

A judge's impact on the use of ADR in District Court



The District Court of Maryland, with support from the Maryland Judiciary's Mediation and Conflict Resolution Office (MACRO), commissioned a research study with Salisbury University's Bosserman Center for Conflict Resolution to understand how statements made by judges in the courtroom impact the likelihood that people accept or decline to use alternative dispute resolution (ADR).

GOAL

What role does word choice play in parties considering ADR?

SUMMARY

The odds of parties trying ADR increase when a judge directs parties to try ADR. If a judge asks instead of directs, the odds of parties trying ADR decrease.



More than 90% of parties that leave the courtroom try the ADR process, suggesting that a judge talking to parties about participating in an ADR process is critical.

DIRECT vs. NEUTRAL STATEMENTS

The study reviewed a variety of statements judges used to mention, describe, explain, and promote ADR to parties to understand how different explanations and statements of referral affect the parties' decision to try ADR.

Mentioning that **ADR is voluntary**, provided **free** of charge, or **the ADR practitioner is a volunteer** reduce the odds of parties trying ADR.

DIRECTIVE STATEMENTS THAT INCREASE THE ODDS OF PARTIES TRYING ADR, SUCH AS THESE IDENTIFIED IN THE STUDY:

- *"I would like you to speak with the mediator and then return to the courtroom."*
- *"I'm going to have you meet with the mediators."*

NEUTRAL STATEMENTS THAT DO NOT AFFECT A PARTY'S DECISION TO TRY ADR INCLUDE:

ADR PRACTITIONER	ADR PROCESS	COURT PROCESS
<ul style="list-style-type: none">• credentials• court-approved• an attorney or affiliated with the bar association• a judge's personal endorsement	<ul style="list-style-type: none">• allows for creative ways to resolve the case• a non-legal opportunity to resolve the case• provides better outcomes	<ul style="list-style-type: none">• resolved cases in ADR will be heard sooner• warnings about the realities of trial
<p>Examples:</p> <p>"We have a certified mediator available today."</p> <p>"We have a very seasoned attorney here today who is acting as a mediator."</p> <p>"They are very good at what they do."</p>	<p>Examples:</p> <p>"Oftentimes you can reach a resolution much more flexible and satisfactory to the parties since you're not bound by statutes or case law."</p> <p>"You can often come to an agreement more satisfactory to you than a result after a trial."</p>	<p>Examples:</p> <p>"...if by chance you settle, come back and wave a red flag or a handkerchief or something and I'll interrupt procedure, so we can put that on the record."</p> <p>"The advantage to mediation, quite frankly, is this: If we have a trial somebody is going to win and somebody is going to lose."</p>

The study, **"An Analysis of Judicial Referrals to Alternative Dispute Resolution (ADR) in the District Court of Maryland,"** examines how District Court judges introduce, describe, explain, offer, or direct cases from the courtroom to mediation and settlement conferences on the day of trial and how those comments affect the odds that litigants will or will not try ADR for their case. A Salisbury University research team conducted the data collection and analysis.

For this study, researchers looked at 242 District Court cases from 14 counties. Content analysis was conducted on recordings of 57 judges who presided over cases that were offered ADR. Logistic regression analysis was used to examine and measure the relationship between the judges' statements and the litigants' or attorneys' decision to participate in ADR. Until now, no systematic content analysis of judges' statements about ADR from the bench and their impact on participation has been conducted.

To view the full report, visit: mdcourts.gov/macro/DistCrtStudy.

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