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To: Jim Greiner
From: Melissa Gayton
RE: Craig A. McEwen, *An evaluation of the ADR pilot project*, 7 Maine Bar Journal (1992)
Date: June 26, 2018

Title: An evaluation of the ADR pilot project
Authors: Craig A. McEwen
Location: Maine Superior Court, Knox and York counties, ME
Sample: N = 413
Timeline: September 1, 1988 to March 1, 1990
Target group: Civil cases in Superior Court, except appeals from the District Court or administrative agencies, medical malpractice claims, and domestic relations cases.
Intervention type: Alternative dispute resolution
Research papers: https://heinonline-org.ezp-prod1.hul.harvard.edu/HOL/P?h=hein.barjournals/mainebarj0007&i=310
Partners: Maine Judicial Council

Abstract

Courts in the United States sought to reduce the time and cost of handling civil cases and saw alternative dispute resolution (ADR) as one way to achieve these goals. The Maine Legislature established this study in order to reduce the costs and delays of civil litigation in Maine by evaluating the impact of regular pretrial procedures to ADR. This study found that ADR reduced the number of cases going to trial and requiring judicial resolution and also reduced formal litigation activities but did not have a substantial impact on the overall court docket.

I. Policy Issue

Alternative dispute resolution was a means of reducing the time and cost necessary to handle civil cases. In the context of this study, a neutral could either offer a case evaluation, meaning the neutral heard both sides of a case and provide a non-binding opinion on the appropriate outcome, or mediation, in which the neutral/mediator did not announce an opinion but instead help the parties reach an agreement through negotiation. If successful, ADR allows the parties to reach a settlement and avoid going to trial or

engaging in costly formal litigation activities. However, it is unclear how successfully ADR reduces the costs and delays of civil litigation. Does alternative dispute resolution substantially reduce the costs and delays of civil litigation?

II. Context of Evaluation

The Maine Super Court facilitated the study in two counties – Knox, a small, rural county, and York, a large, fast-developing county – between September 1, 1988 and March 1, 1990. The project was a result of the Maine State Bar Association's Alternative Dispute Resolution Commission seeking to find ways to reduce litigation costs and delays and the resulting Legislative Commission to Examine Problems of Tort Litigation and Liability Insurance's recommendations. A subcommittee of the Maine Judicial Council created the final design.

III. Details

Almost all civil cases filed in the Superior Court in Knox and York Counties after September 1, 1988 were eligible to be a part of the study. The study excluded appeals from the District Court or administrative agencies, medical malpractice claims, and domestic relations cases. For civil cases where one party already selected ADR, they received ADR. Self-selection into ADR occurred before randomization and therefore did not compromise random assignment of the other cases. For civil cases where neither party selected ADR, the case received random assignment to ADR or the normal pretrial track. Therefore, there were three groups – a voluntary ADR group ($n = 87$), a "control" group following the standard pre-trial track ($n = 156$), and those randomly assigned ADR ($n = 170$).

For ADR, the clerk would identify three lawyers as eligible mediators and then select one after giving each party a chance to strike any names from the list. There was a time limit for completion of ADR and parties could not engage in formal discovery, though the mediator could require the parties to exchange information informally. ADR could terminate if the mediator determined that reaching settlement necessitated formal discovery. The ADR Conference could use any ADR technique, generally either a neutral evaluation or mediation. ADR proceedings were nonbinding, privileged, and inadmissible as evidence. A $250 fee paid by litigants generally covered the expense of hiring the attorney to do ADR work, but not the administrative costs of the program.

IV. Results and Policy Lessons

Because this report only includes cases through November 30, 1991, approximately 11% of cases were incomplete and the results remain subject to modification.

The use of ADR reduced the number of cases requiring judicial resolution, encouraged earlier settlement of cases, reduced the number of cases that reach trial, and reduced the volume of formal litigation activities such as discovery, motions, and motion hearings. Among completed cases, 20% of the control group underwent resolution through trial or a judicial finding which necessitated discovery, compared to 13% in assigned ADR and 8% in voluntary ADR, which was slightly statistically significant ($p < 0.1$). Cases

assigned to ADR came to completion an average of 60 days earlier than control cases and voluntary ADR cases were disposed of 72 days earlier, which is statistically significant ($p < 0.05$). 57% of control group cases had a trial schedule, compared to 32% of assigned ADR cases and 20% of voluntary ADR cases, which was statistically significant ($p < 0.001$). Finally, voluntary and assigned ADR cases required one third to one half less frequent motions, half as many hearings, and less formal discovery (67% of assigned cases and 54% of voluntary ADR cases compared to 82% of the control group), all of which is statistically significant ($p < 0.01$). However, ADR had no impact on the docket as a whole and created some administrative burden. The lack of impact on the docket as a whole may have reflected the fact that only 15% of 1989 civil filings began ADR in York and Knox counties.

The researchers lacked data on what neutrals did during the ADR conference, although they received questionnaire responses from thirty of the 74 neutrals suggesting wide variation across cases, making conclusions about relative effectiveness of different approaches impossible. There was no statistically significant difference in the type of cases that were most likely to reach settlement through ADR.

V. Quality of the Study

One major flaw of this research is that because all participants who opted for ADR received ADR there is no group comparing those who were in the control condition but preferred the treatment. It is unclear whether this was a choice during the design of the experiment or simply an accident in implementation.

Additionally, because the study made no impact on the docket as a whole and created some administrative burden, the project did not settle definitively whether the benefits of ADR warranted its expansion and renewal. Even after reducing the amount of formal litigation activity and time between filing and settlement, there was no major impact on overall court costs. It is unclear whether the result would be any different if the program expanded.

Finally, without knowing more about how ADR occurred, it is difficult to assess precisely which components of ADR contribute to reducing the time and cost required for each case and which do not.