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To: Jim Greiner
From: Melissa Gayton
RE: Steven H. Clarke et al., *Court Ordered Civil Case Mediation In North Carolina: An Evaluation Of Its Effects* (1995).
Date: Month 1, 2018

Title: Court Ordered Civil Case Mediation in North Carolina: An Evaluation of Its Effects
Authors: Steven H. Clarke, Elizabeth D. Ellen, and Kelly McCormick
Location: North Carolina Superior Court, North Carolina
Sample: N = 349
Timeline: March 1992 to January 1993
Target group: Superior court civil cases except those involving actions for extraordinary writs
Intervention type: Court-ordered mediated settlement conferences (MSCs)
Research papers:
<https://s3.amazonaws.com/aboutrsi/59a73d992959b07fda0d6060/CourtOrderedMedNC.pdf>
Partners: The North Carolina Administrative Office of the Courts, The Institute of Government of The University of North Carolina at Chapel Hill, The State Justice Institute, Interest on Lawyers' Trust Accounts Board of Trustees, the North Carolina Bar Foundation Endowment; the Broyhill Family Foundation; and the Hanes Family Foundation

Abstract

Attorneys, judges, and court administrators in North Carolina predicted that mediated settlement conferences would solve common issues with civil litigation, such as lengthy negotiations, dissatisfaction among litigants, and high workloads for the court. Researchers set out to evaluate to what extent MSC realized these potential benefits, if at all. The study found that MSC reduced the disposition time for cases but did not find evidence to support other benefits.

I. Policy Issue

Civil cases often ended in settlement after a prolonged process of negotiation carried out mostly between the two parties' attorneys. The Mediated Settlement Conference (MSC) had the potential to improve the resolution of civil cases by facilitating faster settlement and increasing satisfaction for both parties. Did court-ordered mediation make the operation of the superior courts more efficient, less costly, and more satisfying to litigants?

II. Context of Evaluation

This study focused on the Mediated Settlement Conference (MSC) program in North Carolina's superior courts. As a result of a planning committee of judges, attorneys, and court administrative officials creating a program for court-ordered mediation, North Carolina General assembly passed legislation requiring the Administrative Office of the Courts (AOC) to conduct a study to determine whether the MSC program could improve the efficiency and quality of the superior courts. North Carolina's MSC program was distinctive from other forms of mediation in its involvement of attorneys, inspired by a similar program in Florida where only experienced attorneys and retired judges were eligible to be mediators. Attorneys also did most of the negotiating during the MSC.

III. Details

Researchers randomly assigned contested civil cases filed in Superior Court in three "intensive-study" counties (n = 254) – Cumberland, Guilford, and Surry – in North Carolina from March 1992 through January 1993 to either a mediation group (ordered to conduct MSCs) or a control group (excluded from MSCs). The authors collected data through questionnaires sent to litigants and their attorneys and the AOC civil case database. In another county, Forsyth County, the authors did not establish a control group or collect litigant or attorney data but did collect court data on both contested and non-contested civil cases (n = 266). Because the sampling fraction was higher in Forsyth county (0.3393 compared to 0.1371), a randomly selected 40.41 percent of the Forsyth sample were ultimately included ($0.4041 = 0.1371/0.3393$). This resulted in a total of 349 closed, contested cases from the four counties. With nine other counties, the authors used court data to track trends in disposition time and jury trial rates. In analyses regarding court record data in the three intensive-study counties, the authors also analyzed a Preprogram Group of civil cases filed in 1989.

IV. Results and Policy Lessons

Based on data from the three intensive-study counties and Forsyth County, 49 percent of cases eligible for MSCs and 65.8 percent of cases in which MSC orders were issued actually went to mediated conferences. 40.9 percent of cases reached full-settlement through MSC, which is consistent with court data across all thirteen counties (45.9 percent). The overall participation rates varied between counties, from 30.7 percent in Cumberland to 73.7 percent in Surry, though the settlement rate was not significantly different between counties.

In the three intensive-study counties, MSC did not significantly affect case outcomes in terms of the amount of monetary and nonmonetary relief received by plaintiffs or

defendants or the likelihood of receiving monetary relief when compared to conventional settlement.

In the three intensive-study counties, the median disposition time for cases in the mediation group was less time than for cases in the control group and preprogram group, but the authors did not indicate at what level this difference was statistically significant if at all.

There were no significant differences in the probability of settlement, the probability of trial, or the number of motions and orders.

Using principal components analysis, the researchers combined litigants' responses into an Outcome/Procedure Satisfaction Score measuring satisfaction with the outcome and procedure of the case and a Cost Dissatisfaction Score measuring dissatisfaction with the money and time spent on resolving the case. For plaintiffs, there was no significant difference between the treatment and control group on either measure. For defendants in the treatment group, there was a small but statistically significant decrease in the Outcome/Procedure Satisfaction score from 4.50 points to 1.26 points out of 42 points. The authors again failed to state at what level this difference was statistically significant.

There were no significant differences in the plaintiff or defendant's attorney fees, time spent, or travel costs when comparing between the treatment and control groups.

There were no significant differences in compliance with judgements between the Mediation and Control groups.

V. Quality of the Study

It is unclear how much of an affect MSC had on either cost or disposition time, because the authors did not state the level of significance. Additionally, the authors often included Forsyth County, where no randomization occurred, in analysis alongside the three counties where participants were randomized. This means that the two groups weren't truly random.

While MSC may have reduced case disposition time, it did not necessarily reduce court workload, because there was no change in the trial rate or the number or orders and motions. According to the authors, judges commented that earlier settlement reduced the number of cases placed on the trial docket, which made it easier for them to re-allocate their time to other cases. The authors did not study trial docketing, which makes it impossible to verify this claim. It would improve the quality of the study or a future follow-up to track trial docketing and the use of judges' time, since this would potentially lend support the argument that reduced case disposition time increases court efficiency.

Because the participation rate was much lower than expected and did not realize the predicted benefits to the court, the study provided only weak support for the continuation of the MSC program. The authors concluded that North Carolina could either choose to continue the program as it was, since people were generally satisfied with it and it cost next to nothing or find ways to improve it.