



# Benchmarks & Bar Charts

## Arkansas Court Statistics Research

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## Domestic Relations Research Issue: Access and Visitation Mediation Program

### Background Facts

- Act 673 of the 1995 Arkansas General Assembly created the Arkansas Alternative Dispute Resolution Commission.
- Section 469B of Title III of the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, P.L. 104-193, authorizes federal grants for the establishment or operation of state Access and Visitation Programs.
- The states can use the federal grant to pay for 90% of a program's total costs, and the remaining 10% of total program costs must come from non-federal sources (i.e., state or local appropriations, cash or in-kind funding).
- The Arkansas Access and Visitation Mediation Program ("A/V Program") was created in 1997 as a result of a federal grant provided under PRWORA.
- This study was conducted in the Fall 2002 by Shannon L. Mashburn, a graduate student in the University of Arkansas at Little Rock, Masters of Public Administration Program.

### Introduction and A/V Program Description

The mediation process "involves [the] intervention of an acceptable, impartial, and neutral third party who has no authoritative decision-making power to assist contending parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute."<sup>1</sup> The traditional American court system is based upon an adversarial process in which the parties use advocates to try their cases to a decision-maker who commonly makes a unilateral ruling. However, the mediation process uses less formal methods, and it is designed to reduce the adversarial intensity between many disputing parties by allowing them to construct the terms of their own agreement.

### Exhibit A—A/V Program Sliding Scale

PARTY'S INCOME	COST OF A/V MEDIATION
\$30,000 or below	Mediation is free of charge
\$30,001 to \$50,000	Fee is \$15.00 per hour
\$50,001 and above	Fee is \$30.00 per hour

The A/V Program is the only statewide mediation program in Arkansas, and it is designed to aid parents involved in a divorce or separation resolve emotional and often difficult issues. In addition, the A/V Program also handles post divorce decree modifications and paternity issues. It uses mediation as a tool for the parents to construct their own mutual custody agreement as well as a plan for future access and visitation of their child(ren). Once the A/V Program Director accepts the parties into the program, the parties select a mediator from the roster.

During the mediation process, the mediator(s) encourages the parties to cooperate and discuss the issues in a courteous and fair demeanor. The mediator(s) also keeps the parties focused on the issues and assists them in understanding visitation problems, providing possible solutions, and incorporating the plan into writing using the disputing parties' own terms and wording.

Due to increasing program operation costs and the limited federal and state funding, the process of paying the mediators had to be modified. In 2002, a sliding scale was initiated to determine whether a fee will be imposed upon the disputing parties. The sliding scale is divided into income ranges, and the parties pay according to his or her individual income (See Exhibit A). Any sliding scale payment will be applied toward the cost of that particular mediation, which includes the mediator's billable hours. However, the mediator may not bill for more than ten (10) hours without the program director providing prior approval.

<sup>1</sup>Stevenson, Max O. & Pops, Gerald M. (1989). Conflict Resolution Methods and the Policy Process. *Public Administration Review*, 49 (No. 5), 463-473.

How do parties get accepted into the A/V Program? The parties can either submit their admission request directly (i.e., personally or through their attorney) to the A/V Program Director, or circuit judges are authorized to order divorcing parents “to submit to mediation in regard to addressing parenting issues, custody and visitation issues” pursuant to Arkansas Code Annotated § 9-12-322(a)(2). The Arkansas Office of Child Support Enforcement is also authorized to make referrals to the A/V Program.

The A/V Program does have policies regarding the types of cases that will be accepted for mediation purposes. The program director scrutinizes any case in which the balance of power between the disputing parties could be an issue. For example, a case receives scrutiny prior to acceptance if it involves spousal or child abuse, substance abuse, or alcoholism.

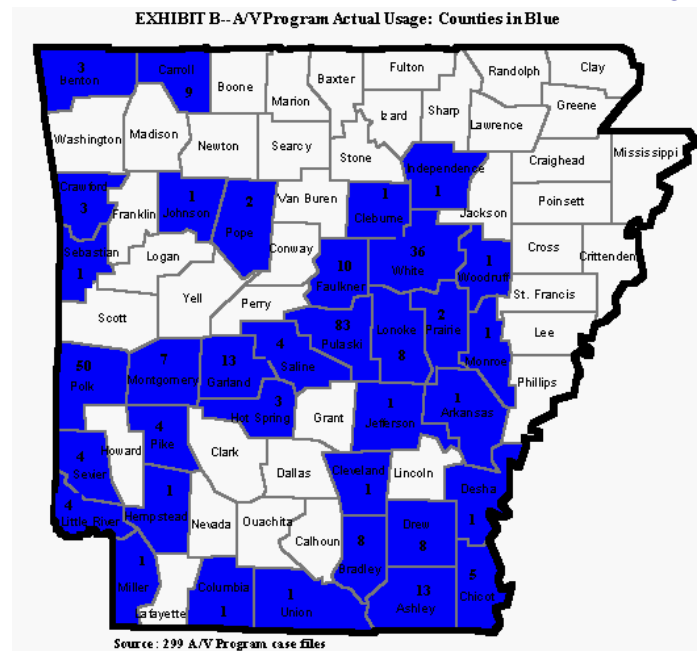
### Methodology of A/V Program Analysis

A twenty-four (24) question survey instrument was developed to gauge the use of the A/V Program and was sent to the 88 Arkansas circuit judges that handle domestic relations cases. The questions were designed to obtain factual data and opinions related to the A/V Program's use, benefits, and possible problem areas.

The survey results are also used to determine which Arkansas counties use the A/V Program and whether one particular area uses the program more than other areas. In addition, the survey instrument discovered the reasons the judges have not referred cases to the program. Lastly, it obtained opinions related to possible future program policies such as mandatory referral of child custody and visitation cases to mediation. This study obtained a 68% response rate from the 88 circuit judges that were sent a survey, and thus, it has statistical validity.

Over 300 case files were analyzed and compared to the survey results. The specific data that was extracted from these case files are as follows: (1) the judicial circuit and county that ordered the case into mediation, and (2) whether the process ended with an agreement. Due to missing data in at least 30 case files, this study uses a total of 299 case files to illustrate the success of the A/V Program. This data was compared to the survey data mentioned in the previous paragraph.

Lastly, this study analyzed 209 exit surveys that were completed by the mediation participants. The exit survey responses convey the participants' degree of satisfaction with the mediation process and the output (i.e., agreement).



### Results of Study

An analysis of 299 A/V Program case files yields that circuit judges from the eastern portion of Arkansas did not refer any cases to the A/V Program. More than a majority of the caseload (53%) came from the central Arkansas area. Pulaski County accounted for 28% of the A/V Program's caseload, which makes Pulaski County the largest referrer among the central Arkansas counties. The only cases that the A/V Program mediated from Benton County were self-referrals from the disputing parties themselves. Thus, even though Exhibit B shows Benton County with two mediation cases, no circuit judge in Benton County is recorded in the 299 case files as referring or ordering a case to the A/V Program.

Polk County, located in the 18th-West Judicial Circuit, had some of the most interesting statistics of all of the counties that referred cases to the A/V Program. Circuit Judge Gayle Ford, who recently retired, had a Standing Order in place that practically ordered all domestic relations cases to the A/V Program. The A/V Program screened out those cases not suitable for mediation. The Standing Order allowed the circuit to account for 19% of the 299 case files analyzed for this study, and it obtained a 63% overall agreement rate. This result provides justification to the belief that a system of mandatory referrals of suitable child access, custody, or visitation cases to mediation is a viable method of aiding the resolution of the dispute.<sup>2</sup> In addition, since Judge Ford ordered mediations early in the process, it could be inferred that the odds of an agreement increases the earlier a case is ordered to mediation.

<sup>2</sup> Survey results show that 54% of the circuit judges have an interest in the mandatory mediation of cases involving access and visitation issues (See Exhibit E).

### Exhibit C—Overall Disposition from the A/V Program

DISPOSITION	NUMBER	PERCENT
Full Agreement	144	48.2%
Partial Agreement	19	6.4%
Mediation Halted	12	4.0%
No Agreement	119	39.8%
Settled Outside Mediation	5	1.7%
<b>TOTAL</b>	<b>299</b>	<b>100.0%</b>

As illustrated in Exhibit C, 48.2% of the 299 cases ended with a “full agreement.” A full agreement is achieved when the disputing parties reach a mutual and voluntary concurrence on all relevant issues. In addition to the full agreements, 6.4% of the disputing parties reached “partial agreements,” which means at the disputing parties failed to resolve at least one relevant issue. Thus, the A/V Program was successful in allowing the parties to reach some sort of an agreement in 54.5% of the cases.

An analysis of the exit surveys, which were administered to the disputing parties directly after the mediation, reveals that 70% of the 192 survey participants agree overall that they were satisfied with the agreement reached during mediation. Thus, more than a majority of the disputing parties were satisfied with the resolution that resulted from the mediation process. When the analysis is narrowed down to consider only those survey participants that marked “strongly agree,” 37% responded that they were strongly satisfied with the agreement that resulted from the mediation process.

If more than a majority of the mediated cases have ended in a satisfying resolution and the circuit judges have the statutory authority to order many parties to mediation, why did some of the circuit judges not refer any cases to the A/V Mediation Program? According to the survey results, 81% of the circuit judges who responded to the survey did not order any cases to mediation because of the lack of interest among the attorneys (see Exhibit D). The second prominent reason is the lack of interest among litigants. Some of the additional reasons stated under the “other” response regarding why the judges did not order mediation are as follows: (1) Expense of mediation; (2) Money shortage (i.e., county budget); (3) Will only order mediation if requested by both parties; (4) He/she sees the case too close to trial to order mediation; and (5) the use of the local mental health clinic, ad litem program, or CASA program.

### Conclusion

The mediation process is present in Arkansas, but many circuit judges have not shared in the benefits that the process offers to disputing parties. This study discovered that many circuit judges did not refer cases to mediation because of the lack of interest among attorneys as well as litigants. However, the 18th-West Judicial District’s record illustrates the success that the court system can achieve when a judge orders a case to mediation. The A/V Program allowed 54.5% to reach an agreement or resolution without significant, if any, direct court intervention. In addition, a majority of the disputing parties were satisfied with the agreements.

*Newsletter written by Shannon L. Mashburn, MPA, Attorney at Law. Additional editorial assistance was provided by Kellye Mashburn, AOC Research Analyst; Jennifer Jones Taylor, Alternative Dispute Resolution Commission Coordinator; Angie Perrow, Alternative Dispute Resolution Commission Assistant Coordinator; and Shannon Hall, A/V Program Director.*

### Exhibit D- Why No Mediation Was Ordered

RESPONSE	PERCENTAGE*
Lack of Interest Among Attorneys	89%
Lack of interest Among Litigants	61%
Inappropriate Subject-Matter for Mediation	50%
Lack of Information Concerning the A/V Program	33%
Other	31%
Lack of Trained Mediators in Immediate Area	28%
Participation would Unnecessarily Delay the Case	11%
Lack of Facilities to Hold Mediations	6%
Participation by Mediator would Complicate the Case	3%

\*Note: The percentages will not total 100% because it was a multiple response question

### Exhibit E—Judge’s Interest in Mandatory Mediation

Selection Options	# of Responses	Percentage
Very Interested	15	26%
Interested	10	18%
Moderately Interested	6	11%
Slightly Interested	8	14%
Not Interested	16	28%
Don’t Know	2	4%
<b>TOTAL</b>	<b>57</b>	<b>100%</b>

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## *For More Information*

*Benchmarks & Bar Charts: Arkansas Court Statistics Research* is available on the web with additional files to download at [http://courts.state.ar.us/courts/aoc\\_pubs.html](http://courts.state.ar.us/courts/aoc_pubs.html). A complete copy of *Promoting Mediation in Arkansas Government* is also available at the site.

*Benchmarks & Bar Charts: Arkansas Court Statistics Research* is a publication by the Arkansas Administrative Office of the Courts. Contributions, comments, or inquiries for data are welcome. Please submit to Kellye Mashburn, AOC, Justice Building, 625 Marshall, Little Rock, AR 72201. Phone (501) 682-9400.



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