7%	668	-8.9%	706	5.7%
Total Filings	107,899	101,482	-5.9%	105,888	4.3%	112,283	6.0%	116,608	3.9%
DISPOSITIONS									
Change of Venue	410	383	-6.6%	398	3.9%	545	36.9%	777	42.6%
Lower Court Appeal Decision	333	279	-16.2%	328	17.6%	332	1.2%	337	1.5%
Default Judgmt/Uncontested	29,590	33,679	13.8%	35,168	4.4%	36,685	4.3%	40,091	9.3%
Dismissal	19,177	27,815	45.0%	29,180	4.9%	36,487	25.0%	36,297	-0.5%
Settlement/Agreed Judgment	20,791	22,147	6.5%	22,187	0.2%	22,694	2.3%	25,148	10.8%
Summary Judgment	1,222	1,199	-1.9%	1,144	-4.6%	1,216	6.3%	1,592	30.9%
Judgment After Trial	5,037	7,305	45.0%	8,691	19.0%	9,747	12.2%	9,600	-1.5%
Not Specified	6,408	572	-91.1%	0	-100.0%	0	---	0	---
Total Dispositions	82,968	93,379	12.5%	97,096	4.0%	107,706	10.9%	113,797	5.7%
PROCEEDINGS									
Non-Jury Trial	3,595	3,518	-2.1%	3,678	4.5%	3,706	0.8%	3,971	7.2%
Jury Trial	705	674	-4.4%	736	9.2%	762	3.5%	778	2.1%
Pre-Disposition Hearing	46,189	47,703	3.3%	50,487	5.8%	52,192	3.4%	55,742	6.8%
Disposition Hearing	44,708	46,840	4.8%	50,052	6.9%	54,794	9.5%	59,471	8.5%
Post-Disposition Hearing	17,292	18,886	9.2%	19,065	0.9%	19,223	0.8%	19,157	-0.3%
Total Proceedings	112,489	117,621	4.6%	124,018	5.4%	130,677	5.4%	139,119	6.5%

Trial rate = Non-jury trial + jury trial/total disposition
(i.e., 1986 = 3595 + 705/82,968 = 5.18%)

Source: 1990 Report of the Courts of Washington
Prepared by the Office of the Administrator for the Courts

STATISTICS

Group A: Requesting Settlement Conference

Group B: Not requesting settlement conference

Group C: Actually holding settlement conferences

	Group A	Group B	Group C
AVERAGE CASE AGE AT DISPOSITION: (in days)	342.12	277.38	361.56
TRIAL RATE:	12.00%	11.47%	18.75%

PENDING CASE AGE: (in days)	363.64	361.15	356.60
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PERCENT PENDING:	30.5%	33.9%	23.8%
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PERCENT PENDING ALL SUBJECT CASES: 33.5%

PERCENT PENDING ALL CASES: 19.6%

NOTE: "SUBJECT" CASES REPRESENT DISSOLUTION CASES, WITHOUT CHILDREN WHICH HAVE SET A TRIAL DATE. "ALL" CASES ARE IDENTICAL, EXCEPT HAVE NOT SET A TRIAL DATE.

LAWYER QUESTIONNAIRES

Group A: Requesting settlement conferences

Group B: Not requesting settlement conferences

TIME PERCEPTIONS:	Group A	Group B
Took: Too much time	16%	9%
Not enough time	0	3
About the right amount of time	84	88
	<hr/>	<hr/>
	100%	100%
SATISFIED WITH RESULTS:		
Yes	87%	96%
No	13	4
	<hr/>	<hr/>
	100%	100%
TREATED FAIRLY		
Yes	100%	97%
No	0	3%
	<hr/>	<hr/>
	100%	100%
RESPONSE RATE:		
	45%	48%

LITIGANT QUESTIONNAIRES

Group A: Requesting settlement conferences

Group B: Not requesting settlement conferences

TIME PERCEPTIONS:	Group A	Group B
Took: Too much time	74%	39%
Not enough time	4	0
About the right amount of time	22	61
	<hr/>	<hr/>
	100%	100%
SATISFACTION WITH RESULTS:		
Yes	61%	82%
No	39	18
	<hr/>	<hr/>
	100%	100%
TREATED FAIRLY		
Yes	65%	88%
No	35%	12%
	<hr/>	<hr/>
	100%	100%
RESPONSE RATE:	33%	26%

END NOTES

1. Madelyn Mays stated in her report that she believed that early intervention probably led to earlier resolution. May, Madelyn Botta 1987, Mandatory Settlement Conference Program - Domestic Relations

2. Four separate articles found litigant and/or attorney perceptions were more positive, less negative, or, at least not less positive for dispute resolution methods other than trial. Pearson, Jessica and Nancy Theonnes 1985, "Divorce Mediation: An Overview of Research Results", 19 Columbia Journal of Law and Social Problems 451-484. Emery, Robert E and Melissa M. Wyer 1987, "Divorce Mediation", 42 American Psychologist 472-480. Clarke, Stevens H., Laura F. Donnelly and Sara A Grove 1991, "Court-Ordered Arbitration in North Carolina: Case Outcomes and Litigant Satisfaction:", 14 The Justice System Journal 154-182. Loveland, Geneva Kay, Fall 1991, "Across the Divide: Bench-Bar Perspective on Delay Reduction in California", State Court Journal 18-26.

3. Rosenberg, Maurice 1964, The Pretrial Conference and Effective Justice, a Controlled Test in Personal Injury Litigation, New York, NY: Columbia University Press.

4. Stephen Weller warns of the dangers inherent in settlement conference type hearings. Weller, Stephen Summer 1991, "The Perils and Promise of One Party Discussions", The Judges' Journal.

5. The COSCA Committee recommends, among other things, that the court maintain responsibility for fair and equitable dispute resolution. Committee on Alternative Dispute Resolution, Report to the Membership, Conference of State Court Administrators.

6. Both Emery and Pearson found participation rates to be higher in mandatory programs. Emery, Robert E. and Melissa M. Wyer, IBID. Pearson, Jessica and Nancy Theonnes, IBID.

7. Geneva Loveland found that lawyers are likely to resent a program they do not feel they were part of establishing. Loveland, Geneva Kay, IBID. Maurice Rosenberg found that while some lawyers criticized the mandatory pretrial conference program on the grounds of effectiveness, some were not happy with the court's entering areas previously attorney prerogatives. Rosenberg, Maurice, IBID.

8. Clarke and Orbeton showed that, out of about 4,000 cases, 74% are settled, either within mediation or by the parties, 8% are withdrawn, and the remaining 18% go to trial. Clark, Lincoln and Jane Orgeton 1985, "Mandatory Medication of Divorce: Maine's Experience", Maine Lawyers' Review 25.

END NOTES - CONTINUED

9. The COSCA committee considered resources adequate to monitor the program to be necessary, IBID.

10. Genevra Loveland found that layers who did not feel they had input into the program were more likely to have negative feelings about the program. Loveland, Genevra Kay, IBID.

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