

INFORMATION SHEET

More than Meets the Eye: Civil Case Mediation Usage in the 17th Judicial Circuit

April 30, 2008

BACKGROUND

The 17th Judicial Circuit's Major Civil Case Mediation Program began in 1993 as a pilot project aimed at reducing costs and time to resolution for litigants, as well as providing satisfaction with the legal system. Success with the program led the circuit to make the program permanent, and encouraged other circuits in the state to follow suit. In the last few years, the number of cases reported as being mediated through the court monitoring system maintained by the 17th Circuit's Arbitration Center has started falling. From a record high of 162 mediations in 1995, the number declined slowly over the next several years, until a sudden decline to 32 in 2005. However, anecdotal evidence from lawyers and judges in the circuit indicated that the number of mediations being reported to the court was much lower than the number actually mediated. Because of this discrepancy, the court asked that Resolution Systems Institute study what really was happening with mediation in the circuit. The court was also interested in getting information on what methods over all were being used to settle cases.

METHODOLOGY

The court and Resolution Systems Institute decided that the best method for getting a complete picture of the way in which cases are settling was to gather data from three sources:

- + The number of mediations reported to the 17th Judicial Circuit's Arbitration Center through normal court processes.

- + The number of cases lawyers reported as having been settled through mediation. The lawyers were sent letters requesting information on settlement based upon recorded settlements by judges presiding over civil cases. Lawyer response was 87% for the cases reported by the judges.

- + The number of mediations reported over a four month period by the mediators who responded to requests for information on the cases they mediated.

To eliminate duplications, the cases that were reported as being mediated by these three sources were compared to discover which ones were reported by more than one source. Data was gathered between July 2006, and June 2007.

FINDINGS

Lawyers are using a healthy mix of methods to settle cases.

Of the settlements reported by the lawyers, 65% were through negotiation, 22% through mediation, and 14% through judicial settlement conferences. Two were arbitrated. (This totals more than 100% because more than one settlement method was used in three cases.)

More mediation is occurring than has been reported through the court's monitoring system.

The court officially recorded 17 mediations through the monitoring system maintained by the Arbitration Center. For the study, lawyers and mediators reported 33, for a total of 50.

SUMMARY

A study was conducted of large civil settlements in the 17th Judicial Circuit of Illinois. The study found that 65% of cases settle through negotiation, 21% through mediation, and 14% through judicial settlement conferences. Much more mediation is occurring than is being reported to the court.

However, this number is not complete because mediators only reported for four months, and not all judges with a civil call provided lists of cases that settled. For that reason, the number of mediations that took place during the study was extrapolated from the data at hand. This provided a range of 84 to 132 mediations, with the more likely range being between 84 and 101.

There has been a decline in the use of mediation over the years, but appears to have stabilized.

The number of mediations reached a high of 162 in 1995. It declined to about 100 in 2000 and appears to have remained at around that number.

Pre-suit mediations are occurring.

The mediators reported 7 pre-suit mediations over the four months for which they provided information. However, only 3 are definitely known to have been in the 17th Judicial Circuit. The jurisdiction of the other four is unknown.



RECOMMENDATIONS

Continue encouraging the use of mediation early in the case.

Other research has shown that mediation reduces time to settlement when compared to direct negotiations, particularly when conducted earlier in the case. Settlement without mediation often occurs after most, if not all, discovery has been completed.

Create a better system to monitor the use of mediation.

The current tracking system is only capturing a small percentage of the cases being mediated. A better system is needed so that the court has reliable information it can share with litigators and parties to encourage their use of mediation.

Create a system to monitor the quality of the mediation program.

This includes monitoring the quality of the mediation experience for the parties and the quality of the mediator. Establishing a system for having mediation participants complete post-mediation evaluation forms which are compiled and reviewed by the court on a regular basis is a key part of this process.

Develop or sponsor continuing education seminars for judges, lawyers, and mediators.

The court has an interest in ensuring that all mediations, including those not ordered by the court, are of high quality. If mediation is done well, it can help with court case flow and enhances the experience of litigants. In this area, education may be the best method for maintaining or increasing the quality of the mediations.