

# RSI/ABA MODEL MEDIATION SURVEYS

## MODEL ATTORNEY SURVEY

### INTRODUCTION

Post-mediation surveys are the only practical, low-cost way to gauge how well a mediation program serves participants. They provide essential information for assessing the quality of your program.

Here's what follows:

- [Background information on the survey](#)
- [Advice on using the survey](#)
- [The survey with commentary, including core and optional questions](#)
- [A survey without commentary, including core and optional questions](#)

### INFORMATION THIS SURVEY PROVIDES

A survey gives you the opportunity to assess the attorneys' satisfaction with the process, the mediators' performance and the achievement of particular goals for the mediation process. It also allows you to gather information on the attorneys' perspective on particular characteristics of the case and the mediation.

#### SATISFACTION

Satisfaction with the process and outcome are broad measures that provide an overall sense of how participants feel about their experience in mediation.

#### MEDIATOR PERFORMANCE

You should be tracking mediator performance in two areas: ethical practice and competence.

##### Ethical Practice

Mediators are expected to be unbiased and to protect a party's self-determination by not being coercive. This survey asks the attorneys to assess whether the mediators have fulfilled these expectations.

##### Competence

Research has shown that attorneys can provide reliable feedback on mediator skills. In addition to the questions that are asked of parties, you can use some of the optional questions to ask attorneys to assess the mediator's competence in such areas as impasse breaking or preparing the parties for the mediation.

#### GOAL ACHIEVEMENT

No doubt you have particular goals for your program. Surveys can help you assess whether the program is achieving those goals. This survey includes questions related to a number of common goals of mediation

programs, including whether the parties gained a better understanding of each other's perspectives and whether their relationship or communication was enhanced.

## **CASE AND MEDIATION CHARACTERISTICS**

### **The status of the case at the time of the mediation**

How far along was the case? Were there any motions pending? These types of questions help you to understand the posture of cases in mediation and, when combined with other information, whether the cases are mediating at the most effective and efficient time.

### **The characteristics of the case at the time of the mediation**

Was enough discovery completed? Were the legal issues complex? Was there major disagreement about liability or about damages? The responses to these questions can lead to a better understanding of what characteristics exist in the cases being mediated, which can help in determining whether the program should be tailored to address particular issues.

### **The characteristics of the parties at the time of the mediation**

Did someone from each side have settlement authority? Was there a large power imbalance? Were the parties hostile to one another? The responses to these questions can be used to determine whether the program needs to address any issues. For example, if someone with settlement authority does not attend in a large number of mediations, the program may want to take steps to ensure that this is not an issue in the future.

### **Whether mediations are resulting in resolutions not available in court**

This provides information on whether mediation is adding value beyond just reaching settlement. Research suggests that parties are interested in resolving non-monetary issues.

## **A NOTE ON PROCEDURAL JUSTICE**

Procedural justice – a sense that the dispute resolution process is fair – is one of the most important concepts in the provision of justice. While there is no data on what affects attorneys' sense of procedural justice (as there is for the party's perception of procedural justice), the attorney survey contains the same questions pertaining to procedural justice as the party survey. The Committee included these questions with the belief that they provide information on the quality of the program and the mediators.

## **TIPS ON USING THE SURVEY**

### **ADAPTING THE FORM FOR YOUR PROGRAM**

The Committee carefully crafted wording and the response options for each question, then tested each question in the field. For this reason, we recommend that you use the questions as written as much as possible. See the [instructions for developing participant surveys](#) if you would like to make some modifications to the forms.

## WHEN TO HAVE ATTORNEYS COMPLETE THE SURVEY

There are a few options for having attorneys complete surveys. They each have their pros and cons.

### Right after mediation session, online

In this model, a mediator or a staff member asks the attorneys to complete the form online before leaving the mediation. This would require access to computers.

- **Pros:** The application automatically records all responses and provides simple statistical analysis. This model also has a high response rate since the participants complete the form right at the end of mediation. It may be low cost, depending on the online survey application used to administer the survey and availability of computers.
- **Cons:** It requires access to more than one computer so that the participants can complete the survey at the same time. Participants can be tired and rushed at the end of mediation and therefore may not want to complete the survey or may not think about their responses. They may also tend toward a positive bias in their responses because they are completing the form in the mediation space.
- **How to administer:** To prepare the attorneys to complete the survey, have the mediator tell the participants before the mediation session starts that they will be asked to complete an evaluation survey at the end of mediation. In order to minimize the possibility of bias, it's best if the participants complete the survey when the mediator is not in the room. To ensure that parties are not left in the room alone together (which has possible repercussions on party safety), have the sides go to different rooms to fill out the survey. Another option is to have a staff member come into the room to administer the survey.

### Right after the mediation session, on paper

In this model, the mediator asks the participants to complete the survey before leaving the mediation and then hands out the survey forms.

- **Pros:** Along with the first option, this has the highest response rate since the participants are handed the form while still at the mediation site. If Optical Mark Recognition (OMR) software is used to read the survey responses into a database, the software will automatically record all responses and provide statistical analysis.
- **Cons:** Since the attorneys are handed the form by the mediator and they are evaluating that same mediator, they may be inclined to answer more positively. Participants can be tired and rushed at the end of mediation and therefore not want to complete the survey or will not think about their responses. You will either need to have someone enter the responses into a database or have to buy OMR software.
- **How to administer:** To prepare the attorneys to complete the survey, have the mediator tell the participants before the mediation session starts that they will be asked to complete an evaluation survey at the end of mediation. At the end of mediation, have the mediator distribute the surveys. In order to minimize the possibility of bias, it's best if the participants complete the survey when the mediator is not in the room. To ensure that parties are not left in the room alone together (which has

possible repercussions on party safety), have the sides go to different rooms to fill out the survey. Another option is to have a staff member come into the room to administer the survey.

- **Return of completed forms:** A number of options may enhance the sense that the responses are confidential, thus increasing the likelihood that attorneys will respond honestly. These include: 1) handing each attorney an envelope to put the survey into and seal; 2) leaving an envelope in the middle of the table for the attorneys to put their surveys into and having the last one seal the envelope; 3) putting a box in a convenient place for the attorneys to put their surveys into as they leave.

### **After the participants have left the mediation, online**

In this model, program staff emails a request to the attorneys to complete a survey online.

- **Pros:** Research has shown that those responding to a post-service survey are more likely to be honest in their answers when they are not in the presence of the service provider. Also, attorneys are able to complete the form when they aren't pressed for time. The online survey application automatically records responses and provides simple statistical analysis.
- **Cons:** Lower response rate. If the attorneys aren't given the survey to complete at the time of the mediation, they are less likely to complete it.
- **How to administer:** To prepare the participants to complete the survey, have the mediators tell the participants at the end of the mediation session that they will be receiving an email asking them to complete an evaluation survey.
- **Survey completion:** Send the email request within a day of the mediation. If an attorney doesn't complete the survey, email another request a week later. Send a final request a week after that.

### **After the participants have left the mediation, by mail**

In this model, the mediator hands the participants the survey and asks them to complete the form and mail it back.

- **Pros:** Attorneys are more likely to be honest in their answers because they are separated from the mediator. Attorneys are able to complete the form when they aren't pressed for time.
- **Cons:** This method has the lowest response rate because it requires the most effort by the attorneys. It's also not cost efficient.
- **How to administer:** To prepare the attorneys to complete the survey, have the mediators tell the participants at the end of the mediation session that they will be receiving an evaluation survey at the end of the mediation and ask them to mail it back.
- **Survey completion:** To increase response rate, provide a self-addressed, stamped envelope with the survey, but the response rate will still be lower than the other survey administration methods.

## MODEL ATTORNEY SURVEY (with commentary)

### CORE QUESTIONS FOR ALL PROGRAMS

**To help us to maintain the quality of the mediation program, please answer all of the questions below. Your responses will be kept confidential and will be used to evaluate our services. No identifying information about you will be released.**

Always start by letting the people responding to the survey know why they are being asked to do so and what will be done with their responses. The more work someone has to do in order to complete a survey, the greater incentive you must give them to do so. They want to know that their effort will be useful, particularly for them. Therefore, if the survey is to be completed at some point after the attorneys leave mediation, you may want a stronger introduction as greater encouragement to respond, such as: “Your response is very important to us. It provides us with the only information we have to help us improve participant experience with the process and program and to evaluate the mediator.”

<b>Case Name:</b>	<b>Case Number:</b>
<b>Mediator Name:</b>	<b>Referring Judge:</b>
<p>The above information is included in order to match up attorney surveys with other surveys and the mediator report, if you have access to it.</p> <p>Collecting the mediator’s name helps you to monitor the quality of the mediators by enabling you to track attorney responses for individual mediators across all cases in which they are involved. If you are using a case management system for your program, you may not need the mediator’s name or referring judge’s name because they will already be associated with that case number.</p>	

**Note the little numbers next to the check boxes in the questions below.** While these aren’t necessary, they are included for ease of data entry and analysis. If each response is given a number, that number can be used for the response option, making it easier to enter if doing so by hand, and it can be easier to analyze with numbered responses rather than text.

<b>1. Which party did you represent in the mediation?</b>
<input type="checkbox"/> <sub>1</sub> I represented the plaintiff <input type="checkbox"/> <sub>2</sub> I represented the defendant <input type="checkbox"/> <sub>3</sub> Other: _____
<p>This question allows you to see if there are trends in the responses of plaintiff and defense attorneys. You can also use it to match up party responses with those of their attorneys.</p> <p>The question asks about who they represented in the mediation in order to include those attorneys who may be providing limited representation just for the mediation. The responses use the phrase “I represented the...” because when the survey was used in the field, some attorneys marked “other” and then stated they were the plaintiff’s attorney or the defense attorney.</p>

**The following questions ask about your experience during the mediation session.**

*Please check one box for each question*

**2. Was your side able to talk about the issues and concerns that were most important to you?**

- <sub>1</sub> We were able to talk about none of the issues and concerns that were most important to us
- <sub>2</sub> We were able to talk about some of the issues and concerns that were most important to us
- <sub>3</sub> We were able to talk about most of the issues and concerns that were most important to us
- <sub>4</sub> We were able to talk about all of the issues and concerns that were most important to us

This question replaces the commonly used, “Our side was able to talk about our side of the story” or “Our side had the chance to give our point of view.” Those questions are too broad to properly interpret the responses. The phrasing here narrows the focus of the question to what is most important about procedural justice: feeling heard. Parties feel heard when they can talk about what is most important to them.

The full sentence is repeated for each option in order for the response options to make sense in light of the question’s wording, making it more likely that respondents will answer appropriately. It also avoids there being one “no” response and 3 “yes” responses. That is, it avoids the response set: “No;” “yes, some;” “yes, most;” and “yes, all.”

**3. Was the mediator active enough in helping the parties work out the issues in the dispute?**

- <sub>1</sub> No <sub>2</sub> Yes

This question was added in response to focus group feedback that some mediators don’t do enough to help parties come to resolution.

This particular phrasing was used so that the question did not focus on reaching settlement because reaching settlement is not the only goal in mediation. In testing, the wording was found to reliably provide feedback on whether the mediator did enough to help the parties.

**4. How well did the mediator understand what was important to your side?**

- <sub>1</sub> Not at all <sub>2</sub> Somewhat <sub>3</sub> Very well

When asked of the attorney, this question assesses the mediator’s competence. If the mediator is often seen as not understanding what is important to the parties, he/she may not be competent to mediate in your program.

Note the three-point scale. The Committee decided to use a three-point scale because it is easy for survey respondents to differentiate between the categories and the categories lend themselves to simple data analysis.

**5. Did the mediator treat you with respect?**

- <sub>1</sub> Not at all <sub>2</sub> Somewhat <sub>3</sub> Very much

The question asks the question about how the mediator treated the attorney, not the “side”. This is because the Committee felt it was important that the attorneys feel respected as well as the parties.

**6. Did the mediator treat you fairly?**

- <sub>1</sub> Not at all <sub>2</sub> Somewhat <sub>3</sub> Very much

Use this question for monitoring the quality of the mediators. At minimum, mediators should be unbiased. If participants in multiple mediations don’t respond positively to this question, the mediator should be looked at more closely to decide whether any measures need to be taken to improve his/her performance or to remove the mediator from the roster.

**7. Did the mediator push too hard to get your side to settle?**

- 1** Yes, the mediator pushed too hard                       **2** No, the mediator didn't push too hard

Use this question for monitoring the quality of the mediators. Mediators should respect the self-determination of the parties. If participants in multiple mediations don't respond positively to this question, the mediator should be looked at more closely to decide whether any measures need to be taken to improve his/her performance or to remove the mediator from the roster.

Even though mediators often need to push the parties in order to assist them, that pushing must stop short of coercion. This question focuses on pushing too hard to get the parties to settle. This is to keep respondents from answering based on actions mediators should be taking, such as reality testing, or because they didn't like a particular settlement option.

**8. The mediation ended in:**

- 1 Full settlement** – all issues for all parties have been settled, and a written agreement has been signed.  
 **2 Partial settlement** – some issues have been settled, or all issues for some parties have been settled, and a written agreement has been signed  
 **3 Provisional settlement** – agreement is pending a signature, consent or provision of additional information  
 **4 No settlement**

Use this question if there is no way to match up the mediator report to the survey responses, and therefore you don't know what the outcome of the mediation was. If you have access to mediator reports, you may omit this question.

The term "settlement" is used instead of "agreement" because "agreement" can be interpreted in different ways. Experience has shown that when the term "agreement" is used, respondents don't always answer the same way for the same case.

The options reflect the complexity of what resolution looks like in civil cases. Often only some issues have been settled. And often the parties leave with an agreement that depends on getting authorization or information that wasn't available at the time of mediation. These options were tested with mediators and attorneys in the field and were understood correctly.

**9. If full or partial settlement was reached, what did the settlement include? (check all that apply)**

- A.  Monetary provisions
- 1** Payment in one lump sum
  - 2** Payment schedule
  - 3** Provision(s) not involving payment, such as forgiveness of debt
- B.  Non-monetary provisions, other than a release

This question lets you know how many cases include provisions that would not be available in court, which adds to the value of mediation. The options under "monetary provisions" were added in response to feedback from respondents who wondered whether the development of a schedule for payment and forgiveness of debt were non-monetary provisions.

**10. To the best of your knowledge, which of the following were true at the time of the mediation?**

*Please check all that apply*

*Things about the case*

- A.  Additional discovery was needed
- B.  A question of law needed to be determined
- C.  A question of fact needed to be determined
- D.  A motion to dismiss or for summary judgment was pending
- E.  There was a serious disagreement about the value of the case
- F.  Liability was at issue in the case
- G.  The legal issues in the case were highly complex

*Things about the mediation*

- H.  The time scheduled for mediation was too short
- I.  Mediation occurred too soon in the life of the case
- J.  Mediation occurred too late in the life of the case
- K.  The case required a mediator with a different skill set

*Things about the participants*

- L.  Someone central to the case did not attend the mediation
- M.  One or more participants did not have authority to settle
- N.  There was a high level of anger/hostility in the relationship between the parties
- O.  There was a large power imbalance between the parties

This multi-part question is included in order to understand more about:

- The characteristics of the cases that are being mediated
- The characteristics of the parties
- The attorney's perception of particular factors that might affect settlement

This information not only gives programs more information about cases being mediated, but can be used in an evaluation to determine if any of the factors impede settlement.

Note that attorneys answer these questions no matter what the outcome was. This replaces an often-used question: "If you didn't reach settlement in mediation, what do you think was the reason?". The current formulation allows programs to determine whether a characteristic that is thought to impede settlement in fact does not. That is, if attorneys check off particular characteristics in settled cases, this is evidence that they don't impede settlement.

**11. How satisfied are you with the outcome of the mediation?**

- <sub>1</sub> Very unssatisfied
- <sub>2</sub> Unsatisfied
- <sub>3</sub> Satisfied
- <sub>4</sub> Very satisfied

Responses to this question have been found to be associated with whether settlement was reached in mediation. Despite this, the Committee kept the question in the survey because it's a question that many programs want to ask so they have an easily understood statistic about the success of the program. Note that "un" is underlined to help draw the eye to the distinction between being satisfied and unsatisfied.

This question is asked prior to asking about the attorney's satisfaction with their overall experience so that the opening phrase "regardless of the outcome" could be used in that question. (See below.)

**12. Regardless of the outcome, how satisfied are you with your overall experience in the mediation session(s)?**

- <sub>1</sub> Very unsatisfied
- <sub>2</sub> Unsatisfied
- <sub>3</sub> Satisfied
- <sub>4</sub> Very satisfied

"Regardless of the outcome" was added as a way to pivot the respondent away from the previous question and to be clear that the question was independent of their view of the outcome. Nevertheless, responses to this question may be influenced by whether the case settled in mediation. Note that "un" is underlined to help draw the eye to the distinction between being satisfied and unsatisfied.

When interpreting responses, remember that the question is very broad and provides little evaluative insight into the effectiveness of the program. Despite this, the Committee kept the question because it provides a single, overarching statistic that programs want about how people feel about their experience in mediation.

**13. Overall, was the mediation process fair?**

- <sub>1</sub> Not at all
- <sub>2</sub> Somewhat
- <sub>3</sub> Very much

This looks at a core value of dispute resolution processes. Although the question is subjective and thus doesn't give information on whether the mediation was intrinsically fair, it can let you know how your program and the process are being perceived by the attorneys. You should be looking for trends in the responses. If a significant percentage of attorneys and parties indicate the process isn't fair, you will need to look into the reason and address it. The same goes for whether you see a trend with particular mediators.

**14. Would you use this mediator again?**

- <sub>1</sub> Yes
- <sub>2</sub> No
- <sub>3</sub> Possibly

Why or why not? \_\_\_\_\_

This question is considered to be a good proxy for mediator quality. If the attorney says they would use the mediator again, then they are happy with the mediator's services. Research has shown that attorneys are good judges of mediator quality.

**15. How many mediations have you participated in prior to this mediation?**

- |   |   |
|---|---|
| <input type="checkbox"/> <sub>1</sub> None  | <input type="checkbox"/> <sub>4</sub> 26-50         |
| <input type="checkbox"/> <sub>2</sub> 1-10  | <input type="checkbox"/> <sub>5</sub> 51-100        |
| <input type="checkbox"/> <sub>3</sub> 11-25 | <input type="checkbox"/> <sub>6</sub> More than 100 |

This gives you some context for the attorney's responses. More experienced attorneys will have more information with which to judge the mediator and the mediation.

**16. What, if anything, made the mediation effective?**

This question above gives the attorneys the opportunity to discuss their experience in greater depth and gives you more information about the program. The phrasing of the question is designed to focus the attorneys on the effectiveness of the process and the mediator. The question also offers the possibility of using quotes in reports. If you plan to do so, you may want to add the following language above this question and the next question: "Your comments may be used anonymously in reports about the program."

**17. What could have improved the mediation?**

This question above gives the attorneys the opportunity to discuss their experience in greater depth and gives you more information about the program. The phrasing of the question is designed to focus the attorneys on issues that can be addressed. The question also offers the possibility of using quotes in reports. If you plan to do so, you may want to add the following language above question #16, above: "Your comments may be used anonymously in reports about the program."

### QUESTION THAT WAS DELETED

**Please answer the following question IF FULL OR PARTIAL SETTLEMENT WAS REACHED:**

10. Is the settlement fair to your client?

- ~~1~~ Not at all
- ~~2~~ Somewhat
- ~~3~~ Very much

The Committee decided not to include this commonly-asked question because in testing we discovered that those parties who responded that the settlement favored the other party did not mind that it did. They saw the settlement as the best they could have gotten in the circumstances, so they were satisfied with it despite their belief that they didn't get a settlement they thought was fair to them.

If you decide to use this question, you should include a follow-up question: "If the settlement was not fair to your client, what led you to agree to it?"

### OPTIONAL QUESTIONS OR ALTERNATIVE WORDING FOR MODEL ATTORNEY SURVEY

[NOTE ON IMPLEMENTATION: The following 5 questions should be placed after the question, “Did the mediator push your side too hard to get you to settle?” If you use more than one, place them in the order they are in below.]

#### 1. How do you think mediation will affect communication between your client and the other party?

- <sub>1</sub> Make it a lot worse
- <sub>2</sub> Make it somewhat worse
- <sub>3</sub> Have no impact
- <sub>4</sub> Improve it somewhat
- <sub>5</sub> Improve it a lot
- <sub>6</sub> Not applicable/ No future communication is likely
- <sub>7</sub> I don't know

This question is good for programs that have cases in which future relationships are likely – such as business-to-business disputes – or for programs that have the goal of enhancing communication between parties.

#### 2. Did your client know/have a relationship with the opposing party before this case was filed?

- <sub>1</sub> No relationship – the other party is a stranger to my client other than this case
- <sub>2</sub> Yes

This question is useful for evaluative purposes – do cases in which the parties have a relationship have different outcomes than those in which the parties don't? It can also provide context for Question #4.

#### 3. How important is it to your client or your client's company or organization that your client have a future relationship with the opposing party after this case is resolved?

- <sub>1</sub> Not at all important
- <sub>2</sub> Somewhat important
- <sub>3</sub> Very important

This question provides context for question #4. If the parties have little interest in a future relationship, they won't place importance on maintaining that relationship during the mediation, which could affect this particular outcome. Further, if a future relationship isn't important, the response to question #4 doesn't matter as much to the parties as it would if a future relationship is important.

**4. How do you think mediation will affect your client's relationship with the other party?**

- <sub>1</sub> Make it a lot worse
- <sub>2</sub> Make it somewhat worse
- <sub>3</sub> Have no impact
- <sub>4</sub> Improve it somewhat
- <sub>5</sub> Improve it a lot
- <sub>6</sub> Not applicable/No future relationship is likely
- <sub>7</sub> I don't know

This question can be used for two purposes:

- To monitor the quality of the mediators – if the program generally involves cases in which relationships are important, the mediators should manage the mediation in such a way that the relationship is not harmed
- To evaluate whether the program is achieving its goal of maintaining relationships between parties

Three things to note with this question:

1. The question includes the phrase “do you think” to emphasize that this question is subjective in nature. If you report on this question, be sure to say that the attorneys believed mediation helped/harmed their client's relationship with the other party. Do not say that “mediation helped/or harmed the parties' relationship.
2. It includes a “not applicable/no future relationship is likely” option in order to cover all possible responses to this question.
3. While it should be used in conjunction with questions #2 and #3 above, it can be used alone in situations in which the parties almost always have a relationship that should be maintained.

**5. How do you think mediation will affect your ability to work with opposing counsel in resolving the case?**

- <sub>1</sub> Make it much more difficult
- <sub>2</sub> Make it somewhat more difficult
- <sub>3</sub> Have no effect
- <sub>4</sub> Make it somewhat easier
- <sub>5</sub> Make it much easier

Mediation should help attorneys to work together. If your program generally has cases in which both parties are represented, you may want to ask this question.

**6. IF THE PARTIES REACHED FULL OR PARTIAL SETTLEMENT, do you think they could have settled without the mediator's help?**

- <sub>1</sub> Yes
- <sub>2</sub> Yes, but not as quickly
- <sub>3</sub> No
- <sub>4</sub> I don't know

This question can be used to discover the added value of mediation. One response to the use of settlement rates to demonstrate the value of mediation is that most cases settle without going to trial. This question answers that critique by asking about the impact of the mediator on a more timely settlement.

If you use this question, place it after the question, “If full or partial settlement was reached, what did the settlement include?”

**OPTIONAL LANGUAGE**

**A7. To the best of your knowledge, which of the following were true at the time of the mediation?**

*Please check all that apply*

*Things about the case*

- A.  Additional discovery was needed
- B.  A question of law needed to be determined
- C.  A question of fact needed to be determined
- D.  A motion to dismiss or for summary judgment was pending
- E.  There was a serious disagreement about the value of the case
- F.  Liability was at issue in the case
- G.  The legal issues in the case were highly complex

*Things about the mediation*

- H.  The time scheduled for mediation was too short
- I.  Mediation occurred too soon in the life of the case
- J.  Mediation occurred too late in the life of the case
- K.  The case required a mediator with a different skill set

*Things about the participants*

- L.  Someone central to the case did not attend the mediation  
<sub>1</sub> Party <sub>2</sub> Attorney <sub>3</sub> Insurance Representative <sub>4</sub> Other: \_\_\_\_\_
- M.  One or more participants did not have authority to settle  
<sub>1</sub> Party <sub>2</sub> Attorney <sub>3</sub> Insurance Representative <sub>4</sub> Other: \_\_\_\_\_
- N.  There was a high level of anger/hostility in the relationship between the parties
- O.  There was a large power imbalance between the parties

This multi-part question is the same as the one in the initial section of questions for this report that all programs should use, with the exception of the addition of detail in L and M. The Committee doesn't recommend using this version of the question because of potential confidentiality and neutrality issues. For example, by collecting information about who did not have settlement authority, the program will put the mediators in the position of assessing whether parties had authority and could result in the court wanting to pierce confidentiality and find out which parties came without authority. However, some Committee members noted that in some programs, particular party types (such as insurance representatives) consistently do not attend mediation or lack settlement authority, so a program might want to collect this information. Even though mediators are asked about L and M, the Committee thought the attorneys should be asked as well.

**8. Excluding judgment or settlement costs, what effect do you think participation in mediation had, or will have, on your client’s total litigation costs?**

- <sub>1</sub> Mediation raised my client’s costs substantially
- <sub>2</sub> Mediation raised my client’s costs somewhat
- <sub>3</sub> Mediation had no effect on my client’s costs
- <sub>4</sub> Mediation decreased my client’s costs somewhat
- <sub>5</sub> Mediation decreased my client’s costs substantially
- <sub>6</sub> I don’t know

This is the traditional question about whether mediation saves parties money. If you use this question, be sure to report the results as the attorneys’ opinions, not as an objective fact. For example, you would report, “45% of attorneys reported that mediation...” You would not report, “Mediation saved money in 45% of cases.”

Place this question after the “What was true at the time of mediation” question.

[NOTE ON IMPLEMENTATION: The next two questions should be placed directly before the satisfaction with the outcome question.]

**9. How well did the mediator help the participants:**

A. Prepare before the mediation? [PROGRAM SPECIFIC]	<input type="checkbox"/> <sub>1</sub> Not at all well	<input type="checkbox"/> <sub>2</sub> Somewhat well	<input type="checkbox"/> <sub>3</sub> Very well	<input type="checkbox"/> <sub>4</sub> N/A
B. Communicate effectively with one another?	<input type="checkbox"/> <sub>1</sub> Not at all well	<input type="checkbox"/> <sub>2</sub> Somewhat well	<input type="checkbox"/> <sub>3</sub> Very well	<input type="checkbox"/> <sub>4</sub> N/A
C. Express their emotions? [PROGRAM SPECIFIC]	<input type="checkbox"/> <sub>1</sub> Not at all well	<input type="checkbox"/> <sub>2</sub> Somewhat well	<input type="checkbox"/> <sub>3</sub> Very well	<input type="checkbox"/> <sub>4</sub> N/A
D. Overcome obstacles to settlement?	<input type="checkbox"/> <sub>1</sub> Not at all well	<input type="checkbox"/> <sub>2</sub> Somewhat well	<input type="checkbox"/> <sub>3</sub> Very well	<input type="checkbox"/> <sub>4</sub> N/A
E. Develop options for resolving the dispute? [PROGRAM SPECIFIC]	<input type="checkbox"/> <sub>1</sub> Not at all well	<input type="checkbox"/> <sub>2</sub> Somewhat well	<input type="checkbox"/> <sub>3</sub> Very well	<input type="checkbox"/> <sub>4</sub> N/A

All programs should be interested in the quality of their mediators. Research has shown that attorneys can accurately assess mediator skills. This chart asks about the most important skills a mediator should possess (that have not already been asked about in earlier questions).

Notes on the questions marked “program-specific”:

#A: Some programs are designed so that the mediator does not prepare the participants before mediation. If the mediators in general do prepare the parties for mediation in your program, leave this question in.

#C: Keep this question if cases in your program tend to have an emotional element to them (e.g., medical malpractice).

#E: In some programs, the mediator does not [is not supposed to] develop options for resolving the dispute; that is left up to the parties. If the mediators in general do develop options in your program, leave this question in.

<b>10. Please rate the mediation program on the following criteria:</b>				
A. The quality of overall service from program staff prior to the mediation	<input type="checkbox"/> <sub>1</sub> Poor	<input type="checkbox"/> <sub>2</sub> Unsatisfactory	<input type="checkbox"/> <sub>3</sub> Satisfactory	<input type="checkbox"/> <sub>4</sub> Excellent
B. Program staff communications with you prior to mediation	<input type="checkbox"/> <sub>1</sub> Poor	<input type="checkbox"/> <sub>2</sub> Unsatisfactory	<input type="checkbox"/> <sub>3</sub> Satisfactory	<input type="checkbox"/> <sub>4</sub> Excellent
<p>These questions are meant for full-service mediation programs with an administrative staff. Note that the questions on the party survey regarding convenience of time and location are not included here, in the attorney survey. This is because the Committee felt that convenience is more important for the parties than for the attorneys.</p> <p>Note the response options. The Committee decided to use these four options rather than the traditional “Excellent/good/fair/poor” because they provide two positive response options and two negative ones.</p>				

[NOTE ON IMPLEMENTATION: The following 5 questions should be placed (in order, if using more than one) after the question “would you use this mediator again?”.]

**Please answer the following questions about the case:**

<b>11. Point in case at which mediation occurred: (check one in each column):</b>		
	First session	Final or only session
1. Before case was filed	<input type="checkbox"/>	<input type="checkbox"/>
2. Before discovery	<input type="checkbox"/>	<input type="checkbox"/>
3. During discovery	<input type="checkbox"/>	<input type="checkbox"/>
4. After discovery was completed	<input type="checkbox"/>	<input type="checkbox"/>
5. Don't know	<input type="checkbox"/>	<input type="checkbox"/>
<p>This question is useful if you have a goal of promoting early mediation or simply want to know when cases are going to mediation. If you promote early mediation, this question will help you determine whether you need to do anything differently to encourage parties to mediate sooner. For evaluations that look at causation, this will help to determine whether there is a correlation between the extent of discovery completed prior to mediation and mediation outcomes.</p> <p>The question has been written with two columns with the idea that mediation of large civil cases can take place over a long period of time and that discovery often progresses over that time.</p> <p>If you use this question, place it after the question “what did the settlement include?”</p>		

<b>12. What was the status of any motion to dismiss or for summary judgment at the time of the <i>final</i> (or only) mediation session? (check all that apply)</b>	
	Final or only session
1. None had been filed	<input type="checkbox"/>
2. Motion(s) pending	<input type="checkbox"/>
3. Motion(s) granted in full or in part	<input type="checkbox"/>
4. Motion(s) denied in full or in part	<input type="checkbox"/>
5. Don't know/Not applicable	<input type="checkbox"/>

Some preliminary research correlates the status of dispositive motions with the probability of settlement. Studies found that cases are less likely to settle when mediation occurs while a dispositive motion is pending. On the other hand, some mediators believe that the uncertainty of pending motions can be an incentive to settle. If you're interested in collecting data to help decide whether to refer cases when a motion is pending, use this question.

If you use this question, place it after the question "what did the settlement include?" If using Optional Question #11, above, this question would come after that one.

<b>13a. How close to trial was the case at the time the mediation took place?</b>	
<input type="checkbox"/> <sub>1</sub> Less than one month	<input type="checkbox"/> <sub>4</sub> 7-12 months
<input type="checkbox"/> <sub>2</sub> 1-2 months	<input type="checkbox"/> <sub>5</sub> More than a year
<input type="checkbox"/> <sub>3</sub> 3-6 months	

<b>13b. Please estimate how close to trial was the case at the time the mediation took place</b>	
<input type="checkbox"/> <sub>1</sub> Less than one month	<input type="checkbox"/> <sub>4</sub> 7-12 months
<input type="checkbox"/> <sub>2</sub> 1-2 months	<input type="checkbox"/> <sub>5</sub> More than a year
<input type="checkbox"/> <sub>3</sub> 3-6 months	

These questions are useful if you have a goal of promoting early mediation or simply want to know when cases are going to mediation. The two questions above differ in only one respect: whether there's an exact date for the trial that is already known – which fits the way some courts work – or whether the attorneys would need to estimate the trial date because it hasn't been set yet.

If you promote early mediation, these questions will help you determine whether you need to do anything different to encourage parties to mediate sooner. Programs may want to examine timing of mediation to understand their findings about length of time to disposition or to discover if there is a correlation between when a case is mediated and mediation outcomes.

**14. What was the amount of the claim at the time of filing?**

- <sub>1</sub> Less than \$10,000
- <sub>2</sub> \$10,000 - \$50,000
- <sub>3</sub> \$50,001 - \$100,000
- <sub>4</sub> \$100,001 - \$500,000
- <sub>5</sub> \$500,001 - \$1,000,000
- <sub>6</sub> More than \$1,000,000
- <sub>7</sub> There was no monetary claim
- <sub>8</sub> I don't know

This question is suitable for programs in which there is a wide range in the amount of money that could be involved. It can be used by the court to track what types of cases are using mediation.

This question can also be used to determine how case characteristics affect outcomes. Doing so would require advanced statistical analysis.

**15. Please approximate the total number of court appearances for this case**

A. You would have had if you had not gone through mediation: \_\_\_\_\_

B. You will have now that it has gone through mediation: \_\_\_\_\_

These questions provide one way to determine the effect of mediation on judicial time and court resources. The two should be asked together to understand the estimated difference in the number of hearings with and without mediation.

If you use this question, be sure to report the results as the attorneys' estimate, not as an objective fact. It should be reported as, "attorneys estimate..."

[NOTE ON IMPLEMENTATION: The following 2 questions should be placed at the end of the survey.]

**Please answer the following questions about your practice:**

**16. How many years have you been practicing law? \_\_\_\_\_**

This question should be used to correlate experience with attorney responses. For example, you may want to explore whether more experienced attorneys are more or less satisfied with the mediation process.

Analysis of this correlations requires advanced statistical analysis.

**17. What type of law do you practice?**

<input type="checkbox"/> <sub>1</sub>	Personal Injury	<input type="checkbox"/> <sub>2</sub>	Medical Malpractice	<input type="checkbox"/> <sub>3</sub>	Products Liability
<input type="checkbox"/> <sub>4</sub>	General Tort	<input type="checkbox"/> <sub>5</sub>	Commercial	<input type="checkbox"/> <sub>6</sub>	Construction
<input type="checkbox"/> <sub>7</sub>	Real Property Disputes	<input type="checkbox"/> <sub>8</sub>	Employment	<input type="checkbox"/> <sub>9</sub>	Probate
<input type="checkbox"/> <sub>10</sub>	Chancery	<input type="checkbox"/> <sub>11</sub>	Other:		

The question above should be used to correlate practice type with attorney responses. For example, you may want to explore whether personal injury attorneys have a more positive perspective on the mediators.

Analysis of this correlation requires advanced statistical analysis.

### QUESTION THAT WAS DELETED

9. How well did the mediator help the participants:				
F. articulate their underlying needs?	<input type="checkbox"/> 1. Not at all well	<input type="checkbox"/> 2. Somewhat well	<input type="checkbox"/> 3. Very well	<input type="checkbox"/> 4. N/A
The Committee decided not use this common question. Although it is considered to be important by many, it is not an appropriate question. Research has demonstrated that attorneys often don't know what their clients underlying needs are, so they would not be able to accurately answer this question.				

<INSERT PROGRAM NAME>

Model Attorney Survey

To help us to maintain the quality of the mediation program, please answer all of the questions below. Your responses will be kept confidential and will be used to evaluate our services. No identifying information about you will be released.

Case Name:	Case Number:
Mediator Name:	Referring Judge:

**1. Which party did you represent in the mediation?**

- <sub>1</sub> I represented the plaintiff
- <sub>2</sub> I represented the defendant
- <sub>3</sub> Other: \_\_\_\_\_

The following questions ask about your experience during the mediation session.

*Please check one box for each question*

**2. Was your side able to talk about the issues and concerns that were most important to you?**

- <sub>1</sub> We were able to talk about none of the issues and concerns that were most important to us
- <sub>2</sub> We were able to talk about some of the issues and concerns that were most important to us
- <sub>3</sub> We were able to talk about most of the issues and concerns that were most important to us
- <sub>4</sub> We were able to talk about all of the issues and concerns that were most important to us

**3. Was the mediator active enough in helping the parties work out the issues in the dispute?**

- <sub>1</sub> No
- <sub>2</sub> Yes

**4. How well did the mediator understand what was important to your side?**

- <sub>1</sub> Not at all
- <sub>2</sub> Somewhat
- <sub>3</sub> Very much

**5. Did the mediator treat you with respect?**

- <sub>1</sub> Not at all
- <sub>2</sub> Somewhat
- <sub>3</sub> Very much

**6. Did the mediator treat you fairly?**

- <sub>1</sub> Not at all
- <sub>2</sub> Somewhat
- <sub>3</sub> Very much

**7. Did the mediator push too hard to get your side to settle?**

- <sub>1</sub> Yes, the mediator pushed too hard
- <sub>2</sub> No, the mediator didn't push too hard

**8. The mediation ended in:**

- <sub>1</sub> **Full settlement** – all issues for all parties have been settled, and a written agreement has been signed
- <sub>2</sub> **Partial settlement** – some issues have been settled, or all issues for some parties have been settled, and a written agreement has been signed
- <sub>3</sub> **Provisional settlement** – agreement is pending a signature, consent or provision of additional information
- <sub>4</sub> **No settlement**

**9. If full or partial settlement was reached, what did the settlement include? (check all that apply.)**

- A.  Monetary provisions
- <sub>1</sub> Payment in one lump sum
  - <sub>2</sub> Payment schedule
  - <sub>3</sub> Provision(s) not involving payment, such as forgiveness of debt
- B.  Non-monetary provisions, other than a release

**10. To the best of your knowledge, which of the following were true at the time of the mediation?**

*Please check all that apply*

*Things about the case*

- A.  Additional discovery was needed
- B.  A question of law needed to be determined
- C.  A question of fact needed to be determined
- D.  A motion to dismiss or for summary judgment was pending
- E.  There was a serious disagreement about the value of the case
- F.  Liability was at issue in the case
- G.  The legal issues in the case were highly complex

*Things about the mediation*

- H.  The time scheduled for mediation was too short
- I.  Mediation occurred too soon in the life of the case
- J.  Mediation occurred too late in the life of the case
- K.  The case required a mediator with a different skill set

*Things about the participants*

- L.  Someone central to the case did not attend the mediation
- M.  One or more participants did not have authority to settle
- N.  There was a high level of anger/hostility in the relationship between the parties
- O.  There was a large power imbalance between the parties

**11. How satisfied are you with the outcome of the mediation?**

- <sub>1</sub> Very unssatisfied
- <sub>2</sub> Unsatisfied
- <sub>3</sub> Satisfied
- <sub>4</sub> Very satisfied

**12. Regardless of the outcome, how satisfied are you with your overall experience in the mediation session(s)?**

- <sub>1</sub> Very unssatisfied
- <sub>2</sub> Unsatisfied
- <sub>3</sub> Satisfied
- <sub>4</sub> Very satisfied

**13. Overall, was the mediation process fair?**

<sub>1</sub> Not at all

<sub>2</sub> Somewhat

<sub>3</sub> Very much

**14. Would you use this mediator again?**

<sub>1</sub> Yes

<sub>2</sub> No

<sub>3</sub> Possibly

Why or why not? \_\_\_\_\_

**15. How many mediations have you participated in prior to this mediation?**

<sub>1</sub> None

<sub>4</sub> 26-50

<sub>2</sub> 1-10

<sub>5</sub> 51-100

<sub>3</sub> 11-25

<sub>6</sub> More than 100

**16. What, if anything, made the mediation effective?**

**17. What could have improved the mediation?**

OPTIONAL QUESTIONS OR ALTERNATIVE WORDING TO ADD TO BASIC SURVEY

**1. How do you think mediation will affect communication between your client and the other party?**

- <sub>1</sub> Make it a lot worse
- <sub>2</sub> Make it somewhat worse
- <sub>3</sub> Have no impact
- <sub>4</sub> Improve it somewhat
- <sub>5</sub> Improve it a lot
- <sub>6</sub> Not applicable/No future communication is likely
- <sub>7</sub> I don't know

**2. Did your client know/have a relationship with the opposing party before this case was filed?**

- <sub>1</sub> No relationship – the other party is a stranger to my client other than this case
- <sub>2</sub> Yes

**3. How important is it to your client or your client's company or organization that your client have a future relationship with the opposing party after this case is resolved?**

- <sub>1</sub> Not at all important
- <sub>2</sub> Somewhat important
- <sub>3</sub> Very important

**4. How do you think mediation will affect your client's relationship with the other party?**

- <sub>1</sub> Make it a lot worse
- <sub>2</sub> Make it somewhat worse
- <sub>3</sub> Have no impact
- <sub>4</sub> Improve it somewhat
- <sub>5</sub> Improve it a lot
- <sub>6</sub> Not applicable/No future relationship is likely
- <sub>7</sub> I don't know

**5. How do you think mediation will affect your ability to work with opposing counsel in resolving the case?**

- <sub>1</sub> Make it much more difficult
- <sub>2</sub> Make it somewhat more difficult
- <sub>3</sub> Have no effect
- <sub>4</sub> Make it somewhat easier
- <sub>5</sub> Make it much easier

**6. IF THE PARTIES REACHED FULL OR PARTIAL SETTLEMENT, do you think they could have settled without the mediator's help?**

- <sub>1</sub> Yes
- <sub>2</sub> Yes, but not as quickly
- <sub>3</sub> No
- <sub>4</sub> I don't know

**OPTIONAL LANGUAGE**

**A7. To the best of your knowledge, which of the following were true at the time of the mediation?**

*Please check all that apply*

*Things about the case*

- A.  Additional discovery was needed
- B.  A question of law needed to be determined
- C.  A question of fact needed to be determined
- D.  A motion to dismiss or for summary judgment was pending
- E.  There was a serious disagreement about the value of the case
- F.  Liability was at issue in the case
- G.  The legal issues in the case were highly complex

*Things about the mediation*

- H.  The time scheduled for mediation was too short
- I.  Mediation occurred too soon in the life of the case
- J.  Mediation occurred too late in the life of the case
- K.  The case required a mediator with a different skill set

*Things about the participants*

- L.  Someone central to the case did not attend the mediation  
<sub>1</sub> Party <sub>2</sub> Attorney <sub>3</sub> Insurance Representative <sub>4</sub> Other: \_\_\_\_\_
- M.  One or more participants did not have authority to settle  
<sub>1</sub> Party <sub>2</sub> Attorney <sub>3</sub> Insurance Representative <sub>4</sub> Other: \_\_\_\_\_
- N.  There was a high level of anger/hostility in the relationship between the parties
- O.  There was a large power imbalance between the parties

**8. Excluding judgment or settlement costs, what effect do you think participation in mediation had, or will have, on your client's total litigation costs?**

- <sub>1</sub> Mediation raised my client's costs substantially
- <sub>2</sub> Mediation raised my client's costs somewhat
- <sub>3</sub> Mediation had no effect on my client's costs
- <sub>4</sub> Mediation decreased my client's costs somewhat
- <sub>5</sub> Mediation decreased my client's costs substantially
- <sub>6</sub> I don't know

<b>9. How well did the mediator help the participants:</b>				
A. Prepare before the mediation?	<input type="checkbox"/> <sub>1</sub> Not at all well	<input type="checkbox"/> <sub>2</sub> Somewhat well	<input type="checkbox"/> <sub>3</sub> Very well	<input type="checkbox"/> <sub>4</sub> N/A
B. Communicate effectively with one another?	<input type="checkbox"/> <sub>1</sub> Not at all well	<input type="checkbox"/> <sub>2</sub> Somewhat well	<input type="checkbox"/> <sub>3</sub> Very well	<input type="checkbox"/> <sub>4</sub> N/A
C. Express their emotions?	<input type="checkbox"/> <sub>1</sub> Not at all well	<input type="checkbox"/> <sub>2</sub> Somewhat well	<input type="checkbox"/> <sub>3</sub> Very well	<input type="checkbox"/> <sub>4</sub> N/A
D. Overcome obstacles to settlement?	<input type="checkbox"/> <sub>1</sub> Not at all well	<input type="checkbox"/> <sub>2</sub> Somewhat well	<input type="checkbox"/> <sub>3</sub> Very well	<input type="checkbox"/> <sub>4</sub> N/A
E. Develop options for resolving the dispute?	<input type="checkbox"/> <sub>1</sub> Not at all well	<input type="checkbox"/> <sub>2</sub> Somewhat well	<input type="checkbox"/> <sub>3</sub> Very well	<input type="checkbox"/> <sub>4</sub> N/A

<b>10. Please rate the mediation program on the following criteria:</b>				
A. The quality of overall service from program staff prior to the mediation	<input type="checkbox"/> <sub>1</sub> Poor	<input type="checkbox"/> <sub>2</sub> Unsatisfactory	<input type="checkbox"/> <sub>3</sub> Satisfactory	<input type="checkbox"/> <sub>4</sub> Excellent
B. Program staff communications with you prior to mediation	<input type="checkbox"/> <sub>1</sub> Poor	<input type="checkbox"/> <sub>2</sub> Unsatisfactory	<input type="checkbox"/> <sub>3</sub> Satisfactory	<input type="checkbox"/> <sub>4</sub> Excellent

**Please answer the following questions about the case:**

<b>11. Point in case at which mediation occurred: (check one in each column)</b>		
	First session	Final or only session
1. Before case was filed	<input type="checkbox"/>	<input type="checkbox"/>
2. Before discovery	<input type="checkbox"/>	<input type="checkbox"/>
3. During discovery	<input type="checkbox"/>	<input type="checkbox"/>
4. After discovery was completed	<input type="checkbox"/>	<input type="checkbox"/>
5. Don't know	<input type="checkbox"/>	<input type="checkbox"/>

<b>12. What was the status of any motion to dismiss or for summary judgment at the time of the final (or only) mediation session? (check all that apply)</b>	
	Final or only session
1. None had been filed	<input type="checkbox"/>
2. Motion(s) pending	<input type="checkbox"/>
3. Motion(s) granted in full or in part	<input type="checkbox"/>
4. Motion(s) denied in full or in part	<input type="checkbox"/>
5. Don't know/Not applicable	<input type="checkbox"/>

**13a. How close to trial was the case at the time the mediation took place?**

- |   |  |
|---|--|
| <input type="checkbox"/> <sub>1</sub> Less than one month | <input type="checkbox"/> <sub>4</sub> 7-12 months      |
| <input type="checkbox"/> <sub>2</sub> 1-2 months          | <input type="checkbox"/> <sub>5</sub> More than a year |
| <input type="checkbox"/> <sub>3</sub> 3-6 months          |  |

**13b. Please estimate how close to trial was the case at the time the mediation took place**

- |   |  |
|---|--|
| <input type="checkbox"/> <sub>1</sub> Less than one month | <input type="checkbox"/> <sub>4</sub> 7-12 months      |
| <input type="checkbox"/> <sub>2</sub> 1-2 months          | <input type="checkbox"/> <sub>5</sub> More than a year |
| <input type="checkbox"/> <sub>3</sub> 3-6 months          |  |

**14. What was the amount of the claim at the time of filing?**

- <sub>1</sub> Less than \$10,000
- <sub>2</sub> \$10,000 - \$50,000
- <sub>3</sub> \$50,001 - \$100,000
- <sub>4</sub> \$100,001 - \$500,000
- <sub>5</sub> \$500,001 - \$1,000,000
- <sub>6</sub> More than \$1,000,000
- <sub>7</sub> There was no monetary claim
- <sub>8</sub> I don't know

**15. Please approximate the total number of court appearances for this case**

A. You would have had if you had not gone through mediation: \_\_\_\_\_

B. You will have now that it has gone through mediation: \_\_\_\_\_

**Please answer the following questions about your practice:**

**16. How many years have you been practicing law? \_\_\_\_\_**

**17. What type of law do you practice?**

<input type="checkbox"/> <sub>1</sub>	Personal Injury	<input type="checkbox"/> <sub>2</sub>	Medical Malpractice	<input type="checkbox"/> <sub>3</sub>	Products Liability
<input type="checkbox"/> <sub>4</sub>	General Tort	<input type="checkbox"/> <sub>5</sub>	Commercial	<input type="checkbox"/> <sub>6</sub>	Construction
<input type="checkbox"/> <sub>7</sub>	Real Property Disputes	<input type="checkbox"/> <sub>8</sub>	Employment	<input type="checkbox"/> <sub>9</sub>	Probate
<input type="checkbox"/> <sub>10</sub>	Chancery	<input type="checkbox"/> <sub>11</sub>	Other:		