Washington and Lee Law Review

Volume 81 | Issue 1 Article 7

Winter 2024

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Abstract

Since the late twentieth century, federal and state jurisdictions across the United States have explored the use of Alternative Dispute Resolution ("ADR") programs to resolve legal disputes. ADR programs provide extrajudicial mechanisms through which parties can resolve their disputes without the delay and expense of a traditional judicial proceeding. Courts and practitioners alike have lauded ADR programs. For litigators, ADR programs are a way to deliver outcomes to clients quickly and efficiently. For courts, ADR programs are a way to remove cases from overcrowded dockets.

While ADR is generally considered to be speedier and more cost-efficient than a trial, little empirical research has been done to determine which sorts of ADR programs deliver the greatest returns. An examination of the last four decades of ADR programs in Delaware Superior Court may provide just this insight.

Since 1978, the Delaware judiciary has enacted, repealed, and amended three similar, but distinct, iterations of an ADR program in Delaware Superior Court. Because all three

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iterations were enacted in the same court system, the Delaware ADR program is a microcosm in which different characteristics of ADR programs may be compared against each other. This objective comparison reveals which iteration of the ADR program has proven most efficient for Delaware, and may provide valuable insights for legislators and rule-makers who seek to design efficient ADR programs in jurisdictions across the United States.

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INTRODUCTION

Since the late twentieth century, alternative dispute resolution ("ADR") programs have played an important role in resolving legal disputes in jurisdictions across the United States.[1] Whether they take the form of arbitration, mediation, or neutral case assessment, ADR programs have been embraced by lawmakers, litigators, and court systems alike. Seen by many as a free-market solution to the problem of an increasingly litigious society, ADR programs promise relatively quick and inexpensive resolutions to legal disputes.[2] For lawmakers and courts, the benefits of such systems are obvious—they offer an opportunity to resolve legal conflicts outside the courtroom, thus preserving precious judicial time and resources.[3] For attorneys and litigants, the benefit is clear as well—an opportunity to reach an equitable judgment in less time and at lower cost than if the dispute were to go to trial.[4] But enthusiasm for potential benefits does not suffice as the basis of good public policy. As ADR programs become more popular in jurisdictions across the United States, it must be asked: How well are these ADR programs working? And how might they be improved?

The Delaware judiciary, through its implementation of ADR programs over the past four decades, provides an excellent real-world context in which these questions may be considered. Since 1987, the Delaware Superior Court has established,

1. *See Alternative Dispute Resolution: Alternative Dispute Resolution Movement*, DEL. CTS. JUD. BRANCH, https://perma.cc/J2L7-2GWB (last visited Dec. 21, 2004).

2. *See id.* (discussing the factors that lead state and federal courts to implement ADR programs).

3. *See Alternative Dispute Resolution: Recent Trends*, DEL. CTS. JUD. BRANCH, https://perma.cc/LC47-3S4S (last visited Dec. 21, 2004) (noting the benefits of ADR programs to courts).

4. *See id.* (discussing the benefits of ADR for litigants).

repealed, and reestablished three different iterations of a mandatory nonbinding arbitration ("MNA") framework to help bring legal disputes to resolution outside the courtroom.[5] In that time, Delaware has demonstrated a willingness to test, solicit feedback on, revamp, and rewrite its ADR provisions to accomplish its goals.[6] A side-by-side comparison of these three ADR provisions allows those interested in judicial efficiency a unique opportunity to examine how different approaches to ADR affect outcomes for courts and litigants. Furthermore, given Delaware's reputation for having a highly-sophisticated and nationally-respected judiciary, the lessons gleaned from Delaware's ADR programs may prove useful to other jurisdictions seeking to shape efficient and equitable ADR policies of their own.

This Note begins by briefly examining the role that ADR, and specifically MNA, plays in jurisdictions in the United States.[7] It then examines the unique set of factors that make Delaware particularly worthy of consideration and useful as an example for other jurisdictions considering ADR programs.[8] Next, this Note establishes a framework through which it evaluates the effectiveness of ADR programs and examines in detail the features and outcomes of the three distinctive eras of ADR in Delaware Superior Court.[9] Next, it examines the unique outcomes from the most recent iteration of the Delaware Superior Court's MNA program that make this version of the program particularly effective.[10] Finally, it makes a determination about which of the three ADR systems is best for Delaware and recommends how court systems and legislatures across the United States can apply these findings to craft more effective ADR provisions in their jurisdictions.[11]

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5. *See infra* Part III.
6. *See infra* Part V.B.
7. *See infra* Part I.
8. *See infra* Part II.
9. *See infra* Part III.
10. *See infra* Part IV.
11. *See infra* Part V.

I. ALTERNATIVE DISPUTE RESOLUTION IN THE UNITED STATES

A. *Overview*

In the late 1970s and early 1980s, ADR programs became popular in jurisdictions across the United States.[12] These programs were lauded by legislators and the public as a free-market solution for what was perceived as an overly-litigious modern society.[13] These programs, as a whole, received high satisfaction ratings from both litigators and clients.[14] Yet, while litigators, some clients, and state governments saw ADR provisions as an important step forward, some worried that these provisions would result in unfair and prejudicial treatment of the very people the programs were designed to benefit.[15]

The goal of an ADR program, for a court system, is to free up the court's time and resources by facilitating the resolution of legal disputes in extrajudicial proceedings before the case ever needs to be heard before the court.[16] For litigants and litigators, the goal of an ADR program is to reach a favorable outcome to the dispute more quickly than if the case went to trial.[17] These interests are not always clearly aligned—for obvious reasons, individual litigants are much more concerned with obtaining a favorable outcome than they are with the expenditure of judicial resources—but for many disputes, it is

12. *See* Lisa Bernstein, *Understanding the Limits of Court-Connected ADR: A Critique of Federal Court-Annexed Arbitration Programs*, 41 U. PA. L. REV. 2169, 2172 n.3 (1993) ("Throughout the seventies and eighties state legislatures passed ADR legislation at an increasingly rapid rate.").

13. *See Alternative Dispute Resolution: Alternative Dispute Resolution Movement*, *supra* note 1 (discussing the history and popularity of ADR in the United States).

14. *See Alternative Dispute Resolution: Recent Trends*, *supra* note 3 (mentioning parties' general satisfaction with ADR outcomes).

15. *See id.* (noting that some were concerned that informal dispute resolution systems would become a form of "second-class justice for the poor").

16. *See id.* (discussing the court's interest in preserving judicial resources and removing cases from its docket, and litigants' interest in reaching a resolution as quickly as possible).

17. *See id.* (listing avoidance of the time delays of court proceedings as among the main incentives for litigants to resolve their disputes through ADR).

possible to reach an equitable outcome that satisfies both parties in a litigation without the rigor of a trial.[18] For some cases in this space, ADR methods, such as nonbinding arbitration, can satisfy the parties' desire for a fair decision from a neutral third party without the expense and delay of presenting the case before a judge.[19]

B. *Mandatory Nonbinding Arbitration*

MNA is one form of ADR introduced in many jurisdictions.[20] Under an MNA framework, a qualifying case is submitted to an arbitrator rather than heard by a judge.[21] After hearing both sides of the controversy, the arbitrator issues a decision similar to a judgment entered by a judge at trial.[22] Unlike the decision of a judge, however, the arbitrator's decision is nonbinding, meaning that the parties are not legally required to accept the arbitrator's decision (unless they have previously stipulated that they would accept they decision).[23] When an arbitration is "successful," the arbitrator's decision can be entered as a judgment by the court.[24] This outcome is desirable for an over-burdened court system because it allows controversies between parties to be resolved in a legally binding way while expending little of the court's time and resources.[25] When one or more parties to the arbitration are unsatisfied with the decision of the arbitrator, however, they are not required to accept it, and may demand a trial de novo.[26] This essentially brings the

18. *See supra* note 3 and accompanying text.

19. *See infra* note 314 and accompanying text.

20. *See* Bernstein, *supra* note 12, at 2173 (discussing the rise of court-annexed arbitration).

21. *See* DEL. SUPER. CT. CIV. R. 16.1(b)(1) (2002) (repealed 2008) (defining arbitration).

22. *See id.*

23. *See id.* ("If the parties stipulate in writing the decision shall be binding.").

24. *See id.* R. 16.1(k)(11)(C) (providing that the arbitrator's order can be entered as a judgment after the window of time to demand trial de novo has expired).

25. *See Alternative Dispute Resolution: Recent Trends*, *supra* note 3 (discussing the savings to litigants and the court from compulsory arbitration).

26. *See* DEL. SUPER. CT. CIV. R. 16.1(k)(11)(D)(i) (2002) (repealed 2008) (discussing a litigant's right to demand a trial de novo).

controversy back to square one before the court.[27] After a party moves for a trial de novo, the court once again takes control of the controversy and proceeds with a trial as if the arbitration had not occurred.[28]

Because of this structure, a case submitted to MNA will either save significant judicial resources by resulting in an arbitration decision that can be entered as a judgment, or it will completely waste the time and money of the parties, bringing their still-undecided dispute back before the court.[29] Perhaps one reason why MNA is such a popular option for courts is that the courts themselves have everything to gain and almost nothing to lose by mandating it.[30] If a court mandates MNA and the arbitration is successful, the court saves significant time, effort, and resources.[31] If the arbitration is not successful, the court finds itself in the exact same position as if MNA had never been assigned.[32] The court has lost nothing.[33] This is not the case for parties to the litigation, who may have invested significant time and money in the unsuccessful arbitration, only to find themselves back at square one.[34] Since the late twentieth century, MNA has been an often-preferred form of ADR in states across the country, including the jurisdiction that is the main focus of this Note: Delaware.[35]

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27. *See id.* ("Upon demand for a trial de novo, the case shall be . . . treated for all purposes as if it had not been referred to arbitration.").

28. *See id.*

29. *See Alternative Dispute Resolution: Recent Trends*, *supra* note 3 (discussing the potential savings for the court); *see* DEL. SUPER. CT. CIV. R. 16.1(k)(11)(D)(i) (2002) (repealed 2008) (noting that, upon a demand for trial de novo, the case starts over as though the arbitration had never occurred).

30. *See* DEL. SUPER. CT. CIV. R. 16.1(i) (2002) (repealed 2008) (mandating that the cost for an arbitration will be split between the litigants).

31. *See Alternative Dispute Resolution: Recent Trends*, *supra* note 3 (discussing the potential savings for the court).

32. *See* DEL. SUPER. CT. CIV. R. 16.1(k)(11)(D)(i) (2002) (repealed 2008).

33. *See id.* R. 16.1(i) (noting that arbitration costs are paid by the litigants).

34. *See id.*; *see also id.* R. 16.1(k)(11)(D)(i).

35. *See* SBC Interactive v. Corp. Media Partners, 714 A.2d 758, 761 (Del. 1998) ("We begin our analysis with the premise that the public policy of Delaware favors arbitration.").

II. DELAWARE AS A PROVING GROUND

A. *America's Corporate Home*

The State of Delaware holds a unique role in the legal jurisprudence of the United States, particularly in the areas of business law and civil litigation.[36] Each year, a vast number of new business entities in the United States choose to file their articles of incorporation in Delaware.[37] In 2021, 93% of all business entities that issued an initial public offering were Delaware corporations.[38] Additionally, 66.8% of Fortune 500 companies have chosen to make Delaware their legal home.[39] Delaware's status as the legal home of so many of the country's corporations makes it a hotbed for litigation. In fact, Delaware is a popular choice for the legal home of new business entities, in part, because of choice of law considerations.[40] Historically, the Delaware Supreme Court has been extremely willing to uphold and enforce forum selection clauses that bring litigation to Delaware courts,[41] and the Delaware legislature has codified a state policy of upholding Delaware choice of law provisions in contracts.[42]

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36. *See Litigation in the Delaware Court of Chancery and the Delaware Supreme Court*, DEL.GOV, https://perma.cc/JLG2-NG6Z (last visited Jan. 9, 2024) ("Delaware is world-renowned for its efficient and professional court system, which is particularly prominent in the areas of corporate, business, and commercial law.").

37. *See* JEFFREY W. BULLOCK, DELAWARE DIVISION OF CORPORATIONS: 2021 ANNUAL REPORT 2 (2022), https://perma.cc/V22G-ZJHF (PDF) (noting that there were 336,407 new business entities originated in Delaware in 2021).

38. *Id.*

39. *Id.*

40. *See Litigation in the Delaware Court of Chancery and the Delaware Supreme Court*, *supra* note 36 ("For many experienced lawyers throughout the world, the principal reasons to recommend organizing in Delaware are the Delaware courts and the body of case law developed by those courts.").

41. *See, e.g.*, Nat'l Indus. Group (Holding) v. Carlyl Inv. Mgmt., 67 A.3d 373, 381 (Del. 2013) (holding that a forum selection clause, if valid, must be enforced).

42. *See* DEL. CODE ANN. tit. 6, § 2708 (2024) (allowing parties to a contract to stipulate that the agreement will be governed under Delaware law).

B. *Litigation in the First State*

Delaware is one of the few jurisdictions in the United States that still has separate courts of law and equity.[43] The Court of Chancery is Delaware's court of equity and is appealable directly to the Delaware Supreme Court.[44] Meanwhile, the Delaware Superior Court is the state's court of general jurisdiction for matters at law, the state's criminal court, and the court of intermediate appeal for other state courts, such as the Family Court and the Justice of the Peace Court.[45]

Delaware is perhaps best known for its Court of Chancery.[46] The Delaware Court of Chancery is one of the most sophisticated and well-respected courts in the world dealing with matters of corporate governance.[47] For many businesses, the opportunity to avail themselves of the jurisdiction of Delaware's Court of Chancery is a major factor in deciding to file their articles of incorporation in the First State.[48]

Although less renowned than the Court of Chancery, Delaware's Superior Court is also highly sophisticated and respected.[49] One example of the Superior Court's sophistication is the much-lauded Complex Commercial Litigation Division ("CCLD").[50] Created in 2010, the CCLD was designed to handle complex disputes between large business "citizens" of Delaware

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43. *See An Overview of the Delaware Court System*, DEL. CTS. JUD. BRANCH, https://perma.cc/D77K-SMW3 (last visited Jan. 9, 2024) (noting that the Delaware Court of Chancery has jurisdiction over matters in equity and that the Delaware Superior Court is the state's court of general jurisdiction in all matters except cases in equity).

44. *Id.*

45. *Id.*

46. *See* Joseph R. Slights III & Elizabeth A. Powers, *Delaware Courts Continue to Excel in Business Litigation with the Success of the Complex Commercial Litigation Division of the Superior Court*, 70 BUS. LAW. 1039, 1039 (2015) ("Over its more than two-hundred-year history, Delaware's Court of Chancery has emerged as the world's most respected forum for adjudicating highly complex business disputes.").

47. *See id.*

48. *See id.* at 1047 ("The quality of Delaware's court system undoubtedly plays a role in Delaware's distinction as the go-to choice for companies to incorporate.").

49. *See id.* at 1048 (remarking on the high quality and reputation of Delaware's trial court judges).

50. *See id.* at 1052 (discussing the formation of the CCLD).

whose disputes involved remedies at law and thus did not fall within the jurisdiction of the Court of Chancery.[51] Today, when a conflict is brought to the Delaware Superior Court in which the amount in controversy is over $1 million, or which satisfies certain other qualifications such as an exclusive choice of court agreement, the case will be heard by the CCLD of the Superior Court.[52] In just the first few years after its inception, the CCLD developed a reputation as a nationally recognized business court.[53] The Delaware Superior Court has also demonstrated its sophistication in its contribution to the highly-respected Delaware judiciary as a whole.[54] To date, four of the last nine Chief Justices of the Supreme Court of Delaware served first as judges in Delaware Superior Court.[55]

All three iterations of the Delaware ADR program examined in this Note are designed to resolve conflicts in which monetary damages are sought and equitable remedies are nominal.[56] Accordingly, all three have been programs in Delaware Superior Court.[57] In establishing these programs, the Delaware judiciary has demonstrated its commitment to ADR as a matter of public policy. As the following subpart will discuss, the sophistication and rigor of the Delaware Superior Court's implementation of ADR provisions make this jurisdiction an excellent case study on the effectiveness of ADR programs.

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51. *See id.* at 1040 (examining the purpose of the CCLD).

52. *See Complex Commercial Litigation Division (CCLD)*, DEL. CTS. JUD. BRANCH, https://perma.cc/ZDG4-GL2G (last visited Jan. 9, 2024).

53. *See* Slights & Powers, *supra* note 46, at 1040 (noting the success and renown of the CCLD).

54. Multiple former Chief Justices of the Delaware Supreme Court served as Superior Court judges prior to their tenure as Chief Justice. They include Chief Justice Myron T. Steele (2004–2014), Chief Justice Andrew D. Christie (1985–1992), Chief Justice Daniel F. Wolcott (1964–1973), and Chief Justice Charles L. Terry, Jr. (1963–1964). *History of the Supreme Court*, DEL. CTS. JUD. BRANCH, https://perma.cc/WEA3-C35V (last visited Jan. 9, 2024) (listing the history and accomplishments of the Delaware Supreme Court's previous Chief Justices).

55. *See id.*

56. *See infra* Part III.

57. *See An Overview of the Delaware Court System*, *supra* note 43.

C. *Delaware as a Model Jurisdiction*

Delaware state court may be an ideal testing ground for a model ADR program for three reasons. First, because of Delaware's unique status as the United States' corporate home, its courts hear an outsized number of the country's most important and interesting litigious disputes.[58] Second, because of Delaware's reputation, many jurisdictions around the country and around the world may look to Delaware for inspiration on how to frame their own laws and court systems.[59] Third, the relatively modern adoption of three separate MNA provisions, all recently enacted in a designated court of law that sees a high volume of important cases each year, provides a unique opportunity to examine the pros and cons of different approaches to MNA under relatively similar conditions.[60] Over the last four decades, the Delaware Superior Court has seen three major iterations of ADR programs. In the following Part, this Note examines the history and particularities of these three iterations, what concerns led to their formation, whether they successfully accomplished their intended goals, and the shortcomings that ultimately led to program changes or repeals.

III. AN ANALYSIS OF THE THREE ERAS OF ADR IN DELAWARE SUPERIOR COURT

A. *A Framework for Analysis*

In examining and evaluating these programs, this Note will pay special attention to three specific benchmarks: speediness, judicial efficiency, and prejudicial concerns. These three areas of interest will serve as touchstones by which the ADR programs

58. *See* DEL. ADMIN. OFF. CTS., THE DELAWARE JUDICIARY ANNUAL REPORT 2021, at 26 (2021) (noting that the CCLD of the Superior Court had 123 new cases filed in the 2021 fiscal year).

59. *See* Ido Baum & Dov Solomon, *Delaware's Copycat: Can Corporate Law Be Emulated?*, 23 THEORETICAL INQUIRIES L. 1, 13–14 (2022) (discussing how Israel has looked to Delaware for inspiration by constructing its corporate statute modeled on Delaware's, establishing a blatantly Chancery-esque special court, and considering Delaware case law in the settling of business disputes).

60. *See infra* Part III.

can be compared against each other and against the alternative of proceeding in Superior Court without an ADR option.

1. Speediness

In the context of this Note, speediness, the simplest of the three factors, refers to the amount of time taken to resolve a claim, from initial filing to final disposition. This factor is relevant because one of the primary goals of any ADR program is to enable the parties to reach a resolution in a quick and efficient manner.[61] This factor is meaningfully distinguished from the more general idea of judicial efficiency because, after a case is assigned to arbitration, the interests of litigants and the court are not as clearly aligned.[62] Once a case is assigned to arbitration, its status is less of a concern for the court.[63] From the perspective of the litigant, however, the interest in resolving the dispute as quickly as possible remains the same.

2. Judicial Efficiency: The "Failure Rate"

Judicial efficiency is often used as a catch-all term that describes any meaningful conservation of a court system's time, money, and effort.[64] One of the main reasons court systems adopt ADR programs is to enable them to conserve these resources, redirect those resources to where they are most needed, and keep caseloads manageable.[65] If a dispute

61. *See Alternative Dispute Resolution: Recent Trends*, *supra* note 14 (listing the avoidance of the time delay of court proceedings among the main incentives for litigants to resolve their disputes through ADR).

62. *See id.* (discussing the court's interest in preserving judicial resources and removing cases from its docket, and litigants' interest in reaching a resolution as quickly as possible).

63. *See* DEL. ADMIN. OFF. CTS., 1987 ANNUAL REPORT OF THE DELAWARE JUDICIARY 77 (1987) [hereinafter *1987 Report*], https://perma.cc/ZK4V-D9RW (PDF) (noting that, when a case is referred to arbitration by the Superior Court, it is considered "disposed" and included in the category of non-trial dispositions).

64. *See* Judson R. Peverall, *Inside State Courts: Improving the Market for State Trial Court Law Clerks*, 55 U. RICH. L. REV. 277, 285–86 (2020) (remarking on the various notions implicated in the term judicial efficiency and the onus on judges to produce "speedy and fair case resolutions, for the minimum cost").

65. *See Alternative Dispute Resolution: Recent Trends*, *supra* note 3 (discussing courts' motivations to dispose cases through ADR).

adjudicated through an ADR process can be brought to a resolution while requiring fewer hearings, filings, and hours of work from judges and court personnel than if the dispute were heard by the court, then—assuming that the resolution reached is substantially the same—the ADR process can be said to be judicially efficient.[66] Generally speaking, resolving disputes through ADR requires fewer court resources and, thus, is judicially efficient.[67] However, the three ADR programs examined here all have a mechanism that has the potential to reverse any progress towards judicial efficiency: the demand for trial de novo.[68]

In all three iterations of ADR programs examined, a party that is unsatisfied with an arbitrator's decision has the right to demand trial de novo.[69] When trial de novo is demanded, the case goes back on the docket for the Superior Court and proceeds as if the arbitration never happened.[70] In terms of judicial efficiency, this is the worst possible outcome. The court expends all the resources necessary to take the case to trial in addition to the resources expended assigning and/or overseeing the ADR process, and litigants spend the time and money necessary to try their case before the court in addition to the time and expense of completing the unsuccessful arbitration.[71] Because both parties and the court suffer a loss of time and resources when trial de novo is demanded, it can be inferred that a litigant

66. *See* Peverall, *supra* note 64, at 285 (discussing the definition of judicial efficiency).

67. *See Alternative Dispute Resolution: Recent Trends*, *supra* note 3 (identifying the types of efficiency gains typical of ADR).

68. *See* DEL. SUPER. CT. CIV. R. 16.1(k)(11)(D) (2002) (repealed 2008) (establishing the right for litigants to demand trial de novo); DEL. SUPER. CT. CIV. R. 16.1(m) (2023) (same).

69. *See supra* note 68 and accompanying text; *see also* DEL. SUPER. CT. R. 16(f) (2016) (establishing that, while no right to trial de novo is specifically mentioned, none of the three forms of ADR under this rule are binding unless the parties so stipulate, and that statements made in an arbitration or mediation are not admissible at trial).

70. *See* DEL. SUPER. CT. CIV. R. 16.1(k)(11)(D) (2002) (repealed 2008) (describing the effect of a demand for trial de novo); *id.* R. 16.1(m) (same).

71. *See* Peverall, *supra* note 64, at 285–86 (describing the preservation of judicial resources that constitutes judicial efficiency). *But see* DEL. SUPER. CT. CIV. R. 16.1(k)(11)(D) (2002) (repealed 2008) (dictating that, when demanded, trial de novo recognizes none of the findings or decisions of the preceding ADR); *id.* R. 16.1(m) (same).

would not demand trial de novo unless he felt that the arbitrator's decision was so unfair that he would likely receive a substantially better outcome at trial.[72] Accordingly, the rate of demands for trial de novo may be considered a kind of "failure rate" for an ADR program.[73] When trial de novo is demanded, the arbitration failed to bring a final resolution to the conflict. When trial de novo is not demanded, the parties are ostensibly satisfied with the arbitrator's decision and the court enjoys the gains of judicial efficiency.[74] The following analyses use the rate of demands for trial de novo as a lens through which to determine the "failure rate" of arbitration under each of these programs.[75]

3. Prejudicial Concerns

Prejudicial concerns, as used in the following analyses, refer to any aspect of an ADR program that makes it more or less likely for an arbitration to favor certain types of litigants, or any aspect of a program that disincentivizes a party from exercising her right to bring a meritorious claim. By their nature, prejudicial concerns defined in this way are not as easily quantifiable as the factors of speediness and judicial efficiency discussed above.[76] In the following analyses, this Note will take a qualitative approach to examining potential prejudicial concerns through the plain language of the rules, anecdotal evidence, and statements and reasoning provided by the Delaware court system itself.

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72. *See* Joshua W. Martin III et al., *Recent Changes to Compulsory Alternative Dispute Resolution in the Superior Court*, 10 DEL. L. REV. 199, 204 (2008) (discussing factors that would motivate a litigant to demand trial de novo after an arbitration hearing).

73. *See Alternative Dispute Resolution: Recent Trends*, *supra* note 3 (identifying a successful arbitration as one that reaches a fair outcome while preserving time and resources).

74. *See* Martin, *supra* note 72, at 203 (noting that, when no demand was made for a trial de novo, the arbitrator's order could be entered as a judgment by the court without the court ever having to hear the case itself).

75. *See infra* Parts III.B–C.

76. The remainder of this Note repeatedly uses empirical data gathered by the Delaware Administrative Office of the Courts to calculate the average length of time to disposal of the case—the de novo "failure rate." *See infra* Parts III.B–D.

B. *Old Rule 16.1: 1987–2008*

1. The 1987–1991 Trial Period

In 1987, the Delaware Superior Court adopted an ADR program on a trial basis (no pun intended).[77] While many states would adopt their own ADR programs in the 1990s, the Superior Court's early action made Delaware one of the first states to enact such a program.[78] Under the first iteration of the program, any civil action in which (1) trial was available, (2) monetary damages were sought, (3) non-monetary damages were nominal, and (4) damages did not exceed $30,000, was subject to compulsory arbitration.[79] On January 1, 1988, the damages limit was increased to $50,000.[80] Under this program, the arbitrator could be selected by joint stipulation of the parties or, if the parties failed to agree, from a list of three potential arbitrators selected by the court.[81] From this list of three, each party in the litigation could strike one of the judge's selections and the judge would appoint an arbitrator from the remaining options.[82] The arbitrator would then hear the dispute and issue a decision in the form of a written order.[83] After the order was issued, the parties had a window of twenty days to file a request for a trial de novo.[84] If neither party did so in the allotted time, the arbitrator's order would be entered as a judgment by the court, resolving the case.[85]

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77. *Alternative Dispute Resolution: Alternative Dispute Resolution in Superior Court of Delaware*, DEL. CTS. JUD. BRANCH, https://perma.cc/GRV5-7V8R (last visited Mar. 27, 2010).

78. *See* Peter S. Chantilis, *Mediation U.S.A.*, 26 U. MEM. L. REV. 1031, 1034–83 (1996) (detailing when each of the fifty states, Puerto Rico, and the District of Columbia implemented ADR programs and finding that very few did so prior to the early 1990s).

79. *See 1987 Report*, *supra* note 63, at 85 (describing, in an explanatory note, the conditions under which a case would be subject to the compulsory arbitration program).

80. *Id.*

81. *See id.*

82. *See id.*

83. *Id.*

84. *Id.*

85. *Id.*

During the trial period between 1987 and 1991, the program showed some signs of success and revealed some of its limitations. In its first year, 1987, the arbitration program disposed of 1,496 cases.[86] Of these, 924 were disposed of before reaching an arbitration hearing by voluntary withdrawal, settlement, dismissal, etc.[87] Of the remaining 572 cases that went to an arbitration hearing, the arbitrator's order was entered as a judgment in 266.[88] The arbitrator's order was appealed and trial de novo demanded in the remaining 306 cases.[89] This means that, when a case reached an arbitration hearing, there was a 53.5% chance that one of the parties would demand trial de novo, thus wasting the time and effort spent by the court and the parties in assigning the case to arbitration in the first place.[90] It is worth noting, however, that an arbitration hearing, like a trial, is only reached when the parties are unable or unwilling to reach an agreement on their own before the date of the hearing.[91] And just as most cases never make it to trial, most of the cases subject to the arbitration program (924 out of 1,496) never made it to arbitration.[92] If one considers the number of cases in which a request was made for trial de novo against the total number of arbitration cases disposed—including cases in which the parties resolved the dispute on their own—the "failure rate" appears to be only 20.4%.[93] But if one rightly considers the number of arbitration hearings (572) against the number of de novo demands (306), the "failure rate" of arbitration this first year was 53.5%.[94]

While the "failure rate" this first year was over 50%, considerable gains were realized in speediness.[95] In 1987, for the 572 cases which reached arbitration hearings, it took an average

86. *1987 Report*, *supra* note 63, at 89.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*; *see supra* note 71 and accompanying text.

91. *See 1987 Report*, *supra* note 63, at 89 (listing the various types of dispositions, such as settlements, which are included in the category of "dispositions removed before hearing" in the report).

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* at 94.

of 208.8 days from the date of filing for the case to be either finally disposed (by entering the arbitrator's order as a judgment) or appealed de novo.[96] In this same year, complaints before the Superior Court took an average of 561.1 days from filing to disposition, and mechanic's lien and mortgage cases took an average of 327.7 days.[97] Taking these comparisons into account, it appears that, for the 266 arbitration cases in which final judgment was reached, considerable time—several hundred days on average—may have been saved.[98] At the same time, however, for the 306 cases which were ultimately appealed de novo, 208.8 days on average were wasted.[99]

Any gains in speediness, however, must be viewed in the context of the ways in which the arbitration program was systematically falling short of its own standards.[100] In 1987 and throughout the rest of the arbitration program's trial period, cases referred to arbitration were subject to the conditions set forth in the Delaware Superior Court Rules, which specified that, when arbitration was assigned, the arbitration hearing must take place within forty days of the appointment of the arbitrator.[101] The rule also allowed the arbitrator to grant extensions to push the hearing date further out.[102] These extensions were used liberally.[103] In 1987, only 40.2% of cases were heard within forty days of appointment and the average amount of time from appointment to hearing was 60.2 days.[104]

Perhaps the most concerning result of the arbitration program this first year was that, in a significant proportion of cases, parties were filing requests for trial de novo even when the arbitrator had issued an order in their favor.[105] In 1987,

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96. *Id.*

97. *Id.* at 82–83.

98. *Id.* at 82–83, 94.

99. *Id.* at 94; *see supra* note 71 and accompanying text.

100. *See 1987 Report*, *supra* note 63, at 94 (discussing the requirement of then-active Superior Court Rule 16(c)(6)(A) that the arbitration hearing should take place within forty days of the appointment of the arbitrator).

101. *1987 Report*, *supra* note 63, at 94.

102. *Id.*

103. *See id.* (showing that extensions were necessary 59.8% of the time).

104. *Id.*

105. *See id.* at 93.

arbitrators issued 427 orders in favor of plaintiffs.[106] 208 of these orders were "appealed" by requests for trial de novo.[107] In seventy-six of these cases, the appeal came from the plaintiffs themselves.[108] This happened much less often for orders in favor of defendants. Out of 140 orders in favor of defendants, ninety-five were appealed by plaintiffs and only three were appealed by defendants.[109] In terms of the judicial efficiency of an arbitration program, any demand for trial de novo constitutes a failure. But these cases in which the order was appealed by the prevailing party constitute a special type of failure of the arbitration process: in these cases, the arbitration did not merely fail to satisfy both parties, it failed to satisfy even the party that "won." This particular type of failed arbitration foreshadowed an ongoing problem that plagued the MNA program: the lack of a discovery process before arbitration led parties to believe that they did not have access to the information they needed to reach fair settlements, leading many parties to demand trial de novo almost as a matter of course.[110] This issue is discussed in more detail in the following section.

Over the course of the next three years of the trial period, the number of cases assigned to arbitration increased steadily.[111] Yet the program did not make any measurable improvements in speediness or judicial efficiency from its initial performance in 1987. In 1990, the arbitration program disposed of 2,479 cases, 973 of which reached arbitration hearing.[112] By

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *See* Lisa M. Grubb, *The New Superior Court Rule 16.1: The Revamping of an Old 'Favorite'*, DEFENSE DIGEST, Sept. 4, 2018, https://perma.cc/M3ES-M5TP (noting how the lack of discovery led to a large number of litigants demanding trial de novo).

111. *See 1987 Report*, *supra* note 63, at 89 (1,496 cases); DEL. ADMIN. OFF. CTS., 1988 ANNUAL REPORT OF THE DELAWARE JUDICIARY 96 (1988) [hereinafter *1988 Report*], https://perma.cc/3EYE-RYAP (PDF) (1,949 cases originally reported, corrected to 2,055 in the following year's report); DEL. ADMIN. OFF. CTS., 1989 ANNUAL REPORT OF THE DELAWARE JUDICIARY 68 (1989) [hereinafter *1989 Report*], https://perma.cc/G454-HCF4 (PDF) (2,457 cases); DEL. ADMIN. OFF. CTS., 1990 ANNUAL REPORT OF THE DELAWARE JUDICIARY 70 (1990) [hereinafter *1990 Report*], https://perma.cc/L42Q-4Q9K (PDF) (2,479 cases).

112. *1990 Report*, *supra* note 111, at 72.

that year, however, the average amount of time from filing to disposal/appeal had ballooned to 242.4 days on average, and over 57% of the cases heard (559 out of 973) ended in a de novo appeal rather than a final judgment.[113] In that same year, however, the Superior Court had made significant progress towards lowering the average time to disposition of its non-arbitration cases—502.8 days for complaints and 172.4 days for mechanic liens and mortgages.[114] By any measurement, the arbitration program was performing, comparatively, worse than ever.[115] In all four years of the trial period combined, 3,144 cases reached a hearing under the arbitration program, 56.3% of which were appealed de novo.[116] On average, these 3,144 cases took 222.6 days to reach final judgment or de novo appeal.[117] Over the same period, civil complaints in Superior Court reached final disposition in 558.2 days on average, and mechanic's lien and mortgage cases averaged 289.1 days.[118]

When it came to compliance with the Delaware Superior Court Rules, only 46.2% of arbitration hearings during the

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113. *Id.* at 75, 72.

114. *Id.* at 67.

115. *See id.* at 67, 75 (showing the highest average time to disposition of any of the four years between 1987–1990 and the smallest gap between the average time to disposition for arbitration cases and other civil cases).

116. *1987 Report*, *supra* note 63, at 89; *1988 Report*, *supra* note 111, at 96; *1989 Report*, *supra* note 111, at 70; *1990 Report*, *supra* note 111, at 72.

117. *1987 Report*, *supra* note 63, at 94; *1988 Report*, *supra* note 111, at 101; *1989 Report*, *supra* note 111, at 73; *1990 Report*, *supra* note 111, at 75.

118. *1987 Report*, *supra* note 63, at 82–83; *1988 Report*, *supra* note 111, at 88–89; *1989 Report*, *supra* note 111, at 65; *1990 Report*, *supra* note 111, at 67. It is worth noting that actual gains in speediness from the arbitration program may be smaller than the average time to disposition disparity makes them appear. The types of cases that could be settled by the arbitration program were a categorically simpler subset of the full range of cases that could be heard by the Superior Court generally. Arbitration was mandatory only if (1) trial would have been available, (2) monetary damages were sought, (2) any non-monetary damages were nominal, and (4) the value of damages sought was less than $50,000. Because of these limitations, the cases which were subject to compulsory arbitration are unlikely to have been among the most time-consuming cases heard by the Superior Court at any rate. For this reason, we should not assume that, had these cases come before the Superior Court rather than to arbitration, they would have taken just as long as the average case heard by the court. Rather, these arbitration cases represent a subset of cases which would likely have been among the less time-consuming items on the Superior Court's docket.

four-year trial period were held within the forty-day window.[119] The average amount of time from appointment to hearing was 66.4 days.[120] The greatest delay in these cases, however, was getting the court to appoint an arbitrator in the first place.[121] Over the course of the four-year trial period, it took 142.2 days on average for an arbitrator to be appointed after the claim was filed.[122]

Despite the lack of improvement in speediness and judicial efficiency from the first year of the trial period until the end of the 1990 fiscal year, the Superior Court deemed the trial of the arbitration program a success.[123] In 1991, the court officially codified the program into Delaware Superior Court Rule 16.1[124] by issuing the Superior Court's Administrative Order on ADR.[125]

2. Officially Adopted Rule 16.1: 1991–2008

On January 1, 1991, Delaware Superior Court Rule 16.1 took effect, codifying the arbitration program. In 1992, the Superior Court introduced a second ADR option, voluntary mediation.[126] After a successful one-year trial period, the mediation program became permanently codified as Rule 16.2.[127] In 2002, the ADR program was expanded to include a third option, neutral assessment.[128] At that time, Rule 16.2 was deleted and all three ADR methods—arbitration, mediation,

119. *1987 Report*, *supra* note 63, at 94; *1988 Report*, *supra* note 111, at 101; *1989 Report*, *supra* note 111, at 73; *1990 Report*, *supra* note 111, at 75.

120. *Supra* note 119.

121. *See id.* (showing that, for each year, the average number of days between filing and appointment was larger than the number of days between appointment and hearing, and larger than the number of days between hearing and disposition).

122. *Id.*

123. *See Alternative Dispute Resolution: Alternative Dispute Resolution in Superior Court of Delaware*, *supra* note 77 (noting that the Court deemed the program to have successfully met its initial goals).

124. DEL. SUPER. CT. CIV. R. 16.1 (2002) (repealed 2008).

125. *See Alternative Dispute Resolution: Alternative Dispute Resolution in Superior Court of Delaware*, *supra* note 77.

126. *Id.*

127. DEL. SUPER. CT. CIV. R. 16.2 (1993) (deleted 2002).

128. *See Alternative Dispute Resolution: Alternative Dispute Resolution in Superior Court of Delaware*, *supra* note 77.

and neutral assessment—were combined into Rule 16.1 ("Old Rule 16.1").[129]

Under Old Rule 16.1, ADR was compulsory for all civil complaints in which monetary damages were sought, the amount in controversy was under $100,000, and any equitable relief sought was only nominal.[130] At the time of filing, the complainant would choose the form of ADR on the Case Information Sheet (a standard form complainants are required to file with the court at the time the complaint is filed) and the defendant could choose to either accept the complainant's choice of ADR or refuse it.[131] In cases where the parties did not agree on the form of ADR, compulsory arbitration was assigned.[132] According to the Delaware Superior Court website during the time Old Rule 16.1 was in effect, less than 5% of cases before the court actually went to trial and the majority of cases reached settlement through the ADR program.[133]

Nevertheless, the ADR program had its shortcomings.[134] Specifically, there was concern that the lack of a pre-arbitration discovery process limited arbitration's effectiveness.[135] Because there was no pre-arbitration discovery, if a party felt that he did not have access to all of the information he needed to argue his case, he would move for trial de novo almost as a matter of course.[136] In these instances, the compulsory arbitration process seemed to be little more than a costly and time-consuming hoop to jump through before the "real" case could commence.[137]

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129. *Id.*

130. *See* DEL. SUPER. CT. CIV. R. 16.1(a) (2002) (repealed 2008) (specifying which cases are subject to compulsory ADR).

131. *See id.* R. 16.1(c) (describing the process of choosing an arbitration method).

132. *See id.* R. 16.1(c)(2) ("If any defendant rejects the plaintiff's choice of ADR, the Court will schedule mandatory arbitration.").

133. *See Alternative Dispute Resolution: Alternative Dispute Resolution in Superior Court of Delaware*, *supra* note 77.

134. *See* Grubb, *supra* note 110 (discussing the shortcomings of Rule 16.1).

135. *See id.* (noting how, under Rule 16.1, parties were forced into arbitration before any discovery took place).

136. *See id.* (remarking on instances in which parties would "automatically" demand trial de novo due to a lack of discovery).

137. *See* DEL. SUPER. CT. CIV. R. 16.1(k)(11)(D)(i) (2002) (repealed 2008) (providing that, if a trial de novo was demanded, the case would proceed as if the arbitration had never occurred).

This shortcoming can be clearly seen in the high rate of de novo appeals during this period. In the years for which data are available, trial de novo was demanded in 55.4% of cases that were sent to an arbitration hearing.[138] More often than not, arbitration failed.[139]

At the same time, the speediness gains realized during the 1987 to 1991 trial period dwindled as well. During Old Rule 16.1's trial period, the average number of days from filing to final disposition for any given year reached as low as 208.8 days, in 1987,[140] and was never higher than 257.7 days, in 1991.[141] In fiscal year 1992, the first full fiscal year in which Rule 16.1 had been formally adopted, the average time from filing to ADR disposition ballooned to 398.7 days.[142] This average wouldn't fall under 300 days again until 2006, when the average was 291.2 days.[143] Comparing the data from the trial period to the officially adopted period, the speediness gains from the ADR program were smaller in the latter period in relative terms as well as nominal terms.[144] This is because, while the average time from filing to disposition for the ADR program was growing, the average time from filing to disposition for complaints in the

138. Of the years between 1991–2008, the number of demands for trial de novo was reported only for the years 1991–1994 and 2000. During those years, there were a total of 5,691 arbitration hearings and 3,151 demands for trial de novo, meaning a de novo demand was made 55.4% of the time. DEL. ADMIN. OFF. CTS., 1991 ANNUAL REPORT OF THE DELAWARE JUDICIARY 73 (1991) [hereinafter *1991 Report*], https://perma.cc/PM5L-KXVM (PDF); DEL. ADMIN. OFF. CTS., 1992 ANNUAL REPORT OF THE DELAWARE JUDICIARY 72 (1992) [hereinafter *1992 Report*], https://perma.cc/QZ4E-XNLC (PDF); DEL. ADMIN. OFF. CTS., 1993 ANNUAL REPORT OF THE DELAWARE JUDICIARY 73 (1993) [hereinafter *1993 Report*], https://perma.cc/B6BW-8WHA (PDF); DEL. ADMIN. OFF. CTS., 1994 ANNUAL REPORT OF THE DELAWARE JUDICIARY 83 (1994) [hereinafter *1994 Report*], https://perma.cc/9KYE-2AZF (PDF); DEL. ADMIN. OFF. CTS., 2000 ANNUAL REPORT OF THE DELAWARE JUDICIARY 55 (2000) [hereinafter *2000 Report*], https://perma.cc/2773-7X4T (PDF).

139. *See supra* note 138 (showing that the rate of de novo appeals was over 50%).

140. *1987 Report*, *supra* note 63, at 94.

141. *1991 Report*, *supra* note 138, at 77.

142. *1992 Report*, *supra* note 138, at 75.

143. DEL. ADMIN. OFF. CTS., 2006 ANNUAL STATISTICAL REPORT OF THE DELAWARE JUDICIARY 23 (2006) [hereinafter *2006 Report*], https://perma.cc/5GZA-ENSZ (PDF).

144. *1987 Report*, *supra* note 63, at 82, 94; *2006 Report*, *supra* note 143, at 23.

Superior Court as a whole was shrinking.[145] For example, when the ADR program trial period saw its lowest average time to disposition, 208.8 days in 1987, the average time to disposition for all civil complaints in the Superior Court was 561.1 days, making the ADR program 352.3 days (62.8%) faster than the Superior Court as a whole.[146] Yet, when the officially adopted Rule 16.1 ADR program saw its speediest year in 2006 with a 291.2-day average, the average time from filing to disposition for all civil complaints in the Superior Court was 403.1 days, making the ADR program only 111.9 days (27.8%) faster.[147] While the Superior Court as a whole had become more efficient since the late 1980s, the ADR program had not.[148]

The ADR program's struggle to move cases through the arbitration process quickly is also demonstrated by the program's low adherence to the forty-day rule.[149] For the limited number of years for which data concerning the forty-day rule are available during the officially-adopted period, the timeframe of referring cases to arbitration complied with the forty-day rule only 57.7% of the time.[150] In 1992, only 50.8% of cases complied with the rule.[151] After 1992, the Administrative Office of the Courts stopped reporting data on the ADR program's compliance with the rule altogether.[152]

It is worth noting that, while the speediness gains realized in the ADR program's officially-adopted period were smaller than the trial period might have indicated, these gains were still

145. *1987 Report*, *supra* note 63, at 82, 94; *2006 Report*, *supra* note 143, at 23.

146. *1987 Report*, *supra* note 63, at 82, 94.

147. *2006 Report*, *supra* note 143, at 23.

148. *1987 Report*, *supra* note 63, at 82, 94; *2006 Report*, *supra* note 143, at 23.

149. *See supra* note 100 and accompanying text.

150. For all years from 1991 forward, data on adherence to the Superior Court Rule 16(c)(6)(A) forty-day rule are reported only for the years 1991–1992. During that time, the arbitration hearing complied with the forty-day rule in 1,128 out of 1,954 instances (57.7%). *1991 Report*, *supra* note 138, at 78; *1992 Report*, *supra* note 138, at 75.

151. *See 1992 Report*, *supra* note 138, at 75 (showing compliance with the forty-day rule in 492 out of 979 instances).

152. *See id.*; *1993 Report*, *supra* note 138, at 71–73 (showing that the "Arbitration" section of the 1993 Annual Report contained no mention of Superior Court Rule 16(c)(6)(A) while the 1992 Report did).

significant.[153] Even in 2001, the year in which there was the smallest difference between average time to the arbitrator's order and average time to all civil complaint dispositions, the ADR cases still reached resolution 90.8 days (20.3%) faster.[154] Nonetheless, these modest gains were not enough to outweigh the provision's other issues, most notably the high rate of demand for trial de novo.[155] Such shortcomings ultimately led to the repeal of Old Rule 16.1 in 2008.[156]

C. *Rule 16 ADR: 2008–2018*

On March 1, 2008, Old Rule 16.1 was repealed and the ADR program—with significant changes—was codified in Superior Court Rule 16 ("2008 Rule 16").[157] One of the primary differences in the 2008 ADR program was that compulsory ADR was now included as a part of the case scheduling order, rather than taking place before the scheduling order was given.[158] This change allowed the court to play a more direct role in the scheduling of compulsory ADR and allowed for discovery to take place during or before the arbitration process.[159] One other significant change under 2008 Rule 16 was that, if the parties could not agree on a form of ADR, the compulsory default would be mediation rather than arbitration.[160] Another change, which constituted a significant expansion of the provision, was that the $100,000 amount in controversy ceiling was removed; going

153. *See infra*, note 154 and accompanying text.

154. *See* DEL. ADMIN. OFF. CTS., 2001 ANNUAL REPORT OF THE DELAWARE JUDICIARY 61 (2001) [hereinafter *2001 Report*], https://perma.cc/2AMU-QVDF (PDF) (showing an average of 355.6 days for civil complaints disposed by arbitrator's order and an average of 446.4 days for all civil dispositions).

155. *See* Grubb, *supra* note 110 (discussing the repeal of Rule 16.1).

156. *Id.*

157. *See id.* (discussing the 2008 repeal of Rule 16.1 and the amendment to 2008 Rule 16).

158. *See id.* (noting the timing of the Trial Scheduling order under 2008 Rule 16).

159. *See* Joshua W. Martin III et al., *Recent Changes to Compulsory Alternative Dispute Resolution in the Superior Court*, 10 DEL. L. REV. 199, 206 (2008) (noting that, under 2008 Rule 16, discovery could commence "without delay").

160. *See* DEL. SUPER. CT. CIV. R. 16(b)(4) (2008).

forward, qualifying controversies of any amount would be subject to compulsory ADR.[161]

In the year that 2008 Rule 16 was implemented, the average time to disposition for cases decided by arbitrator's orders slightly decreased, dropping from 312.2 days in 2007 to 297.4 days in 2008.[162] Unfortunately, data released throughout the majority of this era of the Superior Court's ADR program are sparse. In 2008, the Administrative Office of the Courts stopped reporting the number of ADR filings and dispositions each year.[163] After the 2009 report, the Administrative Office of the Courts also stopped reporting the average time to disposition for civil cases.[164] Among the few data trends reported consistently throughout the period of 2008 to 2018, little is noteworthy.[165]

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161. *See* DEL. SUPER. CT. CIV. R. 16 (showing the absence of an amount-in-controversy requirement).

162. DEL. ADMIN. OFF. CTS., 2007 ANNUAL STATISTICAL REPORT OF THE DELAWARE JUDICIARY 24 (2007) [hereinafter *2007 Report*], https://perma.cc/X3B7-MZ3V (PDF); DEL. ADMIN. OFF. CTS., 2008 ANNUAL REPORT STATISTICAL INFORMATION FOR THE DELAWARE JUDICIARY 23 (2008) [hereinafter *2008 Report*], https://perma.cc/7Q9S-WP8Y (PDF).

163. *Compare 2007 Report*, *supra* note 162, at 26 (showing the number of ADR filings and dispositions), *with 2008 Report*, *supra* note 162, at 18–35 (showing that the Superior Court section of the annual report lacks any mention of ADR).

164. *Compare* DEL. ADMIN. OFF. CTS., 2009 ANNUAL REPORT STATISTICAL INFORMATION FOR THE DELAWARE JUDICIARY 23 (2009) [hereinafter *2009 Report*], https://perma.cc/VCF6-CUBX (PDF) (showing the average number of days it took to reach each type of disposition in civil cases), *with* DEL. ADMIN. OFF. CTS., 2010 ANNUAL REPORT STATISTICAL INFORMATION FOR THE DELAWARE JUDICIARY 23–38 (2010) [hereinafter *2010 Report*], https://perma.cc/N6FV-83ZU (PDF) (showing the Superior Court section of the report no longer contains data on the average time to disposition).

165. After the annual reports stopped including data on the number of ADR filings and the average time to disposition, see *supra* notes 163–164 and accompanying text, the only relevant statistic contained in the reports from 2008–2018 is the total number of civil filings and dispositions per year. *See 2008 Report*, *supra* note 162, at 19 (showing 13,177 filings and 13,144 dispositions); *2009 Report*, *supra* note 164, at 19 (14,137 and 13,151); *2010 Report*, *supra* note 165, at 29 (15,060 filings and 13,543 dispositions); DEL. ADMIN. OFF. CTS., 2011 ANNUAL REPORT STATISTICAL INFORMATION FOR THE DELAWARE JUDICIARY 67 (2011) [hereinafter *2011 Report*], https://perma.cc/6W7B-UPEY (PDF) (15,085 filings and 15,736 dispositions); DEL. ADMIN. OFF. CTS., 2012 ANNUAL REPORT STATISTICAL INFORMATION FOR THE DELAWARE JUDICIARY 64 (2012) [hereinafter *2012 Report*], https://perma.cc/7Y5U-VJSS (PDF) (12,430 filings and 14,422 dispositions); DEL. ADMIN. OFF. CTS., 2013 ANNUAL REPORT STATISTICAL INFORMATION FOR

The total number of civil filings and dispositions in the Superior Court peaked in 2011 with 15,085 filings and 15,736 dispositions, and proceeded to decline throughout the rest of the of the mid-2010's.[166] Each year, the Superior Court disposed of more or less the same number of cases that were filed (usually a little less).[167] For the years between 2008 and 2018, the difference between the numbers of filings and dispositions was only more than 10% in either direction in three instances: 2010, 2012, and 2017.[168] Unfortunately, the annual reports from the Administrative Office of the Courts contain few other insights into either the ADR program or the larger Superior Court civil litigation context during this period.[169]

Despite the dearth of empirical data available for this era of ADR in the Superior Court, an examination of the principles underlying the policy shift toward the 2008 Rule 16 ADR is warranted for two main reasons. First, the shifts in both the mechanics and goals from Rule 16.1 to 2008 Rule 16 provide a touchstone for understanding how the Delaware judiciary had come to view ADR in the broader judicial context.[170] Second, because a new version of Rule 16.1 would later supplement but not replace 2008 Rule 16, understanding the functioning of 2008

THE DELAWARE JUDICIARY 22 (2013) [hereinafter *2013 Report*], https://perma.cc/4SYZ-EWTH (PDF) (11,726 filings and 11,619 dispositions); DEL. ADMIN. OFF. CTS., 2014 ANNUAL REPORT STATISTICAL INFORMATION FOR THE DELAWARE JUDICIARY 64 (2014) [hereinafter *2014 Report*], https://perma.cc/99QQ-6ND3 (PDF) (11,972 filings and 11,166 dispositions); DEL. ADMIN. OFF. CTS., 2015 ANNUAL REPORT STATISTICAL INFORMATION 70 (2015) [hereinafter *2015 Report*], https://perma.cc/8SFJ-RRGB (PDF) (11,498 filings and 11,342 dispositions); DEL. ADMIN. OFF. CTS., 2016 ANNUAL REPORT STATISTICAL INFORMATION 82 (2016) [hereinafter *2016 Report*], https://perma.cc/RLS2-W75F (PDF) (11,890 filings and 11,857 dispositions); DEL. ADMIN. OFF. CTS., 2017 ANNUAL REPORT STATISTICAL INFORMATION 77 (2017) [hereinafter *2017 Report*], https://perma.cc/X8RV-9CKW (PDF) (14,394 filings and 12,934 dispositions); DEL. ADMIN. OFF. CTS., 2018 ANNUAL REPORT STATISTICAL INFORMATION FOR THE DELAWARE JUDICIARY 75 (2018) [hereinafter *2018 Report*], https://perma.cc/PM3W-6VVR (PDF) (13,076 filings and 14,026 dispositions).

166. *See supra* note 165 and accompanying text.

167. *Id.*

168. *Id.*

169. *Id.*

170. *See* Grubb, *supra* note 110 (discussing the repeal of Rule 16.1).

Rule 16 is essential to understanding the application of this new Rule 16.1 in proper context.[171]

Perhaps the most significant policy position demonstrated by the Delaware judiciary in adopting 2008 Rule 16 was that, despite the admitted shortcomings of Old Rule 16.1,[172] the role of ADR in the Superior Court should nonetheless be expanded.[173] This is demonstrated by the fact that, rather than merely increase the monetary cap for compulsory ADR—as the court had done under Rule 16.1[174]—the court opted to remove the monetary limit altogether.[175] This shows that the court did not see compulsory ADR merely as a possible shortcut for small matters but as a viable option for almost any sort of dispute in which monetary damages are primarily at issue.[176] This demonstrates the court's confidence—or, at the very least, hope—that ADR is an effective solution to a broad range of disputes.[177] Furthermore, by including compulsory ADR into the trial scheduling order, the court opted to entwine the judicial and extrajudicial processes of dispute resolution in a more integral way.[178] While, as previously discussed, this change helped to solve practical problems with the discovery process, this change also had the effect of including the judge in the ADR process in a way not realized under Old Rule 16.1.[179] These changes, taken together, can be seen as the court granting ADR

171. *See* DEL. SUPER. CT. CIV. R. 16.1(a) (2002) (repealed 2008) (specifying that the MNA provision in Rule 16.1 is "[n]otwithstanding and in addition to the ADR provisions contained in Rule 16").

172. *See* Martin, *supra* note 72, at 205 (discussing that a committee was appointed to address the "perceived limitations" of Rule 16.1).

173. *Id.* (noting that 2008 Rule 16 prescribes compulsory ADR to "nearly all civil cases").

174. *See supra* Part I (discussing the increase of the amount-in-controversy requirement under Rule 16.1 from $30,000 to $50,000); DEL. SUPER. CT. CIV. R. 16.1(a) (2002) (repealed 2008) (showing that the amount-in-controversy amount was raised to $100,000).

175. *See* DEL. SUPER. CT. CIV. R. 16 (2008) (showing the absence of an amount-in-controversy requirement).

176. *See* Martin, *supra* note 72, at 205–06 (discussing the expansion of the ADR program under 2008 Rule 16).

177. *Id.*

178. *See id.* at 205 (discussing the judge's "closer involvement" in ADR under 2008 Rule 16).

179. *Id.*

a level of importance and centrality not seen under Old Rule 16.1.[180] Although data alone cannot convey with certainty what motivated the court to make these policy shifts, an examination of caseload trends around the time 2008 Rule 16 was adopted provides some insight.[181] ADR programs have long been framed as a practical approach to handling disputes in an increasingly litigious society.[182] The data show that the world the Superior Court saw itself facing in the mid-2000s was indeed an increasingly litigious one.[183] The total number of civil case filings in the Superior Court was gradually increasing throughout the late 1990s and early 2000s.[184] In 2002, the number of civil filings in the Superior Court exceeded 10,000 for the first time on record.[185] While this number would fluctuate from year to year, the number of civil filings would not fall below

180. *Id.*

181. *See infra* note 184 (showing that the number of civil case filings gradually increased throughout the mid-1990s and early 2000s).

182. *See Alternative Dispute Resolution: Alternative Dispute Resolution Movement*, *supra* note 13 (discussing the history and motivations for the rise of ADR in the United States).

183. *See infra* note 184 (showing a steady increase in the number of civil case filings).

184. *See* DEL. ADMIN. OFF. CTS., 1995 ANNUAL REPORT OF THE DELAWARE JUDICIARY 53 (1995) [hereinafter *1995 Report*], https://perma.cc/V4WS-ZNMY (PDF) (showing 7,075 civil filings and 7,877 dispositions); DEL. ADMIN. OFF. CTS., 1996 ANNUAL REPORT OF THE DELAWARE JUDICIARY 39 (1996) [hereinafter *1996 Report*], https://perma.cc/ZPU9-ZKGU (PDF) (7,485 civil filings and 6,693 dispositions); DEL. ADMIN. OFF. CTS., 1997 ANNUAL REPORT OF THE DELAWARE JUDICIARY 44 (1997) [hereinafter *1997 Report*], https://perma.cc/55JS-FDPR (PDF) (7,465 civil filings and 7,504 dispositions); DEL. ADMIN. OFF. CTS., 1998 DELAWARE JUDICIARY ANNUAL REPORT 37 (1998) [hereinafter *1998 Report*], https://perma.cc/3X7Q-YGZ8 (PDF) (8,215 civil filings and 8,022 dispositions); DEL. ADMIN. OFF. CTS., 1999 STATISTICAL REPORT OF THE DELAWARE JUDICIARY 50 (1999) [hereinafter *1999 Report*], https://perma.cc/FHY5-WNHM (PDF) (9,175 civil filings and 8,303 dispositions); *2000 Report*, *supra* note 138, at 48 (9,523 civil filings and 9,246 dispositions); *2001 Report*, *supra* note 154, at 55 (8,812 civil filings and 10,671 dispositions); DEL. ADMIN. OFF. CTS., 2002 STATISTICAL REPORT OF THE DELAWARE JUDICIARY 52 (2002) [hereinafter *2002 Report*], https://perma.cc/3VL5-39YP (PDF) (10,078 civil filings and 10,499 dispositions); DEL. ADMIN. OFF. CTS., 2003 ANNUAL REPORT OF THE DELAWARE JUDICIARY 53 (2003) [hereinafter *2003 Report*], https://perma.cc/P6UL-J7DM (PDF) (10,696 civil filings and 10,776 dispositions).

185. *See supra* note 184 (showing that 2002 was the first year in which the number of civil filings exceeded 10,000).

10,000 again until 2021—when the global COVID-19 pandemic would slow the pace of life in many aspects.[186] In light of the rise in civil filings throughout the past several decades, it is not at all surprising that the Superior Court sought to expand its options for and philosophy toward dealing with disputes outside of the courtroom.[187]

Regrettably, the lack of statistical data for the ADR program between 2008 and 2018 makes it difficult to examine the impact of one noteworthy policy change brought about by the adoption of 2008 Rule 16—the role of mediation as the new default.[188] Without empirical data, it is difficult to say what impact this change may have had in settling disputes or the parties' attitudes towards the ADR process.[189]

In addition to being noteworthy, the 2008 Rule 16 provides both the actual and theoretical backdrop upon which any examination of the newest version of Rule 16.1 must rely.[190] In the decade between 2008 to 2018, the Superior Court had fully integrated compulsory ADR into the regular practice of adjudicating civil disputes.[191] It is on this foundation, of ADR as the norm, that a new version of Rule 16.1 was introduced.

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186. *See* DEL. ADMIN. OFF. CTS., 2021 ANNUAL REPORT STATISTICAL INFORMATION FOR THE DELAWARE JUDICIARY 16 (2021) [hereinafter *2021 Report*], https://perma.cc/M89E-2HCW (PDF) (showing 8,408 civil case filings and 8,731 dispositions).

187. *See supra* note 184 (showing the rising number of annual filings), *Alternative Dispute Resolution: Alternative Dispute Resolution Movement*, *supra* note 13 (discussing Delaware's increased interest in ADR as a response to demand on judicial resources).

188. *See supra* note 165 and accompanying text (discussing the lack of ADR-specific data in the 2008–2018 annual reports); DEL. SUPER. CT. CIV. R. 16(b)(4) (2016) (establishing mediation as the default form of ADR if the parties cannot agree).

189. *See supra* note 165 and accompanying text (discussing the lack of empirical information for this period).

190. *See* DEL. SUPER. CT. CIV. R. 16.1(a) (2018) (specifying that the MNA provision in Rule 16.1 is "[n]otwithstanding and in addition to the ADR provisions contained in Rule 16").

191. *See* Martin, *supra* note 72, at 205–06 (discussing the expanded scope of ADR under 2008 Rule 16 and the increased role of the judge in the process).

D. *New Rule 16.1: 2018–Present*

On January 1, 2018, the Superior Court amended its Rules of Civil Procedure with a new iteration of Rule 16.1 ("New Rule 16.1").[192] Unlike the changes to the ADR program in 2008, the adoption of New Rule 16.1 was not a replacement of any ADR provision but was a supplement to the ADR requirements under Rule 16.[193] According to the Delaware Superior Court website, New Rule 16.1 addresses "previously identified issues" with MNA.[194] For these reasons, a proper understanding of New Rule 16.1 requires observation from two seemingly-conflicting perspectives.

Practically, New Rule 16.1 is a supplement to 2008 Rule 16.[195] While the adoption of 2008 Rule 16 coincided with the repeal of Old Rule 16.1, the introduction of New Rule 16.1 did not change 2008 Rule 16 or its requirements.[196] In its functions, therefore, it must be viewed alongside 2008 Rule 16.[197] Conceptually, however, New Rule 16.1 should be seen as a replacement for its then decade-gone predecessor, Old Rule 16.1.[198] Notably, the court chose to frame this new rule as one that addresses problems with the previous iteration of MNA—namely, Old Rule 16.1—not the current and still-existing larger ADR framework of Rule 16.[199]

The new MNA provision in the 2018 version of Rule 16.1 is different from MNA under Old Rule 16.1 in five important ways. First, MNA under New Rule 16.1 is imposed only if it is selected

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192. DEL. SUPER. CT. CIV. R. 16.1(a) (2018); *see* Grubb, *supra* note 110 (discussing the adoption of New Rule 16.1).

193. *See* DEL. SUPER. CT. CIV. R. 16.1(a) (2018) (specifying that that the provision is "[n]otwithstanding and in addition to" the compulsory ADR provisions of Rule 16).

194. *Alternative Dispute Resolution (ADR)*, DEL. CTS. JUD. BRANCH, https://perma.cc/JE5H-XZ3F (last visited Jan. 9, 2024).

195. *See* DEL. SUPER. CT. CIV. R. 16.1(a) (2018) (specifying that that the provision is "[n]otwithstanding and in addition to" the compulsory ADR provisions of Rule 16).

196. *See id.* (showing that the requirements of Rule 16 are still in effect).

197. *Id.*

198. *See* Grubb, *supra* note 110 (framing New Rule 16.1 as a reviving of Old Rule 16.1).

199. *See Alternative Dispute Resolution (ADR)*, *supra* note 194 (discussing New Rule 16.1 as improving on the shortcomings of Old Rule 16.1).

by the complainant on the Case Information Sheet.[200] In practice then, because the complainant must affirmatively select Rule 16.1 MNA, it is a choice for the plaintiff and is really only "mandatory" for the defendant.[201] This is significantly different from the function of Old Rule 16.1, where MNA was imposed as a default if the parties did not agree to another form of ADR.[202] Unlike under Old Rule 16.1, if a case goes to arbitration under New Rule 16.1, at least one of the parties chose to be there.[203] If the complainant does not select New Rule 16.1 MNA and the parties do not agree to another form of ADR, the default of mediation under Rule 16 still applies.[204]

Second, New Rule 16.1 re-introduced an amount in controversy requirement of $50,000 or less—half the amount imposed by Old Rule 16.1.[205] This is significant because it is a departure from the trend toward an increasing expansion of the ADR program over the previous three decades.[206] Rather, this program reflects a more fine-tuned approach—not a panacea for all disputes, but a tool designed to efficiently handle a narrow category of cases.[207]

Third, New Rule 16.1 contains provisions for mandatory and permissible discovery, with particular instructions for

200. *See* DEL. SUPER. CT. CIV. R. 16.1(a) (2018) (discussing the mechanics of initiating MNA under the rule).

201. *See id.* R. 16.1(a) (showing that the case is submitted to MNA under the rule only is the complainant selects it on the Case Information Sheet but is then "mandatory" for both parties).

202. DEL. SUPER. CT. CIV. R. 16.1(c)(2) (2002) (repealed 2008) (specifying the mandatory arbitration will be assigned if the defendant rejects the plaintiff's choice of ADR).

203. *See* DEL. SUPER. CT. CIV. R. 16.1(a) (2018) (showing that the complainant must have affirmatively selected MNA).

204. *See id.* (providing MNA as an ADR option "[n]otwithstanding and in addition to the ADR provisions contained in Rule 16").

205. *See id.* (specifying that this MNA provision is available only for disputes of under $50,000); *see also* DEL. SUPER. CT. CIV. R. 16.1(a) (2002) (repealed 2008) (setting the maximum amount in controversy for the provision at $100,000).

206. *See supra* note 174 and accompanying text.

207. *See* DEL. SUPER. CT. CIV. R. 16.1(a)–(e) (2018) (showing a historically low amount-in-controversy ceiling of $50,000, listing four categories of cases in which MNA is not applicable, and providing filing and discovery rules specific to personal injury cases).

personal injury cases.[208] This change both addresses a previously-identified shortcoming of Old Rule 16.1 and fine-tunes the MNA provision for its expected application.[209]

Fourth, New Rule 16.1 delegates the management of the arbitration almost entirely to the attorneys.[210] Fifth, New Rule 16.1 heavily incentivizes parties to accept the arbitrator's decision by assigning the entire cost of the arbitration to the party who demands such a trial if that party does not receive a more favorable ruling from the court.[211]

New Rule 16.1 was adopted at a very interesting time for the civil caseload in the Superior Court. From 2012 to 2021, the Superior Court averaged 11,700 filings and 10,958 dispositions per year.[212] The number of filings peaked in 2017 with 14,394 and has declined steadily since in each year for which data is available, with 13,076; 11,492; 10,117; and 8,408 filings per year from 2018 to 2021, respectively.[213] In each of these years, the number of civil case dispositions was greater than the number of filings, which had not been true for any year since 2012.[214] This downward trend in the number of civil cases filed and disposed of each year closely tracked a similar trend in the Superior Court's criminal caseload, so that the total number of cases filed in the Superior Court steadily declined from 20,315 in 2017 to only 12,793 in 2021.[215] Seemingly by chance, New Rule 16.1 was adopted at a time when the strain on the Superior

208. *See* DEL. SUPER. CT. CIV. R. 16.1(d)–(e) (2018) (listing filing requirements and discovery rules applicable to injury cases).

209. *Compare* DEL. SUPER. CT. CIV. R. 16.1(j) (2002) (repealed 2008) (staying all discovery requests until trial de novo is demanded), *with* DEL. SUPER. CT. CIV. R. 16.1(e) (2018) (allowing limited discovery relevant to injury cases).

210. *See Alternative Dispute Resolution (ADR)*, *supra* note 194 ("In this new rule, the lawyers are charged with meeting the deadlines and in running the arbitration process.").

211. *See* DEL. SUPER. CT. CIV. R. 16.1(m)(4) (2018) (establishing the shifting of costs to a party which fails to obtain a better outcome after demanding trial de novo); *see also infra* Part IV.C (discussing the effects of the cost-shifting provision).

212. *See 2021 Report*, *supra* note 186, at 18 (showing the ten-year caseload trend).

213. *Id.*

214. *Id.*

215. *Id.* at 19, 25.

Court's resources was declining for reasons unrelated to the adoption of New Rule 16.1.[216]

Given that the adoption of New Rule 16.1 occurred during a much larger downward trend in demand for judicial resources in the Superior Court, it is unlikely that even the most careful examination of the adoption of the rule could explain any significant change in the expenditure of judicial resources. This is partially due to the fact that New Rule 16.1 has not been often utilized.[217] New Rule 16.1 came into effect on January 1, 2018, yet only eighty-two civil dockets filed in 2018 contain any reference to Rule 16.1.[218] The number of cases utilizing New Rule 16.1 MNA has increased each year since its inception, even as the total number of Superior Court cases has declined.[219] Yet even at its peak in 2021, Rule 16.1 was mentioned in only ninety-nine dockets out of the 8,408 civil cases filed that year, accounting for a little more than 1% of civil cases filed.[220] Nonetheless, the data available are sufficient to allow an examination of New Rule 16.1, especially as it compares to Old Rule 16.1, under the tripartite framework of judicial efficiency, speediness, and prejudicial concerns.

IV. EFFECTS OF NEW RULE 16.1

While the information available in the Delaware Administrative Office of the Court's annual reports is sparse, New Rule 16.1's MNA provision has been used in a sufficiently small number of instances since its adoption in 2018 to allow those instances to be observed individually. The data used in the analysis of New Rule 16.1 in this Part were gathered from individual court dockets that contain any reference to Rule 16.1 which were filed in Superior Court between the inception of New Rule 16.1 on January 1, 2018, and the end of the Delaware

216. *See id*. at 25; *see also infra* note 218 and accompanying text (showing a relatively low number of MNA cases amidst a large decline in the court's caseload).

217. *See infra* Appendix.

218. This data was gathered from the Lexis CourtLink docket retrieval tool. For the docket information for each of these above-mentioned cases, see *infra* Appendix.

219. *See infra* Appendix.

220. *See infra* Appendix (showing a low number of MNA filings); *2021 Report*, *supra* note 186, at 18.

Court's fiscal year 2021 (the most recent year for which the Administrative Office of the Court has released its annual report).[221] From these dockets, the following information was coded: docket number, date of filing, date of arbitration hearing, date of arbitrator's order/arbitrator's decision, date of final disposition, and circumstances of disposition, including whether the case was dismissed or settled after the issuing of arbitrator's order, disposed after a party demanded trial de novo, or disposed after an arbitrator was assigned but before an arbitration hearing took place.[222]

A. *Judicial Efficiency*

For filings between January 1, 2018 and June 30, 2021, data are available for 321 cases assigned to MNA under New Rule 16.1.[223] Of these 321 cases, twenty-five were disposed before an arbitration hearing took place.[224] Of the remaining 296 cases that went to an arbitration hearing, 214 were disposed after the arbitrator's order and trial de novo was demanded in eighty-two.[225] This means that the "failure rate" for MNA under New Rule 16.1 is 27.7%—almost exactly half the failure rate under Old Rule 16.1.[226] From this single data point it can be argued that New Rule 16.1 is significantly more judicially efficient than Old Rule 16.1.

Three factors likely contribute to making rate of demands for de novo trial so much lower under the new framework. First, New Rule 16.1's provisions for pre-arbitration discovery remedied a large contributor to the high rate of de novo demands under the old framework.[227] Under Old Rule 16.1, parties would

221. These data were gathered from a search in Lexis CourtLink of all Delaware Superior Court civil dockets that make any reference to "Rule 16.1" and which have a filing date between January 1, 2018, and June 30, 2021. Of the 330 results, 321 dockets were identified as civil cases that had been assigned to MNA under New Rule 16.1. For information from these individual dockets and statistical calculations from these data, see *infra* Appendix.

222. *See infra* Appendix.

223. *See infra* Appendix.

224. *See infra* Appendix.

225. *See infra* Appendix.

226. *See infra* Appendix; *supra* note 138 and accompanying text.

227. *See* Grubb, *supra* note 110 (contrasting New Rule 16.1's discovery provisions with Old Rule 16.1's stay of discovery).

often demand trial de novo nearly automatically because, without discovery, these parties often had insufficient information to determine whether or not accepting the arbitrator's judgment was in their best interest.[228] New Rule 16.1 not only allows for discovery to take place, but also contains provisions specifically designed to streamline the process in personal injury cases—the type of claim most commonly brought under New Rule 16.1 MNA.[229]

Second, New Rule 16.1 MNA is only undertaken when the complainant chooses it.[230] Because the complainant must affirmatively select MNA on the Case Information Sheet in order for it to be assigned, the proportion of instances in which neither party wants to engage in the arbitration will almost certainly be lower.[231] Furthermore, New Rule 16.1 MNA will not go forward unless the parties can agree on the selection of an arbitrator.[232] If the parties cannot agree, the case is assigned a different form of ADR under Rule 16.[233] This is a far cry from Old Rule 16.1 where, unless otherwise stipulated, the court would choose the arbitrator.[234] By requiring the parties to agree on the arbitrator, New Rule 16.1 effectively screens out litigants who can come to no agreement whatsoever.[235]

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228. *See id.* (discussing instances under Old Rule 16.1 in which parties would "automatically" demand trial de novo due to a lack of discovery).

229. *See* DEL. SUPER. CT. CIV. R. 16.1(d)–(e) (2018) (providing filing requirements and discovery rules particularly relevant to injury cases).

MNA under New Rule 16.1 has been used almost exclusively for personal injury cases. A search in Lexis CourtLink of the 321 dockets which comprise the data gathered for the Appendix reveals that, out of the 321 cases, 292 are personal injury auto ("CPIA") filings and another twenty-four are other personal injury ("CPIN") filings. *See infra* Appendix.

230. *See* DEL. SUPER. CT. CIV. R. 16.1(a) (2018) (showing that the complainant must affirmatively select MNA on the Case Information Sheet).

231. *Compare id.* (showing that the complainant must select MNA on the Case Information Sheet), *with* DEL. SUPER. CT. CIV. R. 16.1(c)(2) (2002) (repealed 2008) (assigning MNA by default if the parties cannot agree on another form of ADR).

232. *See* DEL. SUPER. CT. CIV. R. 16.1(f) (2018) (providing that, if the parties do not agree on an arbitrator within twenty days, they may not utilize MNA).

233. *See id.* R. 16.1(a) (providing that the requirement of compulsory ADR under Rule 16 still applies).

234. *See* DEL. SUPER. CT. CIV. R. 16.1(h)(2) (2002) (repealed 2008) (establishing that the Court selects the ADR practitioner).

235. *See* DEL. SUPER. CT. CIV. R. 16.1(f) (2018).

Third, the cost-shifting provision of New Rule 16.1 increases the financial risk to a party that would seek trial de novo after an arbitrator's order, which may dissuade a dissatisfied party from going forward with a de novo demand.[236] If any party demands trial de novo and fails to receive a more favorable judgment from the court than the arbitrator's order, that party must pay the entire cost of the arbitration and the arbitrator's compensation.[237] In addition, a defendant who fails to obtain a better verdict after demanding trial de novo must pay interest on the amount of the arbitrator's award from the date it was ordered and a plaintiff who fails in such a demand must pay the defendant's costs incurred after the date of the arbitrator's order.[238] This added financial risk dissuades parties from demanding trial de novo as a default and may even have a chilling effect on meritorious trial de novo demands.[239]

B. *Speediness*

Of the 321 MNA cases analyzed, the average time from filing to final disposition was 327.1 days.[240] For the 214 cases which were disposed after the arbitrator's order, the average time to final disposition was 285.5 days.[241] For those eighty-two cases in which trial de novo was demanded, the average time to disposition was 473.2 days.[242] 285.5 days for a "successful" arbitration is slower than Old Rule 16.1 during the trial period but faster than the rule during its officially-accepted period.[243]

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236. *See id.* R. 16.1(m)(4) (2018) (establishing the costs for a party that demands trial de novo and fails to obtain a more favorable verdict than the arbitrator's order).

237. *Id.*

238. *Id.*

239. *See infra* Part IV.C.

240. *See infra* Appendix.

241. *See infra* Appendix.

242. *See infra* Appendix.

243. *See 1987 Report*, *supra* note 63, at 94 (showing an average time from ADR filing to disposition of 208.8 days); *1988 Report*, *supra* 111, at 101 (223 days); *1989 Report*, *supra* note 111, at 73 (209.7 days); *1990 Report*, *supra* note 111, at 75 (242.4 days); *1991 Report*, *supra* note 138, at 76 (257.7 days), *1992 Report*, *supra* note 138, at 76 (398.7 days); *1993 Report*, *supra* note 138, at 69 (371.8 days); *1994 Report*, *supra* note 138, at 79 (310 days); *1999 Report*, *supra 184* at 54 (337.4 days), *2000 Report*, *supra* note 138, at 52 (348.2 days); *2001 Report*, *supra* note 154, at 61 (355.6 days); *2002 Report*, *supra* note 184, at 58

It should be noted, however, that Old Rule 16.1 achieved a maximum speed of 208.8 days on average *without* any discovery and before a scheduling order had been established, whereas New Rule 16.1 has averaged 285.5 days while still allowing a significant amount of discovery to take place.[244] And yet, even without time-consuming discovery, Old Rule 16 during its officially-enacted era from 1991 to 2008 never saw a single year of averaging as low as 285.5 days.[245] With or without taking the issue of discovery into account, New Rule 16.1 is significantly speedier than Old Rule 16.1.

A few factors likely contribute to New Rule 16.1's speedy outcomes. First, New Rule 16.1 has a built-in time provision that requires the arbitration hearing to take place within 120 days from the end of the parties' initial pleading stage.[246] This requirement—unlike the forty-day rule which applied to Old Rule 16.1—is appropriately inclusive of the entire span of time between the filings and the hearing.[247] Old Rule 16.1's forty-day rule only required that the arbitration hearing take place within forty days after the appointment of the arbitrator.[248] Because the forty-day clock didn't start running until the arbitrator was appointed, courts could delay the case without violating the forty-day rule by simply not appointing the arbitrator in the first place—and indeed they did. In 1992, the slowest year for Old Rule 16.1 MNA for which data are available, MNA cases took an

(347.3 days); *2003 Report*, *supra* note 184, at 59 (304.2 days); DEL. ADMIN. OFF. CTS., 2005 ANNUAL STATISTICAL REPORT OF THE DELAWARE JUDICIARY (2005), https://perma.cc/MGF8-BFZJ (PDF) (308.8 days); *2006 Report*, *supra* note 143, at 23 (291.2 days); *2007 Report*, *supra* note 162, at 24 (312.2 days); *2008 Report*, *supra* note 162, at 23 (297.4 days).

244. *Compare* DEL. SUPER. CT. CIV. R. 16.1(j) (2002) (repealed 2008) (showing that under Old Rule 16.1 discovery was stayed until after the arbitration), *with* DEL. SUPER. CT. CIV. R. 16.1(e) (2018) (allowing discovery before the arbitration hearing).

245. *See supra* note 154 and accompanying text.

246. *See* DEL. SUPER. CT. CIV. R. 16.1(h) (2018) (establishing that the arbitration hearing should take place within 120 days of the initial pleadings).

247. *Compare 1987 Report*, *supra* note 63, at 94 (discussing the then-active Rule 16(c)(6)(a) requiring the arbitration hearing to take place within forty days of the assignment of the arbitrator), *with* DEL. SUPER. CT. CIV. R. 16.1(h) (2018) (requiring the arbitration hearing to take place within 120 days of initial pleadings).

248. *See supra* note 100 and accompanying text.

average of 398.7 days from filing to arbitrator's order.[249] Over half of that time, 220.9 days on average, passed before the arbitrator was even appointed.[250] While New Rule 16.1's 120-day window is less ambitious on its face than the forty-day rule from the 1980's, the 120-day window is better suited to avoid these long delays where they had previously been known to occur.[251]

Second, New Rule 16.1 is speedy because it is well-tailored to the type of disputes for which it is most often used—personal injury cases.[252] While there is no provision within New Rule 16.1 that limits its use to only personal injury cases,[253] in practice, New Rule 16.1 MNA is used almost exclusively in personal injury disputes.[254] With this in mind, the rule contains provisions designed specifically to make the handling of personal injury claims more efficient, such as rules related to the timely discovery of medical records.[255] With these injury-specific provisions combined with its relatively restrictive amount-in-controversy requirement, New Rule 16.1 is able to quickly and efficiently dispose of this narrow category of commonly-brought claims.[256]

C. *Prejudicial Concerns*

Perhaps the greatest risk New Rule 16.1 poses for justice and fairness is that, in its effort to be efficient, it may disincentivize worthy parties from seeking their day in court.[257] One of the primary arguments for the fairness of requiring litigants to submit themselves to an extrajudicial ADR process

249. *1992 Report*, *supra* note 138, at 75.

250. *Id.*

251. *See id.*; *supra* note 247 and accompanying text.

252. *See supra* note 229 and accompanying text.

253. *See* DEL. SUPER. CT. CIV. R. 16.1(a)–(b) (2018) (specifying the situations in which New Rule 16.1 MNA may be used).

254. *See supra* note 229 and accompanying text.

255. *See* DEL. SUPER. CT. CIV. R. 16.1(d)–(e) (2018) (discussing filing requirements and discovery rules particularly well-suited to injury cases).

256. *See* Grubb, *supra* note 110 (discussing how both Old Rule 16.1 and New Rule 16.1 were suited for personal injury cases).

257. *See* DEL. SUPER. CT. CIV. R. 16.1(m)(4) (2018) (discussing costs that will be assessed if a party seeks trial de novo and fails to obtain a more favorable verdict).

is that their right to trial is not circumvented—a point which New Rule 16.1 states explicitly.[258] Because a party has the right to demand trial de novo if he is unsatisfied with the outcome of the arbitration, so the argument goes, no right to trial is infringed by requiring the party to submit to an extrajudicial ADR process first.[259] New Rule 16.1 is careful to avoid prejudice by specifying that, once trial de novo has been demanded, no evidence concerning the arbitration may be brought.[260] However, the cost-shifting structure of New Rule 16.1 nonetheless gives the arbitrator's decision prejudicial weight in the form of a de facto exception to the American Rule.[261] In this way, a de novo trial after a New Rule 16.1 MNA is not really de novo; it is a trial in which the arbitrator's vacated decision still plays a role in the balance of financial risks between the parties.

On the other hand, an ADR system that limits or changes the risk level of a party's right to trial may not be considered truly prejudicial if parties choose to enter into it of their own free will.[262] In contracts, cost-shifting provisions for legal fees are ubiquitous and can hardly be said to be unjust.[263] While the analogy of ADR to contract is not perfect, it is important to note that no two parties will be subjected to New Rule 16.1 MNA unless they have both agreed to the selection of the arbitrator.[264]

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258. *See id.* R. 16.1(m)(1) ("Any right of trial by jury shall be preserved inviolate.").

259. *Id.*

260. *See id.* R. 16.1(m)(3) (specifying that no evidence from the arbitration or that an arbitration has taken place may be admitted at trial).

261. *See id.* R. 16.1(m)(4) (explaining the ways in which the results of the original arbitrator's decision can affect the assignment of costs after trial de novo). The American Rule is the norm in courts of law in the United States that litigants pay their own attorneys' fees regardless of whether they win or lose. *See* Dover Historical Soc'y, Inc. v. City of Dover Planning Comm'n, 902 A.2d 1084, 1089 (Del. 2006) ("[T]he American Rule requires that a litigant must, himself, defray the cost of being represented by counsel." (internal quotations omitted)).

262. *See* DEL. SUPER. CT. CIV. R. 16.1(a) (2018) (showing that the claimant must affirmatively select MNA on the Case Information Sheet in order for the MNA to occur).

263. *See* John F. Vargo, *The American Rule on Attorney Fee Allocation: The Injured Person's Access to Justice* 42 AM. U. L. REV. 1567, 1578 (1993) (discussing contracts which provide for how attorney's fees shall be allocated as an exception to the American Rule).

264. *See* DEL. SUPER. CT. CIV. R. 16.1(a) (2018) (showing that the claimant must affirmatively select MNA on the CIS in order for the MNA to occur); *id.*

If a complainant is unwilling to lend prejudicial weight to the arbitrator's decision, she is free to not choose MNA on the Case Information Sheet in the first place.[265] And if a defendant is concerned that the arbitrator will not treat her fairly, she is free to object to the choice of arbitrator until one is found on whom the parties can agree or the case is assigned to another form of ADR under Rule 16.[266] In this way, New Rule 16.1 MNA is hardly "mandatory" at all—a fact that should serve to further ease concerns of its potential prejudicial effects.

V. PROPOSING A MODEL MNA RULE

A. *The Best Fit for Delaware Superior Court*

This Note has examined three distinct eras of the ADR program in Delaware Superior Court: Old Rule 16.1 (1987 to 2008), 2008 Rule 16 (2008 to 2018), and New Rule 16.1 (2018 to present).[267] While an understanding of all three eras is important, this subpart will focus primarily on a comparison between Old Rule 16.1 and New Rule 16.1.

When analyzing these two ADR provisions under the three-part framework of judicial efficiency, speediness, and prejudicial concerns, there can be no doubt that New Rule 16.1 is a substantial improvement upon Old Rule 16.1. First, New Rule 16.1 is more judicially efficient because its "failure rate" is less than half of the "failure rate" of Old Rule 16.1.[268] Because a successful arbitration saves the court's time and resources, and ensures that the costs and time spent by the parties in arbitration are not wasted, it is a net gain for all involved and an unsuccessful arbitration is a net loss for all involved.[269] For this reason, judicial efficiency as evidenced by a low rate of

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R. 16.1(f) (showing that MNA cannot be utilized unless the parties agree on an arbitrator).

265. *See id.* R. 16.1(a) (requiring an affirmative selection by the complainant on the CIS).

266. *See id.* R. 16.1(f) (stating that MNA under New Rule 16.1 cannot be used if there is no agreement on an arbitrator).

267. *See supra* Part III.

268. *See supra* Part IV.A.

269. *See supra* Part III; *supra* note 64 and accompanying text.

demand for trial de novo can be considered the single most important factor in this analysis.[270]

Second, New Rule 16.1 is consistently speedier than Old Rule 16.1.[271] With the exception of those few years at the beginning of Old Rule 16.1's trial period from 1987 to 1991, New Rule 16.1's average time to disposition is lower than Old Rule 16.1's average in every year for which data are available.[272] New Rule 16.1 accomplishes this while also allowing for the case scheduling order and limited discovery to go forward.[273] With more accomplished in less time, New Rule 16.1 is the clear speediness winner.

Third, New Rule 16.1 raises fewer and smaller prejudicial concerns than Old Rule 16.1.[274] Admittedly, New Rule 16.1 contains provisions that may disincentivize some parties from bringing meritorious demands for trial de novo.[275] But the method by which MNA and the arbitrator are selected gives both parties ample opportunity to avoid an unfavorable outcome.[276] The provisions of this rule are well-tailored to promote judicial efficiency while only marginally raising the risk of an unfair or prejudicial outcome for one of the parties.[277] Under Old Rule 16.1, however, parties could be made to participate in MNA whether they wanted to or not, with an arbitrator that may have been unilaterally selected for them by the court.[278] Requiring

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270. *See supra* Part III.

271. *See supra* Part IV.B.

272. *See supra* note 243 and accompanying text.

273. *See* DEL. SUPER. CT. CIV. R. 16.1(e) (2018) (providing for discovery during arbitration period); *id.* R. 16.1(h)(2) (discussing the Case Scheduling Order).

274. *See supra* Part IV.C.

275. *See supra* Part IV.B; DEL. SUPER. CT. CIV. R. 16.1(m)(4) (2018) (discussing the risk of cost-shifting for the party that demands trial de novo).

276. *See* DEL. SUPER. CT. CIV. R. 16.1(a) (2018) (establishing that the claimant must voluntarily select MNA); *id.* R. 16.1(f) (providing that MNA will not go forward unless the parties agree on an arbitrator).

277. *See* Grubb, *supra* note 110 (discussing the benefits of New Rule 16.1's discovery provisions and trial de novo penalties, and the favorable reception the rule has received from the bar).

278. *See* DEL. SUPER. CT. CIV. R. 16.1(c) (2002) (repealed 2008) (establishing that MNA is the default assignment when the parties do not otherwise agree on a form of MNA and specifying that the arbitrator will be appointed by the Court).

litigants to spend time and money on an ADR process they want no part in is manifestly more unfair than New Rule 16.1's cost-shifting provision.[279] This is not to say that New Rule 16.1 must be fair on the grounds that Old Rule 16.1 is not. Rather, New Rule 16.1, on its own merits, provides meaningful gains in efficiency and speed which far outweigh its risks.[280]

One possible critique of this analysis is that, because New Rule 16.1 is less expansive than Old Rule 16.1, the two cannot be compared in an apples-to-apples fashion.[281] However, that distinction demonstrates not a weakness of the analysis but a strength of New Rule 16.1: part of the reason New Rule 16.1 works so well is that it is not a catch-all—it is a narrow framework well-tailored to efficiently handle a specific set of disputes.[282] This is a feature, not a bug.

For the above reasons, the MNA program under New Rule 16.1 is a meaningful improvement from the Old Rule 16.1 framework and is the best iteration of the policies examined here. The Delaware judiciary introduced New Rule 16.1 with the stated intention of addressing previously perceived issues with the old MNA framework.[283] It has done just that.

B. *Principles for a Model ADR Provision*

If New Rule 16.1 has been so successful in Delaware Superior Court, is the best course of action for other jurisdictions to simply copy-and-paste New Rule 16.1 into their own respective rules of civil procedure? Likely not. Instead, the greatest applicable lessons from Delaware's four-decade ADR experiment may be what can be learned from how the Delaware

279. *See* Grubb, *supra* note 110 (discussing instances in which litigants subject to MNA under Old Rule 16.1 would "automatically" demand trial de novo); *see also supra* Part IV.C.

280. *See supra* Part IV.

281. *Compare* DEL. SUPER. CT. CIV. R. 16.1(a) (2002) (repealed 2008) (establishing Old Rule 16.1 as a stand-alone ADR provision to which all civil cases, with some exceptions, are subject), *with* DEL. SUPER. CT. CIV. R. 16.1(a) (2018) (establishing New Rule 16.1 as a supplement to the existing 2008 Rule 16 ADR framework).

282. *See* Grubb, *supra* note 110 (discussing the benefits of and favorable reception for New Rule 16.1).

283. *See Alternative Dispute Resolution (ADR)*, *supra* note 194.

Superior Court has changed its approach to ADR over the years since 1987.

1. Lesson One: Don't Be Afraid to Iterate

One of the most laudable aspects of the Delaware Superior Court's approach to developing its ADR program is that the court was not afraid to test and make changes. When the court first decided to implement the ADR program in 1987, it did so on a trial basis.[284] Following this trial, the court made small changes to the program before codifying it as Old Rule 16.1 in 1991.[285] In 2008, despite the fact that Old Rule 16.1 was an "old favorite" of some litigators[286] and *was* succeeding in removing cases from the court's crowded docket,[287] the court nevertheless decided to sunset Old Rule 16.1 in favor of a new framework (2008 Rule 16).[288] Again in 2018, the court demonstrated its willingness to iterate by re-introducing a new version of Rule 16.1—which, as has been shown here, was its best version.[289] This progress would not have been possible if the Delaware Superior Court had not been willing to continue iterating and improving on its original idea thirty-one years later.

In the same way, jurisdictions across the United States seeking to shape effective ADR systems should not hesitate to test, re-write, and change their ADR provisions. To facilitate this, state legislatures should give their respective judiciaries the authority and mandate to establish ADR programs, and the freedom to change and re-write rules to facilitate the goals of those programs. Not only will this place the decision-making ability in the hands of the judges who are most familiar with the needs of and stresses on their court systems, but making these edits at the judge-level will streamline the process for making and implementing procedural changes that may make the ADR programs more effective. Furthermore, placing the power to

284. *See supra* note 77 and accompanying text.

285. *See 1987 Report*, *supra* note 63, at 85 (describing in an explanatory note that the amount in controversy requirement changed from $30,000 to $50,000 during the trial period).

286. Grubb, *supra* note 110.

287. *See supra* Part III.B.

288. *See supra* Part III.B.

289. *See supra* Part III.D, IV.

design ADR programs in the hands of the judiciary will help to facilitate another important aspect of a successful ADR program that was demonstrated in Delaware Superior Court: cooperating with and soliciting feedback from the local bar.

2. Lesson Two: Solicit Feedback

The Delaware Superior Court's changing ADR program benefited at multiple times from feedback from its state bar.[290] Most notably, in designing New Rule 16.1, the Delaware judiciary responded to feedback from the personal injury bar concerning issues with the discovery process that plagued Old Rule 16.1.[291] Under Old Rule 16.1, because the arbitration process took place before discovery commenced, litigants often felt that their concerns were not able to be fully addressed or understood at arbitration.[292] Although a quantitative analysis of the isolated effect of this no-discovery provision is beyond the scope of this Note, it is not difficult to imagine that this shortcoming was at least partially responsible for the relatively high rate of demands for trial de novo under Old Rule 16.1.[293] At the very least, litigants feelings that their cases were not fully understood at arbitration would help to explain why it was not uncommon for even the *prevailing* party in an arbitration to demand trial de novo under Old Rule 16.1.[294] The Delaware judiciary did well to solicit feedback from the personal injury bar and address this discovery issue in drafting New Rule 16.1.[295] And, although a statistical breakdown of this one change in isolation is beyond the scope of this analysis, the mere fact that New Rule 16.1 has had a trial de novo "failure rate" half that of Old Rule 16.1 suggests that responding to the feedback from the Delaware bar has made a real difference.

Similarly, other jurisdictions should solicit feedback from their state bars to design ADR programs that litigators and litigants want to use. Not only will the feedback from practitioners inform rule-makers about the concerns of the

290. *See* Grubb, *supra* note 110.
291. *See id.*
292. *See id.*
293. *See supra* Part III.B.
294. *See supra* notes 105–110 and accompanying text.
295. *See* Grubb, *supra* note 110.

attorneys and clients, but it may help foster the buy-in that allows an ADR program to function effectively and smoothly. This is especially true when an ADR program seeks to delegate a large portion of the case management responsibilities to the attorneys themselves—as New Rule 16.1 has done.[296] Soliciting feedback and partnering with the bar of practitioners can help facilitate the design of an effective program that promotes efficiency and meets the judiciary's goal of removing cases from the court's docket as quickly and cheaply as possible.

3. Lesson Three: "Better is Good"

As discussed above, one of the reasons that New Rule 16.1 has proven to be so much more effective than Old Rule 16.1 may be precisely because it is less ambitious.[297] Old Rule 16.1 was written with the intention that all controversies within a certain dollar amount, with a few exceptions, would be forced into arbitration.[298] This made Old Rule 16.1 somewhat of a catch-all provision which—as is discussed above—did not prove to be particularly effective.[299] On the other hand, where Old Rule 16.1 was written broadly, New Rule 16.1 was written narrowly, with a specific type of case—personal injury—in mind.[300] In that arena, it has excelled. At first glance, it may look like New Rule 16.1 wins because it cheats: of course an ADR provision narrowly-tailored to handle some of the simplest and most repetitive disputes will perform better than an omnibus rule that sends more complex matters through an ADR process along with the simplest ones—it is not a fair comparison. But when it comes to accomplishing the stated goals this Note identifies for an ADR program—to free up judicial time and resources for courts, and save time and money for litigants by reaching extrajudicial resolutions quickly[301]—New Rule 16.1 is just as valid as a more expansive provision like Old Rule 16.1. If

296. *See supra* note 210 and accompanying text.

297. *See supra* Part V.A.

298. *See supra* note 79 and accompanying text.

299. *See supra* Part III.B.

300. *See* Grubb, *supra* note 110 (noting that the Superior Court paid special attention to the concerns of the personal injury bar in drafting New Rule 16.1).

301. *See supra* notes 16–17 and accompanying text.

programs like New Rule 16.1 can quickly and cheaply resolve conflicts and take those cases off a court's docket, they are a success.

In light of these lessons, perhaps the best advice regarding the design of ADR systems in other jurisdictions is this: don't try to write an omnibus catch-all ADR provision. Instead, identify a type of dispute that eats up judicial resources and design an ADR program that effectively meets the needs of those litigants. Solicit feedback. Listen to and address the concerns of experienced practitioners so they can wholeheartedly recommend the ADR process to their clients and stand by its outcomes. Stay flexible and be willing to tweak procedural rules to facilitate the concerns of litigants and litigators so that ADR leads to as few appeals for courtroom justice as possible.

Will jurisdictions that implement this advice succeed in designing ADR programs that remove large portions of all case types from their dockets? Probably not. But they will likely succeed in removing *some* cases from their crowded dockets, freeing up *some* judicial resources, and delivering speedy and equitable relief to *some* litigants. This approach is not likely to completely solve the problem of judicial efficiency, but it is likely to make it better. And, as Former President Barack Obama used to say to his staff during policy debates regarding the possibility of incremental change, "[B]etter is good."[302]

CONCLUSION

The Delaware Superior Court's three iterations of its ADR program provide a unique look at how different approaches to ADR perform in a sophisticated and highly respected judicial structure. From an analysis of these programs, New Rule 16.1, the most recent of the three, has been the most successful in meeting the goals of speediness and judicial efficiency, while subsequently outweighing prejudicial concerns that may arise from it. For Delaware, New Rule 16.1 stands as its most successful ADR program to date.

As other jurisdictions across the United States seek to implement ADR programs with the goal of delivering equitable resolutions to litigants while preserving judicial resources, they

302. *See* Jeffrey Goldberg, *Why Obama Fears for Our Democracy*, ATLANTIC (Nov. 16, 2020), https://perma.cc/LZ3S-G4KK.

would do well to apply the lessons that the Delaware Superior Court has learned along the way. Rather than drafting catch-all provisions that attempt to keep all sorts of cases off their courts' dockets whenever possible, those court systems should investigate what types of common disputes are well-suited to be solved through extrajudicial processes, solicit feedback and concerns from their local bars of attorneys, and draft narrow provisions that are well-suited to these goals. By focusing on these achievable objectives, state courts across the country may well preserve the interests of justice while making progress towards the goal of judicial efficiency.

APPENDIX

New Rule 16.1 Cases: January 1, 2018—June 30, 2021

Docket No.	Complaint Filed Date	Arbitration Hearing Date	Arbitrator's Decision Date	Case Disposed Date	Disposed After Arbitration	De Novo Trial Demanded	Disposed Before Arbitration	Days From Filing to Disposition
K18C-01-004	1/5/18	5/7/18	6/14/18	8/27/18		✓		234
N18C-01-095	1/10/18			9/19/18			✓	252
N18C-01-065	1/8/18	2/19/19	2/27/19	4/27/19	✓			474
N18C-01-193	1/17/18	8/15/18	8/17/18	10/30/18	✓			286
N18C-01-230	1/20/18		7/12/18	10/2/18	✓			255
K18C-01-041	1/23/18	8/30/18	9/6/18	1/2/19		✓		344
N18C-01-313	2/5/18	5/30/18	6/1/18	7/31/18	✓			176
N18C-02-062	2/9/18	9/13/18	9/19/18	1/28/19		✓		353
S18C-02-013	2/9/18			12/9/19		✓		668
N18C-02-113	2/16/18		8/2/18	2/1/19		✓		350
K18C-03-003	3/1/18	10/25/18	10/31/18	2/14/19	✓			350
K18C-03-001	3/1/18	7/30/18	8/6/18	12/20/18	✓			294
N18C-03-002	3/1/18	8/29/18	9/24/18	10/24/18	✓			237
N18C-03-022	3/2/18	11/12/18	11/20/18	2/27/19	✓			362
K18C-03-008	3/8/18	6/7/18		8/19/18	✓			164
K18C-03-014	3/13/18	2/26/19	4/12/19	9/18/19	✓			554
N18C-03-101	3/13/18	7/18/18		3/21/19	✓			373
N18C-03-138	3/16/18	8/23/18	8/28/18	10/15/18	✓			213
N18C-03-192	3/21/18	3/19/19	3/21/19	4/4/22		✓		1475
N18C-03-198	3/22/18	8/7/18	8/17/18	9/25/18	✓			187
N18C-03-273	3/28/18	7/24/18	7/30/18	8/15/18	✓			140
N18C-04-013	4/3/18	9/27/18	10/2/18	10/23/18	✓			203
N18C-04-113	4/11/18	10/9/18	10/16/18	12/26/18	✓			259
N18C-04-152	4/13/18	10/1/18	10/3/18	8/13/20		✓		853

N18C-04-216	4/20/18	8/19/18	9/10/18	10/26/18	✓			189
N18C-04-266	4/25/18	4/22/19	4/30/19	6/10/19	✓			411
K18C-05-040	5/18/18			8/19/18			✓	93
N18C-05-198	5/22/18	10/3/18	10/4/18	11/27/18	✓			189
N18C-05-221	5/23/18	10/3/18	10/4/18	10/31/18	✓			161
K18C-05-052	5/25/18			3/2/21		✓		1012
N18C-05-288	5/31/18	11/5/18	11/8/18	12/11/18	✓			194
N18C-06-013	6/4/18	10/2/18	10/5/18	11/1/18	✓			150
K18C-06-005	6/8/18	10/26/18	10/30/18	10/28/19		✓		507
K18C-06-032	6/21/18	10/9/18		11/27/18	✓			159
K18C-06-027	6/20/18		4/2/19	5/23/19	✓			337
N18C-06-161	6/21/18	10/2/19		12/5/19	✓			532
N18C-06-173	6/22/18	1/28/19	1/28/19	7/9/19		✓		382
N18C-06-188	6/26/18	11/7/18	11/16/18	12/19/18	✓			176
N18C-07-001	7/2/18	10/28/19	10/30/19	2/25/20	✓			603
N18C-07-021	7/3/18	5/9/19	5/15/19	7/8/19	✓			370
N18C-07-059	7/6/18	10/23/18	10/29/18	11/28/18	✓			145
N18C-07-019	7/17/18		1/7/19	2/20/19	✓			218
N18C-07-203	7/23/18	12/7/18	12/13/18	2/11/19	✓			203
K18C-07-029	7/23/18	7/3/19	7/9/19	8/21/19	✓			394
N18C-07-273	7/27/18	3/21/19	3/25/19	7/17/19		✓		355
N18C-08-094	8/10/18	7/10/20	7/10/20	8/11/20	✓			732
N18C-08-152	8/16/18	1/31/19	2/1/19	3/26/19	✓			222
S18C-08-026	8/22/18	2/6/19	2/18/19	7/9/19		✓		321
N18C-08-217	8/22/18	2/25/19		5/20/20		✓		637
N18C-08-273	8/28/18	8/15/19	8/16/19	10/7/19	✓			405
N18C-08-294	8/30/18	9/17/19	9/18/19	11/7/19	✓			434
K18C-09-006	9/7/18	4/15/19	4/18/19	5/30/19	✓			265
N18C-09-062	9/10/18	3/11/19	3/13/19	4/4/19	✓			206
K18C-09-014	9/14/18			1/22/19	✓			130
S18C-09-027	9/19/18	2/12/19	2/19/19	4/9/19	✓			202
S18C-09-024	9/19/18	2/8/19	2/11/19	3/21/19	✓			183

N18C-09-159	9/19/18	4/3/19	4/9/19	7/16/19	✓			300
N18C-09-213	9/25/18	2/28/19	3/26/19	5/15/19	✓			232
K18C-09-031	9/28/18		8/12/19	4/6/20	✓			556
N18C-09-277	9/28/18	3/12/19	3/13/19	4/14/20		✓		564
N18C-10-052	10/4/18	1/11/19	1/17/19	3/19/19	✓			166
N18C-10-053	10/4/18	1/11/19	1/17/19	3/18/19	✓			165
N18C-10-151	10/11/18	6/20/19	6/25/19	9/10/19	✓			334
N18C-10-165	10/12/18	3/26/19	3/27/19	6/21/19		✓		252
N18C-10-241	10/20/18	5/13/19	5/17/19	9/18/19		✓		333
S18C-10-022	10/23/18	4/1/19	4/3/19	8/9/19		✓		290
N18C-11-005	11/1/18	2/27/19	2/28/19	6/3/19		✓		214
K18C-11-017	11/8/18			9/5/19			✓	301
N18C-11-126	11/14/18			6/4/19			✓	202
N18C-11-114	11/13/18	4/23/19	4/26/19	6/17/19	✓			216
N18C-11-163	11/18/18	3/26/19	3/27/19	5/7/19	✓			170
K18C-11-045	11/28/18	4/11/19	4/17/19	9/30/21		✓		1037
S18C-11-030	11/29/18	3/26/19	4/3/19	5/15/19	✓			167
K18C-11-051	11/30/18	5/3/19	5/7/19	7/17/19	✓			229
S18C-12-004	12/4/18			5/9/19			✓	156
N18C-12-059	12/6/18	5/24/19	5/28/19	7/1/19	✓			207
N18C-12-062	12/6/18	11/25/19	12/3/19	5/22/20		✓		533
S18C-12-011	12/12/18	5/23/19	5/28/19	7/10/19	✓			210
K18C-12-012	12/13/18	5/1/19	5/2/19	6/12/19	✓			181
N18C-12-218	12/19/18	9/9/20	9/15/20	10/29/20	✓			680
N18C-12-220	12/20/18	6/10/19	6/11/19	7/28/20		✓		586
N18C-12-216	12/19/18	5/16/19	5/22/19	8/5/19	✓			229
N19C-01-039	1/4/19	6/21/19	6/27/19	7/31/19	✓			208
N19C-01-070	1/9/19	11/18/19	11/22/19	1/7/20	✓			363
N19C-01-081	1/9/19	12/2/19	12/5/19	5/20/20		✓		497
N19C-01-106	1/11/19	6/12/19	6/17/19	10/22/19	✓			284
N19C-01-138	1/14/19	6/28/19	7/1/19	8/1/19	✓			199
S19C-01-046	1/24/19	7/9/19	7/12/19	10/8/19	✓			257

N19C-01-269	1/25/19	6/26/19	6/28/19	8/1/19	✓			188
N19C-01-319	1/30/19	6/19/19	6/21/19	9/13/19		✓		226
S19C-01-047	1/31/19			4/29/19			✓	88
N19C-02-104	2/12/19	6/14/19	6/17/19	7/27/19	✓			165
K19C-02-018	2/12/19	5/23/19	5/24/19	6/14/19	✓			122
N19C-02-106	2/12/19	7/17/19	7/22/19	3/16/20		✓		398
N19C-02-142	2/15/19	6/17/19	6/20/19	8/5/19	✓			171
N19C-02-131	2/14/19	12/17/19	12/20/19	1/17/20	✓			337
N19C-02-187	2/21/19			8/6/19			✓	166
N19C-02-217	2/25/19	8/27/19	8/28/19	11/23/20		✓		637
N19C-02-167	2/27/19	8/27/19	8/28/19	5/19/20		✓		447
N19C-03-017	3/4/19			8/2/19			✓	151
N19C-03-086	3/8/19	11/11/20	11/12/20	1/25/21	✓			689
K19C-03-016	3/13/19			1/3/20			✓	296
N19C-03-187	3/19/19	11/19/19	11/22/19	6/1/20		✓		440
N19C-03-198	3/19/19	4/28/20	6/9/20	10/22/21		✓		948
N19C-03-250	3/25/19	9/20/19	9/26/19	2/28/20		✓		340
K19C-04-005	4/1/19		9/11/19	3/4/21		✓		703
N19C-04-019	4/2/19			12/18/19			✓	260
N19C-04-041	4/3/19	9/18/19	9/24/19	11/12/19	✓			223
K19C-04-016	4/4/19			9/18/19			✓	167
N19C-04-087	4/9/19	12/5/19	12/11/19	12/8/21		✓		974
N19C-04-123	4/11/19	4/19/21	4/21/21	10/19/21		✓		922
N19C-04-122	4/11/19	10/18/19	10/23/19	12/13/19	✓			246
N19C-04-155	4/17/19	12/6/19	12/9/19	12/10/20		✓		603
N19C-04-173	4/18/19	12/5/19	12/5/19	1/24/20	✓			281
S19C-04-034	4/26/19	10/14/19	10/15/19	11/22/19	✓			210
N19C-04-263	4/30/19	10/25/19	10/1/19	12/3/19	✓			217
K19C-05-001	5/1/19	9/13/19	9/13/19	11/18/19	✓			201
K19C-05-003	5/2/19	9/30/19	10/2/19	11/5/19	✓			187
N19C-05-085	5/10/19	12/11/19	12/13/19	4/6/20		✓		332
N19C-05-173	5/17/19	9/24/19	9/25/19	11/20/19	✓			187

S19C-06-006	6/5/19			12/23/19			✓	201
N19C-06-087	6/11/19	6/4/20	6/8/820	1/28/21		✓		597
N19C-06-147	6/17/19	2/13/20	2/14/20	3/9/20	✓			266
N19C-06-182	6/20/19	9/18/20	9/21/20	11/18/21	✓			882
N19C-06-197	6/21/19	10/17/19	10/23/19	12/2/19	✓			164
N19C-06-213	6/24/19	1/7/20	1/9/20	3/30/20	✓			280
N19C-06-238	6/27/19	1/9/20	1/13/20	3/12/20		✓		259
N19C-07-135	7/17/19	1/13/20	1/15/20	5/19/20		✓		307
N19C-07-137	7/17/19	1/13/20	1/15/20	6/9/20		✓		328
N19C-07-219	7/26/19	11/14/19	11/15/19	1/15/20	✓			173
N19C-07-229	7/29/19	12/18/19	12/23/19	2/7/20	✓			193
K19C-07-036	7/31/19	12/16/19	12/22/19	2/13/20	✓			197
N19C-08-040	8/6/19	1/29/20	1/31/20	4/8/20		✓		246
N19C-08-105	8/12/19	1/7/20	1/9/20	2/17/20	✓			189
N19C-08-127	8/15/19	1/10/20	1/13/20	2/8/20	✓			177
N19C-08-179	8/19/19	12/6/19	12/11/19	1/21/20	✓			155
N19C-08-191	8/20/19	2/25/20	2/26/20	7/17/20	✓			332
S19C-08-024	8/23/19	12/5/19	12/11/19	3/2/20		✓		192
N19C-08-243	8/26/19	1/21/21	1/26/21	4/28/21	✓			611
N19C-08-278	8/28/19	12/17/19	12/31/19	1/23/20	✓			148
N19C-08-310	8/30/19	2/27/20	3/3/20	5/9/20		✓		253
N19C-09-034	9/5/19	1/15/20	1/30/20	10/28/21		✓		784
N19C-09-037	9/5/19	2/5/20	2/6/20	3/18/20	✓			195
N19C-09-064	9/9/19	1/22/20	1/24/20	3/26/20	✓			199
N19C-09-061	9/9/19	2/13/20	2/14/20	6/15/20	✓			280
S19C-09-006	9/10/19	2/13/20	2/19/20	3/25/20	✓			197
N19C-09-071	9/10/19	2/24/20	2/27/20	6/29/21	✓			658
N19C-09-080	9/11/19	1/14/20	1/14/20	5/2/20		✓		234
N19C-09-122	9/13/19	7/7/20	7/8/20	8/24/20	✓			346
N19C-09-128	9/16/19	7/9/20	7/10/20	9/24/20	✓			374
N19C-09-143	9/16/19	3/13/20	3/26/20	5/4/20	✓			231
N19C-09-149	9/17/19			6/4/20	✓			261

N19C-09-176	9/19/19	3/18/20	4/2/20	5/6/20	✓			230
N19C-09-193	9/20/19	6/18/20	6/19/20	10/14/20	✓			390
K19C-09-021	9/20/19	7/21/20	7/22/20	12/29/20	✓			466
N19C-09-215	9/23/19	3/3/20	3/5/20	5/7/20	✓			227
N19C-09-235	9/24/19	1/16/20	1/21/20	1/15/21		✓		479
K19C-09-041	9/30/19			2/20/20			✓	143
N19C-10-095	10/10/19	3/5/20	3/11/20	10/3/22		✓		1089
N19C-10-126	10/15/19	1/2/20	1/6/20	3/11/20	✓			148
N19C-10-232	10/28/19	8/27/20	8/31/20	12/23/20	✓			422
N19C-11-090	11/11/19		5/12/20	7/6/20	✓			238
S19C-11-018	11/15/19	4/20/20	4/27/20	6/26/20	✓			224
N19C-11-149	11/14/19	1/29/21	2/3/21	4/21/21	✓			524
S19C-11-024	11/22/19	8/17/20	8/21/20	10/5/20	✓			318
N19C-11-244	11/25/19	4/16/20	4/20/20	7/6/20	✓			224
N19C-11-237	11/22/19	4/30/20	5/4/20	5/17/22	✓			907
N19C-11-272	11/27/19		4/21/22	6/10/22	✓			926
N19C-12-014	12/2/19	3/10/21	3/15/21	6/11/21	✓			557
N19C-12-068	12/6/19	4/21/20	4/24/20	6/5/20		✓		182
K19C-12-020	12/16/19	4/29/20	4/30/20	10/13/20		✓		302
N19C-12-161	12/18/19	4/8/20	4/14/20	7/30/20	✓			225
N20C-01-021	1/3/20	5/11/20	5/15/20	7/20/20	✓			199
N20C-01-060	1/8/20	6/22/20	6/23/20	8/26/20		✓		231
N20C-01-055	1/8/20	5/14/20	5/20/20	6/9/20	✓			153
K20C-01-018	1/9/20	5/28/20	6/1/20	6/22/20	✓			165
N20C-01-132	1/15/20	6/16/20	6/17/20	9/2/20	✓			231
K20C-01-035	1/23/20	7/7/21	7/8/21	9/17/21	✓			603
N20C-01-208	1/24/20	5/6/20	5/7/20	8/3/20		✓		192
K20C-01-042	1/27/20	6/9/20	6/15/20	7/13/20	✓			168
K20C-01-047	1/29/20	10/7/20	10/9/20	2/8/21	✓			376
N20C-01-260	1/30/20			9/2/20			✓	216
N20C-01-271	1/31/20	7/21/20	8/5/20	10/9/20		✓		252
N20C-02-055	2/10/20	8/10/20	8/11/20	10/2/20	✓			235

K20C-02-016	2/12/20	8/4/20	8/7/20	10/1/20		✓		232
N20C-02-127	2/14/20	10/29/20	10/30/20	12/14/20	✓			304
K20C-02-019	2/14/20	8/13/20	8/17/20	5/13/21		✓		454
N20C-02-135	2/15/20	7/28/20	7/30/20	9/2/20	✓			200
N20C-02-187	2/20/20	11/10/20	11/12/20	5/26/21	✓			461
S20C-02-023	2/27/20	7/22/20	7/29/20	10/5/20	✓			221
K20C-02-039	2/27/20	7/28/20	7/29/20	6/8/21		✓		467
N20C-02-282	2/27/20	6/30/20	7/7/20	3/23/21		✓		390
N20C-03-090	3/10/20	7/21/20	7/23/20	11/30/20	✓			265
K20C-03-036	3/23/20	8/12/20	8/13/20	10/30/20		✓		221
K20C-03-040	3/26/20		8/25/20	10/1/20	✓			189
N20C-03-283	3/30/20	10/28/20	11/2/20	12/15/20	✓			260
K20C-04-003	4/2/20	12/17/20	12/18/20	2/15/21		✓		319
S20C-04-015	4/16/20	12/16/20	12/17/20	7/7/21		✓		447
N20C-04-097	4/13/20	2/19/21	2/24/21	7/21/21	✓			464
N20C-04-149	4/17/20	9/21/20	9/24/20	11/5/20	✓			202
K20C-04-027	4/23/20			11/24/20			✓	215
K20C-04-026	4/23/20			1/8/21			✓	260
N20C-04-173	4/24/20	11/18/20	11/23/20	1/13/21	✓			264
N20C-04-246	4/29/20	10/28/20	10/30/20	1/12/21	✓			258
N20C-04-262	4/30/20	11/13/20	11/16/20	12/18/20	✓			232
N20C-05-094	5/11/20	3/29/21	3/31/21	6/28/21		✓		413
K20C-05-026	5/15/20	1/26/20	2/2/21	10/22/21		✓		525
N20C-05-127	5/13/20	1/8/21	1/14/21	8/3/21	✓			447
N20C-05-172	5/19/20	11/2/20	11/2/20	2/9/21	✓			266
N20C-05-191	5/22/20	3/3/21	3/8/21	3/7/22	✓			654
S20C-05-022	5/20/20	10/6/20	10/12/20	12/30/20	✓			224
S20C-05-029	5/26/20	11/2/20	11/4/20	11/20/20	✓			178
N20C-05-234	5/28/20	5/5/21	5/6/21	7/20/21	✓			418
N20C-05-256	5/29/20	3/29/21	3/29/21	8/23/21		✓		451
N20C-06-018	6/2/20	11/23/20	11/24/20	12/23/20	✓			204
N20C-06-039	6/3/20	11/4/20	11/5/20	1/20/21	✓			231

N20C-06-073	6/5/20	11/23/20	11/25/20	1/25/21	✓			234
N20C-06-149	6/12/20	9/15/21	9/16/21	5/26/22	✓			713
N20C-06-158	6/15/20	1/27/21	1/28/21	10/5/21		✓		477
K20C-06-018	6/15/20	9/16/20	10/1/20	11/23/20	✓			161
N20C-06-255	6/24/20	12/2/20	12/8/20	2/3/21	✓			224
S20C-06-033	6/29/20		1/22/21	3/2/22		✓		611
N20C-06-260	6/25/20	1/27/21	2/1/21	10/27/21		✓		489
N20C-06-289	6/29/20	12/29/20	1/5/21	7/28/21		✓		394
N20C-07-002	7/1/20	1/13/21	1/14/21	3/2/21	✓			244
N20C-07-182	7/17/20	1/4/21	1/8/21	4/11/21	✓			268
K20C-07-029	7/20/20	1/22/21	1/25/21	5/9/22		✓		658
S20C-07-026	7/21/20	11/16/20	11/18/20	1/12/21	✓			175
N20C-07-211	7/21/20	3/1/21	3/2/21	6/23/21		✓		337
S20C-07-033	7/28/20			1/13/21			✓	169
N20C-07-308	7/31/20			3/30/21			✓	242
S20C-08-003	8/5/20		5/5/21	3/22/22		✓		594
N20C-08-060	8/7/20	1/11/21	1/14/21	2/22/21		✓		199
S20C-09-010	9/10/20	3/3/21	3/3/21	6/6/22		✓		634
N20C-09-151	9/16/20	3/18/21	3/18/21	6/18/21		✓		275
N20C-09-153	9/16/20	4/11/22	4/12/22	5/7/22	✓			598
K20C-09-010	9/15/20	6/1/22	6/2/22	10/21/22		✓		766
N20C-09-170	9/17/20	6/25/21	6/28/21	8/26/21	✓			343
N20C-09-236	9/24/20	7/21/21	7/30/21	9/1/21	✓			342
N20C-09-309	9/30/20	5/24/21	5/24/21	9/2/21	✓			337
N20C-10-056	10/7/20	3/16/21	3/16/21	6/9/21	✓			245
N20C-10-072	10/8/20	2/16/21	2/27/21	7/25/22		✓		655
N20C-10-096	10/12/20	5/25/21	5/27/21	7/23/21	✓			284
K20C-10-023	10/15/20	3/8/21	3/8/21	4/12/21	✓			179
N20C-10-142	10/15/20			8/31/21			✓	320
N20C-10-176	10/20/20	3/12/21	3/19/21	4/29/21	✓			191
K20C-10-034	10/22/20		8/19/21	10/11/21	✓			354
N20C-10-267	10/29/20	2/17/21	2/19/21	5/26/21	✓			209

N20C-10-284	10/30/20	3/2/21	3/2/21	4/15/21	✓			167
N20C-11-076	11/9/20	5/13/21	5/13/21	7/9/21	✓			242
K20C-11-009	11/10/20	8/10/21	8/11/21	11/15/21	✓			370
N20C-11-203	11/23/20			10/7/21			✓	318
N20C-11-112	11/20/20	8/27/21	8/30/21	8/30/21	✓			283
N20C-11-212	11/24/20	5/13/21	5/13/21	6/28/21	✓			216
K20C-11-021	11/30/20	2/23/21	2/24/21	3/12/21	✓			102
N20C-12-017	12/2/20	4/26/21	4/27/21	6/4/21	✓			184
N20C-12-013	12/2/20	7/13/21	7/13/21	5/10/22		✓		524
K20C-12-007	12/5/20	1/28/22	1/31/22	3/29/22	✓			479
N20C-12-080	12/7/20	5/12/21	5/13/21	7/17/21	✓			222
S20C-12-012	12/8/20	7/26/21	7/27/21	9/16/21	✓			282
N20C-12-098	12/9/20	5/10/21	5/12/21	6/5/21	✓			178
N20C-12-212	12/23/20	5/21/21	5/24/21	2/23/22		✓		427
K20C-12-032	12/29/20	6/2/21	6/9/21	7/9/21	✓			192
N21C-01-041	1/7/21	7/13/21	7/14/21	10/27/22		✓		658
S21C-01-014	1/14/21	6/9/21	6/11/21	7/21/21	✓			188
N21C-01-121	1/12/21			6/22/21			✓	161
N21C-01-128	1/18/21	7/20/21	7/21/21	8/27/21	✓			221
S21C-01-021	1/25/21	6/24/21	6/30/21	7/23/21	✓			179
N21C-01-156	1/21/21	5/27/21	5/28/21	6/30/21	✓			160
N21C-01-169	1/22/21	11/23/21	11/30/21	12/30/21	✓			342
N21C-01-184	1/25/21	6/22/21	6/24/21	8/2/21	✓			189
N21C-01-224	1/27/21	7/29/21	7/30/21	9/29/21	✓			245
K21C-02-004	2/2/21	8/15/22	8/16/22	12/13/22	✓			679
N21C-02-066	2/5/21	8/8/22	8/10/22	8/27/22	✓			568
N21C-02-073	2/8/21	11/8/21	10/12/21	11/16/21	✓			281
N21C-02-104	2/11/21	2/11/22	2/14/22	3/23/22	✓			405
N21C-02-107	2/11/21	7/29/21	7/30/21	9/28/21	✓			229
N21C-02-117	2/12/21	10/7/21	10/11/21	1/18/22	✓			340
N21C-02-112	2/11/21	4/26/21	6/2/21	8/19/21	✓			189
N21C-02-130	2/12/21			9/13/21			✓	213

N21C-02-139	2/15/21	8/31/21	9/1/21	11/9/21		✓		267
N21C-02-196	2/22/21	10/27/21	11/1/21	1/10/22	✓			322
N21C-02-225	2/25/21	12/1/21	12/2/21	9/15/22	✓			567
N21C-02-238	2/26/21	7/14/21	7/14/21	9/29/21	✓			215
S21C-03-004	3/3/21	7/12/21	7/13/21	8/27/21	✓			177
N21C-03-032	3/3/21	7/19/21	7/19/21	9/8/21		✓		189
N21C-03-045	3/4/21	9/10/21	9/16/21	12/2/21	✓			273
N21C-03-036	3/4/21			7/28/21			✓	146
N21C-03-196	3/18/21	6/28/21	6/29/21	9/16/21	✓			182
N21C-03-208	3/19/21	8/23/21	8/24/21	6/22/22		✓		460
N21C-03-216	3/22/21	10/6/21	10/7/21	11/11/21	✓			234
K21C-03-029	3/19/21	7/22/21	7/27/21	10/20/21		✓		215
N21C-03-239	3/24/21	6/21/21	6/23/21	8/5/21	✓			134
N21C-03-252	3/25/21			10/1/21			✓	190
N21C-04-035	4/6/21	7/19/21	7/20/21	9/8/21	✓			155
N21C-04-056	4/9/21	9/8/21	9/9/21	11/5/21	✓			210
N21C-04-082	4/13/21	10/18/21	10/25/21	11/30/21	✓			231
N21C-04-097	4/15/21	10/29/21	11/3/21	1/24/22	✓			284
N21C-04-189	4/27/21	10/8/21	10/11/21	11/29/21	✓			216
N21C-04-210	4/30/21	6/21/22	6/22/22	8/17/22	✓			474
N21C-05-009	5/3/21	9/28/21	9/29/21	10/18/22		✓		533
N21C-05-026	5/4/21	1/27/22	1/28/22	4/24/22	✓			355
N21C-05-067	5/7/21	9/22/21	9/24/21	11/2/21	✓			179
N21C-05-121	5/14/21	8/30/21	8/30/21	9/21/21	✓			130
N21C-05-133	5/17/21	11/3/21	11/9/21	12/9/21	✓			206
K21C-05-013	5/18/21	12/1/21	12/2/21	1/12/22	✓			239
K21C-05-011	5/17/21	11/21/22	11/22/22	12/27/22	✓			589
N21C-05-162	5/20/21	1/18/22	1/20/22	3/9/22	✓			293
N21C-05-233	5/27/21	8/27/21	8/30/21	10/12/21	✓			138
N21C-06-045	6/4/21	6/29/22	6/30/22	12/21/22		✓		565
S21C-06-009	6/4/21	9/17/21	9/20/21	10/8/21	✓			126
K21C-06-013	6/7/21	10/28/21	11/4/21	11/15/21	✓			161

N21C-06-061	6/7/21	12/1/21	12/2/21	1/10/22	✓			217
N21C-06-072	6/7/21	1/11/22	1/12/22	2/10/22	✓			248
S21C-06-014	6/10/21	11/22/21	11/23/21	2/24/22		✓		259
N21C-06-139	6/14/21	11/1/21	11/2/21	11/17/21	✓			156
N21C-06-179	6/18/21	12/7/21	12/8/21	12/29/21	✓			194
N21C-06-183	6/18/21	3/28/22	3/26/22	6/1/22	✓			348
N21C-06-206	6/22/21	1/25/22	1/26/22	4/1/22	✓			283
N21C-06-232	6/24/21			12/1/21			✓	160
N21C-06-258	6/29/21	12/20/21	12/21/21	1/28/22	✓			213

	Disposed After Arbitration	De Novo Trial Demanded	Disposed Before Arbitration	Total
Number of Cases:	214	82	25	**321**
% of Referred Cases:	66.67%	25.55%	7.79%	**100%**
% of Hearings:	72.30%	27.70%	0.00%	**100%**
Avg Days to Disposition:	285.5	473.2	203.4	**327.1**