Mandatory Initial Discovery Pilot (MIDP)
Final Report

Prepared for the Judicial Conference Advisory Committee on Civil Rules

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Executive Summary

Judges in the District of Arizona and Northern District of Illinois volunteered to participate in the Mandatory Initial Discovery Pilot (MIDP) project in new civil cases initiated in district court from May/June 2017 through April/May 2020. The MIDP replaces the initial disclosures required by the Federal Rules of Civil Procedure with broader disclosure requirements. At the request of the Advisory Committee on Civil Rules, Federal Judicial Center researchers conducted this study of the MIDP. Findings include:

- 5,078 pilot cases were initiated from May 1, 2017, through April 30, 2020, in Arizona, and 12,133 pilot cases were initiated from June 1, 2017, through May 31, 2020, in Illinois Northern ("pilot case" is defined as one in which the MIDP notice was docketed).
- Regression analysis shows that pilot cases had shorter disposition times than non-pilot cases, controlling for case type, district, and the effects of the coronavirus pandemic.
- Surveys of attorneys in closed pilot cases show that respondents tended to rate the MIDP most positively in terms of providing the parties with information earlier in the case. Survey respondents were more neutral or negative toward the MIDP on a broader range of its potential effects.
    - Plaintiff attorneys tended to rate the MIDP's effects more positively than defendant attorneys, and Arizona attorneys tended to rate the MIDP's effects more positively than Illinois Northern attorneys.
    - When provided the opportunity to respond to open-ended survey questions, attorneys in Illinois Northern were more likely to express negative views, and attorneys in Arizona were more likely to express positive views, about the MIDP. In both districts, attorneys with more years of practice experience were more likely to express positive views about the MIDP.
- The MIDP participation rate (defined as at least one party making MIDP responses) was higher in Arizona than in Illinois Northern. Based on the study's docket analysis, the participation rate in Arizona was 65% for pilot cases compared to 44% in Illinois Northern. Based on its closed-case surveys, the participation rate in Arizona was about 65%, compared to 55% in Illinois Northern.
- The 30-day pilot deadline for MIDP responses (after the filing of a responsive pleading) appears to have been manageable in at least half of participating cases in the sample. The docket analysis shows that the median time in both pilot districts from first responsive pleading to first MIDP responses, when docketed, was 32 days for both plaintiffs and defendants.
- In an analysis of Rule 26(f) reports in pilot cases, disputes over the MIDP were brought to the court's attention in 7% of Arizona participating cases and 3% of Illinois Northern participating cases.
- There appears to have been little satellite litigation resulting from disputes over MIDP obligations. Motions to compel MIDP responses, for example, were filed in less than 1% of Arizona participating cases and in 3% of Illinois Northern cases.

Background

In June 2016, the Judicial Conference Committee on Rules of Practice and Procedure (Committee) approved the Mandatory Initial Discovery Pilot (MIDP) for use in the district courts.[1] Judges in two districts, the Northern District of Illinois and the District of Arizona, volunteered to participate in the pilot. The MIDP is based on the expectation that "civil litigation will be resolved more quickly and less expensively if relevant information is disclosed earlier and with less discovery practice."[2] The mandatory initial discovery replaces the initial disclosures otherwise required by Rule 26(a)(1). However, MIDP disclosures are broader than those under the existing rule because they require disclosure of both favorable and unfavorable information; the existing rule requires a party to disclose only favorable information. In contrast to the current rule, the MIDP "sweeps broadly."[3]

The MIDP was modeled in part on substantial mandatory disclosure requirements in some states, including Arizona, and the Canadian judicial system.[4] As noted in the Mandatory Initial Discovery User's Manual for the District of Arizona, "[i]t has been reported that lawyers and their clients manage this obligation faithfully, at first because of the consequences of failing to do so and eventually because of a change in culture among litigation practitioners."[5]

At the request of the Committee, researchers at the Federal Judicial Center (Center) have studied the MIDP since its inception.[6] Early on, Center researchers worked with staff in the participating districts to develop case events in the courts' docketing systems, enabling MIDP cases to be readily identified and tracked. This front-end work made it possible to, among other things, survey attorneys of record in closed MIDP cases on a regular basis since the fall of 2017.

The rest of the report is organized as follows. The next section addresses the goals of the MIDP, providing both historical context and information on the formulation of the pilot. That section is followed by an analysis of disposition times of pilot cases in the two participating districts. The

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1. *See* Report of the Proceedings of the Judicial Conference of the United States, Sept. 2016, at 30, *available at* https://www.uscourts.gov/sites/default/files/2016-09_0.pdf; Report of the Judicial Conference Committee on Rules of Practice and Procedure, Sept. 2016, at 20, *available at* https://www.uscourts.gov/sites/default/files/st09-2016_0.pdf. The MIDP was developed by the Advisory Committee on Civil Rules and its Pilot Projects Working Group. *See* Video: Introduction to the Mandatory Initial Discovery Pilot (Federal Judicial Center 2017), *available at* https://www.fjc.gov/content/321101/midpp-introduction-video. This 22-minute video, narrated by Judge Paul Grimm, then-chair of the Pilot Projects Working Group, is very clear as to the intended aims of the MIDP and worth watching for an overview of the MIDP's requirements.

2. Advisory Comm. on Civil Rules, Report to the Standing Committee, May 12, 2016, at 27, *available at* https://www.uscourts.gov/sites/default/files/2016-06-standing-agenda-book.pdf.

3. Salt River Project Agric. Improvement & Power Dist. v. Trench France SAS, 303 F. Supp. 3d 1004, 1008 (D. Ariz. 2018) (Campbell, J.).

4. https://www.fjc.gov/content/320224/midpp-standing-order; Mandatory Initial Discovery Users' Manual for the District of Arizona, at 3–4, *available at* https://www.azd.uscourts.gov/sites/default/files/documents/Arizona_MIDP_Users_Manual.pdf.

5. *Id.*

6. Our Center colleagues George Cort, Margaret S. Williams, Carly Giffin, and Vashty Gopinpersad provided invaluable assistance on this multiyear project, as did three Center interns, Danielle Rich, Annmarie Khairalla, and Mustafa Almusawi. Judges and court staff in the Northern District of Illinois and District of Arizona were generous with their time and attention throughout the pilot. Judges Amy St. Eve, Robert Dow, David Campbell, and Paul Grimm were instrumental in implementing the MIDP.

bulk of the report then summarizes findings from surveys sent to attorneys of record in recently closed MIDP cases. The survey section includes attorneys' evaluations of the MIDP's effects, with a focus on the issue of discovery costs, and a detailed analysis of their open-ended responses. After the survey section, the results from an intensive study of sampled pilot case dockets in both participating districts are presented. The body of the report concludes with a brief section discussing the findings as a whole. Additional information is provided in two appendices.[7]

The Goals of the MIDP

In requiring "early, substantial disclosures" of relevant information before commencement of party-driven discovery,[8] the MIDP builds on the disclosure-and-discovery model of information exchange that has been part of the Federal Rules of Civil Procedure since the early 1990s. In this model, the parties are required, at the outset of the litigation, to provide each other with certain types of information specified in the rule including disclosure of the names of persons likely to have discoverable information and copies of documents in the disclosing party's possession. These mandatory initial disclosures are *in addition to* party-driven discovery. The receiving side is not required to request the disclosure information, but the producing side is required to produce it.

The disclosure-and-discovery model was controversial in the 1990s and is, to a somewhat lesser extent, controversial today. Initial disclosures are clearly in tension with a purely party-driven discovery model. Critics of initial disclosures have long argued that requiring litigants, on their own initiative, without so much as a discovery request, to reveal information to their opponents is contrary to the adversarial nature of the system, the attorney's duty of zealous advocacy, and evidentiary rules regarding privilege and attorney work-product—especially when determining relevance is necessary to comply with the rule.[9] There is, traditionally, a "sporting theory of justice"[10] that a party should not be willing or eager to turn over information to the opposing side. The resulting gamesmanship can take many forms, from narrowly parsing discovery requests to withhold documents the requesting party would likely have considered included in the request or producing a less-than-ideal organizational deponent when a Rule 30(b)(6) deposition is noticed, to even more blatant forms of stonewalling and obstruction. Particularly obstreperous attorneys may even defend this conduct as zealous advocacy of their clients.

There is a contrary view that, while litigation may be adversarial, the parties and especially their attorneys should act in a more cooperative manner throughout the discovery process.[11]

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7. In addition to analyzing court data and conducting the closed-case surveys, FJC researchers interviewed judges and court staff in the participating districts to better understand the pilot's operations. Material from these interviews is presented at various points in the report.

8. *See* Video: Introduction, *supra* note 1.

9. Notably, Justice Scalia, joined by Justices Thomas and Souter, raised these exact concerns in his dissent from the Supreme Court's approval of the amendments to Rule 26. *See* Amendments to the Federal Rules of Civil Procedure and Forms, *reprinted in* 146 F.R.D. 402, 507–13 (1993).

10. Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 8 Baylor L. Rev. 1, 14 (1956), *reprinted from* 40 Am. L. Rev. 729 (1906). Pound suggested, in the early years of the 20th century, that "our exaggerated contentious procedure," *id.* at 15, was "probably only a survival of the days when a lawsuit was a fight between two claimants in which change of venue had been taken to the forum," *id.* at 14.

11. *See*, *e.g.*, The Sedona Conference, Cooperation Proclamation, 10 Sedona Conf. J. 331 (2009 Supp.). The influence of the Sedona Conference on current rulemaking efforts is obvious.

Proponents of cooperativeness argue that the purpose of discovery, as envisaged by the drafters of the federal rules, is full exchange of information between the parties: "the overriding objective civil discovery was designed to accomplish was the location and disclosure of all the unprivileged evidentiary data that might prove useful in resolving a given dispute."[12] Gamesmanship distorts the discovery process, concealing information for tactical advantage,[13] making adjudication of cases on their merits more difficult and costly. As early as the 1970s, Wayne Brazil was pointing to the "fundamental antagonism between the goal of truth through disclosure and the protective and competitive impulses that are at the center of the traditional adversary system of dispute resolution."[14] Proponents have long argued that a more cooperative model of discovery is an important part of the solution to many problems perceived as plaguing civil litigation—especially cost and delay.

Greater cooperation in the discovery process could, in theory, achieve the goals of its proponents without initial disclosures. But *robust* initial disclosures, as conceived by the proponents of cooperative discovery, are seen as a way to accelerate ("front-load") the shared search for truth at the heart of the discovery process, providing litigants with relevant information early in a case without the need to make and respond to formal discovery requests. A judge participating in the MIDP described the pilot to us as working on a belt-and-suspenders model—the two tools, disclosure and discovery, work together, even if in most cases, either one would perform the task. Under the MIDP, a party can always seek information that is not disclosed (disclosures serving as the belt) using the discovery methods found in the Rules (serving as suspenders). The point of the MIDP disclosures is not, in most cases, to replace party-driven discovery, but instead to empower the parties *in every case* to make an early case assessment of the strengths and weaknesses of their positions before incurring the costs of discovery. The expectation is that parties will, as a result, be better equipped to participate in case-management conferences at an early point in the case. Even though party-driven discovery will still be necessary in many cases to provide the litigants with the information needed to resolve the dispute, an early case assessment and effective case management may focus discovery on key issues in the case, potentially reducing costs.

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12. Wayne D. Brazil, *The Adversary Character of Civil Discovery: A Critique and Proposals for Change*, 31 Vand. L. Rev. 1295, 1298–99 (1978).

13. The opposite of the disclosure-and-discovery approach is to hide information until it can be sprung on an unsuspecting opponent, possibly at trial. "One of the MIDP's purposes is to avoid surprise at trial by providing fair notice to each side of the facts and theories underlying the other side's claims and defenses." Final Pretrial Order at 9, Cramton v. Grabbagreen Franchising LLC, No. 2:17cv4663 (D. Ariz. Oct. 2, 2020) (Lanza, J.). In the words of one party moving for sanctions in an MIDP case, "The MIDP seeks to eliminate litigation by ambush." Plaintiff's Motion for Sanctions at 2, BBK Tobacco & Foods LLP v. Skunk, Inc., No. 2:18cv2332 (D. Ariz. Feb. 2, 2021). *See also* Report & Recommendation, Leland v. Yavapai County, No. CV-17-8159-PCT-SPL (DMF) (D. Ariz. Aug. 8, 2017), 2019 WL 1547016, at *4 ("The MIDP . . . eliminates such gamesmanship.") (Fine, M.J.). One of the judges interviewed for this report agreed that the MIDP "eliminates the game playing of rule 34 requests parsed by the producing party. That's a good thing."

14. Brazil, *supra* note 12, at 1299. Brazil was a vocal critic of common discovery practices: "[S]ome lawyers might argue that a thoroughgoing adversarial professionalism commands the use of such obstructive devices whenever they appear to promise significant advantages for a client." *Id.* at 1331.

The courts participating in the MIDP adopted a general or standing order[15] explaining the parties' obligations under the pilot and setting forth the initial discovery requests to which the parties must respond.[16] All civil cases subject to mandatory initial disclosures under Fed. R. Civ. P. 26(a)(1), except those categories of cases exempted by the order, were included in the pilot program and subject to the order.[17] Some of the requirements set forth in the pilot standing order are:

- At the Rule 26(f) conference, parties must discuss the mandatory initial discovery listed in the Standing Order and describe their discussions (including limitations invoked and disputes) in their Rule 26(f) report.
- Parties must provide the requested information as to facts that are relevant to the parties' claims and defenses, whether favorable or unfavorable, and regardless of whether they intend to use the information in presenting their claims and defenses.
- Parties must file answers, counterclaims, cross-claims, and replies within the time set forth in Rule 12(a)(1)–(3), even if they have filed or intend to file a motion to dismiss or other preliminary motion.
- Parties must serve their initial discovery responses by the deadlines described in the Standing Order unless modified by the court.
- Parties must address certain issues relating to electronically stored information (ESI) and produce ESI by the deadline set in the Standing Order.
- Pilot judges should hold initial case-management conferences within the time set in Rule 16(b)(2) and discuss the parties' compliance with the mandatory discovery obligations.[18]

The MIDP provides for limited exemptions. For example, the Users' Manual for the District of Arizona provides two exemptions but states that "[c]ourts should not excuse parties from their obligation to provide timely discovery responses under the MIDP."[19] At the same time, experience with the pilot has proven that judges applying the MIDP must do so in a flexible way suited to the needs of each case. Most notably, judges in both districts have worked to balance the need for

15. With respect to nomenclature, Arizona usually refers to the order as a general order, *see* "Mandatory Initial Discovery Pilot," *available at* https://www.azd.uscourts.gov/attorneys/mandatory-initial-discovery-pilot, and Illinois Northern as a standing order, *see* "Mandatory Initial Discovery Pilot Standing Order," *available at* https://www.ilnd.uscourts.gov/_assets/_documents/MIDP%20Standing%20Order.pdf.

16. *See also* "Mandatory Initial Discovery Pilot Project Model Standing Order," *available at* https://www.fjc.gov/content/320224/midpp-standing-order.

17. For example, in Arizona, "Mandatory initial discovery responses are required for all cases other than (a) those exempted from initial disclosures by Rule 26(a)(1)(B); (b) cases transferred for consolidated administration in the District by the Judicial Panel on Multidistrict Litigation; and (c) actions under the Private Securities Litigation Reform Act ("PSLRA")." Mandatory Initial Discovery Users' Manual for the District of Arizona, at 2, *available at* https://www.azd.uscourts.gov/sites/default/files/documents/Arizona%20MIDP%20Users%20Manual.pdf. Patent cases governed by local rules are also exempted from the MIDP.

18. https://www.fjc.gov/content/320224/midpp-standing-order.

19. "Mandatory initial discovery responses may be excused or deferred in two circumstances. First, no responses are required if the Court approves a written stipulation by the parties that no discovery will be conducted in the case. Second, responses may be deferred once, for 30 days, if the parties jointly certify to the Court that they are seeking to settle their dispute and have a good-faith belief that the dispute will be resolved within 30 days of the due date for their responses." Mandatory Initial Discovery Users' Manual for the District of Arizona, at 2, *available at* https://www.azd.uscourts.gov/sites/default/files/documents/Arizona%20MIDP%20Users%20Manual.pdf.

prompt MIDP responses against the possibility that some cases might be resolved on the pleadings alone. The difficulty of managing the discovery process while Rule 12 motions are pending is not, of course, unique to the MIDP, but the pilot shines a bright light on the difficulty by accelerating the parties' exchange of discovery. In Illinois Northern, especially, "[m]any lawyers objected to the need to make initial discovery responses in actions that might well be dismissed on the pleadings."[20] In response to these concerns, in December 2018, "the rules were altered to give judges more discretion to pause [the MIDP] pending disposition of a motion to dismiss."[21]

Disposition Times Analysis

This report uses multivariate regression to compare the disposition times of pilot cases and non-pilot cases. A simple bivariate comparison is not possible due to the way districts assigned cases to the pilot and the fact that some pilot cases were still pending at the conclusion of the study

Because the pilot responses supersede Rule 26(a)(1)(A) disclosures,[22] this report sought to compare pilot and non-pilot cases in which Rule 26(a)(1)(A) would ordinarily apply (bivariate comparisons). This report refers to case types in which Rule 26(a)(1)(A) disclosures would typically be required as "civil-heartland" cases. The civil-heartland category includes the kinds of cases (defined by nature-of-suit code) in which one would typically expect disclosure and discovery to proceed pursuant to Rules 26–37. Rule 26(a)(1)(B) includes a list of case types excluded from the initial-disclosure requirement, including most prisoner cases, administrative appeals including Social Security disability appeals, and forfeiture actions. Such cases are outside the civil heartland, as defined here.

Arizona assigned a higher percentage of its civil-heartland cases to the pilot than Illinois Northern because a higher percentage of district judges in Arizona opted to participate in the pilot than in Illinois Northern, where several judges opted to not participate or to participate in a limited fashion. Even so, pilot cases account for a lower share of Arizona's total civil docket compared to Illinois Northern because the caseload in Arizona includes a much higher percentage of non-heartland cases, especially prisoner cases, than that in Illinois Northern. In terms of the number of pilot cases in each district:

- In Arizona, 5,078 pilot cases were initiated from May 1, 2017, through April 30, 2020, accounting for
    - 28% of all civil cases in the district during the pilot period

20. Agenda Book, Advisory Committee on Civil Rules, Apr. 1, 2020, at 99 (Minutes of October 2019 Meeting), https://www.uscourts.gov/sites/default/files/04-2020_civil_rules_agenda_book.pdf. Similar negative assessments of the MIDP were prominent in the survey results released by the Chicago chapter of the Federal Bar Association released in May 2018. *See* Report of the Advisory Committee to the Northern District of Illinois on Mandatory Initial Discovery Pilot Project: Survey Results, *available at* https://www.ilnd.uscourts.gov/_assets/_news/MIDP%20Advisory%20Committee%20Report%20FINAL.pdf.

21. Agenda Book, Apr. 2020, *supra* note 20. *See also* Agenda Book, Advisory Committee on Civil Rules, Oct. 29, 2019, at 124 (Minutes of April 2019 Meeting), https://www.uscourts.gov/sites/default/files/2019-10_civil_rules_agenda_book.pdf ("The court has come to recognize a judge's discretion to not require that discovery go forward pending a motion to dismiss.").

22. *See* Mandatory Initial Discovery Pilot Model Standing Order, *available at* https://www.fjc.gov/sites/default/files/2017/MIDPP%20Model%20Standing%20Order.pdf.

    - 89% of all non-MDL civil-heartland cases during the pilot period
- In Illinois Northern, 12,133 pilot cases were initiated from June 1, 2017, through May 31, 2020, accounting for
    - 46% of all civil cases in the district during the pilot period
    - 63% of non-MDL civil-heartland cases during the pilot period

The civil-heartland classification does not perfectly capture the courts' assignment of cases to the MIDP, and this is the source of the difficulty in making bivariate comparisons. Both participating districts assigned non-heartland cases to the pilot in relatively small but not negligible numbers:

- In Arizona, 687 pilot cases (14%) were not in a civil-heartland nature-of-suit category. More than a third of these cases were prisoner civil-rights cases. Even though most prisoner civil-rights cases filed during the pilot period were excluded from the pilot, some were included in the pilot.
- In Illinois Northern, 1,112 pilot cases (9%) were not in a civil-heartland nature-of-suit category. More than a third of these cases were immigration actions included in the pilot.

That not all pilot cases are civil-heartland cases (and that not all civil-heartland cases are pilot cases) complicates making bivariate comparisons pre- and post-pilot. An apples-to-apples comparison of cases assigned to the pilot (including non-heartland cases) to similar cases not assigned to the pilot is practically impossible without multivariate analysis. That analysis includes controls for nature-of-suit categories and can control for the effects of case type on processing times in a more nuanced way.

The number of pilot cases still pending as of April 2022 further complicates a direct comparison of disposition times. About 5% of pilot cases in Arizona and about 10% in Illinois Northern were still pending at the time the dispositions data was last extracted from the courts' electronic records. Still-pending cases are a common problem when using filing cohorts (and the pilot cases are, by definition, a three-year filing cohort). Until all cases in a filing cohort have terminated (for the first time) in the district court, the average disposition times will change (grow longer) with each data extraction, as more cases (with longer disposition times) terminate. In other words, more recent filing cohorts have more missing data than less recent ones, making it difficult to compare disposition times. The pilot cases still pending as of our most recent data extraction in April 2022 could not be factored into a bivariate comparison of disposition times, pre- and post-pilot.

Regression Analysis

The regression model presented in this section includes all civil cases filed in or removed to federal court from January 1, 2014, through March 12, 2020, the day before President Trump declared a national emergency to address the coronavirus pandemic. The model includes more than three years of pre-pilot filings and removals in the participating districts and more than six years of filings and removals overall. Given our focus on the disclosure-and-discovery process, the analysis is limited to original proceedings and removals, excluding reopened cases, appellate remands, cases originating from interdistrict and multidistrict litigation (MDL) transfers, and directly filed MDL cases.

The cases were drawn from four districts—the two participating districts, Arizona and Illinois Northern, and two districts included for comparison purposes, California Eastern (for Arizona) and New York Southern (for Illinois Northern). The choice of comparison district for Illinois Northern is limited to a handful of districts because of the district's large and complex caseload; New York Southern is the best, and arguably the only, option. Arizona presents a more difficult, if less limited, choice in terms of comparison district. But California Eastern is a similar district in terms of size and nature of caseload; both districts manage a relatively high volume of prisoner cases; and both are in the Ninth Circuit. The choice of these two comparison districts is discussed at more length in Appendix 1.

The **dependent variable** is the number of days from filing or removal to (first) termination in the district court, for terminated cases, or the number of days from filing or removal to the date of the data extraction, for cases still pending as of April 2022. Cox proportional-hazards regression analysis is commonly used to estimate the effects of a treatment (here, the pilot) on survival (here, filing to disposition time after adjusting for other explanatory variables (usually called covariates)). Often used in medical fields, the typical event of interest is death.[23] But survival need not mean time until death.[24] In this study, a civil case "survives" from its initiation in federal district court (filing or removal) until it is closed in the same court (for present purposes, the first time, excluding reopened cases). The pilot can be thought of as the treatment, and the model examines how the treatment affected the survival (time to event).[25]

Covariates

Pilot: The value of the pilot variable is 1 if the pilot standing order appears in the case's docket and 0 otherwise. (This kind of variable is commonly referred to as a "dummy variable.") Pilot cases only appear in the participating districts. Note that the regression model uses the same definition of "pilot case" as the rest of the study. The regression model does not account for whether any MIDP responses were, in fact, made in the pilot cases.[26] Indeed, we know that in many pilot cases, no MIDP responses were made—for example, in cases assigned to the pilot that

23. *See* David G. Kleinbaum & Michael Klein, Survival Analysis: A Self-Learning Text (3d ed. 2012).

24. This method is also commonly used in the social sciences. *See*, *e.g.*, Nicole Asmussen, *Female and Minority Judicial Nominees: President's Delight and Senators' Dismay?*, 36 Legis. Studs. Q. 591, 606 (2011) (using Cox proportional-hazards regression to show that the confirmation of female and minority candidates does not take longer once gridlock is controlled for); Sarah A. Binder & Forrest Maltzmann, *Senatorial Delay in Confirming Federal Judges, 1947–1998*, 46 Am. J. Pol. Sci. 190, 192 (2002) (using a Cox proportional-hazards regression to analyze sources of delay in judicial confirmations).

25. Survival analysis can also account for the still-pending pilot cases. Using this approach, it is common practice to include cases in the regression in which the event of interest has not yet occurred. *See* Kleinbaum & Klein, *supra* note 23, at 28, 37–41. In a clinical setting, for example, there may be patients who have not yet died at the time of the study and thus for whom time-to-event (i.e., death) information is incomplete. This kind of data is referred to as "right censored" (if one thinks of the timeline as running from left-to-right, these cases do not have a right terminus). The post-treatment survival of the censored cases still provides (incomplete) information that is included in the analysis—for example, a case that had been pending 12 months at the time of the analysis without closing had survived at least 12 months. The regression model included 6,052 still-pending cases in the four districts, about 4% of the total.

26. As discussed in the survey section, about half of attorneys in both participating districts stated that all required exchanges were made; about 8–9% of attorneys stated that one side, but not both, made MIDP responses. The docket section provides a higher rate: MIDP responses were provided in 77% of sampled cases with a responsive pleading in Arizona; 62% in Illinois Northern.

were resolved before the filing of a responsive pleading. But in some subset of pilot cases in which no responsive pleading was filed, the obligation to make MIDP responses factored into the parties' decision to settle early. In other words, the existence of the MIDP obligations likely affected litigants' decisions even in some cases in which the MIDP responses were not made.

District Variables: The regression model includes dummy variables for three of the four districts; different specifications of the models were performed changing the baseline district, without any substantive change in the pilot coefficient. The model includes non-pilot cases from the participating districts as well as all cases from comparison districts filed or removed from January 1, 2014, through March 12, 2020, to provide estimates of the effects of covariates on survival times. In **Table 1** the baseline district (for which a dummy variable was not included) is New York Southern.

Controlling for Case Types: The regression model includes controls for case types based on the broad nature-of-suit categories on the civil coversheet (listed in **Table 1**). The baseline case type for purposes of the regression models is "Other." The model also includes a dummy variable coded 1 if the court's electronic case record includes an MDL docket number. Many MDL cases are screened from the analysis based on case origin, but this variable should control for any MDL effects; MDL cases in general are excluded from the MIDP.

Controlling for the Effects of the Coronavirus Pandemic: The coronavirus pandemic struck in the third year of the pilot period. Many pilot cases were pending on the date of the declaration of the national emergency, and several hundred pilot cases were filed on or after that date. Given the impact of the pandemic on court operations and litigants, not to mention life in general, it is necessary to attempt to control for its effects. The regression analysis is limited to cases filed before the date of the declaration of the national emergency. This simplifies the analysis because it requires only controlling for the effect of the pandemic on pending cases and not, in addition, for effects on cases filed after its onset. The control variable included in the model is the natural log of the number of days a case had been pending on the date of the national emergency. (The variable is coded zero for cases terminating prior to the date of the national emergency.)

Results

Table 1 summarizes the results of the regression analysis. The model as a whole is statistically significant at the $p < .001$ level, meaning that the model performs better than a model including none of the covariates. In terms of the covariates, a positive coefficient means that an increase in the variable increases the likelihood of case termination (results in a higher risk of failure); a negative coefficient means that an increase in the variable decreases the likelihood of case termination (a lower risk).[27] Positive coefficients are associated with shorter disposition times; negative coefficients with longer disposition times.

Most of the variables in the model are dummy variables, which only take the values 0 or 1, making them relatively simple to interpret. (The log of days pending on the date of the coronavirus national emergency is the exception.) Note that, except for one nature-of-suit category

27. *See* Binder & Maltzmann, *supra* note 24, at 193 ("An increase (decrease) in the hazard rate means that the variable has the effect of speeding up (slowing down) a confirmation decision.").

("Bankruptcy," the category including bankruptcy appeals, in *italics* in **Table 1**), all the coefficients are significant at the $p < .001$ level.

Most importantly for this report, the pilot coefficient is positive and statistically significant, meaning that the regression indicates that pilot cases had shorter dispositions than non-pilot cases, all else equal. The Cox-regression coefficients can be used to calculate the change in the hazard ratio, comparing pilot to non-pilot cases, all else equal; that calculation indicates that pilot cases had a 33% higher risk of terminating than non-pilot cases, all else equal. **Figure 1** shows the survival curves for pilot versus non-pilot cases in Illinois Northern based on the regression analysis. The pilot curve is to the left of the non-pilot curve, showing that the model predicts pilot cases have a greater risk of terminating than non-pilot cases, which translates to a shorter disposition time, all else equal.

As expected, the control variable for the effects of the coronavirus pandemic has a negative and statistically significant coefficient—cases pending on the date of the declaration of the national emergency had longer disposition times, all else equal, than other cases. It is important to note that, if a regression model like this one is run without including a coronavirus control variable, the pilot variable takes a negative coefficient, reflecting the overlap of the pilot period and the coronavirus pandemic.[28] The occurrence of the coronavirus pandemic certainly complicates interpretations of the study's results. But the regression results are consistent with the conclusion that the pilot shortened disposition times for cases subject to the MIDP, despite the pandemic, for cases filed before the declaration of the national emergency.

For the most part, the remaining covariates are of limited substantive interest. The district dummy variables must be interpreted against the baseline district—in this case, New York Southern (i.e., the district for which a dummy variable is not included). The model indicates that civil cases in Arizona have shorter disposition times than those in New York Southern, all else equal, but that civil cases in Illinois Northern and California Eastern have longer disposition times than those in New York Southern, all else equal. The substantive difference between New York Southern and Illinois Northern is very small, however—the hazard ratio is only about 4% lower in Illinois Northern than in the baseline district.

The nature-of-suit category control variables must be interpreted against the baseline category, which here is "Other." One nature-of-suit category is not different from the baseline category—bankruptcy. Four nature-of-suit categories have shorter disposition times, all else equal, than the baseline category: immigration, forfeiture, real property, and intellectual property.[29] All the other nature-of-suit categories have longer disposition times, all else equal, than the baseline category.

28. That is, because so many pilot cases were pending when the coronavirus pandemic struck, pandemic-related delays in case processing times coincide with the pilot (without a pandemic control variable).

29. The inclusion of the intellectual property category here may seem counter-intuitive, as patent cases are often complex and protracted; but the category includes less complex trademark and copyright cases, as well. Moreover, the model includes first terminations, and many patent cases are closed initially (stayed) in the district court pending administrative review. *See* Margaret S. Williams & Rebecca J. Eyre, Federal Judicial Center, Patent Pilot Program: Final Report 10–11 (2021) (finding 9% of patent cases overall terminated by administrative closing in the district court).

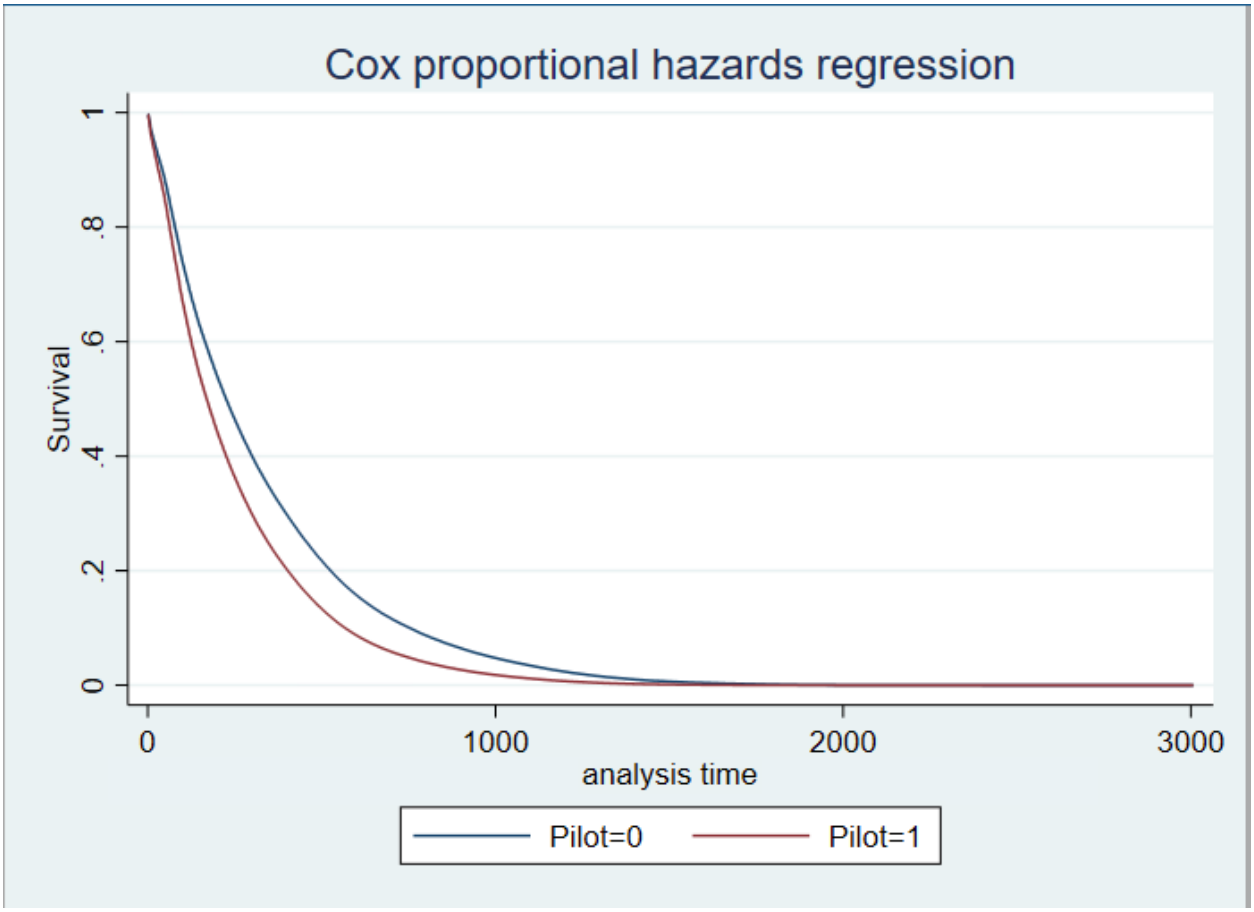
As one might have suspected, MDL cases had particularly long disposition times (the coefficient translates to a 28% lower risk of termination than non-MDL cases, all else equal).

Table 1: Cox Proportional-Hazard Regression Results, Days to Disposition

Covariate (β)	Coefficient	Robust Standard Error	95% Confidence Interval
Pilot	.2885368	.0083698	.2721323 – .3049413
Log COVID days	-.2281492	.0012065	-.2305139 – -.2257845
Illinois Northern	-.0478062	.0071304	-.0617817 – -.0338308
Arizona	.0955787	.0089757	.0779868 – .1131707
California Eastern	-.1216502	.0082796	-.1378778 – -.1054225
Tort-personal injury	-.2415724	.0133737	-.2677845 – -.2153603
Tort-property damage	-.2631303	.0238847	-.3099435 – -.2163171
Civil rights	-.2234253	.0102447	-.2435046 – -.2033459
Prisoner-habeas corpus	-.2048721	.0141974	-.2326985 – -.1770458
Prisoner-other	-.1525257	.0115884	-.1752386 – -.1298128
Forfeiture	.097084	.0474754	.0040339 – .190134
Labor	-.2368965	.0114217	-.2592827 – -.2145103
Immigration	.4739206	.0199447	.4348297 – .5130115
Bankruptcy	-.0466798	.0241887	-.0940888 – .0007292
Intellectual property	.1111934	.0132205	.0852817 – .1371051
Social Security	-.3810319	.010386	-.4013881 – -.3606757
Tax	-.4071609	.0507852	-.5066981 – -.3076237
Contract	-.2527188	.0121528	-.2765379 – -.2288997
Real property	.0717456	.025094	.0225622 – .1209289
MDL	-1.273546	.024181	-1.32094 – -1.226152

n = 166,324 (including 6,052 pending cases as of April 1, 2022)
Log likelihood = 1,810,341.8
Wald χ^2 = 41,567.22 ($p < .001$)

Figure 1: Survival Curves, Pilot Versus Non-Pilot, Controlling for Covariates (Illinois Northern)



Closed Case Attorney Surveys

As part of the MIDP study, Center researchers surveyed attorneys of record in recently closed pilot cases to measure participation in the pilot as well as participants' evaluations of it. Pilot cases were identified by searching each district's electronic records for closed cases in which the standing order was docketed. Cases with dispositions in which discovery was unlikely to have occurred, such as default judgments, were excluded when possible.

Starting in October 2017,[30] attorneys in both districts received surveys each October and April until the final (tenth) survey round in April 2022, with one exception: Due to the coronavirus pandemic, instead of a survey in April 2020, surveys were sent in August 2020. The cycle then resumed in October 2020. Each round included cases closed since the last round. For example, the final April 2022 survey round included cases closed between October 1, 2021, and March 31, 2022.

30. Arizona began applying the MIDP in civil cases filed on or after May 1, 2017, and Illinois Northern did so in civil cases filed on or after June 1, 2017.

Across the 10 survey rounds, 9,040 Illinois Northern attorneys were invited to complete the survey; 3,306 did, an overall response rate of 36.6%. Response rates varied from 28% to 49% across the 10 rounds. In Arizona, 4,434 attorneys were invited to complete the survey and 1,485 did, an overall response rate of 33.5%. Response rates varied from 25% to 42% across the 10 rounds. These response rates are consistent with those obtained in similar FJC studies. Although the email lists were deduplicated each round so no attorney in either district received more than one survey per round, some attorneys responded to more than one round of surveys.[31]

Results are reported separately for attorneys representing plaintiffs in the closed case ("plaintiff attorneys" in the figures) and attorneys representing defendants in the closed case ("defendant attorneys"). For each closed case included in the study, a survey was distributed, if possible, to both a plaintiff attorney and a defendant attorney; surveys were not distributed to self-represented parties. In each round of surveys, then, some closed cases are represented by two responses (one for each side). Reporting responses separately in this way eliminates any double counting of cases that may occur. Reporting the responses separately can also reveal meaningful differences in evaluations of the pilot between plaintiff attorneys and defendant attorneys; these differences will be discussed where appropriate.

Survey Questions

Survey respondents were first asked to complete a series of questions about their experience litigating in Illinois Northern or Arizona, and in the Arizona state courts (Arizona respondents only); whether they primarily represent plaintiffs, defendants, or both equally; how many years they had practiced law; and how the closed case was ultimately resolved in the district court. All respondents were also asked to rate, on a five-point scale, the fairness of the procedures used in the closed case as well as the substantive fairness of its outcome.

Respondents were then asked how they first became aware of the MIDP (communication from the court prior to filing; notice of standing order after filing; bar program or publication; communication with colleague/in-office training; other). Respondents then selected from five options whether, if in the recently closed case named in the invitation email, parties made MIDP responses. If the attorneys selected "I do not recall," they were directed to the final survey question, which allowed them to provide comments about the MIDP program. If the attorneys selected "No", they were asked why the required mandatory initial discovery was not provided from four options ("The parties stipulated that no discovery would be conducted in the case"; "The parties certified that they believed the case would be resolved in 30 days after the responsive pleading"; "The case was dismissed, transferred, or otherwise resolved before mandatory initial discovery was required"; or "Other. Please explain"). They were then directed to the final open-ended question. Attorneys in closed cases in which MIDP responses were made by one or both sides—"participating cases," as defined in this report—were then directed to additional questions about the MIDP.

31. The 3,306 Illinois Northern attorney responses came from 2,356 different attorneys. The 1,485 Arizona attorney responses came from 1,111 different attorneys.

Attorneys in participating cases were asked to rate their agreement or disagreement (on a five-point scale from "strongly agree" to "strongly disagree" with an "I don't know" option) with 12 statements related to the goals of the MIDP. They were asked if the exchange of initial discovery, as provided for in the standing order:

- provided relevant information earlier in the case
- led to disclosure of information that would not likely have been requested otherwise
- focused subsequent discovery on the important issues in the case
- enhanced the effectiveness of settlement negotiations
- expedited settlement discussions among the parties
- reduced the number of discovery requests that would have otherwise been made in the case
- reduced the volume of discovery required to resolve the case
- reduced the number of motions filed in the case
- reduced the number of discovery disputes that would have otherwise been made in the case
- reduced the discovery costs in the case for my client
- reduced the overall costs in the case for my client
- reduced the time from filing to resolution in the case

In later rounds of the surveys, respondents were also asked whether there were discovery disputes in the named case brought to the attention of the presiding judge and whether the issue of sanctions was raised in the named case, in relation to discovery issues.

The closed-case surveys also included two open-ended questions to better understand the attorneys' evaluations of the pilot. The two open-ended prompts were:

- "Please provide any additional comments you have regarding the initial discovery in the above-named case."
- "Please provide any comments you have about the district's mandatory initial discovery pilot program."

The second prompt was added to the survey starting in the Spring 2019 round.[32] Appendix 2 provides all responses to these prompts, edited only for spelling and to remove identifying information (e.g., name of the case or client).

Attorney Characteristics

The survey respondents were an experienced group of attorneys. In both participating districts, the typical survey respondent had practiced law for more than two decades. In Arizona, the average was 21.6 years, the median 20 years, with a range from 1 to 57 years. In Illinois Northern, the average was 22.4 years, the median 22 years, with a range of 1 year to 60 years. In terms of attorney

32. In earlier rounds of the closed-case surveys, respondents who answered that neither side made MIDP responses, or they could not recall, were not provided with the opportunity to respond to an open-ended question. Starting in the Spring 2019 surveys, however, these respondents were also directed to the final open-ended question so they could provide comments about the MIDP program. In all survey rounds, respondents who answered "Yes, all required exchanges were made," "Yes, my side did but all sides did not," or "Yes, other sides did but my side did not" received both open-ended question prompts.

role, Arizona respondents stated they primarily represented defendants (42%), plaintiffs (32%), or both plaintiffs and defendants equally (26%). The Illinois Northern respondents stated they primarily represented plaintiffs (41%), defendants (35%), or both plaintiffs and defendants equally (24%). In most of this section, attorney role will be defined by the respondent's role in the closed case.

Respondents reported substantial experience litigating in the participating districts. Arizona plaintiff attorneys (see **Figure 2**) most often reported a great deal of experience (35%) or some experience (36%) litigating in that district, as did defendant attorneys (47% and 34%, respectively). Relatively few plaintiff attorneys (11%) or defendant attorneys (7%) reported no prior experience in the District of Arizona prior to the closed MIDP case. Because of the long-standing use of mandatory initial disclosures in state courts, Arizona attorneys were also asked how often they practiced before Arizona state courts (see **Figure 3**). About half of plaintiff and defendant attorneys (52% and 51%, respectively) answered that they had a great deal of experience in Arizona state courts, with 16% and 19%, respectively, answering some, and 15% and 12%, respectively, a little, and 17% and 18%, respectively, that they had no Arizona state court experience.

Illinois Northern attorneys also tended to report a great deal of prior experience litigating in that district (see **Figure 4**). Fully 54% of plaintiff attorneys and 61% of defendant attorneys reported a great deal of experience litigating in Illinois Northern, 33% and 29%, respectively, some experience, 10% and 7%, respectively, a little experience, and only 4% and 3%, respectively, no prior experience in the district prior to the closed MIDP case.

In interpreting the survey results, it is useful to know how the respondents' cases were resolved. In both districts, most respondents indicated that the closed cases were resolved by settlement. In Arizona (**Figure 5**), 71% of plaintiff attorneys and 60% of defendant attorneys reported that the closed case settled. In Illinois Northern (**Figure 6**), the comparable rates were 71% for plaintiff attorneys and 68% for defendant attorneys.

Figure 2: Arizona Respondent Experience Litigating in the District of Arizona (*n* = 1,426)

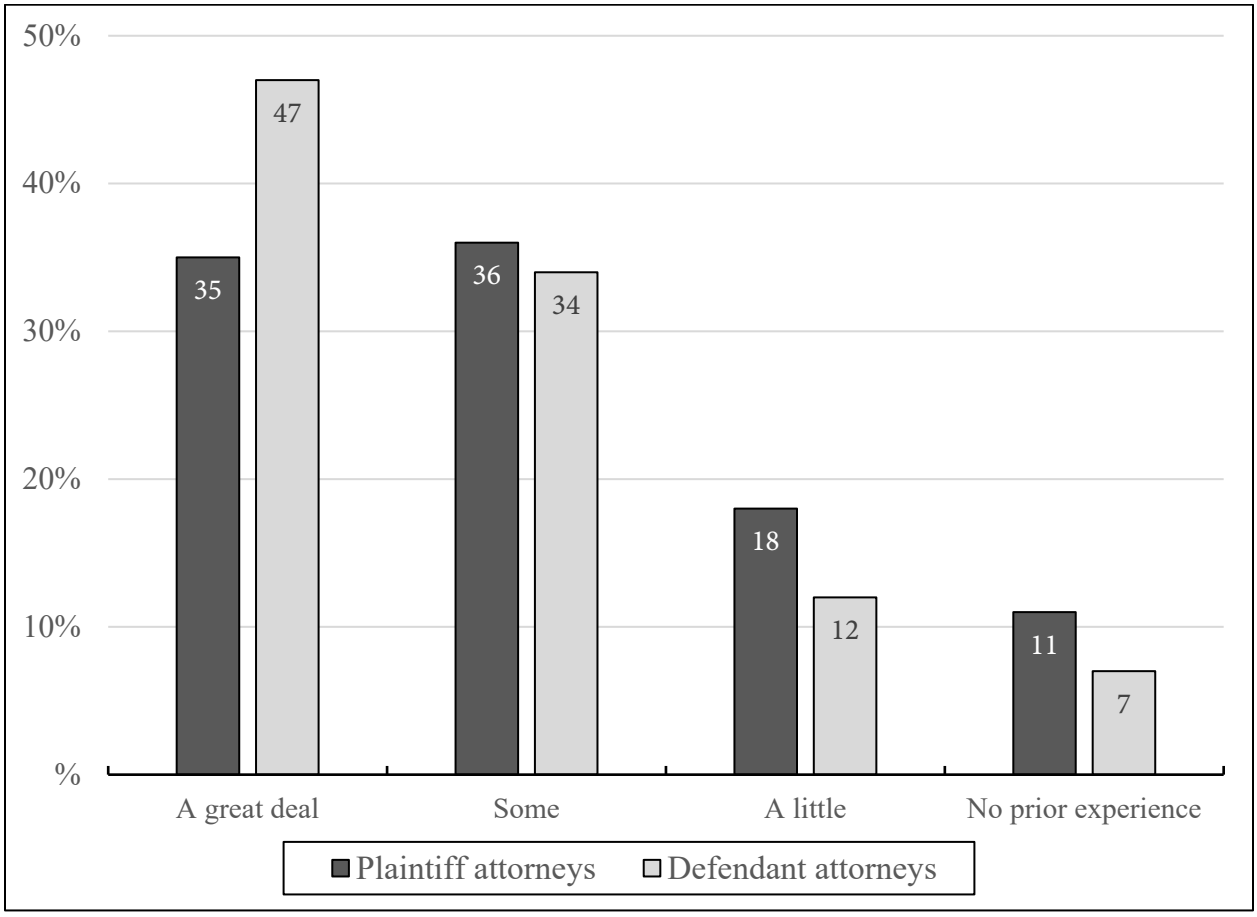


Figure 3: Arizona Respondent Experience Litigating in Arizona State Courts (*n* = 1,472)

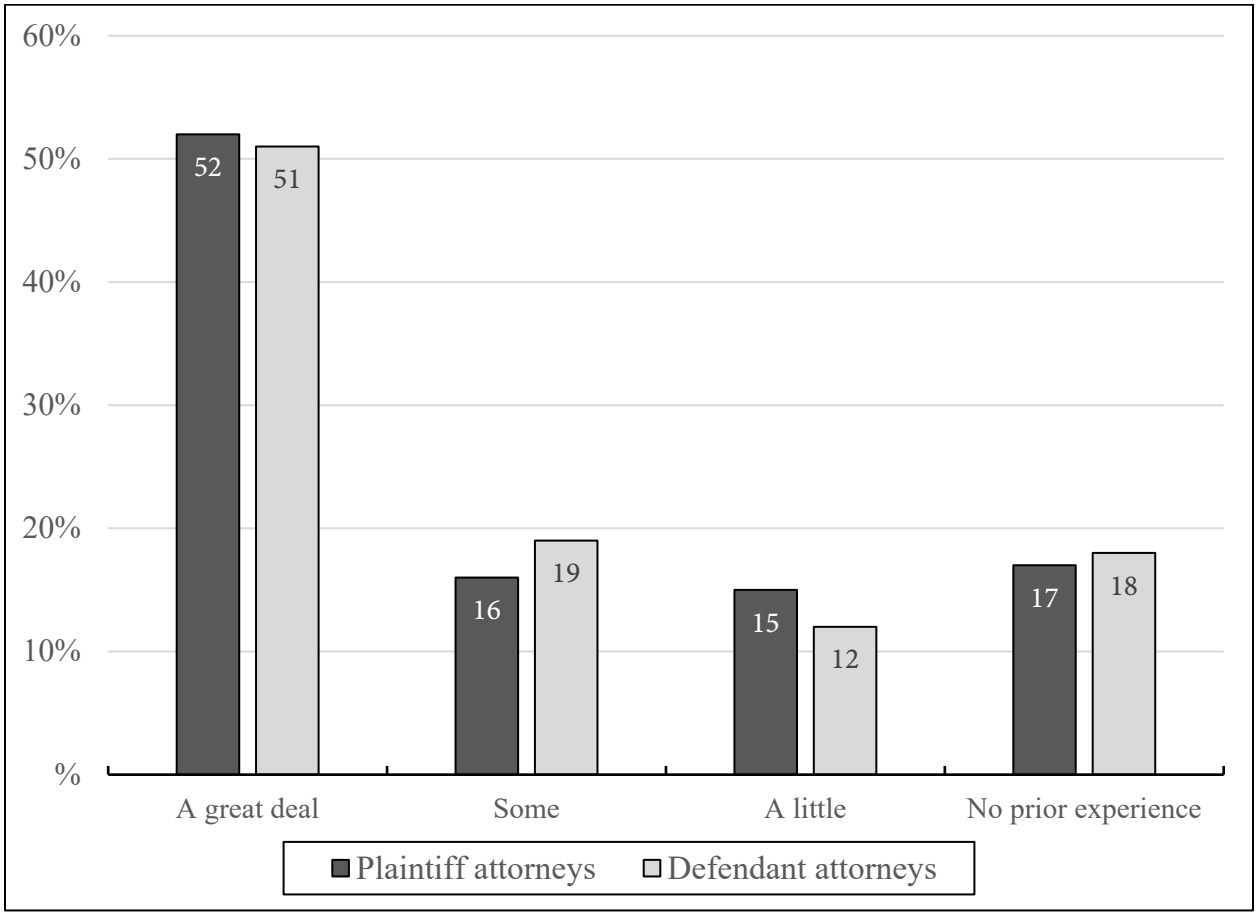


Figure 4: Illinois Northern Respondent Experience Litigating in the Northern District of Illinois (*n* = 3,260)

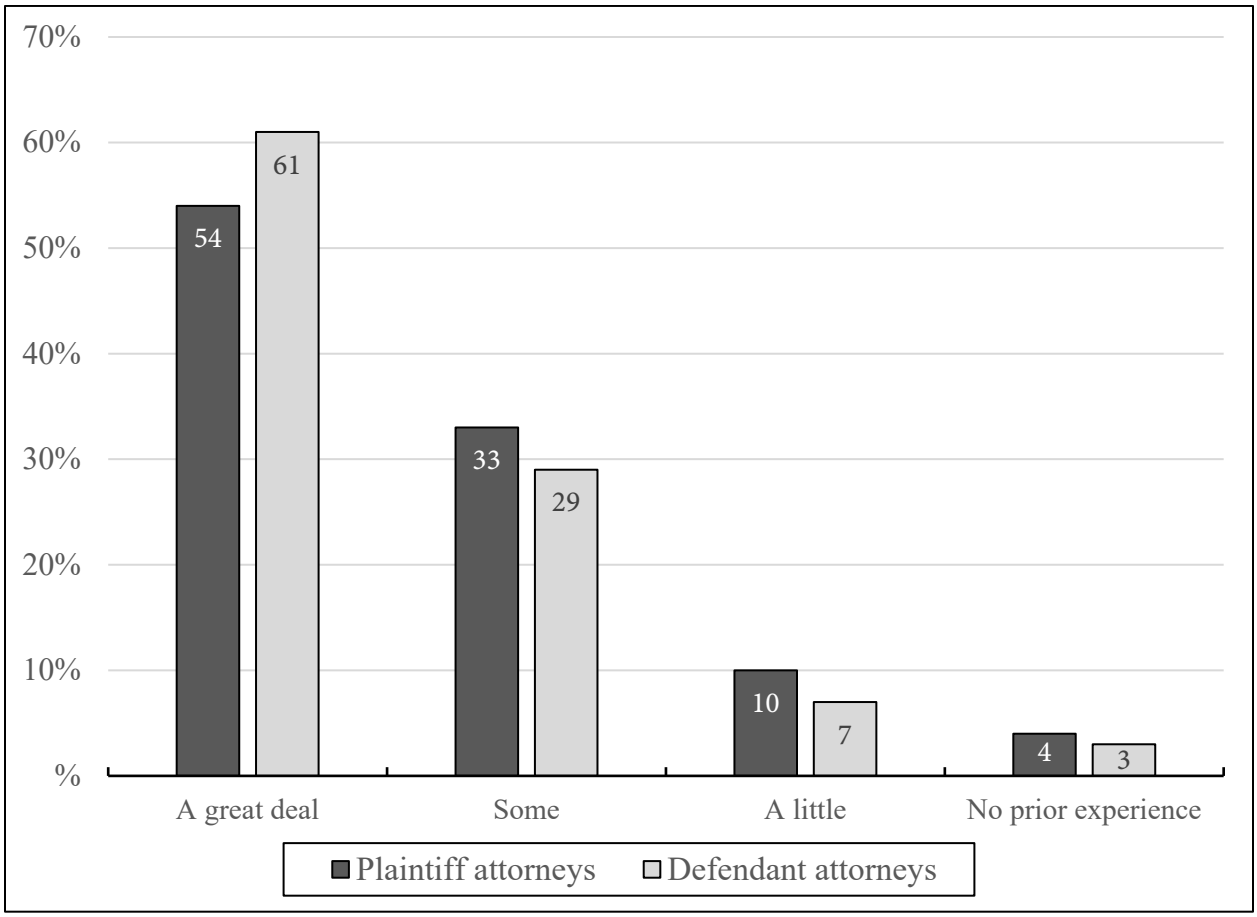


Figure 5: Arizona Closed-Case Resolutions (*n* = 1,477)

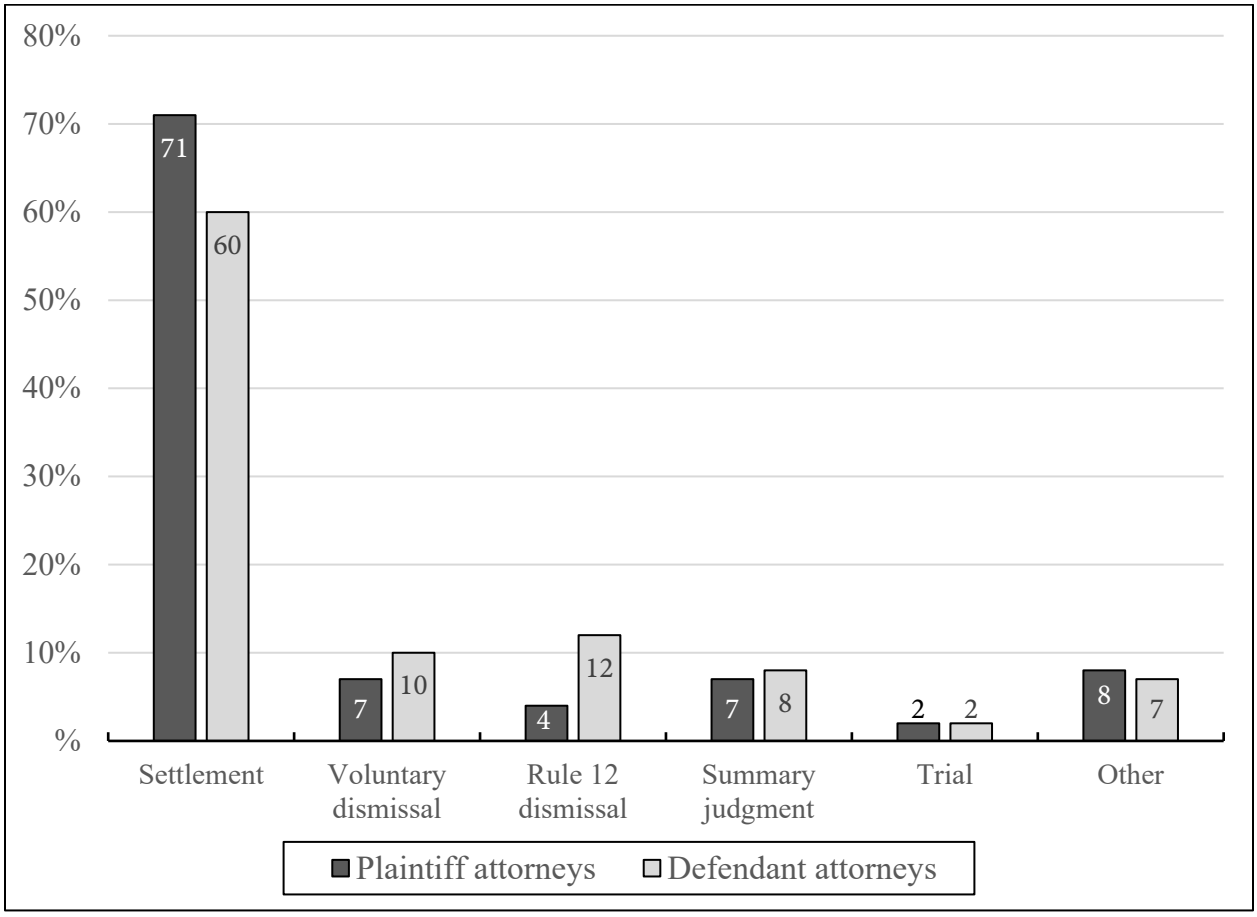
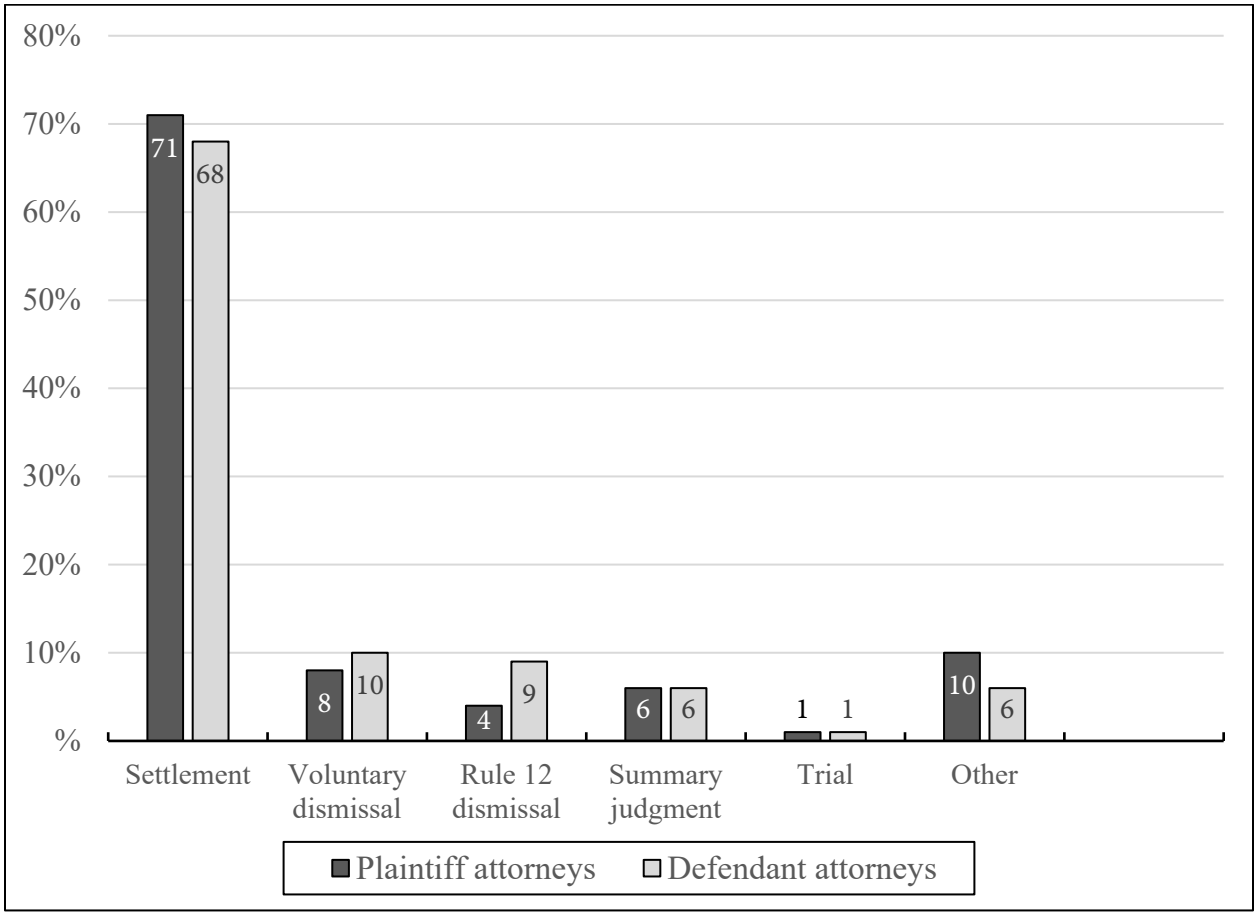


Figure 6: Illinois Northern Closed-Case Resolutions (*n* = 3,266)



Respondents' Evaluations of Fairness

To assist the advisory committee in considering whether the MIDP is consistent with the goals of Federal Rule of Civil Procedure 1, the survey asked all respondents to rate their agreement with whether "The discovery procedures followed in the case were fair" and "The substantive outcome of the case was fair" on five-point scales from "strongly agree" to "strongly disagree." In both districts, respondents in cases participating in the MIDP tended to rate both the procedures and substantive outcomes as fair. Respondents in cases in which no MIDP responses were made, however, tended to rate the procedures in a more neutral fashion—likely because attorneys were unable to evaluate procedural fairness in cases resolved with minimal procedure.

Procedural fairness. In Arizona (**Figure 7**), 80% of plaintiff attorneys in participating cases either strongly agreed (26%) or agreed (54%) that "the discovery procedures followed in the case were fair," and 73% of defendant attorneys either strongly agreed (22%) or agreed (51%). Only 8% of plaintiff attorneys in participating cases either disagreed (5%) or strongly disagreed (3%), and only 9% of defendant attorneys either disagreed (7%) or strongly disagreed (2%). Relatively few attorneys in participating cases were neutral with respect to the fairness of the discovery procedures: 12% of plaintiff attorneys and 18% of defendant attorneys. But in non-participating

cases in Arizona (**Figure 8**), both plaintiff attorneys (63%) and defendant attorneys (67%) were more likely to be neutral, neither agreeing nor disagreeing with the statement, "the discovery procedures followed in the case were fair." The remaining respondents in non-participating cases were more likely to agree than disagree with the statement.

Similarly, in cases participating in the MIDP in Illinois Northern (**Figure 9**), 79% of plaintiff attorneys either strongly agreed (29%) or agreed (50%) with the statement, "the discovery procedures followed in the case were fair," and 73% of defendant attorneys either strongly agreed (21%) or agreed (52%). Only 8% of plaintiff attorneys either disagreed (6%) or strongly disagreed (2%), and only 12% of defendant attorneys either disagreed (9%) or strongly disagreed (3%). Among respondents in participating cases, relatively few tended to be neutral with respect to the fairness of the procedures followed: 14% of plaintiff attorneys and 15% of defendant attorneys. But in non-participating cases in Illinois Northern, respondents tended to be more neutral (**Figure 10**). More than half of both plaintiff attorneys (58%) and defendant attorneys (60%) neither agreed nor disagreed with the statement, "The discovery procedures followed in the case were fair." Again, the remaining respondents in non-participating cases were more likely to agree than disagree with the statement.

Figure 7: Participating in MIDP Arizona Respondents' Agreement with the Statement "The discovery procedures followed in the case were fair." (*n* = 959)

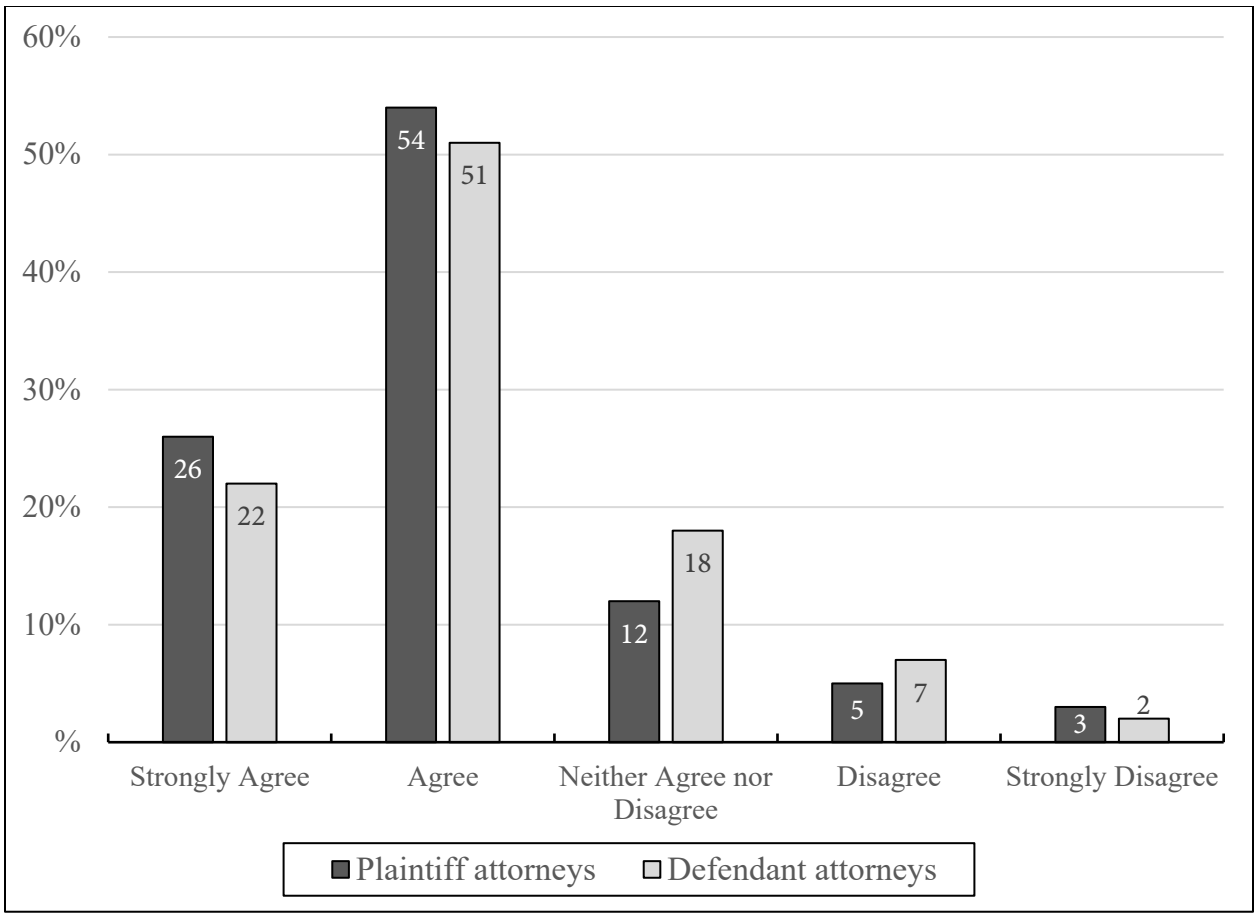


Figure 8: Not Participating in MIDP Arizona Respondents' Agreement with the Statement "The discovery procedures followed in the case were fair." (*n* = 432)

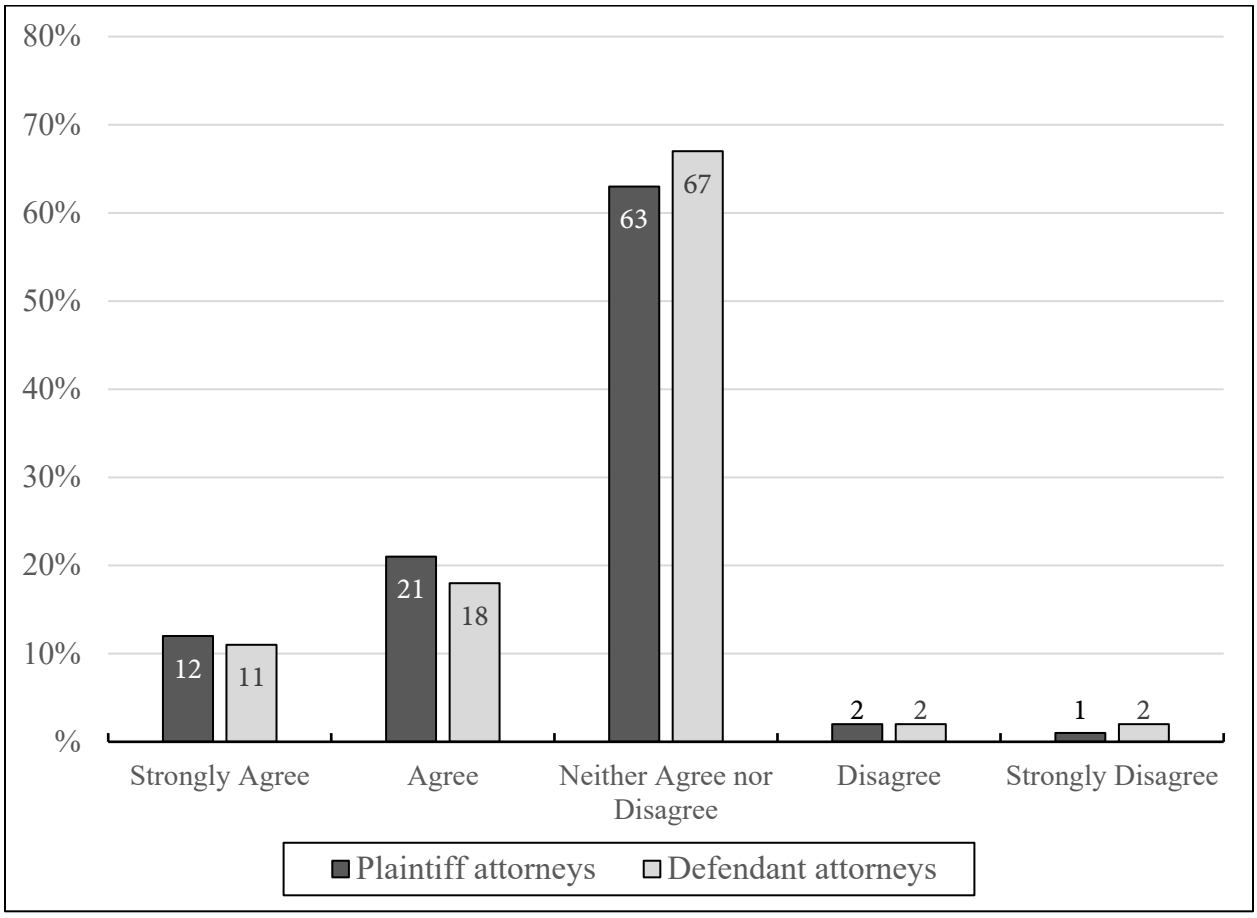


Figure 9: Participating in MIDP Illinois Northern Respondents' Agreement with the Statement "The discovery procedures followed in the case were fair." (*n* = 1,773)

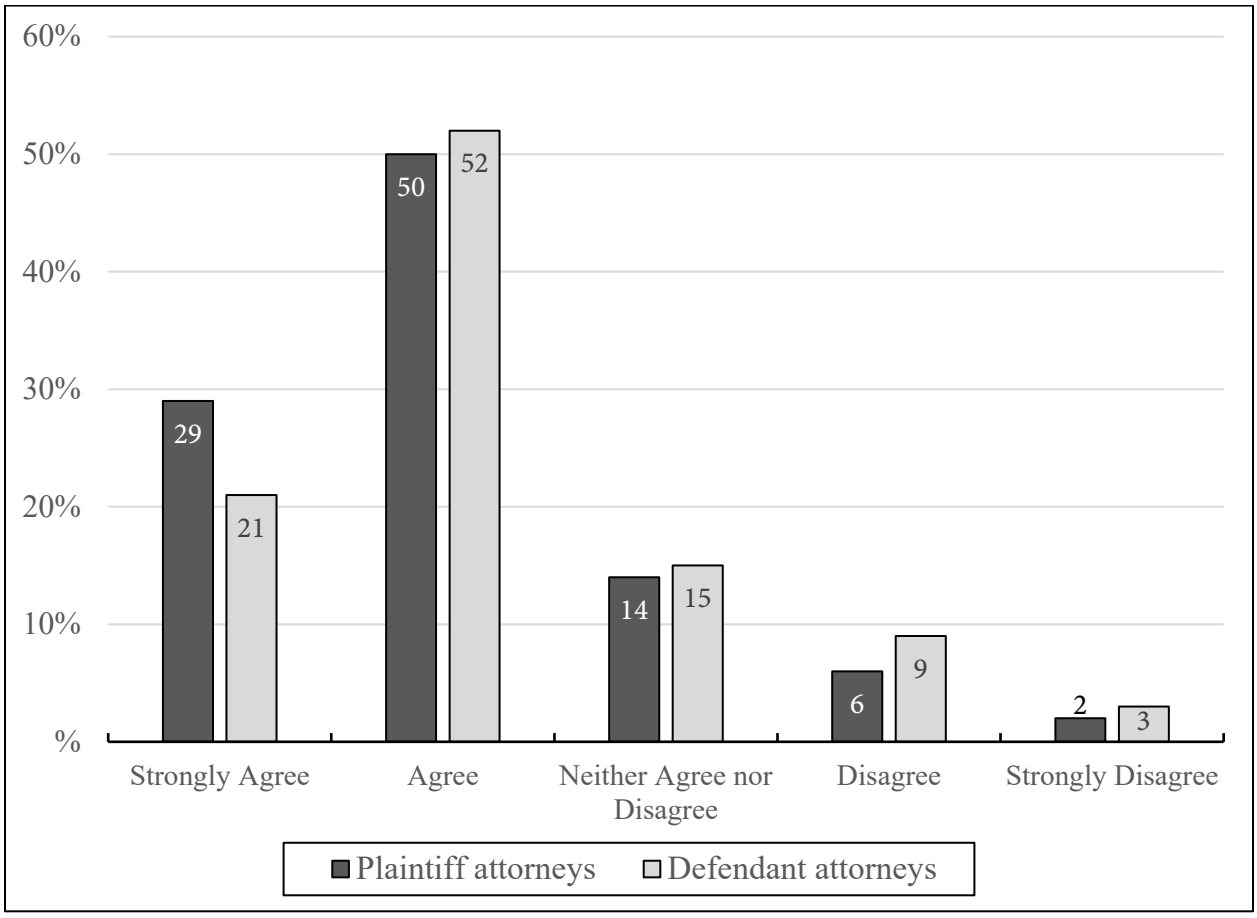
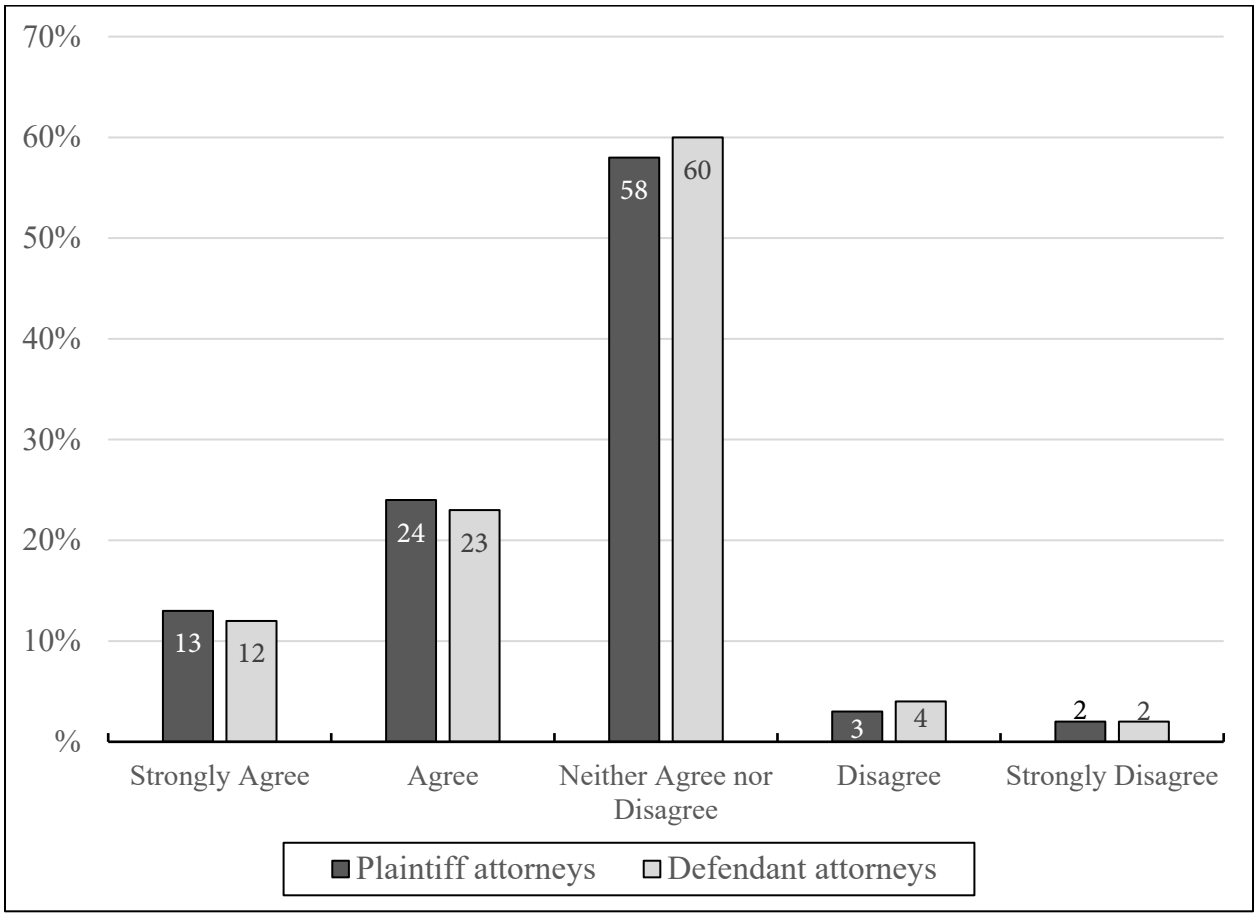


Figure 10: Not Participating in MIDP Illinois Northern Respondents' Agreement with the Statement "The discovery procedures followed in the case were fair." (*n* = 1,332)



Substantive fairness. In participating cases in Arizona, respondents tended to agree that the substantive outcome of the case was fair (**Figure 11**). About 73% of plaintiff attorneys either strongly agreed (22%) or agreed (51%) with the statement, "the substantive outcome of the case was fair" and 78% of defendant attorneys either strongly agreed (34%) or agreed (44%). For both plaintiff and defendant attorneys, 16% neither agreed nor disagreed, and relatively few respondents disagreed or strongly disagreed. In non-participating cases in Arizona (**Figure 12**), 53% of plaintiff attorneys either strongly agreed (23%) or agreed (30%) that the outcome was substantively fair, and even more defendant attorneys (70%) either strongly agreed (41%) or agreed (29%). The intensity of the defendant attorney response (41% strongly agreeing) is notable, though our data offer no explanation. One might speculate that defendant attorneys are especially positive about case outcomes in cases in which they avoid the cost and burden of discovery for their clients. Most of the other respondents in non-participating cases neither agreed nor disagreed with the statement: 34% of plaintiff attorneys and 28% of defendant attorneys.

Illinois Northern attorneys in cases participating in the MIDP tended to agree that the substantive outcome of the case was fair (**Figure 13**). Fully 77% of Illinois Northern plaintiff attorneys either strongly agreed (28%) or agreed (49%) with the statement, "the substantive

outcome of the case was fair," and 74% of defendant attorneys either strongly agreed (28%) or agreed (46%). In non-participating cases (**Figure 14**), 58% of plaintiff attorneys either strongly agreed (26%) or agreed (32%), and 62% of defendant attorneys either strongly agreed (32%) or agreed (30%). But a third of both plaintiff attorneys (33%) and defendant attorneys (33%) neither agreed nor disagreed.

Figure 11: Participating in MIDP Arizona Respondents' Agreement with the Statement "The substantive outcome of the case was fair." (*n* = 947)

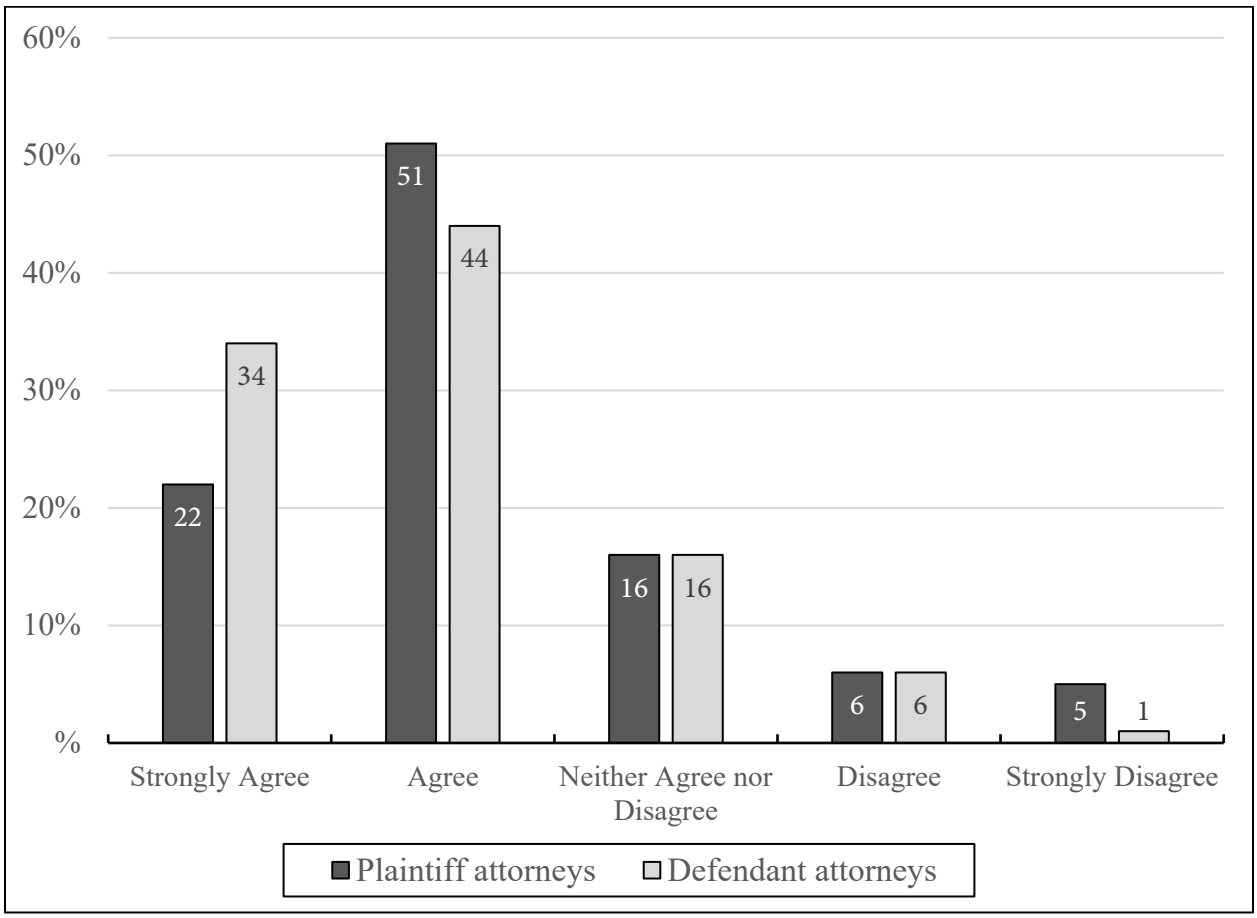


Figure 12: Not Participating in MIDP Arizona Respondents' Agreement with the Statement "The substantive outcome of the case was fair." (*n* = 432)

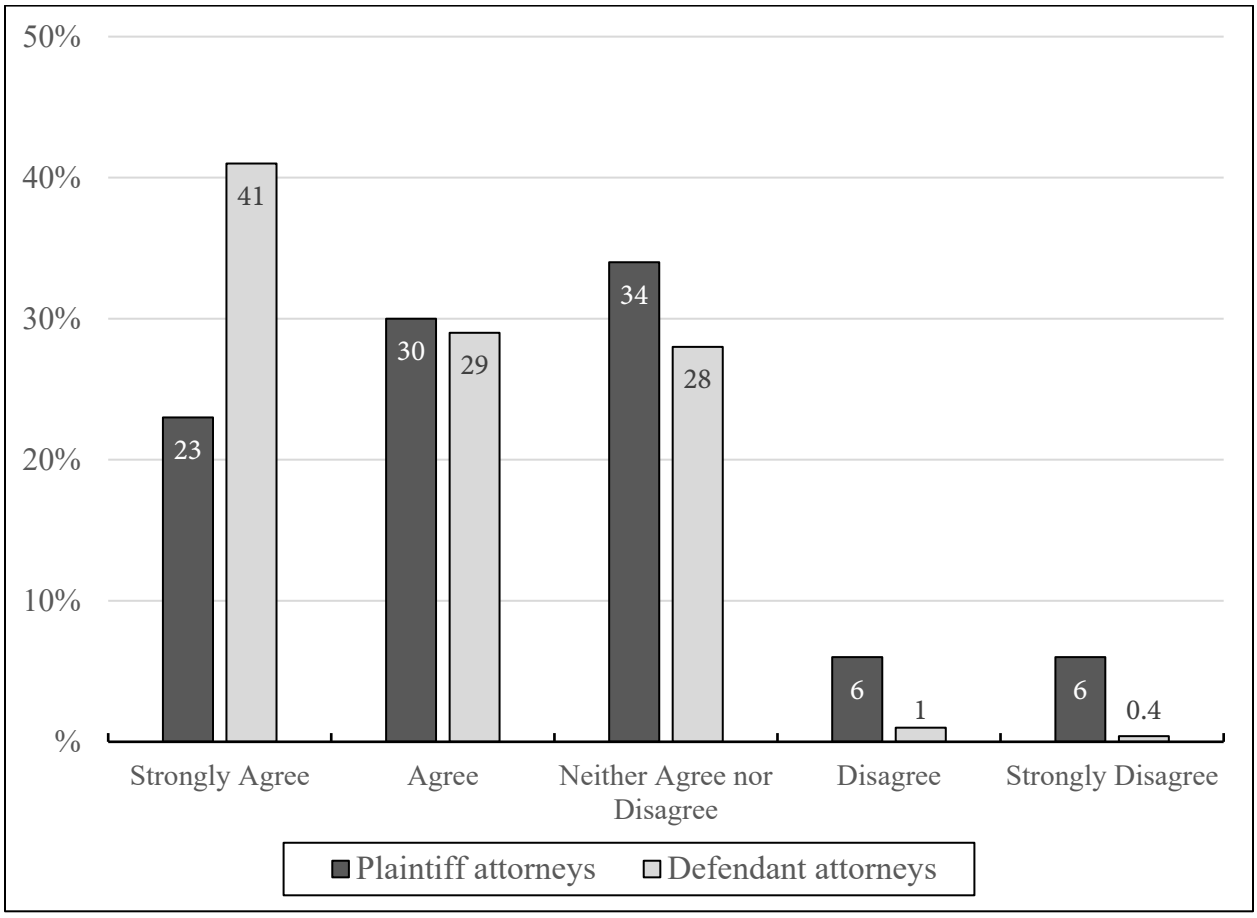


Figure 13: Participating in MIDP Illinois Northern Respondents' Agreement with the Statement "The substantive outcome of the case was fair." (*n* = 1,760)

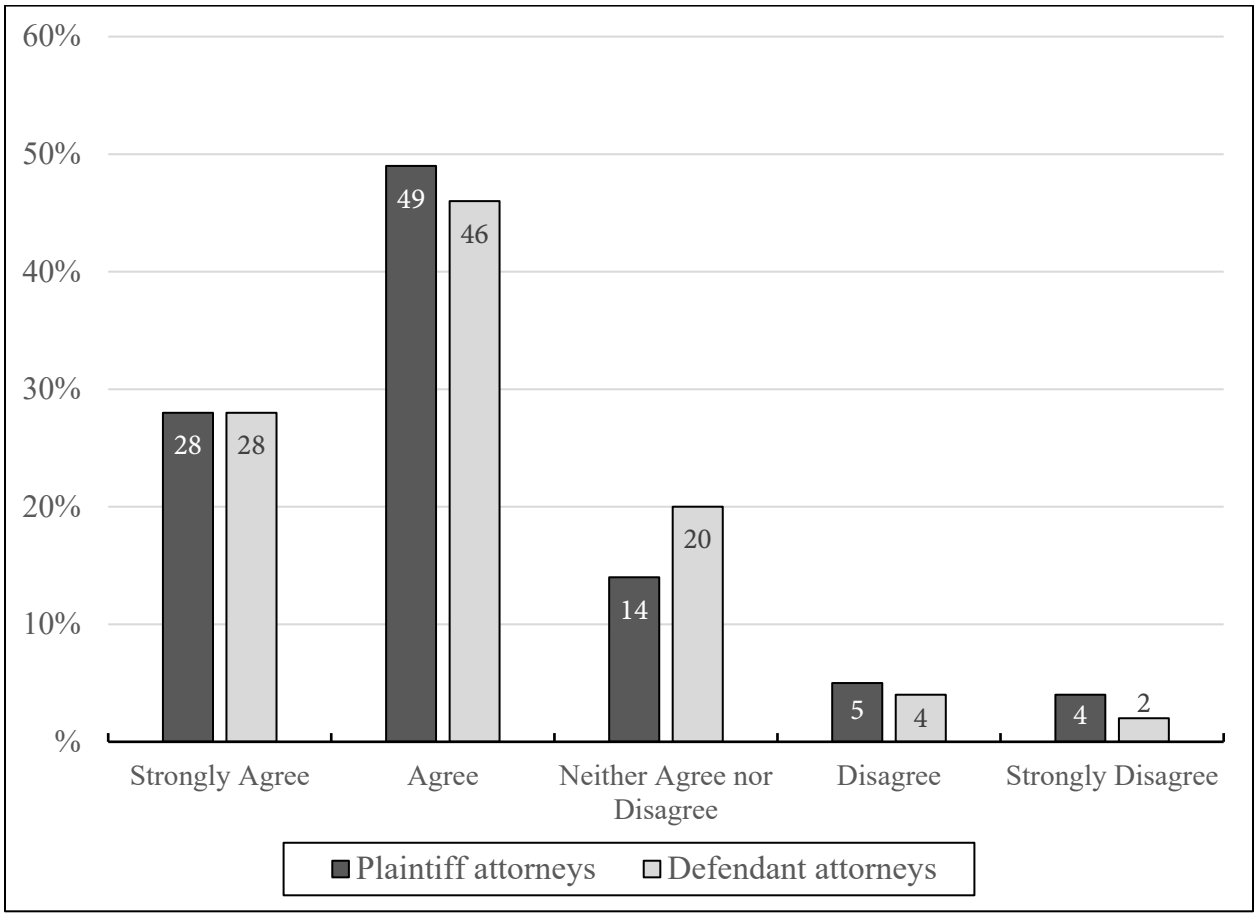
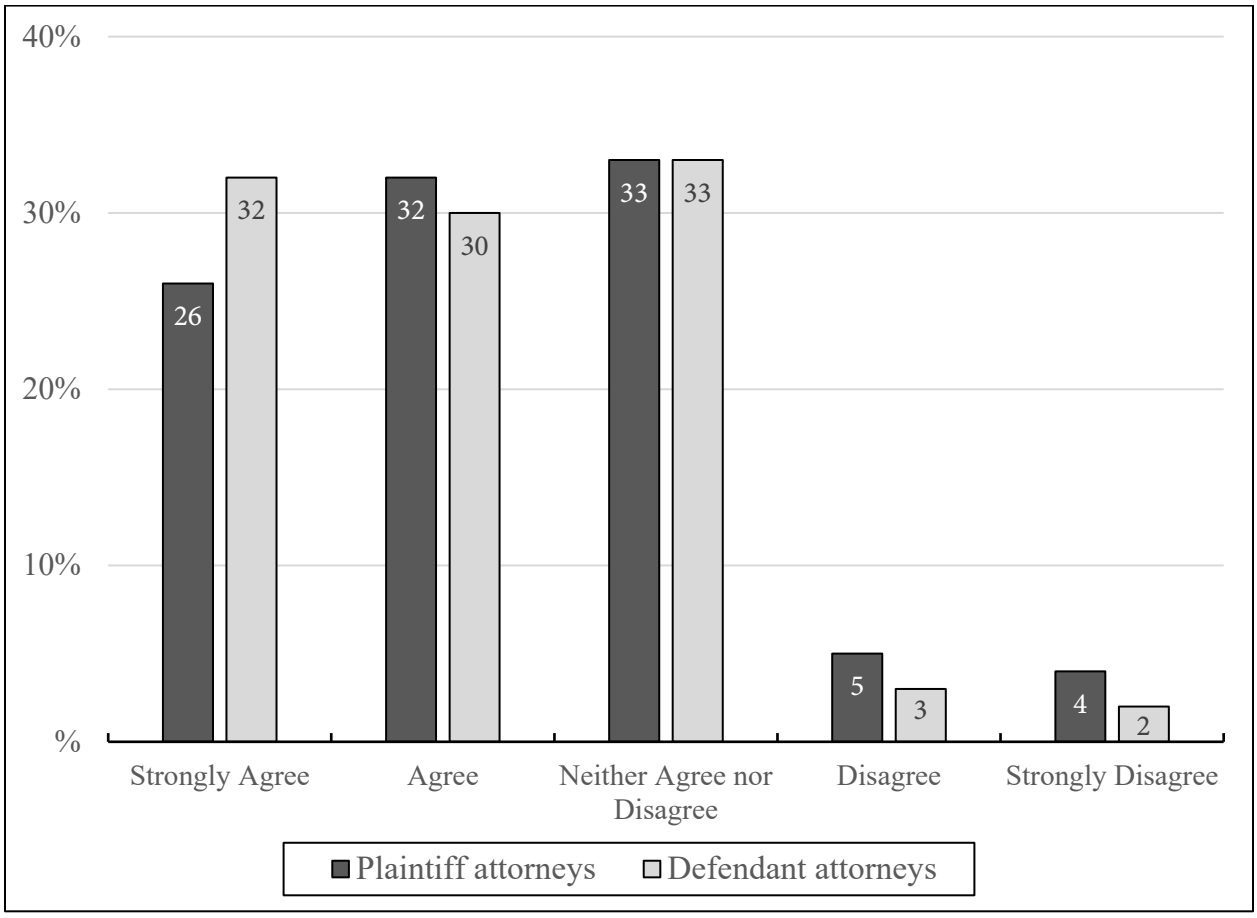


Figure 14: Not Participating in MIDP Illinois Northern Respondents' Agreement with the Statement "The substantive outcome of the case was fair." (*n* = 1,338)



Participation in the Pilot

The survey asked respondents how they first became aware of the MIDP. In Arizona, attorneys most often said they learned of it through notice of the standing order after filing the case (40%), followed by communication sent out by the court prior to the filing of the case (28%), communication with a colleague/in-office training (15%), a bar program or publication (7%), or some other way (11%). In Illinois Northern, attorneys most often said they learned of it through communication sent out by the court prior to the filing of the case (36%), followed by notice of the standing order after filing the case (35%), communication with a colleague/in-office training (12%), a bar program or publication (7%), or some other way (10%). In both districts, attorneys who selected "other" generally noted that they became aware through prior filings and cases or through local counsel making them aware.

The surveys asked respondents to answer if, in the closed case, "either side provide[d] the other side with mandatory initial discovery, as required by the standing order." All respondents were informed that their answers applied only to the closed case named in the subject line of the email inviting them to participate in the survey. Response options were, "Yes, all required exchanges

were made," "Yes, my side did but all sides did not," "Yes, other sides did but my side did not," "No," and "I do not recall." In the figures, the one-side responses are combined; few respondents indicated that the other side made MIDP responses but that their side did not (27 total respondents).

In Arizona (**Figure 15**), 57% of plaintiff attorneys and 55% of defendant attorneys reported that, "Yes all required exchanges were made." Another 9% of plaintiff attorneys and defendant attorneys each responded that one side but not both made MIDP responses. Roughly 27% of plaintiff attorneys and 29% of defendant attorneys stated that neither side did, and 7% of plaintiff attorneys and 6% of defendant attorneys said they did not recall. In Illinois Northern (**Figure 16**), 47% of plaintiff attorneys and 48% of defendant attorneys reported that, "Yes all required exchanges were made." Another 8% of plaintiff attorneys and defendant attorneys each responded that one side, but not both, made MIDP responses. Roughly 36% of plaintiff attorneys and defendant attorneys each stated that neither side did, and 7% of plaintiff attorneys and 9% of defendant attorneys said they did not recall.

Figure 15: Participation in MIDP in Arizona (*n* = 1,480)

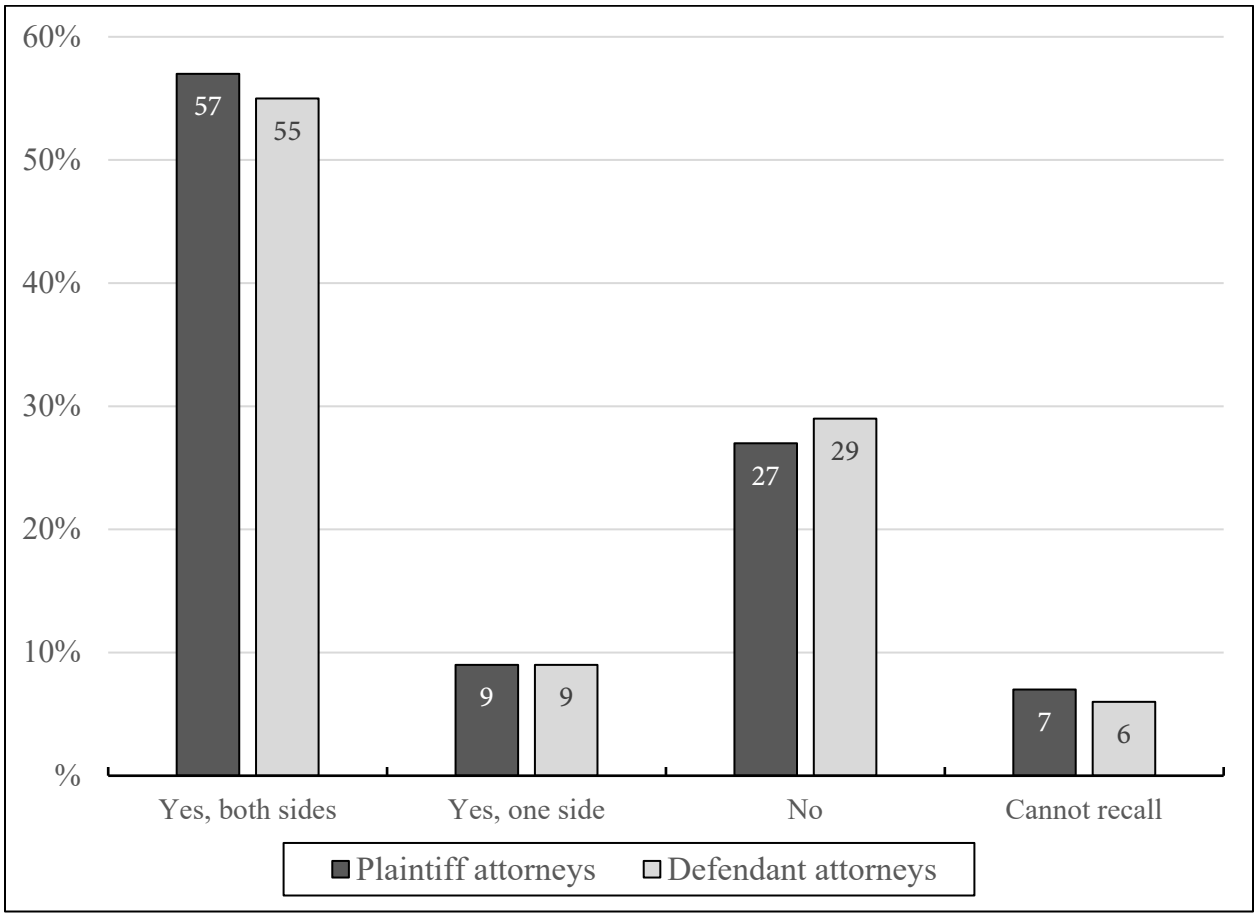
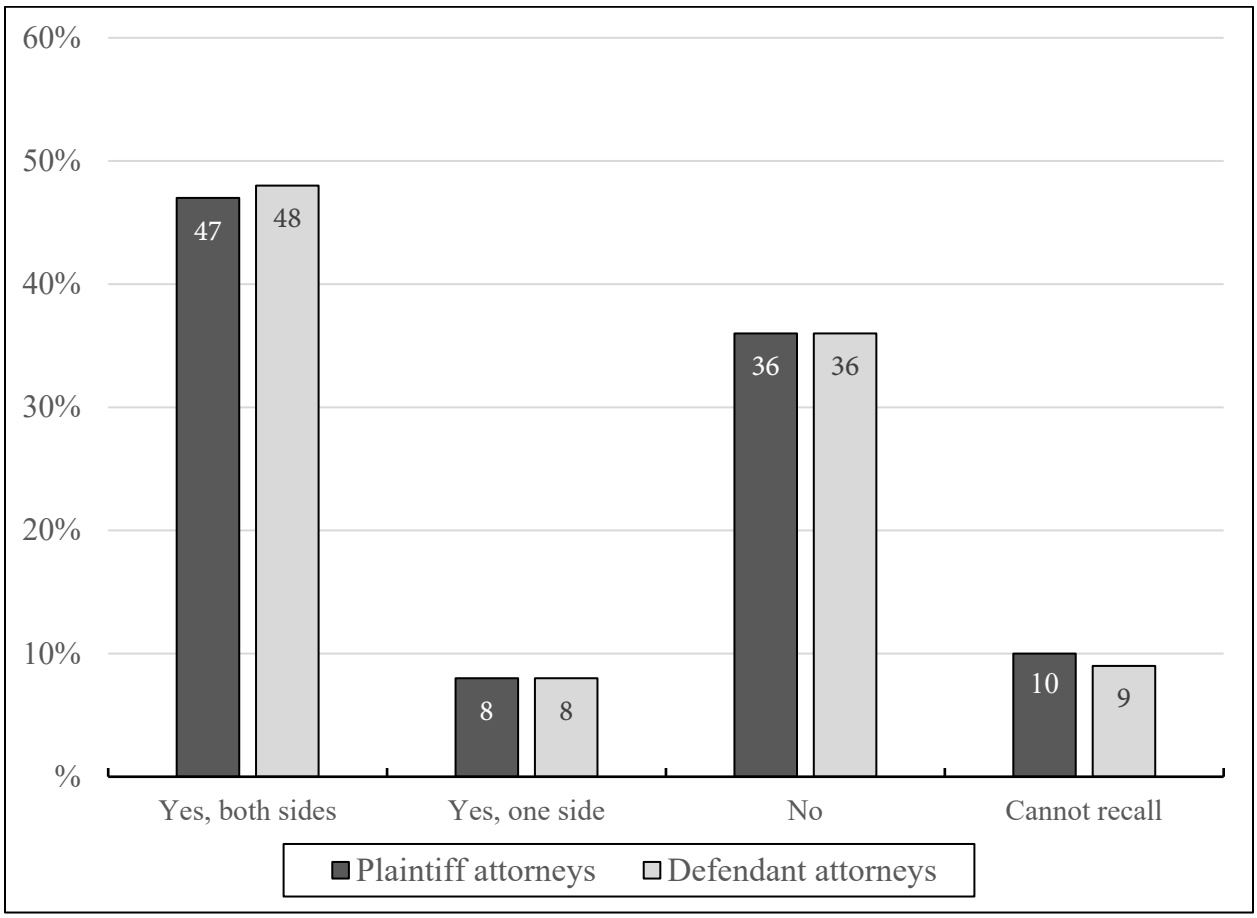


Figure 16: Participation in MIDP in Northern Illinois (*n* = 3,266)



Combining the both-sides and one-side responses, we can estimate the MIDP participation rate in pilot cases in the two districts. In Arizona, the participation rate in the closed case survey results was 63–65%, and in Illinois Northern, the participation rate was about 55%. This higher MIDP participation rate in Arizona is a consistent finding of the study.[33] The extent to which these participation rates reflect resistance to the MIDP disclosure obligations imposed by the pilot is difficult to estimate. It is impossible to know, for example, how many defendants sought an extension of time to file a responsive pleading to avoid triggering MIDP obligations. Impressionistically, motions to extend time to answer complaints, including joint motions and second motions, were somewhat common in Illinois Northern.[34]

33. *See supra* note 26.

34. For a sample of pilot cases, the median time from case filing to the filing of the first responsive pleading was 62 days in Illinois Northern, compared to 48 days in Arizona. *See infra* at 90 (Illinois Northern) and 85 (Arizona). For example, consider this Minute Entry from a non-participating Illinois Northern pilot case in which no responsive pleading was filed: "MINUTE entry before the Honorable Robert M. Dow, Jr: Second joint motion to extend response deadlines and initial status hearing . . . is granted. Defendants' responses to [Plaintiff's] amended complaint is due 5/30/2018." Minute Entry, Gen. Star Indem. Co. v. Panther Wholesale, Inc., No. 1:17cv8039 (N.D. Ill. Apr. 2, 2018). The defendants in this case never answered; the case was voluntarily dismissed (probably settled) on May 29, 2018.

If MIDP responses were not reported to have been made in the closed case, respondents were asked a follow-up question about why they were not made. The primary reason respondents in both districts gave for not making the MIDP responses was resolution of the case before the pilot obligations arose (generally speaking, 30 days after filing of a responsive pleading). In Arizona, 77% of plaintiff attorneys and 79% of defendant attorneys responded that the case was dismissed, transferred, or otherwise resolved before the pilot's discovery obligations arose. About 6% of Arizona plaintiff attorneys and 2% of defendant attorneys responded that the parties stipulated that no discovery would be conducted in the case. About 3% of Arizona plaintiff attorneys and 4% of defendant attorneys responded that the parties certified that they believed the case would be resolved in 30 days after the responsive pleading. Additionally, 14% of Arizona plaintiff attorneys and 15% of defendant attorneys selected "Other" and provided a reason, mostly that the case had settled, that it was not subject to the MIDP, or that a motion to dismiss was pending.

In Illinois Northern, 62% of plaintiff attorneys and 65% of defendant attorneys responded that the case was dismissed, transferred, or otherwise resolved before the pilot's discovery obligations arose. About 5% of Illinois Northern plaintiff attorneys and 4% of defendant attorneys responded that the parties stipulated that no discovery would be conducted in the case. About 8% of Northern District of Illinois plaintiff attorneys and 6% of defendant attorneys responded that the parties certified that they believed the case would be resolved in 30 days after the responsive pleading. Additionally, 26% of Illinois Northern plaintiff attorneys and defendant attorneys each selected "Other" and provided a reason, mostly that the case had settled, that it was not subject to the MIDP, that discovery was stayed, or that a motion to dismiss was pending.

Respondents' Evaluation of the Pilot's Effects on Closed Cases

Survey respondents in participating cases were asked a series of 12 questions assessing how the MIDP had affected the recently closed case. These questions were designed to address the goals of the pilot, such as reducing discovery disputes and motions practice, and, in a few instances, to address concerns that were raised about potential effects of the MIDP exchanges, such as disclosure of information through the MIDP that would not otherwise have been requested. Respondents stated agreement or disagreement with the statements about the "exchange of initial discovery" in the closed case. Responses to each statement are provided separately below, with responses discussed by district and attorney role.

Provided Relevant Information Earlier in the Case

In both districts, more respondents agreed with the statement that the MIDP responses "provided relevant information earlier in the case" than agreed with any of the other 12 statements. This was expected because the primary purpose of the MIDP is to provide relevant information earlier in the case.

In Arizona (**Figure 17**), 75% of plaintiff attorneys either strongly agreed (21%) or agreed (54%) with this statement, compared to the 10% who either disagreed (7%) or strongly disagreed (3%). Among Arizona defendant attorneys, 67% strongly agreed (13%) or agreed (54%), compared to 17% who either disagreed (12%) or strongly disagreed (5%). Relatively few Arizona plaintiff attorneys (12%) or defendant attorneys (15%) neither agreed nor disagreed.

In Illinois Northern (**Figure 18**), 66% of plaintiff attorneys either agreed (47%) or strongly agreed (19%) with this statement, compared to the 17% who either disagreed (11%) or strongly disagreed (6%). Among Illinois Northern defendant attorneys, 55% agreed (45%) or strongly agreed (10%), compared to 23% who disagreed (17%) or strongly disagreed (6%). Similar numbers of Illinois Northern plaintiff attorneys (16%) and defendant attorneys (20%) neither agreed nor disagreed.

Figure 17: MIDP "Provided Relevant Information Earlier in the Case," Arizona (*n* = 921)

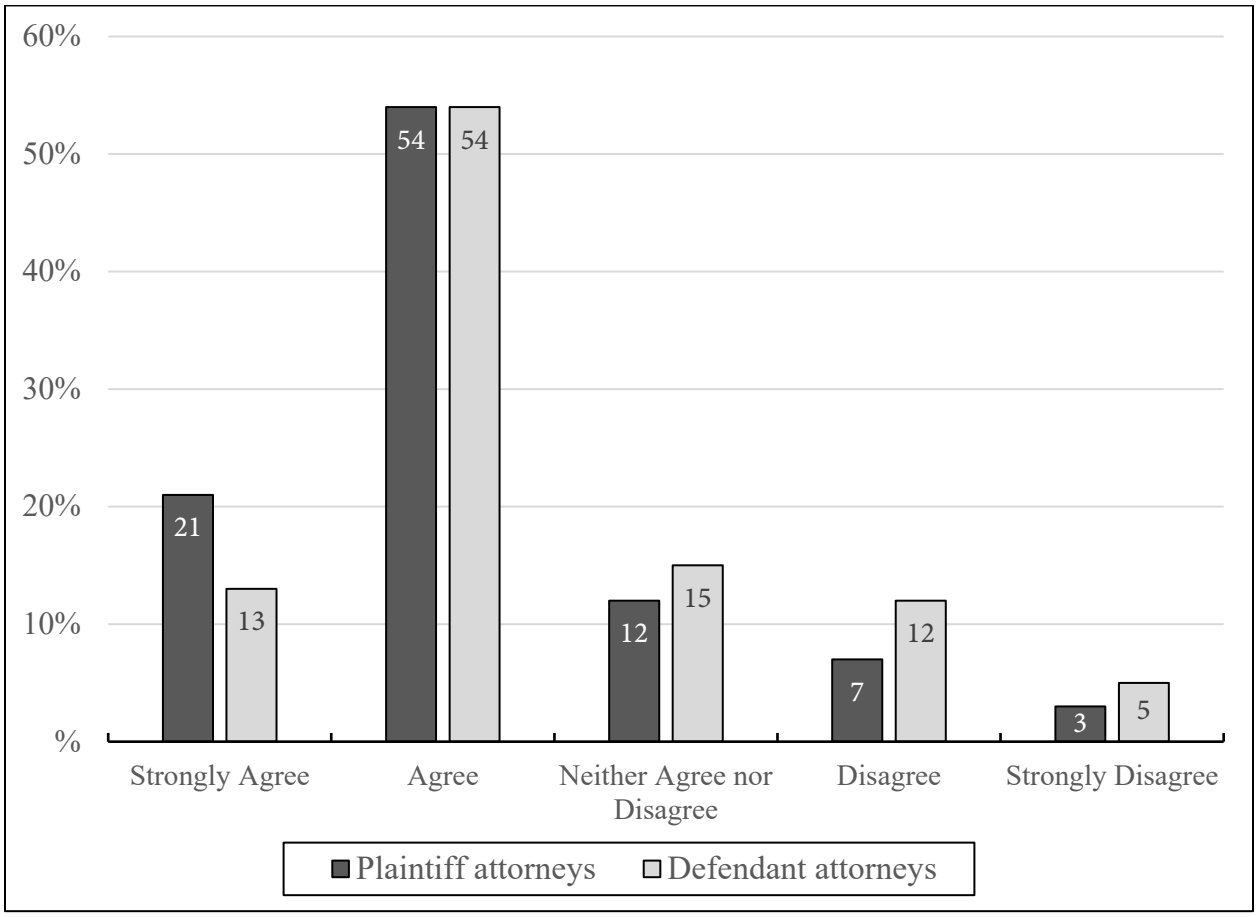
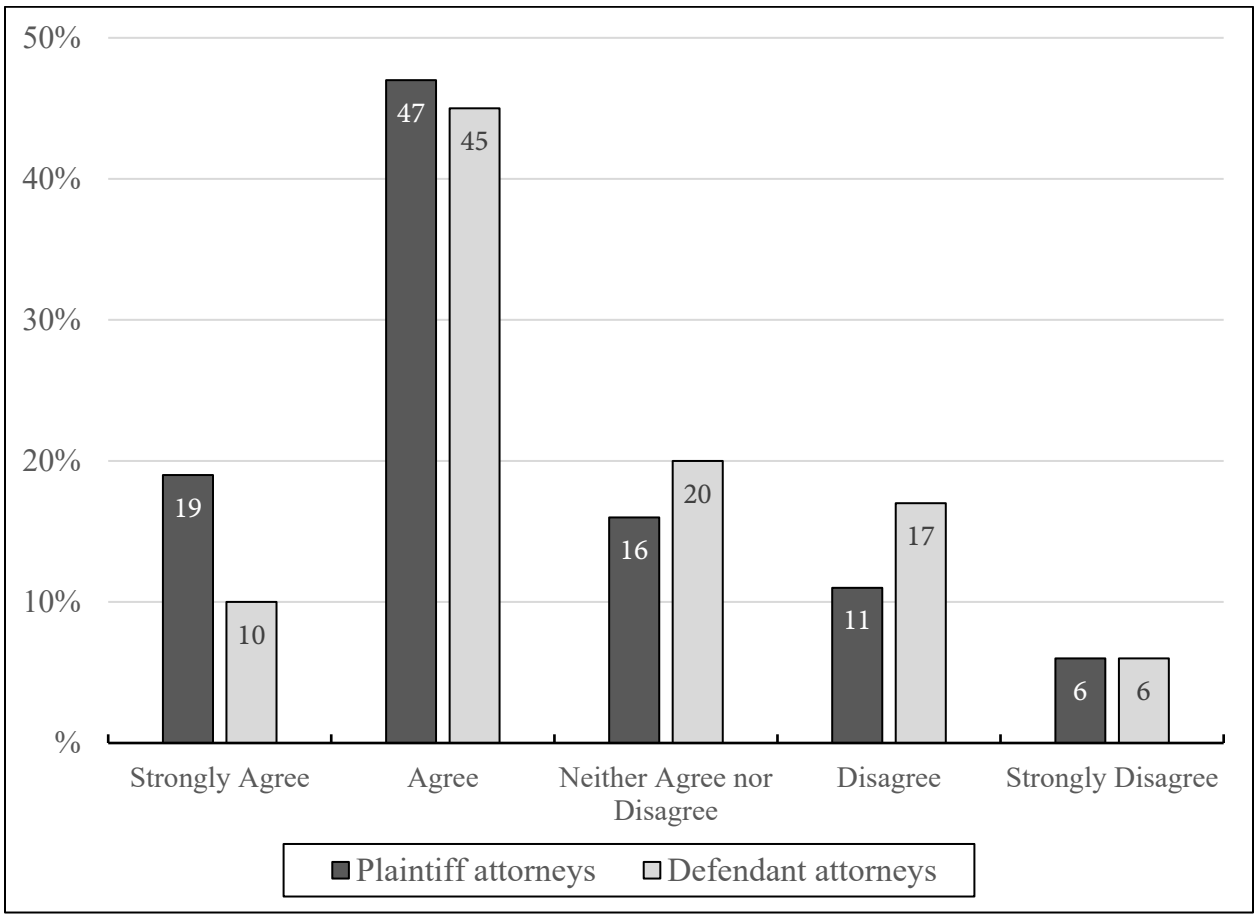


Figure 18: MIDP "Provided Relevant Information Earlier in the Case," Illinois Northern (*n* = 1,732)



Led to Disclosure of Information That Would Not Likely Have Been Requested Otherwise

Arizona respondents tended to disagree with or express neutrality toward this statement while Illinois Northern respondents most often disagreed or strongly disagreed with it. Relatively few respondents in either district saw the exchange of information through the MIDP as leading to disclosure of information that would not otherwise have been requested by opposing counsel.

In Arizona (**Figure 19**), 43% of Arizona plaintiff attorneys either disagreed (34%) or strongly disagreed (9%) with the statement; 30% neither agreed nor disagreed. Only 24% of plaintiff attorneys either strongly agreed (7%) or agreed (17%). Among Arizona defendant attorneys, 49% either disagreed (35%) or strongly disagreed (14%); 31% neither agreed nor disagreed. Only 18% of defendant attorneys either strongly agreed (3%) or agreed (14%) with the statement.

In Illinois Northern (**Figure 20**), 58% of plaintiff attorneys either disagreed (39%) or strongly disagreed (19%), 21% neither agreed nor disagreed, and 19% either strongly agreed (6%) or agreed (13%) with this statement. Likewise, among defendant attorneys, 67% either disagreed (42%) or strongly disagreed (25%), 18% neither agreed nor disagreed, and only 12% strongly agreed (3%) or agreed (9%).

Figure 19: MIDP "Led to Disclosure of Information That Would Not Likely Have Been Requested Otherwise," Arizona (*n* = 922)

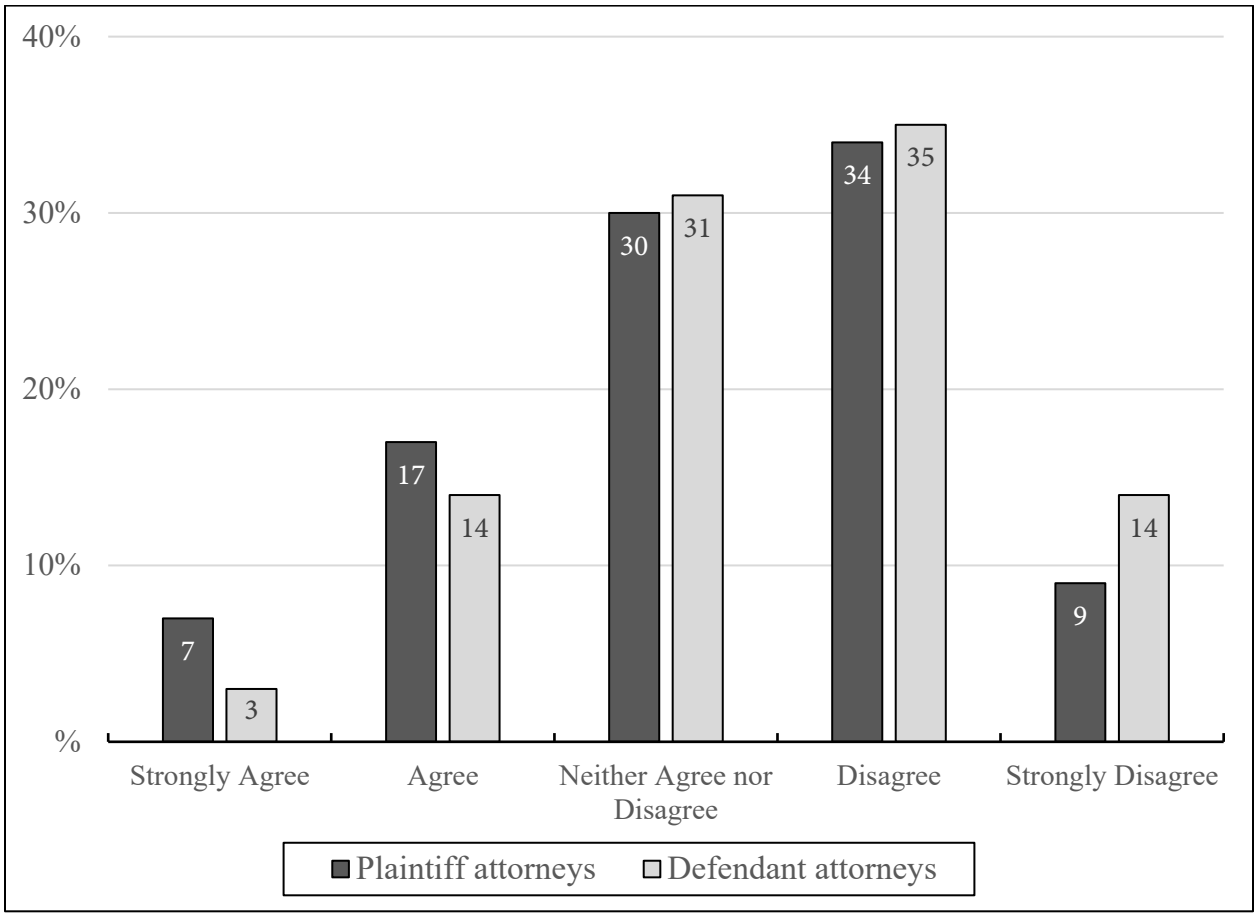
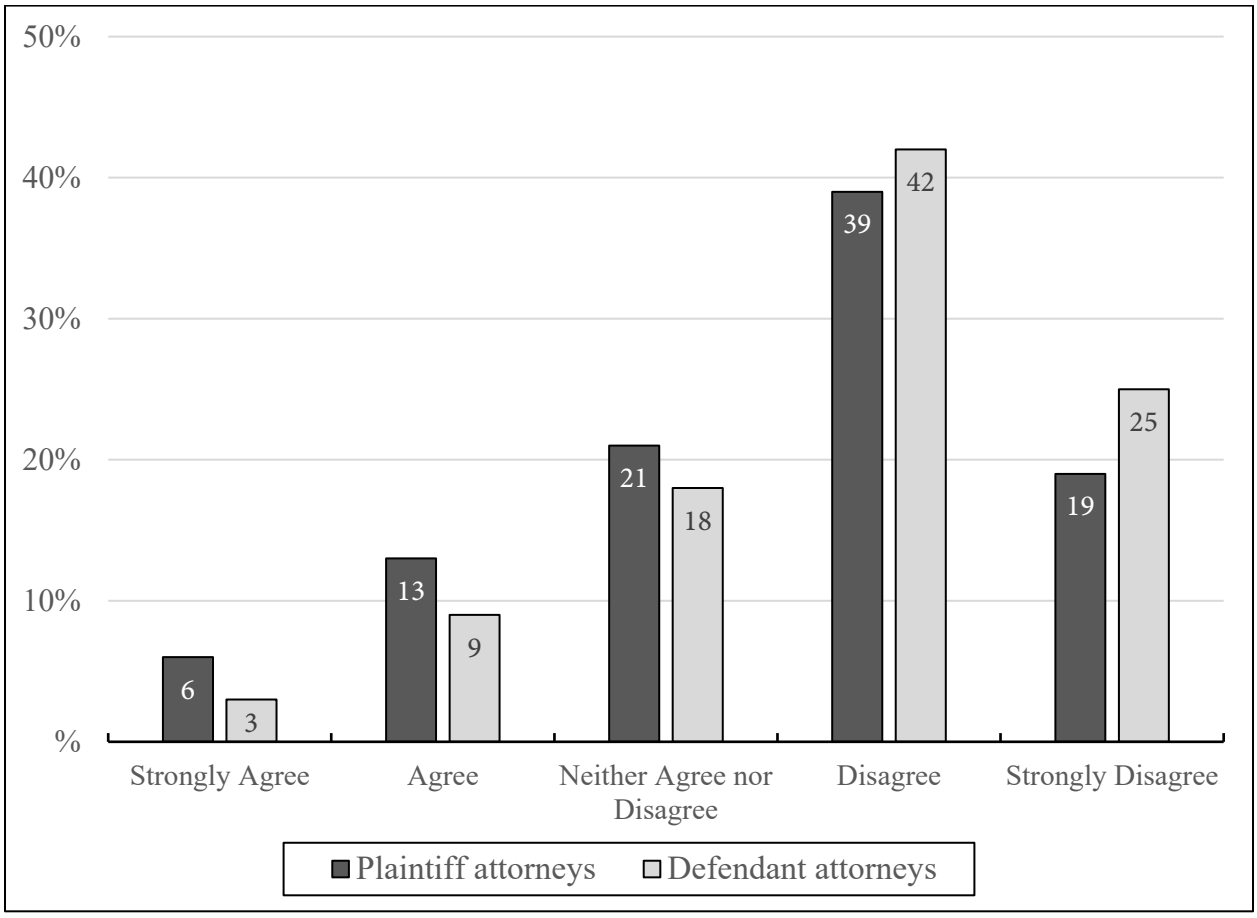


Figure 20: MIDP "Led to Disclosure of Information That Would Not Likely Have Been Requested Otherwise," Illinois Northern (*n* = 1,732)



Focused Subsequent Discovery on the Important Issues in the Case

The MIDP was intended to accelerate the exchange of relevant information but not change the discovery to which the parties would have access. However, respondents were less clear on whether the accelerated exchange of information focused subsequent discovery on the important issues in the case.

In Arizona (**Figure 21**), 42% of plaintiff attorneys either strongly agreed (10%) or agreed (32%), 36% neither agreed nor disagreed, and 18% either disagreed (13%) or strongly disagreed (5%) with this statement. Among defendant attorneys, 33% either strongly agreed (6%) or agreed (27%), 36% neither agreed nor disagreed, and 27% either disagreed (18%) or strongly disagreed (9%).

In Illinois Northern (**Figure 22**), 37% of plaintiff attorneys either strongly agreed (9%) or agreed (28%) that the MIDP focused subsequent discovery on the important issues in the case, compared to the 31% who either disagreed (21%) or strongly disagreed (10%), and 30% who neither agreed nor disagreed. Only 22% of defendant attorneys strongly agreed (3%) or agreed (19%), compared to 53% who disagreed (28%) or strongly disagreed (15%) and 30% who neither agreed nor disagreed.

Figure 21: MIDP "Focused Subsequent Discovery on the Important Issues in the Case," Arizona (*n* = 920)

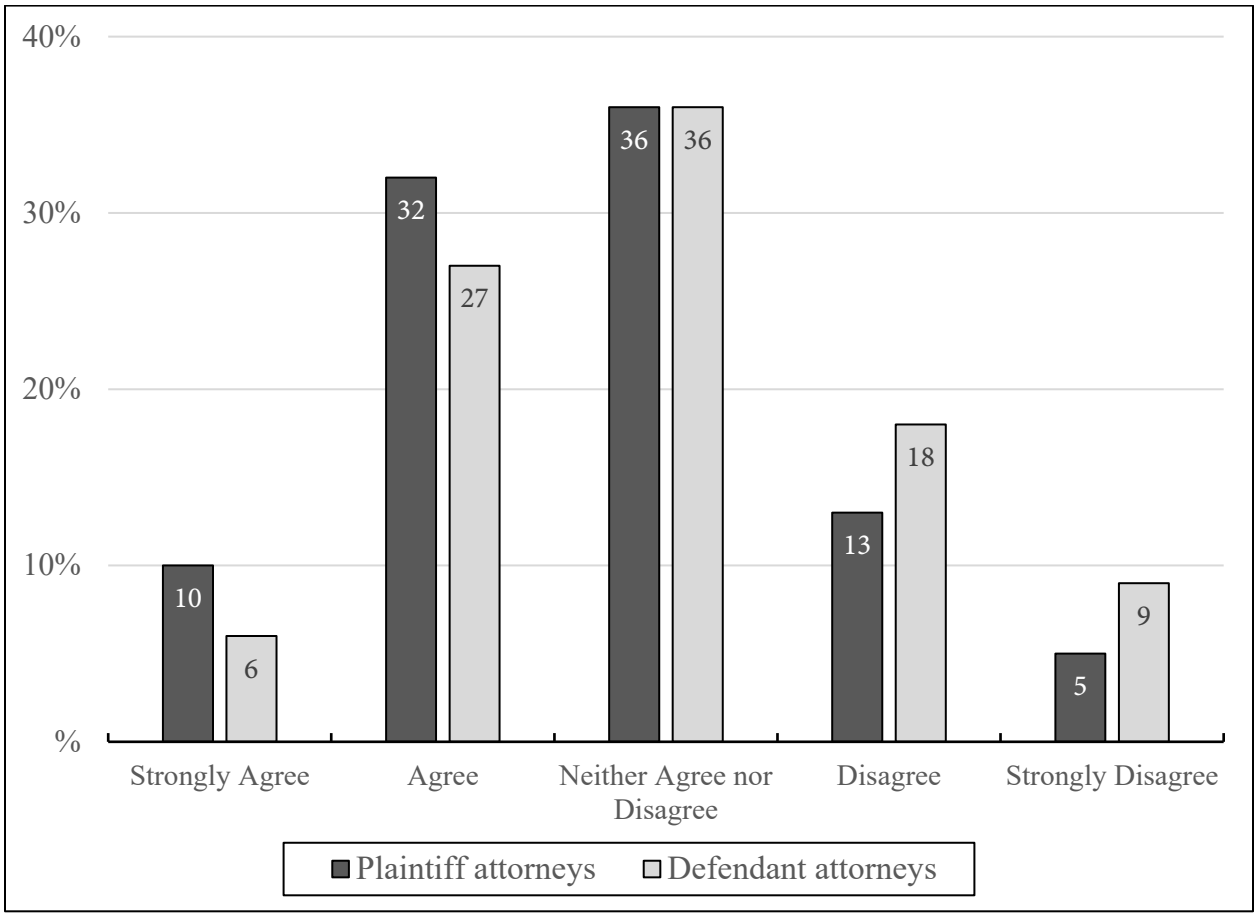
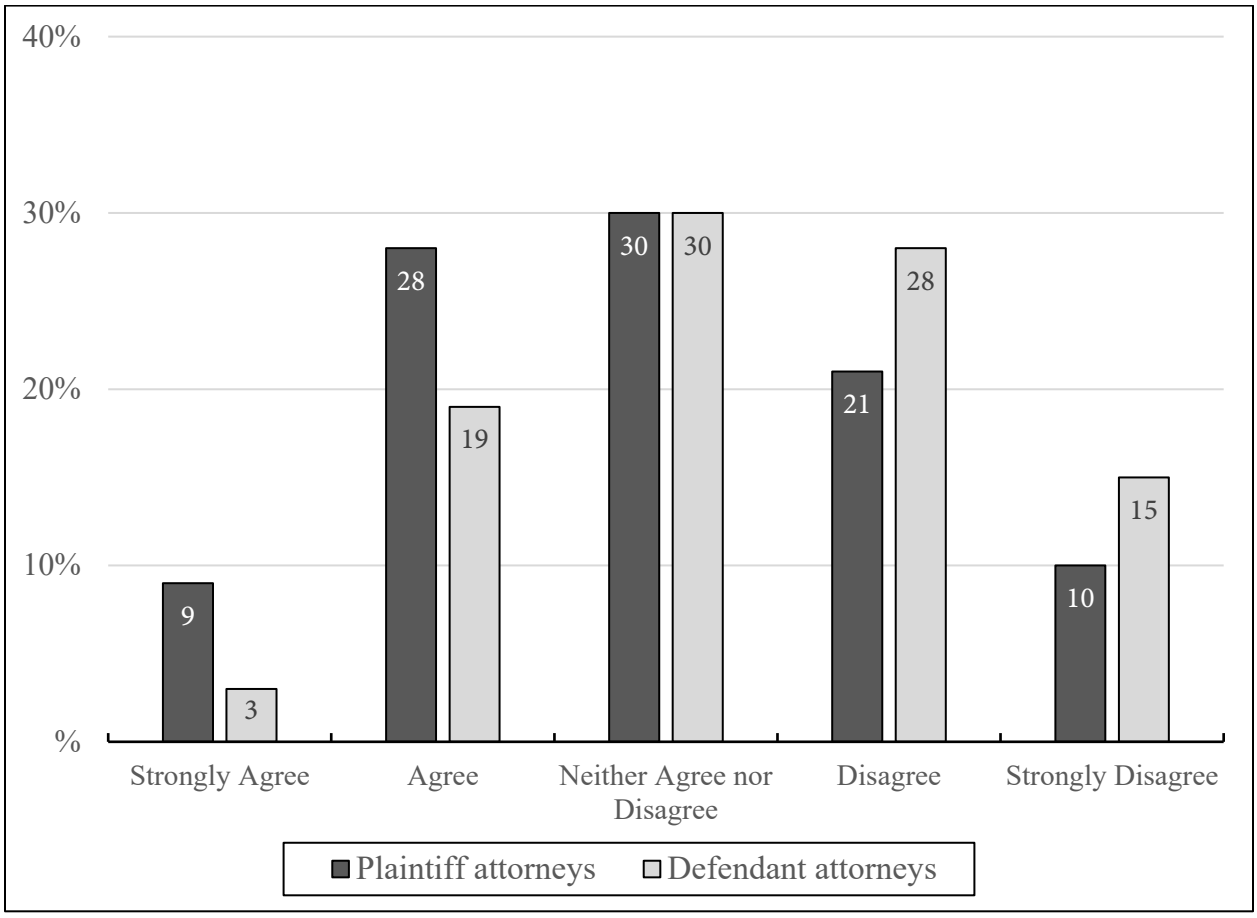


Figure 22: MIDP "Focused Subsequent Discovery on the Important Issues in the Case," Illinois Northern (*n* = 1,762)



Enhanced Effectiveness of Settlement Negotiations

Respondents were evenly divided in their responses to this statement. Similar numbers of both Arizona and Illinois Northern respondents agreed, expressed neutrality toward, or disagreed that the MIDP enhanced effectiveness of settlement negotiations.

In Arizona (**Figure 23**), 41% of plaintiff attorneys strongly agreed (10%) or agreed (31%) that the MIDP enhanced the effectiveness of settlement negotiations, 30% neither agreed nor disagreed, and 25% either disagreed (18%) or strongly disagreed (7%). Among Arizona defendant attorneys, 31% either strongly agreed (7%) or agreed (24%), 32% neither agreed nor disagreed, and 35% either disagreed (23%) or strongly disagreed (12%).

In Illinois Northern (**Figure 24**), 35% of plaintiff attorneys either strongly agreed (10%) or agreed (25%) that the MIDP enhanced the effectiveness of settlement negotiations, compared to the 37% who either disagreed (25%) or strongly disagreed (12%), and 27% who neither agreed nor disagreed. Among Illinois Northern defendant attorneys, 26% strongly agreed (4%) or agreed (22%), compared to 45% who disagreed (28%) or strongly disagreed (17%), and 27% who neither agreed nor disagreed.

Figure 23: MIDP "Enhanced Effectiveness of Settlement Negotiations," Arizona (*n* = 917)

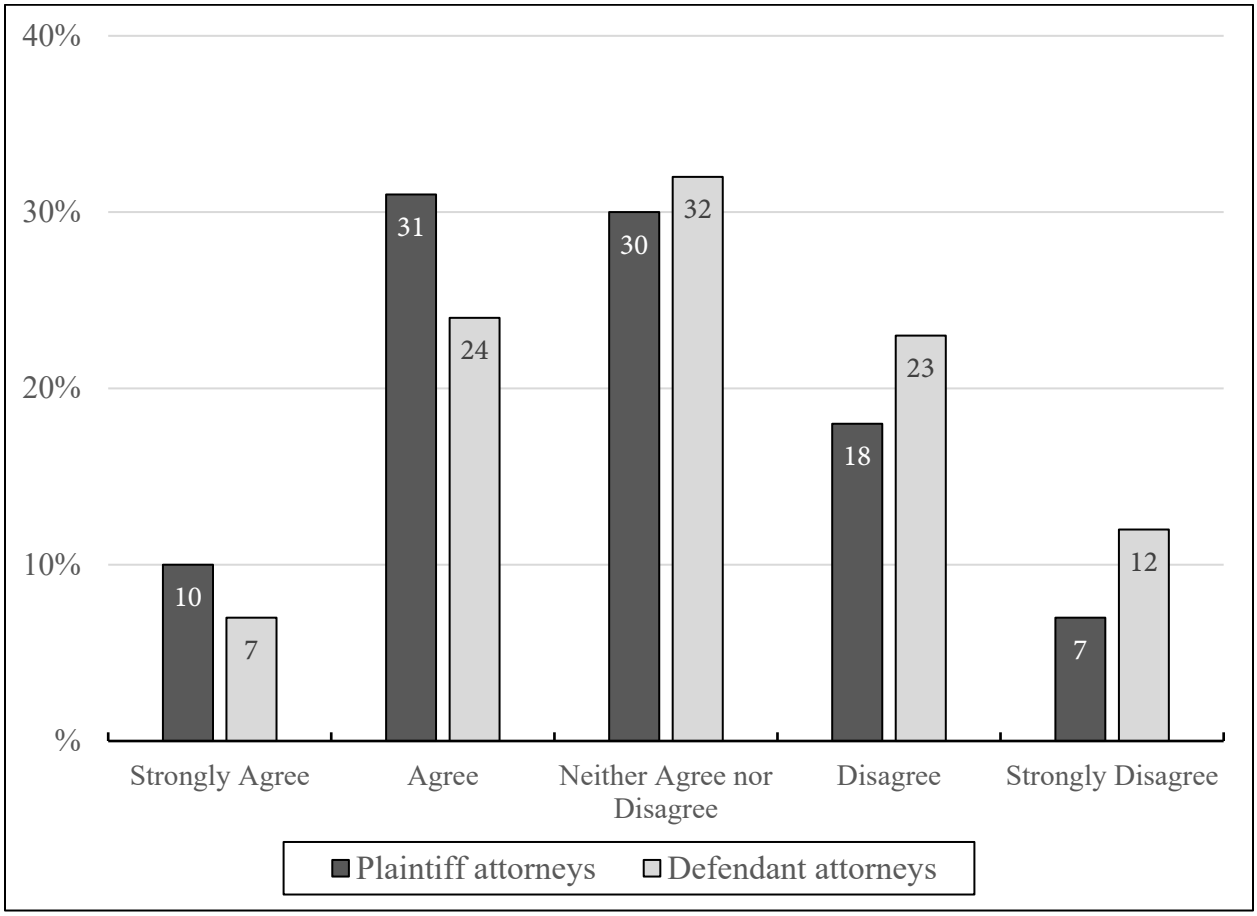
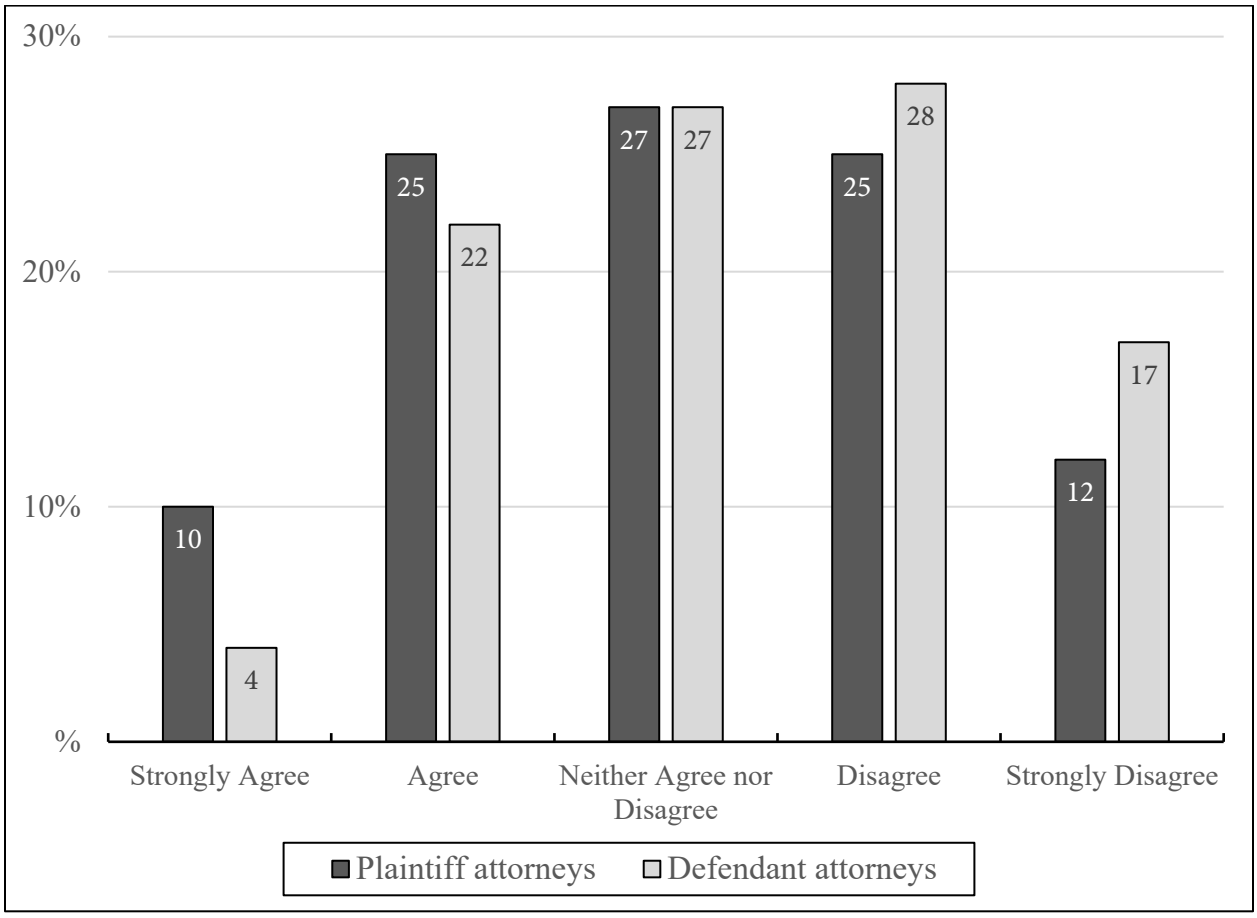


Figure 24: MIDP "Enhanced Effectiveness of Settlement Negotiations," Illinois Northern (*n* = 1,728)



Expedited Settlement Discussions Among the Parties

As with the last statement, respondents were evenly divided in their responses to this statement. Similar numbers of both Arizona and Illinois Northern respondents agreed, expressed neutrality toward, or disagreed that the MIDP expedited settlement discussions among the parties.

In Arizona (**Figure 25**), 36% of plaintiff attorneys either strongly agreed (10%) or agreed (26%), 31% neither agreed nor disagreed, and 30% either disagreed (22%) or strongly disagreed (8%) with this statement. Among Arizona defendant attorneys, 28% either strongly agreed (7%) or agreed (21%) or, 30% neither agreed nor disagreed, and 39% either disagreed (27%) or strongly disagreed (12%).

In Illinois Northern (**Figure 26**), 33% of plaintiff attorneys either strongly agreed (11%) or agreed (22%) with this statement, compared to the 41% who either disagreed (27%) or strongly disagreed (14%), and 24% who neither agreed nor disagreed. Among defendant attorneys, 26% strongly agreed (5%) or agreed (21%), compared to 48% who disagreed (31%) or strongly disagreed (17%), and 24% who neither agreed nor disagreed.

Figure 25: MIDP "Expedited Settlement Discussions Among the Parties," Arizona (*n* = 921)

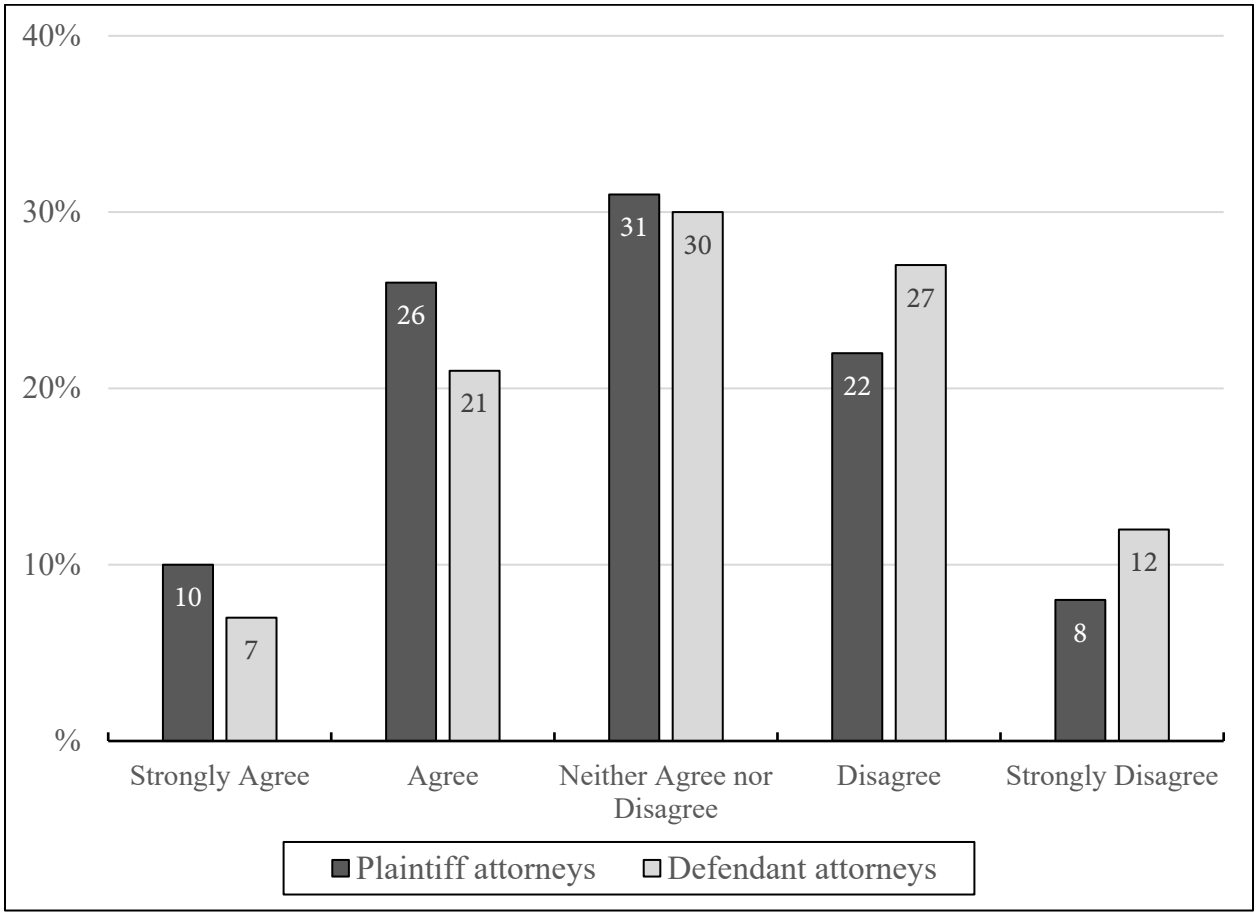
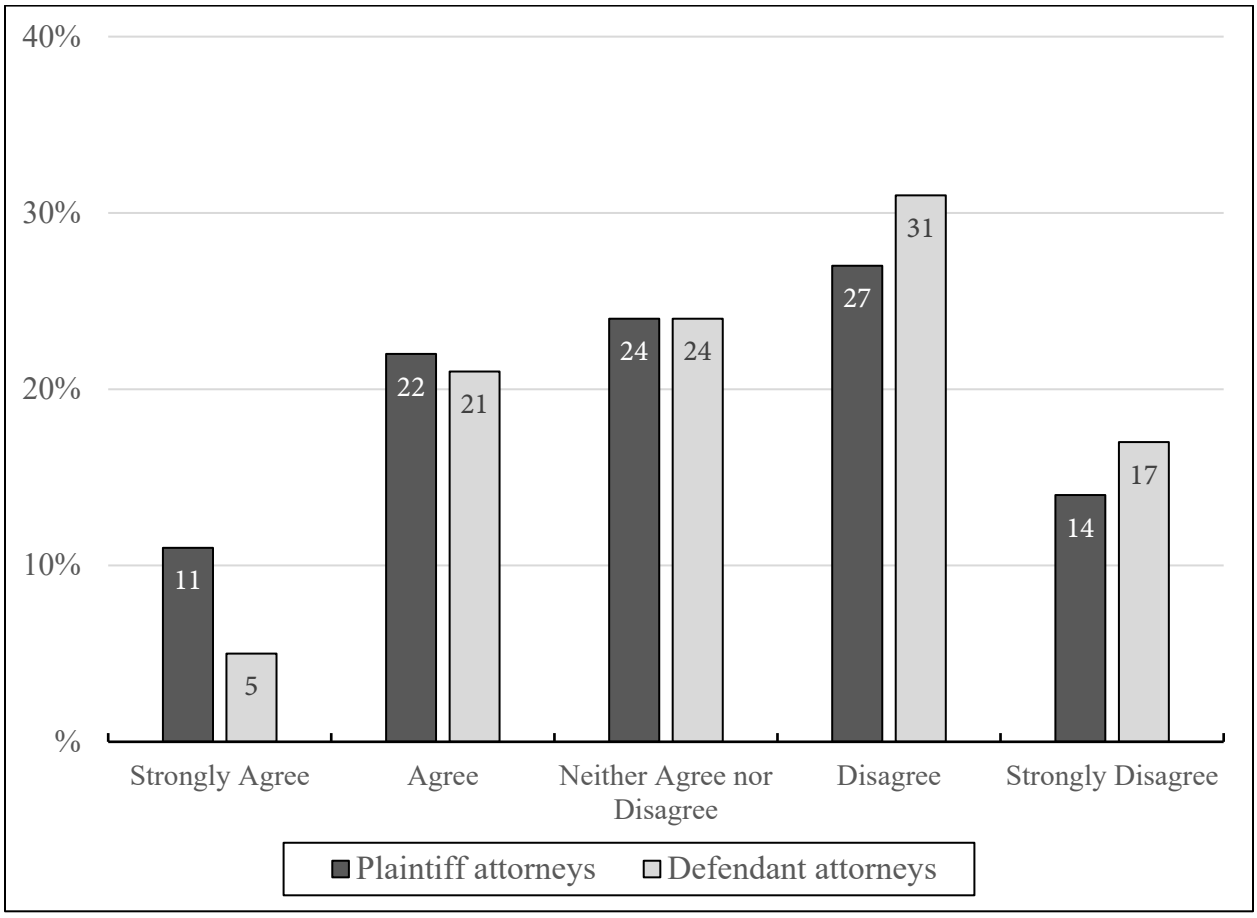


Figure 26: MIDP "Expedited Settlement Discussions Among the Parties," Illinois Northern (*n* = 1,728)



Reduced the Number of Discovery Requests That Would Have Otherwise Been Made

Regarding whether the MIDP reduced the number of discovery requests that would have otherwise been made, both plaintiff and defendant attorneys in Arizona and plaintiff attorneys in Illinois Northern tended to agree with this statement, and defendant attorneys in Illinois Northern tended to disagree.

In Arizona (**Figure 27**), 51% of plaintiff attorneys either strongly agreed (13%) or agreed (38%), 23% neither agreed nor disagreed, and 21% either disagreed (16%) or strongly disagreed (5%). Similarly, for Arizona defendant attorneys, 47% either strongly agreed (10%) or agreed (37%), 19% neither agreed nor disagreed, and 30% either disagreed (20%) or strongly disagreed (10%).

In Illinois Northern (**Figure 28**), 39% of plaintiff attorneys either strongly agreed (10%) or agreed (29%) with this statement, compared to the 38% who either disagreed (25%) or strongly disagreed (13%), and 20% who neither agreed nor disagreed. In contrast, only 29% of defendant attorneys strongly agreed (6%) or agreed (23%), compared to 47% who disagreed (31%) or strongly disagreed (16%), and 20% who neither agreed nor disagreed.

Figure 27: MIDP "Reduced the Number of Discovery Requests That Would Have Otherwise Been Made," Arizona (*n* = 921)

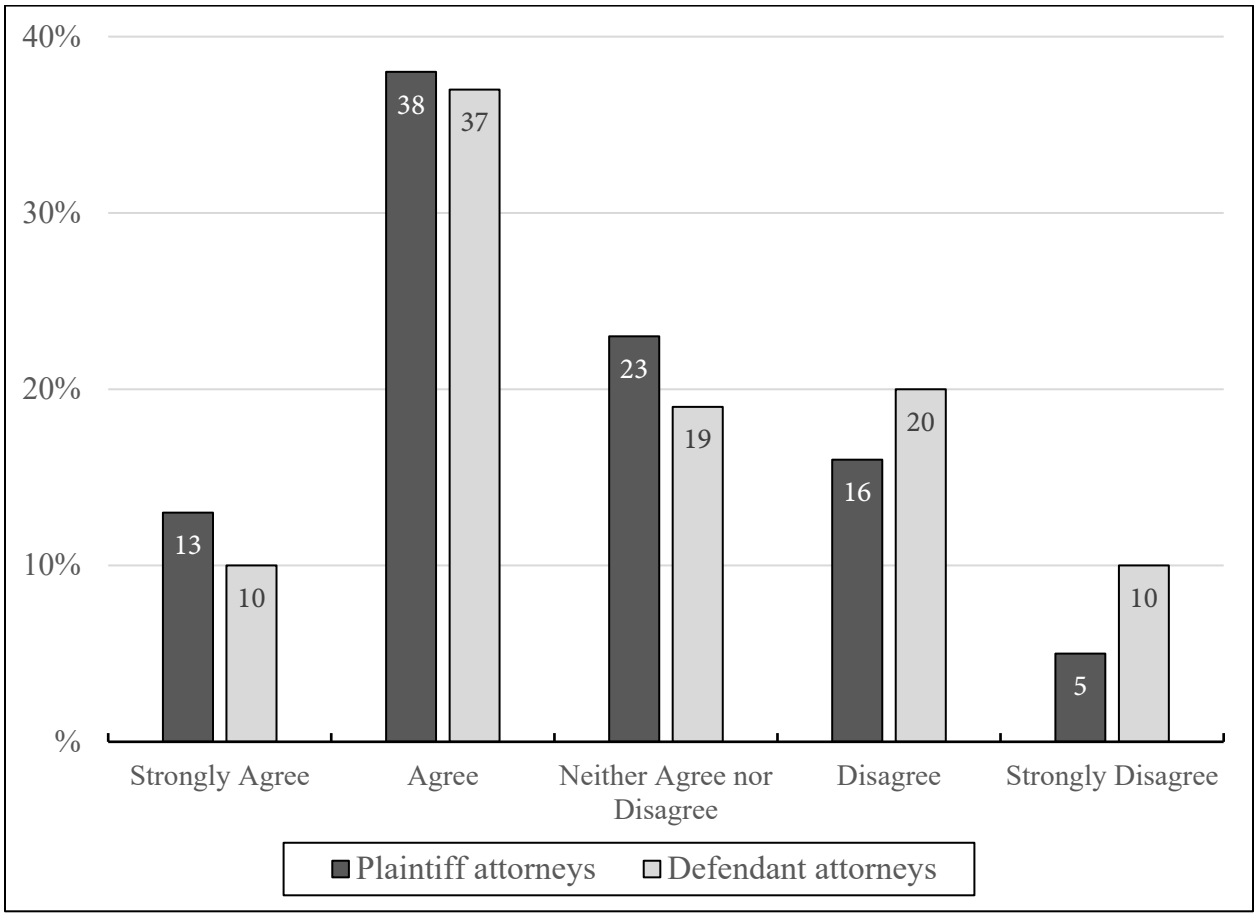
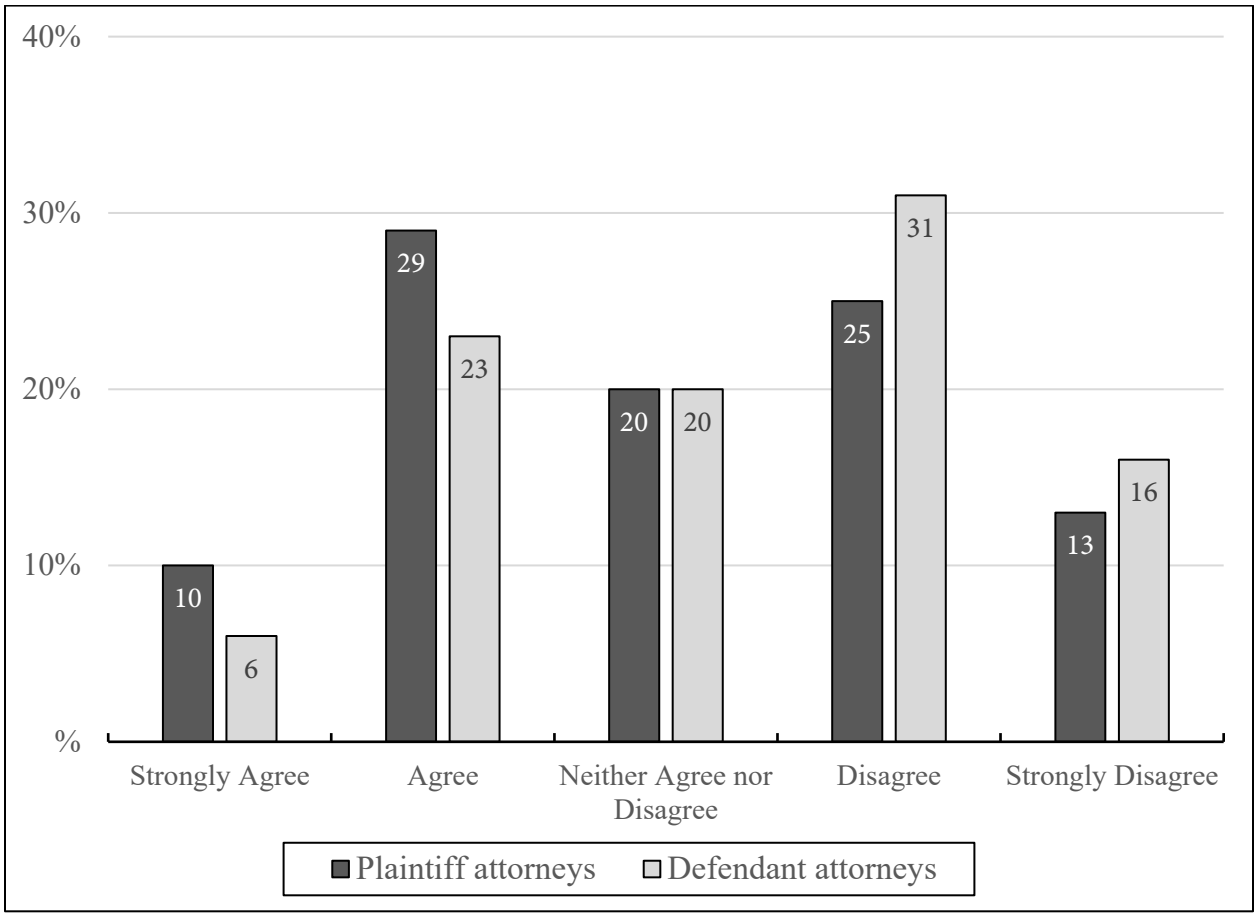


Figure 28: MIDP "Reduced the Number of Discovery Requests That Would Have Otherwise Been Made," Illinois Northern (*n* = 1,725)



Reduced the Volume of Discovery Required to Resolve the Case

This question is slightly different from the preceding one, focused not on the number of discovery requests but on the actual volume of discovery. A single request for electronically stored information may represent a massive volume of information (in petabytes). Arizona respondents tended to be evenly divided on whether MIDP met this goal, while Illinois Northern respondents tended to disagree that it did.

In Arizona (**Figure 29**), 37% of plaintiff attorneys either strongly agreed (9%) or agreed (28%), 30% neither agreed nor disagreed, and 27% either disagreed (20%) or strongly disagreed (7%). For Arizona defendant attorneys, 33% either strongly agreed (8%) or agreed (25%), 25% neither agreed nor disagreed, and 38% either disagreed (25%) or strongly disagreed (13%).

In Illinois Northern (**Figure 30**), only 28% of plaintiff attorneys either strongly agreed (8%) or agreed (20%) that the MIDP reduced the volume of discovery required to resolve the closed case and 24% neither agreed nor disagreed; 45% either disagreed (30%) or strongly disagreed (15%). Similarly, only 19% of defendant attorneys strongly agreed (4%) or agreed (15%) and 23% neither agreed nor disagreed, but 54% disagreed (33%) or strongly disagreed (21%).

Figure 29: MIDP "Reduced the Volume of Discovery Required to Resolve the Case," Arizona (*n* = 921)

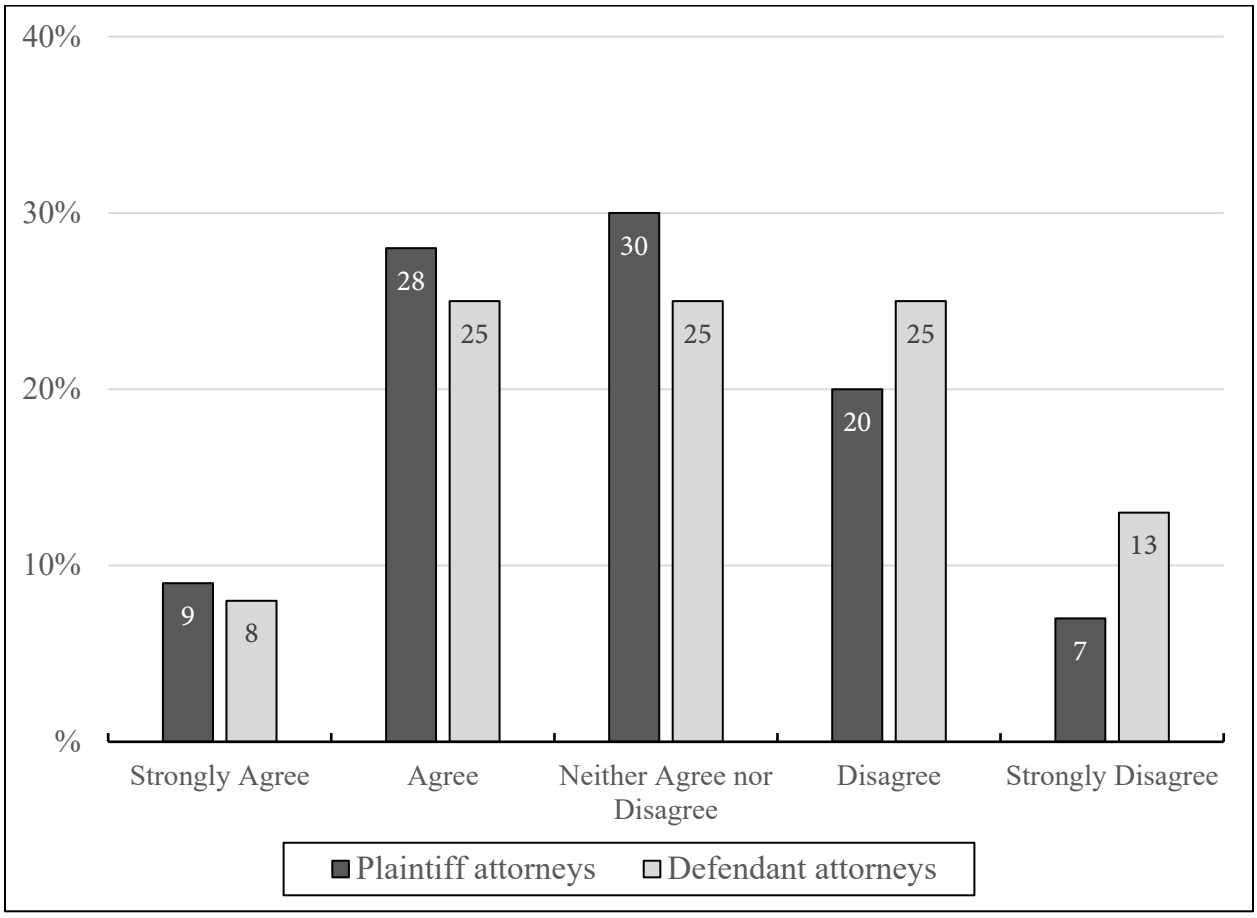
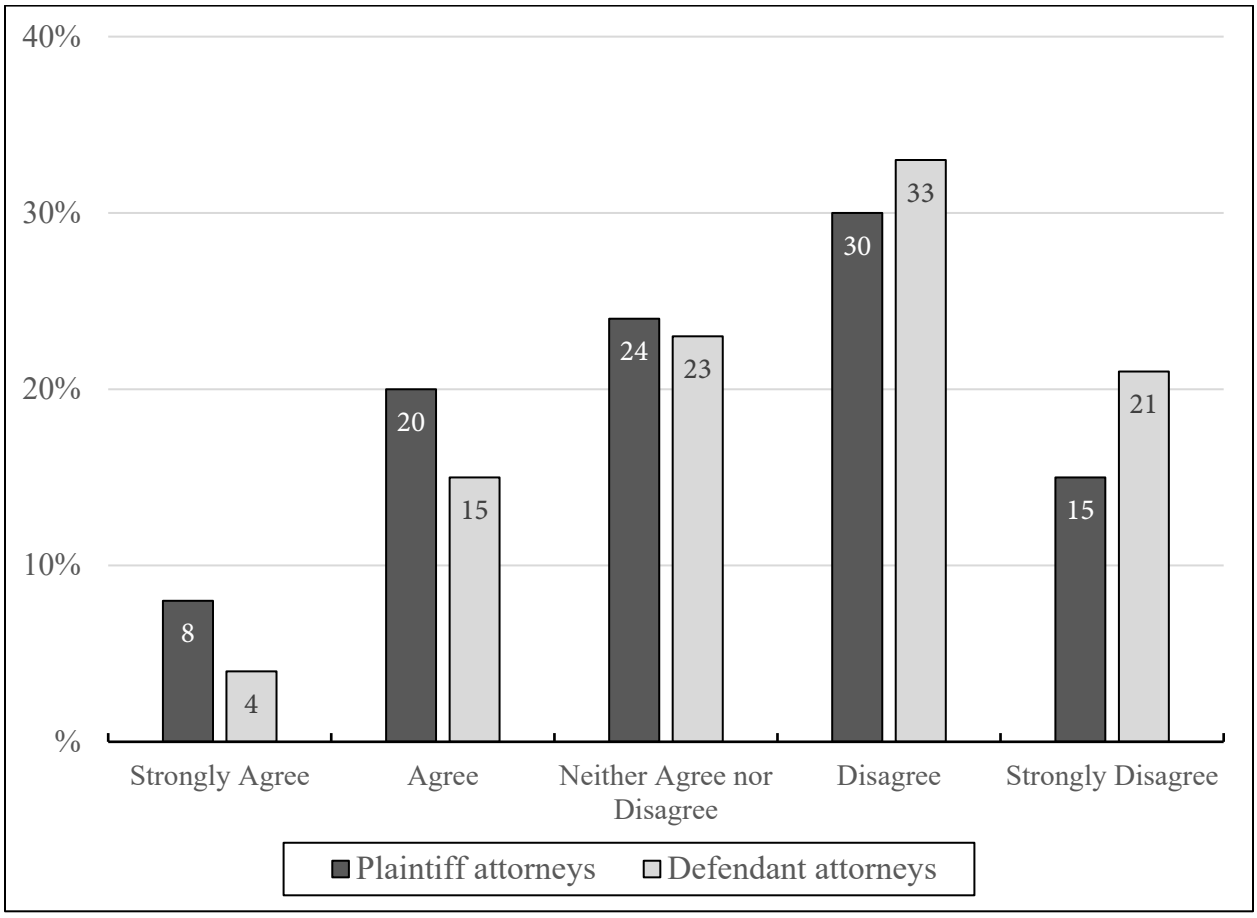


Figure 30: MIDP "Reduced the Volume of Discovery Required to Resolve the Case," Illinois Northern (*n* = 1,723)



Reduced the Number of Discovery Disputes That Would Have Otherwise Been Made in the Case

Regarding whether the MIDP reduced the number of discovery disputes that would have otherwise occurred, Arizona plaintiff attorneys tended to agree or respond neutrally; Arizona defendant attorneys and Illinois Northern plaintiff and defendant attorneys tended to disagree or respond neutrally.

In Arizona (**Figure 31**), 34% of plaintiff attorneys either strongly agreed (6%) or agreed (28%), 35% neither agreed nor disagreed, and 23% either disagreed (16%) or strongly disagreed (7%). For Arizona defendant attorneys, 25% either strongly agreed (6%) or agreed (19%), 32% neither agreed nor disagreed, and 34% either disagreed (23%) or strongly disagreed (11%).

In Illinois Northern (**Figure 32**), 27% of plaintiff attorneys either strongly agreed (8%) or agreed (19%) that the MIDP reduced the number of discovery disputes, 31% neither agreed nor disagreed, and 38% either disagreed (26%) or strongly disagreed (12%). Only 18% of defendant attorneys strongly agreed (3%) or agreed (15%), compared to 32% who neither agreed nor disagreed, and 43% who disagreed (29%) or strongly disagreed (14%).

Figure 31: MIDP "Reduced the Number of Discovery Disputes That Would Have Otherwise Been Made in the Case," Arizona (*n* = 919)

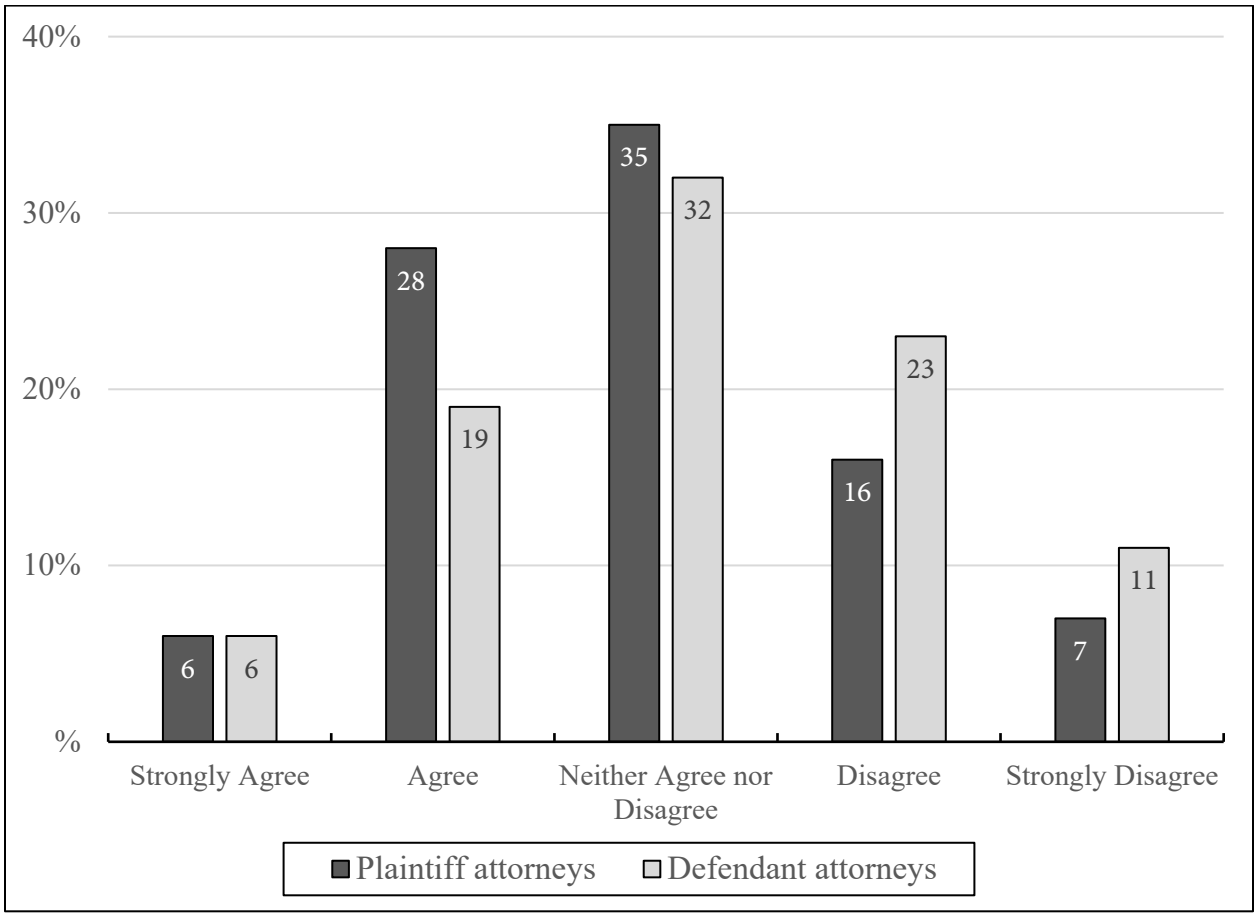
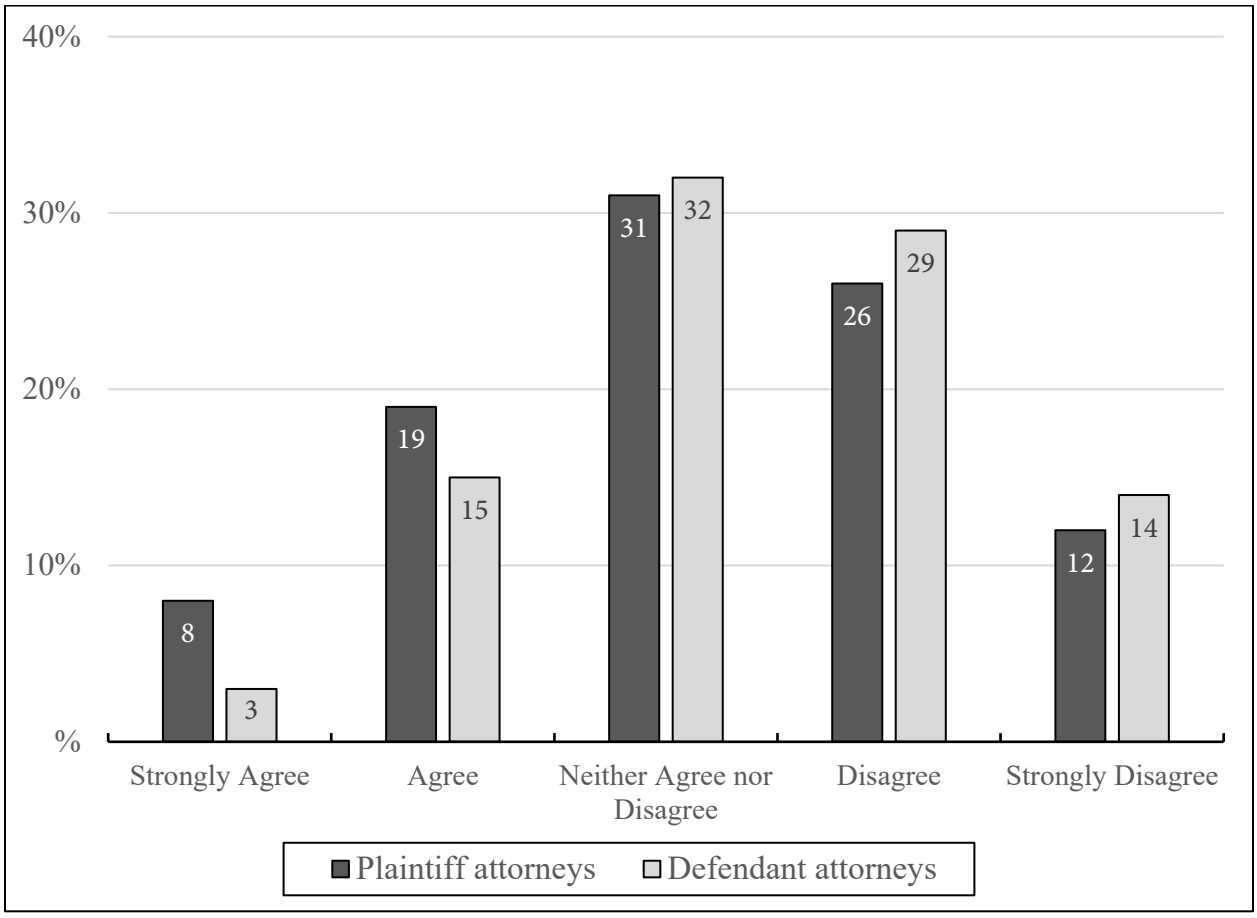


Figure 32: MIDP "Reduced the Number of Discovery Disputes That Would Have Otherwise Been Made in the Case," Illinois Northern (*n* = 1,721)



Reduced the Number of Motions Filed in the Case

Respondents tended to respond neutrally or disagree with the statement that MIDP reduced the number of motions filed in the case.

In Arizona (**Figure 33**), 23% of plaintiff attorneys either strongly agreed (5%) or agreed (18%), 39% neither agreed nor disagreed, and 30% either disagreed (22%) or strongly disagreed (8%). Among Arizona defendant attorneys, 18% either strongly agreed (5%) or agreed (13%), 35% neither agreed nor disagreed, and 40% either disagreed (28%) or strongly disagreed (12%).

In Illinois Northern (**Figure 34**), 24% of plaintiff attorneys either strongly agreed (7%) or agreed (17%) with this statement, 34% neither agreed nor disagreed, and 38% disagreed (26%) or strongly disagreed (12%). Only 15% of defendant attorneys strongly agreed (3%) or agreed (12%), compared to 44% who disagreed (30%) or strongly disagreed (14%) and 34% who neither agreed nor disagreed.

Figure 33: MIDP "Reduced the Number of Motions Filed in the Case," Arizona (*n* = 919)

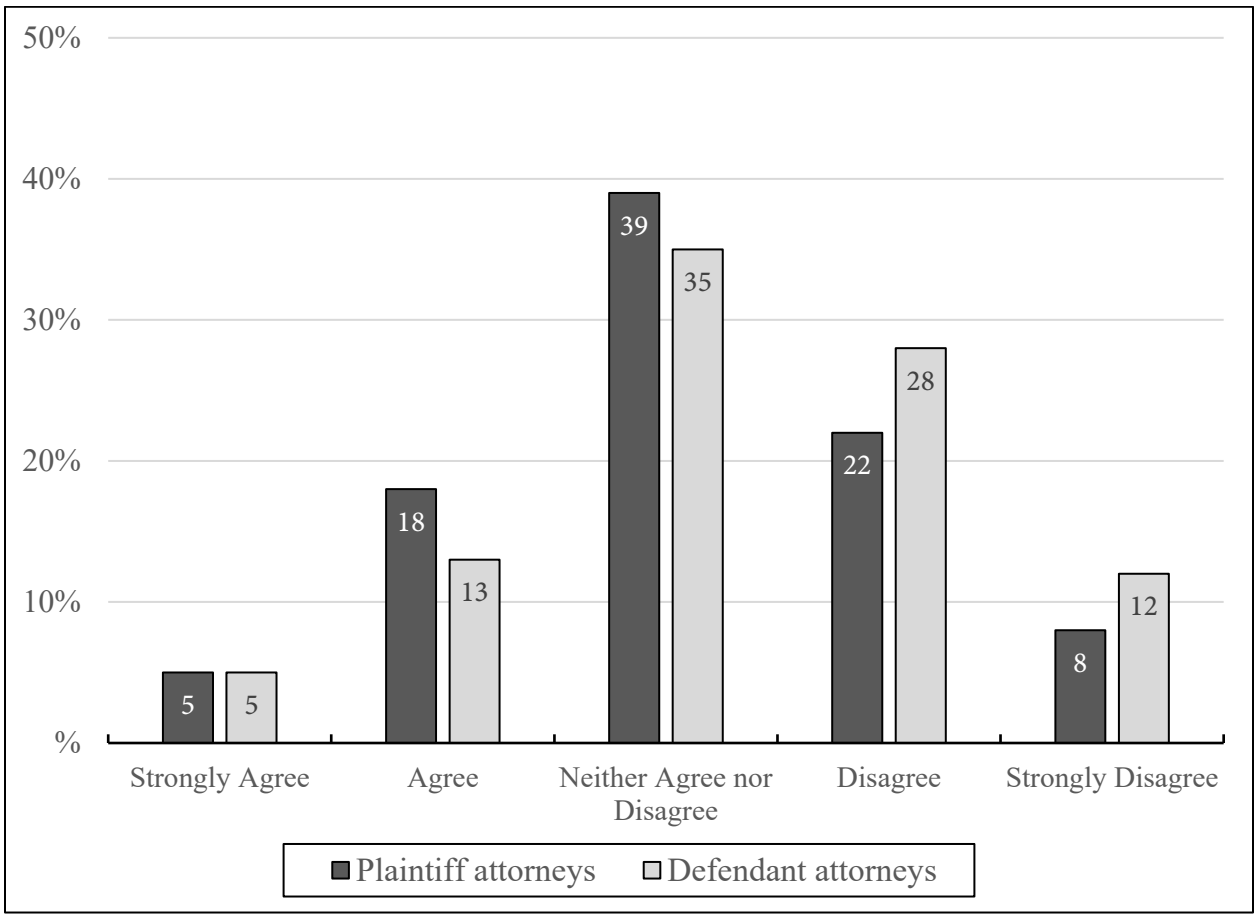
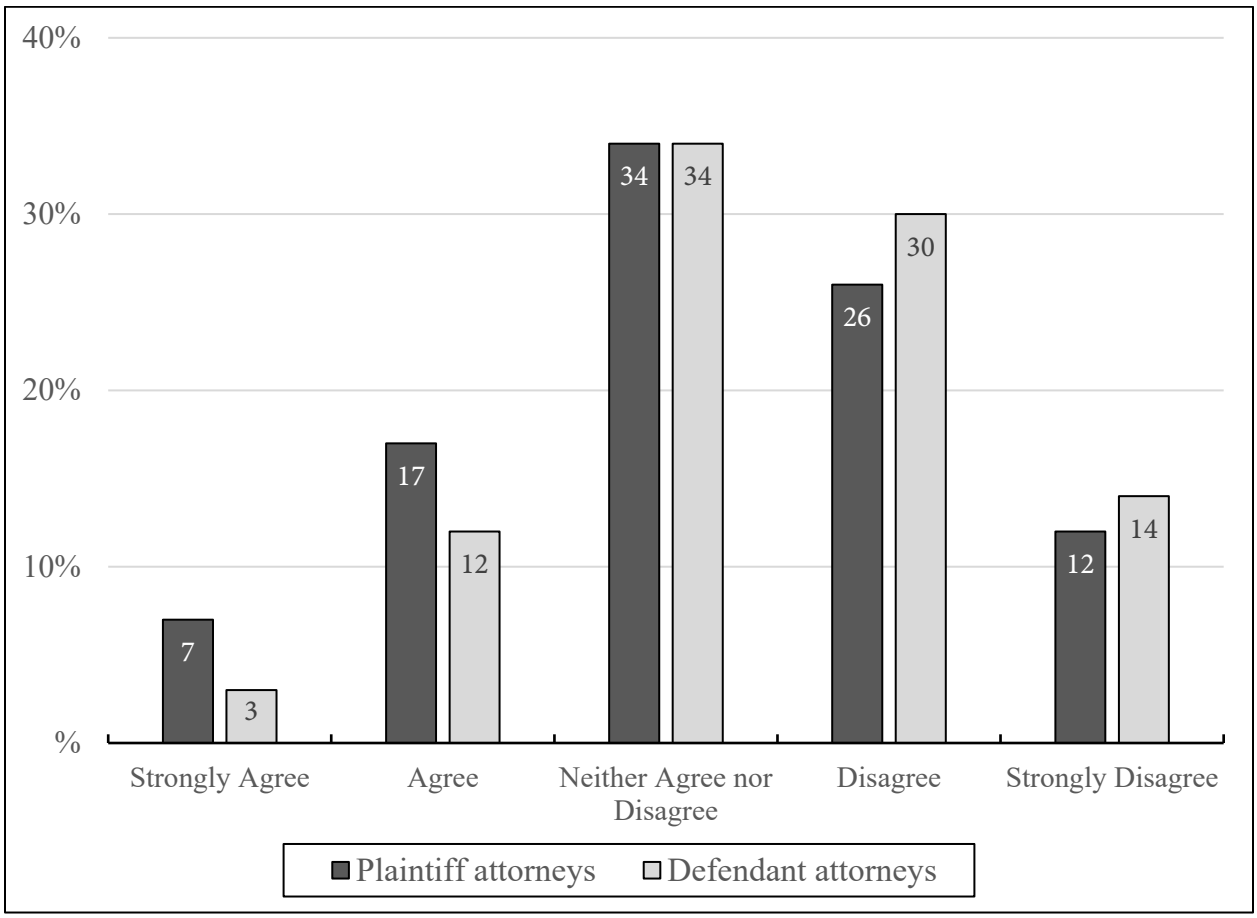


Figure 34: MIDP "Reduced the Number of Motions Filed in the Case," Illinois Northern (*n* = 1,722)



Reduced the Discovery Costs in the Case for My Client

Regarding whether the MIDP reduced discovery costs for their client, Arizona plaintiff attorneys tended to agree or respond neutrally, while Arizona defendant attorneys tended to agree, respond neutrally, or disagree at similar rates. Illinois Northern plaintiff attorneys tended to disagree or respond neutrally, and Illinois Northern defendant attorneys tended to disagree or strongly disagree.

In Arizona (**Figure 35**), 35% of plaintiff attorneys either strongly agreed (7%) or agreed (28%), 29% neither agreed nor disagreed, and 31% either disagreed (22%) or strongly disagreed (9%). Among Arizona defendant attorneys, 29% either strongly agreed (7%) or agreed (22%), 24% neither agreed nor disagreed, and 42% either disagreed (23%) or strongly disagreed (19%).

In Illinois Northern (**Figure 36**), 29% of plaintiff attorneys either strongly agreed (9%) or agreed (20%) that the MIDP reduced discovery costs for their client, compared to the 45% who either disagreed (29%) or strongly disagreed (16%), and 24% who neither agreed nor disagreed. Only 20% of defendant attorneys strongly agreed (3%) or agreed (17%), compared to 55% who disagreed (31%) or strongly disagreed (24%) and 21% who neither agreed nor disagreed.

Figure 35: MIDP "Reduced the Discovery Costs in the Case for My Client," Arizona (*n* = 921)

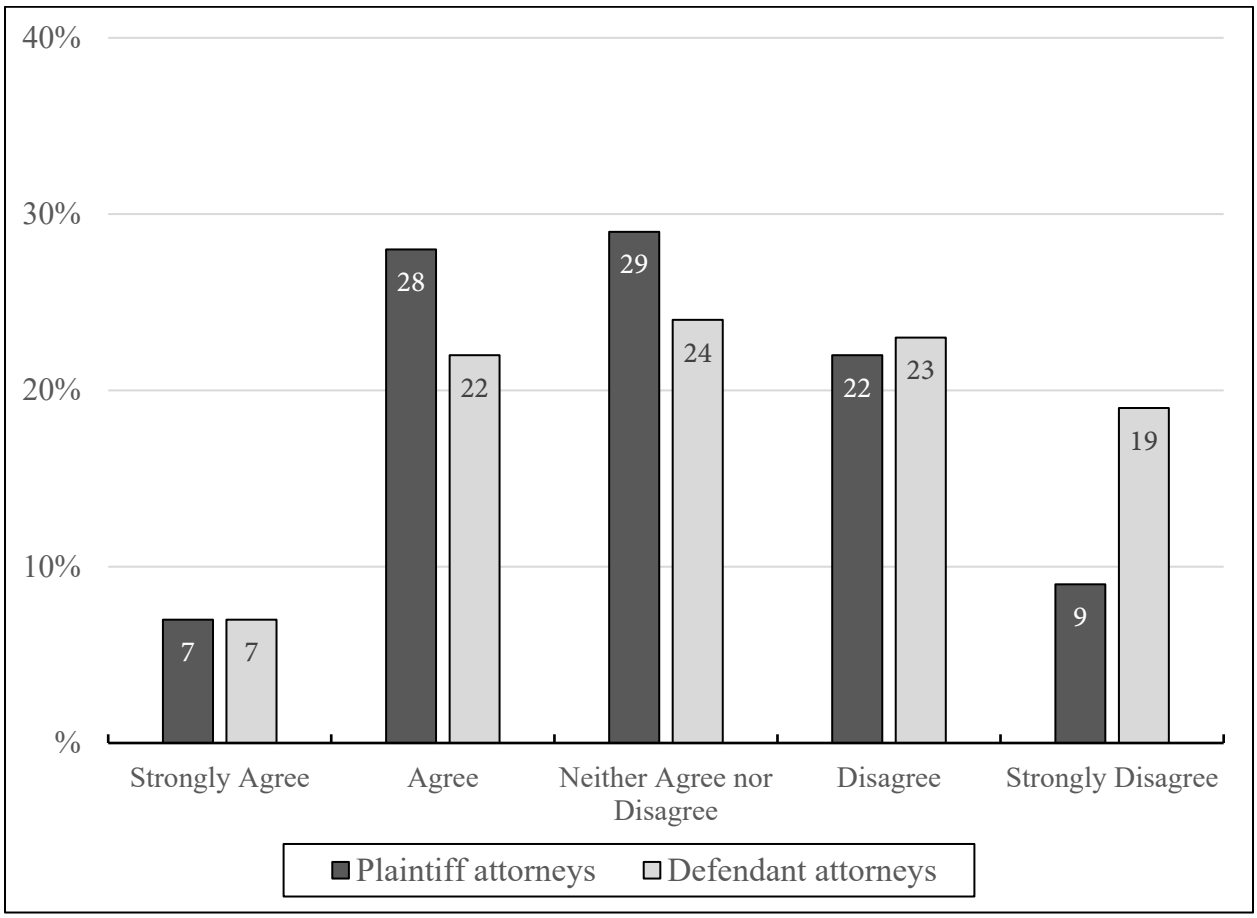
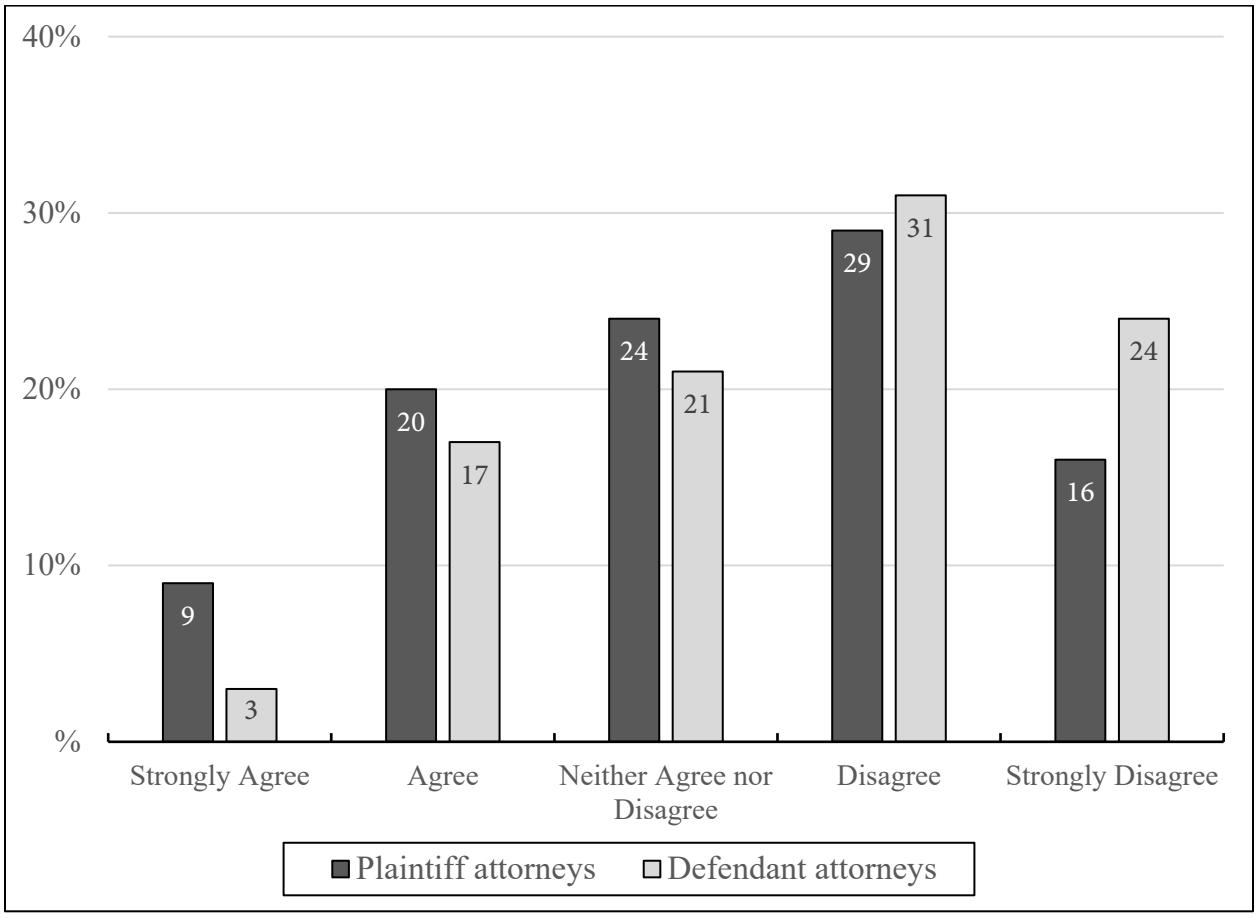


Figure 36: MIDP "Reduced the Discovery Costs in the Case for My Client," Illinois Northern (*n* = 1,726)



Reduced the Overall Costs in the Case for My Client

When considering whether the MIDP reduced the overall costs for their clients, Arizona plaintiff attorneys tended to agree or respond neutrally, while Arizona defendant attorneys tended to respond neutrally or disagree. As with the preceding statement, Illinois Northern plaintiff attorneys tended to disagree or respond neutrally, and Illinois Northern defendant attorneys tended to disagree or strongly disagree.

In Arizona (**Figure 37**), 32% of plaintiff attorneys either strongly agreed (7%) or agreed (25%), 33% neither agreed nor disagreed, and 31% either disagreed (21%) or strongly disagreed (10%). For Arizona defendant attorneys, 28% either strongly agreed (7%) or agreed (21%), 24% neither agreed nor disagreed, and 44% either disagreed (24%) or strongly disagreed (20%).

In Illinois Northern (**Figure 38**), 28% of plaintiff attorneys either strongly agreed (9%) or agreed (19%) that the MIDP reduced overall costs for their client, compared to the 46% who either disagreed (29%) or strongly disagreed (17%), and 24% who neither agreed nor disagreed. Only 20% of defendant attorneys strongly agreed (3%) or agreed (17%), compared to 55% who disagreed (31%) or strongly disagreed (24%) and 22% who neither agreed nor disagreed.

Figure 37: MIDP "Reduced the Overall Costs in the Case for My Client," Arizona (*n* = 918)

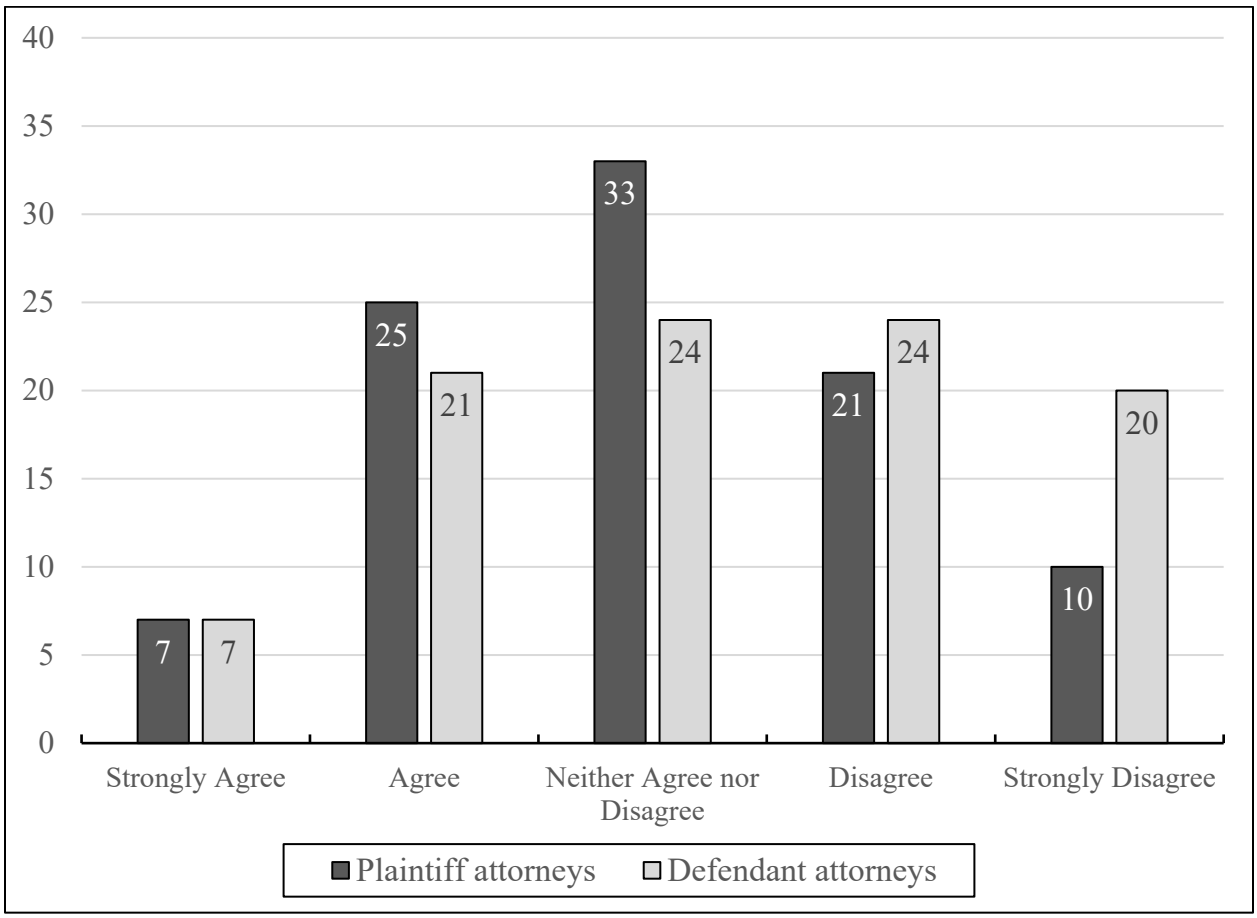
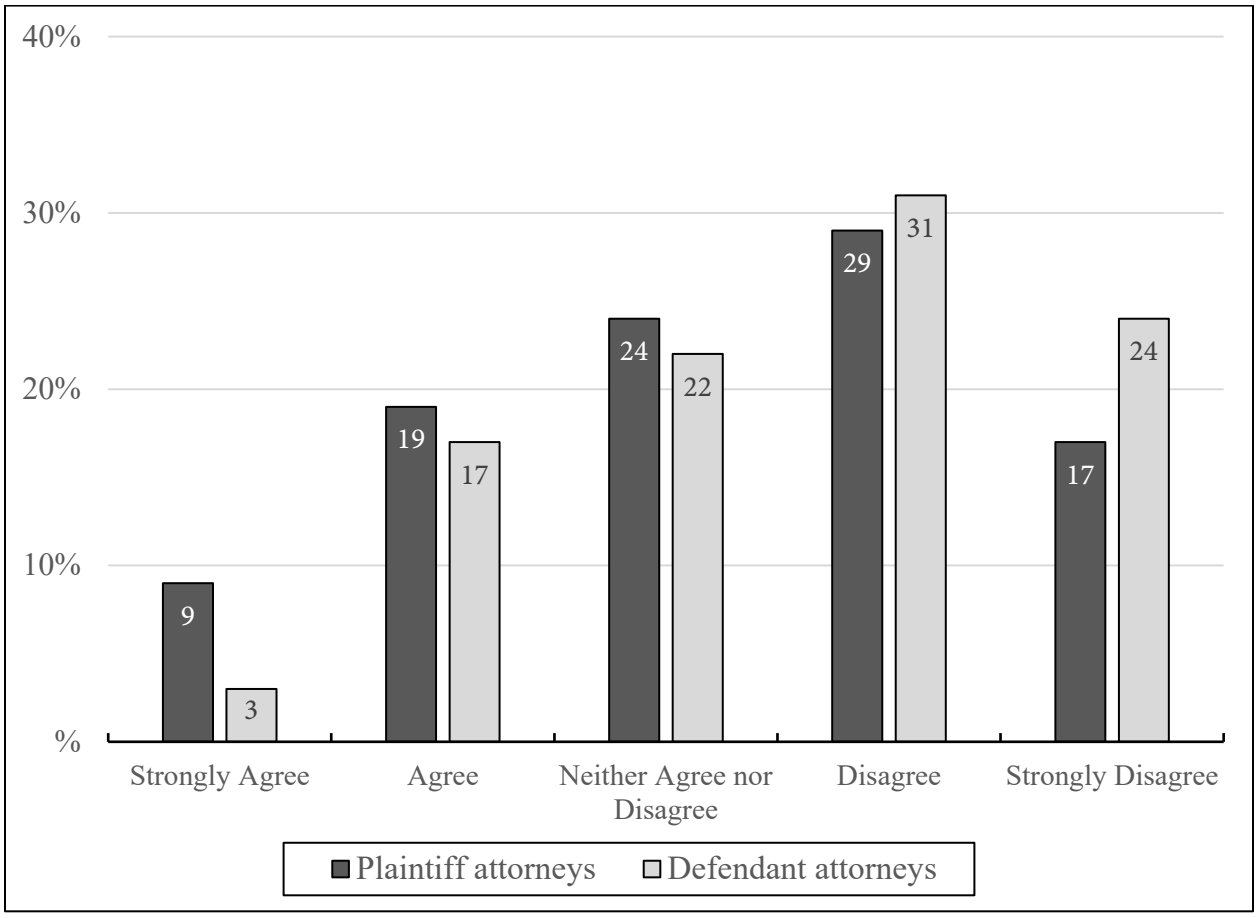


Figure 38: MIDP "Reduced the Overall Costs in the Case for My Client," Illinois Northern (*n* = 1,723)



Reduced the Time from Filing to Resolution in the Case

Regarding whether the MIDP reduced the time from filing to resolution in the case, Arizona plaintiff attorneys tended to agree or respond neutrally, while Arizona defendant attorneys and Illinois attorneys tended to disagree or respond neutrally.

In Arizona (**Figure 39**), 36% of plaintiff attorneys either strongly agreed (8%) or agreed (28%), 31% neither agreed nor disagreed, and 28% either disagreed (21%) or strongly disagreed (7%). For Arizona defendant attorneys, 27% either strongly agreed (7%) or agreed (20%), 28% neither agreed nor disagreed, and 40% either disagreed (27%) or strongly disagreed (13%).

In Illinois Northern (**Figure 40**), 31% of plaintiff attorneys either strongly agreed (10%) or agreed (21%) that the MIDP reduced disposition time, compared to the 41% who either disagreed (26%) or strongly disagreed (15%), and 26% who neither agreed nor disagreed. Only 23% of defendant attorneys strongly agreed (4%) or agreed (19%), compared to 48% who disagreed (29%) or strongly disagreed (19%) and 26% who neither agreed nor disagreed.

Figure 39: MIDP "Reduced the Time from Filing to Resolution in the Case," Arizona (*n* = 917)

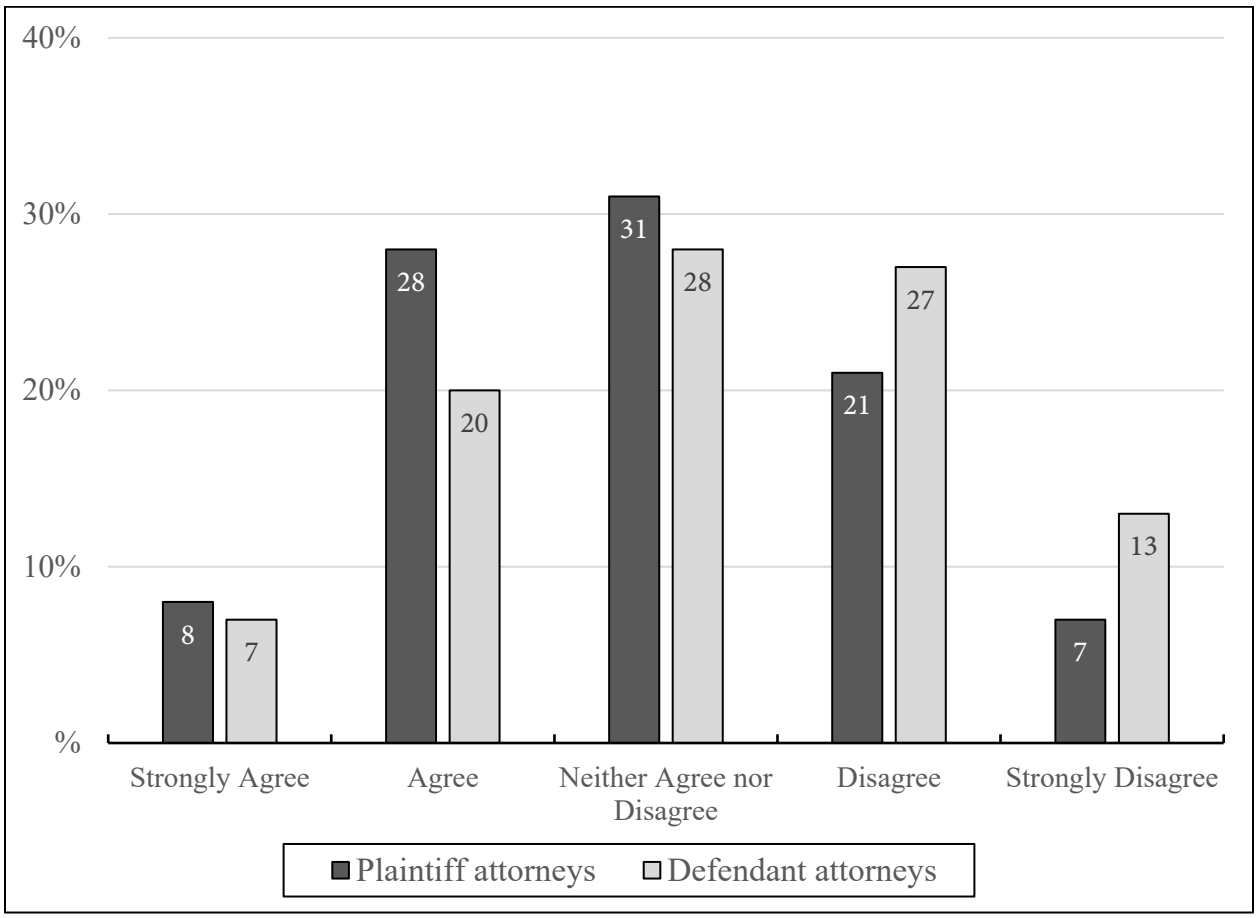
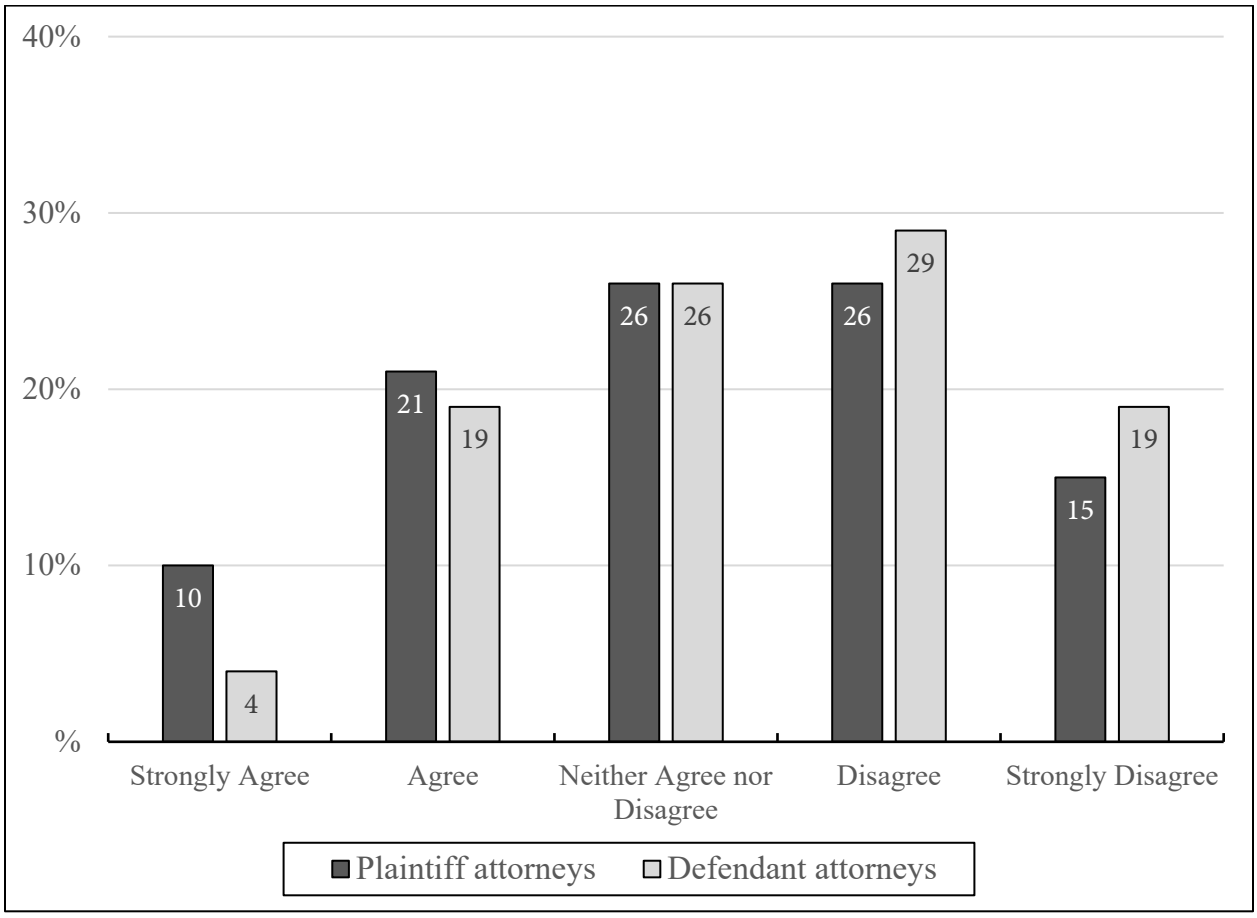


Figure 40: MIDP "Reduced the Time from Filing to Resolution in the Case," Illinois Northern (*n* = 1,709)



Discovery Dispute Brought to Attention of the Court

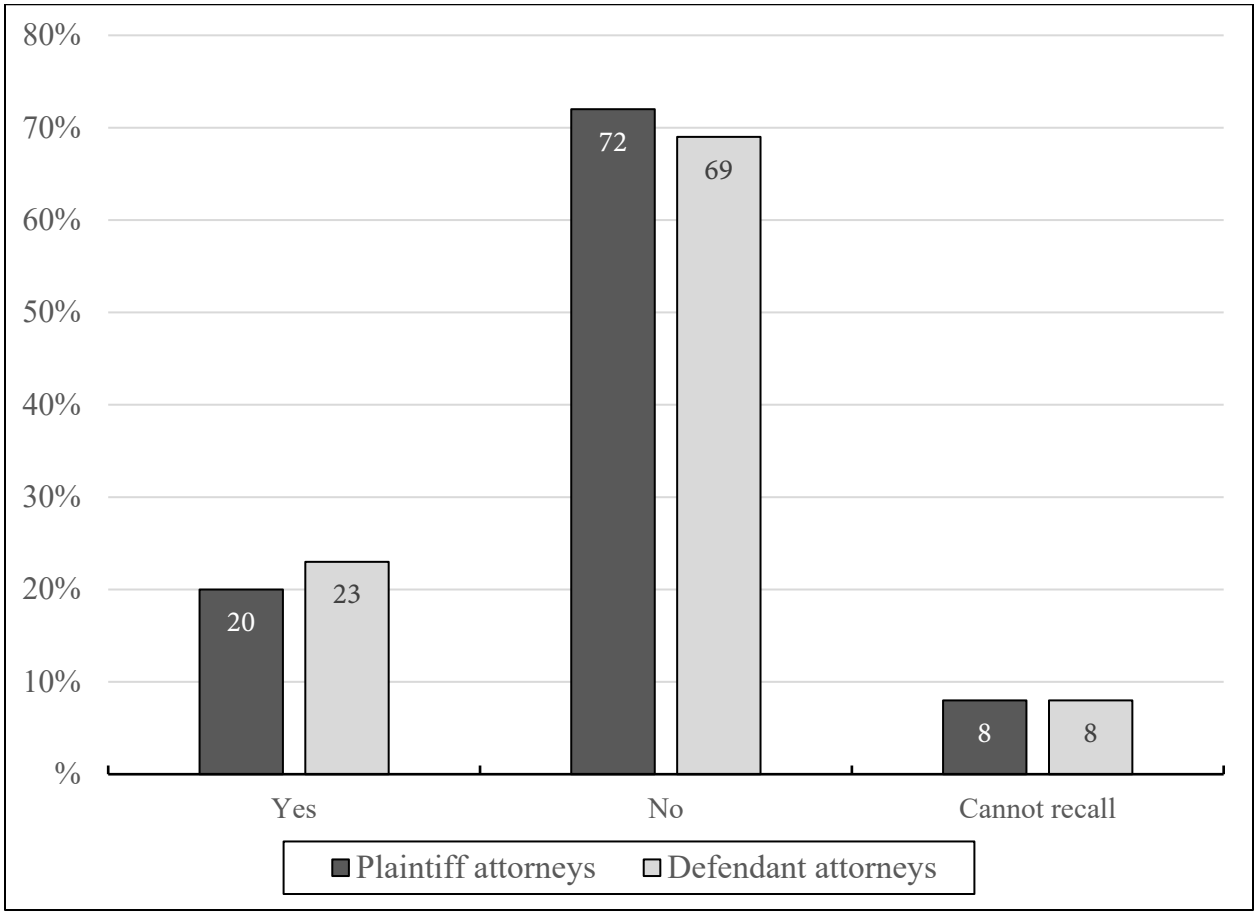
Two questions were added to the closed-case surveys for the final six survey rounds. These questions obtained additional information about discovery disputes and sanctions activity in the participating districts. First, respondents were asked whether there were discovery disputes in the named case brought to the attention of the court. In Arizona (**Figure 41**), 20% of plaintiff attorneys and 23% of defendant attorneys answered "Yes," 72% of plaintiff attorneys and 69% of defendant attorneys answered "No," and 8% each of plaintiff attorneys and defendant attorneys were unable to recall. In Illinois Northern (**Figure 42**), 30% of plaintiff attorneys and 26% of defendant attorneys answered "Yes," 62% of plaintiff attorneys and 67% of defendant attorneys answered "No," and 9% of plaintiff attorneys and 8% of defendant attorneys were unable to recall.[35]

Second, respondents were asked whether the issue of discovery sanctions was raised in the named case. In Arizona (**Figure 43**), only 8% each of plaintiff and defendant attorneys answered "Yes," compared with 86% of plaintiff attorneys and 87% of defendant attorneys answering "No,"

35. In a sample of pilot cases, no discovery motions were filed in 51% of participating cases in Illinois Northern or in 69% of participating cases in Arizona. *See infra* at 94 (Illinois Northern) and 87 (Arizona).

and 6% of plaintiff attorneys and 5% of defendant attorneys unable to recall. In Illinois Northern (**Figure 44**), only 9% of plaintiff attorneys and 7% of defendant attorneys answered "Yes," compared with 87% of plaintiff attorneys and 90% of defendant attorneys answering "No," and 4% of plaintiff attorneys and 3% of defendant attorneys unable to recall.[36]

Figure 41: Was a Discovery Dispute in the Closed Case Brought to the Attention of the Court, Arizona (*n* = 786)



36. In a sample of pilot cases, motions for discovery sanctions were filed in 3% of participating cases in Illinois Northern and in 2% of participating cases in Arizona. *See infra* at 94 (Illinois Northern) and 87 (Arizona).

Figure 42: Was a Discovery Dispute in the Named Case Brought to the Attention of the Court, Illinois Northern (*n* = 1,516)

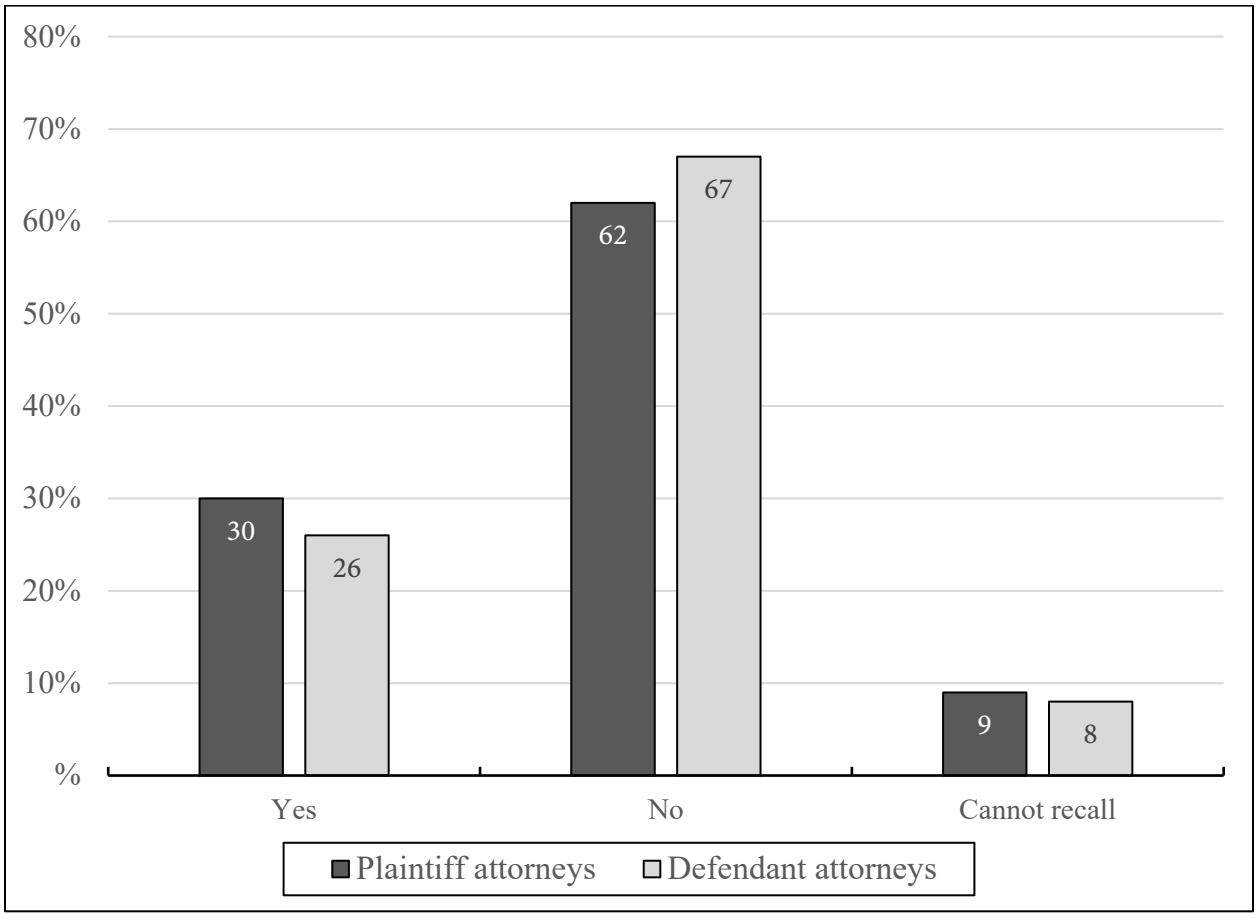


Figure 43: Were Discovery Sanctions Raised in the Closed Case, Arizona (*n* = 792)

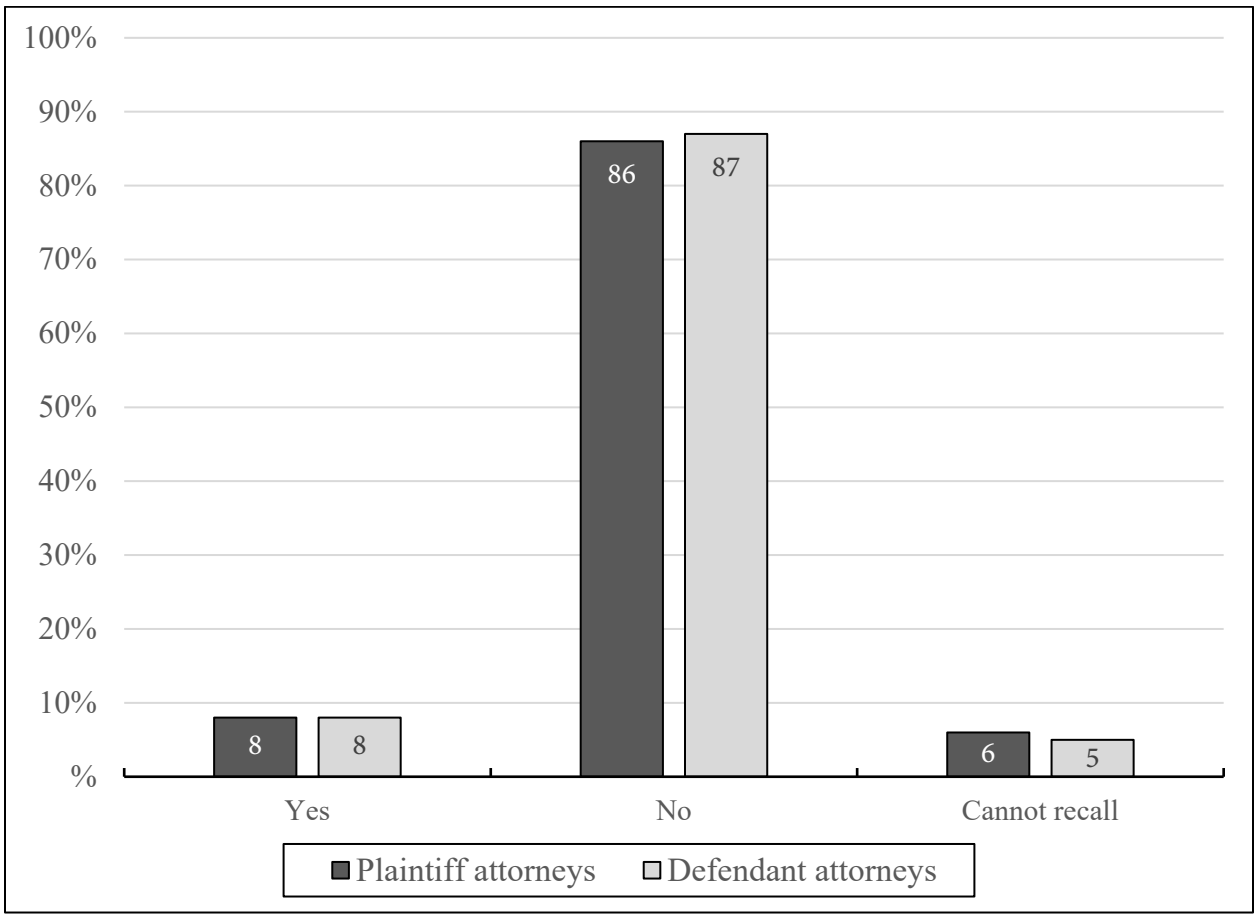
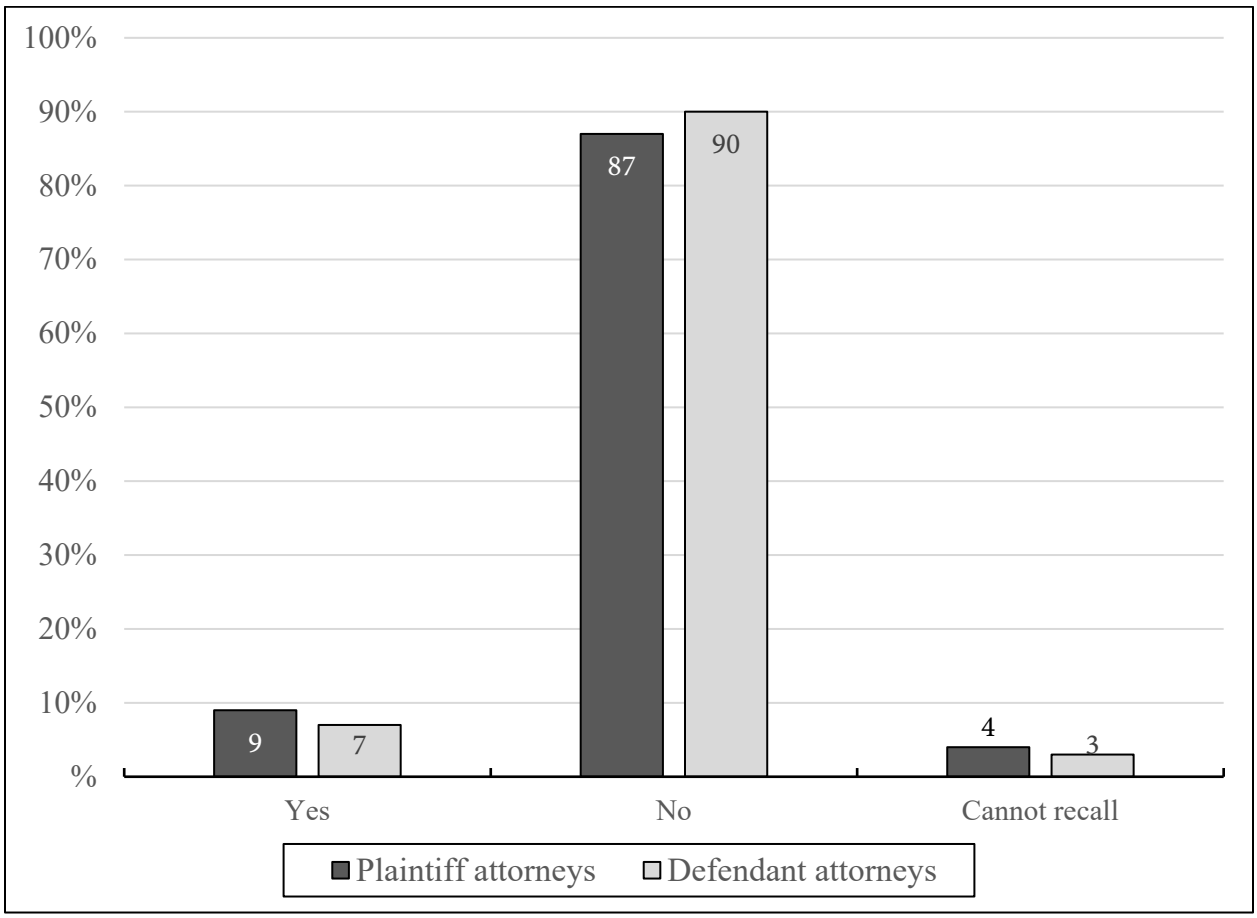


Figure 44: Were Discovery Sanctions Raised in the Closed Case, Illinois Northern (*n* = 1,511)



MIDP Reduced Discovery Costs: Additional Analysis

In November 2021, Judge David G. Campbell of the District of Arizona (and former chair of both the Advisory and Standing committees) asked whether the closed-case survey results could shed further light on the cases in which respondents strongly agreed or agreed that the MIDP reduced costs for their clients. Even though respondents tended to be neutral or to disagree or strongly disagree that the MIDP reduced costs, 35% of Arizona plaintiff attorneys and 29% of Arizona defendant attorneys strongly agreed or agreed, and 29% of Illinois Northern plaintiff attorneys and 20% of Illinois Northern defendant attorneys strongly agreed or agreed that the MIDP reduced discovery costs for their client in the closed case.

Follow-up analyses examined whether there were case characteristics or other factors that help to explain why some attorneys thought MIDP reduced costs for their clients. Were respondents more likely to perceive cost savings due to the MIDP in certain types of cases? Were they less likely to perceive savings in other types of cases?

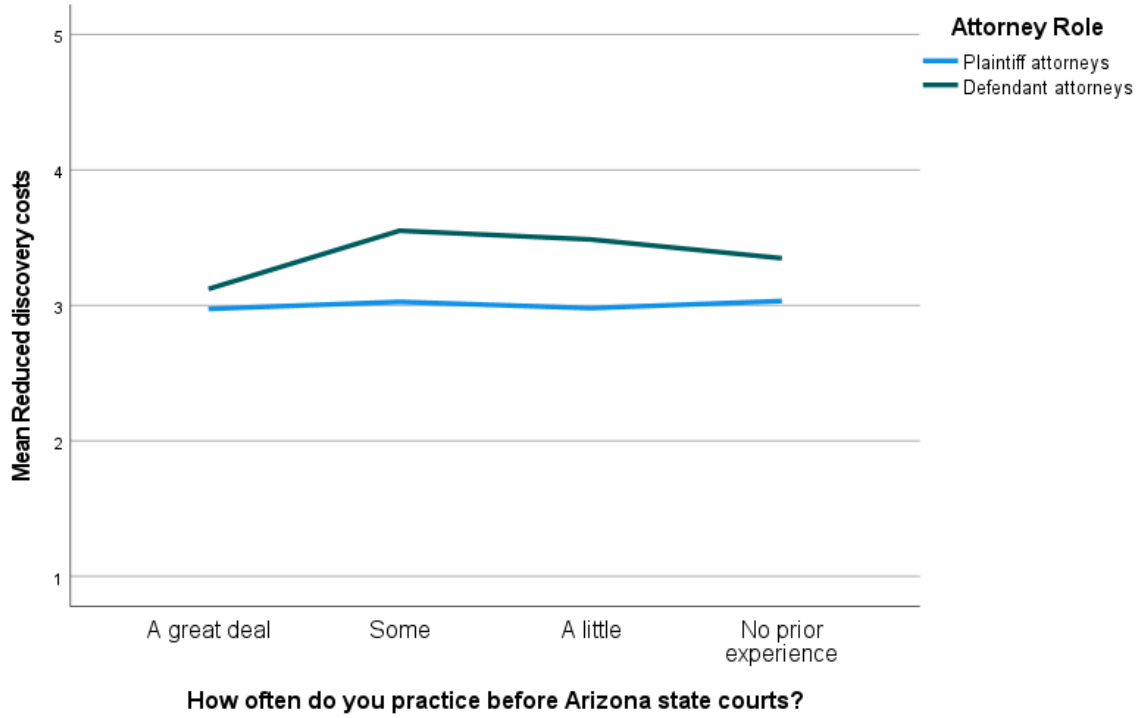
Respondents' answers to the two cost statements (discovery and overall) were very highly correlated, so to keep things simple this section focuses only on responses to the "discovery costs" prompt. On the five-point scale from strongly agree (1) to strongly disagree (5), most groupings

of respondents (e.g., plaintiff attorneys) average somewhere near 3, the neutral "neither agree nor disagree" option. This is common with questions of this type—respondents tend to cluster in the middle of the range. The lower a group of respondents' average rating, the more likely they were to strongly agree or agree with the prompt; the higher a group's average, the more likely they were to disagree or strongly disagree.

In general, plaintiff attorneys gave lower (more positive) average ratings than defendant attorneys. In Arizona, plaintiff attorneys overall (n = 421) averaged 2.99 out of 5, and defendant attorneys (n = 458) averaged 3.27 ($p < .001$). In Illinois Northern, plaintiff attorneys (n = 822) overall averaged 3.24 out of 5, and defendant attorneys (n = 852) averaged 3.52 ($p < .001$). As seen in preceding sections of the report, Arizona respondents tended to rate the MIDP more positively than Illinois Northern respondents across a range of statements.

The more positive evaluations of the MIDP in Arizona may be due to practitioners' greater familiarity with more robust disclosures, given that much of the MIDP overlaps with already existing Arizona state court rules. **Figure 45** shows Arizona respondents' average ratings on the discovery-cost prompt broken down by the respondents' self-reported experience in Arizona state courts. Arizona plaintiff attorneys' ratings were similar, averaging about 3, the midpoint, regardless of how often they practiced before Arizona state courts. The pattern for defendant attorneys shows more variation, with attorneys self-reporting the most experience in Arizona state courts rating the MIDP's effects on costs the most positively of any state-court experience level. Few respondents, however, selected the "A little" and "No prior experience" response options, making it difficult to say how such attorneys responded to the MIDP overall. In interpreting these results, then, there is some reason to think that for defendant attorneys, experience with the Arizona state-court rules affected how they saw the MIDP, but the observed effect is slight. Defendant attorneys were not particularly well-disposed to the MIDP, regardless of state-court experience.

Figure 45: Experience Litigating in Arizona State Courts and Discovery-Cost Question (*n* = 875)



The closed case survey also asked about prior experience litigating in the participating districts. In Arizona (**Figure 46**), both plaintiff attorneys and defendant attorneys self-reporting "A great deal" of experience in the district rated the MIDP most negatively with respect to costs. The same pattern holds in Illinois Northern (**Figure 47**). Again, there are few respondents in the "No prior experience" category in either district, so one would not want to put much weight on the right end of the lines in either figure. But regular practitioners in both participating districts, on both sides of the v, were somewhat negative with respect to the MIDP's effects on discovery costs. This most likely reflects resistance to changing local rules and procedures among those who are used to the way things have been done in the past.

Figure 46: Prior Experience in the District of Arizona and Discovery-Cost Question (*n* = 877)

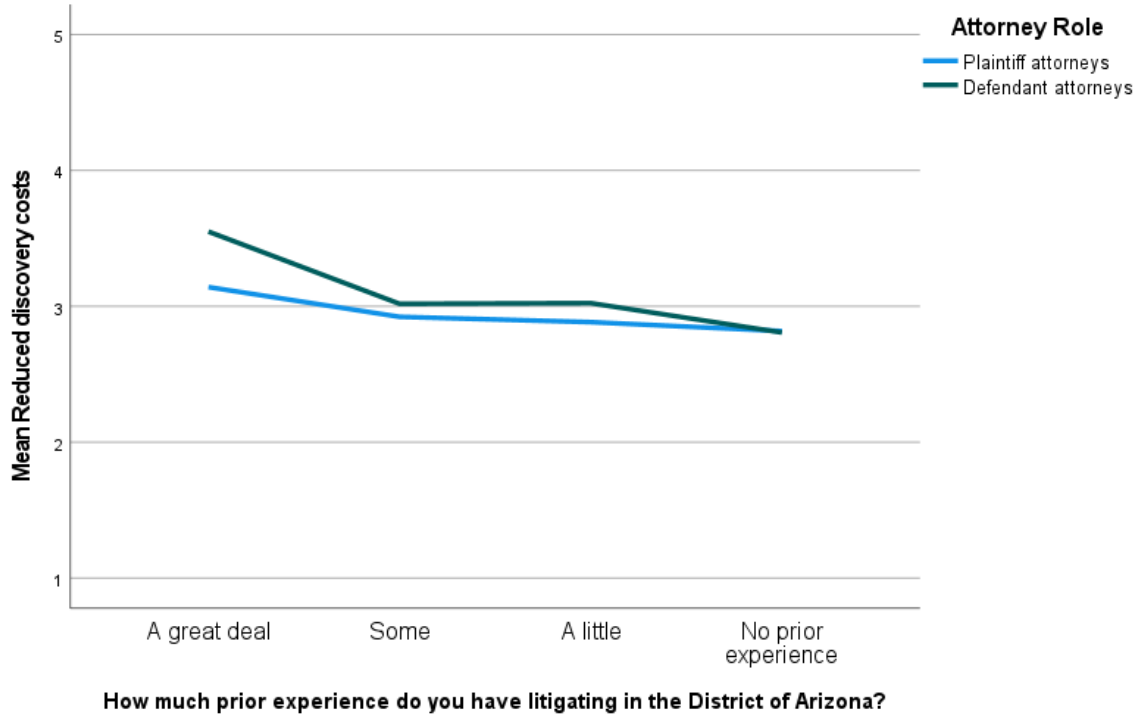
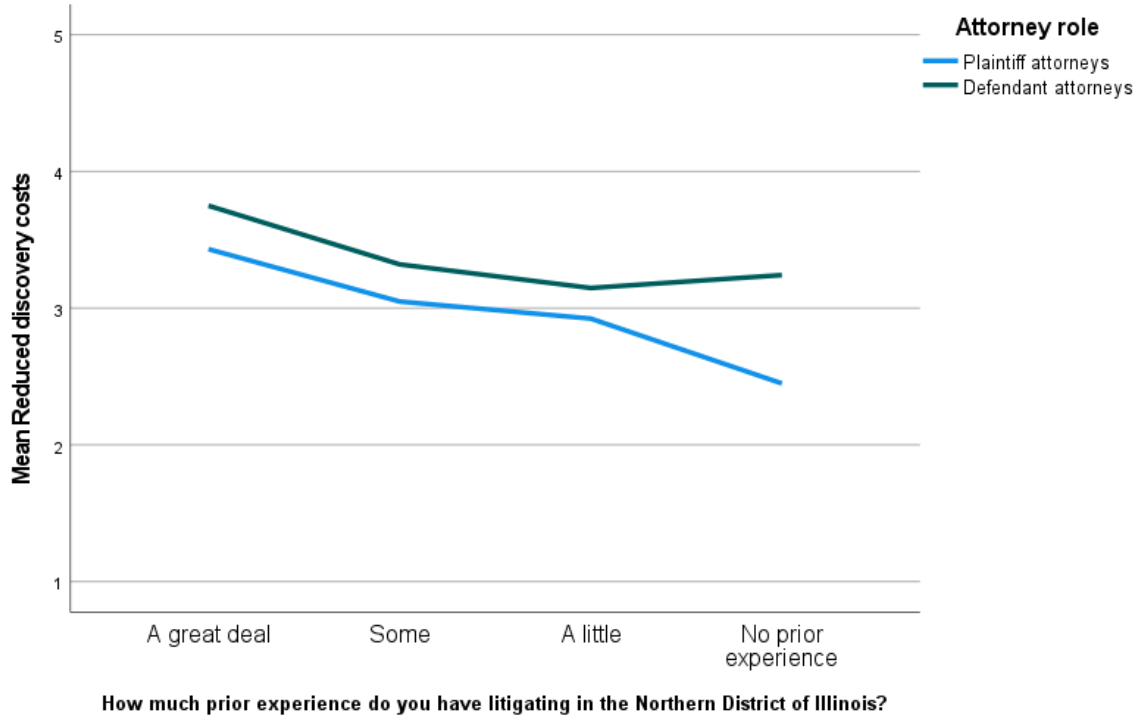


Figure 47: Prior Experience in the Illinois Northern and Discovery-Cost Question (*n* = 1,673)



Speaking of resistance to change, attorney experience in general (measured here by self-reported years of practicing law) may also affect how respondents viewed the MIDP's effects. To simplify the presentation, attorney respondents were divided at the median years of self-reported practice in each district; the figures present the average ratings for less experienced respondents (attorneys with less than the median years of practice) and more experienced respondents (median or greater years of practice). In Arizona (**Figure 48**), more experienced respondents did not rate the MIDP's effects on discovery costs differently than less experienced respondents; the two variables (years of practice and rating) are not correlated at the bivariate level for either plaintiff or defendant attorneys. In Illinois Northern (**Figure 49**), however, defendant attorneys with more experience rated the MIDP's effects on discovery costs less negatively than less experienced defendant attorneys. There was no difference between less experienced and more experienced plaintiff attorneys, on average.

Figure 48: Attorney Experience and Discovery-Cost Question, Arizona, (*n* = 870)

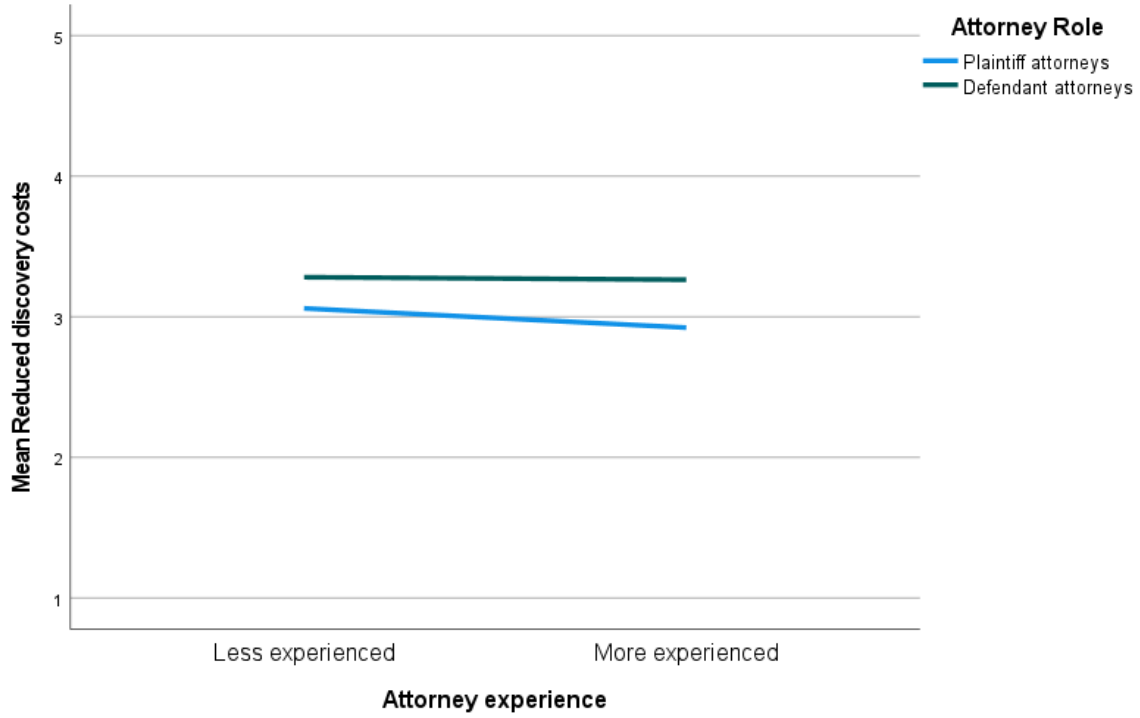
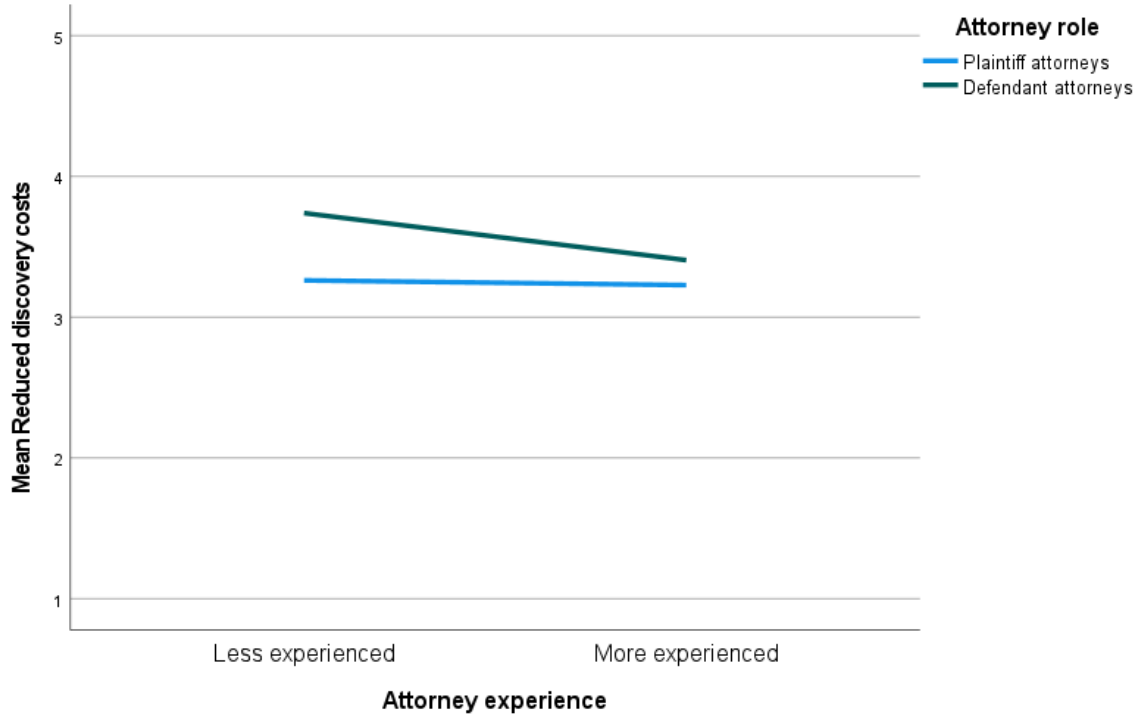


Figure 49: Attorney Experience and Discovery-Cost Question, Illinois Northern (*n* = 1,653)



Another factor that could affect respondents' evaluation of the MIDP's effects on discovery costs is the length of the case in question. One might hypothesize that respondents in shorter duration cases would be more likely to perceive MIDP effects than respondents in longer cases. For example, a judge interviewee suggested that MIDP cases lasting longer than six months are just like any other case; when MIDP responses alone do not lead to a resolution, the parties proceed with discovery as usual, which will cost the usual amount. The results on this are mixed.

To simplify the presentation, the average discovery-cost ratings of respondents in the shorter-than-median-length cases are compared to the ratings of respondents in median-or-longer-length cases in each district. In Arizona (**Figure 50**), plaintiff attorneys in the shorter-duration and longer-duration cases both averaged right at the midpoint, but there is a slight difference among defendant attorneys, with those in longer-duration cases rating the MIDP's effects on discovery costs more negatively, on average. A simple bivariate correlation of respondents' ratings on the five-point scale and case length is positive and statistically significant, for Arizona defendant attorneys. Illinois Northern presents the opposite pattern (**Figure 51**)—shorter case length is correlated with more positive ratings for plaintiff attorneys but not defendant attorneys. It is likely that the effects of case length are interacting with case outcome—summary judgment is a more likely outcome for longer-pending cases. Given the small number of summary-judgment outcomes in the closed-case survey data, however, it is difficult to say.

Figure 50: Case Length and Discovery-Cost Question, Arizona (*n* = 879)

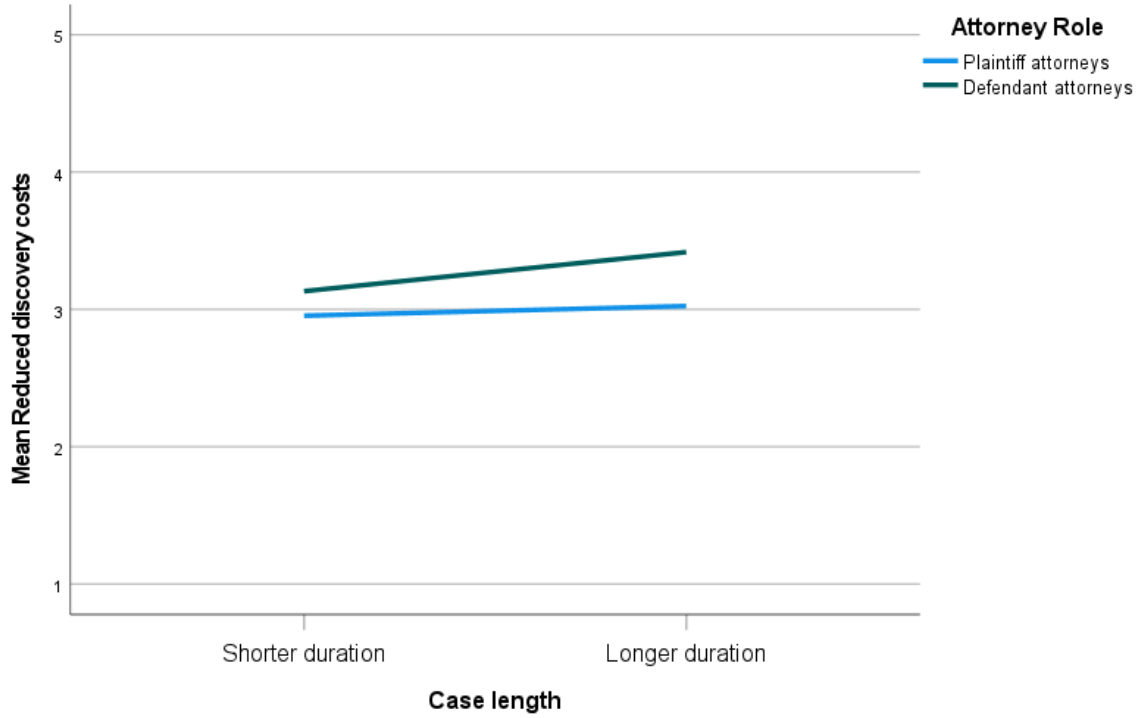
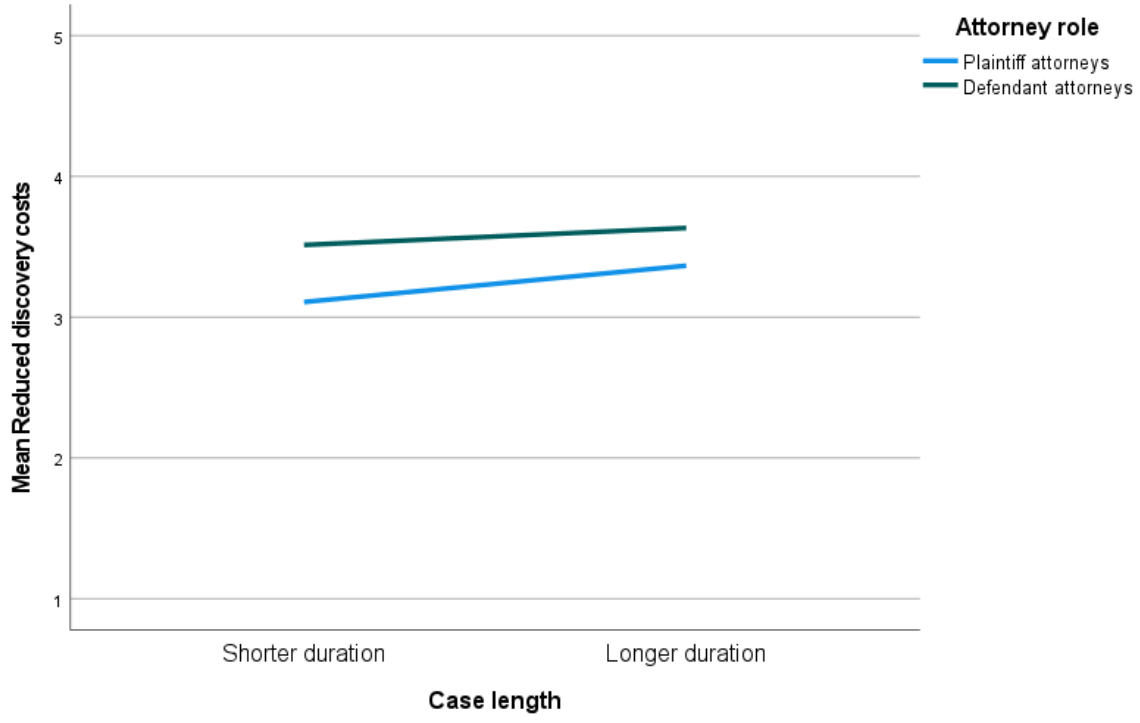
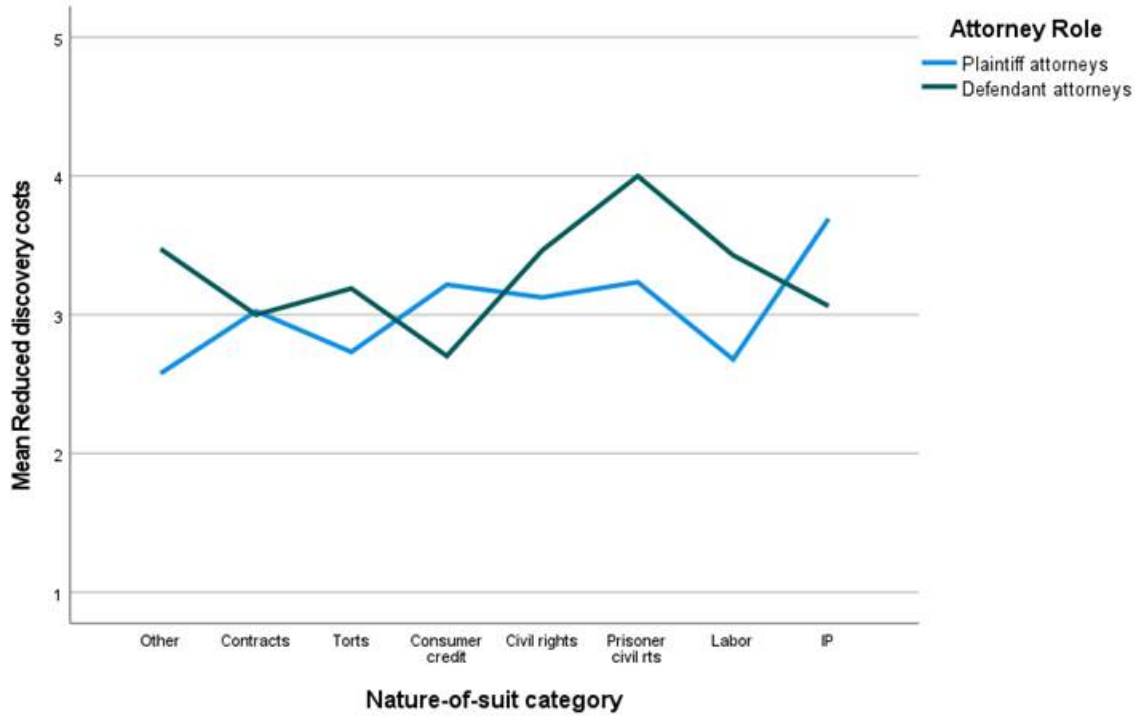


Figure 51: Case Length and Discovery-Cost Question, Illinois Northern (*n* = 1,674)



Additionally, respondents in different types of cases may evaluate the MIDP's effects on discovery costs differently, depending on the kinds of discovery typical in different nature-of-suit categories. In Arizona (**Figure 52**), plaintiff attorneys tended to rate the MIDP's effects on discovery costs more highly than defendant attorneys in every nature-of-suit category except contracts (no difference between plaintiff and defendant attorneys),[37] consumer credit, and intellectual property (not including patents). Defendant attorneys in consumer credit cases accounted for 32% of all defendant attorneys strongly agreeing that the MIDP reduced their client's discovery costs while accounting for just 8% of all defendant attorneys answering the discovery-cost question. Defendant attorneys in prisoner civil-rights cases (accounting for 4% of respondents answering the discovery-cost question in Arizona) rated the MIDP most negatively, which is not surprising, and defendant attorneys were more negative in their ratings than plaintiff attorneys in other, torts, civil-rights, and labor cases.

Figure 52: Nature-of-Suit Category and Discovery-Cost Question, Arizona (*n* = 879)

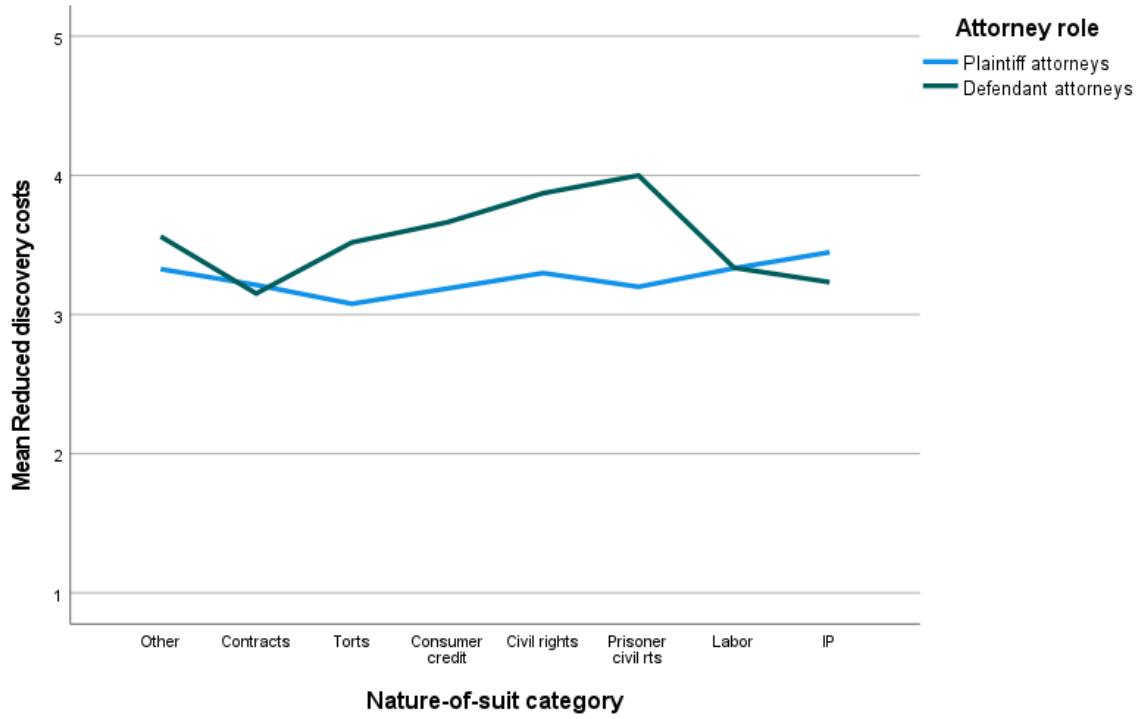


In Illinois Northern (**Figure 53**), plaintiff attorneys tended to rate the MIDP's effects on discovery costs more positively in every nature-of-suit category other than contracts (again, no difference between plaintiff and defendant attorneys), labor, and intellectual property. Defendant attorneys were more negative in the other nature-of-suit categories. Fewer than 1% of Illinois Northern respondents were in prisoner civil-rights cases, which averaged the most negative

37. The contracts nature-of-suit category includes insurance cases as well as "other contract actions," which includes complex commercial disputes.

rating—but in civil-rights cases, accounting for a plurality of respondents, the MIDP was rated quite negatively by defendant attorneys.

Figure 53: Nature-of-Suit Category and Discovery-Cost Question, Illinois Northern (*n* = 1,764)



Qualitative (Open-Ended) Attorney Responses

At the end of the closed-case survey, attorneys were invited to respond to two open-ended questions. The first question was included in all 10 survey rounds and asked about MIDP in the attorney's closed case; the second question was included in the survey rounds from Spring 2019 through Spring 2022 and allowed all attorneys (whether participating in the MIDP in their closed case or not) to expound upon their views on the MIDP.

First Open-Ended Question (Illinois Northern)

The first question asked attorney respondents to "please provide any additional comments you have regarding the initial discovery in the above-named case." In response, 480 attorneys provided comments, of which 447 were substantive. These 447 comments were assigned to discrete categories.[38] **Table 2** summarizes these comments. Illinois Northern attorneys most often expressed negative views about the MIDP in their case (38%), followed by positive views about

38. The number of categories differed between the Arizona and the Illinois Northern respondent groups. All comments were categorized into only one category. The 33 non-categorized responses were of the nature of "n/a" or "none" or "thank you for the survey."

the MIDP (21%), and negative comments about another party's actions during the case with limited (or no) reference to the MIDP (11%).

One comment offers an overview of the themes that emerged across attorneys' negative MIDP views: "The mandatory initial discovery front loads the time and cost of discovery, and unfairly benefits an opponent who is unorganized and unknowledgeable." These themes included concerns about front-loading discovery, which could negatively affect timing, cost, and burdens to the parties, and exacerbate inequity between parties, especially when other parties did not follow the MIDP or played games in discovery.

Table 2: Illinois Northern Categorized Open-Ended Responses: Comments on Initial Disclosures in Closed Case

Category	Percentage of Comments (*n* = 447)
Negative views about the MIDP	38%
Positive views about the MIDP	21%
Negative comments about another party's actions during the case, but nothing about MIDP	11%
Mixed views about MIDP	7%
The case settled early or did not reach discovery	6%
The MIDP made no difference or did not differ from Rule 26 disclosures	5%
Other, outside of these categories	5%
Case information not related to the MIDP or discovery	4%
The MIDP should not have a one-size-fits-all approach	3%
Specific concern regarding judge/ enforcement	3%

Thirty-eight percent of the MIDP comments were negative; these comments most often fell into two subcategories. About 18% of the negative comments stated that MIDP was burdensome, onerous, and/or amounted to "doing double discovery," and an additional 18% provided general negative feedback regarding the MIDP. Thirteen percent stated that they did not support the MIDP because it favored plaintiffs (though about 5% of attorneys stated that they did not support the MIDP because it favored defendants), and 8% stated that the MIDP was a "waste of time and money."

On the other hand, 21% of the Illinois Northern comments expressed positive views on the MIDP. For example, one attorney stated that: "[The MIDP] should be done in all cases—the discovery process is enormously expensive and tedious, and this helps alleviate some of those issues." Many of these comments were generally positive, with 43% of the positive comments providing high-level positive feedback (e.g., "Worked well"). The remaining positive responses varied across many subcategories, including that they personally liked the MIDP but did not believe other parties followed it (19% of the positive comments).

The third most common category, representing 11% of Illinois Northern comments, focused only on the other side's actions in the case. For example, one attorney responded, "Plaintiff did not comply with the MIDP disclosures and court was reluctant to force the issue." Another responded: "Plaintiff's counsel … essentially send the exact same set of disclosures in all the cases which defeats the purpose of the [MIDP] and flooded our side with irrelevant documents that we still had to sift through to make sure nothing new was added."

An additional 7% of Illinois Northern comments reflected mixed views on the MIDP. For example, one attorney stated: "The procedures would work well if parties actually followed them. In some cases, I have had defendants flaunt [sic] the rules and discovery actually has taken longer because of them." (Because this comment included mixed feedback regarding the MIDP, it was categorized as mixed rather than as regarding another side's actions in the case.)

Only 3% of Illinois Northern comments reflected concerns about the one-size-fits-all approach of the MIDP. These comments generally provided suggestions for how to improve the MIDP. Two examples are:

> The one-size-fits-all does not work well, and the tight deadlines increase the expense of the case. Also, requiring ESI discovery so early tends to undermine Rule 26(f)'s goal of any type of agreed ESI discovery process, like agreed search terms.

> The effectiveness of MIDP will be found in larger cases where the volume of discovery would be greater. In small to modest cases, the MIDP does not have nearly the effect and at times in those small to modest cases, the MIDP in fact seems to create more work—at least in my employment cases (FLSA).

Additionally, 3% of the comments noted a specific concern regarding the judge or a lack of enforcement in their case. For example, one attorney noted that the "Defense got away with murder; district judge did not enforce sanctions (three times) although warranted."

Although the first open-ended question regarded initial discovery in the case and the second open-ended question asked about the MIDP generally, there was considerable overlap between the two. In addition, almost twice as many attorneys responded to the second question.[39] While comments in response to the first question provided helpful feedback regarding attorneys' perceptions of initial discovery, this report focuses more on the second question, which more specifically addresses the MIDP.

39. As noted above, starting in 2019 all attorneys were invited to respond to this question even if they reported no mandatory discovery or if they did not know if mandatory discovery was provided.

Second Open-Ended Question (Illinois Northern)

The second question asked respondents to "Please provide any comments you have about the district's mandatory initial discovery pilot program." In response, 801 attorneys provided comments, 738 of which were substantive. These comments were assigned to the categories described in **Table 3** below.

While the first open-ended question asked specifically about the MIDP in the closed case, the second question asked about the MIDP more broadly. Still, the most common responses to both were similar: comments most often expressed negative views about the MIDP (38% for the first question; 39% for the second), followed by positive views (21% for the first question; 28% for the second). Attorney responses to the two questions did notably differ in one aspect. Fewer attorneys responded to the second question with "negative comments about other parties/attorneys but limited (no) comment about the MIDP itself" (2%) than in response to the first question (11%). Recall though, as described above, some negative comments about other parties fit better in other categories (such as the mixed category).

Table 3: Illinois Northern Categorized Open-Ended Responses: Comments on MIDP

Category	Percentage of Comments (*n* = 738)
Negative views about the MIDP	39%
Positive views about the MIDP	28%
Mixed views about the MIDP	11%
The MIDP should not have a one-size-fits-all approach	9%
The case settled early or did not reach discovery	3%
The MIDP made no difference or did not differ from Rule 26 disclosures	3%
Specific recommendation to retain Rule 26 (without mentioning MIDP)	3%
Negative comments about another party's actions during the case, but nothing about MIDP	2%
Case information not related to the MIDP or discovery	2%
Other, outside of these categories	1%

Thirty-nine percent of comments included negative views about the MIDP. Within these negative comments, they were most often general, negative feedback (28% of negative comments)

(e.g., "The MIDP process is not efficient, and the program should not be continued."). More specific, negative comments noted that the MIDP was burdensome/onerous/created "double discovery" (21%), increased costs (or front-loaded costs in a way that hurt their client) (10%), was biased toward plaintiffs (10%), or was a "waste of time and money" (8%). For an example of the latter category, one attorney commented:

> The mandatory initial discovery program makes little sense and does not help early resolution of cases. It drives up costs and takes energy at the initial stages of a matter that would be better spent on other efforts, e.g., settlement, motion practice, etc. Other districts where I practice have no problem with just the Federal Rules of Civil Procedure, as some judges in the Northern District only use the FRCP and have not signed onto the program. It would be best for the court to put the [mandatory] initial discovery program on the scrap heap where it belongs.

One early concern about the pilot was its original requirement that MIDP responses be filed even while motions to dismiss were pending; halfway through the pilot period, this requirement was relaxed in response to attorney complaints. Comments that addressed motions to dismiss generally did so in two ways. Overall, 8% of negative comments described this MIDP response requirement (e.g., "It does not make sense for defendants to have to answer and engage in [discovery] when they have filed a fully dispositive motion. It is wasteful.").

Comments about the motion to dismiss requirement were also reflected within the positive comments. About 2% of all comments (7% of positive comments) expressed positive views about a change to the original requirement (e.g., "I'm happy to see that the NDIL moved away from requiring answers simultaneously with 12(b)(6) motions."). Not every respondent, however, opposed the original MIDP response requirement. One attorney noted that, "I am a fan of this program, and was sad to see the requirement that answers be filed with motions to dismiss go." Another attorney raised a related concern: "Defendants should not be allowed to avoid disclosures by filing a motion to dismiss. I think that the MIDP has actually pushed more baseless motions to dismiss to be filed so that defendants can avoid having to make disclosures."

Overall, 28% of the comments expressed positive views about the MIDP in general. More than half of these comments (54%) were generally positive (e.g., "I think it is a good idea and should be continued"). More specifically, comments expressed positive views regarding obtaining information earlier (14% of positive comments), positive views on the MIDP but concern regarding other parties' actions (11%), or observations that the MIDP helped promote a quicker resolution (including settlement) (11%). For example, one attorney stated that: "The process was straightforward and was helpful in obtaining discoverable information that [led] to the settlement of our matter."

Another 11% of overall comments expressed mixed views. For example, one attorney noted that: "The program was helpful in front-loading discovery in this and many other cases. However, the requirement of clients['] verification of the MIDP disclosure is burdensome and unnecessary." Another, more concisely, stated, "The MIDP is well-intentioned but ultimately ineffective."

In addition, 9% of overall comments expressed concern with the MIDP's one-size-fits-all approach. These comments were generally split between recommending the MIDP be limited to

smaller cases ("You should keep this to simple, run-of-the-mill cases") or recommending it be limited to certain types of cases ("Not always helpful in all cases—ERISA cases are often not helped by way of the mandatory initial discovery program"). Comments about specific case types generally concerned ERISA cases and cases involving self-represented litigants. Further, 3% of overall comments recommended that the court "just stick with Rule 26 and leave the MIDP."

A few respondents expressed concern with how judges enforced the requirements of the MIDP. For example, one respondent commented: "Nonsense. Unenforced by Judges. Defendants do not produce anything. Could have been a useful tool if Judges actually required Defendants to comply."

Attorney Role

As some readers may have gleaned from the quantitative survey results and from the illustrative comments in the preceding section, attorney views on the MIDP in Illinois Northern varied by attorney role. Overall (see **Table 4**), defendant attorneys were more likely to express negative views than plaintiff attorneys for plaintiffs (47% vs. 31%), less likely to express positive views than plaintiff attorneys (18% vs. 38%), and more likely to express mixed views than plaintiff attorneys (14% vs. 8%).[40]

40. The three differences addressed in the text are statistically significant at the $p < .05$ level; none of the other differences in the table are statistically significant. The statistical tests were performed using Chi-square tests with Bonferroni corrections. Attorneys for plaintiffs and attorneys for defendants significantly differed in three categories: negative, positive, and mixed feedback.

Table 4: Illinois Northern Categorized Open-Ended Responses by Attorney Role

Category	Overall Attorneys (*n* = 738)	Attorneys for Plaintiffs (*n* = 368)	Attorneys for Defendants (*n* = 370)
Negative views about the MIDP	39%	31%	47%
Positive views about the MIDP	28%	38%	18%
Mixed views about the MIDP	11%	8%	14%
The MIDP should not have a one-size-fits-all approach	9%	8%	9%
The case settled early or did not reach discovery	5%	4%	2%
The MIDP made no difference or did not differ from Rule 26 disclosures	3%	2%	3%
Specific recommendation to retain Rule 26 (without mentioning MIDP)	3%	2%	4%
Negative comments about another party's actions during the case, but nothing about MIDP	2%	3%	2%
Case information not related to the MIDP or discovery	2%	3%	1%
Other, outside of these categories	0.5%	0.3%	1%

Years of Experience

One respondent commented, "An experienced attorney would not likely see benefit from mandatory initial discovery. A new member of the bar on the other hand, may see it as beneficial." To test this assessment, which was also expressed in interviews, attorneys' qualitative feedback about the MIDP was examined broken out by years of practice. Illinois Northern respondents reported an average of 22 years of practice (mean = 22.4; median = 22) so the file was split into two groups based on the median: attorneys with fewer than 22 years of practice experience and attorneys with 22 years or more.

More experienced attorneys were more likely to express positive views about the MIDP than attorneys with less experience (32% vs. 23%) and less likely to express mixed views about the MIDP than attorneys with less experience (9% vs. 14%).[41] Note, however, that both groups most often expressed negative views about the MIDP. None of the other differences between attorneys based on experience in **Table 5** are statistically significant.

41. These statistical tests were performed using Chi-square tests with Bonferroni corrections.

Table 5: Illinois Northern Categorized Open-Ended Responses by Years of Experience

Category	Overall Attorneys (*n* = 738)	Fewer than median years of experience (*n* = 354)	More than or at median years of experience (*n* = 384)
Negative views about the MIDP	39%	41%	38%
Positive views about the MIDP	28%	23%	32%
Mixed views about the MIDP	11%	14%	9%
The MIDP should not have a one-size-fits-all approach	9%	10%	7%
The case settled early or did not reach discovery	3%	3%	3%
The MIDP made no difference or did not differ from Rule 26 disclosures	3%	2%	3%
Specific recommendation to retain Rule 26 (without mentioning MIDP)	3%	4%	2%
Negative comments about another party's actions during the case, but nothing about MIDP	2%	2%	3%
Case information not related to the MIDP or discovery	2%	1%	3%
Other, outside of these categories	0.5%	0.3%	0.8%

First Open-Ended Question (Arizona)

In response to the first question regarding MIDP responses in the closed case, 277 attorneys provided 264 substantive comments. The 264 comments fell into the eleven high-level categories summarized in **Table 6**.

Table 6: Arizona Categorized Open-Ended Responses: Comments on Initial Discovery in Closed Case

Category	Percentage of Comments (*n* = 264)
Negative views about the MIDP	31%
Positive views about the MIDP	25%
Negative comments about another party's actions during the case, but nothing about MIDP	15%
The case settled early or did not reach discovery	7%
Case information not related to the MIDP or discovery	7%
Mixed views about the MIDP	5%
The MIDP made no difference or did not differ from Rule 26 disclosures	4%
The federal courts should just fully implement the analogous state court rules	3%
The MIDP should not have a one-size-fits-all approach	2%
Specific concern regarding judge/ enforcement	2%
Other, outside of these categories	1%

As in the Northern District of Illinois, the most common comments were negative views about the MIDP (31%), followed by positive views (25%). For the most part, the broad categories of comments did not differ based on district. Because, however, the MIDP parallels already existing rules in the Arizona state courts, the coding scheme for Arizona included a category that the federal court should just implement the Arizona state court version; 3% of the comments fell into this category. But not every reference to Arizona state court was favorable. Some comments critiqued both the MIDP and Arizona rules, for example:

> We have had mandatory disclosures in Arizona state court for a very long time. Still, as an individual that sues insurance companies and other large corporations, I find they rarely disclose anything approaching all of the relevant information in a

> case and I have learned to not trust their disclosures and always do back up with written discovery and depositions. Accordingly, I think mandatory disclosures do some good, but I also think they deceive some people into thinking they're actually receiving all of the necessary information which might be out there when many large corporations and their defense firms are really gaming the system. Judges still need to be judges and they need to understand we need decisions on discovery issues. Way too much time is wasted on judges who are reluctant to make simple discovery decisions.[42]

The negative comments about the MIDP (31%) varied and fell into a variety of sub-categories. Most commonly, within the negative comments, 23% expressed concerns about costs (i.e., the MIDP raising or front-loading costs), 19% stated that MIDP was burdensome, onerous, and/or amounted to "doing double discovery," 19% expressed generally negative views regarding the MIDP, 6% expressed negative views regarding discovery issues related to the MIDP (including concerns involving electronically stored information), and 6% expressed negative views on the MIDP's effects on the timing of the case. One attorney addressed many of these concerns in a single response:

> The standing order, like many such provisions in the Federal Rules, imposes unnecessary time burdens upon plaintiffs' counsel, who almost always are representing clients on a contingent fee basis. Consequently, the Standing Order is costly and burdensome to plaintiffs' counsel. On the other hand, the Standing Order gives defense counsel yet another opportunity to bill hours in the case. In my opinion, the Federal Rules . . . are completely adequate to govern discovery in any case. The only perceived problem with discovery under those rules arose because the trial judge would not adequately enforce the provisions of the rule through the use of sanctions. If adverse judgments had been entered, years ago, for parties who were abusing discovery, discovery abuses would have substantially abated, and the now-exiting plethora of micro-management discovery rules would never have been enacted—which would have been a glorious boon to the administration of justice for all parties. Sadly, that horse has now been out of the barn for many years. [43]

While this attorney opined that the MIDP imposes unnecessary burdens on plaintiffs' attorneys, other attorneys expressed the opposite view, that the MIDP favors plaintiffs. For example, one attorney stated:

> The program is unnecessarily time and cost heavy in the initial 60 days and is skewed toward forcing settlement that is based on cost, not substantive issues. In the four cases I have had under this program, the requirements strongly favored plaintiff in that defendant would be required to incur unrealistically high costs for compliance with the MID even if plaintiff's case was frivolous.

42. This comment was coded into the "mixed feedback" category.
43. This comment was coded as a general negative response given the number of different topics presented.

About 25% of the overall comments expressed positive views about the MIDP. Unlike the negative views, which tended to be specific, 60% of the positive comments provided general, high-level positive feedback. For example, one attorney commented:

> Keep the pilot program. Mandatory affirmative disclosure (like Arizona Rule 26.1) reduces discovery games played by lawyers. The federal bench should have adopted it years ago and the fact that lawyers from other states think it's crazy to require [everyone] to put their cards on the table at the beginning of the lawsuit is not a valid reason to avoid implementing such procedures.

Positive feedback varied across many subcategories, including that attorneys liked the MIDP but did not believe other parties followed it (12% of positive comments), that the MIDP helped lead to a quicker resolution (including settlement) (12%), or that they liked it, but had a suggestion that it could be made simpler or easier to follow (8%).

About 15% of overall comments were negative comments specifically about another side's actions in the case, with limited (or no) feedback about the MIDP itself. These comments were kept separate from the negative category. For example, one attorney commented, "The Defendant did what it always does. It produced a lot of material, but embargoed information required for class certification, provided non-responsive information and a lot of it, piecemealed responses, objected to all written discovery, required extensive meet and confers."

An additional 5% of overall comments expressed mixed views. For example, one attorney commented, "MIDP is very effective at expediting cases, although it can make less complicated cases more expensive to litigate."

Finally, 2% of overall comments noted a specific concern regarding the judge or judges more generally. Comments in this category generally expressed concern that the MIDP rules were not being enforced by judges, or that the judges were not enforcing them equally. For example, one attorney said that the MIDP is "Not a bad idea, but until Judges hold Plaintiffs to the same standard as Defendants, largely useless."

Unlike in the Northern District of Illinois, attorneys in Arizona did not generally comment on the one-size-fits-all approach of the MIDP or comment on which types of cases should be included or excluded.

Second Open-Ended Question (Arizona)

District of Arizona attorneys provided 321 substantive comments in response to the second question, which requested attorneys' thoughts about the MIDP; these comments were assigned to the nine high-level categories shown in **Table 7**.

Table 7: Arizona Categorized Open-Ended Responses: Comments on MIDP

Category	Percentage of Comments (*n* = 321)
Positive feedback about the MIDP	43%
Negative feedback about the MIDP	32%
Mixed feedback about the MIDP	13%
Negative comments about another party's actions during the case, but nothing about MIDP	3%
Feedback that the federal courts should fully implement the analogous state court rules	2%
Case information not related to the MIDP or discovery	2%
Other feedback outside of these categories	2%
Feedback that MIDP should not have a one-size-fits-all approach	1%
Feedback that the case settled early or did not reach discovery	1%

Arizona attorneys were more likely to express positive views about the MIDP in general than negative views, which is different from the pattern observed in Illinois Northern—likely due to respondents' greater familiarity with similar rules in the Arizona state courts. Overall, 43% of comments reflected positive views about the MIDP. More than half of these positive comments (63%) were generally positive. More specifically, attorneys expressed positive views regarding its similarity to rules in the state courts (9% of positive comments), positive views about the MIDP but concern regarding other parties' actions (9%), that the MIDP helped quicker resolution (including settlement) (7%), or the benefits of obtaining information earlier (5%). Compared to Illinois Northern, more Arizona comments explicitly suggested that the MIDP should be permanently implemented. Two examples of this view:

> This is an important and valuable tool. It helps avoid gamesmanship and it focuses all the parties on the facts and areas of dispute earlier rather than later. I hope the district decides to make it part of the normal process.

> The MIDP program was a big step in the right direction to streamlining discovery and resolution of civil cases. It will improve the efficiency and just resolution of cases if permanently implemented.

Among the 32% of comments expressing negative views about the MIDP, attorneys most often provided general negative feedback about the MIDP (25% of negative comments). More specific negative views noted that the MIDP was burdensome/onerous/created "double discovery" (13%), increased costs (or front-loaded costs in a way that hurt their client) (13%), was biased toward plaintiffs (13%), or negatively affected timing (9%). For example, one respondent commented:

> The program creates a much higher burden for defendants in employment cases. It also increases costs early in the case, making settlement more difficult. It also creates the potential for an increase in discovery disputes where parties claim the other party has not fully complied with the MIDP order.

Within the positive and negative categories, some attorneys expressed views about the original MIDP order's provisions regarding motions to dismiss. Four percent of overall comments expressed positive views about the MIDP though noted a concern with how pending motions to dismiss were treated under MIDP (e.g., "I like it with one MAJOR exception: To require MIDP disclosure before an answer is filed (when a Rule 12 Motion is pending) is nonsensical and unhelpful. Many cases are filed that are frivolous or do not belong in that court. In those instances, the MIDP does nothing but compound costs unnecessarily. There is no purpose."). An additional 2% of overall comments expressed negative views focused on MIDP duties while motions to dismiss were pending.

About 13% of overall comments expressed mixed views. For example:

> Overall, I am in favor of the MIDP. I think it goes a long way to minimizing the effort and expense (not to mention the horrible games) of discovery. However, it may need some claws to aid parties in finding information not disclosed. I recommend a mechanism for discovery sanctions, in the discretion of the Court, for discovery that later turns out to be relevant but was not timely disclosed.

About 3% of comments expressed concern with how judges implemented or enforced the MIDP. For example, one attorney commented: "It's too paternalistic, but that's the way the federal courts have become the last 10–15 years. They act like they've forgotten what's it like to be lawyers, and they're using inflexible, heavy-handed rules and attitudes as a crutch, when the better solution would be early, interactive case management."

Attorney Role

In Arizona, plaintiff attorneys were significantly more likely to express positive views about the MIDP (55% vs. 32%) and significantly less likely to express negative views about the MIDP (21% vs. 43%) than defendant attorneys (see **Table 8**).[44]

Table 8: Arizona Categorized Open-Ended Responses by Attorney Role

Category	Overall Attorneys (*n* = 321)	Attorneys for Plaintiffs (*n* = 170)	Attorneys for Defendants (*n* = 151)
Positive feedback about the MIDP	43%	55%	32%
Negative feedback about the MIDP	32%	21%	43%
Mixed feedback about the MIDP	13%	12%	13%
Negative comments about another party's actions during the case, but nothing about MIDP	3%	3%	3%
Feedback that the federal courts should fully implement the analogous state court rules	2%	1%	2%
Case information not related to the MIDP or discovery	2%	3%	1%
Other feedback outside of these categories	2%	3%	2%
Feedback that MIDP should not have a one-size-fits-all approach	1%	1%	2%
Feedback that the case settled early or did not reach discovery	1%	1%	1%

Years of Experience and Views on MIDP

The median number of years of practice experience among respondents was slightly lower in Arizona (20 years; mean = 21.6 years) than in Illinois Northern (22 years; mean = 22.4 years). Respondents were split into two groups based upon the median: attorneys with fewer than 20 years of experience and attorneys with 20 or more years of experience.

44. The difference addressed in the text was statistically significant at the $p < .05$ level; none of the other differences in the table are statistically significant. The statistical tests were performed using Chi-square tests with Bonferroni corrections.

As in Illinois Northern, attorneys with more years of experience were more likely to provide positive feedback about the MIDP than those with fewer years of experience (47% vs. 39%) (see **Table 9**). However, none of the differences in Table 5 were statistically significant.[45]

Table 9: Arizona Categorized Open-Ended Responses by Years of Experience

Category	Overall Attorneys (*n* = 321)	Fewer than median years of experience (*n* = 158)	Above or at median years of experience (*n* = 163)
Positive feedback about the MIDP	43%	39%	47%
Negative feedback about the MIDP	32%	34%	31%
Mixed feedback about the MIDP	13%	14%	11%
Negative comments about another party's actions during the case, but nothing about MIDP	3%	4%	3%
Feedback that the federal courts should fully implement the analogous state court rules	2%	3%	1%
Case information not related to the MIDP or discovery	2%	1%	4%
Other feedback outside of these categories	2%	2%	2%
Feedback that MIDP should not have a one-size-fits-all approach	1%	3%	0%
Feedback that the case settled early or did not reach discovery	1%	1%	2%

45. These statistical tests were performed using Chi-square tests with Bonferroni corrections. There was a significant difference that attorneys with less experience were more likely to provide feedback that the MIDP should not have a one-size-fits-all approach, but this was expressed by a small number of attorneys.

Docket Study

Many civil cases are resolved in the district court with little or no discovery activity. This docket analysis was designed to collect information on cases in which some discovery (including initial disclosures) was likely to occur. For this reason, the sampling frame excluded cases resolved within 90 days of case filing—either because they were resolved by the parties or in some other way (e.g., default judgments). Including such cases without discovery in the sample would not shed much light on the operation of the disclosure and discovery rules. For this reason, the sampling frame was limited to terminated cases when:

- The case, now terminated, had taken at least 90 days to resolve in the district court.
- The case had one of the following disposition codes: consent (5); dismissal on motion (6); jury verdict (7); directed verdict (8); court trial (9); voluntary dismissal (12); settlement (13); other dismissal (14); or other judgment (17).
- The pilot standing order was docketed in the case. "Pilot cases" in what follows is defined as civil cases in which the pilot standing order was docketed.

Even applying these filters, in about one in six cases in the two samples, no defendant ever filed any type of responsive pleading (answer or Rule 12 motion). This section of the report will focus on four aspects of the pretrial process: responsive pleadings, including Rule 12 motions to dismiss; discovery planning (Rule 26(f) reports and case-management orders); discovery and discovery disputes; and summary judgment motions. The findings presented in this section of the report are intended to inform the advisory committee's discussions with respect to the time required to plan and carry out discovery and motions practice.

Arizona Docket Data

The final sample included 1,170 District of Arizona pilot cases filed during the Arizona pilot period (May 1, 2017–April 30, 2020) that terminated between August 4, 2017, and September 30, 2021. **Table 10** summarizes the findings discussed in this section.

Table 10: Procedural Summary (Arizona)

Litigation Stage	Findings	Notes
Pilot Standing Order	100% of sampled cases	Sampling frame defined by standing order
Responsive Pleadings	Median, 48 days after filing | Answers were filed in 87% Rule 12(b)(6) motions in 24% Rule 12(b)(1) motions in 10%	There is limited overlap of answers and Rule 12 motions, e.g., 145 cases with both an answer and a Rule 12(b)(6) motion
MIDP Responses	Filed in 77% of sampled cases with a responsive pleading Median, 32 days after filing of responsive pleading	Both parties noticed responses in 87% of participating cases
Rule 26(f) Reports	Filed in 62% of sampled cases Median, 95 days after filing	7% of Rule 26(f) reports included MIDP dispute
Case-Management Orders	Filed in 60% of sampled cases Median, 105 days after filing	Median discovery cutoff 271 days from date of case-management order
Summary Judgment Motions	Filed in 15% of sampled cases Median, 391 days after filing	More than one motion for summary judgment filed in 5% of sampled cases
Summary Judgment Rulings	Motion granted in full Median, 220 days after motion Motion granted in part Median, 166 days after motion Motion denied Median, 110 days after motion	70 sampled cases (6%) resolved on summary judgment Summary judgments averaged 630 days from filing to termination
Trial	11 trials in the sample (0.9%)	Trial cases averaged 883 days from filing to termination

Types of Responsive Pleadings (Arizona)

Responsive pleadings are a logical starting point for the analysis because the parties' obligation to make MIDP responses is triggered by the filing of a responsive pleading (answer or Rule 12 motion). Responsive pleadings were filed in 84% of sampled pilot cases (978). No responsive pleading was filed in 1 in 6 pilot cases in the sample (with disposition time of at least 90 days).

As seen in **Table 11**, the most common responsive pleading was an answer, filed in 87% of the cases in which a responsive pleading was filed (851 cases), followed by a Rule 12(b)(6) motion

to dismiss for failure to state a claim, filed in 24% of cases in which a responsive pleading was filed (233 cases). The only other responsive pleading filed with any frequency was a Rule 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction, filed in 10% of the cases in which a responsive pleading was filed (100 cases).

There is, of course, overlap with respect to types of responsive pleadings. It is relatively common for a motion to dismiss to rely on more than one subpart of Rule 12(b). The overlap is limited in that, in most pilot cases, no Rule 12(b) motion was filed. The most common forms of Rule 12(b) motion are (b)(6) and (b)(1) motions, which will be discussed in this section. In 83% of pilot cases in which an answer was filed, no Rule 12(b)(6) motion was filed (706 cases). In 94% of pilot cases in which an answer was filed, no Rule 12(b)(1) motion was filed (804).

In 12% of sampled pilot cases (145), however, both an answer and a Rule 12(b)(6) motion were filed, which accounts for 62% of the Rule 12(b)(6) cases (233 cases total). In 38% of Rule 12(b)(6) cases (88), the motion to dismiss was filed without an answer being filed. Among those cases, the court granted the motion to dismiss, terminating the entire case, 59% of the time (52 cases).

Rule 12(b)(1) motions to dismiss for lack of subject-matter jurisdiction were less common than Rule 12(b)(6) motions but present a similar pattern. In 53% of the sampled pilot cases in which a Rule 12(b)(1) motion was filed, no answer was filed (53 cases). In 64% of those cases, the court granted the motion to dismiss, terminating the entire case (34 cases).

Table 11: Incidence of Responsive Pleadings in Sampled Cases (Arizona)

Type of Responsive Pleading	Percentage of Sampled Cases with Responsive Pleading	Percentage Filed in Cases with an Answer
Answer	87%	100%
Rule 12(b)(6) failure to state a claim	24%	62%
Rule 12(b)(1) subject-matter jurisdiction	10%	47%
Rule 12(b)(2) personal jurisdiction	4% (40)	58%
Compel arbitration	3% (27)	59%
Rule 12(c) judgment on the pleadings	2% (23)	96%
Rule 12(b)(3) improper venue	1% (12)	50%
Rule 12(b)(5) insufficient service of process	1% (11)	27%
Rule 12(e) more definite statement	1% (11)	73%
Rule 12(b)(7) failure to join party	< 1% (6)	50%
Rule 12(b)(4) insufficient process	< 1% (3)	67%

Amended Complaints (Arizona)

The study collected limited information on amended complaints, recording instances in which a complaint was amended in response to the filing of a motion to dismiss (whether or not the motion to dismiss was granted without prejudice). The District of Arizona disfavors the filing of Rule

12(b)(6) motions to dismiss when the defects in the complaint can be cured by amendment, requiring the moving party to certify that it has raised the defects with opposing counsel prior to filing the motion.[46] In 61% of the cases in which a Rule 12(b)(6) motion was filed, no amended complaint was filed. But in 39%, an amended complaint was filed *after* the filing of a Rule 12(b)(6) motion to dismiss—92 sampled cases. The renewed motion to dismiss was granted in whole in 29% of those cases (27) and in part in 43% (40).

Overall, complaints were amended after the filing of a motion to dismiss in 9% of sampled pilot cases (105 cases).

Self-Represented Parties

There were lawyers on both sides in 88% of sampled pilot cases (88%). But in 140 sampled cases (12%), there was a party that was self-represented for the entire time the case was pending in district court.

Responsive Pleadings and MIDP Responses (Arizona)

At least one notice of pilot responses was docketed in 77% of cases in which a responsive pleading was filed (775 cases). Responsive pleadings were filed in almost all participating cases. In nine cases, however, pilot responses were made by at least one party without a responsive pleading having been docketed. As can be seen in **Table 12**, participating cases account for a majority (65%) of pilot cases in the Arizona sample.

Table 12: Participating Cases (Arizona)

MIDP Responses Made by	Responsive Pleading Filed (*n*)	No Responsive Pleading Filed (*n*)	Total (*n*)
Both	68% (661)	1% (2)	57% (663)
Plaintiff only	4% (43)	3% (5)	4% (48)
Defendant only	5% (51)	1% (2)	5% (53)
Participating cases	77% (755)	5% (9)	65% (764)
Neither	23% (223)	95% (183)	35% (406)
n	978	192	1,170

46. *See* District of Arizona LR12.1(c), *available at* https://www.azd.uscourts.gov/sites/default/files/local-rules/LRCiv%202021.pdf#page=42. The same local rule applies to Rule 12(c) motions for judgment on the pleadings, but these motions are uncommon.

Timing of Initial MIDP Responses (Arizona)

In general, initial MIDP responses were exchanged about **two-and-a-half months** after the docketing of the pilot standing order and about **one month** after the first responsive pleading in the case; a responsive pleading was filed about one-and-a-half months after the filing of a case.

From the date of the pilot notice (standing order) to the filing the initial MIDP responses:

- Plaintiffs' first MIDP responses, median 76 days, mean 92 days (n = 711)
- Defendants' first MIDP responses, median 76 days, mean 94 days (n = 716)

From the first responsive pleading to filing the initial MIDP responses (excluding cases in which the MIDP response preceded the responsive pleading):

- Plaintiffs' first MIDP responses, median 32 days, mean 49 days (n = 669)
- Defendants' first MIDP responses, median 32 days, mean 50 days (n = 699)

Note that some MIDP responses were made before the filing of a responsive pleading and have been excluded from these calculations. The median time from case filing to the first responsive pleading is 48 days, mean 57 days (n = 942) (this includes cases in which no MIDP responses were docketed).

Rule 26(f) Reports (Arizona)

Federal Rule of Civil Procedure 26(f) requires the parties to meet and confer to formulate and submit to the court a discovery plan. The MIDP additionally required the parties to discuss their MIDP obligations at the Rule 26(f) conference and to include a "a concise description of their discussions of the mandatory initial discovery responses" in their report to the court.[47] Rule 26(f) reports were filed in 62% (730) of the sampled pilot cases (including non-participating cases). The District of Arizona, it should be noted, clearly labels Rule 26(f) reports in its civil dockets. The median time from case filing to the docketing of the Rule 26(f) report was 95 days; the average was 114 days.

Contents of Rule 26(f) Reports

Researchers collected limited information from Rule 26(f) reports. For purposes of this study, the most important issue was whether the parties raised a dispute about the scope or timing of their MIDP obligations in their report to the court. In the District of Arizona, 7% of Rule 26(f) reports (54 out of 730) brought a dispute about MIDP obligations to the attention of the court. The extent to which the parties were unclear or at odds on their MIDP obligations in the other 93% of cases in which Rule 26(f) reports were filed is unknown.

In 25% of Rule 26(f) reports (180 out of 730), the parties indicated to the court that they had engaged in settlement negotiations prior to the filing of the report. For study purposes, "settlement negotiations" was defined broadly; even so, 75% of Rule 26(f) reports do not indicate to the court that the parties have discussed settlement. In 21% of Rule 26(f) reports (156 out of 730), the parties

47. Arizona Amended General Order 17-08, ¶ 9, *available at* https://www.fjc.gov/sites/default/files/materials/35/17-08.pdf.

requested a settlement conference with a magistrate judge at the present time (as opposed, for example, to expressing an interest in a conference after conducting some discovery). In only 3% of Rule 26(f) reports (20 out of 730), the parties reported potential problems with respect to the discovery of electronically stored information in the case.

Researchers also recorded, when available, the proposed discovery deadline from the Rule 26(f) reports; these are discussed in a later section.

Case-Management Orders (Arizona)

For purposes of this study, the case-management order is defined as the first one entered after the filing of a joint Rule 26(f) report by the parties; ideally the order sets the discovery cutoff. There were 700 pilot cases in which a first case-management order was issued in Arizona (60% of sampled cases). The median time from case filing to entry of the first case-management order was 105 days; mean, 128 days (n = 700). In other words, in Arizona, the median case in which party-driven discovery is expected to occur is subject to a court-ordered discovery deadline about 3.5 months after filing. This is consistent with setting the sampling criterion at 90 days, which assumes that most cases that terminate in less than 90 days will not have completed the discovery planning phase.

Discovery Deadlines (Arizona)

The coding scheme captured the agreed discovery deadlines in the Rule 26(f) reports, including dates for expert discovery, if any; the last jointly proposed discovery deadline was used in the following analyses to estimate the length of the discovery period proposed by the parties. Measured from the date of the first case-management order, the average agreed discovery deadline (prior to any extensions) was 271 days, or 8.9 months, with a median of 259 days, just about 8.5 months (n = 547). Measured from the date of the Rule 26(f) report, the average agreed discovery period was slightly longer, averaging 280 days, or about 9.2 months, with a median of 270 days, or 8.9 months (n = 579). Measured from filing date to agreed discovery deadline, the average time was 393 days, about 12.9 months, with a median of 364 days (12 months) (n = 579). The study did not attempt to capture information about extensions of the discovery period, but it likely that the average discovery period extends beyond the agreed discovery deadline in the Rule 26(f) report.

In the median pilot case in the Arizona sample in which a Rule 26(f) report is filed, the parties have agreed to a discovery plan about three months after the case is initiated in federal court. Based on the Rule 26(f) reports, then, the median pilot cases would be scheduled to complete planned discovery about one year after case initiation, barring any extension of the discovery deadline. To the extent the parties need to complete most or all of the planned discovery to resolve the case, the median case should come in at around a year in length. As will be discussed below, cases in which motions for summary judgment are filed will take longer than the median case in which discovery takes place.

Discovery Disputes (Arizona)

Discovery disputes that rise to the court's attention are relatively uncommon in civil cases, and contested discovery motions are more uncommon. By far the most common type of discovery motion is a stipulated (agreed) motion for a protective order. But some discovery disputes were observed among the participating cases (i.e., cases in which at least one party made MIDP responses).

Judges in the District of Arizona disfavor the filing of discovery motions, requiring parties instead to address discovery disputes with the court in a telephonic conference before the filing of a motion (even before coronavirus). The coding identified 55 participating cases—about 7% of participating cases—in which a telephonic discovery conference occurred.

Some Arizona judges permit the filing of discovery motions only with leave of the court, so, unsurprisingly, discovery motions were relatively rare in the sampled cases. Motions to compel pilot responses were filed in 0.4% of participating cases (3 cases), and motions to compel (anything other than pilot responses) were filed in 4% (31). Motions to compel were also filed in two non-participating cases. Motions for protective order were filed in 26% of participating cases (197); in 91% of those cases (180), the first motion for a protective order was stipulated by the parties. Motions for protective orders were also filed in five non-participating cases, 3 stipulated. Motions for discovery sanctions were filed in 2% of participating cases (16), and in one non-participating case.

Motions Count: No discovery dispute (motion or telephonic conference) was recorded in 69% of participating cases (527). Again, Arizona disfavors discovery motions and likely has much lower rates of the filing of such motions in general than other districts, including Illinois Northern. Only one motion (likely a stipulated motion for protective order) was filed in 22% of participating cases (165), and two were filed in 6% (45). More than two discovery motions (including telephonic conferences) were docketed in 4% of sampled cases (27). The largest number of discovery motions observed in an Arizona participating case was 11 (in one particularly contentious case).

Incidence and Timing of Summary Judgment Motions (Arizona)

At least one summary judgment motion was filed in 15% of sampled Arizona pilot cases (176), and more than one summary judgment motion (e.g., cross motions for summary judgment) was filed in 5% of sampled pilot cases (54). Seventy sampled pilot cases were resolved on a motion for summary judgment; in other words, 40% of cases in which a motion for summary judgment was filed were resolved by summary judgment. Overall, however, summary judgment accounted for only 6% of terminations among the sampled cases.

The first motion for summary judgment was filed an average of 391 days, or 12.9 months, after case filing, with a median of 388 days, or 12.8 months, after case filing (n = 172). The observed average time from case filing to the first summary judgment motion, 391 days, is very similar to the observed average time from case filing to the agreed discovery deadline, 393 days, as these two dates are typically related to one another in case-management orders.

Incidence and Timing of Rulings on Summary Judgment (Arizona)

No ruling was recorded for 42 motions for summary judgment (e.g., the case settled while the motion was pending). For first motions for summary judgment only:

- From filing of motion to order granting motion in full, median 220 days, or 7.2 months, mean 224 days, 7.4 months (n = 63)
- From filing of motion to order granting motion in part, median 166 days, or 5.5 months, mean 200 days, 6.6 months (n = 33)
- From filing of motion to order denying motion, median 110 days, or 3.6 months, mean 150 days, 4.9 months (n = 35)

Settlement Conferences with Magistrate Judges (Arizona)

The court referred 14% of sampled cases to a magistrate judge to conduct a settlement conference (168); a settlement conference with a magistrate judge (including those conducted by remote means because of the coronavirus pandemic) was conducted in 68% of those cases (114); 92% of those cases resulted in a settlement (105). There were referrals in 20% of participating cases (155); a settlement conference was held in 67% of those cases (105); 91% of those cases resulted in a settlement (96). The average settlement conference occurred 317 days, or 10.4 months, after case filing, median 283 days, or 9.3 months (n = 114).

Disposition Times of Sampled Cases (Arizona)

The average for all pilot cases was 346 days, or 11.4 months, from filing to termination with a median of 280 days, or 9.2 months (n = 1,170). Cases in which a responsive pleading was filed averaged 378 days, or 12.4 months, from filing to termination, with a median of 322 days, or 10.6 months (n = 978). Cases without a responsive pleading averaged 180 days, or 5.9 months, with a median of 144 days, or 4.7 months (n = 192).

Participating cases averaged 412 days, or 13.6 months, with a median of 357 days, or 11.7 months (n = 764), while non-participating cases averaged 221 days, or 7.3 months, with a median of 161 days, or 5.3 months (n = 406). Of course, because participating cases were likely to be cases in which a responsive pleading was filed, the longer disposition times for participating cases is not a result of the MIDP; the non-participating cases include many cases resolved before the obligation to make MIDP responses would have arisen.

Case length varies greatly by type of disposition. Cases that are resolved by summary judgment or trial take the longest—these two disposition types each averaged more than two years in length. These two disposition types are also the least common (among these broadly defined categories).

Mean case length by disposition type (largest category to smallest)

- Settlements: 352 days, or 11.6 months, from filing to termination (n = 671)
- Voluntary dismissals: 259 days, or 8.5 months, from filing to termination (n = 223)
- Rule 12 dismissals: 303 days, or 10 months, from filing to termination (n = 113)
- Other dispositions: 269 days, or 8.8 months, from filing to termination (n = 80)
- Summary judgments: 630 days, or 20.7 months, from filing to termination (n = 70)
- Trials (bench and jury): 883 days, or 29 months, from filing to termination (n = 11)

Illinois Northern Docket Data

The final sample included 1,909 Illinois Northern pilot cases filed during the Illinois Northern pilot period (June 1, 2017–May 31, 2020) that terminated between October 3, 2017, and September 30, 2021. **Table 13** summarizes the findings discussed in this section.

Table 13: Procedural Summary (Illinois Northern)

Litigation Stage	Findings	Notes
Pilot Standing Order	100% of sampled cases	Sampling frame defined by standing order
Responsive Pleadings	Median, 62 days after filing | Answers were filed in 84% Rule 12(b)(6) motions in 35% Rule 12(b)(1) motions in 8%	There is limited overlap of answers and Rule 12 motions, e.g., 294 cases with both an answer and a Rule 12(b)(6) motion
MIDP Responses	Filed in 62% of sampled cases with a responsive pleading Median, 32 days after filing of responsive pleading	Both parties noticed responses in 75% of participating cases
Rule 26(f) Reports	Filed in 58% of sampled cases Median, 68 days after filing	3% of Rule 26(f) reports included MIDP dispute
Case-Management Orders	Filed in 51% of sampled cases Median, 83 days after filing	Median discovery cutoff 213 days from date of case-management order
Summary Judgment Motions	Filed in 8% of sampled cases Median, 432 days after filing	More than one motion for summary judgment filed in 4% of sampled cases
Summary Judgment Rulings	Motion granted in full Median, 210 days after motion Motion granted in part Median, 254 days after motion Motion denied Median, 165 days after motion	79 sampled cases (4%) resolved on summary judgment Summary judgments averaged 790 days from filing to termination
Trial	7 trials in the sample (< 1%)	Trial cases averaged 816 days from filing to termination

Types of Responsive Pleadings (Illinois Northern)

The filing of a responsive pleading triggers the obligation to make pilot responses. Responsive pleadings were filed in 70% of sampled pilot cases (1,340 cases). The average time between case initiation and the filing of a responsive pleading (of any type) was 75 days, with a median of 62 days (n = 1,339).

As can be seen in **Table 14**, the most common type of responsive pleading was an answer (in 1,125 pilot cases, 84% of pilot cases in which a responsive pleading was docketed), followed by Rule 12(b)(6) motions to dismiss for failure to state a claim (in 473 pilot cases, 35%). As discussed previously, there was some controversy over the need to file MIDP responses in cases in which defendants planned to file a motion to dismiss the entire action, and the MIDP obligations were adjusted halfway through the pilot period to conform more closely to non-pilot practice. In Illinois Northern, there was considerable overlap between the filing of answers and Rule 12(b)(6) motions. Answers were filed in 62% of cases in which a Rule 12(b)(6) motion was filed (294 out of 473). But there were plenty of answer-only cases in the sample. No Rule 12(b)(6) motion was filed in almost three-quarters of the cases in which an answer was filed (74%, or 831). It is interesting to note that the sample does not include a single case with a responsive pleading that does not include at least one of these two types of responsive pleadings.

In pilot cases in which a Rule 12(b)(6) motion was docketed without an answer, the first motion to dismiss was granted, terminating the case, in 46% (83 out of 179). In pilot cases in which a Rule 12(b)(6) motion was docketed with an answer, the first motion was granted, terminating the case, in 14% (42 out of 294). Other types of Rule 12 motions were less common than Rule 12(b)(6). Rule 12(b)(1) motions to dismiss for lack of subject-matter jurisdiction were the next most common responsive pleading—filed in 88 of the cases in which a responsive pleading was filed, 8%. In exactly half of these cases (44) an answer was also filed.

Table 14: Incidence of Responsive Pleadings in Sampled Cases (Illinois Northern)

Type of Responsive Pleading	Percentage of Sampled Cases with Responsive Pleading	Percentage Filed in Cases with an Answer
Answer	84%	100%
Rule 12(b)(6) failure to state a claim	35%	62%
Rule 12(b)(1) subject-matter jurisdiction	8%	50%
Compel arbitration	3% (35)	51%
Rule 12(b)(2) personal jurisdiction	3% (34)	56%
Rule 12(b)(3) improper venue	2% (30)	60%
Rule 12(c) judgment on the pleadings	2% (24)	13%
Rule 12(b)(5) insufficient service of process	1% (10)	60%
Rule 12(e) more definite statement	< 1% (5)	0%
Rule 12(b)(7) failure to join party	< 1% (3)	67%
Rule 12(b)(4) insufficient process	< 1% (1)	0%

Amended Complaints (Illinois Northern)

The study collected limited information on amended complaints, recording instances in which a complaint was amended in response to the filing of a motion to dismiss (whether or not the motion to dismiss was granted without prejudice). Overall, complaints were amended after the filing of a motion to dismiss in 211 sampled cases. In 41% of cases in which a defendant filed a Rule 12(b)(6) motion to dismiss, an amended complaint was filed *after* the motion, 196 sampled cases. A renewed motion to dismiss after the amended complaint was granted in whole in 27% of those cases (53) and in part in 26% (51).

Self-Represented Parties (Illinois Northern)

There were lawyers on both sides in most of the sampled pilot cases (94%). But in 108 sampled cases (6%), there was a plaintiff who was self-represented for the entire time the case was pending in district court. The coding scheme did not account for the limited-purpose appointment of counsel for settlement conferences, a common practice in Illinois Northern; for purposes of this report, those cases are coded as represented cases.

Responsive Pleadings and MIDP Responses (Illinois Northern)

At least one notice of pilot responses was docketed in 62% of pilot cases in which a responsive pleading was filed, 823 cases ("participating cases"). As can be seen in **Table 15**, almost all the participating cases were cases in which a responsive pleading was filed. In nine cases, however, pilot responses were made by at least one party without a responsive pleading having been docketed.

Table 15: Participating Cases (Illinois Northern)

MIDP Responses Made by	Responsive Pleading Filed (*n*)	No Responsive Pleading Filed (*n*)	Total (*n*)
Both	46% (625)	1% (3)	33% (628)
Plaintiff only	6% (83)	1% (6)	5% (89)
Defendant only	9% (115)	0% (0)	6% (115)
Participating cases	61% (823)	2% (9)	44% (832)
Neither	39% (517)	98% (560)	56% (1,077)
n	1,340	569	1,909

Note that less than half of sampled pilot cases, 44%, were participating cases (832 cases). It is likely that parties failed to docket notices of their pilot responses in some pilot cases, so the participation rate is probably higher than 44% of pilot cases. It is difficult to say for certain how much higher, but the estimated participation rate in the closed-case surveys was 55–56%.

Timing of Initial MIDP Responses (Illinois Northern)

In general, initial MIDP responses were exchanged about three months after the docketing of the pilot standing order and about one month after the filing of the first responsive pleading in the case; a responsive pleading is filed about two months after the filing of a case. From pilot notice to filing the initial MIDP responses:

- Plaintiffs' first MIDP responses, median 91 days, mean 110 days (n = 715)
- Defendants' first MIDP responses, median 91 days, mean 116 days (n = 740)

From first responsive pleading to filing the initial MIDP responses (excluding cases in which the MIDP response preceded the responsive pleading):

- Plaintiffs' first MIDP responses, median 32 days, mean 53 days (n = 687)
- Defendants' first MIDP responses, median 32 days, mean 54 days (n = 734)

Note that some MIDP responses were made before the filing of a responsive pleading and have been excluded from these figures. The median time from case filing to the first responsive pleading is 62 days, mean 75 days (n = 1,340) (this includes cases in which no MIDP responses were docketed).

Rule 26(f) / Joint Initial Status Reports (Illinois Northern)

Illinois Northern docketing practices with respect to Rule 26(f) reports varied more than those in Arizona, which created some ambiguity in the data-collection process. The coding rules specified that, to be included in the analysis, the initial status report required by Rule 26(f) had to be jointly filed (typically docketed as a "joint initial status report"). Joint initial status reports were filed in 58% of the sampled cases (1,111, including non-participating cases). It is important to remember that the sampling rules omitted many civil cases in which a joint initial status report would not be filed (for example, default judgment cases). Thus, the percentage of all civil cases in which the parties file a joint initial status report is lower than 58%. The median time from case filing to docketing of a joint initial status report was 68 days; the mean was 89 days. In summary:

- The sample included 1,111 joint initial status reports (Rule 26(f) reports).
- Median time, 68 days after case filing; mean, 89 days (n = 1,111).

Contents of Joint Initial Status Reports (n = 1,111)

About half of joint initial status reports, 536 (48%) informed the court of ongoing settlement negotiations among the parties. Relatively few joint initial status reports requested a settlement conference with a magistrate judge (77, 7%) or informed the court of a dispute concerning MIDP responses (35, 3%).

Timing of (First) Case-Management Orders (Illinois Northern)

There is a great deal of variation in Illinois Northern in terms of the timing and content of case-management orders. Case-management orders may issue prior to the filing of an initial joint status report—for example, setting a new deadline for the defendant's answer. For purposes of this report, a first case-management order is issued after the filing of a joint initial status report and

(preferably) sets a discovery cutoff date (or some other relevant deadline). In some cases, however, a case-management order that sets relevant deadlines is entered in the absence of a joint initial status report; for example, when the parties are unable to agree on a joint report. Among the sampled cases, 980 case-management orders were determined to meet the coding criteria. This means that case-management orders were docketed in 51% of sampled cases.

The median time from case filing to issuance of the first case-management order is 83 days; the mean, 109 days after case filing.

Discovery Deadlines (Illinois Northern)

The coding scheme captured the agreed discovery deadlines, including dates for expert discovery, if any, in the joint initial status reports. The length of the discovery period proposed by the parties can be estimated using these dates. Measured from the date of the first case-management order, the average discovery period ordered (prior to any extensions) was 235 days, or 7.7 months, with a median of 213 days, just about 7 months (n = 719). Measured from the date of the joint initial status report, the agreed discovery period was slightly longer, averaging 245 days, or about 8 months, with a median of 226 days, 7.4 months (n = 795). The study did not attempt to capture information about extensions of the discovery period, but it is safe to say that the average discovery period probably extends beyond the agreed discovery cutoff in the joint initial status report.

Measured from filing date to agreed discovery cutoff, the average was 333 days, about 11 months, with a median of 313 days (10.3 months) (n = 797). About three months after case filing, a discovery plan was in place in about half of sampled cases. The discovery planning process, however, was not completed in about half of pilot cases. It is important to remember that many civil cases are resolved without the parties engaging in discovery at all. Then the "typical" discovery period, in a case with discovery, would run 7–8 months (or longer if the discovery period was extended). This process can be delayed by motions practice. Measured from filing date, the "typical" pilot case would be slated to complete discovery in 10–11 months after the first case-management order, subject to extensions in the discovery deadline.

Discovery Disputes (Illinois Northern)

Discovery disputes rising to the court's attention, especially motions to compel, were more common in Illinois Northern than in Arizona, likely because of the latter district's local practices discouraging the filing of discovery motions. Arizona's practices may even result in fewer discovery disputes being brought to the court's attention (without the filing of a motion). In the closed-case survey, Illinois Northern survey respondents, especially plaintiff attorneys, were more likely to report a discovery dispute brought to the attention of the court (plaintiff attorneys, 30%) than Arizona respondents (plaintiff attorneys, 20%).

Motions to compel pilot responses were filed in 3% of participating cases (23 cases).[48] Oddly enough, there are three cases in which neither side docketed a notice of MIDP responses with one of these motions, indicating that parties sometimes failed to docket such notices. Motions to

48. In the words of one Illinois Northern interview subject: "There was remarkably little litigation about compliance."

compel (other than to compel pilot responses) were filed in 14% of participating cases (116). (Motions to compel were also filed in 35 non-participating cases.) Motions for protective order were again the most common form of discovery motion, filed in 43% of participating cases (356); in 82% of those cases (293), the first motion for a protective order was stipulated by the parties. Motions for protective orders were also filed in 71 non-participating cases, 60 of which were stipulated. Motions for discovery sanctions were filed in 3% of participating cases (25, and in 10 non-participating cases). A reference to "a discovery dispute" (not in a motion) appeared in the dockets of 3% of participating cases (27, and in 5 non-participating cases).

Motions Count: No discovery motion was filed in 51% of participating cases (n = 422). One discovery motion (likely an agreed motion for protective order) was filed in 31% of participating cases (262), and two discovery motions were filed in 10% of participating cases (81). More than two discovery motions were filed in 8% of participating cases (67). The largest observed number of discovery motions in an Illinois Northern participating case was 13 (in one particularly contentious case).

Incidence and Timing of Summary Judgment Motions (Illinois Northern)

At least one motion for summary judgment was filed in 8% of sampled Illinois Northern pilot cases (162), and more than one motion for summary judgment in 2% (40). Seventy-nine pilot cases were resolved by summary judgment; 49% of cases in which a motion for summary judgment was filed were resolved by summary judgment. But overall, only 4% of sampled Illinois Northern pilot cases were resolved by summary judgment.

The average time from case initiation to filing of the first motion for summary judgment was 432 days, or 14.2 months, with a median of 425 days, or 14 months (n = 161).

Incidence and Timing of Rulings on Summary Judgment (Illinois Northern)

No ruling was recorded for 19 motions for summary judgment (e.g., the case settled while the motion was pending). For first motions for summary judgment only:

- From filing of motion to order granting motion in full, median 210 days, or 6.9 months, mean 219 days, 7.2 months (n = 89)
- From filing of motion to order granting motion in part, median 254 days, or 8.3 months, mean 286 days, 9.4 months (n = 20)
- From filing of motion to order denying motion, median 162 days, or 5.3 months, mean 165 days, 5.4 months (n = 34)

Settlement Conferences with Magistrate Judges (Illinois Northern)

The court referred 23% of sampled cases to a magistrate judge to conduct a settlement conference (including remote conferences) (436 cases), which was conducted in 73% of those cases (319); 91% of those cases resulted in a settlement (289). There were referrals in 37% of participating cases (311), a settlement conference was held in 77% of those cases (222); 91% of those cases resulted in a settlement (201). The average settlement conference occurred 367 days, or 12.1 months, after case filing, median 322 days, or 10.6 months (n = 319).

Disposition Times for Sampled Cases (Illinois Northern)

The average for all pilot cases was 343 days, or 11.3 months, from filing to termination with a median of 265 days, 8.7 months (n = 1,909). Cases with a responsive pleading (issue joined) averaged 402 days, or 13.2 months, from filing to termination with a median of 332 days, 10.9 days (n = 1,340). Cases without a responsive pleading averaged 205 days, 6.7 months, from filing to termination with a median of 156 days, 5.1 months (n = 569).

Case length varies greatly by type of disposition. Cases that are resolved by summary judgment or trial take the longest—these two disposition types each averaged more than two years in length. These two disposition types are also the least common (among these broadly defined categories).

Average case length by disposition type (largest category to smallest):

- Settlements: 379 days from filing to termination (n = 1,030)
- Voluntary dismissals: 227 days from filing to termination (n = 550)
- Rule 12 dismissals: 354 days from filing to termination (n = 129)
- Other dispositions: 290 days from filing to termination (n = 114)
- Summary judgments: 707 days from filing to termination (n = 79)
- Trials (bench and jury): 816 days from filing to termination (n = 7)

Discussion

The findings of the Center study are mixed. With respect to disposition times, pilot cases were resolved in less time, all else equal, than non-pilot cases. Still, to the extent the pilot did result in shorter disposition times, neither attorneys for plaintiffs nor those for defendants were particularly enthusiastic about the pilot in their responses to the surveys.

On the scaled survey questions, respondents tended to be neutral with respect to most potential effects of the MIDP. On the open-ended questions, particularly the question regarding views of the MIDP, Illinois Northern attorneys were more likely to express negative views than positive views, while Arizona plaintiff attorneys were more likely to express positive views.

Still, some attorneys in both districts expressed positive views on the pilot, and on some of the scaled questions, the MIDP's effects were rated positively. Most notably, respondents in both participating districts and on both sides of the v tended to strongly agree or agree that the MIDP achieved one of its key goals: providing relevant information earlier in the case than disclosures under Rule 26. To many attorneys, however, it seems that discovery is discovery, for good or bad. And, either way, many of them would prefer that it not be front-loaded.

The MIDP changes the timing of certain kinds of discovery, but some amount of time in the litigation process cannot be reduced. It is beyond the scope of this report to say how much of case disposition time is nonreducible, but its findings shed some light on how long litigation activities took in the participating districts. For example, in both participating districts, in participating pilot cases, it took around three months from case filing for the court to enter a case-management order setting a discovery deadline, and the typical discovery period runs at least seven months after that,

before any extensions.[49] It takes, then, about 10 months to plan and carry out discovery in the median case in which discovery is completed.[50] The median pilot case in the sample—after applying the 90-day filter—was resolved in about 11 months or, in short, about the time one would expect it would take to complete most or all of the discovery planned in the sampled case.

There is the old chestnut that cases won't settle before a ruling on summary judgment, but as this and many other empirical studies have shown, most settlements occur before any party files a motion for summary judgment. In the docket study, the median case in both participating districts was resolved before one would expect a motion for summary judgment to be filed. Typically filed after the completion of discovery, summary judgment motions in the sampled cases were, at the median, filed more than one year after case filing. To the extent a ruling on summary judgment is necessary to move the case forward, it should be expected to last several more months. But the typical case is resolved earlier, without summary judgment.

This discussion of the amount of time various tasks take to complete helps put the survey responses into context. It seems likely that, in cases in which discovery proceeded after the exchange of MIDP responses—most pilot cases in which the responses are made—the positive benefits of the pilot were less obvious (focusing subsequent discovery, for example) than the familiar frustrations of ordinary civil litigation (discovery disputes, motions practice, settlement negotiations) to attorneys answering the closed-case surveys.

This study of the MIDP has several limitations—most notably, the sweeping effects of the coronavirus pandemic on court operations and procedures. Given this timing, the pilot study has less than three years of pre-pandemic MIDP data to work with. This is probably most important in the analysis of disposition times, which does attempt to control for the pandemic in the multivariate analysis. But it is difficult to control for all pandemic effects. Moreover, the pandemic is ongoing, and it is unlikely that its full effects will be understood for quite some time.

Another limitation of the pilot is that only two districts came forward to participate. The lack of volunteers was not for lack of trying—several members of the Rules committees worked very hard to recruit more districts, without success. The MIDP data analyzed in this report comes from two large districts, with Illinois Northern one of the largest, in terms of civil caseloads. These districts are not representative of all districts. Ideally, a few medium- or small-sized districts would have also participated.[51]

A limitation of every pilot project is the question of its scalability. Sometimes pilots work when they are conducted in a small setting, with enthusiastic participants, but not when implemented more broadly, with personnel compelled to implement the new rules. The scalability of the MIDP is an open question. In terms of implementation, neither Arizona nor Illinois Northern seems to

49. An earlier study of discovery deadlines found similarly that the average time from the case-management order to discovery deadline in 11 districts was 6.5 months, with a mean of 6.2 months. *See* Emery G. Lee III, Federal Judicial Center, The Timing of Scheduling Orders and Discovery Cut-Off Dates 1 (2011).

50. In the 2011 study of discovery deadlines, the average time from the case initiation to the discovery deadline was 10.7 months—similar to what was observed in the sampled cases—with a median of 10.2 months. *See id.*

51. The original plan was to include "at least three to five districts." Report of the Proceedings of the Judicial Conference of the United States, Sept. 2016, at 30, *available at* https://www.uscourts.gov/sites/default/files/2016-09_0.pdf.

have had any difficulties putting the MIDP into practice. Interview subjects within the two courts generally agreed that attorneys understood the pilot procedures. MIDP responses were filed within 30 days of a responsive pleading in the median case. There was little satellite litigation through motions practice in either district over pilot obligations. To the extent the MIDP was a demonstration project, it was feasible to implement, even in one of the busiest courts in the federal system, with the enthusiastic leadership of Judges St. Eve and Dow.

Illinois Northern attorneys, though, were not particularly enthusiastic, which raises another limitation of the findings of this report. Interview subjects in Illinois Northern suggested that attorneys were sometimes complying with the letter of the MIDP rather than proceeding in the spirit of Wayne Brazil-style full disclosure of relevant information. There was a sense that plaintiff and defendant attorneys in some cases colluded to avoid pilot disclosures—what one judge described as a kind of "mutually assured destruction," in which neither party fully complied with the pilot and neither party raised the other side's non-compliance with the court. The actual extent of this kind of collusive evasion of pilot obligations is unknown. But overt participation in the pilot was lower in Illinois Northern than in Arizona, as measured by the filing of notices of MIDP responses and by responses provided in the closed-case surveys.

The observed shorter case lengths in pilot cases are ambiguous in this regard. On the one hand, it seems to weigh against the conclusion that evasion of the MIDP was widespread. But it is also consistent with the view that parties sometimes settled cases early to avoid having to make MIDP responses, another possibility raised by interview subjects in Illinois Northern. Which is to say, again, that the study's findings are mixed. But perhaps something to build upon. A three-year pilot is too short a time to work a change in the culture—a change like that envisioned by Wayne Brazil and that embodied in the Arizona state court rules. One judge interviewed as part of this project said that, as a lawyer in Arizona, he had been resistant to the disclosure rules when they had first been put in place, but that over time those rules had become an integral part of the courts' culture.

Appendix 1: Selection of Comparison Districts

Given the number of considerations involved, the selection of comparison districts is more art than science. Districts vary on multiple dimensions—the volume and nature of their civil caseload, the volume and nature of their criminal caseload, number of filings per authorized judgeship, and so on. No two districts are the same, and even districts in the same state can differ greatly. Illinois Northern, for example, is a very different district than either the Central or Southern District of Illinois. Moreover, both Arizona and, especially, Illinois Northern are relatively large districts, which reduces the pool of potential comparison districts. Illinois Northern is one of the five largest districts on almost every civil metric, meaning that any comparison must be made to another very large district. Arizona is the second largest district encompassing an entire state; the District of New Jersey is larger, and the District of Colorado is slightly smaller.

For purposes of this report, Arizona is compared to California Eastern, and Illinois Northern is compared to New York Southern. As was discussed, the comparison districts were chosen based on similarities in caseload and other factors that existed *prior to* the MIDP program. California Eastern also provides a comparison of Arizona to another district in the same circuit; no such comparison opportunity presented itself for Illinois Northern.

A major consideration is the size of the districts' respective caseloads. The second column in **Table 16** shows the total number of civil filings in these four districts in calendar years 2014–2016. Arizona and California Eastern had similar numbers of filings during this four-year period,[52] and Illinois Northern about 15% more than New York Southern. The similarity in number of civil filings persists when various filters are applied to the data. The third column of **Table 16** shows the percentage of all civil cases in the four districts in the nature-of-suit codes in which discovery is likely to occur ("civil-heartland" cases). The civil caseloads in both Illinois Northern and New York Southern, in particular, are weighted more heavily toward civil-heartland cases than is the caseload in either Arizona or California Eastern. As for cases outside of the civil heartland, civil cases filed by prisoners account for the largest share. The relative volume of prisoner litigation is also an important consideration in selecting a comparison district in any study of civil cases. California Eastern receives the bulk of the federal prisoner litigation in California. Because the State of Arizona is a single district, the District of Arizona receives all the prisoner litigation in Arizona. As can be seen in the fourth column of **Table 16**, Arizona and California Eastern both have much higher prisoner caseloads (42% of civil filings) than either Illinois Northern or New York Southern (less than 20%).

52. Though the filing numbers are similar, it should be noted that California Eastern has only 6 authorized judgeships, compared to Arizona's 13.

Table 16: Comparison Districts, 2014–2016

District	Total Civil Filings (2014–2016) *n*	Civil-Heartland Filings (2014–2016) (% Civil)	Prisoner Litigation (2014–2016) (% Civil)
Arizona	14,965	46%	42%
California Eastern	14,555	40%	42%
Illinois Northern	35,269	58%	16%
New York Southern	30,537	70%	14%

For non-MDL original proceedings and removals in the civil heartland, filed in calendar years 2014–2016, the median disposition time in Arizona was 6.5 months (197 days) (n = 5,415), about a month shorter than the median disposition time in California Eastern, 7.4 months (224 days) (n = 5,573). For non-MDL original proceedings and removals in the civil heartland, filed in calendar years 2014–2017, the median disposition time in Illinois Northern was 6.2 months (188 days) (n = 17,478), shorter by more than a month than the median disposition time in New York Southern, 7.4 months (226 days) (n = 18,912). For cases in which any defendant filed a responsive pleading, "issue-joined" cases, the disposition times for the paired comparison districts are also very similar (non-MDL, original proceedings and removals, civil heartland only, filed in calendar years 2014–2016): Arizona, 9.8 months (298 days) (n = 3,556), compared to California Eastern, 10.2 months (313 days) (n = 3,015); and Illinois Northern, 11.2 months (340 days) (n = 8,563), compared to New York Southern, 11.4 months (346 days) (n = 11,229).

In sum, prior to the MIDP program, Arizona processed a similar number of cases, with similar numbers of civil-heartland cases with similar processing times, compared to California Eastern, and Illinois Northern processed a similar number of cases, with similar numbers of civil-heartland cases with similar processing times, compared to New York Southern.

Appendix 2: Open-Ended Responses

This appendix provides the open-ended responses from the attorneys. It is organized by district and then by attorney role (plaintiff attorneys then defendant attorneys in the closed case). Spelling corrections were made to improve the readability of the comments. Names of judges and parties and identifying details have been redacted.

Please provide any additional comments on the initial discovery in the above-named case.

District of Arizona Plaintiff Attorneys

A faster discovery process and more-rigid deadlines makes things harder for lawyers with small law practices who have fewer resources than big firms or government agencies. It puts smaller operations at a disadvantage.
After going through MIDP, I prefer regular disclosure under Rule 26—this is true both procedurally and from a defense perspective
All discovery done with initial demand and informally from Defendant. Discovery rules not relevant.
All federal civil rules unfairly favor government parties, but MIDP is particularly unfair. Ultimately the judge's unfair actions led to the final unfair outcome, but MIDP did nothing at all except raise costs for the plaintiff
As a former Civil defense attorney [redacted], I found that the Pilot project made everyone a little more conscious of duties owed to the other side than the old way of doing things. It felt like, in this "Products and Premises" case that Plaintiffs had to be very aware of all the prior medical issues and records, while defendants had to focus on duties of disclosing prior accidents, claims and design drawings that could easily be delayed. The ordinary course of "producing" only after specifically being requested with a limited number forced upon Plaintiffs by the RFP rules. It is a good rule change.
As is true with defense, relevant information was not disclosed during the initial discovery phase.
As with state court disclosure rules, which allow? for good actors to show their cards early, there are substantial costs front loaded and robust disclosure does not—in my opinion—meaningfully reduce the amount of discovery.
Better system than the return to old system when MIDP was revoked at least in Personal Injury cases.
Case settled almost contemporaneously with the exchange of the MIDP Responses.
Case was remanded prior to the substantive exchange of discovery
Counsel for both parties were exceedingly passive and did almost nothing for 18 months. Their bills were large and, in my opinion excessive, considering they got nothing done. Shortly after I was hired, I started depositions, I insisted documents be exchanged, a private mediation be scheduled. With that, the case settled.
Defendant was not cooperative in providing initial disclosures which required plaintiff to seek court resolution on several occasions. Initial disclosure deadlines allowed these issues to be resolved earlier in the case than relying on traditional discovery would have afforded.
Defendants still attempted to conceal relevant information, which required court intervention on multiple occasions. [Redacted] did a fantastic job dealing with these disputes.
Defense counsel in this employment dispute did not seem to take its MIDP obligations seriously. Their MIDP responses provided almost no meaningful information, and they clearly treated it as a pro forma obligation that could be met with minimal disclosures and a catchall phrase like "to be supplemented later," even though they should have and could have had the information before the initial MIDP deadline. Stronger oversight (such as having initial MIDP responses reviewed by the judge or staff) would help. MIDP was not helpful to achieve any of the above-identified goals because defense

counsel knew its failure to comply would have no adverse consequences. Even if my client had the money to pay for me to pursue court intervention on these failures, it is likely that the only outcome would have been that they would have eventually complied with the order in a way that they should have done from the beginning.
Defense discloses nearly nothing in the MIDP responses other than the bare minimum, if that. Requires judicial intervention to force production of relevant information despite disclosure clearly being required by the MIDP rules.
ESI production is too expensive for the average litigant. More processes should be available to curtail the expense.
Exchanging MIDP disclosures provides an early deadline that can accelerate settlement of straightforward cases. Parties are eager to settle the case quickly before being forced to complete the disclosure.
Expediting and/or modifying discovery deadlines/processes etc. only creates the lawyer more work in a shorter time and reduces the number of cases a lawyer can handle which reduces a lawyer profitability.
Good idea but I disagree it should take place before opportunity to move for dismissal under 12(b)—as waste of a lot of effort if case gets dismissed.
Good intentions in formulating the MIDP. Where one side withholds information or documents, it retards the discovery process, but little more than the Fed.R.Civ. Pro 26 disclosure requirements.
Helps focus the issues early in the case.
Honestly, I don't quite get the purpose of the MIDP. Why not just stick with the initial disclosures under Rule 26 but move those deadlines up?
I am a strong supporter of the MIDP.
I am not certain that this process is that different from normal discovery procedures.
I appreciated the amount of information provided up front, but there were many depositions in our case, so the costs for discovery were still significant.
I believe it is a good idea, but the orders governing mandatory initial discovery should be simplified.
I did not practice in federal court prior to the use of the MIDP, hence so many "I do not know" answers.
I do not believe we received more discovery in the case than we otherwise would have received without the MIDP
I do not like the MIDP
I found the MIDP to be helpful. It helped attorneys talk and communicate rather than work in silos.
I generally appreciate the MIDP. However, requiring MIDP Responses while a motion to dismiss is pending is unnecessary for obtaining clear results—which was the reason articulated for the inflexible nature of the MIDP. In fact, doing so skews the results to make MIDP appear more productive than it really is, because meritless lawsuits regularly terminate early. And, of course, requiring early MIDP notwithstanding a pending motion to dismiss boosts the cost (and the shakedown value) of a meritless lawsuit. In practice, the attorneys often do an incomplete/dumbed down version of the MIDP, which is unhelpful.
I think it's a great idea!
I think the idea is great. Defense has to answer the questions instead of objecting to everything and providing nothing, I think having the court ask the questions is invaluable.
I like the MIDP but the policy surrounding refusing extensions when a Rule 12 motion is pending is counterproductive and expensive for clients—particularly when faced with meritless lawsuits. The requirement does not serve the interests of justice and is particularly punitive to clients with limited resources.
I prefer the standard disclosure process, rather than the MIDP.

I think it does help streamline matters and provides a context for discovery. Requiring litigants to exchange an MIDP before discovery, I feel, is a good thing.
I think it is a worthwhile procedure if adhered to in spirit by both sides.
I think it provided information early without the usual rote objections. It gives both sides the information that otherwise might not be disclosed for a year and a half well into discovery and motion practice. It has allowed me to settle cases both with my client changing position and with the defense changing position.
I think it would be better just to implement Rule 26.1 from state court. At least with regards to Rule 26.1, local attorneys have some experience with how the issues will be handled by both counsel and the court.
I think MIDP Responses provide LESS information, though it is earlier, than Initial Disclosures.
I think the best part of the new rule is the portion that allows failures in the initial disclosure to be brought up in the Scheduling Conference Memo. If judges took that seriously, it could reduce costs and time.
I think the Mandatory Discovery is a good idea. Didn't help a lot in our case, but it didn't hurt. And I can see how it would help in some cases.
I think the MIDP procedures should be scrapped. The existing federal procedures work fine and these frankly lead to more gamesmanship.
I think the program should require immediate production (not just listing) of documents.
I thought the MIDP requirements increased the initial costs of litigating the case. I file a number of insurance recovery cases on behalf of my clients in several jurisdiction. We are often able to settle these cases early under the normal FRCP initial disclosure protocols. The MIDP requirements were burdensome and costly.
I took over the case for plaintiff's initial counsel after the close of discovery, so my knowledge is limited.
I was a strong supporter of the MIDP program.
I was local counsel and was not involved with the discovery production to fully know its impact on the above issues.
I was local counsel only; Trial counsel ran the discovery process.
I would like to see this adopted full-time. It keeps large, corporate defendants from playing "hide the ball." It makes the courts more financially accessible to actual human beings.
I would recommend that more detailed information be required under the project, similar to Arizona Rule 26.1
If the other side is unfair with discovery as our OPC was, they will be unfair in mandatory just the same as they are in open requests.
I love mandatory initial disclosures. I have done many such cases and the discovery gets done early in the case and disclosure has to happen rather than documents hidden or disclosed late.
In not only this case, I find that defense counsel (especially the big defense firms) do not fully disclose all relevant materials under MIDP—it takes a subsequent RFP and ROGs to get at info they have. I find this to be universal. I don't know if it is the defense firm mindset, but it makes more work for the plaintiff attorney to pry it out of them.
Indistinguishable from initial disclosure statement.
Initial disclosures were likely the same regardless.
Initial discovery largely ineffective due to general ineffectiveness of opposing counsel.
It made it more difficult for me, because the timelines were too short. I have a small practice and need more flexibility.
It parallels state court disclosure in many respects and is helpful.

It requires too much front-end loading.
It was already my custom as Plaintiff's counsel to provide almost all information required by the MIDP. Defendants behaved as they normally do, failing to timely or fully disclose evidence, witnesses, pushing off the burden of creating and filing the MIDP and pretrial order onto the Plaintiff, meanwhile providing as little as possible. In this case, I represented a Plaintiff against parties and counsel I am often opposite. While it is the Defendants tack to delay and embargo discovery, I have a high regard for the lawyers who represent the defendants. We have so much experience opposite each other that we were able to quickly assess the case, its value, and settle it fairly. The lawyers on the other side were extremely cooperative in the unique nature of litigating this case alongside a bankruptcy. However, they still didn't give us everything required by the MIDP.
It was deficient, I moved to compel, sanctions were denied, and that set the tone for the defendants for over 2 years of discovery gamesmanship [redacted], costing my client almost $2 million in wasted legal fees.
Judge [redacted] exhibited hostility towards MIDP and said that because nobody ever consulted with him prior to it being initiated that he wasn't going to care about it.
Judge [redacted] is sharp. It was a pleasure to be before a judge who reviews the papers and treats litigants with courtesy.
Mandatory disclosure is vital.
Mandatory disclosures may well be advantageous in general, but are not always appropriate, and in my particular case increased the overall expenses of all parties without corresponding benefit.
Mandatory discovery is a complete waste of time and the defense does not provide any items that were not in disclosure.
Mandatory discovery was required way, way before the parties were prepared to provide meaningful answers, and wasted fees in a time that they were working on settlement.
MIDP does not accomplish what was intended. The opposing side only discloses what they want, not what they should. It has turned into another burden on plaintiffs just like the Rule 56.1.
MIDP is a powerful tool for both sides to compel disclosures and does save time in beginning the discovery process. That was the case here.
MIDP should be used in ERISA cases, because it has helped when we have used it. Defendants should have to watch the video to understand the purpose of the MIDP. If utilized effectively, it will save costs and change the landscape of discovery for the better.
More requirements/ scope is better.
Most of the documents obtained through initial discovery were exchanged prior to the filing of the suit. It is difficult to assess the benefit of the program in this situation, as the parties had already exchanged previously.
My experiences have been that unless Plaintiff asks for something specifically, the Defendants do not produce it.
NONE
NONE
Our case settled before the mandatory disclosures, so I don't have much to share regarding the program.
Our case was an interpleader action, and the discovery program did not seem well-suited for that type of case since the discovery it called for was duplicative of what the parties already had in their possession from the underlying lawsuits.
Overly Burdensome.
Please note that these responses are heavily influenced by a particularly difficult pro se defendant more than the process itself.
Procedure should be mandatory.

The actual rules and deadlines are irrelevant and ineffective if they are not enforced.
The case informing these responses was unique in that the defendant had no interest in settlement for years despite having indisputable liability on some claims and no amount of cost or discovery would have changed that. I think in most other cases, the prospect of early discovery is a powerful tool for expediting a resolution.
The case settled before any substantial discovery occurred.
The case was dismissed on summary judgment related to failure to exhaust administrative remedies. There was no discovery beyond the MIDPP disclosures.
The case was voluntarily dismissed early in the proceedings with leave to re-file. I regret my answers could not be more substantively helpful.
The corporate defendant did not fully disclose as required though we found out after settlement.
The Defendant did what it always does. It produced a lot of material, but embargoed information required for class certification, provided non-responsive information and a lot of it, piece-meal responses, objected to all written discovery, required extensive meet and confers. The reasons we avoided contacting the court for compulsion are (1) we have litigated deeply against the defendant, (2) this was a related case to one we litigated deeply against [Redacted] & so we knew most of what we needed; (3) the required face to face settlement conference. One thing that would be an effective adjunct to the MIDP is a settlement conference with a magistrate judge.
The Defendant treated the MIDP the same way defendants generally treat mandatory disclosures and discovery generally, with delay, incompleteness, and deception. I was not truly able to craft the RFPs, Interrogatories, and RFAs to be more targeted only because of the general refusal to produce information that it should have produced in the MIDP. I feel that the case settled after a long meet and confer process that produced almost nothing, several depositions, and the threat of a motion to compel. This was pled as a class action, and the only thing that enabled us to settle was pushing for the information about whether a class existed. Which should have been easy to determine at the MIDP stage, saving time and costs.
The defendants were obstructionist from start to finish—and the district court did nothing about it.
The Defendants' counsel was allowed to withhold relevant non-privileged information that they admitted to withholding for the duration of the case.
The defense would not turn over discovery voluntarily and went so far as to say documents did not exist without even providing and affidavit. Plaintiff disclosed numerous documents including documents found on the internet as it related to the Defendants.
The discovery rules are a positive in that the case moves forward much quicker than it otherwise might.
The initial discovery requirements are similar to those for initial disclosures in State Court, which is beneficial to ensure the opposing party provides a summary of its factual and legal theories.
The items I strongly disagree with above are not because the MIDP program doesn't generally provide these benefits, because I believe it does. Instead, these responses are unique to this case in which the opposing party was an intractable pro se litigant determined to litigate the case as fully as possible.
The MID program sounds good on paper but in the few cases in which I've dealt with it, it is largely used as the basis for more discovery disputes, than less. It seems to simply cause more disputes about what should be disclosed and not used as a mechanism to reduce discovery and expedite resolution.
The MIDP could be a really, true breakthrough in litigation. However, the gamesmanship by corporate defendants is no different than with ordinary, traditional litigation. The MIDP seemed to frontload discovery disputes and prolong the costs and pain for ordinary people who find themselves as plaintiffs. Also, some judges refused to or signaled they would not enforce the MIDP as early as the 16(b) (not in this case, but others). Instead of producing everything relevant to a case, Defendants I experienced used the MIDP as a chance to narrow even further than what they would under 26(a)(1). It is a shame that the MIDP ended, I think an ambitious project needs more like 10 years rather than three.

The MIDP made us lazy. We didn't ask for discovery that, in retrospect, we should have asked for because we errantly believed the other side provided us with everything of possible relevance.
The MIDP process greatly increases the costs of litigation in the District. It should be abandoned as soon as possible.
The MIDP process in this case, as is increasingly common, becomes a tool over which the parties engage in unnecessary discovery disputes. In my experience, the MID Program does not result in any measurable benefit.
The MIDP program for the most part tracks with Arizona State court requirements, so it is consistent with what many Arizona lawyers would disclose even in the absence of a standing order.
The MIDP program is very similar to state court disclosure requirements.
The other side did not take its obligation to produce all relevant information seriously. There were two discovery conferences as a result, and there does not appear to be a clear enforcement mechanism for failure to produce all relevant information at the outset of the case.
The other side produced documents they intended to use but not all documents relevant to the case. We eventually sought a discovery conference pursuant to the judge's procedures, but the court vacated the conference without scheduling a new one after the other side stated they had a scheduling conflict but would continue to work towards a resolution of the discovery dispute. They were not working towards a resolution, and they did not work toward a good faith resolution after the court vacated the discovery conference. We ultimately had to request another discovery conference on the same issue months later after incurring thousands of dollars of attorneys' fees. My experience the pilot program has some benefit, but that benefit is greatly outweighed by the cost added to litigation.
The other side wasn't nearly as forthcoming as we were (not unusual even in AZ state Court disclosures). Sadly, that is my experience with Defense counsel. They doubt that the court will sanction them, so they go into less detail. From the plaintiff's perspective, many members of the bench have a bit of a bias because Plaintiff "brought the case," so it seems to make sense that they have a bigger disclosure burden, because the other side is just "defending."
The previous procedures were better.
The problem with any knew procedure is that it has to be enforced. Plaintiff did not get anymore by the mandated discovery than he would have in discovery. Surprisingly the same evasive answers were used, and a minimum of documentation provided. Because of the opponent the settlement was not much affected. It does put much of the cost upfront. It feels like another way to dissuade plaintiff and will unless the opponent's answers become real. [Redacted] used to say if it hurts then it is clearly needing to be disclosed.
The project works if the lawyers managing the case are interested in getting to a resolution, are engaged and do their jobs.
The standing order, like many such provisions in the Federal Rules, imposes unnecessary time burdens upon plaintiffs' counsel, who almost always are representing clients on a contingent fee basis. Consequently, the Standing Order is costly and burdensome to plaintiffs' counsel. On the other hand, the Standing Order gives defense counsel yet another opportunity to bill hours in the case. In my opinion, the Federal Rules that were enacted in 1954 are completely adequate to govern discovery in any case. The only perceived problem with discovery under those rules arose because the trial judge would not adequately enforce the provisions of the rule through the use of sanctions. If adverse judgments had been entered, years ago, for parties who were abusing discovery, discovery abuses would have substantially abated, and the now-exiting plethora of micro-management discovery rules would never have been enacted—which would have been a glorious boon to the administration of justice for all parties. Sadly, that horse has now been out of the barn for many years.
There is a lack of uniformity between the divisions in the district court as to what is expected to be disclosed. I had a prior Case in the Tucson division and it was satisfactory. In the Phoenix division the Court believed my disclosures were not sufficient, even though they were essentially identical to what I did in Tucson.

There were a number of categories of documents that the parties did not agree were subject, or not, to mandatory disclosure. We were able to ultimately resolve the matter, however, and those disputes were not, as a result, brought before the Court.
There were issues identified after the initial discovery deadlines that required additional discovery and included a discovery dispute. [Redacted] has a simple and effective procedure for discovery disputes.
This case did not have many factual disputes. The primary issue in the case was the legal effect of the agreed-upon circumstances.
This case initiation pre-dated the original order. Moreover, opposing counsel seemed to have been AWOL, maybe due to termination by the party. Also, [redacted] took over negotiations and requested a termination of the case in District Court.
This case resolved quickly because of the initial discovery process.
This case settled fairly early on due to familiarity and experience of attorneys of both sides.
This case settled quickly so we didn't have to get too deep into discovery.
This case was governed by ERISA which has its own set of limited discovery precedents. The controversy which required motion and threat of discovery motion related to the scope of guidelines by an insurance company relating to a specific decision made in terminating a claim. Anyone familiar with the industry knows that such guidelines exist internally. But it was continually denied, until an eventual agreement with a Protective Order allowed disclosure, the use of a protective order to shield embarrassing information which is relevant is an abuse which often occurs in these cases but continues to exist because companies have no dis-incentive when caught in not providing information which should have been provided.
This case was stayed while the main case in [redacted] was litigated. So, it isn't relevant to this survey.
This gave us the Defendant's information far earlier, as in months than we would get it. Also, the game of objecting to all questions was not played. This enabled me to see what the real defense was and went a long way towards settlement.
[Redacted] The MIDP was a disservice to both sides in this case.
This was an interpleader with numerous pro per defendants. Wasn't your typical litigation-intensive case.
Too complicated and confusing; inhibited resolution.
Useful in forcing parties to move the case along promptly, be prepared much earlier.
We are currently still litigating. Therefore, my answers may be premature.
We did not reach discovery phase in this case.
We have had mandatory disclosures in Arizona state court for a very long time. Still, as an individual that sues insurance companies and other large corporations, I find they rarely disclose anything approaching all of the relevant information in a case, and I have learned to not trust their disclosures and always do back up with written discovery, and depositions. Accordingly, I think mandatory disclosures do some good, but I also think they deceive some people into thinking they're actually receiving all of the necessary information which might be out there when many large corporations and their defense firms are really gaming the system. Judges still need to be judges and they need to understand we need decisions on discovery issues. Way too much time is wasted on judges who are reluctant to make simple discovery decisions.
[Redacted] It was an extremely unusual case.
Whatever benefit the early disclosure provided, was outweighed by the onerous requirements imposed by some judges to have the case prepared for trial (including voir dire, motions in limine, deposition designations, summary of each issue and evidence on each point) before a trial date is actually given. If we must do that much work just to get a trial date, we'd just as soon go to trial.
Yes, the defendant threatened sanctions and demanded information already in their possession

Please provide any additional comments on the initial discovery in the above-named case.

District of Arizona Defendant Attorneys

99% of the time the parties can work it out. Mandatory anything adds costs. Just focus on disputes and stop trying to mandate how you think we should handle cases and on what timeline.
Absolutely unnecessary. Made the cost of litigation exponentially more expensive than it should have been. Parties should be able to opt out of the MIDP when the facts of the case call for it.
As usual, Plaintiff's fail to disclose all relevant information about pre-accident health conditions, claims for disability, and employment.
As with the State court, I do not believe there is added benefit with the MIDP. It treats all cases alike and creates undue expense on cases that do not merit as much attention as other more significant cases. There is no one size fits all ideal which the MIDP attempted to create.
Briefly, the case settled relatively soon after MID, but it is seeming unlikely, or at least hard to say, that settlement decisions were made based on those initial disclosures.
Case lacked merit and was settled for a very very small amount, but costs related to mandatory disclosures were 100x more than settlement amount. Arizona state court rule is better—if case can be dismissed on Motion to Dismiss no disclosures required. That saves litigation costs for defendants in cases clearly without merit.
Case settled before formal discovery.
Case settled early so do not know about any disputes that could have been avoided by the MIDPP.
Case was dismissed before the MIDP had a chance to play out.
Conducting Discovery with a Motion to Dismiss pending ADDED costs in time and money to this matter. Court should have ability to stay discovery pending Motion to Dismiss.
Defendant (my client) provided descriptions of documents and disclosed copies on time, Plaintiff's MIDP was filed late, contained inadequate descriptions of documents, and failed to identify specific documents. Plaintiff also did not provide copies of documents. Although Plaintiff complied with MIDP, it was barely adequate, making Defendant's efforts seem very one-sided, which is what we have come to expect.
Defendant timely complied with all discovery deadlines and produced [thousands] of documents. Plaintiff produced the MIDP responses and responses to discovery only after motions to compel were filed, did not produce a single document, and yet no sanctions were issued. It very much feels like the government is held to a much higher standard than plaintiffs with respect to discovery.
Difficult to say. Plaintiff dropped case because it was meritless on our side filing Motion to Dismiss with our agreement not to pursue costs. Early disclosure may have played a part in convincing them their case was meritless
From my perspective, as Defendants the receipt of documents had no real effect on my case as I was in possession of the majority, if not all, relevant documents. This is not the best case, from the Defendant's perspective to judge the MIDP
Front loading disclosure / discovery costs, without any meaningful alternatives, is a significant burden in a case where the goal is early settlement.
Generally, initial disclosures from the Plaintiff provide no information other than that included in the complaint. After participating in 6 lawsuits subject to the MIDP Order, no documents were provided with Plaintiff disclosures.
Good procedure. Glad the court requires it.
Had the other side complied with the MIDP, the case would have proceeded more smoothly and more expeditiously. However, because the MIDP was in place, we were able to quickly identify what was missing, meet and confer about compliance, raise the lack of compliance with the Court and get

additional information from the other side. The MIDP certainly is a wonderful tool and helped expedite this case. [Redacted] was fantastic in resolving disputes and his timely attention also helped resolve the case.
I deal with fee shifting cases and the MIDP is a very good idea in such cases as it really streamlines litigation.
I did not notice any difference using the Mandatory Pilot Project compared to Rule 26.
I don't like the MIDP program. I prefer the normal rule 26 disclosures and letting people do whatever discovery they want.
I find that the United States complies with MIDP and most private parties do not. Rather that turning over discovery, private plaintiffs "identify" documents that everyone already knew existed and them the United States has to make repeated requests to obtain the actual documents. MIDP has not helped settle cases sooner. If parties really want to settle, they will make the necessary disclosures.
I get it, but I prefer the old system. Sometimes MIDP imposes too great a burden on the front end in cases that would settle quickly without compliance.
I have litigated extensively in three other states and supported these initial disclosures processed.
I have tremendous respect for our Magistrate Judge [Redacted] and our District Court Judge, [Redacted].
I like the format of mandatory initial discovery responses. The issue I ran into was insufficient adherence to the requirements by the opposing side.
I like the MIDP program. Although, in my experience, it places a heavier burden on the Defendants. Also, I have noticed that Plaintiffs do not take their obligations as seriously—this may have been my own experiences, but I found that in multiple cases, Plaintiff's counsel was unable to disclose on time or did not produce anything meaningful. However, if the Order was followed, it would greatly benefit each party.
I liked the MIDP requirement, as it led to more substantial disclosures earlier in the case and helped us get it settled sooner than it would have otherwise.
I prefer earlier, mandatory disclosures in cases. That being said, the current structure sometimes puts defendants at a slight disadvantage initially, as Plaintiff may have months to gather documents and prepare the case before filing the complaint, and the defendant has only a finite amount of time after filing the answer to gather all relevant materials. I would suggest moving the initial disclosure date out a couple of weeks.
I served as local counsel in this matter. I was not involved in settlement discussions and the case did not proceed to a stage that allowed me to respond meaningfully to the majority of the questions asked.
I think the initial discovery under the MIDPP is generally more effective than historical requirements. It helps to understand the positions and weight of evidence early and reduces regular discovery. My disagreement that discovery in my case was not equally fair is probably because the Plaintiff in my recent case was Pro Per. I had to basically guide the Pro Per on how the case gets litigated yet had to contend with his refusal to work together to get through discovery his lack of knowledge of the process made him distrustful and stubborn. The court expected me to, and I complied in drafting all the preliminary documents and take the initiative to follow court rules and stay on schedule regarding meet and confer, joint report, joint case management order, even though the plaintiff was the one bringing suit. The plaintiff was late responding, did not effectively respond, belligerent and did not obey certain of the court's instructions. Because he is a Pro Per, the district court must treat the plaintiff leniently for fear of being chastised or reversed by the 9th Circuit. That situation is a disincentive to bring discovery disputes or missed deadlines to the judge because the Pro Per is going to get a pass. This dynamic lengthened the case and significantly lessened the efficacy of MIDPP requirements regarding initial discovery and meeting deadlines.
I took over the case after discovery so my knowledge of the program as it relates to this case is limited.

If the Court just required that parties follow the initial disclosure requirements imposed in Arizona state court, it would be much better. Instead, the process is strange and the other rules that are imposed (such as requiring an answer even when a motion to dismiss is filed) are very bad and costly.
In general, I prefer FRCivP Discovery Rules to ARCivP rules.
In my experience other lawyers do not tend to fully comply with requirements to disclose adverse information and to admit facts that should be admitted. I am required to do my own investigation and more in-depth oral examinations (depositions) to secure that information.
In this case, the District Judge enforced its scheduling order. The other side did not provide timely disclosure and ultimately this was one of the reasons the plaintiff ended up dismissing the case.
In this particular case, opposing counsel filed a Notice of Service of MIDP responses and then did not provide them until about six months after filing the notice despite repeated requests.
Initial discovery was a waste of time and money in this case that should have settled before it was filed. The amount of initial discovery required by the Standing Order is not necessary at the time it is required in my opinion.
It actually forces extra time to be spent on initial disclosure in fear of non-compliance when most lawyers know and can manage their own cases. Again, rules for the minority of practitioners becomes the rule for all of us. Increasing costs. Same with pushing cases as fast as possible.
It helped that [Redacted] was fairly pleasant dealing with the program.
It made no difference in how the case was litigated.
It was effective.
It was needless time consuming and duplicative in a complex case with no real benefit beyond the ordinary disclosure rules.
It worked well, especially with our Judge's comments and oversight.
It's a good thing. I would hope lawyers would be doing it anyway based on Rule 26, but hope springs eternal.
It's too inflexible. The filing of the lawsuit got the parties talking, working towards resolution, and the MIDP was just a distraction that cost both parties money unnecessarily while they were working towards a settlement that would have happened anyway.
Just a lot of front loading of costs. I do think it discourages hiding the ball on both sides. We took it seriously and disclosed everything we had early on.
Keep the pilot program. Mandatory affirmative disclosure (like Arizona Rule 26.1) reduces discovery games played by lawyers. The federal bench should have adopted it years ago and the fact that lawyers from other states think it's crazy to require everyone to put their cards on the table at the beginning of the lawsuit is not a valid reason to avoid implementing such procedures.
MIDP added expense for the client that was unnecessary in this case. Not every case is the same. MIDP is ineffective and unnecessary in some cases.
MIDP disclosures can make defending cases with nominal or marginal merit unnecessarily expensive for defendants.
MIDP does not streamline the case. In this case, plaintiffs submitted the MIDP well after the deadline. Plaintiff refused to disclose document responsive to discovery requests that should have been disclosed with the MIDP. MIDP does not help the discovery process.
MIDP is a GREAT program and is effective but only if both sides take it seriously. There needs to be some precedent of sanctions or other penalty when any party does not abide by the spirit and letter of the requirements. My experience is that the serial filers in consumer cases—on plaintiffs' side—just repeat in the MIDP the minimum they normally do in disclosure, and you have to press them to provide specifics, documents, and what seems to be required by the program.
MIDP is onerous and unfair.

MIDP is very effective at expediting cases, although it can make less complicated cases more expensive to litigate.
MIDP makes me substantially less likely to settle cases because all my work has to be done up front. There's no benefit to settling. MIDP also takes the skill out of lawyering at the discovery stage, and when dealing with pro se litigants, it's a giant disaster that makes my job substantially harder and more frustrating.
MIDP program is a good idea. it gets the parties talking earlier, but often all parties haven't been served yet.
MIDP seems to cause more expense when the other side is pro per and/or their claims have little merit.
More emphasis should be made to ensure facts provided are not merely recitation of pleadings and are actual facts, and the applicability of sanctions relating to failure to disclose facts as opposed to mere conclusions.
My case involved a mentally ill pro per that did not understand some of the formal court processes. I don't know that my responses would be reflective of a case with a Plaintiff's counsel or a person more capable of understanding the discovery process.
My client provided all information (including electronic documents) up front. The other side did not.
My client was dismissed very early in the case after filing a 12(b)(1) motion. I saw that many other defendants served the mandatory disclosures, but my client was out of the case before it became necessary to do so or to analyze the disclosures of other parties.
My experience has been that in most cases, this program adds to the cost of litigation.
N/A
Needlessly drove expenses higher; counsel capable of determining efficient discovery rather than blanket/unfocused/expensive generic disclosure.
NONE
NONE
Not a bad idea, but until Judges hold Plaintiffs to the same standard as Defendants, largely useless.
One size fits all should be re-examined and perhaps do something more like uniform interrogatories in Superior Court to avoid waste.
Opposing counsel barely complied with their client's minimum discovery obligations and, in every instance, only after we began the procedure to file a motion to compel or related filing.
Other than identifying fact witnesses, Plaintiffs' untimely initial disclosures merely said, "see complaint," and "damages will be calculated later." No documents were provided other than those that had been disclosed to Plaintiffs by Defendant with Defendant's timely initial disclosure (as in, they had Defendant's bates number on them and were "redisclosed" back to Defendant).
Our side's MIDP responses were complete and thorough, but the other side's responses were not, which was not helpful at all.
Overall, it was helpful, but I don't think it made a significant difference in the case.
Plaintiff misread the MIDP rules to allow him to serve intentionally oppressive discovery with his Complaint so long as he also served MIDP responses. The instructions MUST be clarified to prevent this.
Plaintiff technically served MIDP response but did not identify relevant documents or provide copies of documents. Rather one-sided.
Plaintiff took the position she did not have to provide medical releases or damages disclosures.
Plaintiff was unrepresented which made the process ineffective.
Plaintiff's counsel believed providing plaintiff's discovery responses with service of the complaint immediately entitled him to serve written discovery.

Plaintiff's "facts" in the MIDR were no more than a restatement of the allegations of the complaint and provided almost no details. The requirement for facts should be made more explicit and strengthened to make all parties required to provide detailed facts relevant to claims or defenses.
Plaintiffs never provide all relevant records, and this case was no different. MIDP only benefits Plaintiffs.
Plaintiffs only facially, but not substantively, complied with the MIDP, which has been my experience in the two Arizona cases in which I have been involved. The case was so front loaded by discovery for a complying defendant that there was no value in settling to avoid discovery. As most work for defendant was done on the front end, there was a disincentive to settle.
Plaintiffs provided material they had obtained from my clients via public records request, and nothing else. We would have disclosed all of it in our initial disclosure anyway.
Plaintiffs' claims in this case clearly lacked merit and were even subject to res judicata based upon a prior case. There was not, however, a vehicle for us to request that all discovery be stayed pending a motion to dismiss and that we be relieved from filing an answer. MIDP is a waste of resources where the claim is without prima facie merit and subject to a motion to dismiss.
Pro Per plaintiff.
Rule closely matches AZ Rule 26.1 Disclosure. Defense is placed at a somewhat disadvantage given the acceleration for disclosure as plaintiff had the case for some time.
Sanctions were awarded by the Court due to Plaintiff's failure to properly comply with his MIDP obligations, and Plaintiff agreed to voluntarily dismiss his case in exchange for avoiding such sanctions.
The 30-day timeline is so short that it undermines settlement, as it forces the parties to incur significant cost (particularly defendants) prior to the ability to have meaningful settlement discussions.
The burden of significant discovery early in the case does not speed up discovery, it incurs more costs. Not being able to file a Mtd before filing an answer also incurs more costs.
The Case Management Order issued by the judge was an outrage. It assumed all parties had nothing to do except work on this case for the next 3 months full time.
The case was one-sided. The judge was biased.
The case was resolved by motion before extensive discovery was needed.
The cost of complying with discovery was great given that we had to file and answer and exchange discovery even though we filed a motion for judgement on the pleadings.
The discovery is not geared toward different types of cases like labor and employment.
The discovery just does not apply to all cases—this was a wage and hour case, and it was not tailored to that.
The discovery process in this case was smooth, having nothing to do with the new procedures. They attorneys worked together to exchange information with Court involvement.
The early discovery costs more to start, but is worthwhile to have early and full disclosures and will save costs latter in the case
The inflexibility with the timing of the MIDP disclosures is/was the most problematic aspect of the MIDP, and unnecessarily cost the parties money, both in this case and often.
The initial discovery really did not come into play in this case, because it was a re-filed action from state court where the issues had already been presented, for the most part, and nothing had transpired from the dismissal of the first action without prejudice to the filing of the Federal Court case. I do like the concept though.
The judge in the case was too rigid in this case and did not allow the lawyers to professionally discover the case with flexibility. The discovery order and the court's management of the case made this a most unpleasant experience for the lawyers.
The Mandatory Initial Discovery was abused in this case and caused unnecessary expenses to be incurred and should not apply to cases where a motion to dismiss has been filed.

The MIDP increased the discovery burden and the number of discovery motions.
The MIDP is a good idea, but the parties should be able to delay initial disclosures upon agreement if they are working towards settling the matter and for other good cause.
The MIDP is onerous.
The MIDP nearly made this case impossible to settle because of the added costs. It only settled because my client agreed to overpay in settlement.
The MIDP process is not helpful and is more expensive.
The MIDP process is prejudicial to defense. Plaintiff has had months to gather evidence for a case, but the MIDP process requires defense to gather an enormous amount of information in only 30 days. It is a one-sided, unfair process that is unnecessarily costly early on, and makes it more unlikely to settle due to the attorneys' fees incurred up front.
The MIDP program has its benefits (especially with respect to the production of ESI), but courts seem reluctant to enforce its provisions on pro per or prisoner defendants. Perhaps it's unrealistic for them to do so, and that's fine, but in that case all the benefit flows to them. In this case the plaintiff's lawyer filed a completely inadequate MIDP and simply didn't respond to any requests to supplement it. [redacted] I suggest that the program be made into an option that the court has when, in its assessment, the sides are institutional, sophisticated, or well organized. In those cases, it can be a great road map for all parties.
The MIDP project seems like much ado about nothing. Perhaps lawyers who are new to the process would benefit to some small degree, but otherwise, just an earlier bill to my client. Ridiculous overall project.
The MIDP protocol actually led to sanctions arguments that otherwise would not have arisen.
The MIDP was used to weaponize the other side. Inadvertent "failures to disclose" were used as points of cross examination against witnesses, when inadvertent, clerical type errors are attorney generated and should not be used against the party or witness. This helps extend abusive cross examinations and posturing which already occurs. It becomes just another weapon, when subjective differences of opinions on what is a fair disclosure or not is more of a legal or issue for the judge.
The parties did not have a discovery dispute, but an issue relating to discovery led to the parties requesting extensions from the court. None of this was impacted by the MIDP.
The plaintiff dismissed voluntarily rather than serve the required MIDP responses.
The plaintiff is this case was pro per, so the results of this case are likely atypical.
The prior process of requiring disclosures even when a strong Rule 12 motion was filed was very wasteful and expensive.
The problem with the MIDP is it requires an answer and MIDR even while a motion to dismiss for failure to state a valid claim is pending. This unnecessarily forced great expense.
The process did not seem particularly effective in our case. There was no disclosure of information that would not typically be requested, and we still had to engage in discovery disputes to obtain information that we believed was highly relevant.
The process is just so foreign. It would make more sense if they just amended Rule 26 (and if the requirements just mirrored state court, which does have slightly higher initial discovery requirements).
The program is unnecessarily time and cost heavy in the initial 60 days and is skewed toward forcing settlement that is based on cost, not substantive issues. In the four cases I have had under this program, the requirements strongly favored plaintiff in that defendant would be required to incur unrealistically high costs for compliance with the MID even if plaintiff's case was frivolous.
The rules should be clarified to prevent the abuse by the plaintiff's attorney, based on his claim that serving his client's MIDP responses allowed him to initiate discovery with the lawsuit, all to force an unjust settlement, which he did until he was suspended from the practice of law. The rules should say that completion of MIDP responses is a necessary but NOT sufficient condition on initiating discovery.

The time frame in which MIDP responses are due (30 days following answers) is particularly short given the number of voluminous documents that must be reviewed and redacted before disclosure. 45 days after Answer would be better.
There are lots of ways to technically comply with the order without actually providing useful information, similar to the initial disclosure statement in state court. Nobody was being willfully evasive or noncompliant, but I can't say that I received significant useful information as the result of the MIDP.
There should be CLE Credit provided for watching the Judges' panel on the MIDP program—it was excellent. I have had to encourage/persuade opposing counsel to live up to the requirements in the program though, but the explicit text of the Order helps.
This case had to do with a stop payment order on a check. The discovery by both parties was very straight forward. The only discovery dispute was whether my initial disclosure satisfied by obligations under Rule 26.
This case probably isn't a good one for input on the effectiveness of the MIDP. The parties made only minimal disclosures, under the old requirement to do so even when a Rule 12 motion was filed.
This case was unique because Plaintiff requested a mandatory injunction. So, everything moved quickly, but it was not related to disclosures.
This case was unique given that Plaintiff was Pro Per.
This is more complicated that just doing a traditional disclosure statement with facts, legal theories, witnesses, and exhibits.
This program greatly increases the cost to defend a frivolous action by requiring unnecessary discovery when a case will easily be dismissed on Motion to Dismiss.
This program is very similar to the disclosure requirements in Arizona state courts.
This system doesn't really do anything for anyone.
This was a case brought by a serial plaintiff. Costs were disproportionate on Defendant for frivolous litigation. Intent is good, but process needs refinement for type of case.
This was a FOIA case, to which the MIDP did not apply. The Court's order that MIDP applied caused problems, as the Plaintiff wanted to pursue discovery in light of the order.
This was a pretty open and shut case involving promissory notes for loans.
This was a small case and the mandatory discovery really didn't have much of an impact.
This was an unusual case brought by pro se plaintiffs. I very much like the MIDP disclosure process, but it didn't work as well in this particular case due to pro se plaintiffs that did not want to comply with any court rules or orders.
[Redacted] In my opinion, [plaintiffs] completely disregarded the letter and spirit of the Standing Order
This was one of two cases involving [redacted]. Both were dismissed early on, and the case is pending in state court, so my answers are not too valuable.
Tremendous benefit in expediting progress of case. Saves months at the start.
We already have mandatory discovery in state court and so the MIDP is already familiar.
We did not get passed initial motion practice, so initially discovery was not extensive. In addition, we were already debating discovery issues in a sister case in the State Court.
We filed a Motion to Dismiss for failure to state a claim and failure to complete service. However, because of the MIDP, the motions were not decided, and the Defendants were obligated to prematurely provide disclosure of documents. We feel strongly that the basis for the motions to dismiss were valid and would have dismissed the case. Due to the obligation to comply with the MIDP, Defendants made the disclosures and Plaintiff's bargaining position was enhanced. A settlement was reached to avoid increased expenses, but the MIDP unnecessarily created many of those expenses. There needs to be a compromise when a motion is filed to stay the MIDP until the motions on the pleadings are resolved. This same issue has come up in multiple cases.

We never got that far in the litigation as we settled, but the threat of mandatory discovery and federal court rules/costs helped expedite settlement.
We were required to disclose and engage in discovery even though our motion to dismiss was granted six months after fully briefed.
Went smoothly.
Worked well, but I would make the time frame longer by 30 days.
Worked well, especially because counsel for both sides were familiar with the process and cooperated.
Yes.
You should offer CLE for the on-line video panel discussion available on the court's website. It is excellent and everyone should watch.

Please provide any comments you have about the district's mandatory initial discovery pilot program.

District of Arizona Plaintiff Attorneys

A little more flexibility is useful at times.
An unnecessary burden that is a waste of time.
As a general proposition, I believe it ought to be automatically delayed in the event a Rule 12 motion is filed. Otherwise, it's a needless expenditure of time and money.
As it tracks the State Court rules on mandatory disclosures, I have no problem with MIDP. MIDP seems to move the case forward quicker and helps exchange basic case information without the need for discovery disputes.
As said previously, the MID program is more often than not just another tool used by the parties to engage in manufactured discovery disputes. I would abandon it and simply resort to Rule 26(a)(1) disclosures.
Availability of hotline calls would be helpful.
Based on experience in other cases (this case settled before MIDP disclosures), I generally like the MIDP program and think it has a lot of utility.
Bring it back.
Case settled before discovery was engaged.
Corporations and defendants still treat the MIDP as an adversarial process. I have had about 10 cases so far under the MIDP.
Didn't apply to my case because it was an action for judicial review under the Administrative Procedure Act which must be decided on the record.
Early and full disclosure benefits clients and the courts.
ERISA cases should not be exempt from the MIDP because some discovery is appropriate in nearly all ERISA cases. The MIDP should continue in this District. It has helped with earlier settlement discussions and less delay, such as with extensions on pleadings. It also requires plaintiffs to be more "on the ball" with enforcing the MIDP earlier in the case, encouraging resolution. It makes the process less adversarial.
Everything went smoothly.
Fine with me.
Good idea but does not accomplish what was intended.
Good program as long as the parties ALL act in good faith. Was not the case in this matter.
Good start in right direction of relevant disclosure and reducing discovery demands and disputes.
Great program.
Helpful, but outweighed by the ponderous procedures just to get a trial date. Some judges require all of the work up for trial be done before considering a trial date.
I am a proponent as it is similar to the mandatory disclosures in state court. The only criticism I have is the inability to mutually agree to extensions of time for initial responses, which are limited to situations where the parties are engaging in good faith settlement discussions. I would like to see the court allow parties a one-time 30-day mutual extension of time to allow the parties to make meaningful disclosures.
I am in favor of the MIDP requirements and believe that they are helpful.
I am inclined to believe that the program is beneficial and should be continued.
I am strongly in favor of the program.

I am trying to resolve the issue of whether ONLY a LIST of documents is required to be disclosed, or if the documents themselves are required to be disclosed.
I applaud the effort. Removal of requirement that no discovery take place until the CMC is a solid one. Unfortunately, my experience is that defendants' MIDP in these cases is insufficient to eliminate the need for extensive discovery tools to secure the basic information. Although the Rule required parties to disclose not only evidence, they contend relevant to their own claims or defenses, but evidence which could bear on any claim or defense, defendants consistently failed to produce such evidence in MIDP or supplemental disclosures. To work the District Courts must have, and use, strong sanctions for insufficient disclosures. When the discovery tools are there to get the necessary evidence, it is a waste of time to bring a motion to compel insufficient MIDP.
I appreciate the program. I think it aligns well with Arizona's state-court rules and promotes early resolution of disputes. It is important that requirements be enforced by the judge to ensure compliance. Otherwise, some parties have been less forthcoming with information.
I appreciated the court's flexibility in this case. In two prior cases, other judges have been unwilling to be flexible, which has led to unnecessary waste and expense for the parties.
I believe it is a great tool and it should become a rule.
I believe mandatory disclosure requirements promote quicker, cheaper, equitable processing of cases.
I believe the pilot program can be helpful, however our case ended up with 2 dispositive motions pending in front of the court, one motion for 8 months and one for 6 months that were never ruled upon and made MIDP non-effective. Both motions were important and could have changed the case for either party significantly.
I believe they were helpful and expedited things.
I continue to think it is a good idea. It (at least with honest parties) starts the parties on an even footing. If defendants are going to hide the ball, however, this does not change that.
I did not like it.
I didn't mind it when it was followed by both sides. I actually liked the Employment Protocols better (since that's what I practice).
I do not like the MIDP program and believe it shortchanges parties' opportunities to fully litigate a case in a proper timeframe.
I do not like the MIDP—this is based on my experience in other federal court cases. It does not materially advance the litigation.
I don't believe that it is helpful. It increases fees that affect an early settlement.
I don't think there is a large value add. I am neither here nor there on it.
I found MIDP to be largely an unnecessary, confusing, and time-consuming process which neither assisted nor affected the case. Instead, it required the attorneys to spend an inordinate amount of time satisfying court requirements which had no tangible value to the case. 26(a)(1) is enough; I would recommend the suspension of MIDP.
I have [redacted] other cases against the same defendant. FOIAs to public entities received after settlement proved [redacted] did not fully disclose per the MIDP order. There are pending discovery issues in the new cases and I am evaluating challenging the prior settlement.
I have been part of the pilot program in other cases and believe it helps facilitate the discovery process.
I have had inconsistent application of the MID rules between courts and almost exclusively, attorneys seem to use it as a mechanism for more disputes rather than less. Not a fan!
I have never participated in it. My cases involve challenges under the Administrative Procedure Act or similar statutes. No discovery takes places. Instead, the case is decided based on the agency's administrative record.
I have no strong opinion.

I highly recommend the initial discovery become a permanent part of civil litigation in the district court.
I hope that the Court make the MIDP rule permanent. I have represented plaintiffs and defendants under the MIDP regime and can confidently say that the rules benefit both sides. I sincerely appreciate the tireless efforts undertaken by the FJC and the District of Arizona in implementing the MIDP.
I am not sure how this is different from the standard initial disclosure requirements.
I just am involved in civil immigration cases, which proceed usually based on the administrative record.
I like it.
I like it and think it should be continued.
I like it as a Plaintiff's counsel. It keeps the case moving forward.
I like it as party of normal discovery. However, so many cases have different circumstances at the beginning that there should be more discussion about when discovery will proceed to ensure that it is not burdensome or a waste of resources.
I like it because it helps to avoid unnecessary discovery and pushes the case toward settlement.
I like it with one MAJOR exception: To require MIDP disclosure before an answer is filed (when a Rule 12 Motion is pending) is nonsensical and unhelpful. Many cases are filed that are frivolous or do not belong in that court. In those instances, the MIDP does nothing but compound costs unnecessarily. There is no purpose. The court's stated reason (to get a larger sample size of how the MIDP affects cases) is illogical. Frivolous and no meritorious cases often have extremely short lives regardless of the MIDP. So, the increased sample size will inaccurately skew shorter by requiring MIDP before an answer is filed. If that pre-answer MIDP policy continues, I would vehemently oppose MIDP. Other than that, I think it's great.
I like the changes made that prevented the MIDP process from kicking in while a Rule 12(b)(6) motion was pending. The original version caused clients to incur unnecessary legal fees.
I like the idea of mandatory discovery, but it still requires compliance in good faith, and that was a seeming challenge in my case.
I like the MIDP Program and think it should be brought back.
I like the MIDP and think the federal courts should adopt it.
I like the new rules.
I loved it. Matches AZ state court.
I noticed no significant benefit of the changes.
I prefer the standard disclosure process.
I strongly believe it should be a standard order in employment cases.
I support continued application of the program.
I think it does help streamline matters and provides a context for discovery. Requiring litigants to exchange an MIDP before discovery, I feel, is a good thing.
I think it is a good idea overall.
I think it is helpful.
I think it is useful and should clear calendars quicker.
I think it is very effective to move cases to a quicker resolution.
I think it should be brought back as it was helpful early in the litigation for settlement purposes.
I think it worked and streamlined the process.
I think the MIDP could have been revolutionary but baked in gamesmanship is hard to reroute in just a few short years.

I think the MIDP restores balance between defense and plaintiffs. Absent MIDP defendants had huge incentive to not disclosure materials unless on point discovery was submitted by plaintiffs.
I think the pilot program has a lot of potential to achieve its goals. I have only litigated a handful of cases under the MIDP so far, and I have not noticed any change to Defendants' behavior. It adds a substantial amount of time to Plaintiff's burden, and much of it is duplicative with the R. 16/26(f) order many judges require. Its overall effect is to multiple Plaintiff's attorney time. I already had a long-standing practice of providing everything R. 26(a)(1) required, and the MIDP report together with the attorney conference report has substantially increased the time spent on this task to make it meaningful, while the Defendants still embargo information & documents. I believe that Defendants still abuse the protective order process to withhold information, produce documents in a cumbersome form despite agreement otherwise.
I thought it helpful on the whole.
I thought it was great. I got responses from Defendants on the type of questions I continually see them circumvent in discovery.
I was a strong supporter of the MIDP program and was sorry to see it end.
I was not the day-to-day attorney on this case as the attorney was admitted pro hac. My other cases are all appeals [redacted] adjudicated on summary disposition w/o discovery.
I wish it applied to ERISA (791) cases, at least related to evidence and theories outside the administrative record.
I wish it would continue and be mandatory in the rules.
I'm a fan.
I'm very glad it is no longer in effect.
If you are going to keep it, please make it track the state court rules. There are problems caused by not requiring "normal" disclosures that make the "trial witnesses" very clear. Instead, the parties list everyone under the sun and there's difficulty deciding who actually needs to be deposed. Making a clearer distinction between "trial witnesses" and "persons with knowledge" and between "trial exhibits" and "potentially relevant documents" would be helpful.
In a different case it probably would have been much more effective. Overall, it seems like a good program.
In my experience MIDP responses submitted by the parties are rarely substantial.
In theory this was a good idea but not all judges enforced the spirit or the rules, so Defendants often gave just the bare minimum. If the MIDP was going to be effective it required judicial buy-in.
In theory, it is a good program that accelerates the litigation process, but I did not find it beneficial in the type of case that I had.
Ineffective because the court did not require the other side to comply.
Instructions were easy to understand and to follow.
It comes too early for the more complex cases.
It could have been more strictly enforced.
It helped move cases along from the beginning. Reduced the amount of discovery and expedited an understanding of the other sides case. It should be made permanent.
It helps the parties promptly move their cases forward towards resolution.
It is a good program.
It is an excellent idea—but I think the order needs to be tweaked and made more specific perhaps so that attorneys cannot make a "light" disclosure under the guise of complying with the rule, then waiting for the plaintiff attorney to make a specific RFP for the "meat and potatoes" s/he really wants. And I note that after the ROGs/RFPs go out, defense firms typically interpose a panoply of boilerplate objections (these need to be prohibited by a district court order). Though the FRCP disallows

boilerplate objections, defense firms persist in this practice. This results in wasted time work trying to "work things out." Thank you.
It is helpful in most cases but some defense Counsel are not complying with the letter or spirit intended.
It is much better since the program was amended to not require compliance while a Rule 12 motion is pending. It would be even better if the disclosures required not only persons with knowledge, but also required parties to identify potential trial witnesses (these categories are separate in the Arizona Rule of Civil Procedure 26.1). As it stands, it is difficult to determine who will need to be deposed when a party lists many people with knowledge.
It is probably more effective than the limited disclosure requirements under Rule 26, FRCP.
It lacked the level of flexibility needed in civil cases for the parties to efficiently resolve a case. For example, if the parties stipulate to extend the answer deadline because they are engaged in settlement discussions, it is a waste resources for the court to insist that an answer be filed and MIDP begin.
It required more discovery earlier in the case than my cases at the state level, but it got more information into our hands quicker, which was good. I have a favorable outlook at the MIDP program.
It was great and I like all things that streamline federal lit.
It's a step in the right direction.
It's a great program and should become standard procedure in civil cases, just need more guidance about what is expected in the disclosures. It's not a hardship whatsoever because we have been doing mandatory disclosures in Arizona State Court for 20 years.
It's great! However, the more consistent with the ARCP the better. That would create efficiency, economy and most importantly savings for the clients. Thanks.
It's a good idea.
Keep the program and expand it to other jurisdictions.
Local rule requirements that go beyond the provisions of FRCP 26 disclosure requirements add burden and expense to litigation with limited benefit from what I can tell as motions to compel remain necessary.
Make it clear to all parties that they should be disclosing clearly relevant documents as part of MIDP responses. For example in a wage and hour case employers should disclosing records regarding wages paid and hours worked.
Mandatory initial discovery is a great idea—our case was ordered to be arbitrated, so we don't know how it would have helped to resolve our federal court matter.
MIDP is great. Please bring it back.
MIDP was helpful in providing additional information about the claims and defenses, which is not otherwise required under Rule 26.
My experience with MIDP in other cases is favorable. It operates more like Arizona's state court disclosure rules.
My experiences have been that the Defendants do not produce anything unless you ask for it and even then, it is a battle.
My recommendation would be that the MIDP be available but not mandatory for every case to be ordered by the Judge as the Court deems appropriate at the beginning of the case. In some cases, the MIDP create in equities. In some cases, there are good reasons not to frontload the costs of discovery, which can be one downside of the MIDP. I believe Judges should be encouraged to Order the parties to comply with the MIDP unless there is a persuasive reason not to do so that is unique to the case.
N/A
N/A
No comments.

No comments to offer.
No real experience with it yet. This case settled as quickly as it began.
NONE
NONE
NONE
NONE
Not a fan of the requirement to jointly move the court for resolution of disputes. Currently involved in a case where the other side flatly refuses to cooperate about anything—including joint motions—and there is no prescribed procedure for approaching the court in such instances.
Not a fan. Glad it's done.
Not effective, increased anxiety.
Open the Court!!
Opportunity to move for dismissal and hearing thereon should occur before the mandatory initial disclosures which might turn out not to be needed if case dismissed.
Overall, I am in favor of the MIDP. I think it goes a long way to minimizing the effort and expense (not to mention the horrible games) of discovery. However, it may need some claws to aid parties in finding information not disclosed. I recommend a mechanism for discovery sanctions, in the discretion of the Court, for discovery that later turns out to be relevant but was not timely disclosed.
Overall, I think the mandatory initial discovery pilot program will assist in cases moving quicker as long as the courts ensure the parties comply with the disclosure requirements.
Please continue the program of mandatory disclosure.
Please keep it!
Please see my comment to the prior answer. Sorry for being late in my response. I didn't see the earlier email.
Really appreciative of the idea as the current discovery procedures are so dysfunctional. I don't have a lot of experience with MIDP, but it seems that parties would be more likely to substantively engage in it if the obligations did not take effect until the defendant answered or a motion to dismiss was denied. Also, there are issues when a party makes a 12(b)(6) motion but then plans to later file a 12(b)(1) motion.
Sanctions should be automatic for Defendants who refuse to produce insurance policy information required already under Rule 26(a)
Satisfied.
See above
See above
See above. I would prefer that this be abandoned.
See prior page. It's a great program except obstructionist opposing parties namely big corporations tend not to be cooperative.
Seems like it's creating more paperwork with another set of essentially local rules. Either put it in the FRCP, or don't do it.
Seems ok, keep using it.
Since I haven't worked in Federal court much before I don't know how it compares. But it seemed pretty similar to state court.
Support it.
Terrible in conception and in operation.
The case was decided at such an early stage I lack experience to opine.

The Court applied Instruction #5 of General Order 17-08 (that applies to pre-deadline extension motions) to the Defendant's post-deadline extension motion under Rule 6(b)(1)(B)(i). As result, the Court did not give Plaintiffs the opportunity to respond to Defendant's post-deadline motion and the Court did not make a determination as to whether Defendant's failure to file a timely answer or response pursuant to Rule 12(a) was the result of excusable neglect.
The Mandatory Initial Discovery was effective in providing a clear understanding of the legal and factual issues that were expected to be center stage in the lawsuit and therefore the parties could tailor discovery efforts such as the number of depositions to be taken, the extent of discoverable documents to be exchanged. As the case in question was not legally and factually complex, I did not see the full benefits the program could have. I suspect with more complex litigation the benefits of the MID would be more visible.
The MID could be broken into phases, with the initial responses to claims and facts and witnesses and then a 60 day additional period to gather and produce materials.
The MIDP disclosures are counterproductive if judges don't issue prompt and meaningful monetary sanctions for violations. I made a motion to compel for deficient MIDP responses which was granted, but no sanctions were issued despite partial flagrant violations. It later emerged the defendants and their counsel had undeniably and intentionally lied in subsequent MIDP responses, but again nothing was done by the Court. The Judge eventually issued sanctions under Rule 37 [redacted] but they came far too late to make a difference after 2 years of discovery gamesmanship, which was incentivized by the Court's delay in issuing sanctions. Overall, the MIDP Order is counterproductive. It drives up fees and wastes time for honest lawyers and permits delay and gamesmanship by dishonest lawyers. The only antidote is meaningful sanctions issued promptly and presumptively in the first litigated MIDP dispute, and basically no Judges are willing to do that. Happy to discuss further, but the MIDP is counterproductive and should be abandoned in federal court for these, and multiple additional reasons (e.g., that the newness of the MIDP and the lack of case-law on noncompliance makes judges even more reluctant to issues sanctions). Bottom line, the reluctance of many (or most) federal judges to issue prompt and meaningful sanctions in discovery disputes amounts to just as serious a deprivation of substantive rights in civil cases as Brady violations in criminal cases. And this reality is made even worse in the context of the MIDP Order, where case-law is underdeveloped, controlling case-law nonexistent, and Judges even more inclined to give lawyers a pass as a result.
The MIDP program was a big step in the right direction to streamlining discovery and resolution of civil cases. It will improve the efficiency and just resolution of cases if permanently implemented.
The process is generally helpful in getting information early so formal discovery can be more focused.
The program in my opinion puts a lot of requirements and causes much stress on attorneys—even where the merits of the case on the other side are frivolous.
The program is unnecessarily too restrictive on the parties' ability to manage early deadlines in the case—such as the Answer deadline and the MIDP deadline—to save costs.
The scope of initial production required by this rule was overwhelmingly burdensome.
There is no need to fix a system that is not broken.
There should be a way to opt out of the MIDP paperwork requirements for cases where discovery is not applicable.
This is a good program that is fair to both sides and expedites resolution. I hope the court adopts this as the new standard.
This is a huge mistake. The "Zlacket rules" requiring extensive initial disclosures in Arizona have been a disaster. The pilot rules are worse. They will result in more attorneys billing clients for work that is nearly useless—and they will be used tactically to beat down on parties that cannot afford to pay for all the extra work. The current FRCP's are much more efficient and effective.

This is an important and valuable tool. It helps avoid gamesmanship and it focuses all the parties on the facts and areas of dispute earlier rather than later. I hope the district decides to make it part of the normal process.
This program has expired.
This should be the standard in federal cases.
This was an interpleader action. Our client filed the lawsuit, deposited the money and was then dismissed.
This was not effective in moving the case along from a Plaintiff's perspective.
Very useful for getting information early in the case but the process to dispute sufficiency of MIDP responses needs to be expedited.

Please provide any comments you have about the district's mandatory initial discovery pilot program.

District of Arizona Defendant Attorneys

Again, the idea is good, but plaintiffs largely don't comply, and everyone knows that judges won't make them.
Although it was not an issue in this case, in other cases, I do not believe that it has reduced the number of requests for production or interrogatories that are served on my client. Additionally, although my client provides full and robust MIDP responses, it has not been my experience that plaintiffs comply with the MIDP order. Most simply refer me to the complaint, and few produce documents with the MIDP responses. The MIDP has not alleviated the discovery burdens, but merely front-loaded them, and resulted in discovery rabbit holes about documents that are not relevant, and that my client does not intend to rely on.
Although not applicable in this case, I generally strongly favor the IDP's implementation, especially as it has brought the D.AZ. more in line with the requirements of Arizona state courts.
Am a strong supporter.
As long time Arizona practitioner, I was happy to see the Federal Court follow suit with what we have been doing in AZ State Court for 30 years.
As someone who practices regularly in state court in Arizona, I appreciate that the MIDP is similar to Rule 26.1. However, I am overall not a fan of Rule 26.1 or the description of the MIDP in the Standing Order because the state and federal courts' decisions interpreting what is supposed to be included in these disclosures and what can be withheld is not consistent. This is especially true for the Facts and Legal Theories sections.
Based on my experience, it's useful but somewhat cumbersome.
Because of significant delays in getting rulings on motions the expedited discovery program was not of value in our case.
Because the MIDP essentially mimicked the Arizona disclosure, I didn't have an issue with it generally but believe there were issues with the scope of what it encompassed (i.e. plaintiffs argued the disclosures were to be much broader than defendants interpreted which led to discovery disputes).
Can be more costly as requires more time initially without enough time to explore a quick resolution.
Cannot provide any substantive feedback, since the parties stipulated to hold off on discovery while negotiations took place which ultimately settled the case.
Consider a final rule on mandatory initial discovery that does not require disclosure until after 12(b) motions are ruled on.
Continue or incorporate requirement into local rules for employment matters.
Disclosure requirements are similar to those employed by Rule 26.1 under Arizona law. Initial disclosures are often a springboard and offer a starting place for discovery. Plaintiffs ought to be required to make initial disclosures to show they have evidence to support their asserted claims. Defendants, however, are disadvantaged because of limited time to provide initial disclosures, conduct investigations into claims and respond to allegations while Plaintiffs have the months, if not years, to prepare their case, including initial disclosures, prior to filing. Initial disclosure requirements ought to be staggered to promote fairness.
Early disclosure requirements help the parties get down to the brass tacks. It is a good program that promotes expedient litigation on the merits.
Early mandatory disclosures are generally very helpful for early resolution, but it was not the case for this matter.

Generally a waste of time. Attorneys should know what to ask for in discovery. Asking a party to guess as to what the opposing party thinks is relevant is silly.
Generally one-sided. It is common for Plaintiff's responses to be insufficient causing Defendant to issue interrogatories and RFPs anyway.
Have not developed enough thoughtful opinions on it yet.
Honestly, I'm not a fan of the MIDP. I think standard Rule 26(a) disclosures and traditional discovery work just fine. I'm in favor of terminating the Pilot Program.
I am not a fan. I believe the existing Rule 26 requirements are sufficient. I further believe that the mandatory disclosure requirements place a disproportionate burden on Defendants. The expense of discovery and disclosure is front-loaded and is more often than not far more expensive on Defendants than Plaintiffs. Further, current pleading practice in District Court under Rule 8 requires notice pleading, rather than meaningful detail on what is at issue in the case. Without focus provided in more precise pleadings, or in disclosures under Rule 26, a defendant is left to guess what is truly relevant and proportional in a case and what to object to.
I believe it is a bad idea.
I believe it is fair, but not appropriate for class actions. The rules should expressly provide that class information need not be produced at the outset; only information regarding the named Plaintiff's claim.
I believe it is required too soon and often leads to additional, needless costs and fees to clients.
I believe that the MIDP does not enhance case outcomes, especially among unequal parties. Instead, it is a burden on the defendant who did not see to be involved in litigation to begin with.
I believe that the MIDP tends to be burdensome—in particular for defendants.
I believe that the standing order is sensible and puts the case into a progress mode that is good.
I believe the MIDP program has been counterproductive; it front loads the costs of cases when it's not necessary and forces lawyers to treat all cases the same in terms of the "required" disclosures, when the value of many cases vary and do not merit the extra work the pilot program required. It also gives opposing counsel an opportunity to "weaponize" summaries of witness statements made by lawyers trying to dutifully comply with the MIDP disclosure obligations; oftentimes, the witness neither necessarily made the statement or "owns" it. The lawyer may have drafted it a misapprehended a witness's nuanced statement. Then, if there's a slight inconsistency between the disclosure and testimony, it allows opposing counsel to create impeachment evidence that would never have existed before, oftentimes when no one is working in bad faith. it just gives an opportunity for opposing counsel to manufacture fake issues (the disclosure statement said "this," but the witness said "that, often at the expense of a litigant trying to follow the new MIDP rules. This is not the purpose of the "truth seeking" function of litigation and adds an extra layer of controversy to the cases. You should trust lawyers to do their jobs and assess the value and work needed for the cases.
I believe the MIDP program was excellent and urge the Court to reinstate the program.
I believe the program is working well and generally as intended, as revised to postpone answers if a Rule 12 motion is filed.
I cannot, until I have better experience with them. But they seem to be a substantial increase in the requirements on counsel, over and above the Arizona Rule 26.1. Not sure why it is so aggressive.
I do not like it. It does not advance the interests of the case. It is too complicated and burdensome.
I do not like it. I think it provides less information and makes discovery process more challenging given the time constraints imposed in Federal Court.
I don't know that the MIDP program was especially useful in this case. The requirement for the disclosures to be made within 30 days of answering can be burdensome for institutional clients because it takes time to receive and review documents.
I don't think it's necessary in most cases. It could be helpful in some, but a standing order requiring it in all cases I think only adds to the overall expense of litigating the case.

I feel the district should do away with the MIDP process.
I found it to be very useful in streamlining discovery and managing related fees and costs.
I found that the program causes more discovery issues than I previously would have had prior to the program.
I generally like it and find it helpful in most cases. This case had an out-of-state lawyer who was not familiar with Arizona Rule 26.1 and did not meaningfully comply with MIDP.
I have found that I do not receive any more information from Plaintiffs than prior to the MIDP; however, it is a significant burden on Defendants.
I have found that the opposing side (Plaintiff) frequently do not provide all that is required under the MIDP. Basic information was acquired through regular discovery and motion practice. The only use for the MIDP to my client was pointing to Plaintiff's failure to comply with it in response to a discovery motion; however, I don't think the outcome would have been any different. I do not believe the MIDP has increased efficiency, and I believe it unduly favors Plaintiffs, who often do not comply with it.
I hope the court will adopt the pilot program processes as a long-term rule. Mandatory disclosures in state court are fantastic and would be useful in district court cases as well.
I like it and favor it continuing.
I like it and think it should be incorporated into the rules of civil procedure for all civil cases.
I like it. Early and transparent exchange of information is good.
I like it. It seems more practical that the previous Rule 26 statement.
I liked the program and, would like to see it implemented again.
I personally don't find it helpful because it overlaps and, in some ways, conflicts with the initial disclosures already required in federal court. Most of my cases that result in early settlement involve voluntary exchanges of information and documents; the mandatory initial disclosure process is a distraction from this and creates what in my case is an unnecessary round of paperwork. I cannot, of course, speak for other attorneys; it may assist them in reaching early settlement.
I prefer the MIDP over the 26(a)(1) disclosure requirements since it requires a statement of claims, defenses and relevant facts. It has helped clarify Plaintiff's allegations that were either vague or poorly plead in their complaint and helped narrow down discovery requests in a number of our cases. Additionally, I have noticed that pro per plaintiff's seems to be able to better comply with MIDP orders than Rule 26(a)(1) requirements, which is helpful for all parties.
I prefer the standard Rule 26 disclosures.
I strongly dislike it.
I strongly doubt the legality of the MIDP program. Among other problems, it is a de facto local rule but not approved through the processes required for local rules. Its further forces parties to file an answer when the Federal Rules expressly permit filing a motion to dismiss instead of an answer. It is also in severe tension with the proportionality requirements of Rule 26, as well as Twombly/Iqbal's holdings that the gates of discovery are not unlocked simply by bare allegations (but MIDP does not require even that).
I think it is a good program that increases early settlement and reduces the number of discovery requests needed in most cases.
I think it is great. Would be more effective if the Rule 26f conference was not dispensed with, but rather the court at the hearing reinforced the seriousness of compliance with it
I think it is not helpful and we should return to disclosure statements.
I think it should be a permanent program and strictly enforced.
I think it was helpful, but not as helpful as it was intended to be.

I think it works well in fee shifting cases. I am not sure if it would be as helpful in non-fee shifting cases.
I think it's an unwise program that ignores the provisions in the federal rules and the cases that can be dismissed or limited under Rule 12, in addition to raising ethical problems.
I think the mandatory initial discovery pilot program is a bit too rigid. For cases likely to settle, such as ours, I think it is in the interests of both the court and the parties to allow the parties to pursue settlement without incurring unnecessary discovery expenses.
I think the MIDP is a waste of time in most cases. We need to allow for additional time to serve MIDP so parties can work on dismissing improper Defendants or resolving dispositive motions
I think the program creates too much of a burden on the parties (especially on the defense) to exchange all relevant information at the initial stage of the case, particularly in cases involving enormous ESI.
I think the theory is good, but in practice, I think it increases the costs to litigants when non-meritorious claims are being made.
I was a big supporter. I am sorry that the pilot program was discontinued.
I was a strong advocate. I wish the pilot program had been extended.
I was admitted pro has vice in this case, I did not have the opportunity to participate the discovery pilot project, but I believe the initial disclosure requirement will be of great benefit for the parties, the attorneys and the Court.
I was not the trial lawyer on the case; I came in for the appeal process.
I would like there to be more emphasis on the fact that the MIDP is not triggered where a motion to dismiss under Rule 12 has been filed. For example, I have another case in which we filed a partial motion to dismiss, but the court separately ordered us to provide MIDP responses on the portion of the case we did not move to dismiss. I believe this leads to confusion about the deadlines (because of one being subject to dismissal) and can also lead to abuse of the program by attorneys. For example, in that other case, the attorney insists that I must disclose information pertaining to all claims, including the claims that I have moved to dismiss.
I would prefer not to do the mandatory initial discovery. I do not think it aids early settlement discussions and believe that it might even hurt settlement discussions in some case.
I would suggest the court look at doing this more on a case-by-case basis. It should not be a one size fits all.
In a complex case involving a large amount of documents, the required disclosures at the 30-day mark can be onerous. Also, the more mandatory disclosure requirements in federal court mirror state court requirements, the better, from the perspective of an attorney who practices in both courts.
In cases where we have made MIDP disclosures, those disclosures have generally been one-sided, with the government providing information and the Plaintiff claiming they are not in possession of the information even when they clearly have access and control over the information (particularly medical records and financial /tax information). Plaintiffs routinely respond that some other entity has the information even though they could access and disclose it. Plaintiffs do not generally abide by MIDP and pro-se plaintiffs never do. It was not a good or helpful program.
In general, these are good programs.
In general, it mirrors State Court disclosure and is helpful to moving a case forward to resolution.
In my practice, plaintiffs never meaningfully complied with the MIDP process, but it frontloaded a ton of work for me and the governmental clients I represent and led plaintiffs to request ridiculous discovery based on documents that I had to disclose that really had nothing at all to do with the case.
In theory, I think it was a good idea. In practice, it presented some inefficient situations when we had pending early motions to dismiss.
It creates unnecessary work for the parties.
It does not require enough factual disclosure.

It doesn't seem very helpful or applicable to 1983 civil rights cases, which is the bulk of my work in district court
It increases the cost to defend a frivolously filed lawsuit.
It is a common occurrence for cases that are exempt from the MIDP protocol to mistakenly be classified as requiring MIDP disclosures, i.e. APA review cases. This causes confusion and often requires us to file a motion for relief from the protocol. Some Plaintiffs resist this, and resources are unnecessarily tied up in sorting the issue out. It would be helpful if there could be review of whether the MIDP protocol actually applies to the case before issuing the Notice on the parties.
It is a good and effective program, and I recommend the Court keep it in some form.
It is burdensome, has resulted in unnecessary discovery disputes, and provides advantages for plaintiffs in asymmetrical cases such as employment cases.
It is direct and simple. Helps evaluate the case early on. Just need to make sure that both parties comply.
It is effective and forces parties to lay out their case up front, as opposed to months down the road, which may encourage faster settlement.
It is helpful, but not everyone is taking it seriously. The result is unequal disclosures and still requiring discovery. I have almost always had to ask for a damages disclosure or a supplement to the responses on that. Same with other documents supporting damages.
It is onerous and unfair.
It is subject to abuses and this case is a good example of how the MIDP is counterproductive to case resolution.
It is too easily gamed.
It is very similar to Arizona disclosure rules
It made no impact on what I was already doing in providing disclosure statements.
It operated smoothly and efficiently.
It seemed to be a good process.
It seemed unnecessary in light of Rule 26 and created unwarranted ethical issues.
It tends to be one-sided. In my experience Plaintiff's never disclose all medical records. Defendants always have to demand them. If MIDP was fair, Plaintiffs would obtain complete records for a reasonable period and disclose them, but Defendants always have to demand releases and go to the medical providers.
It unnecessarily adds costs to the defense of any employment-related litigation. Rule 26(a) mandatory disclosures are more than adequate to address whatever early disclosures should be made prior to the parties engaging in formal discovery. My experience with the Pilot Program is that it forced both sides to invest in discovery earlier than normal, without any real benefit to the parties (such as compelling early settlement).
It was a bit cumbersome but not too bad.
It was a good program that should be extended.
It was fine.
It works well in some cases and not well in others.
It would be helpful if the system better recognized cases filed under the Administrative Procedure Act, which are typically based on judicial review of the Administrative Record, so the Parties and the Court don't have to spend time vacating the MIDP order
It's a good program.
Love it. Please keep it in place. It helps the older and younger attorneys focus on what is needed, the questions the need to ask their clients and opposing counsel and holds the attorneys to a higher

standard. Too often attorneys are getting away with waiting until two months before the close of discovery to conduct an investigation into their case. The MIDP helped to ensure that the work was done on the front end so that settlement discussions could be fruitful early on in the case.
Make it permanent.
Makes no sense, even on paper. MIDP has added unnecessary waste of time and expense to civil litigation in the District. It improved slightly with amendments relating to pending MTDs. Also, might make some sense if limits were placed on discovery in exchange for MIDP. Apparently, that is discretionary, and most divisions decline to limit written discovery if one side objects. Real problem is the inordinate amount of time it takes to get even simple rulings from Court. If the Judicial Branch were serious about speeding the process, it would look to the real problem, rather than try to micro-manage the litigants
Mandatory discovery is a good idea—the goal, in the internet age, should be limited mandatory disclosures, and limited depositions, to reduce the cost of discovery to all concerned. Otherwise, parties will prefer arbitration to judicial resolutions.
Mandatory discovery should not start until Motions to Dismiss have been resolved.
Mandatory initial discovery is a valuable tool in narrowing issues and reducing litigation costs. However, it should be regularly reviewed and updated to adapt to changes such as e-discovery evolution.
MIDP disclosures are effective at expediting cases, although they can make less complicated cases more expensive.
MIDP does not streamline the discovery process and does not result in avoidance of discovery disputes.
MIDP frequently increases cost for my clients. The court insists on prompt MIDP even when the parties are working toward a settlement. The court needs to be more flexible with its initial deadlines where counsel on both sides are working toward a resolution where further litigation may not be necessary. It frustrating when the court needlessly holds fast to MIDP deadlines and pushed the parties in unforgiving fashion to meet deadlines yet cannot rule on a motion to dismiss or summary judgment motion in less than 12 months.
More details about witnesses and exhibits would be better.
My firm represents corrections and detention defendants in Section 1983 claims. We have found that the expense and burden associated with the Mandatory Initial Pilot Project ("MIDP") has the opposite effect of its stated purpose. Specifically it dissuades our defendant clients from possible early settlement given how entrenched in the discovery process the parties are at very early stages of litigation. Moreover, in light of the fact that plaintiffs can simply wait to have documentation provided to them rather than engage in discovery, we have found that plaintiffs are not as inclined to settle a case at an early stage. The time limitation to disclose all "relevant" evidence within thirty days of uncovering the same is extremely prohibitive, particularly for a defendant, who typically controls a majority of the evidence in most cases. Moreover, requiring both defense counsel and their clients to investigate, gather, review, organize, and produce all "relevant" evidence within such a restrictive time limit imposes a heavy and costly burden, one that is almost always one-sided. The lack of definitive parameters concerning "relevance" also creates unnecessary discovery channels and broadens the entire scope of discovery and has significantly increased our clients' costs. Further, whether "relevant evidence" encompasses impeachment evidence remains undefined by the MIDP. This determination is even more vexing because judges have expressed different opinions on the issue. Practically speaking, it is almost impossible to ascertain all of the impeachment evidence a party intends to use at the time of trial prior to the discovery deadline, and thus this requirement is problematic and could lead to unfair advantages at trial. Moreover, requiring that the parties disclose impeachment evidence under the MIDP goes against F.R.C.P. 26(a)(1) and 26(a)(3), which specifically exempts from disclosure evidence that would be used solely for impeachment

My main critique was the requirement to file an answer and commence disclosures before the court ruled on a motion to dismiss.
n/a
n/a
NA, we did not get to discovery. The action was dismissed, and the dismissal order is up on appeal. We may get to discovery is the matter is remanded back down.
Need more experience with but seems like a very good idea.
Needlessly drove expenses higher; counsel capable of determining efficient discovery rather than blanket/unfocused/expensive generic disclosure.
none
None
None at this time.
None at this time.
Not a fan.
Not effective as most Plaintiffs' attorneys fail to provide any more information than under Rule 26(a) but significant cost to defendant.
Not in favor of it—creates unnecessary work for defendants and is not consistent with the scope of the federal rules.
Not sure if the program was the problem or the judge but the Case Management Order forced the parties to settle or incur huge fees and costs to complete discovery, file motions and hire experts in about 3 months. Had no choice but to settle as clients could not comply with judge's order without going broke.
Not unlike Ariz. Rules of Civil Procedure Rule 26.1 and continuing duties to supplement relevant material, I am always in favor of civil procedure rules that facilitate mandatory disclosure of relevant information. Early and often. I had spent approx. [redacted] years of my early career practicing civil litigation in a state which did not have similar requirements. The general practice was terrible because almost every case, of any import, would have multiple discovery issues that required hearings to resolve. Private practice defense billed numerous hours for such tactics. I am no issues with mandatory initial discovery pilot program. It isn't a panacea to foster early resolution, but it will certainly cut down on discovery disputes.
Nothing further. Thank you.
On balance, initial discovery under the MIDPP seems calculated to making discovery more efficient. But I have had little experience with it and that with a Pro Per, which I think diluted its effects. I think my view would be more helpful to you after I've gone through it a few times.
Overall MIDP is good. Should be a permanent rule change to FRCP.
Overall provides nothing particularly useful, adds cost, increases discovery disputes, the current FRCP discovery rules are more fair, and streamlined.
Overall, I have found the MIDP program problematic for the defense bar. Even with extensive disclosures, I have yet to have a case where it reduces traditional discovery—i.e., Plaintiffs still serve significant paper discovery despite most to all of the information having been provided. Plaintiffs' disclosures remain generally inadequate.
Please see above.
Positive experience from my other D of AZ cases were MIDP was exchanged.
Puts a substantial burden on clients who do not have a load of funds to start with.
Representing the government, I have provided robust initial discovery responses that include documents that truly are not relevant, but disclosure almost invariably leads to pointless and

unnecessary discovery about matters that are not at issue. Meanwhile, I have not received mandatory initial discovery from a plaintiff that consists of much more than "see complaint."
Requirements of parties disclosing adverse information should be a greater focus.
Requiring that each party provide a statement of "facts relevant to EACH claim or defense raised by the responding party, AND the legal theory upon which each is based" seems too broad. Many defenses are raised to avoid waiver arguments. Requiring that the legal theory be described at the outset of a case, before the defendant has had the opportunity to conduct discovery seems unfair. The plaintiff had the opportunity to develop their theory of the case pre-litigation, and defendants do not have the same luxury. It's an easy way for an aggressive plaintiff's attorney to force a defendant in a corner early on in the case. On the whole, good program.
Same as above. I prefer MIDP to the prior disclosures under the federal rules.
See above.
See above. It's too paternalistic, but that's the way the federal courts have become the last 10-15 years. The act like they've forgotten what's it like to be lawyers, and they're using inflexible, heavy-handed rules and attitudes as a crutch, when the better solution would be early, interactive case management.
See earlier comments.
see my prior comments.
See previous comment. Prejudicial to defense; causes defense to incur substantial attorneys' fees up front, making client less inclined to settle.
See prior comment. As much as anything, the fact that the MIDP prevented the parties from agreeing to reasonable and customary extensions to answer and disclosure deadlines made it unnecessarily costly and unworkable.
Since its implementation, I do not feel the MIDP program had reduced discovery disputes or assisted in providing relevant information earlier in a case. If anything, it has created problems—it is often misapplied to cases not subject to the MIDP, or in the alternative, it creates disputes over the other party's failure to comply with the protocol. There is no value added from the program.
Sometimes helpful but most of the time increases initial costs to the client.
Sorry, nothing to report.
Staff was helpful when we inquired as to MIDP requirements for this case.
Still not convinced it is worth the cost to the client.
Terrible overall experience.
The burden of the MIDP Program falls more heavily on defendants than plaintiffs. I believe that the disclosure requirements should be more narrowly tailored.
The case can get very expensive very fast for all parties is discovery is required before Rule 12(b) motions are decided. This case, for example, was dismissed and the parties saved significant money by not immediately conducting discovery.
The disclosure of expert information was too soon relative to fact discovery.
The district's mandatory initial discovery pilot program is a complete waste of time and resources. It is redundant and appeared to be a creation of those that does not know how the real world, works. The district's mandatory initial discovery pilot program has no real application and serves no purpose.
The idea behind the MIDP is not bad, but it was poorly executed. Mirroring the state requirements in Arizona would be more effective, especially since it already provides a framework that mirrors Rule 26 of the Federal Rules of Civil Procedure.
The MIDP seems onerous and would require the parties to do a tremendous amount of work at the beginning of a lawsuit, prior to any discovery being conducted, and prior to relevant facts being known by the parties. The MIDP also unfairly requires parties to "List the documents, electronically stored information ("ESI"), tangible things, land, or other property known by you to exist, whether or not in

your possession, custody or control, that you believe may be relevant to any party's claims or defenses." It does not seem fair for a party to be required to identify documents that may be relevant to the opposing party's claims. It should be the plaintiff's job to identify documents that support his or her own claims; defendant should not be required to assist plaintiff by having to identify documents that support plaintiff's own claims.
The MIDP should only apply to cases in which an Answer is filed, should not require an Answer to be filed with a dispositive motion pending, because this unnecessarily increases the cost of litigating meritless cases that would have otherwise been addressed via a Rule 12 pleading challenge.
The MIDP was used to weaponize the other side. Inadvertent "failures to disclose" were used as points of cross examination against witnesses, when inadvertent, clerical type errors are attorney generated and should not be used against the party or witness. This helps extend abusive cross examinations and posturing which already occurs. It becomes just another weapon, when subjective differences of opinions on what is a fair disclosure or not is more of a legal or issue for the judge.
The pilot program required more robust disclosures, more similar to those required by the Arizona state rules of civil procedure, which I find more helpful to kick off the discovery process and keep cases moving quickly.
The program assumes every case is subject to discovery, but I primarily litigate APA cases on the record. [redacted] I would appreciate a procedure that allowed the parties to notify the Court early in the case that a particular case is not subject to discovery.
The program creates a much higher burden for defendants in employment cases. It also increases costs early in the case, making settlement more difficult. It also creates the potential for an increase in discovery disputes where parties claim the other party has not fully complied with the MIDP order.
The program is a bad idea and should be abandoned.
The program is generally good, and in most cases is something that should be continued in my opinion.
The program lacks the flexibility necessary to address cases where the parties are attempting to settle and reduce cost or where the plaintiff's claim lack merit and are subject to a 12b motion
The program mimicked the state of Arizona disclosure rules, so it did not seem to have any significant impact on my cases. There were, however, some inconsistencies within the program.
The responses are helpful in cases, but the timing is somewhat draconian. If it more closely mirrored the Arizona disclosure process, it would be better.
The short time frame was very difficult for all parties. It is a burden on smaller firms with scarce resources to assemble everything so quickly. The Initial Disclosures required by the Federal Rules and continuing duty to supplement is more manageable.
The timeline of the MIDP is a bit onerous, especially for attorneys who are managing large caseloads. The disclosure requirements are similar to Arizona state court procedures, but with less flexibility. It would be great if the District Court would adopt more flexibility with stipulated extensions related to MIDP responses.
The timing is a bit rushed especially for boutique firms representing a defendant. Most judges seem inflexible on moving the dates.
The United States complies with the program whereas Plaintiffs generally do not and do not disclose copies of documents. It is generally one sided and unfair to the Defendants.
There needs to be better coordination with the deadline for the mandatory disclosures and the deadline for the Rule 16 conference. It is easier to pick scheduling dates after seeing the disclosures.
There should probably be more opportunities to suspend the order when dealing with pro per litigants.
Think it is a waste of atty time and client resources.
This case is on appeal following early dismissal before MIDP responses were exchanged. But my experience with MIDP in other cases is positive. I strongly favor the amendment postponing MIDP responses while motions to dismiss are pending.
This case was closed so long ago that I have little memory of how the disclosures affected the case.

Unless the Court is going to oversee the substance of the initial disclosures, the requirements do little other than drive up the costs for the parties.
Very good program.
Was helpful as a mechanism to early settlement of small value case.
Waste of time.
We followed MIDP in the early stages but settled before Conference. I like the certainty of MIDP.
While I appreciate the goal, in a negligence case all it does it vastly increase the time it takes to author the initial disclosure. The detailed legal analysis is helpful in some cases, but in an auto or accident case, the legal issues are not really in dispute.
While the program results in the parties receiving more discovery early in the case, it tends to increase fees and costs early in the case. This tends to have a chilling effect on settlement efforts. In employment cases, the program puts more of a burden on defendant employers early in cases.
With the revisions implemented to the timing for them being due, I think it works well and is fair.
Worked well.

Please provide any additional comments on the initial discovery in the above-named case.

Northern District of Illinois Plaintiff Attorneys

A former associate did the hands-on discovery. I recall that he had to persist and pressure the defendant to produce information of which it denied the existence, but which we knew existed because we were advised by a former employee of the defendant.
A substantial amount of relevant documents were omitted from the initial discovery production by the opposing party; the documentation that was produced was minimal.
After litigating numerous 1983 cases that have mostly concluded by settlement, I conclude that MIDP discovery is usually a waste of time. It ultimately impacts the discovery process no faster than the 26(a)(1) process. I think it is of very limited use, at best, in these cases. Even when there is complicated *Monell* discovery, I can think of no MIDP case where it made a difference. It is just a tiresome hassle for me and my opposing counsel to complete.
An inexperienced litigator from opposing counsel that offered some disingenuous responses early in the discovery process enlarged greatly the discovery costs in this matter. Unfortunately, interceding precedent which was decided while this case was pending rendered it unwinnable. I do not believe the MIDP made a big difference in discovery disputes in this matter.
Any mandatory one size fits all plan is bad for justice.
As a frequent litigator in NID, I find the MIDP to be nearly useless to the plaintiff, DEFTs fail to produce a single document (in nearly all cases) and their "facts" are almost non-existent (regarding defense etc.). There is no procedure for correcting the failure to produce, and by the time the court would address it, the same will be had via traditional discovery requests. Overall, the MIDP is a big waste of time for plaintiffs, as they have to put a lot in to them and get almost nothing out.
As all MIDL cases, no docs were produced, the standard denial of facts was presented, the filing was of almost no use.

As in all MIDDP cases little was produced as the testimony was vague and non-specific. Amazingly actual documents were produced, 95% of cases no actual documents are produced.
As plaintiff I provided mandatory initial discovery; however, I received my discovery information from [MDL centralized document depository]
Attorneys did not really take it seriously by producing all relevant information early in the case. The problem was it allowed Defense to just claim everything was not relevant and not produce much at all via the MIDP.
Both sides complied with order in a very timely and professional manner.
Case settled rather quickly.
Case settled while mandatory disclosures were in process but before either side had completed disclosures.
Case went to arbitration very soon after filing, so discovery was not conducted in court.
Court refused to allow amendment for alternative theories citing additional discovery as reason.
COVID-19 procedures also impacted the progress of the case.
Default was entered, defendant in the DJ was a no show.
Defendant company hid its documents, held back its key documents, including employee handbooks, and did not provide any full or fair disclosure, and unduly delayed producing key documents, and then filed a motion to compel arbitration, while hiding its key contrary documents. Plaintiff, on the other hand, was placed at a severe disadvantage because she produced all her documents up front. The defendant usurped the discovery process by hiding its key documents, despite repeated Plaintiff's repeated requests up front to disclose pertinent employee handbooks. These initial disclosure rules work if there is are cooperative counsel, acting in good faith, but when, as here, the defendant's/company's counsel delays for months and then, only after Plaintiff is forced to spend several months "pulling teeth" and repeated informal requests, does the Defendant produce key documents which it, in effect, hid, the process does not work and, indeed, works to the disadvantage of the litigants and sanctions the miscarriage of any "justice." See Rule 1, Fed. R. Civ. P., stating that the civil procedure rules "should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding."
Defendant did not participate in the program with a level of commitment. It therefore did not change in any way how we proceeded to engage in discovery.
Defendant essentially did not comply and faced no real consequences for the failure to comply after the issue was brought to the court's attention. This is consistent with my experience with the MIDP, unfortunately.
Defendant was uncooperative throughout the discovery process.
Defendant was very late with disclosures and provided the minimum. Initial discovery had no impact on the case.
Defendant's MIDP disclosures were bare bones and did not include any actual documents, which is par for the course, in my experience.
Defendant's MIDP's provided virtually no information, and the only document produced related to insurance coverage. The parties also had to serve 26a1 disclosures, so the MIDP's did not add anything to the process.
Defendant's reluctance to produce documents directly led to settlement.
Defendants are not producing any documents as part of their disclosures, especially in TCPA litigation
Defendants' counsel did not provide responses to our discovery requests and instead filed motions to dismiss the case, then eventually paid the damages instead of responding to the plaintiffs' discovery requests, rendering the case essentially moot.

Defendants did not take seriously their obligations under the MDIP. As a result, there were no time savings.
Defendants rarely provide any documents or actual information with their MIDP's, so it is really just a waste of time in most cases.
Defendants were allowed to question their employees about the Complaint litigated without the notice or participation of Plaintiff's Counsel.
Defense counsel was just particularly litigious in this case, which leads to the answers I had to make. I don't think the MID necessarily reduced the discovery needed in a personal injury motor vehicle occurrence. We still needed to serve additional discovery.
Defense got away with murder; district judge did not enforce sanctions (three times) although warranted.
Despite the requirements of the disclosures demanded by both sides in the Model Pilot Program, Defendant's flout the Rules. There are no ramifications for a failing to make the proper disclosures, such as appropriate sanctions. Frankly, that would at least provide a fear factor in making a strategic decision by the defense to ignore the requirements dictated pursuant to the Model Pilot Program. In this case, I wrote consecutive, exhaustive F.R.C.P. 37 letters, and included the failings of proper disclosure under the Model Pilot Program. The case settled through private mediation within two weeks of the F.R.C.P. 37 letters being sent to counsel for the defense. from my office
Didn't see how it was any different than 26a1 in actual effect.
Discovery issue pertained to expedited discovery related to injunctive relief, not based on deficiencies.
Discovery was discussed at Statuses, but nothing rose to the level of a motion being filed.
Due to the bankruptcy filing, the full extent and benefit of the discovery process was not available in this case. This is not a fair example.
During motions in limine we pointed out that Defendants had not produced items we had gotten an order (after motion) to produce, and we asked for a negative inference instruction and that is probably the only reason the case settled. shows how defendants fail to comply with discovery. They didn't want us to know some negative stuff that was not part of the initial discovery order.
Early disclosure is never harmful and often helpful, but not a game changer as far shortening time to resolution. Call me skeptical, but in litigation, especially with new filings down, lawyers who are not working on contingency fees (my opponents) and both sides in commercial disputes NEED TO BILL HOURS. That is reality.
ERISA collection actions should be exempted from the MIDP program, as they rarely require extensive discovery. Thus, MIDP imposes higher costs on the parties to these cases.
For diversity pi cases, this was not helpful.
Forced MIDP in ERISA collection cases is not very effective. There are many cases in which the parties need a little bit of time to resolve the matter. While one of the goals of MIDP is to make the litigation cheaper, in instances in which the parties can resolve the litigation, MIDP makes it more expensive.
Generally a good idea.
Generally, a good program. Not very impactful on this case due to the default judgment.
Had the opposing party provided substantive information along with their disclosure (i.e., a production of documents and electronically stored information called for by the protocol), many of my "agree" answers would have moved to strongly agree and many of my "neither agree nor disagree" answers would have been some level of agree.
I am not a fan of the MIDP requirements, especially how soon the plaintiff must file.
I appreciate the plan's objective.
I believe mandatory initial discovery is very beneficial to litigation process. In this particular matter, however, the defendant merely recirculated documents and information supplied by plaintiff, no

attempt was made by defendants to provide full and complete information, so the benefits of the process were not realized.
I did not care for this system. I found that it ruined the tempo of discovery, was anti-Plaintiff, and did not allow for the case to mature naturally and develop in a more fruitful way based on traditional discovery practice.
I did not feel that the MIDP program had much of an effect on the progress of the case.
I didn't think the initial discovery had much value.
I do not believe MIDP is helpful.
I don't believe the MIDP program is effective. It only duplicates the cost of discovery.
I feel the opposing party did not adequately and in good faith identify the documents responsive to some of the MIDP requests. Rather, it stated that they were contained within tens of thousands of pages of documents produced, leaving me to review all those documents to identify the relatively few responsive ones. Although the case was resolved before this problem was formally raised with the Court, in this respect the MIDP mechanism did not work well for me.
I felt the mandatory discovery order in this particular case called for duplicative work. This was a fairly straight forward case and the order simply added additional steps that would have been addressed with standard discovery.
I find a lot of value in the MIDP's requirement that the parties state in writing the relevant facts and legal theories for their claims/defenses at the outset of the case. It helps me understand what path the litigation might take, even if it may not necessarily reduce the discovery I seek.
I find the MIDP process to be an unnecessary and time-consuming evolution; especially in light of the fact that NDIL judges set several status conferences in which they continuously address discovery issues. To me the MIDP process is superfluous.
I found the initial disclosures required by the MIDP to be fairly useless because it required the disclosure of any witness who may have knowledge of the case and did not help identify potential trial witnesses. I think the disclosures can be helpful, but I think we need to continue with Rule 26 disclosures, so parties aren't left guessing which witnesses are actually going to be trial witnesses.
I generally think the program is effective with the caveat that parties often do not possess certain materials early in the litigation.
I have never had the Mandatory discovery expedite anything. No opponent of mine has ever voluntarily provided any documentation to my clients without it being specifically requested or subpoenaed. In the cases I am involved in, there is a long tradition of ignoring production until the last possible minute and withholding documentation.
I like the initial discovery disclosures because I was able to receive information/documents from the other side early on in the case.
I oppose the mandatory disclosure programs that only serve to delay Rule 34 document requests. These rules are pro-defense, slowing them to do a garbage dump, then hide behind the sheer volume of garbage produced as their excuse to oppose our sadly delayed Rule 34 requests. I wish the busybodies would get out of the way and let trial lawyers do our job.
I practice primarily TM and trade secret law. The MIDPP seems more geared toward less complex cases. It is not helpful in my practice.
I saw the case to completion after my client's previous lawyer had withdrawn, and some discovery had already been completed when I took the case.
I think it is a useful requirement.
I think it's a worthwhile program overall.
I think Rule 26(a)(1) is as effective as MDP for my cases.
I think that the MIDPs should require the production of identified documents.

I think the mandatory discovery program increases the overall costs of litigation and does not reduce the overall discovery requests. I think this program should be discontinued.
I think the MIDP aspect of an early ESI search was helpful. Got a lot of emails from that.
I think we received disclosures we would have received anyway, but I do not believe that receiving them earlier affected the outcome of the case. The case remained pending for over a year after we received MIDP disclosures before we settled.
I thought that mandatory initial discovery ultimately leads to a quicker resolution of the case because of the head start in obtaining discovery. How much quicker? Perhaps 2-3 months.
I thought this didn't work as well in a government case like this one, parallel filing with the criminal authorities. Everything we produced was duplicative of the criminal productions.
I was appointed as settlement assistance counsel. There was limited discovery.
I was severely punished in this case for [Redacted]
I would agree that MIDP is more beneficial that Rule 26 Initial Disclosures.
I would say that the initial discovery resulted in getting a head start, but not certain it affected the timing of the resolution of the case.
In general, I find the mandatory initial discovery is helpful for getting necessary discovery early that may resolve the case.
In other cases, still have trouble receiving documents in mandatory initial discovery and still rely on request to produce.
In this case both parties worked together to comply with the order, and I think is a good process for initial disclosures.
In this case specifically, we learned the defendant was interested in settlement early on, however they did not actually engage substantively in settlement negotiations until a year after the case was filed. We did have the shutdown which slowed down some progress, but overall, the defendant did not seem genuinely interested in settlement until we were about half-way through our deposition schedule. We still had quite a bit of written discovery after our initial disclosures. One issue that the plaintiff faces in having to get out the initial discovery so early and come up with a settlement demand, is that we have not had a chance to get certain information from the defendant that would make our damages calculation more accurate (monetary value of benefits, salary information, etc.).
In this case the defendant [redacted] did not disclose the offer letter to my client as a document that contains information relevant to the claims or defenses but then relied on the offer letter in support of the motion for summary judgment.
Initial discovery provides the initial step towards transparency which is necessary to search for the truth.
It cost money for my client to comply with MIDP. However, the defendants escaped without providing any meaningful MIDP, so there was no benefit to my clients.
It did not help or hurt; I would receive the same discovery either way.
It didn't work in this case but could work in others.
It essentially accomplishes the same thing discovery does, though a bit sooner.
It is a good program.
It is difficult being appointed to a case as a solo practitioner.
It is no different than the process under existing rules from a practical standpoint.
It is too minimal and toothless to be an improvement over R 26(a)(1).
It really had no effect and was virtually indistinguishable in practice from typical 26(a)(1) discovery. It had no effect on the "speed" of settlement.
It should be done in all cases—the discovery process is enormously expensive and tedious, and this helps alleviate some of those issues.

It simplified matters.
It was just another extra step that had to be done. We ended up doing regular written discovery by agreement.
It would be helpful to expand the classifications of cases exempt from the MIDP program, as ERISA delinquency cases typically do not require extensive discovery beyond basic payroll information. The MIDP disclosures require plaintiffs to produce substantially more records than they ordinarily would have, and records that are ultimately not relevant to resolution of the case.
Judge [redacted] temperament and treatment of counsel was awful.
Large firms and high-wealth corporations and individuals win lawsuits, humans lose. Over the past 40 years, the federal judiciary has presided over the largest transfer of wealth in the history of humankind and appears oblivious to it. Powerful interests do not have to comply with discovery rules, or any other rules, for that matter, as they make the rules.
Limited need for discovery.
Mandatory discovery rules like these are a waste of time and were enacted by people who do not litigate—the add to the unnecessary paperwork of a case and are annoying—they serve ZERO constructive purpose.
Mandatory initial disclosures in my opinion places extra responsibility on the attorneys to press their client early on for relevant material. It does, in most instances, hasten the discovery process by flushing out pertinent information as early as possible.
May want to tweak MIDP to suit size of cases; could work well, but not one size fits all.
Meaningful settlement discussions began before the MIDP deadlines. The deadlines may have slightly increased the pace of discussions, however.
MID should be required in all cases except for good cause,
MID's are generally useless make work.
MID's are waste of time.
MIDP did not enhance the discovery process or lead to quicker resolution but did substantially increase the cost of early litigation due to the early compliance deadlines.
MIDP disclosures are largely redundant to what was required under FRCP 26a. I didn't like that they required disclosure of adverse evidence. I didn't like that they required sworn statement.
MIDP forced attys to produce items without waiting for first set of discovery that would seem the identical info. Its whole value seems to be that it carries exclusion from evidence of unproduced material thereby causing attorneys to be thorough. This advantage is far outweighed by the stress and body involved in enduring compliance. As if we don't have enough frivolous sanctions motions threats from judges and other unnecessary stressors with which to deal.
MIDP has typically been unhelpful and overly cumbersome for most if not all the cases I have needed to do it in.
MIDP Imposes an additional burden on the parties in ERISA delinquency cases and does not streamline litigation. If MIDP is continued, ERISA delinquency cases should be exempted.
MIDP is effective at getting some of the most important discovery exchanged early in the case. I believe that is beneficial to the parties and the administration of justice.
MIDP is really a good way for parties to assess the viability of their respective positions early on in the litigation.
MIDP only works if the parties comply, and the Court enforces. My general experience, particularly with regard to ESI, is that the Defendants simply ignore the requirements, and the judges don't enforce them. In nearly every MIDP case the Defendants have refused to meet and confer regarding ESI, play games if they do, and rarely does the obligation result in early disclosure. It is a shame because if MIDP were followed I absolutely believe many, many cases would settle earlier and lots of motion practice could be avoided.

MIDP process and deadlines associated with it make it difficult for Plaintiffs as they constantly need more follow up in a short timeframe.
MIDP was very effective in this case moving us through discovery quickly which led to moving the case quickly.
MIDPP was not effective, there was rarely actual disclosures, there was no mechanism to make the Defts actually produce or provide actual testimony.
MIPD is an unnecessary burden for the parties in 1983 cases. It has little to no difference from 26(a)(1) discovery in practice and has not instigated early settlement in any case I have had. Plaintiff and defense counsel seem to agree on this point.
Most of my cases are EEO cases against government agencies so the AUSAs basically only turn over the case file from the EEO proceedings. But we already have that. Private employers may provide a bit more. But Rule 26 disclosures followed by interrogatories and production requests is more efficient and just as good, if not better.
Mostly it was duplicative information usually included in standard discovery. 26A is just as useful. But this was PI. maybe different for other types of cases.
My adversary was particularly ethical and cooperative. This is not always the case with defense attorneys. There was insurance, which also made case easier to settle.
My experiences have been in this and other cases that lawyers more or less go through the motions of complying while holding back significant information. It seems like an unnecessary step that seems to prolong the discovery process.
My recollection is that we used the MIDP, but the judge was flexible regarding the timelines because both parties had expressed good faith attempts were being made to cooperate and discuss settlement.
My role was limited as part of the Settlement Agreement Program and discovery was completed before being assigned to this case. I did have a few follow-up discovery requests which were handled promptly by the Court and opposing counsel.
Never exchanged MIDP. Discovery was stayed. Case was dismissed on a motion.
Never had a case where MIDP was anything but an extra hassle. Glad to see it gone.
No discovery exchanged because settlement was reached before case progressed to that stage.
No matter what MIDP disclosure requires, written discovery addresses the same information. The value is in the lack of ability for a party to object. Too many objections to written discovery is the real problem.
NONE
None
None
None
None
None
None
None
None
None.
On smaller cases, I think it is harmful because it fronts discovery costs impacting settlement. I think a happy medium is to have the MIDP but allow an agreement of the parties to opt out (without Judge approval).
One party defaulted and upon vacating provided little useful info.
Other district courts should adopt the policy.

Other side didn't provide discovery—filed motion to compel. The same would have happened with or without the pilot, I think.
Our case had a bifurcated discovery track, as there were preemption issues to be resolved prior to substantive discovery. Ours was probably not the best case for judging the success of the pilot program.
Our case involved [redacted] a video. [Redacted] wouldn't turn over the video prior to suit. The company turned over the video after the initial conference. The case resolved. Little to no discovery—other than the most important piece of evidence, the video.
Parties just end up responding to MIDP and then re-issuing discovery that includes MIDP issues. Objecting on that basis is not practical so we answer both.
Parties were civil and cooperative throughout the litigation.
Please note that this case was settled shortly after MIDPP disclosures were tendered.
Prefer FRCP 26. I did not like obligation to disclose unfavorable evidence. Also, disclosure obligations are often redundant in ERISA benefits disputes like this one.
Provided focus on the issues sooner than I usually would have.
Putting the case on a fast track led to settlement discussions.
Rule 26(a)(1) is more than adequate.
Settled pre-answer, so no MIDP completed.
The case did not advance far enough into discovery to provide an informed answer. After filing of three motions to dismiss, the case settled.
The case settled before mandatory discovery was required. As such, the mandatory discovery had no impact on the case.
The case settled relatively early, but not necessarily due to MIDP.
The complaint included indisputable evidence of infringement. Case settled on the power of the pleading.
The concern I have is how the Discovery program integrates with the standard court rules. Does the discovery program supersede the rules or compliment them?
The cost of compliance sometimes makes it difficult to settle the case later because of the investment needed to get to that point.
The defendant did not respond adequately to the MIDP. We mentioned this problem in a hearing before the judge and requested relief, but we proceeded to discovery anyway. The case was voluntarily dismissed prior to any meaningful discovery taking place, but due to the defendant's lack of compliance MIDP could not receive adequate evaluation in my opinion. I like the idea.
The defendant eventually filed for bankruptcy- opposing counsel likely knew it was a possibility and delayed responding to discovery to avoid incurring costs/fees that would not be reimbursed; my client incurred unnecessary fees and costs due to the mandatory discovery requirements
The District Judge referred the discovery matters to the Magistrate Judge, so the disputes were brought to that judge's attention (we had two).
The effectiveness of MIDP will be found in larger cases where the volume of discovery would be greater. In small to modest cases, the MIDP does not have nearly the effect and at times in those small to modest cases, the MIDP in fact seems to create more work—at least in my employment cases (FLSA)
The increased expense of MIDP, and particularly for ESI, was significant. It ended up causing me client problems (client was upset with the cost of ESI and document review) that might have been somewhat lower under traditional discovery. My opponent also did not do things correctly the first time through, so MIDP resulted in inequity in expense and follow up.
The initial disclosures did not seem to have much of an impact on the case.
The initial discovery procedure was a massive waste of time and resources, and ultimately cost my client thousands of extra dollars in legal fees.

The initial discovery program would be better if it hadn't been watered down. Defendants now tend not to take it seriously. Also, it does not pay proper attention to preservation issues attendant to third parties. This case went sideways because a third party failed to properly preserve documents. In the normal course of discovery, we likely would have prevented this.
The judge seemed confused by the mandatory requirements and did not control discovery.
The lawyers on both sides of the case knew the Federal Rules of Civil Procedure, the local federal rules and the Judge's standing order. This made moving the case forward predictable and timely.
The local rules and standing orders are very unclear and confusing about whether filing a 12(b)(6) motion automatically stays the requirement to make the mandatory disclosures until resolution of the motion. The parties in my recent case had to get guidance from the judge on that issue. I have been told by colleagues who practice in ND Illinois that is a common dispute that arises. I encourage the court to make a plainly worded rule that clarifies that issue.
The Magistrate Judge did a great job in mediating the settlement.
The Magistrate was great!
The major problem with this case was having a large uncooperative federal government agency on the other side; not cooperative; very slow to produce anything.
The Mandate Disclosures are well worded and since they are from the Court, it's hard for parties to parse words or say things like: I don't understand, or object for vagueness, that's GOOD.
The mandatory disclosure rules do not effectively reduce the gamesmanship played during discovery. Stipulation of facts and documents must increase to reduce time for resolution of a case.
The mandatory disclosures are used as a sword when bringing motions to compel. Further, it is very annoying to have to be forced to work together with the other side because it's time consuming and childish, and if the two sides happen to not get along (which was not the situation in my case), it would be a very arduous and painful process.
The mandatory discovery program facilitated early and often discussions between myself and, defense counsel which assisted both of us in transparency in the discovery process.
The mandatory initial discovery hampers the process because a plaintiff cannot serve discovery with the filing of the case; also, it did absolutely nothing to expedite the case and involved an unnecessary and worthless additional cost to the process for no tangible benefit at all. This is another example of the court made up of lawyers who have never practiced before the court themselves or have limited experience with it, setting rules allegedly to speed up the process, when the folks implementing and conceiving the rules apparently collectively suffer from a cranial rectum inversion. The court should go back to the old rules and stop tinkering
The MID program does flush out some of the initial facts/documents that would normally not be flushed until discovery answers are due. In my wage and hour cases (99% of what I do in the ND), because the employment records often drive the factual dynamics of the case, the MID is an effective way to speed up production of those records, although specifically targeted discovery requests are still almost always needed.
The MIDP are an ineffective measure as DEFTs ignore them or provide the rout nothing reflecting the non-answers of the Answer, and almost never provide a single document, and the Judges do not seem to enforce the proper implementation of the rule. I have not bothered to file an MTC as the rule does not seem to have any enforcement method, and the rule slows cases down, as DEFTs will use it as another hurdle/excuse for delay.
The MIDP does not help alleviate discovery burdens. Instead, it adds to them as it basically just splits discovery into 2 phases.
The MIDP initial disclosures were helpful—but a requirement to produce documents rather than simply identify categories of documents would be even more helpful.
The MIDP is useless make-work.
The MIDP process has proven to be busywork without any benefit.

The MIDP process is not efficient, and the program should not be continued.
The MIDP system has both good and bad ramifications. It does tend to be "one size fits all" and, while it may motivate parties, it also prevents counsel from reducing costs in many circumstances.
The MIDP was helpful in getting the case started on the right foot from a discovery standpoint.
The mountain of discovery provided by the defendant was over 9,000 pages and was not necessary to the handling of this case.
The opposing party did not provide the required initial ESI disclosures. For various strategic reasons, we chose not to raise this issue with the court.
The opposition was not forthcoming in discovery and they were very caddy and accusatory. [Redacted]
The other party in this case was not very knowledgeable of the local rules for discovery, which resulted in more motion practice than a typical case.
The other side did not produce any useful information in the MIDP process. They produced little to no documents and we still had to go through a long discovery process.
The overwhelming majority of opposing attorneys (typically plaintiffs but in this case defendant) completely ignored the MIDP requirements with no consequence.
The parties began making progress on settlement after the initial discovery but before engaging in significant additional discovery. As a result, the initial discovery did not have a large impact one way or the other on the remaining discovery.
The parties do not take the MIDP seriously enough.
The parties' failure to turn over documents should have been sanctioned given our participation in the mandatory discovery process. Instead, extensive motion practice resulted, and the burden was left on the party who upheld their obligations.
The Pilot program compel lawyers to move their cases forward in an orderly manner which lead to a timely understanding of issues between the parties and whether the case may be settled or proceed to trial.
The pilot program requirements were removed about 3-6 months into litigation from my recollection, so it wasn't in place for the majority of the case.
The primary problem was that the defendants did not understand or chose not to understand the MIDP rules. We tried to avoid serving numerous RFPs and rely on the parties' duties to produce all relevant documents. The defendants had to be forced to do the same.
The primary value to us of the MDIP was it gave us an orderly way to Bates and supplement all discovery in the case.
The procedures would work well if parties actually followed them. In some cases, I have had defendants flaunt the rules and discovery actually has taken longer because of them. I do think the rules are a great idea but that there has to be stricter enforcement and consequences for violating them. I had a defendant wait over a year to produce any emails which the rules required it to produce at the outset of the case and the defendant suffered no consequences and my client expended tens of thousands of dollars on discovery compliance. Too many lawyers for large corporations realize that there is no consequence for delaying and withholding discovery for prolonged periods. Most lawyers I deal with fortunately don't engage in such tactics.
The program is well-intentioned, but I feel it will rarely work as planned. I don't see a need for it.
The program seems to get the parties moving with discovery early in the case.
The required disclosures did not provide any meaningful information and did not include any actual document production.
The requirements for initial discovery were not enforced.
There is no immediate protective order which can be entered for documents pursuant to mandatory discovery, so it still delays things if you need a protective order.
There was confusion on the other side regarding when or if documents identified had to be produced.

There was no discovery conference between the parties in this case. Defendant began discovery prior to the discovery conference unknown to Plaintiff
There was no discovery. We did not even get to the point of a response on the complaint.
There were no discovery disputes. It made the case reach settlement a lot quicker.
There were specific documents that we knew from the outset of the case that were highly relevant, and we had been asking for. MIDP did not necessarily facilitate the process as we would have hoped, and we received them still quite late and far into discovery.
Think it is great thing to force both sides to define the issues so the case can go faster.
This case is a poor resource for useful information about the MIDP. After substantial efforts by the Defendant to avoid service and dodge the jurisdiction of the Court, through and including service by publication, once the Defendant(s) finally came under the jurisdiction of the Court, the case quickly settled.
This case is not a good example because I have already obtained all discovery before I filed the case as I had represented the plaintiff on the underlying criminal case.
This case settled before we had to make disclosures through the MIDPP.
This case was filed under the APA and discovery consisted of the filing of the Administrative Record.
This case was not particularly complicated, so it was able to be resolved quickly. In this case and others, I have not found the MIDP to have made that big a difference from the R26 disclosures. Parties still issue the same extensive WD requests, though the responding party can refer to the MIDP to answer them.
This case was resolved pursuant to an inspection of the property and the referral to a settlement conference. However, the initial discovery disclosures likely did expedite the parties' resolution.
This is the Worst. Program. Ever. Delayed my issuance of subpoenas to non–parties. And we issued the same document requests and interrogatories that we would have issued were we not compelled to follow this crazy process. Only difference is that we had to wait months until we were able to take control of our own case!
This program is good in theory, but in practice it does nothing to help resolve a case more quickly.
This program is superfluous.
This wage and hour case settled quickly because liability was clear and the necessary payroll documents were provided voluntarily at the outset of the case. It was that, more than mandatory disclosures, that led to settlement of the case.
This was a Railway Labor Act case. The parties are very familiar and exchanged all information prior to the case being filed. There was no discovery.
This was a small case with little complexity. Settlement was driven by external development not discovery or disclosures.
This was an administrative review case (where there already had been a trial) along with a civil right claim. My opponent insisted the mandatory discovery applied here even though there had already been discovery at the administrative level. So the mandatory discovery was a complete waste of time and money.
This was an ERISA claim for benefits, in which we generally have limited discovery due to extensive pre-litigation claim review, making the MIDP not helpful, but imposing more work on the parties and attorneys.
This was an ERISA collection case against a recalcitrant employer. No efforts were made to disclose truthful information. FOIA requests were made that disclosed hours and employees doing covered work. That was helpful, not the voluntary offer of misleading information by Defendant.
This was an insurance coverage case. In our experience, the MIDP does not help with the relevant information and does not materially advance resolution of the coverage issues presented.
This was not a particularly discovery-intensive case, so the impact was limited.

Ultimately, the discovery in case was mainly irrelevant to ultimate settlement for numerous reasons specific to the issue at hand.
Very disappointed with this judge and the outcome of this case due in part to her bias exhibited repeatedly in this case and others.
Very effective for FLSA case.
Wasn't really helpful or necessary in our case.
We agree that the MIDP procedures, when followed, should greatly help streamline discovery; however, in this particular case, the opposing party failed to participate in discovery in the manner contemplated by the MIDP and the Federal Rules. As a result, the potential benefits of the MIDP were not realized.
We [redacted], requested an extension of discovery [redacted], and the request was not granted. I felt this limited us from being able to fully conduct discovery.
We followed the rule, including the spirit. The other side more or less ignored it, sent standard discovery despite receiving everything from us per the program and dragged their feet. It was a collection type case and there was not much dispute that at least a good percentage of the money was owed, so I am pretty confident that the nature of the dispute was the biggest factor in discovery. The fact that the pilot program did not help this case much is more about this case than the program.
We had been assigned a very smart District Court Judge and a very good Magistrate Judge who was excellent at getting the parties to communicate and get the case resolved. The Initial Mandatory Discovery Disclosures had nothing to do with helping resolve this case. It was the assigned Judge and Magistrate that made the difference.
We had no discovery disputes. My opposing counsel was very professional.
WE ONLY COMPLETED THE MANDATORY INITIAL DISCOVERY BEFORE CASE SETTLED.
We still had to make specific discovery requests to obtain the necessary documentation.
While Defendant Served MID, no documents were produced, and no substantive information was produced. Information obtained was no more than is usually furnished with R26(a)(1) disclosures.
While I appreciate the program, I have found in this and other cases that there is still a delay by the defense in responding to MIDP (as there usually are with initial disclosures under Rule 26). On our end (plaintiff) we still issued our normal discovery requests to make sure that all documents were accounted for and because the continuing nature of Rule 26(e) obligations is clearer than under the MIDP. Maybe just because of the length of time I've practiced, and I'm used to it, I think Rule 26 is more streamlined to follow at the start of the case.
While I do not believe the opposing party fully complied with the initial discovery requirements, the case settled before it became necessary to file a motion to compel.
While the parties did exchange the disclosures, I think from our perspective, the other party did not provide everything that should have been included.
With all due respect, in my area of practice, I feel Rule 26 disclosures achieve much of the same as MIDP.
With ESI—usually there needs to be a meet and confer with search terms, custodians, etc. MIDP is helpful to identify relevant people but not really ESI. As long as Judges do not assume MIDP is complete discovery... there is not a problem. Problem arises when discovery is cut short or unrealistic time frame because of MIDP in some cases. It's a helpful starting point but not complete by any means.
Worked well.

Please provide any additional comments on the initial discovery in the above-named case.

Northern District of Illinois Defendant Attorneys

1) They asymmetrically create burdens for corporate defendants in consumer cases. 2) Judge [redacted] refusal to grant routine motions for extensions of time to respond to initial pleadings, even when agreed, is unfair to my clients. He cites the pilot program to justify the refusal, which is not supported by the text. 3) The requests themselves were poorly drafted (e.g., overbroad on their face), so I have to object to them, which causes Plaintiff's to continue issuing their own discovery.
A complete disaster.
A waste of time and effort.
Adding a layer of paperwork to a process where one side is not interested in being honest is simply a burden.
An essential document was produced subject to an agreed order of confidentially.
As far as this case, the IMD's were adequate. However, in larger cases they did not really assist since the other party cherry-picks what they want to produce.
As this case was settled, I strongly agree that the Mandatory Initial Discovery Pilot Project sped up the parties' settlement process.
Because my client is well versed in litigation and discovery related matters, the initial discovery process added a layer of expense and probably an unnecessary additional initial procedure.
Because of the delay due to COVID by the time I filed my appearance on behalf of defendants the case proceeded after the pilot had ended.
Because of the nature of the case, it settled quickly. Plaintiff's counsel was dilatory in complying with discovery but did eventually.
Because the MIDP expedited exchange of information, case settled before protracted discovery could commence.
Believe mandatory initial disclosures are a waste of time. We get the info we need, and we make sure to provide it to opposing counsel. Mandatory initial disclosures are a waste of time and unnecessary burden.
Both sides complied with initial discovery requirements.
Case settled before MID were due.
Case settled early so never got into full blown discovery.
Case settled very quickly so it is difficult to judge the impact of the MIDP discovery.
Case was dismissed pursuant to a R. 12 and the parties negotiated a settlement so no further amended complaints were filed, so the case did not reach discovery beyond the initial exchange.
Case was resolved by court order prior to any discovery being required under rule.
Compliance by the opposing party was incomplete; and, therefore, discovery was still necessary to obtaining meaningful information.
Disagree because I didn't notice any significant difference from pre-MIDPP initial disclosures.
Disagree with having to conduct discovery in any case where a case dispositive motion to dismiss as to a party has been filed. I believe the program is otherwise productive but requiring discovery where a motion to dismiss would get my client out of the case if successful is not a good use of resources.
Don't think it has had the intended impact and would recommend getting rid of it.
Early production of documents was favorable for both sides. But, ideally, it should refine the discovery requests which follow & if MID becomes permanent and pervasive, it will eliminate the lull between serving discovery and receiving responses so that we will learn a lot about the case, evaluate it & make discovery & settlement decisions earlier in the case. The only downside (and this will be eliminated if

MID becomes commonplace) is that most lawyers use existing forms for discovery requests & despite having produced documents in the MID, we receive requests for the same category of documents in the regular discovery requests which follow. There was confusion as to whether certain documents were produced in the MID or the regular discovery. BUT this was a source of confusion solely because MID was a new way of conducting discovery, was not required in every case and robotic lawyers like me failed to segregate documents obtained or produced pursuant to MID from those in regular discovery.
Essentially simultaneous disclosures are fundamentally unfair to the defendant who, in most tort cases, is required to disclose video of the event before the plaintiff has committed to an account of same.
For government agency defendants, the MIDP program is extremely burdensome and difficult. The nature of government work means that collecting discovery materials, even for initial disclosures, can take many months. Compliance with MIDP procedures is extremely difficult.
From my perspective, the program has some very significant flaws. Foremost, the program presents a considerable tactical advantage to plaintiffs. Before filing suit, a plaintiff could essentially take as much time as its needs to prepare for the expedited discovery obligations, whereas a defendant has essentially no flexibility from the 70-day window to produce ESI. In certain cases, those obligations simply will not be physically possible to meet. Further, as interpreted in this case, the program was read to divest the Court with its otherwise inherent ability under Rule 16 to set pleading deadlines and further to require participation by any served defendant, including those who had not yet even appeared or otherwise were yet required to answer. In this case, a joint motion by both sides to extend the pleading deadline of defendant was denied based upon the MIDP. The result forced both sides to expend fees and resources that otherwise might not been incurred without any noticeable impact on settlement, as the parties had already been discussing a potential resolution. From my perspective, the program is also problematic in that it is not uniformly applied across the country, let alone even in this District. It does not seem fair.
From the defense side, all possible disclosure of information available in the first 30 days of the case were made. Plaintiff was not satisfied with the disclosures and attempted to argue that the initial disclosures were not adequate. However, documents were produced to plaintiff much earlier in the process than they otherwise would have been.
Good idea.
Great program, would like to see it spread.
Having to produce documents the defendant believed could be relevant on claims that were the subject of a motion to dismiss, and which were later dismissed, resulted in unnecessary effort and expense and production of documents that were subsequently made irrelevant. It was inefficient and should not have happened.
Helpful program, but most attorneys I expect feel more comfortable with making specific key discovery requests, so nothing is omitted / ignored by the opponent.
I am generally not in favor of the mandatory disclosure program.
I am local counsel and so I rarely get into the substantive issues of the case so my answers may be of limited use.
I am not sure that the pilot program moved this case forward any quicker than normal discovery.
I answered neutral on most of the “Exchange of initial discovery...” questions because (a) the opposing party did not comply with mandatory discovery, and (b) it appears that he allowed the case to be DWPd with no reinstatement soon thereafter.
I believe that the program is beneficial and forces the parties to engage and engage in a collegial way at the outset of a case.
I believe that this is a useful experiment, but I do believe that the burden falls unevenly on the defendant in the kind of cases I typically litigate—that is, employment cases. In such cases, almost all of the discovery is in the possession of the defendant, and plaintiffs seldom produce any discovery of any real material use, other than their deposition testimony.

I do not believe the MIDP had the intended effect of streamlining discovery or making it more efficient. I would prefer to stick with the process of making and supplementing initial disclosures under Rule 26.
I do not find the mandatory disclosure program to be particularly useful. Representing defendants, we often are forced to scramble to catch up with a plaintiff who can pre-plan disclosures.
I do not normally practice in Illinois but found this program to be extremely favorable to plaintiffs who usually have little or no documents. The burden is, therefore, almost entirely shifted to the defendants at great expense.
I do not think that the mandatory discovery pilot program has been helpful.
I do not think the mandatory initial discovery program was significant in any way in this case.
I don't believe it's useful to expediting the resolution of the case or to streamline the discovery process.
I don't think the order enhanced discovery in this case, just made some of it earlier, although subsequent discovery requests were made to supplement the disclosures, leading to the same quantum of discovery being produced. In sum, I don't think it was particularly helpful.
I find it highly unfair to Defendants. Mandatory initial discovery allows the Plaintiff to conduct a fishing expedition and "form" his case/"facts" around the documents produced. That is what happened in this case.
I find the MIDP to add cost in that it's another step, which some use as another excuse to pick pointless fights and doesn't really add any value in terms of efficiencies.
I left the employment [redacted] prior to any MIDP disclosures being made.
I like the MIDP procedures because it renders it difficult for parties to object on relevancy and/or burden grounds to discovery requests as to subjects that a party would otherwise propound its own requests but are within the scope of the mandatory requests.
I litigated many MIDP cases during the pilot and plaintiffs rarely complied or provided non-substantive responses and would just resend me copies of what I turned over to them.
I note this case was consolidated with other related cases and is still ongoing, so my responses are only of limited utility. The case was a mass-tort aviation crash and I do not believe the program is well-suited for such a case.
I practice primarily in the area of employment law, so I have no knowledge of whether the program is effective in other practice areas. I feel that the program added just another required filing and added to the overall cost of defending cases. I did not find that there was any significant benefit to the initial disclosures. I further believe that each party should be responsible for drafting their own discovery requests without the other side volunteering information.
I rather like the MIDP disclosure process- it makes the written discovery less onerous later on as you've already put together your responses. While I did not encounter this issue with one individual defendant in this case, I have several cases where I represent multiple [redacted] individual defendant officers. The issue I've had there is the "certification" when representing multiple individual defendants, as I am gathering municipal documentation that the officers may not know the extent or even existence of certain types of documentation that is being produced. So, for them to certify to the completeness of these disclosures under oath seems onerous. Perhaps the certification should be limited to the corporate or municipal entities procuring and producing the documents, as opposed to any individual named as a party.
I represent both plaintiffs and defendants but find the voluntary disclosures to favor plaintiffs, especially in class actions and, to a lesser extent, in any case in which an individual plaintiff sues a corporate entity.
I substituted in late in the case where there was prior to my time less than full compliance or engagement in the case by prior counsel.
I think it is a good starting point as it allows defense counsel to get a quick understanding of the case, but it is not an adequate substitute for discovery all together,

I think MIDP can be useful in some cases, but only if attorneys on both sides take common sense, reasonable approaches. Otherwise, it is just an additional layer of activity early in the case.
I think the MIDP program as a general matter increases early costs for defendants, with no concomitant benefit.
I thought the program worked pretty well, both in this case and across two other cases I've got pending.
I was just local counsel for this case and was not involved in discovery or settlement negotiations.
I was lucky enough to have professional, collegial opposition attorneys in this matter. All discovery issues were handles without the need for court intervention.
I was not involved in the discovery process in this case.
If you are going to do this, make the initial discovery more comprehensive.
In an FLSA case, the mandatory initial obligations are one sided in that the plaintiff has very little to produce but the burden to the defendant can be substantial and disproportionate to the rest of the matter.
In employment cases, the MIDPP benefits plaintiffs and disfavors defendants.
In general, I don't find initial discovery programs like this to be useful. It did not appear to have any benefit to this case.
In my view, MIDP prolongs the case by delaying written discovery.
In Section 1983 cases, it places a major burden on the defense at the beginning of the case.
In this case it forced our client (the defendant) to spend a lot of time and money up front in a case that never should have been brought in the first place, which was not ideal.
In this proposed class action, our client was named only on a theory of vicarious liability, and it did not have significant information to provide. So, the burden here was not great. However, in some class cases, the initial discovery may require extensive production, or defendant would face contentions of lack of compliance. Overall, the initial discovery requests do not appear well suited to proposed class actions.
Informal discussions by counsel of record were very helpful in the resolution of the case.
Initial disclosure of event surveillance footage should equitably be produced in regular course of discovery, not up front before plaintiff has committed to a story.
Initial discovery is very problematic for defendants as Plaintiffs do not often specifically identify what their claims are in order to respond to discovery until later in the litigation and issues with scope need to be determined prior to the initial disclosures.
Initial discovery helps both sides and moves the case along.
It really had no effect. Because this was a very large potential collective action, we stipulated to an extension. So, while we exchanged initial disclosures, it didn't happen with the proscribed timeframe.
It all depends on type of case and how competent opposing counsel.
It created a lot of additional work that was not required as I had filed a Motion to Dismiss as they named the wrong party. Despite that I had to comply with the initial discovery at I had to comply with the initial discovery.
It does not make sense to require initial discovery before a potential Rule 12 motion can be briefed, heard, and decided.
It is too broad for such an early stage of litigation; it is hugely burdensome to companies.
It is unnecessary and increases the burden and cost on parties to litigate without any corresponding benefits.
It somewhat relieves the attorneys of the duty to focus on what evidence should be requested in cases.
It was a small case and being forced to spend money so early on discovery was detrimental to my small client and forced them to a higher settlement than was fair or justified by the claims.

It was essentially the same as the Rule 26 initial disclosures.
It was fine
It was overly simplified. It did not take into consideration the complex individualized issues in my case.
It was unnecessary and a waste of time and money while dispositive motions to dismiss were pending.
It was only due to Magistrate Judge that the invalidity of Plaintiffs claim was exposed.
It worked great for a simple commercial dispute where both comply equally.
It's duplicative of Rule 26(a)(1) and yet Courts require both (mandatory disclosures under Pilot Project and Rule 26(a)(1) disclosures).
Judge [redacted] is great; very fair and patient; no drama like other judges; no raising of voice and not two faced.
Mandatory initial discovery disclosure procedures were not notably helpful to the case. In fact, counsel for plaintiffs were so uniformed about the procedures that they incorrectly filed personal identity information with the court along with their initial disclosures—which they should not have done anyway.
Mandatory initial discovery disproportionately impacts defendants, particularly with respect to ESI. As a practical matter, it often felt like we were just doing discovery twice over.
Mandatory initial discovery was overly burdensome, repetitive of R 26 and subsequent discovery. ineffective and costly.
Mandatory up front disclosures are inequitable in a tort case here by diversity, at least in the case where the defendant has video of the event. often plaintiff's complaint or pre-suit communications regarding the facts of the trauma are not based in reality. under the old rules, we got to obtain answers to basic discovery before tendering the video of the vent. under the Mandatory disclosure rules, the plaintiff can reform her account to fit the video before the first interrogatory is issued.
MID are a waste of time.
MID did not help. It created more discovery requests, time and money.
MIDP does little to advance cases. It often is a roadblock to standard discovery. Plaintiff's take months, maybe years to file their case. Defendants then get hammered with MIDP requirements that if not met Plaintiffs use as leverage to stall Discovery.
MIDP in employment cases just leads to double discovery. Increases and does not decrease cost. No real gain. Actually makes discovery more complicated.
MIDP increased settlement demand in fee shifting cases. In individual FDCPA, FCRA, TCPA cases, the MIDP did next to nothing to narrow, inform, or resolve discovery disputes. It was another task Plaintiffs could bill for in order to comply with standing orders and for defendants had to pay.
MIDP is incredibly burdensome for Defendants, particularly in employment litigation. Creates excessive costs at the beginning of the case, which can have a significant negative impact on potential early resolution (i.e., too many upfront costs, eliminates significant settlement incentives).
MIDP is unhelpful and adds unnecessary legal costs—by a lot.
MIDP makes sense for Plaintiffs. They have time to put together their case, so they should show their cards and explain what they are basing their case on. Defendants simply do not have enough time to respond to a complaint and assemble MIDP. Also, Plaintiff's change their theory based on discovery when Defendants turn over evidence. Basically, Defendants are being punished for disclosing info.
MIDP may be helpful for complex litigation however it is not helpful in every case and in fact can create an area in fee shifting litigation for plaintiff's counsel to seek to enforce strict compliance under rule 37 and run up fees which settlement discussions are taking place or trying to resolve the case early.
MIDP needlessly increases costs early in the case, making settlement more difficult.
MIDP not necessary or beneficial.

MIDP places the burden on defendants in employment cases and is not cost efficient or effective.
MIDP provided little to no benefit.
MIDP adds to the discovery burden and is not more efficient than the regular discovery process.
MIDP Request No. 4 should be reserved until after the conclusion of discovery.
MIDP shifts the expense and burden to defendants in employment cases and is not efficient or effective.
MIDP was not effective for this case as Plaintiff's appointed counsel did not comply and numerous discovery motions were filed.
My case ended on my client's motion to dismiss on the ground of lack of a federal question. However, as I looked at subsequent questions, I somehow provided an answer that I did not intend and was unable to "erase."
My case was defending against a pro-se defendant—not sure why it ended up in the pilot. An attorney was assigned, and it worked ok then.
My client, which was the defendant, was awarded sanctions for plaintiff's failure to produce.
My survey may not be overall indicative of mandatory discovery. It was the professionalism of the attorneys after expert reports were exchanged that led to a very quick settlement.
N/A
N/A
N/A
NA
No additional comments.
none
none
none
none
none
none
None.
Not a bad idea in the right case.
Not a fan of the MIDP.
Note that the plaintiff was pro se and didn't follow any discovery rules and didn't do his MIDP disclosures. So, it is hard to fully judge the efficacy of the program when dealing with a pro se litigant who doesn't follow the rules.
Opposing counsel still sent an army of discovery requests despite the mandatory program. We were able to do less.
Other side still propounded discovery that duplicated what was provided and what was provided were things we all ask regardless.
Our case was removed to federal court, dismissed, and then refiled. We relied mostly on prior discovery in the refiled suit rather than the mandatory discovery pilot program.
Our Client was brought into the case later, after quite a bit of written discovery had been completed.
Our Judge also took a long time to resolve the MTD which increased costs.
Overall, I think it is a great idea but, the time limits were unnecessarily brutal. I would loosen the time limits and give the trial judge flexibility to manage the automatic discovery at the Rule 16 CMC.
Parties need discovery extensions, which are not liberally granted.

Plaintiff did not comply with the MIDP disclosures and court was reluctant to force the issue.
Plaintiff did not participate in MIDPP.
Plaintiff fell ill and decided to abandon her case while she pursued treatment.
Plaintiff was pro se and did not provide responses so there was no benefit to defendant in this case. Defendant made the required disclosures, but it did not seem as though they were reviewed by plaintiff.
Plaintiff was pro se and struggled with providing discovery.
Plaintiff's counsel ([redacted]) essentially send the exact same set of disclosures in all the cases which defeats the purpose of the MIDPP and flooded our side with irrelevant documents that we still had to sift through to make sure nothing new was added.
Plaintiff's counsel was not familiar so there were some delays and we thought we were teaching him as we went along. His settlement number was ultimately helpful in resolving the case, but it took as long as it probably would have otherwise.
Program is generally effective.
Quickly went to settlement.
Significant amount of follow-up was needed in order to obtain the required information under the MIDP
Simultaneous initial disclosures favor the plaintiff because a plaintiff accumulates documents before filing suit.
Some material, like surveillance video of the event, should not in equity be turned over to the opponent until the opponent had committed itself to a sworn account, a notion abrogated by MID.
Sometimes it's difficult for a respondent to have the requisite documents so soon in the case.
Supplemental discovery on discovery was requested of us and we opposed, and the Court denied the request—that helped move resolving case.
The amount of information required under the Pilot Program was overwhelming, and very expensive.
The attorney who handled discovery has since left the firm.
The attorneys had a good relationship and Judge [redacted] did an excellent job of managing the litigation.
The case and discovery provided by Plaintiff, didn't move the case since the plaintiff and perhaps counsel believe they have a case but have no proofs.
The case contained an attorney fee provision. The mandatory discovery process automatically added fees to the final settlement of the case. Without the mandatory discovery program, the case would have settled for a lower amount on behalf of my client, as the attorney fees on the other side would not have been as high. This was an alleged FDCPA violation, that without the mandatory discovery, would have settled for about 2-3k less than it did.
The case settled before any meaningful discovery occurred.
The case was destined to settle, but the parties had to spend tens of thousands of dollars on unnecessary discovery, which made reaching a settlement more difficult. Good riddance to the MIDP.
The case was resolved during settlement discussions with the very able assistance of Magistrate Judge [redacted].
The court relaxed the discovery obligations of the Plaintiff.
The early discovery was burdensome because the case would have settled prior to much discovery being done. So, it was additional work for the parties without a positive impact or value-added to the case in my opinion.
The FRCP 26 disclosures are sufficient.
The initial discovery did not reduce or eliminate discovery issues in the case.

The mandatory disclosures were an unnecessary cost to my client and an expenditure of unnecessary resources. The parties still conducted the discovery that would have occurred without the disclosures.
The mandatory discovery essentially resulted in our client having to respond to written discovery requests twice. We did not receive the information from the plaintiff that we likely should have received. The burden on the plaintiff is far less onerous and most plaintiff's counsel do not take seriously their obligations to provide fulsome information about mitigation, etc.
The mandatory initial discovery front loads the time and cost of discovery, and unfairly benefits an opponent who is unorganized and unknowledgeable.
The mandatory initial discovery process is disproportionately more burdensome on defendants than plaintiffs. It essentially requires the parties to answer discovery twice, which is one of the more burdensome and onerous parts of discovery. The mandatory ESI exchange is incredibly burdensome at the initial stage of the case and is far more expensive and burdensome on the defendant. The time for producing ESI is also incredibly short, particularly if there is a lot of ESI. We ended up still not getting the mitigation documents we should have received from plaintiff, despite the fact that we participated in this program. There are a lot of judgment calls about the scope of what needs to be produced under this program.
The Mandatory Initial Discovery was fine in this case, but in two other cases of mine it caused confusion and duplication of effort. People claiming documents had already been produced pursuant to the MIDP, documents being produced twice—I see no reason to alter the discovery process which worked fine for me for many years.
The matter settled early.
The MID process should not begin until all dispositive motions are concluded. A lot of time and effort and money was expended in this case unnecessarily because this matter was resolved at a motion to dismiss. I work for a governmental agency so the money that was wasted here was taxpayer dollars. But if it was two private entities as the parties to the suit then my client in this situation would have had to pay probably $80-$100k in legal fees for the discovery process that should not have even taken place because it was resolved on a motion to dismiss. That is a lot of money to a smaller employer who would have to defend a baseless suit like this one during a MID process.
The MIDP becomes overly burdensome at the outset on defendant employers who have the bulk of business records to provide in the typical employment dispute.
The MIDP basically only serves the interests of Plaintiffs in 1983 cases as Plaintiffs rarely have any responsive documents early in the litigation. It is just an undue burden on public entities and does little to lessen the discovery requests that later come in.
The MIDP creates significant extra work with no benefits. I do not believe it is a useful program.
The MIDP is completely unnecessary and wastes client money and time. We already have enough rules to follow with the threat of being sanctioned. This program should be abolished effective immediately.
The MIDP procedure is a waste of time and does not produce the desired outcomes, as set forth in the standing order.
The MIDP program is not effective in Consumer Financial Protection cases. It also is not equitable because Plaintiff's usually just say they have nothing in their possession to establish their claims.
The MIDP project should not be implemented again.
The MIDP should be abolished. It's a waste of time and actually increases the costs to the parties.
The MIDP was a complete waste of time.
The MIDP was overwhelmingly unfair to Defendants and required the disclosure of documents at the onset of the case, which were ultimately "re-asked" for by Plaintiffs during the standard discovery process. IT DID NOT SAVE ON ANYTHING AND ONLY CREATED MORE WORK. Plaintiff rarely IF EVER provided any early documents in their possession including medical records. It was a joke. Please don't try to revive this process.

The MIDP was unfair and overly burdensome to Defendants. Plaintiffs rarely provided any documents and rarely reduced their discovery requests and were duplicative of discovery already provided. It was a joke.
The MIDPP did not help this case.
The MIDPP did not reduce litigation costs or lead to a faster conclusion of the case.
The one-size fits all, does not work well and the tight deadlines increase the expense of the case. Also, requiring ESI discovery so early tends to undermine Rule 26(f)'s goal of any type of agreed ESI discovery process, like agreed search terms.
The other side tried to use the order (which did not apply to our case [redacted]) to force discovery while our motion to dismiss was pending on grounds of the parties' agreement to arbitrate any disputes.
The plaintiff in this case attached \s to its complaint voluminous evidentiary materials normally not attached as exhibits to a federal complaint. As a result, in this case, mandatory disclosure by plaintiff was merely repetitive to complaint. As a result, for the defendants' rpo
The plaintiff was a pro-se consumer whose complaint was facially invalid and was subject to a motion to dismiss. Discovery ought to have been stayed pending the outcome of the motion based upon the allegations present in the complaint
The process worked beautifully. Thank you to my home state of Illinois!
The program does illuminate some of the early concerns about discovery, but generally I have not had a great deal of discovery disputes in federal court.
The program is certainly a good idea, however in my practice area it tends to be mostly unnecessary as we work with the same counsel very frequently and all parties know what should and shouldn't be produced in a given case. However, for litigation outside of this realm I believe that it will be a great program.
The program just seems redundant with normal FRCP disclosures.
The required FRCP disclosures are sufficient. The Mandatory Program is unnecessary so long as judges require compliance with the FRCP.
The requirement that Defendants' comb through and produce thousands of emails in this kind of case added unnecessary and extremely expensive costs to what should have been a very simple case.
The survey questions do not apply, opposing party did not comply with MIDPP so the correct answer to these questions is N/A
The timing of having to file an answer and initial discovery per the MIDPP is not reasonable and convoluted.
The usual very able management of the case by [redacted].
There should be a stay in discovery and filing of an Answer if there is a pending Motion to Dismiss.
These rules of discovery are only effective if both sides cooperate. If one side ignores the case or is unprepared, the cost of litigation continues. While I applaud the judge for keeping on his calendar he did not motivate the other side to pay attention to the case.
This case had been preceded by expensive litigation in state court, so discovery had already been produced by both sides. So mandatory federal disclosures did not have much impact.
This case settled early for reasons unrelated to the MIDPP.
This case was a 12 b 6 motion, so the discovery requirements were an additional and costly burden on the defendant, which was wholly unnecessary
This case was a little different because the presiding judge set deadlines so early in the case that the standing order was effectively preempted.
This case was hampered by the fact that one of the Defendants, whom we did not represent, had the largest amount of relevant records and did not provide the records easily. Plaintiff's counsel had to keep asking for the discovery, which was finally provided, but it took a long time.

This case was identical to another case before another judge. The parties focused on resolving the other case, which resulted in the resolution of this one. For that reason this case does not provide any real information about the value of mandatory disclosures.
This case was not a great example, since both sides already had exchanged a great deal of information and were negotiating prior to the litigation being filed.
This case was one we were positioning for settlement from the start. The initial discovery meant my client spent a lot more money up front, when it would have preferred to hold off on major ESI review/production until after the settlement conference.
This got the case off to a faster start that usual, but it usually ends up in the same place. Initial costs are higher, but that is mitigated by reduced discovery time later in the case. Hard to enforce the initial discovery via motion.
This is not a good case to evaluate the mandatory discovery program. Plaintiff's counsel and I moved the case and completed discovery to resolve the case. Traditional discovery remains a more effective method.
This pilot program made it clear that the opposing side lacked a good faith basis for bringing a claim. Unfortunately, the failure of the opposing party to follow the procedures as the rules require prevented the efficiencies envisioned by the MIDPP.
This process does not work for consumer finance cases in general, or class actions specifically. The Defendant has all of the discovery—the Plaintiff provides virtually nothing—and the Defendant is under an unfair time constraint. This process may work for simple cases, but not complex ones.
This was a nuisance case settled for a same amount below the cost of defense. It likely would have been settled early regardless and the cost of mandatory initial discovery in this case outweighed its benefit
This was a pension fund collection case, and the discovery is usually driven by the audit and the documents produced during the audit. I would exempt these cases from the mandatory initial disclosures.
This was an ERISA case where discovery outside of the administrative records is not always permissible and even if permissible not always conducted. As such, the mandatory initial discovery requirements took up more time than possibly otherwise would have been spent as the parties litigated this case on the record.
This was an unusual case because of prior proceeding in state court; not a good test of the new discovery procedures
This was originally a pro se case. The Plaintiff had no idea how to comply with the discovery orders. When counsel took over, he still did not comply.
Thought it was a waste of time and money as regular discovery requests were still issued by both sides.
To be fair, the plaintiff was pro se. He didn't comply with ANY discovery until more than a year later when he was given a pro bono lawyer, despite never asking for one and earning a six-figure income. Then we got a very minimal amount of discovery from him, enough to get summary judgment, after wasting tens of thousands of dollars because he wasn't required to comply with rules or orders.
Too burdensome for frivolous cases. This case never should have been filed and was ripe for dismissal or summary judgment.
Unfairly required photo and video evidence to be produced by defense before PLTF commits to an account of the tort event.
Wastes time and money in low value cases by creating more defense costs.
We filed a MTD, which was never decided because under the MIDP protocol, we answered and nearly completed discovery without a decision, and finally settled. This matter would have been resolved sooner and with less expense if we had waited until a decision on the MTD before answering/completing discovery.

We filed substantive Motion to Dismiss that was never ruled on, but we had to engage in initial discovery in Class Action. That puts all the burden on defendants. This is unfair and gives Plaintiffs a clear advantage.
We had to exchange initial disclosures while the motion to dismiss was pending. This drove up the costs of litigation. Our client spent more money than it would have spent as a result of the pilot program.
We made our disclosures. The Plaintiff did not. We filed a motion to compel. Plaintiff's counsel was having difficulty communicating with his client and withdrew. The plaintiff never obtained other counsel and did not show up for court. The Magistrate made a R & R dismissing the case. The District Judge dismissed the case.
We were required to engage in e-discovery while a motion to dismiss the entire case was pending. [redacted] The parties settled immediately after the motion to dismiss was decided. This would have been the result regardless of e-discovery. However, the mandatory disclosures and e-discovery forced my client to spend tens of thousands of dollars that it would not have otherwise spent. And it resulted in a waste of judicial resources.
When two sides are fighting and end up in litigation, I can see how this program is useful because they already know the issues. In some tort cases, however, a defendant's first notice of a dispute is the lawsuit (e.g., some product liability cases). In those cases, without the chance to see the product and conduct some investigation it is very difficult for the defendant to provide meaningful responses to MIDP discovery within the initial time period in my opinion.
While I normally do not find the MIDP helpful, this is the first case I had under the procedure that I believe it did assist in reaching early resolution. I believe this is likely because it was a small case that was definitely going to settle, so getting the small amount of relevant documents on the table early was useful.
While the initial mandatory discovery was of some help, the same information would have been provided in any event.
While the program provides for earlier discovery, the burdens are increased because you are doing discovery twice. The pilot program timetable for mandatory e discovery was not realistic nor were rules clearly defined. In the rush to meet the timetables, there was not enough meet and conferring and agreeing on search terms and custodians— each side did their own thing and fought about it later. Hard to even agree on search terms with opponents early in the case. Also, hard to know what they have and trust them in early meet and confers during pilot program. Defendants are at huge disadvantage because Plaintiff before filing knows what they have discovery wise and has done due diligence and can intelligently meet and confer on discovery parameters. Defendant is busy trying to prepare MTD and learn legal issues and basic facts, but now has to be prepared to meet and confer in an educated way to assess if opponent is robustly producing during mandatory eDiscovery prior to issuing any discovery requests.
While the program was effective, I also feel like it should be noted that my working relationship with Plaintiff's counsel was also very cordial. This made the process that much more effective and beneficial to both our clients.
While well-intentioned, so far, my experience is that the program has front-loaded discovery costs in a fashion that expenses were incurred that might not have been had discovery proceeded in the ordinary course under the FRCP.
With other opposing counsel, the above answers likely would have been more favorable.
Worked pretty well to force each side to round up their responsive documents before receiving discovery requests—a plus all around.
Works very well and [redacted] did an excellent job.
Zero case oversight from the district court. It did not even hold a scheduling conference or enter a Rule 16 discovery order. The mandatory initial disclosures were useless and greatly increased the cost of litigation to my client. For context, the plaintiff's case was purely extortionary. [Redacted]

Please provide any comments you have about the district's mandatory initial discovery pilot program.

Northern District of Illinois Plaintiff Attorneys

A default provision should be added that MIDPP is suspended if a motion to dismiss is filed as to all or most of the claims asserted.
Again, there was rarely actual production of documents by DFTS the testimony provided was similarly lacking, and procedural there was no means to force DEFTS to actually engage in the MIDPP process, typically "categories" were listed, which means nothing and a rote denial of all claims in the testimonial and last the list of "witnesses" was always lacking anyone not willing to tell the DEFTS denial of all story.
Already did.
Although based on a sensible concept of expediting resolution of cases, it creates a strong and often unfair burden on a defendant. A plaintiff has time before filing to organize for an initial disclosure. A defendant's time is limited to that permitted by the rule; few exceptions; often harshly applied. Its multiples costs and burdens right at the beginning of a case, not always with the concomitant advantages that supposedly underlie it. The most cynical description I have heard of it is that it's just more hazing of lawyers, piling on of procedural requirements that pointlessly increase the cost of a case forcing clients to settle without a full hearing of their dispute. Any harshly applied procedure that does not have a ready escape valve is usually a really bad idea.
Although the mandatory initial disclosure covers lots of the documents that would be typically requested during the first round of discovery, it did not prevent parties from issuing the same request as a CYA. So, while the program got the documents to the parties sooner it did not cut out the initial round of discovery requests.
Anything that gets the parties sharing information and quickly from the outset of the case is a good thing.
Appointed for settlement only.
As a general matter, it was not useful for insurance coverage disputes.
As a general Rule MIDP has been very effective in limiting discovery battles, leading to settlement conferences early where settlement is possible, and generally reducing the burdens and costs of discovery.
As a plaintiff it was strategically useful in this case to have the mandatory discovery requirements in place. It probably led to an earlier exchange of documents although I don't know if the amount and the nature of the discovery exchanged was ultimately all that different from what it otherwise would have been.
As an experienced attorney who has witnessed decades of discovery gamesmanship, I strongly support this program.
At least in this case, the MIDP did not provide the benefits hoped for.
Attorneys still file the exact same set of written discovery requests after the exchange of the MIDP documents, regardless of what was already produced.
Based on my limited experience thus far, it makes a lot of sense and appears well thought out.
Because we had difficulty finding the defendant for service, we dismissed the case at client's request.
Busywork. No tangible benefits.
Case settled before discovery.
Defendants should not be allowed to avoid disclosures by filing a motion to dismiss. I think that the MIDP has actually pushed more baseless motions to dismiss to be filed so that defendants can avoid having to make disclosures.

Defendants typically do not provide any substantive information in their disclosures and enforcement usually requires normal written discovery to take place first.
Did not appear to achieve its intended result.
Discovery should still be due even if a motion to dismiss is filed.
Does not apply—our cases are all judicial review of federal agency matters.
Dump this program and go back to the standard Rule 26(a)(1) Disclosures. This program is good in theory, but in practice it does not achieve the intended result.
During about two years of litigation, [redacted]
Early discovery begets early resolution.
Effective.
Effective at resolving the litigation.
Every judge who participates in this program should be compelled to litigate under it. Absolutely horrible.
Excellent.
Excellent program. I was happy to help. The magistrate was very good.
Expand the disclosure requirements for basic information, prohibit re-asking the same questions in written discovery and then enforce the disclosure requirements and limits to repetition. What's the point of disclosures if you have to answer the same questions later?
Expects omnipotence at a very early stage when counsel is usually just getting up to speed; benefits the more resourced party (usually defendants) and large law firms who have large number of associates to task to discovery.
Fair requirement of the parties; allows for initial discovery prior to first status, which is extremely helpful when litigating against the US Government.
For ERISA Fringe Benefit Delinquency Matters, MIDP unnecessarily increases amount of fees incurred by the parties; many of the judges are willing to allow the parties to discuss settlement before complying. Most of these type of matters are resolved by settlement and keeping fees and costs to a minimum is beneficial to a timely resolution.
For my purposes, it's been a waste of time. No employer ever volunteers information in my experience. It's always a difficult search and one obtains discovery by asking the exactly right question, and often that is of no help.
For some reason, MIDP requests have not been as fruitful as we would have hoped in my MIDP cases. The initially identified evidence has not expedited the exchange of the material.
Front loading of document production substantially increased the cost of litigation in the first months after filing. MIDP Standing Order provided for no extensions for document production (other than for settlement negotiations), and the parties in our case met those Standing Order deadlines. Very frustrating to hear that in other cases falling within the MIDP Order were granted extensions or excepted out entirely for a reason not articulated in the Order.
Generally, it is helpful but, in this case it was not needed based upon the facts of the case and the position taken by the defendant.
Generally, think it is a good idea and does move things along; in this matter, nothing was likely to help.
Glad it's over! Simply not practical for this district.
Glad it's over. Just not practical in a big district like this one.
Glad that this MID is in place
Good idea
Good idea, but ultimate efficiency dependent on parties and judge's inclination to be strict enough.

Good program as full disclosure occurs soon.
Hate the process, DEFTs did nothing, produced nothing provided no actual useful testimony, no enforcement method, complete waste of time
Helped organize my side of the case early.
Helpful.
Helpful.
Honestly, I was not happy with it when it was initially rolled out. I'm a fan of it now.
Horrible—was not followed by the Judge—we needed the mandatory disclosure to respond to the motion to dismiss.
I am a fan of this program and was sad to see the requirement that answers be filed with motions to dismiss go. Since its implementation, outside of the [redacted] cases I handle, this program has moved cases to resolution at a much swifter pace.
I am always for change and progress, truly, but this system does not help, or at least allows the court to rush the early and important aspects of the case to the detriment of the plaintiff. It creates more and expensive workload upfront and, does not allow the case to develop in a way leads to settlement. Frankly, the Federal Court is already impatient with Plaintiff's forced into Federal court by Defendants, who now with this program have even greatly incentive do to do. I greatly, greatly prefer the state court rules for discovery, and find settlement much easier found therein.
I am based out of [redacted] and do not regularly practice in Illinois. This is the only case I have brought before the North District of Illinois and the case was settled prior to this stage in litigation requiring participating in the pilot program. As such, I cannot provide any helpful insight.
I am glad it's over!
I am glad the MIDP program is no longer in effect and I hope it does not come back. It is not productive and basically leads to a two-tiered discovery process, which only raises costs for both sides.
I am greatly disappointed with and humiliated by the district court's handling of this case.
I am in favor of it, but the deadlines should be a little more flexible.
I am not a fan based upon previous cases. Costly and unfair to cases which may otherwise be quickly resolved.
I am not a fan. I find it leads to duplication and increases attorneys' fees.
I am not in favor of the program as it is often not required for cases I am in and becomes burdensome to address.
I am sorry I can't be of much help. We settled this case within less than 2 months of filing it. Good luck with your program.
I appreciate the thought that went into it, but it's not working in practice the way it was designed in theory.
I believe it increases client costs and is a waste of time.
I believe it is an excellent program, but this is the first case that I filed in Federal District Court in [redacted] years of practicing law, so my experience is limited.
I believe it is good intentioned but a bit too onerous in its breadth particularly with respect to stating relevant facts and legal theories (B.4) and the time of production of ESI (C.2.c). A party wishing to defer providing discovery (see A.3) should be required to file a motion or provide some notification well in advance of the due date for the disclosures.
I believe it makes sense and beneficial to litigants.
I believe that Defendants should have to turn over any evidence that the plaintiff request and then the judge should rule rather the evidence is prudent to the case in my case the defendants turned over no evidence claiming they believed it was not prudent to my case and the judge ruled summary judgment in their favor

I believe that the initial discovery pilot obligations work with certain types of cases, but they are not cost-effective in larger cases.
I believe that the mandatory initial discovery pilot program is effective in facilitating that important and relevant discovery information is exchanged early on in the case.
I believe that there are too many things required in the beginning of the case. As a Plaintiff's lawyer that practices in FDCPA/TCPA which contains a fee shifting agreement, I have found that many of these cases can be resolved early on without the need for ANY formal discovery. I believe that the 26(f) and 26(a) requirements are sufficient to put pressure on the parties to settle, that the MIDP stuff is just too much.
I believe the mandatory initial discovery process is beneficial, however, it is easy for a non-responsive, evasive party to give weak, non-substantive responses with impunity.
I believe the program could be helpful but there needs to be some clarification about the timing of production of documents.
I believe the program is a good one.
I believe to make the program more effective and, efficient, parties should be barred from including subsequent discovery requests that are duplicative of the mandatory initial discovery. In our case, it seemed like the discovery issued was largely redundant of the documents and information required to be disclosed in the mandatory initial discovery.
I can't comment as the other side never appeared, so no discovery occurred.
I could go without it but as Paul Simon said, "Who am I go blow against the wind"
I did not feel that the program was particularly helpful in facilitating discovery.
I did not think the MIDP did any good whatsoever in progressing discovery along, at least no more so than Rule 26.
I didn't get the opportunity to participate in it, but it looks like a good idea.
I do have concerns about this due to the expenses of compliance where agreement cannot be reached with the other side.
I do not believe that mandatory initial discovery changes anything about the discovery process, and acts to slow down the process.
I do not believe that this program is well-suited to insurance coverage declaratory judgment actions.
I do not believe the MIDP is helpful.
I do not have a lot of feedback. I left the firm that was handling this case.
I do not see how MIDP makes any real difference when applied to 1983 matters. I don't have the experience to comment on how it might be useful in other types of cases.
I do not support the MIDPP. It is just another means for corporations or large law firms to take advantage of individuals or small firms who may not be able to comply with the broad nature of the MIDPP at the inception of a claim. A preference is to have non-mandatory approved suggested or standard discovery requests as in State Court that can be amended or revised as necessary.
I do not think that the initial discovery pilot program should be applied to ERISA Long Term Disability Claims, because discovery is only allowed under special circumstances after motion by the Plaintiff.
I don't believe the MIDP program should continue. It does not save money or time for the parties—it only creates two stages of discovery.
I don't believe the program decreases the need for written discovery.
I don't find it very useful as most attorneys get this material rather quickly in the cases.
I don't have any experience with the program yet as we were not required to follow it in this case.
I don't know that it adds any value or efficiencies over what is already required by initial disclosures.

I don't think it helped in this personal injury case.
I don't think the program makes that much difference. The information disclosed doesn't seem all that much more thorough than in cases not in the pilot program.
I don't think this is a good idea at all. Discovery should only be done, in my opinion, after the parties are at issue. Unscrupulous litigants can use lawsuits to obtain discovery and use that discovery for other litigation unrelated to the case that was filed. The old way of doing things worked fine. This program is a really bad idea.
I favor early on mandatory disclosures. However, mandatory disclosures are not effective in all cases. For example, I can see it being very effective in commercial cases with limited issues. However, I can also see it been of little value in cases with complex issues. Bottom line I think some form of initial disclosures is important.
I find the MIDPP to be a great help in the discovery process.
I found it duplicative and created unnecessary extra work.
I found it useful. Please continue it.
I found the Defendant's just whittled away at its purpose never really gave information until forced in traditional discovery methods—still had to conduct full discovery.
I generally find that the MIDP program saved a great deal of work in discovery and moved the case along more quickly. While it feels like a pain early in the case, it was a very effective way of focusing cases and clarifying the burden v. probative value of things thereby making litigation less expensive in the long run.
I had an extremely positive experience in this closed case, however, the MIDP program was later amended to provide that discovery need not be served until after a party files an answer per Fed.R.Civ.P. 12(a). In nearly every later case, this amendment had the effect of imposing a discovery stay (an unintended result). This is because in the class action cases that I litigate defendants opt to file motions to dismiss under Fed.R.Civ.P. 12(b). Though courts retain discretion in such circumstances to order discovery, in my experience, no judge has done so despite our objection. I would encourage the MIDP to continue in our district but would urge an amendment to address the stay issue which I believe imposes unnecessary delay and prejudices plaintiffs.
I have compiled with the MIDP in a number of cases now and find it to be more work, but not necessarily more productive or efficient.
I have found that a complete and extensive initial Disclosure reduces the need for lengthy written discovery.
I have found that I need to still issue discovery and that the work of figuring out the deltas between MIDP and my own discovery does not represent any time savings.
I have had cases where a defendant did not produce relevant material in the MIDP production, I moved for sanctions, and though an order compelling production was entered no sanction was entered.
I have mixed feelings about it. It's not right for every case.
I have mixed feelings about the program. It works great for cases that were properly filed. However, I think it can be abusive by those filing meritless cases.
I have mostly enjoyed and found useful the program.
I have no opinion at this time because our case settled before we started discovery.
I have used it in prior cases. I think that for certain cases such as business disputes and auto cases that it makes sense. For others, especially employment cases, there is insufficient information for either side to really respond in a meaningful manner....
I hope it is not continued after the pilot period.
It is a lot to do very quickly, but I understand the need for it. Would help to relax the initial discovery and ESI discovery deadlines a bit.

I like it, and particularly that it requires early disclosure of relevant evidence rather than evidence the party intends to use.
I like it. I think it encourages parties to put their cards on the table quickly.
I like it. It helped to get a quick resolution of the case.
I like the idea.
I like the idea.
I like the MIDP program generally. I think in this case it may not have made much of a difference, but in other cases it requires the parties to deal with basic discovery (which avoids protraction of litigation on basic discovery). This forces the parties to deal with facts, which has in other cases encouraged early resolution. Where it does not lead to early resolution, at the very least it helps move discovery along efficiently, which is beneficial to both parties if a case does not resolve through settlement.
I like the MIDP. [Redacted]
I like the program to get the ball rolling.
I liked it. I found it very helpful.
I liked the rule that required defendants to file an answer, even if they file a Rule 12 motion to dismiss. Otherwise, the initial discovery exchanged did not provide much more than Rule 26 disclosures would have provided.
I never saw the benefit of MIDP vs. Rule 26 disclosures. Theoretically, MIDP is broader because it encompasses evidence without regard to whether it benefits the providing party, but I've never seen it work like that. Even though MIDP was required, there was no real incentive to produce everything, and very soon, you had regular discovery that kind of mooted the MIDP disclosures. I can't imagine anyone going to court over an alleged MIDP deficiency when they can simply request what they need in discovery.
I personally think the mandatory initial discovery program is a waste of time for the parties and confusing for individuals who do not normally practice in this jurisdiction. My hope is that this program will one day be discontinued.
I practice trademark law and this program does not fit well.
I prefer 26(a). Paragraph B (3) is burdensome and creates unnecessary work in many cases.
I prefer 26(a)'s over Mandatory Initial Discovery mostly because each party only lists people who they may use to support their claims/defenses. It's more focused and that better helps me decide who I want to depose.
I really like it. Forces parties to identify relevant documents early in the process which reduces time spent fighting about responses.
I served in this case only as local counsel for plaintiff. My participation was limited to the local counsel designation. Plaintiff's lead counsel would be in a better position to answer these questions.
I strongly believe in mandatory initial discovery and do not believe that cases should be subject to discovery stays.
I strongly disliked it. Created extra work and imposed extra cost with no discernible benefit.
I strongly favor this process—there needs to be more detailed directive regarding documents and electronic materials
I suggest that MIDP be discontinued.
I support all efforts to streamline litigation, including this program.
I think a good "fit" for more "straight-forward" cases like auto accidents/injury cases but may be overwhelming for "bigger" or commercial cases (I have handled both).
I think a little deeper dive into common discovery elements of discrimination would also focus the discovery process even further and lead to more time savings overall, i.e., common interrogatories to

focus on the decision makers in the HR process like the direct supervisor, the responsible HR decision maker, etc.
I think it expedites discovery and forces both sides to be diligent early on in the litigation.
I think it is a double-edged sword. On one hand, it can promote settlement early because people have to produce materials early on. On the other hand, it ramps up costs very early in the case which can be detrimental. Sometimes targeted discovery is better rather than the very broad range permitted under the discovery pilot program. I think the best way to use the program is not to make it mandatory, but for the parties to advise the judge in the initial status report whether it would help to implement the detailed discovery pilot program or not. In some cases, it works and in others it doesn't.
I think it is a good idea in theory, but it doesn't work in practice. If a Defendant is inclined to obstruct, it doesn't really matter if there are mandatory initial discovery requirements.
I think it is a good system because it reduces the time to receive certain important documents in the case, rather than waiting for formal discovery.
I think it is a great program and would like to see it implemented on a more permanent basis.
I think it is a useful requirement.
I think it is helpful. gives an early look into the evidence and the Defendant's position.
I think it was a very worthwhile process.
I think it was a wash in most of my cases; the same games that certain lawyers play, were just repeated in the MIDP and the judges were just as reticent about taking too strong of a role in discovery disputes. I think a larger issue is that lawyers do not feel like the judges will rein in overbroad requests and so discovery costs against a party with money tend to be much higher than in smaller cases.
I think it's an excellent idea so long as the parties and the Court agree about technical (i.e., ESI retention and access) capabilities. In our case Defendant spent months arguing that accessing ESI pursuant to MIDPP disclosures was outrageously costly. Additionally, Defendant argued for months that the agreed-upon MIDPP search parameters prevented Plaintiff from asking for other ESI through regular written discovery.
I think it's ultimately very productive, but it just wasn't particularly effective in getting this case settled because the Defendant hard-lined.
I think mandatory initial discovery is a good idea as long as everyone keeps in mind that the litigants may not have all of the information as soon as the case is filed.
I think parties should merely be required to identify persons, at an early stage, who they are likely to call as witnesses at trial. Thanks.
I think the District ought to consider whether some aspects of the pilot program should apply to federal securities cases, once a motion to dismiss is decided. Presently, these cases are exempted.
I think the mandatory disclosures are a success. I am involved in many bars and overall feel your approach is an improvement over Rule 26 standing alone. Good work and good luck with the program.
I think the MIDP has good goals but unnecessarily makes litigation more expensive earlier in the case, and therefore tends to make parties steel themselves after having invested significantly in the litigation.
I think the pilot program helps resolve cases through earlier document collection and case evaluation.
I think the program is good particularly in straightforward FLSA cases [redacted].
I think the program is just adding expense, and not improving discovery at all. We rarely get any real information with the MIDP disclosures, and when it is provided it is the same info, we would have received in 26a1 disclosures. However, it is required automatically much earlier in the game, even if the case is on a settlement track or there is an MTD being briefed. This just adds costs for both parties.
I think there should be a way to monitor if the parties are actually participating in good faith. In my experience, the parties do the littlest possible just to get over the hurdle and then proceed to their normal discovery in-fighting. It's a good idea, but it needs better monitoring.

I think there should be some threshold application for it instead of a blanket requirement for all cases filed, regardless of nature of the claims.
I think this is a very helpful procedure which avoids much of the gamesmanship that defense counsel often engages in.
I thought the mandatory disclosures helped the parties focus on the important aspects of the case and get information exchanged quickly.
I thought the mandatory discovery program was helpful.
[redacted] I don't understand how it differs from FRCP 26. Which means complying with R26 does not fulfill MIDP requirements. I would pose this question to someone if a forum existed for questions and answers.
I typically represent plaintiffs in wage cases. The mandatory discovery program was not helpful because we rarely received much information, and it delayed the timing of when we could issue written discovery.
I understand that the program is well intended but it's as good as the good faith or lack thereof the counsel and the parties or lack of same. it took me over a year and multiple motions to obtain the deposition of the individual who made the decision to terminate our client and multiple motions to compel to obtain relevant discovery...only to see summary judgement entered while conveniently ignoring facts in the record that should have resulted in a finding of genuine issues of material fact.
I was not impressed that it facilitated the resolution of this case.
I wish all cases had this.
I would prefer that discovery begin in all cases, even where defendants allege the plaintiff does not have standing.
I'd prefer that it be dropped.
I'm not a fan. Seems like it results in doing some of the same work twice.
I'd like to see it become permanent for more straightforward cases like this FLSA case.
If an objective of the pilot program is to encourage earlier settlement discussions, the program might benefit from slightly more judicial involvement in ensuring compliance with the ESI disclosures.
If it's used, redundant 26 report should be modified.
In another case my opposing party has ignored the deadline to respond without apparent consequence. To make a party take the steps necessary to bring the failure to respond to the attention of the court seems to defeat the purpose of the mandatory responses. Perhaps a mechanism for automatic imposition of consequences such as sanctions if the failure does not have the court's prior consent. Put the onus on the party not responding.
In general it works well, and should continue.
In general, I am in favor of the program, but it is difficult to resolve the tension on whether a motion to dismiss should stay discovery. Leaving it in the discretion of the district court judge appears to be the best approach.
In general, I think it is positive. I am not certain that it reduces the volume of the discovery or discovery disputes, but it does get things moving more quickly at the outset of the case, rather than waiting for the parties to generate and answer discovery.
In general, it appears to move cases along more quickly.
In general, the program is very difficult and does not recognize the practicalities of law practice.
In my experience depending upon the case type, not all parties issue discovery requests. The program imposes a burden of production on parties who otherwise may not have been asked to produce anything. Thus, in some ways, the program adds to the cost of litigation for certain parties.
In my experience, the program had little impact on anything.

In some cases, I could see MIDP having benefit by providing discovery earlier, but in my experience MIDP has only shifted the timing of heavy discovery efforts, increasing the cost of litigation before an opportunity for meaningful settlement discussions could be had. It acts to impede early settlement discussions as attorneys must focus efforts on discovery production at the preliminary stage of litigation.
In the cases that we had where we were required to participate in it, I am not confident that it helped moved things along any faster than the cases would have moved without the MIDP.
In the context of this case, it simply required the parties to do additional work while they were attempting to settle that case that from a Plaintiff's perspective had little or no bearing on the settlement.
In theory I think it is a good program but if the courts don't hold parties accountable for providing full disclosures it can hurt more than it helps.
In theory, its great; however, Defendants never provide any documents that are supportive and/or hurtful for their case.
In this case, as with others, it seems to be followed by diligent parties and ignored by others. For the diligent parties, it forces much of the expenditure on discovery in the case to the very start of the case. These funds could be better used in settlement for a defendant or making a lower settlement palatable for a plaintiff.
In this case, we represented the plaintiff for purposes of settlement only.
Initial disclosures under Rule 26 accomplish the same goals without the strict timelines.
Insurance coverage cases should be exempted from the MIDP.
It appears to make sense and should be workable in the context of most matters.
It can be effective when used as intended by both parties.
It did not apply to this case.
It does not appear to make a difference in my civil rights practice.
It does not make things faster. It does not help get to the heart of the issues. Initial discovery is initial discovery. It's from the initial discovery that you realize what important discovery items you really need and really need to hone-in, and the judges seem reluctant to go beyond the initial disclosures. So, I don't think it's an effective program.
It does not work for highly contentious cases. Unless you specifically ask for something no one will voluntarily provide it for you.
It doesn't seem to serve any practical issue or solve any problem. It only places an additional burden on the parties.
It functioned in a fair and useful way. I would prefer if Defendants in State Court cases in Illinois (where I practice) were compelled to disclose things by requirement. There is a disproportionate burden and disproportionate knowledge about the facts that may underlie a case (corporate documents, medical records, memoranda, policies, procedures, etc.) on the injured party to find the information that is required to meet the Plaintiff's burden. Almost all relevant evidence about an injury is already known to a Defendant besides medical records (which they obtain from third parties).
It has been a very helpful process early in the litigation. Contributes to productivity and focus of later discovery.
It is a burden to the small practitioner.
It is a counterproductive waste of time unless judges are willing to uniformly apply the rule. And federal judges don't do anything uniformly.
It is a failure. [Redacted]
It is a good policy that will help speed cases through litigation.

It is a good program generally, but it does not cleanly fit to every type of case. Judges may want to consider setting a status early, or taking one at the parties' request, to address whether all aspects of the MIDP are necessary in any specific case.
It is a good program that should be continued.
It is a solution in search of a problem. Please do not implement it again.
It is adding costs rather than reducing them in most cases.
It is an effective procedure to reduce cost, save time, narrow issues, prevent disagreement, and efficiently get to the substance and create posture for settlement.
It is an effective program that I feel should be instituted in all cases.
It is burdensome and costly for plaintiffs.
It is effective at expediting the discovery process and reduces the amount of time that must be spent later on discovery requests. It also allows the parties to get into depositions earlier in the case, which also expedites the case.
It is helpful if both parties seriously comply; if the other party is going to withhold information, they will do so regardless of whether the posture is initial discovery or formal discovery.
It is little different than the previous Rule 26 disclosure system.
It is not that useful.
It is ordinarily helpful, if the parties cooperate. But it was not in this particular case.
It is painful, unnecessary, inflexible. Does not enhance the process.
It is practical, well-thought out and important to the efficient disposition of cases.
It is ridiculous and a waste of effort and time—it should be abolished.
It is salutary in purpose and intentions but is often manipulated by defense attorneys to continue delays and evasive document production. The MID does not obviate the necessity to file Rule 34 requests and interrogatories. I often must remind defendants to produce their insurance policies and the plaintiff's complete personnel file. MID helps somewhat. Mandatory settlement conferences, like [redacted] conducted in every case, helps expedite settlements.
It is very good.
It just doubles the work because both sides issue the same discovery after that and answer discovery twice. The program should bar, with sanctions, the re asking for any discovery already disclosed.
It makes litigating for poorer defendants exceedingly expensive.
It makes sense in simpler cases and is good there. But in more complex disputes, especially complicated commercial disputes, it just slows us down before getting to the written discovery we are going to need anyways.
It makes the parties put up or shut up about their claims or defenses.
It may be useful in some cases but not in a breach of equipment lease.
It might be more effective in class actions, patent cases, IP cases, etc. For more straightforward cases, I do not think it should be required.
It might work in normal cases, but not when there was a 500 page administrative trial transcript already in existence.
It only works is the parties want it to work. In my experience, private corporate defendants take it seriously while the City of Chicago, a municipal corporation, does not.
It requires plaintiff to gather and provide too much information to early in the lawsuit. As a government Plaintiff, this is too burdensome.
It seems duplicative and cumbersome.

It seems reasonable. It also seems slanted toward larger cases and medium-sized to larger law firms with abundant support staff. "Electronically Stored Information" is a broad category; some guidance as to the quantity of document pages or types of information is referred to in ESI-specific rules / regs. would be helpful. Generally speaking, the MIDP guidelines are clear and comprehensible.
It seems to give both sides a jump-start on the case.
It should be discontinued. It only adds to the cost of the case and does not streamline discovery.
It should be helpful in expediting discovery.
It should not apply to cases with Fee Shifting provisions. It increases costs in the early stages when parties are trying to settle the case. In FDCPA/TCPA violations, the offender knows whether they violated the law and are willing to settle usually, but then when we go to ask for fees, they're much higher because of all of the preliminary stuff that happens. In my opinion, the federal courts are too aggressive in the beginning of cases involving fee shifting provisions, and a new track should be created specifically for cases involving fee shifting to minimize attorneys' fees in the beginning of a case.
It sometimes can be somewhat helpful.
It stinks, wastes time, causes needless additional expense to the process. All these recent rule changes have not helped. They are an annoyance, waste time and money and do absolutely nothing to streamline or help the litigation process. Leave the rules alone!
It was a summary judgment immigration matter. The record was provided by DHS. No issues
It was an honor to assist a pro se litigant and to fulfill my obligation as a member of this district.
It was not applicable in this case.
It went well.
It worked well.
It works.
It would be very helpful if as part of MIDP the parties are required to disclose whether insurance coverage exists and to name the carrier and policy periods that provide potential for coverage.
It's a good idea, speeds up some of the discovery production, although I'm not sure it makes a huge difference.
It's a great idea which should increase the amount of actual justice delivered by the justice system, but it will only work if judges support it and get tough on recalcitrant parties. Unfortunately, while our case was active, we found very little in the way of written—much less published—rulings on MIDP disputes. Large firms were surely sharing decisions internally, but smaller firms were left without good resources for learning about rulings which might support their positions.
It's not taken seriously enough...particularly by defendants...much like Rule 26 disclosures....
It's not well suited for most claims arising under 29 U.S.C. 1132(a)(1)(B)
it's useless and burdensome, particularly in cases where the primary relief sought is injunctive or declaratory.
It's useless. Make work.
It's good to have the program as an additional vehicle in trying to resolve without trial.
Judge [redacted] was excellent and fair for all parties.
Judges need more discretion (and should exercise that discretion) to limit mandatory discovery where it will be voluminous and costly.
Judges need to be reminded, early and often, that the reason the Framers granted them lifetime tenure and guarantee concerning their compensation was to enable them to make unpopular decisions, when required pursuant to the "General Welfare" clause of the U.S. Constitution, not to ingratiate themselves with special interests and high-wealth individuals and entities.

Jurisdictional issues and motions to dismiss preempted discovery disclosures.
Just my answer to the last question. It was a good idea but it's too hard to get the lawyers to cooperate fully in the spirit of the program.
Just rule 26a1 disclosures on steroids.
KEEP USING IT, thanks.
Like most discovery rules, obligations and tools, it is incumbent upon attorneys to force their clients (the parties) to comply. Because discovery in employment cases is asymmetric (i.e., one party has substantially more information), that burden and responsibility fall more heavily on employers' attorneys. But that is true of ALL discovery obligations. I strongly support the initial discovery pilot program's goals and requirements, particularly as they relate to early production of documents and information, as exchanging the underlying evidence earlier in the case should almost always expedite resolution. In this particular case, it did not in part because Defendant elected not to provide substantive information (only form disclosures).
Liked it.
Love it. Really forces both sides to define their case and focus.
Loved the MIDP in other cases—encouraged settlement.
Mandatory Initial Discovery has not significantly reduced the work of the Parties in any of the matters that we have litigated. The similarity to Rule 26(a)(1) disclosures is such that either would be appropriate and seem to accomplish pretty much the same results.
Mandatory initial discovery provides no benefit to the litigants.
Mandatory Initial Discovery should be tailored differently for different types of cases. For example, FLSA wage and hour cases typically zero in on a few discreet categories of business records, and these records should be explicitly named and required for initial disclosures. We continue to engage in discovery combat over the production of these records notwithstanding the MIDP Standing Order.
Meh
MIDP appears to be a good idea on its face, but litigants still find ways to "game the system" and, when they do, dealing with it raises the total cost of the litigation. Dealing with the deadlines and required filings is onerous and does seem to "cause form to be elevated over substance."
MIDP disclosures are not any more useful than 26(a)(1) initial disclosures, and they ultimately wind up slowing down the case because: (1) they must occur before any other discovery yet they are not due until 30 days after a responsive pleading is filed, whereas absent MIDP a 26(f) conference is the only prerequisite to serving discovery requests; (2) the standing order makes the default rule that filing a motion to dismiss pauses any "traditional" discovery whereas such a motion does not do so under 26(d); and (3) defendants do not generally comply with the spirit of MIDP by fully disclosing, so the end result is MIDP is no more useful than 26(a)(1) disclosures except for defendants who can use them to delay traditional discovery (see #1-2).
Misguided.
More flexibility would be a good idea. Give the parties or the Court the ability to opt out or establish alternative deadline.
More known.
More required disclosures is always better.
Most of my cases get resolved before discovery is needed.
Much better than 26(a)(1).
My case work is typically ERISA collections. I find that it adds expense to the case. It doesn't add documents early on because the more specific records need to be requested and Defendants, I filed suit against do not provide them without being asked —typically more than once.

My concerns in this case were less about MIDP and more about settlement in that we requested tax information which was never provided. This disadvantaged us in settlement negotiations.
My experience since the amended order was issued is that MIDP program has been used by defendants to, in effect, impose a discovery stay in every case where a motion to dismiss is pending. This has chilled discovery altogether, contrary to the program's purpose of encouraging honest discussions at the outset.
My experience with the program has generally been quite negative. Defendants I have worked with don't take the obligations seriously, so it just delays the process of serving formal discovery requests without obtaining information up front. Additionally, whenever you update discovery responses, you have to update both the interrogatories and the mandatory initial disclosures, which seems like a waste of time.
My involvement in this matter was limited as another attorney in my office primarily handled it.
My opinion is that it's not very helpful.
N/A
N/A
N/A here—I did not participate in any MID. I was settlement counsel only.
NA
Never harmful, often mildly helpful.
No additional comments.
No comment.
No comment.
No comment.
None
None
None
None
None—it was over by the time that I became involved in the case, after the handling partner retired.
None in this case.
None.
None.
None. My client dismissed his case voluntarily.
Nonsense. Unenforced by Judges. Defendants do not produce anything. Could have been a useful tool if Judges actually required Defendants to comply.
Not a fan. An experienced attorney would not likely see benefit from mandatory initial discovery. A new member of the bar on the other hand, may see it as beneficial. Certainly, there are fans of cruise control and "autopilot" for cars, but should litigation be handled the same way? I am trying to imagine whether founding father John Adams would view the program favorably? My guess is the answer would be no.
Not applied to my case which was consolidated into [redacted] where detailed discovery orders were in pace.
Not efficient, just more busy work.
Not necessary; merely adds another layer of complexity for which the federal rules should be adequate to handle.
Not really applicable to this case, which settled within 30 days of filing. But [redacted] was fantastic.

Not very helpful.
Often duplicative of written discovery requests.
One potential recommendation would be to stay discovery and answer until motions to dismiss are decided.
One size does not fit all. Ours was a small case and the discovery turned out overly expensive in proportion to the ad damnum.
Our case started as a AAA Arbitration and transferred to this court, so initial discovery may not have been done.
Our case was unique in that much of the discovery had been completed during the administrative process.
Overall a good idea—but there are exceptions. . . .
Overall, I think it was helpful to focus on important issues early in the progress of the case.
Overall, it is a good program. It helps to focus the parties early. In this particular case, I was appointed to represent the plaintiff after discovery was closed.
Overall, I think it is a good program. As with anything, it relies on the good faith and professionalism of the attorney's involved to make it truly effective. In this case, unlike most others, we were met with stonewalling and unprofessional conduct. We should have teed up a motion for sanctions, and threatened to, but you have to keep your eye on the prize and do what is best for your client. Sometimes it is not in your client's best interests to engage in protracted discovery battles which are unlikely to lead to useable supportive evidence. That was my conclusion in this case. We had great help from [redacted] who took over our negotiations, he was brilliant. Very effective in his low-key way.
Overall, I think it's a good program, but as always, you're relying on the good faith of the opposing party to comply.
Parties aren't following it. Judges aren't consistently enforcing it.
Please do not renew the pilot or institute the initial disclosures on a permanent basis. They are pointless and do nothing to streamline discovery. In fact, they have the opposite effect as it simply adds another layer to discovery.
Please keep it in place.
Please keep the program. It helps to bring focus to a case quickly allowing the parties to address real issues of dispute.
Please see my prior comments.
As a frequent litigator in NDIL, I find the MIDP to be nearly useless to the plaintiff, DEFTs fail to produce a single document (in nearly all cases) and their "facts" are almost non-existent (regarding defense etc.). There is no procedure for correcting the failure to produce, and by the time the court would address it, the same will be had via traditional discovery requests. Overall, the MIDP is a big waste of time for plaintiffs, as they have to put a lot in to them and get almost nothing out.
Same as last entry.
Same response as above.
See above.
See last comment.
See my earlier or last comment. Thank you.
See my last comment. Let's abolish this program, please. It only gets in the way.
See previous answer.
See previous comment.
See previous comment. I believe MIDP can be effective, but it also can be abused, and I have to conclude that it was abused, to some extent, in this case.

Seems like more than is necessary and somewhat burdensome.
Seems to be positive on the whole.
Seems to get ignored by some defendants, and they do not really face any consequences for ignoring it.
Seems to work well.
Should be a useful tool for matters filed and litigated with the court.
Should be more fluid for cases that may settle before any discovery is needed or necessary.
Since most attorneys representing the opposing side did not provide any additional information or records, I did not find the program useful at all. I was not going to keep filing motions against my opponent since I would simply request the records during written discovery and address disputes with the court during that phase.
Since the case settle fairly quickly after filing, the parties did not have a chance to engage in the process.
Since this was a challenge to an administrative action, where discovery is typically limited, the mandatory guidelines had less applicability here.
So far, my experience is the format of the MIDP is more tedious and onerous than R26 without causing any noticeable reduction in later written discovery requests. I practice mostly section 1983 civil rights cases in which, in my experience, both sides tend to be fairly thorough in their Rule 26 disclosures but also issue extensive WD requests, so the MIDP is not making a significant difference.
Sometimes it helps move the case, but other times it becomes a lot of work to get the Defendant to comply...just as difficult as trying to get regular discovery. But sometimes with MIDP Defendants fail to comply with the mandatory disclosures—counsel is sometimes unfamiliar with the obligations imposed under the MIDP amended order.
Sometimes useful in terms of getting things a bit earlier, but overall does not matter a lot in light of the amount of time it takes to litigate the case.
Staying discovery in this case radically hurt the Plaintiff. [Redacted]
Strongly favor.
Strongly in favor of the program.
The application and execution of the MIDPP is inconsistent from judge to judge, making compliance inconsistent and more burdensome than standard discovery practice. MIDPP should be stayed by Rule once a Rule 12 motion is filed and until it is disposed of by the court. The disclosure requirements should be exactly the same in each court.
The attorneys for the case were all professional and civil and worked cooperatively in their client' best interests to conclusion of the matter by settlement. As a result, the MIDPP did not appear to affect the outcome of this matter in any material way, and likely added unnecessary work for the attorneys.
The case settled so quickly that we did not get to discovery.
The communication about the program and its requirements were confusing for and hard to apply to a U.S. government administrative decision record-review case.
The concept of the program is well-conceived, but the mechanisms to ensure compliance are insufficient and/or not meaningfully enforced.
The Defendant still seemed to delay discovery and was not held to deadlines in discovery.
The ESI requirement in the MIDP is too vague yet very powerful as a discovery weapon.
The exception to MIDP allowing for immunity-based defenses to be a basis to seek to stay discovery is not at all helpful. These cases are just as complex, if not more complex, as cases where immunity is not a defense and MIDP disclosures would have helped the settlement discussions in this case.
The initial discovery pilot program has decreased the number of discovery motions that were done in other cases that I've been involved.

The intent to reduce delays due to discovery issues is a worthwhile pursuit.
The local rules and standing orders are very unclear and confusing about whether filing a 12(b)(6) motion automatically stays the requirement to make the mandatory disclosures until resolution of the motion. The parties in my recent case had to get guidance from the judge on that issue. I have been told by colleagues who practice in ND Illinois that is a common dispute that arises. I encourage the court to make a plainly worded rule that clarifies that issue.
The mandatory initial discovery is a must and very necessary to increase judicial efficiency and provide fair due process before any hasty compromise resulting from case
The mandatory initial discovery pilot project is completely ineffective and should not be adopted.
The mandatory initial discovery program makes little sense and does not help early resolution of cases. It drives up costs and takes energy at the initial stages of a matter that would be better spent on other efforts, e.g. settlement, motion practice, etc. Other districts where I practice have no problem with just the Federal Rules of Civil Procedure, as some judges in the Northern District only use the FRCP and have not signed onto the program. It would be best for the court to put the mandatory initial discovery program on the scrap heap where it belongs.
The MIDP are an ineffective measure as DEFTs ignore them or provide the rout nothing reflecting the non-answers of the Answer, and almost never provide a single document, and the Judges do not seem to enforce the proper implementation of the rule. I have not bothered to file an MTC as the rule does not seem to have any enforcement method, and the rule slows cases down, as DEFTs will use it as another hurdle/excuse for delay.
The MIDP program is a good idea in theory but, in practice and on balance, it creates unnecessary work on both sides. Many, indeed most, cases settle. With some unfortunate exceptions, counsel on each side usually provides the information/discovery necessary to effect settlement. It seems that, by and in large, the same disputes that arise in regular discovery arise in the MIDP—and cause counsel and the parties to expend resources unnecessarily, because such disputes would normally be held in abeyance pending productive settlement talks.
The MIDP worked for our Plaintiff cases.
The MIDP, while having mixed results, was helpful in cases where both sides participated in good faith.
The MIDP program is more helpful in some cases than others.
The new discovery requirements expedited settlement.
The process generally is helpful in reducing requests for production of documents. But, as with this case, when the Plaintiff is uncooperative, the MIDP is of no value.
The process is not decreasing costs or increasing the speed at which key documents are produced. Defendants still routinely fail to produce actual documents with their MIDP disclosures and provide minimal information on witnesses. The requirement to state your facts and legal theories is also just creating work that does not advance the case.
The process makes a great deal of sense, but it does provide a burden on the litigants before they are at issue. I believe that the burden outweighs the benefit. I would recommend a similar program once the parties are at issue (i.e. after an answer is filed). It does not make sense to me to require discovery before an answer is filed to a complaint.
The program can work well to force an initial exchange of information for early settlement evaluation.
The program has been cancelled in the Northern District.
The program is extremely beneficial in terms of moving the litigation forward.
The program is salutary in theory, but otherwise ineffective.
The program is well suited to personal injury and simple contract actions to define issues and aid pretrial resolution.

The program should not be continued. It does not streamline the process and only adds to the cost of litigation.
The standing order MIDPP required Defendants to answer the complaint even if there was a pending 12b6 motion as long as there was no pending motion to dismiss for immunity or jurisdiction. That order was not applied to the defendants in my case, however. Later, the district amended the order to not require the defendants to answer while there's a pending 12b6 motion.
They are useless.
This case had some unusual circumstances, so it is not the best to judge the effectiveness of the program.
This case settled very early without much discovery.
This program is largely a failure and should be discontinued. It leads to greater overall costs and fails to reduce overall discovery requests.
This program is largely a waste of time, as most of the discovery is just re-done at a later date and nothing substantive is disclosed in these initial disclosures.
This program makes sense, provided the court enforces the rules contained in it, of course (ours did).
This questionnaire does not provide meaningful information about MIDP. It is superficial and lacks the ability to include and explain details that are important. I have been in the federal court for decades. MIDP can be helpful but not greatly in most cases.
This was my first time with MIDP, and I thought the court system did a great job in explaining the system so that I knew what I had to do as an attorney to comply with the procedures/rules.
Unfortunately the defendants in this case were particularly combative and among many things they did to make things difficult, they did not make a good faith effort to comply with MIDP. My clients could have raised this issue with the court, but it was more efficient to simply request the same information through regular discovery, which is what they did. This meant we received the needed information much later in the case. My clients actually did take the MIDP requirements seriously and we provided fulsome responses. This has been my experience with MIDP in other cases as well. I think it would be better if the judges actually read the MIDP. If the opposing side knew the judge was going to see their responses, I think they would have provided actual responses.
Useless make-work.
very helpful for smaller, simpler cases.
Very little discovery was ever received from the defendants which was not caused by the initial discovery program. For this case there was not much of a difference between an ordinary 26 a 1 and the program.
Waste of time and energy.
We are fans of the program. It makes cases proceed smoother from the beginning!
We are happy to continue prosecuting state cases in federal courts under diversity jurisdiction and hope there is a continued focus to expedite discovery and encourage settlement conferences or arbitrations.
We did not engage in discovery. We settled this case fairly quickly
We did not utilize it in this case.
We were local counsel in this case, so it was not a good sample for your survey. Overall, as plaintiff lawyer I applaud this new program.
We would have followed protocols if case had proceeded.
When dealing with smaller employment or other types of simple fact based, low dollar amount, cases MIDP does not seem to help at all with moving the case forward.
While I admire the intent behind the program, I believe it front-loads legal expense to each party disproportionate to the benefit of the program.

While I believe the program was well-intended, I believe it had little practical effect on the course of discovery.
While it is very helpful in larger cases, I have found it to be burdensome in lower dollar cases.
With ERISA collection cases, preparing the disclosures can increase the amount of fees incurred by both parties. The increase in fees is sometimes a stumbling block to resolving the litigation.
WORKED WELL.
Works.
Works well for simple cases. Does not work for class actions or other high-volume document cases, particularly where there is asymmetric discovery.
Would work well had the Defendant made timely initial disclosures as required by the standing order.

Please provide any comments you have about the district's mandatory initial discovery pilot program.

Northern District of Illinois Defendant Attorneys

A more limited plan might be helpful, but the current plan is too broad; it is too much at an early stage and is thus burdensome on companies much more so than individuals.
A standing order that the MIDP does not apply to ERISA benefit claim cases would be helpful rather than seeking the court's approval on each case.
A well-managed pretrial order process would be more efficient than is the MIDP's procedures.
Although it did not have much of an impact on discovery in this case, in general, I think the program is a good idea.
Although not used in this case, seems redundant to Rule 26 and puts unnecessary additional burden on parties.
As an attorney representing insurance policyholders, I'm happy that the program is apparently no longer in effect. Because of the Illinois estoppel rule, insurers in Illinois routinely file unnecessary and/or premature declaratory judgment actions that must be dismissed or stayed. The MIDP, in my opinion, can in some circumstances require significant amounts of discovery from policyholders in cases that will not actually be litigated, but rather were filed merely to preserve the insurer's rights.
Because we were able to quickly resolve this case, the mandatory initial discovery pilot program had no impact. If we had been unable to quickly resolve the case, I expect that the MIDPP would have increased the parties' efforts and costs with no discernable benefit.
Case settled almost immediately after answer was filed.
Compliance is expensive and labor-intensive.
Compliance unnecessarily increases costs of ESI discovery.
Conceptually, the pilot is a good idea and, particularly, as modified to allow a reprieve from the mandatory requirements in the event of a Rule 12 motion. The issue that we are seeing is that parties do not voluntarily produce relevant information, which then results in full-blown discovery any way. Albeit, somewhat more targeted.
Discontinue MIDP.
Disfavored.
Does not accomplish anything the programs sets out to do. Having a giant list of potential witnesses without any idea of who will actually testify at trial is extremely unproductive.
Does not seem to help much. Good idea. Attorneys know enough what they are doing in practice.
Don't like the MIDP.
Don't think it is very helpful.
Early exchange of documents and key information leads to quicker case evaluation and decisions regarding defending or settling cases. On the defense side, not having the time the Plaintiff has to gather & review documents before filing suit, and often not even being aware a lawsuit is coming, it would be helpful to be permitted sufficient time to get familiar with the client, sufficient time for the client to confer with knowledgeable employees and for them to search for relevant documents. 60 days would work in most cases.
Either it should replace all or part of regular discovery or it's just a make work exercise that wastes time.
Even though the initial mandatory discovery exposed a problem in my client's defense, I believe that the forced additional disclosure moved the case into a settlement posture more quickly than using normal procedures.

FDCPA cases should be carved out of the requirement.
Fine for Plaintiffs, but too onerous for Defendants.
Flexibility is key; many cases are different. Judges who are flexible help resolve disputes.
For insurance declaratory judgment actions, like this case, the MIDP is very burdensome. This is true for a couple of reasons. 1) these cases often can be resolved by moving for a judgment on the pleadings. Being required to spend money on discovery when planning to move for judgment adds one extra hurdle; (2) insurance coverage cases are often stayed under Illinois law under the Peppers Doctrine because of conflicts with the underlying litigation. Discovery may be one source of that conflict. Insurance companies are required to file the dec action because of Illinois insurance law. That does not mean that action is ripe for any discovery or other movement. (3) the dollar amounts involved in many insurance coverage disputes make expensive discovery impractical. Insurance coverage disputes are often able to be settled. An initial discovery expense reduces the pool of money available for settlement and makes settlement more difficult.
Forcing Defendants to engage in preliminary discovery, even when they are filing a well-founded motion to dismiss is extremely burdensome and frankly seems completely contrary to the case law allowing for motions to dismiss and, allowing discovery to be stayed pending motions to dismiss based on qualified immunity. Additionally, I have had numerous cases where I have moved to dismiss for my defendants, but some of the other defendants want to answer and proceed with discovery, but then I am also forced to continue with discovery, even though I have filed my motion to dismiss, because of the MIDP. I feel like the MIDP has forced parties to proceed to discovery more quickly than necessary, increasing costs at a very early stage of the case when frankly, settlement could be discussed or at least a better relationship forged between opposing counsel. While it would be great if opposing counsel had a civil and professional relationship, we all know that most of the time that is not the case, and the MIDP just seems to compound that. With the MIDP, as soon as a Defendant is served, the clock is ticking. Plaintiffs have had two years to draft a complaint, but Defendants need to get in touch with their clients to discuss the case, determine what type of responsive pleading to file and, also respond to and draft discovery, on a ridiculously short timeline. This case is a prime example of why staying discovery pending a motion to dismiss is necessary, as my motion to dismiss was granted and my Defendants did not have to engage or participate in expensive and burdensome discovery. I just am not sure what the point of the MIDP was, since the Federal Rules already laid out a pretty clear and workable timeline for discovery in civil litigation. Adding in a slightly different timeline was just unnecessarily confusing.
Fortunately, the requirement that the complaint must be answered has been done away with, as it required us in past cases to file a motion for judgment on the pleadings rather than a Rule 12(b)(6) motion to dismiss. Also, district courts have been cognizant that the mandatory discovery program frequently is inconsistent with the way ERISA cases are adjudicated (i.e., with little to no discovery based on the administrative record). Otherwise, my experience with the program has been negative in the ERISA area, because the disclosures increase litigation costs with no benefit to the litigation. Also, in most of my ERISA cases where we have been required to comply with the program, the plaintiff was late in complying and simply copied the defendant's disclosures. I encourage courts to be open to excusing compliance in ERISA cases.
From a defense perspective, most of our clients want to get through discovery (not just mandatory initial discovery) before considering settlement, mediation, etc. When this is the case, mandatory initial discovery does not seem to resolve the case any more quickly.
From the perspective of tort cases, I see no benefit to the program in terms of time or money saved.
Frustrating and unnecessary.
Generally support the program as long as discovery is not required to proceed during pendency of motions to dismiss.
Get rid of it.

Good idea that needs to be more flexible in certain cases. Glad it was amended to account for motions to dismiss.
Good idea!
Have not had a case that this has facilitated settlement movement. Notwithstanding, the initial discovery makes the parties deal with each other sooner and moves the case along, whether for better or worst.
Having participated in MIDPP while it was piloted, it is my opinion that it is not effective, is burdensome and creates unneeded expenses for defendants.
Having the clients sign the MIDPP verification forms only increases the costs.
I agree with the pilot program.
I always felt MIDP was repetitive of FRCP 26 and did not add much more.
I am generally in favor of the MIDP procedures.
I am in favor of MIDP continuing in its present form.
I am not a fan and have not found them productive.
I am not a fan. While not applicable to this case, it drives additional early expense with little to no benefit.
I am not convinced that the discovery rules under the pilot program promote efficiency or reduce costs.
I am not in favor of the program.
I am very glad the MIDP is concluded, because it only served to make litigating more difficult.
I appreciate that the court revised the MIDP as it ran up fees and costs for cases (such as this one) when early settlement is accomplished. I still do not see the benefits of the MIDP program and believe that the standard Rule 26 disclosures are the only disclosures to be made prior to formal discovery.
I believe it generally prejudices a defendant, and it is a tool that can used by plaintiffs to pressure a settlement because of increased discovery costs, rather than on the merits. I believe the current rules allow for expedited or other discovery, should a Court so order as appropriate in certain cases. A mandatory discovery rule like the current pilot is not helpful or appropriate for all cases.
I believe it is beneficial to litigants.
I believe it is generally too burdensome, particularly on defendants in complex commercial cases, and would support it being discontinued.
I believe it is having its intended purpose.
I believe it streamlines the litigation.
I believe it's unnecessary, as Rule 26, if done properly provides the necessary information. In addition, practicing employment law, most of the information is already known, since we went through an administrative process.
I believe that flexibility is important to the program relative to the timelines.
I believe that it is unduly burdensome in situations where a defendant is filing a motion to dismiss all claims. It can allow a plaintiff to collect a ransom for filing a frivolous case so as to avoid the cost of the burdensome discovery, as would have been the case here if the judge had required us to participate.
I believe that the default timeframes for production of ESI are grossly unrealistic.
I believe that for Mandatory Initial Discovery Pilot Project assists parties in presenting immensely and is a creative tool for the Court to ensure parties work diligently on their cases.
I believe the mandatory initial discovery was helpful to get the case moving.
I believe the marginal benefits gained by the MIDP are outweighed by the extra layer of costs associated with it.
I believe the MIDP program provides only drawbacks with no corresponding benefits.

I believe the program benefits Plaintiffs more than it does Defendants, and for that reason find it to be a bit unfair.
I did not find that it substantively resulted in any change in outcome, costs of litigation, etc.
I did not like mandatory disclosures. Rather than making discovery easier or less costly, it seemed to add another layer of work and cost. Also, I believe that as part of the adversary process in civil case, attorneys should have to discover information through their own discovery requests unless the parties mutually agree to exchange documents and information informally before formal discovery as part of settlement discussions. Also, it very much seemed that discovery requests remained more or less the same after the initial disclosure were already made.
I did not see any impact on hastening settlement or disposition or in avoiding discovery disputes.
I do believe the program is helpful in getting the parties to focus on the core issues in the case, and in lessening the time and expense of discovery generally.
I do not believe it is helpful to move towards early resolution of fee shifting cases, class or individual.
I do not believe that the pilot program has made cases more efficient or saved my clients money.
I do not believe the MIDP program meets the stated goals.
I do not believe the pilot program adds anything useful to the process of litigation in the Northern District of Illinois.
I do not believe the pilot program has accomplished the goals of reducing costs and delay with respect to discovery. In fact, the pilot program has made it more onerous and costly for defendants in complex cases to engage in anticipated discovery before discovery begins. I believe the ND Ill should terminate the pilot program like the Dist. of AZ did.
I do not believe the pilot program speeds discovery or resolution. Instead, it results in a fire drill for defendants, who are scrambling to locate documents under tight deadlines. After having litigated many cases under the MIDPP, I think the burden outweighs the benefits. However, I think it could be revised to require early production of available documents (in employment cases for example, personnel files). The concept is good but in practice it is very difficult to manage. This is especially true for large cases and class actions.
I do not find it useful. It is too pro forma and only delays genuine discovery.
I do not find the mandatory initial discovery helpful in my practice. The initial disclosures usually provide very little insight into the opposing parties' positions and does not less subsequent traditional written discovery.
I do not find the MIDPP to be a material improvement over Rule 26(a)(1). The early disclosure of facts and defense theories can also take away a strategic advantage when defending against a frivolous claim (e.g., by allowing a Plaintiff to tailor their discovery responses or amend their complaint to otherwise avoid summary judgment).
I do not like it. It is overly burdensome and too premature.
I do not like the MIDP program. The courts should follow the federal rules, the MIDP simply increases litigation costs.
I do not think it's useful and it's overly burdensome.
I do not think MIDP is effective in the types of cases I handle. Expensive and cumbersome. Every MIDP case I have had it has been more expensive and actually made the case harder to settle because the parties had more "into the case" by the time written was complete.
I do not think that it is necessary as Rule 26 already suffices and the additional restrictions on defendants having to provide discovery when an MTD may likely resolve the case.
I do not think that the mandatory initial discovery pilot program was worth the costs it imposed. It attempted to solve problems that I believe are adequately addressed by existing rules of civil procedure. But it does so in a way that creates additional expense for the parties without significantly advancing the aims of discovery in general. The additional overlay of rules it imposed did not seem worth the

benefits that the court likely anticipated. And to the extent that the court saw benefits from this pilot, I hope that it considers the costs to litigants, especially clients who pay their lawyers an hourly rate.
I do not think.it was effective in early resolution of our cases in the employment law area. It required additional time to work up a case early which did not result in cost or time savings on the back end. Experienced and competent litigators can adhere to reasonable discovery deadlines.
I do not yet have sufficient experience with the pilot program to compare and contrast it with prior practice in this district.
I do not think the program is helpful.
I don't believe it's all that helpful.
I don't believe that mandatory initial discovery facilitates case resolution (early or otherwise) but serves only to add unnecessarily to the costs of litigation.
I don't favor it.
I don't find them particularly useful.
I don't see the need for it.
I don't think it is helpful for anything except for very small straightforward disputes with limited discovery. I also don't think it speeds anything along.
I don't think it is necessary. It creates extra work and delays the start of cases.
I don't think it works well. In my experience, it does not lead to quicker resolution of cases or more efficient discovery, and, often, it can be an unnecessarily cumbersome process.
I don't understand the requirement that Initial Disclosures be signed under oath by the party
I exclusively practice in this court and the MIDP project has not changed anything about how I conduct discovery or how opponents respond to discovery. We should return to the old procedures that all other district courts in this country follow.
I feel stricter adherence to discovery deadlines (absent good cause for extensions) and more oversight (more frequent status hearings) would be more effective in pushing simpler cases to early and efficient resolution. Many NDIL judges are already very good at this. MIDP often does not fit larger/more complex cases and is a significant burden on parties with voluminous files/ESI.
I feel that it adds more cost to litigation and provides no advantage.
I find that in tort liability cases, under diversity, or employment discrimination cases occasionally video of a disputed event is required to be turned over before the plaintiff has committed him/herself under oath to an account. Before MID, we could at least get the plaintiff's sworn account in interrogatory before production of the video of the disputed event, a more equitable result.
I find that the mandatory disclosures, as bright as they are, generally disfavor the premises liability defendant. It was often-times surveillance footage of the event itself which when disclosed of front forms the basis of the plaintiff's testimony. And more equitable approach is found where the plaintiff has to commit to an account of the event before seeing the video.
I find that the MIDPP is a useful way to streamline the volume of requests, but usually supplemental requests are necessary anyway.
I found it placed asymmetric burdens on the defense and did not, in my opinion, materially improve the efficiency of the litigation.
I found it was much more work for defendants, no extra work for the majority of plaintiffs, and did not find it to be valuable.
I found the MID pilot program to be very similar to the required Rule 26(a) disclosures but only a bit more extensive.
I generally find it wasteful and an unnecessary expense to the parties. Moreover, invariably one party takes it less seriously than the other.
I generally like it because it promotes more early disclosure which helps with case evaluation.

I generally think the program is a good idea. However, when implemented and enforced where there is dispositive motion practice, it adds a cost (sometimes significant) to the parties that would not otherwise incurred if the motion is granted.
I have been on other cases with the program and did not find it particularly helpful. I do think it would be helpful to have clearer rules about how to conduct electronic discovery, which has become something of a nightmare of expense and traps for the unwary. Getting agreed search terms subject to Court assistance where there is an impasse would be very useful.
I have had three or four cases subject to the MIDP. I've been the defense in all cases. The program has potential if parties follow the rules, including by supplementing and certifying they have complied, etc. However, my experience was that most parties do not know the rules or comply with them—there is an initial exchange of MID and then the parties seem to forget their obligations under the program. The MID turn out to be more akin to initial disclosures and the parties wind up serving the written discovery they would have served anyway. For these reasons, I did not see that it worked as I believe it was intended to work. (I never had a judge ask the parties about MID supplements or raise MID at any time other than the beginning of the case.) Also, I felt it put additional obligations on corporate defendants in the early stage of litigation but not on individuals (who, again, in my experience either did not follow it or treated the MIDP as Rule 26(a)(1) disclosures and nothing more). There is potential to encourage early streamlining of issues and possible early resolutions by modifying discovery practices, but I did not think the MIDP succeeded on these fronts, at least not in the handful of single plaintiff matters I defended that were part of this program.
I have not found it helpful in any case I have been on. It was much improved when a rule 12 motion stayed the required answer. The prior rule, requiring an answer regardless of the filing of a rule 12 motion, was exceedingly wasteful as the matters I handle are typically primarily questions of law. Furthermore, setting rules for exchange of discovery that are independent of reasonable negotiation between the parties is not helpful. The system requiring meet and confer and proposed schedules contained in the FRCP is a superior system to the MIDP.
I have not found it helpful in streamlining and/or expediting the discovery process, nor have I noticed that it decreased the average number of disagreements regarding the discovery process.
I have not found it useful. It causes an expenditure of resources too early in the litigation process.
I have other cases where the pilot program has been in place. I do not like it. The existing rules are more than adequate and adding different rules unsteadily complicates matters. Further, no matter how much emphasis is put on initial disclosures, party specific discovery will be needed, and discovery motions are unavoidable. Less emphasis on process and more emphasis on substance is the better path, in my opinion. Thank you for all the Court does and thank you for asking for my thoughts.
I have regularly made disclosures under Rule 26(a)(1) for several years. Quite frankly I do not see the difference. I wholly agree with the goal of moving a case along as expeditiously as possible.
I have used in other cases. Discovery is still necessary because the automatic disclosures are not sufficient.
I have used it in other cases and find it is advantageous to move the case forward or to facilitate settlement.
I have yet to have a case in which I felt like the mandatory initial discovery program significantly changed the overall pace or trajectory of discovery. I am not necessarily opposed to it, but my subjective impression is that it has not moved the needle much.
I haven't seen much benefit from it. Rather, I think some litigants try to use it to specifically trip up the other side if they don't follow the requirements exactly. I think Rule 26 sufficiently addresses discovery issues and obligations.
I hope that the district moves away from this program. Any perceived benefit does not justify the huge cost to litigants.
[redacted] It was a joke and unfairly placed a burden on Defendants. Plaintiffs rarely, if ever, provided helpful documents or items at this stage and completely repeated discovery requests even though same

had already been provided during the MIDP. It simply made discovery more costly to Defendants and did not aid in earlier or quicker resolutions. Thank goodness it was done away with.
I like the program.
I love it. It holds people's feet to the fire. There are circumstances, though, where it should be stayed and usually the Judge agrees. I am also a big fan of it because prior to the pilot, we agonized over objections. PP takes that away, because it's just relevant to a claim or defense, whether or helpful or harmful, should be provided. It doesn't make us worry so much about disclosures that hurt us ("volunteering information") because we just have to produce the documents.
I personally prefer the normal discovery rules and process.
I practice employment law on the defense side. I do not feel the program was appropriate for employment matters in the long run and had too many short deadlines that are sometimes difficult to comply with in light of the nature of employment cases. If the MIDP comes back, I do believe there should be an employment track more tailored to employment suits, rather than a generic/general program that forces such cases into a box that is not fit for the peculiarities of employment disputes.
I prefer to not have them. I think the FRCP are adequate.
I primarily handle patent infringement matters so I do not have experience with the Court's MIDP.
I see its benefits, but it is very burdensome.
I see the value of the mandatory initial discovery in a fact-intensive, document intensive case.
I still don't understand how it's different from Rule 26(a) disclosures.
I strongly dislike. eDiscovery is very expensive and time consuming, and I think it is important for the parties to be given time to give it a thoughtful approach. The quickness of the MIDP creates problems for litigants, even those that are prepared.
I support the program, but the magistrate judges need to be trained to help the parties comply and be willing to grants motion to compel when there is no compliance. This is particularly true with ESI. [redacted] The program is only as good as the judges who enforce it. Because I have had no success in convincing a judge to enforce the provisions it has had no meaningful positive impact on my practice—which is frustrating because the concept behind early disclosure is both practical and positive. I hope the Court will continue to work on training and enforcement, as I do believe early disclosure could improve early settlement potential and diminish the overall need for protracted litigation.
I think in most cases, particularly small ones, it is not beneficial and in fact forces the parties to spend money early in the case that would be better spent in potential settlement. There may be some cases where it is helpful, but most of mine, it was not.
I think it has potential to be helpful.
I think it is a good idea and should be continued.
I think it is a good idea but, having to answer a complaint and file a motion to dismiss is nonsense and defeat the purpose of reducing costs.
I think it is a good idea.
I think it is a good way to get a case jump-started with the exchange of information and helps lead to more focused discovery thereafter.
I think it is an efficient way of dealing with the most pressing discovery issues off the bat, as opposed to allowing broad discovery requests that inevitably result in motions and disputes.
I think it is grossly unfair to defendants to require the costs and burdens of collecting and producing documents before a viable claim or complaint has been sustained.
I think it is more helpful when dealing with large scale litigation. In smaller cases, it doesn't accomplish much but results in additional fees.
I think it is unnecessary and unduly burdensome on attorneys, particularly when there is a pending motion to dismiss.

I think it unnecessarily drives up defendant employer's costs at the outset, and as such is prejudicial to defendant employers.
I think it was cumbersome and not really an improvement on the usual rules for initial disclosures.
I think it's a good idea in many ways, but I'm skeptical that recalcitrant parties will be forced by the Court to fully comply.
I think it's a good program overall and has facilitated discovery in other case we're involved in much faster.
I think mandatory initial discovery is a great idea as it makes the parties focus on facts and law of the case at the outset.
I think that the program is effective when it's enforced.
I think that this program is not useful for public accommodation cases under title III of the ADA. That's my primary practice and the course of these cases does not align well with the mandatory pilot program. I think that the court should seriously evaluate the effectiveness of this program from a greater perspective.
I think the initial discovery procedure is fair and a reasonable means to get the basic documents exchanged. It also allows for the identification of potential witnesses and requires counsel to focus on that issue. So, on balance I'm in favor of the process.
I think the mandatory discovery provision referencing Rule 12(a), though more relaxed than the pre-December 2018 order, can still start the discovery clock too quickly when a likely meritorious 12(b)(6) motion is pending.
I think the mandatory initial discovery program is a great idea for most cases, but it is not appropriate for ERISA cases since the Court is restricted to only reviewing the Administrative Record.
I think the MID are actually more difficult- as it is harder to determine who to depose, in addition, I have not noticed a reduction in the amount of discovery completed because of MID.
I think the MIDP is a good idea and is useful.
I think the MIDP puts an unreasonable burden on defendants.
I think the program was good in concept but was not necessarily as effective in practice.
I think, overall, it's a very useful program, and good to have. However, for many cases, its document production requirements are too stringent and burdensome (especially for a defendant who may have no advance notice of a case). I think there should be a revision to the production, requiring parties only disclose categories/types of documents that will be produced.
I thought the MIDPP was okay. It did seem to force plaintiffs to provide some justification for their lawsuit earlier in the case than normal, which was helpful in certain cases. However, for defendants, the program often created additional financial burdens by forcing them to produce documents early in the case when the issues in the case may not have been determined (or limited by motions to dismiss). The revisions to the program, which allowed for a deferral of the MIDPP disclosures until after an answer was filed (rather than a motion to dismiss) was definitely welcome, so I think that if the program continues in the future, it should contain the provision that the MIDPP disclosures are not required by a defendant until it files an answer to the plaintiff's complaint. Otherwise, it's just used as a tool by plaintiffs who may not have a meritorious case to leverage a settlement early on because the defendant will otherwise have to spend time and expense to gather documents and information for the MIDPP disclosures much earlier in the case than normally.
I understand its purpose, but I don't think it's implemented in the most efficient way.
I usually do ERISA cases so only the administrative record should be subject to mandatory initial discovery.
I view it as a positive program in general.
I was pleased to learn amendment to standing order no longer requiring Answer if pre-Answer motion filed pursuant to Rule 12(b).

I wish I had an opportunity to discuss settlement with the court before I had to accept the plaintiff's settlement terms or risk incurring additional legal fees (defendant was required by statute to pay for plaintiff's legal costs).
I wish you did not have to notice a motion- when it is stipulated- to move a hearing date when the whole point of the motion is that you cannot make it to the scheduled hearing date in the first place.
I'd recommend pursing it further.
I'm happy to see that the NDIL moved away from requiring answers simultaneously with 12(b)(6) motions.
I'm not a fan of it because expensive and not tailored. Our motion practice avoided it.
I'm not a fan.
I'm not sure that Mandatory Initial Discovery adds anything. It may just lead to more disputes as to whether the parties have complied with their Mandatory Initial Discovery obligations.
I've not been subject to it enough to say with much confidence. It is cumbersome so early on in the case. But it forces the parties to produce for themselves, as well as for the other side, just about all necessary information and documents.
I'm glad it's over.
If the case went into discovery, I think the new plan would have streamlined the process.
Impedes working on scheduling or settlement because parties are wrapped up in trying to meet the edicts of the order.
In 1983 cases, this is a very one-sided process and requires much more from the defense than from the plaintiff. Moreover, the parties end up duplicating the discovery during the normal process anyways. I get the same interrogatories and same production requests from Plaintiff regardless of what I have already produced. It's like they never even read or review what I have given. It's a complete waste of time and should be done away with. Or there should be some way for defendants to recoup costs associated with duplicative requests by Plaintiff's attorneys.
In employment cases like the instant case, we are usually dealing with undocumented workers being paid in cash. Neither employee nor employer usually has any paper records for obvious reasons; in other types of cases, especially those that should be settled as it is clear one side will prevail, an immediate exchange of records is beneficial and will encourage a quick settlement.
In favor.
In general, I don't find initial discovery programs like this to be useful.
In its original form it was not good. Requiring initial disclosures and answers before ruling on fully dispositive rule 12 motions is burdensome on defendants and unfair when claims have no merit. I have seen no added benefit to the original form nor the revised December 2018 form. It should not return.
In more complex cases the mandatory discovery program may help assist in narrowing issues, but in smaller, less complex cases the initial cost of responding to the discovery requirements increased the cost to clients that may have hampered settlement.
In my cases it really has not made too much of a difference—the parties have been generally cooperative and forthcoming with discovery compliance as a matter of course. Discovery might be more of an issue in complex corporate litigation.
In my experience it is an added burden that does not streamline further discovery requests or disputes.
In my experience, more discovery early in a case does not help settle or speed up the case.
In my opinion, the mandatory initial discovery program did not provide any significant advantage in resolving disputes, and often just overlapped with written discovery issued later on in the case.
In my opinion, there are aspects of MIDP that could be helpful in patent cases, consider an opt in option.

In not sure it accomplishes any more than that normal 26(a)(1) disclosures. I think litigants will withhold and supplement if they absolutely have to later. I feel like it hasn't reduced the gamesmanship inherent in discovery.
In smaller cases, like this one, it is a great program as it saves each side quite a bit of money and gives each side an early understanding of the strengths of the other side's case and weaknesses of your own without the time and cost of expensive discovery.
In some cases, mandatory initial discovery pilot program works. In a case like ours, it was not that beneficial.
In this instance the parties agreed to forego discovery until the complaint was tested by a motion to dismiss. The parties are not so reasonable in every case. I believe that the mandatory initial discovery project often imposes unnecessary costs on defendants in particular and is predominantly used as a one-way lever by plaintiffs to drive up nuisance value. It should be retired permanently.
Incredibly burdensome, and more on defendants than plaintiffs.
It creates more work, and often duplicative work, for attorneys without any tangible benefit.
It disproportionately benefits plaintiffs. It drives settlements based on avoiding the cost of discovery and not on the merits of the case.
It does not appear fully effective or useful in cases brought under 29 U.S.C. Section 1132(a)(1)(B), which have their own rules pertaining to discovery (or rather the lack thereof).
It does not make sense for defendants to have to answer and engage in discover when they have filed a fully dispositive motion. It is wasteful.
It forces people to think of discovery before filing suit—at least I hope.
It gives unfair advantage to Plaintiffs—especially those without legitimate claims. It places a higher burden and expense on Defendants.
It is a good program.
It is a good program, but this particular case would have been fine without it.
It is a good program in theory for certain cases, but it is not necessarily helpful in all cases.
It is a good thing.
It is a huge advantage to plaintiffs when fees are allowed in FDCPA cases, because it raises their fees before we can even get a MTD heard. They then want a higher settlement based on those unnecessary fees, even though their case has little or no merit. MIDP, in FDCPA cases at least, increases the number of meritless claims and increases their settlement amounts. I clearly do not favor it for these types of cases. I understand how it may be helpful in other cases, but it would be better used by requiring it only in certain types of cases.
It is beneficial to get the documents out immediately, but it can lead to duplicative requests from counsel unfamiliar with the process.
It is burdensome and does not increase efficiency. I have not found that the program assists in the resolution of cases or in discovery. In general, the parties' MIDP disclosures mirror the substance (or lack thereof) of their Rule 26a1 disclosures and written discovery responses. I would prefer not to have the program as it generates confusion and unnecessary additional work.
It is effective in smaller cases. However, in larger cases with a number of custodians and loads of documents, it is not as effective.
It is fine.
It is not effective and does not accomplish its goal. There is also great confusion about the need for supplementation through the MIDPP v. through provisional requirements of the Rules of Civil Procedure.
It is not helpful and results in unnecessary burdens and expenses on defendants, particularly when a motion to dismiss is filed.

It is not necessary. If a plaintiff wants to move the case towards resolution, that attorney should not require prompting from the court to do so. Likewise, if a defendant wants to bring defenses to the attention of opposing counsel, that defendant's attorney need not wait for a Rule 26 deadline to do so. While the underlying purpose is laudable, it is probably as necessary as in court status hearings.
It is not workable in the class action context. There is an extraordinary burden on the employer and very little burden on the plaintiff
It is valuable and important. I hope that it continues. In this particular case, my client was dismissed as a defendant. In my other cases with defendant's who must defend in civil matters where we know that there is no evidence, and where the court is used as a tool of extortion, the program helps that come to light sooner.
It just makes extra work, and it should be discontinued. The procedure in the federal rules works fine.
It makes sense for an early exchange of discovery to efficiently move cases through the system.
It placed an extremely high burden on my client and made it very difficult to determine which depositions to take.
It places an unfair burden on defendants in employment litigation and thereby tips the scales unfairly in favor of settlement at an excessive price.
It played little role in this particular case.
It puts a greater burden on defendants than necessary, and especially in employment cases, does nothing to encourage an early settlement when often-times Defendants have a good basis for summary judgment in such cases.
It remains ineffective because Plaintiff counsels produce almost nothing of substance because Plaintiff counsels expect to engage in the same costly discovery process the MIDP was intended to help control.
It required extra effort for little or no gain. The only reason it did not do more harm is that virtually everyone just paid lip service to the program and then did "real" discovery under the existing rules. Almost nobody ever tried to enforce the program because "real" discovery was already available. The program also imposed a Brady-like obligation on the parties, which fortunately was also largely ignored. Good riddance.
It saves the parties having to make formal requests.
It seems like a good idea.
It seems like another box to check rather than a program that meaningfully progresses the litigation.
It seems redundant of 26A requirements.
It seems to be working, but the proposed orders need to be more detailed with the e-discovery issues.
It seems to work fairly well but it can be difficult for corporate parties to obtain all materials required quickly enough.
It seems unnecessary in certain cases and adds expense.
It should have a quick and merciful death. Very bad idea.
It still needs some tweaking for cases where there are issues that can be resolved on the pleadings. The plaintiff should not be entitled to mandatory initial discovery if they cannot even state a claim or are subject to arbitration or forum-selection clause.
It was an honor being in Judge [redacted]'s courtroom.
It will not be missed by the defendants' bar.
It works well for commercial disputes. It does not work as well for larger commercial disputes with many moving parts. In those cases, transfer to a magistrate earlier on in the process is key. One size fits all doesn't work where there are numerous counts, it issues like RICO or dispositive motions early on.
It would be helpful to clarify that ERISA benefit claim cases are not subject to the MIDP so as to not require seeking an exemption on a case-by-case basis.

It's a good program and should continue.
It's a very good idea that all federal and state courts should consider
It's fantastic, when people actually provide it.
It's useless when the other side is not participating in good faith but rather is engaged in extortion-by-litigation. It just gives that party more opportunity to run up your side's fees, increasing the effectiveness of its extortionary tactics.
It's worthwhile but doesn't have make any earthshattering difference regarding case progress or volume of discovery.
It's helpful and generally fine until the other side tries to use it offensively.
It's one thing to identify docs that will be produced but requiring the parties to produce all initial docs in a short timeframe is unrealistic for commercial cases.
Its intentions are good, but the usefulness is almost always determined by how detailed the disclosures are. Not specifically relevant to this case, but in some instances, plaintiff's counsel will issue discovery that suggests they didn't bother to read the disclosures beforehand.
Judges should have additional discretion to modify the requirements depending on the needs of an individual case.
Litigants still propound written discovery and the same discovery issues arise—so this is just an added up-front expense.
Makes sense to streamline litigation.
Mandatory disclosures and upfront discovery and positions could be positive, but needs management by the parties in good faith and, also by the relevant judicial officer; in many cases, discovery is asymmetric
Mandatory discovery should be deferred until after any responsive dispositive motions are resolved.
Mandatory initial discovery helps me settle cases earlier. I don't know why it was not made permanent.
[redacted]
MIDP is well-intentioned but does not allow for the complexity and time of modern discovery and should not be mandatory.
MIDP serves to burden defendants and coerce settlements. That may move the court's docket, but it is not justice. It effectively causes the courts to collude with dishonest plaintiffs to leverage settlements. While opposing counsel in this case are excellent, ethical attorneys that just is not always the case. Furthermore, in fee-shifting cases MIDP needlessly increases the cost of settlement.
MIDP was very ineffective, primarily because the opposing parties would rarely produce their MIDP responses or, if they did, the responses did not include any additional information beyond what would be produced informally, via standard Rule 26(a) disclosures or through formal discovery. In fact, since the ND IL MIDP program required that the parties complete MIDP responses before proceeding with formal discovery, discovery was often delayed without consequence to the offending party who failed to serve their MIDP responses.
MIDPP works as intended. However, opposing counsel often-times asks for the same discovery in subsequent written discovery.
Modification of the Standing Order to allow motions to dismiss to be decided before having to answer was a smart decision.
My experience has been limited. I obtained a voluntary dismissal of my client early in this matter, so we didn't get into discovery. The other parties can better speak to the MIDPP.
My impression is that parties don't take the substance of the initial disclosures as seriously as they should.
My Northern District Practice primarily involves PSLRA disputes, to which the MIDP is not applicable.

N/A
N/A
N/A
N/A
N/A
No comments.
No comments one way or another.
No strong feelings because I haven't yet had to provide the disclosures.
No comments.
None
None
None
None
None
None
None.
None.
Not a fan.
Not a fan. Just adds another layer of discovery and something to fight over. The EDI time frames are unrealistic in the vast majority of cases. Full discovery progresses after MIDP disclosures so what's the point.
Not always helpful in all cases—ERISA cases are often not helped by way of the mandatory initial discovery program.
Not always helpful in moving the case forward and especially disfavors defendants in employment cases where a plaintiff can simply adjust their testimony prior to be under oath or providing written answers under oath.
Not applicable to this case.
Not applicable.
Not at this time.
Not effective. Costly. Not well received by clients.
Not helpful in most cases.
Not helpful in my cases.
Not helpful or productive.
Not particular to this case but overall, I thought it was a good project.
Not really necessary.
On several cases that were subject to MIDP, the parties did not provide any initial discovery, other than as part of information provided as part of settlement discussions.
Only concern with the program was the former requirement that answers be filed simultaneously as 12(b) motions (which did not apply to this case, where qualified immunity was involved). With the amendment to remove that requirement, no complaints.
Oppressively costly for small defendants.

Other than Rule 26a disclosures, no mandatory initial discovery protocol was in place or used by the court or various assigned judges during the case.
Our case fell within the time-period before the court clarified the procedures in cases where motions to dismiss are filed, so these issues may have been mitigated by that subsequent revision. But determining what might be relevant to a claim that was almost certainly going to be dismissed was problematic and unnecessary. It is also telling that plaintiff did not issue any document requests in the case, because defendants' initial production had been required to be over-inclusive.
Our case was a personal injury arising out of a motor vehicle accident. The discovery in the case progressed in largely the same way that it otherwise would have.
Overall, it is probably a good system. It gets the parties to come forward with the relative facts promptly. I would suggest defendants get at least 30 more days to put their responses together.
Plaintiffs seldom comply with all of the requirements, while demanding full compliance from defendants.
Please discontinue. Just an added layer of useless back and forth between the parties. Has no effect on early settlement.
Please do not bring it back. If you do, it is 110% necessary to keep the change that paused initial discovery while 12(b)(6) motions are pending.
Please reconsider at least until valid Motions to Dismiss are decided.
[redacted] representing multiple individual officers, where I am putting together municipal or corporate documentation (and many times that entity may be separately represented), and the certification requirement as to individuals who may not be in a position to truly certify the responses. It seems the certification requirement should be that of the corporate or municipal entity only. I do like the program and it has helped us focus cases earlier than the conventional manner. Thank you.
Prefer not to have it.
Program was great for helping resolve small case like this one.
Program was not good. Requiring defendant to answer when also filing a MTD also wasteful.
Provides too much leverage to plaintiffs who file weak cases.
Requiring MIDP disclosures to occur when there is a pending motion to dismiss is illogical.
Resulted in duplication of efforts and abuse of the discovery process by opposing counsel.
Rule 26 is sufficient.
Rule 26(a) disclosures are sufficient. The rules requiring discovery while a motion to dismiss is pending are unfair to the Defendant.
See above. The pilot should be discontinued.
See comment above. I think it's a waste.
See comment above.
See comments that I just made on the prior page. This program is a waste of time and unduly burdensome to defendants.
See my comments in: [redacted].
See previous comment. In all the years that I had cases that required it, it was unhelpful, costly, and repetitive of discovery that followed.
See previous response.
See prior comment.
Seem excessive and increases costs for cases that settle prior to discovery.
Seemed to work well in this case.

Social Security benefits cases are really appellate cross motions for summary judgment. NO discovery. Just briefing on the admin record
Sometimes the program is a square peg in a round hole. Sending out discovery when the parties are actively settling is a problem.
Substantial cost to my client in light of pending Motion to Dismiss. Additionally, it did not circumvent any discovery requests made through written discovery.
The amended MIDPP regarding Rule 12 motions is very efficient and well needed. It worked perfectly in this case.
The applicability of the mandatory discovery program was a factor in our decision to push this case to arbitration and the MIDP increases costs.
THE BASIC PROBLEM WITH DISCOVERY IS IT IS VERY TIME CONSUMING AND LEADS TO EXORBITANT CLAIMS FOR ATTORNEYS' FEES, DISCOVERY SHOULD BE TAILORED TO WHAT IS ACTUALLY NEEDED FOR THE PARTICULAR CASE RATHER THAN USE A SHOTGUN APPROACH, WHICH IS VERY BURDENSOME FOR THE CLIENT, AND MOST OF THE DISCOVERY REQUESTED IS IRRELEVANT TO THE ACTUAL ISSUES IN THE CASE.
The changes to the program are helpful. Filing an answer concurrent with a motion to dismiss was burdensome. The production deadlines (30 days for hard copy; 45 days for ESI) are onerous—particularly as to ESI. It's just not realistic. The written initial disclosures are fine as they are very similar to Rule 26(a) disclosures.
The exchange of written discovery is sufficient. Mandatory initial disclosures are unnecessary and create more work.
The FRCP 26 disclosures are sufficient. The MIDPP is well intentioned but unnecessary.
The hardest provision is the requirement to answer while a motion to dismiss is pending. It is unfair to require an individual to answer a pleading (which can be later used against the party) where the claims are barred as a matter of law and it requires even more work and expense for the defendant. Most litigants ignore the rule to limit discovery after the initial disclosures to items not already produced and issue discovery before initial disclosures are due. I do not mind doing the initial disclosures though because it is all information we must produce anyway, and it may keep the other litigants from arguing its relevancy.
The initial discovery rules are an unconstitutional violation of a defendant's due process rights because they immediately impose burdens on corporate defendants that are so expensive and difficult to satisfy that plaintiffs who have filed a completely meritless case can immediately demand a nuisance value settlement in excess of $1 million because that is cheaper for a defendant than complying with discovery obligations imposed. Due to its interlocutory nature, the initial discovery pilot program cannot be effectively or reasonably challenged by defendants on appeal. Clearly this pilot project is a gift to the plaintiffs' bar.
The judge was very flexible, which was greatly appreciated.
The mandatory discovery program is very burdensome and expensive and, puts significant pressure on civil defendants in particular at the beginning of litigation, thus increasing legal costs and hampering any prospects for early resolution.
The mandatory initial disclosures are burdensome, in that they require you to identify all possible people with knowledge and all possible documents. At the same time, they are unhelpful, because you do not know who the other side actually intends to rely on at trial. Opposing counsel may name dozens of people and trying to figure out who actually needs to be deposed is difficult.
The mandatory initial discovery program is very onerous and, favors plaintiffs as they generally have little or no ESI. I am not in favor of it.
The MIDP is duplicative and burdensome. The normal procedure under the Federal Rules works fine.
The MIDP is well-intentioned but ultimately ineffective.

The MIDP process is convoluted and does not approach its goal of expediting discovery at all. It also is unfair to institutional parties, as they are expected to produce documents at a greater speed than individuals.
The MIDP seems totally unnecessary and cumbersome. FRCP already has mandatory disclosures. I was happy to see the change that excepting MIDP where a motion to dismiss was to be filed.
The MIDP simply polarizes my clients by forcing legal work that is often unnecessary. I have not had a single case in which they reduced the total cost of the case, and they far too often made it harder for me to get cases settled. In non-fee-shifting cases that may not be true, but they hinder resolution in fee-shifting cases.
The MIDP typically imposes potentially unnecessary costs on defendants early on. Those costs are one-sided; they do not impact plaintiffs. It makes nuisance suits more expensive for defendants.
The MIDP was overwhelmingly unfair to Defendants and required the disclosure of documents at the onset of the case, which were ultimately "re-asked" for by Plaintiffs during the standard discovery process. IT DID NOT SAVE ON ANYTHING AND ONLY CREATED MORE WORK. Plaintiff rarely IF EVER provided any early documents in their possession including medical records. It was a joke. Please don't try to revive this process.
The MIDP was unnecessarily burdensome and drove up costs. It should not be renewed.
The MIDPP was not helpful, and I am thankful the pilot program has ended.
The obligation to list all documents that "may be relevant" and to produce all such documents in a party's possession, custody or control at the very start of the case before any other discovery is propounded is an undue burden, particularly for defendants who are not rich, and unnecessarily drives up the cost of litigation and settlement. Let the parties decide what documents they think they need from one another. More data is not necessarily better data. I would very much be interested in learning how the Court believes litigation and trials have improved as a result of requiring all litigants to comply with the MIDP, for if it does not improve the justice system what is the point?
The pilot offered no benefit to any of my tort cases, but occasional unfair advantage to the plaintiff.
The pilot program is inappropriate for cases like class actions and, would require the production of a substantial amount of material in a very short time. While it may work in simple cases, it is not appropriate for complex cases, and often imposes additional litigation costs on parties in such cases negotiating over whether mandatory initial discovery will occur. In addition, in such complex cases, the burden of mandatory initial discovery is disproportionately imposed on a defendant.
The pilot program unfairly prejudices defendants in terms of the quantity of work required and increased fees. Discovery should be stayed while motions to dismiss are pending. The program is in direct contravention of FRCP 1.
The procedure should be clarified as to when disclosures are required while a pre-answer motion to dismiss is pending.
The process was straightforward and was helpful in obtaining discoverable information that leads to the settlement of our matter.
The program can work fine if all sides are made to comply with it. When pro se litigants are held to lower standards, it simply creates more expense for compliant defendants, while letting pro se plaintiffs get away with no time or expense invested in the process.
The program ends up requiring a data dump of information that is not necessary and does not lead to earlier settlement. The disclosures of every person with knowledge also creates an unrealistic list of people to be deposed that are not really relevant to the litigation.
The program front loads investigation and decision making. I find the following very helpful to early decision making: The fact that defendants are required to give up all relevant documents, not just relevant documents that support the defense.
The program has not been a significant factor in the cases I have handled.
The program is expensive and burdensome; it does not eliminate any discovery burdens.

The program is terrible, it does nothing to help substantively. All it does is front-load litigation costs and forces clients to incur large legal bills immediately after the filing of a case.
The program looked fine, I just settled before needing it.
The program promotes prompt opportunity for settlement as it exposes the strengths or weaknesses in the case early on.
The program seems motivated by good intentions. As a practical matter, though, it really only accelerates some discovery by about a month. Any highly motivated counsel will propound complete and necessary discovery requests after the Rule 26(f) conference is conducted. This should result in production of everything required by the program.
The program was helpful in front-loading discovery in this and many other cases. However, the requirement of clients' verification of the MIDP disclosure is burdensome and unnecessary.
The program works well in certain cases. In others it does not need to occur and, in reality creates more expense because of the realities of litigation, client reporting obligations and the nature of certain cases. There certainly are a number of cases. I really wish it was used in in state court where it would be a boon.
The project provides laudatory structure to discovery in certain types of cases in which there is unlikely to be much legitimate dispute about the scope of discovery (but nonetheless might be delay and discovery disputes that waste the court's and parties' time). However, for complex cases or cases that present non-routine discovery issues, it is important that the court continue to recognize flexibility in removing or exempting appropriate cases from the pilot program.
The project should end. The discovery it requires is not useful. The FRCP should be followed.
The requirement of filing an answer contemporaneously with the filing of a motion to dismiss required additional work that ended up being unnecessary.
The requirement that a party (defendant) produce ESI in the manner requested by the opposing party seems to run contrary to the rule that a party produce information in the manner in which it is stored.
The requirement that an answer be filed, and discovery begin even if a motion to dismiss is filed is unduly burdensome, particularly when complaints are filed by pro se plaintiffs.
The revised version is an improvement.
There are occasional instances in which, given the voluntary cooperation between the parties, the mandatory program is unhelpful.
There needs to be a path to Rule 12 and pre-discovery motions and rulings before requiring parties to produce initial discovery.
There should be an exception for class action litigation.
There should be some flexibility with program to allow parties who are interested in working to resolve claims once case filed and not be burdened with costs and labor associated with mandatory initial discovery.
There was a Plaintiff that would file motions BECAUSE OF the MIDs arguing as to whether certain documents should have been covered under the program or not. It led to motions on it, when he could have simply just issued written discovery asking for specific discovery. I also find that as the Defendant I am turning over a lot of information that otherwise would never be asked for out of fear for failing to produce something, and meanwhile Plaintiffs turn little or no information over.
These are my opinions of the MIDPP, not the opinions of the office for which I work or my clients. I am extremely glad that it is over. I found it to be a hugely unfair burden to Defendants, especially when Defendants have thousands of documents to produce up from and Plaintiffs usually have far less than that (often less than 100). It seemed designed to push Defendants into settlement. Given the very low pleading standards in Federal Court, it resulted in a lot of unnecessary work on Defendants.
They are a waste of time. Rule 26 is sufficient.
Think it should be discontinued as it simply wasted time and money.

This case did not provide any opportunity for mandatory discovery disclosures, so it does not offer any meaningful help to determine the effectiveness of the program.
This case involves a plane crash and the investigating authorities have not issued their final reports. Disclosure of relevant materials are limited by statute and the parties have no independent right to the relevant evidence. As such, it was difficult to self-identify relevant materials and placed an undue burden on the defendants. I recommend that these types of cases be opted out of the program.
This case settled before discovery commenced, so I cannot provide responsive feedback on the MIDPP.
This case was dismissed on a Rule 12 motion, which could have been brought without having to incur the expense of discovery. Other than that, the program is good.
This is a bad program that should be discontinued. If a party has a motion to dismiss there is no reason for discovery. It should only proceed after the motion is ruled on and a case moves forward. This greatly increases costs for no reason. Terrible project that needs to be discontinued.
This is really difficult for larger employers, who may have lots of places where records are kept. We have to go searching for records that may not be useful to either side, or that neither side really wants, but we fall within the parameters of the MIDP requirements. It creates a lot more work for employer defendants, but in my experience, does not provide the same amount of benefit to the proceedings in a way that makes it worth it.
This program is valuable and meaningful. I fear that my answers may skew the data in a way that does not reflect my impression of the program. The other party did not adhere to the rules, so I was not able to answer in ways that support the program—even though the program was helpful.
This requires much more thought about a case at the time of initial filing, instead of putting that part off until later. Drives up initial costs dramatically, but those costs can be mitigated on smaller cases where additional discovery needs are significantly reduced.
This was an ERISA benefit claim case, so it was essentially a stipulated record. My personal view of the pilot program is that it is very inefficient and has increased discovery costs for all parties. It has the effect of basically completing written discovery twice. For employment cases where litigants are sensitive to cost, I do not think it adds anything other than maybe just an unintentional deterrent effect.
To be honest I rarely received any useful documents as part of a party's MIDP disclosures. I also found the program costly and burdensome in cases where the goal was to settle early, without court-mandated deadlines getting in the way. I think the MIDP was a well-intentioned program that did not have the impact it was meant to have.
Unfortunately litigants that want to play games and hide things are able to do so in the MIDP disclosures. I have received deficient MIDP disclosures several times but, have determined that it is easier to just ask for and seek what I need in further discovery requests rather than try to fight about MIDP. As a result of this, I feel that MIDP only works when the litigants are acting in good faith. Sometimes I have felt that I made my disclosures in good faith, but the other side did not, and the end result of the MIDP was that the other side got a free "sneak preview" of my case, and my client had to pay for my time to put together proper disclosures, while the scofflaw on the other side gets away with turning over nothing. So MIDP ends up being taken advantage of by litigants not acting in good faith and it unfairly hampers those who take it seriously. I'm not sure if there's a great way to correct this. Perhaps the judges could review the MIDP disclosures. But that would be a burden on the court.
Unfortunately, I am not sure it is saving cost or moving the cases along faster. It seems to depend on how serious opposing counsel takes its obligation to fully disclose information that is not helpful to their case and which may be helpful to the opposing party.
Unnecessary. Not appropriate for all cases and, takes too much discretion for case management and settlement away from the attorneys.
Useful in getting some information earlier, but parties often do not take it seriously or fully comply with it. Does not significantly reduce the amount of discovery.
Very burdensome. Could work in some cases but no this one or others I have had in the District.

Very good idea—provides parties with good initial information that they can communicate to their clients early in the litigation.
Was helpful, both sides worked together for a just settlement.
Waste of time and money in complex cases.
We did not use it in this case in light of the plaintiff proceeding pro se
We had no chance to participate in the program for this case due to early settlement
We were required to file an answer when we requested an extension, which was a total waste of time. We eventually filed a motion to dismiss which was granted. We should not have been required to respond to such a frivolous lawsuit.
Well-intentioned, but doesn't add anything of value to the overall progression of the case.
While a good idea in principle, it relies heavily on both sides of the litigation to be conscientious, knowledgeable, and willing to address the case as a whole. The plaintiffs were substantially lacking in these regards at times. Also, the pleadings in this case were incomprehensible and required significant litigation to narrow the claims and issues. As the matter involved significant trade/business practices, as well as [redacted], wholesale disclosure appeared problematic, even with a protective order that the Plaintiffs grudgingly accepted eventually.
While I applaud [the] initiation of the program, I do not know how closely attorneys are following its requirements.
While I've never seen an objection, the MIDPP puts defendants in the position to determine their defenses within a shorter period of time, while defendants are required to also answer or otherwise plead. In short, if held the letter of the disclosure requirements, there is a disproportionate burden placed on defense counsel at the very beginning of the case.
While it did not have to be done for this case, I think the MIDP is unnecessary, incredibly burdensome and expensive.
While the initial discovery is somewhat streamlined, it is not necessary, nor does it assist in resolving the issues in any cases more quickly than would occur without the program.
While the program has its merits, a "one size fits all" approach in any case just does not work. I, for one, am not a fan of the MIDPP.
With all due respect, I have not found the pilot program to be helpful to either side.
Works to motivate clients to collect and secure relevant information as early as possible.
Works well particularly since the amendment not requiring discovery to proceed when dispositive motion is pending.
Works well, modifications not requiring discovery proceed while dispositive motions are briefed has much improved the program.
Yes—it was helpful. The district court judge was very efficient.
You should clarify whether MIDP requires production of documents within the timeframe. In another case, plaintiff cited an AZ case that says all available documents must be produced instead of just listed. In most cases, that is impossible.
You should keep this to simple, run-of-the-mill cases.