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Harvard Law School

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To: Jim Greiner
From: Sara Bobok
RE: James B. Eaglin, *The pre-argument conference program in the Sixth Circuit Court of Appeals: an evaluation* (1990).
Date: February 4, 2019

Title: The Pre-Argument Conference Program in the Sixth Circuit Court of Appeals, an evaluation
Authors: James B. Eaglin, Federal Judicial Center
Location: United States Court of Appeals for the Sixth Circuit
Sample: N = 1525
Timeline: March 12, 1985 to August 20, 1986
Target group: Civil appellate cases
Intervention type: Randomized controlled study assigning civil cases to either receive pre-argument conferences or not
Research papers: N/A
Partners: Federal Judicial Center

Abstract

This study sought to understand the effects of pre-argument conferences on efficiency in court. Pre-argument conferences were a confidential opportunity in which court staff attorneys discussed procedures, appeals, and settlements with civil appeal attorneys. This randomized control test evaluated whether pre-argument conferences were effective in meeting their original objectives of improving court efficiency. The study found that the conferences increased settlement of cases that otherwise would have proceeded to argument and judicial decision.

I. Policy Issue

Courts were overbooked and appellate procedures and issues were often unclear. The pre-argument conference program originated with the hope of increasing court efficiency without increasing the size of the bench. If more appeals were settled or dismissed outside of the court, the judicial workload would decrease. Preargument conferences were meant to create a space in which parties could pursue settlement. Did preargument conferences lower court burdens and for what cases were they most effective?

II. Context of Evaluation

This study was conducted in the United States Court of Appeals for the Sixth Circuit. Sixth Circuit Local Rule 18 established pre-argument conference procedure in 1981, and the program became fully operational in 1982. Conference attorneys were hired to conduct conferences for most civil appeals in order to explore settlement as well as clarify and resolve any procedural or other issues in the appeal. An initial study was run two years after the beginning of the program, but due to inconclusive results the court decided to run a larger, more systematic study.

The Sixth Circuit's conferencing program was substantially different from programs in other courts. For example, the Sixth Circuit conducted conferences over the telephone rather than in-person, as well as are other differences in the staffing and conduct of the program.

III. Details

The study consisted of two groups, a treatment (n = 1,016) and a control (n = 509). The researchers collected cases starting in March 1985 for 17 months until they reached 1,500 cases. They drew the cases from all possible civil appeals, with the exception of agency, Social Security, pro se, prisoner, tax court, and original action cases. They also considered cases in which either parties requested participation in the program, or it was recommended by the court. Approximately one third of the cases were randomly assigned, using a computer-generated randomized procedure, to the control group, and two thirds to the treatment group.

Upon finishing each case, researchers collected the necessary data. They studied the conference attorney's log of activities and frequency/nature of program-related contacts, the information in the case file in the clerk's office, a questionnaire completed by judges and attorneys, and participant-observer data.

IV. Results and Policy Lessons

Pre-argument conferences substantially increased the number of appeals diverted from the argument calendar. 69 percent of control cases reached submission or argument, while this was 12 percent lower, at 57 percent, for treatment cases ($p < 0.05$). Based on these results, approximately 90 appeals a year would be diverted from the court with pre-argument conferencing.

The authors analyzed whether certain types of cases were more likely to settle in one of the two groups. The only category of appeal which was significantly more likely to settle was diversity appeals.

Treatment group cases took 25 fewer days between filing to disposition of any kind, including settlement, dismissal, or judicial decision, compared to control group cases ($p < 0.05$). For submitted appeals, treatment cases took 12 days longer to reach submission from docketing and 11 more days to reach disposition compared to control group cases ($p < 0.05$). Treatment cases averaged 446 days from docketing to closing, compared to 484

days for the control group ($p < 0.05$). There was no statistically significant difference in time between filing and settlement for cases that were settled or dismissed.

There were not statistically significant differences in the length of appellate briefs, or the number of motions filed or disposed.

Questionnaire responses were not analyzed for statistical significance.

V. Quality of the Study

The study was well conducted in that it had a very large sample size to work with. However, there are many structural variables that make the results difficult to generalize to other pre-argument conference programs, such the Second Circuit's Civil Appeals Management Plan (CAMP), which conducts conferences in-person. Additionally, while the attorney questionnaire indicated generally positive feelings towards the program, it is not clear whether the attorneys were more satisfied compared to those who did not participate in the program, since control group attorneys were not surveyed.