

# CASE EVALUATION AND MEDIATION IN MICHIGAN CIRCUIT COURTS: A FOLLOW-UP STUDY

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## STUDY PURPOSE AND METHODS

Michigan's circuit courts currently employ two primary means of alternative dispute resolution (ADR) to resolve civil claims involving money. *Case evaluation* is a process through which a panel of three attorneys, appointed by a court and not involved in the dispute, hears issues specified by the parties and then renders a monetary evaluation of the case. *Mediation* is a process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement.

In fall 2017, the State Court Administrative Office (SCAO) contracted with Courtland Consulting to conduct a follow-up study to replicate portions of an ADR study conducted for SCAO in 2011. The purposes of the follow-up study were to:

- 1) Examine the efficacy of case evaluation and mediation in resolving civil cases, and
- 2) Assess current attitudes and opinions of attorneys, circuit court judges, and court administrators regarding case evaluation and mediation and compare them to the 2011 study findings.

## FINDINGS

**Mediation is used more now than five years ago; however, judges continue to order case evaluation as often as before.**

Two-thirds of both judges and attorneys said that mediation is used more often for civil cases than it was five years ago (Figure 1). Judges report ordering about 46% of torts and 47% of non-tort civil cases to mediation, which is significantly higher than in 2011 when these rates were around 30%. The judges order or refer 89% of tort claims to case evaluation as well as 72% of non-tort civil cases—about the same as in 2011.

### STUDY DATA

- Statewide web-based survey of 1,135 attorneys
- Statewide web-based survey of 67 circuit court judges
- Reviews of 358 civil cases in three circuit courts
- Interviews with judges and court administrators at three circuit courts

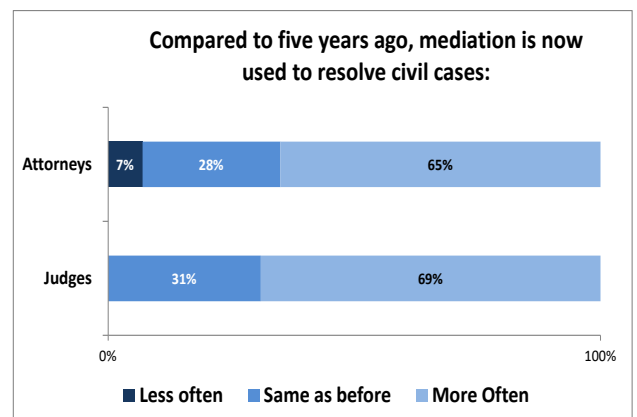


Figure 1. Attorneys' and judges' ratings of change in use of mediation

**Cases that used either form of ADR had high rates of disposition through settlement or consent judgment.**

Based on the case file review of 358 civil cases (tort and non-tort), both case evaluation and mediation are effective in achieving settlements that help prevent cases from going to trial—over 80% of the time when used individually or in combination (see Figure 2). When neither of the ADR processes was used, just over half of the cases (57%) were disposed through a settlement or consent judgment. The rest were disposed through other means, such as dismissal/default, summary disposition, or court verdict.

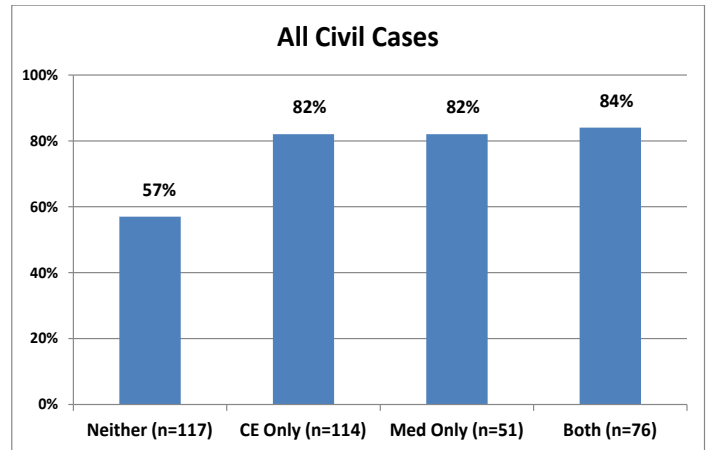


Figure 2. Percentage of cases disposed through settlement/consent judgment

**Case dispositions occurred more quickly through mediation.**

As shown in Figure 3, cases in which neither ADR process was used resolved the quickest (an average of 309 days); however, these were typically less complex matters involving lower value claims. When ADR processes were used, cases that used only mediation were disposed within an average of 377 days. The disposition time increased significantly when case evaluation was used—to 489 days when only case evaluation was used and to 537 days if both ADR processes occurred.

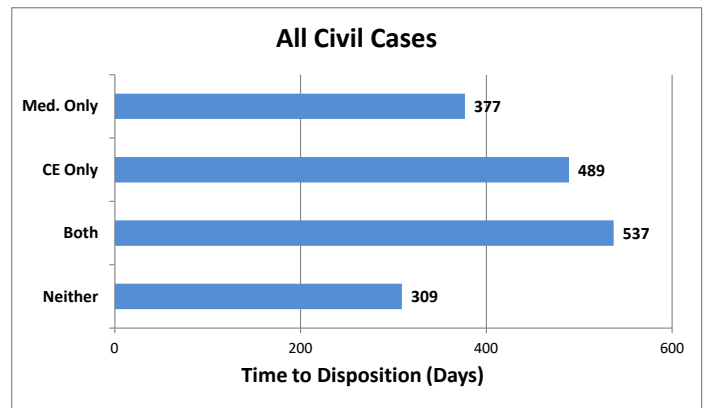


Figure 3. Average number of days to resolve case by type of ADR used

**Case evaluation increased the time to disposition by 3 to 4 months, compared to mediation.**

Mediation was faster than case evaluation for disposing cases because mediation was held about two months sooner in ADR cases and cases closed more quickly following mediation by nearly two months. Figure 4 shows the average number of months from case filing to when the ADR event was held—either the mediation conference or the convening of the case evaluation panel—and then the average number of months from that date to case closing.

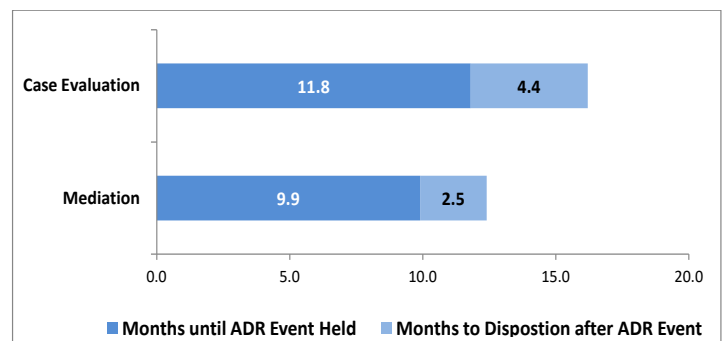


Figure 4. Average months before and after ADR event

As shown in Figure 5, many more judges (83%) said that mediation helped dispose of civil cases within the court's time guidelines than said that case evaluation had done this (45%).

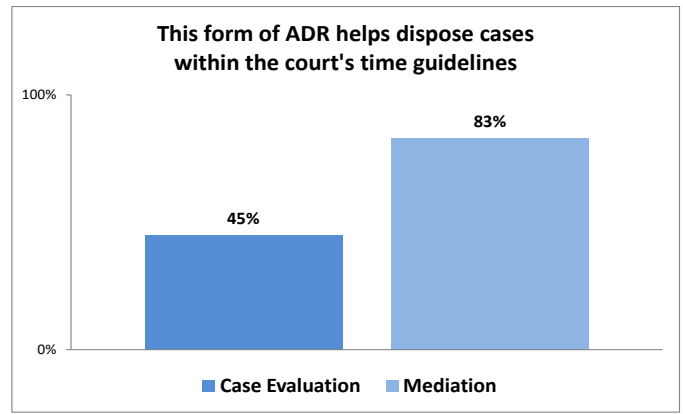


Figure 5. Percentage of Judges agreeing with the statement

**Mediation provides a more direct means of achieving a disposition than case evaluation does.**

Judges estimated that in 59% of the cases where mediation was held the process led directly to a settlement; the estimated rate was only 41% in cases where case evaluation was used (Figure 6). Examination of civil case records revealed that when mediation was held two-thirds of the cases were settled at the mediation conference. In only 15% of the cases in which case evaluation was held did the parties accept the award amount and settle quickly. Many of the remaining cases were later disposed through mediation.

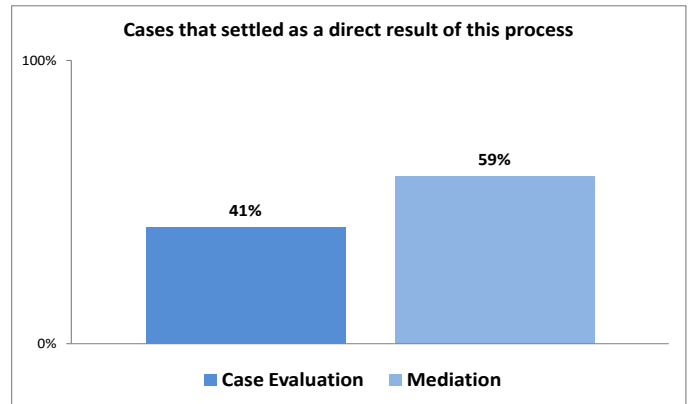


Figure 6. Judges' percentage estimates averaged

**While mediation's effectiveness ratings continue to be high, case evaluation's ratings have declined since 2011.**

Judges and attorneys were asked in the 2011 study, and again in this one, if they agreed that case evaluation and mediation are effective methods for resolving civil cases.

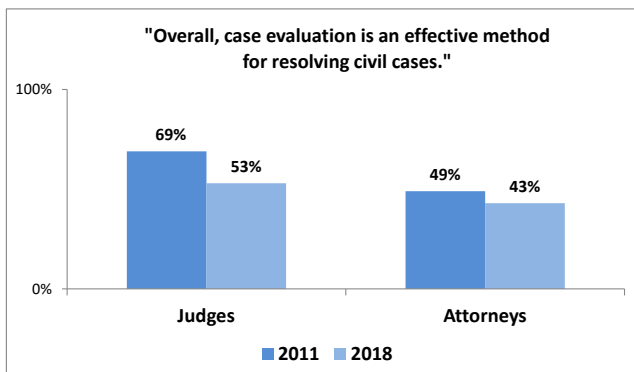


Figure 7. Percentage agreeing that case evaluation is effective

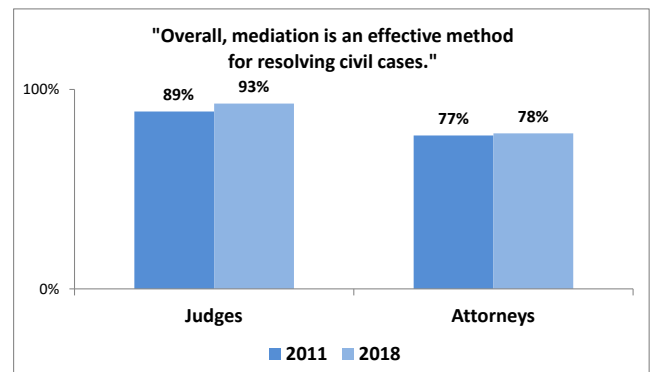


Figure 8. Percentage agreeing that mediation is effective

Comparisons of Figures 7 and 8 reveal that:

- In both study years, judges rated the effectiveness of each form of ADR more highly than did attorneys.
- High percentages of judges and attorneys in 2018 agreed that mediation is effective for resolving civil cases, just as in the 2011 study.
- Most judges agreed that case evaluation is an effective means to resolve cases, while most attorneys did not.
- However, the portion of judges who said case evaluation is effective declined from 69% in 2011 to 53% in the current study

Compared to 2011, both groups said they would be less likely to use case evaluation if it was not required for some civil cases (see Figure 9). Most strikingly, the percentage of judges who said they would voluntarily use case evaluation dropped from 83% then to 66% now.

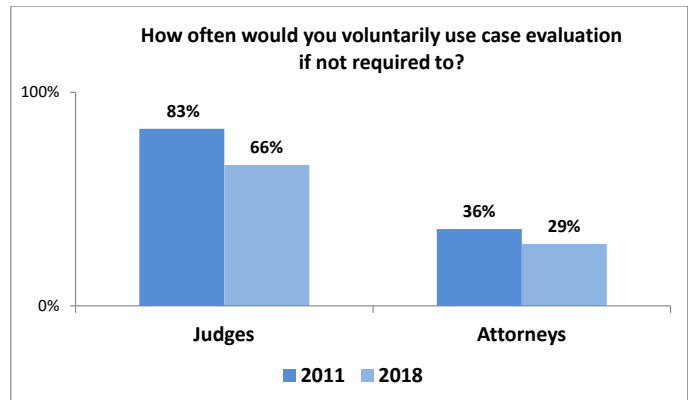


Figure 9. Percentage that would use case evaluation “Often” or more if not required to use it

## SUMMARY AND DISCUSSION

The case reviews found that case evaluation and mediation both produced high rates of settlement, but that mediation was a more direct method for doing this and disposed of cases more quickly. Both judges and attorneys rated mediation as the more effective form of ADR, just as they had in the 2011 study. Judges continued to regard both case evaluation and mediation more positively than did attorneys. However, while most judges still rate case evaluation as effective and say they would use it voluntarily, these numbers are not nearly as strong as they were in 2011.

Despite the increased use of mediation to resolve civil cases in Michigan and the evidence that it is the more effective form of ADR, some judges and attorneys want to retain the option of using case evaluation as needed to move civil cases toward resolution. In their comments on the survey, some argued for greater flexibility in choosing which type of ADR to use and when to use it—tailoring ADR use to the unique requirements of each case. Those who support the use of case evaluation frequently describe it as a tool that can be used to motivate parties to settle later once they have a potential settlement figure to work with and the threat of sanctions can be invoked for not accepting the award.

The complete report can be found at:

[HTTP://COURTS.MI.GOV/ADMINISTRATION/SCAO/OFFICESPROGRAMS/ODR/DOCUMENTS/2018%20MEDIATION%20AND%20CASE%20EVALUATION%20STUDY.PDF](http://courts.mi.gov/administration/scao/officesprograms/odr/documents/2018%20mediation%20and%20case%20evaluation%20study.pdf)

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