RSI/ABA MODEL MEDIATION SURVEYS
MODEL MEDIATOR REPORT

INTRODUCTION

The mediator report is intended to be shared with the court so that the judges can manage cases they have sent to mediation. The program also uses it for case management, but also should use it as a source of important evaluative information.

Here's what follows:
- Background information on the report
- Advice on using the report
- The report with commentary
- A report without commentary

INFORMATION THE REPORT PROVIDES

The report allows the court to track where a case is in the mediation process, whether parties participated in mediation and whether the case has been resolved. In order for it to be used as a case management tool, mediators should complete the form after each session.

The mediator report helps the judge manage the case by providing information on:
- Whether the case was mediated
- Broadly, why the case was not mediated
- Where a case stands in terms of mediation: Has a session been held? Is another scheduled? If one hasn't been held, has it been rescheduled? When is the next session to be held?
- Whether the case settled in mediation

In terms of program monitoring and evaluation, the mediator report is useful for more than just whether or not the case settled. It is an important instrument for tracking how cases are flowing through the process and any potential barriers to getting them to mediation.

The mediator report should provide you with the following program monitoring information.

Who is referring cases to mediation

You can use the report to find out which judges are referring cases to mediation, as well as when and what types of cases they are referring, and what the outcomes of the referrals are for each judge. As a program management tool, this allows you to target judicial education efforts designed to encourage referral of appropriate cases at appropriate times in the life of the case.

Number of cases referred to mediation and number entering mediation

The mediator report provides the raw data for understanding program usage. This information, when combined with information from other sources, can be used to determine the percentage of cases using the program, the cost per case, and so on.

The percentage of cases referred to mediation that are making it through the process

This is one indicator of the effectiveness of referrals to mediation. It can be calculated by comparing the number of mediation completions to the number of referrals.

The reasons cases that are referred to mediation don't enter the program

This provides an ongoing picture of the effectiveness of the referral system. Is referral leading nowhere? Are cases settling before reaching mediation? Are referred parties refusing to mediate?

The outcome of cases that are mediated

How many are settling in full or in part? What percentage of cases are settling at mediation?

How much time it takes for cases to go through the mediation process

Mediation shouldn't hold up the process of moving cases through the judicial system. Placing dates on the mediator report will help the court monitor whether this is an issue. These dates include date of the order of referral, date the mediator is appointed/selected, date of first mediation session, date of last mediation session.

The types of cases going through mediation

Are there certain case types that are more likely to be mediated? Which types are more likely to settle?

The amount of time spent in mediation sessions

This is a good question to ask if the mediators are paid by the court, or if minimum time of participation is mandated by the court. It can also be helpful for research into the correlation between time in mediation and outcomes.

TIPS ON USING THE MEDIATOR REPORT

WHEN TO HAVE MEDIATORS COMPLETE THE REPORT

The mediators should complete the form at the end of each session. By doing so, the judge and/or the program can manage the case more effectively. The judge will know whether the case is progressing as it should and the program will be able to keep tabs on continuances and session dates.

WHO GETS THE MEDIATOR REPORT

If there is a program administrator, the report should be returned to the administrator. The court can decide whether the judge should receive a report after each session or if the judge should only receive the report after the final session. If the former, the program administrator should send each report to the Clerk. If the latter,

the session reports can stay in the case file. The final report would be sent to the Clerk. If there is no program administrator, the mediator sends a report to the Clerk after each session.

MODEL MEDIATOR REPORT
(with Commentary)

Overall Commentary

This form was created with the assumption that the mediation program would not be able to be access case information in the court's database. Therefore, some questions here may overlap with what is already known about a particular case by the court. You may want to modify the form if you can coordinate the data collected for your mediation program with the court's database.

The form is meant to be completed after each session, or after a session has been rescheduled. When the report is completed after each session or rescheduling of a session, the judge or program can more closely manage each case.

Case Name:	Case Number:
Case Name is included as a backup in case the case number is inaccurate.	Case Number is essential for evaluation if data on a case is going to be gathered from multiple sources, such as participant surveys and the court case management system.
Mediator Name:	**Referring Judge:**
Mediator Name is needed to match up mediators with evaluation metrics	Referring Judge allows you to track which judges are referring cases, and could also be used to connect that with the types and timing of referrals and what the outcomes of those cases are.

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.

1. Case Type					
❑$_1$	Personal Injury	❑$_2$	Medical Malpractice	❑$_3$	Products Liability
❑$_4$	General Tort	❑$_5$	Commercial	❑$_6$	Construction
❑$_7$	Real Property Disputes	❑$_8$	Employment	❑$_9$	Fee Dispute
❑$_{10}$	Other:				
This provides the program with information on what types of cases are being mediated and could be used later to connect case type to the likelihood of settlement. The list should be modified to reflect the most common case types for your program.					

2. Filing and Appointment Date
A. This case was filed on (*date, if known*): ____/____/_____ (mm/dd/yy)
This date can be used to determine how long it is taking cases to go from filing to resolution. If used in conjunction with the date the mediator is appointed/selected, it can also be used to determine how old cases are when they enter mediation. This information can help determine whether timing of referral affects efficacy and efficiency of mediation.
B. You were appointed/selected as mediator on *(date, if known)*: ____/____/____ (mm/dd/yy)
This date is useful for case management – ensuring the case is moving through the process within the allotted time, or in a timely manner if court rules don't include a deadline for the conclusion of mediation. It also allows you to calculate the average number of days it takes cases to move through the mediation process.   Note: The Committee included both appointed and selected in the question because in many programs mediators can be appointed by the court (or program) or selected by the parties. You may want to modify this to fit your program. Also, if you'd like to track cases based on whether the parties selected the mediator or the mediator was appointed by the program or court, you can add check boxes before "appointed" and "selected." It would look like this: "You were: ☐ appointed / ☐ selected as mediator…"

3. Status of the Mediation

A. ☐ Not held and mediation is terminated
     ☐₁   One or more parties decided against pursuing mediation or did not appear
     ☐₂   Case settled prior to mediation
     ☐₃   Other reason (*please specify without disclosing any confidential information*):
     _____

The reasons mediation was not held are kept purposely vague here in order to maintain confidentiality and mediator neutrality.

B. ☐ Continuing
     ☐₁   A mediation session occurred on: ____/____/____ (mm/dd/yy)
          Another session is scheduled for: ____/____/____ (mm/dd/yy)
 	
     ☐₂   A scheduled mediation session was rescheduled to: ____/____/____ (mm/dd/yy)
     ☐₃   Mediation sessions completed, further telephonic or electronic facilitation to be completed
          by: ____/____/____ (mm/dd/yy)

Part B is included for case management purposes and to make sure the options cover all the bases. It reflects the often complex mediation process in civil cases, which may include multiple sessions as well as continued contact by the mediator after the sessions are completed.

C. ☐ Completed (no further work on this case is expected from the mediator)
 	
     1. Date of first mediation session (or date mediation began): ____/____/_____ (mm/dd/yy)
 	
     2. Date of final mediation session: ____/____/____ (mm/dd/yy)
 	
     3. Number of sessions: _____
 	
     4. Total time in substantive discussion with the parties (in session or out of session): ____(hours)
 	
     5. Total time preparing for all mediation sessions, including preparing the parties: _____(hours)

Part C is included for case management purposes. It includes information as well that can be used for calculating the number of days spent in the mediation program. The number of sessions and total time questions allow you to track the resources used in the program. They can also be used to evaluate whether preparation and time spent in mediation have an impact on program effectiveness. In Item 1, date mediation began can be used for capturing pre-mediation caucuses. Item 4 regarding substantive discussion is intended to exclude time spent scheduling and other administrative activities.

4. If mediation has been completed, what was the outcome?
❑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**
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 or not all parties reach agreement. And, often, the parties leave with an agreement that depends on getting authorization or information that wasn't available at the time of mediation.

Signed: _____   Date: _____

OPTIONAL FORMAT: MODIFYING THE REPORT FOR LESS COMPLEX CASES

The Model Forms Committee created this report with complex civil cases in mind. You can modify it easily for programs with less complex cases by simplifying the options and the language. For example, if your program allows only one mediation session, or collects data from each session individually, and mediators do no pre-mediation work, you could use the following:

3. Status of the Mediation
A. ❑ Not held and mediation is terminated
❑₁   One or more parties decided against pursuing mediation or did not appear
❑₂   Case settled prior to mediation
❑₃   Other reason (*please specify without disclosing any confidential information*):
_____
B. ❑ Continued: A scheduled mediation session was rescheduled to ____/____/____ (mm/dd/yy)
C. ❑ Completed (no further work on this case is expected from the mediator)
1. Date of mediation session: ____/____/____ (mm/dd/yy)
2. Total time in substantive discussion with the parties (in session or out of session): ____(hours)

<INSERT PROGRAM NAME>
MEDIATOR REPORT

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

1. Case Type

❑$_1$	Personal Injury	❑$_2$	Medical Malpractice	❑$_3$	Products Liability
❑$_4$	General Tort	❑$_5$	Commercial	❑$_6$	Construction
❑$_7$	Real Property Disputes	❑$_8$	Employment	❑$_9$	Fee Dispute
❑$_{10}$	Other:				

2. Filing and Appointment Date

A. This case was filed on (*date, if known*): ____/____/_____ (mm/dd/yy)

B. You were appointed/selected as mediator on *(date, if known)*: ____/____/____ (mm/dd/yy)

3. Status of the Mediation

A. ❑ Not held and mediation is terminated

    ❑$_1$ One or more parties decided against pursuing mediation or did not appear

    ❑$_2$ Case settled prior to mediation

    ❑$_3$ Other reason (*please specify without disclosing any confidential information*):
    _____

B. ❑ Continuing

    ❑$_1$ A mediation session occurred on: ____/____/____ (mm/dd/yy)
       Another session is scheduled for: ____/____/____ (mm/dd/yy)

    ❑$_2$ A scheduled mediation session was rescheduled to _____/_____/_____ (mm/dd/yy)

    ❑$_3$ Mediation sessions completed, further telephonic or electronic facilitation to be completed by: ____/____/____ (mm/dd/yy)

C. ❑ Completed (no further work on this case is expected from the mediator)

    1. Date of first mediation session (or date mediation began): ____/____/____ (mm/dd/yy)

    2. Date of final mediation session: ____/____/____ (mm/dd/yy)

    3. Number of sessions: _____

    4. Total time in substantive discussion with the parties (in session or out of session): ____(hours)

    5. Total time preparing for all mediation sessions, including preparing the parties: _____(hours)

4. If mediation has been completed, what was the outcome?

❑$_1$ **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**

Signed: _____   Date: _____