

**FASTER, CHEAPER & AS SATISFYING
AN EVALUATION OF ALASKA'S EARLY RESOLUTION TRIAGE PROGRAM**

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FASTER FOR SELF-REPRESENTED LITIGANTS AND THE COURT AN EVALUATION OF ALASKA'S EARLY RESOLUTION TRIAGE PROGRAM

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Abstract

The Alaska Court System created the Early Resolution Program (ERP) to address many issues with which courts across the country are grappling: how to efficiently and effectively manage divorce and custody cases involving self-represented litigants (SRLs), and how to triage cases to the appropriate resolution approach. This paper reported on an evaluation of the Anchorage ERP. It found different outcomes for ERP cases that settled than comparable cases that proceeded on the regular trial process track with respect to the following outcomes:

- time to disposition,
- number of case processing steps, and
- number of motions to modify filed within two years of the disposition.

In ERP, a staff attorney conducts a triage process with every newly filed contested divorce and custody case involving two SRLs. The attorney screens the case to determine suitability for the program based on the file contents and the parties' court case histories according to screening criteria. If accepted into the program, he assigns the appropriate legal resource – volunteer unbundled attorneys, mediator or settlement judge - to help resolve the case. Up to eight cases are scheduled for the same hearing time within a few weeks of the case initiation and the parties work at the courthouse with the assigned legal resource to try to resolve the disputes. Approximately 80 percent of the parties leave the courtroom with all issues resolved and final paperwork in hand.

There was an abundance of information collected for ERP cases since the program began in December 2010, including the time to disposition, ERP hearing outcomes, and the numbers of motions to modify filed within two years of disposition. This evaluation looked at 299 ERP cases that resolved by settlement from 2011-2013.

Much of the research for this paper involved determining a control group against which to compare the different relevant outcome measures. It was not possible to create a control group from cases that occurred during the same time period as the ERP cases because they would not be comparable. The cases from 2011-2013 that were not accepted into ERP were rejected because they had disqualifying characteristics. To find a group of cases in which to compare the relevant outcomes, a random sample of divorce and custody cases from 2007-2009, prior to ERP implementation, was screened using the same screening methodology as ERP cases used. The screening for the control group looked at the documents in the file until the answer¹ filing date and ignored everything filed after that date. In addition, a search of the court's electronic case management system occurred for each party to the case using a name search to determine each of their court case histories until the date of the answer. From that group of 392 screened cases, 228 would have been "accepted" into ERP, had it existed at the time.

This evaluation compared two outcome measures between the 2011-13 ERP cases and the cases that would be suitable for ERP had the program existed from

¹ In a contested divorce and custody case, the plaintiff starts the case by filing a complaint and other required documents and serving the documents on the defendant. The defendant has twenty days to file an answer to the complaint, responding to each of the plaintiff's requests and also including counterclaims that assert his or her own requests. If the defendant does not file an answer within twenty days, the plaintiff may file an application for a default judgment.

2007-2009. The time to disposition from the answer filing date varied significantly between the cases that settled in ERP compared to those in the control group that resolved before the assigned judge. The mean time to disposition from the answer filing date for ERP cases was 50 days and 172 days for the control group, a statistically significant difference. ERP cases resolved three to four times faster than the control group cases. This difference can be attributed to the ERP process that screens cases as soon as the answer is filed and subsequently schedules a hearing a few weeks later, at which most cases resolve by agreement.

The number of processing steps varied significantly between ERP cases and typical divorce and custody cases. From filing to disposition, there are 30 processing steps in ERP cases. A typical non-ERP divorce or custody case has 49 processing steps. This resulted in ERP cases having 39% fewer processing steps. The ERP process is more efficient than the typical case processing for two main reasons. First, once the ERP staff screens and accepts a case into ERP, the file stays with the attorney, eliminating many case processing steps that occur in typical cases. Second, there are great efficiencies in scheduling multiple cases during the same ERP hearing block, especially when most cases resolve in one court event.

There was also a difference in the number of motions to modify filed within two years of the disposition. This outcome was chosen as a proxy for litigant satisfaction based on the belief that dissatisfied litigants file motions to modify soon after the disposition, essentially as a way to express buyer's remorse to a settlement. ERP cases had .18 motions and the control group cases had .22 motions. There was not a statistically significant difference between the two outcomes. The very low number of

motions to modify in both groups indicates that filing one was a relatively rare occurrence and most cases did not include a post-judgment motion in the two-year time frame. This result suggests that ERP cases, which resolved significantly quicker than typical divorce and custody cases, did not result in more dissatisfaction. In other words, any concerns that the ERP process is too quick and parties do not have enough time to think about the issues, is not reflected in additional post-judgment motion activity and fewer motions result.

The Early Resolution Program addresses many issues – self-representation in family law cases, triaging to determine the appropriate resolution approach, the importance of early intervention and the desire to use a simplified process and a problem-solving approach. This evaluation showed that ERP has been an effective and efficient way to resolve newly filed contested divorce and custody involving two self-represented parties. It resulted in much faster resolutions with substantially fewer processing steps than similarly situated cases that are resolved in the typical adversarial fashion.