

United States District Court
District of Vermont



Early Neutral Evaluation Program
2014 ANNUAL REPORT
January 1 - December 31, 2014

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INTRODUCTION

In response to the Civil Justice Reform Act of 1990, the District of Vermont adopted Early Neutral Evaluation (ENE) as its program for alternative dispute resolution. Officially established July 1, 1994 and governed by [Local Rule 16.1](#), the program effectively provides litigants with an early advisory evaluation of the likely court outcome and promotes settlement negotiations.

The purpose of this Annual Report is to provide relevant historical and statistical data regarding this district's ENE program. To draw the most detailed picture of the program, it is necessary to study the statistical information as it relates specifically to **ENE-eligible cases** filed and disposed, and to **individual evaluation sessions**. This Report also includes a review of **evaluator** usage and participating attorney feedback.

Reporting period:
January 1–December 31, 2014

“One of the best ways to persuade others is with your ears—by listening to them.”

- Dean Rusk

STATISTICAL ANALYSIS

Eligible¹ Cases

The cumulative number of eligible cases filed since the program was officially launched on July 1, 1994 is **3,753**. Of those eligible cases, 1,853, or 49%, either settled or were dismissed prior to an evaluation session; 41, or 1%, successfully opted out of the process altogether; and the remaining 50% continued to session. Fig. A illustrates these numbers.

Fig. A



Fig. B simply compares the number of eligible cases filed over the previous five reporting periods.

Fig. B

Eligible Cases Filed	
2014	133
2013	119
2012	158
2011	171
2010	158

¹ All cases filed with nature of suit statistical code categories specified in [L.R. 16.1\(b\)\(1\)\(A\)-\(G\)](#) are subject to the ENE process.

Disposition of Eligible Cases

Fig. C compares the point of disposition for eligible cases in the more active nature of suit (NOS) categories.

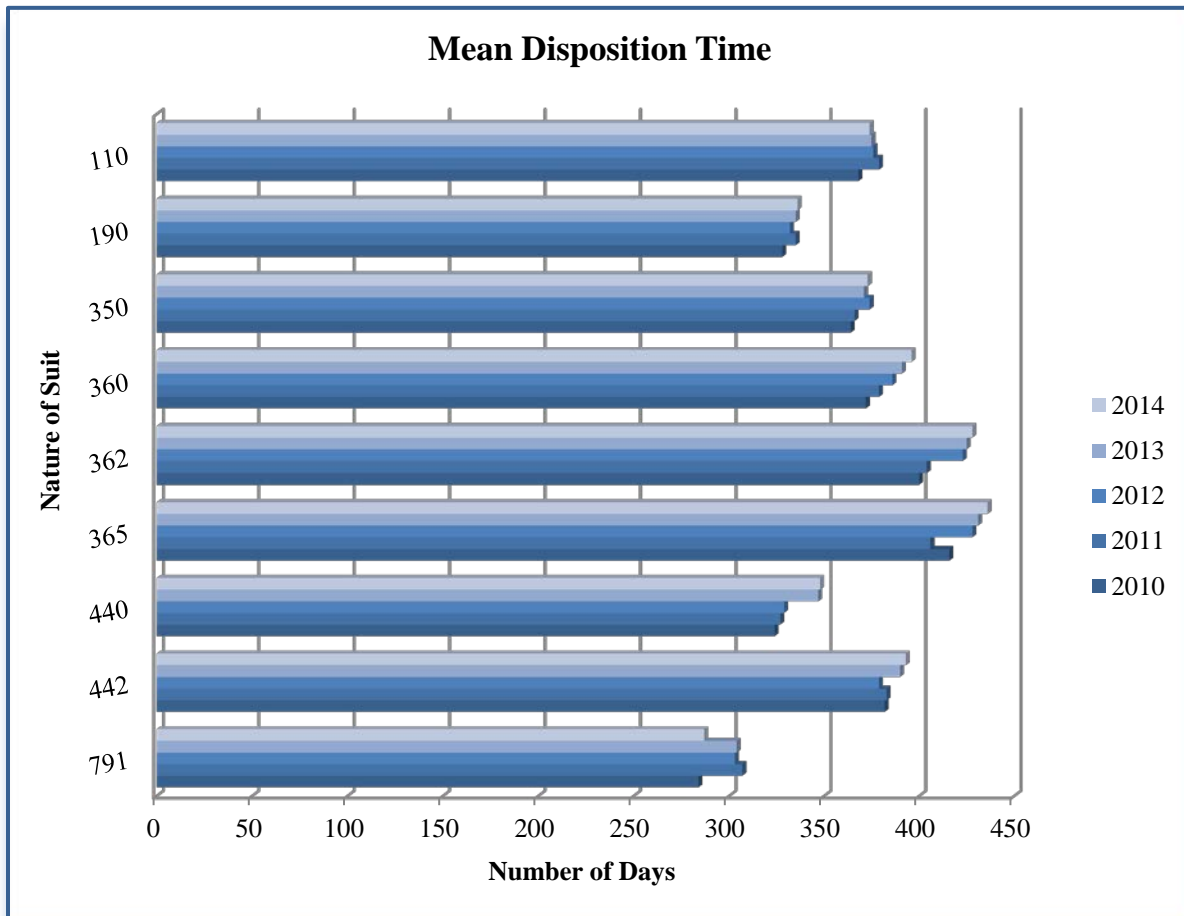
Fig. C

NATURE OF SUIT	WHEN DISPOSED		
	Prior to Session	At Session	After Session
110 Contract: Insurance	50%	20%	30%
190 Contract: Other	58%	17%	25%
350 PI: Motor Vehicle	25%	36%	39%
360 PI: Other	33%	31%	36%
362 PI: Med Malpractice	48%	26%	26%
365 PI: Product Liability	48%	23%	29%
440 Civil Rights: Other	61%	16%	23%
442 Civil Rights: Jobs	31%	32%	37%
791 Labor: ERISA	50%	28%	22%

Mean Disposition Time of Eligible Cases

Employing the same NOS categories used in [Fig. C](#), the graph below exhibits the number of days to disposition over the previous five years. The information reveals a gradual increase in the number of days to case closure. This is particularly evident in categories 360, 362, 365, and 440.

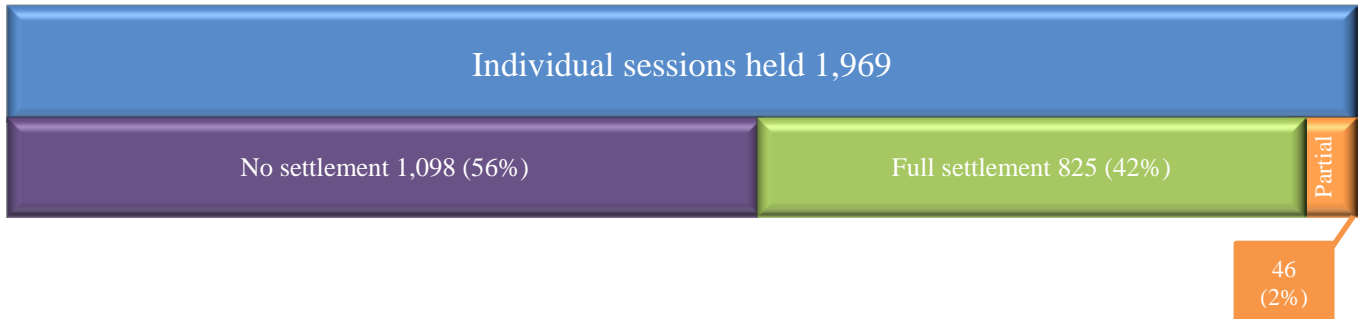
Fig. D



Evaluation Sessions

A total of **1,969** individual sessions have been held since the program began. The total number of sessions includes: 1) the remaining 50% of eligible cases proceeding to session (*see Fig. A*); 2) non-eligible cases opting into the program; and 3) cases holding more than one session. Fig. E illustrates the settlement results of those sessions.

Fig. E

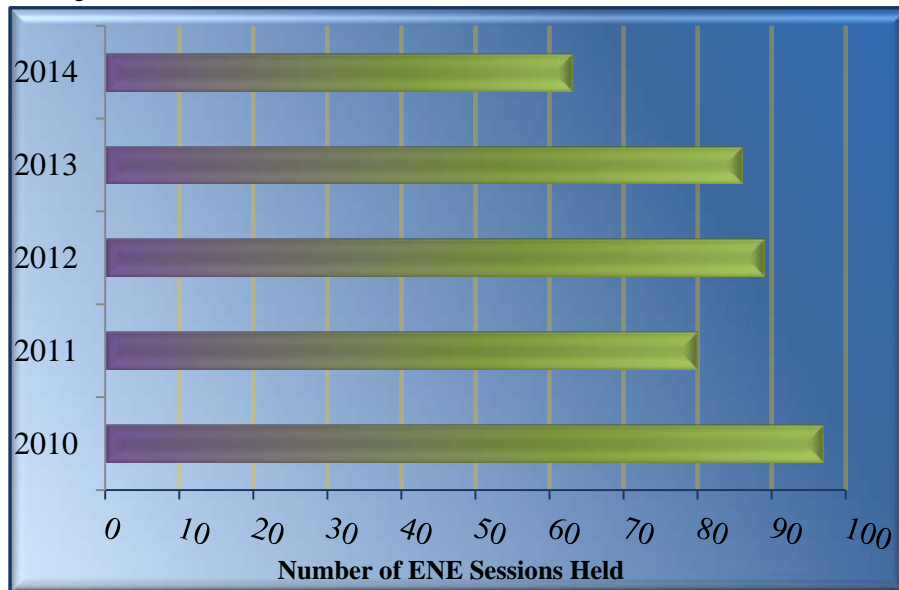


2014 Results

In the 2014 reporting period, 133 eligible cases were filed and 63 sessions were held. The number of sessions held represents a 26% decline from 2013.

Fig. F compares the number of ENE sessions held during each of the previous five reporting periods.

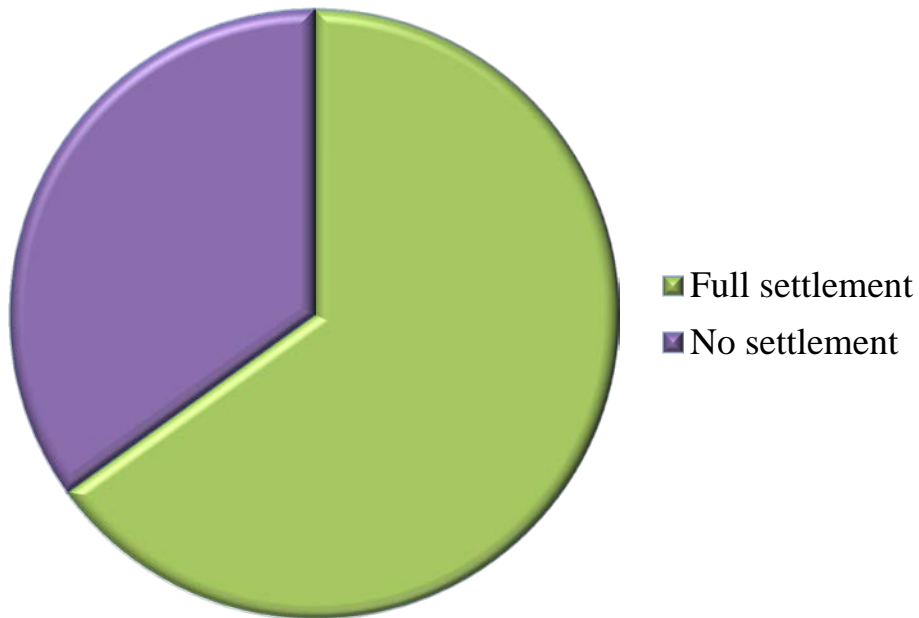
Fig. F



Higher numbers of sessions held should not be equated with a successful program or lower numbers with a less successful one. Of the 63 sessions held during this reporting period, 22, or 35%, resulted in no settlement and 41, or 65%, resulted in full settlement. Although fewer sessions were held in 2014 as compared to 2013, there was a meaningful rise in the overall success of the sessions that did occur, as demonstrated below.

Fig. G

2014



EVALUATOR USAGE

Attached as [APPENDIX 1](#), is a spreadsheet displaying the **combined** efforts of **all** evaluators—those who are, or were at one time, on the official court roster, and those who have been stipulated to by parties.

EVALUATOR FEEDBACK

[APPENDIX 2](#) summarizes the responses to the Court’s Annual Early Neutral Evaluator Questionnaire. Although no evaluator comments were offered on the Questionnaires, the numbers provided indicate a slight increase in the percentages given to the excellent and good categories for *attorney’s participation* in the process. Oddly those numbers do not necessarily correlate with the decline in the percentage of those who felt there had been an increase in *attorney preparedness*. (See APPENDIX 2, [question 1a.](#)) However, again, a slight increase of the percentages for full, active participation of the *parties* is shown.

PARTICIPATING ATTORNEY FEEDBACK

Case Closing Questionnaires are mailed throughout the reporting period to counsel who participated² in the ENE process. A summary of responses to the Questionnaires is attached as [APPENDIX 3](#).

Responses to the Questionnaires remain generally positive. *“The case settled because of the ENE. It took time for things to sink in, but a good process was initiated by that process.” “I was please[d] with the ENE session and am grateful for the opportunity. . . .”* However, the majority of comments continue to revolve around the timing of ENE. *“I still believe that Alternative Dispute Resolution is better done towards the end of discovery. Otherwise, folks don’t know how witnesses/experts will do.” “ENE held too early in the process.” “The program is great although in some cases it should be held later than the midpoint of discovery.”*

² Participation begins with the assignment of an evaluator. Questionnaires were NOT sent to counsel in cases achieving full settlement at session.

UPDATES

Panel Refresh

Panel Retention Questionnaires were mailed to all evaluators on the Court's current roster. After a thorough review of the information provided on the Questionnaires, the Court will refresh the panel as necessary to meet the overall needs of the program.

Training

No ENE-specific training was offered during this reporting period. However, as the Court endeavors to maintain a panel of skilled and effective neutrals and consistent with the [Training & Roster Refresh Schedule](#), potential training opportunities are being explored.

Evaluator Reports and Supplemental Report Procedure

A fillable [Evaluator Report Form](#) is available on the Court's website. Evaluators are again encouraged to utilize the form as it will assist in efficiently filing reports that are consistent and compliant with the requirements of L.R. 16.1(j).

Included on many of the Case Closing Questionnaires, were comments from counsel where cases settled after an ENE session, but as a result of the session and the evaluator's continued work with the parties. (See [APPENDIX 3](#).) Because this occurs frequently, evaluators are reminded of the procedure developed for submission of a Supplemental Evaluator Report within 60 days of the initial ENE session. This procedure allows evaluators to report and receive credit for their continued efforts when ultimately resulting in settlement *after* the initial ENE session. Please see the [Procedure](#) on the Court's website for complete information.

Bankruptcy

Two bankruptcy cases were referred to ENE during this reporting period. One case did not settle and the other achieved full settlement at the session.

CONCLUSION & VISION

2014 was another positive year for the ENE program. It continues to be an effective litigation tool that opens communication and provides the opportunity for neutral case assessment. Parties are encouraged to fully utilize the process for the many benefits it offers.

The Court stands allegiant to its ENE program and would like to recognize and thank the evaluators and members of the legal community for their commitment to, and full participation in, the ENE process.

Comments

The Court encourages and welcomes comments and suggestions related to the ENE program. Please forward to H. Beth Cota, ENE Administrator, at (802) 951-8113, or to Beth_Cota@vtd.uscourts.gov.

APPENDIX 1

Current Court Roster (as of 12/31/2014)	Current Court Roster - Bankruptcy (B) (as of 12/31/2014)
Previous Court Roster	
By Stipulation	

Evaluator	Cases Assigned	Full Settlement	Partial Settlement	No Settlement	Settled Prior to Session	Dispositive Motion Prior to Session
Affolter, Richard W.	3	1			1	1
Allen, Frederic W.	24	6	1	12	5	
Amidon, Jr., Edwin H.	51	7		29	12	3
Archer, Evan	11			7	3	1
Badgewick, Joseph	16	2		4	8	2
Barnes, Gary H.	12	6		2	4	
Bell, Alison J.	23	6		9	5	3
Bergeron, John J.	16	2		8	4	2
Bisson, Leo A.	38	15	3	16	3	
Blackwood, Eileen M.	56	20	1	22	8	5
Blodgett, Stephen S.	42	8		22	4	8
Bloomberg, Samuel S.	18	1	1	10	5	1
Boylan, III, John J.	9	3		4	1	1
Briggs, Heather	1			1		
Brown, Victoria J.	1				1	
Bryan, Alden T.	24	4	1	6	8	5
Burchard, Daniel L.	1					1
Cahill, Jr., Joseph F.	29	4	1	16	6	2
Carlson, Thomas Z.	4	2		1	1	
Carroll, James F.	4	1		2		
Cassidy, Richard T.	97	38		33	16	2
Chadurjian, Mark	3	1			2	
Clapp, Michael	1			1		
Clayton, Gregory S.	8	5		2		
Cleary, David L.	61	25	1	21	7	
Coffrin, James	1			1		
Cohen, Jerry	1	1				
Collins, John	2			2		
Coughlin, Patrick	3	2		1		
Crampton, Stephen R.	6	1		1	3	
Crawford, Geoffrey	1			1		
Crispe, Lawrin P.	1			1		
Davis, Christopher L.	78	17		37	15	7
Deitz, Roger M.	1	1				

Evaluator	Cases Assigned	Full Settlement	Partial Settlement	No Settlement	Settled Prior to Session	Dispositive Motion Prior to Session
Deschenes, Denise J.	3	1		2		
Diamond, Jerome M.	1			1		
Dier, Jr., Hon. Hilton H.	40	9	1	21	8	1
Dolak, Lisa	1			1		
Dumont, James A.	34	9		13	10	2
Eaton, Gregory M.	1	1				
Ekman, Christopher D.	1			1		
Ellis, Stephen D.	2			1		1
Emens-Butler, Jennifer (B)	1	1				
Fallon, Ellen M.	22	4		8	7	3
Fead, William A.	27	8		8	9	2
Feinberg, Kenneth	1			1		
Fitzhugh, John	40	5	1	23	7	3
Foote, Richard P.	2		1	1		
Furlong, Michael G.	1			1		
Gallagher, James C.	37	6		17	11	2
Garvey, John B.	2	2				
Gebauer, Jr., Gordon C. (B)	8	3		3		2
Gerety, Jr., Robert P.	51	10		30	5	6
Geronemus, David	1			1		
Gum, Carl	1			1		
Hall, Peter	72	13	2	42	11	4
Hanley, Michael F.	39	9		17	8	4
Hemley, Robert B.	49	16	2	16	11	2
Hoar, Jr., Samuel	6	1		5		
Holden, Peter V.	1			1		
Holland, Donald S.	1	1				
Hughes, Jr., John R.	20	2	1	7	5	4
Iandiorio, Joseph	2			1	1	
Infante, Edward	1				1	
Jentes, William	2	1		1		
Joseph, Ben W.	0					
Joslin, Peter B.	81	22	3	36	16	2
Kaplan, Mark A.	20	7	1	7	1	4
Kasper, Keith J.	1			1		
Kassel, John	1	1				
Katz, Matthew I.	0					
Kauders, Christopher	1			1		

Evaluator	Cases Assigned	Full Settlement	Partial Settlement	No Settlement	Settled Prior to Session	Dispositive Motion Prior to Session
Kehoe, Mary P.	23	5		9	7	1
Keiner, Robert P.	1			1		
Kellner, John L.	1					1
Keyes, Allan R.	1			1		
Kirkpatrick, Mary G.	4			2	2	
Knapp, Spencer	1				1	
Kronk, Catherine	16	4		7	4	1
Kunin, Peter B.	3	2		1		
Lamb, Anthony B.	24	7	2	7	6	2
Lobel, Ira B.	1			1		
Lotty, Robert	1				1	
Luce, Robert B.	1	1				
Maley, John P.	1				1	
Manchester, Robert E.	14	1		10	3	
Manitsky, Andrew D.	4			1	3	
Mapes, Stephanie	3				1	1
Marks, Michael J.	186	100	5	32	24	7
Martin, Stephen B.	1	1				
Mazzone, David A.	3				1	
McAndrew, Karen	34	8		15	7	2
McClallen, Robert	3	1		2		
McCormick, Thomas E.	74	18		40	12	4
McGee, P. Scott	9	3		4	2	
McKearin, Robert R.	44	9		21	8	4
McNeil, Joseph E.	2			2		
Meaker, John P.	6				1	5
Mello, Robert A.	17	4		11	1	1
Mertz, Gregory	1	1				
Meub, William H.	41	19		12	6	3
Monahan, Jr., John	2			2		
Morgan, Glenn	1				1	
Mulvey, Jr., William A.	9	4		3	1	
Murdoch, James W.	34	4	1	24	4	1
Norton, Richard W.	5	2		2	1	
O'Dea, Arthur J.	276	128	1	80	51	11
O'Neill, Jerome F.	33	12		13	7	1
Obuchowski, Raymond J. (B)	1				1	
Olanoff, Jerrold A.	1			1		

Evaluator	Cases Assigned	Full Settlement	Partial Settlement	No Settlement	Settled Prior to Session	Dispositive Motion Prior to Session
Otterman, David A.	1	1				
Palmer, Michael (B)	1	1				
Pearl, Mitchell	2	1		1		
Pessin, Myron Stuart	2	1		1		
Pyle, Antonio D.	0					
Powers, Donald	20	4	2	12		1
Rachlin, Robert	3		1	1	1	
Reis, Robert K.	1				1	
Rendall, Donald J.	12			5	7	
Richards, Douglas	42	4	1	29	8	
Rothstein, Amy	1				1	
Runcie, James W.	17	5		4	6	2
Sabalis, Patricia M.	2	1				
Saltonstall, Stephen L.	22	4		10	6	2
Sartore, John T.	5	3		2		
Scholes, Richard A. (B)	2			1	1	
Simons, Richard B.	1			1		
Smith, Jr., Shapleigh	2		1	1		
Spink, James W.	216	76	4	86	33	6
Stewart, Jr., Potter	73	15		30	18	10
Suskin, James S.	67	24	2	30	8	3
Sussman, Susan M.	7	2		3	1	1
Taylor, Julie	3	1		1	1	
Troy, Gordon	1				1	
Valsangiacomo, Jr., Oreste V.	1			1		
Vana, James	1			1		
Watts, Jr., Norman E.	3	1				1
Webber, John B.	6	1	1	1	2	1
Wing, Joan Loring	72	32	3	17	13	7
Wolinsky, Douglas J. (B)	3	1		1		1
Woolmington, Robert E.	9	1		4	1	3
Yates, Glen	8			7		1
Yessne, Dinah	4			1	2	1
Zawistoski, John J.	4	1	1	2		
	2717	825	46	1098	501	171
Sessions Pending	-59	1969				
Opted out after assignment	-17	2641				
	2641					

APPENDIX 2

ANNUAL EARLY NEUTRAL EVALUATOR QUESTIONNAIRE

In the Court's continued effort to ascertain the degree of participation in the Early Neutral Evaluation process, please answer the following questions based on your experiences and observations.

*2013 figures in green.

1. As to **attorneys'** participation in the process, please indicate what percentage applies to each statement below.

84%	<u>86</u>	%	Excellent – thorough preparation and honest efforts toward success
11%	<u>12</u>	%	Good – some efforts made, but appear hesitant and/or skeptical
2%	<u>2</u>	%	Indifferent – participate minimally to comply with the Local Rule
1%	<u>0</u>	%	Negative – little or no preparation with no chance given to process
2%	<u>0</u>	%	Other – please explain:

- 1a. Compared to previous years, do your responses above represent

23%	<u>17</u>	%	An increase in attorney preparedness and participation
77%	<u>83</u>	%	The same level of attorney preparedness and participation
0%	<u>0</u>	%	A decline in attorney preparedness and participation

2. As to **parties'** participation in the process, please indicate what percentage applies to each statement below.

80%	<u>82</u>	%	Full active participation
17%	<u>17</u>	%	Some participation
2%	<u>1</u>	%	Neutral – present, but not actively participating in the process
1%	<u>1</u>	%	Negative participation harming case progress
0%	<u>0</u>	%	Other – please explain

3. In your experience, are there any types of cases that are currently subject to ENE that should not be? **None suggested.**
-
-

Comments or suggestions regarding the ENE program:

There were no comments or suggestions from evaluators.

APPENDIX 3

ENE CASE CLOSING QUESTIONNAIRE

This questionnaire is being sent to all counsel in ENE eligible cases which closed either **before** or **after** the actual ENE session was held. Please answer the following questions about how and why your case closed to help us determine what effects, if any, the ENE process has on eligible cases.

1. The primary reason(s) this case closed when it did: (check all that apply)

If your Case Closed Before ENE Session was Held

- | | | |
|------------|----|---|
| <u>32%</u> | a. | Facts/Issues were straightforward so lengthy discovery was not needed |
| <u>14%</u> | b. | Settlement was at least partly worked out before the case was filed |
| <u>23%</u> | c. | Client changed mind – case dropped or to be pursued in another venue |
| <u>5%</u> | d. | ENE process imminent – discovery checklist, case summary, etc. due soon |
| <u>27%</u> | e. | Other (please explain) _____ |

If your Case Closed After ENE Session was Held

- | | | |
|------------|----|--|
| <u>39%</u> | f. | Recent receipt of needed written discovery materials, i.e., interrogatories, requests to admit/produce, expert reports |
| | g. | Deposition(s) of experts were completed |
| | h. | Deposition(s) of key fact witnesses were completed |
| <u>25%</u> | i. | Decision on controlling motions by the Court |
| <u>8%</u> | j. | Trial date set/approaching |
| <u>2%</u> | k. | Attorney/client schedule only recently permitted full attention on this case |
| <u>25%</u> | l. | Other (please explain) _____ |

2. Was the ENE process *as a whole* helpful in settling this case? (Please consider “intangible effects” of ENE, such as opening communication between the parties, identifying strengths and weaknesses of each side, getting clients to be more realistic, etc.)

- | | |
|------------|------------------|
| <u>24%</u> | Very helpful |
| <u>24%</u> | Somewhat helpful |
| <u>52%</u> | No effect |
| <u>0%</u> | Detrimental |

- 2a. If you checked “Very” or “Somewhat” helpful above, what about the ENE process helped most in resolution of the case? (check all that apply)

- | | |
|------------|---|
| <u>33%</u> | Active participation of client in the session, i.e., direct communication with other party(ies), hearing strengths and weaknesses of their own case, etc. |
| <u>9%</u> | Prompted counsel to exchange information and/or “get moving” on discovery sooner than we otherwise might have |
| <u>7%</u> | \$500 fee prompted consideration of settlement before that stage was reached |
| <u>26%</u> | Evaluator’s methods of conducting the session and discussing the case |
| <u>9%</u> | Prompted all to consider settlement earlier than we otherwise might have |
| <u>2%</u> | Combination of all |
| <u>5%</u> | Improved pretrial settlement discussion as trial approached, i.e., court pretrial conference |
| <u>9%</u> | Other (please explain) _____ |

3. Do you think this case settled any earlier than it would have if there were no ENE process?

- | | |
|------------|----------------|
| <u>32%</u> | Yes |
| <u>48%</u> | No |
| <u>20%</u> | No way to tell |

4. Did the ENE process help decrease the costs of the litigation, either because of early settlement, or in other ways?

- | | | |
|------------|-----|-------------------------------|
| <u>39%</u> | Yes | If yes, please explain: _____ |
| <u>61%</u> | No | _____ |

PLEASE USE THE AREA BELOW FOR ANY OTHER COMMENTS OR SUGGESTIONS YOU MAY HAVE REGARDING THE ENE PROGRAM.

“ENE process generally helpful but in this case parties were too far apart and it was likely too early.”

“The parties, w/ the input & consent of the ENE evaluator, postponed the ENE session w/in the time frame allowed by Local Rule to allow the parties time to complete settlement, which was close to being finalized by the time the ENE session had approached. The case settled shortly thereafter, obviating the need for the parties to utilize the rescheduled ENE session.”

“I was please[d] with the ENE session and am grateful for the opportunity. I think Potter Stewart is a great mediator.”

“I still believe that Alternative Dispute Resolution is better done towards the end of discovery. Otherwise, folks don’t know how witnesses/experts will do.”

“Initial ENE was much too early to affect timing of settlement of this case. A second ENE/mediation held as the close of discovery approached did not at first result in settlement, but negotiations continued & the case settled.”

“ENE held too early in the process.”

“The program is great although in some cases it should be held later than the midpoint of discovery.”

**1. After ENE Session was held
c. Other (please explain):**

“The case settled because of the ENE. It took time for things to sink in, but a good process was initiated by that process.”

“Parties better able to assess respective risks after reviewing cross-MSJs filed after ENE; settled before ct. ruled on MSJ.”

“Atty’s continued discussing settlement options.”

“Rich[ard Cassidy] stayed involved and discussions occurred by e-mail such that additional movement by each party caused settlement.”

“Plaintiff chose to accept mediation offer.”

2a. Other (please explain):

“Prompted counsel to narrow focus, file cross-MSJ’s on central issue in dispute.”

“Richard [Cassidy] does an excellent job keeping people talking when settlement is realistic.”

“The Evaluator’s assistance at the ENE was very helpful, and the evaluator’s post-ENE communications with both sides were even more helpful.”

“Insurer forced to focus on the case before trial.”

“Helped inattentive opponent focus on case.”

“The Fact that it was scheduled pushed the client to a decision.”

4. Did the ENE process help decrease the costs of the litigation, either because of early settlement, or in other ways? Yes or No.

Yes: "I think it helped focus the parties on the salient issues."

Yes: "Partial settlement of some clients after ENE."

Yes: "Avoided cost of trial and risk of add'l attorney's fees."

Yes: "Focused parties on discovery needed to evaluate case."

Yes: "Focus of dispute was narrowed by ENE."

Yes: "Expenses of trial & further discovery were avoided."

Yes: "Because the ENE process helped to keep the parties moving forward toward settlement we certainly avoided all the expenses associated with ongoing litigation."

Yes: "Less depositions and no need to bring expert doctor to court."

Yes: "ENE conducted prior to retention of expert witnesses and depositions of experts, significantly reducing costs of litigation."

Yes: "Helped Plaintiff to value claim & evaluate defenses."

Yes: "Without ENE the case would not have settled."

No: "The ENE increased the costs of litigation by requiring acts rendered useless by Defendants' lack of good faith efforts to engage meaningfully in the process. A client (insurance company representative) with a maximum authority of \$1,000.00 in a case where the recoverable costs (42 U.S.C. 1983) were \$60,000.00 says it ill with regard to Defendants' intentions."

No: "I felt the mediation moved so slowly that it actually added to the cost w/o obtaining any movement from opposing party."

No: "Case voluntarily dismissed."

No: "Not this time."

No: "Case settled prior. ENE's should be held later in trial schedule – they are always too early under current rules to be effective."

No: "Due to fact here the process was not successful."

No: "Not in this case, but usually ENE helpful – more helpful after sufficient discovery concluded."