

United States District Court



**REPORT
ON
MEDIATION**

2002

I. INTRODUCTION

There were no major revisions to the mediation program in 2002, and no major developments. There were more mediations reported in 2002 than in prior years. Some of the previous revisions to the program are now better known among the practicing bar, as reflected in their responses to inquiries about mediation. More of our “approved” mediators have been renewed in this, the seventh year of the program’s existence. Some, however, chose not to renew, and so, with some mediators having moved out of Nebraska, the ranks are shrinking a bit. At the close of 2002 there were 36 approved mediators on the list.

Court Staff

Kathy Griess continues to be the court's ADR Coordinator. She monitors the referral process and the progress of mediated cases. She also administers the application process for mediators, evaluations, statistics, and the surveys utilized in this report. Magistrate Judge Piester continues as the court's ADR Administrator.

Training

From its beginning in 1995, the mediation program has relied upon trained lawyers for its approved mediators: Lawyers because it was believed mediators trained in law would, perhaps more easily than others, build rapport with mediating parties and their attorneys; Trained because there was then no general knowledge, nor a “culture” of mediation in Nebraska, and it was thought mediation would be sooner accepted if mediators had skills necessary to be successful in mediating federal cases. To ensure at least a basic mediation skill level for approved mediators, the court selected Nebraska lawyers who had previously qualified as mediators in accordance with the Nebraska Dispute Resolution Act. Building from that level, the court required an additional 16 hours of mediation skills training designed around typical disputes in federal courts (“Fed-Med”), and also instruction in ethical pitfalls, in order to be approved to mediate federal cases. The 16-hour requirement has since been raised to 24 hours.

Like any skill, mediation practice usually improves with practice. That was the impetus for raising the “Fed-Med” requirement to 24 hours. It was also the principal reason the court offered periodic “workshops” for its approved mediators. These one-day meetings have become nearly annual events. They serve as both refresher courses in mediation skills and ethics, and opportunities to discuss issues of common interest.

In response to interest shown by Nebraska lawyers, and hoping to gain more approved mediators, the court held the fifth “Fed-Med” training session in December, 2002. A full class of 24 attorneys participated. Mr. Michael Keating, affiliated with the CPR Institute for Alternative Dispute Resolution, was the trainer, assisted by coaches provided

through the Nebraska Office of Dispute Resolution Training Center. Mr. Keating, an attorney practicing in Providence, RI, has been mediating over thirty years in employment, public policy, and major commercial disputes, among others. He has also trained “literally thousands” of mediators in places as diverse as law schools, international associations, and the maximum security prison at Attica. This was his third “Fed-Med” training session in Nebraska, and his teaching was again highly praised.

In November the court held its Federal Mediators Workshop, a one-day workshop for approved mediators. The presenter was Mr. Jeffrey Senger, Deputy Senior Counsel for Dispute Resolution, U.S. Department of Justice. Mr. Senger brought his considerable knowledge and experience to the workshop and presented training and exercises in negotiation as well as mediation suggestions and tips. He was also well received by the mediators. In addition to the skills portion of the workshop, participants discussed the workings of the court’s mediation program and possible improvements.

II. STATISTICS

The following pages are the "raw" quarterly and annual statistics for calendar year 2002, followed by additional information.

Period: January - March 2002

| | Mediator Approved | Mediator Not Approved | Total |
|--|----------------------|--------------------------|----------------|
| Referrals Pending Beginning of Period | 5 | 4 | 9 |
| Mediation Orders Entered | 4 | 12 | 16 |
| Mediation Orders Withdrawn | 0 | 0 | 0 |
| Settled Prior to Mediation Session | 0 | 0 | 0 |
| Referrals Pending End of Period | 1 | 6 | 7 |
| Total Cases Mediated (With MRO) ¹ | 8 | 10 | 18 |
| Cases Mediated (No MRO) | 0 | 3 | 3 ² |
| Total Cases Mediated | 8 | 13 | 21 |
| | | | |
| Mediation Reference Orders, by Division | Mediator Approved | Mediator Not Approved | Total |
| Omaha | 0 | 3 | 3 |
| Lincoln | 4 | 8 | 12 |
| North Platte | 0 | 1 | 1 |
| Total | 4 | 12 | 16 |

¹ "MRO" means "Mediation Reference Order."

² Some mediations take place without the entry of a mediation reference order. These cases are counted when they are reported by the attorneys to have settled or when there is a final pretrial conference. If a mediated case ends by involuntary dismissal or summary judgment, however, the court is not informed of the fact or results of that mediation. Thus, there could have been more "No-MRO" mediations than appear in this report.

| Cases Mediated Without MRO, by Division | Mediator Approved | Mediator Not Approved | Total |
|--|-------------------|-----------------------|-------------------|
| Omaha | 0 | 1 | 1 |
| Lincoln | 0 | 1 | 1 |
| North Platte | 0 | 1 | 1 |
| Total | 0 | 3 | 3 |
| | | | |
| Outcome of Mediated Cases (MRO) | Mediator Approved | Mediator Not Approved | Total |
| Full Agreement | 7 | 6 | 13 |
| Partial Agreement | 0 | 0 | 0 |
| No Agreement | 1 | 4 | 5 |
| | | | |
| Outcome of Mediated Cases (No MRO) | | | |
| Full Agreement | 0 | 3 | 3 |
| No/Partial Agreement | Unknown | Unknown | Unk. ³ |
| Total | 8 | 13 | 21 |
| | | | |
| Summary of No/Partial Agreement, After Closure | Mediator Approved | Mediator Not Approved | Total |
| Trial Settings Pending Beginning of Reporting Period | 5 | 7 | 12 ⁴ |
| No or Partial Agreement, This Period (from above) | 1 | 4 | 5 ⁵ |
| Settled | 1 | 3 | 4 |
| Judgment Entered Without Trial or Settlement | 0 | 0 | 0 |
| Transfer to Bankruptcy | 0 | 0 | 0 |
| Trials Held During Reporting Period | 0 | 0 | 0 |
| Trial Settings Pending at End of Reporting Period | 5 | 8 | 13 |

³ While there could be cases in this category, none is known. See discussion, p. 15.

⁴ Of the twelve trial settings that were pending at the beginning of the period, two cases settled during this period.

⁵ Of the five cases that were mediated during this period and had no agreement, two cases settled later in this period and three cases remained pending for trial at the end of this period.

Period: April - June 2002

| | Mediator Approved | Mediator Not Approved | Total |
|---|-------------------|-----------------------|-------|
| Referrals Pending Beginning of Period | 1 | 6 | 7 |
| Mediation Orders Entered | 4 | 6 | 10 |
| Mediation Orders Withdrawn | 0 | 0 | 0 |
| Settled Prior to Mediation Session | 0 | 1 | 1 |
| Referrals Pending End of Period | 2 | 7 | 9 |
| Total Cases Mediated (With MRO) | 3 | 4 | 7 |
| Cases Mediated (No MRO) | 4 | 13 | 17 |
| Total Cases Mediated | 7 | 17 | 24 |
| | | | |
| Mediation Reference Orders, by Division | Mediator Approved | Mediator Not Approved | Total |
| Omaha | 2 | 0 | 2 |
| Lincoln | 2 | 6 | 8 |
| North Platte | 0 | 0 | 0 |
| Total | 4 | 6 | 10 |
| | | | |
| Cases Mediated Without MRO, by Division | Mediator Approved | Mediator Not Approved | Total |
| Omaha | 4 | 12 | 16 |
| Lincoln | 0 | 1 | 1 |
| North Platte | 0 | 0 | 0 |
| Total | 4 | 13 | 17 |
| | | | |

| | | | |
|--|-------------------|-----------------------|-----------------|
| Outcome of Mediated Cases (MRO) | Mediator Approved | Mediator Not Approved | Total |
| Full Agreement | 3 | 2 | 5 |
| No/Partial Agreement | 0 | 2 | 2 |
| Outcome of Mediated Cases (No MRO) | | | |
| Full Agreement | 3 | 0 | 3 |
| No/Partial Agreement | 1 | 13 | 14 |
| Total | 7 | 17 | 24 |
| | | | |
| Summary of No/Partial Agreement, After Closure | Mediator Approved | Mediator Not Approved | Total |
| Trial Settings Pending Beginning of Reporting Period | 5 | 8 | 13 ⁶ |
| No or Partial Agreement, This Period (from above) | 1 | 15 | 16 ⁷ |
| Settled | 2 | 2 | 4 |
| Judgment Entered Without Trial or Settlement | 0 | 0 | 0 |
| Transfer to Bankruptcy | 0 | 0 | 0 |
| Trials Held During Reporting Period | 0 | 0 | 0 |
| Trial Settings Pending at End of Reporting Period | 4 | 21 | 25 |

⁶ Of the thirteen trial settings that were pending at the beginning of the period, four cases settled during this period.

⁷ Of the sixteen cases that were mediated during this period and had no agreement or a partial agreement, none settled later in this period and all sixteen cases remained pending for trial at the end of the period.

Period: July - September 2002

| | Mediator Approved | Mediator Not Approved | Total |
|---|-------------------|-----------------------|-------|
| Referrals Pending Beginning of Period | 2 | 7 | 9 |
| Mediation Orders Entered | 3 | 4 | 7 |
| Mediation Orders Withdrawn | 0 | 0 | 0 |
| Settled Prior to Mediation Session | 0 | 0 | 0 |
| Referrals Pending End of Period | 1 | 5 | 6 |
| Total Cases Mediated (With MRO) | 4 | 6 | 10 |
| Cases Mediated (No MRO) | 1 | 2 | 3 |
| Total Cases Mediated | 5 | 8 | 13 |
| | | | |
| Mediation Reference Orders, by Division | Mediator Approved | Mediator Not Approved | Total |
| Omaha | 1 | 3 | 4 |
| Lincoln | 2 | 1 | 3 |
| North Platte | 0 | 0 | 0 |
| Total | 3 | 4 | 7 |
| | | | |
| Cases Mediated Without MRO, by Division | Mediator Approved | Mediator Not Approved | Total |
| Omaha | 1 | 2 | 3 |
| Lincoln | 0 | 0 | 0 |
| North Platte | 0 | 0 | 0 |
| Total | 1 | 2 | 3 |

| Outcome of Mediated Cases (MRO) | Mediator Approved | Mediator Not Approved | Total |
|--|-------------------|-----------------------|-------------------|
| Full Agreement | 1 | 4 | 5 |
| Partial Agreement | 0 | 0 | 0 |
| No Agreement | 3 | 2 | 5 |
| Outcome of Mediated Cases (No MRO) | | | |
| Full Agreement | 1 | 2 | 3 |
| No/Partial Agreement | Unknown | Unknown | Unk. ⁸ |
| Total | 5 | 8 | 13 |
| | | | |
| Summary of No/Partial Agreement, After Closure | Mediator Approved | Mediator Not Approved | Total |
| Trial Settings Pending Beginning of Reporting Period | 4 | 21 | 25 ⁹ |
| No or Partial Agreement, This Period (from above) | 3 | 2 | 5 ¹⁰ |
| Settled | 2 | 2 | 4 |
| Judgment Entered Without Trial or Settlement | 0 | 0 | 0 |
| Transfer to Bankruptcy | 0 | 1 | 1 |
| Trials Held During Reporting Period | 0 | 0 | 0 |
| Trial Settings Pending at End of Reporting Period | 5 | 20 | 25 |

⁸ See note 2, supra.

⁹ Of the 25 trial settings that were pending at the beginning of the reporting period, four cases settled during this period.

¹⁰ Of the five cases that were mediated during this period and had no agreement, none settled later in this period and all five cases remained pending for trial at the end of the period.

Period: October - December 2002

| | Mediator Approved | Mediator Not Approved | Total |
|---|-------------------|-----------------------|-------|
| Referrals Pending Beginning of Period | 1 | 5 | 6 |
| Mediation Orders Entered | 5 | 0 | 5 |
| Mediation Orders Withdrawn | 0 | 0 | 0 |
| Settled Prior to Mediation Session | 0 | 0 | 0 |
| Referrals Pending End of Period | 2 | 1 | 3 |
| Total Cases Mediated (With MRO) | 4 | 4 | 8 |
| Cases Mediated (No MRO) | 3 | 1 | 4 |
| Total Cases Mediated | 7 | 5 | 12 |
| | | | |
| Mediation Reference Orders, by Division | Mediator Approved | Mediator Not Approved | Total |
| Omaha | 2 | 0 | 2 |
| Lincoln | 3 | 0 | 3 |
| North Platte | 0 | 0 | 0 |
| Total | 5 | 0 | 5 |
| | | | |
| Cases Mediated Without MRO, by Division | Mediator Approved | Mediator Not Approved | Total |
| Omaha | 1 | 1 | 2 |
| Lincoln | 2 | 0 | 2 |
| North Platte | 0 | 0 | 0 |
| Total | 3 | 1 | 4 |

| Outcome of Mediated Cases (MRO) | Mediator Approved | Mediator Not Approved | Total |
|--|-------------------|-----------------------|------------------|
| Full Agreement | 1 | 3 | 4 |
| Partial Agreement | 0 | 0 | 0 |
| No Agreement | 3 | 1 | 4 |
| Outcome of Mediated Cases (No MRO) | | | |
| Full Agreement | 3 | 0 | 3 |
| No/Partial Agreement | 0 | 1 | 1 |
| Total | 7 | 5 | 12 |
| | | | |
| Summary of No/Partial Agreement, After Closure | Mediator Approved | Mediator Not Approved | Total |
| Trial Settings Pending Beginning of Reporting Period | 5 | 20 | 25 ¹¹ |
| No or Partial Agreement, This Period (from above) | 3 | 2 | 5 ¹² |
| Settled | 2 | 2 | 4 |
| Judgment Entered Without Trial or Settlement | 2 | 0 | 2 |
| Transfer to Bankruptcy | 0 | 0 | 0 |
| Trials Held During Reporting Period | 0 | 0 | 0 |
| Trial Settings Pending at End of Reporting Period | 4 | 20 | 24 |

¹¹ Of the 25 trial settings that were pending at the beginning of the period, three cases settled during this period.

¹² Of the five cases that were mediated during this period and had no agreement, one case settled later in this period and four cases remained pending for trial at the end of the period.

Period: January - December 2002

| | Mediator Approved | Mediator Not Approved | Total |
|---|-------------------|-----------------------|-----------|
| Referrals Pending Beginning of Period | 5 | 4 | 9 |
| Mediation Orders Entered | 16 | 22 | 38 |
| Mediation Orders Withdrawn | 0 | 0 | 0 |
| Settled Prior to Mediation Session | 0 | 1 | 1 |
| Referrals Pending End of Period | 2 | 1 | 3 |
| Total Cases Mediated (With MRO) | 19 | 24 | 43 |
| Cases Mediated (No MRO) | 8 | 19 | 27 |
| Total Cases Mediated | 27 | 43 | 70 |
| | | | |
| Mediation Reference Orders, by Division | Mediator Approved | Mediator Not Approved | Total |
| Omaha | 5 | 6 | 11 |
| Lincoln | 11 | 15 | 26 |
| North Platte | 0 | 1 | 1 |
| Total | 16 | 22 | 38 |
| | | | |
| Cases Mediated Without MRO, by Division | Mediator Approved | Mediator Not Approved | Total |
| Omaha | 6 | 16 | 22 |
| Lincoln | 2 | 2 | 4 |
| North Platte | 0 | 1 | 1 |
| Total | 8 | 19 | 27 |
| | | | |

| Outcome of Mediated Cases (MRO) | Mediator Approved | Mediator Not Approved | Total |
|--|-------------------|-----------------------|------------------|
| Full Agreement | 12 | 15 | 27 |
| Partial Agreement | 0 | 2 | 2 |
| No Agreement | 7 | 7 | 14 |
| Outcome of Mediated Cases (No MRO) | | | |
| Full Agreement | 7 | 5 | 12 |
| No/Partial Agreement | 1 | 14 | 15 |
| Total | 27 | 43 | 70 |
| | | | |
| Summary of No/Partial Agreement, After Closure | Mediator Approved | Mediator Not Approved | Total |
| Trial Settings Pending Beginning of Reporting Period | 5 | 7 | 12 ¹³ |
| No or Partial Agreement, This Period (from above) | 8 | 23 | 31 |
| Settled | 7 | 9 | 16 |
| Judgment Entered Without Trial or Settlement | 2 | 0 | 2 |
| Transfer to Bankruptcy | 0 | 1 | 1 |
| Trials Held During Reporting Period | 0 | 0 | 0 ¹⁴ |
| Trial Settings Pending at End of Reporting Period | 4 | 20 | 24 |

¹³ Of the twelve cases pending for trial at the beginning of 2002, nine cases settled later in the year, one case was transferred to bankruptcy court, summary judgment was granted in one case, and one case remained pending for trial at the end of the year.

¹⁴ This figure has been checked and re-checked; it is correct.

FOLLOW-UP SURVEYS

Survey questionnaires were sent to counsel in the sixteen cases (for the period January 1, 2002 through December 31, 2002) which did not settle at the mediations, but which DID settle before trial, to determine if the settlements occurred "because of" the mediation, "in spite of" the mediation, or if the mediation had "no impact" on settlement. Responses were received from 27 attorneys in fifteen cases. Results are below:

TOTAL **RESPONSES**: 27

| MEDIATOR | "Because Of" | "In Spite Of" | "No Impact" | Total |
|--------------|--------------|---------------|-------------|-------|
| APPROVED | 7 | 1 | 4 | 12 |
| NON-APPROVED | 7 | 2 | 6 | 15 |
| TOTAL | 14 | 3 | 10 | 27 |

CASES REPORTED ON:¹⁵ 16

| MEDIATOR | "Because Of" | "In Spite Of" | "No Impact" | Total |
|--------------|--------------|---------------|-------------|-------|
| APPROVED | 5 | 0 | 2 | 7 |
| NON-APPROVED | 6 | 2 | 1 | 9 |
| TOTAL | 11 | 2 | 3 | 16 |

It is commonly thought that even a "failed" mediation (that is, one that does not end in settlement "at the table") may spawn fruitful settlement discussions in the future. It is probably not appropriate to draw conclusions in that regard from so few cases. However, if the measure is "Do no harm," 14/16 is a pretty successful result.

¹⁵ It should be noted that in the "cases reported on," in the surveys received there were some "split" responses, e.g. one lawyer indicating "in spite of" and the other, "no impact." In those instances the comments were used to determine where the case should be classified, with the stronger of the opinions expressed guiding the decision. When there were no comments on either rating, the case was put in the "no impact" column.

III. OBSERVATIONS ON THE NUMBERS:

MEDIATION "CAUSED" SETTLEMENT IN 71% OF THE CASES MEDIATED:

Adding the cases settled at the mediations (39) and those later settled "because of" the mediation (11) yields a total of 50 of the 70 cases actually mediated (71%) were settled directly because of the mediation program. Calculated according to Approved/Non-Approved, the rates are: Approved: $24/27 = 89\%$; Non-Approved: $26/43 = 60\%$.

Effects of Mediation on Settlement, 2002:

| Mediator | Cases Mediated | Settled AT Mediation | Settled Because of Mediation | Total Cases Settled | Effective Rate of Settlement |
|--------------|----------------|----------------------|------------------------------|---------------------|------------------------------|
| Approved | 27 | 19 | 5 | 24 | 89% |
| Non-Approved | 43 | 20 | 6 | 26 | 60% |
| Totals | 70 | 39 | 11 | 50 | 71% |

In addition, one case was settled after the entry of the mediation reference order but before the scheduled mediation. It is not known what effect (if any) the impending mediation had on settlement in that case, but it would not seem likely to have been negative.

It should also be noted that of the total of 82 mediated cases tracked in 2002 (twelve "post-mediation" cases still pending at the beginning of the year, plus the 70 mediated in 2002), no cases have been tried. Strange as it may seem, this is not an aberration. In the last five years (from January, 1 1998 through December 31, 2002), of the 288 cases mediated, only thirteen¹⁶ cases have later gone to trial, with 24 cases remaining set for trial at the end of 2002. The highest number of trials in post-mediation cases was six in 2000.

Of concern is that there were two cases mediated in 2002 in which counsel reported that settlement occurred "in spite of" the mediation. Because these were mediations held by a "non-approved" mediator, however, the court has no knowledge of what, if anything, went wrong, nor whether it was the "fault" of the mediator, the attorneys, or the parties.

¹⁶ Calculated as follows:

1998: Mediated Cases Tracked: 63 (13 pending 1/1/98 + 50 mediations); Trials: 1

1999: Mediated Cases Tracked: 56 (actual mediations during year); Trials: 5

2000: Mediated Cases Tracked: 50 (actual mediations during year); Trials: 6

2001: Mediated Cases Tracked: 49 (actual mediations during year); Trials: 1

2002: Mediated Cases Tracked: 70 (actual mediations during year); Trials: 0

Referrals and Settlements Compared by Mediator Approval: The number of referrals, mediations, and rates of settlement, divided according to whether the mediator was approved by the court or not, are shown below.

| | Approved | Non-Approved | Totals |
|----------------------------|-----------|--------------|-----------|
| MRO's Entered | 16 | 22 | 38 |
| Cases w/MRO's Mediated | 19 | 24 | 43 |
| Cases w/No MRO Mediated | 8 | 19 | 27 |
| Total Cases Mediated | 27 | 43 | 70 |
| Cases Settled In Mediation | 19 70% | 20 47% | 39 56% |
| Effective Settlement Rate | 89% | 60% | 71% |

COMPARISONS TO PRIOR PERIODS:

Number of Cases Mediated: Although the number of mediation reference orders (38) in 2002 was down compared to prior years, there was a modest increase in the number of mediations. In the past five years the number of mediations in federal cases hovered around fifty per year; in 2002 there were seventy mediations. Whether this is significant remains to be seen.

Geography: Most mediation reference orders continue to emanate from Lincoln. This has been consistent over the course of the program.¹⁷ However, there were more mediations without MRO's in Omaha cases, effectively balancing the two venues in cases actually mediated. Whether the discrepancy between number of MROs and the number of mediations is significant is unknown.

Mediations by Non-Approved Mediators: Two observations are interesting: First, there were more mediations conducted by non-approved mediators than by approved mediators. Second, the settlement rates of mediations were higher in cases in which the mediator was approved. It is not known whether these differences are significant, but they probably are not. First, the total number of mediations is not high enough to make statistical analysis accurate. Second, both numbers have fluctuated widely during the course of the program, and no "trend" for either is apparent.

¹⁷ 1998: 65 orders: Lincoln: 44; Omaha: 11; North Platte: 10.
 1999: 67 orders: Lincoln: 41; Omaha: 20; North Platte: 6.
 2000: 63 orders: Lincoln: 39; Omaha: 17; North Platte: 7.
 2001: 63 orders: Lincoln: 48; Omaha: 13; North Platte: 3.
 2002: 38 orders: Lincoln: 26; Omaha: 11; North Platte: 1.

MROs to Non-approved Mediators: A little over half the MRO's entered in 2002 were referrals to non-approved mediators. With the exception of 2001, this has been a fairly consistent proportion over the years.¹⁸ There continue to be a fair number of lawyers in Nebraska who hold themselves out as mediators, with or without mediation training. It is apparent there is no or little reluctance among the litigation bar to hiring such lawyers as mediators. Many of these lawyers have been invited to participate in "Fed-Med" training, with the notion that their significant experience in providing settlement services might "substitute" for their not being qualified under the Nebraska Dispute Resolution Act. Some of these lawyers took the "Fed-Med" training in December, 2002, and may apply to be approved in 2003.

Mediations without MROs: The cases mediated without an MRO have been difficult to track and include in the tabulations. In 2002 they were tabulated either when the court was notified that a case had settled or at the pretrial conference. However, if such "post-mediation" cases were involuntarily dismissed or if summary judgment was granted, these mediations were not counted. There were proportionately more mediations (43/70) by non-approved mediators, and particularly more "non-MRO" mediations by non-approved mediators (19 by non-approved mediators; 8 by approved mediators). Although for the most part these mediators have been extremely cooperative in providing court personnel statistical and evaluation information, it is not a foolproof system. The system used in 2002 of obtaining information about cases mediated without MRO's is believed to have "caught" most, if not all, of these mediations; however, it will be refined in 2003 to close gaps and more accurately count those mediations.¹⁹

¹⁸ 35/65 in 1998; 41/67 in 1999; 39/63 in 2000; 29/63 in 2001; 22/38 in 2002.

¹⁹ Such "non-MRO" mediations would be tabulated, of course, as "partial/no agreements" by the fact that they continued after the mediation, so they can be expected to "hurt" the overall statistics. Additional information, however, such as their location, the approval status of the mediator, and any evaluative comments would help both in presenting a more complete picture of the program and in making improvements. In 2003 attempts are being made to include these cases in the tabulations.

IV. EVALUATIONS

After each mediation the participants were asked to complete an evaluation form, judging various aspects of their mediation from 1 (Excellent!) to 5 (Terrible!). (Copies of the evaluation forms are in the Appendix). They were asked to mail it back to the court. Averaged responses to some of the questions are set forth in chart form below.

| EVALUATION QUESTION | *PTY-APP | PTY-NON | ATTY APP | ATTY NON | OVRL AVE |
|--|----------|---------|----------|----------|----------|
| "How was the mediator at remaining neutral?" | 1.00 | 1.30 | 1.27 | 1.18 | 1.18 |
| "During the mediation session, how was the mediator-- ...at giving you opportunities to express your views?" | 1.00 | 1.25 | 1.18 | 1.22 | 1.16 |
| "...at understanding your/your client's interests and needs in the dispute?" | 1.00 | 1.31 | 1.18 | 1.29 | 1.19 |
| "...at allocating appropriate time for the mediation?" | 1.25 | 1.25 | 1.20 | 1.52 | 1.30 |
| "...at treating you with fairness and respect?" | 1.00 | 1.15 | 1.09 | 1.11 | 1.08 |
| "How well were the legal issues of the case identified and discussed during the session?" | 1.23 | 1.68 | 1.50 | 1.65 | 1.51 |
| "Overall, how would you rate the mediation process in your case?" | 1.07 | 1.38 | 1.18 | 1.55 | 1.29 |
| "From this experience, how satisfactory do you think mediation is to resolve other disputes in which you might be involved?" | 1.15 | 1.57 | 1.27 | 1.45 | 1.36 |
| "How efficient was the procedure of court referral and arranging the mediation session?" | 1.23 | 1.76 | 1.40 | 1.83 | 1.55 |

* "PTY-APP" means "Parties and Insurers–Approved Mediators." "PTY NON" means "Parties and Insurers–Non-Approved Mediators." "ATTY APP" means "Attorneys–Approved Mediators." "ATTY NON" means "Attorneys–Non-Approved Mediators." "OVRL AVE" means "Overall Average."

Although it is difficult to draw any firm conclusions on this small number of mediations, some generalizations from the chart are possibly these: These "scores" are a rather significant improvement from the collective scores of prior years; in fact, for ALL questions the average scores were better in 2002 than in 2001. Thus, it appears either the mediators are improving or the parties' and attorneys' views of mediation are improving, or both.

Interestingly, the participants' perceptions of the quality of the mediation and the mediator did not change much depending on whether or not the case settled "at the table." Classed by whether the case settled at the mediation, the evaluations yielded these averages:

| EVALUATION QUESTION | CASE DID SETTLE IN MEDIATION SESSION | | | CASE DID NOT SETTLE IN MEDIATION SESSION | | |
|--|--------------------------------------|------|------|--|------|------|
| | PRTY | ATTY | AVE | PRTY | ATTY | AVE |
| "How was the mediator at remaining neutral?" | 1.13 | 1.27 | 1.20 | 1.30 | 1.15 | 1.22 |
| "During the mediation session, how was the mediator-- "...at giving you opportunities to express your views?" | 1.17 | 1.13 | 1.15 | 1.10 | 1.30 | 1.20 |
| "...at understanding your/your client's interests and needs in the dispute?" | 1.22 | 1.17 | 1.19 | 1.10 | 1.35 | 1.22 |
| "...at allocating appropriate time for the mediation...?" | 1.28 | 1.38 | 1.33 | 1.14 | 1.31 | 1.22 |
| "...at treating you with fairness and respect?" | 1.13 | 1.06 | 1.09 | 1.00 | 1.15 | 1.07 |
| "How well were the legal issues of the case identified and discussed during the session?" | 1.63 | 1.46 | 1.54 | 1.20 | 1.75 | 1.47 |
| "Overall, how would you rate the mediation process in your case?" | 1.18 | 1.17 | 1.17 | 1.44 | 1.73 | 1.58 |
| "From this experience, how satisfactory do you think mediation is to resolve other disputes in which you might be involved?" | 1.39 | 1.25 | 1.32 | 1.44 | 1.52 | 1.48 |
| "How efficient was the procedure of court referral and arranging the mediation session?" | 1.50 | 1.70 | 1.60 | 1.50 | 1.52 | 1.51 |

The first observation is that in EVERY category save one²⁰, these responses are better than in previous years. Next, it appears there is no significant correlation between the evaluations and the fact of settlements achieved during mediation.

²⁰ In the "How well..." question, for settled cases, attorneys rated the discussion of legal issues at an average of 1.42 in 2001 and 1.46 in 2002; four hundredths is hardly significant.

Would these settlements have eventually occurred anyway, without mediation? This question is asked on the evaluation questionnaires. A full majority of participants indicated the settlement reached would not have occurred without mediation. Over one-fourth said settlement would have occurred later (after the expenditure of more time and money), without mediation. Seven responders were unsure.

“If you reached full settlement, in your view would the case have settled later without mediation?”

| Attorneys “Yes” | Attorneys “No” | Attorneys- “Maybe” or “Unsure” | Parties/Insurers “Yes” | Parties/Insurers “No” | Parties/Insurers “Maybe” or “Unsure” |
|--------------------|-------------------|---|---------------------------|--------------------------|---|
| 8/29 = 27% | 18/29 = 62% | 3/29 = 10% | 7/23 = 30% | 12/23 = 52% | 4/23 = 17% |

While obviously there is no way of scientifically knowing the answer to that question, these results, from the people most familiar with the cases, are impressive indicators of the effectiveness of the mediation.

Participants were also asked to state if they thought the mediation saved them time and/or money in resolving the case. The results, shown in the table below, indicate averages between “excellent” and “good.” They were then asked to quantify how much time and/or money was saved by resolving the case when they did. Those “guesstimates” have been averaged; recognizing, however, the non-scientific nature of these figures, the highs and lows were not calculated in the money averages.²¹

| EVALUATION QUESTION | PRTY | ATTY | OVERALL AVERAGE |
|---|----------|----------|-----------------|
| “To what extent do you think the mediation saved you money in resolving this case?” | 1.72 | 1.62 | 1.66 |
| “Please ‘guesstimate’ how much money saved” | \$17,893 | \$31,705 | \$31,138 |
| “To what extent do you think mediation saved you time in resolving this case?” | 1.48 | 1.36 | 1.41 |
| Please ‘guesstimate’ how much time saved, i.e. hours of attorney time” | 47 | 99 | 98 |

²¹. Money Saved--Attorneys: The high estimate of \$100,000 and the low estimate of \$2,500 were not counted in this average; remaining responses were between \$7,500 and \$85,000.

Money Saved--Parties/Insurers: The high figure of \$190,000 and the low figure of \$5,000 were not counted in this average; remaining responses were between \$5,000 and \$40,000.

Time Saved--Attorneys: The high estimate of 500 hours and the low estimate of 20 hours were not counted in this average.

Time Saved--Parties/Insurers: The high estimate of 500 hours and the low estimate of 2 hours were not counted in this average.

Even recognizing the subjective nature of the question, and that these numbers may be too small to reach a statistically valid conclusion, it appears that mediation provides an effective opportunity not only to reach settlement, but also to do so early enough to save significantly on both time and litigation costs.

It is commonly thought that mediation causes the parties to feel that they have been “heard” by a neutral person, thereby creating a perception of fairness not achieved in “traditional” negotiations. By drawing the parties into active involvement in the negotiation process, mediation is thought to not only help litigants resolve “their” dispute themselves, but also to give them control of how their dispute is ended. This is not a traditional role played by lawyers, yet this cathartic element seems instrumental in bringing parties to the point of willingness to settle. Parties’ and insurers’ evaluation responses indicate this factor is positive, although it is difficult to quantify just how important it may be.

This “involvement, control, and fairness” factor is reflected by the responses to the five questions evaluating the mediator's neutrality, giving parties the chance to express their views, treatment of the parties, understanding their “interests and needs” in the case, and the extent to which the legal issues were discussed. In 2002 four of those five questions scored “perfect” 1.00's among approved mediators, and the fifth question scored 1.23. The parties’ evaluations of these factors for non-approved mediators are only slightly less positive, and the averages do not vary much between settled and not-settled cases. These indicators have been conspicuously positive over the course of the program, but the average scores for 2002 are the best. If one of the court’s objectives in mediation is to foster a perception of fairness, involvement, and control among parties, the program certainly seems to be achieving it.

V. CONCLUSIONS

Statistics

There continues to be a low number of federal cases mediated. This may result from the lack of a mandatory mediation requirement and/or the fact that the federal judges in Nebraska do not “push” mediation as other judges do. As the practicing bar becomes more familiar with the process and the individuals mediating, this number may at some point increase.

The “market” drives the selection of mediators, and the selection process is a complicated mixture of factors, unique in many cases. There are a few mediators, both approved and not approved, who seem to be the leaders in attracting federal cases for mediation. Thus, our statistics may not be as “broad-based” as they would be were the cases spread more evenly among mediators.

The past year's statistics indicate that mediation caused or accelerated settlements in 70 % of the cases referred. The “effective settlement rate” (the total of mediations resulting in settlements “at the table” or later “because of” the mediation) has gone up and down over the existence of the program, but the overall average for the entire seven-year period is 65%.²²

²² For the seven-year period, of 385 cases mediated there were 250 settlements attributable to mediation. The highest “effective settlement rate” was 90% in 2000; the lowest was 47% for the first period of the program’s existence, the 18-month period ended 12/31/97.

Critics could argue that these statistics do not accurately reflect mediation's "success," because there is no "control group" against which to measure. It is true that there is no such control group. However, establishing a control group of civil cases in which no mediation were allowed, and comparing it to a group in which mediation were required in each case, has its own problems and may not yield more reliable results. Because each case is unique, such groups of cases would have to be monitored for a very long time to have sufficient numbers to "cancel out" idiosyncratic factors; doing so, however, would not account for mediators becoming more proficient over the period. Second, because the court's program is voluntary, such hard and fast rules of selection for the study would violate this principle of voluntariness; further, if individual cases were permitted to voluntarily "opt out" of such a study, the "control" would be lost and the results skewed. Third, it may be that parties', insurers', and attorneys' *perceptions* are at least as important as hard numbers in judging the "effectiveness" or "success" of mediation. Thus, even recognizing the weaknesses of accepting the participants' subjective opinions on the effect, if any, of their mediation, the present method of evaluation may be about as accurate and cost efficient as practicable.

Perception of Fairness

The evaluation feedback from participants, especially parties and insurers, continues to indicate that the process generally is perceived as fair. The questions seeking to gauge this factor were the highest ever in the program's duration.

Money and Time Saved

Anecdotally, and again recognizing the subjective nature of the responses, the reports from lawyers and parties tend to overwhelmingly indicate both that there were savings in time and money resulting from their mediated settlements, and also that such savings were significant. In this regard it may be noted that the number of attorney hours and correspondingly, money, saved could perhaps be improved by holding mediations at an earlier time in the progression of a case. Most attorneys seem reluctant to mediate cases until after the major discovery has been completed and its corresponding costs have been incurred. More education and experience among the bar may, over time, affect these measures of savings. One thing should be fairly clear: It is unlikely that mediation ever would *increase* the costs of litigation beyond the cost of the mediation itself.

Training

The training programs held in 2002 were both successful. Both presenters were well received by participants, and contributed not only to the trainees' knowledge, but also the continued vitality of the program. The fact that attorneys are interested enough in being trained in the "Fed-Med" program to spend three days and about \$400.00 to do so is one indicator of the utility of the program. Whether the court continues to fund such training sessions in the future is an issue (see below).

VI. FUTURE OUTLOOK

The court will host a workshop for approved mediators in October, 2003. This is an opportunity for mediators to brush up on skills, discuss ethical and skills issues, and contribute to the future planning of the program. No "Fed-Med" training is scheduled in 2003.

There is a pending concern about the necessity of the court, specifically the Federal Practice Fund, continuing to fund training programs for lawyers to become better mediators. Some believe that, now that the court has "gotten the mediation ball rolling," the court's continued involvement in training does not reflect a legitimate court interest, and it should bow out of the training role altogether or severely cut back on the funds used for such training. The District Judicial Council will address this issue in July, 2003 as part of the court's strategic planning effort. The Council's decision will not affect the October workshop; it will occur as planned regardless of the outcome of the July meeting.

Another concern is the need to increase the number of cases being mediated. The court's civil caseload is growing, and its criminal caseload is burgeoning. Criminal trials often require postponing scheduled trials in civil cases. It is sometimes months before a civil case, once passed over for trial, is actually called for trial. Mediation appears to be one viable means to help ameliorate this situation, but to be effective, the mediation resource must be used. Despite efforts by the magistrate judges to encourage mediation during their planning conferences held with lawyers, the low numbers persist.

It seems reasonable to anticipate that as the usefulness of mediation becomes more known in Nebraska, it will be sought by more lawyers and parties alike. Once that happens, a "snowball" effect can be expected. Because mediation skills improve with practice, mediators will get better at mediating because they will do it more, which will make positive results more likely, which will make mediation more popular, etc. However, with a few notable individual exceptions, the "snowball" has not yet begun to roll, and it is anyone's guess when that might happen. So long as results like those reported here continue to improve, that day will arrive sooner.

There will be more mediators "approved" in 2003 as a result of the "Fed-Med" program held in December, 2002. Some of these lawyers have considerable standing among the litigation bar, and it is hoped they may contribute to wider acceptance of mediation as an alternative to litigation.

With more mediators, the court's web site, by setting out their training, types of cases mediated, fees, and experience will offer a greater range of mediator background information to "consumers" of that information. Mediator skills are largely personal, so a wider range of training and experience may increase the likelihood of parties and lawyers being willing to try mediation in a particular case.

The court has contributed to the development of mediation as a viable alternative dispute resolution technique in Nebraska. The statistics accumulated over the course of the court's program do demonstrate that mediation is definitely worthy of consideration in civil cases. Whether it continues as a viable force or even expands will depend upon the acceptance of the bench and bar and the continuing competence and fairness of mediators.

APPENDIX

1. EVALUATIVE COMMENTS, 2002
2. EVALUATION QUESTIONNAIRES

EVALUATIVE COMMENTS, 2002

1. PARTIES' COMMENTS RECEIVED ON EVALUATION FORMS

The evaluation forms were distributed to participants in the mediations held through the auspices of approved federal mediators as well as the non-approved mediators. The comments received from the parties and insurance company claims representatives appear below:

In Cases That Did Settle During the Mediation Session (Approved Mediator):

"The mediator was honest and took the time with me and my lawyer to explain legal issues that I did not understand. He exhibited extreme genuine honesty and I did not at all feel discomfort, which I did expect prior to attendance. The above was extremely important to me."

"Prior to and at the beginning of the mediation, I did not think that settlement would occur. We were just too far apart. But through the persistence and tactfulness of the mediator, we were able to reach a win/win solution to our dispute. I was frankly surprised that we reached settlement."

"Thank you for ending this dispute for me. I am so grateful it is all over now. I can move forward with my life. Very good mediator!!! Thanks again."

In Cases That Did Settle During the Mediation Session (Non-Approved Mediator):

"Mr. _____ is an excellent mediator. This case may not have settled but for his efforts."

"I respect _____'s abilities, he is the best!"

In Cases That Did Not Settle During the Mediation Session (Approved Mediator):

"Mr. _____'s insistence that we come to mediation in spite of the plaintiff's desire to withdraw was critical. We didn't reach an agreement that day, but the session was the catalyst for a global settlement reached one week later. Mr. _____'s objectivity and commitment to pursuing the "right" settlement was a great help."

In Cases That Did Not Settle During the Mediation Session (Non-Approved):

"_____ does a great job. We could not get this case settled. Hopefully, we will get the case settled in the future."

"Mr. _____ was very kind. My expectations were a bit different than reality. I thought there would be more question/answer stuff. It might be helpful to know if both sides REALLY want to mediate, and not just go through the motions. Please note this was only my perception and not necessarily the reality. However, Mr. _____ handled it all with extreme calmness which was reassuring."

“Very good job!”

2. ATTORNEYS’ COMMENTS RECEIVED ON EVALUATIONS

In Cases That Did Settle During the Mediation Session (Approved):

“I have completed this on behalf of the United States and myself as counsel. I recommend Mr. _____ highly!”

“_____ just keeps getting better and better at ADR!”

“May be a little too close to plaintiff counsel’s firm due to # times he has mediated matters. Good appearance & demeanor. Did not demonstrate any specialized knowledge of labor & employment law matters; nevertheless was effective. Only difficulty was the court failed to stay court proceedings until after mediation as parties requested.”

“_____ is one of the better mediators I know.”

“Not possible to know how much money and time saved since will never know what might have happened if we went to trial. _____ is excellent!”

“Although this was my first use of a mediator in a federal court case, I would rate Mr. _____ higher than other mediators I have used, based upon his preparation beforehand and his ability to comprehend the issues.”

In Cases That Did Settle During the Mediation Session (Non-Approved):

“\$150/hour is the standard rate for mediators. It is probably higher than most mediators receive in their practices.”

“Defendant does not believe plaintiffs came to mediation with an open mind. Several weeks before mediation, Plf’s attorney indicated that he would decide the settlement amount without regard to the mediator’s thoughts. There was a \$90,000 worker’s compensation lien not represented at mediation.”

“Mr. _____ did an excellent job in bringing the parties together, and particularly so with the worker’s comp subrogation lien holder, to get the case settled.”

“_____ does a great job. He is by far the best mediator in this area. His ability to relate to the parties and his honest assessment of their positions works wonders!”

“Initially, I thought the mediation was moving too slowly, but great leaps were made toward the end that would ultimately settle the case.”

“ _____ did a great job.”

In Cases That Did Not Settle During the Mediation Session (Approved):

“I would be happy to use Mr. _____ again as a mediator.”

“Case settled approximately 1 week after mediation. In my opinion, while we were not successful the day of the mediation, the case/matter would not have been resolved without the groundwork laid at the mediation session (even getting the plaintiff to attend). Mr. _____ was very effective as mediator.”

“ _____ did an excellent job. The failure of the mediation was not his fault. I would use _____ again if the need arises.”

“This is a very tough case to mediate. _____ did a great job trying to move it forward. The claimant was intractable and not prone to settle. _____ tried very hard to point out the obvious reasons to settle.”

In Cases That Did Not Settle During the Mediation Session (Non-Approved):

“Case was not settled. Parties were much too far apart. Mediator cut to the chase, which saved time and money.”

“I wish Mr. _____ would have leaned on the parties a little more. I know he didn’t lean on us very hard and we were about \$50K different. I think a little more pressure from him would have been helpful to resolve the case.”

“Case did not settle because mediation occurred too early.”

“I have been through dozens of mediations and I really thought this was an effective mediator and an effective mediation session. That sounds odd in that the case did not get settled but I believe that to be the case.”

3. LAWYERS’ COMMENTS RECEIVED IN FOLLOW-UP SURVEY

Approved: "Because Of":

“Made the parties realize the relatively small damages that were available and the resources that the EEOC could bring to bear on my client.”

“The case settled entirely because of mediation. Mr. _____ was able to assist the parties in coming to an agreement that could not be finalized the day of the mediation because of some outstanding Medicare medical lien issues. His specific suggestions with respect to those issues were

adopted by the parties, the Medicare lien issues were resolved, and a prompt agreement to settle the case was finalized.”

“The parties were able to determine each sides respective positions in the mediation. The case did not actually get mediated because we needed to try and get an agreement with one of the subrogation carriers that had an interest in the matter. We were unable to make this agreement prior to the mediation. I think the mediation did allow each side to evaluate their positions and talk about realistic settlement amounts.”

“Allowed the plaintiff to explain to defendant what needed to be done differently in regards to sexual harassment complaints. The gap in the parties’ settlement positions was narrowed as a result of the mediation.”

“Judge Jaudzemis is personally responsible for this settlement. Her work with the plaintiff was the most important factor in this resolution. Her work was outstanding.”

“I am convinced that without having had the mediation forum within which we began this latest round of settlement discussions, it is highly unlikely that the matter would have been successfully resolved at the time it did. My client had entered into the mediation process with the hope that some settlement could be effectuated. It was not necessary to ‘convince’ the Station of the merits of mediation. I do believe, however, that the efforts of the mediator had the effect of bringing some new perspectives to Ms. _____, which ultimately facilitated the matter being resolved.”

“During mediation plaintiff was unwilling to change her original demand, even though the mediator was effective in pointing out pros and cons of her case. After leaving the mediation session, plaintiff called me while I was traveling back to Des Moines and indicated willingness to compromise at the amount counsel had suggested. She was firm in that position and defendant agreed to settlement at that figure.”

Approved: "In Spite Of":

“This plaintiff left after defendant’s first offer - no chance to resolve.”

Approved: "No Effect":

“My client would not settle for the amount the defendant offered at mediation. She tripled her settlement value by going to trial & settling shortly before trial. Mediation is great, but I don’t believe it was the mediation process which factored in this case. Perhaps the defendant was affected by talking & seeing the plaintiff close up. I don’t know but I am satisfied that mediation is a good process.”

Non-Approved: "Because Of":

"The mediation session ended after a brief exchange of proposals but the mediation was helpful in getting the parties to start talking."

"Mr. _____ was forced by the mediator to face the weaknesses of his case. Mr. _____ & other defendants were forced to face how badly they wished to avoid spending a week in trial in Nebraska. A week after mediation they agreed on a dollar amount."

"Identified parties' positions. Used this as basis to settle just prior to trial."

"Other side came to mediation without any meaningful authority to settle the case, in violation of the mediation order. I believe opposing counsel forced his client to settle within the next few weeks out of fear that the court would sanction their behavior."

"The case was not settled at mediation because it took longer than time allotted for the actual mediation. The mediator continued working on the case to get the insurance carriers to participating in the settlement."

"The mediation was extremely helpful in the resolution of this case. Without the assistance of _____ as mediator, I doubt that this lawyer from Philadelphia representing a client from North Platte, could have convinced his client that [defendant] was being fair. It is my belief that absent mediation, this case would have gone to trial and at the end of the day, the plaintiff would have gotten less and my client would have spent more...."

"The mediation set the ground work for the subsequent settlement. "

Non-Approved: "In Spite Of":

"Nothing about the mediation advanced the settlement of this case. At best, the mediation was natural - actually it was very counter productive. The mediator did not allow the party to communicate at all; he started the session with a long speech about how disillusioned he was with litigation & what a waste of time & \$ attorneys & courts are - this set a very negative tone; he misstated our position and attitude to plaintiffs and only after we had a candid discussion w/the plaintiffs did we start to make progress toward settlement. This was absolutely the worst mediation session I have ever been involved in or heard about. I am supportive of the mediation process and used it successfully in Federal District Court in Nebraska in previous litigation. I would do it again, but never with this same mediator."

"Mediation is generally the preferable means of resolving cases where liability can be established. However, we chose an independent mediator that was not approved on the Court's list who found one of the defense attorneys too abrasive and combative to continue the mediation. Accordingly it

was the mediator that ultimately terminated the mediation which we negotiated successfully without assistance. It is my understanding that the mediator did, however, make it quite clear to the defendant and his attorneys how, in his opinion, a jury would view this case and the potential damages. This may have assisted in resolution of the case but that is purely speculative. We would encourage continuance of the program with strong encouragement to use court-approved mediators.”

“Defendants had no real interest in settling the case and just wanted to be in the same room as plaintiff to intimidate her. Note: our mediator was not a federal certified mediator. Made is worse in fact. I moved for sanctions against defendants fro failing to mediate in good faith.”

Non-Approved: "No Effect":

“I personally believe that we (the parties) were hurt by the mediator. I don’t think he contributed much to the process. I think a better mediator would have gotten the case settled.”

EVALUATION OF MEDIATION—ATTORNEYS

Name of Case: _____ Number of Hours in Session(s): _____

Mediator(s): _____

Date, Place of Mediation Session(s): _____

I am: _____ plaintiff(s) attorney
_____ defendant(s) attorney

This mediation resulted in:
_____ full settlement of case
_____ partial settlement
_____ no settlement of the case

For each question below, please circle the response that reflects your opinion, using the following key for your answers: 1="Excellent!"; 2="Good"; 3="Adequate"; 4="Poor"; 5="Terrible!"

1. How efficient was the procedure of court referral and arranging the mediation session? 1 2 3 4 5
 2. How was the mediator at explaining mediation? 1 2 3 4 5
 3. During the mediation session(s), how was the mediator at:
 - a. Giving you opportunities to express your views? 1 2 3 4 5
 - b. Understanding your client's interests and needs in this dispute? 1 2 3 4 5
 - c. Treating you with fairness and respect? 1 2 3 4 5
 4. How was the mediator at remaining neutral? 1 2 3 4 5
 5. How well were the legal issues of the case identified and discussed during the session? 1 2 3 4 5
 6. How was the mediator at allocating appropriate time for the mediation without rushing you to reach an agreement or dragging out the process? 1 2 3 4 5
- _____ Moved too quickly _____ Moved too slowly _____ Paced right

7. If you reached full or partial agreement,

a. To what extent was the mediator responsible for it? 1 2 3 4 5

b. To what extent do you think the mediation saved you money in resolving this case? 1 2 3 4 5

c. Please "guesstimate" how much money saved: \$ _____

d. To what extent do you think the mediation saved you time in resolving this case? 1 2 3 4 5

e. Please "guesstimate" how much time saved: _____ hours of attorney time

8. If you reached full settlement, in your view, would the case have settled later without mediation? ___ yes ___ no

9. If you reached only partial agreement, to what extent was the mediator helpful in identifying possible areas of future agreement? 1 2 3 4 5

10. From this experience, how satisfactory do you think mediation is to resolve other disputes in which you might be involved? 1 2 3 4 5

11. Overall, how would you rate the mediation process in your case? 1 2 3 4 5

12. How appropriate was the fee? ___ Too High ___ Too Low ___ About Right

13. How helpful was it that the mediator was a lawyer? ___ Very ___ Somewhat ___ Not

COMMENTS: _____

THANK YOU!!

EVALUATION OF MEDIATION--PARTIES AND INSURERS

Name of Case: _____ Number of Hours in Session(s): _____

Mediator(s): _____

Date, Place of Mediation Session(s): _____

I am: _____ plaintiff
_____ defendant
_____ plaintiff's insurer/subrogee
_____ defendant's insurer

This mediation resulted in:
_____ full settlement of case
_____ partial settlement
_____ no settlement of the case

For each question below, please circle the response that reflects your opinion, using the following key for your answers: 1="Excellent!"; 2="Good"; 3="Adequate"; 4="Poor"; 5="Terrible!"

1. How efficient was the procedure of court referral and arranging the mediation session? 1 2 3 4 5
2. How was the mediator at explaining mediation? 1 2 3 4 5
3. During the mediation session(s), how was the mediator at:
 - a. Giving you opportunities to express your views? 1 2 3 4 5
 - b. Understanding your interests and needs in this dispute? 1 2 3 4 5
 - c. Treating you with fairness and respect? 1 2 3 4 5
4. How was the mediator at remaining neutral? 1 2 3 4 5
5. How well were the legal issues of the case identified and discussed during the session? 1 2 3 4 5
6. How was the mediator at allocating appropriate time for the mediation without rushing you to reach an agreement or dragging out the process? 1 2 3 4 5

____ Moved too quickly ____ Moved too slowly ____ Paced right

7. If you reached full or partial agreement,

a. To what extent was the mediator responsible for it? 1 2 3 4 5

b. To what extent do you think the mediation saved you money in resolving this case? 1 2 3 4 5

c. Please "guesstimate" how much money saved: \$ _____

d. To what extent do you think the mediation saved you time in resolving this case? 1 2 3 4 5

e. Please "guesstimate" how much time saved:
_____ hours of attorney time _____ hours of your time

8. If you reached full settlement, in your opinion would the case have settled later without mediation? ___ yes ___ no

9. If you reached only partial agreement, to what extent was the mediator helpful in identifying possible areas of future agreement? 1 2 3 4 5

10. From this experience, how satisfactory do you think mediation is to resolve other disputes in which you might be involved? 1 2 3 4 5

11. Overall, how would you rate the mediation process in your case? 1 2 3 4 5

12. How appropriate was the fee? ___ Too High ___ Too Low ___ About Right

13. How helpful was it that the mediator was a lawyer? ___ Very ___ Somewhat ___ Not

COMMENTS: _____

THANK YOU!!