

## **RSI/ABA MODEL MEDIATION SURVEYS HOW TO MODIFY THE MEDIATOR SURVEYS**

Participant surveys are deceptively difficult. They seem easy to create. You have a question. You ask it, and you specify the type of response you want. But they are, in fact, very complex forms. This is why Resolution Systems Institute (RSI), the ABA Dispute Resolution Section, and a panel of experts designed and tested the set of Model Surveys that courts can adopt for civil case mediation or adapt for other program types.

The approach that is most likely to produce reliable data is to use the surveys as written. Between the core questions and the optional questions, most programs' needs will be addressed. If your program needs to adapt the surveys, use the guidelines below.

### **HOW TO SELECT AND WRITE QUESTIONS**

It is particularly important to ask questions of participants that are clear, precise and unambiguous. If people completing the survey can interpret a question in multiple ways, their responses won't be useful because it is impossible to know how each individual is interpreting the question.

#### **SELECT OPTIONAL QUESTIONS WITH A PURPOSE IN MIND**

You should always have a reason for asking each question you ask. Start by determining what you want to learn from the surveys. For each question, ask yourself if it will provide you with the information you need. Then look at the survey as a whole to be sure that it does provide all the information you need, and that it provides ONLY the information you need. The idea is to keep the survey as short as possible while being purposeful with each question. If the survey is too long to complete, you will have a lot of missing data.

Focus on what you want to learn from mediation participants. Here are some thoughts:

- Do parties have an experience that reflects the values of mediation, particularly self-determination and mediator neutrality?
- Do parties have a perception of procedural justice, which requires feeling heard and feeling respected?
- How do the attorneys rate the mediators' skills?
- Have particular goals of mediation in your program have been achieved?

The Model Forms Committee used these parameters to determine what questions to ask. For example:

- Parties should have an experience that reflects the values of mediation. The questions asked to determine if they are having such an experience are the following:
  - Did the mediator push too hard to get you to settle?
  - Did the mediator treat you fairly?
- The parties should have an experience of procedural justice. The relevant questions in the Model Forms about this issue are the following:

- Did the mediator treat you with respect?
- Were you able to talk about the issues and concerns that were most important to you?
- How well did the mediator understand what was important to you?
- Mediator quality questions asked in the Model Forms surveys are the following:
  - Was the mediator active enough in helping you to work out the issues in the dispute?
  - How well did the mediator understand what was important to you?
  - Did the mediator treat you with respect?
  - Did the mediator treat you fairly?
  - Did the mediator push too hard to get you to settle?
- Goals for mediation may be to improve understanding of the other party's point of view, enhance communication, provide a forum for talking about one's feelings and so on. Some possible questions in the Model Forms are the following:
  - How do you think mediation will affect communication between you and the other party?
  - Do you understand the other party's point of view better than you did before mediation?
  - Did you have the chance to express your feelings in mediation?

### **USE THE SIMPLEST LANGUAGE POSSIBLE**

The goal is for the average fifth grader to be able to understand the questions. This means using short, direct sentences. It also means using simple words. This is particularly important for party surveys. The Model Forms Committee kept this in mind while writing both questions and response options.

Here are some “before” and “after” examples of how questions can be revised to be more easily understood.

#### *Example 1:*

Before: If you have objected to mediation, informally in conversations with judges, or formally via motion, what are the most common reasons offered to the court for not participating in mediation?

After: If you have objected to mediation, what are the most common reasons you have given for not participating in mediation? Include informal objections during conferences and formal objections via motion.

#### *Example 2:*

Before: Are you willing to **utilize** mediation in the future?

After: Are you willing to **use** mediation in the future?

#### *Example 3:*

Before: The mediator was able to facilitate discussion successfully.

After: The mediator helped us talk about the issues

#### *Example 4:*

Before: The mediator gave me an opportunity to fully explain the dispute.

After: Did the mediator give you the chance to explain your side?

## **INTRODUCE ONLY ONE CONCEPT FOR EACH QUESTION**

### **“And” Questions**

One of the most basic mistakes in creating surveys is writing “and” questions.

#### *Example 1:*

Before: “The mediator really listened to and understood my perspectives.”

After: The mediator understood my point of view.

“And” questions are hard to answer and interpret. In this example, the party might think the mediator really listened but still didn’t understand. It’s better to separate the two concepts into two questions, if both concepts are important. However, it may be that the mediator’s understanding the parties’ points of view is the really important question.

#### *Example 2:*

Mediation resulted in less time spent in court and was preferable to appearing in court.

As in the previous example, this is actually two questions. A party can think that it resulted in less time spent in court, but would have preferred going to court. Or vice versa.

### **“Or” Questions**

Although not as common as “and” questions, “or” questions create their own issues.

#### *Example 1:*

The mediator didn’t let me talk about my feelings or concerns.

Just as with “and” questions, this is actually two questions. The mediator may have let the party talk about his or her feelings but not his or her concerns, or vice versa.

#### *Example 2:*

Did you talk with the mediator before the mediation either in person or on the phone? (Y/N)

Be careful with this kind of construction. If you only care if the party talked with the mediator before the mediation and don’t care how, this is fine. If you care how, you will want to change the response options: in person / on the phone / both.

## **ASK QUESTIONS THAT PARTIES CAN ANSWER**

This may sound obvious, but don’t ask people questions they don’t have the answers to. This is actually an issue in many surveys. The following are good examples.

*Example 1:*

This is a better way to resolve my dispute than going to court.

The problem is that many parties will never have been to court, so they have no point of reference for this question. If the question is asked without knowing whether a particular party has gone to trial in the past, there is no way to interpret responses to this question. If a party hasn't been to trial, his or her response will not be based on experience. It will simply be an uninformed opinion.

*Example 2:*

Was the mediator competent to mediate your case?

If you're trying to find out if the mediator is competent, this is not a good question for an unsophisticated party. Unless the parties are repeat players with a lot of experience with mediation, they will not be able to make an informed assessment of the mediator.

On the other hand, you may just want an uninformed opinion. That is, what you're really looking for is the parties' feeling about the mediation or the mediator. If that is the case, be sure that you both ask the question in a way that makes it clear and report the responses as the parties' feelings rather than a gauge of the party's understanding.

*Example 3:*

Do you feel that you could have gotten a better outcome if you went to court?

*Example 4:*

Do you feel that the mediator did a good job with your case?

*How to write the results of the above examples:*

In surveys, 34% of parties felt they could have gotten a better outcome in court. However, most were happy with their mediator: 89% of parties felt their mediator did a good job.

**DON'T MAKE THE QUESTION TOO BROAD**

Make sure the question is focused enough that a participant can answer it with clarity and you can be sure of the meaning of their response.

*Example 1:*

Before: Did everyone at the mediation treat you with respect?

This question encompasses too many options. The party is being asked whether the mediator, the other party and the attorneys treated him or her with respect. What if the mediator did, but the other party didn't?

After: Did the mediator treat you with respect?  
Did the other party treat you with respect?

*Example 2:*

Before: Mediation benefitted me.

This question is too broad to have meaning for evaluating program quality. What does “benefit” mean? *How* did the mediation benefit the participant? These need to be clarified in order for the question to be useful. It’s better to ask a question about how it benefitted them, provided they have the information to answer that question.

After: Mediation helped me to understand my options better.  
Mediation helped the other party and me to come up with options to resolve our dispute.

### **USE UNAMBIGUOUS LANGUAGE**

The meaning of the question you ask needs to be very clear, and should not be able to be interpreted in different ways.

*Example:*

Before: How comfortable were you in the mediation session?

This is a simple, direct question that has several possible interpretations. The question could be asking whether the participant was physically comfortable. Or it could be asking whether the participant was emotionally comfortable. There’s no way to know which question the participant is answering.

After: Did you feel comfortable discussing your issues in mediation?  
Was the room comfortable?

### **PITFALLS TO AVOID WHEN WRITING QUESTIONS**

The following incorporates all the errors noted in the “before” questions in each section above.

*Example:*

Before: How would you rate the comfort and appropriateness of the physical setting arranged by the mediators for your session?

There are a lot of problems with this question:

- It doesn’t use simple language. The language and sentence structure are difficult to follow. The sentence contains numerous clauses and long words.
- The question contains two concepts – the comfort and the appropriateness of the physical setting.
- The question asks a question that the parties may not be able to answer. Do they know what an appropriate physical setting for mediation is? Do they know what a physical setting is?

- The term “appropriate” is ambiguous. Appropriate might mean that there are enough chairs for everyone, or the area is private, or there are enough rooms for caucusing.

After: How comfortable was the room you were in during the mediation?

## HOW TO WRITE RESPONSE OPTIONS

Once you’ve figured out what your questions will be, you need to determine what the response options for each question will be. What your question is will dictate, to a certain extent, what your response options will be: Yes/No, check all that apply, scaled questions (i.e., Likert Scale), etc.

Here are obvious examples:

- Did your attorney attend the entire mediation (either by phone or in person)?
  - Y/N
- Which of the following happened during mediation?
  - Check all that apply
- How satisfied are you with your overall experience in mediation?
  - Scale: very satisfied to very unsatisfied

### LIKERT SCALES: HOW MANY OPTIONS?

The Likert Scale is widely used. These are responses that go from lowest to highest or highest to lowest. For example: not at all to very much, very unsatisfied to very satisfied. You will need to decide how many points to put on that scale. The rule of thumb is not to have more than 7 points because people have a hard time decoding more options. So, that leaves you with 3-7 points. Each has its pros and cons, discussed below.

#### 3-Point Scale

**This is the scale the Model Forms Committee decided to use.**

*Example:*

Did the mediator treat you fairly?

Not at all      Somewhat      Very much

There are two arguments for using a 3-point scale. The first is that the options are clearly separate so it’s easy for someone to decide between them. The second is that, generally, programs like to report the aggregate percentages based on three points, not 5 or 7. (For example, how often do you see someone write something like: 80% of respondents said they were satisfied or very satisfied with the process?)

The argument against a 3-point scale is that it doesn’t provide enough detail to detect variability in responses between groups (e.g., plaintiffs and defendants; men and women).

#### 4-Point Scale

There are two types of 4-point scales:

1. From low to high (or high to low):

*Example 1:*

Did the mediator treat you fairly?

Not at all     A little     Somewhat     Very much

*Example 2:*

Please rate the overall service of program staff:

Poor     Unsatisfactory     Satisfactory     Excellent

2. From negative to positive (or positive to negative):

*Example 3:*

How satisfied are you with the outcome of the mediation?

Very unsatisfied     Unsatisfied     Satisfied     Very satisfied

Although 4-point scales offer more distinctions, respondents can sometimes find it hard to parse between the response options. In Example 1, how does “a little” differ from “somewhat?”

However, if your question includes negative options, as in examples 2 and 3 above, 4-point scales provide a necessary balance between positive and negative options. That is, you want to have the same number of negative responses as positive ones in order to remove bias based on an unequal number of responses.

#### 5-Point Scale

Five-point scales are often written with a neutral option in the middle – such as “neither satisfied nor unsatisfied,” as seen below. The idea here is that without a neutral option, some people will either not know how to answer, and thus leave the question blank, or they will be pushed into selecting a response they don’t actually agree with.

*Example:*

How satisfied were you with your overall experience in mediation?

Very satisfied  
 Satisfied  
 Neither satisfied nor unsatisfied  
 Unsatisfied  
 Very unsatisfied

Some argue against this option both because it is misleading (it really is “no opinion,” not something between satisfied and unsatisfied) and offers too much of an “out” to the respondent. If they don’t feel like thinking about a question, they can just choose the middle option; as a result, the neutral response is selected too often.

They recommend removing the neutral option, making the response options a 4-point scale. Or, if you think that respondents will have a valid reason for marking the neutral option, you can put the option at the end so that they go through all the other options first. This would force the respondents to consider each option before hitting the “no opinion” option.

*Example:*

How satisfied were you with your overall experience in mediation?

- Very satisfied
- Satisfied
- Unsatisfied
- Very unsatisfied
- No opinion

This is not to say you will never need a “neutral” option. Sometimes it’s essential, as when a question asks about the effect of mediation on a particular variable or outcome.

*Example:*

How do you think mediation will affect your relationship with the other party?

- Make it much worse
- Make it somewhat worse
- It will have no affect
- Make it somewhat better
- Make it much better

The argument for a 5-point scale is the same as for the 4-point scale in that it can provide a balance between positive and negative options. It can also provide a little more detail than a 3-point scale. As mentioned above, the addition of a neutral or “no opinion” is sometimes essential. However, it is often over-used.

### **7-Point Scale**

**This scale is generally not used for program evaluation, but may be used for research.**

*Example:*

Please answer the following on a scale from 1 to 7.

Do you feel the mediator treated you fairly?

Not at all			Somewhat		Very Much	
1	2	3	4	5	6	7

The argument for the 7-point scale is that it is easier to detect variability in opinions across respondents with this larger scale.

The argument against using 7 points is that it's difficult for respondents to precisely decide the difference between the points, particularly when all the points aren't labeled. You should use a scale with five or fewer points unless you have a very compelling reason to use a 7-point scale.

### **The Right Number Depends on Purpose**

The best number of points on a scale depends, in large part, on what you want to do with the information that you get from the questions. If you intend to use the information only to monitor the effectiveness of your program, fewer response options may be best. If you plan on using the information in a more sophisticated way, such as determining whether parties who have a relationship with each other are more satisfied with mediation, you might want to have four or more response options.

## **PITFALLS TO AVOID WHEN WRITING RESPONSES**

### **Reliance on Strongly Agree/Disagree Responses**

It is very common to use a response format in which the survey-taker is asked to rate their level of agreement with a statement.

#### *Example*

The mediator treated me fairly.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Research has shown that this type of “question” is difficult for people to answer. It requires some mental gymnastics to move from a concept of fairness in the statement to a concept of agreement in the response. Further, it requires them to struggle with what it means to strongly agree with the statement versus only agreeing with it.

It's better to ask a more conceptually simple question and response.

#### *Example*

Did the mediator treat you fairly?

- Not at all       Somewhat       Very much

Not only does this make the question easier to answer, but it provides more substance to your reporting. Instead of saying that 85% of parties agreed or strongly agreed that the mediator treated them fairly, you can say that 85% of parties thought the mediator treated them very fairly.

### Use of Confusing Presentation of Numbered Scales

Numbered scales are very popular. A common response format is to ask the survey-taker to circle a number that corresponds to their rating of a particular aspect of the program.

#### *Example*

On a scale from 1 to 5, with 1 being not at all and 5 being very much, please rate the mediator on the following:

The mediator's ability to break impasse (circle your answer)

1      2      3      4      5

Numbered scales are fine, but they need to be used with caution. Research shows that respondents do better with clearer guidance on what the numbers mean. Here are some options for labeling the numbers:

#### *Example 1:*

Please rate the mediator on the following:

The mediator's ability to break impasse (circle your answer)

Poor		Fair		Excellent
1	2	3	4	5

#### *Example 2:*

How well did the mediator help you to overcome obstacles to settlement?

Not at all	Somewhat	Very well
1	2	3

Providing guidance about what the responses mean helps you to have a clear understanding of what mediation participants are thinking. It also provides the words you can use when reporting. Instead of saying "80% rated their mediator's ability to break impasse as a 5," you can say 80% rated their mediator's ability to break impasse as excellent."

## TEST THE SURVEYS

When developing your own surveys, testing the forms is critically important. This allows you to find out if the people who will be using the forms will understand the questions, will answer the way you expect and can provide reliable answers. The easier way to know that you are getting reliable, valid information is to use surveys that have already been tested, as the Model Forms Committee did with the RSI/ABA model surveys.

The best way to test your survey is to ask members of your target population – parties, attorneys, mediators – to complete the survey, and then ask them about their view of the questions and their responses. You will get the most information if you do this is with individual interviews because you can ask follow-up or clarifying questions. An alternative method is to ask survey takers to respond in writing to questions about the survey.

This can be done by adding the questions to the surveys you are testing. As they complete the survey, they will provide their perspective on the meaning and wording of the questions.

Not all questions need to be vetted. For example, routine demographic questions are common and have a good track record. The focus should be on those questions that would be novel to those completing the surveys and that have not been tested previously with a similar population.

Questions to ask for specific questions are:

- Can you tell me what the question is asking?
- Please explain why you answered the question the way you did.
- Do you have any suggestions for improving the question?

Questions to ask about the survey as a whole are:

- Are there any questions we didn't already discuss that you don't understand?
- Are there any questions you felt uncomfortable answering?
- Are there any questions we didn't include that you think should be asked?

## **CONCLUSION**

The information you get from participant surveys is only as good as the survey itself. To create a good survey, use tested forms, if possible, and apply recommendations from experts. When you need to create your own forms, follow this guidance and be sure to test the potential questions before using them.

If you would like help to modify your forms, contact Resolution Systems Institute at [info@aboutrsi.org](mailto:info@aboutrsi.org).