

From: [MacGregor, Susan D.](#)
To: [Allison Hayes](#)
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Hi Ms. Hayes, I have been meaning to offer my two cents on the proposed changes to Case Evaluation. Unfortunately I just realized that the comment period recently closed, but perhaps you will let me sneak this in.... I'd like to comment on how valuable CE is here [in Upper Michigan](#), where I have been practicing for nearly 30 years. My practice since 1995 has been mostly insurance defense, primarily medical malpractice in the last 15 years. I represent 14 of the 16 hospitals here in Upper Michigan. I have participated in CE, both as counsel for litigants and as panelist, for cases from all over the U.P.

It is not so much how many cases resolve in the 28 days after CE, but how many cases resolve BECAUSE OF CE (at some later point). Here in the U.P., the panels typically only hear the one case on a particular day. The panelists read everything that is submitted, and view their task as "getting the case settled." The numbers we get at CE are typically viewed as legitimate. I would bet that a large percentage of cases settle at CE or at some point prior to trial at a number close to case evaluation.

AND the process is SO valuable for other reasons as well, in that both sides have to sit down and really think about their case; and we also hear what is essentially the other side's closing argument and thereby get a very good look at the case and can assess its strengths/weaknesses before having to go through trial. We here in the UP do CE early, before all discovery is done. Discovery remains open for a significant period of time after CE. So CE often results in resolution 6-8 months into the case, after just a couple of depositions and long before a trial is even scheduled, resulting in significant cost savings and efficiency.

The fact that CE is required is, in my opinion, very important. Facilitative Mediation is also helpful, but it is significantly more expensive and it only works when the defense has been convinced it should open the checkbook. Case evaluation often gives me/my clients a view of the plaintiff's case that we would not get at facilitation; and vice versa. Thus because of case evaluation, the parties have a more realistic idea of the true settlement value of the case. Facilitation works better after CE. I expect plaintiffs will not voluntarily agree to CE, and I am not likely to agree to Facilitation until much later in the case. I think something very valuable will be lost if CE is no longer mandatory.

Thank you for submitting these comments, if it is still permissible at this late date.

Susan



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