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*North Hennepin  
West Suburban  
Municipal Mediation*



**REPORT TO THE MINNESOTA  
SUPREME COURT  
AND  
THE MINNESOTA CONFERENCE OF  
CHIEF JUDGES  
  
ON  
  
HENNEPIN COUNTY DISTRICT COURT  
MANDATORY MEDIATION PROJECT**

**June 30, 1997**

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## I. BACKGROUND

### **A. CONFERENCE OF CHIEF JUDGES STRATEGIC PLANS**

In 1994 the Conference of Chief Judges identified a need to more effectively deal with the increased number of pro se litigants appearing in the Minnesota State court system.

### **B. COMMITTEE ON THE TREATMENT OF LITIGANTS AND PRO SE LITIGATION**

One of the leadership goals of the Conference of Chief Judges was to develop an action plan that would include services and programs to meet this need. To do this, the Conference of Chief Judges established a Committee on the Treatment of Litigants and Pro se Litigation, chaired by the Honorable John M. Stanoch, then Assistant Chief Judge of the Fourth Judicial District. The Committee's membership included judges, court administrators and staff, representatives of the Minnesota State Bar Association, a law librarian and a former law school dean.

The Committee was divided into three subcommittees: 1) Family Law, 2) Domestic Abuse and Harassment, and 3) Conciliation Court and General Civil Law.

### **C. CONCILIATION COURT/CIVIL LAW SUBCOMMITTEE**

In early 1996 the Conciliation Court Subcommittee, chaired by Judge John M. Stanoch, submitted the following recommendations to the Committee on the Treatment of Litigants and Pro Se Litigation.\*

- Judicial districts should be given the authority to require that a settlement conference be held prior to a Conciliation Court trial or hearing. The subcommittee recommends that applicable rules and policies be modified with judicial districts given the clear authority to provide that no Conciliation Court matter will be set for trial before the parties have met face-to-face in an attempt to settle the matter at the pretrial settlement conference. The subcommittee believes that each judicial district should determine the appropriate process and procedures to be followed within its jurisdiction and that many Conciliation Court matters could be resolved as a result of a settlement conference. Dismissal or default judgment will result if a party fails to appear for a scheduled pretrial settlement conference. The subcommittee recommends that the judicial districts be empowered to set trial dates only if the parties fail to resolve the matter at a pretrial settlement conference. Wherever possible, the pretrial settlement conference should be held the same day as the Conciliation Court trial to reduce the burden on pro se litigants. Each judicial district, as part of its pro se services delivery plan, is encouraged to solicit local attorneys to serve as mediators at the Conciliation Court pretrial settlement conference.

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\* Excerpted from "Report of The Minnesota Conference of Chief Judges Committee on the Treatment of Litigants and Pro Se Litigation" page 18

- The subcommittee also recommends that removals of Conciliation Court appeals not be accepted for filing until the party seeking to appeal first reviews prepared written materials, or a video, describing the more formal proceedings and requirements in district court, and signs a written acknowledgment of their basic responsibilities in district court.

**D. RECOMMENDATION FOR CONCILIATION COURT MEDIATION PILOT PROJECT**

The Committee on the Treatment of Litigants and Pro Se Litigation submitted these recommendations in its full report to the Conference of Chief Judges in April 1996. At this time the Conference of Chief Judges recommended that Hennepin County District Court pilot a mandatory mediation project in Conciliation Court. Upon completion of a six-month pilot, Hennepin County District Court has to report its findings and recommendations to the Conference of Chief Judges.

**II. HENNEPIN COUNTY CONCILIATION COURT MANDATORY MEDIATION PROJECT**

**A. HENNEPIN COUNTY IMPLEMENTS RECOMMENDATIONS OF CONFERENCE OF CHIEF JUDGES**

To create a pro se services delivery plan, Mark Thompson, Fourth Judicial District Administrator, established a Pro Se Services Advisory Committee. The committee's membership includes: Hennepin County Judge John Stanoch; Judge E. Anne McKinsey; Mark Thompson; Chelle Uecker, Deputy District Administrator; and Elisabeth Steinbring, Pro Se/Pro Bono Services Coordinator.

This committee used the recommendations of the Conference of Chief Judges as the impetus for the Fourth Judicial District's pro se initiatives. Consequently the committee identified the mediation project as one of the pro se service coordinator's first responsibilities.

**B. PROJECT PLANNING**

As Pro Se/Pro Bono Services Coordinator, Elisabeth Steinbring was responsible for establishing a project team and managing the development and implementation of the mediation project. Her efforts included:

- Researching several existing mediation programs in small claims courts across the country.

- Submitting a summary report of research data to the managing team of Conciliation Court (see Attachment A).
- Assisting the managing team in the selection of project team members.
- Managing the project team through the development and implementation of the pilot project.
- Gathering and compiling statistical data and evaluations from the project and reviewing this data with the project team and Pro Se Services Advisory Committee.

The project team members were: Judge John Stanoch; Judge Tony Leung; Administration Manager Mary Gagne; Pro Se/Pro Bono Services Coordinator Elisabeth Steinbring; Administration Supervisor Sheila Smith; and Court Staff Supervisor for Conciliation Court Lynn Lahd. The team also received input and assistance from Conciliation Court Referee Don Seel and Conciliation Court administration staff, including Jill Hunt, Pamela Nelson, Deb Lofgren and Karen Graham.

Once identified, the team began the process of exploring ways to set up the project without placing excess burden on the staff, referees and the litigants.

To maintain a manageable project, the team developed the following components to the mandatory mediation process:

- The pilot project would run from November 1, 1996, through April 30, 1997.
- There would be no cost to any litigant for participating in the mediation pilot project.
- The mediation calendars would be heard on Tuesday and Thursday mornings only.
- Each calendar would be assigned no more than 20 cases.
- No multiple case filings would be assigned to a mediation calendar (for example, a dentist filing multiple claims against multiple patients, all of which are scheduled for hearing the same day).
- At the hearing the referee would give the opening remarks about the mediation project. Contested cases would then leave the courtroom to meet with the mediator.
- Cases where mediation is unsuccessful would go back to the courtroom to have their case heard by the referee that same morning.

- Notice and explanation of the mediation project would be sent out to both parties in advance with the Notice of Hearing (see Attachment B).
- The Conciliation Court Mediation Agreement form would be used by parties and mediator to identify terms of settlement (see Attachment C).
- An Affidavit of Non-Compliance would be available for receiving party to file against the owing party, if the owing party were to fail to comply with terms of settlement. Judgment may then issue based on the Affidavit alone (see Attachment D).
- The mediator should try to limit each case to less than one hour for mediation.
- Each calendar should have five mediators available for mediation.
- Private rooms or space should be made available for mediators and parties.
- Participants would be requested to complete exit surveys (see Attachment E).
- Conciliation Court referees and mediators would be asked to complete mediation evaluations (see Attachment F).

### **C. INVOLVEMENT OF COMMUNITY MEDIATION PROGRAMS**

Since the mid-1980's, Hennepin County District Court has maintained contracts with three community mediation programs: Minneapolis Mediation, West Suburban Mediation and North Hennepin Mediation. These programs provide mediators for housing court as well as for voluntary Conciliation Court mediation at our Brookdale suburban Division II.

The Pro Se Service Advisory Committee determined that it was appropriate for the court to utilize these existing resources to launch the Conciliation Court pilot project. The project team and the Pro Se Services Advisory Committee met with the directors' of the mediation programs to explain the project and enlist their participation.

### **D. MINNESOTA SUPREME COURT AUTHORITY TO CONDUCT PILOT PROJECT**

To authorize mandatory mediation in Conciliation Court during the pilot project, the Fourth Judicial District requested and received authority from the Supreme Court to establish the pilot project (see Attachment G).

### III. RESULTS

#### A. STATISTICS

During the pilot, 927 cases were scheduled for mediation calendars. Of these cases, 71 percent (658) were resolved before trial. Of the 658 cases, 61 percent (400) went to mediation. Of the 400 mediated cases, 43.5 percent (174) settled. Affidavits of Non-Compliance were subsequently filed in 15 percent (26) of the 174 cases that settled.

927 cases scheduled for mediation		
	Total	Percent
Resolved before trial	658	71%
Mediated	400	61%
Settled	174	43.5%
Affidavits of Non-Compliance	26	15%

#### B. EVALUATION AND USER COMMENTS

##### Litigants

During the project participating litigants were asked to complete an exit evaluation. The response rate for the evaluation was approximately 90%. Of that, the satisfaction rate for the mediation experience was also 90%. The following are some of comments from the participating litigants.

- "A good way to work out differences and feel in control."
- "Good system to reduce direct court time."
- "Helps to maintain order and objectiveness of both parties."
- "It's better than being sued—it gives a chance for both parties to become friends again."
- "Too costly – I think I would've won in court!"
- "Mediation works well in most cases, unfortunately it did not work in this one. I would definitely recommend it in the future despite this case."
- "Extremely helpful in solving disputes in an orderly fashion."
- "Overly complicated and slow."
- "Takes up time. I wish we had an option to say it would not help."

- "Mediator kept it on a level playing field, very much appreciated."
- "Interesting process. There appears to be more time to develop the information pertaining to the case, which I think is beneficial to the process."
- "Much more conducive to a friendly handling of the case."
- "Why not have the judge solve things in the same style as the mediator?"
- "I think it makes a lot of sense. It also provides an opportunity to discuss issues in an atmosphere with less pressure."
- "Excellent, I appreciate the civility."

### **Mediators**

Each of the mediation programs provided mediators for the pilot project. Some, but not all, had experience mediating small claim issues in the suburban court. The mediators were also asked to provide feedback from the project. Among their comments:

- "Referees need to endorse and support mediation, especially if it is going to be mandatory."
- "Referees (not the court clerk) should explain mediation, the "win/win" vs win/lose concept, and the rules."
- "The court should be mindful that the mediators are volunteering their time. If the calendar is scheduled to start at 8:30 that's when it should start, not 9:00."
- "The court should consider developing a way to promote mediation before parties file a claim. The mediation services are available in the communities, they should be used."
- "A permanent program will require training for mediators and referees on what the court wants in the settlement agreement."
- "The court could make a checklist for mediators."
- "Standardization of attire. Some of the mediators dress too informally. A little more formal attire can help with credibility."



## **Referees**

Hennepin County District Court contracts roughly 85 private attorneys to preside over Conciliation Court calendars. Attorneys for the mediation calendars were randomly assigned in the same manner as all other Conciliation Court calendars. The following comments come from some of the letters we received from the attorneys who heard mediation calendars:

- "...Litigants do not initially understand the concept of mediation. I, therefore, chose to deviate from the prepared mediation speech. I took additional time to very carefully explain the mediation concept to the parties."
- "About fifty percent of the cases referred to mediation were settled thus allowing more time to hear the contested cases that could not be settled by mediation."
- "With no time limit, some of the cases before me that day dragged on and on in mediation, while I sat in the referee's chambers cooling my heels. A time limit must be imposed."
- "From your statistics, the public is apparently accepting the program and from my standpoint, as a referee, I believe the mediation is a help to the referee."
- "Over all, I thought that the Conciliation Court Mediation Pilot Project was a success. This is based on my observation while serving as a referee on three separate occasions during the term of the pilot project."

## **Court Staff (Project Team)**

Conciliation Court staff involved in the mediation project were supportive and positive about the mediation process in Conciliation Court. Overall the staff believe mediation is a good idea for Conciliation Court matters. The following are some comments and concerns of the staff who clerked in the mediation courtroom, handled the follow-up paper work, and supervised the department.

- "The overall effect of the pilot I felt was very favorable. Comments from litigants were generally in a positive manner. The letter explaining the pilot was necessary as this prepared the litigants for the process and it greatly reduced the phone calls asking to explain what would be happening when they came to court. We found also as the project continued and the referees became more aware of the pilot, that the introductory speech was very important. Referees commented that the more they explained the process to the litigants the more positive was the litigants' approach to the mediation process."

- "I think mediation is an option that should be looked at carefully if not as a part of the Conciliation Court process once a claim is filed then as a process to be tried before filing a claim."
- "I do feel that one of the key components for the success of whatever process is decided on if a mediation is to continue will involve extensive communication to the public about the process. A good PR campaign including simple and understandable brochures will be necessary."
- "There was confusion among the parties, with regard to the entry of the default judgment. Many, half or more, were confused as to why they should have to wait for the statutory stay period to expire, before they could commence collection. Having the court recite the terms, making clear the consequences of non-compliance, does make a difference."
- "Communication seems to be the bottom line. Hopefully, this program can be instituted, which will allow the cases that require more than the 10-15 minutes that is allowed for in scheduling, to be handled without holding up an entire courtroom full of people."
- "People had to wait before going into mediation. With several cases to be mediated and only a couple of mediators, people had to wait, sometimes, 1-1 1/2 hours. We have to make sure people can be seen and processed in a timely manner."
- "Mediators really made good efforts for settlement and people felt their services were a benefit."

### C. "GLITCHES"

One of the persistent problems discovered during the project was the inability of the mediators to help the litigants identify the consequences for both parties if there was failure to comply with the express terms of the settlement agreement. We found that some of the settlement agreements subsequently filed did not clearly state the consequences of non-compliance, resulting in defective settlement agreements.

This problem can be linked to two factors:

- Most of the mediators were not experienced in Conciliation Court mediation, and may not have been adequately trained to include a consequence component to settlement negotiations.
- The settlement agreement form never clearly required specific language regarding non-compliance, other than to indicate that a judgment may issue according to the terms of the settlement.

In February we had an informal meeting with the mediators and referees to discuss the project and this prevailing problem. Following this meeting we modified the form and asked the mediation program directors to ensure their mediators include language on the agreement regarding consequences of non-compliance.

Though this issue created some hardships on the litigants and the court, we can look at possible solutions to ensure the consequence component will be at the forefront of any future program. These solutions include:

- New settlement forms that have a specific statement requiring each party to identify the specific consequence of their failure to comply with the agreement.
- Mandatory Conciliation Court training for mediators through their own program or through court initiated orientation, including a presentation on what is required for a binding settlement agreement.
- Review of the settlement agreement by the referee.
- Orientation for referees and court clerks about the mediation program.

Another less serious problem occurred when litigants (or their lawyer) refused to mediate. In some cases it was appropriate that mediation not take place, as there was litigation pending in District Court relating to the case.

For other cases the litigant (or his/her lawyer) was asked to sign an acknowledgement waiving mediation (see Attachment H). With the exception of a few determined litigants and one case where additional litigation was pending, no further refusals occurred.

#### **IV. Summary and Request**

The high satisfaction rate of the litigants speaks loudest for the success of this project. While some people still **think** they want their "day in court" they also realize that if they just start talking to the other party in a neutral environment, sometimes they can work things out.

However, parties will usually not volunteer to mediate. There is still a lack of public understanding about alternative dispute resolution and the benefits of mediation. We believe that it will continue to be necessary to invoke the authority of the court to force parties to initially speak to one another about their dispute.

Statistically, mediation reduced the number of cases in this project that needed to be heard by a judicial officer. And, as one referee stated, this gave referees more time with the contested cases.

As the public gets more familiar with mediation as a viable alternative to traditional court processes, it is possible that we will see a reduction in the number of appealed cases.

To continue exploring the use of mediation in Conciliation Court we request authority from the Supreme Court to expand the project. In 1998 Conciliation Court will be relocating to new facilities in Minneapolis city hall. The facilities include several conference rooms that will be conducive to mediation. In the meantime we will plan for a more permanent program based on the results of this six-month pilot project. The components to the expanded program will include:

- Mandatory Conciliation Court training for mediators via their own program or through a court initiated orientation.
- A special orientation program for referees who want to preside over mediation calendars.
- Review of the settlement agreement terms with the parties by the referee.
- New settlement forms that have a specific statement requiring each party to identify the consequence of their failure to comply with the agreement.
- Continued control by court administration and the bench over number and types of cases referred to mediation calendar.

As we continue our efforts to improve access to the justice system, we need to maintain our focus on those areas producing a high volume of pro se litigants. Over 50,000 people are involved in a Hennepin County Conciliation Court dispute each year. And, in Minnesota an individual is most likely to come into contact with the civil justice system through Conciliation Court. By providing pre-trial options for people to resolve their disputes such as the Conciliation Court Mediation Project, we can reduce the number of cases that require judicial attention. This will allow judges to concentrate on more complex, litigious matters, and will promote a more favorable perception of the justice system by the public.

# ATTACHMENT A

**SUMMARY OVERVIEW OF SMALL CLAIMS MEDIATION  
WASHINGTON D.C.  
PORTLAND, OREGON  
DES MOINES, IOWA**

**According to John A. Goerdt, author of Small Claims and Traffic Courts, 1992:**

"The nature of the small claims mediation program and the way it is managed are very likely to affect, if not determine, the success of the program. From the observations and interviews in these three small claims courts, there appears to be four key components that contribute to an effective small claims mediation program:

- 1) Commitment of the court to the mediation program;
- 2) Having a professional mediation program coordinator who is responsible for the recruitment, coordination, training, and oversight of the volunteer mediators, and who is accountable to the court for the performance of the program
- 3) High-quality training and supervision of mediators, and
- 4) A reasonably dignified setting for mediators to conduct the mediation sessions."

**WASHINGTON D.C. MEDIATION PROGRAM  
(INFORMATION TAKEN FROM SMALL CLAIMS AND TRAFFIC  
COURTS BOOK, CASE MANAGEMENT PROCEDURES, CASE  
CHARACTERISTICS, AND OUTCOMES IN 12 URBAN  
JURISDICTIONS)**

1990 - 38,000 SMALL CLAIMS WERE FILED.

In 1985 a multi-door dispute resolution program was initiated under a three year project funded by the ABA.

Characteristics of the program:

- Managed by a full-time supervisor whose office is in the court.
- There are approx. 80 active small claims mediators, 1/3 of which are attorneys. The rest are senior citizens and others with a wide range of occupation.
- They are all paid \$30.00 per case.
- When additional mediators are needed, they recruit through the newspaper, meetings with neighborhood and business groups, and through the "grape-vine".
- Supervisor receives more applications than are needed. Can be selective in whom she invites for interviews and subsequent training.
- Training is free. Applicant must make a commitment to mediate three mornings per month during the first year.
- Each mediator must attend 40 hours of classroom training. (Most of which involves role-playing exercises that are videotaped.) After 32 hours of training, some trainees may be asked to drop out if they do not appear to be suitable.
- Trainees are then directly supervised by a mentor (experienced mediator) for three to five mediation

## Attachment A

sessions and receive written and oral comments. Mediators then receive one formal written evaluation each year.

- Supervisor schedules 6-8 mediators to be in court each morning.
- When courtroom clerk finishes preliminary matters, all cases with both parties present and ready for trial are referred to mediation.
- Mediators receive cases in order in which they report for work in the morning. Oldest small claims case is assigned first.
- Six small conference rooms adjacent to large courtroom where calendar call occurs. First six cases assigned to mediation go to these rooms. (Any more in mediation simultaneously must find some other available room.)
- Mediation sessions typically take one hour.
- Mediator handles two cases per morning.
- 10-12 cases are mediated each day. Appx. 50-60% are settled during mediation.
- If no settlement is reached within appx. 90 minutes, mediator refers parties to return to courtroom to await trial.
- If settlement is reached, mediator writes up a detailed "Settlement Praeipce," which includes method and time for payment.
- Judgment is not entered until settlement agreement is satisfied. If defendant fails to comply, plaintiff must file a motion for default judgment.

**PROBLEMS IN WASHINGTON D.C. MEDIATION PROGRAM:**



- Mediators arrive at 9:30 a.m.. Cases are not referred to mediation until the entire calendar is called and preliminary matters are disposed. It is often 10:30 before the first mediator receives a case.

(Recommended resolution: Identify cases that will be ready for trial through some kind of litigant check-in procedure which would allow mediation to begin while other preliminary matters are being handled.)

- Mediation problem - both litigants want to know how the judge will rule on some legal issue. Mediators are not qualified to speculate-- a problem not peculiar to Washington's program.
- Small claims supervisor indicated that she would like to have more minority mediators. Recruiting is difficult and has had little success.

## **PORTLAND, OREGON MEDIATION PROGRAM**

1990 - 11,000 SMALL CLAIMS FILED.

In 1989, initiated by Judge Kristena LaMar of the Multnomah County Circuit Court, an effort to obtain cooperation of the local bar association and professional mediators to help organize a mediation program.

In 1990 the court obtained a grant from the State Justice Institute to train at least 100 mediators to produce a training manual and videotapes for other courts interested in small claims mediation.

More than 170 applicants for mediator training were recruited through newspaper-125 were selected for training, 116 completed the course. Appx. 1/3 are attorneys, and all are volunteers.

- Managed by a full-time small claims coordinator, paid by the court, and offices in the court.
- Coordinator oversees scheduling of mediators, assignment of cases to mediators each day, training, and supervision of active mediators.
- Mediators schedules are set one month in advance.
- Most mediators work one or two times per month.
- Training consists of 32 hours of course work over four Saturdays. (Role-playing, conducted by a professional mediation training organization.)
- 25 were selected for additional 10 hours of training, to serve as training interns to help the training program, and to assist in supervision of other 91 mediators. All were trained from January to June 1991.
- All new mediators are supervised and evaluated during their first three mediation sessions by program coordinator or training intern. Thereafter, once a year.
- Two or three mediators are scheduled to work each calendar.

## Attachment A

- Litigants report to small claims courtroom where referee gives an introduction that encourages mediation. Mediators receive some enhanced credibility through judge's endorsement.
- Referee explains to litigants that a mediated agreement would not be entered as a judgment against the defendant, but rather as a stipulated agreement.
- If defendant defaults on the mediated agreement, plaintiff files an "Affidavit of Noncompliance," and judgment is entered without additional hearing.
- When cases are called, if there are witnesses, mediation is voluntary. If there are no witnesses, mediation is mandatory.
- Appx. 75% of all cases ready for trial go to mediation, most voluntarily.
- Referee refers litigants to mediation coordinator.
- Coordinator greets litigants and assigns a mediator (Tries to assign more experienced mediators to cases she expects to be more difficult.)
- Mediators escort litigants to an available conference room or empty jury room.
- If agreement is reached, mediator writes out details on small claim order form attached to file, which includes method and time of payment, and what the plaintiff's responsibilities are after satisfaction of judgment.
- Parties are escorted back to the courtroom, where mediator politely interrupts the referee, if there is a trial in progress. Referee stops the trial, asks the litigants if they agree to the terms of their settlement, then signs the handwritten agreement.

**Attachment A**

- **If settlement is not reached in mediation, litigants return to the courtroom to await their trial.**
- **Average time is 65-75 minutes.**
- **54% of all mediated cases successfully settled in 1990.**

## **DES MOINES, IOWA, MEDIATION PROGRAM**

### **1990 - APPX. 14,000 SMALL CLAIMS FILED**

In 1987 the chief judge decided to initiate a small claims mediation program. Chief judge chose a coordinator, who was authorized to recruit mediators. Coordinator found four retired businessmen in the city, mostly personal acquaintances, willing to volunteer to mediate cases once or twice a week. They did not receive any training.

The mediators settled a substantial percentage of cases that they handled. But, eventually litigants complained that they were never told they had a right to see a judge, and therefore, felt forced to settle. Others simply felt pressured to settle.

In 1990 the local bar provided funds to pay for a full-time coordinator. The court provided a small office for him.

- Coordinator organized a formal training program for the four original mediators, plus two additional.
- Six mediators work regular schedules. Not as much scheduling required as in Washington and Portland.
- Little supervision is required.
- Small claims are heard five days a week, 4-6 hours each day. Usually several mediation sessions each day.
- Program expanding into domestic relations issues.
- Little recruitment (at publication of book). They have trained a backup mediator (student from Drake University). Coordinator expects further recruitment through Drake.
- Mediation set-up is done by check-in outside of the courtroom. Mediator asks if the parties would like to mediate and explains the process. If parties agree to mediate, they go to a conference room to attempt settlement.
- Sixty-five percent of all trial-ready cases, and 85 percent of the mediated cases result in a settlement before trial.

## Small Claims Mediation in Three Urban Courts - 95

Small claims mediation programs, even those means of dispute resolution that is both friendly to litigants.

## Small Claims Courts

Portland, and Washington) were among the 12 courts studied in a study conducted by the National Center for Justice Institute.<sup>2</sup> These 3 courts were selected for their mediation programs, and because of the reforms in the management of their Small Claims Court Act<sup>3</sup> suggests that they have moved from trials; prohibit collection agencies from filing claims that one plaintiff can have to meet the requirement that defendants file an answer and, instead, simply set the trial date. The reforms retain all the characteristics of the traditional courts, but otherwise retains all the other

Washington has dropped the answer requirement. The reforms suggested reforms (see Table 4.1). Characteristics about these three small claims courts are that in each of these courts, small claims are handled by a limited jurisdiction division within the court system; a regular judge handles all small claims trials; a regular judge presides. The same is true in Washington, where the reforms in Des Moines, associate district court judges before unification in 1985, still handle small claims cases. In Des Moines, however, indicated that some cases come into the small claims court when the defendant is in default, however.

Washington's low trial rate and a faster than average disposition time to other small claims courts in this study. Long waiting times are explained largely by the differences in these three courts.<sup>4</sup> None of the differences. Business plaintiffs generally file at lower trial rates and are more likely to settle. Landlord-tenant cases.<sup>5</sup> The reforms in Des Moines reduces the trial rate and the

Table 4.1  
Key Characteristics of the Three Small Claims Courts

	Portland	Washington	Des Moines
Maximum claim amount	\$2,500	\$2,000	\$2,000
Small claims filings, 1990	11,124	38,825	13,886 <sup>1</sup>
Days per week small claims are heard	3 half-days	5 half-days	5 full days <sup>1</sup>
FTE small claims judges or QJ staff <sup>2</sup>	3 Referee	1 Commissioner	1.5 Judges <sup>1</sup>
Trial rate in 1990 <sup>3</sup>	7%	24%	6.7% <sup>1</sup>
Percent of cases filed by businesses or government	81%	83%	83% <sup>1</sup>
Median time: filing to disposition (1990) <sup>4</sup>	38	35	34 <sup>1</sup>
Prohibits attorneys	Yes	No	No
Prohibits collection agencies	No	No	No
Limits the number of filings by plaintiffs	No	No	No
Trial date set when complaint filed	No	Yes	No

<sup>1</sup> Approximately 25 percent of small claims in Des Moines are forcible entry and detainer cases, which are not counted among the small claims cases in the other sites (FEDs were not included in calculating the percentage of business plaintiffs, trial rate or case-processing times, however).

<sup>2</sup> FTE means full-time equivalent (if one judge hears small claims cases 5 half-days per week, this is .5 FTE judge); QJ means quasi-judicial staff (referee, commissioner, judge pro tem, attorneys hired by the court to sit as judges with the authority to adjudicate a limited range of cases).

<sup>3</sup> Data from a sample of approximately 450 cases filed during 1990 (the percent of these cases disposed by trial).

<sup>4</sup> The ABA disposition time standards suggest that all small claims cases be completed within 30 days after the complaint is filed.

Washington's small claims case management rules and procedures are quite different from traditional. Attorneys are allowed at trial, and collection agencies can file cases as assignees. Washington, however, sets the first trial date when the complaint is filed, and a defendant is not required to file a written answer.

About 175 to 190 small claims cases are scheduled in Washington each weekday morning. Parties in all cases scheduled for a particular day are scheduled to be in court at 9 a.m. All litigants wait in a large, dignified courtroom for the proceedings to begin. After a short introduction by the commissioner, who hears trials later in the morning, the courtroom clerk calls each case on the calendar. After the list of cases is called, default cases and other short matters are handled first by the courtroom clerk and court attendant.<sup>7</sup> These preliminary matters require considerable time; it is not unusual for the first trial to begin at 10:30.<sup>8</sup>

In Portland, defendants must file an answer before a trial date will be set. If the defendant receives service of the summons but fails to answer in the allotted time, the

# **ATTACHMENT B**

# "YOUR DAY IN CONCILIATION COURT"

Attachment B

The Hennepin County District Court in compliance with a recommendation from the Minnesota Conference of Chief Judges is conducting a mandatory mediation pilot project in the Conciliation Court.

The purpose of this mandatory mediation project is to get parties talking together about settling their complaint to avoid a hearing.

The enclosed Summons and Notice of Trial gives you your court date. Here is what you can expect when you come for your day in court:

1. You will show up for court at the time, date and location stated in the enclosed notice.
2. When all parties are present, you will be assigned a mediator.
3. If you do not show up, here is what happens:
  - 3a. If you are the plaintiff: Complaint will be dismissed with prejudice.
  - 3b. If you are the defendant: A default judgment will be entered against you (you lose).
4. You and the other party will meet with a neutral person (mediator). This person will help you talk with each other about the complaint. This is the final chance for you to settle your complaint before a judge makes a decision for you.
5. If a settlement is reached, all parties and the mediator will sign the agreement. The mediator will then take the document to the judge for signature. The judge will return the document to the mediator who will provide a copy to each party.
6. If a settlement is not reached a hearing will be held and the official decision of the judge will be entered into the court record (judgment).

BY THE COURT:



*Daniel H. Mabley*

Daniel H. Mabley, Chief Judge  
Fourth Judicial District

*[Signature]*

---

Mark S. Thompson  
Court Administrator  
Fourth Judicial District



**ATTACHMENT C**

**CONCILIATION COURT MEDIATION AGREEMENT**

\_\_\_\_\_  
(Date)

Case # \_\_\_\_\_

The following parties participated in a mediation session: (All legal names)

Plaintiff(s) \_\_\_\_\_ dba/aka/nka \_\_\_\_\_

Defendant(s) \_\_\_\_\_ dba/aka/nka \_\_\_\_\_

Other \_\_\_\_\_

During mediation the following settlement was reached:

**WHAT WILL BE DONE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BY WHOM:**

\_\_\_\_\_  
\_\_\_\_\_

**WHEN:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BY AGREEING TO THIS SETTLEMENT, I UNDERSTAND THAT THIS IS A FINAL RESOLUTION OF THIS DISPUTE. IF THE TERMS ARE NOT MET BY THE DEADLINE AGREED TO, FINAL JUDGMENT MAY BE ENTERED BY THE FILING OF AN AFFIDAVIT OF NON-COMPLIANCE AND ORDER FOR JUDGMENT.**

\_\_\_\_\_  
SIGNATURE DATE

\_\_\_\_\_  
SIGNATURE DATE

\_\_\_\_\_  
SIGNATURE DATE

\_\_\_\_\_  
SIGNATURE DATE

\_\_\_\_\_  
MEDIATOR MMP NHMP WSMC DATE  
THE SESSION BEGAN AT \_\_\_\_\_

\_\_\_\_\_  
MEDIATOR MMP NHMP WSMC DATE  
ENDED AT \_\_\_\_\_

White/Court

Yellow/Defendant

Pink/Plaintiff

Gold/Mediator

# ATTACHMENT D

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT  
CONCILIATION COURT

Case No. \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

vs

\_\_\_\_\_  
Defendant

**AFFIDAVIT OF NON-COMPLIANCE  
AND ORDER FOR JUDGMENT**

I, \_\_\_\_\_, swear or affirm that on \_\_\_\_\_  
print your name date agreement signed print other party's name  
and I signed a Mediation Agreement which contained the following: (Do not state "see attached". You must write terms of agreement below.)

\_\_\_\_\_ has not complied with the agreement, by failing to do the following:  
print other party's name

Date \_\_\_\_\_ 19 \_\_\_\_\_ Sign your name: \_\_\_\_\_

Subscribed and (sworn to) (affirmed under penalties of perjury) before  
me on \_\_\_\_\_ 19 \_\_\_\_\_  
\_\_\_\_\_  
Court Clerk or Notary

DISTRICT COURT ADMINISTRATOR by  
\_\_\_\_\_

Now, therefore, based on the above affidavit, it is Ordered that the dismissal is vacated, this case is reopened to enter judgment by default, and no additional filing fees are required.

**JUDGMENT**

Judgment Creditor \_\_\_\_\_ Judgment Amount \_\_\_\_\_

Judgment Debtor \_\_\_\_\_ Replevin on \_\_\_\_\_

If the agreement is not kept, the creditor should fill out this document and return it to:  
Hennepin County District Court  
Conciliation Court Division  
C-857 Government Center  
300 South Sixth Street  
Minneapolis, MN 55487

Dated: \_\_\_\_\_

\_\_\_\_\_  
District Court Judge

# **ATTACHMENT E**

## MEDIATION PROJECT EVALUATION

The purpose of the following questions is to obtain feedback from individuals who participated in the mediation pilot project. From this information we will measure its success and determine whether or not a permanent mediation program will provide better service to court users. All answers are confidential.

### TO BE FILLED OUT BY MEDIATOR:

DATE: \_\_\_/\_\_\_/\_\_\_ MEDIATOR \_\_\_\_\_ MMP NHMP WSMC  
(CIRCLE ONE)

CASE # \_\_\_\_\_ LENGTH OF MEDIATION \_\_\_\_\_

### TO BE FILLED OUT BY PARTY:

1. Are you a  plaintiff or a  defendant?
2. Do you feel that the mediator was fair to both sides?  
 Yes  No
3. If your answer to the above questions is no, which side did s/he favor?  
 Plaintiff  Defendant
4. Did the mediator give both parties a full opportunity to explain their case?  
 Yes  No
5. Was there enough time for the mediation process?  
 Yes  No  Too much time
6. If your answer to question 5 is no, how much more time was needed?
7. Did you settle?  Yes  No
8. If your answer to question 7 is no, why not?
9. How do you feel about the mediation process?

Please drop completed evaluation in box on table in waiting area.  
Thank you for your time in filling out this evaluation.

# ATTACHMENT F

Attachment F

Referee Evaluation Letter

\*  
\*  
\*  
\*

Dear \*,

On April 29, we ended our 6-month Conciliation Court Mediation Pilot Project. Overall, we are pleased with the results. The settlement rate for the 6-month period averaged 44%. The response rate on the exit surveys was about 90%. Of that, the satisfaction rate for the mediation experience was also 90%. Based on other court mediation programs around the country, these are pretty impressive statistics for mandatory mediation.

Over the next few months we will be reviewing the statistics and data collected from the project to make our report to the Minnesota Supreme Court and to develop a permanent mediation program in Conciliation Court.

To help us with the process, we need the perspective from the Bench. We would appreciate hearing from you about any concerns or suggestions you may have regarding the pilot project and mediation in Conciliation Court.

We also want to take this opportunity to thank you for assisting us with the project. The satisfaction rate of the litigants is truly indicative of an environment where many people believed the justice system was more accessible and responsive to their issues.

As you continue your service on the Conciliation Court Bench, we look forward to working with you as we expand our mediation services in this area. The new Conciliation Court site in city hall will provide an environment more conducive to mediation. We anticipate moving to that space early in 1998.

We look forward to your assessment of the project. Please send it directly to me at the address below.

Thank you for your time.

Most sincerely,

Elisabeth Steinbring  
Coordinator, Pro Se/Pro Bono Services  
Hennepin County District Court  
C-851 Government Center  
Minneapolis, MN 55487

Cc: Judge John Stanoch  
Mary Gagne  
Lynn Lahd



O s k i e      B a u c h , P . A .

Attorneys & Counselors at Law

June 24, 1997

Ms. Elisabeth Steinbring  
Coordinator, Pro Se/ Pro Bono Services  
Hennepin County District Court  
C-851 Government Center  
Minneapolis, MN 55487

Dear Ms. Steinbring:

Thank you for your June 5, 1997, soliciting my input regarding the Conciliation Court Mediation Pilot Project. I apologize for the delay in responding to your letter.

Over all, I thought that the Conciliation Court Mediation Pilot Project was a success. This is based on my observation while serving as a referee on three separate occasions during the term of the pilot project.

It was my observation that the litigants did not initially understand the concept of mediation. I, therefore, chose to deviate from the prepared mediation speech. I took additional time to very carefully explain the mediation concept to the parties. In addition, I went on to explain that a successful mediation results from the parties compromising from their initial positions. I further explained that only with the parties willingness to compromise is mediation successful. Finally, I explained to the parties that should mediation be unsuccessful and their case was presented to the Court for a decision, one party was very likely going to be very unhappy when the Court's decision reached them within several days. In making this statement, I informed the parties that the nature of litigation usually meant that there was a winner and a loser. In talking to several mediators, they informed me that they felt that this more expansive explanation of the mediation and Court process made the parties more receptive to attempting to resolve issues through mediation. They also felt that the parties had a better understanding of the mediation process.

The only other suggestion that I have with respect to the Pilot Project, should it become a permanent fixture in Conciliation Court, is to break each half day's Court session into two distinct sessions; for example, the morning session having an 8:30 a.m. and 10:00 a.m. calendar. In two of the three

David Oskie & Walter G. Bauch

970 Ray - 013 Ave. Ste 200

St. Paul, MN 55104

Phone 612.644.8037

Fax 612.644.7511

Attachment F

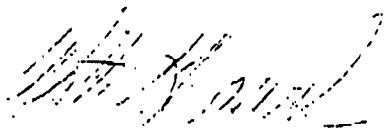
Ms. Elisabeth Steinbring  
June 24, 1997  
Page Two

mediation calendars in which I was involved, there were numerous contested cases and a shortage of mediators. As a result, quite a few parties were left sitting in the Court Room for several hours before their case was heard. I heard several complaints about this from parties who were forced to wait for several hours. Hopefully, by breaking up a session into two distinct calendars, the waiting time would be cut.

I sincerely appreciate the opportunity to provide you with my thoughts regarding the Mediation Project. I hope that you will find my comments useful and constructive. If you have any additional questions or comments, please feel free to contact me.

Sincerely,

OSKIE & BAUCH, P.A.



Walter G. Bauch

WGB/jah

cc: Hon. John Stanoch, District Court Judge  
Mary Gagne  
Lynn Lahd

STATE OF MINNESOTA  
DISTRICT COURT OF MINNESOTA  
FOURTH JUDICIAL DISTRICT



DISTRICT COURT ADMINISTRATION  
12TH FLOOR COURTS TOWER  
HENNEPIN COUNTY GOVERNMENT CENTER  
MINNEAPOLIS MINNESOTA 55487-0421  
FAX 612 308-3131

May 30, 1997

Dear Mediator,

On April 29, we ended our 6-month mediation pilot project. There were many successes in this project. The settlement rate for the 6-month period averaged 44%. Also, we received a 90% satisfaction rate for the mediators and the overall concept of mediation. These are high statistics considering that mediation during the project was mandatory. There were also a few expected bumps and bruises, all of which provide us with the knowledge and information we need to plan for the future of mediation in conciliation court.

Over the next few months we will be reviewing the statistics and data about the project to make our report to the Minnesota Supreme Court and to develop a permanent mediation program in conciliation court. To help us do this we need some input from you on your experience with the pilot project.

On the back of this letter are a couple of guiding questions to give you an idea of what type of information we're looking for. Use additional paper if necessary. Please return to your mediation program director or to me at the address below by June 15.

We thank you for your participation in this project. We appreciate your anticipated respond to our questions in this letter. We look forward to working with you in a more permanent setting when conciliation court is relocated to its newly renovated space in city hall early next year.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elisabeth Steinbring".

Elisabeth Steinbring  
Coordinator, Pro se/Pro Bono Services  
Hennepin County District Court  
C-851 Government Center  
Minneapolis, MN 55487

Cc: Judge John Stanoch  
Mary Gagne  
Lynn Lahd

## HENNEPIN COUNTY CONCILIATION COURT MEDIATION PILOT PROJECT-MEDIATOR QUESTIONNAIRE

Please identify any issues or experiences you had during the mediation project that would be helpful for our planning a permanent mediation program in Conciliation Court. These issues may include concerns with forms, court staff, referees, mediators, and space. When identifying a problem, please suggest a way in which we might remedy it. Return to your mediation program director, OR Elisabeth Steinbring, Hennepin County District Court, C-851 Government Center, Minneapolis, MN 55487, by June 15.

1. **PROBLEM AREA:** The court clerk first gives all the rules about mediation, then the referee enters and gives the same information. Seems like a lot of duplication of effort, and a waste of time.
1. **SOLUTION:** Just have the referee give the info talk. The mediators fill in the basic material information at the beginning of the case any way.
2. **PROBLEM AREA:** Start time. The mediators are told to be there at 8:30am, it seems that the session is to start at 9:00am. I have yet to see one start on time.
2. **SOLUTION:** Have the referees start the session on time.
3. **PROBLEM AREA:** Accommodations. Room size-Twice I have had to find rooms in other parts of the building to accommodate the number of parties present. Not all rooms have doors for privacy.
3. **SOLUTION:** Before the session begins the question should be asked if more than five people are involved in any one case, then proper rooms could be found or set aside for these cases. It will save lots of time. Put up doors.
4. **PROBLEM AREA:** Training. It seems that some things were changed in the way you wished agreements to be written. I felt that the court clerk was giving us, the mediators instructions on a catch as catch can basis.
4. **SOLUTION:** If you are going to continue this program some more training should be given on how you wish the mediators to write agreements and better follow the courts rules. If not then mabeey a check list of things that must be included so we may monitor

# **ATTACHMENT G**

10-17-96 DRAFT ORDER

WHEREAS, the Fourth Judicial District desires to establish a pilot program to evaluate the use of mandatory mediation in conciliation court cases as described in the Conciliation Court Pilot Program Outline dated October 17, 1996; and

WHEREAS, trained mediators for this program will be provided by the West Suburban, North Hennepin and Minneapolis Mediation Centers which are part of the Hennepin County Community Dispute Resolution Program established under Minnesota Statutes section 494.04; and

WHEREAS, the court is advised in the premises;

NOW, THEREFORE, it is ordered that:

1. A pilot program is hereby established in the Fourth Judicial District to evaluate the use of mandatory mediation in conciliation court cases scheduled for hearing from November 1, 1996 to April 30, 1997 (herein the "Pilot Program"). For any case included in the Pilot Program, the court may require the parties to participate in court sponsored, non-binding mediation prior to their initial hearing in conciliation court. If the parties are unable to resolve their dispute through mediation, the conciliation court shall promptly hear the case on the same day as the mediation session.
2. Minn.Gen.R.Prac. 114.07, 114.08 and 114.10 shall apply to mediation conducted as part of the Pilot Program;
4. The parties shall not be required to pay for mediation under this Pilot Program; and
5. Within sixty days following completion of the Pilot Program, the Fourth Judicial District shall submit to this Court a full report on the effectiveness of mediation in conciliation court cases, including the number of cases referred to mediation, the number of cases settled, and the impact and on, and perception of, litigants involved in the Pilot Program cases.

# ATTACHMENT H

**HENNEPIN COUNTY DISTRICT COURT  
CONCILIATION COURT DIVISION  
MEDIATION PILOT PROJECT**

Case No. \_\_\_\_\_

I \_\_\_\_\_ am the attorney for \_\_\_\_\_, in the  
matter of \_\_\_\_\_ vs \_\_\_\_\_

**I acknowledge that I have read the Minnesota Supreme Court Order mandating mediation in Conciliation Court cases in Hennepin County District Court.**

**I am aware that the order requires the Fourth Judicial District to submit to the Supreme Court a report on the effectiveness of mediation in Conciliation Court cases.**

**I believe my client's case is inappropriate for mediation because:**

**Therefore, my client will not participate in the mediation process.**

**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Attorney Signature**

\_\_\_\_\_  
**Attorney**

\_\_\_\_\_  
**Address/Phone No./Attorney I.D.#**