

Traditionally  
Managed Court  
Cases Compared to  
Cases Managed with  
Alternative Dispute  
Resolution in  
Four Randomly  
Selected Jurisdictions



Administrative Office  
of the Courts  
Statistical Analysis and  
Applied Studies

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# Abstract

This research gathered baseline data to compare the number of days from filing to disposition for selected cases assigned to Alternative Dispute Resolution (ADR) with a similar number of cases assigned to traditional case management. It also examined whether a basis for comparison of ADR programs between and among different jurisdictions was possible. Finally, the research explored whether cases assigned to ADR had fewer subsequent filings than cases managed by traditional court processes.

The staff of the Administrative Office of the Courts (AOC), District Court Administrators (DCA), and judges involved in the local ADR program selected the Oak jurisdiction as the source for baseline data. Oak and the three other jurisdictions selected were based on the longevity of the ADR program, the consistent management of ADR cases, and the high rates of referral to ADR. Data collection was limited to general civil and domestic relations cases. The comparison was based on filings and dispositions from 1999 to 2008.

The analysis of the processes associated with ADR in this study lacks the rigor of “pure research” conducted in an academic environment or in a formal research setting. This study is best described as “exploratory research.” Exploratory research assumes that a formal statistical research design does not actually exist prior to the study and often seeks to determine if such a design is practical, possible, or meaningful.

Research staff matched cases disposed using ADR with traditionally managed cases. Cases were matched based on case type, year of filing, number of attorneys for the plaintiff and for the defendant,

pro se by both parties, pro se with at least one attorney, the number of attorneys by either or both parties, and simple, moderate, or complex action within a case. Cases were randomly drawn from a list provided to the researcher by the district court administrator and the ADR director.

Descriptive statistics were generated for each jurisdiction and used to compare the mean, median, and mode. (See Appendix B) The differences in time from filing, to assignment to ADR, to the end of ADR, and the final court ordered disposition between and among the jurisdictions were compared using t-tests. Statistically significant differences were set at the 0.05 level or greater probability.

The analyses were mixed. There were variations across all jurisdictions when the mean, median, and mode were analyzed. There were statistically significant differences when cases assigned to ADR were compared to cases not assigned to ADR based on the time from filing, to assignment to ADR, to the end of ADR, and the final court ordered disposition were compared between and among the jurisdictions.

These analyses effectively demonstrate that data on ADR cases can be collected and statistically compared from jurisdiction to jurisdiction. The results suggest that a statistically representative sample be collected to establish statewide baseline data for ADR cases. The variability in the results also appears to suggest that there are organizational differences at the local level contributing to the mixed results.

The data was insufficient to determine whether ADR cases resulted in fewer subsequent filings. A larger sample is required to reach a sound conclusion.

## I. Conclusions

A. The data analyzed in this research project does not support the commonly held assumption that ADR reduces the days from original filing to final disposition. The ADR findings in this limited study agree with other similar research conducted nationally. The national studies show both decreased Days to disposition and increased days to disposition and are contradictorily inconclusive.

B. The effects of ADR on case processing time appear to have more to do with local procedures and policies than with the mediation processes alone.

C. ADR needs to be analyzed with a larger database than is currently available to demonstrate its effectiveness as a tool for improved case management using more consistent caseload reports and an objective database. At this time, the current understanding of ADR depends largely on anecdotal sources.

D. Local program directors assert that the programs meet the needs of the local courts even though their programs are managed differently from jurisdiction to jurisdiction. While there is no reason to doubt these claims, it is apparent that local judges lack a set of Standards to compare the success of their programs against other programs. Comparison of programs between and among jurisdictions could be more effective if appropriate time standards were promulgated by the Supreme Court or the Judicial Council in conjunction with the Georgia Commission on Dispute Resolution.

E. The responsibilities and duties of the local program Board of Trustees of the County Fund for the Administration of Alternative Dispute Resolution Programs under the current laws are indisputable. The fact that a superior court judge acts as the chairperson of the Board and that the fees are collected for the operation of the programs appears to be ample justification for setting such standards at the state level. Thousands of litigants and millions of dollars are involved.

F. Observations during the on-site visits confirm a lack of standardization, consistency in procedures, transparency, and accountability for local programs despite the necessary uniformity required in the ADR Rules. These findings are neutral and the effects on ADR may or may not explain the mixed results. The programs visited are autonomous and have varying degrees of oversight by the local boards. Local Memoranda of Understanding manage the operations among the circuits, counties, or both more than by any state rules.

G. The credentials of individuals conducting case reviews to determine whether cases will be assigned to the local ADR program vary from jurisdiction to jurisdiction in the group studied. Screening by a judge's secretary or routine assignment of all domestic relations cases to ADR leads to a wide range of practices in this group of jurisdictions, and neither is altogether problem free. Case review of the ADR program may require further review on the state level if the outcomes are to be improved, enhanced, or made more effective.

H. The Office of Dispute Resolution (ODR) and the Georgia Commission on Dispute Resolution would greatly benefit from the development of a practical, easily implemented scope statement, a uniform evaluation system of the ADR, and measurable goals and objectives. This plan should include a statewide audit of the financial status of the local programs.

I. The data presented in the Annual Report<sup>1</sup>, FY 2006, of Alternative Dispute Resolution in the Georgia Courts (ADR Annual Report) collected and published by the ODR gives policy makers valuable information. The 2007, 2008, and 2009 ADR Annual Reports need to be published as soon as possible. Budget constraints, lack of senior judge availability and crowded dockets make the need for timely data imperative for discussion among the Judicial, Executive, and Legislative branches. Effective ADR could be a factor in reducing the number of cases handled by the judges.

K. Continuous efforts need to be implemented to expand ADR into the criminal courts, into the other courts of record, and cover all case types.

L. A future publicity campaign should be launched to inform the public of the advantages of ADR.

M. A set of strategies should be developed for “fast tracking,” scheduling a firm “day-certain” for mediation, judicial monitoring and integrating ADR into differentiated case management.

N. A report form developed for dissemination to the judges in the jurisdiction should be implemented following the requirements in Uniform Superior Court Rule 39.9. After implementation, such report should be available to the judges upon request and routinely prepared at least monthly.

## II. Background

Court processes in Georgia changed when ADR was implemented across the state and the effects have been pervasive. These changes are particularly noticeable since the ADR process removes a case from direct court management during the mediation process. The effects of the ADR changes remain unclear since the data analyzed in this project is not statistically representative of cases on a statewide basis. The problem with analysis of the effects of ADR is further compounded since the actual number of cases referred to ADR represents only a small percentage of all general civil and domestic relations cases filed. The data published in The ADR Annual Report shows that only 14,637 cases were referred to ADR in FY 2006. Data from the calendar year 2006 Annual Report on the Work of the Georgia Courts shows that 393,940 cases were filed in the superior courts resulting in about 3.7% of filings referred to ADR.

As stated by the National Center for State Courts, “Every state has some type of court-connected ADR at some level.” Most judges, court administrators, clerks of courts, and court staff generally maintain that ADR reduces time to disposition, is cost-effective, and leads to more satisfied litigants. These general outcomes may contribute to the satisfaction and spread of ADR; however, the objective analysis of data relating to these outcomes is mixed.

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<sup>1</sup>This report is the latest produced by the Georgia Office of Dispute Resolution. See appendix 1 for recommendations concerning the ADR Annual Report.

The Georgia courts are under pressure from decreasing judicial branch appropriations, loss of senior judge assistance, increasing caseload, and the lack of newly created judgeships. ADR could do a great deal to resolve cases that ordinarily would be heard by the judge effectively reducing the number of cases a judge must manage.

Comparison of ADR processes would help determine a statewide baseline standard by which districts and circuits could compare their programs with other programs. Comparisons with other jurisdictions could demonstrate the strengths and weaknesses of the local program. In turn, the local jurisdiction could implement changes to the processes, procedures, and adopt “best practices” to increase the effectiveness of its program based on such a comparison.

Three questions were examined in this project:

**1. Can a set of baseline data be determined to compare ADR managed cases across jurisdictions<sup>2</sup>?**

**Answer 1:** Yes, the planned methodology utilized in this study demonstrated that a baseline can be configured to compare ADR from jurisdiction to jurisdiction. At this time, the sample consists of four jurisdictions and conclusions should be considered cautiously.

**2. Can data be collected to demonstrate differences in the processes and outcomes in the management of ADR cases from jurisdiction to jurisdiction?**

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<sup>2</sup>These ADR programs are in both single county circuits and multiple county circuits. Using “jurisdiction” avoids semantic confusion since ADR programs are district-wide, circuit-wide, or a group of counties in a circuit.

**Answer 2:** Yes, the data collected in this study produced findings that compare the ADR intervals<sup>3</sup> within and between the four jurisdictions.

**3. Do cases resolved and closed using ADR result in fewer follow-up cases than cases processed without ADR?**

**Answer 3:** The answer to this question is preliminary at best. The sample from the four jurisdictions was small and did not yield enough cases managed with and without ADR to reach a firm conclusion. The answer is further confounded since the court-managed and ADR managed cases, 17 occurrences, had just about the same number of post-adjudication filings.

## Discussion

Determining a baseline for a valid and reliable comparison of ADR cases to establish a statewide baseline or a standard is somewhat problematical. Among the six logical<sup>4</sup> comparisons of cases in this study show mixed results which conforms to national research findings. Despite not obtaining a statistically valid and reliable statewide ADR baseline, this study did successfully demonstrate that the methodology can be used successfully to collect a larger and broader sample from which valid generalizations to the state could be realized. The data in this study describes only the individual jurisdictions from which the samples were drawn.

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<sup>3</sup>The intervals, expressed in days, are the days from original filing to referral to ADR, from referral to ADR to the end of the ADR process, and the end of the ADR process to final disposition.

<sup>4</sup>The logical possibilities are a comparison of Oak with Pine, Oak with Cedar, and Oak with Poplar in the first round. The second round is a comparison of Pine with Cedar, Pine with Poplar. In the final round, Cedar is compared to Poplar. This exhausts the logical comparison between and among the four jurisdictions.

### III. Expert Opinion

Research at the federal, state, and local levels studied the presumed effects of ADR. Evaluation of ADR effects on case processing have included time to disposition, reduction in costs, attorney satisfaction, litigant satisfaction, and rate of resolution to name but a few.

Mahoney (1988) found that a comparison of conventionally managed cases and ADR cases in 17 courts were not correlated with pace of litigation. Mahoney also reported that data about the kinds of ADR programs were inconclusive, that ADR arbitration effects were mixed, some evidence that early neutral evaluation reduced time to disposition, and that family mediation results were mixed.

Keilitz (1994) edited the publication of the findings from a symposium on ADR, and reported, "One limitation of the body of research and evaluation of ADR is that it has produced diverse and sometimes conflicting findings." She later writes, ". . . lack of ready accessibility to judges, court managers, and program administrators." contributes to the shortcomings of ADR evaluation. She concludes her preface with the following remarks concerning the themes that emerged from the symposium. She says that the courts need to know more about the dynamics of the litigation process. She also says information about the expectations of attorneys regarding how ADR fits into the traditional court processes is not comprehensive. Later she continues saying that there is a need for reliable findings on the benefits of ADR; about the most effective methods for training, qualifying, and selecting ADR providers; innovative measures of participant satisfaction with ADR. She recommends that courts have better access not only to research findings, but also to

practical guides for implementing, operating and evaluating ADR programs.

Steelman (2000) writes that ADR may have positive effects on litigant satisfaction, case processing, and use of judicial resources. Additionally, he states that lower costs associated with ADR may be uncertain. His main recommendation is to integrate ADR into the case flow management as a routine part of court processes.

Emery, Sbarra, and Grover (2005) researched divorce mediation during a 12-year longitudinal study. They found that parents who participated in mediation made more changes to their agreement prior to disposition resulting in mutual resolution of the issues. In addition, the group reported that satisfaction among the mediated group was higher than the satisfaction of the non-mediated parties. The effect of mediation on parental contact showed that the mediated group made more contact than the non-mediated group, 39% and 9% respectively.

Shack (2007) has compiled an impressive bibliography concerning court-related mediation programs. She references studies dealing with general civil, bankruptcy, worker's compensation, family, child protection and dependency, juvenile, adult criminal, small claims, community mediation, and appellate cases. The effects of ADR across this broad range of programs were mixed. Family, child protection and dependency, and juvenile cases used innovative methodologies; however, analysis made it clear that ADR has a positive effect on these most sensitive cases.

## IV. Analysis

### Preface

A fundamental requirement of research into court procedures, functions, and outcomes is the need for two classes of baseline data. First, there should be an objective<sup>5</sup> and subjective understanding of how ADR functions within the courts of the state. These data tentatively provide a statewide benchmark against which regions, individual circuits or courts, and specific programs can be compared between and among the courts. Second, similar base line data are needed to quantify and qualify specific programs such as ADR, first offender cases, and drug court cases among many other programs.

The judicial branch has made significant progress toward being able to collect and analyze data to establish<sup>6</sup> such baselines, but more progress is needed. This would include case type uniformity among the counties to be sure that a case docketed as a “contract” in one county would be the same as a “contract” in other counties, for example. There should be a common set of data elements for each case type having the same definition from county to county. Such elements should include the disposition date, the amount in controversy, whether the case is disposed by ADR, non-trial,

or jury trial. Other helpful data elements should include the number of attorneys, whether the case deals with children, child support, or trade secrets.

The data presented in this report can become increasingly more reliable for analysis with quantitative statistical methods and standardized qualitative analysis as the judicial branch moves toward the collection of uniformly defined data, accurate data, and tentative baseline averages.

There have been attempts to collect such data concerning a wide range of topics<sup>7</sup> over the past two decades. The objective data has proven to be so varied as to render statistically based conclusions invalid or suspect at best. This study is among the first<sup>8</sup> conducted in the state dealing with a court-annexed program; as such, cautious and limited interpretations of the data are mandatory.

This study and its conclusions do not pretend to meet statistical rigor since the “normal” values comprising a standard of cases in Georgia has not been conclusively determined. Even so, most criminal and civil cases are disposed relatively sooner rather than later. As such, the following summary should be given careful consideration and not be generalized to all ADR managed cases across the state.

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<sup>5</sup>Broadly speaking, this requires numerical data such as average days from filing to disposition, the age of the open caseload, the ratio of filings to dispositions, the percentage of bench and jury trials, and other numerical measures. Other indexes include such subjective measures as access and fairness, sentencing patterns, the state of the dockets, and continuances; these measures are primarily subjective but can be assessed numerically to some extent.

<sup>6</sup>Data elements such as those cited in fn2 should be compared to national standards or standards set within the state itself.

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<sup>7</sup>Such topics have included time to disposition for court proceedings in child support cases, criminal trial time, multiple criminal defendants, and drug court staffing and hearings, among others. The studies were done internally and have not been published.

<sup>8</sup>Eaton and Talarico have conducted landmark data analysis of tort cases, and Applied Research Associates has done extensive analysis of criminal cases.

## Analytical Findings

### I) Comparison between Jurisdictions: Days from Original Filing to Final Disposition of Court Managed Cases

Logical Comparisons	Average Days	Statistical Results
A. Oak with Pine	278 vs 217	<b>Different</b>
B. Oak with Cedar	278 vs 200	<b>Different</b>
C. Oak with Poplar	278 vs 179	<b>Different</b>
D. Pine with Cedar	217 vs 200	Not Different
E. Pine with Poplar	217 vs 179	Not Different
F. Cedar with Poplar	200 vs 179	Not Different

### II) Comparison between Jurisdictions: Days from Original Filing to Final Disposition of ADR Managed Cases

Logical Comparisons	Average Days	Statistical Results
A. Oak with Pine	390 vs 376	Not Different
B. Oak with Cedar	390 vs 329	Not Different
C. Oak with Poplar	390 vs 269	<b>Different</b>
D. Pine with Cedar	376 vs 329	Not Different
E. Pine with Poplar	376 vs 269	<b>Different</b>
F. Cedar with Poplar	329 vs 269	<b>Different</b>

### III) Comparison between Jurisdictions: Days from Original Filing to Final Dispositions of ADR Managed Cases without the ADR Time Interval

Logical Comparisons	Average Days	Statistical Results
A. Oak with Pine	313 vs 260	<b>Different</b>
B. Oak with Cedar	313 vs 201	<b>Different</b>
C. Oak with Poplar	313 vs 231	<b>Different</b>
D. Pine with Cedar	260 vs 201	Not Different
E. Pine with Poplar	260 vs 231	Not Different
F. Cedar with Poplar	201 vs 231	Not Different

## Analytical Findings

### IV) Comparison between Jurisdictions: Days from Original Filing to Referral to ADR

Logical Comparisons	Average Days	Statistical Results
A. Oak with Pine	208 vs 191	Different
B. Oak with Cedar	208 vs 54	Different
C. Oak with Poplar	208 vs 97	Different
D. Pine with Cedar	191 vs 54	Different
E. Pine with Poplar	191 vs 97	Different
F. Cedar with Poplar	54 vs 97	Different

### V) Comparison between Jurisdictions: Days from Referral to ADR to End of ADR

Logical Comparisons	Average Days	Statistical Results
A. Oak with Pine	77 vs 116	Different
B. Oak with Cedar	77 vs 128	Different
C. Oak with Poplar	77 vs 38	Different
D. Pine with Cedar	116 vs 128	Different
E. Pine with Poplar	116 vs 38	Different
F. Cedar with Poplar	128 vs 38	Different

### VI) Comparison between Jurisdictions: Days from End of ADR to Final Disposition

Logical Comparisons	Average Days	Statistical Results
A. Oak with Pine	105 vs 69	Different
B. Oak with Cedar	105 vs 147	Different
C. Oak with Poplar	105 vs 134	Not Different
D. Pine with Cedar	69 vs 147	Different
E. Pine with Poplar	69 vs 134	Different
F. Cedar with Poplar	147 vs 134	Different

## Analytical Findings

### VII) Comparison within Jurisdiction: Court Managed Cases with ADR Managed Cases

Logical Comparisons	Average Days	Statistical Results
A. Oak with Oak	278 vs 390	Different
B. Cedar with Cedar	376 vs 217	Different
C. Poplar with Poplar	200 vs 329	Different
D. Pine with Pine	179 vs 269	Different

### VIII) Comparison within Jurisdiction: Court Managed Cases with ADR Managed Cases without the ADR Days Interval

Logical Comparisons	Average Days	Statistical Results
A. Oak with Oak	278 vs 313	Not Different
B. Cedar with Cedar	217 vs 260	Not Different
C. Poplar with Poplar	200 vs 201	Not Different
D. Pine with Pine	179 vs 231	Different

## V. Methodology

### Procedures

1. Lists of cases referred to ADR were provided to the researcher by the DCA in consultation with the ADR Directors or Coordinators in the four jurisdictions. The lists included all cases from Calendar Years 2004, 2005, 2006, and 2007. In one jurisdiction, cases were selected from a single year - 2007.

2. The researcher randomly selected 150 cases from each of the lists. These cases were entered into a working database and provided a reference to each case resolved by ADR. Random selection was limited to cases that had a partial or a full-settlement. Cases where ADR ended prior to a resolution were skipped and the next settled case was selected.

3. Each case file was reviewed and the date the case was originally filed and finally disposed was entered into the working database. The date the case was referred to ADR and the date each case completed ADR was collected.

4. Each case file was reviewed<sup>9</sup> and notations were made detailing the number of attorneys in the case, whether pro se litigants were present, and an assessment of the case complexity. Complexity was classified based on whether there were multiple parties, counterclaims, cross-complaints, motions, expert testimony, medical reports, land surveys, third party monetary assessments, psychological assessments, custody evaluations, guardian ad litem, or changes in attorney status.

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<sup>9</sup>Cases without ADR documentation were skipped, and the next case file on the ADR list was reviewed. Cases where an order to attend ADR were present but no further ADR documentation was present were also skipped and the next case was selected from the ADR list.

5. Analysis from other unrelated studies of the general civil and domestic relation dockets identified three levels of complexity<sup>10</sup>: simple, moderate, or complex. Simple cases were so designated if only one or two issues were being contested. Moderate cases were so designated based on whether a counterclaim was made, whether discovery was uncomplicated, whether there were more than two attorneys. Sixteen of the 414 cases reviewed were specially classified as highly complex since the cases involved many combinations of elements, multiple filings, complex discovery, many motions, and several changes in legal representation.

6. Court managed<sup>11</sup> case files were randomly pulled from the shelves and reviewed to match each file with a case in which the participants elected to utilize ADR. Matching cases proved to be comprised of nearly one-to-one cases. Nine cases were unique and were matched with court managed cases using a “best fit” approach<sup>12</sup>.

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<sup>10</sup>The three descriptions of the case complexity presented are the minimal, base characteristics of each classification. More often than not each specific classification included less frequently occurring characteristics such as the defendant being served by publication, involvement with other courts such as a juvenile court custody assessment, or one party's tardiness delayed the ADR session. Close adherence to the defined degrees of complexity reduced the likelihood of subjective biases; even so there was a subjective component to the classification. The biases tended to consistency since only one researcher conducted case file review.

<sup>11</sup>Court managed cases identify general civil and domestic relations cases that were filed and disposed without ADR intervention. Many litigants refused to participate in ADR even though it was ordered by the judge.

<sup>12</sup>For example, one case involved a great many distinct issues associated with the production of a film. It lasted over five years and parties were dismissed and added during extensive discovery. Expert witnesses were called throughout the proceedings and financial experts were called by each party. A similar case in that jurisdiction had many of these same occurrences but did not deal with the production of a film; hence, the designation of a “best fit” match.

7. Data from the court files were compared to reports generated by the Superior and State Court Information System<sup>13</sup> (SSCIS). Twenty-two cases were removed from the data set since the filing and disposition dates were not consistent<sup>14</sup> with data obtained from the files.

8. No court managed cases were deleted since the filing and final disposition dates obtained from the file review were consistent with the SSCIS reports.

9. Data was subjected to statistical review.

10. All comparative statistics were tested at the 0.05 level

### Assumptions

1. Superior court judges across the state act similarly<sup>15</sup> during court proceedings and their actions are undertaken to the best of their ability in compliance to law and court rules.

2. Superior court clerks maintain<sup>16</sup> the files of each case with attention to detail, accuracy, and completeness.

3. ADR programs included in this study operated in accordance with the statutes and the Alternative Dispute Resolution Rules (ADRR).

4. Review of cases for referral to ADR was surveyed by qualified<sup>17</sup> court personnel without bias.

5. ADR program staff uniformly managed each case in conformity with the ADRR.

6. Staff of the ADR program conducted each case with integrity, diligence, fairness, and confidentiality.

### Observations

1. Oak, Pine, and Cedar processed both general civil and domestic cases; Poplar heard only domestic<sup>18</sup> cases.

2. Each jurisdiction has different procedures for reviewing cases for possible assignment to ADR. The superior court judge's secretary reviewed cases in Cedar; ADR staff reviewed the cases. Many cases in all four jurisdictions are reviewed very soon after filing; many other cases are reviewed after service has been perfected. To

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<sup>13</sup>There are some problems with the data in the SSCIS, but this study and two other earlier studies indicate that the case filing and disposition dates are reliable. Variations in the final disposition date are frequently observed; the differences seem to be mostly related to the date the final order is signed and the date that the file is stamped as "disposed" in the clerk's office. The differences are most frequently limited to three to five days. The differences are important but were judged to have minimal, if any impact, on the elements of this study.

<sup>14</sup>For example, two of the ADR reports had only the date of referral to ADR and the date ADR was completed. If the date of final disposition in the file occurred before end of the ADR process; then the file would be deleted from the database.

<sup>15</sup>Of course, all judges are different when individual attributes, such as temperament, experience, ability, and knowledge, are considered but each shares jurisdiction, uniform rules, and standard court practices such that a judge can sit in all other superior courts. This study acknowledges that the attorneys before the court have tremendous influence on the actual processing of a case from filing to disposition.

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<sup>16</sup>A derivative finding in this study demonstrated that the "state of the dockets" in these four jurisdictions is well maintained.

<sup>17</sup>The rules of ADR states that review must be managed by individual's who have completed specified training. See Alternative Dispute Resolution Rules; Appendix A, 2.2.4. (Analysis or assessment of this aspect of the study was outside the scope of the project.)

<sup>18</sup>In this set of data, there were three contract/account cases and one tort case from early 2005.

a lesser extent, other cases were reviewed after discovery. In the remainder of cases, the judges ordered ADR after it was apparent that a case appeared unlikely to settle without further and extensive court proceedings. It seems that some small number of cases go to ADR after both parties agree to do so.

3. Most cases reached agreement after one session; a very small number of cases required more than one session of ADR, usually two sessions, but one case met three times. In two instances, a case was referred to ADR for a second time.

4. More often than not, the case file had a formal report to the judge about the success of the ADR process.

5. Generally, the agreement reached was in the file and was amended to the final order disposing of the case. Slightly more often one party produced a draft final order with the agreement included.

6. There were significant differences in how long a case was assigned to ADR before the ADR process reached a disposition. It was clear, more often than not, that it was difficult to find a mutual date for both parties to meet. Most frequently, it was not possible to determine why the ADR interval was extended.

## Related Observations

1. ADR staff in three of the four jurisdictions was emphatic that they did not want the State ADR Office to interfere with their programs. They also stated that they were well satisfied with the program management at the local level. They seemed to imply that the “local board” was managing the program without state level oversight.

2. The ADR staff offered different processes being used to refer cases to ADR. One used the original filing of the case for first review. Another used the perfection of service as the trigger for ADR review. One court used the end of discovery at the most appropriate date for ADR referral. Review of the actual files showed variation in referral to ADR.

3. Some cases were referred to ADR even though the litigants appeared to have an agreement at the time of filing. This was most frequent with both parties proceeding pro se and mostly dealt with divorce proceedings.

4. In one jurisdiction, the ADR staff director seemed to be the primary mediator.

5. None of the jurisdictions explained how the mediator was chosen.

## Appendix A: Recommendations Regarding ADR Annual Report

**Comment:** Enhancing certain subsections of the ADR Annual Report would increase the information needed by policy makers. These enhancements would effectively increase the perception that the programs, at the state level, are relevant, are effective, and comprehensively well managed – particularly to the Governor and General Assembly.

### Suggested Enhancements:

1. Data should be published on the number of newly certified mediators, the number of mediators who have left the court annexed ADR programs, the number of cases processed by the mediators, and the number of mediators by classification<sup>19</sup>. This section should also include the number mediators that are removed from the registry and a general description of the reason for removal.
2. It would increase the usefulness of the information to state and local decision makers the data in the section “Programs by County” if the data were organized by a classification scheme as a prefatory summary to the table “ADR<sup>20</sup> Processes Offered by County.”
3. The “Statistic Tables” (sic) would be enhanced if it were a distinct section of the ADR Annual Report. Pie charts are extremely effective and should be limited to the annual report

only in the year reported. It is difficult to gain a quick, comprehensive understanding of change over time by means of comparing a sequence of pie charts. The data would be enhanced if the historical data was displayed in line or bar graphs. A similar data presentation strategy would benefit the data presented in the section titled “ADR Activity” and the breakdown of the data in the sections titled, “Superior Court,” “State Court,” “Juvenile Court,” “Probate Court,” and “Magistrate Court.”

4. The section titled “Programs & Statistics” needs to be reconsidered. For instance, in the Fiscal Year 2006 ADR Annual Report at page 59, for example, the data presented is unclear. The chart shows that 36 cases were referred to ADR and that 28 were settled or dismissed. The reader might rightly conclude that 8 cases actually proceeded to ADR. However, the reader might question if there were cases that were filed in prior years and mediated during the index year. This presentation would be greatly enhanced if it followed the standard caseload reporting practice where there would be the number of pending cases, the cases filed in the index year, the cases disposed, and the end pending.

5. The ADR Annual Report should include basic statistics about the aging of the pending cases using standard caseload reporting practices where cases are classified as pending, backlog, cases 4 to 6 years old, and the number of cases assigned to ADR that are disposed by the 5 Year Administrative Rule.

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<sup>19</sup>The Annual Report describes general mediators, case evaluators, early neutral evaluators, arbitrators, and specialized domestic relations mediators.

<sup>20</sup>Such a scheme might include the following classifications MAE, MA, ME, AE, M, A, and E. This would have the counties listed in each classification.

6. The ADR Annual Report should include the number of cases processed by summary trials and mini-trials.
7. The ODR should have a standard evaluation program in full compliance with the rules published in Appendix A. 10.1 and 10.2 of the Alternative Dispute Resolution Rules and the data should be reported in the ADR Annual Report.
8. The evaluation protocols should be published on the ODR website and sent to the chief superior court judge in the jurisdiction, the program directors, and the certified mediators.
9. The evaluation protocols should be fully annotated, have plain and clearly stated specific instructions, and examples.
10. The evaluation should be undertaken, on a preliminary basis, after the program has been operational for 6 months and annually thereafter.
11. The evaluation should include sending a copy of the local program rules, as filed with the Supreme Court of Georgia, for verification by the local program director to include any changes or amendments to its rules within the year past. The verification should be signed by the Chair of the local program and the program director.
12. The ODR should create an on-site evaluation protocol to be used where questions about the efficiency and compliance with the local program rules are questioned.
13. Evaluation results should be confidential and distribution limited to the chief judge of the Superior Court, the Chair of the local program board, and the director of the local program.
14. The ODR should publish in its ADR Annual Report the number of evaluations conducted each year.

## Appendix B: Mean, Median, and Mode for Cases without ADR, with ADR, and ADR with ADR Days Removed

Without ADR		With ADR		ADR Days Removed	
<b>Oak</b>		<b>Oak</b>		<b>Oak</b>	
Mean	278	Mean	390	Mean	313
Median	222	Median	310	Median	240
Mode	63	Mode	91	Mode	75
<b>Pine</b>		<b>Pine</b>		<b>Pine</b>	
Mean	217	Mean	376	Mean	260
Median	152	Median	324	Median	218
Mode	134	Mode	256	Mode	219
<b>Cedar</b>		<b>Cedar</b>		<b>Cedar</b>	
Mean	200	Mean	329	Mean	201
Median	113	Median	264	Median	121
Mode	57	Mode	275	Mode	91
<b>Poplar</b>		<b>Poplar</b>		<b>Poplar</b>	
Mean	179	Mean	269	Mean	231
Median	137	Median	221	Median	176
Mode	149	Mode	550	Mode	196

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