



Greacen Associates, LLC

**North Dakota Supreme Court
Family Mediation Pilot Project
Evaluation**

Interim Report

February 25, 2009

Executive Summary

During its initial ten months, the North Dakota Family Law Mediation Pilot Project has been successful in meeting its objectives.

- The project has been implemented successfully from an administrative standpoint, with the establishment of procedures, the selection and training of mediators, the augmentation of the UCIS system to support automated data gathering, the gathering of survey and other data for the project, and the preparation of draft ethical guidelines and a draft process for enforcement of those guidelines. All participants praise the performance of the project administrator.
- The project has assigned mediators and issued mediation orders in 98 cases. Forty-nine of those cases were completed by the middle of December and the results available for analysis.
- The pilot project has reached persons from rural areas of the pilot districts, persons of limited means who could not afford private mediation, and members of minority groups.
- Project mediators report that they have obtained full agreement in 54% of the cases completed and partial agreement in an additional 25% of the cases, for a positive impact on 79% of the cases. The project's success rate compares favorably with that from similar efforts in other states. Mediators in the Northeast Central District (Grand Forks) have been more successful than those in the South Central District (Bismarck) although the gap is closing over time.
- Mediations in two thirds of the completed cases have been finished within the time frame set by the North Dakota Supreme Court's Administrative Order 17. Most of the slower cases occurred at the beginning of the program when implementation was postponed at the request of the evaluator.
- Participants in the completed mediations rate them highly.

- The satisfaction rating for the overall process was 91% – for all participants, including those who did not reach agreement.
 - Ratings of mediator respect, fairness, and equal treatment of the parties and the parties' feelings of safety were over 90%.
 - 94% prefer mediation over going to court; only 11% felt they would have gotten a better outcome in court.
 - 70% reported that mediation introduced new ideas into their discussions.
 - 40% felt they had come away with better negotiation skills.
 - 33% reported that they learned something new about their former spouse.
- Judges in the pilot districts agree that the pilot project is succeeding on all dimensions on which they were asked to provide an opinion.
 - Court staff report that the pilot project is not requiring substantial additional work on their part.
 - The family law bar is divided on the wisdom of implementing mandatory child custody mediation in North Dakota. A majority of family law attorneys surveyed support mediation of child custody and visitation issues. Most but not all of their comments on the pilot project have been positive.
 - Mediation providers are supportive of the pilot project, have identified challenges arising from differences between their traditional private mediation clients and the pilot project participants and are successfully addressing those challenges.

The report that follows provides detailed support for these conclusions and makes several suggestions for improvement.

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Pilot Project Background

After several years of discussion with the North Dakota bench and bar, the North Dakota Supreme Court in 2007 made plans for, and obtained a legislative appropriation to support, a Family Mediation Pilot Project.

The court believes that the traditional adversarial process does not necessarily produce the best long term outcomes for contested child custody and visitation disputes. The parties to these disputes must maintain ongoing relationships for many years as they continue to co-parent their children. Mediation – a process in which a non-judicial neutral mediator facilitates communication between the parties to assist them in reaching voluntary decisions related to their dispute – may produce better short and long term outcomes in contested child custody and visitation disputes. In the short term, voluntary agreements are more likely to be implemented by the parties than agreements forced upon them by a judge; in the long term, the parents may learn from the mediation process skills that will enable them to resolve future disputes amicably.

Mediation has long been available to North Dakotans with child custody and visitation disputes – on a voluntary basis for those who can afford and choose to use the services of private mediators. North Dakota courts embody these agreements in court orders. But the courts have not previously had the means to provide mediation services to litigants in lieu of the traditional litigation process.

The mission, purpose and structure of the pilot project are set forth in North Dakota Supreme Court Administrative Order 17, amended effective March 1, 2008 – the start date for the pilot project.

The pilot project's mission is "to explore a procedure to provide a high quality, impartial, and efficient forum for resolving disputed custody and visitation matters through mediation." The pilot project's goal is "to improve the lives of families and children who appear before the court by trying to resolve custody and visitation disputes through mediation in order to minimize family conflict, encourage shared decision-making, and support healthy relationships and communication among family members."

Under the project, the North Dakota Supreme Court funds the cost of mediators to attempt to resolve contested child custody and visitation

disputes in family law cases arising in the South Central and Northeast Central Judicial Districts of North Dakota. These two districts include Bismarck and Grand Forks respectively.

Any divorce, separation, paternity, or guardianship case filed in one of the two pilot districts in which legal custody, physical custody, or visitation of a child is an issue must be referred by the clerk of court to the pilot project administrator at the Supreme Court within ten days of filing. A judge may refer a post-judgment motion for custody modification to the administrator if the judge finds that a prima facie case for relief has been established under N.D.C.C. 14-09-06.6 and determines that mediation may be useful to the parties and the children in the case.

The mediation process is mandatory for cases falling within its parameters. The parties in these cases are required to participate in mediation. Their lawyers may participate in the mediation process. The pendency of a mediation does not bar a party from obtaining temporary custody and visitation orders from the court. The parties are expected to continue with the traditional court process if mediation does not succeed.

The following cases are not referred for mediation: cases in which the parties started mediation on their own prior to the commencement of the pilot project, cases in which the parties stipulate to all custody and visitation matters, and cases in which there is a current domestic violence protection order or other order for protection between the parties. Under limited circumstances, a victim of domestic violence may request that her or his case be included in the mandatory mediation process. The project administrator also excludes cases in which one or more of the parties live outside of North Dakota – on the theory that it would be a hardship to require a party to travel from out-of-state to attend a mediation session.

Under Administrative Order 17, the project administrator is to administer the protocol developed for the pilot project, select mediators, assign them to particular cases, obtain information from the mediators on case outcomes, and arrange for an evaluation of the pilot project.

Administrative Order 17 sets forth the following process: The clerk of court notifies the administrator of a case falling within the program parameters. The administrator appoints a mediator, prepares an order for the judge's signature requiring the parties to participate in the mediation process, and sends the signed order when she gets it back from the judge to the parties and mediators. The order requires the parties to contact the mediator and participate in an orientation within 20 days. The mediation is to take place

within 90 days, unless the mediator obtains an extension of time from the court. The pilot project pays for six hours of mediation; the parties may pay the mediator for further services if they desire to spend more time trying to reach an agreement. A fee waiver or sliding scale reimbursement for such additional mediation fees may be available from the Supreme Court upon application by the parties and a showing of financial hardship. Attorneys for the parties may participate in the mediation.

The parties must mediate their custody and visitation issues. They may mediate other outstanding issues – such as property division – if they wish to do so. The project administrator has stressed with the mediators that the North Dakota Supreme Court does not consider reaching agreement to be the highest purpose of the pilot project. The Supreme Court instructs the mediators not to pressure the parties into agreements; the Court prefers no agreement to one that will not persist because it was not fully voluntary on the part of the participants.

If the parties reach an agreement during mediation, the mediator puts it in writing – using the parties' own words – for their signature. Within five business days following signature of such an agreement, either party may notify the mediator in writing of her or his request to reconsider the decisions made in mediation. Unless the mediator receives such a request, s/he sends a copy of the written summary and conclusion of mediation form to the parties, their attorneys, and the judge presiding over the case.

The pilot project includes all cases filed since March 1, 2008 in the pilot districts. However, mediations did not commence in earnest until May 2008 when the evaluators were in place, evaluation training had occurred, the evaluation contract was awarded, and pre-pilot attitudinal surveys were administered to North Dakota family bar members and mediation providers.

Evaluation Design

Through a competitive Request for Proposals process, Greacen Associates, LLC, was chosen to evaluate the pilot project.

The evaluation consists of three reports – an interim report based on the first six months of pilot project experience, a report on the first year of the pilot project, and a supplemental report roughly one year later to assess the effect of the pilot project on post-decree litigation.

This report is the interim report. It includes all data gathered for the first ten months of the project – from March 2008 through the end of the calendar year. The interim report is intended to serve three purposes:

- To provide a progress report for the North Dakota legislature on the project's initial accomplishments;
- To make an initial assessment of the project's effectiveness; and
- To identify recommended midcourse corrections in the project's operations.

The evaluation does not include any review of project costs; it focuses exclusively on project effectiveness.

The project administrator and the evaluator agreed upon the following set of pilot project objectives for purposes of the evaluation:

Objectives for child custody and visitation mediation services

1. To promote resolution of custody and visitation disputes by agreement between the parties rather than through litigation
2. To improve parental decision making as it affects their children, i.e., getting the parents to internalize the "best interests of the child" standard for making such decisions
3. To improve the ability of divorced parents with children to communicate with each other
4. To reduce post-final decree litigation in the courts
5. To have litigants leave mediation sessions satisfied with the process
6. To have judges, lawyers and court staff believe that the mediation program has been a worthwhile investment of judicial branch resources
7. To avoid unintended negative consequences of the mandatory mediation program, such as
 - a. delay in issuing temporary or permanent custody and visitation orders, leaving families "in limbo" longer
 - b. creating an incentive for lawyers' strategic games, such as "mediator shopping" to obtain a mediator perceived to be more sympathetic to persons like the lawyer's client
 - c. the imposition of unnecessary "boilerplate" custody and visitation order provisions as a result of standard language included in mediation agreements or mediator recommendations to the judge
 - d. reducing the use of private mediation because of the availability of publicly funded mediation by court contract mediators

8. To provide access to mediation for persons who cannot otherwise afford the services of private mediators, persons who live in remote areas, and to underprivileged and minority persons

Objectives for the pilot project as a culture change intervention

9. To increase awareness of, and promote the use of, mediation to resolve child custody and visitation disputes - for instance, by informing family law litigants, lawyers and the community that mediation:
 - a. allows litigants to maintain control over the outcome of the dispute, and
 - b. gives them maximum flexibility to develop a resolution appropriate to their personal needs and circumstances
10. To develop ethical guidelines for mediators
11. To identify, record and publicize best practices for child custody and visitation mediation, including
 - a. how to work effectively with the domestic violence services community,
 - b. how to ensure that the mediation process is not distorted by the presence of domestic violence in the relationship between the parents,
 - c. how to ensure the personal safety of litigants during the mediation process when there has been a history of domestic violence in the relationship (for instance, by conducting the mediation by "shuttle diplomacy" so that the litigants do not come into visual or physical contact with each other), and
 - d. how to ensure that the policies and approaches of the mediators are aligned with the policies and approaches of the judges and with those of court personnel who provide services to self-represented litigants.

The evaluation design uses both before and after and control group comparisons to assess the effectiveness of the pilot project in achieving these objectives. The North Dakota Supreme Court is obtaining data from pre-pilot project cases in the pilot districts and data from non-pilot districts from the same time period as the pilot project for comparison purposes.

The first year of the pilot project will study cases filed between March 1, 2008 and February 28, 2009. The pre-pilot comparison group will consist of all family cases involving children filed in the two pilot districts between March 1, 2007 and February 29, 2008. The post-implementation comparison group will consist of all family cases involving children filed

between March 1, 2008 and February 28, 2009 in the East Central and Northwest Districts.

It has proved necessary to add data entry fields and codes to the North Dakota UCIS case management information system to support this data collection effort. It has also proved necessary for the project administrator to retroactively enter data for pilot project cases from March 1, 2008 to the date the new fields and codes were added to UCIS and to enter that data for all pre-pilot cases in the pilot districts. All three of these tasks have been completed, but data reports have not yet been run for purposes of this interim report.

This interim report is based on the following data:

- Observation of the training for the mediators in early May 2008
- Meetings with mediators, the project administrator, judges and court staff in the pilot districts, and the Supreme Court/State Bar Association Joint ADR Committee in December 2008
- Attitudinal surveys of North Dakota bar members and mediators in May and November 2008
- Attitudinal surveys of pilot district judges and court staff in November – December 2008
- Attitudinal and demographic data surveys of litigants completing mediations in 49 of the initial 98 cases accepted into the pilot project. These surveys also contain information from the mediators on the characteristics of the litigants and the outcomes of the cases
- Activity logs maintained by the mediators showing the dates of events in the mediation process for the 49 completed cases

Data for the one year report will include additional data:

- Data from UCIS comparing time to disposition for cases from the pre-post and comparison groups

- Data from telephone interviews with mediation participants six months after their mediation sessions¹

Initial Project Accomplishments

By the close of calendar year 2008, the Family Mediation Pilot Project has accomplished a number of tasks.

Development of protocol and program materials

The North Dakota Supreme Court Office of State Court Administrator hired a full-time project administrator who finalized a project protocol and procedures for administering the project.

Recruitment of mediators

The project administrator, through a process involving applications and interviews, selected twelve mediators to provide mandatory mediation services for the two pilot districts. Several of the mediators chosen live outside the pilot districts but agreed to deliver the mediation services within the pilot districts – at the courthouse or at some other location convenient to the parties.

Recruitment of evaluator and development of evaluation methodology

The Office of State Court Administrator chose Greacen Associates, LLC, to perform the evaluation. The project administrator worked with the evaluator to develop survey instruments and data collection protocols for collection of survey information from lawyers, mediation providers, judges, court staff, and participants in mediation.

The project administrator and evaluator met with Office of State Court Administrator's information technology staff and clerical staff from the pilot districts and worked out changes to the UCIS system needed to enter data needed to support the evaluation design.

¹ The evaluation design also includes interviews with persons who did not have the opportunity to participate in mediation. Initial attempts to reach these litigants have been unsuccessful and it is likely that we will not be able to make those comparisons in the first year evaluation report.

Training of mediators

On May 5th, the project provided a day long training session for the project mediators which included extensive training in domestic violence identification, techniques for dealing with likely victims who chose not to reveal the violence explicitly, and safety planning for these situations. All mediators were provided with a screening tool for use during orientation with potential mediation participants to identify domestic violence victims. The training session also covered the history of the project, project objectives and procedures, the project evaluation design, and data gathering required of the mediators.

Identification of cases and preparation of referral orders

The project administrator received 151 case referrals from the pilot districts during the first ten months of the pilot project. The table below shows that roughly one third of the cases referred were rejected because they contained disqualifying characteristics. Of the remaining cases, half had not been completed by the end of the calendar year. Forty-nine cases are available for analysis for this interim evaluation.

Pilot Project Cases – 2008

Total cases referred from pilot districts		151
Cases rejected		53
Existence of domestic violence restraining order in case record or domestic violence issues identified	15	
Out-of-state party	10	
Custody issues settled prior to mediation	28	
Cases accepted into pilot project		98
Evaluations completed as of December 31, 2008		49
Cases open as of December 31, 2008		49

The evaluator requested that mediations not begin until baseline attitudinal data had been collected from lawyers and mediators. The project administrator therefore held all mediation orders until that data was collected. The result was that no mediations actually took place until May 2008.

Modification of case management system to record needed data

The North Dakota Office of State Court Administrator completed the data base modifications needed to support the needed additional fields and data entry codes by the summer of 2008. The project administrator circulated a memorandum informing court staff of the changes and the procedures to be used to enter data about future cases.

Entry of data from cases from project start date to effective date of UCIS modifications

It was necessary for the project administrator to travel to the courthouses in all fourteen counties in the two pilot districts to retroactively enter the data needed for the pre-pilot comparison for the one year evaluation.

Conduct of mediations

The mediators completed 49 mediations in the ten months of the project's life during the 2008 calendar year.

Development of draft code of ethics and enforcement process

The North Dakota Supreme Court/State Bar Association's Joint ADR Committee developed a draft code of ethics for mediators participating in the pilot project and a draft enforcement process. In December 2008, the Committee determined the codes ready for submission to the SBAND Board of Governors for review and comment, and then final submission to the Supreme Court.

Data Concerning Completed Mediations

Of the 49 completed mediations, roughly half involved cases from each pilot district. 88% of the completed cases were from Burleigh or Grand Forks Counties – i.e., from the cities of Bismarck and Grand Forks. Six cases were from outlying counties in the two pilot districts – two from Nelson County in the Northeast Central and four from two of the outlying counties in the South Central District.

The completed cases were not equally distributed among the mediators. Four of the twelve mediators accounted for 27 of 49 completed cases.

Most completed cases took considerable time in mediation. The median time was a little more than four hours; half of the cases took longer than four hours. The average mediation length was 4.3 hours. The longest case was 11 ½ hours. The most frequently reported times were – not surprisingly – 6 hours (7 cases) and 2 hours or less (11 cases). Because of the way in which the mediation time was reported, it is likely that this total includes the time spent on orientations. Most of the mediators reported that they spent an hour on each orientation.²

Most of the cases arose from divorce proceedings (25 cases). Interestingly, the next highest frequency (9 cases) was post-judgment modification requests. There were 7 paternity cases and 7 custody cases not arising out of a pending proceeding.³

Data Concerning Mediation Participants

In 39 of the completed cases, the mediators obtained completed surveys from both participants. It was not always clear which was the plaintiff and which was the defendant in the case. In the other 10 cases we received only one completed survey. Consequently, we had a total of 88 completed surveys from 49 cases.

Each survey asked for demographic data on the participant. Most participants provided the requested information. We present the demographic data for all 88 completed litigant surveys.

Forty-four respondents (52%) were female; forty (48%) were male. This merely shows that men were slightly less likely to complete the questionnaire than women.

Twenty-nine participants (37%) were between the ages of 25 and 34. Twenty-seven (34%) were between 35 and 44. Only 12 (15%) were between 18 and 24 and only 11 (14%) were 45 years old or older. Custody disputes in North Dakota overwhelmingly involve middle-aged persons, not the young or the old.

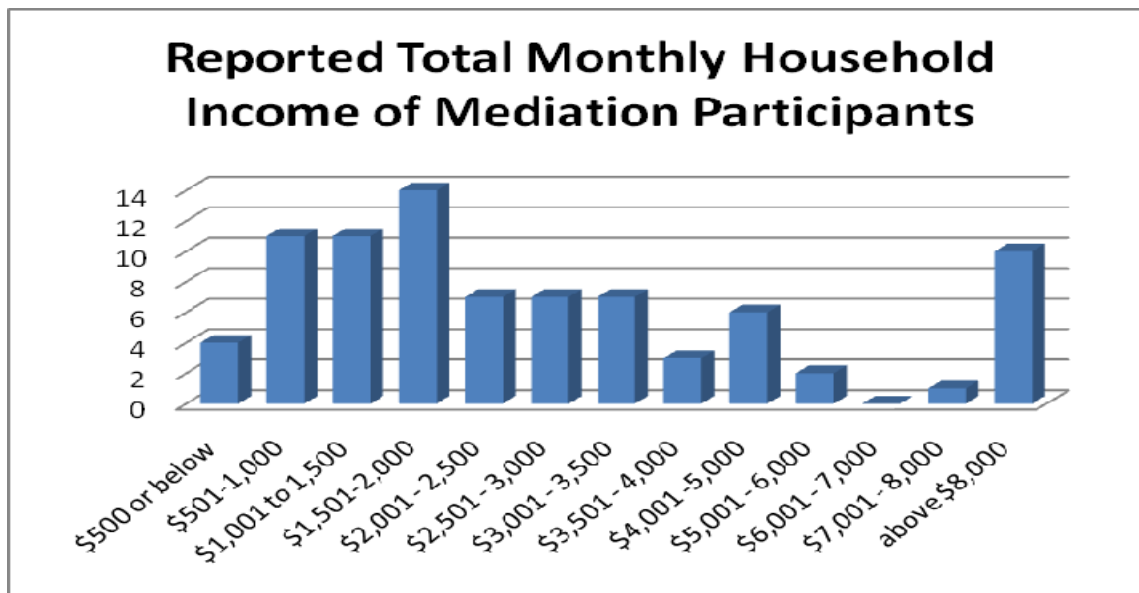
² The one exception was a mediator who conducted the orientation by phone. She reports being able to complete them in 45 minutes or less.

³ One case lacked a case type designation. There were no guardianship cases in this first group of 49 cases.

Fifty-five percent of mediated cases (26 cases) involved an only child.⁴ Thirty-two percent (15 cases) involved two children. Three cases (6%) involved three children, two cases (4%) involved four children and one case (2%) involved five or more children.⁵

Six (12%) of the forty-nine completed cases are from rural counties. One of the project goals is to make mediation more widely available to rural North Dakota residents. We have no comparison data on this characteristic to show definitively that mediation is reaching more rural residents than previously, when it was only available to those who could afford the services of private mediators. However, it is clear that mediation is reaching rural county residents.

Median participants report a wide range of total monthly household income. The survey instrument defined this term to include all income sources, including child support, before taxes. The instrument did not state whether divorcing or divorced persons should state their incomes as separate households. It is clear that they did so in some cases because the amounts reported by the two parties were quite different. The data is displayed on the chart below.

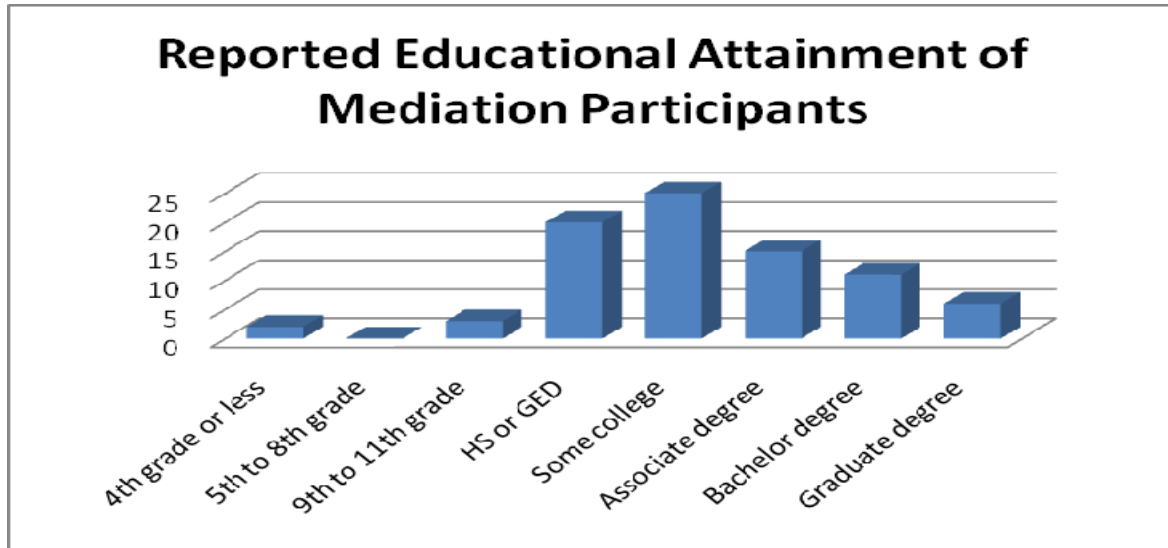


⁴ For this data, we used a different data set, involving only one survey from each case. This data set had the number of children for 47 of the 49 cases.

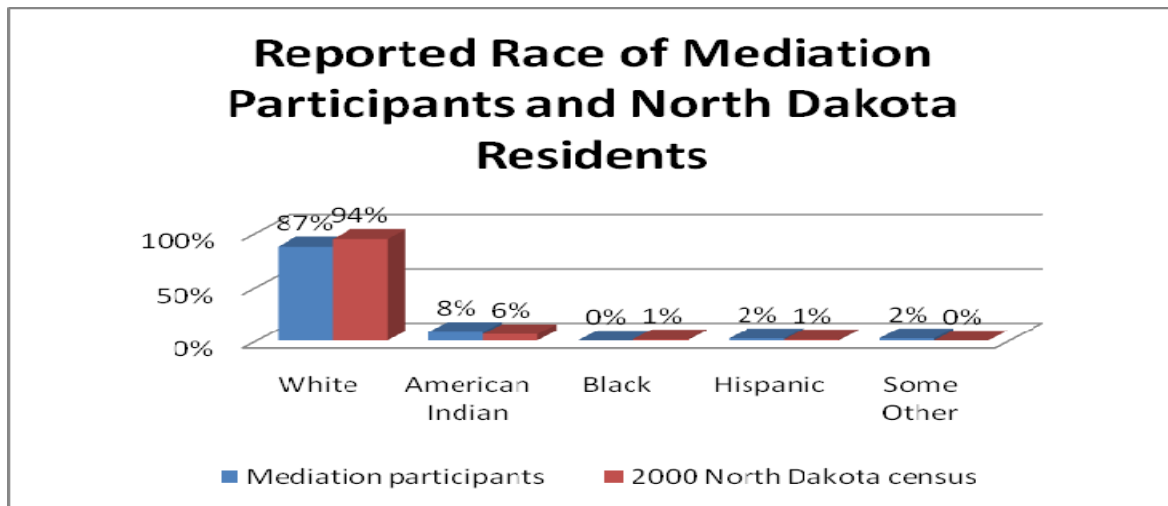
⁵ There is a one percent rounding error in the percentage data as presented.

The data shows that the pilot project is making mediation available to many North Dakotans of low or limited means. However, it is not surprising that there are some participants who could afford to pay for these services. It is entirely appropriate for the court to provide these services on an equal basis to all North Dakotans.

Educational levels of participants are shown in the next table. This data tends towards the middle values, not the extremes.



Seventy-six of the participants (87%) reported their race as White, seven as American Indian (8%), two as Hispanic (2%), and two (2%) as "some other." The table below shows that minority groups are more heavily represented within mediation participants than within the North Dakota population in general.



No participants reported a primary language other than English.

In a very high percentage of the mediated cases (86%) both parties were represented. In many other states more than half of these cases would have one or more unrepresented litigants.

Data Concerning Success in Reaching Agreement through Mediation

Complete agreement on custody and visitation issues was reached in 26 (54%) of the 48 cases for which this information was reported. Agreement was reached on some custody and visitation issues in 12 (25%) cases. No agreement was reached in 10 cases (21%). The project administrator has stressed with the mediators that reaching agreement is not the highest objective of the pilot project. Nonetheless, North Dakota's initial outcomes compare favorably with those in other jurisdictions that have evaluated family court mediations.⁶

Comparative Agreement Rates Following Family Case Mediation

Jurisdiction	Date of Study	Mandatory/ Voluntary	Full Agreement	Partial Agreement	Combined Full and Partial
District of Columbia	1992	Voluntary	80%		80%
North Dakota Pilot Project	2008	Mandatory	54%	25%	79%
Charlottesville, VA	1989	Mandatory	77%		77%
North Carolina	2000	Not Known	74%		74%
James City County, VA	2001	Voluntary	72.4%		72.4%
Winnipeg, Canada	1988	Voluntary	65%		65%

⁶ Comparison of cross-jurisdictional outcomes should be treated with considerable skepticism. This data was gathered from multiple sources. The full context of each program and its evaluation was not available. It is therefore not clear whether the other programs listed were comparable to North Dakota's program, how full and partial agreements were defined and measured (assessment was left completely to the mediator in North Dakota), or the extent to which participation was mandatory or voluntary (one might expect higher agreement rates in voluntary programs). Note, however, that Benjamin and Irving in their 1995 summary of research on this topic (Benjamin, M. and Irving, H. H., "Research in Family Mediation, Review and Implications," *Mediation Quarterly*, 1995) conclude that outcomes do not vary significantly on these variables.

Jurisdiction	Date of Study	Mandatory/ Voluntary	Full Agreement	Partial Agreement	Combined Full and Partial
Montreal, Canada	1988	Voluntary	58%		58%
California	2003	Mandatory	44%	8%	52%
York County, VA	2001	Voluntary	39.5%		39.5%
Georgia	2002	Voluntary	34%		34%

As explained in footnote 4, some of these comparisons may be questionable. The evaluator is very familiar with California's mediation program. Other than the fact that mediations are done by court-employed full-time mediators in larger California courts, the California and North Dakota programs are roughly comparable in approach. Two researchers in 1995 summarized outcomes research from dozens of studies done by that date as finding that full agreement varies from 40% to 60% and that partial agreement varies from 10% to 20%. By both of these benchmark, North Dakota's pilot mediation project is markedly successful in obtaining agreements.

Agreement was not as high on non-custody issues. Full agreement on these issues was reached in 42% of the cases in which they were raised. Partial agreement was reached on 22%. The total of full and partial agreement on ancillary issues was 64%. This is nonetheless a fully acceptable level of success when viewed in the context of other research findings, particularly given the reality that they were subsidiary issues in the mediation.

Do the details of this initial data on agreement outcomes provide any insight into the mediation process in North Dakota?

Success rates in reaching agreement during mediation are relatively consistent among the four case types – divorces, paternity, post-judgment modification, and custody not related to another pending proceeding. (There were no guardianship cases reported within the first 49 completed cases.) Of considerable interest – mediation produces agreement at a higher rate in post-judgment cases than in other case types. The lowest success rate – still almost 60% agreement – was in custody matters unrelated to other pending cases.

Outcomes are more successful in the Northeast Central District than in the South Central District – on every dimension.

Outcome Differences by Location

	Agreement on Custody and Visitation Issues				Other Issues			
District	Full	Partial	None	Sum	Full	Partial	None	Sum
Northeast Central	63%	25%	13%	88%	42%	32%	26%	74%
South Central	46%	25%	29%	71%	41%	12%	47%	53%

The above data did not surprise any of the judges, attorneys, mediators or court staff with whom we consulted in December. The Grand Forks area has a longer tradition of mediation; the Conflict Resolution Center at the University of North Dakota has been in existence for 22 years. Judges and attorneys in Grand Forks are more familiar with and more supportive of mediation in Grand Forks. Bismarck is known as a litigious legal community; half of all jury trials in North Dakota are held in Bismarck. Outcomes for the first 25 cases were more skewed in favor of Grand Forks than the outcomes for the first 49 cases. This suggests that the process is becoming more successful in Bismarck as the project progresses and that success rates in the last few months of 2008 were probably roughly comparable between the two pilot districts.

Did some mediators have higher success rates than others? Yes, but – given the Supreme Court’s de-emphasis of the importance of achieving agreement through mediation – none of the mediators lacks sufficient success to question his or her capabilities to continue to participate in the pilot project.

	Custody and Visitation Mediation				Other Issues
	Full agreement	Partial agreement	No agreement	Percentage agreement	Percentage agreement
Mediator 1	5	0	2	71%	40%
Mediator 2	4	3	0	100%	100%
Mediator 3	2	0	2	50%	50%
Mediator 4	3	2	3	63%	63%
Mediator 5	3	1	0	100%	100%
Mediator 6	1	1	2	50%	0%
Mediator 7	1	2	0	100%	0%
Mediator 8	1	0	0	100%	-
Mediator 9	1	1	0	100%	67%
Mediator 10	3	1	1	80%	75%

	Custody and Visitation Mediation				Other Issues
	Full agreement	Partial agreement	No agreement	Percentage agreement	Percentage agreement
Mediator 11	0	1	0	100%	100%
Mediator 12	2	0	0	100%	100%

Agreement success rates are lowest at the extremes of participant education – agreement on both custody and visitation and other issues was at 50% for persons with a 4th grade education and at 30% for custody and visitation and 20% for other issues for persons with graduate degrees.⁷

Agreement success rates did not show any striking differences according to the age or income of participants. In particular, the more well-to-do participants reached agreement at the same rate as participants as a whole.

Participant Satisfaction Ratings

We present the participant satisfaction data from the database of 88 completed participant questionnaires. We then look for differences in participant satisfaction level by various case and participant characteristics.

Participants reported their satisfaction by responding to various statements with Strongly Agree, Agree, Neutral, Disagree, or Strongly Disagree. For purposes of assessing this data, we have created two alternative scores. The first is the “percentage satisfied” which compares the sum of those responding Strongly Agree and Agree with those responding Disagree and Strongly Disagree. This measure disregards “Neutral” scores. The second assigns the values 5, 4, 3, 2, and 1 to the five ratings. Although this scoring process involves assigning a strict numerical ranking to a series of qualitative statements that may not be related to each other in this strict proportion, it is nonetheless a standard research practice. This scoring practice takes into account the “Neutral” ratings. The maximum score would be 5.0; the minimum would be 1.0; and all “Neutrals” would be 3.0.

The statements were set forth in the survey instrument in both positive and negative formulations to discourage respondents from answering all questions the same way. For reporting purposes, we set forth the statements as they appeared on the survey form but have transformed the

⁷ It is worth noting that this pattern did not repeat with satisfaction ratings. Persons with graduate degrees were as satisfied with the mediation process as persons with other educational attainments.

average scores as if all statements had been stated in their positive formulation. For example, “The mediator did not care about our case” is reported as 97% satisfied and a 4.36 average even though the actual scores are the converse – 3% and 1.64 respectively.

Both scoring processes provide very positive support for the pilot project mediation process. Overall, 91% of respondents stated that they were satisfied with the overall mediation process. Of the 19 specific aspects of satisfaction measured, only 7 rated below 90%. Of those, five aspects represented realistic assessments of the project’s most optimistic objectives. In reverse order they are – to enable a former spouse to learn something new about his or her former spouse (33% positive ratings), to enable the participants to learn new negotiating skills (40% positive ratings), to introduce new ideas into child custody decision making (70% positive ratings), to put the needs of the children first (83% positive ratings), and to have better outcomes than would have occurred in court (89% positive ratings). That these statements have lower ratings than others lends credibility to the data as a whole. We should not be surprised that spouses do not believe that they have learned something new about each other or that they have improved their ability to negotiate with each other. In fact, it is surprising that the satisfaction ratings on the latter aspect were as high as 40%.

The rating on doing better than the participant would have expected to do in court is surprisingly high. One could have predicted that 50% of the participants would report that they did more poorly than they would have in court; the actual score was only 11%. For 89% to believe that the outcome was more favorable than a courtroom decision would have been is a great endorsement of the mediation process – an affirmation that “win/win” is more than a slogan.

Participant Satisfaction Scores

Statement	Percentage Satisfied	Average
The mediation was at a time relatively convenient for me	97%	4.26
The mediator treated me with respect	98%	4.61
I did not understand the process that we were to follow ⁸	84%	3.89
I was able to say what I needed to say during the mediation	94%	4.17
I learned something new today about my former spouse	33%	3.31
I was not well prepared for the mediation today	94%	3.95
I was able to do a good job representing my point of view	89%	3.90

⁸ There was an obvious grammatical error in this statement that might have contributed to the lower than expected overall score on this dimension of the mediation process.

Statement	Percentage Satisfied	Average
The mediator treated both of us equally	94%	4.31
The mediator did not care about our case	97%	4.36
We were able to put the needs of the children first	83%	3.87
I learned today how to negotiate more successfully with my former spouse	40%	3.22
The mediation process was not fair to me	93%	4.08
I did not feel safe here today	95%	4.36
Overall, I am satisfied with the mediation process	91%	3.91
Mediation is better than going to court	94%	4.08
The outcome today was worse for me than it would have been in court	89%	3.69
The mediation included new ideas for resolving our disagreement	70%	3.31
I had difficulty participating because an interpreter was not present	99%	4.45
I had difficulty participating because of physical barriers	97%	4.44

Two overall ratings suggest to us room for improvement. One is the 84% rating for participant understanding of the process to be followed. One would expect that the emphasis placed on orientation would produce higher ratings on this aspect of the process. There was an obvious grammatical error in the statement as it appeared on the survey form that might have contributed to the lower than expected overall score. The other rating is the 95% rating for feeling safe during the mediation process. Four persons reported feeling unsafe. No one should feel unsafe during this court-mandated process.

Do the details of this initial data on satisfaction ratings provide any insight into the mediation process?

The overall satisfaction scores for the Northeast Central District are slightly higher (94% versus 86%) than those for the South Central District. On the other hand, the percentage of persons feeling that they would have done better in court was lower in the South Central Division (7%) than in the Northeast Central Division (16%). Three of the four reports that participants felt unsafe came from the South Central Division – two of them were with the same mediator.

Satisfaction scores were not markedly different for the 11 participants who were not represented by counsel and for the 76 who were.

Satisfaction Ratings for Represented and Unrepresented Participants

Statement	Percentage Satisfied	
	Represented	Unrepresented
The mediation was at a time relatively convenient for me	97%	91%
The mediator treated me with respect	97%	100%
I did not understand the process that we were to follow ⁹	85%	78%
I was able to say what I needed to say during the mediation	94%	89%
I learned something new today about my former spouse	34%	33%
I was not well prepared for the mediation today	95%	89%
I was able to do a good job representing my point of view	91%	80%
The mediator treated both of us equally	94%	94%
The mediator did not care about our case	97%	91%
We were able to put the needs of the children first	85%	67%
I learned today how to negotiate more successfully with my former spouse	44%	17%
The mediation process was not fair to me	94%	91%
I did not feel safe here today	96%	89%
Overall, I am satisfied with the mediation process	90%	100%
Mediation is better than going to court	94%	100%
The outcome today was worse for me than it would have been in court	88%	100%
The mediation included new ideas for resolving our disagreement	65%	100%

Unrepresented litigants were somewhat more likely to be satisfied with the process than represented litigants (100% versus 90%). Unrepresented participants were less likely to report that they were able to do a good job representing their point of view (80% versus 91%) or to put the needs of the children first (67% versus 85%). One might expect that unrepresented persons would report that they learned more about negotiating from the mediation process than represented persons; the participants reported the opposite (17% versus 44%). However, the unrepresented were more likely to report that mediation contributed new ideas for resolving the disagreement (100% versus 65%).

The comparative satisfaction scores show that attorneys are not systematically biasing their clients against the mediation process.

There are relatively few surveys for some of the mediators. There was, however, a wider discrepancy in participant satisfaction scores among the different mediators than we would have anticipated. None of them were low enough to suggest removing a mediator from the project. However, we will provide individual reports for each mediator, along with the average project-wide satisfaction percentages, for the project administrator to provide to the mediators.

⁹ There was an obvious grammatical error in this statement that might have contributed to the lower than expected overall score on this dimension of the mediation process.

College graduates were somewhat less satisfied with the mediation process than persons with other levels of educational attainment. Persons with graduate degrees did not share this lower satisfaction level.

Satisfaction levels were not systematically different for participants of different ages.

Women had somewhat lower satisfaction with their ability to say what they needed to say (88% versus 100%) and with their ability to represent themselves (78% versus 100%) than men. Only women reported that the mediator did not treat both parties equally (12%). On the other hand, women had higher scores for learning how to negotiate more successfully with their spouse than men (59% versus 46%) and their overall satisfaction with the mediation process was the same as that for men.

There was no noticeable difference in satisfaction according to income levels.

Satisfaction levels did not differ noticeably across case types. Nor was satisfaction systematically higher for plaintiffs or defendants.

Participant Comments

The survey forms gave mediation participants an opportunity to record the aspects of mediation that were most and least helpful. Here is a full list of those comments with the “most helpful” and “least helpful” comments of each participant reported side by side.

These comments provide rich material for better understanding the context within which child custody mediation takes place. The parties are often bitter and highly conflicted. The issues separating them are of long-standing. The comments demonstrate the problems faced by child custody mediators and highlight the significance of the pilot project’s success rate in achieving agreements.

Most Helpful	Least helpful
It provided means to communicate where emotions are kept in check. It helped direct communication and pause to consider what could be compromised on and what needed to be resolved.	There is not a lot of legal counsel. One assumes that both are meeting in the middle, but that is not likely the case in the majority of the time.
Having someone present to restate things	Having to listen to him talk about inter-relationship issues.

Most Helpful	Least helpful
Having issues explained in a manner that helped both of us resolve the matters at hand.	Nothing
Absence of other side attorney	N/C
Having someone there to explain stuff that was not easy to explain -- breaking it down help a lot	nothing -- it was all very helpful
Realizing we can still communicate and not argue. Easier to get along with than over the phone	N/C
Having the opportunity to let my former spouse know why we have come to this point with the custody issue	unable to come to a resolution concerning custody issue
provided a chance @ resolving this issue, in a atmosphere that could have had a chance for success.	This session may have been better served in a different structure. One that provided some alternative ways of trying to get to the core issues and whether or not there was a way to do something different to resolve those core issues might help to diffuse the situation
calm atmosphere	nothing
no interruptions and less intrusive on the people involved than a court trial	no representation present, but that is also a good thing
find the differences	out of work time
I did not feel that the mediation was helpful. I believe the mediator did her best, but I feel that my wife was not willing to negotiate and the mediation ended after only a few hours when my wife and her attorney walked out and refused to return.	I spent a lot of time filling out questions sent by the mediator prior to the mediation and none of that information was used at the mediation session. Also, my wife and I were never in the same room at the mediation session so I never got to communicate my position directly to her nor did I hear first hand what her positions were.
It was another chance to work on resolutions and to communicate some information	When the mediator took sides and was "forceful" in trying to get me to agree.
Equal environment	Time it took
It is a lot better than going to court	I could have gained more by going to court; but I bent over and made my ex happy for the sake of our child.
The mediator explained a lot of things that we didn't understand	N/C
dissolving conflict about custody	I do not believe there was anything not helpful
It helped me understand that basically because I am the father and make a better living, she still gets the better outcome	N/C
nothing	Brandon had no interest in participating
Getting to sit and talk with other party face to face with help of impartial party	Other party was not willing to finish the mediation session

Most Helpful	Least helpful
Having someone to be there to help me express my feelings	It was very uncomfortable during the process, but was not because of the mediator
nothing	nothing was worked out! My wife is a bitter woman
nothing	I felt pressure and felt that there were things expected from me that was impossible for me to do
nothing was OK	was OK with the process
the mediators created an environment that really encouraged cooperation	difficult to work with ex-husband
agreeing on some aspects	not agreeing on child custody
that we were able to come to some kind of agreement with our son's interest	N/A
I got to speak my views and opinions and concerns to enable a compromise	I felt at times threatened by "legal language" that I did not understand and felt accused
It allowed me to say what I needed to without fear of it being used against me	I found it all helpful
I was able to understand Matt's feelings towards Gavin	We weren't able to agree upon Gavin's last name
We agreed about visitation	She put me on the spot a lot
opportunity to try to work things out without going to court	Needed legal advice. Too much pressure. Time pressure. Hours too late. Too many issues to work through and not enough time.
we were able to begin negotiations without an obstructionist attorney present	my spouse's unrealistic expectations -- her stance was no compromise -- when she was in phone contact with her counsel she would then become more disagreeable -- she initiated the divorce action, she is not the breadwinner
The mediator Bonnie Storbakken. She is excellent. Highly endorse this process	nothing
we were able to get matters resolved quickly	N/C
letting us do the talking	N/C
opening lines of communication	not long enough
That the mediator was making us make the decisions instead of someone else making them for us. The mediator gave us different ideas to help us come to an agreement.	That my former spouse was not willing to negotiate on any level
I got my points across about what I want for my child without being belittled or interrupted	My ex who can't see beyond his own issues to come to a decision about what is right for my daughter
It brought the two of us to a place that we were able to at least talk about the issues	there was no decision made from mediation

Most Helpful	Least helpful
having people there to keep him from interrupting me We were able to speak openly and honestly.	spouse's unwillingness to cooperate It did not do any good to get everything out in the open. Nothing was settled or agreed upon in the end. Despite our inability to solve anything, I believe that, overall, this is a good opportunity for any reasonable couple to participate in.
learning more about my spouse	nothing got solved
N/C	mediator was pushy
She was helpful and pleasant. She kept us separate from each other. She helped with understanding the process and answering my questions	Other party
It was all put into bigger perspective. The mediator really taught me how to look farther ahead in time and see what I could lose	N/C
I got to discuss things that needed to be brought up	not agreeing on anything
not having to talk to my husband -- getting down to important things	Felt like she was rude. Snapped @ me and having concern about Nick's behavior -- felt like she was more respectful to Mike than me
being able to voice my opinions openly	N/C
I have limited resources and this saved a lot of money	N/C
to know all the different options available. Everything was discussed very detailed	N/C
having an unbiased person help with the discussions	N/C
just being able to talk about everything together	I thought everything was helpful
settling stuff outside of court	N/C
a neutral person outside a court room	nothing, really
work on the details	nothing
reaching a successful agreement for Sullivan and avoiding a trial	I was unaware that opposing party was bringing 2 people to mediation
having a mediator, a neutral third party to take some of the emotion out of decision making. A different perspective	It was pretty helpful
no legal jargin -- we talked as normal people solving problems	the distance -- need to figure out a method that is equal travel for both parties
Being able to express both views to our situation without the other/either getting too upset to finish the conversation. We were able to resolve most, if not all, the issues	N/C
Express our points to someone who took the time to listen	In some issues I wish my attorney could have been present

Most Helpful	Least helpful
The mediator -- he was objective, knowledgeable and fair. Hopefully this will help us avoid court.	N/C
no lawyer to interfere	my daughter's wants for visitation didn't matter
I was able to voice my point of view because the mediator made sure my spouse let me talk and have my say	nothing comes to mind
finally getting issues resolved	N/C
getting to communicate our issues with an objective third party present	N/C
having the third party present	N/C
Jim explained everything very well	Distance (6 hour drive)
forced communication with ex	time limit
suggestions made by the mediator allowed us to "meet in the middle"	having to sit with my ex-spouse
It gave me a sense of direction on what my spouse was expecting since I don't talk to her at all anymore.	I feel that the mediator sided with my wife. My wife has made unfounded accusations about me and the mediator was asking me to take counselling. I don't need counselling, she does. But I haven't made allegations about her.
Getting an idea of where my spouse is coming from	my ex-wife's inability to cooperate
neutral -- allowed fair speech	no fault of the mediator. My partner was unwilling to negotiate
To have a neutral party listen to our issues	N/C
sitting down and talking with the other party in person	nothing, everything was very helpful
I thought she was fair to both of us and the most bias how she felt what was best for my son, not for me or the other party	The other party's opinion of his rights, how he will always disrespect me and put so much negative on me
It was a neutral party and nonthreatening, She gave useful and helpful insight	Too much confusion around the process. There was an interim hearing scheduled, but didn't make sense because we were supposed to work it out in midstream. All motions should be put on hold until mediation.
My husband will not talk to me at other times or listen to me. He had to listen to what was said and we were pretty much both in agreement. So it worked out well.	N/C

Time Required to Complete Mediations

A possible drawback for a mandatory mediation program is it may delay the resolution of family law cases. Administrative Order 17 was structured to ensure speedy completion of the mediation process. The trial court is to notify the project administrator of a qualifying case within 10 days of filing. There is no time frame for the project administrator's drafting of the mediation order, its return to the trial judge for signature, its return to the project administrator for distribution, and its dissemination by the project administrator to the parties, attorneys and mediator. The mediator has 90 days from the date of the order to complete the orientations and mediation. Assuming that the time from referral by the trial court to signing of the order takes up to 10 additional days, mediations should be completed within 100 days from referral of a case to the project.

Thirty-three of the first forty-nine cases (67%) were completed within this time period. Sixteen cases took longer than 100 days to complete.

The average time required to complete the first 49 mediations was 94 days from the date of referral of the case by the trial court – less than the time limits set by the Supreme Court in Administrative Order 17. The longest case took 203 days – roughly 7 months – and the shortest 36 days – roughly a month. Both the longest and shortest were in the South Central District. The average time was the same for both pilot districts. The longest mediation in the Northeast Central District was 160 days; the shortest in that district took 38 days. Half of the longer cases were in each pilot district.

As noted earlier, project start up was delayed significantly at the request of the evaluator. Eleven of the cases that took longer than 100 days were referred to the project during the months of March and April. Only five cases referred since May have taken longer than the project's desired time frame.

Eight of the sixteen longer mediations were handled by two mediators – one in each district. Consequently, it appears that the project administrator could assert some pressure on a few mediators and reduce by half the number of cases that exceed the time frame established by the Supreme Court.

Whether mediations are completed within the time called for by the Supreme Court's Administrative Order does not determine whether mediation is

slowing down the court process in family law cases. That issue will be addressed in the first year report with data from the UCIS system showing the average time to disposition for cases in the pilot project compared with the average time to disposition for cases in the pilot districts before the pilot project began and with cases in the comparison districts during the same time period as the pilot project. That data is not available for this interim report.

Attitudes of Attorneys and Mediation Providers

The project administrator, in consultation with members of the family law bar and the mediator community, developed a list of mediation providers and members of the family law bar in the two pilot districts. On two different occasions – at the beginning of the project and in late fall -- she sent them questionnaires to learn of their views towards mediation and their attitudes towards the pilot project. The numbers of surveys sent and returned, and the resulting response rates, are shown in the table below.

Survey Responses – Family Bar Members and Mediation Providers

	May survey		November survey	
	Surveys sent	Surveys returned	Surveys sent	Surveys returned
Family bar members	77	54 (70%)	77	39 (51%)
Mediators	43	19 (44%)	24	11 (46%)

Family Bar Member Survey Results

The bar surveys used the same data gathering technique used with mediation participants. Respondents were given a series of statements and asked to choose Strongly Agree, Agree, Neutral, Disagree, or Strongly Disagree for each statement. We scored the answers by assigning the values 5, 4, 3, 2, or 1 to those answers. The most favorable score would be 5; the least favorable 1; 3 would represent the midpoint. The statements alternated from positive to negative. The actual statements are shown in the table below; the responses are all transformed as if the question were stated in a positive formulation.

Family Bar Member Survey Responses

Question	Average Scores	
	May survey	November survey
Litigation is the best way to resolve child custody and visitation disputes	3.93	4.00
I would encourage my clients to participate in mediation of child custody and visitation matters if the services were free	4.30	4.33
I generally discourage my clients from participating in mediation	4.11	4.26
I have used private mediators to resolve family law matters in the past	3.70	3.95
My previous experience with mediation has been favorable	3.48	3.95
I have served as a mediator myself	2.52	2.89
I believe that mediation provides litigants with improved dispute resolution skills	3.46	3.69
Parties are more likely to abide by the terms of a mediated agreement than a court order	3.33	3.46
Parties are less likely to come back to court to modify custody and visitation if their agreement was reached through mediation than through trial	3.51	3.82
The power relationships between the parties are the same in mediation as in the courtroom	2.53	2.24
I think mediation should be required in custody and mediation matters	2.91	3.26
I am comfortable with the professional quality of private mediators in my community	3.04	3.54

A final question asked the number of the respondent's family law clients who participated in mediation during the past six months. The answers for both the spring and fall surveys are below.

Reported Family Law Clients Who Participated in Mediation during the Past Six Months

	None	One	Two	Three	Four to Six	Seven to Ten	Eleven to Fifteen	More than Fifteen
May survey	30%	11%	10%	8%	9%	0%	3%	1%
November survey	23%	10%	10%	13%	26%	10%	3%	3%

Because the numbers of attorney responders to the two surveys was quite different, it would not be appropriate to attempt to discern trends in attitudes as a result of the differences in the survey results. The differences are just as likely to arise from a different group of attorneys responding.

The data shows the following:

- There is strong support for mediation within the bars of the two pilot districts. Most attorneys support mediation. 75% of respondents in both surveys disagree that litigation is the best way to resolve child custody and visitation disputes. 88% would encourage clients to participate in mediation if the services are free. 74% report having used private mediators in the past. 70% or more report having a client participate in mediation during the past six months. Only 2% report discouraging clients from using mediation.
- Eleven percent of all attorneys responding reported an unfavorable experience with mediation. Two thirds report a favorable experience.
- One third of responding attorneys have served as a mediator in the past.
- Sixty percent believe that mediation provides the participants with improved dispute resolution skills.
- Slightly more than half of responders believe that parties are more likely to abide by the terms of a mediated agreement than a court order.
- 64% of responding attorneys believe that parties are less likely to come back to court to modify a custody arrangement if it was reached through mediation.
- On the other hand, 60% of respondents disagree that power relationships are the same in mediation as in the courtroom. Only 18% agree.
- Respondents are equally split in their views on mandatory mediation of child custody matters. 44% are supportive; 41% disagree; the remaining 15% are neutral.
- Only half of the respondents are comfortable with the professional quality of private mediators in their community.

Attorney Narrative Comments

The bar member survey provided an opportunity for attorneys to set forth their perceptions of the advantages and disadvantages of mediation for child custody and visitation matters and to make suggestions for the pilot project.

Bar members provided comments on both the May and November surveys. Those comments are presented separately.

The comments of each attorney who chose to respond are shown side-by-side. The comments demonstrate the disagreement within the North Dakota legal community that delayed development of court-based mediation and ultimately required the Supreme Court to take the initiative in establishing a pilot project.

Attorney Narrative Comments from May Surveys

Advantages	Disadvantages	Suggestions
an opportunity to work out differences among themselves; control over their destiny in regard to their children	if a fee, a lot of expense that family law clients can't afford	add additional, qualified mediators
environment for discussions and understanding w/o litigation pressures	complex cases where mediation attempts to address custody/visitation issues when there are other highly charged issues (e.g. money, property valuation, etc) in this divorce action	mediation could include some parenting classes
a less adversarial forum/conference; professional mediators can see and resolve problems that the parties (and especially the attorneys) couldn't on their own	At this time I don't see any drawbacks. It has been a positive experience.	This is my first experience with mediation, so I will encourage my client to fully cooperate with the process through conclusion and then form opinions and suggestions.
It provides the parents with the chance to have a voice in the settlement of the custody issues; lowers cost of litigation; neutral and less confrontational setting	mediators often do not understand the dynamics of the marital relationship and the imbalance of power, psychological or emotional needs of one or both of the parties that may make mediation inappropriate.	Mediators that are chosen for the project must be well trained, have experience and be respected by the family law practitioners if the project is going to succeed
less turmoil; less expense; good potential for success and continued success	In some cases, mediation is a waste of time. What is more important is the courts stepping in and shutting down the few family law lawyers that turn every case into a mess. There should	Above

Advantages	Disadvantages	Suggestions
	be an opt out if there is not already.	
n/c	n/c	I think the court is paying mediators twice as much as what they pay lawyers to represent indigent defendants is an embarrassment to our profession. I realize this is a legislative decision, but I believe it reflects poorly on all lawyers that we allow this huge difference in pay.
Way to meet without attorneys in a neutral setting	length of time between filing and meeting with mediator is too long	n/c
It takes the pressure off the attorney. So often litigants blame their attorneys for an unfavorable result. Mediation gives the litigant an opportunity to negotiate the outcome. Unfortunately many attorneys do not advise their clients of the law and what their reasonable expectations should be prior to the negotiation. The parties go into mediation so polarized that the mediator has little to no chance of arriving at an agreement. If the litigants are focused on the issues and the mediator is experienced and well trained, mediation can resolve a lot of issues, preserve what's left of family harmony and save a lot of money for the clients.	Most mediators can't stay focused on the issues, repeat everything over and over, or force their own agenda on the litigants. The latter guarantees future court appearances. One of our mediators has gone so far as to say that they will decide what is best for the litigants then make them sign the agreement. The Court in its infinite, albeit far removed wisdom has entered its edict that we must follow but has ill-equipped us to carry out the edict. In fact, we came to a stand still in our cases because the pilot program went into effect before any mediators were appointed.	Scrap it until you have the resources, personnel and training, including family law attorney training completed. What you have now is typical governmentally enforced and mandated inefficiency at its worst. Moreover, the attorneys and judges mandated to make this work are too busy to fix the problems it has created. As it stands, there's only one mediator I would send my clients to out of the five chosen for this project. I suspect she will be a tad busy.
The opportunity to hear a reality check from a neutral third party	none	none
n/c	In Bismarck there is almost no one qualified to act as a family law mediator because I strongly feel F.L. mediators should be F.L. attorneys	All the mediators should be attorneys and I hope they are
cost effective process of dispute resolution	a breeding ground for advantage taken when power imbalance	n/c

Advantages	Disadvantages	Suggestions
I believe that the clients that are willing to agree to resolution through mediation are the same clients that are willing to settle cases through stipulations. The only people you may actually be helping are pro se litigants who want to reach an agreement anyway. However, the program is not aimed at them nor does it inform such people of the possibility	It is a waste of time and money. Most litigants will still want his or her attorney present for mediation. Therefore, in addition to the supposed "free" mediation you have added at least \$500 to \$1000 to every custody dispute even when there is no way mediation will work.	The mandatory program is idiotic. Allow it to be an option. Right now this program forgets the axiom "You can lead a horse to water..." The whole thing is a waste of time and I will be discussing with all my clients the option of filing in non-participating districts.
If the power issues are equal, it may work; but I believe there will be added costs and delays	should not be mandatory; tried in the past and didn't work; delays resolution; biases against men (fathers); covers only custody and visitation leaving property and debt issues for litigation. What has been gained?	Make it voluntary. If the money comes from the dues attorneys pay, our dues are too high.
Opportunity to air grievances without cross examination focus; opportunity to reach agreement on issues; fathers may have better opportunity for fair and equal treatment	some are dishonest or unwilling to live up to agreements without threat or court sanctions; fathers may not be able to enforce agreement reached with mothers	n/c
It is great if the lawyers already have a working relationship; cuts down on animosity between parties; open dialogue; cuts down on game playing by attorneys	don't consider all the ramifications; don't consider all the issues relevant to the matter; only a couple of mediators in the community I trust; still a power and control issue	Still don't know how it works; how are mediators assigned? When is the mediator assigned? Do mediators only address child custody/visitation matters or all aspects of divorce (i.e. property and debt division). Need to send a letter explaining the process and time lines involved. Need to be able to opt out if don't like mediator. Attorneys should be involved if wanted by client.
A sense that the participants are responsible for the decisions made; a (hopefully) less adversarial process; a quicker resolution	n/c	n/c

Advantages	Disadvantages	Suggestions
less expensive than going to court (if a resolution is agreed upon)	litigants often feel they have given too much and they end up in court in the future where the issues have remained unresolved	n/c
less cost, less trauma to the children; quicker; both parties normally willing to follow	wrong mediator can ruin it; the agreement must immediately be reduced to writing	n/c
n/c	n/c	don't require it, at least not until after discovery is complete; let attorneys try to work it out first
the parties avoid or delay saying hurtful things about one another in court	Parties sometimes agree to a mediated agreement under pressure and then disavow afterwards, or they mediate "joint custody" and later find out how hard it is to obtain "full custody".	Guard against the power imbalances in the relationship
A chance to hear each other's concerns and work things out between themselves which is best for them and their children	n/c	Offer joint mediation using two mediators – one more experienced and one with less experience to assist more trained mediators gain the required experience to qualify under the program.
A voice; an opportunity to learn a way of productive communication with the other party; experience in calmly resolving disputes; an opportunity to discuss issues that may not be addressed by the court in contested proceedings; a chance at a win/win situation; creativity; monetary savings	I do believe that there are cases that are not appropriate for mediation. I would encourage all parties to consider it and to attend at least one session. There should be an ability to "opt out" after that first meeting. For example, if one party is mentally ill, compromise is sometimes difficult. As in all things, not all mediators are created equal.	Seek out talented mediators. These are usually busy attorneys who may not be looking for this work or interested in updating their resumes.
Better opportunity to "vent" and then get to the issues. Some attorneys simply exacerbate the situation rather than assist resolution.	Need strength in all mediators. If any is viewed as partial or "soft" it's a waste of time.	n/c
Resolution may occur more expeditiously because the formal requirements of litigation do not slow things down. Any time the parties can come together to talk, focused	Power imbalance between parties can impact mediation. Mediation training must teach mediators to address or recognize these issues.	I don't know enough about it to comment; but I am delighted that the program has been launched.

Advantages	Disadvantages	Suggestions
on resolution, it is good.		
Control over their lives	Another battleground to plead their case and show why they are right; perception, of course; need the right parties for mediation	I would like to see an ENE process available, similar to the Hennepin County project. I've had great success there. This program should be voluntary; if not willing to mediate a waste of valuable resources others could use.
n/c	expense	n/c
if done properly, quick resolution; mediator must be experienced practitioners or experience of mediation is wasted	added costs; if not done properly exposure to over reaching and intimidation	Truly need experienced practitioners and a free service. If not free, lower cost. That doesn't mean low pay for mediators. They have to get equivalent hourly fee or you won't get the talent.
If it works, it could be great	My experience has been that it delays final resolution 4 to 6 months; it costs a substantial amount; when the sessions are over the underlying disagreements have not been resolved – the matter still goes to trial	free; strict time tables
quicker, less expensive resolution; an opportunity to see both sides, education on various issues; ownership in the process; a sense of control of their own future; much greater input and results tailored to their and their family's specific needs	don't see any	I think the Bismarck area needs more law trained and experienced mediators from which to choose.
Ability to begin dialogue in an informal setting	nonbinding; can leave with nothing resolved	It is a good idea, but it has no teeth
allows clients to have a say in their future. Parties are more likely to get along afterwards versus a trial with mudslinging	n/c	I think it would be a great idea.
Lower costs; less court time and judicial involvement	none	n/c

Advantages	Disadvantages	Suggestions
They can work out their own solution instead of having a judge tell them what it will be. These people generally don't come back.	If the parties are going to agree, they will agree. I have rarely seen two people reach an agreement if they both are not willing to participate. To that extent, a majority of all custody cases are resolved by the parties without mediators	I'm not overly confident it will work. In an ideal world it would, as both parties would at least try to negotiate. However, that is not how our society works all of the time. As such, forcing people into mediation will not resolve these cases where either one or both do not enter into negotiations in good faith. Those people should be identified quickly and ushered out of the program to make room for people who are willing to at least try. I don't know how you make that determination. Perhaps a questionnaire.
More control; allows things to be said	cost in addition to attorney fees; depends on willingness/ability of parties to mediate	n/c
fast and agreeable resolution; inexpensive alternative	prolongs the process in the event the parties are not successful; may increase tension if unqualified mediator; potential for unfair agreement if one party more persuasive/powerful and mediator lets it happen	Difficult to refer people when do not trust ability of mediators – Select and train mediators – lacking good, qualified mediators in our area
there are none; I believe it is time for a separate family law court system	You have to come to grips with the idea that custody is not about custody. Until there is a way to make the custodial parent accountable for how child support is used, you will always have disputes pertaining to custody.	Dump the program. It will cost litigants more in the long run than if they went straight to court.

Attorney Narrative Comments from November Surveys

The comments from the fall survey are more likely to include comments focused on the pilot project itself, although the majority continue to address the philosophical pros and cons of mediation in family law matters.

Advantages	Drawbacks	Suggestions
More options in visitation schedules -- feeling of some control vs court-ordered	If one party is too domineering, it perpetuates the problem -- mediator may not be aware of some of the psychological history	
less stress, less expensive	N/C	try to listen to both sides -- some clients are not good at expressing themselves or fully understanding implications of decisions
N/C	N/C	allow some time to do discovery before mandatory mediation. Attorneys can maybe work something out before mediation is needed. Project assigns mediation way too quick
control over their own problems -- ability to avoid an "aggressive" attorney who fosters unreasonable expectations --cost advantages -- the ability to work together which may impact future decisions -- I try to mediate or just hold settlement meeting or conference in virtually all of my cases, family law or not. 95% of the time we resolve and the parties go away reasonably pleased with the process	When power is unequal mediation can still be effective, but attorneys may need to be present. I don't feel that court-ordered mediation provides additional successes unless people want to be there, there is little to be gained. Some mediations are held too late after the money is spent or emotions have gotten carried away.	N/C
More flexibility creating parenting schedules than they would have in court -- More practical and faster than having attorneys negotiate terms -- saves attorneys fees and long, drawn out trials	They don't always understand the legal ramifications of their agreements -- Parties give in too much, more than would happen in court -- They give no legal advice because mediation occurring without attorney present -- they don't address all of the issues	Attorneys need to be kept in the loop. We should receive copies of correspondence to mediator and it would be nice to hear from the mediator about the status of the case. Would be nice to have input in who the mediator is -- some are better than others
insight into others' view of the situation	could maybe be better deterrent offered to ignoring custody agreements	N/C
an ability to try and resolve differences in a less stressful and intimidating setting	none	N/C

Advantages	Drawbacks	Suggestions
It allows those individuals who are open to settlement a meaningful opportunity to resolve differences in a neutral atmosphere	Forcing mediation is never a good idea and there are some individuals who are not open or willing to work with the opposing party	N/C
more expeditious and less costly relief	power relationship issues	N/C
can save money if done early and parties are amenable to resolution	can increase costs to litigants -- should never be made mandatory -- not all mediators are patient and tolerant of the clients -- some mediators show bias based on sex	N/C
say what must be said, move forward issues	mediators are not counselors, strongly disagree with UND's current approach to mediation and I do not use it	use trial experienced attorney mediators only -- UND's current mediation philosophy can unfortunately turn
reduces legal fees --reduces acrimony -- produces more satisfying results	sometimes I don't think mediators/mediation can level the playing field when one party lacks information or confidence	Keep up the good work!
Forum where parties can influence the outcome of their own case	none	N/C
An opportunity to discuss many options as well as an opportunity to create a new pattern of communication	it requires a willingness to work together	N/C
quick resolution if possible	if resolution clearly impossible it's a waste of time and money	N/C
It makes it not so adversarial	Cases that are going to settle, will -- those cases are the ones being resolved in mediation. The tough cases always go to trial.	N/C
quick, better atmosphere, parties usually on equal footing, not involve kids as witness or affiants, less expensive (less attorney fees), more understandable	too expensive if mediators charge too much -- no final resolution	N/C

Advantages	Drawbacks	Suggestions
<p>assess their situation and help them resolve with minimal costs</p>	<p>allows power struggles if not properly handled</p>	<p>N/C</p>
<p>I am not sure the program offers too many advantages. The only advantage at this point is that the first 6 hours are free.</p>	<p>It is usually a waste of time. Generally to get to the point where mediation kicks in, both parties have attorneys. Additionally, an interim order has happened or is about to happen around the time of mediation. The parties have already expressed animosity towards each other. Many of the litigants also have their attorneys present, so they do, in fact, pay for the free mediation. Additionally, the parties' attorneys are able to settle most of the issues.</p>	<p>The program should be proactive before people actually file for divorce. They should have the option of choosing mediation prior to actually retaining attorneys. This forced mediation is ridiculous. The bottom line is that people that can work out an agreement will. People that can't are inconvenienced by this program 100%.</p>
<p>Should permit an opportunity to obtain a faster resolution (before problems "fester") -- should provide less "formal" setting for clients to express their concerns, needs and goals -- ideally the setting should encourage and facilitate the parties' listening to each other -- should permit parties to "tell their story" to a facilitator, without cross examination or other destructive forms of questioning -- should avoid (further) embittering parties or (further) poisoning the well for future interactions involving the children -- should remove the focus and motivation from only defining and working to achieve a WIN</p>	<p>In a properly constructed program, with adequately trained mediators, there should not be any drawbacks, except this may not be as clear that someone "wins" and that someone "loses" (this is facetious -- good mediation should be a "win-win" outcome for both). Cost: the pilot project provides a base time period, but after that mediators advise the parties that they are on their own if they elect to go forward. If the mediation is proceeding constructively, the state funding should continue -- clearly there is a positive cost/benefit for the state in having family law matters resolved at this level</p>	<p>I have had three clients before the same mediator and the SOLE issue that the parties and counsel agreed to at the end of the state funded sessions was that the mediation, and the mediator, had been a disaster, including that he was unwilling to deal with numerous issues of the case and after several lurching starts, told the parties, when they wanted to try again, to address issues in the case, that the "free" time was all used up. There MUST be a skilled and effective mediator to provide a review of the process, as well as critique of individual mediators and some level of uniform training. It would do well to have a bifurcated program administration; someone to ascertain whether there is a "match" between the parties and the assigned mediator, and to ensure that the mediators in the program are adequately skilled,</p>

Advantages	Drawbacks	Suggestions
		prepared and effective in their roles (as contrasted with the present situation where you may have an effective mediator or a pig in a poke). My experience with the program to date has been such that I believe that unless there is a rapid and dramatic improvement in the current program, it will be ineffective and will be regarded with disdain and disfavor. If the program sinks without a ripple, the result would then be cited by those who dislike (or feel threatened by) mediation as "proof" that it does not work, and it would likely be a long time before another mediation program would be instituted.
Get together without lawyers and talk out the issues	Some attorneys still resist settlement without their direct input -- makes mediation difficult	Quicker intake and referral
saves the client money even if just to narrow the issues of litigation -- forces some attorneys to resolve some issues that would otherwise be argued at length over	N/C	N/C
none	time restraints causing "hurry up" deal making (dead line pressure) -- unequal bargaining power -- cost, especially when one or both parties need to have lawyers present -- the agreements I've seen are poorly written up, hard to turn the mediated agreement into a court acceptable stipulation -- the attorney for one party ends up calling the opposing attorney to negotiate terms not addressed which could	N/C

Advantages	Drawbacks	Suggestions
	end up in the courtroom anyway!! -- fights over custody are really fights over child support	

We believe that the negative comments contained in the attorney narrative comments reflect philosophical disagreements with the premises of the project. Many of those disagreements – such as the creation of delay in the family law litigation process – do not seem to be borne out by the data currently available. While a number of these comments are thoughtful (such as the suggestion that custody mediation be made available prior to filing a divorce), we do not suggest that the North Dakota Supreme Court make any immediate changes in the pilot project based upon these comments.

The exception is the long comment about three unsuccessful experiences with the same mediator. The data on the first 49 cases shows one mediator with that number of “no agreement” cases. We recommend that the project administrator attempt to determine who the mediator is and have follow up discussions with him or her. It may be difficult for the project administrator to identify the mediator; other mediators may have three failed mediations or the commenting attorney may have categorized as failed a mediation that the mediator thought was at least partially successful. The administrator cannot begin with the attorney who submitted the comment because the attorney surveys are anonymous. However, this explicit feedback from an attorney clearly supportive of mediation should not be disregarded.

Mediation Provider Survey Results

Mediation providers were asked three introductory questions. Ninety percent of respondents to both surveys practice mediation on a part time basis. 46% of the respondents are lawyers; 8% are retired judges; the remaining 46% are other professionals. 17% limit their mediation practice to family law matters.

The results from the two surveys of mediators are shown in a fashion similar to the display of the results of the lawyer surveys.

Mediation Provider Survey Responses

Question	Average Scores	
	May survey	November survey
Litigation is the best way to resolve child custody and visitation disputes	4.37	4.75
I believe that mediation provides litigants with improved dispute resolution skills	4.26	4.44
Parties are more likely to abide by the terms of a mediated agreement than a court order	3.47	4.22
Parties are less likely to come back to court to modify custody and visitation if their agreement was reached through mediation rather than through trial	3.84	4.13
The power relationships between the parties are the same in mediation as in the courtroom	2.17	2.67

Mediation providers were asked how many family law matters they had mediated during the previous six months.

Reported Family Law Mediations during the Past Six Months

	None	One	Two	Five	Six	Eight	Fifteen
May survey	61%	11%	11%	6%	6%		6%
November survey	78%				11%	11%	

Nearly twice as many mediation providers responded to the first surveys than to the second surveys. The above data, therefore, does not tell us whether publicly provided mediation has reduced the level of private mediation. However, it is abundantly clear that private mediation has not ceased as a result of the advent of the publicly funded program for contested child custody and visitation matters.

In addition, the mediation provider surveys show that they agree with the family law bar that:

- Litigation is not the best way to resolve child custody and visitation disputes (100% take this position).
- Mediation provides participants with improved dispute resolution skills (96% agreement).
- Parties are more likely to abide by the terms of a mediated agreement than a court order (80% agree).

- Parties are less likely to return to court to modify a mediated agreement than an order issued following a trial (95% agree).
- The power relationships between the parties are different in mediation and in the courtroom (75% agree).

Mediation Provider Narrative Comments

The mediation provider survey gave mediators an opportunity to set forth their perceptions of the advantages and disadvantages of mediation for child custody and visitation matters and to make suggestions for the pilot project.

Many mediators made comments on both the May and November surveys. Those comments are presented separately.

The comments reflect a number of the issues that the pilot project faced during its start-up phase. The pilot project includes both “transformative” and “legal process” oriented mediators. Transformative mediators engage the parties from a pure dispute resolution perspective – attempting to help them resolve the issues they confront without regard to the legal context within which they arise. Transformative mediators let the parties define the issues to be decided. Other mediators – primarily those with legal training – address child custody disputes within their legal context – for example, pointing out the legal matters to be decided, articulating the applicable legal principles, and letting the parties apply those principles to the issues in dispute. There are strong feelings within the mediation provider community concerning these two approaches. Both types of mediators were chosen for the pilot project and both approaches appear to be effective.

The recommendations address the comment about the binding nature of mediation agreements. We do not make other recommendations as a result of these comments.

Mediation Provider Narrative Comments from May Survey

Advantages	Drawbacks	Suggestions
it allows the parties to maintain open communication	I believe that if not all areas are covered, it may have an impact on their rights and what they may be entitled to in the future	
able to communicate what is important to them; to understand	Mediators cannot give legal advice, so it highlights the	The joint committee on ADR needs to draft ethical standards;

Advantages	Drawbacks	Suggestions
the other party and their kids better; able to work on issues that impact them and others in a productive way; increases their capacity to work through issues in the future; supports ongoing relationships regardless of divorce/separation, etc; diminishes the negative conflict spiral that impacts the kids	need for our state to become more "pro-se friendly", to educate the public, and to provide better low income legal services	educate the public on what mediation is/is not and the benefits and drawbacks; expand to the entire state within two years; develop program for domestic violence cases that supports partnership w/the DV community and mediators; protect against "attorney bias" in the mediation pool and against mediators practicing law as mediators in mediation settings
control over the process; opportunity to be heard and possibly, therefore, understood; increased likelihood of a civil relationship in the future; opportunity to feel strengthened through the process; moves discussion away from vindication and retribution	potential for making decisions without fully understanding legal ramifications; face to face nature of the process is inappropriate if one party is in fear of the other	I would strongly argue for a process based on principles of transformative mediation, given the need for ongoing interactions. And I would argue against a credential based certification process (i.e. licensed attorney or counselor as prerequisite) and for an experience-based or skills-based certification, plus oversight and continuing education requirements
they are allowed to speak and to formulate their thoughts interactively, and on their own terms	stronger parties may dominate	that transformative mediation be practiced so that parties may benefit from empowerment and recognition
it is a safe, neutral place for each party to tell their story; it provides an opportunity for the parties to actually hear, often for the first time, how the other party feels or is thinking; it is voluntary - parties know they can end the conversation at any time	it is not legally binding	I applaud your efforts and encourage you to move forward with great anticipation
clarify misunderstandings; understand other's viewpoint; communicate needs; express emotions; bargain or negotiate solutions; open channels of communication for future problem solving	some are unable to defend self against more powerful persons; some are too angry or hostile to participate in mediation	none

Advantages	Drawbacks	Suggestions
empowerment of the parties; increased input; buy in, and hopefully, commitment to the agreement	no legally binding agreements are established; the follow through is left to the parties	none
saves time and money	none	none
conversation in a neutral environment	participants can withdraw at any time if it isn't court ordered	none
an opportunity to work out an arrangement that will work for the parents and their children. However, both sides need to be willing to work toward what is best for the children rather than their own agenda, thus the most powerful one can get the upper hand.	won't work if both sides don't buy in	none
mediation gives litigants an opportunity to tell their story and have a voice; they can structure their own dispute resolution to a degree; non-binding mediation feels comfortable since they know they won't be forced into an agreement	both parties must be serious about reaching a settlement or mediation won't work; if one party has inflated ideas about the strength or value of his case, mediation is more difficult	Don't practice or mediate family law, so I cannot offer any input in that area
Both parties have a say in agreement and have a chance to air their complaints and concerns with one another. Often times they begin with hostility and end with mutual commitment to the agreement. Mediation is less expensive and results in agreements that are typically better for children	If the mediator is good, I don't see any drawbacks.	I am a family counselor and have found divorced families seem to be more willing to work together to solve problems when they have worked out their divorce with a mediated agreement.
Cost savings; opportunity for constructive evaluations of issues; opportunity to see if there is room for agreement without arbitrary court decision	none	none
parties have a chance to be heard and to hear the other's concerns with a neutral party present. It will be lasting	It takes time. It's hard for litigants to trust the process.	Provide some options for liability insurance. It is hard to find. Use part time mediators. One reason I didn't apply is that I was afraid I

Advantages	Drawbacks	Suggestions
because the parties decide what will work for them.		wouldn't have time. I would want to do it occasionally.
control of their lives; foster resolutions; less stress	no moral victories	n/c
It provides the parties an opportunity to participate in the resolution of their case	It is expensive, although not as expensive as litigation. There may be power imbalances that may be difficult or even impossible to overcome.	

Mediation Provider Narrative Comments from November Survey

Advantages	Drawbacks	Suggestions
control over decision making; cost savings over litigation; reduce conflict interaction -- increased ability to talk -- improvements in relationships with family members -- better decision making -- less post-divorce acrimony	It cannot guarantee protection of legal rights (neither can litigation) -- parties without lawyers still need legal advice which should not come from mediators	more public education on program -- more education for lawyers/judges on program -- consider expansion into other areas
there will be lasting benefits if the parties can come to an agreement themselves -- there may be insights to the other person's point of view -- the best interests of the child will prevail if parents can agree	Attorneys often feel that their clients want things settled quickly -- attorneys feel a duty to represent a client -- it is hard for them to be "neutral" -- it takes time for parties to feel safe enough to hear another party's point of view	I have not done any mediations by myself. I am only open to doing them through the UND Conflict Resolution Center. I favor transformative mediation, in which relationships may change. I do not have experience in other kinds of mediation.
control of outcome -- less cost	N/C	N/C
parties are in control of a process making decisions central to their lives -- parties have opportunity to improve rather than worsen their relationship with each other -- parties can begin a process of constructive dialogue	the weaker party may possibly be disadvantaged	keep working with transformative mediation

Advantages	Drawbacks	Suggestions
N/c	I cannot answer the question successfully for family law. Generally with two cooperating parties, mediation is better than litigation. Family law is a hotly contested area and my general experience with litigation does not carry over to family law, especially where children are involved	have not been involved
N/C	N/C	I have no experience with this program and I do not practice family law
a chance to communicate with each other -- an opportunity to be heard and views considered -- a good result because both parties have invested themselves in a parenting arrangement	sometimes difficult to overcome the power imbalance -- unless both parties want to resolve their differences, it can be a waste of time	make it available before filing

We met with the mediators in person in Bismarck and Grand Forks. Those meetings provided additional context for the findings from the surveys and other data. The mediators had these additional observations:

- The persons participating in the pilot mediation project are different from those who come to them for private mediation sessions. The private mediation parties are paying for the session; they are highly motivated to prepare and always arrive on time. The pilot project parties are younger, less sophisticated, and less motivated. They are more prone to miss appointments. Some mediators are taking steps to address this difference, such as:
 - Calling the parties the day before the session to remind them of the appointment
 - Advising them, during the orientation, to consult with their attorneys before the mediation session so that they will be prepared for the issues to be discussed
- One transformative mediator – whose theoretical perspective is that the outcome is completely up to the parties – is taking a more proactive approach with these parties. She provides more structure,

focusing on the court-desired contents of a parenting plan and raising legal issues with the parties to address with their attorneys. She is more likely to point out options/choices with this client base.

- One mediator prints a copy of the statutory rights and duties of a parent to provide guidance and context for the mediating parties.
- All mediators are frustrated by the attitude of some attorneys who resist mediation and undermine the process with their clients. Some attorneys are said to be resolving all custody issues in their divorce cases before they are filed in court to avoid having to go through mediation.
- All mediators pay close attention to the power relationship of the parties during the mediation session and intervene whenever necessary to make sure that the more powerful party does not take advantage of the less powerful one. Mediators are alert to the possible existence of domestic violence and will end a mediation session if they become convinced that violence is a factor in the parties' relationship, whether or not a party is willing to acknowledge its existence.
- Mediators report success with mediation by telephone with persons living out of state.
- All mediators are very aware of the prohibition on their providing legal advice to either or both parties. They sometimes experience difficulty identifying what is and what is not legal advice.
- One mediator sees the utility of incorporating a custody investigation into the process in some cases – postponing the mediation until an investigation has been conducted to give the parties a more realistic perspective on their situation.
- Cases often settle at the close of the sixth hour – when the parties would have to start paying for the mediator's services if the process were to continue.
- The mediators discussed with the project administrator the process for obtaining approval of additional state funding. If the parties wish to continue the mediation that day, they will have to agree to pay for whatever time is not reimbursed by the pilot project. Alternatively, they can adjourn the mediation so that they can submit financial

information to the project administrator and obtain a determination of what, if any, additional funding will be provided.

Attitudes of Judges and Court Staff

The project administrator sent surveys to judges and court staff in the pilot districts in November seeking their views on the operation of the pilot project during its initial months.

Six of thirteen district judges returned the survey. The results are shown in the table below. The survey used the now familiar technique of asking respondents to state their level of agreement or disagreement with a number of statements. The results are reported both as a numerical average and as percent agreement. As with the other surveys, the statements are presented in both positive and negative formulations (as they appeared in the survey instrument) but the results are reported as if all statements had been stated positively.

Judge Survey Results

Statement	Percentage Agreement	Average
The pilot mediation program is working well in my district	100%	4.50
The outcomes reached through pilot program mediations are more focused on the best interests of the child or children than those reached through litigation	100%	4.00
The pilot mediation program increases the time from filing to disposition for family law matters involving child custody disputes	100%	3.75
Participation in the pilot mediation program has improved the ability of parents to communicate effectively with each other	100%	4.00
The pilot mediation program, in which the mediators' time is compensated by the state, is not a worthwhile investment of public resources	100%	4.60
The pilot mediation program has increased access to mediation for persons living in remote areas	100%	3.75
The pilot mediation program has not increased access to mediation for underprivileged persons	100%	4.75
The pilot mediation program has increased access to mediation for members of minority groups	100%	3.50
The power relationships between the parties are the same in mediation as in the courtroom	33%	2.50
I am concerned that the mediators in the pilot program bring different values to bear during mediation than I would use in reaching decisions in the courtroom	100%	4.00
Parties will be less likely to come back to court to modify custody and visitation if the terms of their custody and visitation arrangement were reached through mediation than through trial	100%	3.80
I am comfortable with the professional quality of the mediators chosen for the pilot program in my community	100%	4.33

The judges were given the opportunity to report positive and negative aspects of the pilot project and to make suggestions for improvement. These are the comments provided

Judge Narrative Comments

Positive Aspects	Negative Aspects	Suggestions
Let's parties reach an agreement	Sometimes reported settled isn't so	Too early to tell
It may be too early to tell, but I think it is working well and I have seen several mediation agreements become stipulated divorce agreements.	I haven't noted any yet.	
To minimize the adversarial environment inherent in domestic relations litigation		
Reduced likelihood that the parties will come back to court	None	
Since implementation I have yet to have a single custody trial – all except one have been resolved. The remaining unresolved case is set for trial next month.	Attorneys obtaining interim orders for custody sometimes make resolution a bit more difficult it would seem. One party sometimes feels that it has an "upper hand" in the mediation process.	Cathy Ferderer is doing a superb job!!
The communication facilitated between parties who, without mediation, would not talk or attempt to discuss issues re children – also, we finally have "teeth" in our ADR requirements!	None – this program is very worthwhile. Should be continued.	

The survey results from judges are uniformly positive. A majority of judges are of the same mind as a majority of attorneys and mediation providers that the power relationships between the parties are different in mediation and in the courtroom.

We spoke personally with judges in Bismarck and Grand Forks. They reported complete satisfaction with the pilot project. The judge in Grand

Forks reported that he had only two contested child custody hearings since the project commenced.

The project administrator received 23 responses to 36 surveys sent to court staff in the two pilot districts. The results of those surveys are set forth below. The average scores are much lower than the agreement percentages would suggest; that is because the vast majority of responses are neutral because of lack of experience with the pilot project.

Staff Survey Responses

Statement	Percentage Agreement	Average
The pilot mediation program is working well in my district	100%	3.59
My workload has increased as a result of the pilot program	100%	3.13
Litigants appear to be satisfied with the pilot program mediation process	100%	3.30
I receive good cooperation from the family law mediation program administrator	100%	4.04
I receive good cooperation from the mediators involved in the pilot program	100%	3.41
The pilot mediation program has increased access to mediation for persons living in remote areas	100%	3.15
The pilot mediation program has increased access to mediation for underprivileged persons	No response	3.00
The pilot mediation program has increased access to mediation for members of minority groups	No response	3.00

Staff were also allowed to provide narrative comments. Few made comments. Most of the comments merely disclaimed knowledge or experience with the project; they have not been reported below.

Staff Narrative Comments

Positive Aspects	Negative Aspects	Suggestions
Litigants are able to resolve their differences out of court which frees up our calendars for other cases.		
If resolution can be had without going to trial	The extra work involved by the clerk's office in processing cases and paperwork	
		We have not used this program often enough to make suggestions. As a person who has been through court ordered mediation, I can tell you it only works if the litigants have open minds and want it to work. Too

Positive Aspects	Negative Aspects	Suggestions
		often they don't.
		I don't see that suggestions ever really make a difference.

Data on Attitudes of the Public Toward Mediation

The evaluation design included obtaining attitudinal information from litigants coming into court to file papers in family law cases. Using surveys prior to commencement of the pilot project and at the end of the first year, the evaluator would be able to determine if public attitudes towards mediation had changed.

The pilot district courts identified only one litigant filing his or her own papers in court during the initial data gathering process. Virtually all court papers in North Dakota are filed by attorneys or by employees of their offices.

Consequently, the evaluation will not be able to gather data bearing on the effectiveness of the pilot project in changing public attitudes towards mediation.

Interim Findings and Recommendations

Having reviewed all of the information provided in this report, Greacen Associates makes the following findings and recommendations.

During its initial ten months, the Family Law Mediation Pilot Project has been successful in meeting its objectives.

- The project has been implemented successfully from an administrative standpoint, with the establishment of procedures, the selection and training of mediators, the augmentation of the UCIS system to support automated data gathering, the gathering of survey and other data for the project, and the preparation of draft ethical guidelines and a draft process for enforcement of those guidelines. All participants praise the performance of the project administrator.

- The project has assigned mediators and issued mediation orders in 98 cases. Forty-nine of those cases were completed by the middle of December and the results available for analysis.
- The pilot project has reached persons from rural areas of the pilot districts, persons of limited means who could not afford private mediation, and members of minority groups.
- Project mediators report that they have obtained full agreement in 54% of the cases completed and partial agreement in an additional 25% of the cases, for a positive impact on 79% of the cases. The project's success rate compares favorably with that from similar efforts in other states. Mediators in the Northeast Central District (Grand Forks) have been more successful than those in the South Central District (Bismarck) although the gap is closing over time.
- Mediations in two thirds of the completed cases have been finished within the time frame set by the North Dakota Supreme Court's Administrative Order 17. Most of the slower cases occurred at the beginning of the program when implementation was postponed at the request of the evaluator.
- Participants in the completed mediations rate them highly.
 - The satisfaction rating for the overall process was 91% – for all participants, including those who did not reach agreement.
 - Ratings of mediator respect, fairness, and equal treatment of the parties and the parties' feelings of safety were over 90%.
 - 94% prefer mediation than going to court; only 11% felt they would have gotten a better outcome in court.
 - 70% reported that mediation introduced new ideas into their discussions.
 - 40% felt they had come away with better negotiation skills.
 - 33% reported that they learned something new about their former spouse.
- Judges in the pilot districts agree that the pilot project is succeeding on all dimensions on which they were asked to provide an opinion.
- Court staff report that the pilot project is not requiring substantial additional work on their part.

- The family law bar is divided on the wisdom of implementing mandatory child custody mediation in North Dakota. A majority of family law attorneys surveyed support mediation of child custody and visitation issues. Most but not all of their comments on the pilot project have been positive.
- Mediation providers are supportive of the pilot project, have identified challenges arising from differences between their traditional private mediation clients and the pilot project participants and are successfully addressing those challenges.

We suggest that the Supreme Court and the project administrator consider the following program improvements and modifications:

- Urging mediators to give more attention during the orientation, and at the beginning of the mediation itself, to clarifying with the participants the process to be followed;
- Urging mediators to pay more attention to ensuring that all participants feel safe during mediation. We suggest that the project set as a goal that no participant reports feeling unsafe on the exit questionnaire;
- Giving out of state parties an option to participate in the pilot mediation project rather than being excluded automatically;
- Changing the wording of the mediation order to provide that an agreement reached during mediation (that is not rescinded within the five business day window following the mediation) is binding on the parties, and supercedes any temporary order entered in the case. Greacen Associates has provided the project administrator with suggested amendments to the current mediation order to accomplish these objectives.

The current understanding that a mediation agreement is not binding on the parties undermines the integrity of the process. The parties need to understand that the mediation process, and the effort to reach agreement, has consequences. Any agreement reached by the parties can be modified subsequently by the court. But, until it is modified, it should be binding and enforceable.

- Creating a process to ensure that written court orders implementing a mediated agreement are prepared for unrepresented parties in North

Dakota. As noted in the report, very few North Dakota family law litigants are unrepresented. However, the mediation process cannot be brought to a successful conclusion for unrepresented persons unless there is a mechanism in the process for preparing final court orders. Mediators feel that they would be providing legal advice if they were to perform this service. Final divorce orders frequently must address issues – e.g., child support and division of property – that were not resolved within the mediation process.

Burleigh County has processes in place to meet this need. The court has prepared a divorce forms packet that unrepresented parties can use, the local legal aid program provides a “divorce night” at the public library to provide assistance to unrepresented persons, and the court referee will prepare orders in cases qualifying for the court’s summary divorce process. That process usually excludes cases involving children; the court has agreed that mediated custody and visitation agreements suffice to remove a case from that exclusion.

We suggest that Grand Forks County adopt and distribute the Burleigh County forms packet, use the local law school clinic to provide assistance to unrepresented litigants, and implement the Burleigh County summary divorce program.

In the long term, as child custody mediation is rolled out statewide, the state will have to solve this issue on a statewide basis. Several states have developed a statewide self-represented litigant services program staffed in a state office such as the state law library. Services are delivered statewide by telephone and workshops are conducted remotely by video conference.