

What Does the Data Say? Creating Value for Clients in Resolving Conflict *is* Early Dispute Resolution.

By Ellie K. Vilendrer

Early in my career, I co-founded a data science tech startup. Our technology leveraged data to help app developers maximize profits by informing their most important business decisions. Consequent to my venture into data science, I witnessed firsthand the power of data to transform decision making. This background, a career in litigation, and a confluence of disciplinary studies—including finance, traditional and behavioral economics, game theory, and negotiation strategy—led me to an important question: *How could attorneys maximize value for their clients in resolving conflict?* I realized that, just as data could help app developers optimize their business outcomes, it could help litigants in the same way.

Wanting to understand the factors that lead to better outcomes, and the magnitude of the impact of those factors, we designed a study to confirm and measure the value add of early dispute resolution (“EDR”) in resolving legal disputes. We are currently in the process of collecting responses from civil litigators to a national [survey](#) and are a quarter of the way to our goal.

The data that we collect will allow us to quantify the value of the outcome for each case reported in the survey. Our objective is to use data segmentation to identify the factors correlated with the best outcomes. Some of the factors that we examine include: dispute resolution methods used and those which were dispositive; type of attorney-client fee agreement; phase of litigation at disposition; duration and expense of litigation; and counsel cooperation.

The qualitative metrics that we are obtaining from the survey will serve to enhance and contextualize the quantitative data gathered. The survey seeks attorney opinions on what makes for a successful outcome, whether the attorney considered the case a win for their client, and whether fees exceeded their estimate.

Cases reported in our sample thus far come from 24 different states. Of the cases reported, approximately 43% are valued between \$100,000 - \$1,000,000, 36% are valued below \$100,000, and 20% exceed \$1 million in controversy. Undoubtedly, there are different pressures, resources, and norms for cases with significant exposure than for those with relatively little. Looking at the correlations by case size would be fascinating and valuable—but only possible with more data.

We deeply appreciate the support of the attorneys, bar associations, and organizations who are enabling this research with their participation. If you are a civil litigator, please consider taking our [survey](#). If you are willing to share the survey or connect us with a bar association or affinity group which may be interested in participating, we would be grateful. The aggregated results will be shared with participating organizations, and we will publish the results in the hope that this will provide useful guidance to improve outcomes through a time-efficient and cost-effective means of resolving disputes.



Ellie K. Vilendrer is a business lawyer, arbitrator, and mediator. She has extensive experience serving healthcare, software, and technology companies, ranging from start-up to publicly traded, in roles including outside general counsel, intellectual property counsel, and privacy counsel. She is a co-Chair of the EDR Committee of the American Bar Association's Dispute Resolution Section. Ellie@Vilendrerlaw.com.