COMMUNITY MEDIATION: SOLUTION OR ALTERNATIVE?

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PREFACE

This study was conducted to provide insight into the Early Settlement Mediation Program which services the Northern Region of Oklahoma. The eight counties served by the Payne County office include: Payne, Kay, Lincoln, Noble, Creek, Osage, Logan, and Pawnee counties. In order to better serve this community, periodic checkups of this program are necessary.

This study incorporates data from the Early Settlement office case files, as well as information collected from local mediators, participants in the mediation process, and local judges. These informative sources provided details pertaining to the effectiveness of this program. They also pinpointed weaknesses which exist. My hope is that the information provided and the suggestions for improvements which are offered will be reviewed by the local Early Settlement Director, and possibly incorporated into his program.

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CHAPTER ONE

Introduction

This research project is a qualitative analysis of the mediation process and its participants. In today's world, people live in many diverse settings. Many of these settings provide an environment in which people of different ethnic origin, educational background, and social status live in close proximity to one another. Because of these differences and the tendency of human nature to promote self-preservation, a natural and common occurrence is conflict. We live in a society fixated on social power, making the occurrence of conflict inevitable and natural.

The scholars who have studied conflict do not agree on one single definition for this concept. Diversity in conflict definitions stems from the context in which the term is used. The definition of conflict which applies to this research is, "From a communication perspective, conflict is an expressed struggle between at least two interdependent parties who perceive incompatible goals, scarce resources, and interference from the other party in achieving their goals" (Hocker & Wilmot, 1991, p. 12).

Conflict is a natural and expected phenomenon occurring in all social settings. It exists in a society in which there are scarce resources and too many claims to those resources. To ensure an orderly and safe society in which to live, various methods of dispute resolution evolved including: courts, conciliation,

arbitration, and mediation. Historically, the courts served as the primary resource used in conflict resolution. As society becomes more modern and more complex, the number of disputes increases, resulting in a judicial system that is overloaded.

The negative impact of an overloaded court system is just one of the justifications leading to the search for alternative methods of dispute resolution (See Appendix A). Mediation is one such form of dispute resolution. As mediation becomes more widely used, it is important to identify strengths and weaknesses in the process. It is also necessary to identify the types of conflict in which mediation is an appropriate alternative to the courts.

CHAPTER TWO

A Review of the Literature

We as individuals engage in conflict everyday, whether it is with our own family members, members of peer groups, our friends, or even co-workers. As a result of this conflict, we must find a way to cope with the problem at hand and find a solution. Researchers who study conflict and conflict resolution offer different approaches. One such approach is principled negotiation, also known as "negotiation on the merits" (Fisher, Ury, & Patton, 1991, p.10).

Fisher, Ury, and Patton (1991) present this principled negotiation technique in their book. They use a step-by-step approach to outline the process. The authors explain the purpose of principled negotiation, the steps to take, and the various obstacles that are encountered in the process. The purpose of this book is to teach the reader how to become a better negotiator.

Fisher, Ury, and Patton (1991) present the argument that principled negotiation is the preferred method over positional bargaining. Positional bargaining is a contest of wills, in which one side gives in and the other side wins. Neither side is completely satisfied with the outcome. Dissatisfaction leads to further conflict and a deterioration of the relationship of the parties.

Principled negotiation differs from positional bargaining because the goal is not for one side to triumph over the other. In principled negotiation, the people and

the problem are dealt with as two separate issues. The focus is on the interests involved. A variety of options are generated, and some objective criteria are found on which to base the end result. By insisting on these neutral criteria as part of the negotiating process, there is less of a temptation to resort to positions and a win-lose mentality. The goal of principled negotiation is to arrive at an agreement which is mutually satisfying to both sides, a win-win mentality (Fisher, Ury, & Patton, 1991, pp. 11-12).

In recognizing that the people and the problem are two separate issues, the negotiator must adhere to some basic rules. First, a negotiator must realize that the "other side" is human. Humans tend to react differently to conflict situations - some will avoid conflict altogether; some will take a position and fight to win. A negotiator must be able to react to these different viewpoints and still proceed by negotiating on the merits.

One way to see the other side's point of view is to "put yourself in their shoes." Try to see the issue as they see it. Try to understand their interests, their fears, their emotions, and ultimately their goals. Look for ways in which these interests, fears, emotions, and goals can be met. Look for mutual gains. Find ways for both sides to win. It is possible to diffuse the mistrust which is inherent in a conflict situation by doing these things. The other side may be less defensive and more inclined to negotiate once trust and rapport are established.

Communication is a key factor in negotiation. A good negotiator must be able to communicate effectively and also actively listen to the other side. Negotiators need to speak to be understood. A good negotiator tries to present the issues without putting the other side on the defensive. This is accomplished by not talking about what the other side did or why, but about how the problem is having an impact on the negotiator's side. A negotiator must be very careful not to place blame on the other side, which could lead to positional bargaining.

More importantly, a negotiator must listen actively to the other side and acknowledge what is being said. It is important for the other side to feel they have been heard. This is accomplished by simple body language - nodding the head. Verbal acknowledgments are very effective. Repeating what the other side said is a very important tool in negotiating. Repeating what was said is a way to show the other side that they have been heard, and also to clarify what was said. Ambiguities are a nuisance in principled negotiation (Fisher, Ury, & Patton, 1991, pp. 32-36).

The negotiator focuses on interests by dealing with the people, keeping them separate from the problem. The goal of principled negotiation is to devise a "wise" solution or agreement to the conflict. A wise agreement can be defined as "one that meets the legitimate interests of each side to the greatest extent possible, resolves conflicting interests fairly, is durable, and takes community interests into account" (Fisher, Ury, & Patton, 1991, p. 4).

Interests define the problem. Interests are the underlying concerns which lead to the position of the parties involved in the dispute. These include basic human needs, both material and emotional. These interests are not always directly addressed or verbalized by the parties. In some instances, the parties may not even recognize all of their own underlying concerns and the importance of them in the dispute. A good negotiator must be able to determine what those interests are. The negotiator realizes that the other side has multiple interests and makes a list of those interests. The parties discuss the list and acknowledge which interests relate to the problem. More often than not, the negotiator finds more compatible interests than incompatible interests between the two parties. This is an important find when devising a mutually satisfactory outcome (Fisher, Ury, & Patton, 1991, pp. 40-55).

The next step to principled negotiation is to develop several options as solutions to the problem. The goal here is to select options that serve both sides' needs. It is imperative that both sides participate in this process so that both parties leave the negotiation feeling satisfied.

Brainstorming is one technique which is designed to produce many options. Not all options will be acceptable or even feasible. During brainstorming sessions, however, the sides are only concerned with putting all possible options on the table. Decisions about which ones will be seriously considered are made at a later time (Fisher, Ury, & Patton, 1991, pp. 60-66).

While inventing options, both sides should discuss how these options address their interests. Mutual and differing interests will become more apparent during this process. A good negotiator will ask for the other side's preferences, actively seeking to incorporate those preferences into a solution that also serves the negotiator's interests.

After generating several options as solutions to the problem, it is time for both sides to agree on some objective criteria on which to base their conclusions. Objective criteria need to be independent of each side and should apply to both sides. Objective criteria should be based on fair standards and fair procedures. These criteria need to be acceptable to both sides. The temptation to revert back to positional bargaining is lessened when using objective criteria. The goal is still to reach an agreement which is mutually satisfactory to both sides, and to reach it in an amicable and efficient way (Fisher, Ury, & Patton, 1991, pp. 85-92).

Power is an important factor in the negotiation process. Not all negotiations involve parties with symmetrical power. In many negotiations, one side is stronger than the other. For example, one side may have more resources than the other. In these situations the principled negotiator has a very valuable tool. A good principled negotiator never goes into any negotiation without a BATNA (Best Alternative to a Negotiated Agreement). This is the standard by which any proposed agreement is

measured. A negotiator never agrees to anything which falls short of the BATNA (Fisher, Ury, & Patton, 1991, pp. 97-106).

Sometimes in negotiations, the other side won't participate in this process of principled negotiation. For example, the other side may be trained to pursue positional bargaining. The goal of the negotiator is to try to break through this barrier and get the other side to participate in principled negotiations. Fisher, Ury, and Patton call this technique Negotiation Jujitsu (Fisher, Ury, & Patton, 1991, p. 107).

To break through the barrier, the first step is to not attack their position. Look behind their position to identify their underlying interests. If the other side attacks, do not get defensive. Encouraging the other side to criticize and asking for their advice is one technique used to learn more about their underlying interests.

Silence is a great asset to the principled negotiator. Ask questions and pause. By letting the other side fill the void of silence, they will oftentimes come up with alternative options, and may even be more sympathetic to viewpoints which differ from their own position.

Some opponents resort to using dirty tricks. Dirty tricks include: deliberate deception, phony facts, ambiguous authority, threats, and personal attacks. The principled negotiator addresses these types of conflict situations by recognizing the tactic, raising the issue with the other side, questioning its legitimacy, and

determining whether or not it is conducive to negotiations (Fisher, Ury, & Patton, 1991, pp. 132-138). In some cases, the principled negotiator may decide to use the BATNA and walk away from negotiations. However, a negotiator never walks away from negotiations without letting the other side know that future negotiations are a possibility.

Fisher, Ury, and Patton present the method of principled negotiation, designed to resolve conflicts and maintain the relationship of the parties. This method allows the parties to work together and come up with their own creative and mutually satisfactory solutions to the problem. The authors believe that the outcomes from this type of negotiation are more likely to last than those outcomes of positional bargaining where one party loses and the other party wins.

The principled negotiation method, however, is only one method of conflict resolution. Other researchers have identified other ways to manage conflict and resolve disputes. Herb Cohen (1980) presents an alternative approach to conflict resolution which is contrary to the Fisher, Ury, and Patton approach.

Cohen describes this approach as a "Soviet style" negotiation dance. He uses this label because, "This term is descriptive, because more than anyone else, the Soviet Union's leaders consistently try to win at the expense of other nations or groups...I'm not referring to a national or ethnic way of interacting. I'm talking about a negotiation style that has nothing to do with geography" (Cohen, 1980, p. 120).

Six steps are involved in this dance leading to a win-lose negotiation. They include: taking extreme initial positions; giving negotiators limited authority; using emotional tactics; viewing adversary concessions as weakness; being stingy in concessions; and ignoring deadlines (Cohen, 1980, p. 121). This type of negotiator tries to gain as much as possible and concede as little as possible in negotiations. The whole purpose of this approach is to triumph over the opponent.

Cohen admits that this approach is not appropriate in all situations. It is up to the negotiator to determine when the proper conditions exist. A negotiator would not want to use this method with a family member or a friend. The Soviet style is not conducive to a lasting interpersonal relationship.

Many more methods for conflict resolution exist. Many more researchers have presented theories and views as to the best approach to use. Ultimately, it is up to the negotiator to decide the strategy to be used and the effectiveness of that strategy.

Fisher and Brown wrote another book (Fisher & Brown, 1988). This book explains the importance of developing good relationships with those individuals with whom we interact. The authors' premise is that it is necessary to develop "working" relationships so that individuals can not only interact with one another, but also resolve any conflicts which may arise during a relationship. A basic assumption which is made is that most relationships are continuous in nature, they involve many

interactions, and some of these interactions result in conflict (Fisher & Brown, 1988, pp. xi-xiii).

Working relationships are developed and maintained by following two basic guidelines. First, as a principled negotiator, an individual must be able to separate relationship issues (the people) from the substantive issues (the outcome). It is important to recognize both of these aspects of a relationship, but it is equally important to deal with them separately. Otherwise, the goals of the parties involved in the relationship may become unclear, and the relationship may suffer from this ambiguity (Fisher & Brown, 1988, pp. 16-23).

Second, individuals should pursue a relationship in an "unconditionally constructive" manner. This requires an individual to be concerned with those elements of a relationship that are good for that person and for that relationship. It is totally irrelevant that the other party reciprocate (Fisher & Brown, 1988, pp. 37-39).

Fisher and Brown (1988) list several elements which are important to an unconditionally constructive relationship. They argue that recognition of these elements leads to a better understanding of a working relationship. With this better understanding comes an enhanced ability to successfully deal with differences in the relationship.

The first element is termed by the authors as "working rationality." This means that the individuals involved in the relationship must be able to balance logic

and emotion. The authors recognize the difficulty in excluding emotion from a relationship, but they argue that emotion has a place in a relationship as long as it does not dominate over logic (Fisher & Brown, 1988, pp. 43-63).

Understanding is another important element. Understanding does not mean agreement. It does, however, mean recognizing the other party's interests and perceptions, and making a good faith effort to understand their point of view. Understanding does not just happen. In order for there to be understanding, a third element is necessary - communication (Fisher & Brown, 1988, pp. 64-83).

Communication requires individuals to openly express their interests, their perceptions, and their understanding of the other party's point of view. Effective communication also requires the parties to establish any limits which exist. By addressing these issues, suspicion and stress in the relationship are diminished, and the likelihood of reaching a mutually acceptable agreement is enhanced (Fisher & Brown, 1988, pp. 84-106).

A fourth element is reliability. Reliability creates an atmosphere which is conducive to trust, trust leading to respect. Respect leads to an enhanced cooperation in resolving differences. Individuals influence the reliability of other parties in a relationship by paying special attention to their own behavior and following some basic rules: be predictable, be clear, take promises seriously, and

be honest. By following these simple guidelines, parties to a relationship are able to encourage the other parties to follow suit (Fisher & Brown, 1988, pp. 107-131).

Another extremely important element is persuasion. The parties involved in a relationship must not feel coerced into resolving differences. By using persuasive techniques as opposed to coercive modes of influence, a principled negotiator is more likely to gain resolution to a problem, with all parties feeling as though they have had an impact on the outcome (Fisher & Brown, 1988, pp. 132-148).

Finally, mutual acceptance of the other party must be a part of the relationship. A principled negotiator recognizes the importance of the other party to the relationship. It is understood that in order to resolve differences, the other party must be dealt with in a serious and respectful manner. Their interests, goals, and concerns are just as important to the working relationship, and must be incorporated into the working relationship (Fisher & Brown, 1988, pp. 149-169).

According to the authors, these are the six elements that are important to an unconditionally constructive relationship. There are other elements, however, which are not conducive to this type of relationship. These include approval and shared values (Fisher & Brown, 1988, p. 154).

It is not necessary for a principled negotiator to approve of the other party's interests, nor is it important for there to be shared values between the parties. In most relationships, the parties have different interests, goals, points of view, and

values. The only factors which are important are a willingness to work together to resolve those differences that could harm the relationship, and a commitment to continue a working relationship. As the authors of this book say,

> "In each of our relationships, whether between individuals, businesses, religious groups, or governments, we should seek to establish and maintain those qualities that will make it a good working relationship - one that is able to deal well with differences...this should be the goal for every relationship" (Fisher & Brown, 1988, p. xiii).

A working relationship is contingent upon the many factors outlined in an unconditionally constructive strategy, but other considerations must also be addressed. These considerations relate to things a principled negotiator should avoid. An individual should avoid partisan perceptions, as well as relying on the other party to reciprocate (Fisher & Brown, 1988, pp. 36-37).

One of the most important pitfalls encountered in maintaining a continuous working relationship is forgetting that the other party may have completely different perceptions of the relationship in general, and even more specifically, of the issues which arise. The only effective way to deal with these differences is to openly communicate. Ask questions and actively listen to the other party. More importantly, keep in mind one of the elements to an unconditionally constructive relationship - acceptance. Accept the other individual as someone worthy of

consideration, and someone from whom much can be learned (Fisher & Brown, 1988, p. 149).

Reliance on reciprocity can be very dangerous to a working relationship. The "Golden Rule" does not apply. It cannot be assumed that behavior modifications made by one party to a relationship will also be made by the other parties involved. If individuals expect this type of outcome, a working relationship may fail. Once again, differing perceptions make reciprocal behavior impossible (Fisher & Brown, 1988, pp. 31-33).

Fisher and Brown (1988) acknowledge the fact that a working relationship based on an unconditionally constructive approach appears to be based on common sense. It appears that maintaining relationships is an easy thing to do, when in fact, many people fail. They address this issue by giving some reasons for the failure of some relationships, and they suggest some ways to avoid the possibility of future failures.

The first problem is inconsistency. Although the elements of an unconditionally constructive approach are based on common sense, many individuals do not apply all aspects to a relationship. The tendency is to use some parts to this approach, while ignoring others. The authors argue that this method of maintaining working relationships works well only when applied in its entirety. All six

elements of an unconditionally constructive approach are important, and need to be implemented (Fisher & Brown, 1988, pp. 173-174).

Another problem is failure to assess each relationship as different. Some people try to approach each relationship in the same manner, irrespective of the unique qualities each possesses. Individuals need to consider these differences, and modify their behavior accordingly. The most important assessment made is of the other people involved in the relationship (Fisher & Brown, 1988, pp. 174-175).

The emotional aspect of the relationship needs to be considered. Special attention should be given to the other side's feelings. The expectations of the other side should be analyzed. It is important to know the other party's interests and goals. Finally, the behavior traits of the other side should be studied including: the pace at which the other side functions, actions that are taken or are not taken, and the formality of the other party's behavior. The fact that these characteristics will differ from person to person, and from relationship to relationship, indicate the need for flexibility on the part of the principled negotiator (Fisher & Brown, 1988, pp. 175-177).

The importance of the relationship also needs to be assessed. Not all relationships are as important to a person as are others. The authors argue that individuals should pay more attention to the important relationships, and address the less important relationships accordingly. By doing this, needed attention can be

given to the important working relationships, while time is not wasted on relationships of little importance. The authors suggest a "reflective checkup" of relationships to make this determination. An individual can periodically reflect on a relationship, assess the direction in which it is going, and then determine the amount of attention it will need (Fisher & Brown, 1988, p. 177).

A final problem the authors address is sincerity. As individuals modify their behavior to fit the needs of each individual relationship, they must be careful not to ignore their own beliefs, values, and interests. Individuals must be truthful and sincere in their approach to a relationship. A working relationship is doomed to failure if the other side does not perceive complete honesty (Fisher & Brown, 1988, p. 192).

The primary focus of this book is relationships. The authors give a plan for developing and maintaining a working relationship based on an unconditionally constructive approach. They address the various issues involved in dealing with people in relationships, as well as giving advice on how to be more successful in relationships.

Fisher and Brown (1988) recognize the human factor involved in these working relationships. They admit that this is not a fool-proof plan that will never fail. They do suggest, however, that individuals are better off trying to use this unconditionally constructive approach. Individuals who use this approach are more

than likely going to have a greater number of working relationships that succeed, and fewer relationships that end in failure.

Ury (1991) wrote another book dealing with the art of negotiation (Ury, 1991). He describes an approach dealing with people who refuse to negotiate. He believes that one must uncover the underlying issues that impede negotiations. These issues include: negative emotions, habit, inability to see benefits to negotiation, and preference for a win-lose proposition (Ury, 1991, p. 8).

Ury (1991) details this five-step approach to negotiation. He calls his approach the "strategy of breakthrough negotiation." This type of problem solving is counter-intuitive. You do the opposite of what you normally would do. Your reactions are the opposite of your normal reactions. You also utilize indirect action. You let your opponent figure out the solution instead of telling him what to do. The five steps of breakthrough negotiation include: not reacting, disarming an opponent, changing the game, making it easy to say yes, and making it hard to say no (Ury, 1991, pp. 8-9).

In order to effectively communicate with a difficult opponent, one must control personal reactions and emotions to the situation and stay focused on the issues at hand. By not reacting to the situation, emphasis is on the conflict and its resolution, not on the parties' personal feelings. Ury suggests "going to the balcony" when reactions are difficult to control. This metaphor suggests stepping away from the

situation and recovering emotional stability. It is important to stay focused and to not let emotions overtake the negotiation (Ury, 1991, pp. 16-18).

Ury also recommends determination of the BATNA (Best Alternative To a Negotiated Agreement) prior to engaging in negotiations with a difficult opponent. BATNA provides a tool for measurement of the negotiation process. This is a last resort solution to the problem when a negotiated agreement cannot be reached (Ury, 1991, pp. 20-22).

Step two in this strategy, disarming an opponent, is a way to facilitate communication between the parties, and lessen any tension which may impede negotiations. Ury suggests doing the opposite of what is expected, for example, acknowledge the opponent's point of view, take the opponent's side, even agree with the opponent on certain points. The other side will not expect this sort of behavior (Ury, 1991, pp. 40-45).

Changing the game is an extension of disarming an opponent. Ury suggests "reframing." Reframing is recasting what the opponent says in a form that directs the solution toward satisfying both sides' interests and needs. Ways to reframe include: telling the opponent about concerns, asking problem solving questions, determining opponent's underlying motives, soliciting options from the opponent, and even asking for advice (Ury, 1991, pp. 60-71).

Make it easier for an opponent to say yes by addressing the issues that are important to that individual. Include the opponent in generating solutions for the problem. Treat an opponent's suggestions as important possible solutions to the conflict. Pay attention to the pace at which the opponent is moving toward resolution. Keep pace with the opponent (Ury, 1991, pp. 92-109).

The fifth step to Ury's approach is making it hard for an opponent to say no. Seek a win-win solution, not a win-lose outcome. Don't try to overpower or threaten the opponent. Work with the other side to find a mutually acceptable agreement (Ury, 1991, pp. 111-118).

This process requires doing the opposite of what is a natural reaction. Because both sides are important in the process, a mutually acceptable solution is preferable. The process is designed to destroy adversaries by making them partners in problem-solving negotiations (Ury, 1991, p. 146).

Hocker and Wilmot (1991) describe conflict theory using their own research findings, beliefs, and ideas. According to these authors, all interpersonal conflicts share some common characteristics, including the conflict process and conflict elements; how our conflicts are influenced by and influence our goals with and against others; the central role perceptions of power have in conflict; and the communication tactics and styles that conflict participants use. The authors' take a positive and constructive approach to conflict. "We see it as a natural process,

inherent in the nature of all important relationships and amenable to constructive regulation through communication" (Hocker & Wilmot, 1991, p. 6).

Interdependence is one of the key elements in the authors' definition of conflict. They believe it is important to recognize the interdependence of the parties to a conflict, as well as the mutual interests of the parties. The authors also discuss the importance of communication as an element in their definition of conflict. They believe that communication and conflict are intertwined. You must have one to have the other. "From a communication perspective, conflict is an expressed struggle between at least two interdependent parties who perceive incompatible goals, scarce resources, and interference from the other party in achieving their goals" (Hocker & Wilmot, 1991, p. 12).

The most common resources perceived as scarce are power and self-esteem. Most conflicts involve one or both of these resources. The parties involved in a conflict may have different perceptions of power and self-esteem. For example, each party may view the other party as more powerful. These different perceptions may lead to conflict (Hocker & Wilmot, 1991, pp. 19-20).

People react to conflict in a variety of ways. Some reactions are positive, others are negative. This book focuses on the importance of positive reactions to conflict, and the impact a creative and positive approach to conflict has on the parties involved. One approach to dealing with conflict is the use of metaphors.

Hocker and Wilmot (1991, pp. 21-34) define a metaphor as a way of comparing one thing to another by speaking of it as if it were the other, for example, calling the world a stage. They believe that the use of metaphors is helpful in conflict management. Positive metaphors allow for new attitudes toward conflict, and may lead toward positive and productive conflict-management techniques. Three positive metaphors used by the authors include a bargaining table, a dance, and balance. The bargaining table is a spatial metaphor defining the relationship of the parties. Tabling a motion, under the table, and the tables are turned are three metaphors used to describe the parties, their actions, and their relationship.

The use of productive conflict management leads to several positive outcomes described by the authors.

> "Each person feels a greater sense of 'zest' (vitality, energy). Each person feels more able to act and does act productively. Each person has a more accurate picture of her/himself and the other person(s). Each person feels a greater sense of worth. Each person feels more connected to the other person(s) and a greater motivation for connections with other people beyond those in the specific relationship" (Hocker & Wilmot, 1991, pp. 38-39).

The authors also assert that productive conflict management is the key to maintaining long-term relationships.

To better understand this book's position on conflict management, it is necessary to define the goals involved. The authors list two kinds of goals present in each conflict - content goals and relationship goals. Content goals are the "real"

issues, for example, the allocation of resources. Relationship goals define the relationship of the parties. The relationship of the parties directly affects the conflict management process. Parties involved in conflict must recognize both types of goals to be able to constructively deal with the problem (Hocker & Wilmot, 1991, pp. 45-49).

Power is an integral element in conflict theory. An individual's perception of power may vary from that of another individual, resulting in conflict. Power and the perception of power may be constructive or destructive to an interpersonal relationship. The authors believe that power should not be used to the detriment of others, but in such a way so that all parties in a relationship benefit. Maintaining a balance of power among the parties in the relationship is instrumental to the longevity of the relationship (Hocker & Wilmot, 1991, pp. 69-75).

This book suggests three methods for reaching a balance of power in the relationship - restraint, empowerment, and transcendence. Restraint is the limitation of power by the more powerful individual in the relationship. This person relinquishes personal power to the less powerful individual, thus leading to more balance in the relationship. Empowerment is the conscious effort of those involved in a relationship to strengthen the less powerful party by giving this party the necessary tools for self-empowerment. Transcendence is the collaborative efforts of all parties in a relationship to consciously work toward a mutually acceptable

resolution to a conflict by ignoring the power structures of the relationship and concentrating on the conflict at hand, as well as maintenance of the interpersonal relationship (Hocker & Wilmot, 1991, pp. 91-96).

Individuals have different conflict tactics and styles. These tactics and styles either help to maintain an interpersonal relationship, or destroy the relationship. The authors describe those tactics which are harmful to a relationship including: avoidance, threats, and violence. These tactics lead to a win-lose relationship (Hocker & Wilmot, 1991, pp. 99-115).

Collaborative conflict tactics work toward a mutually acceptable resolution to the problem. All parties benefit from the outcome. These tactics include: recognition of the interdependent nature of the relationship, and focus on the needs of all parties involved in the conflict. These lead to a win-win relationship (Hocker & Wilmot, 1991, pp. 115-118).

Conflict styles are different from tactics. "Conflict tactics are the specific communicative moves made by participants during a conflict; conflict styles are the patterned responses to a conflict" (Hocker & Wilmot, 1991, p. 118). According to the authors, individuals usually respond to conflict situations using avoidance, competition, or collaboration. Avoidance and competition are not conducive to the maintenance of interpersonal relations. Collaboration is considered the best conflict style to reach mutually acceptable agreements.

Hocker and Wilmot (1991, p. 259) emphasize the necessity of constructive conflict management. They believe that improving interpersonal relationships by individuals in everyday life will lead to more widespread harmony. They close their book with food for thought.

> "Conflict reduction and peacemaking have emerged in this age as necessities for survival. We are convinced that effectiveness in all arenas of peacemaking contributes to meeting the needs of the world community. Peacemaking at home and at work contributes to an overall atmosphere of lessened hostility, anger, and defensiveness...May a new dawning of human consciousness about possibilities for living in peace rise in our lifetimes."

CHAPTER THREE

Methodology

The purpose of this research is to present mediation as an alternative method of dispute resolution. A study of the types of cases, individuals using mediation, success rate, and the satisfaction of those parties who participate in the process is presented. The issues addressed show the significance of the mediation alternative in dispute resolution, the many areas to which it applies, and the types of cases in which mediation may not be the best solution.

The geographic scope of this research is limited to the eight Oklahoma counties served by the Early Settlement Office located in Payne County. The variables considered in this research include the mediator, the parties involved in a dispute, the type of dispute, the outcome of the mediation, and the satisfaction or dissatisfaction of the participants. The subjects of this study are former participants of mediated cases, certified mediators, and small claims judges. A letter was sent to those subjects chosen to participate, asking for their assistance (See Appendix B).

Data were collected from the Early Settlement Program case files located in Stillwater, Oklahoma. The Director for this region provided access to the files containing the necessary information. In addition to the empirical data collected from these case files, five case studies were conducted. These case studies were selected from the different areas of conflict represented in the empirical data,

including merchant/consumer, landlord/tenant, family relations, and criminal activity. Interviews with the participants explain the mediation process as it relates to their specific cases. A chronology of events leading to the participants' dispute, the mediation process and outcome, and a summary of their present situation are also presented.

A letter was sent to prospective participants explaining the purpose of this research (See Appendix B). The letter emphasized the confidentiality of the interviews, and the process used to maintain the participants' anonymity. The voluntary nature of the participants' role in these interviews was also emphasized. Participants agreeing to be interviewed were presented with a consent form detailing their role in this research, the confidential and voluntary nature of the process, as well as an offer to provide them with a copy of this research upon completion.

To further evaluate mediation and its role in conflict resolution, five certified mediators working in the North Central Region of Oklahoma were interviewed. These mediators were selected using the same process as that outlined above in the selection of the participants for the case studies. These mediators are not necessarily the same as those involved in the selected case studies. Their perspectives on the mediation process, however, add an important dimension to this project.

The mediators were asked to identify the strengths and weaknesses of the Early Settlement Mediation Program. They were asked to make suggestions for improvements which might enhance the mediation process in Oklahoma. Since mediators are protected from liability under the Oklahoma Dispute Resolution Act (12 O.S. 1983 § 1805) no consent form was necessary. Mediators were not asked to provide any privileged information about their cases, but to address only the process of mediation. The mediators were not put into a position of violating the Code of Conduct (See Appendix C) which must be followed according to the Alternative Dispute Resolution Act for Oklahoma. Mediators were not asked to jeopardize or violate the confidentiality of the specific cases they have mediated.

Cases which are referred to mediation come from a variety of sources including: lawyers, police, friends who have used the process, and judges. In analyzing the mediation process as a solution to the problem of an overloaded court system or as an alternative form of dispute resolution, the perceptions and opinions of judges are very important. Interviews with the Special Judges who handle the Small Claims docket in Payne County provide insight as to the usefulness of mediation in small claims cases.

In analyzing the empirical data, the case studies, and the interviews with mediators and judges, this researcher looks at the effectiveness of the mediation process as it applies to the Early Settlement Program in the North Central Region of

Oklahoma. Conclusions are drawn as to the types of cases best suited for mediation, the strengths of the process, and its weaknesses. Finally, suggestions for improvements are made. In addition, some generalizations are made from this research that may apply to the mediation process in areas outside the geographic scope of this study.

Private face-to-face interviews were conducted with the participants in order to discuss the issues involved in their cases, the chronology of events leading to mediation, the reasons for selecting mediation, their perception of the mediation process, the outcomes (agreement or no agreement), and how effective this method of dispute resolution was in these situations (See Appendix D). Interviews with certified mediators and Special Judges were also conducted either in person or by telephone. The participants in this project were asked to sign a consent form prior to their participation (See Appendix E).

Data collected from the files in the Early Settlement Office are reported by number. No names or case numbers are used. Any notes taken during the interview process were destroyed upon completion of this research. All of these steps were implemented in order to maintain the confidentiality of the participants, as required by the statute cited earlier.

By studying the mediation process, the role of the certified mediators, the role of the Small Claims Judges, and the role of the participants, weak links in the

mediation process were ascertained. New areas where mediation might be a viable option are suggested. The Director for Early Settlement in Payne County is interested in improving and expanding his program, and he may be able to incorporate the findings from this research into the plans he formulates for improving his program.

Limitations to this study were encountered during the research project. The Early Settlement Office for the North Central Region of Oklahoma processes hundreds of cases each year. Although the findings were consistent with the expected outcomes, only one hundred of these cases were analyzed. Thus, some variation may exist between the actual percentages and those percentages reported in the following tables.

Initially, the researcher encountered some resistance from the participants in the cases first selected for the case studies. The participants were not comfortable with discussing their cases. Additional cases were selected in order to have the five case studies needed for this project. The participants in these five case studies were more than happy to assist the researcher. However, the opinions and perceptions of these ten participants may not necessarily represent the views of all of those participants in the mediation process.

Only five certified mediators currently working in the region were interviewed. All five mediators were very receptive to the interviews, and all five mediators

provided information concerning their roles as mediators and the mediation process. However, these mediators do not represent the opinions and perceptions of all of the mediators currently working in the region. Some variation may exist in the findings of this research and the views and perceptions of all of the mediators.

Because of the time and travel constraints involved in conducting this research, only the Special Judges who preside over the Small Claims docket in Payne County were interviewed. Their opinions and perceptions of mediation do not necessarily reflect the opinions and perceptions of all of the judges in this region.

Not all of the interviews were conducted in a private face-to-face setting. Some of the participants were more comfortable discussing the questionnaires via telephone. In these instances, the researcher conducted the interview via telephone, and mailed the consent form to the participant. The participants interviewed via telephone returned the consent form to the researcher in a self-addressed stamped envelope.

Finally, because of their roles in the judicial process and the mediation process, consent forms were not required of the Special Judges or of the state certified mediators. This researcher believed that the nature of their professions and the Oklahoma Statutes which regulate their roles dictated little need for consent forms. They were, however, informed of the confidential nature of the interviews and the measures taken by the researcher to maintain the anonymity of the participants.

CHAPTER FOUR

Analysis of the Findings

Data were collected from the Early Settlement office case files located in Payne County. One hundred case files were selected. The cases cover the time period from 1991 to 1995. Several variables were analyzed including: the type of case, the year of mediation, the county in which the case originated, the referral source for the parties, the nature of the dispute, and the outcome of the mediation session. From the data collected, the following results were obtained.

Type of case refers to the relationship of the parties involved in the dispute. This relationship is an important variable because it indicates who is turning to mediation as a method of dispute resolution. The table below indicates the percentages associated with the types of cases involved in this study.

TABLE I

TYPE OF CASE	PERCENTAGE
Merchant/Customer	41%
Landlord/Tenant	27
Family Relations	11
*Other	21
n=100 cases	100%

*Several other types of cases were found in this study, but were compiled together to form the "Other" category. The rationale for this compilation is based on the reasoning that these types of cases had only 1% or 2%. See Appendix F for a complete listing of the types of cases.

Table II shows the year of mediation and the percentage of cases selected from that year for this study. This distribution does not reflect the number of cases handled by Early Settlement for that particular year, nor can any conclusions be made about the total caseload differential for the years under study. These percentages relate only to the distribution of cases selected for this study.

TABLE II

YEAR OF MEDIATION	PERCENTAGE
1995	10%
1994	54
1993	15
1992	19
1991	2
n=100 cases	100%

The Early Settlement office in Payne County serves eight counties in the North Central Region of Oklahoma. Table III indicates the percentage of cases originating in each county.

TABLE III

COUNTY	PERCENTAGE
Payne	58%
Kay	24
Lincoln	2
Noble	5
Creek	4
Osage	3
Logan	2
Pawnee	1
n=100 cases	100%*

*This table actually totals 99% of the cases studied. One case selected for study actually originated in Oklahoma County, which falls under the jurisdiction of Early Settlement Central located in Oklahoma City. It appears, however, that the parties chose to mediate this case under the guidance of a mediator from Early Settlement North.

The method of referral to mediation is another important variable. Those who refer cases to mediation see the benefit of such a program. In addition, tracking the source of referrals aids in the development of marketing strategies for expanding mediation services. Table IV indicates the referral sources for the cases in this study.

TABLE IV

REFERRAL SOURCE	PERCENTAGE
Judge	42%
Small Claims	10
Early Settlement Office	28
*Other	17
n=100 cases	100%**

*See Appendix F for a complete listing of referral sources which fall into this "Other" category.

**The percentages in this table do not equal 100%. Three percent of the cases under study did not report a referral source.

The nature of the dispute refers to the issues involved in the conflict. Table V indicates those issues mediated in the one hundred cases analyzed in this study. The predominant mediated issue in this study involves monetary disputes, as would be expected since the principal Type of Case (Table I) is Merchant/Customer.

TABLE V

NATURE OF THE DISPUTE	PERCENTAGE
Money	34%
Money Related Matters	49
*Other	17
n=100 cases	100%

*See Appendix F for a complete listing of those issues falling into this "Other" category.

The outcome of a mediation is arguably one of the most important variables considered in this study. According to the promotional literature distributed by Early Settlement (See Appendix G), mediation is successful about ninety percent of the time. Table VI indicates the rate of agreement in mediation for the cases selected for this study.

TABLE VI

OUTCOME OF MEDIATION	PERCENTAGE
Agreement	80%
No Agreement	20
n=100 cases	100%

To further understand mediation in the North Central Region of Oklahoma, five case studies were conducted. The participants in these case studies were interviewed in person either at their place of business or at a local restaurant. To protect their anonymity, participants are referred to as the initiator and the respondent. The types of cases include: merchant/customer, landlord/tenant, and a dogbite case. The events leading to the dispute, the mediation process, and the outcome of the mediation for each of these cases follows.

CASE STUDY - A

The initiator is a college student and a single mother of two young children. Everyday she takes her children to school. They go to different schools, so she must start her day early to get everyone to their respective locations on time. She also has a schedule to keep. She attends classes and does her errand running while the children are in school. In order to keep up with this schedule, the initiator depends on her vehicle to provide her with transportation.

The respondent is the owner of a used car lot. His business is based on the purchase and sale of used automobiles. He takes pride in his business. He boasts of his successful business dealings, and the very few incidents he has had with unsatisfied customers.

The initiator went to the respondent's car lot to shop for a used automobile. She found one she liked. They made a deal, and she purchased the car. Not long after she purchased the car, she began to have problems with it. She took the car to a repair shop where the mechanic performed repair work costing $2000. She was unhappy at the high cost of the repairs. She decided to go back to the respondent to discuss her concerns with him.

She told the respondent that she believed he misrepresented the car to her. She wanted him to pay the $2000 for repairs, or take the car back and refund her money. The respondent was unsettled by the claim that he had misrepresented the car. He reminded her that when she purchased the car she signed a warranty disclaimer. By signing this document, she released him from any liability toward repair work on the car.

The respondent, however, wanted to make this customer happy. So, he offered her $300 to help her pay the repair bill she had acquired. He gave her the cash, and asked her to bring the car into his shop if she had any further problems. She took the cash and left.

The initiator continued to have problems with the car. She did not feel she could trust the respondent ,and therefore, would not take the car to him for repairs. She continued to feel frustrated by the unreliability of her automobile.

She decided to take action. The only recourse she knew of was Small Claims Court.

The initiator went to the courthouse to file her claim with the Small Claims Clerk. The Clerk asked her if she knew about the Early Settlement Mediation Program. The initiator said no. The Clerk referred her to the Early Settlement Office which is adjacent to her office in the courthouse.

The initiator met with the Early Settlement staff and decided to try mediation before filing her claim with the court. Early Settlement contacted the respondent by letter to see if he would be interested in attending mediation. The respondent had not heard of Early Settlement prior to receipt of this letter. He phoned the office, spoke with the Early Settlement staff, and decided to give it a try.

The mediation was held in a jury room in the courthouse. The session lasted for approximately one half hour. Only one session was required to settle this dispute. The respondent offered the initiator $300 more. He was not willing to negotiate on any other points. The initiator accepted his offer, and received the cash that same day. She also agreed to take no further action against the respondent in this matter. The parties have had no further contact with each other.

Both parties indicated satisfaction with their mediator. They found him to be very professional. The initiator indicated she was very comfortable with the mediator. The respondent felt the mediator did a good job of laying the ground rules (telling them not to talk to eachother) and keeping down arguments. The respondent said that both sides told their stories, and then the mediator asked what they wanted. He really liked this process.

The disputants both indicated that they would use mediation in the future if similar situations arise. They both were satisfied with the process and the outcome of the mediation. They both would recommend the Early Settlement Mediation Program to others.

CASE STUDY - B

The initiator is the owner of an animal boarding business. He boards hundreds of animals for local patrons each year. Normally, his customers pay their boarding bill in full when they pick up their animals. However, there are times when he makes an exception for a customer, and lets them pick up the animal first and pay later.

The respondent is a young married female who has just had a baby. She and her husband are leaving town for a short trip. She contacted the initiator to inquire about boarding their dog. He notified her that he had space, and she could bring the dog before they left.

The respondent brought the dog to the initiator and left on her trip. When she returned, she called to pick up her dog. She and her husband picked up the dog, but were unable to pay the bill. The bill was $104. She informed the initiator that she would get paid that following Monday, and would bring the money to him on that day. The initiator had no reason to believe that the respondent would not pay her bill, so he agreed.

The respondent did not pay her bill that following Monday. The initiator made several attempts to contact her, but to no avail. The initiator became frustrated with his inability to contact the respondent. He decided to take his case to Small Claims Court.

Both parties attended Small Claims Court the day of their hearing. When the judge determined that this was going to be a contested case, he asked the parties to go with the mediator and try mediation. The judge told them that if they were unable to reach resolution with the mediator, they could come back into the courtroom and he would hear their case.

The parties went with the mediator to the law library located in the courthouse. Both parties found the location to be a good site for the mediation. They said that the room was quiet, and there were no distractions. The parties indicated that their mediation session was very short, lasting only ten minutes. Only one session was required to reach agreement in this case.

During the mediation, the initiator learned that the respondent was under the impression that her husband had paid the bill. The reason she had not received any of the initiator's billing statements or phone calls was because she was in the process of moving, and currently living in a hotel. She indicated her embarrassment with the situation and her willingness to pay her bill. She could not, however, pay the bill in its entirety.

The respondent indicated that he was willing to accept payments on the past due bill, but he also wanted to collect the $57 court costs he had to spend to bring this claim to Small Claims Court. The initiator agreed. The parties agreed that the respondent would pay $20 per month until the entire debt was paid.

The initiator indicated that he had received one payment. He said the second payment was late, but the respondent had called to make arrangements with him for the late payment. He was not sure whether or not he would actually receive the money.

The initiator was not very impressed by the mediation process. He felt his mediator did a poor job. He felt like she needed to have a better understanding of her job. He explained that his dissatisfaction stemmed from the three additional trips he had to make to the courthouse to fill out paperwork. These

extra trips to the courthouse cost him time and money. He believed that all of this paperwork should have been filled out at the initial mediation session.

Even though the initiator was dissatisfied with his first experience with mediation, he said that he would probably try it again in a similar situation. He believed that it was less expensive to try mediation before filing a claim. Instead of $57 for court costs, he would only spend $5 for a mediation.

The respondent had no strong feelings about the mediation process or the mediator. She knew she owed the money. She was, however, glad to be able to make payments. She said she would go through the mediation process in the future.

CASE STUDY - C

The initiator is a recent college graduate. She rented a house in the local area while she was in school. Upon graduation, she gave notice that she was moving. She also requested the return of her security deposit on the property.

The respondent is the owner of the property rented by the initiator. The respondent lives out of town. The respondent claims to have several properties in the area, but this is the first time he has had a problem with a tenant.

The initiator lived in the property for approximately one year. The security deposit for this property was $250. When she decided to move, she gave written notice of her intent to move and request for return of the security deposit.

She vacated the property, inadvertently leaving behind some of her furniture. It wasn't until later that she realized she had left these possessions. She also requested from the respondent that these items be returned. The respondent indicated to her that he was going to keep the $250 for the repair work on the property. He claimed that there was in excess of $250 in repairs. He also was noncommittal concerning the return of her furniture. The initiator was very angry and denied that any repair work was necessary. In fact, she had made improvements to the property. She painted the house, and did a lot of cleaning to the property. She was also angry with his dismissal of her concern with the furniture.

The initiator heard about the Early Settlement Program in one of her college classes. She was also familiar with the mediation process through her studies in psychology. She decided to take action in her case by first attempting mediation.

The initiator contacted the Early Settlement Office to request mediation. The office then contacted the respondent. Prior to receipt of this letter from the Early Settlement Office, the respondent had not heard of this program. He did, however, agree to try mediation.

The mediation was held in the law library in the courthouse. The session was very lengthy. The initiator indicated that it lasted more than two hours. The

respondent said that it lasted for exactly six hours. Both parties were obviously frustrated and tired by the process. The parties were not able to reach a mutually acceptable agreement in this case. Neither side was willing to negotiate.

The initiator later filed a claim in Small Claims Court. She obtained a favorable settlement. She was pleased that she received her security deposit and the return of most of her furniture. She was disappointed, however, that she was unable to obtain the same result through mediation.

Neither party was satisfied with the mediation process. The initiator indicated that the process was unsuccessful, but that it was the fault of the respondent. She said he did not come to mediation in good faith. The respondent's dissatisfaction was with a process he believed was binding. He thought that the mediator would make a decision (like an arbitrator) in their case. He said the mediation process was not explained to him. If he had known it was not binding, he would have preferred to go to court.

Both parties indicated their satisfaction with the mediator. They said he did a very good job, especially in light of the hostility in the room. The initiator indicated that the mediator was neutral, and managed to keep control of the situation by keeping the parties from lashing out in anger. The respondent also

indicated that the mediator went out of his way to make him feel comfortable with the mediation process.

Although this mediation was not successful, the initiator indicated that she would try mediation in the future. She believed in the process. She blamed this failure on the respondent. The respondent, however, said he would not try mediation in the future. He thought it was a joke. He would take his problems to court.

CASE STUDY - D

The initiator is the owner of rental property. His tenants are usually long-term renters, renting for a number of years. He has rarely had problems with his tenants. This is the first time a tenant has been delinquent on payments for several consecutive months.

The respondents are the tenants in one of the initiator's properties. They are a young newlywed couple. They are both recent college graduates, and both have started new jobs.

The initiator rented one of his properties to the tenants approximately two years ago. For the first year, the respondents made their monthly payments on time. The initiator had very little contact with the respondents, because they were so good at paying the rent on time. The respondents had few complaints

or requests for repairs to the property. Both the initiator and the respondent appeared to be satisfied with the rental arrangement.

Twelve months ago the rent checks stopped. The initiator was not too concerned the first time the rent didn't arrive on time. He believed that something must have happened, and that the payment was probably just late. However, the rent check never arrived. He contacted the respondents about the late payment. They told him the check was in the mail. They apologized for the delay. The check never arrived.

This pattern continued. The next month the same sequence of events took place. This time the initiator was more forceful in his attempts to collect the rent. He notified the respondents by certified mail that they were late with their payment. The respondents again contacted the initiator to apologize for the delay, but never sent the check.

Finally, after twelve consecutive months of nonpayment of the rent, the initiator decided to take action to collect his money. He had heard about mediation from one of his acquaintances who also owns rental properties. He decided to contact the Early Settlement Office to schedule a mediation.

The Early Settlement Office notified the respondents that the initiator wished to mediate this dispute. The wife contacted the office to inquire about mediation. The process was explained to her by the office staff. After

discussing this option with her husband, she called back to indicate their interest in participating in the mediation.

The mediation session was held at the public library conference room. The session lasted for approximately two hours. Only one session was required to reach a mutually acceptable agreement in this case.

During mediation the initiator discovered that the respondents had experienced several financial setbacks. The husband had been laid off from his job and had been unsuccessful in finding a new job. The couple was accustomed to living on two incomes, and now they were living on one. The couple had also incurred several medical bills over the last several months. They were expecting a baby, and they did not have adequate insurance to cover the expenses. Finally, the couple had been involved in an auto accident. The repair bill for their car was several thousand dollars.

The initiator inquired as to the reason the respondents had not talked with him about their financial problems. They indicated that they were uncomfortable discussing these issues with him, and they had hoped that the husband would find a job. They felt that once he found a job, they could start paying on their past due bills. The rent was not the only payment they had let slide.

The respondents were apologetic about the situation and indicated a willingness to work out a solution. The initiator was sympathetic to their

situation, and agreed that a solution could be reached. They agreed to a time payment plan with reduced payments (to increase once the husband was employed) until the entire debt was paid in full. The respondents also agreed to make a good faith payment of $50 at the mediation session.

Both parties indicated satisfaction with the mediation process. The initiator thought the process was very informative. He said he probably would not have known about the respondents' problems if he had not gone to mediation. The respondents felt that they had an opportunity to tell their side of the story and be heard.

Both parties indicated satisfaction with the mediator. The initiator indicated that the mediator was helpful in asking questions which led to the disclosure of the respondents' problems. The respondents' said the mediator was fair. He did not make them feel uncomfortable when they discussed their financial problems.

Both parties indicated that they would be willing to use mediation in the future. The initiator was especially pleased with the process, and indicated that he would tell other rental property owners about mediation. The respondents were glad that they didn't have to go to court.

CASE STUDY - E

The initiator is a young man living in the local area. His house is centrally located, so he often walks to the places he is going. He is quiet, and he seems to keep to himself.

The respondent is a college student. He lives in a house that is located near the initiator's house. The respondent lives with a roommate, and they often have other friends stay with them.

One day the initiator was walking to one of the stores located near his home. He walked past the respondent's house. A dog was in the front yard. He appeared to be chained near the front porch. The respondent was also in the front yard lounging in a lawn chair. As the initiator walked past the house, the dog approached him. He did not think that the dog could reach him since he was chained, but the chain was too long. The dog barked at the initiator and bit him on the leg.

The initiator yelled at the respondent that his dog had just bitten him. The respondent yelled at the dog, apologized to the initiator, and told him that the dog was not his. He was watching the dog for a girlfriend who was out of town. The initiator did not feel he was seriously injured, so he went on to the store.

While he was in the store, he noticed that his leg was becoming sore where the dog had bitten him. He was also bleeding from the wound. He finished his browsing, and went home.

The initiator called the police department when he returned home to report the dog bite incident. The police told him to seek medical attention for the wound. He went to the hospital where he received a shot, and the doctor cleaned the wound. The initiator received a bill for $180 for this treatment.

The initiator went to discuss the bill with the respondent. The respondent was very apologetic about the incident. He again told the initiator that the dog was not his, he was watching it for a friend. He said that he felt partially responsible since the dog was in his yard when he bit the initiator. He told the initiator that he would take care of the bill. The initiator thanked him. Several weeks later, the initiator began receiving notices from a collection agency that this past due bill needed to be paid.

He attempted several times to contact the respondent to inquire about this bill. He was unsuccessful. He decided to take his case to Small Claims Court.

The Small Claims Court Clerk referred the initiator to the Early Settlement Mediation Program to attempt mediation prior to filing a claim with the court. The Early Settlement Office staff explained the mediation process to him. They then attempted to reach the respondent about the mediation session.

The respondent had no prior knowledge of the Early Settlement Mediation Program. He responded to the letter sent by Early Settlement, and indicated that he would be interested in mediation. The mediation session was scheduled approximately one week later.

The mediation was held at the public library conference room. Both parties indicated that this was a good location for the meeting. The mediation lasted for approximately one half hour. Only one mediation session was required to reach a mutually acceptable agreement in this dispute.

During mediation the initiator learned that the respondent had tried to get the owner of the dog to pay the hospital bill. He believed that she had taken care of the bill. The respondent apologized for the unpaid bill, and indicated a willingness to work out an agreement.

He requested an itemized bill of the hospital charges from the initiator before he would make any payments. The initiator agreed to provide the itemized bill to the respondent. The parties also agreed that the respondent would make monthly payments directly to the collection agency for the unpaid bill until the entire balance was paid in full.

At the time of these interviews, the respondent had failed to make any payments to the collection agency. The respondent no longer sees his liability in the situation. The initiator is considering legal action against the respondent.

Both parties indicated satisfaction with the mediation process. Both thought the process was fair. Neither party had any negative opinions about the process.

Both parties thought that the mediator was fair and neutral. The initiator thought the mediator was helpful in figuring out the details of their agreement. The respondent said the mediator did a good job.

Both parties said they would use mediation in the future. They felt that their first experience with mediation was a positive experience. They both indicated that they would refer their friends to the Early Settlement Mediation Program.

MEDIATOR INTERVIEWS

Five certified mediators currently working in the North Central Region for *Early Settlement* were interviewed. These mediators were asked ten questions designed to determine not only their role in the mediation process, but also to assess their perceptions of the mediation process. They were encouraged to share any suggestions for improvements that might be useful to the Director for this program.

Mediators became familiar with the mediation process through different resources including: newspaper articles and advertisements, educational seminars, government agency referrals, and the marketing efforts of Early

Settlement personnel. Mediators indicated that they had many reasons for becoming state certified mediators. Most mediators were looking for a way to give back to their communities through public volunteer service. One mediator was more interested in participating in this program because he saw it as more of a "professional" form of volunteer service. Some mediators also indicated that they wanted additional professional/volunteer accomplishments to list on their resumes. Some mediators wanted to volunteer and gain experience, and then begin their own private-for-profit mediation practices.

Some mediators conducted more mediation sessions than other mediators. One mediator had mediated less than ten cases. Three of the mediators indicated that they had mediated more than twenty cases. Only one mediator had mediated more than fifty cases. Mediators indicated that they would like to mediate more, but were unable to obtain mediations on a regular basis.

Three of the mediators interviewed had experience mediating in teams. Only one of these mediators indicated that this was a gratifying experience. She felt that co-mediations were more productive than mediating solo. In the five to ten cases she co-mediated, she indicated that the expertise of two mediators as opposed to one is the reason these sessions went well. The other mediators interviewed indicated a preference for mediating on a solo basis.

The types of cases these mediators handled included: landlord/tenant, merchant/customer, seller/buyer, family relations, auto accidents, neighborhood disputes, criminal activity, ex-girlfriend/ex-boyfriend, and realtor/buyer disputes. Mediation sessions were held in a variety of locations including: several rooms in the Payne County Courthouse, the Stillwater Public Library, the Stillwater Police Department, the City Hall building, a convenience store, and even over a speaker phone. None of the mediators indicated any dissatisfaction with the types of disputes they mediated, or with the locations in which these mediations were held.

Mediators were asked to describe the strengths of this particular mediation program. The quality of the mediators and their dedication to mediation were deemed to be the most important assets to this program. In addition, the success rate for helping people to resolve conflict and adhere to their agreements was deemed to be a very important strength of this program. Mediation as an alternative to costly (in terms of time and money) legal action was considered to be important by one of the mediators. The civility between disputing parties that results from enhanced communication facilitated by the mediation process was also important to the mediators.

Mediators were asked to describe the weaknesses of this program. All of the mediators stated the same perceived problem. The general public is lacking

in its awareness and understanding of the Early Settlement Mediation program. Because of this lack of awareness and understanding, people are not using mediation as an alternative form of dispute resolution as frequently as might be expected. The mediators do not feel that enough effort has been put into educating the public about mediation. They would like to see some community-based classes to educate the public about mediation offered by the Early Settlement Office.

Mediators indicated that they would also like to see more advertising of Early Settlement. Some suggested televised programs through the School of Broadcast/Journalism at Oklahoma State University. The students televise an afternoon news broadcast, and are always looking for new stories. This broadcast airs on the local cable television station. Articles in newspapers and local newsletters, as well as partnerships with those agencies who regularly use the services of Early Settlement were other suggestions made by the mediators.

Mediators listed the personal attributes that make an individual a successful mediator. An individual must be a good listener, ask probing and open-ended questions to solicit information, be mature, be calm, know how to help parties sort out solutions to the problem, and evaluate the practicality of these solutions. A mediator must also be able to empathize with both sides. The mediator must try to understand where both sides are coming from to better

assist them in finding a solution to their problem. Finally, a mediator must be respected. By using these personal attributes in a neutral manner, yet still empathizing with both sides, a mediator gains the respect of the parties who then allow the mediator to help them with their problem.

The mediators were more than generous with their time in these interviews. They provided invaluable perceptions and suggestions relating to their mediation program. They have a strong desire to facilitate the expansion of mediation services in their communities. As one mediator stated, "mediation is exhausting but very rewarding, a challenge but well worth it."

SPECIAL JUDGES INTERVIEWS

Forty-two percent of the cases selected for this study were referred to mediation by judges (See Table IV). The Special Judges handling the Small Claims Docket for Payne County were interviewed to assess their perceptions about the mediation process and its usefulness to their court. The judges were supportive of mediation, but their enthusiasm for the program differed.

The judges learned about the Early Settlement Mediation Program through the marketing efforts of the Early Settlement staff. Mediation has been available in their courtrooms since the mid to late 1980s. One judge refers very few cases to mediation, while the other judge refers almost every case before him to mediation. When asked if they encourage parties to attempt mediation,

one judge indicated that the parties are informed that it is available, while the other judge almost requires that they mediate prior to him trying the case.

The judges were asked if there are certain types of cases better suited for mediation. They indicated that disputes between parties with an on-going relationship are well suited for mediation. Oftentimes, the dispute that has brought the parties to court is secondary to a "bigger" dispute that is underlying the problem. These types of issues are not usually addressed in the courtroom. For example, former roommates, neighbors, and ex-mates file a claim in Small Claims Court that is usually a result of a "falling-out" in their relationship. A mediator can sometimes help the parties resolve both the content issue and the relationship issue. The judge is only concerned with the content issue.

The judges were asked if there are certain types of cases they would not refer to mediation. One judge indicated that cases in which attorneys are involved were not referred to mediation. He did not feel that attorneys were receptive to the mediation process when court ordered. The other judge indicated that cases dealing with an obvious violation of the law would not be referred to mediation. This judge did not feel mediation was the appropriate forum for this type of case.

The judges were asked to describe the strengths and weaknesses of the Early Settlement Mediation Program. Only one of the judges had an opinion.

This judge believed the strength of the program was the people. He believed the mediators to be good, quality people with a sincere desire to help others resolve conflict. The only weakness he perceived was in the lack of public awareness about mediation services. He would like to see the "word get out" so that more people try mediation prior to filing a case with the Small Claims Clerk.

The judges were asked if there were ways in which this program might better serve the court. One judge indicated an interest in seeing mediation used more in the filing process. Prior to paying court costs and filing a case with the clerk, he would like to see mediation required of the parties. If mediation is not successful, than the parties could still file a claim. He believes that if mediation were tried, fewer cases would actually be filed with the court.

One judge indicated that the state legislature is considering increasing the jurisdictional limit in Small Claims Court. The current jurisdictional limit is $2500. The proposed increase is $4500. This judge believes that if the increase is improved, then more cases will be filed in Small Claims Court and more mediators will be needed to help with the increased caseload.

Overall, the judges were supportive of the Early Settlement Program. One judge said the volunteers should be commended for their service to the community. This judge does, however, have doubts as to whether or not the

program really "pays for itself." The other judge had great luck with mediation, and would continue to send as many cases as possible to mediation.

The judges were very generous with their time. They provided an interesting element to this research by providing insight into the court's perception of mediation services. They also provided information that would otherwise not have been available to this researcher.

CHAPTER FIVE

Summary, Conclusions and Recommendations

The researchers who previously analyzed conflict and conflict resolution found that different approaches for dealing with conflict exist. Fisher, Ury, and Patton (1991) presented the principled negotiation technique. They suggested that individuals who employ this approach are more likely to have positive experiences with conflict than negative experiences.

These authors also suggested that the principled negotiation technique is preferable to the positional bargaining technique. In principled negotiation, the parties work together to find a solution to the problem which addresses the needs and interests of both sides. They refer to this type of solution as a "win-win solution. In positional bargaining, one party attempts to prevail over the other. They refer to this type of outcome as a "win-lose" solution.

Herb Cohen (1980) suggested a different approach to conflict management. He called his technique the "Soviet Style" negotiation dance. This technique employs six steps leading to a "win-lose" outcome. The individuals using this technique are motivated by selfish interests, and are not interested in the impact the solution may have on the other party. The only important matter to these individuals is that they get what they want. Cohen

admits that this approach is not appropriate in all situations, and he suggests that it is not conducive to a long-lasting interpersonal relationship.

Fisher and Brown (1988) wrote another book dealing with relationships. The premise of this book is the importance of developing and maintaining good "working" relationships. They suggested that by following two basic steps (separating the content issues from the relationship issues, and pursuing the relationship in an "unconditionally constructive manner") an individual is more likely to maintain a relationship than to destroy it. They also suggested that this is an important aspect to positive conflict management.

Another technique in dealing with conflict was presented in Ury's book (1991). The premise of this book is how to deal with difficult individuals who refuse to negotiate. He detailed his five-step approach in this type of situation.

He suggested that the best way for an individual to deal with difficult behavior is to pay special attention to his own behavior. By exhibiting the desired positive behaviors, an individual may influence the other party's negative behaviors, and turn them into positive ones. Thus, the individual exercises more control over the negotiation process, and is more likely to obtain the desired outcome.

Finally, Hocker and Wilmot (1991) described conflict theory according to their own personal perceptions. They believe that all interpersonal relationships

and conflicts share common characteristics, which make it possible to employ techniques leading to positive conflict experiences. They asserted that individuals utilizing productive conflict management techniques are more likely to maintain long-term interpersonal relationships.

All of these authors share invaluable information about conflict and conflict management. This information is integral to this research project, because these are some of the resources used by the individuals who created the Early Settlement Mediation Program in Oklahoma. The ideas expressed by these authors have been incorporated into the training program designed to teach potential mediators for the state, and are actually used in the mediation process utilized by state certified mediators in Oklahoma.

The research design for this project was intended to provide a qualitative (or evaluative) analysis of the Early Settlement Program for the North Central Region of Oklahoma. The data collected and the interviews conducted provided the necessary information for this venture. The findings suggest that mediation is a viable option for dispute resolution, and that it is successful in this region of the state.

The success of this program is measured by agreement rates and by the perceptions of those most closely involved. The agreement rate for the cases analyzed in this study was eighty percent (See Table VI). In addition to this high

rate of agreement, the individuals interviewed for this research were, for the most part, very supportive of the program. Very few of those individuals interviewed expressed dissatisfaction with the mediation process, and indicated that they would not pursue mediation in the future.

The high percentage of referrals to mediation by the Special Judges who preside over the Small Claims Court docket and by the Small Claims Court Clerk indicate their support of the program in Oklahoma. Over one half of the referrals in the cases analyzed in this study were referred by these two sources (See Table IV). The interviews with the Special Judges in Payne County confirm the assumption that the judges are supportive of mediation as an alternative form of dispute resolution in most cases.

The case studies conducted for this project outline a variety of the types of issues mediated in this region including: merchant/customer, landlord/tenant, and other types of disputes. Of the ten participants interviewed, only three indicated dissatisfaction with the mediation process as they experienced it, and only one participant indicated dissatisfaction with the mediator in his case. This high level of satisfaction by the participants is also an indicator of the success of this program.

The five certified mediators currently working in the region who were interviewed for this project were all very supportive of mediation. They each had

their own personal reasons for becoming volunteer mediators, but one common thread existed. They all had a desire to perform community service in their area, and chose mediation for this purpose.

The mediators had little trouble in describing the strengths of this program including: the quality of the mediators, their dedication to mediation, the satisfaction of helping others to resolve conflict, and to enhance the civility in a relationship and facilitate the communication. The mediators found that this program had very few weaknesses. In fact, the one common perception of a weakness in the program was the lack of general public awareness and understanding of mediation and the Early Settlement Mediation Program. The commitment to this program by these mediators and their perceptions indicate the successful nature of this program.

Few recommendations for improvements were made by the participants in this project. Overall, they found the mediation process to work well in their cases. The one common suggestion for improvement made by all who were interviewed was to increase public awareness and education about mediation, and to more aggressively advertise the services of the Early Settlement Program. The participants suggested that this improvement would enhance the reputation of the Early Settlement Program, and ultimately better serve the general public.

One of the mediators interviewed in this study suggested utilizing the resources available through Oklahoma State University. Specifically, the School of Broadcast/Journalism has resources and technical capabilities that could enhance the advertising possibilities for this program. The students who broadcast the afternoon news broadcast might be interested in producing a story on mediation. The most obvious benefit of this broadcast is that it airs on the local cable television station, thus enhancing public awareness about mediation.

By increasing public awareness, more people would have the option of trying mediation prior to filing a claim in Small Claims Court. They would save time and money. The courts would also be relieved of having these cases on the docket, thus saving everyone time and money.

In summary, the Early Settlement Mediation Program which services the North Central Region of Oklahoma is a productive and effective mediation program. It provides mediation services to those who wish to try mediation as an alternative form of dispute resolution. It appears that the program has the support of the key players: the participants of the mediation process, the state certified mediators who work as volunteer mediators in the program, and the Special Judges who preside over the Small Claims Docket. It can be assumed that this program will only experience continued success in the future.

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Population and Cases Per Judge

By Judicial Districts

FY-93

Judicial District	Authorized Judgeships	District Population	Population Per Judge	Rank	District Case Filings	Cases Filed Per Judge	Rank
1	5	29,806	5,961	26	8,286	1,657	20
2	8	64,705	8,088	24	11,473	1,434	24
3	6	61,936	10,323	22	9,989	1,665	18
4	13	135,207	10,401	21	21,561	1,659	19
5	12	167,446	13,954	13	21,576	1,798	16
6	5	71,297	14,259	12	11,954	2,391	10
7	29	599,611	20,676	2	80,618	2,780	3
8	5	59,101	11,820	17	8,028	1,606	21
9	5	90,518	18,104	5	14,554	2,911	1
10	3	41,645	13,882	14	5,050	1,683	17
11	4	58,058	14,514	10	5,948	1,487	22
12	7	102,640	14,663	8	18,205	2,601	5
13	4	58,631	14,658	9	11,537	2,884	2
14	28	518,916	18,533	4	67,408	2,407	8
15	12	202,259	16,855	7	31,042	2,587	6
16	5	64,543	12,909	15	9,230	1,846	14
17	5	59,732	11,946	16	10,717	2,143	11
18	4	57,360	14,340	11	10,499	2,625	4
19	3	32,089	10,696	19	6,264	2,088	12
20	8	83,979	10,497	20	14,683	1,835	15
21	10	223,653	22,365	1	24,066	2,407	9
22	8	72,554	9069	23	10,547	1,318	25
23	5	87,976	17,595	6	12,134	2,427	7
24	10	108,956	10,896	18	14,665	1,467	23
25	3	18,558	6,186	25	3,887	1,296	26
26	4	74,409	18,602	3	7,391	1,848	13
TOTALS	211	3,145,585			451,312		
		STATE AVERAGE	14,908			2,139	

Appendix B

DATE

NAME
ADDRESS
CITY, STATE ZIP CODE

Dear NAME:

I am conducting a study of the Early Settlement Mediation Program for the North Central region of Oklahoma. I am working in conjunction with Oklahoma State University and with Weldon Schieffer, Director for the Early Settlement Mediation Program in Payne County. I would like to ask for your participation in this research project.

I would like to schedule a personal interview with you to discuss your experience with the mediation process. The issues I would like to discuss include how you became familiar with Early Settlement, your reasons for choosing mediation over other methods of dispute resolution, and your satisfaction or dissatisfaction with the program. I am very interested in learning of ways in which mediators serve and can better serve the public.

I will be reporting my findings in a written thesis; however, I will be using every possible method of maintaining your anonymity. No names or case numbers will be reported. If there are details you do not want reported, they will be deleted from this project. If you would like, I will also provide you with a copy of this project upon completion. I would also like to stress that this is a voluntary interview. The interview can be discontinued at anytime during this process.

As Director for the Early Settlement Central Mediation Program located in Oklahoma City, I am very interested in finding ways to provide the best mediation services for my region. Weldon Schieffer is also interested in improving his program. Your insight into your experience with the mediation process will be an invaluable tool in this project.

Thank you for your assistance.

Sincerely,

Natalie L. Bruner

CODE OF CONDUCT

ADR SYSTEM
MEDIATORS

Mediators Code of Conduct

Rules and Procedures for the Dispute Resolution Act
Appendix A
Code of Professional Conduct for Mediators

Preamble

A. Preamble

1. A mediator is an impartial third party certified according to the provisions of the Act who enters a dispute with the consent of the parties, to aid and assist them in reaching a mutually satisfactory settlement to the issues in dispute.

2. Mediation is an informal process of resolving a dispute with the assistance of a mediator. Mediation carries ethical responsibilities and duties. Those who act as mediators must be dedicated to the principle that all disputants have a right to negotiate and attempt to determine the outcomes of their own conflicts. In addition, mediators are bound by the ethical guidelines of this code which specify their duties and obligations to parties who engage their services, to the mediation process, to other mediators, to the agencies which administer programs of mediation, and to the general public.

3. This is a personal code for the conduct of the individual mediator and is intended to establish minimum principles applicable to all mediators.

The Code

B. The Code

1. The responsibility of the mediator to the parties.

a. Initiating mediation.
Any agency or person may make recommendations, suggestions, or urgings, but the decision to engage in mediation is made solely by the disputing parties themselves, unless mediation is mandated by legislation, by court order, or by contract.

b. Involvement of parties.
(1) The mediator urges that the parties agreeing to mediation take an active role in the mediation process.

The Code (cont.)

(2) In the event of non-resolution, the mediator informs parties of the options available to them under the provisions of the Act.

c. Parties' mutual agreement on the mediator.
The mediator begins mediation only with mutual consent by the parties.

d. Responsibility of the parties in mediation.
(1) The parties, not the mediator, are responsible for decisions made during mediation, as they are not being represented independently by the mediator.
(2) The mediator never forces parties into reaching a settlement.
(3) The mediator never makes decisions for parties.

e. Termination of mediation.
(1) The mediator suspends or terminates mediation when it appears that continuation would harm or prejudice any party.
(2) The mediator terminates the mediation session when it appears that a party is unable or unwilling to make an effort to meaningfully participate in the mediation process.
(3) The mediator terminates mediation when it appears that mediation is not productive, and the parties are unwilling to continue.
(4) The mediator shall not proceed when a party appears to be intoxicated, irrational or exhibits impaired judgment.

2. The responsibility of the mediator to the mediation process.

a. Mediator's expertise.
(1) The mediator performs mediation services only where qualified to do so by experience and training.
(2) The mediator makes appropriate referrals when parties need additional information in order to resolve their conflict.

b. When it is improper to be mediator.

The Code (cont.)

(1) The mediator who has represented or counseled a client beforehand shall not accept the role of mediator.

(2) The mediator who has prior acquaintance with a party shall not accept the role of mediator, unless the current parties, when informed of the prior acquaintance, mutually agree that the mediator shall conduct the mediation.

(3) The mediator who has biases or prejudices either for or against one of the parties or the issues in dispute shall not accept the role of mediator.

c. Mediator's impartiality.

(1) The mediator shall maintain impartiality at all times.

(2) The mediator does not represent a party of mediation in court concerning the issues which were the subject of mediation.

d. Mediation and the law.

(1) The mediator shall not offer legal advice to parties.

(2) The mediator shall low parties to independently assess their legal position and/or seek the assessment of an attorney.

3. The responsibility of the mediator toward other mediators.

a. Joining mediation in progress.

(1) The mediator shall not enter a session already in progress without first conferring with the other mediator.

b. Working with other mediators.

(1) The co-mediator shall keep the other mediator(s) fully informed of developments during the course of mediation.

(2) The co-mediator shall not show disagreement with, no criticism of, the other mediator(s).

The Code (cont.)

4. The responsibility of the mediator to the sponsoring agency and to the profession.

   a. Mediator's role during mediation.

      (1) The mediator shall accept full responsibility for the honesty and merit of interventions or suggested options initiated by the mediator.
      (2) The mediator shall withdraw when requested to by the parties, or upon discovering an inability to fulfill the requirements of the Act or the Oklahoma Rules and Procedures for the Dispute Resolution Act.
      (3) The mediator shall work within the policy of the sponsoring agency, and shall avoid the appearance of impropriety.
      (4) The mediator shall not use the third-party role for personal gain or advantage.
      (5) The mediator shall not accept money nor anything of value for services, other than the collection of fees listed elsewhere in the Oklahoma Rules and Procedures for Dispute Resolution Act.
      (6) The mediator shall not voluntarily incur obligations or perform professional services that might interfere with the ability to act as an impartial mediator.

5. The responsibility of the mediator to the general public.

   a. Confidentiality of mediation.
      (1) The mediator shall not reveal, outside the negotiations, information gathered during mediation.
      (2) The mediator may disclose information from mediation after obtaining the expressed, written permission of all pertinent parties or when permitted by statute.
      (3) Under the Protective Services for the Elderly Act of 1977 (Title 43A Section 801 et seq), and Title 21 Section 846 which deals with persons under age eighteen, the mediator is responsible for reporting information to the proper agencies upon learning that any elderly or handicapped person or child has

The Code (cont.)

had physical injury or injuries inflicted upon him or her, by other than accidental means, where the injury appears to have been caused as a result of physical abuse or neglect.

Appendix D

QUESTIONNAIRE FOR PARTICIPANTS IN THE MEDIATION PROCESS

1. How did you learn about the Early Settlement Program? Have you been involved in other mediation sessions prior to this particular case? If so, what types of issues were involved?

2. What are the issues involved in this particular dispute?

3. Would you please describe to me the chronology of events that led to this mediation, including the nature of the relationship between you and the other parties involved in this dispute.

4. Would you please describe to me your perception of the mediation process as it applies to this particular case.

5. What was your perception of the role of the mediator?

6. Where did your mediation session take place? Was it in the courthouse or at another location?

7. How long did your mediation session last? Was it necessary to participate in more than one mediation session to resolve your dispute? If so, did the same mediator work with you, or did you work with other mediators in this case?

8. Has the mutually accepted agreement been kept? Have there been any problems with either party adhering to the agreement? Will it be necessary to schedule additional mediation sessions in this particular case?

9. Would you consider using mediation for future disputes? Why or why not? If mediation is not an option, what other options will you consider?

10. Is there any additional information you would like to share with me concerning the mediation process as you experienced it in this particular case?

QUESTIONNAIRE FOR EARLY SETTLEMENT PROGRAM MEDIATORS

1. What factors influenced your decision to become a state certified mediator?

2. How did you learn about the Early Settlement Program?

3. How many cases have you mediated?

4. Have you participated in any mediations as part of a mediating team?

5. What types of issues have you mediated?

6. Where have your mediation sessions been held?

7. What do you consider to be the strengths of the Early Settlement Program?

8. Do you perceive there to be weaknesses in the program? If so, do you have any suggestions for ways to deal with these weaknesses?

9. What do you perceive to be the personal characteristics an individual must possess to be an effective mediator?

10. Is there any additional information about your role as a mediator that you believe is important to the Early Settlement Mediation Program?

QUESTIONNAIRE FOR SMALL CLAIMS JUDGES

1. How did you learn about the Early Settlement Mediation Program?

2. Do you refer cases to mediation?

3. How do you encourage parties to a case to participate in the mediation process?

4. Are there certain types of cases that you believe are better suited for mediation?

5. Are there certain types of cases you would not refer to mediation?

6. Approximately how many cases do you refer to mediation?

7. What do you perceive to be the strengths of the Early Settlement Mediation Program?

8. What do you perceive to be the weaknesses of the program?

9. Are there ways in which this program might better serve the court?

10. Is there any additional information about mediation and small claims court that you feel would benefit the Early Settlement program?

Appendix E

CONSENT TO PARTICIPATE IN INTERVIEW

I, _____, hereby authorize or direct **NATALIE L. BRUNER**, to perform the following procedure.

1. To interview me in person, or by written questionnaire when a personal interview is not possible.
2. The length of the interview will vary according to the amount of information provided by me.
3. The interview may be terminated at anytime if deemed necessary by **NATALIE L. BRUNER** or me.
4. The interview is **CONFIDENTIAL and VOLUNTARY** and will be conducted in a neutral meeting place to be determined by **NATALIE L. BRUNER** and me.
5. Any notes taken during the interview will be destroyed by **NATALIE L. BRUNER** upon completion of the research project.
6. The anonymity of the parties will be maintained through the use of numbers to identify the participants. No names or case numbers will be used in this research project.
7. To notify participants that two limitations to confidentiality exist. Any information given by the parties during the interview which (1) alleges a crime has been committed or is going to be committed, and/or (2) alleges physical abuse or neglect of a minor child (under the age of eighteen [18]), an elderly person, or a person with disabilities **MUST BE REPORTED TO THE PROPER AUTHORITIES**.
8. Participants will assist in determining the strengths and weaknesses of the Early Settlement Mediation Program, as well as sharing their perceptions of the mediation process.

This is done as part of an investigation entitled: **MEDIATION - SOLUTION OR ALTERNATIVE.** The purpose of this procedure is to gather information about the mediation process directly from the participants.

I understand that participation is **VOLUNTARY**, that there is no penalty for refusal to participate, and that I am free to withdraw my consent and participation in this project at any time without penalty after notifying the project director.

I may contact **NATALIE L. BRUNER** at telephone number (405) 682-7570. I may also contact University Research Services, 001 Life Sciences East, Oklahoma State University, Stillwater, OK 74078; Telephone: (405) 744-5700.

I have read and fully understand the consent form. I sign it freely and voluntarily. A copy has been given to me.

DATE: _____ TIME: _____ (a.m./p.m.)

SIGNED:_____
Signature of Subject

_____
Person authorized to sign for subject, if required

Witness (es) if required: _____

_____

I certify that I have personally explained all elements of this form to the subject or his/her representative before requesting the subject or his/her representative to sign it.

SIGNED: _____
Project Director

Appendix F
SUMMARY OF DATA FROM EARLY SETTLEMENT CASE FILES

Case #	Type	Date	County	Referral Source	Nature of Dispute	Outcome
1	L/T	1995	Payne	Judge	Money	Agreement
2	M/C	1995	Payne	Judge	Money	Agreement
3	L/T	1995	Kay	Judge	Money	Agreement
4	FR	1995	Payne	Sheriff	Phys/Mental Impairments	Agreement
5	M/C	1995	Kay	Judge	Money	Agreement
6	M/C	1995	Payne	Judge	Money	Agreement
7	L/T	1994	Payne	Judge	Money	Agreement
8	Co-Workers	1994	Lincoln	Small Claims	Money	Agreement
9	M/C	1994	Lincoln	Judge	Money	Agreement
10	A&B	1994	Noble	Judge	A&B	Agreement
11	L/T	1994	Kay	Judge	Money	Agreement
12	M/C	1994	Kay	Judge	Money	Agreement
13	M/C	1994	Creek	Judge	Auto Purchase	NO
14	Agent/Broker	1994	Creek	Judge	Real Estate Transaction	Agreement
15	M/C	1994	Kay	Judge	Money	Agreement
16	M/C	1994	Payne	Small Claims	Service of Air Conditioner	Agreement
17	IDEA	1994	Osage	Special Ed.	IEP Plan	Agreement
18	L/T	1994	Payne	ES Office	Money/Damages	Agreement
19	L/T	1994	Logan	Judge	Past Due Rent	Agreement
20	Strangers	1994	Payne	ES Office	Dog Bite/Money	Agreement
21	M/C	1994	Payne	ES Office	Property	Agreement
22	Auto Accident	1992	Payne	Judge	Damages to Car	Agreement
23	M/C	1992	Kay	Judge	Past Due Loan	Agreement
24	Lawyer/Client	1992	Kay	Judge	Past Due Atty. Fees	Agreement
25	Aquaintances	1992	Payne	Judge	Damages to Car	Agreement
26	M/C	1994	Payne	Judge	Real Estate Transaction	Agreement
27	L/T	1994	Payne	ES Office	Past Due Rent	Agreement
28	M/C	1993	Kay	Judge	Money	Agreement
29	M/C	1993	Payne	ES Office	Services	Agreement
30	L/T	1993	Kay	Judge	Past Due Rent	Agreement
31	M/C	1994	Payne	ES Office	Unpaid Child Care	Agreement
32	M/C	1994	Kay	Judge	Money	Agreement
33	Neighbors	1994	Payne	Sheriff	Property Rights	Agreement
34	FR	1994	Logan	Legal Aid	Child Custody	Agreement
35	FR	1994	Payne	ES Office	Relationship/Visitation	Agreement
36	M/C	1994	Payne	ES Office	Services Rendered	Agreement
37	FR	1994	Payne	ES Office	Relationship Issues	Agreement
38	FR	1994	Payne	Agency	Pre-Divorce Meeting	Agreement
39	L/T	1994	Kay	Judge	Money	Agreement
40	M/C	1994	Payne	Attorney	Money/Repair Work	Agreement

41	FR	1994	Noble	ES Office	Relationship Issues	Agreement
42	E/E	1993	Payne	Judge	Unpaid Wages and Criminal Activity	Agreement
43	Neighbors	1994	Payne	D.A.'s Office	Harassment	Agreement
44	L/T	1994	Oklahoma	Small Claims	Money	Agreement
45	L/T	1994	Kay	Judge	Money	Agreement
46	L/T	1993	Payne	OSU	Money	Agreement
47	M/C	1993	Payne	Small Claims	Unpaid Hospital Bills	Agreement
48	M/C	1993	Payne	ES Office	Auto Repairs	Agreement
49	M/C	1992	Kay	N/A	Unpaid Medical Bills	NO
50	Aquaintances	1992	Kay	Small Claims	Auto Damages	Agreement
51	M/C	1992	Kay	Self	Past Due Account	NO
52	M/C	1992	Pawnee	N/A	Unpaid Child Care	NO
53	M/C	1992	Payne	Small Claims	Money	Agreement
54	M/C	1992	Noble	Letter	Unpaid Account	NO
55	Auto Accident	1992	Osage	Friend	Money	Agreement
56	M/C	1992	Noble	N/A	Unpaid Account	NO
57	FR	1992	Payne	Judge	Division of Property	Agreement
58	L/T	1991	Kay	ES Director	Past Due Bills	Agreement
59	M/C	1991	Payne	Judge	Repair Work/Money	Agreement
60	FR	1994	Noble	Attorney	Child Custody	Agreement
61	M/C	1994	Payne	Judge	Payment Plan	Agreement
62	M/C	1994	Payne	Judge	Money	Agreement
63	M/C	1994	Payne	Judge	Money/Failed Business	Agreement
64	L/T	1994	Payne	Judge	Money	Agreement
65	M/C	1994	Payne	ES Office	Car Repairs/Money	Agreement
66	FR	1994	Payne	ES Office	Property	NO
67	M/C	1993	Payne	Judge	Money	Agreement
68	M/C	1992	Kay	Judge	Past Due Account	Agreement
69	M/C	1992	Payne	Judge	Past Due Bills	Agreement
70	FR	1992	Kay	Small Claims	Money/Unpaid Bills	Agreement
71	M/C	1992	Kay	Judge	Past Due Car Loan	Agreement
72	L/T	1992	Kay	Judge	Vacate Property and Unpaid Bills	Agreement
73	Friends	1992	Payne	ES Office	Unpaid Vet. Bill	Agreement
74	L/T	1993	Payne	ES Office	Money	Agreement
75	Buyer/Realtor	1993	Payne	Board of Realtors	Home Repairs	Agreement
76	L/T	1993	Payne	Judge	Past Due Rent	Agreement
77	M/C	1993	Kay	Judge	Money	Agreement
78	L/T	1993	Kay	Judge	Money	Agreement
79	E/E	1994	Payne	Legal Aid	Property/Harassment	Agreement
80	M/C	1994	Payne	ES Office	Auto Services	Agreement
81	L/T	1994	Payne	Judge	Money	Agreement
82	L/T	1994	Payne	Judge	Money	Agreement
83	L/T	1993	Payne	ES Office	Past Due Rent	Agreement
84	M/C	1993	Payne	ES Office	Past Due Account	Agreement

85	M/C	1994	Payne	ES Office	Prof. Medical Services	NO
86	M/C	1994	Payne	ES Office	Past Due Account	NO
87	M/C	1994	Payne	ES Office	Money	NO
88	M/C	1994	Payne	ES Office	Money	NO
89	FR	1994	Payne	D.A.'s Office	Child Visitation	NO
90	L/T	1994	Payne	ES Office	Past Due Rent	NO
91	L/T	1994	Payne	ES Office	Property Damages	NO
92	IDEA	1994	Creek	OASIS	School/Family Probs.	Agreement
93	Aquaintances	1994	Payne	ES Office	Purchase of Dryer	NO
94	L/T	1994	Kay	Judge	Money	Agreement
95	Friends	1994	Payne	Small Claims	Property	Agreement
96	Aquaintances	1994	Payne	Small Claims	Money	NO
97	L/T	1995	Payne	Small Claims	Money	NO
98	L/T	1995	Creek	ES Office	Money	NO
99	Environmental	1995	Osage	ES Office	Environmental Issues	NO
100	L/T	1995	Kay	ES Office	Money	NO

KEY FOR TABLE

L/T = Landlord/Tenant

M/C = Merchant/Customer

FR = Family Relations

A&B = Assault and Battery

IDEA = Individuals with Disabilities Education Act

E/E = Employer/Employee

What is Mediation?

Oklahoma law provides an effective, faster and much more affordable process to resolve disputes other than going to court. It's the **Early Settlement Dispute Mediation Program.** For a one-time fee of $5.00, disputants settle their issue with the help of a trained expert called a **mediator**. The mediator is a highly skilled, court-certified person who is neutral to the dispute, and has no stake in the outcome.

How Does it Work?

By calling the **Early Settlement** office and initiating a case, a meeting is scheduled (at a time and place convenient to the participants) in which the issue is discussed in detail. This format gives the disputants direct input into the *"who, what, when, where and how"* the situation will be resolved. The mediator does this by keeping the dialogue focused on the issue and aiding in clear communication between the disputants. The mediator doesn't judge the case or give advice, but rather focuses on productive discussion of all the options which are available to the disputants.

Mediation is hard on issues....
but easy on people

How Long Does it Take?

From the time of intake to completion, an **Early Settlement** case usually takes a week to ten days. Typically, court processes require much longer to reach completion, and courts rely on the final decision of a judge or jury, not the decision of the disputants. Mediation sessions typically last an hour, and in mediation the decisions are made by the disputants. Also, if needed, court-referred cases can be mediated to agreement and then the details entered into the court record as the journal entry of the judgement.

How Well Does It Work?

Early Settlement mediation is successful about 90 percent of the time, including collection and restitution matters after court judgements have been rendered. Mediation allows for the participants to *"say what's on their minds,"* and vent the frustration and pressures that develop from the situation. That opportunity to express their feelings and be heard in a structured and controlled format lends itself to meaningful problem solving. Participants in mediation do not waive any legal rights so they don't risk losing access to court processes if mediation is not successful.

How Convenient is it?

Early Settlement cases are private and confidential, and meetings are scheduled at a neutral location at the convenience of all concerned, including evenings and week-ends. Participants don't have to miss work and can schedule a session to fit their particular needs.

What Kinds of Cases are Appropriate for Mediation?

Almost any issue or problem can benefit from the **Early Settlement** program and it's services. Cases include past due bills, family matters, car accidents, landlord/tenant problems, merchant/customer issues, non-violent felonies, and many more. Mediation is almost always helpful. *(**Early Settlement** refers child abuse and violent felony cases to other agencies.)*

VITA

Natalie Lorraine Bruner

Candidate for the Degree of

Master of Science

Thesis: COMMUNITY MEDIATION: SOLUTION OR ALTERNATIVE?

Major Field: Natural and Applied Science

Biographical:

Personal Data: Born in Casper, Wyoming, on July 13, 1965, the daughter of Michael Alan and Dianne Elizabeth Bruner.

Education: Graduated from Putnam City North High School, Oklahoma City, Oklahoma in May 1983; received Bachelor of Arts degree with honors in Political Science and Foreign Languages (Spanish, German, and French) from Oklahoma State University, Stillwater, Oklahoma in July 1986. Completed the requirements for the Master of Science degree with a major in Natural and Applied Sciences at Oklahoma State University in May 1995.

Experience: Currently employed as Director for the Early Settlement Central Mediation Program in Oklahoma City, Oklahoma; worked as the Coordinator of Honors Communication and Advisement for the University Honors Program at Oklahoma State University; team-taught "AP American Government" via satellite from Oklahoma State University to high school students nationwide; worked in advertising sales for a large computer publications publishing company in Dallas, Texas; and worked in various positions within the legal community including-legal secretary, para-legal trainee, and Magistrate's clerical assistant, 1986 to present.

Professional and Academic Memberships: State Certified Mediator for Oklahoma, Great Plains Honors Council, National Collegiate Honors Council, Phi Kappa Phi, Golden Key, Pi Sigma Alpha.

OKLAHOMA STATE UNIVERSITY
INSTITUTIONAL REVIEW BOARD
HUMAN SUBJECTS REVIEW

Date: 02-07-95 **IRB#:** AS-95-043

Proposal Title: MEDIATION - SOLUTION OR ALTERNATIVE

Principal Investigator(s): Larry Perkins, Natalie L. Bruner

Reviewed and Processed as: Expedited

Approval Status Recommended by Reviewer(s): Approved

APPROVAL STATUS SUBJECT TO REVIEW BY FULL INSTITUTIONAL REVIEW BOARD AT NEXT MEETING.
APPROVAL STATUS PERIOD VALID FOR ONE CALENDAR YEAR AFTER WHICH A CONTINUATION OR RENEWAL REQUEST IS REQUIRED TO BE SUBMITTED FOR BOARD APPROVAL.
ANY MODIFICATIONS TO APPROVED PROJECT MUST ALSO BE SUBMITTED FOR APPROVAL.

Comments, Modifications/Conditions for Approval or Reasons for Deferral or Disapproval are as follows:

Signature: _____ Date: March 3, 1995

Chair of Institutional Review Board