



**RSI**



Dispute Resolution Section

# The Wisconsin Mediation Landscape

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A Survey of Judges on the Availability, Need and Use of Mediation

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Formed in 1995, Chicago-based Resolution Systems Institute is a non-profit organization whose mission is to strengthen access to justice by enhancing court alternative dispute resolution systems through expertise in program development, research, resources, program administration and training.

Founded on the premise that collecting and disseminating reliable information about court ADR can raise the quality of court ADR, RSI has assisted state and federal courts with the design, administration, monitoring, and evaluation of mediation programs, as well as training ADR neutrals. Courts and individuals across the country call on RSI for advice and make use of RSI's [Court ADR Resource Center](#).

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Jennifer Shack

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MAY 2019

## INTRODUCTION

This study arose from a desire to better understand the landscape of mediation in Wisconsin. The State Bar of Wisconsin Dispute Resolution Section and the Wisconsin Supreme Court wanted to know if and how mediation is being used in Wisconsin state courts in order to identify the courts' needs and determine the best way to address them. To do this, they worked with Resolution Systems Institute to devise a survey of sitting circuit court judges that asks about the use of mediation in their county, as well as their views on the process. The questions focused on five areas:

- The availability of mediation in each county
- Whether there is a need for mediation in individual counties
- What supports and limits the use of mediation in each county
- Judicial referral of cases to mediation and to specific mediators
- The judges' views on the benefits and suitability of mediation

In order to limit the length of the survey, the questions focus on four case types for which it is believed that mediation may be needed. These are personal injury, contracts/business, family financial (e.g., division of property and child support in dissolution cases) and small claims.

Personal injury and contract/business cases were selected for two reasons. Personal injury cases are more likely to be mediated than other civil case types, so required separate analysis. Contract/business cases are likely to be considered for mediation much as other civil case types are and, therefore, were chosen to represent civil cases in general (except personal injury). Note that contested family custody and placement cases are mandated to mediate by statute and, therefore, were not included in the survey.

### Findings

*Mediation in Wisconsin is widely available, but not necessarily widely accessible or widely used*

Mediation is available for at least one of the surveyed case types in each of the 55 counties for which there was a response. However, the judges' responses indicate that mediation use is not universal. This is particularly true for family financial and small claims cases. Thus, the lack of use, rather than the lack of availability, is the most likely reason for judges to say that there is an unmet need in their county.

### *Mediation is needed most for family financial cases*

At least one judge in 40 of the 55 counties said there was an unmet need for mediation, with general agreement among responding judges in 13 of these counties. The judges most often said there is an unmet need for family financial cases, with 48 saying so. They were least likely to say there was an unmet need for personal injury cases.

### *Issues are primarily structural, not attitudinal*

The judges see the obstacles to mediation to be structural – primarily the lack of funding and the cost to litigants. They most commonly cited these as issues that need to be addressed in order for mediation to be made more widely available. The judges also most often selected these issues as limits on the use of mediation in their county. Lack of mediators was the next most common issue and limit cited.

On the flip side, the judges were much less likely to say that attorney or party attitudes were obstacles to the use of mediation in their county. On the contrary, they saw attorney interest in mediation as one of the major supports for mediation in their county.

### *Referrals were highest for personal injury cases, and to attorney-mediators*

The majority of judges who responded to this series of questions refer more than half of their cases to mediation for personal injury cases. On the other end, only 14% of judges do so for family financial cases, and 6% refer more than half of their small claims cases to mediation.

When the judges refer cases, they more often do so based on whether one party requests it. When selecting mediators, they most often select an attorney-mediator and look for someone with experience and subject matter expertise.

### *Most judges have a positive perspective on mediation*

The judges' responses regarding the benefits and suitability of mediation, as well as their comments throughout the survey, indicate that most are supportive of mediation and view it positively. Most of the judges believe that mediation provides more than one benefit and see it as suitable in a variety of situations. Additionally, most of their comments about mediation were positive.

### Who the Judges Are

The survey was sent to every sitting circuit court judge in Wisconsin, with 246 being offered the opportunity to complete it. The response rate was 54%, with 134 judges representing at least 55 counties<sup>1</sup> filling out the survey. More than two-thirds of the judges hear all four case types involved in the survey. Another 14% of responding judges hear none of them. The remaining 18% hear one or more of the four case types.

## AVAILABILITY OF MEDIATION

The judges were asked two questions about the availability of mediation in their county:

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<sup>1</sup> Six judges did not provide county information.

- Is mediation required by the court or available, but not required for the following case types?: personal injury, contract/business, family financial (not custody or placement), small claims, or “other.”
- Is private mediation, without a court order, available in your county? If so, for which case types?

### *Mediation is widely available*

The judges indicated that mediation for at least one of the four case types is available in all of the 55 counties for which judges responded to the survey. **Personal injury and contract/business** mediation is available in all counties except County 15. The judges were unsure about the availability of mediation for these cases in County 8 and County 47. **Family financial** mediation is available in all counties, although judges in Counties 8, 13, 14 and 26 were unsure about this. Fewer counties had **small claims** mediation, with judges in five counties saying it was not available. Judges in another eight counties either didn’t agree about its availability or were unsure that it was available.

The survey asked the judges whether mediation was “required by the court” or “available, but not required.” Judges from the same county sometimes answered this differently. One possible reason for this are that some judges interpreted the response option “required by the court” to mean that it is required when they order it. Another possible reason is that they order all cases to mediation, and thus believe it to be required by the court.

The survey also asked if private mediation was available in their county. The judges’ answers corresponded completely with their responses regarding the availability of mediation through the court.

**NOTE:** Because of the lack of consistency in the judges’ responses regarding whether mediation is required or available, and the complete overlap in responses about the availability of mediation through the court and the use of private mediation, the table below only states whether mediation is available or not in each county represented in the survey.

IS MEDIATION AVAILABLE IN YOUR COUNTY?					
County:	Personal Injury	Contract/Business	Family Financial	Small Claims	Other
County 1	Yes	Yes	Yes	Yes	
County 2	Yes	Yes	Yes	Yes	
County 3	Yes	Yes	Yes	Yes	
County 4	Yes	Yes	Yes	Yes	
County 5	Yes	Yes	Yes	Yes	
County 6	Yes	Yes	Yes	Yes	CHIPs, TPR, <sup>2</sup> estates
County 7	Yes	Yes	Yes	No	
County 8	Unsure	Unsure	Yes	Yes	
County 9	Yes	Yes	Yes	Yes	

<sup>2</sup> Child Protective Services and Termination of Parental Rights cases

IS MEDIATION AVAILABLE IN YOUR COUNTY?					
County:	Personal Injury	Contract/Business	Family Financial	Small Claims	Other
County 10	Yes	Yes	Yes	Yes	
County 11	Yes	Yes	Yes	Yes	
County 12	Yes	Yes	Yes	Unsure	
County 13	Yes	Yes	Yes	Unsure	
County 14	Yes	Yes	Yes	No	
County 15	No	No	Yes	No	
County 16	Yes	Yes	Yes	Yes	
County 17	Yes	Yes	Unsure	Unsure	
County 18	Yes	Yes	Yes	Yes	
County 19	Yes	Yes	Yes	Unsure	
County 20	Yes	Yes	Yes	Yes	CHIPs and TPR
County 21/54	Yes	Yes	Yes	Yes	
County 22	Yes	Yes	Yes	Yes	
County 23	Yes	Yes	Yes	Yes	
County 24	Yes	Yes	Yes	Yes	Juvenile guardianship and medical malpractice
County 25	Yes	Yes	Unsure	Yes	
County 26	Yes	Yes	Yes	Unsure	
County 27	Yes	Yes	Yes	Yes	
County 28	Yes	Yes	Yes	Yes	
County 29	Yes	Yes	Yes	No	
County 30	Yes	Yes	Yes	Yes	
County 31	Yes	Yes	Yes	Yes	
County 32	Yes	Yes	Yes	Yes	
County 33	Yes	Yes	Yes	Yes	
County 34	Yes	Unsure	Yes	No	
County 35	Yes	Yes	Yes	Yes	Juvenile TPR & guardianship
County 36	Yes	Yes	Yes	Yes	
County 37	Yes	Yes	Yes	Yes	
County 38	Yes	Yes	Unsure	Yes	
County 39	Yes	Yes	Yes	Yes	
County 40	Yes	Yes	Yes	Yes	Harassment/ domestic TRO, <sup>3</sup> probate
County 41	Yes	Yes	Unsure	No	
County 42	Yes	Yes	Yes	Yes	
County 43	Yes	Yes	Yes	Yes	

<sup>3</sup> Temporary restraining order

IS MEDIATION AVAILABLE IN YOUR COUNTY?					
County:	Personal Injury	Contract/Business	Family Financial	Small Claims	Other
County 44	Yes	Yes	Yes	Unsure	
County 45	Yes	Yes	Yes	Yes	
County 46	Yes	Yes	Yes	Yes	
County 47	Unsure	Unsure	Unsure	Yes	
County 48	Yes	Yes	Yes	Yes	
County 49	Yes	Yes	Yes	Yes	
County 50	Yes	Yes	Yes	Yes	
County 51	Yes	Yes	Yes	Unsure	
County 52	Yes	Yes	Yes	Yes	
County 53	Yes	Yes	Yes	Yes	
County 55	Yes	Yes	Yes	Yes	

## MEDIATION NEED

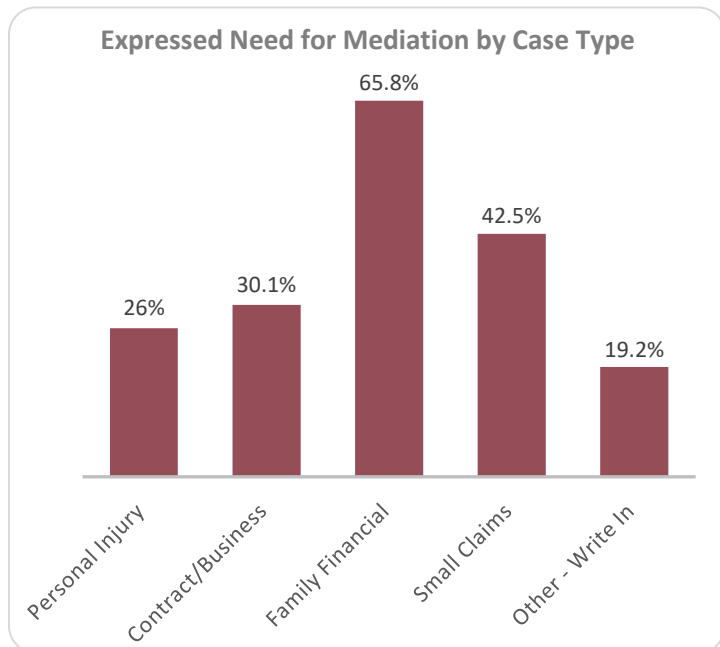
The judges were asked a series of questions about whether they perceived a need for mediation in their county:

- Do you think there's an unmet need for mediation in your county?
- For which case types is mediation needed?
- What issues would need to be addressed for parties to use mediation if it were made available in your county?

The responding judges were more likely to believe there was an unmet need for mediation in their county than to believe there was not, with 57% saying mediation was needed and 43% saying it was not. Costs and funding are the most common issues that must be addressed, according to the judges, with the need for mediators being the next.

### *Mediation is most needed for family financial cases*

Although mediation is available in almost all the counties represented in the survey sample, 76 judges representing 40 of the 55 counties said that mediation was needed or possibly needed for at least one case type. Of the 76 judges who said there was a need for mediation in their county, 66% said it was needed for family financial cases. This need was expressed by 48 of the judges, representing 33 counties. The judges were least likely to see a need for mediation for personal injury cases, with only 26% saying so.



### Counties with Declared Need for Mediation

The following table includes all counties in which at least one judge said there was an unmet need for mediation. The judges in each county did not always agree on whether or for which case types mediation was needed. To address this, the stated need is coded below as to the level of agreement among the judges, with 1 being the greatest agreement and 3 the least. If only one judge for a county responded to the survey, their response was coded as a 1. The stated need is also color coded as to how many judges in a county responded “Yes” to the question of whether there was a need for mediation, as opposed to “Possibly.”

**RECOMMENDATION:** Focus first on those counties that are coded as most/all agree (1) AND Yes (Y), as highlighted in dark red in the table below when deciding which counties to assist. It may also be worthwhile to start first with those stating that lack of mediators is an obstacle to mediation.

**Legend:** Response agreement: 1 = most/all agree 2= about half agree 3= less than half agree  
Strength of sentiment: Y = yes P = possibly Y/P = both yes and possibly

Counties with Stated Need for Mediation						
County (% of Judges Who Responded)	Personal Injury	Contract	Family Financial	Small Claims	Other	Obstacles to Mediation (bold = most/all respondents agree)
County 1 (50%)			1,Y			<b>Lack of funding, cost to litigants, attorneys aren't interested</b>
County 2 (100%)			1,Y	1,Y	Family Placement	<b>Lack of mediators, lack of funding, cost to litigants</b>
County 3 (100%)	3,Y	3,Y	1,Y	3,Y		<b>Lack of mediators, lack of funding, cost to litigants</b>
County 4 (100%)	1,P	1,P	1,P	1,P		<b>Lack of mediators</b>



Counties with Stated Need for Mediation						
County (% of Judges Who Responded)	Personal Injury	Contract	Family Financial	Small Claims	Other	Obstacles to Mediation (bold = most/all respondents agree)
County 7 (50%)			1,P			<b>Parties aren't interested</b>
County 8 (67%)	2,Y	1,Y	1,Y	1,Y		Lack of mediators, <b>lack of funding, cost to litigants</b>
County 9 (50%)					Pro Se Family	Cost to litigants
County 10 (75%)	2,Y/P	2,Y/P		3,Y		<b>Lack of mediators, lack of funding</b>
County 12 (100%)	1,P	1,P	1,P			<b>Lack of mediators, cost to litigants</b>
County 13 (75%)			1,Y	1,Y		Lack of mediators, lack of funding, cost to litigants
County 14 (67%)	2,P	2,P	2,P			Lack of funding, cost to litigants, parties aren't interested
County 15 (67%)			1,Y	1,Y		<b>Lack of mediators, lack of funding, cost to litigants</b>
County 16 (100%)			1,Y			<b>Cost to litigants</b>
County 17 (67%)		2,P				Cost to litigants
County 20 (60%)	3,P	3,P	3,P			Lack of funding, cost to litigants
County 21/54 (100%)	2,Y	2,Y	2,Y	2,Y		Lack of mediators, lack of funding, cost to litigants, belief that mediation isn't effective, attorneys aren't interested, parties aren't interested
County 22 (100%)			3,Y			Lack of funding, cost to litigants
County 23 (25%)			2,Y			Lack of funding, cost to litigants
County 24 (40%)*	3,Y	3,Y	3,Y	3,Y	CHIPs, (criminal)	<b>Lack of funding, cost to litigants</b> , belief that mediation isn't effective, parties aren't interested
County 26 (40%)			3,P	2,Y/P		<b>Lack of mediators</b> , lack of funding, <b>cost to litigants</b> , belief that mediation isn't effective
County 27 (100%)		1,P	1,P			<b>Lack of funding, cost to litigants</b>
County 28 (67%)	2,Y	2,Y	1,Y	2,Y		<b>Lack of mediators, lack of funding, cost to litigants, belief that mediation is not effective</b> , attorneys aren't interested, parties aren't interested
County 29 (100%)			1,P			<b>Lack of mediators</b>
County 30 (100%)	1,Y		1,Y	1,Y		<b>Lack of mediators</b>
County 31 (100%)	1,P					<b>Lack of mediators, lack of funding</b>

Counties with Stated Need for Mediation						
County (% of Judges Who Responded)	Personal Injury	Contract	Family Financial	Small Claims	Other	Obstacles to Mediation (bold = most/all respondents agree)
County 32 (50%)			1,Y			Lack of mediators, cost to litigants, belief that mediation isn't effective
County 33 (60%)			3,P	3,P	Family Custody	<b>Lack of mediators, lack of funding, cost to litigants</b> , belief that mediation isn't effective, attorneys aren't interested, parties aren't interested
County 35 (50%)	3,P	3,P		3,P		<b>Lack of funding, cost to litigants</b> , belief that mediation isn't effective, attorneys aren't interested
County 36 (100%)			2,Y			Lack of mediators, lack of funding, <b>cost to litigants</b>
County 37 (100%)	1,P	1,P				<b>Lack of mediators, lack of funding, cost to litigants</b>
County 38 (100%)			1,Y			<b>Lack of funding, cost to litigants</b>
County 41 (29%)			2,P	2,P		Lack of funding, parties aren't interested
County 43 (100%)	2,Y/P	2,Y/P	1,Y/P	2,Y/P		Lack of mediators, lack of funding, parties not interested
County 46 (40%)		2,P	2,P			Lack of mediators, lack of funding, cost to litigants
County 47 (38%)			1,P			Lack of funding, <b>cost to litigants</b>
County 49 (67%)	2,Y/P	2,Y/P	2,Y/P	1,Y/P		<b>Lack of funding, cost to litigants</b>
County 50 (100%)			2,Y	2,Y		Lack of mediators, lack of funding, cost to litigants, parties aren't interested
County 51 (100%)				1,Y	Injunctions	Lack of mediators, lack of funding, cost to litigants, belief that mediation isn't effective
County 52 (100%)			1,Y		Family Placement	<b>Belief that mediation isn't effective, parties don't want mediation</b>
County 53 (50%)	2,Y	2,Y	2,Y			Lack of funding

\* County 24 is discussed separately, as well, in order to fully present the varied perspectives of the 21 judges who responded.

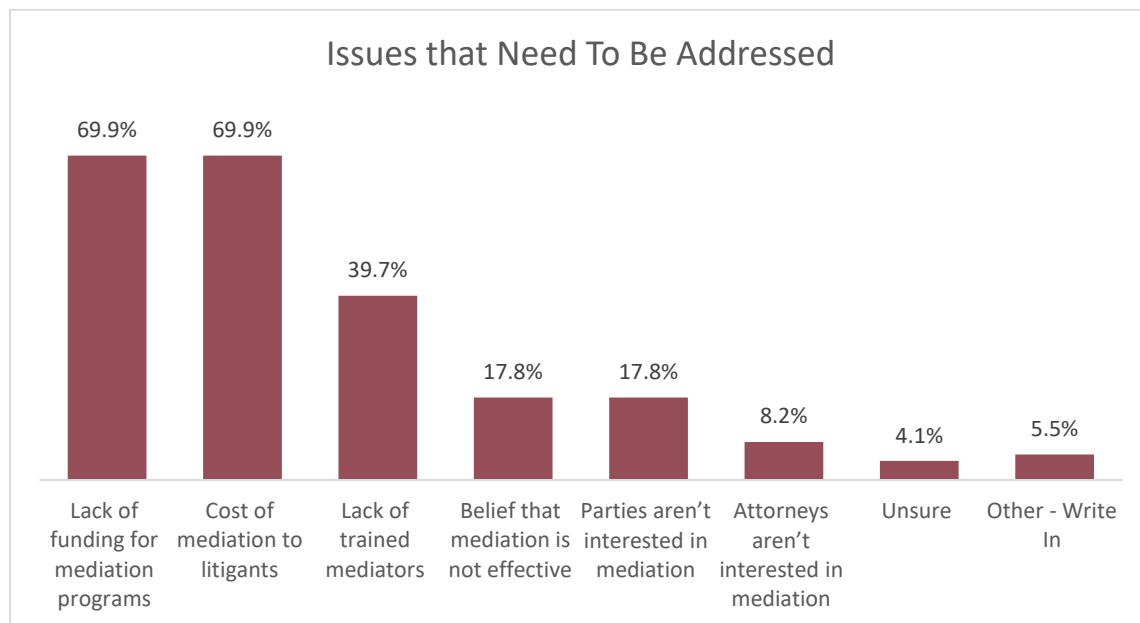
#### Needs Identified from Comments in Other Parts of Survey

- County 2 needs funding for mediators
- County 13 has no mediators
- County 14 does not have funding for mediators for family law cases other than custody and placement, which makes mediation realistically unavailable

- County 24 needs low-cost and moderate-cost mediation for family financial cases
- County 26 needs small claims mediation
- County 42 has no civil mediators and is concerned about the expense
- Judges in County 49 would like a trained mediator for custody and placement cases, but the county lacks funding; the county also needs funding for small claims mediation

### Issues to be Addressed

Seven in 10 of the judges who said there was a need for mediation in their county cited **lack of funding** and **cost to litigants** as issues that needed to be addressed for mediation to be used in their county. The two almost always were cited together by the same judge, likely indicating that the judges believed that many parties can't afford mediation and the court can't afford to provide it to them at a lower cost. **Lack of mediators** was the next most common response, with 40% of the judges saying this was an issue.



### Other Issues to be Addressed

Four judges, all from County 24, mentioned other issues to be addressed:

- Lack of support by court administration
- Need a change in the law [for mediation of criminal cases]
- Self-represented parties don't know about mediation
- Pro se parties believe it's a waste of time and money

Two others wrote comments that were about other issues:

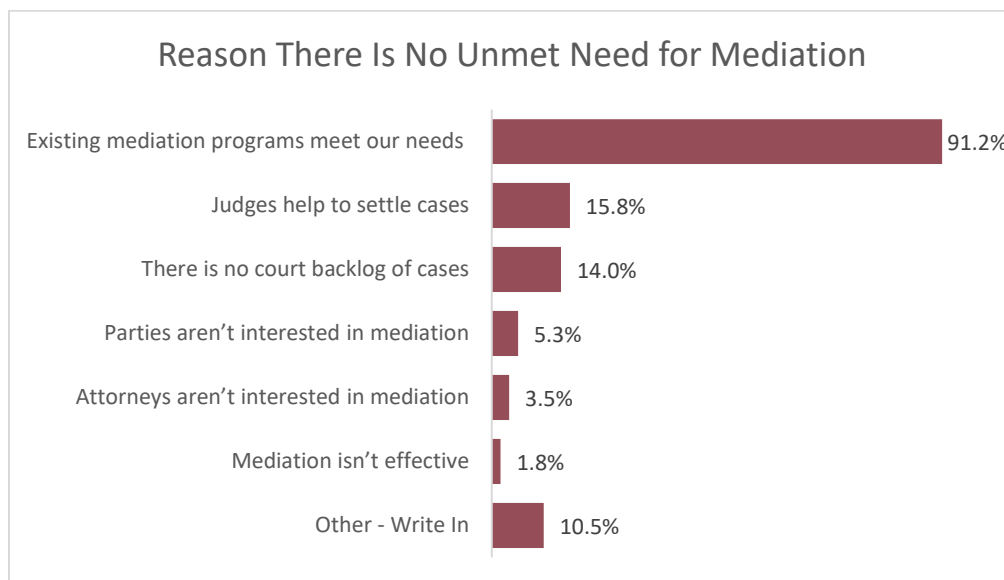
- Some lawyers are against mediation even when it would help their clients
- There are enough mediators to meet the need for mediation when parties are represented.  
"The shortage is for mediators who are willing (and trained) to mediate with SRLs [self-

represented litigants]. SRLS do not know mediation is an option or how to find a lawyer who can mediate for them.”

**RECOMMENDATION:** Focus on the structural issues identified by the judges when addressing the need for mediation.

#### Reasons There Is No Unmet Need

Of the 134 judges who responded to the survey, 56, or 43%, said there was no unmet need for mediation in their county. Fifty-two of the 56 judges said the reason there was no unmet need was that existing mediation programs met their needs. The only other options that more than one in 10 judges selected were that judges settle cases (16%, 9 judges) and that there is no court backlog (14%, 8 judges).



#### Other Reasons Mediation Is Not Needed

Six judges provided other reasons mediation isn't needed:

- There is a thriving mediation profession
- There are enough attorney-mediators and retired judge mediators to meet the county's needs (2 responses)
- Mediation is mandatory in County 24 in order to get a trial date
- Mediation is already overused
- Mediation is used if requested

#### SUPPORTS AND LIMITS

The judges were asked two questions about the landscape for mediation in their county:

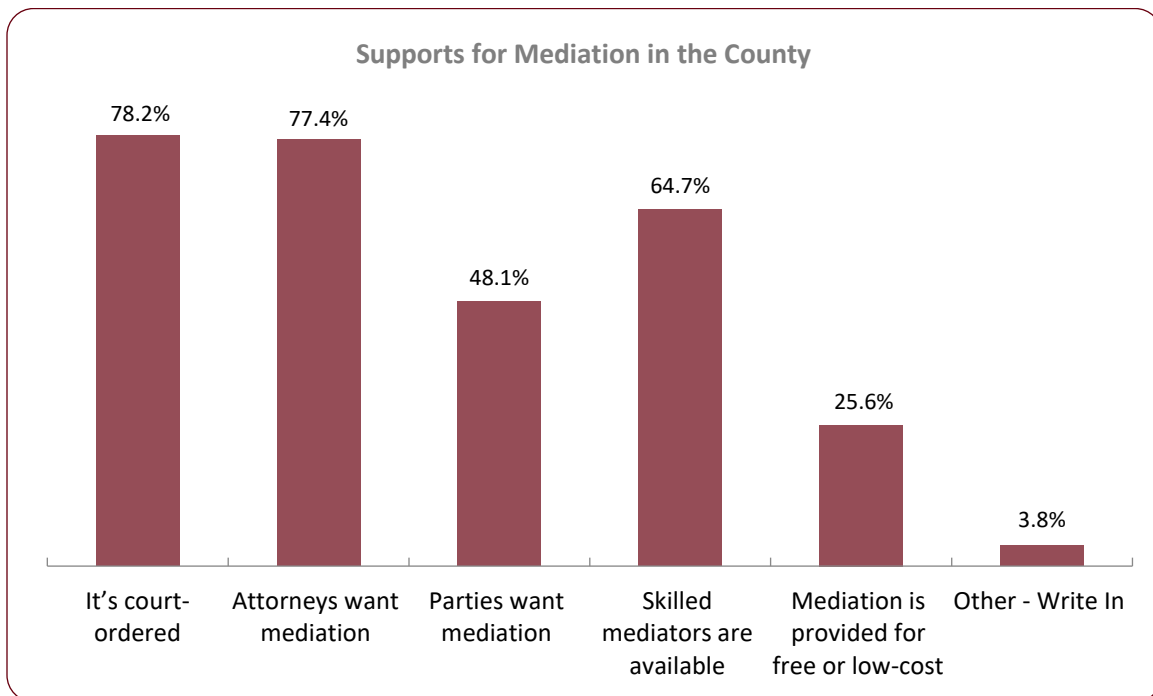
- What supports mediation in your county?
- What limits the use of mediation in your county?

The first question was asked globally, without reference to specific case types. The second was asked for personal injury, contract/business and family financial case types individually.

Most of the judges saw more than one support for mediation in their county. Few judges saw limitations.

### Supports

The most common support for mediation in their county, cited by more than three-quarters of the judges, is that **mediation is court-ordered**. Almost as many judges said that **attorneys want mediation**. The third most cited support for mediation was the **availability of skilled mediators**, which was checked by almost two-thirds of the judges. Just under half saw parties wanting mediation as a support for mediation in their county. Financial support was selected least often, with only a quarter of the judges believing that the availability of free or low-cost mediation was helpful.



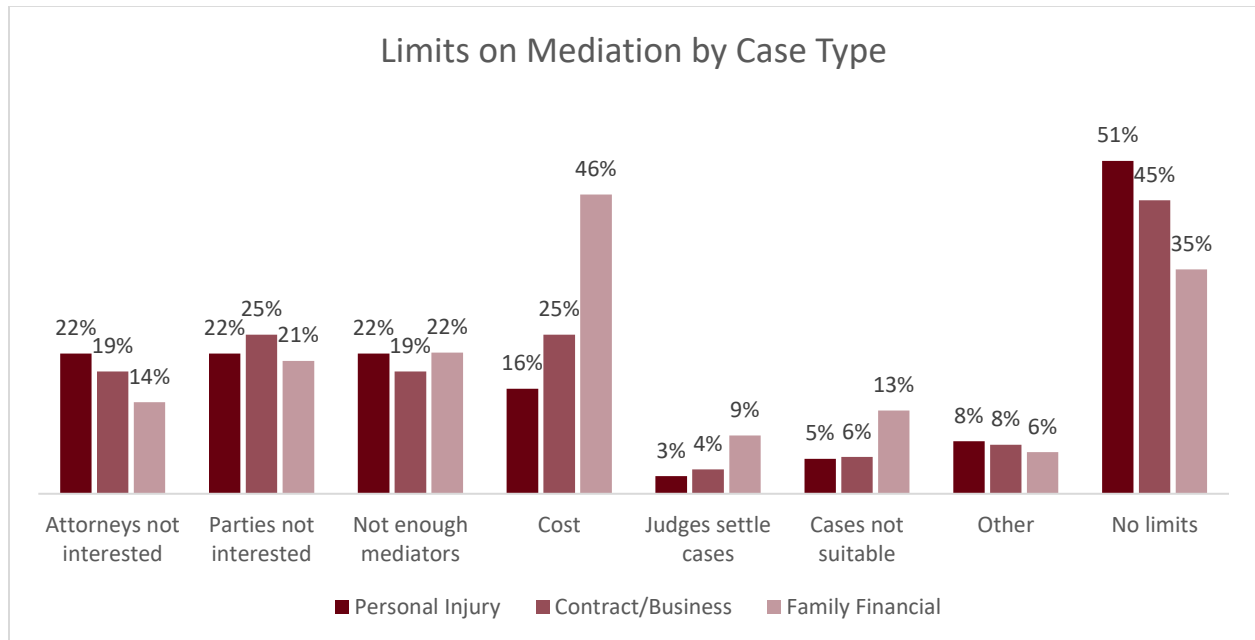
### Other Supports

Two judges said there were supports that were not listed in the survey. These were: 1) there is a “formal agreement with private attorneys who volunteer pro bono to mediate guardianships at children's court” and 2) that the judge pushes it. Two others explained that court orders for mediation are for custody cases only.

### Limits

The judges’ responses about what limits the use of mediation in their county differed by case type. The judges were much more likely to believe that **cost of mediation was a limit to mediation for family financial cases** than for personal injury or contract/business cases. This was by far the single largest limit on the use of mediation for family financial cases, according to the judges.

Judges were most likely to believe that there were **no limits on mediation in their county for personal injury cases** and least likely to believe so for family financial cases. This corresponds to judges being most likely to state that there is a need for family financial mediation in their county and least likely to say there was need for mediation of personal injury cases.



### Other Limits

The judges who checked “other” in response to what limits the use of mediation in their county did not provide a limiting factor. One said that the cost wasn’t prohibitive, but it did affect use. The others mentioned how they use mediation or how it is used in their court.

### JUDGE PRACTICE

Judges were asked a series of questions about how they use mediation. These were:

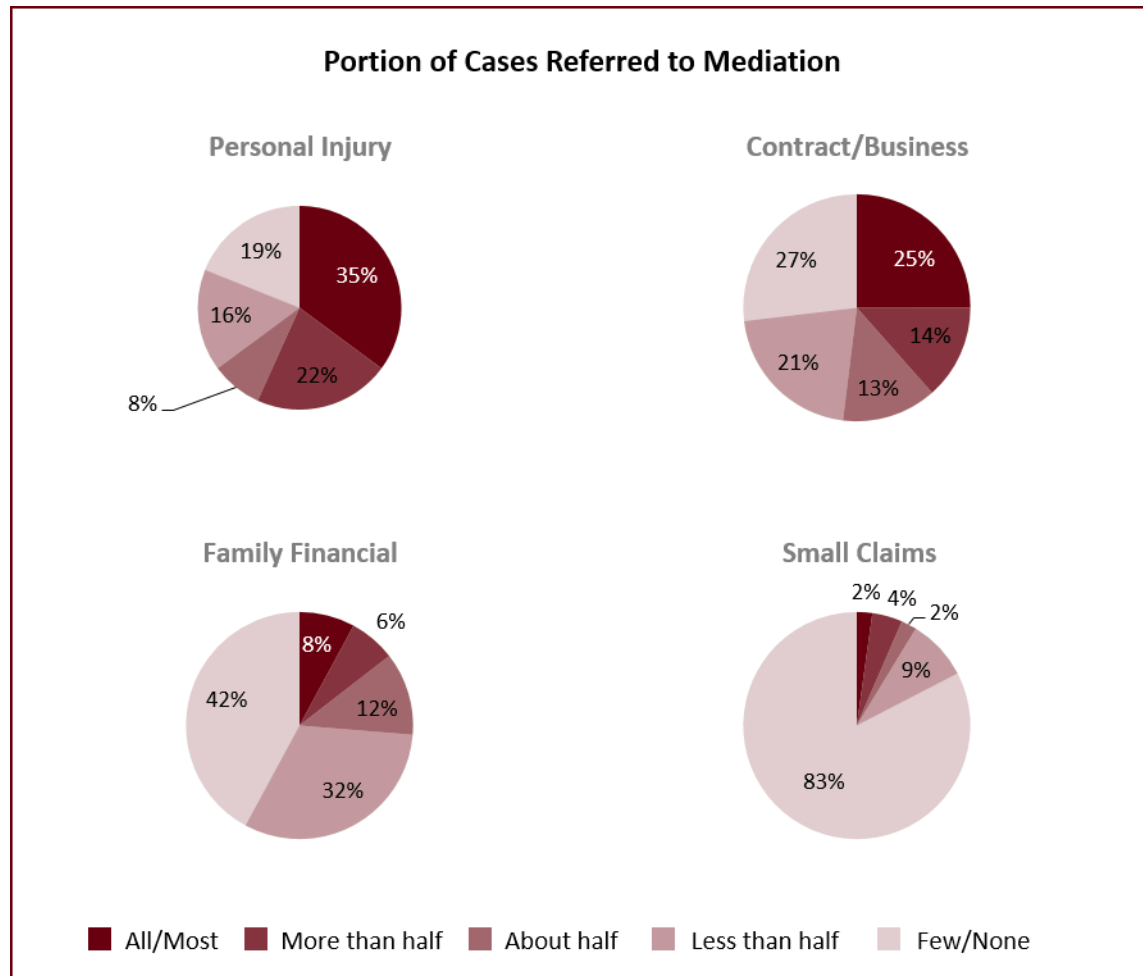
- What portion of your cases do you refer to mediation?
- How do you decide which cases to refer to mediation?
- If you select a mediator for your cases, who do you primarily select?
- When you select a particular mediator for a case, what are your two most important criteria?

The first question was asked individually for all four case types. The other three were asked individually for personal injury, contract/business and family financial cases.

Only a subset of judges was asked these questions. Those who indicated that mediation was required for a particular case type in their county were not asked these questions under the logic that if mediation was required, the judges would refer all cases to mediation. This limited the number of judges who responded to the questions.

## Referrals

As a whole, judges refer a higher portion of personal injury cases to mediation than the other case types, with 57% referring more than half of their cases. Small claims cases are least likely to be referred to mediation, as only 6% of judges who hear those cases refer more than half of their cases and 83% refer few or none.



N = 37 for personal injury; N = 52 for contract/business; N = 75 for family financial, N = 45 for small claims

## How Judges Decide Which Cases to Refer

The majority of judges who responded to these questions only referred cases when asked by a party or both parties to do so. This is particularly true of personal injury cases.

	Personal Injury (N = 16)	Contract/ Business (N = 25)	Family Financial (N = 38)
I look for specific characteristics of the case	20.0%	25.0%	31.6%
I only refer a case if asked by at least one party to do so	46.7%	33.3%	42.1%
I only refer a case if asked by both parties to do so	20.0%	25.0%	18.4%

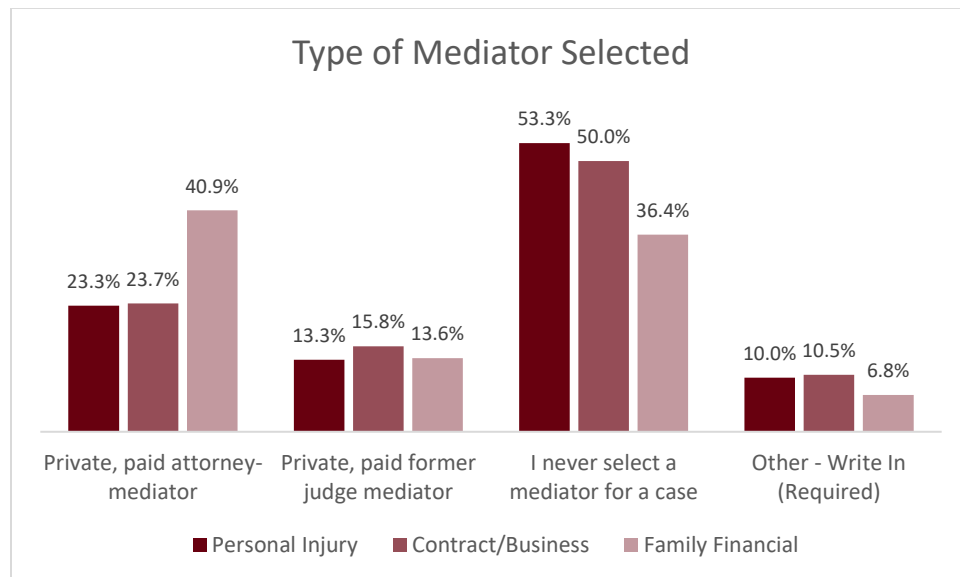
Other - Write In (Required)	13.3%	16.7%	7.9%
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### *Specific Case Characteristics*

The responses of those judges who said they refer cases based on particular case characteristics generally fell into three categories regarding what those characteristics are. The categories are: the **complexity of the issues**, the **amenability of the parties to mediation or the probability that they will settle** in mediation, and the **amount of money involved**. For family financial cases, they also look at **whether the parties can afford mediation**. Only one judge said he considers whether domestic violence is involved. This may be because they address domestic violence separately.

### Mediator Selection

About half of the judges who responded to this question said they never selected the mediator for a case. When they select the mediator, they more often select an attorney-mediator than a judge mediator. For family financial cases, about 40% of the judges said they select an attorney-mediator for the case. About one-third don't select a mediator.



### **What Judges Look for in a Mediator They Select**

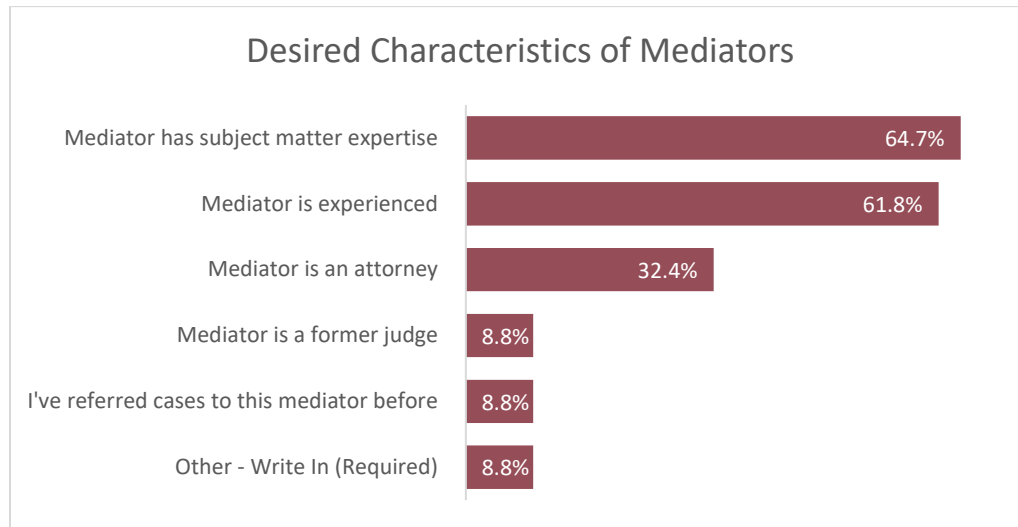
The judges were asked to select the two most important characteristics they want in mediators they select. The options were:

- A mediator with experience
- A mediator with subject matter expertise
- A mediator who is an attorney
- A mediator who is a former judge
- Someone they have referred to before

The judges most often said they look for an experienced mediator with subject matter expertise, a combination that was selected by 38% of those who responded to the question. The second most common combination is an attorney who has subject matter expertise. Overall, subject matter



expertise and experience are the two most often selected characteristics sought by judges when they select mediators.



### JUDGE PERSPECTIVES ON MEDIATION

All judges were asked three questions about their perspectives on mediation:

- What benefits do you think mediation provides?
- In general, are civil (non-family) cases with the following characteristics suitable for mediation?
- In general, are family financial cases with the following characteristics suitable for mediation?

The judges, in general, see mediation as having multiple benefits, and believe that mediation is suitable in most situations.

#### Benefits

Almost every judge said that mediation provides multiple benefits, with only one saying it provides no benefits and two checking only one benefit in the list provided. The most common benefit selected by the judges was that mediation leads to quicker resolution. This is followed by mediation saving litigants money. The least cited benefit, checked by about a third of the judges, is that mediation increases compliance with court orders.

Benefits of Mediation		
	Percent	Count
Clears cases more quickly	91.7%	121
Saves litigants money	82.6%	109
Parties can tailor their outcomes to fit their legal and emotional needs	79.5%	105
Reduces need for high conflict emotional trial	76.5%	101

<b>Benefits of Mediation</b>		
Reduces number of contested hearings	76.5%	101
Resolves emotional issues outside of court	75.8%	100
Reduces complexity of issues involved in case	53.0%	70
Reduces post-disposition returns to court	49.2%	65
Increases compliance with court orders	36.4%	48
There are no benefits	0.8%	1
Unsure	0.8%	1
Other - Write In	2.3%	3

### Other Benefits

Only one of the three judges who checked “other” wrote in something that could be considered to be a benefit. That benefit was that it gives parties “their day.” The other two judges wrote what appear to be comments.

### Suitability

Based on the judges’ responses regarding the suitability of mediation for cases with particular characteristics, the judges believe that most cases are suitable for mediation, with the exception of when domestic violence is involved. This is in line with their responses regarding what limits mediation in their county. Few judges selected the response option “few cases are suitable for mediation” to that question.

The greatest variation in responses among the judges was regarding the suitability of mediation for cases in which only one side is represented by an attorney or when domestic violence is involved. This indicates that judges may need instruction about how to deal with these cases when deciding whether to refer them to mediation.

**RECOMMENDATION:** In an upcoming judicial education seminar, address the suitability of mediation in cases in which only one party is represented or in which domestic violence is involved.

<b>Suitability of Case Characteristics – Civil Cases</b>							
	<b>Yes</b>		<b>No</b>		<b>Unsure</b>		<b>Total</b>
	Count	%	Count	%	Count	%	Count
There’s an ongoing business relationship between the parties	101	94.4%	0	0%	6	5.6%	107
Emotional issues are involved	97	90.7%	2	1.9%	8	7.5%	107
The case involves complex legal issues	95	89.6%	3	2.8%	8	7.5%	106

A high amount of conflict exists between the parties	91	85.0%	4	3.7%	12	11.2%	107
Both parties are pro se	81	77.1%	11	10.5%	13	12.4%	105
Only one side is represented by an attorney	72	70.6%	13	12.7%	17	16.7%	102

### Comments

Three judges commented on the suitability for civil cases. One said that complex cases require a mediator with expertise evaluating those cases. Another said that pro se parties require a lawyer mediator. The other welcomes mediation.

<b>Suitability of Mediation for Characteristics of Family Financial Cases</b>							
	<b>Yes</b>		<b>No</b>		<b>Unsure</b>		<b>Total</b>
	Count	Row %	Count	Row %	Count	Row %	Count
Domestic violence is involved	34	34.7%	49	50.0%	15	15.3%	98
A high amount of conflict exists between the parties	77	77.8%	11	11.1%	11	11.1%	99
The case involves complex financial issues	97	97.0%	1	1.0%	2	2.0%	100
Both parties are pro se	82	84.5%	11	11.3%	4	4.1%	97
Only one side is represented by an attorney	72	75.8%	12	12.6%	11	11.6%	95

### Comments

A few judges commented on the suitability of mediation for domestic violence cases. They mentioned that a decision should be made on a case-by-case basis and should attend to the safety of the victim, such as not mediating face-to-face, and should be done with trained mediators with experience in domestic violence. One judge mentioned that high conflict cases are tricky, but can be mediated.

### ADDITIONAL COMMENTS

The judges' final comments about mediation are indicative of the generally positive perspective judges have on the process. Of the 18 judges who wrote final comments, four were unsupportive of the process, four reiterated the need for low-cost mediation in family financial cases, and the rest said it was beneficial or that the attorneys and parties were supportive of mediation. Those who were unsupportive essentially said that the courts and attorneys are the experts who can and should deal with cases. Those who were supportive of mediation generally said either that they

always use it, it works, they are supportive, or that the attorneys take the initiative and use mediation without a court order.

## DISCUSSION

Mediation is widely available and judges largely support its use. Despite its wide availability, in practice, it is not used as much as many judges appear to want. Thus, the majority of responding judges believe that there is an unmet need for mediation in their county, particularly for family financial cases. The reasons for this are mainly financial. Mediation is by and large accessible to those who can afford it, but not for those with low incomes. The judges would like funding for programs and/or more mediators willing to take on self-represented litigants and those whose ability to pay for mediation services is limited. Future efforts should concentrate on those counties in which judges are generally in agreement that mediation is needed and should focus on structural issues, such as finances and more trained mediators.

When mediation is available, the majority of judges believe that attorneys are supportive. Most judges indicated their support as well, both through their acknowledgement that mediation provides multiple benefits and through their comments, which were largely positive. They also see most cases as suitable for mediation. However, there was variability in the responses about whether cases involving domestic violence and those in which only one side is represented by an attorney are suitable for mediation. Therefore, it is recommended that the suitability of such cases for mediation should be addressed in an upcoming judicial education opportunity.