

2003

Evaluation of the Effect of Court-Ordered Mediation and Proactive Case Management on the Pace of Civil Tort Litigation in Lake County, Indiana, An

Jeffrey J. Dywan

Follow this and additional works at: <https://scholarship.law.missouri.edu/jdr>



Part of the [Dispute Resolution and Arbitration Commons](#)

Recommended Citation

Jeffrey J. Dywan, *Evaluation of the Effect of Court-Ordered Mediation and Proactive Case Management on the Pace of Civil Tort Litigation in Lake County, Indiana, An*, 2003 J. Disp. Resol. (2003)
Available at: <https://scholarship.law.missouri.edu/jdr/vol2003/iss1/12>

This Article is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Journal of Dispute Resolution by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.

An Evaluation of the Effect of Court-Ordered Mediation and Proactive Case Management On the Pace of Civil Tort Litigation in Lake County, Indiana^{*}

Jeffery J. Dywan

I. INTRODUCTION

In the 1980's state legislatures and courts became increasingly aware of a perceived dissatisfaction with the judicial system. The public's greatest irritation with the court system was not the quality of judicial decisions, but calendar congestion and trial delay.¹

Responding to these types of concerns, and in an effort to reduce the time and cost of conducting civil litigation, the Indiana Supreme Court adopted rules for alternative dispute resolution that became effective January 1, 1992.² The rules permit trial courts to require the parties to engage in non-binding mediation³ with the assistance of mediators certified by the Indiana Supreme Court.⁴ The 1992 annual meeting of the Judicial Conference of the State of Indiana was devoted principally to the introduction of mediation to trial courts as a means of reducing delay, backlogs, and the cost of civil litigation.⁵

Indiana trial court judges have referred civil litigants to the mediation process since 1992. The number of reported civil cases⁶ referred to mediation in the state rose from 628 in 1992 (0.6% of 113,400 cases filed) to 5,602 in 1997 (4.6% of 122,545 cases filed).⁷ The number of tort cases referred to mediation annually increased from 243 in 1992 (2.9% of 8,376 tort cases filed) to 3,024 in 1997 (23.8% of 12,716 tort cases filed).⁸ The reports do not detail what effect, if any, these referrals have had on the time it takes to resolve civil litigation or the referrals' effect on court backlogs. The annual judicial reports do indicate that the

^{*} This article is in partial fulfillment of the requirements for the Master of Judicial Studies degree program at the University of Nevada, Reno.

1. Natl. Conf. of State Trial Judges, *The Judge's Book* 107 (ABA 1989).

2. See Ind. ADR Rules (1992).

3. Ind. ADR R. 1.6 (2001).

4. Ind. ADR R. 2.3 (1997).

5. 26th Annual Meeting of the Judicial Conf. of Ind., *Indiana Judicial Center Agenda and Materials* (Sept. 1992).

6. The state judicial reports provide statistics for alternate dispute resolution referrals in "civil cases" (domestic relations, civil plenary, and civil tort) and "other" litigation. *Indiana Judicial Report*, Vol. 1: Executive Summary 69 (Ind. Sup. Ct. 1997).

7. *Indiana Judicial Report*, Vol. 1: Executive Summary 69 (Ind. Sup. Ct. 1997); *Indiana Judicial Service Report*, Vol. 1: Executive Summary 50 (Ind. Sup. Ct. 1999).

8. *Id.*

number of civil cases pending statewide increased from 183,371 as of January 1, 1992,⁹ before the mediation rules went into effect, to 199,255 pending civil cases as of December 31, 1999,¹⁰ an increase of 8.6%. The reports show that the number of civil tort cases pending statewide increased from 12,368 on January 1, 1992,¹¹ to 24,234 on December 31, 1999,¹² an increase of almost 100%. Even with a ten-fold increase in the number of civil tort cases referred to mediation each year, the backlog of civil tort cases doubled.

Given this experience, one might question whether mediation was helping to increase the pace of litigation or to reduce backlogs, particularly in civil tort litigation. Three studies of the mediation process have been conducted in Indiana. Each will be described briefly below.

A. The 1994 Lake County Survey

This author conducted a survey of mediators working with the courts in Lake County, Indiana in 1993-1994. At that time, thirty-four civil mediators were listed with the court administrator's office. The mediators were asked to track mediation cases for six months and to record the number of cases that had been referred to them for mediation, the number of cases actually mediated, the number settled, and the time to settlement after the referral to mediation.

Twenty-three of the mediators responded to the survey. These mediators reported that 816 civil cases had been referred to them for mediation during the six month reporting period. Mediation sessions were held in 556 (68%) of those cases. No mediation sessions were conducted in the remaining 260 (32%) of the cases. Of those cases in which a mediation session was conducted, 455 (82%) settled through mediation. However, those 455 settlements represent only 56% of all cases referred to mediation.

The survey did not request mediators to provide the reasons why mediation sessions were not conducted in over 30% of these cases. However, comments of mediators and attorneys at the time indicated that mediation sessions were not held, or cancelled, if the monetary value of the case was too small to warrant the expense of mediation, if one or both parties were so firmly entrenched in their settlement position as to indicate that attempts to negotiate further would be futile, or if the parties settled before a mediation session was held.

The mediators reported that the mediation sessions were conducted relatively promptly, ranging from one to five months after the referral to mediation. The average time from the court's referral to the conclusion of mediation was 2.2 months. Though mediated settlement rates were not as high as the 90% overall settlement rate for civil cases, mediation was moving mediated settlements to conclusion reasonably quickly after referral.

9. *Indiana Judicial Report*, Vol. 1: Executive Summary 54 (Ind. Sup. Ct. 1992).

10. *Indiana Judicial Service Report*, Vol. 1: Executive Summary 59 (Ind. Sup. Ct. 1999).

11. *Indiana Judicial Report*, *supra* n. 9.

12. *Indiana Judicial Service Report*, *supra* n. 10.

B. The 1999 Indiana Judges' Survey

The Alternative Dispute Resolution Committee of the Indiana Judicial Conference conducted a statewide survey of civil mediation in 1999.¹³ All registered civil mediators in the state were contacted and asked to supply information on civil mediations that occurred in Indiana in the last six months of 1998. Of the 462 mediators who were contacted, 75 returned the survey.¹⁴ The summary report noted that the response rate was slightly below the typical response range of 20 to 30%, perhaps because the mediators either felt it would take too much time to fill out the survey or forgot to fill out the survey. The report acknowledged that the results might be distorted because those mediators more successful at mediation may have been more likely to report results than those with mediations which were not successful.¹⁵

The mediators' reports indicated that of the 934 cases referred to mediation, mediation sessions were held in 923 cases,¹⁶ 610 (65.8%) were resolved at mediation, and an additional 29 (3.1%) were settled soon after mediation as a result of mediation.¹⁷ The average length of time from the referral to mediation to the conclusion of mediation was 3.7 months.¹⁸ The report found through analysis of the mediation data that the likelihood for successful mediation increased as the amount of discovery completed in the case increased.¹⁹

C. The Allen County Study

The Allen County, Indiana courts reported in May 2000 that its family relations mediation project had reduced the time to conclusion for both mediated and non-mediated dissolution-of-marriage cases. The study reported that time to conclusion was reduced by 54% for mediated cases and 53% for non-mediated cases.²⁰

However, the study also demonstrated that mediated cases took significantly longer to conclude than non-mediated cases. The time to conclusion for mediated cases was almost twice the time to conclusion for non-mediated cases.²¹ The Allen County report attributed this to the fact that many uncontested and easily settled cases were finalized earlier than those cases in which contested issues might generate an order for mediation.²² The report also concluded that proactive case

13. Virginia Shingleton, *Summary Report on the Alternative Dispute Resolution Survey* (Jud. Conf. ADR Comm. Sept. 1999).

14. *Id.* at 1.

15. *Id.* at 14.

16. *Id.* at 7.

17. *Id.* at 9.

18. *Id.* at 6.

19. *Id.* at 11.

20. Rick Thackeray, *Allen County Program Challenges Myths about ADR, Divorce*, *The Indiana Lawyer* 9 (Apr. 26 - May 9, 2000).

21. *Id.* at 9.

22. Thomas L. Ryan, Charles F. Pratt, Stephen M. Sims, Thomas J. Felts, Irene A. Spindler, *Report on the Study of the Allen County Family Relations Alternative Dispute Resolution Plan* 10 (Dec. 1999).

management²³ practices led to a “dramatic shortening of the time between a request for trial date and the trial.”²⁴

The results of these three studies indicate that mediation helped cases move more promptly to conclusion, but only *after referral to mediation*. The 1999 judges’ study indicates that completion of discovery, a time-consuming and potentially expensive process, is important to increase the likelihood of successful mediation. As a result, the time the parties use to prepare their cases for mediation may be slowing down the dispute resolution process.

It is therefore reasonable to question whether mediation and the overlapping effect of proactive case management have helped increase the pace at which the courts resolve civil litigation and have helped to combat backlog. This research study will examine the effect of mediation and case management upon the pace of civil tort litigation and court backlog in Lake County, Indiana.

II. THE LOCATION OF THE RESEARCH STUDY

Lake County is located in the northwest corner of the State of Indiana and is an industrialized urban region with a population of 484,564 people.²⁵ During the period of the research study, the county had one Circuit Court and thirteen Superior Court judges.²⁶ The Circuit Court and five Civil Division judges had general civil jurisdiction, and heard domestic relations, torts, property or contract disputes, or any other civil cases at law or in equity. Four Criminal Division judges had exclusive criminal jurisdiction and presided over all felony criminal cases, except for Class D felonies (the lowest category). Three County Division judges handled a small claims docket, with simplified rules of pleading and practice for cases under \$3,000, as well as civil cases under \$10,000, and traffic, misdemeanors and Class D felonies. The one Juvenile Division judge heard matters involving juveniles, such as delinquency proceedings, dependent and neglected children, and paternity cases.²⁷

The Circuit Court was located in Crown Point, Indiana, the county seat, while the five Civil Division Courts were located in the cities of East Chicago, Gary, and Hammond. These civil courts were created by the Indiana Legislature to serve the population that had grown in those cities early in the 20th Century.²⁸ The

23. Proactive case management is a system whereby the trial court, not the litigants or attorneys, moves a case through its various stages to conclusion. This is done by a system of scheduling conferences, discovery and motion deadlines, and the eventual trial setting. This is an alternative to a more traditional and *reactive* approach to case management, in which conferences, deadlines, or trials are scheduled by the court only upon request of the litigants or their attorneys. See Natl. Conf. of State Trial Judges, *supra* n.1, at 107 – 110; Indiana Judicial Center, *Fundamentals of Caseflow Management, Agenda and Materials* (May 2000).

24. Ryan et al., *supra* n. 22, at 10.

25. U.S. Census Bureau, *Census 2000 Data for the State of Indiana: State by County* <<http://www.census.gov/census2000/states/in.html>> (last updated Oct. 31, 2002).

26. The 1999 Indiana State Legislature added two additional civil courts and one additional county court to the Superior Court of Lake County. Ind. Code. §33-5-29.5-21(b) (2002).

27. Each of the divisions of the court is also served by a number of magistrates, who preside over pre-trial proceedings and report findings and recommendations to the supervising judge. Ind. Code § 33-5-29.5-21 (2002); Ind. Code § 33-5-29.5-7.1 (2002); Ind. Code § 33-5-29.5-7.2 (2002).

28. Powell A. Moore, *The Calumet Region: Indiana's Last Frontier* 169 (Ind. Historical Collections, vol. XXXIX, Ind. Historical Bureau 1959).

courthouses in the cities of Gary and Hammond each had two Civil Courts, while one Civil Court was located in East Chicago. Civil cases were assigned to a particular courtroom at the option of the plaintiff, who selected the court in which to file.²⁹ The Criminal Division and County Division judges were located in Crown Point, while the Juvenile Division was located in Gary.

III. THE SYSTEM OF MEDIATION REFERRALS IN THE COURTS

The Rules for Alternative Dispute Resolution (ADR) in Indiana are generally applicable in all civil cases.³⁰ The ADR rules permit a trial court judge to refer any civil case to mediation at his or her discretion at any point in the proceeding prior to disposition. The ADR rules do not suggest when or if a court should refer a case to mediation, nor do they require mediation within a specific time period once a court orders a case to mediation.³¹

The courts in Lake County have adopted local rules for alternative dispute resolution.³² These rules provide additional detail regarding mediation practices, but do not establish guidelines as to which cases should be selected for mediation or at what point in the proceedings cases should go to mediation.³³ The system of mediation referrals in the civil courts in Lake County is left to the discretion of the individual judges.³⁴

This study focuses on two of the Civil Division courtrooms. In one of the courts, proactive case management procedures were employed. In that court, each case was reviewed at an initial status conference held approximately six months after the case was filed. After the initial conference with attorneys for both sides, the judge would, at his discretion, refer a case to mediation and establish a deadline for completing the mediation process. The mediation session was usually to be completed after the discovery in the case was completed and before the pre-trial conference.³⁵

The second court in this study did not employ a systematic program for early review of cases for potential mediation referrals or for the establishment of deadlines and trial. The customary practice was that matters were set for pre-trial conference, hearing, or trial upon the attorneys' request. This court usually referred cases to mediation during a pre-trial conference, after the conclusion of a dispositive motion hearing, or upon request of an attorney.³⁶

29. The assignment of cases to the courts was modified in a caseload management plan adopted by the courts in 1999. Under the caseload management plan, the jurisdiction of the Juvenile Division was expanded to include guardianship and adoption cases, certain types of Class D felony cases were assigned to the Criminal Division, and random-filing procedures were implemented to distribute cases among the Civil Division courts. See *Weighted Caseload Plan for Lake Superior Court* (Dec. 3, 1999), approved by the Indiana Supreme Court *Order Approving District Caseload Plan* in Case No. 94S00-0001-MS-19 (Jan. 6, 2000).

30. Ind. ADR R. 1.4 (2001).

31. Ind. ADR R. 1.6 (2001), 2.2 (1997).

32. See Lake County ADR Rules (1993).

33. Lake County ADR R. B(2) provides that any case may be referred to mediation at virtually any time in the proceeding, with limited exceptions.

34. *Id.*

35. The author was the presiding judge in the subject court during the period of this study.

36. The presiding judge described his method for mediation referrals during meetings and conversations.

The judges in both courts generally took the position that a case must be submitted to mediation before it would be scheduled for trial, unless the attorneys could offer a substantial reason to not require mediation. Over time, it became more apparent to the judges that in certain cases the amount of money at issue did not warrant the expense of mediation, or that in some cases the defendants' insurers or the plaintiffs were so firm in their settlement positions that mediation would likely be fruitless.

IV. THE RESEARCH STUDY AND ITS METHODOLOGY

This research study was designed to evaluate the effects of mediation and proactive case management on civil tort cases in Lake County, Indiana. The study attempts to measure whether mediation in civil tort litigation in Lake County decreased the time to case disposition, increased settlement rates, or reduced backlogs. The study also attempts to determine the effect of proactive case management procedures on civil tort cases using the same measures.

The research included a review of the numbers of civil tort case filings in the years 1993 through 1997 in the six civil courts in Lake County, Indiana. The five years were selected because the courts first began referring cases to mediation in 1992. Data from prior years was not relied upon because the civil courts of Lake County did not routinely handle civil tort cases to conclusion before 1992.³⁷ The research included a review of each of the civil tort cases filed from 1993 to 1997 for two of the six courts with civil jurisdiction.

The two courts selected were subject to the same Local Rules of Procedure and the Indiana Rules of Trial Procedure. One of these two courts engaged in proactive case management in all civil tort litigation, while the other followed the county's traditional practice of permitting the attorneys to control the pace of the litigation.

The Chronological Case Summary³⁸ for each case filed in each court between 1993 and 1997 was examined to determine filing dates, referrals to mediation, trial dates, and settlement dates. The data for the civil tort case filings, which totaled approximately 400 to 600 cases per year in each court, were tabulated and analyzed.³⁹ The number of civil tort case filings, dispositions, jury trials, as well as

37. Prior to 1992, the Indiana Rules of Civil Procedure permitted a party in any civil case to request an automatic change of venue from the county in which the case was filed. *See* Ind. R. Civ. P. 76 (1991) (amended 1992). In most contested tort litigation in Lake County, defendants requested a change of venue to the adjoining rural counties. For example, 1693 civil tort cases were filed in Lake County in 1991, and 842 were transferred out of the county. The six courts with general civil jurisdiction tried only one civil tort case to a jury in that same year. *See Indiana Judicial Report*, Vol. II 46 (1991); *Indiana Judicial Report*, Vol. III 15, 239 (1991). The Indiana Supreme Court eliminated the automatic change of venue rule effective February 1, 1992. *See* Ind. R. Civ. P. 76 (1992), as amended effective February 1, 1992. The elimination of the change of venue rule shifted the responsibility of managing the county's civil tort litigation from the adjoining counties to the Lake County civil courts, which had previously been principally involved with domestic relations, commercial, and probate cases.

38. A Chronological Case Summary is the document maintained for each case that lists, in chronological order, the date and description of each filing or event that occurs in the case. Ind. R. Civ. P. 77 (2000).

39. Information from author's surveys of the Chronological Case Summaries is in the possession of the author and is available upon request.

the number of pending civil tort cases were calculated from the courts' Chronological Case Summaries.

The median times to disposition were calculated for each of the courts for each of the years under the study. Mediated cases were compared with non-mediated cases. Cases processed in the court with proactive case management procedures were compared to cases processed in the court without proactive case management. In this way, the effect of mediation on the time to disposition, settlement rates, and caseloads could be evaluated, as could the effect of proactive case management.

V. EVALUATION AND DISCUSSION

A. Tort Case Filings

The tort case filings for the two subject courts and for Lake County's six civil courts are shown in Table 1.⁴⁰

Table 1
Tort Cases Filed

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
Traditional Court	211	381	307	356	398
Proactive Court	534	692	683	587	611
All Courts	1674	2218 ⁴¹	2130	2170	2138

Table 1 demonstrates that during the years under study, attorneys annually filed between 43 - 46% of the county's tort cases in the two courts in the study, while the remaining 54 - 57% of the county's tort cases were filed in the four other civil courts. The table also demonstrates that attorneys filed significantly more cases in the proactive court than in the court following traditional case management methods. The traditional court showed an increasing trend in filings, while the number of filings were generally decreasing in the proactive court in the last four years of the study.

40. The information contained in the Table 1 was obtained by the author from two sources. The author conducted a review of civil tort cases filed in each of the two courts studied and calculated the numbers of cases filed from that review. This data is in possession of the author and is available upon request. The figures for the civil tort filings for All Courts were obtained from the annual *Indiana Judicial Reports*. See *Indiana Judicial Report*, Vol. II: 47 (Ind. Sup. Ct. 1993); *Indiana Judicial Report*, Vol. II: 47 (Ind. Sup. Ct. 1994); *Indiana Judicial Report*, Vol. II: 65 (Ind. Sup. Ct. 1995); *Indiana Judicial Report*, Vol. II: 63 (Ind. Sup. Ct. 1996); and *Indiana Judicial Report*, Vol. II: 67 (Ind. Sup. Ct. 1997).

41. The number for new cases filed in All Courts in 1994 as shown in the table is lower than the published figure because the published number of new cases included cases transferred from another court in the county to the Proactive Court. These transferred cases were not included as new tort case filings.

B. Mediation Referrals

The Chronological Case Summaries were also examined to separate the cases in each court that had been referred to mediation from those that had not. The numbers of cases referred to mediation by each court for each of the years in the study appear in Table 2.⁴²

Table 2
Cases Referred to Mediation⁴³

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
Traditional	63 (30%)	92 (24%)	95 (31%)	150 (42%)	159 (40%)
Proactive	327 (61%)	445 (64%)	468 (69%)	369 (63%)	305 (50%)

The proactive court referred a substantially higher number and a greater percentage of its cases to mediation for all years. The court using the traditional approach to case management generally increased the number of cases referred to mediation during the term of the study. The number of cases referred to mediation by the proactive court, though at first on the increase, began to decline with cases filed in 1996.

C. Time to Disposition

The median times to disposition for cases referred to mediation and for cases that were not referred to mediation were calculated for each of the courts. The median times to disposition are shown in Table 3.⁴⁴

Table 3
Median Number of Months to Disposition⁴⁵

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
<u>Traditional Court</u>					
Ref'd. to Med.	31	36	29	29	29
Not Ref'd. to Med.	11	12	15	13	17
All Cases	20	18	21	23	24
<u>Proactive Court</u>					
Ref'd. to Med.	14	15	18	19	20
Not Ref'd. to Med.	6	6	7	8	12
All Cases	12	13	15	16	16

42. The author reviewed the case summaries for each case filed to determine which cases were referred to mediation, and then calculated the number of referrals to mediation. The information is in possession of the author and is available upon request.

43. The data represents the number of cases filed in a given year that were later referred to mediation. The data does not reflect the number of cases referred to mediation in a particular year.

44. The author obtained a data processing system report providing the age at disposition for most cases and reviewed the case summaries and tabulated the disposition times for the remaining cases. The information is in the author's possession and is available upon request.

45. The data represents the median time to disposition for cases originally filed in the year shown.

Table 3 demonstrates that the median times to disposition for all tort cases were 28 - 40% shorter in the court using proactive case management techniques than in the court using the traditional approach. Over the five years studied, the proactive court's median time to disposition for all cases was an average of 32% shorter than in the traditional court.

The data also indicates that the median times to disposition were shorter in both courts for cases that were not referred to mediation than for cases that were referred to mediation. In the traditional court, the median time to disposition for referred cases was 70 - 200% longer than the time to disposition for cases that were not referred to mediation. Over the five years studied in the traditional court, the average of the median times to disposition was 133% longer for cases referred to mediation.

In the proactive court, the median times to disposition for cases referred to mediation were 67 - 157% longer than the median times for cases not referred to mediation. Again, over the five years studied in the proactive court, the average of the median times to disposition was 129% longer for cases referred to mediation.

It would appear that mediation did not reduce the time to disposition for these civil tort cases, but rather that it was accompanied by an increase in the time to disposition, the opposite of what advocates of mediation might predict.⁴⁶ But is this conclusion accurate?

The Allen County study, referred to earlier, found the time to disposition for mediated domestic cases was "almost twice as long" for cases referred to mediation than for cases not referred, and attributed this to "the fact that many uncontested and easily settled cases are finalized earlier than those in which contested issues and a request for a trial might generate an order for mediation."⁴⁷ The same could be said concerning civil tort litigation: uncontested and easily settled cases reduce the time to disposition for those cases, and those uncontested or easily settled cases are not generally referred to mediation. The uncontested or easily settled cases could distort the measure of the effect of mediation upon disposition time.

In order to evaluate whether this observation is accurate, the disposed cases from each of the two courts in Lake County were further subdivided in an attempt to eliminate the effect of uncontested and easily settled cases. This first required identification of cases which were "uncontested" or "easily settled."

Under the Indiana Trial Rules and the Lake County Rules of Civil Procedure, the defendant's answer to the plaintiff's complaint is usually not due until approximately sixty days after the complaint is filed.⁴⁸ Those cases that are uncon-

46. See Kenneth Kressel & Dean G. Pruitt, *Mediation Research: The Process and Effectiveness of Third-Party Intervention* ch. 18 (Jossey-Bass 1989). There is evidence that cases that get to mediation reach settlement more quickly than comparable cases that follow the traditional adversarial approach. *Id.* at 398; Lynn A. Kerbeshian, *ADR: To Be or...?* 70 N.D. L. Rev. 381 (1994). The available evidence suggests that mediated cases settle more quickly than comparable cases using an adversarial approach. In child custody settlements, settlement time for the mediation group was significantly shorter. A review of mediations for minor disputes indicated that resolution occurred considerably faster than court hearings could be held. *Id.* at 391.

47. Ryan et al., *supra* n. 22, at 10.

48. Ind. R. Civ. P. 6 (1989); Lake County R. Civ. P. 7 (1993).

tested, resolved typically by default judgment, are usually concluded within six months of filing. In contested cases, local practices permit extensions of time and it is common to see 90 to 120 days pass before the pleadings in a case are complete. At this time, the attorneys typically begin the discovery process. The discovery process usually consumes the next six months and up to two or three years in a case, with only a very few cases presenting any preliminary issues to the court within the first twelve months. Almost any case settled within twelve months after filing would be considered easily settled by the parties.

The proactive court held its first conference in a case approximately six months after the case was filed. The traditional court did not systematically schedule any action in the first twelve months. Attorneys attending the first conference routinely reported that at that time the parties were in the early stages of the discovery process. Virtually all dispositions in both courts within twelve months of filing were either default judgments or settlements. No trials were conducted within twelve months of filing, and it was rare to see a contested dismissal order or summary judgment order within twelve months of filing. If a case settled in the first twelve months after filing, the courts had at that time done very little to move the case to conclusion, except for the proactive court's setting of deadlines. No trials occurred within twelve months after filing. These cases were easily settled from the courts' standpoint as well.

Since uncontested cases were usually resolved within six months, and the courts' work in cases within twelve months after filing was minimal, cases settled within twelve months after filing were classified for this study as easily settled. The courts' data was then retabulated to exclude those cases settled within the first twelve months after filing. Table 4 contains the data for median times to disposition for the two courts, excluding all those cases settled within twelve months after filing.⁴⁹

Table 4
Median Number of Months to Disposition for Cases Filed in Year Shown
(Excluding Cases Settled in Less Than Twelve Months)

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
<u>Traditional Court</u>					
Ref'd. to Med.	32	36	29	32	32
Not Ref'd. to Med.	38	33	34.5	44	35
All Cases	35.5	36	31	36	34
<u>Proactive Court</u>					
Ref'd. to Med.	17	18	21	23	22
Not Ref'd. to Med.	21.5	20	32	25	23.5
All Cases	18	18	22	23	22

The data in Table 4 supports the Allen County observation concerning easily settled cases. Though cases referred to mediation required more time if one considers all cases, if one disregards those cases which are settled within twelve

49. The author reviewed the case summaries and tabulated the disposition times. The information is in the author's possession and is available upon request.

months of the filing date, the median times to disposition for cases referred to mediation in the traditional court were 3 - 12 months shorter than for cases not referred to mediation in four out of five years of the study. During only one year, 1994, the median time to disposition for cases referred to mediation was three months longer. In the proactive court, median disposition times for cases referred to mediation were 1.5 - 11 months shorter than for cases not referred in the five years under study. In both courts, the average of the median times to disposition was four months shorter for cases referred to mediation than for cases not referred.

Table 4 also shows that if one disregards easily settled cases, the median times to disposition of cases in the proactive court were 9 - 18 months shorter than in the court using traditional methods. The median times to disposition for cases referred to mediation in the proactive court were 8 - 18 months shorter than in the traditional court.

D. Settlement Rates

The records from both courts were reviewed to determine the number of those civil tort cases filed in the years under study that proceeded to jury trial. Fewer jury trials meant higher settlement rates, whereas more jury trials reflected lower settlement rates. Table 5 contains the data from that review.⁵⁰

Table 5
Cases Disposed by Jury Trial

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
<u>Trad'l. Court</u>	7(3.3%)	7(1.8%)	2(0.7%)	3(0.8%)	5(1.3%)
Ref. to Med.	1(1.6%)	6(6.5%)	1(1.1%)	2(1.3%)	5(3.1%)
No Med. Ref.	6(4.1%)	1(0.3%)	1(0.5%)	1(0.5%)	0(0%)
<u>Proactive Court</u>	20(3.7%)	25(3.6%)	30(4.4%)	29(4.4%)	26(4.3%)
Ref. to Med.	19(5.8%)	23(5.2%)	27(5.8%)	26(7.0%)	18(5.9%)
No Med. Ref.	1(0.5%)	2(0.8%)	3(1.4%)	3(1.4%)	8(2.6%)

The proactive court disposed of a higher percentage of its cases by jury trial than the traditional court for cases filed in each year of the study. With the exception of the traditional court's figures for 1993 cases, each of the courts tried a greater percentage of those cases that had been referred to mediation than those cases that had not been referred.

Again, if one were to compensate for the easily settled cases, which were resolved with little or no court activity within the first twelve months after filing, the percentages change, as shown in Table 6.⁵¹

50. The author conducted an automated search of the two courts' case summaries to determine the numbers of cases that proceeded to jury trial. The information is in the possession of the author and is available upon request.

51. The author conducted an automated search of the two courts' case summaries to determine the numbers of cases that proceeded to jury trial. The information is in the possession of the author and is available upon request.

Table 6
Cases Disposed by Jury Trial
(Excluding Cases Settled in Less Than Twelve Months)

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
<u>Trad'l. Court</u>	7(5.2%)	7(3.0%)	2(0.9%)	3(1.2%)	5(1.7%)
Ref. to Med.	1(1.6%)	6(7.0%)	1(1.1%)	2(1.5%)	5(3.5%)
No Med. Ref.	6(8.2%)	1(0.7%)	1(0.8%)	1(0.9%)	0(0%)
<u>Proactive Court</u>	20(7.0%)	25(6.3%)	30(6.6%)	29(7.2%)	26(6.2%)
Ref. to Med.	19(8.3%)	23(7.0%)	27(7.1%)	26(8.5%)	18(6.8%)
No Med. Ref.	1(1.8%)	2(2.9%)	3(4.1%)	3(3.2%)	8(5.1%)

Two observations can be made from the data in Table 6. First, even disregarding easily settled cases, the court using proactive case management procedures disposed of a larger percentage of its cases by jury trial than the court employing traditional procedures. Second, after disregarding easily settled cases, with the exception of a single year, 1993, in the traditional court, the cases which had been referred to mediation proceeded to jury trial in higher percentages than the cases which had not been referred to mediation. The mediation process did not decrease the percentage of cases proceeding to jury trial and settlement rates therefore did not increase for cases referred to mediation.

E. Backlogs

The final area studied was the number of pending cases in these two courts. State statistics reported that the number of civil tort cases filed annually in Indiana increased from 8,376 in 1992 to 12,336 in 1999,⁵² an increase of 47%, while the number of civil tort cases disposed of annually in Indiana trial courts increased from 7,788 in 1992 to 12,717 in 1999,⁵³ an increase of 63%. During that same time, statewide referrals to mediation in civil tort cases increased from 243 in 1992⁵⁴ to 2,528 in 1999,⁵⁵ an increase of 1040%. However, the number of civil tort cases reported pending in Indiana increased from 12,368 to 24,234, an increase of 96%.⁵⁶ Despite a significant annual increase in the number of disposed cases, and a nearly ten-fold increase in the use of mediation, the tort case backlog grew statewide.

Table 7 contains the numbers of civil tort cases filed for each year indicated, together with the number of those cases disposed of, as well as the number of those cases pending from each year of the study, for each of the two Lake County courts studied, at the end of the study period (August, 2001).⁵⁷

52. *Indiana Judicial Service Report*, *supra* n. 10, at 50.

53. *Id.* at 52.

54. *Indiana Judicial Report*, *supra* n. 7, at 69.

55. *Indiana Judicial Service Report*, *supra* n. 10, at 71.

56. *Indiana Judicial Report*, *supra* n. 9; *Indiana Judicial Service Report*, *supra* n. 10.

57. The author conducted an automated search of cases filed and disposed in each of the two courts for each year of the study, as well as a manual review of cases filed to determine the cases filed and still pending as of the date of the study. The information is in possession of the author and is available upon request.

Table 7
Tort Cases Filed, Disposed and Pending as of August, 2001

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
<u>Traditional Court</u>					
Cases Filed	211	381	307	356	398
Cases Disposed	201(95%)	374(98%)	284(93%)	311(87%)	335(84%)
Cases Pending	10(5%)	7(2%)	23(7%)	45(13%)	63(16%)
<u>Proactive Court</u>					
Cases Filed	534	692	683	587	611
Cases Disposed	534(100%)	689(99%)	658(96%)	572(97%)	561(92%)
Cases Pending	0	3(1%)	25(4%)	15(3%)	50(8%)

Table 7 indicates that although the proactive court received and disposed of more civil tort cases than the traditional court, neither court kept pace with the number of civil tort cases coming before it. At the time the study data was collected, the traditional court still had 148 cases pending from the study period, 8.9% of the cases filed. The proactive court had 93 of its cases still pending, 3.0% of the cases filed. This suggests that proactive case management reduces backlog.

To determine whether referrals to mediation tended to reduce backlog, the courts' data was organized to separate those cases referred to mediation from those cases not referred for each of the two courts in the study. The following two tables contain the data from those reviews. Table 8 contains the data for cases referred to mediation.⁵⁸

Table 8
Tort Cases Filed, Disposed and Pending as of Date of Study
(Cases Referred to Mediation)

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
<u>Traditional Court</u>					
Cases Filed	63	92	95	150	159
Cases Disposed	60(95%)	89(97%)	89(94%)	129(86%)	132(83%)
Cases Pending	3(5%)	3(3%)	6(6%)	21(14%)	27(17%)
<u>Proactive Court</u>					
Cases Filed	327	445	468	369	305
Cases Disposed	327(100%)	445(100%)	458(98%)	365(99%)	281(92%)
Cases Pending	0	0	10(2%)	4(1%)	24(8%)

The traditional court had 60 of 559 cases it had referred to mediation still pending as of the date of the study, or 10.7%. The proactive court had 38 of 1914 cases still pending, or 2.0%. The two courts together had 98 of 2473 cases referred to mediation still pending, or 4.0% of the referred cases.

58. The author conducted an automated search of cases filed and disposed in each of the two courts for each year of the study, as well as a manual review of cases filed to determine the cases filed and still pending as of the date of the study. Data for cases referred to mediation were segregated and tabulated. The information is in possession of the author and is available upon request.

Table 9 contains the data for those cases that were not referred to mediation during the years under study.⁵⁹

Table 9
Tort Cases Filed, Disposed and Pending as of August, 2001
(Cases Not Referred to Mediation)

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
<u>Traditional Court</u>					
Cases Filed	148	289	212	206	239
Cases Disposed	141(95%)	285(99%)	195(92%)	182(88%)	203(85%)
Cases Pending	7(5%)	4(1%)	17(8%)	24(12%)	36(15%)
<u>Proactive Court</u>					
Cases Filed	207	247	215	218	306
Cases Disposed	207(100%)	244(99%)	200(93%)	207(95%)	280(92%)
Cases Pending	0	3(1%)	15(7%)	11(5%)	26(8%)

The traditional court had 88 of 1094 cases still pending that had not been referred to mediation, or 8% of those cases. The proactive court had 55 of 1193 cases pending, or 4.6%. The two courts together had 143 of 2287 cases still pending that had never been referred to mediation, or 6.3% of those cases. Also, if one were to disregard those cases that were easily settled, the percentage of cases referred to mediation and still pending is 4.8%, while the percent of those cases not referred and still pending is 13.6%.

The referrals to mediation were therefore accompanied by a reduction in the numbers of cases that were still pending at the end of the study period. Mediation referrals appear to have helped reduce backlog.

VI. CONCLUSIONS

A. The Effects of Mediation Referrals

The use of mediation in civil tort cases in Lake County appears to have increased the pace of civil tort litigation. Though the median disposition time for all cases referred to mediation in each of the courts studied was much longer than the median disposition time for cases that were not referred to mediation, this observation overlooks the effect of easily settled cases. Uncontested and easily settled cases require little or no court action and are not usually settled through mediation. When easily settled cases are disregarded, the median disposition times for cases referred to mediation in each of the two courts were generally shorter than for cases which were not referred to mediation. For both courts, the median disposition times average four months less for cases referred to mediation than for cases not referred.

⁵⁹ The author conducted an automated search of cases filed and disposed in each of the two courts for each year of the study, as well as a manual review of cases filed to determine the cases filed and still pending as of the date of the study. Data for cases not referred to mediation were segregated and tabulated. The information is in possession of the author and is available upon request.

The use of mediation in civil tort cases in Lake County appears to not have increased the rate of settlements. In the two courts in the study, a higher percentage of cases that had been referred to mediation proceeded to jury trial than the percentage of cases that had not been referred. Though one cannot conclude that it was the referral to mediation which increased the percentage of cases requiring a jury trial, the data does not demonstrate that mediation increased the rate of settlements.

Backlogs of civil tort cases pending in both courts increased during the period of the study, as neither court disposed of all cases filed in the period of the study. The two courts had 4% of the cases referred to mediation during the period of the study still pending as of the date of the study, versus 6.3% of the cases not referred to mediation. Disregarding the easily settled cases, the percentages are 4.8% of referred cases and 13.6% of those cases not referred. Referrals to mediation therefore appear to have helped to reduce the numbers of backlogged cases.

B. The Effects of Proactive Case Management

The use of proactive case management practices had a very significant and positive effect on the pace of civil tort litigation. The proactive court's median disposition times were, on average, 32% shorter than the median disposition times for the court using traditional methods. If easily settled cases are disregarded, the proactive court's median disposition times were, on average, 40% shorter than the median times in the court using traditional case management methods.

Proactive case management was accompanied by an increase in the percentage of cases that were concluded by jury trial. The proactive court was required to try a significantly higher percentage of the cases, 6.6% versus 2.4% in the traditional court, reflecting a reduced settlement rate. The higher trial rate is probably attributable to the proactive court's imposition of deadlines and its use of firm trial settings, which could only be continued for substantial cause. However, the higher trial rate might also be attributable to the attorneys' selections of which cases to file in either court. Attorneys who expected a case to require trial for final resolution may have been electing to file higher numbers of those cases in the proactive court, while more cases in which attorneys wanted longer time periods for discovery, preparation, and in which they expected eventual settlement without trial, may have been filed in the traditional court.

Proactive case management also helped to reduce backlog. At the end of the study, the proactive court had 3% of its civil tort filings from the study period still pending. At the same time, the traditional court had 8.9% of its tort cases still pending.

C. Recommendations

A court intending to implement a system aimed at decreasing the time to disposition and reducing backlogs of civil tort cases should therefore first implement a system of proactive case management procedures. Proactive case management has a more significant positive effect on the pace of civil tort litigation than does mediation. The use of proactive case management, though reducing the disposition time and backlogs, will not increase settlement rates, but will likely be ac-

accompanied by an increased percentage of cases required to be tried. The court should also use the mediation process to help reduce disposition time and backlogs. Referrals to mediation, however, will not likely increase settlement rates or reduce the percentage of cases requiring trials.