

What Works in District Court Day of Trial Mediation: Effectiveness of Various Mediation Strategies on Short- and Long-Term Outcomes



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Research Design, Implementation and Report Authors

This research was designed and overseen by Lorig Charkoudian, Executive Director of Community Mediation Maryland in collaboration with the Maryland Administrative Office of the Courts (AOC). The day to day implementation of research protocols was supervised by Haleigh LaChance, Research Associate at the Bosserman Center for Dispute Resolution at Salisbury University. Data collection was conducted by professional research assistants: Lindsay Barranco, Michal Bilick, Kate Bogan, Gretchen Kainz, Brittany Kesteven, Sue Rose, and Emmett Ward.

Statistical analysis of the data was conducted by Lorig Charkoudian. This report was written by Lorig Charkoudian, with significant contributions from Haleigh LaChance and Jamie Walter.

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This report is connected to a broader study of alternative dispute resolution (ADR) in Maryland courts being conducted by the AOC in collaboration with Community Mediation Maryland, Bosserman Center for Dispute Resolution at Salisbury University, the Institute for Governmental Service and Research, University of Maryland, College Park, and the University of Maryland Francis King Carey School of Law, with funding from the State Justice Institute.

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Questions concerning this report should be directed to Jamie Walter, Director of Court Operations, Administrative Office of the Courts, at 410-260-1725 or via e-mail at Jamie.walter@mdcourts.gov.

Executive Summary

Overview

The goals of the District Court ADR Program are not only to settle a case, but to offer participants an opportunity to better understand each other, to take ownership of the solution, to develop creative solutions, to consider conflict differently in the long term, and to be open to collaborative possibilities.

The goal of this research is to understand which components of the ADR (alternative dispute resolution) process affect what kind of outcomes for participants, in the short- and long-term. This research examines what ADR approaches and program components affect the probability of reaching agreements. This research further considers which ADR approaches and program components affect the type of agreements reached as well as the attitudinal shift of the participants toward each other and their belief in their ability to work together, both immediately after ADR as well as three to six months after ADR.

This research measures the effectiveness and efficiency of various approaches of ADR in the District Court Day of Trial ADR Program. ADR is available in 18 District Court locations throughout Maryland. ADR is provided in a facilitative, inclusive, or transformative framework, in either solo or co-ADR models.

The ADR program includes both mediation and settlement conferences. Day of Trial ADR is standardized across the state in terms of ADR practitioner qualifications, quality assurance program and procedures, ADR forms, Court Rules (MD Rule 17-301 et. seq.), confidentiality (MD Rule 17-105), and data collection. However, jurisdictions differ by the local ADR program procedures, ADR process available to litigants (based on the ADR practitioner who is scheduled and what his or her qualifications are to conduct either a mediation or settlement conference), range of ADR practitioner skills and experience, availability of ADR framework (again, depending on the ADR practitioner scheduled to provide the process), the process used to refer a case to ADR (varies by judge and by courtroom), and the date and time that ADR is available (based upon docket scheduling). Furthermore, ADR practitioners use a range of skills in the process.

Data and Analysis

In order to foster a representative sample, data for this study was collected in District Court Day of Trial ADR Programs in Baltimore City, Calvert County, Montgomery County, and Wicomico County. Data was collected through several methods: surveys of participants before and after the ADR session as well as three to six months later; surveys of the ADR practitioners; behavior coding of participants and ADR practitioners through observations of the ADR process; and review of court records.

Researchers were present on days when ADR practitioners were scheduled to appear for a court docket. Once the ADR practitioner received a case referral and solicited the parties' agreement to participate in ADR, researchers then requested the parties consent to participate in the research study. In all four counties, pre-intervention questionnaires were given before the ADR process. Next, researchers observed the ADR process and coded the behaviors of the ADR practitioners and the participants. At the conclusion of the process, participants were escorted back to the courtroom to either record their settlement or proceed with their trial. Post-intervention questionnaires were given at the conclusion of the court process.

Three months following the ADR process, researchers called participants to conduct a follow-up interview. Finally, 12 months after the court date, researchers reviewed the electronic court record of each observed case to determine if the parties had required further intervention by the court. When the electronic record was not clear, researchers reviewed the original case file at the Clerk's office.

Findings

Below we summarize the impacts of each set of strategies. The analyses described below generally hold constant for the complexity of the case and the level of hostility between participants.

Caucus

The short-term analysis finds that the greater the percentage of time participants spend in caucus, the more likely the participants are to report that the ADR practitioner controlled the outcome, pressured them into solutions, and prevented issues from coming out. Greater percentage of time in caucus was also negatively associated with participants reporting that they were satisfied with the process and outcome, and that the issues were resolved with a fair and implementable outcome. Greater percentage of time in caucus was positively associated with an increase in a sense of powerlessness, an increase in the belief that conflict is negative and an increase in the desire to better understand the other participant (presumably because they did not better understand the other party as a result of the ADR session). The long-term analysis finds that the greater the percentage of time participants spent in caucus was associated with a decrease in participants' consideration of the other person, self-efficacy (e.g., belief in one's ability to talk and make a difference), and sense that the court cares about resolving conflict from before the ADR session to several months later. Long-term analysis also revealed that a greater percentage of time in caucus is positively associated with the likelihood of returning to court in the 12 months after mediation for an enforcement action.

The percentage of time spent in caucus had no statistically significant impact (positive or negative) on reaching an agreement.

ADR Practitioner Reflecting Emotions/Interests

ADR Practitioner Reflecting Emotions/Interests is characterized by the ADR practitioner reflecting back to the participant what the participants themselves expressed, with a focus on the emotions and underlying interests. In the short term, *ADR Practitioner Reflecting Emotions/Interests* was positively associated with participants reporting that the other person

took responsibility and apologized. *ADR Practitioner Reflecting Emotions/Interests* was also positively associated with an increase in a sense of self-efficacy (i.e., ability to talk and make a difference) and an increase from before to after the ADR in the sense that the court cares.

ADR Practitioner Reflecting Emotions/Interests did not have any statistically significant impacts on the long-term outcomes measured.

ADR Practitioner Eliciting Participant Solutions

ADR Practitioner Eliciting Participant Solutions is characterized by ADR practitioner strategies that involve asking participants what solutions they would suggest, summarizing the solutions being considered, and checking in with participants to see how they think those ideas might work for them. This strategy had the broadest set of impacts both in the short- and long-term. In the short-term, *ADR Practitioner Eliciting Participant Solutions* was positively associated with participants reporting that they listened and understood each other in the ADR and jointly controlled the outcome; participants report that the other person took responsibility and apologized; and negatively associated with participants reporting that the ADR practitioner controlled the outcome, pressured them into solutions, and prevented issues from coming out. *ADR Practitioner Eliciting Participant Solutions* was the only ADR practitioner strategy that had an impact on reaching an agreement, and the impact is a positive one. In the long term analysis, *ADR Practitioner Eliciting Participant Solutions* was positively associated with participants reporting that they changed their approach to conflict.

ADR Practitioner Eliciting Participant Solutions was negatively associated with participants returning to court for an enforcement action in the subsequent 12 months. Participants are less likely to return to court for enforcement action if the mediator used more of the eliciting solution strategy.

ADR Practitioner Offering Opinions and Solutions

ADR Practitioner Offering Opinions and Solutions and is characterized in the short-term analysis by the ADR practitioner offering their opinion and advocating for their ideas for solutions. In the long-term analysis, this set of strategies also includes the ADR practitioner offering legal analysis. *ADR Practitioner Offering Opinions and Solutions* did not have any statistically significant impacts in the short-term. In the long-term, it was negatively associated with participants' report that the outcome was working, they were satisfied with the outcome, they would recommend ADR, and with participants' reporting that they changed their approach to conflict.

Reaching an Agreement

Reaching an agreement in ADR results in participants reporting several positive outcomes after the ADR session. It was positively associated with participants reporting that they listened to and understood each other in the ADR session and jointly controlled the outcome; they were satisfied with the process and outcome; that the issues were resolved with a fair and implementable outcome; the other person took responsibility and apologized; an increase in a sense of self-efficacy (ability to talk and make a difference) and an increase in the sense that the

court cares from before to after the ADR was positively associated; and negatively associated with an increase in the sense of powerlessness and the negativity of conflict as well as a desire to better understand the other, presumably because they better understood the other party already as a result of the ADR session. Reaching an agreement did not have any statistically significant impacts on the long-term outcomes.

Racial Match of ADR Practitioner and Participant

Having at least one ADR practitioner in the session who matches the race of the responding participant was positively associated with participants reporting that they listened and understood each other in the ADR session and jointly controlled the outcome and an increase in a sense of self-efficacy (ability to talk and make a difference) and an increase in the sense that the court cares from before to after the ADR session. Here it is important to note that participants were never asked about their opinion on the role of race or the ADR practitioner's race. Participants were asked their race, ADR practitioners were asked their race, and based on these answers, a variable was created identifying if there was a match. This was included in the analysis and was found to be significant in these two areas, even after holding constant for other factors in the case, including ADR practitioner strategies.

Mediation Experience

The number of cases an ADR practitioner had conducted in the 12 months prior to the case is negatively associated with participants' report that they heard and understood each other during the ADR process. That is, practitioners who had conducted more cases in the previous 12 months were less likely to have participants report that they heard and understood each other.

In the long-term, the number of cases an ADR practitioner has conducted in the 12 months prior to the case is negatively associated with the probability of returning to court for an enforcement action in the 12 months after the case. As such, cases conducted by practitioners who had conducted more cases in the previous 12 months were less likely to return to court for enforcement action.

Recommendations

The goals of the District Court ADR Program are to support participants to develop their own solutions outside of the courtroom, to build better understanding among participants, and to support participant self-determination. An important benefit to ADR is that participants who reach agreements in ADR are less likely to return to court for an enforcement action, thus creating more efficiency in case processing in the District Court. The ADR strategies that best align with these goals are *eliciting participant solutions* and *reflecting participants' emotions and interests*. Caucusing and ADR practitioners offering their opinion or solutions have effects that run counter to these goals. Therefore, this research indicates that the District Court ADR Office may wish to encourage and support ADR practices that focus on eliciting participants' solutions and reflecting back to participants, and discourage strategies that are heavily focused on caucus and ADR practitioners offering their own solutions and opinions.

These findings also indicate that racial match between participants and ADR practitioners affect participant self-efficacy, participants' experience that the court cares about resolving

disputes, and participants' hearing and understanding each other. This highlights the value of ensuring the ADR practitioner pool is diverse and includes people from a range of racial backgrounds especially given that the racial match results are impacted by a large sample from Baltimore City, with many African American participants and white practitioners.

This study provides a glimpse into what is occurring in ADR sessions and its varied impact on the participants. The Maryland Judiciary is hopeful that this research model can be replicated with a larger and even more diverse sample of cases. More research examining these crucial questions will result in more confident and informed recommendations for effective ADR practitioner strategies and court ADR program structures.

Introduction

The goals of the District Court ADR Program are not only to settle a case, but to offer participants an opportunity to better understand each other, to take ownership of the solution, to develop creative solutions, to consider conflict differently in the long term, and to be open to collaborative possibilities.

The goal of this research is to understand which components of the ADR (alternative dispute resolution) process affect what kind of outcomes for participants, in the short- and long-term. This research examines what ADR approaches and program components affect the probability of reaching agreements. This research further considers which ADR approaches and program components affect the type of agreements reached as well as the attitudinal shift of the participants toward each other and their belief in their ability to work together, both immediately after ADR as well as three to six months after ADR.

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To conduct this analysis, data was collected in a unique and comprehensive way, including pre- and post-surveys of participants, phone surveys with participants three to six months after ADR, surveys of ADR practitioners, reviews of case files and court databases, and observations of ADR for the purpose of coding the ADR practitioner and participant strategies during the ADR. This allows for an in-depth analysis of the impact of ADR practitioner strategies, while holding constant for the complexity of the case and the level of hostility between the participants. Regression analysis is used to isolate the impact of various program components and ADR practitioner strategies on the outcomes of interest.

Overview of Data and Data Collection Process

In order to foster a more representative sample, data for this study was collected in District Court Day of Trial ADR Programs in Baltimore City, Calvert County, Montgomery

County, and Wicomico County. ADR Practitioners in Baltimore City come from University of Maryland Frances King Carey School of Law Mediation Clinic, Community Mediation (Baltimore) and private practice. In Calvert County, ADR practitioners were from the Community Mediation Center of Calvert County. ADR practitioners in Montgomery County include community ADR practitioners with the Conflict Resolution Center of Montgomery County and private practitioners. ADR practitioners in Salisbury were exclusively from the Community Mediation Initiative at the Bosserman Center for Conflict Resolution, Inc. with Salisbury University.

Data Collection Process

Data were collected through several methods: surveys of participants before and after the ADR session as well as three to six months later; surveys of the ADR practitioners; behavior coding of participants and ADR practitioners through observations of the ADR process; and review of court records.

Surveys were conducted with plaintiffs, defendants, and any support people who attended the ADR session with them. Surveys were only conducted if both the plaintiff and defendant agreed to participate. Support people were included because often those who were not named in the case but accompanied the plaintiff or defendant were key players in the conflict. For example, a person named on a lease might be the party to the case, but his partner, who attends with him, is equally affected by what occurs in their home. In seeking to understand the impact of ADR on a conflict and on relationships, we included all who attended who might be involved in the conflict. Also, in some cases the support person may be influential to the outcome. For example, a younger person may bring a parent or mentor with them for guidance. The ways that this support person is affected by the process in which they participate can affect how they interact with and influence the outcomes of the situation.

Researchers were present on days when ADR practitioners were scheduled to appear for a court docket. Once the ADR practitioner received a case referral and solicited the parties' agreement to participate in ADR, researchers then requested the parties consent to participate in the research study.

In Baltimore City, ADR practitioners largely receive referrals from the courtroom clerk. On a typical afternoon three to five courtrooms were in session, all conducting small claims or landlord/tenant cases. The practitioner checked-in with the clerk in each courtroom. As participants arrived and reported to the courtroom clerk, the clerk set aside case files appropriate for ADR for which both participants were present. As the ADR practitioner made the rounds through courtrooms, they collected those files and spoke to the participants about ADR. Consenting parties were then offered participation in the research study. ADR took place in a private room in another part of the courthouse.

In Calvert, Montgomery, and Wicomico Counties, two ADR practitioners were present for the docket and received referrals directly from the sitting judge. A practitioner escorted participants to the hall to discuss participation in ADR. Participants who agreed to use ADR were then offered to participate in the research study and if all participants consented, they were then escorted to the private room where the ADR process took place.

In all four counties, pre-intervention questionnaires were given before the ADR process. Next, researchers observed the ADR process and coded the behaviors of the ADR practitioners and the participants. At the conclusion of the process, participants were escorted back to the courtroom to either record their settlement or proceed with their trial. Post-intervention questionnaires were given at the conclusion of the court process.

Three months following the ADR process, researchers called participants to conduct a follow-up interview. As an incentive for participation, participants who completed the phone interview were sent a check for \$10. Contacting participants presented a significant challenge. It often took many attempted calls before participants could be reached for the interview. After five failed attempts, the participant was determined to be unreachable. While the standard timing for the call was three months after the ADR, the average length of time between the ADR and the follow up call was 4.3 months, with a standard deviation of 1.57. The minimum amount of time was 2.1 months and the maximum was 11.4 months.

Behavior coding was used to track actions taken by ADR practitioners and by participants during ADR sessions (see Appendix D for final code books). Behavior codes were created initially through a review of the behavior codes used in a previous study of ADR practitioner strategies, used in Charkoudian and Wayne, 2010, as well as Charkoudian, 2012. The codes were adjusted based on feedback from researchers in that previous study and a review of recent literature on approaches to ADR. The draft codes were also reviewed by other ADR researchers in Maryland who provided additional feedback. Two research assistants were trained to record ADR practitioner behavior codes and three research assistants were trained to record participant behavior codes, to allow for flexibility in data collection. Only two researchers were actually present at any given ADR session to record data. During training, codes were further refined as the researchers identified points of confusion or inconsistency. A proportion of use of each ADR practitioner strategy was then calculated for use in data analysis. According to Yoder and Symons (*Observational Measurement of Behavior*, 2010, p. 161), this final variable is the appropriate value to compare across observers to test for inter-rater reliability. Training continued until researchers had reached a level of agreement of at least 80% on each individual proportion.

After six months in the field, the researchers were reconvened to examine if any ‘drift’ had occurred away from the original code definitions and from their inter-rater reliability. Together, the two ADR practitioner coders and three participant coders watched both live ADR sessions and video role-play. Their results were examined for the level of agreement. No measurable drift was found in the agreement rates of either the ADR practitioner coders or participant coders.

Approximately mid-way through data collection, two of the five trained researchers left the project and were replaced. The remaining ADR practitioner coder and two remaining participant coders taught the established codes to the new researchers, under the supervision of the principal investigator. Training continued until the new researchers reached the 80% minimum level of inter-rater reliability for each variable.

Finally, 12 months after the court date, researchers reviewed the electronic court records of each observed case to determine if the parties had required further intervention by the court.

When the electronic record was not clear, researchers reviewed the original case file at the Clerk’s office.

Data Set

The resulting data set is rich with the possibility for analyzing components of the ADR process and their impact on outcomes. The resulting variables are defined in Table 1 below:

Table 1: Descriptive Definitions

Variable Name	Description
Agreement	Was an agreement signed and submitted to the court? (no, partial, yes)
Pre-Intervention Measures	
Police Called	Did any participant report the police had been called?
Contract	Case type - gathered from filing documents
Personal Relationship	What is your relationship to the other party? (yes if personal relationship if response was boyfriend/girlfriend, ex-boyfriend/ex-girlfriend, friends, spouses/domestic partners, other family, roommates, or neighbors)
Attorney Present	Was the attorney present at the ADR session?
Plaintiff	Are you the plaintiff, the person who filed?
Race Matches	Did the race of the plaintiff and defendant match?
Characteristics ADR and Provider	
Caucus Time	Percentage of total ADR time spent in caucus session
Total Time ADR	Total time, in minutes,
Gender Matches Me	Did the gender of the participant match at least one ADR practitioner
Race Matches Me	Did the race of the participant match at least one ADR practitioner
Cases 12 Months	To the best of your recollection, how many cases have you mediated in the past twelve months?
Behavioral Codes	
ADR Practitioner Codes	
Emotions	Percentage of total strategies that meet the following definitions: <ul style="list-style-type: none"> • Any statement from the ADR practitioner which addresses participants’ feelings. • Any ADR practitioner statement which encourages participants to express their own feelings. • Any statement in which an ADR practitioner reflects a feeling that a participant has indicated but not stated directly. • Any statement or question in which an ADR practitioner begins with “feel...” and follows with an emotion or quasi-emotion word.

Interests/Values	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> • A reflection or paraphrasing in which an ADR practitioner tries to name the value or goal <u>behind</u> the position a participant articulates. • This would include attempting to understand the interest or value that the participant has for their children or someone for whom they are speaking.
Open-Ended Question	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> • Any question which attempts to get participants to talk about their perspective on the situation, generally open-ended questions. • Questions which attempt to get beyond the surface position to an underlying goal or value. Includes hypothetical questions about things occurring differently in the past.
Fact/Closed Question	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> • Any question to which yes/no can be answered. Any question which asks for one specific detail or attempts to establish a piece of information as true. • Questions that attempt to determine who was or should be responsible for something that occurred in the past.
Summary of Facts	<p>Percentage of total strategies that meet the following definitions: A summary of specific legal or technical facts in the case, which includes at least two facts and quantitative information.</p>
ADR Practitioner Opinion	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> • Any statement in which the ADR practitioner talks about their own personal experiences or previous ADR experiences, as they relate to the situation. • Any statement in which the ADR practitioner expresses their opinion about the ADR process, or the way they would describe the process. • Any time an ADR practitioner provides personal information about themselves or answers a personal question a participant asks of them in a way which provides information. • Any statement expressing the ADR practitioners' opinion about the situation. • Any statement in which a ADR practitioner brings up a piece of information they got from before the ADR, either from the intake file, the court file, previous conversations with the participants, etc. with an

	<p>indication that they are bringing it from one of these places.</p> <ul style="list-style-type: none"> • Any statement in which the ADR practitioner expresses their opinion about a potential solution. • Any statement in which the ADR practitioner expresses his/her opinion about what the group has said with some degree of certainty or conclusion. • Any statement in which the ADR practitioner explains their analysis of the dynamics of the relationship. • A statement in which an ADR practitioner finishes a sentence for a participant. • Any statement in which the ADR practitioner praises both participants behavior in ADR.
<p>Advocate/Support</p>	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> • Any statement in which the ADR practitioner indicates support for or agreement with one participant's position/ideas. • Any statement in which the ADR practitioner advocates for one participant's position / ideas. • Any statement in which an ADR practitioner praises one participant's behavior in ADR. • Any statement in which the ADR practitioner criticizes one participants' behavior or approach. • Any statement in which the ADR practitioner frames the topic in terms of one participants' view of the situation.
<p>Behavior Direction</p>	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> • Any statement in which an ADR practitioner sets guidelines or rules for participants to follow during the ADR, or tells participants how to act during the ADR. • Any statement in which the ADR practitioner choreographs participants' behavior in a certain way. • Any statement in which the ADR practitioner attempts to tell participants how to behave in response to swearing, cursing, yelling, interrupting, or insults, or breaking any other rules the ADR practitioner has established. Used when ADR practitioners repeat the participants' names over and over or say "ladies, ladies..." or "gentlemen, gentlemen..." in an attempt to get attention to restore order. • Any time an ADR practitioner uses a private session or a break in response to swearing, cursing, yelling, interrupting or insults to a participant.

<p>Explain</p>	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> • Any statement in which the ADR practitioner offers “re-interpretation” or explanation one participant’s behavior or position to the other participant, using a name or pronoun in the commentary. • Any statement in which an ADR practitioner states one participant's position to the other participant. • Any statement in which the ADR practitioner asks participants to consider the other’s perspective.
<p>Ask for Solution/ Brainstorm</p>	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> • Any question in which an ADR practitioner asks participants for a suggestion or solution to the conflict. • A question when the ADR practitioner asks participants to describe what they think or plan to have happen in any particular future scenario. • Any open-ended question by the ADR practitioner in an attempt to get specifics related to a possible solution, or asks for some kind of clarification about the suggestion. These questions would be who, what, when, where, how as follow-ups to a participant solution, without introducing a new direction. • Any question in which an ADR practitioner asks participants for solutions using a plural -- implying asking for more than one possibility. • Any question in which the ADR practitioner asks participants to select solutions out of a range that they have identified. • Any procedural description of the brainstorming process.
<p>Summary of Solutions</p>	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> • Any statement in which an ADR practitioner verbally summarizes the solutions the participants have suggested. • Any statement in which the ADR practitioner summarizes all of the ideas the participants have considered or are considering. • Any statement by the ADR practitioner which summarizes agreements participants have made. • Any action by the ADR practitioner involving listing the possible solutions. • The act of handing participants a written agreement.

Suggestion Question	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> • Any question in which an ADR practitioner suggests a solution to the problem. • Any question in which an ADR practitioner steers participants towards a particular type of solution. • Any question in which an ADR practitioner steers participants towards ADR guidelines or in a particular direction for the ADR process itself.
Negotiation Question	<p>Percentage of total strategies that meet the following definition: Questions that encourage positional negotiation and splitting the difference. These generally use compromise language or language that assumes trade-offs.</p>
ADR Practitioner Solution	<p>Percentage of total strategies that meet the following definition: Any statement in which the ADR practitioner promotes a solution that did not come from the participants.</p>
Request Reaction	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> • Any question in which an ADR practitioner asks participants for their thoughts on a specific suggestion of a solution to the conflict that was made by one of the participants. • Any comment after an ADR practitioner has summarized a set of items participants have agreed to and asks participants if that will take care of the situation. • Any reflection of participants' assessment with a questioning tone or a question attached to it, if the goal is to confirm that status of the possibility. • Any comment in which an ADR practitioner asks participants to consider a list of possibilities and identify which ideas they want to remove from the lists.
Legal Assess	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> • Any statement in which the ADR practitioner makes a prediction about what might occur in court. • Any statement in which the ADR practitioner evaluates the strengths and weaknesses of the participants' case. • Any statement in which the ADR practitioner instructs participants with legal information or asks questions which provide information about a legal situation.

Participant Codes	
Wrong	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> Any statement in which a participant indicates that other participant is wrong about a specific issue. Any statement in which a participant points out something that they consider to be negative that the other participant did in the past or in the ADR. Any statement in which a participant indicates that other participant is lying about a specific thing. Any statement in which a participant indicates that they do not trust the other participant. Any statement in which a participant indicates that they don't care about the other person's needs.
Put Down	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> Any statement in which a participant makes a generalization about the other participant's behavior and criticizes it. This applies to behavior either in the ADR or in the past. Includes adverbs of frequency (such as always, every time, constantly, everywhere, anyplace, any time, whenever, everything) or a negative adjective (lazy, crazy, ugly). Use of negative adjectives to make generalizations about the other participant's skills, property, etc. Any statement in which the participant makes an ironic/sarcastic comment about the other person. This is not defined by the tone used, but when the statement means the opposite of what was said. Any statement in which a participant calls the other participant a name or uses a derogatory term to describe the participant.
Responsibility/Apology	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> Any question or statement in which a participant takes responsibility for some role in the conflict, including taking responsibility for actions within the ADR. Any statement in which a participant apologizes for a specific behavior or action, including within the ADR.
Participant Solution	<p>Percentage of total strategies that meet the following definitions:</p> <ul style="list-style-type: none"> Any statement in which a participant makes a specific future-focused suggestion about what could solve the problem (including within the ADR). These are most often in present or future tense, and can include hypothetical solutions or an if-then clause.

	<ul style="list-style-type: none"> • A Participant Solution can involve a negative concept if it is specific.
Accept Solution	Percentage of total strategies that meet the following definitions: When participants formally accept a solution. This should be coded for all participants who are explicitly agreeing.
Reject Solution	Percentage of total strategies that meet the following definitions: <ul style="list-style-type: none"> • Any statement in which a participant explicitly rejects a solution that it posed to them, by the other participant or the ADR practitioner, in the previous speaking turn. • Any statement in which a participant indicates that a solution the other participant suggested will not work, or that they are not willing to accept it.
Responsibility & Wrong	Percentage of total strategies that meet the following definitions: This is a combination code when a participant assigns mutual responsibility to both parties, including themselves (both <i>wrong</i> and <i>responsibility/apology</i> simultaneously).
Silence	Percentage of total strategies that meet the following definitions: Any instance in which <u>everyone</u> (all participants and ADR practitioners) is silent for more than 10 seconds.
Interrupt	Any time a participant starts speaking while another participant is speaking. This should be coded even if not perceived as hostile. If there are a series of interruptions, <i>Interrupt</i> should still only be coded once for each participant in a 1 minute period.
Post-Intervention Variables: Short-Term	
ADR Practitioner Listened	The (mediator/s or settlement conference attorney) listened to what I had to say without judging me or my ideas.
ADR Practitioner Took Sides	The (mediator/s or settlement conference attorney) seemed to take sides.
ADR Practitioner Respected	The (mediator/s or settlement conference attorney) treated me with respect.
I Could Express	I was able to express myself, my thoughts, and my concerns during the (mediation or settlement conference).
ADR practitioner Understood	I think the (mediator/s or settlement conference attorney) understood what I was expressing.
I Became Clear	Through the (mediation or settlement conference), I became clearer about what I want in this situation.
I Understand Other	Through the (mediation or settlement conference), I think I understand the other person/people involved in the conflict better.
Other Understands Me	Through the (mediation or settlement conference), I think the other person/people involved in the conflict understand/s me better.

ADR Practitioner Prevented Topics	The (mediator/s or settlement conference attorney) prevented us from discussing important topics.
P Underlying Issues	I think all of the underlying issues in this conflict came out in the (mediation or settlement conference).
Other Listened	The other person/people listened to me.
ADR Practitioner Pressured	The (mediator/s or settlement conference attorney) pressured us to reach an agreement in ADR/settlement conference.
We Controlled	Together, the other person/people and I controlled the decisions made in the (mediation or settlement conference).
ADR Practitioner Controlled	I feel like the (Mediator/s or settlement conference attorney) controlled the decisions made in the (ADR or settlement conference).
Reuse ADR	I would bring other conflicts to (mediation or settlement conferencing) in the future.
Recommend ADR	I would recommend (mediation or settlement conferencing) to others involved in conflicts.
Satisfied Outcome	I am satisfied with the outcome of the (mediation or settlement conference).
Satisfied Process	I am satisfied with the process of the (mediation or settlement conference).
P Report Agreement	Did you reach a full agreement, partial agreement, or no agreement?
Issues Resolved	Do you think the issues that brought you to court today are resolved?
P I Took Responsibility	I acknowledged responsibility.
P I Apologized	I apologized.
P Other Took Responsibility	The other person acknowledged responsibility.
P Other Apologized	The other person apologized.
P No One Apologized	Neither of us acknowledged responsibility or apologized.
Outcome Fair	I think the outcome reached today is fair.
P I Can Implement	I think I can implement the results of the outcome reached today.
P Satisfied Judiciary	I am satisfied with my interactions with the judicial system during this case.
Difference from Pre-Intervention to Immediately After Intervention	
Difference P - My Needs	It's important to me that I get my needs met in the issues that brought me to court today.
Difference P - I Understand	It's important that I understand what the other person/people want/s in the issues that brought me to court today.
Difference P - Learn Wrong	The other person/people need/s to learn that they are wrong in the issues that brought me to court today.
Difference P - Their Needs	It's important that the other person/people get their needs met in the issues that brought me to court today.

Difference P - Positive Relationship	It's important for me to have a positive relationship with the other person/people involved in the issues that brought me to court today.
Difference P - No Control	I feel like I have no control over what happens in the issues that brought me to court today.
Difference P - Wants Opposite	The other person/people involved in the issues that brought me to court today want/s the exact opposite of what I want.
Difference P - Talk Concerns	I can talk about my concerns to the person/people I have conflict with.
Difference P - No Difference	It doesn't seem to make any difference what I do in regard to the issues that brought me to court today, it'll just remain the same.
Difference P - Conflict Negative	In general, conflict is a negative thing.
Difference P - Court Cares	The court system cares about helping people resolve disputes in a fair manner.
Difference - Number of Ways	I think there are a number of different ways to resolve the issues that brought me to court today.
Follow-Up After Intervention (3-6 months) Measures (Long Term)	
LT Recommend	How likely are you to recommend mediation or a settlement conference to others involved in a court case?
LT Satisfied Outcome	At this point, how satisfied are you with the final outcome reached?
LT Outcome Working	How well is the outcome you reached working for you?
LT I followed Through	How well do you think you followed through on the outcome?
LT Other Followed Through	How well did the other/s follow through on the outcome?
LT Contact Better	Are the interactions worse, the same, or better than six months ago?
LT New Problems	Since the final outcome was reached, have new problems arisen between you and the other person/people?
LT Personal Inconvenience	In the last three months since the mediation /settlement conference or trial, have you had any personal inconveniences (e.g. missed work, change in your routine, lack of sleep, health issues, situation weighing on your mind etc.) as a result of this situation?
LT Financial Cost	In the last three months, have you had any personal financial costs as a result of this situation, other than any amount agreed upon in the mediation or settlement conference, or decided at trial?
Difference from Pre-Intervention to Long-Term Follow-Up After Intervention (3-6 months)	
Difference LT - Number of Ways	I think there are a number of different ways to resolve the issues that brought me to court three months ago.
Difference LT - My Needs	It's important to me that I get my needs met in the issues that brought me to court three months ago.

Difference LT - I Understand	It's important that I understand what the other person/people want in the issues that brought me to court three months ago.
Difference LT - Learn Wrong	The other person/people need to learn that they are wrong in the issues that brought me to court three months ago.
Difference LT - Their Needs	It's important that the other person/people get their needs met in the issues that brought me to court three months ago.
Difference LT - Positive Relationship	It's important for me to have a positive relationship with the other person/people involved in the issues that brought me to court three months ago.
Difference LT - No Control	I feel like I have no control over what happens in the issues that brought me to court three months ago.
Difference LT - Wants Opposite	The other person/people involved in the issues that brought me to court three months ago want the exact opposite of what I want.
Difference LT - Can Talk Concerns	I can talk about my concerns to the person/people involved in the issues which brought us to court three months ago.
Difference LT - No Difference	It doesn't seem to make any difference what I do in regard to the issues that brought me to court three months ago, it'll just remain the same.
Difference LT - Conflict Negative	In general, conflict is a negative thing.

Next we report on two separate studies conducted with this data. The first analyzes the short-term impacts of the various ADR strategies. The second analyzes the longer term impact.

Study #1: Immediate (Short-Term) Impact of ADR Strategies

Summary Statistics

Tables 2 - 4 provide the summary statistics for the variables included in this analysis. Table 2 provides summaries for variables examined for each participant. Tables 3 and 4 examine each case, Table 3 summarizes the percentage of cases reaching agreements, and Table 4 summarizes each variable examined for each case.

Table 2: Summary Statistics for Each Variable – Data by Participant

Variable Name	N	Freq.	Percent	Range	Mean (SD)
Pre-Intervention Measures					
Agreement	269			0 to 2	0.97 (0.99)
Police Called	269	59	22%		
Contract	269	183	68%		
Personal Relationship	240	55	23%		
Attorney Present	233	16	7%		
Plaintiff	244	107	44%		
Race Matches	233	105	45%		
Characteristics ADR and Provider					
Caucus Time	269			0 to 0.71	0.08 (0.18)
Total Time ADR	269			5 to 155	54.12 (30.9)
Gender Matches Me	239	127	53%		
Race Matches Me	233	105	45%		
Cases 12 Months	262			1 to 180	24.86 (32.32)
Behavioral Codes					
ADR Practitioner Codes					
Emotions	269			0 to 0.37	0.03 (0.06)
Interests/Values	269			0 to 0.23	0.01 (0.03)
Open-Ended Question	269			0 to 0.19	0.05 (0.04)
Fact/Closed Question	269			0 to 0.31	0.09 (0.07)
Summary of Facts	269			0 to 0.05	0.00 (0.01)
ADR practitioner Opinion	269			0 to 0.50	0.14 (0.09)
Advocate/Support	269			0 to 0.09	0.00 (0.01)
Behavior Direction	269			0 to 0.24	0.02 (0.03)
Explain	269			0 to 0.14	0.02 (0.03)
Ask for Solution/Brainstorm	269			0 to 0.29	0.09 (0.06)
Summary of Solutions	269			0 to 0.41	0.15 (0.10)
Suggestion Question	269			0 to 0.09	0.01 (0.02)
Negotiation Question	269			0 to 0.05	0.00 (0.01)
ADR practitioner Solution	269			0 to 0.27	0.06 (0.05)
Request Reaction	269			0 to 0.18	0.02 (0.03)
Legal Assess	269			0 to 0.37	0.03 (0.06)
Participant Codes					
Wrong	269			0 to 1.00	0.27 (0.18)
Put Down	269			0 to 0.33	0.02 (0.04)
Responsibility/Apology	269			0 to 0.60	0.02 (0.05)
Participant Solution	269			0 to 1.00	0.25 (0.15)
Accept Solution	269			0 to 1.00	0.09 (0.12)
Reject Solution	269			0 to 0.18	0.02 (0.03)
Responsibility and Wrong	269			0 to 0.40	0.01 (0.03)
Silence	269			0 to 0.45	0.02 (0.05)
Interrupt	269			0 to 0.13	0.01 (0.03)

Variable Name	N	Freq.	Percent	Range	Mean (SD)
Post-Intervention Variables					
P M Listened	213			1 to 5	4.27 (0.74)
P M Took Sides	214			1 to 5	1.04 (0.76)
P M Respect	213			1 to 5	4.33 (0.63)
P Expressed	212			1 to 5	4.25 (0.66)
P Understood	213			1 to 5	4.09 (0.69)
P Clearer	212			1 to 5	3.82 (0.91)
P Understand Other	211			1 to 5	3.36 (1.08)
P Other Understood	212			1 to 5	3.26 (1.12)
P M Prevented	212			1 to 5	3.73 (0.94)
P Underlying Issues	212			1 to 5	2.05 (0.79)
P Other Listened	211			1 to 5	3.3 (1.08)
P M Pressured	210			1 to 5	1.97 (0.77)
P We Controlled	209			1 to 5	3.76 (0.87)
P ADR practitioner Controlled	210			1 to 5	2.12 (0.81)
P Reuse	212			1 to 5	3.85 (0.82)
P Recommend	211			1 to 5	4.02 (0.74)
P Satisfied Outcome	213			1 to 5	3.56 (1.06)
P Satisfied Process	213			1 to 5	3.96 (0.78)
P Report Agreement	212			0 to 2	1.17 (0.96)
P Issues Resolved	204			0 to 2	1.50 (0.82)
P I Took Responsibility	204	45	22%		
P I Apologized	203	14	7%		
P Other Took Responsibility	205	43	21%		
P Other Apologized	202	26	13%		
P No One Apologized	202	117	58%		
P Outcome Fair	197			1 to 5	3.74 (1.11)
P I Can Implement	196			1 to 5	3.98 (.72)
P Satisfied Judiciary	197			1 to 5	3.98 (.78)
Difference from Before to After Intervention					
Difference - My Needs	203			-4 to 3	-0.16 (0.74)
Difference - I Understand	203			-3 to 3	0.11 (0.9)
Difference - Learn Wrong	200			-4 to 4	-0.31 (1.01)
Difference - Their Needs	200			-2 to 2	0.21 (0.87)
Difference - Positive Relationship	203			-4 to 3	-0.05 (0.98)
Difference - No Control	199			-3 to 5	-0.14 (1.31)
Difference - Wants Opposite	201			-3 to 3	-0.33 (0.1)
Difference - Talk Concerns	201			-4 to 3	-0.05 (1.25)
Difference - No Difference	195			-3 to 4	-0.18 (1.23)
Difference - Conflict Negative	199			-3 to 2	-0.2 (0.83)
Difference - Court Cares	199			-3 to 2	0.05 (0.67)
Difference - Number of Ways	198			-4 to 3	-0.03 (1.1)

Table 3: Percentage of Cases Reaching Agreement

Jurisdiction	Number	Percentage
Total ADR Cases Reaching Agreement	57 (of 116)	49%
Baltimore City	30 (of 48)	63%
Calvert County	19 (of 41)	46%
Montgomery County	7 (of 22)	33%
Wicomico County	1 (of 5)	20%

Table 4: Summary Statistics for Each Variable – Data by Case

Variable Name	N	Freq.	Percent	Range	Mean (SD)
Agreement	116			0 to 2	0.97 (1.00)
Pre-Intervention Measures					
Police Called	116	26	22%		
Contract	116	82	71%		
Attorney Present	116	10	8%		
Caucus Time	116			0 to 0.71	0.08 (0.19)
Total Time - ADR	116			5 to 155	52.97 (30.70)
Cases – 12 months	113			1 to 180	24.77 (32.35)
Related Case	116	18	15%		
ADR practitioner – need agreement	115			1 to 4	1.83 (0.66)
Plaintiff	101	30	30%		
Personal Relationship	116	27	24%		
Male	116	59	51%		
Prefer Trial	116			1 to 5	2.68 (0.84)
Feel Prepared	116			2.5 to 5	4.07 (0.52)
Hope to Resolve	116			3 to 5	4.24 (0.47)
Feel Pressure	116			1 to 4.5	2.12 (0.63)
ADR Waste of Time	116			1 to 3.5	2.00 (0.45)
Clear Idea	116			2 to 5	4.12 (0.53)
Prepared for Trial	116			0 to 2	1.34 (0.61)
Behavioral Codes					
ADR Practitioner Codes					
Emotions	116			0 to 0.37	0.02 (0.06)
Interest/Values	116			0 to 0.23	0.01 (0.03)
Open-Ended Question	116			0 to 0.19	0.05 (0.04)
Fact/Closed Question	116			0 to 0.31	0.09 (0.07)
Summary of Solutions	116			0 to 0.05	0.00 (0.01)
ADR practitioner Opinion	116			0 to 0.50	0.15 (0.09)
Advocate/Support	116			0 to 0.09	0.00 (0.01)
Behavior Direction	116			0 to 0.24	0.02 (0.03)
Explain	116			0 to 0.14	0.02 (0.03)

Variable Name	N	Freq.	Percent	Range	Mean (SD)
Ask for Solution/Brainstorm	116			0 to 0.29	0.10 (0.06)
Summary of Facts	116			0 to 0.41	0.15 (0.10)
Suggestion Question	116			0 to 0.09	0.02 (0.02)
Negotiation Question	116			0 to 0.05	0.00 (0.01)
ADR practitioner Solution	116			0 to 0.27	0.06 (0.05)
Request Reaction	116			0 to 0.18	0.02 (0.03)
Legal Assess	116			0 to 0.33	0.07 (0.06)
Participant Behaviors					
Wrong	116			0 to 0.58	0.26 (0.14)
Put Down	116			0 to 0.25	0.02 (0.03)
Responsibility/Apology	116			0 to 0.13	0.02 (0.02)
Participant Solution	116			0 to 0.55	0.26 (0.10)
Accept Solution	116			0 to 1	0.09 (0.12)
Reject Solution	116			0 to 0.11	0.02 (0.02)
Responsibility & Wrong	116			0 to 0.77	0.00 (0.01)
Silence	116			0 to 0.42	0.01 (0.05)
Interrupt	116			0 to 0.13	0.01 (0.02)

Creating New Combined Variables

Factor analysis and principal component analysis were used to create new variables that combine the variables measuring similar concepts. Factor analysis was used to consider the combination of ADR practitioner behavior variables based on the idea that ADR practitioners have some underlying theory holding together their philosophies and actions that can be identified through factor analysis. Principal component analysis was used to combine the various sets of participant variables with the idea that while there may be patterns connecting the variables, there was no specific underlying theory being used by participants that would tie their answers together in a potentially predictable way.

For both factor analysis and principal component analysis, the minimum Eigen value was set at 1, and varimax was used for the factor matrix rotation. The one exception to the Eigen value setting was with the ADR practitioner behaviors. On examining the findings and the scree plot, the minimum Eigen value was set at 0.8 instead of 1. This allowed for a three factor solution to emerge from the data instead of just two. This strategy of selecting the factors by reviewing the scree plot pattern is still considered to be methodologically valid, only slightly less conservative than using the minimum Eigen value threshold of 1, used in the rest of this research. These three factors are more consistent with the factors found in analysis for the complementary report on child access mediation conducted by the Maryland Judiciary, more consistent with the factors found in the long-term analysis (reported below) and more consistent with ADR theory.

The outputs were reviewed with the settings to report loadings greater than 0.3 and determined to be either consistent with theory or not inconsistent with theory or conventional

wisdom. New variables were created using the factor loadings associated with each of the variables. The new variables are defined in Tables 5 - 11 below, with the loading listed for any value greater than 0.3.

The new variables are listed across the top of the following tables, with the variables they combine listed below. Following each original variable is the factor loading value in parentheses. Factor loading is a measure of how much the factor is explained by a particular variable. The loading value ranges from -1 to 1, with higher positive values indicating that the factor is explained by an increased presence of that variable and negative values indicating that the factor is explained by the absence of that variable.

Table 5: Participant Pre-Test Variables

Participant Pre-Test – Anti-ADR	Participant Pre-Test - Prepared
“I would prefer that we go to trial instead of being in a (mediation) or (settlement conference) today.” (+0.43)	“I feel prepared to go to trial.” (+0.68)
“I hope we can resolve this case in (mediation) or (the settlement conference).” (-0.55)	“I have a clear idea of what I want to get from today’s (mediation) or (settlement conference).” (+0.36)
“I feel pressure to participate in this (mediation) or (settlement conference).” (+0.41)	“Have you done anything to prepare for today’s trial?”(+0.53)
“I believe (mediation) or (settlement conferences) is / are a waste of time.” (+0.48)	
“I have a clear idea of what I want to get from today’s (mediation) or (settlement conference).” (-0.32)	

Table 6: Factor Analysis ADR Practitioner Strategies

ADR Practitioner Eliciting Participant Solutions	ADR Practitioner Reflecting Emotions/Interests	ADR Practitioner Offering Solutions
Open-Ended Question (-0.50)	Emotions (+0.80)	Fact/Closed Question (-0.61)
Fact/Closed Question (-0.32)	Interests and Values (+0.73)	ADR practitioner Opinion (+0.31)
Ask for Solutions/Brainstorm (+0.64)	ADR practitioner Opinion (-0.51)	ADR practitioner Solution (+0.48)
Summary of Solutions (+0.79)		
Request Reaction (+0.50)		

The factor analysis of ADR practitioner codes led to three sets of strategies; see Table 6. The first set is titled “*ADR Practitioner Eliciting Participant Solutions*” and is characterized by ADR practitioner strategies that involve asking participants what solutions they would suggest,

summarizing those solutions, and checking in with participants to see how they think those ideas might work for them.

The second set is titled “*ADR Practitioner Reflecting Emotions/Interests*” and is characterized in the positive by the ADR practitioner reflecting back what participants said, with a focus on the emotion and the underlying interest or value. This is also characterized by ADR practitioners not offering their opinion.

The third set is titled “*ADR Practitioner Offering Opinions and Solutions*” and is characterized by ADR practitioners offering their opinion and advocating for their ideas for solutions.

While factor analysis allows us to identify the sets of strategies used together and the subsequently created variables allow us to measure the impact of those sets of strategies, it is important to understand that these sets of strategies are not necessarily identifying types of ADR practitioners or ADR models. One also cannot assume that one ADR practitioner used only one set of strategies in any given ADR session. So while we can say that various strategies have differing impacts, it is with the knowledge that ADR practitioners may have used a variety of strategies in the same ADR session.

These new variables measure the percentage of the ADR practitioner strategies that fit in the set of strategies. As such, a positive coefficient on these variables indicates that a greater percentage of use of these strategies increases the outcome of interest, while a negative coefficient indicates that the greater percentage of use of these strategies decreases the outcome of interest.

Table 7: Participant Strategies, Participant-Level Data

Participant – My Solutions	Participant – Attacking	Participant – Conciliatory
Wrong (-0.57)	Put Down (+0.39)	Responsibility/Apology (+0.70)
Participant Solution (+0.6035)	Accept Solution (-0.45)	Responsibility and Wrong (+0.67)
Reject Solution (+0.42)	Reject Solution (+0.44)	
	Silence (-0.55)	

Table 8: Post-Test Variables – Experience of ADR

Post – ADR practitioner Listened	Post – Participants Understood	Post – ADR practitioner Controlled	Post – Clarity
“The (mediator/s or settlement conference attorney) listened to what I had to say without judging me or my ideas.” (+0.41)	“Through the (mediation or settlement conference), I think I understand the other person/people involved in the conflict better.” (+0.42)	“The (mediator/s or settlement conference attorney) prevented us from discussing important topics.” (+0.49)	“Through the (mediation or settlement conference), I became clearer about what I want in this situation.” (+0.68)
“The (mediator/s or settlement conference attorney) seemed to take sides.” (-0.44)	“Through the (mediation or settlement conference), I think the other person/people involved in the conflict understand/s me better.” (+0.55)	“The (mediator/s or settlement conference attorney) pressured us to reach an agreement in mediation/settlement conference.” (+0.58)	“I think all of the underlying issues in this conflict came out in the (mediation or settlement conference).” (+0.47)
“The (mediator/s or settlement conference attorney) treated me with respect.” (+0.51)	“The other person/people listened to me.” (+0.61)	“I feel like the (mediator/s or settlement conference attorney) controlled the decisions made in the (mediation or settlement conference).” (+0.55)	
“I was able to express myself, my thoughts, and my concerns during the (mediation or settlement conference).” (+0.48)	“Together, the other person/people and I controlled the decisions made in the (mediation or settlement conference).” (+0.32)		
“I think the (mediators/s or settlement conference attorney) understood what I was expressing.” (+0.36)			

Table 9: Post-Test Variables – Perspective on Outcome

Post – Outcome Workable	Post – I’m Responsible	Post – Other Responsible
“I am satisfied with the outcome of the (mediation or settlement conference).” (+0.42)	“I acknowledged responsibility” (yes, no) (+0.60)	“The other person/people acknowledged responsibility.” (yes, no) (+0.59)
“I am satisfied with the process of the (mediation of settlement conference).” (+0.43)	“I apologized.” (yes, no) (+0.46)	“The other person/people apologized.” (yes, no) (+0.54)
“Do you think the issues that brought you to court today are resolved?” (yes, partially, no) (+0.41)	“Do you think you are: not at all responsible for what happened, somewhat responsible for what happened, or fully responsible for what happened?” (+0.52)	“Neither of us acknowledged responsibility or apologized.” (yes, no) (-0.54)
“I think the outcome reached today is fair.” (+0.50)		
“I think I can implement the results of the outcome reached today.” (+0.45)		

Table 10: Outcomes: Difference in Perspective from Before to After ADR¹

Diff Consider Them	Diff Consider Me	Diff Empowered	Diff Powerless
“It’s important that I understand what the other person/people want/s in the issues that brought me to court today.” (+0.32)	“It’s important to me that I get my needs met in the issues that brought me to court today.” (+0.57)	“I can talk about my concerns to the person/people I have conflict with.” (+0.33)	“It’s important that I understand what the other person/people want/s in the issues that brought me to court today.” (+0.37)
“The other person/people need/s to learn that they are wrong in the issues that brought me to court today. (-0.35)	“The other person/people need/s to learn that they are wrong in the issues that brought me to court today.” (+0.45)	“It doesn’t seem to make any difference what I do in regard to the issues that brought me to court today, it’ll just remain the same.” (-0.46)	“I feel like I have no control over what happens in the issues that brought me to court today.” (+0.55)
“It’s important that the other person/people get their needs met in the issues that brought me to court today.” (+0.54)	“I think there are a number of different ways to resolve the issues that brought me to court today.” (+0.59)	“The court system cares about helping people resolve disputes in a fair manner.” (+0.69)	“In general, conflict is a negative thing.” (+0.60)
“It’s important for me to have a positive relationship with the other person/people involved in the issues that brought me to court today.” (+0.38)			
“The other person/people involved in the issues that brought me to court today want/s the exact opposite of what I want.” (-0.38)			
“I can talk about my concerns to the person/people I have conflict with.” (+0.33)			

¹ Positive values represent an increase in agreement.

Building the Model

The primary goal of this portion of the research is to understand the impact of ADR practitioner strategies and experience on a range of short-term outcomes, including agreement rates and participants' attitude toward the other participant, the situation, and the ADR experience. In order to isolate the impact of ADR practitioner strategies and experience, we used ordinary least squares multiple regression analysis and ordered logistical regression analysis. Through this, we seek to control for other factors that may affect participants' experience. We included several measures of participant attitude, participant actions (as measured through behavior coding), whether participants are represented or consulted counsel, whether the police were called in the past in the case (as a measure of escalation), participant demographics (i.e., age, gender, race), and whether the ADR practitioners' race matched the participants' race. Variables with several missing observations were removed.

Several models were considered. In order to avoid problems associated with multi-collinearity, correlation tables were reviewed for each possible set of independent variables, with the goal of only including variables in the equations if the correlation between them was less than 0.5. For those variable pairs with a correlation coefficient of 0.5 or greater, the variable that was considered more central to the analysis was kept. Before discarding the other variable, however, the equation was run with that variable in order to see if it was significant. If it was not, then it was not used and the more key variable was used.

For all participant level data, whether or not the participants reached an agreement in the ADR session was also included in the equation. This allowed us to hold constant for whether or not an agreement was reached and isolate the impact of the other variables on the outcomes of interest.

Results

Participant level outcomes

Table 11 below reports the results of the Ordinary Least Squares Regressions for post-ADR variables.

Table 11: Results of the Ordinary Least Squares Regressions for Post-ADR Variables

		Post – Participants Understood	Post – ADR practitioner Controlled	Post – Outcome Workable
	Agreement	0.33* (2.49)	-0.17 -(1.33)	0.47* (2.95)
Participant Characteristics and Pre- Intervention Variables	Police Called	-0.22 -(0.85)	-0.14 -(0.59)	-0.28 (-0.91)
	Contract	-0.10 -(0.45)	-0.14 -(0.62)	-0.36 (-1.26)
	Personal Relationship	-0.47 -(1.94)	0.01 (0.06)	-0.00 (-0.01)
	Attorney Present	1.01* (2.01)	0.16 (0.33)	0.15 (0.24)
	Plaintiff	0.24 (1.08)	0.15 (0.75)	-0.07 (-0.28)
	Participant Pre- Prepared	-0.12 -(1.33)	0.11 (1.24)	0.00 (0.06)
	Participant Pre- Anti- ADR	-0.17 -(2.13)	0.15 (2.03)	-0.07 (-0.82)
	Practitioner Characteristics	ADR practitioner Race Matches Participant	0.45* (2.02)	-0.20 -(0.94)
ADR practitioner Gender Matches Participant		0.16 (0.70)	0.01 (0.07)	-0.15 (-0.57)
Cases – Last 12 Months		-0.01** -(2.59)	0.00 -(1.33)	-0.00 (-0.37)
Practitioner Strategies	ADR practitioner Eliciting Participant Solutions	0.33* (2.25)	-0.37** -(2.74)	0.39 (1.64)
	Reflecting Emotions/Interests	0.21 (1.30)	-0.15 -(1.01)	-0.01 (-0.08)
	ADR practitioner Offering Solutions	-0.08 -(0.58)	0.03 (0.25)	0.06 (0.35)
A D R	Caucus Time	-0.68 -(0.99)	2.01** (3.14)	-1.58* (-1.99)

		Post – Participants Understood	Post – ADR practitioner Controlled	Post – Outcome Workable
	Total Time ADR	0.00 -(0.27)	0.01 (1.45)	0.00 (0.34)
Participant Strategies	Participant – My Solutions	-0.01 -(0.11)	-0.02 -(0.24)	-0.05 (-0.40)
	Participant – Attacking	-0.18 -(1.94)	-0.11 -(1.30)	-0.02 (-0.22)
	Participant – Conciliatory	0.13 (1.10)	-0.02 -(0.22)	0.21 (1.49)
	Constant	-0.21 -(0.59)	-0.07 -(0.21)	-0.21 (-0.49)
	Number	176	176	153
	Adjusted R ²	0.22	0.14	0.11

Participants who reported that they listened and understood each other in the ADR and jointly controlled the outcome was positively associated with:

- ❖ *ADR Practitioner Eliciting Participant Solutions;*
- ❖ Reaching an agreement;
- ❖ At least one ADR practitioner’s race matching the race of the reporting participant;
- ❖ Having an attorney present;

And negatively associated with:

- ❖ The number of cases the ADR practitioner had mediated in the previous 12 months.

Participants who reported that the ADR practitioner controlled the outcome, pressured them into solutions, and prevented issues from coming out was positively associated with:

- ❖ The percentage of time spent in caucus;

And negatively associated with:

- ❖ *ADR Practitioner Eliciting Participant Solutions.*

Participants who reported that they were satisfied with the process and outcome, that the issues were resolved with a fair and implementable outcome was positively associated with:

- ❖ Reaching an agreement;

And negatively associated with:

- ❖ The percentage of time spent in caucus.

Table 12: Ordered Least Squares Regression for Post-Intervention Measures

		Post – I’m Responsible	Post – Other Responsible	Post -ADR Practitioner Listened	Post - Clarity
	Agreement	-0.06 (-0.41)	0.27* (1.96)	0.18 (0.31)	0.15 (1.08)
Participant Characteristics and Pre-Intervention Variables	Police Called	-0.47 (-1.72)	0.12 (0.44)	-0.18 (0.58)	-0.49 (-1.87)
	Contract	0.09 (0.36)	0.04 (0.18)	-0.17 (0.57)	-0.14 (-0.58)
	Personal Relationship	-0.24 (-0.93)	-0.05 (-0.18)	-0.07 (0.82)	-0.30 (-1.22)
	Attorney Present	1.18* (2.10)	-0.60 (-1.11)	-0.10 (0.88)	0.43 (0.83)
	Plaintiff	-0.77** (-3.32)	0.43 (1.93)	-0.22 (0.44)	-0.20 (-0.87)
	Participant Pre-Prepared	-0.19 (-1.95)	-0.07 (-0.75)	0.20 (0.11)	-0.01 (-0.13)
	Participant Pre- Anti-ADR	0.01 (0.15)	0.05 (0.71)	-0.20 (0.05)	-0.08 (-1.02)
Practitioner Characteristics	ADR Practitioner Race Matches Me	-0.02 (-0.09)	0.11 (0.48)	0.01 (0.97)	0.15 (0.66)
	ADR practitioner Gender Matches Me	-0.25 (-1.09)	0.19 (0.84)	0.25 (0.38)	0.02 (0.10)
	Cases – Last 12 Months	-0.00 (-0.48)	0.00 (0.48)	-0.01 (0.25)	0.00 (-0.34)
Practitioner Strategies	ADR Practitioner Eliciting Participant Solutions	0.15 (0.98)	0.59** (3.94)	0.31 (0.10)	0.14 (0.96)
	Reflecting Emotions/Interests	0.14 (0.89)	0.36* (2.29)	-0.30 (-0.14)	0.06 (0.35)
	ADR practitioner Offering Solutions	-0.01 (-0.10)	0.18 (1.30)	-0.17 (0.33)	-0.01 (-0.07)
ADR Session	Caucus Time	-0.72 (-1.04)	-0.50 (-0.74)	0.64 (0.47)	0.05 (0.07)
	Total Time ADR	0.00 (1.14)	0.00 (0.80)	-0.01 (0.25)	0.00 (-0.55)
Participant Strategies	Participant – My Solutions	0.18 (1.55)	-0.23* (-2.10)	-0.07 (0.60)	0.01 (0.10)
	Participant – Attacking	-0.02 (-0.18)	-0.04 (-0.46)	0.12 (0.31)	-0.03 (-0.36)
	Participant – Conciliatory	0.43** (3.53)	0.02 (0.15)	0.23 (0.15)	0.13 (1.05)
	Constant	0.49 (1.34)	-0.83 (-2.33)	.42 (0.37)	.32 (0.88)

		Post – I’m Responsible	Post – Other Responsible	Post -ADR Practitioner Listened	Post - Clarity
	Number	153	153	176	176
	Adjusted R ²	-0.20	0.18	0.03	-0.01

The results of the Ordinary Least Squares Regression examining post-intervention measures revealed the following (see Table 12):

Participants who reported that they took responsibility and apologized for the situation was positively associated with:

- ❖ Having an attorney present.

Participants who reported that the other person took responsibility and apologized was positively associated with:

- ❖ Reaching an agreement;
- ❖ *ADR Practitioner Eliciting Participant Solutions*; and
- ❖ *ADR Practitioner Reflecting Emotions/Interests*.

No ADR practitioner Strategies or Characteristics had a statistically significant effect on the following outcomes:

- ❖ Participants’ report that the ADR practitioner respected them, listened to them, and understood them as they expressed themselves freely; and
- ❖ Participants reporting that they became clearer and that the underlying issues came out in the ADR.

Table 13. Ordinary Least Squares Regression Results for Differences in Attitudes

		Diff – Empowered	Diff - Powerless	Diff – Consider Them	Diff – Consider Me
	Agreement	0.30* (2.60)	-0.32* (-2.64)	0.29 1.92	-0.18 (-1.37)
Participant Characteristics and Pre-Intervention Variables	Police Called	-0.42 (-1.88)	0.22 (0.93)	0.13 (0.45)	0.03 (0.13)
	Contract	-0.28 (-1.41)	0.10 (0.47)	-0.12 (-0.47)	0.16 (0.72)
	Personal Relationship	-0.35 (-1.68)	-0.07 (-0.33)	-0.18 (-0.67)	-0.14 (-0.59)
	Attorney Present	-0.89 (-1.97)	0.25 (0.53)	-0.04 (-0.07)	-0.15 (-0.29)
	Plaintiff	0.23 (1.20)	0.02 (0.13)	0.28 (1.14)	0.36 (1.71)

		Diff – Empowered	Diff - Powerless	Diff – Consider Them	Diff – Consider Me
	Participant Pre- Prepared	0.29** (-3.56)	-0.01 (-0.10)	-0.02 (-0.16)	-0.22* (-2.39)
	Participant Pre- Anti-ADR	0.10 (1.59)	-0.13 (-1.83)	0.03 (0.30)	0.07 (1.01)
Practitioner Characteristics	ADR practitioner Race Matches Me	0.39* (2.08)	-0.36 (-1.80)	0.25 (1.01)	0.05 (0.25)
	ADR practitioner Gender Matches Me	-0.20 (-1.06)	0.20 (1.01)	0.26 (1.02)	0.02 (0.10)
	Cases – Last 12 Months	-0.00 (-0.47)	0.00 (-0.79)	0.00 (0.14)	0.00 (-0.72)
Practitioner Strategies	ADR practitioner Eliciting Participant Solutions	0.08 (0.66)	-0.09 (-0.70)	0.05 (0.29)	0.10 (0.70)
	Reflecting Emotions/Interests	0.26* (2.12)	0.11 (0.82)	-0.06 (-0.36)	-0.09 (-0.63)
	ADR practitioner Offering Solutions	0.02 (0.18)	0.04 (0.36)	-0.10 (-0.65)	-0.03 (-0.25)
ADR Session	Caucus Time	-0.87 (-1.55)	1.24* (2.11)	-1.25 (-1.66)	-0.52 (-0.83)
	Total Time ADR	0.00 (0.13)	-0.01 (-1.89)	0.00 (0.60)	0.00 (0.32)
Participant Strategies	Participant – My Solutions	-0.08 (-0.94)	0.03 (0.28)	0.02 (0.13)	-0.04 (-0.39)
	Participant – Attacking	-0.17* (-2.23)	0.11 (1.33)	0.04 (0.38)	-0.02 (-0.24)
	Participant – Conciliatory	0.21* (2.07)	-0.06 (-0.55)	0.17 (1.25)	-0.14 (-1.21)
	Constant	0.03 (0.10)	0.59 (1.81)	-0.61 (-1.46)	-0.02 (-0.06)
	Number	154	154	154	154
	Adjusted R ²	0.21	0.08	-0.03	-0.01

The Ordinary Least Squares Regression, analyzing the difference in attitudes from before to after the ADR revealed the following (see Table 13):

An increase from before to after the ADR session in a sense of self-efficacy (i.e., the ability to talk and make a difference) and an increase in the sense that the court cares, was positively associated with:

- ❖ Reaching an agreement;
- ❖ At least one ADR practitioners’ race matching the race of the reporting participant; and
- ❖ Reflecting Emotions/Interests.

An increase in the sense of powerlessness and the negativity of conflict as well as a desire to better understand the other participant was positively associated with:

- ❖ The percentage of time spent in caucus;

And negatively associated with:

- ❖ Reaching an agreement.

No ADR practitioner strategies or characteristics had a statistically significant effect on the following outcomes:

- ❖ An increase in participants' understanding of and consideration of each other's perspectives from before to after the ADR; nor
- ❖ An increase in participants' dismissal of the other person's perspective and focus on their own needs from before to after the ADR.

Case Level Outcomes

Table 5: New Combined Variables for ADR Practitioner Strategies - Case Level Data

(Case) ADR Practitioner Eliciting Participant Solutions	(Case) ADR Practitioner Reflecting Emotions/Interests	(Case) ADR Practitioner Offering Opinions and Solutions
Open-Ended Question (-0.51)	Emotions (+0.78)	Fact/Closed Question (-0.53)
Fact/Closed Question (-0.38)	Interest/Values (+0.73)	ADR practitioner Opinion (+0.34)
Ask for Solutions/Brainstorm (+0.64)	ADR practitioner Opinion (-0.48)	ADR practitioner Solution (+0.45)
Summary of Solution (+0.89)		Legal Asses (+0.36)
Request Reaction (+0.47)		

Table 6: New Combined Variables for Participant Pre-Intervention Measures - Case Level Data

(Case) Participant Pre Anti-ADR	(Case) Participant Pre Prepared	(Case) Participant Clear & Hopeful
“I would prefer that we go to trial instead of being in a (mediation) or (settlement conference) today.” (+0.45)	“I feel prepared to go to trial.” (+0.59)	“I feel prepared to go to trial.” (+0.35)
“I hope we can resolve this case in (mediation) or (the settlement conference).” (-0.48)	“Have you done anything to prepare for today’s trial?” (+0.77)	“I hope we can resolve this case in (mediation) or (the settlement conference).” (+0.35)
“I feel pressure to participate in this (mediation) or (settlement conference).” (+0.54)		“I have a clear idea of what I want to get from today’s (mediation) or (settlement conference).” (+0.80)
“I believe (mediation) or (settlement conferences) is / are a waste of time.” (+0.48)		

Table 7: New Combined Variables Participant Strategies - Case-Level Data

P (Case) Our Solutions	P (Case) My Solutions	P (Case) Insults and Apologies	P (Case) Responsible and Interrupting
Wrong (-0.59)	Participant Solution (+0.50)	Put Down (+0.47)	Responsibility & Wrong (+0.66)
Participant Solution (+0.32)	Reject Solution (+0.70)	Responsibility/Apology (+0.82)	Interrupt (+.69)
Accept Solution (+0.50)	Silence (-0.35)		
Silence (+0.38)			

Table 8: Ordered Logistical Regression Results for Agreement by Case

		Agreement
Case Characteristics	Police Called	-0.60 (-0.82)
	Contract	1.06 (1.57)
	Personal relationship	0.83 (0.99)
	Attorney Present at Mediation	-0.47 (-0.23)
	Plaintiff/Defendant mixed race	-0.87 (-1.13)
	Related Case	-1.84 (-1.65)
	Male	1.36 (1.63)
Practitioner Strategies	Case – Eliciting Participant Solutions	1.21* (2.51)
	Case – Reflecting Emotions/Interests	0.39 (0.68)
	Case – Offering Solutions	-0.14 (-0.33)
Participant Strategies	P-Case Anti-ADR	-0.33 (-1.57)
	P Case Prepared	-0.07 (-0.23)
	P Case Clear & Hopeful	-0.53 (-1.65)
	P Case Our Solutions	0.17 (0.65)
	P Case My Solutions	0.70* (2.45)
	P Case Insults and Apology	-0.09 (-0.35)
	P Case Responsible and Interrupting	-0.18 (-0.60)
Practitioner Characteristics	Cases Last 12 months	0.02 (1.78)
	Mediator – P needs agreement	0.61 (1.10)

ADR Session	Caucus Time	-2.98 (-1.60)
	Total ADR Time	-0.02 (-1.77)
	Number	99
	Pseudo R ²	0.37

The following was positively associated with reaching an agreement:

- ❖ *ADR Practitioner Eliciting Participant Solutions.*

Study #2: Long-Term Impact of ADR Practitioner Strategies

For the Long-Term Impact study, the same participants were included in the study as had been included in the earlier analyses. However, out of the original 269 participants in the short-term study, follow up data exists for only 114 individuals (42 percent). There are several reasons for this attrition. First, many people did not return calls from researchers for the study. Although participants were offered \$10 to participate in the follow up study, this may not have been enough motivation. For others, contact information may have changed and researchers were not able to access the new contact information.

Some attrition is expected in any study that follows participants over an extended period of time; however, it is important to be sure that the attrition is not due to factors being studied or that the individuals who were lost did not have a different experience in ADR than those who stayed in the study. A difference of means test and chi-squared test allows for comparison of the characteristics of those who remained in the study and those who dropped out. A table outlining the difference of means can be found in Appendix B. In general, we found a few significant differences between the original group and the group that remained in the study for 26 of the 32 variables. There was a statistically significant difference in means for six variables. The following individuals were more likely to be included in the follow-up data set: individuals involved in cases in Montgomery County; individuals whose ADR practitioners had more cases in the 12 months prior to mediating their case; and individuals who reported that the ADR practitioners listened and understood their perspective during the ADR. The following individuals were less likely to be included in the follow-up data set: individuals involved in cases in Wicomico County; individuals involved in a related case; and individuals who experienced a greater increase in their sense of self efficacy and belief that the court cared about resolving their dispute from before to after the ADR.

While these six areas showed a statistically significant difference of means, all remaining variables, including ADR practitioner strategies, participant behaviors, participant attitudes, demographics, and other ADR outcomes were not significantly different. Therefore, we conclude that sample who participated in long-term analysis did not differ substantively from those who were only in the short-term analysis.

Summary Statistics

Table 18 below provides the summary statistics for the variables included in Study #2 (long-term). While many of these variables are the same as the variables in Study #1 (short-term), because this represents a sub-group of the original group, we present the summary statistics for this group. Table 18 also includes summary statistics for variables that are unique to the long term study.

Table 18: Summary Statistics for Long-Term Data

Variable Name²	N	Freq.	Percent	Range	Mean (SD)
Return to Court	113	40	35%		
LT Recommend	113			1 to 5	4.27 (0.97)
LT Satisfied Outcome	113			1 to 5	3.55 (1.40)
LT Outcome Working	111			1 to 5	3.23 (1.33)
LT I followed Through	109			1 to 5	4.59 (1.05)
LT Other Followed Through	106			1 to 5	3.67 (1.68)
New Problems	111	17	15%		
Personal Inconvenience	113	27	24%		
Financial Cost	113	27	24%		
Diff LT Number of Ways	114			-4 to 5	0.58 (1.46)
Diff LT My Needs	114			-5 to 5	0.32 (1.32)
Diff LT I Understand	114			-5 to 5	0.33 (1.61)
Diff LT Learn Wrong	114			-5 to 5	0.05 (1.50)
Diff LT Their Needs	114			-4 to 4	0.36 (1.45)
Diff LT Positive Relationship	114			-5 to 5	0.07 (1.48)
Diff LT No Control	114			-5 to 4	0.19 (1.55)
Diff LT Wants Opposite	114			-4 to 4	0.05 (1.34)
Diff LT Can Talk Concerns	114			-5 to 4	-0.26 (1.64)
Diff LT No Difference	114			-5 to 4	0.13 (1.54)
Diff LT Conflict Negative	114			-5 to 4	0.20 (1.47)
Agreement	114			0 to 2	0.98 (1.00)
Police Called	114	20	17.54		
Contract	114	81	71.05		
Personal Relationship	109	27	24.77		
Attorney Present	102	7	6.86		
Plaintiff	111	57	51.35		
Race Matches Me	108	45	41.67		
Caucus Time	114			0 to 0.71	0.10 (.20)

² Variables in Table 18 with “LT” are long-term and variables with “Diff” are difference scores from short- to long-term.

Total Time ADR	114			5 to 155	55.16 (30.28)
Gender Matches Me	109	54	49.54		
Cases Last 12 Months	111			2 to 180	31.25 (40.16)

Creating New Combined Variables

Principal component analysis and factor analysis were used to create new variables that combine the variables measuring similar concepts. Because the data set for the long-term analysis is different from the original data set, principal component analysis and factor analysis were used to create new variables with the observations in this dataset. While we expect to find similar patterns pointing to an underlying latent indicator, re-running these analyses with the smaller data set allows for more precise measurement and analysis.

Factor analysis was again used to consider the combination of ADR practitioner behavior variables based on the idea that ADR practitioners have some underlying theory holding together their philosophies and actions that can be identified through factor analysis. Principal component analysis was used to combine the various sets of participant variables with the idea that, while there may be patterns connecting the variables, there was no specific underlying theory being used by participants that would tie their answers together in a potentially predictable way.

For both factor analysis and principal component analysis, the minimum Eigen value was set at 1, and varimax was used for the factor matrix rotation. The outputs were reviewed with the settings to report loadings greater than 0.3 and determined to be either consistent with theory or at least not totally inconsistent with theory or conventional wisdom. New variables were created using the factor loadings associated with each of the variables. The new variables are defined in Tables 19 – 23 below.³

The new variables are listed across the top of the following tables, with the variables they combine listed below.

Table 19: New Variables for Participant Attitude – Long Term Data

Participant – Our Solutions - L	Participant –My Solutions- L	Participant – Responsibility and Interrupting - L
Wrong (-0.60)	Participant Solution (+0.35)	Responsibility & Wrong (+.64)
Participant Solution (+0.50)	Reject Solution (+-0.59)	Interrupt (+0.67)
Accept Solution (+0.47)	Silence (-0.51)	

³ For Tables 19 to 23, variables with an “L” refer to long-term data. Those noted with a “P” refer to participant data.

Table 20: New Variables for ADR practitioner Strategies - Long Term Data

ADR Practitioner Eliciting Participant Solutions – L	ADR Practitioner Reflecting – L	ADR Practitioner Offering Opinions and Solutions – L
Open-Ended Question (-0.49)	Emotions (+0.87)	Fact/Closed Question (-0.37)
Fact/Closed Question (-0.58)	Interest/Value (+0.81)	ADR practitioner Opinion (+0.78)
Ask for Solution/Brainstorm (+0.44)		Ask for Solution/Brainstorm (-0.33)
Summary of Solutions (+0.81)		ADR practitioner Solution (+0.61)
Request Reaction (+0.49)		Legal Assessment (+0.36)

Table 21: New Variables for Participant Pre-Intervention Measures - Long Term Data

Participant – Anti-ADR - L	Participant – Prepared - L
“I would prefer that we go to trial instead of being in a (mediation) or (settlement conference) today.” (+.41)	“I feel prepared to go to trial.” (scale 1-5) (+0.67)
“I hope we can resolve this case in (mediation) or (the settlement conference).” (-0.55)	“Have you done anything to prepare for today’s trial?” (+0.63)
“I feel pressure to participate in this (mediation) or (settlement conference).” (+0.36)	
“I believe (mediation) or (settlement conferences) is / are a waste of time.” (+0.43)	
“I have a clear idea of what I want to get from today’s (mediation) or (settlement conference).” (-0.42)	

Table 22: New Variables for Participant Follow-Up Attitudinal Measures - Long Term Data

Participant – Outcome Going Well - L	Participant – Not Going Well - L
“How likely are you to recommend mediation or a settlement conference to others involved in a court case?” (+0.52)	“How well did the others follow through on the agreement/judicial decision?” (-0.37)
“Three months after your mediation/settlement conference or trial, how satisfied are you with the outcome from the mediation /settlement conference or trial?” (+0.54)	“Have new problems with the other person with whom you went to the mediation/settlement conference or trial (which you did not discuss at the time) arise in the last three months?” (+0.64)
“How well is the outcome you reached the mediation /settlement conference or trial working for you?” (+0.50)	“In the last three months since the mediation/settlement conference or trial, have you had any personal inconveniences (e.g. missed work, change in your routine, lack of sleep, health issues, situation weighing on your mind etc.) as a result of this situation?” (+0.46)
	“In the last three months, have you had any personal financial costs as a result of this situation, other than any amount agreed upon in the mediation or settlement conference, or decided at trial?” (+0.39)

Table 23: New Variables Participant Difference before Intervention to Follow-Up

P Follow Up – More Collaborative - L	P Follow Up – More Hopeless - L
“I think there are a number of different ways to resolve the issues that brought me to court three months ago.” (+0.3795)	“The other person/people need to learn that they are wrong in the issues that brought me to court three months ago.” (+0.3130)
“It’s important to me that I get my needs met in the issues that brought me to court three months ago.” (+0.3437)	“I feel like I have no control over what happens in the issues that brought me to court three months ago.” (+0.5281)
“It’s important that I understand what the other person/people want in the issues that brought me to court three months ago.” (+0.3524)	“In general, conflict is a negative thing.” (+0.6796)
“It’s important that the other person/people get their needs met in the issues that brought me to court three months ago.” (+0.3252)	
“It’s important for me to have a positive relationship with the other person/people involved in the issues that brought me to court three months ago.” (+0.3522)	
“I can talk about my concerns to the person/people involved in the issues which brought us to court three months ago.” (+0.3344)	
“The court system cares about helping people resolve disputes in a fair manner.” (+0.3505)	

The factor analysis of ADR practitioner codes led to three sets of strategies that these results indicate are used in combination with each other. These groupings are similar to the groupings developed through factor analysis with the short-term data set. However, since more than half of those cases were lost to attrition, there are some differences in the factor analysis results. The similarities in the patterns of behaviors that group together reinforce our hypothesis that we have in fact identified some underlying latent construct of behaviors that tend to be used together. However, because the findings produced similar yet not identical factor loadings for behaviors, we use an “L” for “Long-term” as a postfix on these variables. Table 20 provides the variables created through the use of factor analysis on the ADR practitioner strategies.

The first factor is titled “*ADR Practitioner Eliciting Participant Solutions – L*” and is characterized by ADR practitioner strategies that involve asking participants what solutions they would suggest, summarizing those solutions, and checking in with participants to see how they think those ideas might work for them. The negative loading on open-ended and fact based questions seems to imply that the focus on solutions in this group of strategies is not used at the same time as eliciting broader understanding of the situation.

The second is factor titled “*ADR Practitioner Reflecting Emotions/Interests - L*” and is characterized by the ADR practitioner stating back to participants the emotions and interests.

The third factor is titled “*ADR Practitioner Offering Opinions and Solutions – L*” and is characterized by ADR practitioners offering opinions, solutions, and legal assessments.

Although factor analysis allows us to identify the sets of strategies used together and the subsequently created variables allows us to measure the impact of those sets of strategies, these sets of strategies are not necessarily identifying styles of ADR practitioners or ADR models. One also cannot assume that an ADR practitioner used only one set of strategies in any given ADR session. So although various strategies have differing impact, ADR practitioners may have used a mix of strategies in the same ADR session. What these new variables measure is the percentage of the ADR practitioner behaviors that fit in those sets of strategies. As such, a positive coefficient on these variables will indicate that a greater percentage of use of these strategies increases the outcome of interest, while a negative coefficient indicated that the greater percentage of use of these strategies decreases the outcome of interest.

Building the Model

The primary goal of this portion of the research is to understand the impact of ADR practitioner strategies and experience on the participants’ experience related to the issues mediated, their relationships, and their attitude toward conflict in general three to six months after the ADR. In order to isolate the impact of ADR practitioner strategies and experience, we use ordinary least squares multiple regression analysis. Through this, we seek to control for other factors that may affect participants’ experience. We include several measures of participant attitude, participant actions (as measured through behavior coding), whether participants are represented or consulted counsel, whether the police were called in the past in the case (as a measure of escalation), and participant demographics (i.e., age, gender, race). We included a variable measuring whether participants reached an agreement in ADR as we want both to understand the impact of reaching agreement in the long-term and the impact of the various ADR practitioner strategies regardless of whether or not an agreement was reached. Finally, we held constant for the number of days between the court date and when the interview occurred. This allows us to consider that, over time as participants experience the outcome of their case, they may either find it more acceptable or new problems may surface.

Several models were considered. In order to avoid problems associated with multicollinearity, correlation tables were reviewed for each possible set of independent variables, with the goal of only including variables in the equations if the correlation between them was less than 0.5. For those variable pairs with a correlation coefficient of 0.5 or greater, the variable that was considered more central to the analysis was kept. Variables with several missing observations were also removed, as the data set already had a relatively small sample size.

Results

Participant Level Long-Term Outcomes⁴

Table 9. Ordinary Least Squares Regression Results for Long-Term Report on Situation

		Outcome Going Well - L	Not Going Well - L	Changed Approach
	Agreement	0.04 (0.18)	-0.29 (-1.46)	0.69 (1.95)
Participant Characteristics and Pre- Intervention Variables	Police Called	-1.40* (-3.14)	-0.13 (-0.31)	-0.33 (-0.49)
	Contract	0.28 (0.66)	-0.75 (-1.92)	-2.43* (-3.17)
	Personal Relationship	-0.06 (-0.14)	-0.30 (-0.70)	-2.29* (-2.67)
	Attorney Present	0.24 (0.35)	-0.50 (-0.78)	-0.83 (-0.57)
	Plaintiff	-0.27 (-0.68)	0.09 (0.25)	0.48 (0.76)
	Part Anti-ADR - L	-0.17 (-1.34)	-0.06 (-0.55)	-0.22 (-1.13)
	Part Prepared - L	-0.02 (-0.11)	-0.08 (-0.51)	-0.21 (-0.77)
		Days Between Court and Follow-up	0.00 (-0.37)	-0.01 (-1.49)
Practitioner Characteristics	ADR practitioner Race Matches Me	-0.13 (-0.37)	-0.04 (-0.13)	0.51 (0.81)
	ADR practitioner Gender Matches Me	-0.12 (-0.34)	0.12 (0.35)	0.61 (0.99)
	Cases – Last 12 Months	0.01 (1.56)	0.00 (0.14)	0.00 (0.63)
Practitioner Strategies	ADR practitioner Eliciting Participant Solutions – L	0.40 (1.77)	0.11 (0.53)	0.83* (2.05)
	ADR practitioner Reflecting Emotions/Interests – L	.02 (0.11)	-.09 (-0.53)	.00 (-0.02)
	ADR practitioner Offering Opinions and Solutions - L	-.42* (-2.05)	-.02 (-0.11)	-1.28** (-2.93)
	Caucus Time	-1.52 (-1.49)	-.65 (-0.69)	.95 (0.61)

⁴ For tables 24 to 25, variables noted with an “L” refer to long-term data; variables noted with “Part” refer to participant measures.

		Outcome Going Well - L	Not Going Well - L	Changed Approach
	Total Time ADR	.00 -(0.39)	-.01 -(1.50)	.00 -(0.11)
Participant Strategies	My Solutions – L	-.34* -(2.22)	.35* (2.49)	-.37 -(1.46)
	Responsibility and Interrupting - L	-.14 -(0.70)	.04 (0.25)	.55 (1.80)
	Constant	.42 (0.56)	2.02 (2.95)	1.79 (1.30)
	Number	87	87	96
	Adjusted R-squared	0.1581	0.0492	0.3002

Table 25. Ordinary Least Squares Regression Results for Long-term Difference in Attitude from Before ADR to Follow-up Survey

		More Collaborative - L	More Hopeless - L
	Agreement	-.27 -(1.50)	-.11 -(0.72)
Participant Characteristics and Pre- Intervention Variables	Police Called	-.06 -(0.15)	.20 (0.65)
	Contract	-.10 -(0.28)	.11 (0.39)
	Personal Relationship	.58 (1.52)	.68 (0.22)
	Attorney Present	.36 (0.58)	-.04 -(0.08)
	Plaintiff	.60 (1.89)	.29 (1.11)
	Part Anti-ADR - L	.14 (1.34)	-.11 -(1.26)
	Part Prepared - L	-.24 -(1.75)	-.09 -(0.80)
		Days Between Court and Follow-up	.00 -(1.27)
Practitioner	ADR practitioner Race Matches Me	-.25 -(0.83)	.00 -(0.01)
	ADR practitioner Gender Matches Me	.04 (0.14)	.34 (1.32)

		More Collaborative - L	More Hopeless - L
	Cases – Last 12 Months	.01 (1.37)	.00 -(0.56)
Practitioner Strategies	ADR practitioner Eliciting Participant Solutions – L	.09 (0.46)	-.07 -(0.44)
	ADR practitioner Reflecting Emotions/Interests – L	-.14 -(0.86)	-.10 -(0.80)
	ADR practitioner Offering Opinions and Solutions - L	-.31 -(1.75)	.05 (0.32)
ADR Session	Caucus Time	-1.75* -(2.23)	.33 (0.51)
	Total Time ADR	.00 (0.01)	-.01 -(1.35)
Participant Strategies	My Solutions - L	.13 (0.97)	.31** (2.84)
	Responsibility and Interrupting - L	-.46* -(3.08)	-.14 -(1.11)
	Constant	.15 (0.24)	-.09 -(0.16)
	Number	97	97
	Adjusted R-squared	0.1807	0.0157

Participants report that the outcome was working, they were satisfied with the outcome, and they would recommend ADR was negatively associate with:

- ❖ *ADR Practitioner Offering Opinions and Solutions –L.*

Participants increase in their consideration of the other person, self-efficacy, and sense that the court cares about resolving conflict from before the ADR to several months later was negatively associated with:

- ❖ The percentage of time spent in caucus.

Participants report that they changed their approach to conflict was positively associated with:

- ❖ *ADR Practitioner Eliciting Participant Solutions – L;*

And negatively associated with:

- ❖ *ADR Practitioner Offering Opinions and Solutions – L;*
- ❖ Participants having a personal relationship;
- ❖ A Contract Case; and
- ❖ The number of days between the ADR and the follow-up interview.

An increase in the likelihood of cases return to court in the 12 months after mediation is positively associated with:

- ❖ Percentage of time spent in caucus.

And negatively associated with:

- ❖ *ADR Practitioner Eliciting Participant Solutions*;
- ❖ The number of cases mediated or facilitated by the practitioner in the 12 months prior to the case.

No ADR practitioner Strategies or Characteristics had a statistically significant effect on the following outcomes:

- ❖ Participants report that there were new problems, personal inconveniences, or financial costs; and
- ❖ Participants increase in their sense of powerlessness over the situation from before the ADR to several months later.

Table 26. Logistical Regression Results for Return to Court for Enforcement Action

		Return 1 Year
	Agreement	-0.79 (-1.80)
Case Characteristics	Police Called	-1.23 (-1.65)
	Contract	-0.22 (-0.31)
	Related Case	0.02 (0.02)
	Plaintiff/Defendant mixed race	-0.24 (-0.32)
	Personal relationship	-0.31 (-0.35)
	Male	-0.46 (-0.53)
Practitioner Strategies	Case – Eliciting Participant Solutions	-1.05* (-2.25)
	Case – Reflecting Emotions/Interests	0.13 (0.39)
	Case – Offering Solutions	0.01 (0.03)
Participant Strategies	P-Case Pre Anti-ADR	0.40 (1.67)
	P Case Prepared	-0.52 (-1.82)
	P Case Clear and Hopeful	0.33

		(1.18)
	P Case Our Solutions	0.34 (1.25)
	P Case My Solutions	0.34 (1.21)
	P Case Insults and Apology	0.43 (1.58)
	P Case Responsibility and Interrupting	-0.43 (-1.19)
Practitioner Characteristics	Cases Last 12 months	-0.02 (-1.96)
	Mediator – P needs agreement	0.11 (0.18)
ADR Session	Caucus Time	5.80* (2.53)
	Total ADR Time	-0.01 (-0.59)
	Constant	0.74 (0.58)
	Number	97
	Pseudo R ²	0.33

Returning to Court for Enforcement Action in the 12 months after the ADR session is positively associated with:

- ❖ Percentage of time spent in caucus.

Returning to Court for Enforcement Action in the 12 months after the ADR session negatively associated with:

- ❖ Mediator eliciting participant solutions.

Discussion

This research is unique, and to our knowledge, the only study conducted in a trial court context that isolates actual, observed ADR practitioner strategies and program components and examines the impact of these strategies on changes in participants' attitudes in the long and short-term, agreements, and participants' experience of the process. Many studies ask ADR practitioners what they did and what they think was effective. Those studies are limited by the individual ADR practitioner's bias about his or her own work.

Other studies report on participants' experiences of "the ADR process". These studies do not allow researchers, ADR program managers, and court staff to know what is actually happening in the ADR session, and indeed treat everything across ADR sessions as equal. An inherent problem with these studies is that depending on the ADR practitioners' approach, participants may experience very different outcomes. When all of the processes are combined,

the range of outcomes may be masked. These studies may actually understate the potential of ADR because effective and ineffective strategies are combined in one group and called ADR. Additionally, in studies asking participants to comment on their ideas about the effectiveness of ADR, participants rarely have anything against which to measure those experiences.

This study observed what ADR practitioners actually did while also asking participants about their experiences in the ADR session. Many questions were asked of participants before and after the ADR and again three to six months later in order to measure the change in attitude from pre- to post-ADR. In addition, because this study includes information about the participants' pre-ADR attitude and behaviors, it allows us to hold constant for these attitudes and behaviors, therefore isolating the impact of ADR practitioner strategies alone. Below we summarize the impacts of each set of strategies.

Caucus

The short-term analysis finds that the greater the percentage of time participants spend in caucus, the more likely the participants are to report that the ADR practitioner controlled the outcome, pressured them into solutions, and prevented issues from coming out. A greater percentage of time in caucus was also negatively associated with participants reporting that they were satisfied with the process and outcome, that the issues were resolved with a fair and implementable outcome. A greater percentage of time in caucus was positively associated with an increase in a sense of powerlessness, an increase in the belief that conflict is negative and an increase in the desire to better understand the other participant. The long-term analysis finds that the greater the percentage of time participants spent in caucus was associated with a decrease in participants' consideration of the other person, self-efficacy (belief in one's ability to talk and make a difference), and sense that the court cares about resolving conflict from before the ADR session to several months later. Long-term analysis also revealed that greater percentage of time in caucus is positively associated with the likelihood of returning to court in the 12 months after mediation for an enforcement action.

These findings are statistically significant even after holding constant for the attitude of the participant, the strategies used by the participant, and the level of escalation before the ADR. Although some ADR practitioners report that they move to caucus in more challenging situations, this method of analysis allowed us to account for how challenging the situation was. Even accounting for the intensity of the situation, caucusing produced these negative outcomes. Furthermore, the short term measures of powerlessness and long term measures of consideration and self-efficacy were measured by asking the same question before and after the ADR session and three months later, so it is an actual shift in the participants' attitudes that is measured, rather than a static question asked at one point in time.

The percentage of time spent in caucus had no statistically significant impact (positive or negative) on reaching an agreement.

ADR Practitioner Reflecting

ADR Practitioner Reflecting Emotions/Interests is characterized by the ADR practitioner reflecting back to the participant what the participants themselves expressed, with a focus on the

emotions and underlying interests. In the short term, *ADR Practitioner Reflecting Emotions/Interests* was positively associated with participants reporting that the other person took responsibility and apologized. *ADR Practitioner Reflecting Emotions/Interests* was also positively associated with an increase in a sense of self-efficacy (ability to talk and make a difference) and an increase in the sense that the court cares from before to after the ADR.

ADR Practitioner Reflecting did not have any statistically significant impacts on the long-term outcomes measured here.

ADR Practitioner Eliciting Participant Solutions

ADR Practitioner Eliciting Participant Solutions is characterized by asking participants what solutions they would suggest, summarizing the solutions being considered, and checking in with participants to see how they think those ideas might work for them. This had the broadest set of impacts both in the short and long-term. In the short-term, *ADR Practitioner Eliciting Participant Solutions* was positively associated with participants reporting that they listened and understood each other in the ADR and jointly controlled the outcome; participants report that the other person took responsibility and apologized; and negatively associated with participants reporting that the ADR practitioner controlled the outcome, pressured them into solutions, and prevented issues from coming out. *ADR Practitioner Eliciting Participant Solutions* was the only ADR practitioner strategy that had an impact on reaching an agreement, and the impact is a positive one. In the long-term analysis, *ADR Practitioner Eliciting Participant Solutions* was positively associated with participants reporting that they changed their approach to conflict.

ADR Practitioner Eliciting Participant Solutions was negatively associated with participants returning to court for an enforcement action in the subsequent 12 months. This means that participants are less likely to return to court for enforcement action if the mediator used more of the eliciting solution strategy.

ADR Practitioner Offering Opinions and Solutions

ADR Practitioner Offering Opinions and Solutions is characterized in the short-term analysis by the ADR practitioner offering their opinion and advocating for their ideas for solutions. In the long-term analysis, this set of strategies also includes the ADR practitioner offering legal analysis. *ADR Practitioner Offering Opinions and Solutions* did not have any statistically significant impacts in the short-term. In the long-term, it was negatively associated with participants' report that the outcome was working, they were satisfied with the outcome, they would recommend ADR, and with participants' reporting that they changed their approach to conflict.

Reaching an Agreement

Reaching an agreement in ADR results in participants reporting several positive outcomes after the ADR session. It is positively associated with participants reporting that they listened to and understood each other in the ADR session and jointly controlled the outcome; they were satisfied with the process and outcome; that the issues were resolved with a fair and implementable outcome; the other person took responsibility and apologized; an increase in a

sense of self-efficacy (ability to talk and make a difference) and an increase in the sense that the court cares from before to after the ADR was positively associated; and negatively associated with an increase in the sense of powerlessness and the negativity of conflict as well as a desire to better understand the other. Reaching an agreement did not have any statistically significant impacts on the long-term outcomes.

Racial Match of ADR Practitioner and Participant

Having at least one ADR practitioner at the table match the race of the responding participant was positively associated with participants reporting that they listened and understood each other in the ADR session and jointly controlled the outcome and an increase in a sense of self-efficacy (ability to talk and make a difference) and an increase in the sense that the court cares from before to after the ADR session. Here it is important to note that participants were never asked about their opinion on the role of race or the ADR practitioner's race. Participants were asked their race, ADR practitioners were asked their race, and based on these answers, a variable was created identifying if there was a match. This was included in the analysis and was found to be significant in these two areas, even after holding constant for other factors in the case, including ADR practitioner strategies.

Mediation Experience

The number of cases an ADR practitioner has conducted in the 12 months prior to the case was negatively associated with participants report that they heard and understood each other during the ADR process. That is, practitioners who conducted more cases in the previous 12 months were less likely to have participants report that they heard and understood each other.

In the long-term analysis, the number of cases an ADR practitioner has conducted in the 12 months prior to the case was negatively associated with the probability of returning to court for an enforcement action in the 12 months after the case. Cases conducted by practitioners who had conducted more cases in the previous 12 months were less likely to return to court for enforcement action.

Limitations

The primary limitation of this study is the small sample size. The intense and thorough method of data collection, including observations, pre- and post-test in-person surveys, and reviews of court files, is the strength of this study. This level of analysis has a significant impact on personnel and financial resources. As a result, fewer cases were observed than might be ideal. While we are still confident in the outcomes that were found, there may be other statistically significant relationships that we were not able to identify in this smaller data set but that may come to light with a larger sample size.

The small sample size becomes even more of a limitation with the analysis of the long term participant attitude outcomes. Because many observations were lost due to an inability to contact participants for an interview, the sample size for the long-term analysis is significantly less than that of the original data set. There is reason to believe that other underlying relationships would surface as significant if there were a larger data set.

The study is also limited by its uniqueness; few other similar studies exist on which to compare these results. Ideally, future studies will use similar methodology to allow for comparison across different settings.

Finally, it is important to note that this research measured what the ADR practitioners did but not whether they did it well. For example, if an ADR practitioner reflected a feeling back to a participant (e.g. “it sounds like you felt shocked when you received that cut off notice”), it was coded as feeling. The quality or accuracy of the reflection was not noted. So these outcomes indicate which general strategies have which outcomes; however, the skill level of the ADR practitioner and quality of the process also matter and could not be measured here.

Recommendations

The goals of the District Court ADR Program are to support participants to develop their own solutions outside of the courtroom, to build better understanding among participants, and to support participant self-determination. An important benefit to ADR is that participants who reach agreements in ADR are less likely to return to court for an enforcement action, thus creating greater efficiency in District Court case processing. The ADR strategies that best align with these goals are the *ADR Practitioner Eliciting Participant Solutions* and the *ADR Practitioner Reflecting Emotions/Interests* of participants. Caucusing and ADR practitioners offering their opinion or solutions have effects that run counter to these goals. Therefore, this research indicates that the District Court ADR Office should encourage and support ADR practices that focus on eliciting participants’ solutions and reflecting back to participants, and discourage strategies that are heavily focused on caucus and ADR practitioners offering their own solutions and opinions.

These findings also indicate that racial match between participants and ADR practitioners affect participant self-efficacy, participants’ experience that the court cares about resolving disputes, and participants’ hearing and understanding each other. Given that these findings are likely influenced by African American participants and white mediators, this highlights the value of ensuring the ADR practitioner pool is diverse and includes people from a range of racial backgrounds.

This study provides a glimpse into ADR sessions and how different strategies impact participants. The Maryland Judiciary is hopeful that this research model can be replicated with a larger and even more diverse sample of cases. More research examining these crucial questions will result in more confident and informed recommendations for effective ADR practitioner strategies and court ADR program structures.

Appendix A: Summary

Maryland Judiciary Statewide Evaluation of Alternative Dispute Resolution

What Works in District Court Day of Trial Mediation: Effectiveness of Various Mediation Strategies on Short-Term and Long-Term Outcomes

Maryland court rules permit judges to order or refer civil cases in the District Court to mediation or a settlement conference. This study identifies the mediator strategies and program factors affecting case outcomes. Statistical analysis of actual mediations revealed four groups of mediator strategies for study. **Mediators often use more than one set of strategies: the groupings described are strategies commonly used together. These are not labels for types of mediators.**

Reflect

Reflecting Strategies:

- Reflecting emotions & interests



SHORT TERM: Reflecting strategies are positively associated with participants reporting:

- that the other person took responsibility and apologized
- an increase in self-efficacy (belief in one's ability to talk and make a difference)
- an increase from before ADR to after ADR in their sense that the court cares

LONG TERM: This strategy was not statistically significant in any positive or negative outcomes.

Elicit

Eliciting Strategies:

- Asking participants to suggest solutions
- Summarizing solutions that have been offered
- Asking participants how those solutions might work for them



SHORT TERM: Eliciting participant solutions was positively associated with participants reporting that:

- they listened & understood each other & jointly controlled the outcome
- the other person took responsibility and apologized

Eliciting was positively associated with reaching an agreement in ADR.

Eliciting participant solutions was negatively associated with participants reporting ADR practitioner:

- controlled the outcome
- pressured them into solutions and prevented issues from coming out

LONG TERM: Participants were more likely to report a change in their approach to conflict and were less likely to return to court for an enforcement action.

Offering / Tell

Offering Strategies:

- Offering opinions
- Advocating for their own solutions
- Offering legal analysis
(long term only)



SHORT TERM: This strategy was not statistically significant in any positive or negative outcomes.

LONG TERM: The more offering strategies are used, the less participants report:

- The outcome was working
- They were satisfied with the outcome
- They would recommend ADR
- They changed their approach to conflict

Caucus

Caucusing is the practice of meeting with the participants on each side of the case separately and privately.

SHORT TERM:

The greater the percentage of time participants spend in caucus, the *more likely* participants report:

- the ADR practitioner: controlled the outcome, pressured them into solutions, and prevented issues from coming out.
- an increase in a sense of powerlessness, an increase in the belief that conflict is negative, and an increase in the desire to better understand the other participant.

The greater the percentage of time in caucus, the *less likely* the participants report:

- they were satisfied with the process and outcome, and the issues were resolved with a fair and implementable outcome.

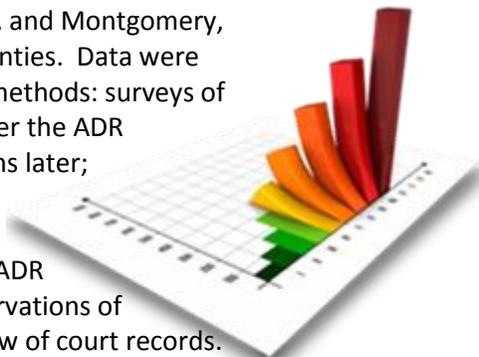
LONG TERM: The greater the percentage of time participants spend in caucus, the *less likely* participants report:

- consideration of the other person,
- self-efficacy (belief in one's ability to talk and make a difference), and
- a sense that the court cares about resolving conflict from before the ADR session to several months later.

Long-term analysis finds that greater the percentage of time participants spend in caucus, the more likely the case will return to court in the 12 months after mediation for an enforcement action.

Data Collection

Data for this study were collected in the District Court Day of Trial programs in Baltimore City, and Montgomery, Calvert, and Wicomico Counties. Data were collected through several methods: surveys of participants before and after the ADR session as well as six months later; surveys of the ADR practitioners; behavior coding of participants and ADR practitioners through observations of the ADR process; and review of court records.



Researchers were present on days when ADR practitioners were scheduled to appear for a court docket. Once the ADR practitioner received a case referral and solicited the parties' agreement to participate in ADR, researchers requested the parties consent to participate in the research study. In all four counties, pre-intervention questionnaires were given before the ADR process. Next, researchers observed the ADR process and coded the behaviors of the ADR practitioners and the participants. At the conclusion of the process, participants were escorted back to the courtroom to either record their settlement or proceed with their trial. At the conclusion of the court process, post-intervention questionnaires were given.

Three months following the ADR process, researchers called participants to conduct a follow-up interview. Finally, 12 months after the court date, researchers reviewed the electronic court records of each observed case to determine if the parties had required further intervention by the court. When the electronic record was not clear, researchers reviewed the original case file at the Clerk's office.

Analysis

This two page flier simplifies a rigorous study which used a variety of statistical tools to determine the results. A detailed discussion of the data collection instruments and analysis tools can be found in the full report; see below for more information.

This research, commissioned by the **Maryland Judiciary**, is part of its Statewide Evaluation of ADR. The project was led by the Administrative Office of the Courts, and funded in part by a grant from the State Justice Institute. Salisbury University and the University of Maryland worked on the statewide study under memoranda of understanding with AOC. The research for this portion of the study was conducted by Community Mediation Maryland and the Bosserman Center for Conflict Resolution at Salisbury University. Lorig Charkoudian, PhD, served as lead researcher. Additional information about the research methods, data collection tools, and statistical analyses, and the full study can be found in the full report at:

www.mdcourts.gov/publications/reports.html



Returning to

More likely to return to court:

Caucus: Cases in which a greater percentage of time was spent in caucus are more likely to return to court.

Less likely to return to court:

Eliciting: Cases in which ADR Practitioners used more eliciting strategies are less likely to return to court.

Mediation experience: Cases in which the ADR practitioner had greater ADR experience in the previous 12 months are less likely to return to court.

Racial Match

Having at least one ADR practitioner at the table match the race of the responding participant was **positively** associated with participants reporting that they listened and understood each other in the ADR session and jointly controlled the outcome, and an increase in a sense of self-efficacy (belief in one's ability to talk and make a difference) and an increase in the sense that the court cares from before to after the ADR session.

The Maryland Judiciary has a long-term commitment to building ADR programs in Maryland. The Administrative Office of the Courts commissioned this study to be conducted by independent researchers in its ongoing effort to provide the highest quality service to Marylanders.

Appendix B: Difference of Means and Chi-Squared Results

The tables below show the difference of means and chi-squared results for comparisons between those participant who completed the follow-up survey and those who did not.

Table B-1: *Significant Differences between Participants Completing the Long-Term Follow-Up Survey*

Table B-1. 1: Chi-Square Test Results for Follow-up by Jurisdiction

	Follow up – No (0)	Follow up- Yes (1)
Not Montgomery County	116 (75%)	70 (61%)
Montgomery County	39 (25%)	44 (39%)

Pearson Chi2 = 5.56, df = 1, p<.05

Table B-1. 2: Chi-Square Test Results for Follow-up by Jurisdiction

	Follow up – No (0)	Follow up- Yes (1)
Not Wicomico County	140 (90%)	113 (99%)
Wicomico County	15 (10%)	1 (1%)

Pearson Chi2 = 9.10, df = 1, p<.05

Table B-1.3: Chi-Square Test Results for Follow-up by "Related Case"

	Follow up – No (0)	Follow up- Yes (1)
No Related Case	102 (80%)	93 (90%)
Related Case	26 (20%)	10 (10%)

Pearson Chi2 = 4.88, df = 1, p<.05

Table B-2: Difference of Means between Participants Who Completed the Follow-Up Survey and Those Who Did Not

	In Follow Up (1)			Not in Follow Up (0)			Significant Difference
	N	Mean	SD	N	Mean	SD	
Cases in last 12 Months	111	31.25	40.16	151	20.17	24.12	-11.08*
Level of Agreement (5) or Disagreement (1) with the following statements immediately after ADR, compared between those who completed follow-up and those who did not							
Post – Med Listened and Understood	98	0.28	1.52	107	-0.25	1.94	-.53*
Difference Between Level of Agreement before ADR and level of agreement after ADR, compared between those who completed follow-up and those who did not							
Diff – Can Talk	86	-.20	1.26	87	.20	1.07	.39*

* Difference between those in the treatment group to those in the comparison group is significant p<.05 using a two-tailed test

† Difference between those in the treatment group to those in the comparison group is significant p<.10 using a two-tailed test

The following variables were tested and there was no statistically significant difference between those who responded to the follow-up survey and those who did not: Calvert, Baltimore City, Police Called, Case Type – Contract, Attorney Present, Represented or Consulted Attorney, Male, Participant Under 125% Poverty Level, Gender of ADR Practitioner Matched Me, White, Race of ADR Practitioner Matched Me, Born in the US, Verdict, Age, Diff - Consider Them, Diff – Forget Them, Total Time ADR, Agreement, Diff – Powerless, Post – We Understand, Post – Mediator Controlled, Post – Became Clear, Post – Outcome Works, Post – I Took Responsibility, Post – Other Took Responsibility

Appendix C: Surveys and Consent Forms

Maryland Judiciary Dispute Resolution Study Consent Form for ADR Session

The Maryland Judiciary is conducting research about Alternative Dispute Resolution in the court system, and the research is looking at how you experience the court system. Part of the study will compare the results of alternative dispute resolution to the results of cases that go to trial. The research will also identify what strategies used in an ADR session are most effective.

All of the data collected will be kept strictly confidential:

- Only the research team will have access to the data.
- The court will not have access to your personal information. Your information will be entered into the database and then destroyed.
- Answers from over 2,000 people total will be in the database.

Participation in this study is completely voluntary and you may choose to stop at any time. Your choice to participate in the research does not affect your participation in ADR. You can choose not to participate and still use ADR. If you choose to participate:

- You will be asked a short survey before and after your ADR session
- Researchers will observe the ADR session and note what occurs
 - ADR is confidential, and that applies to the observers as well
 - Researchers will not record the content of your discussion in any way
- Information will be gathered from your case file and other law enforcement records.
- Your choice (to participate or not) will have no effect on your court case.
- Your participation assists the Maryland Judiciary in providing a better service.

After the ADR session is complete, the observers will ask if you wish to participate in a short follow-up survey by phone in three to six months. If you choose to participate in the follow-up survey, you would be given \$10 for your participation.

By signing below, I agree that a Salisbury University researcher, under the direction of the Maryland Judiciary, may ask me questions about my conflict and observe my ADR session. I know that I can change my mind at any time and inform the researchers that I do not want to be part of this study.

Signed

Parent or Guardian Signature (if minor)

Printed Name

Parent or Guardian Signature (if minor)

Date

Date

If you have any adverse effects or concerns about the research, please contact the primary investigator or the University Research Services Department at Salisbury University at [410-548-5395](tel:410-548-5395) or toll free [1-888-543-0148](tel:1-888-543-0148). Additional contact information can be found at www.marylandADRresearch.org

13. For this case, have you already been involved in any of the following processes:

- | | |
|---|--------------------------------------|
| <input type="checkbox"/> Mediation | <input type="checkbox"/> Arbitration |
| <input type="checkbox"/> Settlement conference | <input type="checkbox"/> Trial |
| <input type="checkbox"/> Community Conferencing | <input type="checkbox"/> Not sure |
| <input type="checkbox"/> No, I have not | |

14. Do you think you are:

- Not at all responsible for what happened
- Somewhat responsible for what happened
- Fully responsible for what happened

15. How long have the issues that brought you to court been going on? _____

16. Have the police been called? Yes No

16a. If yes, how many times have the police been called? _____

16b. Over what period of time were those calls made? _____

17. Other than today's court case, have other cases been filed related to the issue that brought you to court today? (specify the same issue with the same person)

- Yes No

17a. If yes, which type of cases?

- Criminal Family Civil Juvenile Appeals Not sure

18. Using the following scale, express your agreement or disagreement with the following statements:

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I think there are a number of different ways to resolve the issues that brought me to court today.					
It's important that I get my needs met in the issues that brought me to court today.					
It's important that I understand what the other person/people want in the issues that brought me to court today.					
The other person/people need to learn that they are wrong in the issues that brought me to court today.					
It's important that the other person/people get their needs met in the issues that brought me to court today.					
It's important for me to have a positive relationship with the other person/people involved in the issues that brought me to court today.					

English and another language (Please specify the language(s): _____)

Only a language other than English (Please specify the language(s): _____)

24a. How well do you think you speak English?

Very well

Not well

Well

Not at all

25. Do you have a military background?

Yes, I am active duty, reserves, or National Guard

Yes, I'm a veteran No

26. Do you have any disabilities?

Yes

No

a. If yes, please specify: _____

27. What is your relationship to the other party in this court case?

Friend/Acquaintance

Boy/Girlfriend

Ex-boy/girlfriend

Domestic Partners/Spouses

Separated/Divorcing

Other Family

Employer/Employee

Former Emp/Employee

Co-workers

Neighbors

Room/Housemates

Strangers

Other

Landlord/Tenant

Customer/Business

28. What is your highest completed level of education?

No Formal Education

Grammar School

High School/GED

Trade School/Certificate Program (post high school)

College

Graduate degree (MA, PhD)

Law School (JD, LLM)

PARTICIPANT SURVEY (POST-SESSION - ADR)

District Court Day of Trial

FOR OFFICE USE ONLY	RESEARCH CASE NUMBER _____
Name of person being interviewed _____	
Plaintiff v. Defendant _____	

Interviewer: Read the following Confidentiality Statement to the respondent before proceeding
 Your participation in this survey is completely voluntary. You may choose to not answer any question or stop the survey at any time. Your answers are confidential. They will not be shared with the other involved parties, the court, your attorney, or your mediator/settlement conference attorney.

Interviewer: Please use the term MEDIATION or SETTLEMENT CONFERENCE, depending on which was being offered by the court today.

A. Participant’s Opinions

1. Using the following scale, express your agreement or disagreement with the following statements:

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
The mediator(s) or settlement conference attorney listened to what I had to say without judging me or my ideas.					
The mediator(s) or settlement conference attorney seemed to take sides.					
The mediator(s) or settlement conference attorney treated me with respect					
I was able to express myself, my thoughts, and my concerns during the mediation / settlement conference.					
I think the mediator(s) or settlement conference attorney understood what I was expressing.					
Through mediation or settlement conference, I became clearer about what I want in this situation.					
Through the mediation or settlement conference, I think I understand the other person/people involved in the conflict better.					
Through the mediation or settlement conference, I think the other person/people involved in the conflict understand me better.					

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
I think all of the underlying issues in this conflict came out in the mediation or settlement conference.					
The mediator(s) or settlement conference attorney prevented us from discussing important topics					
The other person/people listened to me.					
The mediator(s) or settlement conference attorney pressured us to reach an agreement in mediation.					
Together, the other person/people and I controlled the decisions made in the mediation or settlement conference.					
I feel like the mediator(s) or settlement conference attorney controlled the decisions made in the mediation or settlement conference.					
I would bring other conflicts to mediation or settlement conferences in the future.					
I would recommend mediation or settlement conferences to others involved in conflicts.					
The meeting room was conducive to a comfortable mediation or settlement conference.					
I am satisfied with the outcome of the mediation or settlement conference.					
I am satisfied with the process of the mediation or settlement conference.					

2. Did you reach an agreement?

Full agreement: How did you reach an agreement? _____

Partial: How did you reach agreement on the points you agreed on? _____

and why didn't you reach agreement on the other points? _____

None: Why do you think you didn't reach an agreement? _____

B. Participant's Experience

3. Do you think the issues of custody and visitation are resolved?

Yes Partially No

4. Was there a recognition of responsibility or an apology? (Check all that apply)

- Yes, I acknowledged responsibility
- Yes, I apologized
- Yes, the other people/person acknowledged responsibility
- Yes, the other people/person apologized
- No, neither of us acknowledged responsibility or apologized

5. Do you think you are:

- Not at all responsible for what happened
- Somewhat responsible for what happened
- Fully responsible for what happened

6. Using the following scale, express your agreement or disagreement with the following statements:

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I think the outcome reached today is fair					
I think I can implement the results of the outcome reached today					
I am satisfied with my interactions with the judicial system during this case					
<i>Only ask if they also just finished a trial (no agreement):</i>					
I am satisfied with the process of the trial I just went through					
I am satisfied with the outcome of the trial I just went through					

7. Using the following scale, express your agreement or disagreement with the following statements:

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I think there are a number of different ways to resolve the issues that brought me to court today.					
It's important that I get my needs met in the issues that brought me to court today.					
It's important that I understand what the other person/people want in the issues that brought me to court today.					
The other person/people need to learn that they are wrong in the issues that brought me to court.					
It's important that the other person/people get their needs met in the issues that brought me to court.					

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
It's important for me to have a positive relationship with the other person/people involved in the issues that brought me to court today.					
I feel like I have no control over what happens in the issues that brought me to court today.					
The other person/people involved in the issues that brought me to court today want the exact opposite of what I want					
I can talk about my concerns to the person/people I have conflict with.					
It doesn't seem to make any difference what I do in regard to the issues that brought me to court today, it'll just remain the same.					
In general, conflict is a negative thing.					
The court system cares about helping people resolve disputes in a fair manner.					

C. Costs: direct (fees) and indirect (missed work)

8. How many days did you participate in legal, mediation, or other activities for this court case, including today? _____

a. Approximately how many hours did you spend in these activities? _____

b. How many days did you have to take off work for this court case? _____

c. If you needed to take unpaid absences for this court case, how much do you estimate you lost in wages/salary? _____

d. Is there any possibility of you losing your job due to time lost for this court case?

Yes No Not sure

e. Is there any possibility of you being otherwise penalized at work (losing privileges, priority for choosing shifts, etc), due to time lost for this court case?

Yes No Not sure

9. If you are represented by an attorney, what is your total estimated cost for attorney fees for this situation? _____

10. If you care for dependents (children or other dependents), did you require additional help with care in order to participate in legal or mediation activities for this situation?

Yes No

10a. If yes, about how many total hours of additional care did you require to attend these activities for this case? _____

10b. In total, how much did it cost you to have additional care to attend these activities (do not include care costs that you would normally incur): _____

**MEDIATOR (PRE-SESSION - ADR)
District Court Day of Trial**

FOR OFFICE USE ONLY	RESEARCH CASE NUMBER _____
Plaintiff v. Defendant _____	

MEDIATOR NAME: _____ **Date:** __/__/__

Note: Your answers are confidential. They will not be shared with your roster manager or supervisor. Several questions ask for number of hours or mediations. Please give your best estimate. There is no need to consult records.

A. Mediator Information

1. Today I am serving in the capacity of: (PLEASE CHECK ONE)
 A court employee A Volunteer or Roster mediator
 Community Mediation Volunteer Other, please specify: _____
 An independent contractor

2. How long (approximate number of years) have you served as a mediator?: _____

3. To the best of your recollection, how many cases have you mediated during the following periods (in this venue and others):
 - a. Past six months: _____ (approx. number of cases mediated)
 - b. Past 12 months? _____ (approx. number of cases mediated, including those mediated during the past six months)
 - c. Your entire career as mediator? _____ (approx. number of cases mediated, including those mediated during the past twelve months)

4. How many hours was your initial training in mediation? _____
 - 4a. In what year was your initial training? _____
 - 4b. Approximately, how many total hours of mediation training have you had (including continuing education and advanced training)? _____

5. In the capacity I am serving in today as a mediator, I am supervised by:
 My employer A Roster manager Don't know
 a coordinator at a Community Mediation Center

5a. Approximately, how often do you interact with the supervisor marked above (consider email, phone, and in-person):

- Once for each mediation
- Once for every two-five mediations
- Once for every six-ten mediations
- Less than once every ten mediations

6. Are you a member of Maryland Program for Mediator Excellence (MPME)? Yes No

7. Considering the case you are mediating today, will you use any subject matter knowledge you have (either professional training and/or experience from prior ADR sessions) in the course of today's session?

- Yes
- No
- Not sure yet

B. Mediator Philosophy

If this is your first time completing this survey, please complete the remainder now. If you have completed this section before, and either your demographic information or your approach to mediation or your philosophy has changed since the last time you filled this out, please ask the researcher for the rest of the survey to complete again.

- I have completed this section before and my mediation approach and philosophy has not changed since then (stop and return survey to researcher)

B. Mediator Philosophy

8. In general, how often do you use subject matter knowledge you have (either professional training and/or experience from prior mediations) in the course of a mediation?

Never Rarely Sometimes Often

9. Using the following scale, express your level of agreement or disagreement with the following statements, by placing a check mark or X in the appropriate box.

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
One thing I do as a mediator is to tell a participant that a decision is not in their best interest.					
Talking about the past is helpful in mediation.					
One important goal of mediation is for participants to understand each other's perspectives.					
One thing I do as a mediator is help participants identify what they are willing to give up in order to get something that they want.					
One thing I do as a mediator is help participants identify what issues they want to resolve.					
One thing I do as a mediator is explain one participant's opinion to the other.					
One thing I do as a mediator is encourage participants to think of many possible solutions before making a final decision.					
I find it is helpful to participants when I suggest possibilities for how to resolve the conflict.					
Participants in mediation need to be kept from interrupting each other.					
One thing I do as a mediator is tell participants when their expectations are unreasonable.					
One thing I do as a mediator is help participants identify their underlying interests or goals in the conflict.					
One of the values of mediation or is that participants follow guidelines to treat each other civilly.					

I consider a mediation unsuccessful if participants do not reach an agreement.					
	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I find it is helpful for participants to be free to express themselves however they choose in mediation.					
Conflict is a problem that can be resolved in mediation.					

10. Out of a total of 100 points, distribute them to rank the following goals for your approach to mediation:

- _____ Participants reach an agreement in mediation.
- _____ Participants gain clarity about their own needs and choices.
- _____ Participants gain an understanding of each other.
- _____ Participants control the outcome of the mediation.
- _____ Participants increase their ability to resolve future conflicts.

100 TOTAL

11. Please describe your style or orientation as a mediator:

- Evaluative
- Analytical
- Other (describe): _____
- Facilitative
- Narrative
- Transformative
- Inclusive
- No particular style or orientation

C. Demographic information

[] Check here if you've completed this before, and stop

12. Are you male or female? [] Male [] Female

13. How old were you on your last birthday? _____

14. How many people live in your household, including you? _____

<p>15. What is your household income? Please check the appropriate box.</p> <ul style="list-style-type: none"> [] Less than \$10,000 [] \$10,000 to \$15,000 [] \$15,000 to \$25,000 [] \$25,000 to \$35,000 [] \$35,000 to \$50,000 [] \$50,000 to \$75,000 	<p>16. What is your race? Please check the appropriate box</p> <ul style="list-style-type: none"> [] White [] Black or African American [] Hispanic or Latino (e.g., Mexican, Puerto Rican, Cuban) [] American Indian and Alaska Native [] Asian (e.g., Asian Indian, Chinese, Filipino, Japanese, Korean) [] Native Hawaiian and Pacific Islander (e.g., Samoan, Guamanian)
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**PARTICIPANT SURVEY (Three months post - ADR)
District Court Day of Trial**

FOR OFFICE USE ONLY	RESEARCH CASE NUMBER _____
Name of person being interviewed _____	
Plaintiff v. Defendant _____	

Interviewer: Read the following Confidentiality Statement to the respondent before proceeding
Your participation in this survey is completely voluntary. You may choose to not answer any question, or stop the survey at any time. Your answers are confidential: they will not be shared with the other involved parties, the court, your attorney, or your mediator/settlement conference attorney.

Interviewer: Use the term MEDIATION or SETTLEMENT CONFERENCE, based on which was used, or TRIAL if the final disposition was a judicial order.

1. Using the following scale, please rate your agreement or disagreement with the following statements.

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I think there are a number of different ways to resolve the issues that brought me to court three months ago.					
It's important to me that I get my needs met in the issues that brought me to court three months ago.					
It's important that I understand what the other person/people want in the issues that brought me to court three months ago.					
The other person/people need to learn that they are wrong in the issues that brought me to court three months ago.					
It's important that the other person/people get their needs met in the issues that brought me to court three months ago.					
It's important for me to have a positive relationship with the other person/people involved in the issues that brought me to court three months ago.					
I feel like I have no control over what happens in the issues that brought me to court three months ago.					

The other person/people involved in the issues that brought me to court three months ago want the exact opposite of what I want.					
I can talk about my concerns to the person/people involved in the issues that brought us to court today.					
It doesn't seem to make any difference what I do in regard to the issues that brought me to court three months ago, it'll just remain the same.					
In general, conflict is a negative thing.					
I feel like the issues, about which we went to court, are fully resolved.					
I am satisfied with my interaction with the judicial system in this case.					
The court system cares about helping people resolve disputes in a fair manner.					

B. Compliance

2. How likely are you to recommend mediation or a settlement conference to others involved in a court case?

Very unlikely Unlikely Neither Likely Very likely

3. Three months after your mediation/settlement conference or trial, how satisfied are you with the outcome from the mediation /settlement conference or trial?

Very dissatisfied Dissatisfied Neither Satisfied Very satisfied

4. How well is the outcome you reached the mediation /settlement conference or trial working for you?

Not at all A little Partially Mostly Completely

5. How well do you think you followed through on the agreement/judicial decision? (If answered anything other than completely, go on to questions 5a and 5b)

Not at all A little Partially Mostly Completely

5a. What parts of the agreement/judicial decision did you follow through on? Why?

5b. What parts of the agreement/judicial decision did you not follow through on? Why?

6. How well did the others follow through on the agreement/judicial decision? (If answered anything other than completely, go on to questions 6a and 6b)

Not at all A little Partially Mostly Completely

6a. What parts of the agreement/judicial decision did they follow through on?

6b. What parts of the agreement/judicial decision did they not follow through on?

7. In the last three months, have you had any contact with the opposing parties involved in the case, since the mediation /settlement conference or trial?

None A little A lot

7a. Are the interactions worse, the same, or better than three months ago?

Worse Same Better n/a

8. Have new problems with the person with whom you went to the mediation /settlement conference or trial (which you did not discuss at the time) arisen in the last three months?

Yes No

8a. If yes, what are they?

8b. If yes, how have you dealt with them?

9. In the last three months since the mediation /settlement conference or trial, have you had any personal inconveniences (e.g. missed work, change in your routine, lack of sleep, health issues, situation weighing on your mind etc.) as a result of this situation?

Yes No

9a. If yes, what were they?

10. In the last three months, have you had any personal financial costs as a result of this situation, other than any amount agreed upon in the mediation or settlement conference, or decided at trial?

Yes No

10a. If yes, what were they and how much did you spend?

11. If you care for dependents (children or other dependents), did you require any added help with care in order to participate in legal or mediation activities for this situation?

yes no

11a. About how many total hours of additional care did you require to attend legal or mediation activities for this case? _____

11b. In total, how much did it cost you to have added care to attend these activities (do not include care costs that you would normally incur with or without attending these activities):

12. If you were represented by an attorney, what was the total paid in attorney's fees for this case?

13. Has there been any violence as a result of the issues that brought you to court three months ago?

Yes No

13a. If yes, please describe it.

14. Has your approach to conflicts involving other people changed since the mediation /settlement conference or trial?

Yes No

14a. If yes, how?

15. What else has happened in the issues which were mediated/tried that I have not asked you about?

Appendix D: Code Books

Mediator Codes

General Directions

A **unit of speech** is defined as everything said by one person before someone else speaks with a substantive comment. Any confirmation language (e.g. ok, uh-huh, yes, exactly) does not change a unit of speech, unless it's in response to a fact or request reaction. A "no" or denial, does change the unit of speech. If a person speaks for more than 30 seconds, each 30 seconds counts as a new unit of speech. The code itself starts the 30 second unit for that code. Each code does not get coded in the same 30 seconds or in the same unit of speech, whichever is shorter. If the same individual is speaking 30 seconds after the code was last noted and performs the same behavior, then the behavior should be coded again. Each unit can have more than one code.

Note that **some codes take precedence** over others. This means that the same comment should not be coded as both, however, in a unit of speech, both may occur separately and should both be coded as such. For example, "it sounds like you feel outraged by what happened," would be coded only as *Emotions*, which takes precedent over *Reflection*. However, if the mediator says, "*it sounds like you feel outraged by what happened*," and it sounds like you are upset because she brought home a zebra without asking for your permission," the italicized section would be coded as *Emotions* and the other section would be coded as *Reflection*.

Mediator codes are done through point-and-click selection. To code mediators in Noldus, click the subject and then the behavior. There are no abbreviations to the codes, as keystrokes are not used. Several codes will also then have a choice of modifiers. All codes are point-codes, with the exception of Joint/Caucus session, which is a state code (i.e., the state should always be set at joint or caucus, and all point codes occur within that state).

Mediator Opinion/Social Assessment

Any statement in which the mediator talks about their own personal experiences or previous mediation experiences, as they relate to the situation.

Examples:

- "Having children totally changed my life."
- "What I've come to understand is that teen-agers always push back against limits, but they really appreciate that you are setting them."
- "People often don't feel heard in the workplace."
- "I've found that sometimes things get harder before they get easier in mediation."
- "We lawyers know how tough it is to predict what a jury will do."
- "I sure ran into a lot of traffic getting here today."

Any statement in which the mediator expresses their opinion about the mediation process, or the way they would describe the process. A mediator's explanation of what is going to happen in the process (without qualifiers) is not opinion.

Examples:

- “Mediation is a straightforward process.”
- “Mediation works best when everyone comes with an open mind.”
- “The 3 really important things to understand about mediation is...”

Any time a mediator provides personal information about themselves or answers a personal question a participant asks of them in a way which provides information.

Examples:

- “I’m an attorney and I have a masters in Conflict Resolution.”
- “I have four children, myself.”
- “I’ve been trained by Community Mediation Maryland.”
- Participant: “Are you married?”
- Mediator: “No, I’m not.”

Note: A comment about how they will run the process but not about the mediator themselves, would not be coded as Mediator Opinion. (e.g. “I won’t be acting as an attorney in this process.”; “I will be using the transformative mediation process with you today.”)

Any statement expressing the mediators’ opinion about the situation.

Examples:

- “That’s interesting.”
- “This is fascinating.”
- “That’s good to hear.”

Any statement in which a mediator brings up a piece of information they got from before the mediation, either from the intake file, the court file, previous conversations with the participants, etc. with an indication that they are bringing it from one of these places.

Example:

- “I see here in the file that...”
- “In our phone conversations, you said to me...”

Any statement in which the mediator expresses their opinion about a potential solution.

Example:

- “Now that just doesn’t seem feasible to me.”
- “That’s not going to work.”

Any statement in which the mediator expresses his/her opinion about what the group has said with some degree of certainty or conclusion (e.g. “clearly...”, or “obviously...”)

Example:

- “Obviously, you all care very much for your father’s well-being.”

-“Clearly you have a very strong disagreement...”

Note: Sometimes the differences between a statement being coded as *Mediator Opinion* and *Reflection* is the degree of certainty. For example, if a mediator says, “What I’m hearing you say is that you care about your father’s well-being and it’s hard to see him sick, is that right?” it would be coded as *Reflection*. If a mediator says, “Clearly you care about your fathers well-being and it’s hard for you to see him sick” it would be coded as *Mediator Opinion*.

Any statement in which the mediator explains their analysis of the dynamics of the relationship.

Examples:

- “I think what’s really going on is that you’re taking out your hostility towards others on each other.”
- “I sense some jostling between the two of you”
- “You’re both asserting your need for autonomy here...”
- “I think neither of you are focusing on what’s good for the relationship.”
- “I can see this situation escalating if you don’t deal with these issues now.”

Mediator Opinion is coded on a statement that might otherwise be not coded, if the mediator adds a qualitative modifier.

Examples:

- “You both have different ideas about...”
- “You both shared very strong opinions about...”
- “There are lots of facts here...”

If the mediator had said, “you’ve both shared ideas and now we’re going to move on to...” this would not be coded as anything. The inclusion of the mediators’ assessment that they were “different” or “strong” makes the comment a *Mediator Opinion*. Note: “So, you have a disagreement about xyz” is a reflection, not an opinion.

A statement in which a mediator finishes a sentence for a participant:

Examples:

- Participant: “The thing is, I’m just more...”
Mediator: “Creative?”
- Participant: “When I hired him, we were trying to write up a, uh, you know...”
Mediator: “Contract?”

Any statement in which the mediator praises both participants behavior in mediation.

Example:

- “You’re both doing a good job here.”
- “You’re both working really hard to find a solution.”
- “I am confident you can reach an agreement here today.”
- “We are making major progress and I commend both of you – keep it up.”

Note: To be coded as *Mediator Opinion*, the statement must be the mediator explaining their ideas about what is going on in the relationship or conversation. Mediator attempts to understand the value

or interest behind what participants are saying are coded as *Interest/Value*. So, for example if a participant said, "I hate him for always trying to tell me what to do. He's just like my father." A mediator response of, "It sounds like your autonomy is important to you," would be coded as *Interest/Value*. A mediator response of, "so really this goes back to your childhood resentments," would be coded as *Mediator Opinion*. A mediator response of "So it sounds like he reminds you of your father when he tells you what to do," would be coded as *Reflection*.

Advocate/Support

(specify participant with modifier)

Any statement in which the mediator indicates support for or agreement with one participant's position/ideas. Questions are not coded as Advocate/Support.

- "I think Kristy is being reasonable here."

- "Leticia's idea seems doable to me..."

- "Yeah, you're right."

Note: For a behavior to be coded as *Advocate/Support*, the mediator must be backing up something the participant expressed. For example, if a participant is indicating that a situation was difficult, and a mediator says, "I can imagine that was really hard for you," then it would be *Advocate/Support*. But if the participant said, "then they broke into my house and stole my CD player, but it's all good because I wanted to upgrade to an iPod anyway," and a mediator says, "that must have been hard for you," then it would be *Mediator Opinion* not *Advocate/Support*.

Note: "I understand" by itself, is not *Advocate Support*. It may be *Advocate Support* if there is a direct qualifier, such as "I understand where you're coming from here."

Any statement in which the mediator advocates for one participant's position/ideas.

- "I really think you should go with Tanya's idea here."

Any statement in which a mediator praises one participant's behavior in mediation.

Example:

- "Juanita, you have really made a lot of concessions here. Thank you."

- "Fatima, you've been really trying hard to express yourself here and we appreciate it."

- "Sinead, you mentioned an important point here."

Any statement in which the mediator criticizes one participants' behavior or approach:

- "Brian, you have not been listening to Pat's ideas and I really think you need to."

- "Holly, you need to be giving on some of these issues as well."

Any statement in which the mediator frames the topic in terms of one participants' view of the situation:

- "It seems we need to address the stolen credit cards next." (If the participant being accused of

stealing them has not acknowledged that they were stolen.)

-“Our agenda now includes (1) Tim’s lateness; (2) Tim’s disrespectful language, what else do you want to discuss?”

Note: If a participant has made a suggestion and a mediator advocates for the idea (any time during the mediation after the suggestion was made), even without saying the person’s name, the statement should be coded as *Advocate/Support*.

Note: If a mediator supports both participants at the same time (e.g. “I can understand where you’re both coming from,” it is *Mediator Opinion*, not *Advocate/Support*. However, if a mediator praises one then another in two separate sentences (e.g. “Isabel, I can understand where you’re coming from, and Jose, I can know you’ve been trying hard to be compassionate.”) then it would be *Advocate/Support* for Isabel and then *Advocate/Support* for Jose.

Note: *Advocate/Support* takes precedence over *Mediator Opinion*.

Note: At the end of a caucus, a mediator telling a participant that they will bring a proposal to the other participant (e.g. “I’ll take this proposal to her and see what she says”) would not be coded. If the mediator indicates that they will push for it (e.g. “I’ll take this proposal and really push hard on it.”) then it would be coded as *Advocate/Support*.

Legal Assessment/Information:

Any statement in which the mediator makes a prediction about what might occur in court.

Examples:

-“My experience with Judges in District Court is that they tend to...”

-“These kinds of cases rarely settle for more than \$5,000.”

Any statement in which the mediator evaluates the strengths and weaknesses of the participants’ case.

Examples:

-“Generally, all things being equal, the judge will give custody to the mother. But in this case, you also have the fact that the father has been the primary care provider, so that would also be considered.”

This can be any basic information that relates to how the participants interact with the court:

-“When you’re finished here, you’ll need to take this back to the judge, and enter it as an enforceable motion.”

-“The Court has ordered you to two sessions of mediation, and wants you to work toward agreement on custody, visitation, and child support.”

-“The rules of evidence prevent information gathered in mediation from being brought into court in a civil trial.”

Any statement in which the mediator instructs participants with legal information:

Example:

-Participant: “I want to be the main person making these decisions.”

Mediator: “In the court process, that would be called sole legal custody.”

-Participant: "I want to be the one the kids live with all the time."

Mediator: "So, technically, that would be sole physical custody."

-Mediator: "Physical custody is about where do children live and go to school."

Questions that provide information about a legal situation.

-"Do you realize that juries don't award sums this high these days?"

Note: *Legal Assessment/Information* takes precedence over *Advocate/Support*, *Pressure to Settle*, and *Mediator Opinion*.

Behavior Direction

Any statement in which a mediator sets guidelines or rules for participants to follow during the mediation.

Examples:

-"We'll be asking you to speak one at a time. If you have ideas while the others are talking, please write them on your note pad."

-"We are asking you to speak respectfully to each other during this mediation."

-"Please turn off your cell phones."

Any statement in which the mediator choreographs participants' behavior in a certain way.

Examples:

-"Leticia, could you please look Natasha in the eyes when you give that apology."

-"Fatima, now is the time to say it directly to Matt."

Any statement in which the mediator attempts to tell participants how to behave in response to swearing, cursing, yelling, interrupting, or insults, or breaking any other rules the mediator has established. Or any statement in which a mediator tells participants how to act in the mediation.

Examples:

-"Susan, Linda, we have guidelines here."

-"Shouting at each other really isn't helpful."

-"Lorig, earlier you agreed not to swear. Now this is the third time I've had to remind you."

-"If you both keep this up, we'll have to end the mediation."

-"Could you please talk only to me right now?"

-"We can't discuss that at this stage in the mediation. Please hold that thought."

When mediators repeat the participants names over and over or say "ladies, ladies..." or "gentlemen, gentlemen,..." in an attempt to get attention to restore order.

Any time a mediator uses a private session or a break in response to swearing, cursing, yelling, interrupting or insults to a participant.

Note: A mediator's physical movement, when not accompanied by words, is not coded as *Behavior Direction*.

Note: *Behavior Direction* takes precedence over *Mediator Solution*.

Note: Process descriptions (e.g. "in this phase of the process, we are interested in hearing from everyone about what brought you to mediation.") are not coded as *Behavior Direction* unless they also include requests for a certain type of behavior (e.g. "in this phase of the process, we are interested in hearing from everyone about what brought you to mediation. So please write down your thoughts while the other person is speaking."), in which case the second sentence would be coded as *Behavior Direction*. If a mediator is describing what they will do (e.g. "At the end of the session, we will destroy our notes") it's only a process description and not coded. If the mediator tells participants what they must do (e.g. "At the end of the mediation, we'll destroy our notes, then we'll collect yours and destroy them as well.") the second part will be coded as *Behavior Direction*.

Note: *Behavior Direction* takes precedence over *Mediator Opinion* (e.g., "Mediation works best when everyone speaks gently to each other, and doesn't interrupt each other" is *Behavioral Direction*)

Emotions

Any statement from the mediator which addresses participants' feelings. This only applies to emotions of participants in the room, not conversations about emotions of people not present.

Repetition of a feeling that a participant has said directly.

Example:

-Participant: "I felt furious when he showed up like that." Mediator: "So, you felt furious."

Mediator statement that encourages participants to express their own feelings.

Example:

"How did that feel when that happened?"

Note: "How do you feel about that?" would be coded as *Emotions*, unless it's asking about a solution, thus meaning "what do you think about that idea?" Then it's *Request Reaction*.

Any statement in which a mediator reflects a feeling that a participant has indicated but not stated directly.

Example:

- "If I understand you, you're saying you felt embarrassed by that. Is that right?"

- "So it sounds like you're saying you're proud of..."

Any statement or question in which a mediator begins with "feel..." and follows with an emotion or quasi-emotion word.

Examples:

- “It sounds like you feel betrayed.”
- “It sounds like you felt hurt.”
- “Did you feel frightened when that happened?”

Note: “It sounds like you feel that...” or “It sounds like you feel as if...” would not be coded as *Emotions*. For example, “It sounds like you feel that she should not have done that” would not be coded as *Emotions* because it does not use a feeling word. It would be coded as *Reflection*.

Words that are inherently emotional are coded as Emotion, even if they are not prefaced by “you feel...”

Examples:

- “Sounds like you were hurt when that happened.”
- “If I’m hearing you right, there was a lot of sadness in your heart when you had to fire her.”
- “So, you really miss your mother?”
- “Were you hurt by that?”

One way to test if something is inherently an emotion word is to check what “you were...” sounds like with it. “You were hurt” is inherently an emotional concept. “You were betrayed” indicates someone else’s action, rather than an emotion. So, while “you felt betrayed” would be coded as *Emotion*, betrayed would not be coded as *Emotion* if it was not accompanied by “feel”.

The following words are examples of inherently emotional words that would always be coded as Emotions, even if “you feel...” does not preface them:

Afraid	Disgusted	Happy	Proud
Aggravated	Distraught	Homesick	Relieved
Agitated	Disturbed	Hopeful	Remorse
Alarmed	Ecstatic	Hopeless	Sad
Amazed	Elated	Hurt	Scared
Angry	Embarrassed	Infuriated	Sorrowful
Annoyed	Exasperated	Lonely	Startled
Anxious	Excited	Mad	Surprised
Appreciative	Exhilarated	Melancholy	Terrified
Astounded	Fearful	Miss	Thankful
Confused	Fed Up	Moved	Tired
Crushed	Flustered	Nervous	Touched
Delighted	Frightened	Outraged	Unsettled
Depressed	Fulfilled	Overjoyed	Upset
Despondent	Furious	Overwhelmed	Worried
Disappointed	Grateful	Panicked	
Discouraged	Gratified	Petrified	

For these words, if they appear in a question, it should be coded as an emotion (e.g. “Was that sad for you?”)

Note: Phrases should not be counted as *Emotions*, even if preceded by “feel” (e.g. “it sounds like you felt out of the loop” or “it sounds like you felt hung out to dry.”) “Heartbroken” and “let down” would count as emotions if they were preceded by “feel”.

Note: If the question is the other person’s feelings, such as “How do you think she felt when you said that to her?” it should be coded as *Explain*.

Note: *Emotion* takes precedence over *Reflection*. The first few words explaining the feeling are not coded as *Reflection* (e.g. “It sounds like you felt hurt when she did not call.”). But if the statement goes on (e.g. “It sounds like you felt hurt when she did not call, because you make a point of always calling back and expected that she would as well.”) the first clause would be coded as *Emotions* and the second clause would be coded as *Reflection*.

Note: Concerned is not coded as *Emotion*, even when a mediators says, “it sounds like you feel concerned.”

Reflection

Any statement which paraphrases what either participant has said about the main issues in the conflict and repeats it back, with or without checking for accuracy.

Example:

- “What I’m hearing you say is that you are tired of having to park around the corner. Is that right?”
- “So it sounds like you want to get along with your sister better, is that right?”
- “What I'm hearing you say is that you don't want him to feed the children macaroni and cheese.”
- “So it sounds like you're saying that idea is unacceptable to you.”
- “Earlier you said...”

Any statement in which the mediator repeats back what participants have said, with a questioning tone as if to check to see if they got it right.

Example:

-Participant: “And then I get home and he’s always parked in front of my house so I have to park around the corner and walk the whole way.”

Mediator: “So you want to be able to park in front of your house?”

Note on the difference between *Reflection* and *Fact/Closed Ended Question*:

The following would be coded as *Reflection*:

-Participant: “We’ve been serving in this agency together for 10 years and always been in the same small division.

Mediator: “So, you’ve worked together on a regular basis?”

Whereas the following would be coded as *Fact/Closed-Ended Question*:

-Participant: “We’ve been serving in this agency together for 10 years and always been in the same small division.

Mediator: "Do you work together on a regular basis?"

Note: A check-in phrase at the end of the reflection is considered part of a reflection, not a new question. Check in phrases may include, is that right?; is that accurate?; is that fair?; did I get that right?; or is that fair?

Note on the difference between *Reflection* and *Fact/Closed Ended Question*:

If the mediators comment is related as a summary from a statement the participant has said, then it's a reflection unless it's starts with the word "do"?

The following would be coded as *Reflection*:

-Participant: "We've been serving in this agency together for 10 years and always been in the same small division.

Mediator: "So, you've worked together on a regular basis?"

Whereas the following would be coded as *Fact/Closed-Ended Question*:

-Participant: "We've been serving in this agency together for 10 years and always been in the same small division.

Mediator: "Do you work together on a regular basis?"

Summary of "Facts"

A summary of specific legal or technical facts in the case. This should only be coded if the "facts" include quantitative figures and the mediator lists at least two of the "facts" in the summary.

Example:

- "In summary, the computer was worth \$1,000 when it was first purchased. On eBay, the value of an equivalent computer is \$500, and the website Sell Your PC values it at \$600."

- "So the Tyler, you've lived here for 10 years. Erricka, you moved in 3 years ago. 2 years ago you started sleeping together, and the cat has been there for 1 year. Is that right?"

Fact Questions/Closed Ended Questions

Any question to which yes/no can be answered should be coded as *Fact*, except if a mediator says, "is that right?" or similar check-in phrase after paraphrasing.

Examples:

- "Is there poop on your lawn every morning?"

- "So, did you tell her you never want to see her again?"

- "Do you see each other often?"

- "Do you have the authority to make decisions here today?"

- "Do you have photos of your home?"

Note: If the question is focused on solutions, it should be coded as one of the solution codes (e.g. *Request Reaction*, etc.) not as *Fact*.

Any question which asks for one specific detail or attempts to establish a piece of information as true.

Examples:

-“So, Erricka, you said Yvonne gets to work at 11am. Yvonne, is that true?”

-“How old are you?”

-“On what date did that payment occur?”

-“What are you seeking in damages?”

-“Did the court refer you to mediation?”

-“How often is this a problem?”

Questions that attempt to determine who was or should be responsible for something that occurred in the past.

Examples:

-“Who was supposed to pick up the children that day?”

-“What does the dress code say about what she should have been wearing?”

-“Is it your dog pooping on her lawn?”

Note: Environmental questions or “living room questions” are not coded at all (e.g. “do you want some water?”, “Is the temperature in here okay for you?”)

Note on the difference between Fact Question and Suggestion Question:

If participants are talking about options and the mediators question clearly adds another option, then it should be coded as *Suggestions Question*.

Example:

-Participant 1: I don't know why you keep using my e-mail address, I keep telling you I never check it. I only use Facebook.

Participant 2: I prefer e-mail, because Facebook sells your information.

Mediator: “Do you both have telephones?”

-Participant 1: “I can't do everything for Dad – his meds, his doctor visits, the cooking”

Participant 2: “Well, I can't move out there to help”

Mediator: “Is your mother involved?”

Whereas a similar question when participants are not discussing (or yelling about) options would be coded as a *Fact Question*.

-Participant 1: “So we have this new office and it has lots of equipment, but it's missing some.”

Participant 2: “Right, we have computers and file cabinets, but no fax machine.”

Mediator: “Do you have telephones?”

-Participant 1: “So, Dad's really sick, and I don't know how long he has to live.”

Participant 2: “I know, but I can't figure out what I should do about it.”

Mediator: “Is your mother involved?”

Note on the difference between *Reflection* and *Fact/Closed Ended Question*:

If the mediators comment is related as a summary from a statement the participant has said, then it's a reflection unless it's starts with the word "do"?

The following would be coded as *Reflection*:

-Participant: "We've been serving in this agency together for 10 years and always been in the same small division.

Mediator: "So, you've worked together on a regular basis?"

Whereas the following would be coded as *Fact/Closed-Ended Question*:

-Participant: "We've been serving in this agency together for 10 years and always been in the same small division.

Mediator: "Do you work together on a regular basis?"

Perception Questions/Open-ended Questions

Any question which attempts to get participants to talk about their perspective on the situation, these are generally open-ended questions.

Examples:

- "What are the issues which brought you to mediation?"
- "How do you currently divide the workload?"
- "Tell me about your neighborhood."
- "Tell me more about your experiences in this situation?"
- "What are your thoughts about how bills get paid?"
- "How do you feel about that?"

Any question which attempts to get beyond the surface position to an underlying goal or value.

Example:

- "Help me understand what about that is important to you?"
- "What do you mean by where?"
- "What would that do for you?"
- "What do you mean by controlling you?"

Grammatically closed questions, which are socially considered an invitation to speak broadly about an issue should be coded as Perception Questions/Open-ended Questions.

Examples:

- "Is there anything you want to say to each other?"
- "Do you want to say more about that"?
- "Do you want to respond?"
- "You haven't had a chance to share about this issue." (followed by silence for the sharing)

Hypothetical questions, about a different past:

Examples:

- "What would you have preferred to have happened?"

- “What did you wish you had said?”
- “Where would you have wanted to put the refrigerator?”
- “What would you have charged for it?”

Note: Repeating one or two words at the beginning of a questions (e.g. “when you say ‘structured environment’ what do you mean by that?”) is still just *Open Ended Question*. Whereas, a short reflection followed by a question (e.g. “Earlier you said something about a structured environment. What did you mean by that?”) would be *Reflection* and *Open-Ended Question*.

Note: If the question is focused on solutions, it should be coded as one of the solution codes (e.g. *Ask for Solution/BS*, *Request Reaction*, etc.) not as *Perception Question*. *Request Reaction* takes precedent over *Perception Question*.

Suggestion Question S-Q

Any question in which a mediator suggests a solution to the problem.

Example:

- “Have you considered...?”
- “Is it possible that...could work?”

Note: Only code as *Suggestion Question* if a mediator is asking instead of suggesting a particular solution. If a mediator is directly suggesting a particular solution, it should be coded as *Mediator Solution*.

Any question in which a mediator steers participants towards a particular type of solution.

Examples:

- “What role do you think a leash might play in the solution to the dog problem?”
- “What does the community association say about...?”
- “Have you tried checking the internet for pricing?”

Any question in which a mediator steers participants towards mediation guidelines or in a particular direction for the mediation process itself.

Examples:

- “Do you want to consider how you talk to each other- such as taking turns or something?”
- “What do you want to do about confidentiality?” (If participant have not raised it as something to be discussed.)
- “Is there anyone else you need to talk to in order to make decisions here today?”
- “Is there anything you could say to each other that might change each other’s’ point of view?”
- “What can you say to each other about what you appreciate about the other person?”

“What if...” questions, raised during a discussion of resolution options, in which a mediator brings in any new concept to the conversation that participants have not brought up should be coded as *Suggestion Questions*.

Examples:

-“What if it’s raining? Then what will you do about mowing the lawn?” (if participants have never talked about rain as a concern)

-“If one of you doesn’t follow through on this agreement, what will you do?” (if neither participant has brought up the idea of not following through)

Note: A mediator asking who, what, when, where, or how as a follow-up to a solution, without raising a new concept, would not be coded as *Suggestion Question*, but rather as *Ask For Solution/Brainstorm*.

Example of *Ask for Solution/Brainstorm*:

-Participant: “We’ll meet once a week to review the projects and plan for the future.”

Mediator: “When would these meetings take place?”

Example of *Suggestion Question*:

-Participant: “We’ll meet once a week to review the projects and plan for the future.”

Mediator: “Who will set the agenda for these meetings?” (if participants have not talked about an agenda)

Note: *Suggestion Question* takes precedence over *Fact Question*.

Note: This should be coded each time the mediator uses this strategy, even if they already introduced the idea before.

Interests/Value I/V

A reflection or paraphrasing in which a mediator tries to name the value or goal behind the position a participant articulates. This would include attempting to understand the interest or value that the participant has for their children or someone for whom they are speaking.

Example:

- Part: “She’s a liar.” Med: “It sounds like honesty is important to you.”

- Part: “It’s his way or the highway and it doesn’t matter what the rest of us say.”

Med: “So, is it involvement you’re looking for?”

-Participant: “I don’t want her wearing Daisy Duke shorts.”

Mediator: “What are your concerns about Daisy Duke shorts?” (*Open-ended/Perception*)

Participant: “I’m afraid she’ll grow up thinking her only value is in her appearance to men. Then she will find she doesn’t measure up to the perfect beauty queen and then she’ll love herself less.”

Mediator: “So it sounds like it’s important to you to raise your daughter to feel an inherent sense of self-worth and to love herself unconditionally. Is that right?” (*Interest/Value*)

Note: The following would not be *Interest/Value*, it would be *Reflection*:

Part: “She’s a liar.” Med.: “It sounds like people not lying is important to you.”

Note: A mediator repeating back a value a participant has just said in the segment for which the mediator is reflecting, would be coded as *Reflection* not as *Interests/Value*. (e.g. Participant: "I want privacy." Mediator: "So you want privacy"; Participant: "I want to be talked to respectfully", Mediator: "So you want respect")

Note: *Interest/Value* takes precedence over *Reflection*.

Reject Topics

A comment by the mediator which focuses on eliminating a topic from conversation.

Example:

-“I know you don’t like the way he talked to you that day, but in this mediation we are focusing on the payment for the broken window.”

-“That’s not really relevant to this discussion, which is about custody.”

Focusing/Narrowing Topics

Any comment by a mediator which repeats, clarifies, or focuses the conversation onto specific topics for discussion.

Examples:

-“Is the amount of money owed something you want to work on?”

-“You’ve identified back money owed and how the cell phone is used as two issues you want to work on.”

-“If you were to resolve all of the issues listed here, would this conflict be resolved?”

Any formal action by the mediator involving making a physical list of topics.

Example:

-Mediators writes topics on a flip chart paper.

Questions that ask participants to prioritize the order of topics in which they want to work.

Example:

-“How would you prioritize the importance of these topics?”

-“Which topic do you want to address first?”

Note: *Focusing/Narrowing Topics* takes precedence over *Reflection*, *Open-Ended/Perception Questions*, and over *Mediator Solution*.

Note: Naming the topic only in the context of a solution question (e.g. What can you do to solve the conflict around the Schedule?) would not be *Focus/Narrowing Topics*, but would be *Ask for Solution/Brainstorm*.

Introducing Topics

When a mediator raises an issue that has not been raised by participants.

Examples:

-“If you are discussing custody, we really should also look at a holiday schedule.”

-“I know you came to discuss the salary and benefits package, but it seems you should also really look at the job description, since that will affect those two things.”

-Handing out a sample list of topics.

-Reading a sample list of topics out loud.

Note: *Introducing Topics* takes Precedence over *Mediator Opinion* and *Legal Assessment/Information*.

Common Ground CG

Any statement by the mediator which points out what participants have in common, a perspective they share, or something they agree on.

Example:

-“It sounds like you’re both worried about your children.”

-“It sounds like you’re both committed to your neighborhood.”

-“So you both really want to find some answers here today.”

-“I’m hearing that you’re both really lonely and need each other, is that right?”

Note: This code takes precedence over *Reflection*.

Note: Identifying an issue both have in common (“It sounds like you both want to talk about the rent”) would be coded as *Focusing/Narrowing Topics* not as *Common Ground*.

Note: Not every reflection to both people is inherently common ground. For example, “I’m hearing you both say you’ve worked here a while and the current situation is new,” does not highlight something the participants share and, therefore, would not be coded as *Common Ground*.

-P1, P2 both talking about their son John and his athleticism

-Med “So it sounds like you’re both really proud of your son.” (*Common Ground + Emotion*)

-Med “So you have a son named John who plays sports.” (*Reflection*)

Explanation Exp

Any statement in which the mediator offers “re-interpretation” or explanation one participant’s behavior or position to the other participant, using a name or pro-noun in the commentary.

Examples:

-“What George is saying is that he wants really...”

- “What did you just hear her say?”

Any statement in which a mediator states one participant's position to the other participant.

-“What Tim just said was that he thinks children should watch R-rated movies.”

Any statement in which the mediator asks participants to consider the other's perspective.

Example:

-“How do you think she felt when you told her that?”

Note: *Explain* will often appear similar to *Advocate/Support*. In *Explain*, the mediator is offering information directly from the participant, without weighing in on the legitimacy of that information. In *Advocate/Support*, the mediator is advocating that information from the participant is legitimate, true, worthwhile, important, etc.

Negotiation Questions/Compromise

Questions that encourage positional negotiation and splitting the difference. These generally use compromise language or language that assumes trade-offs.

Example:

-“What are you willing to offer here?”

-“Could you split the difference?”

-“Let's talk about the BATNA and WATNA.”

-“Which of these demands would you be willing to give up?”

-“Is keeping the llama more or less important than getting the diamond ring?”

-“Is there a baseline number?”

-“How can you make this offer more palatable? Sweeten the deal?”

-“How can you compromise here?”

Note: *Negotiation Questions* take precedence over *Ask for Solution/Brainstorm*.

Note: *Suggestion Question* takes precedence over *Negotiation Question*.

If a question is offering a concrete suggestion of how to solve the conflict, it is a *Suggestion Question*. If the mediator is offering a conceptual idea about compromising as how to solve the conflict, it is a *Negotiation Question*.

Example:

-“She's offering \$200. How about you offer \$100?” (SpS + Suggestion Question)

-“She's offering \$200. Is there a way you can meet her in the middle?” (SpS + NQ)

Ask for Solution/Brainstorm

In general future focused questions are likely to be Ask for Solution.

Any question in which a mediator asks participants for a suggestion or solution to the conflict.

Example:

-“What do you think would solve the problem?”

-“What could you do to make this work for you?”

-“How could you get your needs met here?”

- “What do you think you can do about the schedule?”
- “What do you want to see happen?”
- “What would be satisfactory to you?”

A question when the mediator asks participants to describe what they think or plan to have happen in any particular future scenario.

Example:

- “What do you think will happen if you go to court?”
- “What do you plan to do if you get fired?”
- “What would you do if you mechanize the plant?”

Any open-ended question by the mediator in an attempt to get specifics related to a possible solution, or asks for some kind of clarification about the suggestion. These questions would be who, what, when, where, how as follow-ups to a participant solution, without introducing a new direction. Any follow-up considering the ideas would also be Ask for Solutions.

- “When would that happen?”
- Participant: “From now on we'll have honest and open communication?”
- Mediator: “What do you mean by honest and open?”
- “What are the advantages and disadvantages of mechanizing?”
- “What situations would this work or not work in?”

Note: A mediator asking who, what, when, where, or how as a follow-up to a solution, without raising a new concept would be coded as *Ask For Solution/Brainstorm*. However, if a mediator adds a new concept in their question, then it would be coded as *Suggestion Question*.

Example of *Ask for Solution/Brainstorm*:

- Participant: “We'll meet once a week to review the projects and plan for the future.”
- Mediator: “When would these meetings take place?”

Example of *Suggestion Question*:

- Participant: “We'll meet once a week to review the projects and plan for the future.”
- Mediator: “Who will set the agenda for these meetings?” (if participants have not talked about an agenda).

Any question in which a mediator asks participants for solutions using a plural -- implying asking for more than one possibility.

- “What are some ideas that might work?”
- “What else?”

Any question in which the mediator asks participants to select solutions out of a range that they have identified.

Example:

- “Of these ideas you've listed here, which do you think you can agree to?”
- “Which ideas here would be fair?”
- “Which of these ideas would satisfy both of you?”

Any procedural description of the brainstorming process.

-“We'll list all the possibilities, then we'll go back over the list and you'll evaluate the ones that would work for you.”

-“You can say anything out there at this time, and we'll write it up.”

Any question in which the mediators asks participants about what they want to do within the mediation process:

Examples:

-“So, where do you want to go from here?”

-“How do you want to have this conversation?”

Participant: “Well, can we make sure this does not leave this room.”

Mediator: “What do you want to do about confidentiality?” (Only coded in this case because participant brought it up; had the participant not brought it up, it would be *Suggestion Question*)

Mediator Solution M/S

Any statement in which the mediator promotes a solution that did not come from the participants.

Examples:

- “Joint custody really is the best for the children.”

- “I think you should...”

- “This idea really meets both of your needs...”

- “Other people in this same situation have found the following strategy helpful...”

An assumption that the agreement will be written, if participants don't raise it, is a Mediator Solution.

Example:

-“Generally, when we get to the end of the mediation session, we write up the agreement for the participants.”

-“Now that we've settled these issues, I'll write this up for you.”

Note: A sentence or two of explaining why the solution would be good for participants would be coded as part of the Mediator Solution (e.g. “I think you should split the difference here. It really meets the goals of fairness that you both said you wanted.”). Similarly, a sentence or two of personal anecdote or research would be coded as part of the solution. However, if the mediator offers a solution and then goes on for more than a sentence or two, to tell an anecdote or cite research, then the additional commentary is coded as *Mediator Opinion*. (e.g. “I think you should let go of the past and start talking to each other again (*Mediator Solution*). When my grandmother died suddenly, my aunts realized they had never had a chance to tell her how much they loved and that they forgave her. They regret it to this day (*Mediator Opinion*).”

Note: If a mediator is advocating for an idea which came from one of the participants, it should be coded as *Advocate/Support* not *Mediator Solution*.

Note: If a mediator uses a question to offer an idea, such as “have you considered...?” then it would be coded as *Suggestion Question* not *Mediator Solution*.

Note: This should be coded each time the mediator uses this strategy, even if they already introduced the idea before.

Note: *Mediator Solution* takes precedence over *Mediator Opinion*.

Request Reaction

Any question in which a mediator asks participants for their thoughts on a specific suggestion of a solution to the conflict.

Example:

-“What do you think about that idea?”

-“Would this satisfy your needs?”

-“Would this idea be fair?”

-“If she agrees to clean up after herself, would that take care of what you’re looking for in terms of the house?”

-“Cindy, you suggested this idea about Clean up the Park Days. (*Summarize Possible Solutions*) Steve, what do you think about that? (*Request Reaction*)”

Any comment after a mediator has summarized a set of items participants have agreed to and asks participants if that will take care of the situation.

-“So, you've agreed to xyz. Will that take care of that issue?”

-“If you go with that solution, will you still feel afraid?”

-“What are your thoughts about this plan you are making?”

Any reflection of participants assessment with a questioning tone or a question attached to it, if the goal is to confirm that status of the possibility.

Examples:

-“So you guys don’t think this idea is realistic?”

-“So, you want to keep this possibility on the table?”

-“ This idea works for you?”

Any comment in which a mediator asks participants to consider a list of possibilities and identify which ideas they want to remove from the lists.

Examples:

-“Considering this list of possibilities, which ideas won’t work, that you wish to cross off this list?”

Note: The question must be asking about a solution to the conflict to be coded as *Request Reaction*. If the mediator asks for a reaction to some general info about the situation (e.g. "Tanika, it sounds like you were really hurt by what happened. Barry, what do you think about that?"), it should be coded as *Reflection and Perception Question*.

Note: *Suggestion Questions* have an element of checking what a participant thinks, as they are a question (i.e., "How about swapping nights?"). Don't code it as *Request Reaction* until there is a distinct and separate "How would that work for you?" question.

Summarize Possible Solutions SpS

Any statement in which a mediator verbally summarizes the solutions the participants have suggested.

- "So it sounds like you're saying you could share the housework."
- "What I'm hearing you say is that you think if you took that job as a dancer, that would solve your financial problems."

Any statement in which the mediator summarizes all of the ideas the participants have considered or are considering.

- "At this point it seems that you've indicated the options are to develop a payment plan, accept sweat equity as the payment, or split the difference and do the payment here today."

Any statement by the mediator which summarizes agreements participants have made:

- "To summarize, you've agreed to wash the llama once a week, share the profit from the sweaters, and celebrate the llama's birthday with a neighborhood party."

Any action by the mediator involving listing the possible solutions.

Example:

- Mediator writing participants ideas on flip chart paper.

Note: If participants are talking back and forth and mediator is writing the ideas that are coming up, this should only be coded every 30 seconds, and not considered a break in a speaking turn.

The act of handing participants a written agreement.

Clarifying Point about distinction between Reflection, Interest Value, and Summarize Possible Solution:

A reflection of a statement of a value or concept without a person is **Reflection or Interest/Value** (depending on if the speaker used the value or a position to state it).

Example:

- "I'm hearing you say you want a clean house."
- "I'm hearing you say you want privacy."
- "I'm hearing you say you're looking for respect."
- "It sounds like you are looking for proof that others have confidence in you."
- "It sounds like you want more gratitude in the relationship."

-“It sounds like you are looking for reassurance that the neighborhood is safe.”

A reflection of a want/need + an experiential verb (feel, hear, to be, to see, to know) with no specifics or specific person taking on a change is **Reflection** or **Interest/Value**.

Example:

- “It sounds like you want to make sure the kids are healthy.”
- “It sounds like you want to be free.”
- “It sounds like you want to know peace in your heart.”
- “Responsibility is something you want for your children.”
- “You want freedom for your children.”
- “It sounds like you want to feel loved.”

A reflection of a need/want + a value or concept attached to a person (who would have to be a certain way or do something) is *Summarize Possible Solutions*.

Example:

- “I’m hearing you say you want John to clean the house.”
- “I’m hearing you say you want honesty from Lorig”
- “I’m hearing you say you think you should clean the house more often.”
- “I’m hearing you say you want respect from Matt.”

A reflection of a want/need + active verb (one you can see someone doing) or an inactive verb plus a specific or specific person, is *Summarize Possible Solutions*.

Examples:

- “It sounds like you want to cook tofu every day.”
- “It sounds like you want to see the play next week.”
- “It sounds like you need to have the meeting earlier in the day.”
- “It sounds like you want to know that the children are eating tofu at Toby’s house.”
- “It sounds like you want Gretchen to bring the children home safely.”
- “It sounds like you want to hear ‘thank you’ at least once a day.”
- “It sounds like you want the kids home by 8pm.”
- “It sounds like you want the kids with you for Christmas.”

When a mediator reflects what a participant does not want, it is only coded as *Summarize Possible Solution* if there is an element of stopping an action that has been going on (e.g. with language like *stop*, *anymore*, *no longer*) or a specific future time period about which the concept is being discussed.

For example:

- “You don’t want her wearing skimpy dresses” is *Reflection*.
- “You want her to stop wearing skimpy dresses” is *Summarize Possible Solutions*.
- “You don’t want her wearing a skimpy dress to the prom” is *Summarize Possible Solutions*.
- “You don’t want to pay for her things,” is *Reflection*.
- “You don’t want to pay for her things anymore,” is *Summarize Possible Solutions*.

Joint Session/Caucus Session JS/CS

When participants representing all “sides” are in the room and the mediators are engaging with the participants about the mediation and the conflict, the state code should be set as Joint Session. If a

mediator is engaging with only one “side” or one participant about the conflict, then the state code should be set as Private Session.

If a mediator announces a caucus/private session, the Private Session should be coded when the leaving participant closes the door, thus making the conversation private. The session should be coded as Joint Session once the door opens again.

If a participant walks out and the mediator continues to speak with the other participant about the conflict, it should be coded as Private Session, as soon as it’s clear that the mediator will be engaging about the conflict. If the mediator tells the participant that they will wait to see if the other participant returns, then it is still considered to be in Joint Session.

If a participant arrives early and the mediator begins to speak with this participant about the conflict, the state should be set at Private Session. If the Mediator only tells the participant that they will wait until everyone arrives, or gives some other logistical information, then it should not be coded at all, because the mediation is not considered to have started.

Note About Process Directions: Process directions are generally not coded, unless they are accompanied by another behavior listed above. Process directions include such things as “The mediators keep the content of the conversation confidential”; “First we’ll ask you to speak about what brought you here, then we’ll identify topics to be resolved, then you’ll have a chance to work on finding solutions to those topics”; and “Generally about halfway through the process, we take a break.”

At the end of a private session, when a mediator asks, “What can I tell him from this caucus? What can’t I tell him?”, this is considered a process question and is not coded.

Participant Codes

General Directions

A **unit of speech** is defined as everything said by one person before someone else speaks with a substantive comment (e.g. not "ok" or "uh-huh"). If a person speaks for more than 1 minute, each 1 minute counts as a new unit of speech. The code itself starts the 1 minute unit for that code. Each code does not get coded in the same 1 minute or in the same unit of speech, whichever is shorter. If the same individual is speaking 1 minute after the code was last noted and performs the same behavior, then the behavior should be coded again. Each unit can have more than one code.

Note: Codes are transferable to people who are clearly on a participant's "side".

For example, in a neighbor dispute, if a participant talks about how fantastic their child is, it would be coded as *nothing*. In a custody dispute, if one participant points out things that the other participant's new spouse is doing that are problematic, it would be coded as *Wrong*. To be considered "on the side of", there must be a definitive relationship with one participant and not the other, or one participant must be formally identified as a representative of the person in question.

However, if the person about whom they are speaking is connected to both of them (for example a child in a custody dispute, or a boss in a co-worker dispute) then the codes would not be transferable, with the exception of PS. When a parent talks about what s/he thinks the child needs, it would be coded as PS, even though the child is connected to both.

Participant codes are done through keystroke. The abbreviation after each code is used in Noldus to indicate its occurrence. All codes are point codes, with the distinction of One Talk/Two Talk, which is a state code (i.e., the state should always be set to One Talk or Two Talk, and all point codes should occur during the One Talk state).

Interrupt (i)

Use any time a participant starts speaking while another participant is speaking. This should be coded even if not perceived as hostile. If there are a series of interruptions, *Interrupt* should still only be coded once for each participant in a 1 minute period.

Wrong (w)

Any statement in which a participant indicates that other participant is wrong about a specific issue.

Example:

- "It's not worth even half of what he's asking for."

- "You haven't read the research like I have. TV is not good for kids. Period."

Any statement in which a participant points out something that they consider to be negative that the other participant did in the past or in the mediation (must be concrete or tangible). This includes statements where one participant is blaming the other participant, or attacking the other participant's behavior.

Example:

- “She left a mess in the dining room the other day.”
- “She showed up at my house with a baseball bat.”
- “It’s not fair to block the entire street up with your four cars.”
- “They put coleslaw all over my windshield.”
- “That’s none of your business.” (Said to other participant.)
- “You used my good towel on the kitchen floor.”
- “I feel like you’re being passive aggressive right now.”

Note: A statement should be coded as *Wrong* if the participant considers the behavior negative, even if the coder or others do not consider it to be negative (e.g. “He feeds the children meat” would be coded as *Wrong* if the speaker thought that was a negative thing to do.)

Any statement in which a participant indicates that other participant is lying about a specific thing.(usually in response to a wrong)Examples:

- “We can’t get anywhere here without the truth.”
- “That’s just not true, and I can’t believe you would lie about it.”
- “That’s bullshit...”

Any statement in which a participant indicates that they do not trust the other participant. (usually around solutions)

Example:

- “He says that now, but he won’t do that.”
- “I don’t trust you.”
- “I doubt you’ll actually do that.”
- “I’m not sure about your motives on (specific solution)”

A statement “It’s + a qualifier” with no ownership.

Examples:

- “It’s been hard.”
- “It’s stressful.”
- “It’s sad.”
- “It’s disgusting.”

Note: These statements with ownership (“It’s sad to me”; “It’s stressful to me.”) would be *Need/Want/Feel*.

Any statement in which a participant indicates that they don't care about the other person's needs. These “blow-off” comments may sometimes be mumbled

- “Yeah, sure...”
- “Who cares?”
- “Whatever...”
- “Yeah, right...”
- “Really?”(Always a wrong)
- “Here we go again...”
- “Are you kidding me?”

Note: If a statement indicates what both participants have been doing that is problematic (e.g. “We’ve both been yelling and screaming at each other”) it would be coded as *Wrong* and *Responsibility/Apology (rw)*.

Any response to what the other participant says that is essentially “nuh-uh” or “no I didn’t” or “that’s not true” or points out a flaw in their argument. This includes any statements in which a participant is defending themselves against blame.

-P1: “You put the dishes in the dishwasher wrong.” (Wrong)

-P2: “I did it exactly like you said to do it.” (Wrong) or

-P2: “You didn’t tell me how to do it!” (wrong)

-P1: “You don’t play with the kids like my mother played with us.” (Wrong)

-P2: “Your mother is not a good example to compare me to.” (Wrong) or

-P2: “I do too! You’re the one who never plays with them (wrong)

When one P corrects the other P about what their needs are, *Wrong* takes precedence over *NWF*, such as:

-P1: “I can’t come out there.”

-P2: “It’s not that you can’t, it’s that you won’t.” (wrong)

-P1: “No, I can’t afford it.” (wrong even though it is a NWF by itself)

Put Down (p)

Any statement in which a participant makes a generalization about the other participant’s behavior and criticizes it. This applies to behavior either in the mediation or in the past. Adverbs of frequency (such as always, never, every time, constantly, everywhere, anyplace, any time, whenever, everything) or a negative adjective (lazy, crazy, ugly) should be coded as *Put Down*.

Example:

-“I can’t believe you would show up here late, just like you always do.”

-“She’s just lazy.”

-“Every time I turn around he’s complaining about something else.”

-“Are you crazy?”

-“Are you out of your mind?”

-“You’re crazy as a loon.”

-“You never bother to get off the couch.”

Note: The phrase “You never told me” is the one exception to *never* being a Put Down, as it’s often used in the sense of “You didn’t ever tell me” rather than the generalization of “You never do . . .”

Use of negative adjectives to make generalizations about the other participant’s skills, property, etc.

Example:

-“Your cooking is disgusting.”

-“Your car is foul.”

-“Your clothes are nasty.”

-“The woman has a fetish.”

Any statement in which the participant makes an ironic/sarcastic comment about the other person. This is not defined by the tone used, but when the statement means the opposite of what was said. Note: The statement should clearly be mean it’s opposite, as the code is not trying to capture an edge in a participant’s voice which might be more subtle.

-“Yeah, like you could...”

-“And you’re mother of the year.”

- “And you never do that.”
- “Oh gee, thanks, honey.”

Any statement in which a participant calls the other participant a name or uses a derogatory term to describe the participant.

Example:

- “She’s a whore.”
- “He’s an ugly slob”
- “And that’s why he’s dating ‘Barbie Bimbo’”
- “Such an idiot...”
- “Yeah, and she’s your perfect little Princess”

Note: Participants using derogatory terms about people not present in the mediation should be coded as *Put Down* only if it is in reference to someone on the other participant's "side".

Note: *Put Down* takes precedence over *Wrong and Question*.

Participant Solution (ps)

Any statement in which a participant makes a specific future-focused suggestion about what could solve the problem (including within the mediation). This does not include topics for discussion, but includes anything the participant needs, wants, expects, etc. These are most often in present or future tense, and can include hypothetical solutions. They may contain an if-then clause.

Example:

- “I think we should split the difference and I’ll pay you \$500.”
- “You should take out the trash every other day.”
- “I could pick the kids up if you’re late from work.”
- “It’s his dry cleaning. He should pick it up.”
- “She could tell her boyfriends not to make so much damn noise.”
- “He could call me when he wants me to turn the music down.”
- “Don't be blocking my car in.”
- “The curfew should be 10pm.”
- “We could take turns cleaning the bathroom.”
- “Why don’t you go get a real job?”
- “Why don’t you stand on the Brooklyn Bridge naked.”

Participant Solution takes precedence over *Need/Want/Feel*

Note: A Participant Solution can involve a negative concept if it is specific, for example, “No more Twinkies for breakfast.”

Note: A participant solution with an “instead of” clause is only a solution, and not also a wrong. For example: “You should mop the floor instead of just sweeping it like you did last time” is only a PS and not also a wrong

Note: Similarly, when a participant offers a solution and then provides a sentence about why they like their idea (e.g. “Let’s take Aline to Mexico for the summer break. She needs to practice her Spanish”), it

only counts as *Participant Solution*. If the participant goes on with more than one sentence (e.g. "Let's take Aline to Mexico for the summer break. She needs to practice her Spanish. And I heard you told her to only speak English at home – really, I think that's a big mistake.") then the additional commentary may be coded if it is a code-able behavior (in this case *Wrong*).

Any comment in which a participant adds to a suggestion already made.

Example:

- Participant 1: "We should alternate weeks cleaning the bathroom." (PS)
- Participant 2: "Fine, but only if you use bleach instead of lemon juice when it's your turn." (PS)
- P1: "Yeah, fine." (*Accept solution*)

Note: Suggestions about what people not participating in the mediation could do are coded as *Participant Solution*, if the person is associated with one of the participants (e.g. "my son could fix her fence" or "your husband needs to move his car"). If they involve someone not associated with either (e.g. "the city should pick up the trash twice a week"), then they are not coded as anything.

Note: If a mediator makes a suggestion and a participant indicates that it's something they could do, it should not be coded as *Participant Solution*. If a mediator makes a suggestion and a participant adds to the suggestion, then it should be coded as *Participant Solution*.

Example:

- Mediator: "What about poisoning the cats?"
- Participant: "Yeah, I guess we could do that." (*accept solution*)
- Mediator: "What about poisoning the cats?"
- Participant: "Well, I'd only do that if he pays for the poison." (coded as *PS*)

NOTE: Hypothetical questions or solutions are treated as present tense, and responses are coded the same as if it was a solution on the table. For instance, a mediator asks "What would happen if you agreed to take the kids out of daycare?"

- P: It would make me exhausted (NWF)
- P: We would have to pick up groceries (PS)
- P: That would be great (AS)
- P: I'm not doing that (RS)

Any behavior direction from one participant to another, unless it comes in the form of a question

Example:

- "Let me talk now."
- "Stop interrupting me."

Note: "Will you stop interrupting me and let me talk?" is still coded as a question.

Note: *Participant Solution* takes precedence over *Responsibility/Apology*. If a comment has an active verb or includes specifics, then it is *Participant Solution*. For example: "I need to spend more time with the children," or "I should make sure the children eat more tofu," would be coded as *Participant Solution*. If a comment is about the past, such as, "She's right, I really should have spent more time with the children," then it is coded as *Responsibility/Apology*.

Example:

- I should have taken the trash out on time (R/A)
- You should have taken the trash out on time (Wrong)
- We should have taken the trash out on time (RW)

From now on, I'll take the trash out on time (PS)

Topics, though they follow the grammatical structure of solutions, are not codeable, as they are only introducing the fact that a solution is necessary, not what the solution may be:

- I want to talk about custody (nothing)
- I want to discuss the schedule (nothing)
- I want to come to an agreement (nothing)

Care/Appreciation/Understand (ca)

Any statement in which a participant expresses interest, concern, understanding, or empathy in the other participant's needs or feelings.

Examples:

- “I mean, I don't want to make you angry or anything.”
- “I really care about you.”
- “You are the father and it's important to me what you think.”
- “I'm only saying these things because I love you and I think you deserve to hear the truth.”
- “I understand that this has also been hard for you.”
- “I understand that you want to be with your parents as much as you can.”

Any statement in which a participant expresses appreciation of other participant's behavior or characteristics or ideas.

- “I really want to work this out because I think in general you're a good neighbor.”(ps, ca)
- “You've always been a good worker.”
- “I appreciate that you did that for my son.”
- “I see your point/I understand your point”

Any statement through which a participant demonstrates acceptance of an apology, in response to an apology.

- “Thanks for the apology.”
- “Don't worry about it, it's in the past.”

Any statement about a participant wanting good or improved things *exclusively* for the other participant, or wanting it at their own expense:

- “I want her to feel loved”
- “I want to see her making progress”

Note: If the comment is about what the speaker wants for both of them (“I want us to get along again,” “I want us to be friends”) it's just a PS.

Note: If a participant is saying something positive about the other participant in the past as a way to criticize them now (e.g. “He used to be such a good student, and now he gets D's.”) it would still coded as *I Care/Appreciation and then whatever follows (in this case, Wrong)*.

Any positive or better than neutral comment about the other person or their relationship:

- “We got along fine.” (c/a)

- “We’re getting along now.” (c/a)
- “We were friends before he turned into such a dick.” (CA and PD)
- “We worked together for 20 years.” (NOTHING)
- “We worked together for 20 years and had a decent relationship.” (CA)

Question (q)

Any question in which a participant solicits information from the other participant, with or without edge in their voice.

Examples:

- “What do you mean he's hard of hearing?”
- “What do you mean when you say you think I'm a sexist pig?”
- “Why does that bother you?”
- “What do you want me to do?”
- “Why are you in this?”
- “What would work for you?”
- “What are you talking about?”

Note: “What?” is always coded as *Question*, even if it has a tone to it. “Really?” is always coded as a wrong, regardless of the tone.

Note: Depending on the question, it may be combined with another code. For example, “Why does that bother you, you nosy bitch?” would be coded as *Question* and as *Putdown*.

Note: *Participant Solution* takes precedence over *Question* which offer a solution (such “Why don’t you just go get a job?” or “Why don’t you pick up the kids on Tuesdays?”) are *Participant Solution*, rather than *Question*.

If the question is offering a solution to outside the room/to the conflict (Will you do the dishes every Thursday?) it’s a solution, if it’s offering a solution to inside the room, it’s a question (Will you stop interrupting me?) and if it’s introducing a topic (Can we talk about x now?) it’s a question

Note: *Wrong* and *Put-Down* take precedence over *Question*. For example, “Really?” would be coded as *Wrong*, and “Are you insane?” would be coded as *Put Down*.

Note: Questions directed to the Mediator (“what do you think we should do?”) would not be coded.

Question takes precedence over *Reject Solution*.

Wrong and *PD* take precedence over *Q*

PS takes precedence over *Q*

If P reflects what the other P says, it’s just a *Question*, even if there is obvious tone to it:

Examples:

- P1: You shouldn’t use my kitchen towel to mop the kitchen floor (PS)
- P2: Your good towel? (Question)

P1: You can set the table before dinner (PS)

P2: You seriously expect me to set the table? (Q)

P1: I don't want you hovering over me. I want to be autonomous. (PS)

P2: Let me get this straight. Somewhere between hovering micro-management and no contact at all, that's what you're looking for? (Q)

Need/Want/Feel (n)

Any statement in which a participant expresses his interests/feelings/emotions. Any statement which describes how what is occurring affects the speaker or someone they are speaking for (with the exception of jointly owned children)

-“I need to get sleep at night and *the music keeps me up.*” (PS and NWF)

-“My husband was heartbroken.” (NWF)

-“I can't afford to miss another day of work.”(NWF)

-“I keep my lawn neat and if she doesn't it will bring down my property value.”(NWF)

-“I can't afford to pay for this lifestyle anymore.”(NWF)

-“My fear is that he'll stay the same.”

-“I'm worried that she won't cook good food.”

-“All of this stress caused my health to go down the tubes.”

-“I don't have any problem with that.”

-“What seemed fair then doesn't seem fair to me now.”

Any statement in which a participant expresses how s/he felt. “I feel...” or “I felt...” followed by any emotion word.

-“I felt singled out.”

-“I don't feel comfortable with...”

Note: Just using the term “feel” does not make it NWF. “I feel that...” and “I feel like...” is not necessarily *Need/Want/Feel*. For example “I feel like you are being a jerk,” is *Put-down*.

A statement of “It's + qualifier + ownership” is a Need/Want/Feel . Without ownership, it would be coded as *Wrong*. Ownership can be through a “for me” qualifier or through describing one's own actions:

Examples:

-“It's been hard for me.”

-“It's stressful for me.”

-“It's sad to me.”

-“It's disgusting to me.” (i.e., “It's disgusting” without the “for me” is W)

-“I find that disgusting.”

-“It creeps me out.”

-“It's hard to give you feedback when you're the president's daughter.” (nwf)

-“It's difficult to put these feelings into words.” (nwf)

-“It's difficult for me to put these feelings into words.” (nwf)

(Because the action being described is the speaker's action, the “for me” is implied. If they are discussing someone else's actions, it would still be a wrong, such as “It's stressful when you don't take out the trash on time.”)

Any statement in which a participant expresses to the mediator that they do not want to talk about a certain topic because of their privacy. Expressed to the other participant is Wrong.

- "I don't think that's any of your business."
- "I don't feel comfortable talking about that here."

Note: *Wrong* takes precedence over *NWF* **only** when one P corrects the other P with what their needs around the topic, such as:

- P1: "I can't come out there."
- P2: "It's not that you can't, it's that you won't." (wrong)
- P1: "No, I can't afford it." (Wrong even though it is a NWF by itself)

Note: "I don't think I should have to xyz" is not NWF because it does not describe how the situation affects the speaker. It would be coded as Reject Solution.

Note: confirming a mediator's reflection of emotion is not a new NWF

- P1: "My wife died and then Snuggly, my cat, got sick . . ."
- M1: "It sounds like it's been a stressful time for you."
- P1: "Yes! *Really* stressful" (not a NWF, because only confirming med's statement)
- P1: "Yes! *Really* stressful. And I just feel so alone now." (Second part is a new NWF)

Negative statements, such as "I don't know," "I don't understand," "I don't care," etc, or statements of how the speaker is *not* affected by the conflict:

- "I don't know what else we can do."
- "I don't know anything about client reports."
- P1: "You used my good sponge on the floor (wrong)"
- P1: "I didn't know!" (NWF)
- "I really don't care what you think of me."
- "I don't have a problem with . . ."

Note: Exceptions would be Put Downs ("I don't know why you're being such an ass.") and statements where the speaker is clearly expressing hopelessness about the conflict itself ("I don't know if there's any way to solve this." H)

When a P expresses a previous agreement that is not being honored but doesn't specify that the other person is WR, it's only NWF:

- "We agreed on 50/50, and I'm doing more than 50%." (NWF)
- "I'm doing more than 50%." (NWF)
- "We agreed on 50/50 split, and Pete is not doing his half." (W)
- "We agreed to split duties equally, and Pete is not doing his half. I'm doing way more." (W& NWF)

Responsibility/Apology (ra)

Any question or statement in which a participant takes responsibility for some role in the conflict, including taking responsibility for actions within the mediation

Examples:

- "I know I haven't been perfect here, either."
- "I should have . . ."

- P1: "You're being a dick." P2: "You're right, I'll stop being a dick."
- "I'm sorry I interrupted you; go ahead."
- "My temper got the best of me. I know I shouldn't go around threatening to beat people up."
- "I realized denying him access to his kids wasn't fair."

Note: *Participant Solution* takes precedence over *Responsibility/Apology*. If a is about the future and active, then it is *Participant Solution*. For example: "I need to spend more time with the children," or "I should make sure the children eat more tofu," or "I really do need to be a better father," would be coded as *Participant Solution*. If a comment is about the past or reactionary, such as, "She's right, I really should have spent more time with the children," then it is coded as *Responsibility/Apology*.

Any statement in which a participant apologizes for a specific behavior or action, including within the mediation.

- "I'm sorry for (specific behavior)."
- "Oh, did I interrupt you? I'm sorry, go ahead. (Q + RA + PS)

Any apology for a participant's behavior is coded as *Responsibility/Apology*, even if followed by reasoning or excuses, as long as that apology is clearly taking responsibility. Examples:

- "I'm sorry I yelled at you, but I'd had a really bad day." (RA + NWF)
- "I'm sorry but you barged in on me." (wrong only, because not clearly taking responsibility)
- "I'm sorry I yelled at you, but you barged in on me and you know how angry I get." (RA + wrong)
- "I'm sorry, but you just can't barge in on me when you know I've had a bad day." (PS only)
- "I'm sorry but I can't afford to do that." (NWF only)
- "I'm so sorry I can't come visit you. I really want to, but I just can't afford it." (RA + NWF)

Note: "I'm sorry you feel that way" should not be coded as *Responsibility/Apology*.

Note: "I'm sorry" when used as a term of speech, rather than in reference to the speaker's behavior, is not coded. For example, "I'm sorry, but you just can't walk your dog without a leash in this neighborhood." (Only PS)

Note: RA is coded not when a Participant admits to a wrong, but when they agree that the wrong was, in fact, the wrong thing to do. Examples:

- P1: "You were late seven times last month." (wrong)
- P2: "I was not! I was late twice!" (wrong)
- P2: "Well, I was only late twice, but you're right, I shouldn't have been late at all." (wrong + RA)

Wrong and Responsibility Combined (rw)

To save time when coding, a new code has been added for the combo of wrong and responsibility/apology, with a keystroke of rw.

Examples:

- "We've been fighting all the time"(rw)
- "We let our tempers get the best of us." (rw)
- "We should have been more thoughtful toward one another." (rw)

Accept Solutions (as)

Code when participants formally accept a solution. This should be coded for all participants who are explicitly agreeing (and/or willing to try it in some capacity). If both participants are accepting the solution, then Accept Solution should be coded for each of them. Examples:

- “The thing about him coming to the soccer games is fine. We can do that.” (AS)
- Participant 1: “How about if I replace the llama?” (PS)
- Participant 2: “Would you really? Oh, yes, that would take care of this.” (AS)
- “I’ll try to get it done.” (AS)
- “I’ll do my best to replace the llama.” (AS)
- “I’ll try.” (AS)

Note: “I’ll try” or “I tried” statements are not automatically AS, only when in reaction to a specific solution.

- P1: “How about answering the phone every time I call?” (PS)
- P2: “I’ll try. We can see how it goes.” (AS)
- P2: “I tried that already. You yelled at me.” (nothing for first half (not explicit reject) + wrong)

Code when participants are selecting among several ideas that have been brainstormed and discussed, even if the participants selecting it is the one who suggested it. Examples:

- Mediator: “Looking over these ideas, which do you think you could agree to?”
- Participant 1: “I think the one about trading off weekends could work.” (*Accept Solution*)
- Participant 2: “Yup, we could make that work.” (*Accept Solution*)

This should not be coded if participants have agreed in concept but are still working out the details.
Example:

- Participant 1: “What if we take turns driving the kids to kazoo lesson?” (Participant Solution)
- Participant 2: “Well, that could only work if I don’t have to drive on Mondays, because I get my massage Monday evenings.” (*Participant Solution*)
- Participant 1: “Okay, I’ll drive Mondays and you do Tuesday lessons.” (*Accept Solution*)
- Participant 2: “Perfect. Let’s do that.” (*Accept Solution*)

Note: As with all solution codes, when a participant accepts a solution and then provides a sentence about why they will accept it (e.g. “Yes, let’s take Aline to Mexico for the summer break. She needs to practice her Spanish”), it only counts as *Accept Solution*. If the participant goes on with more than one sentence then the additional commentary may be coded if it is a code-able behavior.

Note: “Oh, that’s a good idea,” “I like that idea,” would be coded as *Accept Solution* when it’s said to either the other P. Said to the mediator, it’s NWF

Note: If there’s a solution that would happen within the mediation, and the P agrees to it, it’s AS:

- P1: “Stop calling me names.” (PS)
- P2: “Fine. I’ll stop.” (AS)

Note: Agreeing to discuss a topic or brainstorm a topic is not Accept Solution (nothing)

- M: I heard a lot about cooking and meals. Is that a topic you’d like to make a plan about today?
- P1: Yes (nothing)
- P2: Yes, we need to, because it’s driving me crazy (NWF)

Note: Agreeing or accepting the behavioral guidelines set out by the mediator is not AS (nothing). Agreeing to a solution put forth by the mediator is AS

Example:

-M: "So the ground rules are that both of you speak kindly to the other, and speak one at a time. Can you agree to that?"

-P: "Yeah, sure." (nothing)

-M: "You've had your turn to speak, Lonnie. Please let Ruth speak now."

-P: "Fair enough." (nothing).

-M: "Have you thought about creating a flexible schedule?"

-P: "That's a great idea." (NWF)

-P: "Oh, let's do that." (AS)

-M: "I think you should do joint custody."

-P: "Yes, that's what I want." (AS)

Reject Solution (rs)

Any statement in which a participant explicitly rejects a solution that it posed to them, by the other participant or the mediator, **in the previous speaking turn**.

Example:

-P1: "How about if I give you your old job back with back pay?" (PS)

P2: "Nope" (coded as RS)

-P 1: "How about if I give you your old job back with back pay?" (PS)

P2: "No way (RS). You need to pay for the humiliation you put me through." (PS)

-P1: "How about I give you your old job back with back pay?" (*Participant Solution*)

P2: "No. (RS) I want you to stand on the Brooklyn Bridge naked with an apology painted on your butt." (PS)

P1: I want to see the kids on Tuesday (PS)

M: So- you want to have the kids on Tuesday?

P1: yes (AS)

M: Tuesday at 8p?

P1: yes (AS); and also Friday before noon (PS)

M: Friday at 11?

P1: I don't want them at 11 (RS); I want them at 1130 (PS)

M: Friday at 1135?

P1: I can't do 1135 (RS); but I can do 1140 (PS)

M (to P2): So, he wants to pick them up at 1140.

P2: No. That doesn't work for me (RS).

M: How about 1130?

P2: I only want 1135. (PS)

Note: Reject Solution should only be coded when responding directly to the suggestion, not a comment made several minutes later which may reference a suggestion made in the past.

Note: RS or AS will only come in direct response to a PS proposed by the M or P. If the response comes more than one speaking turn later, it is coded as a new solution. This includes pre-emptive rejections

P1: I just want to say up front that I'm not paying her. I don't owe her any money. (PS)
-P1: Do you want to pick up the kids on Tuesdays?"
-P2: No. I don't get off work in time (RS) or
-P1: Do you want to pick up the kids on Tuesdays?"
Conversation circles around for a few minutes
-P2: I can't pick up the kids on Tuesdays because I don't get off work in time (PS)

Any statement in which a participant indicates that a solution the other participant suggested will not work, or that they are not willing to accept it.

Example:

- "That won't work."
- "We can't do that."
- "I can't have you living with me."

If P offers a solution and the other responds with how that proposed solution would affect them, or the consequences of the proposed solution, it is NWF rather than Reject, until there is an explicit rejection.

- "Just the thought of that exhausts me. I'm already overstretched." (NWF)
- "But I'm not always home." (NWF)
- "I don't like that idea." (NWF)
- "No. I can't do that. I'm already overstretched." (RS + NWF)

Putdown takes precedence over Reject. Example:

- "That's a dumb idea" (PD)
- "No. (RS) That's a terrible idea." (Wrong)
- "You're an idiot." (PD)

Note: As with all solution codes, when a participant rejects a solution and then provides a sentence about why they won't accept it (e.g. "No, we're not taking Aline to Mexico for the summer break. It's terribly dangerous down there!"), it only counts as *Reject Solution*. If the participant goes on with more than one sentence (e.g. "No, we're not taking Aline to Mexico for the summer break. It's terribly dangerous down there! But she does need to practice her Spanish and I heard you told her to only speak English at home – really, I think that's a big mistake.") then the additional commentary may be coded if it is a code-able behavior (in this case *Wrong*).

Silence SI

(always code as P1)

Any instance in which everyone (all participants and mediators) is silent for more than 10 seconds

Note: If a participant is silent for less than 10 seconds, and then another person speaks, the moment should not be coded as *Silence*.

Note: If a question is asked to both and no one speaks, only code *Silence* for P1.

Hopeless HO

Any statement in which a participant expresses a sense that nothing can change or get better in the situation being mediated.

Examples:

- "I can't see what we can do differently. Nothing seems to work."
- "This process isn't going to work."
- "I don't know why we are even wasting our time here."
- "I don't think there's any way to solve this."

Hopeless takes precedence over *Process Complaint* and *Need/Want/Feel*. Generally, "I don't know's" are NWF, unless they are expressing clear hopelessness that the conflict itself cannot be resolved. *Hopeless* comments tend to have more certainty than NWF "I don't know's," which are more like "I'm not sure."

Examples:

- "I've tried everything. I don't know what else to try." (NWF)
- "I've tried everything. It's not possible to fix. I don't know what to do now." (H)
- M: "What would let you get the respect you're looking for and still have the communication she's looking for?"
- P: "I don't know." (NWF)
- P: "I don't know why you're even asking him that. There's nothing that can be done." (H)

Process Complaint

A statement in which a participant complains about the process or the mediator's behavior in it.

Example:

- "Do we really have to go through all this? Either she's going to pay me or she isn't."
- "I can't believe you're taking her side on this one. I knew we should not have come to mediation."
- "You're sitting closer to her than to me."
- "Are you going to let her get away with that?"

Note: *Hopeless* takes precedence over *Process Complaint*

One Talk / Two Talk (2t / 1t)

State variable. As long as one participant is speaking at a time, state should be in *One Talk*. If both participants are speaking over each other in a hostile way for at least 3 seconds, begin coding *Two Talk*. Remain in *Two Talk* state until one participant or a mediator is speaking alone, or there is silence, for 5 seconds.

Note: No other participant codes are coded during *Two Talk*.

Appendix E: List of Research Team and Advisory Committee Members

The **Research Team** collecting and analyzing data used in this report is comprised of professional, full-time researchers with graduate-level education in the field. They are as follows

Lorig Charkoudian, PhD
Principle Investigator

Haleigh LaChance, MA, MFA
Research Coordinator
Coded: Participants
Years on project: 4

Michal Bilick, MS
Research Associate
Coded: Mediators
Years on project: 2.5

Suzanne Rose, MA
Research Assistant
Coded: Participants
Years on project: 2

Gretchen Kainz, MA
Research Assistant
Coded: Participants
Years on project: 1.5

Emmett Ward, MA
Research Assistant
Coded: Mediators
Years on project: 1.5

Lindsay Barranco, JD
Research Assistant
Coded: Mediators
Years on project: 1

Kate Bogan, MA
Research Assistant
Coded: Participants
Years on project: 1

Brittany Kesteven
Data Assistant
Years on project: 3

Matthew Swiderski
Graduate Assistant
Years on project: 1

The **Advisory Committee** for this project has played a central role in the development of this research design, implementation in the courts, survey design, guidance on data collection, and analysis and interpretation of the data.

Members of the Advisory Committee, along with their affiliated agency, are listed below in alphabetical order. This list includes members of the broader research team, who are active participants on the Advisory Committee.

- Barbara Domer, Conference of Circuit Court Administrators
- Brian Polkinghorn, Bosserman Center for Conflict Resolution, Salisbury University

- Clifton Griffin, Graduate Studies and Research, Salisbury University
- Connie Kratovil-Lavelle, Esq., Family Administration
- Deborah Eisenberg, Esq., Center for Dispute Resolution, Francis Carey School of Law, University of Maryland
- Diane Pawlowicz, Administrative Office of the Courts, Court Operations, Research Sponsor
- Douglas Young, Institute for Governmental Science and Research, University of Maryland
- Haleigh LaChance, Salisbury University
- Heather Fogg, Mediation and Conflict Resolution Office (MACRO)
- Jamie Walter, PhD, District Court Clerk's Office
- Jeanne Bilanin, PhD, Institute for Governmental Science and Research, University of Maryland
- Jonathan Rosenthal, Esq., District Court ADR Office
- Joy Keller, Administrative Office of the Courts
- Julie Linkins, Esq., Administrative Office of the Courts
- Lou Gieszl, Administrative Office of the Courts
- Nick White, PhD, Mediation and Conflict Resolution Office (MACRO)
- Pamela Ortiz, Esq., Access to Justice Commission
- Rachel Wohl, Esq., Mediation and Conflict Resolution Office (MACRO)
- Robb Holt, Esq. Administrative Office of the Courts, Court Operations
- Roberta Warnken, Chief Clerk, District Court
- Roger Wolf, Esq., Francis Carey School of Law, University of Maryland
- Toby Guerin, Esq., Center for Dispute Resolution, Francis Carey School of Law, University of Maryland
- Wendy Riley, Conference of Circuit Court Administrators