

Bosserman Center for Conflict Resolution at Salisbury University

An Analysis of Judicial Referrals to ADR in the District Court of Maryland

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Acknowledgments

Undertaking a research project of this nature and magnitude requires considerable coordination of many people and offices. It also requires a large dose of creative thinking, flexibility and teamwork. In this case, special thanks first go to the District Court Judges whose courtroom recordings we were allowed to use for the data analysis. We learned a great deal from these discussions with parties on what can be said that leads litigants to accept the offer to try an Alternative Dispute Resolution (ADR) process. Thanks also go to the Maryland Judiciary ADR staff who thought there was enough merit to this study to be on board and supportive from its inception. Working with the District Court ADR Office, District Court Operations, and the Maryland Judiciary's Mediation and Conflict Resolution Office (MACRO) to design and coordinate the data collection required a good deal of collaboration. Without Jonathan Rosenthal, Rachel Wohl, and Nick White from MACRO, who ushered the project through the internal processes, this project would have ended as nothing more than a good idea. Their patience and flexibility allowed us the chance to collect data on a pressing question that, up to this point, was couched only in hunches from practical experience and professional opinion.

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Executive Summary

This study examines how District Court judges introduce, offer, or direct cases from the bench to Alternative Dispute Resolution¹ (ADR) on the trial date, and how those comments affect the odds that litigants will or will not try ADR for their case. Logistic regression analysis is used to establish if a relationship exists between certain variables and the decision to try the ADR process.

The odds of parties trying ADR **increase** if:

- A judge directs parties to try ADR as opposed to asking parties to try ADR

The odds of parties trying ADR **decrease** if:

- A judge highlights that ADR is a voluntary process
- A judge highlights that ADR is a free process
- A judge highlights that the ADR practitioner is a volunteer

Two other findings worth noting:

- When litigants agree to step out of the courtroom to discuss ADR with the ADR practitioner, only 1% return to the courtroom trial without having tried the process; and,
- When both parties are represented, their odds of trying ADR decreases.

This report discusses the details of the research methods, characteristics of the population studied, and provides more information regarding the above statistics and judges' referral²

¹ The District Court of Maryland's Alternative Dispute Resolution (ADR) Office provides mediation and settlement conference in civil cases in many District Court locations.

² Referral is used in this document in the broadest sense and as a short-hand term to capture the variety of approaches judges use to introduce, offer, or direct cases to ADR.

techniques that had no significant impact. The hope is that this work promotes discussion and consideration of the different methods courts use to engage the public to participate in ADR.

Introduction

Judicial Referrals to ADR

The District Court of Maryland's Alternative Dispute Resolution (ADR) Office provides mediation and settlement conferences in pending **civil** cases in many District Court locations. Cases may be referred to ADR prior to, or on, the trial or hearing date. These ADR services are offered at no charge to the litigants. ADR processes are typically driven by face-to-face interest-based decision making where the parties take the lead in identifying and finding solutions to their issues.

In a pretrial mediation program, civil cases are referred to a partner community mediation center or the law school mediation clinic for *mediation* before the trial date. Impartial mediators will meet with the litigants and their attorneys (if applicable) at a time and location that is convenient to *all* litigants. If the case is not resolved at the pretrial mediation, the case goes to trial on the scheduled trial date. In a pretrial settlement conference, an impartial settlement conference attorney meets with the litigants and their attorneys (if applicable) *at the courthouse* before the trial. If the case is not resolved in the settlement conference, the case goes to trial at the scheduled trial date.

In the District Court ADR Office's Day of Trial ADR Program, one or more impartial mediator(s) or a settlement conference attorney meets with the parties at the courthouse on the day of trial. If the case is not resolved in mediation or settlement conference, the case goes forward to trial on that day.

Day of Trial ADR services are provided free-of-charge to litigants with pending District Court civil cases via a roster of volunteer mediators and settlement conference attorneys (herein

referred to as ‘ADR practitioners’). These ADR practitioners must, at a minimum, meet the qualifications as set forth in rule 17-304 of the Maryland Rules, and participate in an 8-hour new volunteer orientation, an on-site orientation, an apprenticeship process, and periodic monitoring.

Scheduling the Day of Trial ADR Program practitioners occurs on a quarterly basis. Civil docket days of the week, time of day, and the number of courtrooms operating a civil docket, varies from location to location. The dockets staffed by ADR practitioners could involve exclusively small claims cases (amount in controversy is less than or equal to \$5,000.00), large claims cases (amount in controversy is greater than or equal to \$5,000.01, up to \$30,000.00), landlord/tenant matters, or a combination thereof. One to two ADR practitioners are scheduled per civil docket in court locations with a Day of Trial ADR Program. At the time this research was collected, ADR practitioners staff an average of 65 civil dockets on a weekly basis. Referrals made to ADR vary by judge, and not all dockets staffed by an ADR practitioner yield a referral to ADR. To increase the likelihood of a referral to ADR from a particular docket, the Regional ADR Programs Director (RPD), a staff position within the District Court ADR Office, is responsible for screening civil dockets two to seven days in advance of the trial date. The RPD reviews the number of cases scheduled, how many of the cases are contested, and of those that are contested, how many may be appropriate for referral to ADR. The RPD may “flag” those cases as appropriate for referral to ADR (depending on the location of the program) and notify the ADR practitioner of the courtroom(s) s/he should check-in based on the review of the docket.

Purpose of the Study

The purpose of this study is to examine the impact of what judges say from the bench to parties about the use of ADR. Using a variety of statements judges mention, describe, explain, and sometimes promote, ADR to parties. Until now, no systematic content analysis study of the judges' statements about ADR from the bench has been conducted. The goal is to understand how different explanations of ADR, statements of referral, and case-specific characteristics impact the likelihood that people accept or decline to use ADR.

Methodology

This study uses a mixed qualitative and quantitative methodology. A content analysis of judicial referrals to ADR is conducted with emphasis on any mention of ADR and/or any instructions on how to participate given to litigants and attorneys in Day of Trial referrals. This descriptive analysis is the first part of this study. The qualitative data captures the various ways judges instruct, advise, or direct case litigants to try ADR. The second part uses a quantitative technique (logistic regression) to examine and measure the relationship, if any, of the judges' instructions, advice, or directions to the litigants' and/or attorneys' decision to participate in ADR.

Sample Selection: Identifying ADR Referrals through "Green Sheets"

The District Court of Maryland ADR Office regularly collects quantitative data about the cases offered ADR in Day of Trial Programs statewide. Information about cases referred to ADR is captured by the ADR practitioner on the ADR Practitioner Activity Report ("green sheet"). ADR practitioners record each occurrence as they appear in District Court to provide ADR, both when a case is referred to ADR and when no referrals are made. Completed

Practitioner Report (green sheets) are collected by District Court ADR Office staff, reconciled against the quarterly ADR volunteer schedule, and verified for completeness and accuracy.

ADR practitioners volunteer for either a morning or afternoon docket for which between five and 30 cases are set per judge. The ADR practitioner may receive a referral from one to four of these courtrooms (varying from one county to another). While a practitioner is present for about 65 dockets per week across the state, a referral is not necessarily made in every instance and on occasion, multiple referrals occur in a single docket.

An examination of all green sheets submitted during January 2013 was first conducted to identify the characteristics of the potential sample base. The most relevant information from these sheets is the ADR practitioner's record of the courtroom number and/or the name of the presiding judge. This information enables the researcher to identify the docket and request the audio recording where an ADR practitioner was present (and consequently, the judge will have the opportunity to refer cases for ADR). The information gathered from green sheets represent the most important link in determining which dockets will be included in the sample.

Data Sources: Audio Recordings, ADR Practitioner Activity Reports, Case Search

The three sources of data used in the study are audio recordings, ADR practitioner activity reports ("green sheets") and the Maryland Case Search database. A case is included in the study only if data or information is available from all three sources: (a) each case has some associated audio recorded data where judges mention an ADR option to the parties in court, (b) a "green sheet" completed by the ADR practitioner, and (c) background data from the Maryland Case Search database. The latter is especially useful for cases with missing information from the green sheets. Each source of data is explained fully below.

Audio Recording

The primary data set is comprised of 195 CD audio recordings of court proceedings. The CDs contain recordings from civil dockets that occurred between February and April 2013. The CDs are typically divided into AM and PM sessions although some are simply composed of one large audio file. These recordings contain dialogue between judges, attorneys, their clients, and a host of other individuals. The bulk of the recordings range in length from roughly 2 to 5 hours. Researchers listened to these recordings for any mention of ADR. A data collection protocol (explained fully in the Data Collection Protocol section below) is strictly adhered to in the coding process.

ADR Practitioner Activity Reports – “Green Sheets”

Green sheets identify the courtrooms where ADR practitioners are present and, consequently, where presiding judges will have the opportunity to offer litigants the option to try ADR. Information on cases in which participants try ADR is also available from these sheets: source of referral, the name of the judge, case number, names of the plaintiff(s) and defendant(s), represented by counsel, type of case, amount in controversy, case outcome, total amount of time spent in ADR on this case, type of ADR process, and framework practiced. Please see Appendix A for samples of completed green sheets.

Maryland Case Search Database

This online database is maintained by the Maryland Judiciary and provides public access to case records. Any missing information from the green sheet was collected from the Maryland Case Search online database. Searching by plaintiff or defendant name or case number provides background data on each case including: party type (plaintiff or defendant), location (e.g. District

Court in Carroll County), case type (e.g. contract), case status (e.g. Active, Closed, Appealed), document tracking, filing date, and amount in controversy, to name a few of the data points.

The data points and data sources are summarized in Table 1 below.

Table 1. Summary of Data Points and Data Sources

| Data Point | Source |
|---|--------------------------------------|
| Cases receiving referrals | Audio Recording and Green Sheet |
| Transcript of each referral from judge | Audio Recording |
| Other courtroom discussion about ADR | Audio Recording |
| Case information (case characteristics) | Green Sheet and Maryland Case Search |
| Information about ADR Practitioner | Green Sheet |
| Information about ADR processes available | Green Sheet |
| Disposition of cases referred to ADR | Maryland Case Search |

Cases receiving referrals to ADR were then identified based on these data sources. Each case was further categorized as an “ADR case” if litigants agreed to try ADR by stepping out of the courtroom to speak with the ADR practitioner, or as a “non-ADR case” if litigants declined the invitation to participate in ADR. The operational definition (ADR vs. non-ADR) used in this study is whether the litigants stepped out of the courtroom after the judge invited, enjoined, or ordered them to try ADR (including other statements or instructions). We were principally interested in how litigants responded to the judge’s instructions in the courtroom; *if they stepped out of the courtroom we interpreted that as a positive response to the judge’s instruction*. Whether they immediately had a change of heart (refusing even before ADR practitioner started explaining the process for example), or whether they felt unsure or

unconvinced about ADR after practitioner explained the process, their case was still counted as an ADR case for the purposes of this study.³

Development of the Coding System

At the core of this study is the thorough examination of what judges say to litigants about ADR. The process of developing a coding system to capture accurately and categorize judges' statements about ADR began with examining recordings from select sessions in January 2013. The coding scheme was then systematically developed from two initial rounds of audio review. General dialogic themes were identified and the initial working code categories developed. Also identified was how much of the dialogue before and after mentions of ADR was to be transcribed to capture the fullness of the context and the natural cut-off points in the court proceedings where ADR-related matters generally begin or end. The District Court ADR Office provided a select list of cases referred to ADR in the Day of Trial Program in January 2013. The researchers intentionally reviewed cases from the month immediately following revisions to Title 17⁴ took effect. In that time frame, 19 dockets made case referrals to ADR. Fifteen of the 19 docket audio recordings were examined, 10 of which included a mention of ADR. From this, the coding scheme was developed in several stages.

In the first stage, two researchers worked independently to listen to an entire docket and from that transcribe, verbatim, every mention of ADR. The sample of 15 audio recordings came from 15 different dockets. In this stage, the tone⁵ of the dialogue was noted parenthetically.

³ In practical terms this distinction does not materially change the results/conclusions of this study as there are only two respondents who decided to go back to the courtroom after initially agreeing to step out of the courtroom to meet with an ADR practitioner.

⁴ Title 17 of the Maryland Rules of Civil Procedure refers to the rule whereby "a court refers all or part of a civil action or proceeding to ADR."

⁵ While tone was captured in the initial round of transcription, a neutral tone was noted in almost all occurrences. For this reason, the researchers decided against capturing tone in subsequent stages of code development.

Each researcher highlighted specific words and strategies used to create an initial round of in vivo and sociological construct codes.

In the second stage, the researchers compared their respective codes. Each highlighted any mention of ADR, and its corresponding code(s) were compared and discussed. If both researchers used the same code, then the highlighted mention was accepted as being representative of a particular code.⁶ In addition, there were instances when only one researcher identified and transcribed a data point (i.e., a mention of ADR) while the other missed it. To correct for that inconsistency, the time was noted in the transcript and a second round of transcribing was completed to ensure all mentions of ADR were captured. After several rounds of coding and checking each for consistency, the codes were then merged and further refined. More specifically this meant that the codes that were similar were combined and accepted as reliable categories. Further refining was performed on those codes that were not congruent or unique. Once a definition (with properties) was established for data that were initially coded differently (or had different code labels), then that code was entered into the code list.

From this process of independent examination, code development, refinement and code acceptance, a comprehensive list of codes was created. The initial and final list of codes were submitted to MACRO and the District Court ADR Office for their comments and approval. Their thematic groupings are presented below while the complete list of codes is found in Appendix B.

⁶ When codes are systematically developed in this manner a set of quasi definitions or “properties” come to be associated with the code (also known as a label). As more instances of a particular code are identified the chances of enhancing the code due to nuanced examples allows for the code to be further redefined. In some cases, a code such as an “offer” can split into two sub-codes such as “asking” and “ordering.” Likewise, after the data have been coded it is possible to collect all the data instances in one code, print it out for examination and to identify one or two instances that capture the essence of that code. These “ideal” examples are referred to as “exemplars” upon which to provide examples of the code.

Data Collection Protocol

Each audio recording was reviewed by researchers listening to identify any reference judges made regarding the use and/or availability of ADR processes⁷ and/or the availability of an ADR practitioner⁸. Over the life of the project, several researchers collected data along with the assistance of graduate students who were recruited and trained specifically in the data collection method. To ensure that the data collection was accurately performed, a quality control protocol was developed for each person learning the collection method. After a trainee listened to and coded an audio recording, one of the primary researchers would listen to the same audio recording to identify what the trainee was correctly identifying, what they may have missed, and how to clarify and elaborate on the range and variation of means by which judges discuss or mention ADR processes and ADR practitioners. Once a trainee demonstrated an understanding of the scope of the target dialogue and the proper method of transcribing (see below), they were deemed trained. After the initial training was complete, an occasional quality-control spot check was performed whereby a lead researcher would randomly select a recording, listen to it, and compare their capturing of the data and transcription to that of the original researcher. This reassured the team that the researchers were not veering off the data collection protocol method.

The following protocol was established for the collection of the audio data:

1. Listen to all preliminary matters (Generally, the first 45 minutes for each audio recording or docket);

⁷ The phrase “ADR processes” refers to an all-encompassing reference to judge’s comments from the bench where they mention, explain, describe, or define a variety of ADR-related processes. Judges most commonly mentioned mediation, settlement conferences, and facilitation.

⁸ The phrase “ADR practitioner” encompasses any comments by judges that mention a mediator, facilitator, neutral, or third party neutral, etc. In some cases, judges do not use these terms but will mention a particular person and his or her credential(s), and this often also includes membership in the bar.

2. Listen to the first and last two minutes of each case. This rule was developed after listening to several audio recordings from beginning to end. It was determined that the first and last two minutes of a case serve as “natural cut-off points” to decide whether a case will be referred to ADR;

3. Once a reference to ADR is mentioned in the recording, transcribe any mention of:

- ADR (use, explanation, invitation, ADR practitioner);
- Settlement;
- Questions about settlement;

4. Transcribe the dialogue between judges and litigants or counsel regarding ADR:

- Add the following notation to identify the speaker: “J” for Judge, “P” for Plaintiff, “D” for Defendant, “PA” for Plaintiff Attorney, and “DA” for Defendant Attorney;

5. Be generous in what to include. Gather a little dialogue information before and after each mention of ADR to help develop the context.

A copy of the transcription form used by the researchers can be found in Appendix C, Exhibit C1 and a sample transcription is shown in Appendix C, Exhibit C2.

The senior researchers then coded these transcribed statements using the coding scheme described earlier. During this study, only three senior researchers handled the coding of transcriptions. Training and limiting the number of coders fostered transcriptions that were consistently coded.

Sample Data: Descriptive Statistics

The database for this study consists of 242 cases and the respective recorded judges’ statements regarding any mention of ADR. The following sub-sections describe the basic

characteristics of the sample used in this study. Please refer to Appendix D for the corresponding statistical tables.

Characteristics of Study Population

Time Frame (Refer to Appendix D, Table D1)

The time frame for collecting the audio data covered a three-month period between February and April, 2013. The cases were fairly evenly distributed across the data collection period: 36% of the sample were from February, 36% from March, and 29% from April. April has a relatively lower number because some court programs began using a different version of the green sheet. The data-collection for April was effectively truncated.⁹

Geographic Distribution

The geographic coverage in this study includes 14 locations (County/City) in the state as shown in Tables D2 and D3 in Appendix D. Most of the cases included in this study represent four counties: Frederick (25%), Montgomery (22%), Prince George's (12%) and Howard (10%). Those represent the following courthouses: Frederick (60 cases or 25%), Silver Spring (36 or 15%), Upper Marlboro (30 or 12%) and Ellicott City (23 or 10%).

Number of Dockets and Presiding Judges

The 242 cases in this study represent 57 judges and 143 dockets. Ninety-four percent of these dockets referred at least one, and up to three, cases to ADR: 60% of the dockets have one

⁹ The original proposal stipulated the collection period was for April and May 2013. However, changes in green sheet design and formatting, including information collected, were instituted by several local ADR programs. Thus, it was decided to change the time frame to begin in February and conclude in April.

ADR referral per docket, 21% have two ADR referrals per docket, and 13% have three ADR referrals per docket.

Table 2. Number of ADR Referrals Per Docket

| Cases per docket | # | % * |
|--|------------|-------------|
| Total number of dockets in the sample | 143 | 100% |
| 1 ADR referral per docket | 86 | 60% |
| 2 ADR referrals per docket | 30 | 21% |
| 3 ADR referrals per docket | 18 | 13% |
| 4 ADR referrals per docket | 4 | 3% |
| 5 ADR referrals per docket | 4 | 3% |
| 6 ADR referrals per docket | 1 | 1% |

* Percentages total more than 100% due to rounding.

Table 3 below shows that these cases are generally well-distributed across the 57 judges. This is particularly crucial since we do not want a small number of judges' referral styles or statements to unduly skew the results of this study. In the table below, 33% of judges referred one case to ADR in the sample; 46% had 2 to 5 case referrals; and only two judges had more than 20 case referrals in the sample (one referred 22, the other referred 29 cases). To see if the two judges who made 22 and 29 referrals could be skewing the results, analysis was done with and without the data related to these two judges. There were no significant differences in the two data sets, ruling out skewed data results.

Table 3. Number of ADR Referrals Per Judge

| | # | % |
|---|-----------|-------------|
| Total number of judges in the sample | 57 | 100% |
| 1 ADR referral in the sample | 19 | 33% |
| 2 ADR referrals in the sample | 13 | 23% |
| 3 ADR referrals in the sample | 5 | 9% |
| 4 ADR referrals in the sample | 4 | 7% |
| 5 ADR referrals in the sample | 4 | 7% |
| 6 to 10 ADR referrals in the sample | 7 | 11% |
| 11 to 20 ADR referrals in the sample | 3 | 6% |
| More than 21 ADR referrals in the sample | 2 | 4% |

Case Characteristics

Table 4 shows that of the 242 cases where an ADR process is mentioned, explained, described, or discussed by the judge in the recordings, 71% of the cases (172 out of 242) agreed to meet with an ADR practitioner. The remaining 29% declined in the courtroom to meet with an ADR practitioner.¹⁰

Table 4. Sample Composition: ADR versus non-ADR Cases

| | # | % |
|--|------------|-------------|
| Total number of cases | 242 | 100% |
| Parties agreed to meet with ADR practitioner ("ADR Cases") | 172 | 71% |
| Parties did not agree to meet with ADR practitioner ("Non-ADR Cases") | 70 | 29% |

¹⁰ Please refer to the discussion immediately below Table 1 that clarifies the definition relating to "whether the litigants stepped out of the courtroom after the judge invited/enjoined/ordered them to try ADR. We were principally interested in how litigants responded to the judge's instructions in the courtroom; *if they stepped out of the courtroom we interpreted that as a positive response to the judge's instruction.*"

Legal Representation

Legal representation in court may have an impact on parties' acceptance or rejection of ADR. This will be examined in more detail later in the inferential data analysis¹¹ but for now several interesting general observations found in Table 5 are noteworthy. First, in nearly half the cases (46%) neither party has legal representation. Of those represented, the plaintiff is much more likely (29%) to have legal representation than the defendant (11%). Only a fraction of cases (12%) do both parties have legal representation.

Second, two results stand out regarding legal representation. Cases in which both litigants (i.e. both plaintiffs and defendants) did not have legal counsel made up more than half (51%) of the ADR cases, compared to a little over one third (36%) of the non-ADR cases. Non-ADR cases have a higher percentage of cases where both parties are represented: 19% compared to 10% of ADR cases.

Table 5. Legal Representation

| | All Cases | | ADR Cases | | Non-ADR Cases | |
|------------------------------|------------|--------------|------------|--------------|---------------|-------------|
| | # | % | # | % | # | % |
| Total number of cases | 242 | 100%* | 172 | 100%* | 70 | 100% |
| Only Defendant represented | 27 | 11% | 20 | 12% | 7 | 10% |
| Only Plaintiff represented | 70 | 29% | 46 | 27% | 24 | 34% |
| Neither party represented | 112 | 46% | 87 | 51% | 25 | 36% |
| Both parties represented | 30 | 12% | 17 | 10% | 13 | 19% |
| No information provided | 3 | 1% | 2 | 1% | 1 | 1% |

* Percentages total more/less than 100% due to rounding.

Case Type

An overwhelming proportion (80%) of cases in this study are contract cases. The next highest case type, torts, accounts for a significantly smaller percentage of the overall cases (8%).

¹¹ Inferential data analysis makes inferences and predictions about the larger population based on the sample population.

The remaining eight case types found in this study range from 1% to 3% of the cases and together represent 12% of all cases. See Table 6 below.

Table 6. Frequency Distribution by Case Type

| | All Cases | | ADR Cases | | Non-ADR Cases | |
|------------------------------|------------|-------------|------------|--------------|---------------|--------------|
| | # | % | # | % | # | % |
| Total number of cases | 242 | 100% | 172 | 100%* | 70 | 100%* |
| Contract | 193 | 80% | 135 | 78% | 58 | 83% |
| Tort | 20 | 8% | 16 | 9% | 4 | 6% |
| Peace Order | 7 | 3% | 5 | 3% | 2 | 3% |
| Detinue | 4 | 2% | 3 | 2% | 1 | 1% |
| Replevin | 5 | 2% | 2 | 1% | 3 | 4% |
| | | | | | | |
| Rent escrow | 4 | 2% | 3 | 2% | 1 | 1% |
| Forcible entry and detainer | 3 | 1% | 3 | 2% | 0 | 0% |
| Breach of lease | 2 | 1% | 1 | 1% | 1 | 1% |
| Tenant holding over | 2 | 1% | 2 | 1% | 0 | 0% |
| Wrongful detainer | 1 | ** | 1 | 1% | 0 | 0% |
| No information provided | 1 | ** | 1 | 1% | 0 | 0% |

* Percentages total more/less than 100% due to rounding.

** Less than 0.5%.

Claim Amount

Table 7 shows the frequency distribution of the cases by claim amount. Seventy-one percent of the cases offered an ADR option are for small claims, equal to or less than \$5,000 while 19% are for \$5,001 to \$20,000. Only 4% of the cases are claims for more than \$20,000. There is a slight difference in the pattern between ADR and non-ADR cases: in 74% of the ADR cases, the claim amount was between \$0 to \$5,000 compared to 63% for non-ADR cases. The most notable difference between ADR and non-ADR cases was registered for claim amounts between \$5,001-\$20,000, with 15% of the ADR cases and 27% of the non-ADR cases. The logistic regression analysis will delve deeper into this issue of whether a higher claim amount could lead to the rejection of ADR use.

Table 7. Frequency Distribution by Claim Amount

| | All Cases | | ADR Cases | | Non-ADR Cases | |
|------------------------------|------------|-------------|------------|-------------|---------------|-------------|
| | # | % | # | % | # | % |
| Total number of cases | 242 | 100% | 172 | 100% | 70 | 100% |
| \$0 | 10 | 4% | 8 | 5% | 2 | 3% |
| \$1 - \$5,000 | 161 | 67% | 119 | 69% | 42 | 60% |
| \$5,001 - \$10,000 | 27 | 11% | 18 | 10% | 9 | 13% |
| \$10,001 - \$20,000 | 19 | 8% | 9 | 5% | 10 | 14% |
| \$20,001 - \$30,000 | 10 | 4% | 8 | 5% | 2 | 3% |
| Not applicable* | 14 | 6% | 9 | 5% | 5 | 7% |
| No information provided | 1 | ** | 1 | 1% | 0 | 0% |

* Peace Order/Replevin/Tenant Holding Over

** Less than 0.05%.

Length of ADR Session

All cases were conducted in a courthouse. Of those cases reporting the length of time of the ADR session, 54% were conducted in under an hour, 15% took up to two hours, and only 1% went longer than two hours. These statistics should be interpreted with caution though as nearly one-third (31%) provided no information on the length of time the parties spent in ADR.

Table 8. Length of ADR Session

| | ADR Cases | |
|-------------------------|------------|--------------|
| | # | % |
| Total ADR cases | 172 | 100%* |
| Less than 30 minutes | 32 | 19% |
| 31 minutes to 1 hour | 60 | 35% |
| 1 to 2 hours | 26 | 15% |
| More than 2 hours | 1 | 1% |
| No information provided | 53 | 31% |

* Percentages total more than 100% due to rounding.

ADR Outcome

Roughly half the cases (48%) reached a full settlement while in 44% no settlement was reached. Only 2% of the cases reported a partial settlement, and 1% opted to go back to the

courtroom after hearing an explanation about ADR. The remaining 4% of cases in the table provided no information on the outcome.

Table 9. Outcome of ADR Cases

| | ADR Cases | |
|--|------------|---------------|
| | # | % |
| Total ADR cases | 172 | 100% * |
| Full settlement | 83 | 48% |
| No settlement | 76 | 44% |
| Partial settlement | 4 | 2% |
| Opted to go back to courtroom after hearing an explanation about ADR | 2 | 1% |
| No information | 7 | 4% |

* Percentages total less than 100% due to rounding.

Case Disposition of ADR and Non-ADR Cases

Table 10 examines case disposition for both ADR and non-ADR cases. Cases fall into one of three categories: judgments, dismissals and other outcomes.¹² Overall, 52% of all cases had some form of judgment entered while 43% of the cases were dismissed for a variety of reasons. The remaining 5% of cases were still active/open, cancelled, or transferred.

More specifically, for all cases where a judgment was entered, the most frequent type was a trial judgment (35%). By comparison, 33% of the ADR cases and 40% of the non-ADR cases had a trial judgment. The next highest reported category was consent judgment with 7% overall. By comparison, 8% of the ADR cases and 4% of non-ADR cases had a consent judgment.

¹² Other outcomes include: active, bankruptcy, closed, appealed, sub-curia case disposition: dismissal 3-506b, dismissal 3-506, dismissal 3-507, dismissal – neither party appeared, judge in favor of plaintiff, judge in favor of defendant, transferred, and many others

Of those cases that went to ADR, 33% were settled and subsequently dismissed under Rule 3-506¹³ (with 24% specifically under 3-506(b)) compared to 23% (17% under 3-506(b)) of the non-ADR cases dismissed on the same grounds.

Table 10. Case Disposition

| Case Disposition | All Cases | | ADR Cases | | Non-ADR Cases | |
|--|------------------|--------------|------------------|--------------|----------------------|--------------|
| | # | % | # | % | # | % |
| Total number of cases | 242 | 100%* | 172 | 100%* | 70 | 100%* |
| Judgment entered | 126 | 52% | 85 | 49% | 41 | 59% |
| Trial judgment entered | 84 | 35% | 56 | 33% | 28 | 40% |
| Consent judgment entered | 17 | 7% | 14 | 8% | 3 | 4% |
| Affidavit judgment entered | 12 | 5% | 5 | 3% | 7 | 10% |
| Default judgment entered | 5 | 2% | 3 | 2% | 2 | 3% |
| Possession judgment entered | 6 | 2% | 6 | 3% | 0 | 0% |
| Judgment entered (not specified) | 2 | 1% | 1 | 1% | 1 | 1% |
| Case Dismissed | 104 | 43% | 80 | 47% | 24 | 34% |
| Complaint dismissed (Rule 3-506(b)) | 54 | 22% | 42 | 24% | 12 | 17% |
| Complaint dismissed (Rule 3-506) | 20 | 8% | 16 | 9% | 4 | 6% |
| Complaint dismissed (Rule 3-507) | 10 | 4% | 8 | 5% | 2 | 3% |
| Complaint dismissed by court (not specified) | 16 | 7% | 11 | 6% | 5 | 7% |
| Complaint dismissed (voluntary, requested by petitioner, etc.) | 4 | 2% | 3 | 2% | 0 | 0% |
| Active/open/cancelled/ transferred cases or no information provided | 12 | 5% | 7 | 4% | 5 | 7% |

* Percentages total more/less than 100% due to rounding.

¹³ “If an action is settled upon written stipulated terms and dismissed, the action may be reopened at any time upon request of any party to the settlement to enforce the stipulated terms through the entry of judgment or other appropriate relief.”

Audio Transcript Analysis

This section provides an analysis of what judges say in the courtroom about ADR. The analysis is based on the coded audio transcripts summarized in the succeeding tables.

In 53% of the cases in the study, parties heard from one to four different statements (in the form of instructions, descriptions, exhortations, or comments about ADR or the ADR practitioner) from the judge for them to try ADR. The number of statements per case varies from just one (in 17% of the cases in this study) to as many as 16 distinct coded statements (8% of the cases hear from 11 to 16 distinct statements about ADR). The frequency distribution is shown in Table 11 below. On average, judges make five different statements about ADR to litigants.

Table 11. Number of Statements Given by Judges for Each Case Referral

| Number of statements per case | All Cases | | ADR Cases | | Non-ADR Cases | |
|-------------------------------|------------|--------------|------------|--------------|---------------|--------------|
| | # | % | # | % | # | % |
| Total number of cases | 242 | 100%* | 172 | 100%* | 70 | 100%* |
| 1 | 41 | 17% | 26 | 15% | 15 | 21% |
| 2 | 33 | 14% | 27 | 16% | 6 | 9% |
| 3 | 23 | 10% | 18 | 10% | 5 | 7% |
| 4 | 28 | 12% | 21 | 12% | 7 | 10% |
| 5 | 20 | 8% | 13 | 8% | 7 | 10% |
| 6 | 34 | 14% | 24 | 14% | 10 | 14% |
| 7 | 23 | 10% | 15 | 9% | 8 | 11% |
| 8 | 2 | 1% | 2 | 1% | 0 | 0% |
| 9 | 7 | 3% | 7 | 4% | 0 | 0% |
| 10 | 11 | 5% | 7 | 4% | 4 | 6% |
| 11 to 16 | 20 | 8% | 12 | 7% | 8 | 11% |
| Average | 4.9 | | 4.8 | | 5.1 | |

* Percentages total more/less than 100% due to rounding.

Judges' statements about ADR can be classified into five thematic groups:

- a) statements that offer ADR (either by asking or directing)
- b) statements that explain the ADR process to the parties
- c) statements that describe the credentials of the ADR practitioner
- d) statements that expound on the benefits of ADR
- e) statements that caution litigants regarding the reality of trial

The frequency distribution is shown in Table 12 below. Not surprisingly, nearly all case litigants heard an offer to try ADR; the majority heard statements explaining the process, and about half heard about the practitioner's credentials and the benefits of ADR. Judges infrequently mention the "realities" of a trial when referring a case to ADR.

Table 12. General Themes of Judges' Statements*

| | All Cases | | ADR Cases | | Non-ADR Cases | |
|---------------------------------|------------|-----|------------|-----|---------------|-----|
| | # | % | # | % | # | % |
| Total number of cases | 242 | | 172 | | 70 | |
| Theme: Offering ADR | 225 | 93% | 162 | 94% | 63 | 90% |
| Theme: Explaining ADR | 182 | 75% | 130 | 76% | 52 | 74% |
| Theme: Practitioner Credentials | 114 | 47% | 78 | 45% | 36 | 51% |
| Theme: ADR Benefits | 105 | 43% | 71 | 41% | 34 | 49% |
| Theme: Reality of Trial | 44 | 18% | 33 | 19% | 11 | 16% |

* Column percentages total more than 100% due to multiple responses.

Statements Offering ADR (Refer to Tables 13a and 13b.)

Almost all cases (93%) received an offer from the judge to try ADR. Judges either ask or direct litigants to try ADR. Litigants in almost two out of three cases (65%) were directed to try ADR and almost half (44%) were asked to try ADR. In the cases that do exercise the ADR option, 72% were directed to try ADR, while only 49% of those who did not use ADR were

directed to do so. The results here indicate the influence of the judges’ more forceful statement (directing instead of asking) in encouraging litigants to try ADR.

Table 13a. Judges’ Statements Classified Under “Offering ADR” Theme*

| Judges’ Instructions (Coded) | All Cases | | ADR Cases | | Non-ADR Cases | |
|------------------------------|-------------|-----|-------------|-----|---------------|-----|
| | # | % | # | % | # | % |
| Total number of cases | 242* | | 172* | | 70 | |
| OFFER: Directing | 157 | 65% | 123 | 72% | 34 | 49% |
| OFFER: Asking | 107 | 44% | 73 | 42% | 34 | 49% |

* This table shows a partial list of judges’ responses; thus, column percentages may not add up to 100%. The sums can be more than 100% due to multiple responses and more judges mentioning the instructions listed above or the sums can be less than 100% because fewer judges mentioned the instructions listed above.

Statements Explaining ADR to the Parties (Refer to Table 13b below)

Judges typically take time to explain the ADR process. The two statements that judges most frequently use in explaining ADR to the parties involve reassurance that trying ADR will not preclude them from going to trial should their effort fail (mentioned in 49% of cases), and emphasizing the process as facilitating resolution or settlement (46%). The other attributes of ADR are mentioned at a substantially lower frequency: free service (22%), facilitates communication (19%), better use of time (16%), confidential (14%), frequency of resolution (10%), voluntary process (7%), and voluntary settlement (7%).

A comparison of the pattern of judges’ explanations of ADR to litigants produces some interesting patterns. Judges often talk about ADR processes with a slightly different emphasis than the typical description mediators tend to provide in their opening statement. Rather than focusing on attributes of the process (confidential, frequency of resolution, voluntary) and of the practitioner (neutral, impartial, unbiased), judges focus on the ADR process not substituting for trial if it fails, facilitating resolution, and being offered free. It should be noted that comparing

the two types of cases (those that tried ADR and those that did not), the patterns in the frequency of the percentage of the instructions being mentioned remain essentially the same.

Table 13b. Judges’ Statements Classified Under “Explaining ADR” Theme*

| Judges’ Instructions (Coded) | All Cases | | ADR Cases | | Non-ADR Cases | |
|---|------------|-----|------------|-----|---------------|-----|
| | # | % | # | % | # | % |
| Total number of cases | 242 | | 172 | | 70 | |
| EXPLAIN: Guarantee of trial | 119 | 49% | 83 | 48% | 36 | 51% |
| EXPLAIN: Facilitator of resolution/settlement | 112 | 46% | 82 | 48% | 30 | 43% |
| EXPLAIN: Free service | 53 | 22% | 32 | 19% | 21 | 30% |
| EXPLAIN: Facilitator of communication | 45 | 19% | 32 | 19% | 13 | 19% |
| EXPLAIN: Better use of time | 38 | 16% | 30 | 17% | 8 | 11% |
| EXPLAIN: Confidentiality | 35 | 14% | 24 | 14% | 11 | 16% |
| EXPLAIN: Frequency of resolution | 24 | 10% | 13 | 8% | 11 | 16% |
| EXPLAIN: Voluntary process | 18 | 7% | 11 | 6% | 7 | 10% |
| EXPLAIN: Voluntary settlement | 17 | 7% | 15 | 9% | 2 | 3% |

* This table shows a partial list of judges’ responses; thus, column percentages may not add up to 100%. The sums can be more than 100% due to multiple responses and more judges mentioning the instructions listed above or the sums can be less than 100% because fewer judges mentioned the instructions listed above.

Credentials of the ADR Practitioner (Refer to Table 13c below)

Judges also discuss the credentials of the ADR practitioner who will provide the service.

Judges mention a practitioner’s *status as an attorney or his or her affiliation with a bar association* most often (33%), followed by a *personal endorsement* of the practitioner (24%), that he or she is *court approved* (14%), a *volunteer* (13%), and finally, has had *ADR training* (11%). Given the court context, it is not surprising the most frequently mentioned instruction in this category refers to the practitioner’s qualification as an attorney and member of the bar. An interesting distinction between cases that choose ADR and those that did not arises when the

judge mentions the practitioner is an *attorney and/or his or her affiliation with the bar*; this instruction is mentioned in 30% of cases that go to ADR and 40% in those that do not choose the ADR option.

Table 13c. Judges’ Statements Classified Under “ADR Practitioner’s Credentials” Theme*

| Judges’ Instructions (Coded) | All Cases | | ADR Cases | | Non-ADR Cases | |
|---------------------------------------|------------|-----|------------|-----|---------------|-----|
| | # | % | # | % | # | % |
| Total number of cases | 242 | | 172 | | 70 | |
| CREDENTIALS: Attorney/Bar affiliation | 80 | 33% | 52 | 30% | 28 | 40% |
| CREDENTIALS: Personal endorsement | 58 | 24% | 37 | 22% | 21 | 30% |
| CREDENTIALS: Court-approved | 34 | 14% | 24 | 14% | 10 | 14% |
| CREDENTIALS: Volunteer | 31 | 13% | 20 | 12% | 11 | 16% |
| CREDENTIALS: ADR training | 26 | 11% | 21 | 12% | 5 | 7% |

* This table shows a partial list of judges’ responses; thus, column percentages may not add up to 100%. The sums can be more than 100% due to multiple responses and more judges mentioning the instructions listed above or the sums can be less than 100% because fewer judges mentioned the instructions listed above.

ADR Benefits (Refer to Table 13d below)

The frequency with which judges provide instructions on the benefits of ADR are quite interesting. The most frequently made instruction is the mention that ADR can *create better outcomes* (24%). The next most often mentioned instructional code regarding a benefit of ADR is that a case in ADR will be *given priority on the docket* upon settlement (12%). For those who want quick resolution, this may be quite appealing.

The remaining instructional codes for ADR benefits were mentioned as follows: ADR allows parties to *retain control* (10%), try it at *no risk* (10%), build *creative/non-legal opportunities* (10%) and, finally, ADR *allows for compromise* (5%).

Table 13d. Judges’ Statements Classified Under “ADR Benefits” Theme*

| Judges’ Instructions (Coded) | All Cases | | ADR Cases | | Non-ADR Cases | |
|--|------------|-----|------------|-----|---------------|-----|
| | # | % | # | % | # | % |
| Total number of cases | 242 | | 172 | | 70 | |
| ADR BENEFITS: Better outcome | 57 | 24% | 37 | 22% | 20 | 29% |
| ADR BENEFITS: Priority upon settlement | 28 | 12% | 17 | 10% | 11 | 16% |
| ADR BENEFITS: No risk | 25 | 10% | 20 | 12% | 5 | 7% |
| ADR BENEFITS: Retain control | 25 | 10% | 11 | 6% | 14 | 20% |
| ADR BENEFITS: Creative/non-legal opportunities | 24 | 10% | 16 | 9% | 8 | 11% |
| ADR BENEFITS: Allows for compromise | 11 | 5% | 8 | 5% | 3 | 4% |

* This table shows a partial list of judges’ responses; thus, column percentages may not add up to 100%. The sums can be more than 100% due to multiple responses and more judges mentioning the instructions listed above or the sums can be less than 100% because fewer judges mentioned the instructions listed above.

Reality of Trial (See Table 13e below)

The last set of instructional codes—*the consequences of losing* (14%) and *negative emotional outcomes* (12%)—refer to potential negative consequences for not participating.

Table 13e. Judges’ Statements Classified Under “Reality of Trial” Theme*

| Judges’ Instructions (Coded) | All Cases | | ADR Cases | | Non-ADR Cases | |
|--|------------|-----|------------|-----|---------------|-----|
| | # | % | # | % | # | % |
| Total number of cases | 242 | | 172 | | 70 | |
| REALITY OF TRIAL: Consequences of losing | 35 | 14% | 28 | 16% | 7 | 10% |
| REALITY OF TRIAL: Negative emotional outcome | 30 | 12% | 20 | 12% | 10 | 14% |

* This table shows a partial list of judges’ responses; thus, column percentages may not add up to 100%. The sums can be more than 100% due to multiple responses and more judges mentioning the instructions listed above or the sums can be less than 100% because fewer judges mentioned the instructions listed above.

Study Results

Logistic Regression

There are many factors that may affect whether or not a case proceeds to an ADR session. In this study, we posit that these factors include judicial language in introducing, offering, or directing a case to proceed with ADR. Additionally, factual characteristics of the individual case (e.g., presence of counsel or claim amount) may also affect this decision. The researchers used logistic regression to establish and quantify the relationship between these factors and the decision to try ADR.

Logistic regression is a statistical technique that quantifies the relationship, if any, of a set of independent or explanatory variables to a dependent dichotomous variable, i.e., a variable that classifies data into two distinct categories. Examples of a dichotomous variable include variables that take only one of two of the following values: yes or no, true or false, effective or not effective; and in this study, whether or not a case proceeds to ADR, and whether or not a case that proceeded to ADR settles. Because no one factor alone can be the motivating factor behind the decision to participate in an ADR session, the logistic regression model is an appropriate tool to use as it analyzes the impact of several factors in this decision. The results of a logistic regression are based on the odds that an event (in this study, using the ADR option) will occur. For example, if the statement “Judges’ direct the parties to ADR” is statistically significant, the logistic regression results will show the odds of ADR participation when this statement is made by the presiding judge compared to the odds of ADR participation when this is statement is not made by the judge. The results are called the odds ratios. A statement such as, “Litigants are three times more likely to try ADR if the judge direct them to try ADR” is an example of how logistic results are presented and interpreted.

Logistic regression provides insights into (a) case characteristics and judges' statements that increase the likelihood of ADR participation, (b) case characteristics and judges' statements that are "neutral"—there is no evidence to suggest any impact on litigants' decision to try ADR, and (c) case characteristics and judges' statements that are likely to decrease the odds of ADR participation.

What factors determine whether litigants agree to try ADR?

Two sets of factors were identified as potential explanatory variables that influence parties' decision to try ADR. The first set includes case characteristics, such as the amount of the claim and if the parties have legal representation. The second set includes judges' statements. Various iterations of the model (corresponding to various combinations of judges' statements and case characteristics) were conducted; the one deemed "best" is presented here. The choice of this model is based on a consideration of the significant explanatory variables and the one that offers the best explanatory power.¹⁴

The Model: Factors that Affect Parties' Decision to Try ADR

By examining the data and testing various forms of the model, the researchers decided to include the following set of variables as the basis of the final model. Statistical considerations were the main factor by which we chose this model to capture the decision whether or not to try ADR. The model includes the following explanatory variables. The results are presented in Table 14 below.

- (a) The presence of counsel (for both or either party) compared to the absence of counsel for both parties;

¹⁴ Unlike conventional regression analysis where the statistic R-square is used to measure the "explanatory power" of a model, there is no universally-accepted R-square statistic for logistic regression. For lack of a universally acceptable measure of R-squared, researchers use a "pseudo-R square" even if its usefulness is open to debate.

- (b) Judge's directive to try ADR;
- (c) Five (5) statements explaining ADR to the litigants: it is a voluntary process, a free service, there is high frequency of resolution, it is confidential, and the ADR process or the ADR practitioner is a facilitator of resolution or settlement;
- (d) Two (2) statements explaining the benefits of ADR: parties retain control and ADR involves no risk to the parties;
- (e) A statement regarding the ADR practitioner's credentials: that the ADR practitioner was trained in ADR; and
- (f) The ADR practitioner is a volunteer.

**Table 14. Regression Results:
Variables and Statements that Affect Litigants' Decision to Try ADR**

| Column 1: Explanatory Variables | Column 2 Parameter Estimates | Column 3 Parameter Estimate Significance (p-value) | Column 4 Statistical Significant at 95%?* | Column 5 Odds Ratio (Inverse of the odds ratio in parentheses)** |
|---|---|---|--|---|
| Judges' Instructions Theme: Specific Instruction | | | | |
| Offer: Direct | 1.025 | .003 | Yes | 2.788 |
| Explain ADR: Confidential | 1.013 | .106 | No | 2.755 |
| Explain ADR: Voluntary process | -1.268 | .042 | Yes | .281 (1/0.281 = 3.559) |
| Explain ADR: Facilitate resolution/settlement | .783 | .063 | No | 2.188 |
| Explain ADR: Free service | -1.176 | .015 | Yes | .309 (1/0.309 = 3.236) |
| Explain ADR: Frequency of resolution | -1.097 | .079 | No | .334 (1/0.334 = 2.994) |
| Practitioner Credentials: ADR training | 1.338 | .051 | Trending*** | 3.810 |
| Practitioner Credentials: Volunteer | -1.041 | .042 | Yes | .353 (1/0.353 = 2.833) |
| ADR Benefits: No risk | .928 | .150 | No | 2.531 |
| ADR Benefit: Retain control | -1.170 | .052 | Trending*** | .310 (1/0.310 = 3.226) |
| Representation | | | | |
| Representation: Neither party | | .227 | | |
| Representation: Defendant only | -.273 | .635 | No | .761 (1/0.761 = 1.314) |
| Representation: Plaintiff only | -.460 | .236 | No | .631 (1/0.631 = 1.585) |
| Representation: Both parties | -1.003 | .042 | Yes | .367 (1/0.367 = 2.725) |

* Column 4 shows the interpretation of the p-values in Column 3. P-values that are less than 0.05 are considered statistically significant at the 95% level—meaning that the corresponding variable is a statistically significant factor in the model.

** For odds ratios that are less than one, the inverse of each ratio are shown in parenthesis. Please see explanation in the discussion below.

*** Trending results; i.e., the p-values is very close to the cut-off value of 0.05. Please see explanation in the discussion below.

Interpreting the Results

Recall that the main interest in running logistic regression is to establish if a relationship exists between certain variables and the decision to try the ADR process. If a relationship is shown to exist statistically, the subsequent research question is to measure how each of these variables affect the decision to try the ADR process, i.e., whether the presence of a predictor increases the odds of using ADR or decreases the odds of using ADR.

Table 14 lists each of the variables included in our model. The table has five columns: the first lists the variables, and the next four list the important statistics corresponding to each of these variables. The second column shows the estimate of the parameters in the model. These estimates are the bases for the odds ratio, shown in Column 5. The third and fourth columns are related: the third shows the degree of statistical significance and the fourth column interprets the results of the third column by indicating which are and are not statistically significant. The last column shows the main statistic of interest when running logistic regression: the odds ratio. These ratios measure how each of these variables impact the decision to try ADR. The statistical significance and the odds ratios are discussed in the paragraphs that follow.

Statistical Significance

The standard by which most statistical tests are conducted is to use a 95% confidence interval. Table 14 uses the p-value as a measure of this confidence interval. A 95% confidence interval is equivalent to a p-value that is less than 0.05 or 5%. In the context of this study, a p-value of 0.05 or 5% is equivalent to taking a 5% risk of concluding that the presence of a specific statement increases the odds of trying ADR when in reality said statement has no impact on

whether or not litigants try ADR. In other words, there is a 5% risk of reaching an erroneous conclusion.¹⁵

In Column 4 of Table 14, the results show that using the 95% confidence level, the following five variables are statistically significant: (a) judges' directive to try ADR, (b) judges' explanation that ADR is a voluntary process, (c) ADR is a free service, (d) the ADR practitioner is a volunteer, and (e) the presence of representation for both parties. Note that the p-values (Column 3) corresponding to each of these five variables are less than 0.05 (5%).

In the results shown in Table 14, there are two variables where the p-value is very close to 0.05: the ADR practitioner's ADR training (p-value equals 0.051) and the ADR benefit of litigants retaining control (p-value equals 0.052). In these instances where the p-values are very close to the cut-off value of 0.05, they are included in this discussion. We use the term "trending" to indicate these instances. A strict adherence to the cut-off value suggest they are not significant; however, since statistics deals with degrees of uncertainty (say, a 5% risk of committing an error) these instances are worth mentioning.

The next question is how does each of these five statistically significant and two trending variables affect the decision to try ADR? To answer this question, we turn our attention to the odds ratio (last column of Table 14).

Interpreting the Odds Ratio

Each odds ratio presented in Table 14 is the ratio of the odds of having an "event" (agreeing to try ADR) when the corresponding explanatory variable is present, to the odds of

¹⁵ More stringent criterion (say, p-value of 0.01 or 1%) is obviously preferred when the consequences of committing an error is enormous, as in mortality or pharmacological side-effects.

having the same event (agreeing to try ADR) when the corresponding explanatory variable is absent. For example, one statement that judges use to describe ADR is that it is a free service. The odds ratio corresponding to “free service” is the ratio of the odds of trying ADR when “free service” is mentioned to the odds of trying ADR when “free service” is not mentioned.

Odds ratios can take on one of three values: equal to one, greater than one, or less than one. If the odds ratio is equal to one (the odds of trying ADR when “free service” is mentioned is equal to the odds of trying ADR when “free service” is not mentioned) then one can conclude that mentioning that ADR is free has no impact on the litigants’ decision to try ADR.

If the odds ratio is greater than one (the odds of trying ADR when “free service” is mentioned is greater than the odds of trying ADR when “free service” is not mentioned) then one can conclude that the mentioning that ADR is free is associated with the higher odds of the litigants’ decision to try ADR.

If the odds ratio is less than one (the odds of trying ADR when “free service” is mentioned is less than the odds of trying ADR when “free service” is not mentioned) then one can conclude that mentioning that ADR is free is associated with the lower odds of the litigants’ decision to try ADR.¹⁶

With these results in mind, we classify each of the statements in our model as to whether they increase, decrease, or do not impact the odds of using ADR.

¹⁶ One can also interpret the inverse of odds ratios that are less than one. This is discussed in detail under the section “Statements that Decrease the Odds of Using ADR.”

Statements that Increase the Odds of Using ADR

Judges' directing parties to try ADR is important

Not surprisingly, one significant factor that affects whether parties agree to try ADR is judges directing parties to meet with the ADR practitioner. When the judge directs parties to meet with the ADR practitioner, they are nearly three times more likely (odds ratio equal to 2.788 above) to participate in ADR. This contrasts with judges merely asking litigants to try ADR. The asking approach has been consistently shown to be statistically insignificant in all other models tried; i.e., merely asking parties to participate has no impact on their decision to participate.

Statement on ADR training

Mentioning that the ADR practitioner has undergone ADR training suggests that parties are more likely to agree to meet with the ADR practitioner. We note that this is a trending result (its p-value of 0.051 is very close to the cut-off of 0.05). When judges mention this, the parties are almost four times more likely (odds ratio is 3.810 in Table 14) to agree to go to ADR.

Statements that Decrease the Odds of Using ADR

Table 14 shows four statements that result in a reduction of the odds of parties agreeing to meet with the ADR practitioner: (a) ADR is a voluntary process, (b) it is a free service, (c) the ADR practitioner is a volunteer, and (d) parties retain control of the process in ADR. All the odds ratios in Table 14 corresponding to these statements are less than one: these statements decrease the odds of using ADR. Since there are only two possible outcomes, the statement “decreases the odds of using ADR” is equivalent to saying it “increases the odds of not using ADR.” This is how we will interpret these less-than-one odds ratios; we will use the inverse of

these odds ratios and use the equivalent interpretation of “increasing the odds of not using ADR.”

Voluntary process

Making a statement that the process is voluntary makes it less likely that the parties will agree to try ADR (the odds ratio of 0.281 in Table 14). Putting this another way and using the inverse of 0.281 ($1/0.281 = 3.558$): When parties hear that the process is voluntary, the odds of not using ADR increases by 3.5 times.

ADR is a free service

Mentioning that ADR is a free service is not enough incentive for litigants to try ADR; it increases the odds that parties do not try ADR. When judges mention that ADR is offered as a free service, the odds of not using ADR increases three-fold (odds ratio is 3.236).

ADR Practitioner is volunteering his/her services

Mention of the ADR practitioner volunteering their services also reduces the odds of agreeing to ADR or increases the odds of not using ADR. Parties are nearly three times more likely not to try ADR when informed that the ADR practitioner is a volunteer.

Parties retain control of the process

Pointing out that parties retain control of the process more likely increases the odds of not using ADR. The result is trending but points to a three-fold increase (3.226 in Table 14) in the odds that cases do not go to ADR when this statement is mentioned by the judge.

Presence of legal counsel for both parties

The analysis of the presence or absence of counsel for both or one party requires a slightly different interpretation. For this variable each case was categorized as being in one of the following categories: defendant only represented, plaintiff only represented, both parties represented, and neither party represented. The last category serves as the baseline for the comparison. Thus, Table 14 shows the odds of using ADR in the presence of representation (on either or both sides) compared to when neither party is represented.

The results show that only when both parties are represented do we see a statistically significant impact compared to when both parties are not represented. In other words, there is no difference in the odds of the parties trying ADR if only one party is represented compared to when neither party is represented. However, having both parties represented by counsel significantly reduces the odds of trying ADR. When both parties are represented, the odds increase almost three-fold that the parties will not try ADR (2.725 ratio in Table 14).

“Neutral Statements” – Statements that Do Not Affect the Decision to Try ADR

This section briefly lists statements and case characteristics that were statistically insignificant; the statistical results did not provide evidence that these cases characteristics or statements impact the decision to try ADR.

- The claim amount;
- Statements relating to the practitioner’s credentials: an attorney or bar affiliation;
- The judge’s personal endorsement;
- Court-approved;
- Statements relating to the benefits and considered advantages of ADR;

- Creative ways to resolve the case;
- Non-legal opportunities to resolve the case;
- Allows for compromise;
- Priority upon settlement;
- Better outcome; and
- Statements “warning” litigants of the realities of a trial: negative emotional outcome and consequences of losing.

Factors That Affect Settlement among ADR Cases

As a secondary line of investigation, the researchers also examined the factors that affect settlement in cases that used ADR. For cases that went to ADR, there is an almost 50-50 split on the number of cases that settled and did not settle: 87 cases settled (fully or partially) and 76 did not. As in the previous section, we employ logistic regression to determine the factors that increase the odds of settlement. The following factors were included¹⁷ as explanatory variables and whether a case settled (fully or partially) served as the dichotomous dependent variable.

- (a) Representation (whether both or either party is represented compared to cases where both parties are not represented);
- (b) Mediation versus Settlement Conference;
- (c) Time in mediation (more than 30 minutes to one hour and more than one hour compared to sessions that lasted 30 minutes or less); and
- (d) Claim amount (\$5,001 to \$10,000 and more than \$10,000 compared to \$5,000 or less).

¹⁷ The choice of explanatory variables was dictated by data availability.

**Table 15. Regression Results:
Factors that Affect Settlement among Cases that Used ADR**

| Column 1: Explanatory Variables | Column 2 Parameter Estimates | Column 3 Parameter Estimate Significance (p-value) | Column 4 Statistical Significant at 95%?* | Column 5 Odds Ratio (Inverse of the odds ratio in parentheses)** |
|---|---|---|--|---|
| Settlement Conference (compared to Mediation) | .905 | .080 | No | 2.473 |
| Time in session | | | | |
| Up to 30 minutes | | .405 | | |
| 31 minutes to one hour | -.632 | .279 | No | .532 (1/0.532 = 1.880) |
| More than one hour | -.007 | .992 | No | .993 (1/0.993 = 1.007) |
| Claim amount | | | | |
| Claim amount: less than \$5,000 | | .077 | | |
| Claim amount: \$5,001 to \$10,000 | -1.151 | .144 | No | .316 (1/0.316 = 3.164) |
| Claim amount: more than \$10,000 | -2.118 | .045 | Yes | .120 (1/0.120 = 8.333) |
| Representation | | | | |
| Neither party | | .228 | | |
| Defendant only | .219 | .766 | No | 1.245 |
| Plaintiff only | 1.262 | .052 | Trending *** | 3.531 |
| Both parties | 1.505 | .197 | No | 4.506 |

* Column 4 shows the interpretation of the p-values in Column 3. P-values that are less than 0.05 are considered statistically significant at the 95% level—meaning that the corresponding variable is a statistically significant factor in the model.

** For odds ratios that are less than one, the inverse of each ratio is shown in parenthesis.

*** Trending results; i.e., the p-values are very close to the cut-off value of 0.05.

Based on the statistically significant parameter estimates for cases that went to ADR in this sample, the results show¹⁸:

- Settlement conferences are equally likely to settle cases compared to mediation.
- There are no significant differences in the length of the ADR session to the odds of settling the case.
- The odds that cases in ADR do not settle increase by eight-fold (8.333 in Table 15) when the claim amount is more than \$10,000 compared to smaller claims of less than \$5,000. There is no significant difference in the odds of settlement of cases less than \$10,000.
- There is trending to suggest that the odds that cases settle are three and a half times higher (3.531 ratio in Table 15) when only the plaintiff is represented compared to cases where neither party is represented;
- There is no significant difference in the odds of settlement of cases where only the defendant is represented or both parties are represented.

¹⁸ These findings are based on the sample used in this study, not on the overall population of District Court cases.

Summary of Findings

This study was conducted with a very practical consideration: what types of referrals made by judges on the bench encourage parties to agree to try ADR for their case. This study highlights some important findings.

Judges' ability to persuade litigants to use ADR is vital in litigants' decision to try the process. Once litigants agree to try ADR, only 1% come back to the courtroom without having tried the process. That is, once persuaded, almost all go through the ADR process. And, of this number, 48% reach full settlements; 2% reach partial settlements.

The single decisive component in getting litigants to talk with the ADR practitioner is the judges' ability to direct them to try the process. Simply asking the parties, compared to directing them to try ADR, is not persuasive enough for parties to try ADR. Being asked, instead of being directed, is not a limiting or restrictive factor. Other factors might also contribute to their decision to try or not try ADR.

Mentioning the voluntary nature and no-cost aspects of ADR in the courtroom have a negative impact on the litigants' as it reduces the odds of their decision to try ADR. Mentioning that participation is voluntary has the same negative effect.

The presence of counsel for both parties is another factor that reduces the odds of trying ADR. Cases where both parties have counsel are less likely to try ADR compared to cases where neither party is represented.

Most of the advantages of ADR (creative or non-legal opportunities to resolve the case, compromise, priority upon settlement, and better outcome) were statistically not significant in the case litigants' decision to try ADR.

Ultimately, what judges say in court to encourage litigants to try ADR is a matter of personal preference, style, or judgment; this study identifies aspects that could increase the odds that litigants try ADR. What this research aims to accomplish is to increase the odds that litigants “get to the table” to try ADR.

Appendix A: Samples of Completed Green Sheets



DISTRICT COURT OF MARYLAND
ALTERNATIVE DISPUTE RESOLUTION
(ADR) OFFICE

Today's date: 1/22/13
 a.m. docket p.m. docket
 Courthouse: Howard

ADR PRACTITIONER ACTIVITY REPORT

107

Section I. (About today) (if you conduct more than one case today, complete this top section once, but put your name and date on every sheet.)

1. ADR Practitioner Name(s)/ID#: _____
Practitioner #1 (check if one applies: Co-mediation Observer Reviewer)
2. If you are mediating as an affiliate of a community mediation program, indicate name of center here: _____
3. Total time donated today (including travel time, please round up to nearest 1/4 hour): _____ hours (practitioner # 1)
 _____ hours (practitioner # 2, if applicable)
4. Check all that apply: I did not receive any cases today. If you check this box, please do NOT complete Section II below.
 OBSERVERS: I observed (or was scheduled to observe) another practitioner today.
 REVIEWERS: I reviewed (or was scheduled to review) another practitioner today.

Section II. (About this case. Complete this bottom section for each case you get today.)

5. This case was sent to me by: (check one)
 direct referral from judge judge asked for volunteers courtroom clerk referral
 bailiff/sheriff referral party's request attorney's request other
6. Name of Judge for this case: _____
7. Case Number: _____ - 2012 _____
8. Plaintiff(s): _____ 9. Defendant(s): _____
10. Counsel represented: neither party plaintiff only defendant only both other (multiple parties, etc.)
11. Type of case (check only one): Landlord/Tenant Contract Tort (personal injury or auto accident)
 Peace Order Replevin Detinue Other: _____
(Return property and maybe damages) (Return of property or compensation for value and maybe damages)
12. Amount in controversy: (Check "n/a" for Peace Order/Replevin/Tenant Holding Over only)
 n/a \$1 to \$5,000 \$5,001 to \$10,000 \$10,001 to \$20,000 \$20,001 to \$30,000
13. Did this case settle? (Check only one)
 one or more of the participants or their attorneys opted to go back into the courtroom after the ADR process was explained.
 full settlement partial settlement no settlement, but participants did try process
14. Total amount of time spent on this case:
 less than 30 minutes 31 minutes to 1 hour 1 to 2 hours more than 2 hours
15. For this case, I practiced (check all that apply): settlement conference
 solo mediation - facilitative solo mediation - transformative
 co-mediation - facilitative co-mediation - transformative
16. Case 2 of 2 (If you conduct more than one case today, write in the total number of cases you conducted today. Otherwise, just write the number 1. Use a separate sheet for each case.)
17. Comments: _____

check here if comments are continued on back.



DISTRICT COURT OF MARYLAND
ALTERNATIVE DISPUTE RESOLUTION
(ADR) OFFICE

RECEIVED
JAN 23 2013

Today's date: 1/3/2013
 a.m. docket p.m. docket
 Courthouse: ROCKVILLE

ADR PRACTITIONER ACTIVITY REPORT

Section I. (About today) (if you conduct more than one case today, complete this top section once, but put your name and date on every sheet.)

1. ADR Practitioner Name(s)/ID #: _____
 Practitioner # 1 _____ Practitioner # 2 (if applicable) _____
 (circle if one applies: Co-mediation, Observer, or Reviewer)
2. If you are mediating as an affiliate of a community mediation program, indicate name of center here: _____
3. Total time donated today (including travel time, please round up to nearest 1/4 hour): 4 1/2 hours (practitioner # 1)
 _____ hours (practitioner # 2, if applicable)
4. Check all that apply: I did not receive any cases today. If you check this box, please do NOT complete Section II below.
 OBSERVERS: I observed (or was scheduled to observe) another practitioner today.
 REVIEWERS: I reviewed (or was scheduled to review) another practitioner today.

Section II. (About this case. Complete this bottom section for each case you get today.)

5. This case was sent to me by: (check one)
 direct referral from judge judge asked for volunteers courtroom clerk referral
 bailiff/sheriff referral party's request attorney's request other
6. Name of Judge for this case: _____
7. Case Number: _____ - 2012
- 8a. Plaintiff: _____ 8b. Defendant: _____
9. Counsel represented: neither party plaintiff only defendant only both other (multiple parties, etc.)
10. Type of case (check only one): Landlord/Tenant Contract Tort (personal injury or auto accident)
 Peace Order Replevin Detinue Other: _____
 (Return of property and maybe damages) (Return of property or compensation for value and maybe damages)
11. Amount in controversy: (Check "n/a" for Peace Order/Replevin/Tenant Holding Over only)
 n/a \$1 to \$5,000 \$5,001 to 10,000 \$10,001 to \$20,000 \$20,001 to \$30,000
12. Did this case settle? (Check only one)
 one or more of the participants or their attorneys opted to go back into the courtroom after the ADR process was explained.
 full settlement partial settlement no settlement, but participants did try process
13. Total amount of time spent on this case:
 less than 30 minutes 31 minutes to 1 hour 1 to 2 hours more than 2 hours
14. For this case, I practiced (check all that apply): settlement conference solo mediation - facilitative solo mediation - transformative
 co-mediation - facilitative co-mediation - transformative
15. Case 1 of 3. (If you conduct more than one case today, write in the total number of cases you conducted today. Otherwise, just write the number 1. Use a separate sheet for each case.)
16. Comments: _____

Check here if comments are continued on back

Appendix B
Audio Transcription Data Coding List

| Code | Examples of Judges' Statements | Explanation |
|---------------------------------|--|--|
| Theme: Offering ADR | | |
| OFFER: Asking | <p><i>"Do you want to talk to the mediator?"</i></p> <p><i>"Are you interested in talking with a mediator?"</i></p> | Judge is asking party or counsel opinion on appropriateness for mediation, most often by asking if they want to participate in ADR. Coded this way if parties are given the option of ADR. Can come immediately before directing to try ADR. |
| OFFER: Directing | <p><i>"I want you to sit down with the mediator and compare notes."</i></p> <p><i>"I would like you to speak with the mediator and then return to the courtroom."</i></p> <p><i>"I'm going to have you meet with the mediators."</i></p> | Judge indicates that they deem case appropriate for mediation, without soliciting the parties or counsel opinion, and sends parties out of the courtroom with the ADR practitioner. This can be either soft ("I think mediation is a good idea here.") or hard ("Leave the courtroom with the mediator."). The key distinction between Direct and Ask code is with whom the final decision of attending and ADR session rests. |
| Theme: Explaining ADR | | |
| EXPLAIN: Confidentiality | <p><i>"Anything you say is not going to be used at this trial, if there is a trial."</i></p> <p><i>"If you're unsuccessful then what you say in mediation is confidential and you don't have to bring it back into the courtroom."</i></p> <p><i>"Whatever happens outside, I will not be notified of it. If you can't come to an arrangement, then the case would be tried today, and I won't know anything that goes on"</i></p> | Judge explains that the ADR process is confidential, specifically that discussions in mediation cannot be used in the trial, or shared with the Judge. Can include keyword 'confidential' or explain concept of confidentiality. |

| | | |
|--|--|---|
| | <i>outside."</i> | |
| EXPLAIN: Voluntary process | <i>"It is a voluntary proceeding; I'm not ordering you to go."</i> | Judge explains that attending an ADR session is voluntary. Can include keyword 'voluntary' or explain concept of voluntary processes. |
| EXPLAIN: Voluntary settlement | <i>"I'm not ordering you to settle."</i> | Judge explains that coming to a settlement in ADR is voluntary. |
| EXPLAIN: Guarantee of trial | <i>"If you don't come to an agreement, you come in and have a trial." "If you're successful, that's great; if not then come back here and we will have a trial later on."</i> | Judge explains that option for trial will be available regardless of participation in ADR; reassurances that the right to trial has not been waived by participating in ADR. |
| EXPLAIN: Facilitator of communication between parties | <i>"We have Mr. . . . who can assist you in a conversation." "A mediator can help both sides talk to one another and help facilitate those conversations."</i> | Judge explains that either the purpose of the mediation process or the role of the mediator is to facilitate a discussion between parties. Focus is on process of communicating/discussing. |
| EXPLAIN: Facilitator of resolution/settlement | <i>"Do you all wish to have a facilitator speak with you about the possibility of a settlement?" "He is offering his time to talk with you about the possibility of settlement." "A mediator is a person who is not involved in the case, but works with the law, and sometimes provide information to both sides that helps you settle the case."</i> | Judge explains that either the purpose of the mediation process or the role of the mediator is to facilitate a settlement of the case. Focus is the goal of resolution of the case. |
| EXPLAIN: Free service | <i>"There is no charge for this program."</i> | Judge specifies that ADR services are offered free-of-charge. |

| | | |
|---|--|---|
| | <i>"There is no cost to you participating in this effort."</i> | |
| EXPLAIN: Better use of time | <p><i>"We're going to be a good long while waiting to reach this case for trial. The better alternative I would suggest to you is to try to mediate the case."</i></p> <p><i>"It's going to be a while before I get to you so you might as well try to meet with a mediator."</i></p> <p><i>"You might as well make an effective use of your time if you're willing to give it a try."</i></p> | Offering ADR services as efficient use of time while parties wait for their trial. Includes any reference to wait-time while Judge is hearing other matters. |
| EXPLAIN: Frequency of resolution | <p><i>"Approximately 80% of cases are resolved in mediation; You'd be surprised how often parties come to an agreement."</i></p> <p><i>"A lot of people will say-- look judge we've really tried, blah blah blah, we haven't come to any kind of agreement-- and we have found out that about 50% of those cases come to being resolved with the help of our mediator."</i></p> | Any reference to how often cases are settled or parties benefit from ADR services. Can be specific to a percentage of success rates, i.e., 80% of the cases sent to mediation settle, or include any quantitative descriptor, such as "often, most of the time, many times, etc." |
| Theme: Credentials of ADR Practitioner | | |
| CREDENTIALS: ADR training | <p><i>"This is Mr. ..., he's been trained as a mediator."</i></p> <p><i>"Our Alternative Dispute practitioner is a trained and skilled mediator."</i></p> | Any reference from Judge about the ADR practitioner having received ADR-specific training. |

| | | |
|--|--|--|
| <p>CREDENTIALS: Attorney/Bar affiliation</p> | <p><i>"Our facilitators are trained members of the Howard County Bar Association."</i></p> <p><i>"We have a very seasoned attorney here today who is acting as a mediator."</i></p> | <p>Any reference from Judge about the ADR practitioner also being an attorney or a member of the local Bar.</p> |
| <p>CREDENTIALS: Personal endorsement</p> | <p><i>"They are very good at what they do."</i></p> <p><i>"These gentlemen are very experienced."</i></p> <p><i>"Mr. ... is a very well-respected member of the bar."</i></p> | <p>Judge endorses skills of specific ADR practitioner, beyond mentioning that they are trained in ADR or an attorney. Generally should be some form of qualitative language, such as "excellent," "good," etc.</p> |
| <p>CREDENTIALS: Volunteer</p> | <p><i>"She's volunteering her services today."</i></p> | <p>When Judge explains that the ADR practitioner is volunteering their time and/or services.</p> |
| <p>CREDENTIALS: Court-approved</p> | <p><i>"He's the court-appointed facilitator."</i></p> <p><i>"We have a certified mediator available today."</i></p> | <p>Judge specifies that the ADR practitioner is connected with the court or court-approved. Generally implies an approval beyond them being ADR-trained or an attorney.</p> |
| <p>Theme: Benefits of ADR</p> | | |
| <p>ADR BENEFITS: Creative/non-legal opportunities</p> | <p><i>"Come up with a resolution all parties can agree to, even if it's outside the scope of the law."</i></p> <p><i>"Nothing that you say in the course of settlement discussion is going to be admissible to the court so the parties are free to be as candid and open as possible."</i></p> <p><i>"Often times you can reach a resolution much more flexible and</i></p> | <p>References to being able to make an agreement in mediation that a Judge couldn't make, such as agreements outside the scope of the law, partial payment plans, agreements on stipulations to expedite trial, etc.</p> |

| | | |
|---|---|--|
| | <i>satisfactory to the parties since you're not bound by statutes or case law."</i> | |
| ADR BENEFITS: Allows for compromise | <i>"In mediation, sometimes the mediator can do things I can't do, like compromise, or do things by agreement of the parties that I wouldn't be able to do in a judgment."</i> | When a Judge explains that the settlement may require parties to give up some aspects of position, while possibly gaining others. |
| ADR BENEFITS: No risk | <i>"I don't see how it could hurt either of you; There's no reason not to try it." "You don't lose your place in line "Well you've got nothing to lose. If it doesn't work out, it doesn't work out."</i> | A description of ADR process as carrying no associated risks, specifically that parties can attempt ADR without giving up any legal rights. |
| ADR BENEFITS: Priority upon settlement | <i>"If your case is going to settle, let the bailiff know because those cases will be given priority when I get back on the bench." "Now, if by chance you settle, come back and wave a red flag or a handkerchief or something and I'll interrupt the landlord/tenant procedure, so we can put that on the record."</i> | A specific indication from Judge that returning to the courtroom after settling their case in ADR has the advantage of being moved to the head of the docket for recording settlement. |
| ADR BENEFITS: Retain control | <i>"A lot of times it is better to resolve it yourself than having the court dictate the decision." "The other thing that I think is very important is when you mediate a case and you come to a resolution where you have a say in the matter,</i> | An explanation that the parties will have control over the resolution of their case. |

| | | |
|---|---|---|
| | <i>it feels nicer. You know, you've had a say in it, and both sides have."</i> | |
| ADR BENEFITS: Better outcome | <p><i>"You can often come to an agreement more satisfactory to you than a result after a trial."</i></p> <p><i>"Sometimes if you meet with a third party, you can find what evidence you don't have, what evidence you do have, and what your situation might be, sometimes you can find a way to resolve it with the help of a mediator."</i></p> | Any mention of ADR outcomes generally being 'better' than trial outcomes; does not specifically reference the ways it might be better that are captured in other codes, such as there being room for compromise, room for non-legal settlements, etc. |
| Theme: Reality of Trial | | |
| REALITY OF TRIAL: Negative emotional outcome | <i>"50% of people will walk out of here unhappy when the judge makes a ruling."</i> | Any time a judge refers to the losing parties' potential negative emotional state after a trial. |
| REALITY OF TRIAL: Consequences of losing | <p><i>"In a trial, there is one loser and one winner; If you lose your case, you could be facing a judgment against you that could ruin your credit."</i></p> <p><i>"Because it may be, if the court decides the case, one side will take all and the other side will take nothing."</i></p> <p><i>"The advantage to mediation, quite frankly, is this: if we have a trial somebody is going to win and somebody is going to lose."</i></p> | Specific reference from Judge that in traditional litigation, there is one winner and one loser. Can also extend to consequences of losing, such as judgment, credit, etc. |

Appendix C

Transcription Form and Sample Audio Transcription

Exhibit C1. Blank Transcription Form

| | | | |
|--|---------|---------|--------|
| Date: | County: | Docket: | Judge: |
| TRANSCRIPT: List below specific examples from the transcripts, and in the right column, label the example with a specific theme | | | |
| Time (on tape) & Case #: | | Code: | |
| Ending Time: | | | |
| Time (on tape) & Case #: | | Code: | |
| Ending Time: | | | |
| Time (on tape) & Case #: | | Code: | |
| Ending Time: | | | |
| Time (on tape) & Case #: | | Code: | |
| Ending Time: | | | |
| Time (on tape) & Case #: | | Code: | |
| Ending Time: | | | |

Exhibit C2. Sample Transcription

| Date: | County: [information deleted] | Docket: AM | Judge: [information deleted] |
|--|--------------------------------------|---|-------------------------------------|
| <p>TRANSCRIPT: List below specific examples from the transcripts, and in the right column, label the example with a specific theme</p> | | | |
| <p>Time (9:03:08) Introduction: Judge: Good morning ladies and gentleman please be seated. Welcome to a session of the District Court of *** County. This morning we do have a civil docket. We will be beginning the docket with landlord/tenant matters that are before the court this morning. We do have with us Mr. *** and Mr. ***. Members of the *** County Bar Association standing behind you there in the courtroom. These gentlemen are very experienced civil attorneys in *** County who are willing to offer their services free of charge to you, in order to try to facilitate resolution to your case. I am going to ask you to stand where you are. Judge asks mediators to come forward. Judge: If you're involved with these matters I'm going to ask you to please accompany Mr. *** and Mr. *** in an effort to try to facilitate a resolution of your case. And as I've said if you can't reach a resolution, you're welcome to come back in the courtroom and the court will hear your case. Time (9:07:35) & Case #: Judge calls cases: Case *** I'm going to ask you to meet the mediators, I mean facilitators, outside of the courtroom. Thank you. Case *** Would you please meet with the facilitators outside. Thank you</p> | | <p>Code: Credentials: Bar Association Credentials: Judges personal endorsement Credential: Attorney Explain: Free Service Explain: Mediator role as facilitator of resolution Offer: Order Explain: Mediator role as facilitator of resolution Explain: Guarantee trial Offer: Order Offer: Order</p> | |
| <p>Time (1:05:08) Introduction: Judge: We do have with us this afternoon Mr. ***, a member of the *** County Bar Association. He is an experienced lawyer who has been in practice for a number of years. He is very experienced in litigation as well. He's here offering his services free of charge in order to try to facilitate a resolution of any cases that are before the court today. If I make a determination that you may benefit from his services, what I will do is I will ask you to leave the courtroom with him and he will sit with you in an effort to try to facilitate a resolution. If a resolution cannot be reached of course, then you do have the right to come back and have a trial today. Judge: Before I get started with those matters, I'm going to call names, and just stand where you are. The matter of *** and ***. Ms. *** (Plaintiff) are you present in court? Plaintiff: Yes Judge: Do you believe that perhaps talking about this matter in an effort to try to reach a resolution might be helpful? The reason is I cannot call this matter until late afternoon. What do you think? Plaintiff: Your honor, I'm always happy to talk and to try to resolve.</p> | | <p>Code: Credentials: Bar Association Credentials: Lawyer Credentials: Judges Personal Endorsement Explain: Free service Explain: Mediator role as facilitator of resolution Offer: Ask Explain: Mediator role as facilitator or resolution Explain: Guarantee of trial Offer: Ask Explain: Voluntary</p> | |

Judge: It's up to you Ms.***, do you think it would be of some help to try to do that? Now remember, you're not bound to do anything you don't want to do. Do you understand that? I want to make sure you understand.
Plaintiff: I understand.
Judge: OK. I'm going to ask you to please go outside and meet with the mediator. Remember there can't be any contact between the two parties.
Defendant: I understand.
Judge: Ok great. Please go outside and do that, and if you can't come up with something, then we'll continue with this matter in the afternoon.
Thank you.

process
Offer: Order
Explain: Guarantee of trial

Appendix D
Statistical Tables: Sample Characteristics

Table D1. Distribution of Cases by Month

| | All Cases | | ADR Cases | | Non-ADR Cases | |
|------------------------------|------------------|-------------|------------------|-------------|----------------------|-------------|
| | # | % | # | % | # | % |
| Total number of cases | 242 | 100% | 172 | 100% | 70 | 100% |
| February 2013 | 87 | 36% | 66 | 38% | 21 | 30% |
| March 2013 | 86 | 36% | 70 | 41% | 16 | 23% |
| April 2013 | 69 | 29% | 36 | 21% | 33 | 47% |

Table D2. Frequency Distribution by County/City

| | All Cases | | ADR Cases | | Non-ADR Cases | |
|------------------------------|------------|-------------|------------|-------------|---------------|-------------|
| | # | % | # | % | # | % |
| Total number of cases | 242 | 100% | 172 | 100% | 70 | 100% |
| Anne Arundel | 5 | 2% | 5 | 3% | 0 | 0% |
| Baltimore City | 13 | 5% | 8 | 5% | 5 | 7% |
| Baltimore County | 8 | 3% | 8 | 5% | 0 | 0% |
| Charles County | 6 | 2% | 5 | 3% | 1 | 1% |
| Carroll County | 6 | 2% | 4 | 2% | 2 | 3% |
| Calvert County | 3 | 1% | 3 | 2% | 0 | 0% |
| Frederick County | 60 | 25% | 43 | 25% | 17 | 24% |
| Harford County | 7 | 3% | 6 | 3% | 1 | 1% |
| Howard County | 23 | 10% | 10 | 6% | 13 | 19% |
| Montgomery County | 53 | 22% | 39 | 23% | 14 | 20% |
| Prince George's County | 30 | 12% | 22 | 13% | 8 | 11% |
| Saint Mary's County | 16 | 7% | 11 | 6% | 5 | 7% |
| Somerset County | 4 | 2% | 3 | 2% | 1 | 1% |
| Wicomico County | 8 | 3% | 5 | 3% | 3 | 4% |

Table D3. Frequency Distribution by Courthouse

| | All Cases | | ADR Cases | | Non-ADR Cases | |
|------------------------------|------------|-------------|------------|-------------|---------------|-------------|
| | # | % | # | % | # | % |
| Total number of cases | 242 | 100% | 172 | 100% | 70 | 100% |
| Annapolis Courthouse | 1 | 0% | 1 | 1% | 0 | 0% |
| Bel Air Courthouse | 7 | 3% | 6 | 3% | 1 | 1% |
| Charles County Courthouse | 3 | 1% | 2 | 1% | 1 | 1% |
| Ellicott City Courthouse | 23 | 10% | 10 | 6% | 13 | 19% |
| Fayette Courthouse | 13 | 5% | 8 | 5% | 5 | 7% |
| Frederick Courthouse | 60 | 25% | 43 | 25% | 17 | 24% |
| Glen Burnie Courthouse | 4 | 2% | 4 | 2% | 0 | 0% |
| La Plata Courthouse | 3 | 1% | 3 | 2% | 0 | 0% |
| Leonardtwn Courthouse | 16 | 7% | 11 | 6% | 5 | 7% |
| Prince Frederick Courthouse | 3 | 1% | 3 | 2% | 0 | 0% |
| Princess Anne Courthouse | 4 | 2% | 3 | 2% | 1 | 1% |
| Rockville Courthouse | 17 | 7% | 13 | 8% | 4 | 6% |
| Salisbury Courthouse | 8 | 3% | 5 | 3% | 3 | 4% |
| Silver Spring Courthouse | 36 | 15% | 26 | 15% | 10 | 14% |
| Towson Courthouse | 8 | 3% | 8 | 5% | 0 | 0% |
| Upper Marlboro Courthouse | 30 | 12% | 22 | 13% | 8 | 11% |
| Westminster Courthouse | 6 | 2% | 4 | 2% | 2 | 3% |

Appendix E: Maryland Judiciary Offices and Statewide Activities

Maryland has alternative dispute resolution (ADR) programs in every jurisdiction in the state and in four of the five levels of courts (District Court, Circuit Court, Court of Special Appeals, and Orphans' Court). The ADR programs vary in the processes available, type of ADR practitioners, and program structure. At their core, all ADR programs provide litigants an opportunity to resolve their own conflicts in a private setting with the assistance of an impartial third party. Over the years programs have developed to meet the need for ADR services within jurisdictions. Currently, all of Maryland's 23 counties and Baltimore City provide at least one ADR process for litigants.

The District Court of Maryland's Alternative Dispute Resolution (ADR) Office provides mediation and settlement conferences in civil cases in many District Court locations. These ADR services are offered at no charge, either on the day of trial or before the trial date (through District Court ADR Programs and with pretrial partnerships with Community Mediation Centers and a law school clinic). In mediation in the District Court, an impartial mediator supports participants in a conversation to help them try to reach a mutually agreeable resolution of their own creation. The mediator does not evaluate any aspect of the case or suggest solutions. For settlement conferences, an experienced attorney serves as the neutral and may evaluate the strengths and weaknesses of a case and may make suggestions to assist the participants with settling the case. Program availability varies from county to county. More detailed information is available at www.mdcourts.gov/district/adr/home.html or you can call 410-260-1676 or 866-940-1729.

In 1998, the Maryland ADR Commission collaborated with over 700 stakeholders to develop a strategic plan for advancing mediation and other conflict resolution processes

statewide. The work of the ADR Commission led to the development of the Maryland Mediation and Conflict Resolution Office (MACRO). MACRO works across jurisdictions providing grants, technical assistance, research, and evaluation in support of Maryland's ADR initiatives.