

RSI/ABA MODEL MEDIATION SURVEYS OVERVIEW

- ✧ “Which types of cases are settling, and not settling, in our mediation program?”
- ✧ “Do parties feel like they are being treated fairly in mediation?”
- ✧ “How long does it take cases to complete our mediation program?”

These are common questions court mediation programs ask that can be answered by using the model mediation surveys.

INTRODUCTION

Today, courts are not only under more pressure than ever to address a broad array of disputes with limited resources, but they are expected to design metrics to prove the effectiveness of their efforts. To meet this need, Resolutions Systems Institute brought together a national group of expert court ADR researchers and administrators and invited the American Bar Association Section of Dispute Resolution to collaborate. Together, the two organizations and the national experts developed the RSI/ABA Model Mediation Surveys. This high-quality tool can be used by any court to evaluate its mediation program.

Importantly, these metrics should not just be about the bottom line. Courts that establish mediation programs have a responsibility to ensure these mediation programs provide a quality justice experience. Indeed, justice is the “bottom line” for court systems. Therefore, the model surveys allow programs to assess procedural justice, as well as other measures of program effectiveness.

GOALS

RSI and the ABA have three goals for these forms:

1. **Provide a tool created by experts** that doesn’t require experts to analyze the data in order to know how well a program is functioning
2. **Improve data collection** so court mediation programs can tell how well they are functioning and what improvements should be made
3. Provide for **more uniform data collection** across programs so that research can be done about what makes court mediation programs most effective

WHAT FORMS ARE INCLUDED?

Four forms, along with instructions on their use are included in this project.

PARTY SURVEY

The Party Survey is essential for evaluating program performance. It gives mediation programs the opportunity to assess four areas: 1) the parties' experience of procedural justice, 2) the parties' satisfaction with the process, 3) the achievement of particular goals for the mediation process and 4) the mediators' performance on particular standards.

ATTORNEY SURVEY

The Attorney Survey offers the chance to gather similar information from the attorneys as from the parties. The main difference is that procedural justice is not assessed through the attorney responses. Another difference is the opportunity to gather more information about the quality of the mediator and the characteristics of the case.

MEDIATOR SURVEY

This form allows programs to gather more information on the mediation for program evaluation purposes. How many people attended for each side? What case and party characteristics were present? Were non-monetary terms included in the agreement? The information gathered here should not be made public nor provided to the sitting judge unless aggregated from many cases, so as to avoid breach of mediation confidentiality.

MEDIATOR REPORT

The Mediator Report is primarily a case management tool. However, it can also be a good source of program monitoring and evaluation data. The report allows programs to track a case while it moves from session to session, capture mediation outcomes, and gather data that can help to determine how long cases are taking to go through mediation as well as the amount of time spent in mediation. None of the information supplied by this report is confidential.

WHAT DO THESE FORMS TRACK?

Combined, the forms focus on five aspects of mediation programs that courts need to track in order to properly manage and evaluate their mediation programs. These include the program process, program attributes, mediation outcomes, participant experience and mediator quality.

1. Program Process

Number of cases referred

This provides information on how often mediation is turned to for the resolution of cases, as well as providing a baseline for determining the ratio of referrals to mediations.

Number of cases going through mediation

This is the raw data about the use of the program. Further, this data, 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.

Timing of referral

This information helps programs understand at what point cases are being mediated.

Who is doing the referring and what is the result of those referrals

This information shows which judges are referring cases and how effectively they are doing so.

Reasons cases referred do not end up going through mediation

These details help to paint a picture of the effectiveness of the referral system. Is referral leading nowhere? Are cases settling before reaching mediation? Are parties refusing to mediate?

Amount of time spent in mediation

This data can be helpful for determining the cost of mediation, whether it is paid by the court, the parties or other funding sources.

Amount of time the mediation process is taking

Time from referral to the end of mediation can be helpful for determining whether the process might be streamlined.

2. Program Attributes

Type of cases or issues going through mediation

Keeping tabs on what types of cases go through mediation helps courts understand how the program is being used and who is using it.

Parties to mediation

This helps courts understand who the program is serving. How many individuals are being served? Who are those individuals? Are they represented by counsel?

Characteristics of cases at the time of 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 an understanding of what characteristics exist in the cases being mediated and which features are more likely in cases that settle or do not settle.

3. Outcomes of Cases Going through Mediation

Settlement rate

For some, settlement rate is its own measure of a program's effectiveness. Others may disagree. No matter one's opinion, settlement rate can be used to assess use of resources and to determine what factors might make mediation more effective. In mediation, settlement rate is an indicator of the amount of time and money being saved by the court through referral to mediation. Some programs also use settlement rate as a measure of effectiveness. Combined with what types of cases and issues are being mediated, as well as the types of parties involved in the mediation, settlement rates can help programs understand which factors make cases more appropriate for mediation, increase the likelihood of settlement or simplification of issues, and more likely to lead to satisfaction of the parties.

Types of outcomes

The forms can let programs know if parties are reaching agreements that include non-monetary terms which can add value to the use of mediation.

4. Participant Perception of Their Experience with Mediation

It is the court's responsibility to ensure that litigants are experiencing procedural justice – a perception that the process of resolving a dispute is fair – whether at trial or in mediation. Generally, parties find mediation to be fair if they feel heard and respected. Party surveys are used to gather data on these issues.

Attorneys need to have a positive experience with the program and the mediation in order for them to get the most out of mediation for their cases. Attorney surveys are meant to inform the program of their opinion of their experience.

5. Mediator Quality

Monitoring the performance of mediators through participant surveys is essential to monitoring the quality of the program. Both party and attorney surveys help the program to determine whether mediators are being coercive, disrespectful or biased.

HOW TO USE THE FORMS

Each of the forms – Party Survey, Attorney Survey, Mediator Survey and Mediator Report – includes an explanation of what metrics the form provides, an annotated version of the form with an explanation for every question, a version of the form without commentary, and instructions about how to use it. Programs can choose to use just one or two of the forms or all of them. They were developed to work together, but, for example, if a program only has a need to find out what the parties are thinking, the party survey can be used on its own.

It is important to note that the Model Forms Committee tested all the questions and their order with mediation participants in court mediation programs. This testing indicated that the wording and the order of

the questions as they stand will provide valid and reliable information. Changes to the wording or order could lead to unreliable data, which in turn could lead to policy decisions based on bad information. Therefore, we recommend that programs use the questions as written as much as possible.

Because program needs vary, the forms are split into two sections: a core set of questions that all courts should ask, and a set of optional questions that some courts may want to ask for their particular circumstances. The core – or essential – questions are comprehensive. They will answer all the questions detailed above. The committee added optional questions to help courts tailor survey questions to their particular needs. Programs may use only the core questions, or select one or more of the optional questions to add to the core forms.

For assistance in adapting the forms, contact Resolution Systems Institute at info@AboutRSI.org.

WHAT TO DO WITH THE DATA

Obviously, once a program starts using the forms, the information has to go somewhere. Where that might be depends on the size of the program, the funds available and the data needs. The options for this include a simple spreadsheet, use of optical mark recognition (OMR) software, use of online surveys, or the development of a more sophisticated database. However the data is stored, especially the data from the mediator and participant surveys, it should be stored away from the judges who may eventually rule on the underlying cases.

Once the data is collected, it needs to be analyzed. This, too, can be done simply, with spreadsheet calculations or automated reports through the OMR software or online survey service. These tools allow reports on anything from numbers of cases and resolution rates to party perception of fairness and attorney assessment of mediator ability. More sophisticated analysis requires statistical software and someone with experience analyzing statistics. An example of this type of analysis is determining causation, such as whether lack of representation at mediation affects outcomes.

CONCLUSION

The Model Forms Committee created these forms and the related guidance so that any court mediation program could collect reliable information about its effectiveness without needing to bring in experts. Courts are invited to use them in whole or in part, so that they can benefit from the combined know-how and experience of nationally-recognized experts in research and evaluation.

ACKNOWLEDGEMENTS

Many thanks to the Model Forms Committee, the national team of expert researchers and program administrators who created these tools. The quality of the final product is a result of the committee's research, as well as the committee members' own vast experience. Many thanks are also due to the court mediation program administrators and other researchers who reviewed the initial drafts of the tools and tested them in actual court mediations. As a result of this rigorous process, Resolution System Institute and the ABA Dispute Resolution Section are providing courts with tools that were expertly-crafted and tested in the field.

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