

# EVALUATING ALTERNATIVE DISPUTE RESOLUTION PROGRAMS

## REVIEW AND RECOMMENDATIONS FOR MEDIATION IN VIRGINIA



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## ACRONYMS

AAA – American Arbitration Association

AADRC – Arkansas Alternative Dispute Resolution Commission

ABA – American Bar Association

ADR – Alternative Dispute Resolution

ADRESS - Alternative Dispute Resolution Evaluation Support System (Maryland)

CASA – Court Appointed Special Advocates

CDRP – Community Dispute Resolution Program (Michigan)

CJODR – Colorado Judicial Branch Office of Dispute Resolution

CME – Continuing Mediation Education

DJS – Department of Judicial Services (Virginia)

DRS – Division of Dispute Resolution Services (Virginia)

FINS – Family in Need of Services (Arkansas)

FMCS – Federal Mediation and Conciliation Service

GDC – General District Court (Virginia, Maryland and Michigan)

JDR – Juvenile and Domestic Relations Court (Virginia)

MACRO - Maryland Mediation and Conflict Resolution Office

MPA – Master of Public Administration

MPME – Maryland Program for Mediator Excellence

NCCUSL – National Conference of Commissioners on Uniform State Laws

ODR – Office of Dispute Resolution (Michigan)

OMR – Optical Mark Recognition

OES – Office of the Executive Secretary (Virginia)

SJI – State Justice Institute

UALR – University of Arkansas at Little Rock

UMA – Uniform Mediation Act

VCU – Virginia Commonwealth University

## EXECUTIVE SUMMARY

The Division of Dispute Resolution Services collaborated with the Master of Public Administration (MPA) Capstone research team at Virginia Commonwealth University (VCU) to analyze their current program monitoring and evaluation process as it pertains to mediation sessions and mediators. The report focuses on two primary research questions:

- 1) How can DRS's current mediation and mediator data collection and evaluation/monitoring processes be improved to better align with best practices in court-connected mediation program monitoring and evaluation?
- 2) What are DRS and stakeholders' perceptions of the current mediation and mediator data collection and evaluation/monitoring processes?

The data discussed in this report were collected from four primary sources: (1) a detailed review of current literature on the topic of court-connected mediation, (2) comparative analyses of selected states on court-connected mediation programs, including development, implementation, and evaluation of those programs, (3) semi-structured interviews of the mediators on their experiences with Virginia's current mediation evaluation process, and (4) semi-structured interviews with leadership in the field of court-connected mediation programs.

Findings from the research obtained from in-depth interviews with other state ADR representatives, field experts from Resolution Systems Institute and the Dispute Resolution Section of the American Bar Association, and Virginia mediators focused on mediator evaluation survey protocol. Several key findings emerged from the research to include survey format issues that relates to question style, wording, structure, and terminology. The research also indicates that using an electronic format will promote more confidentiality and efficiency in the evaluation process. In addition, an electronic format would help with time restrictions that mediators and parties encounter during the mediation process. Strengthening aspects that pertain to the survey format and administration will provide DRS with reliable data for effective program monitoring and evaluation. The research also indicated a strong need for program goals that drive data collection and mediator training incentives that DRS utilizes to promote mediator performance improvement and growth. From the qualitative content analysis findings, the research team examined best practices for court-connected mediation that can be used to addresses overall program health.

The following recommendations were derived from the analyses of findings:

- 1) Develop program goals and objectives for monitoring and evaluation
- 2) Develop and implement a mediation intake form
- 3) Develop and implement an electronic mediator evaluation survey tool
- 4) Improve data collection practices
- 5) Incorporate additional training opportunities and incentive practices
- 6) Create an annual report

## INTRODUCTION

### PURPOSE OF REPORT

The Division of Dispute Resolution Services (DRS) serves as a centralized alternative dispute resolution office within the Commonwealth of Virginia. DRS oversees the certification of mediators and mediation training programs in addition to enforcing certified mediator standards of ethics, training guidelines, and governing guidelines. Outside of its regulatory role, DRS continuously promotes and monitors Judicial Settlement Conference programs in the circuit courts and court-connected mediation programs, as well as statewide Parent Education programs for the Commonwealth.

Mediators perform a critical role in the ADR process and monitoring and evaluating their work is a fundamental responsibility of DRS. To better assess mediation sessions and mediators, DRS requested a review of its current monitoring and evaluation system, with a specific focus on the types of data to collect and the procedures needed to support it. This report examines DRS's current mediator monitoring and evaluation process, compares that with best practices across the nation, and offers recommendations for collecting meaningful data while respecting party confidentiality.

### RESEARCH QUESTIONS

The primary research questions that guide this report are:

- 1) How can DRS's current mediation and mediator data collection and evaluation/monitoring processes be improved to better align with best practices in court-connected mediation program monitoring and evaluation?
- 2) What are DRS and stakeholders' perceptions of the current mediation and mediator data collection and evaluation/monitoring processes?

### REPORT FORMAT

In order to address these questions, we first examined the existing literature surrounding the history, regulation, ethics, and best practices of ADR, with a specific focus on mediation. Based on the literature and consultations with DRS staff, the research group performed comparative analyses of states, interviews with Virginia mediators, and interviews with leadership in the field of court-connected mediation, the results of which are presented in our findings below. Finally, we provide recommendations for DRS based on our findings. A thematic comparison of the data allowed us to consider evaluation processes and survey aspects that should be sustained, as well as those that may need to be initiated or re-emphasized to Virginia mediators.

### STATEMENT OF PROBLEM

This report focuses on DRS's current program monitoring and evaluation process, as well as examines the evaluation and monitoring needs of their mediation program. Within the Commonwealth of Virginia, mediators are certified and therefore, DRS has the important responsibility of evaluating its programs for effectiveness and quality and to provide a low cost,

user-friendly method for users to provide feedback. Keeping in mind DRS’s goals of protecting the public and collecting meaningful data, this report provides specific recommendations.

To better assess mediation sessions and mediators, DRS requested a review of its current monitoring and evaluation system, with a specific focus on the types of data to collect and the procedures needed to support it. Our analysis is based on a review of best practices in court-connected mediation programs as outlined by the American Bar Association (ABA) and Resolution Systems Institute (RSI) and a comparative analysis of Virginia to ADR programs in Arkansas, Colorado, Maryland, Michigan, New Mexico, and Tennessee, with consideration of input provided from important stakeholders such as DRS, Virginia certified mediators, and other state ADR programs.

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## BACKGROUND AND CONTEXT

### DRS: PART OF A LARGER VISION FOR EFFECTIVE JUSTICE IN VIRGINIA

The Division of Dispute Resolution Services is part of a broader focus on effective justice across the Commonwealth of Virginia. The Department of Judicial Services (DJS) serves as the liaison between the Judiciary's administrative offices and the courts. DJS provides administrative services through publications, trainings, field visits, and the research and support of various programs, as well as serves the courts of the Commonwealth through its seven divisions.

In 1987, Chief Justice Harry L. Carrico appointed a 34-member Commission on the Future of Virginia’s Judicial System (the Commission) in anticipation for the challenges of the 21st century (Office of the Executive Secretary, 2009). The Commission was charged to develop a “vision” for an effective justice system to address the changing needs of its citizens. In the spring of 1989, the Commission released the Futures Commission Report that outlined major recommendations, or “visions,” for the Virginia Judicial System to continue meeting its core mission of “the just resolution of disputes.” These “visions” included a new emphasis on dispute resolution methods that would not simply decide the case, but also seek to resolve the dispute. In order to offer the most effective and responsive methods for resolving disputes, the justice system should provide alternative dispute resolution programs, as well as adjudication. Additionally, in Vision Three of the Futures Commission Report, the Commission recommended the creation of an office within the administrative arm of the court system. Because of this recommendation, in 1991 the Division of Dispute Resolution Services (DRS) was developed within the Office of the Executive Secretary.

Today, the Commonwealth of Virginia is considered a leader in ADR. Not only has the Commonwealth passed legislation authorizing ADR, there is state-sponsored funding to support access to mediation services for parties participating in the dispute resolution process. In terms of ensuring program quality, DRS has developed guidelines for the training and certification of mediators grounded in ADR professional conduct. Guidelines also outline the standards of ethics and the grievance procedures. Parties have access to approximately 600 certified mediators in the Commonwealth through a searchable mediator directory. According to DRS,



mediator evaluation forms completed by parties indicate over 90 percent satisfaction and a settlement rate of about 80 percent.

#### Understanding Mediation within a Justice Continuum

The Futures Commission promoted dispute resolution options as lying along a continuum ranked according to the parties' engagement in the problem, the involvement of a third party, and the power of resolution given to that third party. At one end are the least formal options, which are those that entail the most party control over the outcome. At the other end are those processes, which are the most precise and involve a third party decision-maker (See Exhibit 1).

For some parties, conflict is a very uncomfortable process and can make them feel powerless and overwhelmed. Whether short-term or long-term, these feelings may lead to an avoidance response. When avoidance is no longer practical, parties may choose to pursue some form of informal negotiation where they attempt to settle the dispute between the two parties with no intervention or facilitation. Conciliation involves building a positive relationship between parties. The conciliator may assist parties by helping to establish communication, clarifying misperceptions, dealing with strong emotions, and building the trust necessary for cooperative problem solving.

Mediation lies in the center of the continuum, signifying the balance of power between parties in conflict. While they maintain power over the decision-making, the mediator assists by acting as a facilitator of the communication process. Unlike a conciliator, the mediator acts as an impartial and neutral party in the decision-making. Neutral case evaluation provides parties in dispute with an early evaluation by an objective observer or evaluator on the merits of a case. It is used when the parties disagree significantly about the value of their cases and are locked in positional bargaining. Like mediation, a settlement conference allows an impartial third party to facilitate communication and negotiation between parties; however, parties using this process receive a higher degree of feedback from the third party, who is typically selected from a panel comprised of former judges with strong settlement capabilities. Adjudication is a formal dispute resolution process in which parties present evidence to a judge or a jury who decides the outcome of the resolution. Formal rules dictate the presentation of evidence.

Because dispute resolution is an ever-evolving field, further developments or additional options may form through innovation over time. Regardless, parties always have the possibility of negotiating directly with each other or through representatives, such as attorneys. Adjudication, however, is not automatically used to resolve all disputes. Multiple alternative dispute resolution (ADR) options allow parties to select a process that best meets the needs of their case and absolve the underlying issues of the dispute. ADR allows parties the opportunity to reduce hostility, regain a

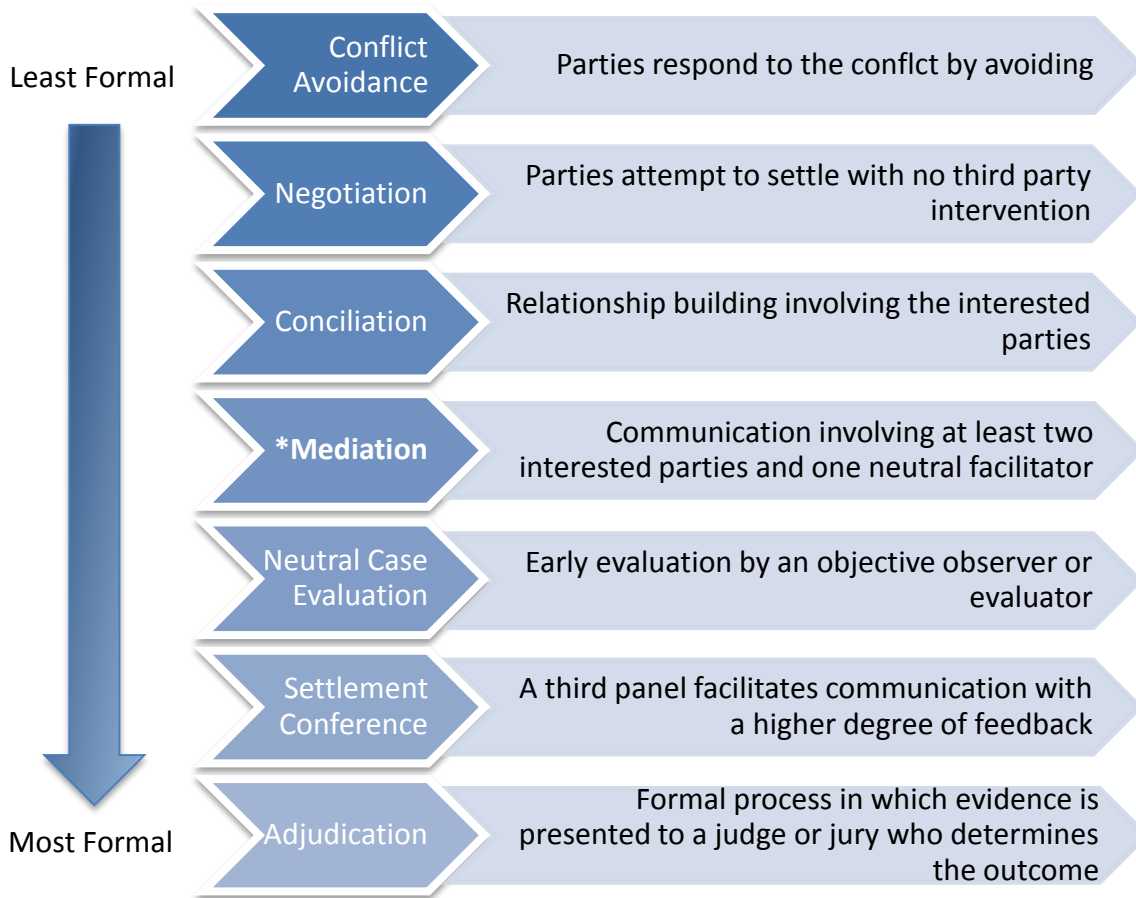
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ADR allows parties the opportunity to reduce hostility, regain a sense of control, gain acceptance of the outcome, peacefully resolve conflict, and achieve a greater understanding of justice in each case.

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sense of control, gain acceptance of the outcome, peacefully resolve conflict, and achieve a greater understanding of justice in each case.

**Exhibit 1: Continuum of Dispute Resolution Options: Least Formal to Most Formal**



## LITERATURE REVIEW

The research team conducted a thorough literature review using scholarly and professional publications. The primary focus of the literature review included (1) the definition and purpose of alternative dispute resolution, (2) the history and emergence of formal alternative dispute resolution, (3) the definition and process of mediation, (4) ethics in mediation, (5), regulating mediation (6) and best practices in mediation from the perspective of state approaches, RSI and ABA.

### WHAT IS ALTERNATIVE DISPUTE RESOLUTION?

Alternative dispute resolution (ADR) is best understood as settling disputes without litigation. ADR is an alternative method used to solve problems by means other than power, the courts, violence, or any other forum in which one party's inherent advantages preclude a fair settlement (Barrett & Barrett, 2004). There are many historical and contemporary forms of

ADR. The most basic form of ADR is conciliation, a negotiation where two parties simply talk out a problem and attempt to come to a resolution of mutual agreement. When two negotiating parties realize they need help in the process, they may accept intervention from a third party. This is known as mediation. Arbitration is when the third party is asked to make the final decision.

Consensus building involves the entire community feeling satisfied with the outcome. Fact-finding, another form of ADR, can be used to investigate the problem in order to help bring some closure to the issue. Although ADR is a mechanism for resolving individual disputes, its tenets hope to move beyond the present problem to allow the participants to build a better understanding of each other and to deepen relationships. ADR is often favored when compared to litigation for three main reasons: it is less costly, it is faster, and it allows for collaboration. These processes are increasingly being utilized in high-profile labor disputes, divorce actions, and personal injury claims (American Bar Association, 2017).

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(American Bar Association, 2017)

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## HISTORY OF ADR

History provides many examples of how people have engaged in peaceful ways of resolving conflict, with historical roots that far predate obvious application of ADR during social movements. Conflict resolution practices can be traced back to 1880 B.C. (Barrett & Barrett, 2004). In prehistoric times when humans had the tendency to settle differences through physical match, there are precursors of ADR found in ancient artifacts and stories where people use tactics to prevent fighting. These tactics detail community dispute resolution through religious practices, moot court, and mediation through elected elders and leadership. In the colonization period of America, Native Americans are credited with educating the settlers and future leaders of the colonies in tactics of persuasion, compromise, maintaining peace, and consensus building (Barrett & Barrett, 2004). Colonial institutions were seen as experimental labs for the development of ADR skills and attitudes that support ADR processes. One of the earliest Acts to install ADR practices was the Patent Act of 1790 where Congress provided for an arbitration system for competing patent claims. The Act authorized the creation of an adjudicative board, consisting of one member appointed by each patent applicant and another by the Secretary of State. While these early attempts at ADR were essential to its development in the United States, ADR did not receive formal institutionalization until the late-19th century.

Post-industrialist labor-management disputes throughout the 1900s provide the most widely used application of ADR processes. This period, when union membership and support began to increase, was also when the use of collective bargaining and mediation experienced tremendous growth (Barrett, 2004). The growth of ADR is closely tied to the growth of rights and protections – particularly of the working class, women, African Americans, consumers, and young laborers and their ability to exercise those rights. State and federal legislation providing

for dispute resolution assistance between employer and representatives of employees (unions) can be seen in the late nineteenth century, although it did not grant employees any rights until 1914. Special mediation agencies like the Board of Mediation and Conciliation for Railway Labor and the Federal Mediation and Conciliation Service (FMCS) were formed to carry out negotiations regarding employment (McManus & Silverstein, 2011). At this stage of ADR's development, it was characterized as less of an alternative to litigation and more as a tool to avoid unrest, strikes, and the resultant economic disruption.

### GROWTH OF COURT-CONNECTED ADR

Although ADR has been used in many different forms and for many different purposes throughout history, it has only recently become more formally conceptualized and institutionalized. One of the formal processes is the dispute management systems for the courts, or Alternative Dispute Resolution programs. "Alternative" implies that dispute resolution techniques, including mediation, are an alternative option to litigation. ADR can also be referred to as "appropriate dispute resolution" insinuating that these techniques are the appropriate way to settle conflicts.

Early in the 20th century, states began taking an interest in systematic ADR as a litigation alternative (McManus & Silverstein, 2011). In the 1920s, over a dozen states passed modern arbitration laws and Congress enacted a federal cognate, the Federal Arbitration Act. All of these statutes significantly improved the nature of U.S. arbitration in four ways:

- 1) Making agreements to arbitrate future disputes that were legally valid, enforceable, and revocable only as any contract could be revoked.
- 2) Closing the court to parties of an arbitration agreement by requiring them to comply with their agreement.
- 3) Authorizing courts to enforce arbitration awards.
- 4) Authorizing courts to appoint arbitrators and permitting courts to expedite arbitration, when one party has failed to move forward with the agreement to arbitrate.

While all of these were positive developments, the most innovative development was the expressed authorization for courts to enforce ADR remedies (McManus & Silverstein, 2011). With the enactment of legal ADR systems, lawyers and entrepreneurs realized the importance of providing a nongovernmental voice to ADR-related policymaking. In 1926, the American Arbitration Association (AAA) was formed to guide arbitrators and parties as to ADR methods and time-tested procedures (McManus & Silverstein, 2011).

### ADR PROGRAMS: A DIVERSE SYSTEM OF APPROACHES

Throughout the 20th Century, ADR grew in popularity as an alternative to the litigation process. State and federal governments began utilizing ADR in some programs using a variety of approaches along the continuum and in an array of dispute areas. For example, during the 1970s, the Department of Health, Education, and Welfare was designated as the administrator of the Age Discrimination Act of 1975 to resolve claims of age discrimination in federal

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The growth and application of ADR programs across federal agencies, state judicial systems, and educational institutions elucidates the diversity of ADR as a system of conflict resolution.

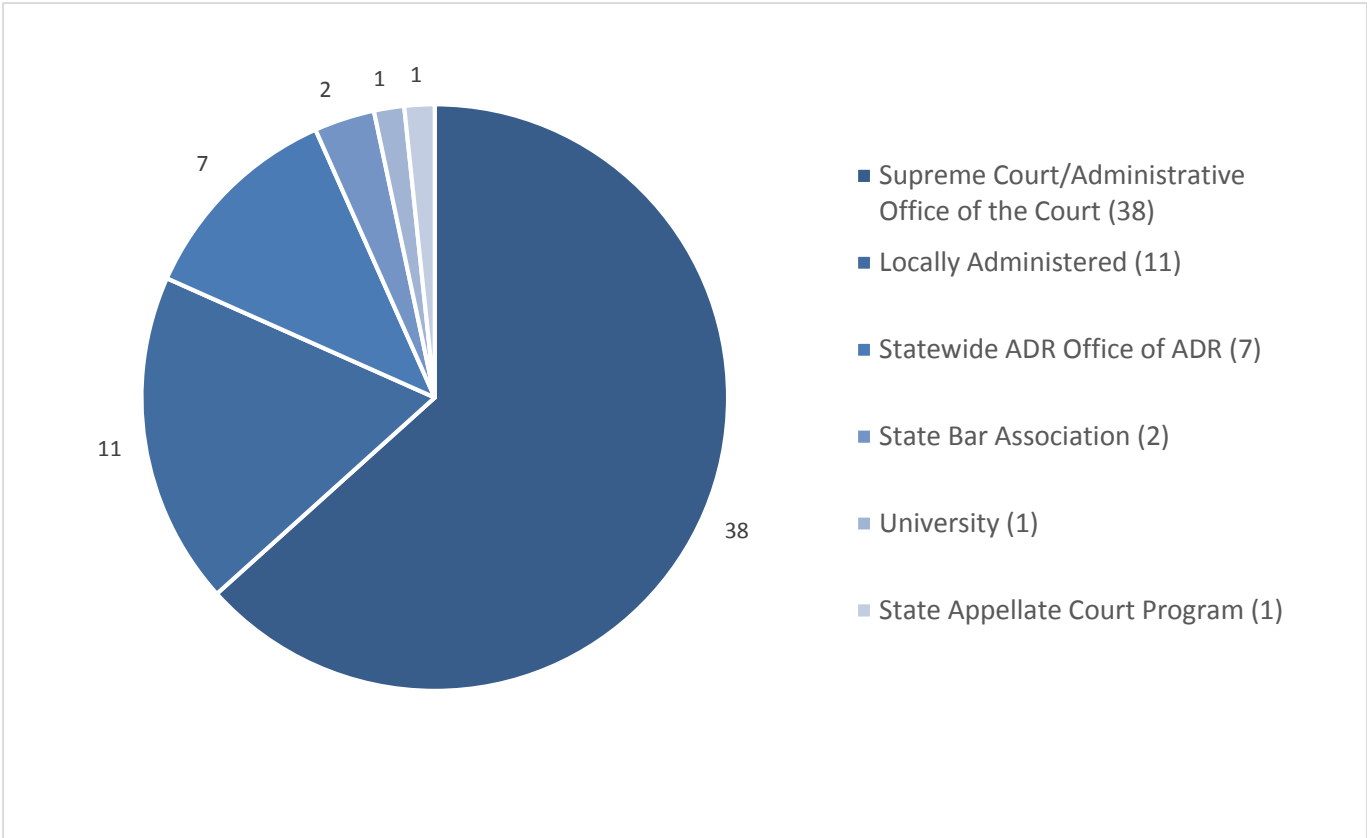
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workplaces. To facilitate speedy resolutions of matters, the Department enlisted the help of FMCS to mediate complaints under the new law, a process that became routine in 1979 (McManus & Silverstein, 2011). At the academic level, the 1980s brought significant interest from legal experts in the uses of ADR in a variety of fields. Universities and law schools began introducing courses and degrees in ADR related topics. By the turn of the 21st century, the American Bar Association (ABA) survey showed that the majority of law schools had some form of ADR related coursework. The growth and application of ADR programs across federal agencies, state judicial systems, and educational institutions elucidates the diversity of ADR as a system of conflict resolution.

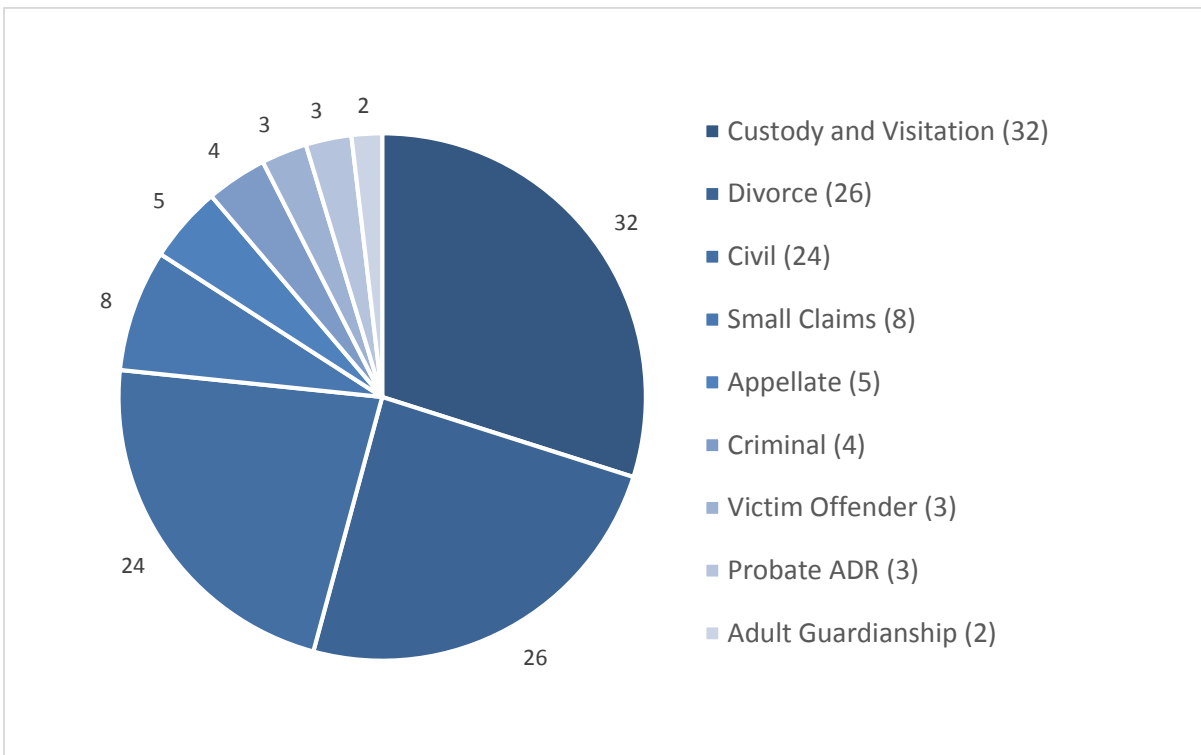
The American Bar Association's (ABA) Section of Dispute Resolution developed a clearinghouse of contact information for tracking growth and diversity of court ADR. The clearinghouse provides an overview about the programs available in jurisdictions across the United States (ABA, 2013). The database includes information about the type of cases handled by each program, the ADR processes offered, and the statutory authorizations and rules related to the programs. There are 224 ADR programs included in the database, 62 of which are at the state level.

The state programs have been divided into six categories based on program operation and structure (See Exhibit 2). There are 38 programs based in the state supreme court or administrative office of the court, 11 locally administered court programs, 7 statewide offices of dispute resolution, two programs based in a state bar association, one program based in at a university, and one based in a state appellate court program. The database further inventories programs by the type of process offered and the types of cases for which ADR is offered (See Exhibit 3). Mediation is most commonly offered for cases of custody and visitation, civil, and divorce. In the case of mediation processes, 17 states offer voluntary mediation, eight states offer appellate mandatory mediation and 31 states offer mediation that did not specify voluntary or mandatory. The database also organizes programs by the types of cases for which ADR is offered. Further research reveals that states have varying program approaches to providing services, such as referring cases to community based mediation centers or providing a roster of independent mediators from which to choose.

### Exhibit 2: State ADR Operation



### Exhibit 3: State ADR Case Types



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## WHAT IS MEDIATION AND WHY IS IT IMPORTANT?

Mediation, the ADR focal point of this research paper, is seen as one of the foundational practices in ADR. Mediation consists of a neutral third party, the mediator, using specific techniques to assist two or more parties to help them negotiate an agreement on a matter of common interest (Mediation Matters, 2009). Mediation can be used most effectively when the parties have had a relationship of some type, such as with landlord-tenant, employee-employer, neighbors, husband-wife, siblings, contractor-subcontractor, and consumer-business (Virginia's Judicial System, 2009). Mediation can be best described as a process of communication with the mediator acting as a facilitator to assist disputants to make their own decisions in the resolution of their conflict through communication. While informal procedures have been around for hundreds of years, mediation becomes difficult to oversee when discussing it in the context of litigation. There are many procedural barriers to formal litigation and this may contribute to an emphasis on the informal procedures of mediation all over the world (McManus & Silverstein, 2011).

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-Virginia's Judicial System, 2009

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Although there is no unified best practice, mediation and other conciliatory techniques are widely perceived to be "good" by comparison with litigation. In *Our courts, ourselves: How the alternative dispute resolution movement is reshaping our legal system*, Hensler (2003) believes as a result of ADR, legislatures and courts do not feel that they need to regulate mediation or mediators closely. Some states certify mediators who have completed a required number of training hours, while in other jurisdictions, courts may publish rosters of attorneys who have indicated an interest in mediating. In some states, mediators are free to set their own fees based on market rate whereas other states set the rate and reimburse based on set fee by the state.

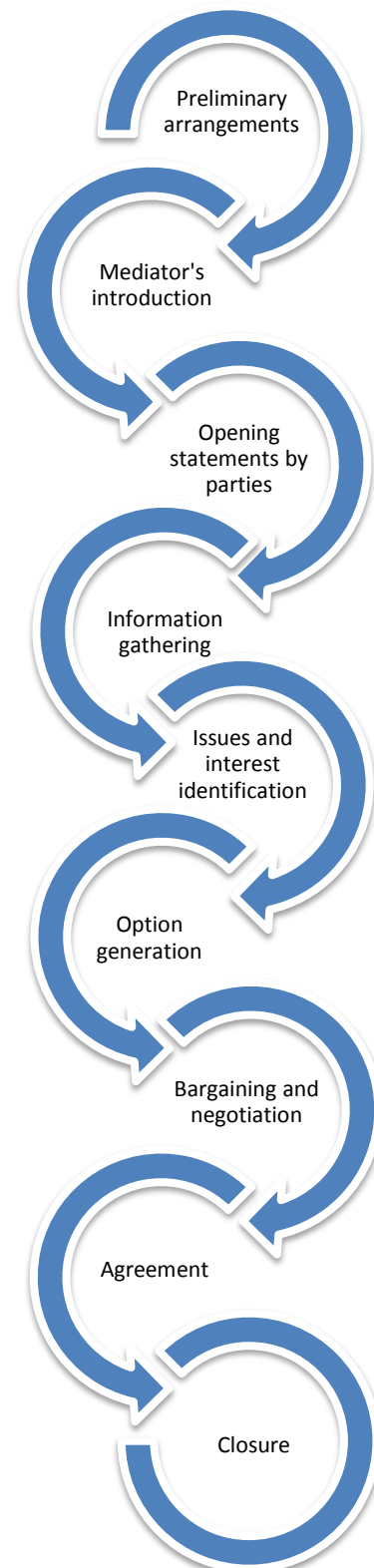
Others believe the reason for ADR's vast acceptance is due to being affordable and time efficient. In *Alternatives to the High Cost of Litigation*, Lande (2005) explains that courts value and promote mediation because of the success in settlements, lower costs, and expedited time to disposition. They have a strong interest in assuring the integrity of mediation services and to ensure that quality standards are being met. Courts must also issue programs that they can readily enforce. While some believe that court-connected mediation programs are the appropriate way to settle conflicts, growth in ADR programs can also be attributed to administrative goals, including reducing cases on the docket, decreasing court costs, meeting requirements of legislation, and increasing party satisfaction by empowering litigants to resolve their own disputes in a private forum.

## THE PROCESS OF MEDIATION

Although the historical overview depicts ADR and mediation in many ways, it is important to remember that mediation is still very new and experimental. It was not until the mid-1970s to the late 1980s when the Pound Conference occurred and revolutionized the utilization of mediation by proposing the reduction in reliance of litigation. The conference inspired many academics, lawyers, local government officials, and statewide officials to develop experimental mediation program centers across the country as community-based practices, rather than court-annexed (Kovach, 2014). In the early 1990s, mediation centers were rapidly being created and implemented throughout the nation. With many different perspectives and communities implementing mediation with no regulations and without consideration of ethics, practical, philosophical and legal issues, it was vital to develop theories, regulations to oversee these new practices, and an understanding of what the process of mediation is as a formalized practice.

Before a mediation case can occur, arrangements must be made, such as the referral and selection of the mediator, the determination of those attending the mediation, fees, and allocation of the settlement authority (Kovach, 2014). It is important to note that the beginning of a case is when the mediator is deciding the approach to take and the roles of the lawyers. Once the arrangements have been established and agreed upon, the mediator introduces his or herself and his or her role and the parties. The mediator explains the ground rules that will guide the process and the importance of confidentiality. After the mediator's introduction, each party, or their respective representatives, present their perspective of the issues. This is the time where the mediator can better understand the issue at hand, but most importantly, each party can express to one another how they see the dispute in their own words.

Exhibit 4: The Process of Mediation





After the parties and their representatives have provided their opening remarks, the mediator processes the information and allows the parties to discuss their emotions about the disputes. When the mediator has processed the information, he or she will restate the issues in a neutral language and determine the underlying interests of both parties (Kovach, 2014). The mediator also discusses with the parties the kind of solutions or ideas that can be generated that may resolve the dispute. This part of the process may require the mediator to meet with the parties privately. Once the parties and the mediator have identified the potential options for the settlement, the negotiation ensues. The mediator is assisting the parties as they negotiate. If the negotiations lead to an agreement, then the mediator drafts the complete agreement or a memorandum. If no agreement is reached, the mediator restates each party's respective position and closes the mediation.

In *Mediation in a Nutshell*, Kovach (2014) provides a detailed explanation of the process (See Exhibit 4). The mediator has the flexibility to follow this order and add his or her styles and tactics along with the stages. Kovach presents her interpretation model of the mediation process in nine stages: (1) preliminary arrangements, (2) mediator's introduction, (3) opening statements by parties (ventilation), (4) information gathering, (5) issues and Interest Identification (agenda setting and caucus), (6) option generation (reality testing), (7) bargaining and negotiation, (8) agreement, and (9) closure.

When illustrating what mediation consists of, a fitting description is like that of a flexible, multi-stage, negotiation process. In this process model above, the parentheses indicate optional components that may seem vital to some mediators or unnecessary to other mediators depending on style and technique. Each stage can be considered vital to a successful facilitation of mediation, even though some mediators may not go through every single stage for a resolution to be reached. It is important to remember, however, that the most effective mediators can possess a great deal of control in how the mediation is done. In conclusion, the usefulness of the stages, the nature of the mediation case, the parties, and the mediator's style will always vary; therefore, a mediator's skills and knowledge are the real indicators of a successful mediation.

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## EVALUATING MEDIATION: UNDERSTANDING THE KEY ISSUES

As with any professional field, evaluation in mediation is necessary to critically examine the programs to assess effectiveness and drive decision making. There are several key issues that impact how evaluation is addressed. The issues examined in regards to evaluation are regulation, confidentiality, ethics, and mediator surveys (See Exhibit 5).

### Exhibit 5: Key Issues in Mediation Evaluation

Key Issues in Mediation Evaluation	
<b>To regulate or not?</b>	Regulation equates to consistency and informs practice which can compromise core principles that make mediation a unique field. However, regulation would create entry standards and professional discipline for mediation making the field a more distinct profession.
<b>Confidentiality Protection</b>	Confidentiality is a core principle in which mediation is based. Mediation communication is confidential and protected. Without clear regulatory practice regarding confidentiality, it may difficult to truly evaluate mediation.
<b>Ethical Considerations</b>	Ethical standards have been implemented regarding mediator conduct. However oftentimes these considerations are ambiguous and can be left open to interpretation.
<b>Mediator Evaluation Surveys</b>	Program evaluation builds stakeholder trust and encourages investment in mediation as an ADR practice. Surveys assess whether mediators are adhering to program goals and how well mediation serves parties.
<b>Resolution Systems Institute</b>	A resource center that provides tools to mediation programs utilize for effective evaluation practices.

#### TO REGULATE OR NOT?

Mediation has transitioned from unconventional conflict resolutions to a widespread normalized step in the traditional litigation process. As mediation has evolved into a more disciplined practice, the argument of developing regulations has risen. Although mediation is praised for its flexibility and diversified practices from mediator to mediator and state to state, discussing regulations has become controversial because regulation equates to consistency and uniformed practices (which compromises core principles of mediation). On the other hand, over 2,500 separate state statutes affect mediation proceedings in some shape or form (Kovach, 2014). In many cases, mediating parties cannot be sure which laws might apply to their efforts.

This complexity is especially troublesome when it undermines one of the most important factors promoting mediation as a means of dispute resolution, namely the parties' ability to depend on the confidentiality of the proceeding and their power to walk away without prejudice if an agreement cannot be voluntarily reached (Uniform Law Commission, 2017). This debate of pro-regulation and anti-regulation has been called Diversity-Consistency Dilemma (ADR, 2017).

Those who are pro-regulation understand how vital confidentiality is, but also believe that it is important to have regulations for skills, credibility, and quality of the mediator. Hinshaw argued that there are two primary ways to incorporate regulation (as cited in Kovach, 2014). The first is to establish a barrier to entry into the field, such as education requirements, ongoing training, and certification. Presently, the field has no entry standards whatsoever – no unified required demonstrations of mediation knowledge, competence, or skill. While not foolproof, demonstrations of competency can keep unqualified, aspiring mediators out of the field and reassure the public that mediator practitioners have at least minimal levels of ability and knowledge. The second is to provide a means of professional discipline associated with a

regulatory regime, up to and including removal from the field. In a field where civil claims against mediators are all but unavailable, it is critical to have some form of recourse against incompetent and underhanded mediators. Even though many legal disputes are subject to mediation under contractual, statutory, or judicial auspices, many mediation users lack a basic understanding of what mediation is and have an even more tenuous understanding of the potential differences among mediators. To make educated choices, consumers need trustworthy information about mediation and mediator quality (Hinshaw, 2015). Regulation could also promote the attraction of more skilled and competent mediators as regulation establishes standards that promotes quality, ultimately giving mediation more credibility as a distinct profession.

There are also several arguments against regulation in mediation, which includes creation of barriers to the field and variation of defining regulation in the field. Some contend that regulation would cause barriers to the field that could limit the amount and diversity of mediators that enter the profession. Another issue lies in defining what regulation means and the methods used to maintain regulation. This proves to be difficult as the definition of mediation is open to interpretation (Kovach, 2014). There are several methods that are used by mediation programs to facilitate regulation, including qualifications, testing and evaluation, mediator certifications and licenses, codes of conduct, membership organizations, and ongoing education. However, difficulty arises as all states do not have formalized general mediation practices due to non-uniformity across the discipline.

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## PROTECTING CONFIDENTIALITY

In 2001, the National Conference of Commissioners on Uniform State Laws (NCCUSL) passed the Uniform Mediation Act (UMA). UMA is intended to address the confidentiality of mediation practices. The American Bar Association assisted NCCUSL in drafting the act and intended the act to be generally applicable to all mediations. UMA's primary concern is keeping mediation communications confidential. Parties engaged in mediation, as well as non-party participants, must be able to speak with full candor for a mediation to be successful and for a settlement to be voluntary (Uniform Law Commission, 2017). For this reason, the central point of UMA is that a mediation communication is confidential, and if privileged, is not subject to discovery or

admission into evidence in a formal proceeding. For example, in proceedings following mediation, a party may refuse to disclose, and prevent any other person from disclosing a mediation communication. Mediators and non-party participants may refuse to disclose their own statements made during mediation and may prevent others from disclosing them as well. For a person's own mediation communication to be disclosed in a subsequent hearing, that person must agree and so must the parties to the mediation. Waiver of these privileges must be in a record or made orally during a proceeding to be effective (Uniform Law Commission, 2017).

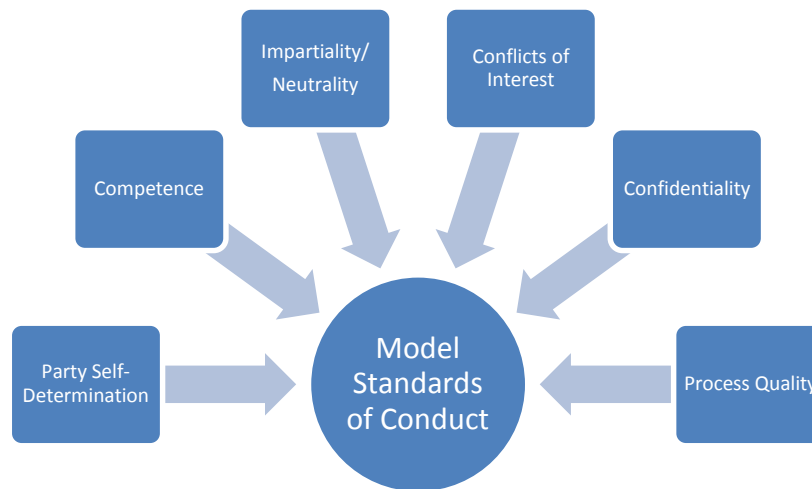
The most vital take away from UMA is that it is meant to be broad while incorporating autonomy for all parties. The act does not dictate qualifications or standards for mediators. Today, there is still no consistent approach to regulating quality and standards of conduct because it is difficult to define regulation in mediation. In terms of regulatory standards, confidentiality has been most consistent across mediation state mediation programs. However, there are still many aspects of mediation practice that potentially call for standard regulation. Certification, training, and education are diversely implemented in every locality and state. Until a unified regulation can be implemented, there will continue to be overlap between quality and standards of conduct results with mediation centers and mediators' ethical considerations. In other words, the current process is trusting that ethics is an important concept to the profession instilled in mediators by the overseeing agency, and by that trustworthy, quality, fair, and unbiased mediations are being practiced.

## ETHICAL CONSIDERATIONS IN MEDIATION

Discussing ethics may also highlight the difficulty surrounding regulation in mediation practice. In *The Importance of Ethics in Public Administration*, ethics is seen as the rules that define moral conduct according to the ideology of a specific group, specific in the sense of how a town, state, or country's conducts good business. Ethics provide accountability between the public and the administration. Adhering to a code of ethics ensures that the public receives what it needs in a fair manner (University of Texas Master of Public Administration, 2016). It also gives the administration guidelines for integrity in their operations. That integrity, in turn, helps foster the trust of the community. By creating this atmosphere of trust, the administration helps the public understand that they are working with their best interests in mind. Using this framework can pinpoint a disagreement giving way to discovering what can be agreed on, which then results in several resolutions of a disagreement. This is the basic premise of how ethics plays a role in mediation. It is essentially a moral duty that a mediator needs to uphold in the process. In 2001, the American Bar Association created the Model Standards of Conduct for Mediators based on the following areas of ethical concerns for mediators: *self-determination, competence, impartiality/neutrality, conflicts of interest, confidentiality, and process quality* (ABA, 2005) (See Exhibit 6).

The first area of ethical consideration is based on the principle of party self-determination, emphasizing the duty of the mediator to conduct a quality mediation process that allows for voluntary, uncoerced decision making (ABA, 2005). Secondly, mediator competence in the process necessitates training, experience in mediation, skills, cultural competence and other

## Exhibit 6: Model Standards of Conduct for Mediators: Areas of Ethical Consideration



qualities. Further emphasizing specific skills, the third consideration regarding ethics considers impartiality and neutrality. Mediation should be conducted in an impartial manner, avoiding conduct that is free of favoritism, bias or prejudice. Neutrality can be examined through the mediation process itself, the subject matter, and personal matters. Fourth, mediators should avoid conflicts of interest and should make reasonable effort to discover, disclose, and dissolve conflicts of interest accordingly. A conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or from any relationship between a mediator and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a mediator's impartiality. The maintenance of confidentiality related to all information shared in the mediation is the fifth ethical consideration raised in the Standards of Conduct. Confidentiality provides protection to many aspects of mediation, including the process itself, information obtained from mediation, parties and representatives, mediators, and any other person. However, with information confidentiality there are ranges and limitations, which may require disclosure agreements (Standards of Ethics and Professional Responsibility for Certified Mediators, 2017). For example, if there is a complaint against a mediator which requires disclosure of mediation communication or if parties agree to use mediation as evidence in court. Finally, process quality is evaluated based on the ethical considerations above and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, party competency and mutual respect among all participants (ABA, 2005).

Recently, issues have arisen that question if there can be complete neutrality as it relates to the mediation process (Kovach, 2014). Remaining neutral and impartial sometimes causes conflict, as these qualities can be viewed as a contradiction to one another. For example, if a mediator attempts to correct a power imbalance between parties so that one is not taken advantage of, the mediator's neutrality is then compromised by intervening. This brings into question the assumption that true neutrality and impartiality can be achieved (Kovach 2014). Issues of neutrality and impartiality can arise when resolution decisions made by the mediator

may not be fair to all parties. To protect against this, the mediator can conduct reality testing which assesses weaknesses and strengths of each party's position. Also, the party perspective should be considered, as there are times that a party can perceive the mediator as biased. Parties may also run the risk of being taken advantage of due to lack knowledge and other factors.

Although nationwide ethical codes have been implemented and are accepted as a good foundation for mediators, it does not translate to smooth enforcement. The most complicated cases are when ethics and standards of conduct overlap. For example, the issues surrounding confidentiality and neutrality are often considered ethical in nature (Kovach, 2014). Statutes and case law also guide confidentiality. Mediator qualifications may also include ethical considerations, although attempts have been made to distinguish ethics from practice, quality matters (Kovach, 2014). Numerous efforts to create ethical guidance for mediators have occurred in small community-based programs all the way through state run programs to capture all mediators in all programs. However, mediators are diverse, and until the profession as a whole is subject to nationwide regulation, the ability to impact all mediators or come to a consensus on ethical standards remains a contentious topic.

#### THE USE OF SURVEYS IN EVALUATING MEDIATION

Evidence of court-connected mediation program impact is important for building stakeholders' confidence in the court system and for persuading investment in the mediation section of that system. Program evaluation is also critical for ongoing improvement of the program. ADR systems, however, can be difficult to assess and evaluate, even where data are relatively available and reliable (USAID, 2017). Baseline data is especially important to collect prior to program implementation. This data should include: the number of cases of various types processed each year; the target constituencies involved in each type of case; the average time between case filing and disposition for a variety of types of cases; the average cost of litigation; and the users' perception of fairness of outcome (USAID, 2017). This data may be gathered as part of the initial assessment process. The ADR system should establish procedures for collecting and processing data regarding its operation. This data should include the same information noted above, as well as any case management and disposition data necessary to monitor the performance of individual mediators. Additional information relevant to specific desired outcomes or development objectives should also be collected. Clear articulation of court mediation programs' goals and practices that are consistent with self-determination and the related characteristics of neutrality, confidentiality, and voluntariness are critical. This is important not only within the operation of the actual mediation process, but also within the manner that mediation is set up as part of the larger court process (Boyarin, 2012). Courts and mediation programs would have to ensure that mediators adhere to such goals. The program design should include a process for reviewing the data collected on a regular basis (USAID, 2017).

Post-mediation surveys are the only practical, low-cost way to gauge how well a mediation program serves parties. They provide essential information for assessing the quality of a program, particularly in the following five 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, (4) the mediators' performance on particular standards, and (5) the parties' perspective on particular characteristics of the case and the mediation. The Resolution Systems Institute (RSI) assists other states and localities with understanding what to look for in post-mediation surveys and recommends many types of monitoring and evaluative techniques.

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Post-mediation surveys are the only practical, low-cost way to gauge how well a mediation program serves parties.

(RSI, 2017)

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## RESOLUTION SYSTEMS INSTITUTE

RSI is an extensive collection of resources pertaining to court referred ADR. RSI began in 1995 with a group of leading judges, former judges, academics and practitioners who identified a need to provide reliable information to help courts across the country to develop major civil case mediation programs (RSI, 2017). A resource center was established to give courts access to information to help with program development, mediator training, and monitoring and evaluation. RSI's mission is "*strengthening access to justice by enhancing court alternative dispute resolution systems*". RSI ascribes to several principles that have built the foundation of their work:

- Information is power
- Maintenance, monitor, and refine on a continual basis
- ADR should never be a barrier to justice
- Court responsibility for ADR program quality
- ADR may be the answer to every problem

RSI is working to create a society in which all people have the ability to use an array of constructive, accessible options for resolving conflicts. The resource center provides guidance on a general and state specific basis, which includes information for statutes, rules, available ADR processes, reports, and contact information. Information is provided for the perspective of judges, lawyers, legal aid, neutrals, and the public. The resource center provides comprehensive guidance for courts based on design as well as management and evaluation basis for ADR program development. It provides a step-by-step process that courts can follow and further develop to design and manage effective ADR programs that strive to provide equal access to justice. Also found in the resource center is a Model Survey toolkit that includes an overview of the surveys explaining how to use them, party and attorney surveys, mediator reports to the court, mediator confidential survey, and survey modification instructions

The Model Mediation Surveys are a collaborative effort of RSI and the American Bar Association Section of Dispute Resolution to enable courts to obtain high-quality data for evaluating their programs. Developed by a committee of expert mediation researchers and program administrators, the surveys developed are intended for use by any court (RSI, 2017).

The toolkit provides an extensive guide and example for party mediator surveys which is one of the focus points of this report. The party mediator surveys assist with the evaluation of mediation programs. The survey gives the opportunity to assess the program in five areas:

- Parties' experience of procedural justice,
- Parties' satisfaction with the process,
- Achievement of particular goals for the mediation process,
- Mediators' performance on particular standards and
- Parties' perspective on particular characteristics of the case and the mediation.

Each evaluation area is further explained in the recommendations section as inspiration for developing a new survey for DRS. RSI also helps to justify the mediation as part of the court system. Mediation must be practiced in a manner consistent with its stated goal of self-determination and with the intertwined characteristics of neutrality, confidentiality, and voluntariness. Overall, what is needed most is the clear articulation of court mediation programs' goals and practices that are consistent with self-determination and the related characteristics of neutrality, confidentiality, and voluntariness; not only within the operation of the actual mediation process itself but also within the manner that mediation is set up as part of the larger court process. Courts and mediation programs need to ensure that mediators adhere to such goals.

## METHODOLOGY

### DATA SOURCES AND ORGANIZATION

The data discussed in this report was collected from four primary sources: (1) a detailed review of current literature on the topic of court-connected mediation, (2) comparative analyses of six states on court-connected mediation programs, including development, implementation, and evaluation of those programs, (3) semi-structured interviews of the mediators on their experiences with Virginia's current mediation evaluation process, and (4) semi-structured interviews with leadership in the field of court-connected mediation programs.

### COMPARATIVE ANALYSES OF STATES

Six states, Arkansas, Colorado, Maryland, Michigan, New Mexico, and Tennessee, were selected to provide an in-depth comparison of court-connected mediation programs with Virginia's program. DRS made initial suggestions of several states to conduct further research based on state ADR programs that they viewed as strong, had interesting program aspects, or would be overall good contacts for our research. From there, cursory research of the suggested state ADR programs was done via their websites. The team also researched state ADR programs not suggested by DRS in order to provide a comprehensive review. The research team specifically looked to ADR program components to narrow selection, such as the state's approach to the provision of mediation services, the number of years ADR has been a part of the state's court system, mediation certification and quality control, and the use of the mediator evaluation tool(s). The comparative analysis was completed with information that was publically available through each state's website. The research team also felt it would be



important to understand any additional activities that were not captured on state websites, including background and development of their current mediation programs.

### INTERVIEWS WITH LEADERS IN THE FIELD

Leaders in the field of court-connected mediation programs were identified from the research as state program directors, as well as those conducting research in this topic not necessarily associated with a state program. The research team conducted eight semi-structured interviews via phone with state representatives of ADR programs. Two members of the research team were present for each phone interview, one serving as the interviewer and the other as the scribe. (See Appendix A for interview protocol). Each interview lasted about 45 minutes. The method of inquiry was semi-structured in which a set of open-ended questions were asked allowing for the opportunity to explore themes and reactions. The topics discussed included the representative's description of the state's current mediation program, their assessment of the program, and any lessons learned and recommendations related to quality control and evaluation of mediation. Other topics included a discussion of resources used to develop their evaluation tools, as well as mediator feedback about their evaluation process. The data collected through the interviews was used to guide recommendations on better aligning Virginia's mediation program evaluation with best practices in the field.

Additionally, two semi-structured interviews were conducted with leaders in the field of court-connected mediation using the same process as other subjects (See Appendices B and C for interview protocols). Given that the research available on what is considered "best practice" is limited, the research team sought insights from those with experience providing support and technical assistance to ADR programs.

### INTERVIEWS WITH VIRGINIA MEDIATORS

In order to better understand court-connected mediation stakeholders' perceptions of the current mediation data collection and evaluation/monitoring processes, the research team conducted 13 semi-structured interviews via phone. Mediators were identified by DRS and contact information provided to the research team. Two members of the research team were present for each phone interview, one serving as the interviewer and the other as the scribe. (See Appendix D for interview protocol). The interviews lasted about 30 minutes on average. The method of inquiry was semi-structured in which a set of open-ended questions were asked allowing for the opportunity to explore themes and reactions. The topics discussed included their assessment of DRS' current evaluation survey tool and how they use it in practice. Other topics included their level of experience as a mediator, as well as reflections and recommendations for evaluating mediation services. The data collected through the interviews was used to guide recommendations on improving data collection through the evaluation surveys.

### CONTENT ANALYSIS

Considering that most of the data collected was qualitative, the research team chose to use a content analysis approach to interpret the data thematically and identify core issues and successes. We approached the content analysis by first looking at mediator perceptions,

including how they value party feedback and barriers they may face when using the current evaluation. Secondly, we relied upon ADR leaders to draw on approaches to similar issues and lessons learned in the implementation of their programs. Interview data was collected and categorized into common themes. Then, we compared the best practices across the selected states with those common to Virginia on how to recreate successes and address any issues. This thematic comparison allowed us to consider evaluation processes and survey aspects that should be sustained, as well as those that may need to be initiated or re-emphasized to Virginia mediators.

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## LIMITATIONS

The first limitation in our research was that the leadership interviews were conducted with representatives from only six states. Considering there are 38 mediation programs based in the state supreme court or administrative offices of the court, this is a very limited view of what approaches exist in terms of monitoring and evaluation at the state level. While all of these programs may not be implementing best practice standards, there are potential findings that could inform recommendations for Virginia. Further research is needed to provide a more comprehensive comparison and uncover practices that may be beneficial.

A second limitation of our research was the small, convenience sample comprised of 13 Virginia mediators. This sample was provided by DRS, not randomly selected, and was too small to conduct statistical significance testing. Therefore, the information obtained only provides the perspective of those that DRS identified. While the interviews were informative and provided valuable insight to enrich our understanding of the evaluation process in practice, findings are not generalizable across the wider population of approximately 600 certified Virginia mediators. Further sampling is needed to provide a more complete picture of how evaluation processes are carried out across the state and at various levels of mediation experience.

Finally, the use of content analysis can be considered a limitation if there are insufficient sources relevant to the research question. As stated previously, approaches to court-connected mediation at the state level varies vastly and it is difficult to identify what is considered the best standard for monitoring and evaluation of mediation programs. The research team attempted to define best practices given the information gathered from the perspectives of a wide-range of professionals in the field. Although the research team took every effort to ensure themes were interpreted accurately and consistently, there remains opportunity for error that could affect frequency and therefore emphasis on the findings and recommendations.

## ANALYSIS OF FINDINGS

### COMPARATIVE STATE ANALYSIS

Almost all states use mediation but the commonalities largely end there. The structure and operation of dispute resolution programs significantly varies from state to state and as such, each has custom ADR program structures that are unique to the state's judicial system, legal culture, and preexisting dispute resolution systems. Some states have a centralized structure where ADR programs directed by the state Supreme Court or the administrative office of the courts, while in other states the programs are decentralized and program options vary by locality.

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All states use mediation but the commonalities largely end there.

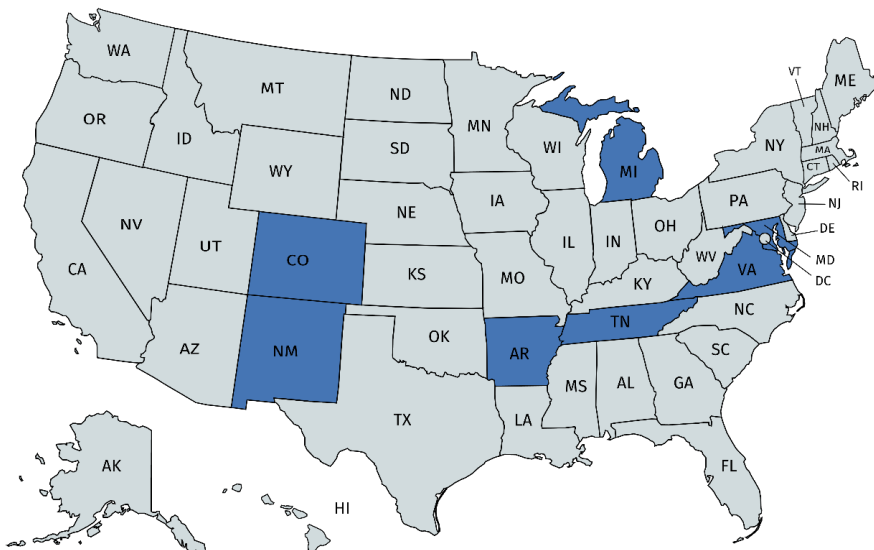
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While there are some similarities in state ADR programs, it is almost impossible to categorize and compare state court programs. Some programs are housed in the state supreme court, like Virginia, while others are independent entities or partnerships with universities or bar associations. Some programs offer extensive services to the courts and communities within the state, others have limited roles, such as maintenance of a roster of mediators and arbitrators.

The state court programs also vary widely in terms of the services they offer. The 2013 ABA clearinghouse Section of Dispute Resolution offers a general overview of court ADR programs in the United States. Five state programs provide staff mediators, while nineteen programs maintain a roster of qualified or credentialed neutrals. Sixteen state programs offer training and nineteen provide education, while seventeen state programs provide program development. As of 2013, only 14 programs evaluate ADR programs and nine administer dispute resolution processes. All 50 states (including Washington, D.C. and Puerto Rico) offer some form of dispute resolution for cases filed in state courts. Mediation is the most common form of ADR in these programs. Thirty-nine states offer voluntary mediation compared to 17 states which require mandatory mediation.

For the in-depth comparative state analysis, Arkansas, Colorado, Maryland, Michigan, New Mexico, and Tennessee were chosen for an in-depth comparison of court-connected mediation program evaluation with Virginia's current system (See Exhibit 7). Research was then conducted on each state's approach to the provision of mediation services, the number of years ADR has been a part of the state's court system, mediation certification and quality control, and their current mediator evaluation tool(s) among other aspects. Exhibit 8 below provides a summary of the research findings, followed by a more detailed review of each aspect summarized. Although some background information on the Virginia DRS was previously stated in the introduction, it is important to set the base line in order to perform a comparative analysis.

Exhibit 7: States Selected for Comparative Analysis



Created with mapchart.net

### Exhibit 8: State Comparative Analysis Summary

Program Characteristics	Virginia	Arkansas	Colorado	Maryland	Michigan	New Mexico	Tennessee
<b>Centralized/Decentralized</b>	Centralized	Decentralized	Decentralized	Centralized – District Court; Decentralized – Circuit Court	Decentralized	Decentralized	Centralized
<b>Courts/Cases eligible for mediation</b>	<ul style="list-style-type: none"> <li>• General District</li> <li>• Juvenile &amp; Domestic Relations</li> <li>• Circuit – family and civil</li> </ul>	<ul style="list-style-type: none"> <li>• Appellate</li> <li>• Child Custody &amp; Visitation</li> <li>• Child Protection &amp; Dependency</li> <li>• Civil</li> <li>• Domestic Relations</li> <li>• Juvenile</li> <li>• Probate</li> </ul>	<ul style="list-style-type: none"> <li>• Domestic Relations</li> <li>• Civil</li> <li>• Juvenile</li> <li>• Dependency &amp; Neglect (child welfare)</li> <li>• Criminal</li> </ul>	<ul style="list-style-type: none"> <li>• Circuit</li> <li>• District</li> <li>• Appellate</li> </ul>	<ul style="list-style-type: none"> <li>• Any non-criminal case</li> <li>• Specialized Mediation Programs: child protection; parenting time</li> <li>• Private</li> </ul>	<ul style="list-style-type: none"> <li>• Magistrate Court</li> <li>• Metropolitan Court</li> <li>• District Court</li> <li>• Appellate</li> <li>• Criminal</li> </ul>	<ul style="list-style-type: none"> <li>• Eligible civil action</li> <li>• Private</li> </ul>
<b>Selection of mediators</b>	Participants through roster	Participants through roster	Varies by court	Varies by court	Participants through CDRP network	Varies by court	Participants through roster
<b>Payment for services</b>	No cost	Participants	Varies by case type	District – no cost; Circuit – participants	Participants subsidized by grant funding	Varies by case type	Participants
<b>Mediator Training Requirements</b>	<ul style="list-style-type: none"> <li>• Bachelor’s degree</li> <li>• Certification through DJS to include 20 hours initial training</li> <li>• Peer mediation</li> </ul>	<ul style="list-style-type: none"> <li>• Certificate in Conflict Resolution, Master’s degree, or J.D.</li> <li>• Certification through AADRC to include 40</li> </ul>	<ul style="list-style-type: none"> <li>• 40 hours initial training</li> <li>• Mediated at least 20 cases</li> <li>• 10 hours annual CME</li> </ul>	<ul style="list-style-type: none"> <li>• Bachelor’s degree</li> <li>• 40-55 hours initial training</li> <li>• Additional training per case type</li> </ul>	<ul style="list-style-type: none"> <li>• J.D., graduate degree in conflict resolution or 40 hours of mediation experience every 2 years</li> </ul>	<ul style="list-style-type: none"> <li>• Bachelor’s degree</li> <li>• 56 hours initial training</li> <li>• Additional training per case type</li> <li>• Co-mediation</li> </ul>	<ul style="list-style-type: none"> <li>• Bachelor’s degree</li> <li>• 40 hours initial training</li> <li>• 6 hours CME every 2 years</li> </ul>

	<ul style="list-style-type: none"> <li>• Additional training per case type</li> <li>• 10 hours CME every 2 years</li> </ul>	<ul style="list-style-type: none"> <li>• hours initial training</li> <li>• Additional training per case type</li> <li>• 6 hours of annual CME</li> </ul>		<ul style="list-style-type: none"> <li>• Co-mediation per case type</li> <li>• MPME: 10 hours annual CME</li> </ul>	<ul style="list-style-type: none"> <li>• 40 hours initial training</li> <li>• Additional training per case type</li> <li>• 8 hours advance CME every 2 years</li> </ul>		
<b>Program evaluation goals</b>	No	Yes	No	Yes	Yes	Yes	No
<b>Party evaluation survey</b>	Yes	Yes	Yes	Yes	Varies by mediation center/program	Yes – Children’s Court	No
<b>Electronic evaluation survey</b>	No	No	Yes; available in one jurisdiction	No	No	No	No
<b>Identifying information required on evaluation survey</b>	Yes	Case # and name; signature	No	Case # and name	Unknown	No	N/A
<b>Submission method of evaluation survey to agency</b>	Mediator or Participants	Participants	Participants via postcard or SurveyMonkey	Participants	Unknown	Mediator or Participants	N/A
<b>Provisions for evaluation survey submission</b>	None	Envelope with paid postage provided	Postcard provided; tablet available in one jurisdiction	None	Unknown	None	N/A
<b>Submission guidelines</b>	Within 3 years of mediation	None	None	Immediately	Unknown	Immediately	N/A
<b>Evaluation survey length</b>	2 pages; 18 questions	2 pages; 7 questions	2 pages; 10 questions	2 pages; 30+ questions	Unknown	1 page; 12 questions	N/A
<b>Surveys for other officials</b>	No	Yes	Yes	Yes	Unknown	Yes	No

## KEY THEMES

After completing research on the state ADR programs in Arkansas, Colorado, Maryland, Michigan, New Mexico, Tennessee, and Virginia, and conducting interviews with directors of those programs several key themes emerged.

### Most surveys developed years ago

Most state party surveys were developed many years ago and have not been significantly updated or changed. As such, their current surveys were not informed by RSI. All states were familiar with the RSI sample survey and believed it to be a powerful tool. Several states also stated that they would consult the RSI form when updating their own surveys.

### Variation in Data Collection

The states that utilized party surveys for feedback varied in terms of the types of questions asked and how the parties ranked or responded to each question or statement. Question formats included Likert scale, true or false, and open ended or comment fields. A common theme is that each survey assessed both the mediator and their practices, as well as the mediation process as a whole. Some surveys collect demographic information and also vary in whether this information is required or optional.

### Shift from Assessment of Program Health to Party Satisfaction

While a lot of the background research alluded to mediation being connected with the courts as a relief mechanism for court dockets, this is no longer one of the primary purposes for offering mediation programs. Participants in many states are choosing mediation as an alternative to litigation. Therefore, monitoring and evaluation for alternative dispute systems have shifted from measuring the health of the program by settlement rates to measurements of party satisfaction and mediator quality.

### Mediator training informed by party feedback

Interviews revealed the positive versus negative consequences from party feedback. The majority of states did not use the information that programs are receiving from parties for punitive measures but as a learning mechanism. In doing so, ADR programs develop training based on party survey feedback. Directors or managers of these programs believe that ongoing mediator training is essential and is primarily where program resources should be invested.

### Electronic Surveys

Only a few states had electronic survey processes in place. These processes varied in terms of software that would be considered basic, such as readily available platforms like SurveyMonkey, to advanced programs designed for a specific court program. Every state interviewed, however, expressed great interest in digitalizing their survey processes and saw this move as inevitable. There was some hesitation expressed around the confidentiality of parties. Of the states currently utilizing electronic surveys, those surveys did not capture any identifying information. All states thought that digitalizing the survey process would make it

easier to run statistical analyses that they could use to drive decision making and ultimately improve their program.

#### Administration of party evaluation form

When looking at the administration of party surveys it was important to understand what ADR programs wanted: a higher response rate or a more accurate view of the process. All but one state administered party surveys at the conclusion of the mediation process. The majority of states had the parties return completed surveys to the mediators who submitted them to the state agency with other paperwork. In states where the state agency did not administer party surveys directly, the forms were kept internally at community mediation centers for example. Only one state did not have a party survey.

#### VIRGINIA

The Department of Judicial Services (DJS) serves as the liaison between the Judiciary's administrative offices and the courts throughout the Commonwealth of Virginia. DJS provides administrative services through publications, trainings, field visits, and the research and support of various programs, as well as serves the courts of the Commonwealth through its seven divisions. The Division of Dispute Resolution Services (DRS) was developed within the Office of the Executive Secretary. DRS, now a division of the DJS, serves as a centralized ADR resource office within the judicial branch that provides an array of dispute resolution options within Virginia's court system and evaluates the effectiveness of these programs as outlined in Va. Code Sections 8.01-576.4-12; 8.01-581.21 – 26.

DRS oversees the certification of mediators and mediation training programs in addition to enforcing certified mediator standards of ethics, training guidelines, and governing guidelines. Outside of its regulatory role, DRS continuously promotes and monitors Judicial Settlement Conference programs in the circuit courts and court-referred mediation programs as well as statewide Parent Education programs.

When mediators apply to become a certified mediator, they must sign a statement indicating that they will collect feedback from each party in any court-referred mediation a party and request that the parties complete the paper form and either return it to the mediator or program director, or send it directly to the Office of the Executive Secretary (OES) where DRS is housed. These forms are then sent to DRS and all forms received will be reviewed. Information is then entered into an OES database as a statistical means of evaluating the overall success rate of certified court-referred mediators and mediation programs.

The Office of the Executive Secretary awards contracts to mediators across the state to provide mediation services to the courts of Virginia. These contracts have introduced mediation to the courts, encouraged judges to refer cases to a dispute resolution orientation session, provided no-cost mediation services to users of the court system, and compensated mediators for their invaluable services. Many ADR programs throughout the state also have part-time or full-time coordinators which oversee and run those individual areas. These positions are typically established when an individual, typically the person who wants to be the coordinator,



approaches the court to inquire if they would like coordination services. The court can then choose to sign off on the position. Coordinator positions are paid by the DRS through grants from the Department of Social Services and the general state budget. These direct contracts with DRS include private companies, nonprofits, community mediation centers, and individuals.

### Survey Development

The mediation party survey in Virginia was originally developed sometime between 1992 and 1994 with the help of the ADR Advisory Committee. At the time, an ADR evaluation pilot program was taking place in Prince William County, Virginia. This program included an evaluation form after the orientation session as well as the mediation session. The current DRS staff believes that the state-wide form currently used may have been based off of the forms of the pilot program. Virginia currently has a two-page post-mediation party evaluation tool designed to provide the Judicial Council of Virginia with important information regarding the performance of certified mediators. This evaluation allows parties to express their opinions as to the value of the mediation process and the work done by their mediator(s).

Several years ago, DRS modified the current evaluation tool. The modifications shortened the tool, asked fewer questions and were non-mandatory. When shared with the mediators for feedback, DRS received a strong response. Many mediators did not like the modifications because they felt it provoked negative feedback and that making it voluntary would in turn essentially make the form a complaint mechanism instead of a means for constructive feedback.

### Type of Data Collected

Currently, the post-mediation party survey collects feedback from individuals who participate in the mediation process (See Appendix E). The survey is not helpful in highlighting the positive aspects of what make the parties appreciative of the ADR process or the mediators. Instead, the forms make it easier to say what parties do not like about individual mediators.

Party identifying information is collected at the top of the form followed by questions addressing the parties' general feedback to the mediation process. Sample questions include: the mediation process was: very helpful / somewhat helpful / not at all helpful; Mediation ended with an agreement on: all of the issues / some of the issues / none of the issues; and would you use mediation again: yes / no.

The back of the form focuses on evaluation of the individual mediator and allows party to use a numeric ranking system in order to rate mediators on specific areas. All of the questions begin with *The Mediator...* and include questions such as: explained the mediation process and procedures, was a good listener, allowed me to talk about issues that were important to me, and encouraged us to come up with our own solutions, among others. The scale is as follows:

- 5 = Very Good
- 4 = Good
- 3 = Adequate

- 2 = Unsatisfactory
- 1 = Poor
- 0 = Does not apply

There is also a yes or no section which includes questions such as *The Mediator ...* was neutral as well as a comment section.

### Assessment of Program Health

When looking at the general health of court ADR programs, DRS looks at agreement rate, general party satisfaction, how ADR helps clear the court dockets, and recidivism rates among other points. Overall there are not a lot of complaints based on mediator performance. DRS believes it is important that parties participating in mediation are comfortable expressing themselves and find the overall process of mediation to be both useful and helpful in resolving their issue. The current data gathered from the surveys, however, is not used in any data-driven decision making outside of basic quality control and addressing mediator feedback.

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DRS believes it is important that parties participating in mediation are comfortable expressing themselves and find the overall process of mediation to be both useful and helpful in resolving their issue.

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DRS staff stated that when collecting data from party surveys, it is best to get quality feedback as well as quantity of returned surveys. While thoughtful feedback can help improve the overall quality of the ADR program, a sufficient quantity of data is necessary to find valid trends and make true meaning of the data. At the moment, however, the focus seems to be on quantity of party surveys returned to DRS instead of the quality of information gathered.

When discussing the ideal way to assess program health and party satisfaction, the DRS staff came up with the following questions:

- Did the parties feel like it was a just way of going about the case?
- Was it fair?
- How did the parties feel about the mediator?
- Are parties satisfied with mediator's performance?
- Are mediators following their ethics and their components?
- Did the party have to refile?
- Did the party get to have a greater participation in the outcome of their case?
- Are there improvements that could be made to the referral and program process?
- Should DRS be able to know more about timing and improve the timing of the cases and of the referrals?
- How long from filing did the case get resolved in mediation (time to disposition)?
- Are particular judges referring more cases?
- What would more demographic info tell us?
- Who is the program serving?
- Do parties think the mediation process will solve/solved the problem?
- Do parties think they will have to return to court for the same issue?

## Mediator Training

Party evaluations help provide opportunities to identify large-scale training and education needs as well as individual assistance that can be offered to mediators. If the DRS receives serious feedback of serious dissatisfaction in terms of the mediator's performance that does not demonstrate a direct violation of the Standards of Ethics and Professional Responsibility or the Guidelines for the Training and Certification of Court-Referred Mediators, intervention or additional training may be necessary. DRS will contact the mediator and indicate suggestions, if any, for appropriate training or mentorship. If deemed necessary, the DRS will hold an individual consultation with a mentor mediator in order to assist the mediator in question with improving overall performance. If it comes to the attention of DRS that a mediator has not been supplying each party to a court-referred mediation with a copy of the party evaluation form, DRS will remind the mediator of the requirement pursuant to the Guidelines. Subsequent failure to provide the forms may cause a complaint to be initiated by DRS and the Mediator Review Committee would then pursue the complaint according to the outlined Procedures.

## Electronic Surveys

Virginia does not have an electronic version of the party survey. While the potential of using an electronic platform interests DRS staff, there are some questions about confidentiality and feasibility. The agency has paid for an advanced profile of SurveyMonkey which they utilize for internal purposes. DRS believes that a digital online party survey which loads the data into a digital database would make it easier to analyze the data and pull out trends. A monthly report could then highlight key findings and trends. If possible, this could be taken a step further in which mediators have an online dashboard where they could view their overall results or performance trends. This could be made easier if every mediation room in the state was equipped with computers that allow parties to fill out surveys and other forms on-site and submit immediately and anonymously.

## Administration of party evaluation form

Mediators are required to sign a form every two years as part of their recertification agreeing to submit party evaluation forms. Party evaluation forms are administered at the end of the mediation process, typically when the mediator is writing up the agreement. Individuals can choose to fill out the form and return it to the mediators to submit with the other paperwork. They can choose to take the form and mail it directly to DRS. General District Court (GDC) requires all evaluation forms to be accounted for in order for mediators to receive payment. If for any reason party surveys are not or cannot be completed as part of the mediation process, a written statement must be submitted outlining the reason for its absence. Juvenile and Domestic Relations Court (JDR) court does not tie mediator payment to the submission of evaluation forms, but Virginia certification and recertification guidelines requires the submission as part of mediator ethics and policies. Where payment is not directly tied to the submission of the party evaluation form or in cases involving mediation centers, party evaluation forms are sometimes submitted on a monthly, quarterly, or yearly basis.

## ARKANSAS

Authority for court ADR in Arkansas is outlined in AR Code 16-7-101 et seq; 9-12-322, 16-108-101 et. Seq. Arkansas Alternative Dispute Resolution Commission (AADRC) is the state office which oversees ADR. AADRC's primary focus is to encourage, promote, and develop the voluntary use of ADR processes in order to resolve all types of disputes, cases, and controversies. AADRC is responsible for providing education to the courts, other government agencies, and the public on the methods, advantages and applications of ADR. AADRC also assists state and local courts, government, and other agencies with the development and implementation of ADR program and oversees the certification, professional conduct, discipline, and training of all court mediators. AADRC focuses more on the regulation, education, and promotion of mediation rather than the mediation itself. Mediation is offered for the following types of cases in Arkansas: Appellate, Child Custody and Visitation, Child Protection & Dependency, Civil, Domestic Relations, Juvenile, and Probate. Funding for these programs comes from party fees and government grants.

Mediators eligible to mediate cases in Arkansas Circuit courts must be certified by AADRC. AADRC has established standards for mediator certification, professional conduct, and discipline with which applicants must comply to be included on the Roster of Certified Mediators. The Roster is provided to every circuit court judge in the state, is posted to their website, and made available to anyone who contacts the AADRC office seeking a mediator. Certified mediators must complete six hours of continuing mediation education (CME) each year to renew their certification.

The Arkansas Youth Mediation Program is offered through the University of Arkansas at Little Rock (UALR) at the Bowen School of Law. Because the program is housed at UALR, students are permitted to attend mediations if all parties agree to it. Just like the certified mediators, students are bound by the Arkansas Confidentiality Code. There are no fees for mediation itself, and it is entirely voluntary. Mediation can be suggested by judges, attorneys, or self-referral. Arkansas Dependency/Neglect Mediation Project helps children obtain permanency and safety in a safe, timely, and effective manner. Parents, children, employees, parent council, attorney ad litem, court personnel, or Court Appointed Special Advocates (CASA) may request mediation or courts across the state and may order cases to the Mediation Clinic. A mediation office administrator can call the courts to request the service if it is not ordered. Family in Need of Services (FINS) case managers can refer a petition to mediation before the scheduled court date. If an agreement is not reached by the scheduled court date the hearing still takes place. However, if an agreement is reached in mediation the case manager will notify the court of the agreement. The Mediation Clinic also offers services for first-time misdemeanor offenses or juvenile delinquency. Juvenile delinquency cases referred to the Mediation Clinic may be diverted by intake before a petition is filed for a formal court hearing.

## Survey Development

The current party evaluation form of the Arkansas ADR program was developed in the early 2000s with the help of a data analyst. When reflecting on the process, the Arkansas ADR Coordinator believes that it may be time to revisit the evaluation form again for updating.

## Type of Data Collected

A simple mediation evaluation form for parties is available for appellate cases on the AADRC website (See Appendix F). At the top of the form the following explanation is given:

*Please take a few minutes to complete this form and return it to the mediator in a sealed envelope [Your responses will serve as a guide to the Court about changes or improvements which need to be made to the mediation program. Your responses are confidential and will not be part of the appellate court file.]*

The form is two pages long and consists of 7 questions.

1. What kind of problem or case was mediated?
2. Was the appeal from a:
3. Was the problem or case resolved through mediation at the appellate level?
4. Are attempts to settle the appeal still ongoing?
5. The services provided by the mediator (were):
6. Would you recommend appellate mediation? (Please explain)
7. Please suggest how you think we can improve the appellate mediation program.

## Assessment of Program Health

Arkansas administers party surveys in order to gauge if there are any issues within the program. Attorneys for parties participating in the mediation process also email any concerns to AADRC. The party surveys attempt to assess participant's attitudes on the mediation concept and process and whether the participants feel like they had a better outcome through mediation than they would have if they didn't participate in mediation. The ADR Coordinator believes that this feedback is invaluable and allows them the opportunity to hear back from those directly affected by the program.

## Mediator Training

Arkansas wants their programs to be more effective and efficient they can be and party surveys help to do that. AADRC uses participant feedback to identify any areas where some mediators may need additional training. If trends emerge, overall mediation training can be altered. The ADR Coordinator explained, "We have a roster and we focus a lot on continually educating them and continually giving them an opportunity to build skills, tackle ethical issues, be aware of trends and things that are changing." If given the opportunity, Arkansas would like to add onsite evaluations where someone would sit in on mediations or implement some sort of mentoring program where seasoned mediators provide feedback to

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*"We have a roster and we focus a lot on continually educating them and continually giving them an opportunity to build skills, tackle ethical issues, be aware of trends and things that are changing."*

-ADR Coordinator, Arkansas

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other mediators. Being able to have post-mediation verbal interviews with parties would also allow for more encompassing evaluation process. The ADR Coordinator did recognize that these practices were time, labor, and resource intensive.

If negative feedback is received on an evaluation the ADR Coordinator, other staff members, and when appropriate, members of the Commission will hold a meeting to determine the next steps. Attorneys or the parties may be contacted in order to gain more insight on the issue. If determined that the complaint or negative feedback was warranted the mediator may be directly contacted. If the feedback is deemed unwarranted but the issues still need to be addressed, ongoing education may be initiated.

### Electronic Surveys

Arkansas does not have an electronic version of the party survey. AADRC serves rural areas where everyone may not have easy access to internet. As such, paper surveys would need to remain an option.

### Administration of Party Evaluation Form

At the end of mediations, parties are provided with the evaluation form as well as a prepaid addressed envelope so they can complete the form outside the presence of the mediator. There is no deadline and it is at their leisure to return the surveys, which results in a low return rate. The information collected is not directly shared with the mediator and instead goes through AADRC. Additionally, there is often a layer between the AADRC and the parties. A large number of parties are represented by attorneys and the attorneys assist them in completing the paperwork. Most formal complaints are reported through the attorneys.

## COLORADO

The Colorado Judicial Branch Office of Dispute Resolution (CJODR) oversees court ADR programs as outlined in Section 13-22-301, et seq., C.R.S. (ADR), -201, C.R.S. (Arb). CJODR is responsible for program design, implementation, administration, and evaluation, including direct provision of ADR services to parties, primarily within the state court system. ADR services in Colorado are provided for cases not filed in court, in addition to services for filed cases. Case types include domestic relations, civil, juvenile, dependency and neglect (child welfare), and criminal cases.

Colorado does not have a true court-annexed mediation program. Instead, CJODR has contracts with approximately 82 neutrals to provide ADR around the state. Unlike other states, Colorado has a unified court system with 22 different judicial districts that have 22 different practices as to how and when they might use ADR services. The majority of these services are mediation, but they also offer early neutral assessment, parenting plan facilitation, and parenting coordination and decision making. All mediators and neutrals have their own business and CJODR contracts based on a set fee structure. CJODR provides a referral mechanism and support courts for mandatory or voluntary mediation. They also collect data and process billing in addition to handling indigent funds for individuals who cannot afford mandatory mediation or those who would like to try mediation voluntarily but cannot afford it.

There are no state requirements or certification processes in place for mediators in Colorado. However, in order to receive a contract with CJODR there are specific requirements that applicants must satisfy. These requirements include: 40 hours of general mediation training and mediated at least 20 cases as sole mediator or lead co-mediator. Preference is given to mediators who have substantive knowledge of areas they would like to mediate, if they have conducted court-ordered mediation instead of voluntary mediation, are knowledgeable about the court system in which they would like to mediate, and available to accepted by the local courts. The CJODR prefers to hire mediators with the most experience mediating in court-ordered mediation cases and who prefer facilitative versus evaluative style of mediation. Every year mediators are required to complete an additional 10 hours of ongoing mediation training.

### Survey Development

Colorado currently has a party satisfaction survey as well as a separate mediator satisfaction survey. The survey tools were developed before the tenure of the current Director of ODR. The RSI sample survey was not used to create the surveys currently in use but the Director of ODR likes the tool and is looking to modify it for use in Colorado.

### Type of Data Collected

The party surveys allow CJODR to pinpoint any issues with specific mediators and mediation processes. How parties feel about the mediation process in general and the performance of the mediators is important to understand program health. From the surveys, statewide trends are highlighted and can be addressed accordingly.

The ODR Mediator Satisfaction Survey 9th Judicial District is the only electronic survey in use in Colorado (See Appendix G). The form is fairly short consisting of 10 questions and includes no party identifying information. Mediators, however, are identified in the survey. Is this the first time you have participated in mediation (Yes / No) along with the follow up if you stated yes who was your prior mediator are the first questions asked.

Next questions that help assess the mediator's work as well as the mediation process as a whole. A Likert scale of one through four is used to assess the mediator.

- 1 = not at all skillful
- 2 = somewhat skillful
- 3 = very skillful
- 4 = extremely skillful

This scale is used for questions such as mediator's neutrality, the mediator guiding the process, the mediator's ability to reduce tension, the mediator identifying interest and concerns, and the mediator's ability to overcome obstacles.

There are two questions which help CJODR assess the overall mediation process. These include:

How satisfied are you with the outcome?

- Very satisfied
- Mostly satisfied
- Neither satisfied nor dissatisfied
- Somewhat satisfied
- Not at all satisfied

How likely are you to refer someone to mediation?

- Very likely
- Most likely
- Neither likely nor unlikely
- Somewhat likely
- Not at all likely

In addition to the electronic form, CJODR provided the attorney survey as well as a survey for other court officials such as District Administrator, Judicial Officer, Self Help Litigant Coordinator, Family Court Facilitator, Clerk of Court, etc. (See Appendices H and I). Both surveys are brief and ask similar questions as well as a space for additional comments after each question. The attorney survey asks why mediation was utilized, overall satisfaction of the process, the outcome of mediation, if mediation reduced the time of the case, and overall satisfaction of mediation compared to other ODR programs.

The survey for court officials is a series of true and false statements with the ability to comment after each. These statements address areas such as understanding what ODR provides, mediation referrals, familiarity with the Colorado Dispute Resolution, ongoing education for staff, developing local mediation programs. The last question asks individuals to rank ODR functions in order of importance to the professional. These functions include:

- Management of state funds for indigent parties referred to mediation services
- Procurement and management of grant funds, when applicable, to develop mediation and other ADR programs for specific populations (i.e. ODR currently manages the federal Access & Visitation grant which funds services targeting never married parents to develop parenting plans)
- Provide quality control and oversight of mediators and other ADR professionals
- Provide ongoing training and educational opportunities for

### Assessment of Program Health

Annual data is collected for the judicial department that measure full or partial settlements, no shows, no agreements, and if proposals were made. It is difficult to determine, however, if judicial officials are sending parties to mediation at the optimum time to maximize settlements. In addition to creating annual reports, CJODR recently did a review of mediators in one county and found that overall party satisfaction is very high.



Colorado does not have community mediation services and as such there is a lack of knowledge in the general public about ADR and informal resolution options. The Director of ODR believes there is a lot of room for improvement in ADR programs and is currently working with a group to draft an official guide to ADR in Colorado. The Director believes that the quality of ADR programs is strong and once people find out about these services, CJODR has a strong pool of mediators on contract to perform high-quality mediation sessions.

### Mediator Training

While the Director of ODR did not speak to the party surveys directly impacting mediator training, there is the required 10 hours ongoing training every year. When asked about mediator training the Director stated, “I think that the observation of [current] mediators in session is really important. That is on my radar and I am plan to do start doing some spot checking.”

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*“I think that the observation of [current] mediators in session is really important. That is on my radar and I plan to do start doing some spot checking.”*

-Director of ODR, Colorado

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### Electronic Surveys

The surveys are not electronic currently but the Director of ODR would like to send the parties a text survey message and have them respond via text. In terms of confidentiality in Colorado, what is protected is mediation communications. There are not any questions geared towards any in-session communications. Parties can voluntarily share identifying information for follow-up. Attorney surveys ask for the mediator and it is optional to provide a name and case number along with any additional comments. There is a tablet in one jurisdiction in which parties complete the survey electronically via SurveyMonkey. The SurveyMonkey is completely anonymous and does not collect any identifying information

### Administration of Party Evaluation Form

The party evaluations are administered at the end of the mediation process. Paper postcards are provided to the participants, but there is no official protocol or methodology for doing so. Participants submit the survey on their own time and there is no official submission deadline. Since parties can choose to submit the survey postcard or not at their leisure, there is a very low response rate.

### MARYLAND

The use of mediation in the Maryland circuit courts is governed by Titles 9 and 17, Ch. 100-109 of the Maryland Rules. Maryland Mediation and Conflict Resolution Office (MACRO) promotes the availability, use, and quality of alternative dispute resolution throughout Maryland. They do so by collaborating with the courts, ADR practitioners, and other stakeholders to advance the field MACRO offers grants and technical assistance in order to support the courts, communities, schools, and universities, and ADR programs, providing training and presentations in order to enhance skills, drive professional growth, address ethical matters, and generally provide public information and awareness. Maryland Program for Mediator Excellence (MPME) fosters continuous improvement of mediation services. MACRO

also supports, conducts and encourages research and evaluation of ADR programs and processes.

Mediators in Maryland must complete a basic training course which consist of 40 to 55 hours. Once an individual completes the basic course, they are still not considered a certified mediator until they show proficiency in a performance-based assessment process. The Maryland Council for Dispute Resolution and Community Mediation Maryland offer performance-based certification programs. This additional step is not required to mediate in Maryland but counts toward professional development. After a mediator takes the basic course they must mediate, co-mediate, and observe, network with other mediators, and join a mediator practitioner organization.

The vast majority of Maryland District Courts have ADR programs in every district courthouse, however, there are still some without ASDR programs. Each of the 24 jurisdictions of Maryland Circuit Courts has their own ADR program which they run on their own. Each jurisdiction has a parenting mediation program but not all have separate civil, child, orphan court mediation. Additionally, there are mediation program for the Maryland Appellate Court of Right or court of special appeals.

Parenting, custody, or visitation cases have mandatory mediation, with some exceptions, parenting plan mediations. Domestic violence cases have the opportunity to opt-out of the mediation process. When cases are ordered to mediation in Maryland Circuit Courts, parties have the ability to opt-out of the process. This opt-out provision is not used as much anymore as people get used to the idea of mediation. Mediation is completely voluntary in all District Court cases but most parties opt to participate in the mediation process. If parties are unsure about the mediation process, they can go through mediation orientation. At the end of orientation, mediators will ask the parties if mediation is something they want to try. The parties can say no at any time. If the Court of Appeals orders mediation, parties must attend but they can also opt-out at any time.

In Maryland Circuit Courts, all appropriate contested custody and visitation cases are sent to mediation. Each Circuit Court also has a Family Services Coordinator on staff who helps manage this process. Many jurisdictions also have active ADR programs for other civil cases. The Maryland District Court is committed to offering mediation services at no cost to the parties. Thus, the District Court works in partnership with community mediation centers, referring appropriate cases to mediation before scheduled court hearings. Also, several jurisdictions rely on the services of volunteer mediators who offer "day of trial" mediation in the courthouse, often coordinated by local bar associations.

Maryland District Courts are considered centralized while Circuit Courts are decentralized. At the District Court level, all mediation and ADR programs are free to all parties but this varies in Circuit Court locations. Some Circuit Courts require parties to pay mediators directly while some require parties to pay the court and then the court pays the mediator. In some instances, such as community mediation centers, mediation is free. In all instances where there is a fee,

however, there is also a fee waiver for those who qualify. No matter what level of mediation program, no payments go directly through the MACRO office.

Alternative Dispute Resolution Evaluation Support System (ADRESS) is a web-based data collection system and reporting tool which allows courts to quickly and efficiently gather survey responses provided by practitioners, clients, and attorneys, which can then be combined with court docket information. ADRESS was a result of the collaboration between MACRO and the State Justice Institute (SJI). The ADRESS initiative was made possible through a SJI grant. ADRESS speaks directly with electronic court management programs. MACRO is in the process of transitioning to the Odyssey software provided by Tyler technologies. Currently, half of the state has been converted and the entire state should be using Odyssey by 2021. ADR managers utilize ADRESS reports to assess the effects of ADR on factors such as litigant satisfaction, practitioner performance, court caseloads, case timelines, and more. This continuous feedback allows the program managers to improve the ADR program by way of efficiency, effectiveness, and overall quality. Currently, ADRESS is being piloted in Baltimore City Circuit Court Civil, Baltimore County Circuit Civil and Family, District Court Statewide, and Worcester County Civil and Family. The data collection process has been tested through these pilot programs, and currently, automated reports are being developed and tested.

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ADR managers utilize ADRESS reports to assess the effects of ADR on factors such as litigant satisfaction, practitioner performance, court caseloads, case timelines, and more. This continuous feedback allows the program managers to improve the ADR program by way of efficiency, effectiveness, and overall quality.

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The source code is available for ADRESS and other states and localities can request the code by submitting an online form. The software, however, is customized to each state and as such program ADR managers must consult with their IT departments about tailoring the code to make it functional for their court IT system.

### Survey Development

All Maryland court ADR programs are required to use evaluation forms as part of the process. There are different forms for attorneys and mediator feedback as well as parties. These evaluations ask both qualitative questions as well as questions about how solutions were generated and the timeframe of the mediation. Answers from evaluations are compiled in order to make decisions about large programmatic issues and smaller issues related specifically to the mediators.

MACRO helps create the evaluation forms in conjunction with the courts utilizing ADR. The front side of the forms have common questions across the state and the back side allows the specific courts to ask their own questions pertinent to their program. This allows MACRO to collect statewide data based on case type, location, whether there are attorneys involved, community mediation versus private, and mediator background.

The current mediation evaluation forms were originally developed in the early 2000s by bringing together relevant stakeholders: judges, magistrates, court administration, ADR program administration, mediators, and attorneys. The process was a collaborative effort which established what all stakeholders wanted to know about ADR programs and the mediators. Program goals and objectives of the program were established and indicators were set to measure them. Questions were then tried designed around these indicators. When creating the evaluation forms in the early 2000s, the stakeholders only referenced old forms. MACRO wanted to start from scratch rather than looking at other states in order to truly figure out why the process was necessary. The forms have been mostly successful since created but slight modifications have been made as necessary.

Maryland's ADR evaluation forms came before the establishment of the current RSI form. When reflecting on the RSI form, a MACRO administrator believed there was a significant amount of overlap between the RSI and Maryland ADR evaluation forms.

### Type of Data Collected

Maryland has post-mediation survey forms utilized for both GDC and Circuit Court mediation cases and includes separate surveys for party (participant), attorneys, and mediators (See Appendices J, K, L, M, N, O, P, Q and R). These surveys are color-coded in the following way: yellow for parties, purple for attorneys, and green for mediators. Surveys for family Circuit Court includes the case number and case name. All survey forms collect mediator number and mediator name.

Each form is divided into background questions, evaluating the ADR practitioner and process, general questions. While there is some variation in specific questions asked between GDC and Circuit Court mediation cases, general questions include: mode of referral, explanation of mediation process, type of ADR process, party communication, the party feeling understood and heard by the mediator, if the agreement met the party's needs, if the party understood the agreement, glad that mediation was an option, who suggestion the possible solution, among other areas of questioning. In order to check the quality of surveys, one question asks that the party mark N/A to ensure that each party is carefully reading the survey and not marking all of one answer. Parties must carefully read the questions in order to respond accordingly.

GDC party surveys provide an area where participants can voluntarily provide contact information if they want to be contacted to provide additional feedback. The GDC form does not have any open-ended questions. Instead all questions are scale questions or pre-selected answers. A numeric scale is not utilized but a word-associate Likert scale is used. This scale allows parties to choose one of the following options: strong disagree, disagree, neither, agree, strongly agree, or N/A. At the end of party surveys there is an optional demographic section for statistical purposes. These include: gender, age, race, education, household income, military status, and zip code.

## Assessment of Program Health

When asked about what they hope to gain from the evaluation process, a MACRO administrator saw the process as two-pronged: macro and micro. The micro-understanding allows MACRO to assess how the practitioners are performing the mediations and their overall success. If the evaluations show that a mediator or settlement conference provider is particularly adept in resolving a particular type of case MACRO tries to identify why that is and try to assign more cases to that practitioner. These findings can also help identify new ways to train other mediation practitioners. The macro-perspective allows the administration to make any tweaks to improve program performance. This perspective allows MACRO to identify things like if certain types of cases stand a better chance of getting resolved earlier or later in the process or if some types of cases do better in mediation or a settlement conference. Information or themes collected from the evaluation forms helps create more efficiencies within the program and mediators to fine-tune their craft. Some data from evaluations is then used to create annual reports that mostly consist of superficial data and help make process or procedural decision-making.

## Mediator Training

MACRO continuously hears that mediators worry that the party evaluation forms are report cards on them. While to some degree this is true, MACRO believes evaluations help improve ADR programs and the services offered to the litigants by the courts. Party feedback helps improve mediator training programs which in turn help fine-tune mediator skills. The evaluation process helps take the pressure of the practitioners and is not a way to penalize mediators or remove them from the court roster.

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*“You want a mediator who is going to be reflective; if you have a bad mediator who is open to feedback, they are the ones who are going to get better.”*

-Director of MACRO, Maryland

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The Director of MACRO believes it is essential to have mediators buy into the evaluation and help them understand the feedback can help them gain more experience and become a better mediator. There is research that says one of the tell-tale sign of a good mediator is experience. The Director went on to say, “You want a mediator who is going to be reflective; if you have a bad mediator who is open to feedback, they are the ones who are going to get better.” Continued training and an open dialogue of feedback will create a better overall mediator.

## Electronic Surveys

Currently mediator, attorney, and party evaluation forms used in Maryland are paper-based ADDRESS forms. These forms, however, are created in way so that they can be scanned and recorded in the ADDRESS system. The system takes the party survey results, connect it to a case, pulls case data, and merges the two within the case management system in Maryland courts. While the report writing feature of ADDRESS has not been completed yet, it will make it easier to run data analyses in order to better facilitate program monitoring and evaluation.

With the continued advancements in technology, it is only a matter of time before the majority of forms and processes will exist only in digital form. This has the potential to cause a real concern about confidentiality and must be taken seriously. The Director of Macro went on to state, "I worry about hacking in a confidential mediation case. If we are telling people that mediation is confidential and then we are putting information on some electronic feedback form, I think we have every right to be skeptical about that. On the other hand, in terms of access, the capabilities are unbelievable."

#### Administration of Party Evaluation Form

At the conclusion of the process, mediators are supposed to send in all paperwork including the post-mediation party survey. In the District Court, program staff can almost instantly tell if mediators are not turning in forms and take corrective measures. However, in the Circuit Court it takes longer since there is not a centralized entity overseeing these programs. While they have the ability to take corrective measures, they do not usually do so due to the fact that all paperwork must be submitted to program coordinators. Once the court knows that the case has gone to mediation and it was resolved or not the court should get that documentation almost instantly. The main incentive for mediators to turn in their paper is to stay on the court roster. In Circuit Court, another incentive includes receiving payment.

#### MICHIGAN

Michigan ADR programs and procedures are compiled in laws Ch. 691551 et seq., Michigan Rules of Civil Procedure, Ch. 2.400 Pretrial Procedure, Alternative Dispute Resolution, and Michigan Court Rules 2.410, 2.411, 3.216. The Office of Dispute Resolution (ODR) oversees grant funding to a network of community dispute resolution program (CDRP) centers, coordinates specialized training, conducts pilot projects in new applications of mediation, conducts an evaluation, and assists trial court in implementing ADR programs in Michigan. ODR coordinates all dispute resolution services for the State Court Administrative Office across the state of Michigan. The primary roles of the ODR is to increase the awareness of dispute resolution options among the legal system's many constituents, assisting judicial stakeholders in integrating dispute resolution processes within the traditional litigation system, administering community dispute resolution programs, and identifying and developing specialized dispute resolution programs and services. Additionally, ODR develops and oversees the implementation of dispute practices and protocols for trial courts, provides technical assistance for trial courts, implements dispute resolution practices allowed or mandated by law, evaluates dispute resolution systems, and provides recommendations on how to improve dispute resolution practices and services.

Currently, Michigan does not have state-level certification but by court rule, mediators must meet some training requirements for private or CDRP mediation. The general training and evaluation for mediators is at the local level. There is a mandatory 40-hour civil training program which consists of educational components and case observations by a pre-approved mediator. There is an additional 48-hour training domestic abuse screening which is mandatory by statute in order to mediate these cases. Individuals who successfully complete training are

placed on the court roster and assigned to cases. Some CDRP centers hold quarterly brown bags or other programs which help mediators to learn new practices or advanced their skills.

Michigan's ADR programs are decentralized and consist of two systems – public and private mediation. In addition to private mediations, ODR oversees CDRP created by Michigan legislation. CDRP is a statewide network of nonprofit organizations who provide free or low-cost mediation and dispute resolution services. ODR offers grant funding to CDRP nonprofit organizations and government programs which provide a variety of mediation services annually for a total of \$1.5 in grants.

Michigan also has a number of specialized mediation programs. Child Protection Mediation Program handles cases involving parents, caseworkers, attorneys, and others. The Parenting Time Mediation Program handles custody issues which often arise after separation or divorce. While the parent(s) can file a complaint with the court, mediation offers them the opportunity to reach an agreement outside of the formal court setting. Newer mediation programs include disputes in agriculture and special education.

Currently there is no mandatory mediation in Michigan but judges have the authority to send cases on their dockets to mediation. Limited jurisdiction courts with cases under \$25,000 are eligible for mediation. Any non-criminal case is appropriate for mediation, with the exception of personal protection or pending domestic abuse cases. A judge cannot order a domestic abuse case to mediation unless the plaintiff agree to participate. While mediations are most routinely counted by private attorney mediators, parties who cannot afford private mediations can utilize one of the 18 community dispute resolution program centers.

Once a judge sends a case to mediation or the parties opt to utilize mediation, the parties have 14 days to choose their mediator. If they have not agreed on a mediator after the two-week period, a court mediator will be assigned by the clerk. Mediation cases that take place in a court program are free to participants. In some jurisdictions, however, the parties are directed to CDRP center. Many citizens cannot afford the price of private mediation and many CDRP centers have adopted a sliding payment scale based on income or parties sometimes receive a contract that helps subsidize mediation costs.

### Survey Development

Currently there is no centralized party survey at the state level. These forms are developed at the community mediation centers. While there are some commonalities between these forms, they greatly vary from center to center.

### Type of Data Collected

The CDRP network submits ADR information to the Office of Dispute Resolution, which publishes an annual report. Statistical data represented in the report includes types of ADR used, settlement rates, settlement amounts, recidivism rates, time to disposition, and time in mediation. The research team attempted to reach two mediation centers suggested by the Director of ODR to obtain party evaluation examples, but were unable to make contact.

## Assessment of Program Health

Michigan evaluates mediation programs on a quarterly basis. ODR receives data that tracks about 40 variables which look at CDRP center performance in terms of volume and complexity of cases as well as center growth. They then produce a weighted case score to determine how many mediators are needed. If there is a downward trend of performance volume or complexity of cases, ODR occasionally defunds CDRP centers that are not seeing results or do not seem to have the competence to run a center. The Director of ODR stated that the Michigan court dockets are in great shape to the point that the number of judges is being reduced by 44. Only 1.1% of cases go to trial and those who came to an agreement through mediation were 35% more likely to collect on the judgment.

Funding is always an issue with ODR. The ODR program is partially funded by a surcharge lawsuit in filing fees. As a whole, however, filings have declined. General district courts (GDC) filings are down by 25% while some courts filings are down 50%. This could be due to the fact that people are not “ramping up” problems by going to court. Those who owe smaller amounts of money sometimes believe the cost to file and go through the court process will be more than the amount owed or believe they will just get a default judgment which may be uncollectable. ODR believes that that the problem-solving approach of mediation is proving to be bit more effective.

## Mediator Training

Some CDRP centers hold quarterly brown bags or other programs which help mediators to learn new practices or advanced their skills. Centers can also utilize feedback from party surveys to identify any problem areas and improve ongoing education as needed.

## Electronic Surveys

It is unknown whether any centers in the CDRP network are using electronic surveys. The Director of ODR was also reluctant about the archaic use paper surveys due to the time it takes to process these forms and the abundance of technology now available. Electronic or automated surveys would make the aggregation of data more effective and efficient.

## Administration of Party Evaluation Form

The centers give parties a survey during mediation while the agreement is being written up. These are then returned to the CDRP centers but not directly accessed by ODR. In terms of general survey practices, The Director of ODR believes that same-day paper surveys do not offer the most accurate feedback. On the day of mediations, the parties are often in challenging multi-hour or day-long mediation sessions. By the end of the process they are often nervous, upset, or tired and as such they are not necessarily at the best, most neutral state of mind. He reflected, “While you are more likely to get a higher response rate the day-of, does it offer an

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*“While you are more likely to get a higher response rate the day-of, does it offer an accurate assessment and is that assessment for to the mediator? Can a party be honest when the mediator receives the evaluation back and is usually in the room when they are completing the survey?”*

-Director of ODR, Michigan

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accurate assessment and is that assessment for to the mediator? Can a party be honest when the mediator receives the evaluation back and is usually in the room when they are completing the survey?” It is also important to consider what the party’s frame of reference is when they are getting this form since they have not been through a mediation training program and may not have a firm grasp on what makes a party neutral or makes a mediator good or ethical.

## NEW MEXICO

The New Mexico statewide ADR program operates out of the Administrative Office of the Courts. Overall, ADR programs are decentralized and the state ADR office only consists of the Statewide ADR Coordinator who oversees the Magistrate Court Mediation Program and the Children’s Court’s Mediation Program among other ADR programs. The Magistrate Court Mediation Program operates in six courts with an additional court being added. While the program once had a central manager, the manager has since left due to lack of funding. Similar to the Magistrate Court program, the Metropolitan Court program is a stand-alone program that handles approximately half of all small claims cases in the state. While the Statewide ADR Coordinator has some connection to District Court programs, they mainly run their own civil mediation programs. Within the past year the state attempted to make improvements to these programs and added district court ADR programs that did not exist in the past. The Court of Appeals mediation program is run by a single mediator who has approximately a 40 to 50 percent settlement rate. A rarity in most other state ADR programs, there is a pilot program for criminal cases in the state’s most populous district of Albuquerque.

Established in 2011 by New Mexico Supreme Court Order No. 11-8110, the New Mexico Statewide ADR commission is fairly new. New Mexico’s ADR Commission strives to develop, organize and monitor ADR programs and services in state courts. These consist of 13 Judicial District Courts, 54 Magistrate Courts, the Bernalillo County Metropolitan Court, the Court of Appeals, and the New Mexico Supreme Court. The Commission strives to save the time, money and frustration of both courts and litigants by supporting court-connected quality alternatives to trials. Tasks of the Commission include: collaborating with public, private, and nonprofit organizations; applying for grant funding; supporting court-connected alternatives to trials; promoting the use of court-connected ADR; developing and recommending standards, competencies, and ethics for ADR practitioners; recommending and instituting new pilot programs and initiatives; objectively assessing, examining, and recommending improvements in existing court-connected programs; and promoting the effective and productive operations of court-connected alternative dispute resolution programs in the New Mexico court system.

Funding streams for each mediation program are different. Overall District Court mediation programs operate primarily on state general funds while some specialized programs with specific funding streams. For instance, foreclosure programs received money from the Attorney General’s office. A bill was also recently passed where \$15 of every filing fee goes to the program and soon participant fees will be in place. The Magistrate Court program operates operating solely on fee based funds of \$5 per filing, but this funding has been declining due to fewer filings. The Metropolitan Court program has joint funding sources which consists of state general funds and fee based funds of a \$5 filing fee. Funding for the Children’s Court comes

from state general funds as well as federal grant funds. The Criminal Mediation pilot program operates solely from state general funds.

The state of New Mexico has no mediation standards or certification process for mediators. Courts look for the 40-hour basic training for the mediators but there are some courts that will accept retired judges for settlement facilitations who do not have this training. Specific types of cases require additional training for domestic relations cases, specifically in domestic violence and parenting plans. Children's Court mediators have the highest standards of any other mediation programs in New Mexico. Some courts have a roster of mediators they refer mediations to, some have direct contracts with mediators, while others some have in-house mediators.

### Survey Development

Currently, there is not a wide-spread party satisfaction survey tool that is being used state-wide in all courts. As a whole, The Children's Court ADR program has its own post-mediation party survey and some Magistrate Court programs utilize a survey as well. No surveys are utilized in District Courts. Difficulties in the monitoring and evaluation of ADR programs include the lack of a centralized area for people to make complaints. If participants make a complaint within the court it may not get very far due to this lack of oversight.

The Children's Court does, however, have a participant survey used regularly to evaluate the mediators and the mediation process (See Appendix S). Due to the diverse population of the state, a party survey is also available in Spanish (See Appendix T). Party survey forms were reviewed last year by mediators who provided valuable feedback. Mediators viewed them from the eyes of the participants since they have best knowledge of groups. From this review, mediators brought up valuable questions such as: How many choices are we giving participants? Are we asking questions that is above a third-grade level?

ADR program managers across the state ideally would like to have forms created for them to use. In order to be used they prefer something simple that does not require a lot of time or oversight. As a whole, however, the judiciary system is strapped for money due to the fact that they have not completely recovered from the economic fallout a few years back and therefore do not have the resources to provide such forms. When asked about the RSI sample survey form, the Statewide ADR Coordinator thought the survey was good and could be easily modified to meet each state's needs.

### Type of Data Collected

The Children's Court Mediation program has a survey for Family Participant Feedback. The only identifying information is the role of the participant (parent, guardian, relative, youth/teen, adopting parent). A series of 12 statements are ranked using the following responses:

- Definitely
- Mostly
- Somewhat

- Not at all
- Does not apply

The statements address areas such as introduction of mediation, mediator neutrality, being heard and understood, presenting their own views, understanding people's views, next steps, the decision made, improving relationships, and the desire to participate in mediation again. Additionally, there is a space for the participant to write about the most important thing that happened in mediation.

The New Mexico Statewide ADR Coordinator believes it is important to measure if the parties are satisfied with the overall mediation process or not and if they felt the mediator was neutral or unbiased through a satisfaction survey. For the Children's Court ADR, quality assurance processes and statistical outcomes are required by the Federal grant funding the program receives. Quality assurance is important at a number of levels and one of those levels is that the participants are satisfied with the process.

Reports are created for the Children's Court program but not the other district court programs. These reports highlight how many people were served, how many families (versus court cases), how much money was spent and what it was spent on (mediator training, requirements for continuing education, marketing), comments from participants, and demographics about the participants.

#### Assessment of Program Health

One way program health is measured in New Mexico Children's Court ADR program is through empirical evidence. It is important for them to understand if the program helps reach a broad population at a relatively low cost. The key is to be both efficient and effective. Outcomes in cases are not weighed as heavily and therefore it is not simply a matter of settled and resolved with everyone being happy about the outcome. With time-limited reunification, the Statewide ADR Coordinator hopes they help parents better understand the ADR process, as well as help them understand the specific circumstances of their case. For example, the opportunity to understand why their was taken away from them what they need to do to get their child back. Demographics are not a priority, as it is difficult to make conclusions without including all of the cases of child abuse and neglect across the state. The courts and other government programs are very complex systems that participants generally do not have the capacity to understand. Through ADR, the goal is to help parents better understand the process and rationale with non-punitive measures.

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If given the opportunity, the Statewide ADR Coordinator would like to measure the time to disposition in the civil district court cases in order to determine if mediation is resolving cases faster than typical litigation. Being able to pinpoint at what point in the case mediation was held would help improve the overall implementation of mediation. Additionally, the ability to have all courts that utilize ADR programs in New Mexico use a relatively uniform party satisfaction survey would allow for a cross-comparison of programs and offer the ability to run further statistical analyses. This would make it easier for the Statewide ADR Coordinator to access data independently without having to ask the courts for any reliable data. All of these things would allow the Statewide ADR Coordinator to show the value of the ADR programs to the state Supreme Court and legislature in order to leverage additional funding.

### Mediator Training

With the varying populations and geographical areas of New Mexico, it is important to regularly check in with these court systems to make sure ADR is being offered in more rural regions and not just in heavily populated areas. The Statewide ADR Coordinator believes that maintaining a high-quality product or program falls on the success of the mediators themselves. She stated, "They are the ones in the trenches doing the work and that is the best place for me to invest time and resources." Continued education, fair pay market rate, and benefits are important for mediators and, in turn, the program to continuously be successful. Mediators must feel comfortable with the program, its inner workings, and have some sort of buy-in into what they are being asked to do. As such, mediators in New Mexico are regularly asked for their input and feedback whenever new forms and policies are being considered or implemented. The party satisfaction surveys allow the Statewide ADR Coordinator to see how successful the mediators are in their practices. If a mediator receives similar comments or complaints over and over, more experienced mediators are sent to sit in on sessions in order to make sure the mediator's prior training is reinforced and assess whether additional training is needed.

As a whole, New Mexico is an incredibly rural and low-income state. The diverse populations consist of Native Americans and Spanish speaking citizens among others. The extreme rural nature of the state makes it extremely challenging to run centralized programs with integrated oversight and have qualified mediators in the outlying areas. In order to address this issue, the Magistrate Court utilizes video calls. Qualified individuals from the central court in Albuquerque link into mediations by video to mediations. While they usually do not intervene, they are able to provide valuable oversight and feedback for those mediators. This allows for immediate and direct feedback, which is critical to mediator growth in these rural areas. It also saves the cost of travel. In some cases, mediators in rural areas are well known to everyone in the town and so it is difficult to be neutral. These instances require someone from outside of the community to travel in order to mediate.

In addition to the party surveys, there is an extensive mediator assessment completed by the regional coordinator (See Appendix U). These are used as a training mechanism to help improve mediators and their practices. The form ranks mediators on the opening of the

process, during the process, and at the end of the process. These areas are graded by the Statewide ADR Coordinator on the following scale:

- E: exceeds expectations, demonstrates exceptional skill and knowledge
- M: Meets expectations consistently; is effective and reliable
- I: Improvement needed, inconsistent
- N/A: no opportunity to demonstrate skill

All questions that do not receive at least an M must be explained in a comment section. There is also an open-ended question section at the end of the form where the mediator can reflect on the process.

### Electronic Surveys

The Statewide ADR Coordinator did not mention the current use of electronic surveys or the general desire to do so.

### Delivery of Party Evaluation Form

In the Children's Court, mediation participants fill out paper surveys by hand. This often causes issues due to the impoverished population, lack of literacy skills, and the large Spanish-speaking and native speaking population. While there are often interpreters involved in the mediation process, survey forms are not translated into native languages such as Navajo. These forms are given to the participants at the end of the mediation process, collected by the mediators, and then submitted with the invoice to the Central Administrative Offices by the regional coordinator. The findings are then entered into the system and data analyses are then run in order to gauge participant satisfaction and program success and look at trends. The Statewide ADR Coordinator believes that if the surveys are not immediately distributed and collected, they would receive little to no response. If a mediator is not turning in the party survey an intervention could occur but according to the Statewide ADR Coordinator this has yet to happen that she could recall.

## TENNESSEE

In 1992, the Tennessee Supreme Court formed a commission to study dispute resolution "with a view toward the use and implementation of procedures to expedite and enhance the efforts of the courts to secure the just, speedy, and inexpensive determination of disputes." Recommendations from this commission resulted in Supreme Court Rule 31 which created a structure where litigants, courts, and attorneys are able to locate qualified alternative dispute resolution mediators in order to settle disputes in matters pending before courts of record. Any case, however, can go through mediation, arbitration, or any other form of dispute resolution without going through the Rule 31 process. Rule 31 was created to help the court or other parties obtain a mediator or other neutral party. Section 19 of Rule 31 established the Alternative Dispute Resolution Commission who devised the training and approval of ADR neutrals for the courts. This process took over a year and during this time Rule 31 was amended to include the specific training and credentials required for mediators.

Before being listed as a Rule 31 Mediator eligible to conduct court-appointed mediations, applicants are required to meet certain education, work experience, and training qualifications.

There are two different types of Rule 31 mediators: general civil and family. Mediators can be listed as one or both types. Those interested in becoming a mediator must have at least a baccalaureate degree, complete a 40-hour ADR Commission approved training for General Civil Listing or a 46-hour ADR Commission approved training for Family Listing before submitting an application. The Commission approves the training process, trainers, and other qualifications. Once being listed, a mediator must renew their listing every year and every two years they must meet continuing mediation education requirements.

There is no central office that appoints mediators but instead each individual court decides who will be appointed. It is the party's decision if they choose to go through the mediation process. There are, however, some statutes in Family Law that require the parties have an agreement for a parenting plan or they must mediate (with some exceptions to this rule). ADR in Tennessee is centralized to the point that someone must be listed in order to be assigned to cases, but decentralized in that the Commission has no say so in who gets appointed to cases.

Eligible civil actions for mediation are outlined in Rule 31, section 2, subsection G, with the exception of forfeiture, adoption, and juvenile delinquency. For the most part, mediation is paid for by the parties but there is some funding in place to help with individuals who are indigent in family court. Supreme Court Rule 38 also outlines reduced fee mediation and parent education cost in which \$7 from each marriage license fee goes into this budget.

### Survey Development

Tennessee does not have a party survey component that is required by the Commission. Section 5 reports are required by the Court, which include type of mediation (domestic, medical malpractice, tort) and if the issue(s) was resolved. Currently, there is no party satisfaction survey in use. The Commission has authority over those that are listed as approved mediators and their requirements for renewal. Because Tennessee lists and does not certify mediators, individual mediators are not evaluated or observed. There is a grievance procedure that can be filed with the Commission. There are some mediation centers that utilize evaluations, but this is dependent on the individual mediation center as opposed to a statewide practice.

### Type of Data Collected

There is currently no party survey in Tennessee ADR programs.

### Assessment of Program Health

Reports filed by the mediators with the Commission are compiled in order to determine how many mediations took place and how many reached a resolution. If given the opportunity, the Tennessee Program Director would like to better understand ADR programs and their overall success based on party satisfaction.

### Mediator Training

There is currently no party survey in Tennessee ADR programs.

## Electronic Surveys

Section 5 reports are completed and submitted online by the mediator and used to compile statistical data.

## Administration of party evaluation form

There is currently no party survey in Tennessee ADR programs.

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### LEADERSHIP IN THE FIELD OF COURT-CONNECTED MEDIATION: ABA AND RSI

In order to explore ABA's work regarding dispute resolution, a semi-structured interview was conducted via phone with the Chair of the Court Alternative Dispute Resolution Committee for ABA's Section of Dispute Resolution and the Director of Research for RSI. These interviews captured some background information and development of current mediation programs that were not captured on state websites.

### FIELD EXPERT OVERVIEW

The Director of Research for RSI has been involved in numerous multi-year projects with a committee of researchers and court administrators to try to establish questions that courts should answer. To form or develop the RSI/ABA Model Survey it was vital to research the best ways to design survey formats, questions, and how to ask the questions. The Director also explained what kind of research they conducted, such as studying the theory of ADR and procedural justice, understanding what benefits the participants, past research about technical programs, mediation case characteristics, and examples of surveys. What the Director and committee concluded was the most vital aspect to look at when creating a survey was accessibility and consideration of user time. The Director explained that language and formatting should be at "fifth or sixth-grade reading level and to gear formatting to make it easy to follow." This will allow the optimal amount of accessibility to all participants. For user time, the idea of having essential and non-essential questions could help participants spend less time on the survey and give the courts the power to decide which questions should be asked.

The ABA Section of Dispute Resolution also lends itself as a resource to examine the monitoring and evaluation processes for mediation programs. The Section of Dispute Resolution has a number of committees that are involved with mediation, court-connected mediation programs and a variety of other aspects of ADR. This includes collaborative work with RSI to develop evaluation tools and model forms. Important data elements were identified for court use for evaluative purposes with a goal for broader use of the survey across different state programs. The ABA Section of Dispute Resolution's Court ADR Committee asserts that broad use of the survey in a certain number of court programs implementing the surveys could possibly determine whether surveys are yielding the useful information to court ADR programs.

## FIELD EXPERT SUGGESTIONS

The Director of Research at RSI emphasized that survey design, data collection and processing must be an ease of use on the administrative end. The best way to do that is by making the process as automated as possible. One suggestion was to use an optical mark recognition (OMR) processing software where surveys can be scanned and processed automatically. OMR can be purchased for a relatively inexpensive price, along with other online software. The Director also suggested and explained a hybrid process used by other programs of, “families filling out a paper form at the end of mediation and we are asking the professionals to complete the survey online (following-up with a reminder). There was a 70 percent evaluation response rate with families versus a 20 percent response rate with professionals.” The Director suggested using platforms such as Survey Gizmo, Survey Monkey, and Google forms as long as the survey is not too complex. The Director did not find cause for concern with regard to privacy because the surveys would be tracked by DRS with the capability of ensuring confidentiality.

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*“It is critical to know what program goals are and what needs to be accomplished.”*

*- Chair, Court Alternative Dispute Resolution Committee, ABA Section of Dispute Resolution*

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Two suggestions to improve program monitoring and evaluation effectiveness were presented through the structured interview with the Chair of the Court Alternative Dispute Resolution Committee for ABA’s Section of Dispute Resolution . The first proposal is ensuring that there are program goals to successfully evaluate mediation programs. “It is critical to know what program goals are and what needs to be accomplished.” Secondly, mediators should be encouraged to voluntarily increase their skill sets by “incentivizing learning and improving in a manner that is not designed to be a punitive system.” This would also promote quality assurance practices as continued education or improvement to ensure that mediators remain qualified.

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**Mediators should be encouraged to voluntarily increase their skill sets by “incentivizing learning and improving in a manner that is not designed to be a punitive system.”**

*-Chair, Court Alternative Dispute Resolution Committee, ABA Section of Dispute Resolution*

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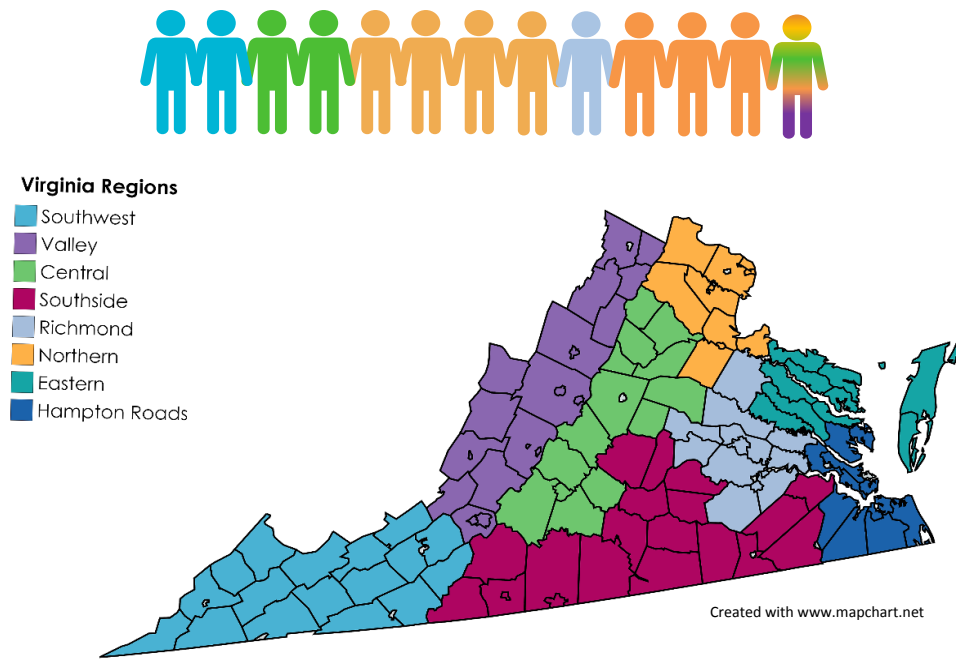
## INTERVIEWS WITH VIRGINIA MEDIATORS

To further examine court-connected mediation stakeholders’ perceptions of the current data collection, monitoring and evaluation processes, semi-structured phone interviews were conducted with thirteen practicing Virginia-certified mediators. The sample of mediators encompassed several regions across Virginia to include the Southwest, Central, Valley, Northern, Richmond and Hampton Roads regions (See Exhibit 9). When looking at the demographics of the sample, 62 percent are female and 38 percent of mediators are male. Educational and professional backgrounds were diversely represented and included education,

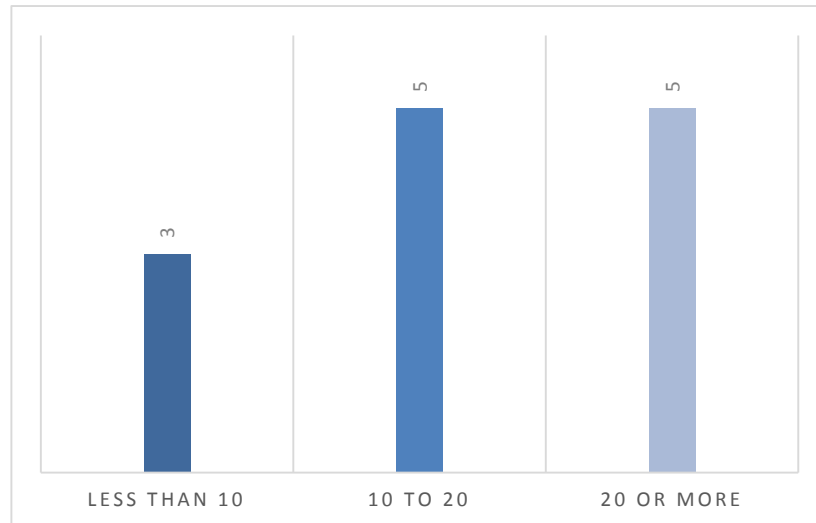


law, human resources, and conflict resolution. Various types of cases mediated, including civil, juvenile, family, victim-offender, small business, and employment disputes. The majority, 69 percent, of mediators have over 10 years of experience, while 31 percent have less than 10 years of mediation experience (See Exhibit 10). All of the mediators have done over 100 mediations, with reports ranging from 150 to 2,700 cases among them. From the interviews conducted, there were four principle themes surrounding common mediator perceptions of the data collection, monitoring and evaluation processes. Based on the evaluation survey form these themes include the assessment process, general impressions, evaluation improvement suggestions, and ideas for the future (See Exhibit 11).

**Exhibit 9: Virginia Regions Represented by Mediators**



**Exhibit 10: Mediator Years of Experience**



### Exhibit 11: Mediator Interview Summary

Mediator General Impressions of Evaluation Surveys	
<b>Party Feedback Importance</b>	There is a consensus across all stakeholders that is important to have an evaluation survey tool. Currently, most mediators say the questions are a good start but could be improved.
<b>Redundancy</b>	Most documents ask for the same demographic information throughout the process. The repetitive nature of the survey questions can lead parties to rush through the survey and not develop thoughtful answers.
<b>Format and Structure</b>	Parties can have difficulty understanding the terminology or how to answer questions that are scaled. Mediators have to explain questions and often times receive surveys that were answered incorrectly.
<b>Time Considerations</b>	The survey is too long and the parties believe it is burdensome because they want to as soon as their mediation session has concluded, leading to unanswered surveys or mindlessly done surveys.
<b>Confidentiality</b>	Parties are not comfortable giving back evaluations to the mediator. Parties do not feel their confidentiality is being protected.
<b>Bias</b>	Parties will answer the survey not focusing on how the process occurred but by the outcome of the case. Surveys often reflected feelings on the outcome rather than the process of the mediation.
<b>Unknown Purpose</b>	A majority of mediators do not know what the purpose of the evaluation form is. Some think it is for reprimanding, others believe it is to see how the mediators are doing. A majority believes that the survey should be about finding out if DRS is achieving its intended purpose.
Mediator Suggestions for Evaluation Improvements	
<b>One-Page Forms and Concise Questions</b>	A shorter survey does not equate to less questions but a better focus on asking concise questions, allowing the parties to take their time to provide genuine feedback. Clarifying the questions and making them more concise will lessen survey confusion among the parties.
<b>Incorporating Technology</b>	An online evaluation form would allow for administrative ease, confidentiality protection, accessibility, and time saving.
Mediator Ideas for the Future of DRS	
<b>Incentives for Survey Submission</b>	Some mediators expressed that self-motivation, ethical standards, and accountability by directors were enough incentives. Others recommended recognition of efforts, electronic survey, and pre-addressed envelopes would incentivize timely survey submissions.
<b>Complaints by Phone</b>	If a mediation was done so poorly, the party could contact DRS directly because many people would not call unless they truly had strong feelings to express.
<b>Provisions for Returning Surveys</b>	If electronic surveys are not an option in the near future, most mediators would want pre-addressed envelopes to be given to parties and the parties would have the sole responsibility to return the survey back to DRS.
<b>Create Program Goals</b>	It is vital for DRS to create program goals in order for mediators to understand the purpose of administering the form and the importance of program evaluation.
<b>Create an Annual Report</b>	Not only could an annual report highlight the achievements of DRS and the evaluation data that has been collected, but allow the mediators to be highlighted for their work in a report.
<b>Incorporate Peer-Reviews/Co-Mediations</b>	Co-mediations and peer-reviews should be utilized as positive reinforcement to target specific training programs and education tools. Incorporating these methods would incentivize mediators to participate in training and allow them to have positive contact with DRS.

## EVALUATION PROCESS ASSESSMENT

The first theme is surrounding the evaluation process assessment. Mediators were interviewed to assess perspectives on the evaluation survey form introduction, administration, and knowledge of data use.

### Evaluation Survey Form Introduction

There was a consensus on the general overview of the mediation process and knowledge, as well as familiarity of the evaluation survey form. When asked about how they introduced the survey to parties, 54 percent of mediators reported that the survey was introduced at the end of the mediation, typically directly following the agreement phase. A total of 23 percent of mediators introduced the survey in the beginning during the orientation process. Only 15 percent of mediators said they “never introduce the survey.” When asked how the survey is introduced, the mediators that explained the survey at the end of the process indicated that they would explain why evaluation of the mediation services received is essential, followed by a brief description of the questions on the form, all while expressing confidentiality. This demonstrates a generalized understanding of the mediation process and evaluation survey form amongst mediators, which is helpful in facilitating effective mediation practice.

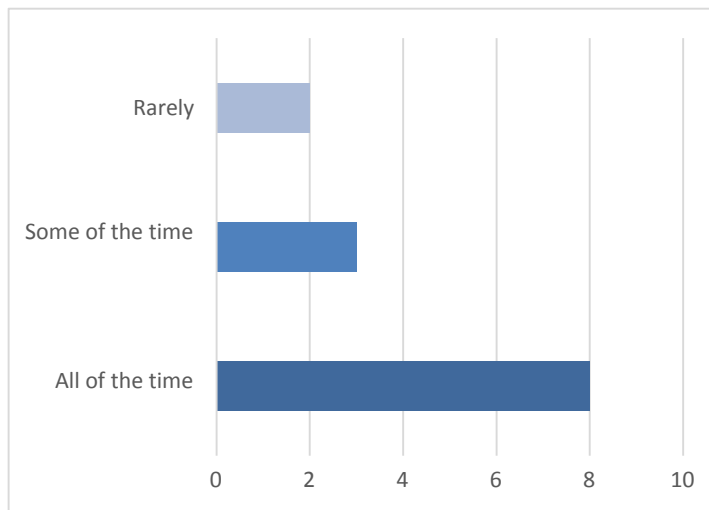
### Administration Process of Evaluation Survey Forms

When asked about the administration process of the evaluation survey form, 62 percent of mediators reported providing privacy to parties by leaving the room after the agreement is drawn. Mediators described providing additional instruction or explanation as needed such as further explaining the scale measurements to rate mediators. “I had someone say we were trying to give you a 10 by circling 1 and 0”, recalled Mediator 006.

Mediators would then return to collect the forms and put them into an envelope for return to DRS.

During the interviews, the research team asked how often the mediators administer the survey and gave four options: almost all of the time, some of the time, occasionally, or rarely (See Exhibit 12). The majority of mediators, 8 out of 10, said they administer the survey almost all of the time. Mediators that said they administer the survey some of the time accounted for 3 out of 10 of responses. Only 2 mediators said they administer the survey occasionally or rarely. Regardless of whether a mediator said they administered a survey all of

**Exhibit 12: Rate of Survey Administration**



the time or rarely, there was a consensus that it may be necessary to mail the survey form to parties due to lack of time.

### Evaluation Data Use Knowledge

About 38 percent of the mediators perceived that the data obtained from the evaluation survey forms were used for justification purposes for mediation programs based on program quality control and client satisfaction measures. Mediator 002, expressed that “Data being used by DJS for grant writing, justification as why this is or isn’t working and justification of the process.” Another 31 percent reported the data was used as means to follow up on mediator complaints. Mediator knowledge of data use is essential as it shapes the mediator’s general opinion of the survey and therefore, their motivation to getting parties to complete the evaluation survey form.

### GENERAL IMPRESSIONS

Another theme that developed from the interviews was an understanding of what the evaluation forms mean to the mediator, allowing the mediators to reflect on the evaluation strengths to weaknesses form.

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In general, having the evaluation form is perceived as a benefit in terms of performance improvement of the mediator and to make sure the process is being carried out correctly.

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### Strengths

A clear consensus is that everyone believes that party feedback is a vital aspect of the mediation process. Mediator 001 said it was “...necessary to subject themselves to the clients. The client can have an outlet. We can take the feedback and improve is beneficial to us.” In general, having the evaluation form is perceived as a benefit in terms of performance improvement of the mediator and to make sure the process is being carried out correctly. Less than 1 percent of the mediators believe the current questions are “good” and “moderate” in getting the job done. However, 46 percent of mediators believe the current questions are a good start but could be improved to address the questions that both mediators and DRS want to be answered.

## Weaknesses

The first weakness suggested is that the questions are perceived as redundant. Twenty-three percent of the mediators pointed out that some documents have to be completed during the process that already asks for names, address, phone number, and other contact information. The parties are fatigued by the end of a session and presenting another document to fill out makes the parties feel weary, especially when the first few questions have been required on every form. If the evaluation form did not ask the parties for their names, addresses, and other personal questions again, they could spend more time answering questions about the mediator and the process.

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The parties are fatigued by the end of a session and presenting another document to fill out makes the parties feel weary, especially when the first few questions have been required on every form.

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Most of the mediators believe they should not have to explain the questions as much as they do, which shows them the survey needs to be worded in simpler terms.

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The second weakness is the format and style. Many mediators reported that parties experience difficulty answering the survey questions. For example, several mediators discussed how some questions confused parties due to not understanding the options and terminology. Most of the mediators believe they should not have to explain the questions as much as they do, which shows them the survey needs to be worded in simpler terms. Another issue was that questions that ask to rate the performance between zero to five are often answered incorrectly due to the direction of the survey scale. Other mediators had to tell parties that a “one” does not mean excellent, but the opposite. Most of the mediators often see parties circling the same row of numbers or circling all “yes” or all “no.” Mediators do not believe the parties are always taking the time to process what is being asked and giving genuine answers while taking the survey. The lack of comment sections does not allow parties to give detailed opinions. The majority of mediators found the lack of open-ended reflection to lead to a waste of time and resources. Overall, mediators believe the style of questions and the format of the evaluation is not user-friendly and is a missed opportunity for valuable data to be collected.

The third weakness is time. Many mediators believe the survey is too long, especially after a mediation that can take up to three hours and consists of other documents the parties must fill out. Words like “fatigue” “draining” “burdensome” were used to describe how parties feel after mediation regardless if an agreement had been reached or not. Most parties want to leave as soon as they are done, so handing a two to three-page evaluation survey is troublesome especially if redundant questions are being asked or the questions are not precise. Most of the time the parties may walk out and not fill it out; or worse, the parties will mindlessly complete the evaluation form without processing what is being asked.

The fourth weakness is confidentiality. In an effort to ensure higher response rates, mediators described administering the survey evaluation at the conclusion of the mediation session before the parties leave. While they attempt to provide privacy as the parties complete the survey by stepping out of the room, this does not allow for complete confidentiality because they return to collect the form directly from the parties. Many of the mediators expressed that parties tend to feel uncomfortable filling out the evaluation form because the mediator is still present or the parties know they will be returning the form containing their personal information directly to the mediator. Although it is made clear in the orientation that DRS, the mediator, and the process itself highly values confidentiality and documents are signed to enforce confidentiality, parties feel their confidentiality rights are not protected because the mediator can see what is said about them. This can lead to bias information being used in completion of the form.

The fifth weakness is bias. Many mediators have been in situations where they have conducted a fair mediation but received bad reviews, not because of the mediator's performance but because the outcome of the case was not in favor of one of the parties. One mediator said, "You don't always have tempers, but when you don't come to an agreement it can be tough to have parties sit down to fill out evaluations. When you have a difficult situation, the parties are so fueled by emotions and what their case is, they aren't thinking about how successful the process is." Another mediator expressed that it is normal to see low numbers circled on the evaluation form by the party that believe they did not get the outcome they wanted and vice versa. The feedback from the evaluation form is not necessarily a reflection of the mediation or the success of the mediator but their feelings of the situation.

The sixth weakness is the lack of known purpose of the evaluation form. A few mediators expressed they do not know what the purpose of the evaluation form is because they only hear back from DRS if there is extreme negative feedback on the form. Some mediators believe it is just a way for DRS to reprimand those who scored low on the forms. They view the form as a way for the parties to express whether the mediator did the job right when instead, they believe the form should evaluate if mediation is achieving its intended purpose and how to improve the process.

## EVALUATION IMPROVEMENT SUGGESTIONS

Suggestions from the mediators on improving the current evaluation survey form was another emergent theme from the interviews. There were many suggestions proposed, but there were two that the majority of the mediators expressed as a solution to making the evaluation forms better for the parties and themselves.

### One-Page Forms and Concise Questions

One suggestion offered was to make the evaluation survey form one page and more concise. Removing additional pages allows DRS to focus on questions that are the most necessary in getting the valuable feedback. The mediators believe that fewer questions do not equate to less information. They also feel that a shorter survey would allow for more thought in determining the essential questions to ask. The mediators expressed that it is essential to focus on clarifying the questions and simplifying the directions. Also, building in more open-ended questions and removing number scale questions so parties can explain their perspectives more accurately. More comment sections allow for all types of participants to be included such as single persons, two parties, more than two parties, and business groups. In reducing the survey to one-page, this would eliminate questions related to personal information. Instead, most mediators suggested a question that asks, “what is the best way to reach you?” Shortening the evaluation form would be less intimidating to the parties and possibly lead to fewer walkouts. A shorter form allows the parties to take their time, process the question, and provide genuine and thoughtful feedback.

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The mediators expressed that it is essential to focus on clarifying the questions and simplifying the directions.

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### Technology

Another suggestion was incorporating technology in mediation. Ninety-two percent of mediators believe that there should be an online evaluation form for parties to fill out for convenience and confidentiality. Parties do not have to stay in the mediation room longer than they already do, they can go home and fill out the form without rushing themselves. Parties will have privacy and will not worry about the mediator seeing their feedback, allowing less bias to impact survey responses. Mediators also believe if evaluation forms were completed online the parties would not mind a longer form because they would be completing it on their own time. Other mediators believe that if the mediation documents and evaluation were done online, they could give their laptop to the parties to fill out and once completed, the mediator can immediately send the documents and evaluation forms the same day. Incorporating technology or online forms would make the process much more efficient and more straightforward for the parties and mediators.

### IDEAS FOR THE FUTURE

The final theme of the interviews were collecting suggestions and ideas for DRS and evaluations as a whole, not just focusing on how to improve the current evaluation forms but also how to improve overall programming. Although the overwhelming consensus that came from the interview was to have electronic surveys and incorporate technology, the mediators had a vast amount of other ideas they believe could improve monitoring and evaluating services for all the stakeholders.

### Incentives for Survey Submission

When analyzing the feedback, it was clear that the mediators have a high sense of ethical responsibility. Those mediators did not discuss or suggest types of incentives but rather talked about how much they value the work they are doing and helping others was enough incentive to submit the surveys. While many expressed that self motivation and ethics was incentive enough, there was a clear link for those mediators that did not share this. They did not have coordinators or directors that collected and submitted the surveys for them. Additionally, because submission of the survey evaluation form is not required in order for mediators to receive payment, there is limited motivation for them to return the forms in a timely manner. Mediators can have high ethical values but the lack of accountability hinders the return of surveys. One mediator reported not returning a single survey this year even though between 35-45 mediation cases have been completed. Mediators who do not have payment tied to survey evaluation form submission nor an additional level of accountability expressed that recognition, electronic surveys, and pre-addressed postage paid envelopes would incentivize timely submission of the surveys.

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Because submission of the survey evaluation form is not required in order for mediators to receive payment, there is limited motivation for them to return the forms in a timely manner.

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### Complaints by Phone

Mediators believe that it would be easier to condense the evaluation forms if DRS allowed parties to issue complaints over the phone. It was described that if mediation was done so poorly, the party could call DRS directly and voice their opinions. Many people would not call unless they had strong feelings about what occurred in their case. The evaluation forms would focus more on the quality and process of the mediation instead of the individual mediator if phone calls were an option.

### Providing Pre-Addressed Envelopes/Other Return Methods

If DRS cannot provide online surveys or electronic submission of surveys and documents, most mediators suggested that DRS should supply them with pre-addressed envelopes to give to the parties. The parties could have the privacy to complete the forms and the mediators will feel less overwhelmed with all of the paperwork they have to keep organized and submit. Some mediators suggested a hybrid system of allowing submission online and paper surveys with pre-addressed envelopes.

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*“They (DRS) need to come with a plan of why they want the survey done. There has to be a reason whether it is to see how we (mediators) are doing, justification, or to better the process.”*

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-Virginia Mediator 001

### Create program goals

Most mediators expressed that it is vital for DRS to create program goals to continue evaluations. Mediator 001 said, “They (DRS) need to come with a plan of why they want the survey done. There has to be a reason whether it is to see how we (mediators) are doing, justification, or to better the process.” At this moment, mediators believe that the forms are either to collect complaints, validate invoices, or to



justify the program. Establishing program goals will legitimize the act of administering survey evaluation forms and sending them to DRS in a timely manner. Mediators would be more motivated by knowing there are specific goals DRS would like to achieve and would better assist DRS with survey administering and collection.

### Creating an Annual Report

Following the suggestion of creating program goals, a few mediators explained if annual reports were generated, they would feel incentivized in administering, collecting, and returning evaluation forms. Mediator 006 said, “Conducting a survey among users of mediation about the quality of mediation services, what worked, what didn’t work, and what was less than satisfactory. That was published in a report a decade ago but doing that again, now, is important.” Not only would annual reports be a good incentive for mediators but a product for DRS to evidence success and to further capture the demographics, feedback, and survey question data into a document that can also educate mediators on what to work on and inform the public on Virginia mediation programs. A few mediators discussed how an annual report could serve as a justification tool for funding support which could assist DRS in hiring more staff or incorporating other technological advances.

### Incorporating Peer Reviews/Co-Mediations

Throughout the interviews, co-mediations and peer reviews were discussed for improving mediation services overall. This suggestion was coupled with the reflection that the survey submission was perceived as tied to a punishment of losing his or her certificate to practice. Many mediators stressed the importance of having more education and learning mechanisms. Instead of utilizing re-certification and evaluation surveys as negative reinforcement, co-mediation and peer reviews were suggested as a tool and an incentive to perform better. Mediator 003 suggested that co-mediation should be required for re-certification stating “Peer

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*“Peer reviews are great learning tools because mediators can see what to do and not to do from one another and truly bestow self-reflection in one another.”*

-Virginia Mediator 003

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reviews are great learning tools because mediators can see what to do and not to do from one another and truly bestow self-reflection in one another.” Mediator 005 explained that “At the end of the day, my certificate being taken away would not teach me anything, I don’t get feedback from that. Co-mediation would help assess me and receive feedback.” Most mediators find co-mediation and peer reviews to be a positive reinforcement compared to being reprimanded for not submitting surveys.

### KEY MEDIATOR FINDINGS

As discussed, findings from mediator interviews revolved around four principle themes: evaluation survey form assessment process, general impressions, evaluation improvement suggestions, and ideas for the future. There was a general consensus among mediator’s perspectives on the evaluation survey form assessment process which includes introduction and administration utilizing similar practices as it regards to timing of when the form is administered and focus on through explanation. In regards to data use knowledge, some

mediators had varying perceptions which included program justification, grant writing, quality control, and follow-up for mediator complaints, while other mediators did not have a clear understanding of data use.

Several general impressions were expressed by mediators. Mediators believed that party feedback is essential to the mediation process, which is why the evaluation survey forms should be completed. However, mediators identified several weaknesses of the current evaluation survey form which included issues pertaining to redundancy of forms, form style and formatting, form longevity, confidentiality, party bias, and lack of knowledge regarding the purpose of the evaluation form.

Mediators also provided evaluation improvement suggestions that included shortening the evaluation survey form to one page to only the information that is necessary get valuable feedback. Also mediators suggested that there should be an online evaluation form for parties to fill out for convenience and to address confidentiality issues.

Mediators also shared ideas for the future for mediation evaluation which included incentives for survey submission such as accountability, recognition, electronic surveys, and pre-addressed postage paid envelopes for return of surveys. Mediators also believed that the evaluation process could be streamlined if DRS allowed parties to make complaints over phone. There was a consensus among mediators expressing that it is vital for DRS to create program goals for effective evaluation. Mediators also indicated the use of program goals would help DRS to generate an annual report that would further incentivize administering, collecting, and returning the form. Lastly mediators strongly expressed the use of co-mediations and peer reviews for mediator services as an effective mode of evaluation and opportunity for training if needed.

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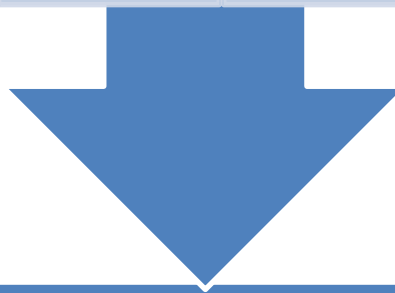
#### SUMMARY ANSWERS TO RESEARCH QUESTIONS

As shown in Exhibit 13, the research team first addressed research question two: *What are DRS and stakeholders' perceptions of the current mediation and mediator data collection and evaluation/monitoring processes?* Using the findings, the research team was able to extract key themes from stakeholder interviews to apply to best practices discovered in the comparative analysis of states. These best practices informed the final recommendations for DRS, addressing research question one: *How can DRS's current mediation and mediator data collection and evaluation/monitoring processes be improved to better align with best practices in court-connected mediation program monitoring and evaluation?*

Exhibit 13: Addressing the Research Questions

Research Question Two: What are DRS and stakeholders' perceptions of the current mediation and mediator data collection and evaluation/monitoring processes?

It is critical to develop program goals and for mediators to understand how they relate to and justify program requirements.	Baseline data about how many mediations are occurring and who the program is serving is important can guide monitoring and promotion of services.	Party feedback is essential for individual mediator growth and overall program success, and must be collected and analyzed in a confidential and efficient manner.	Changes are required administratively that allow for data to be processed and reported in an accurate and efficient way.	Mediators want to improve their skills and feedback from parties, peers, and DRS using positive, skill-building approaches to feedback and training is the ideal way to achieve this.	Showcasing program and mediator achievements is the best way to educate the community on DRS services and recognize mediators for their contribution.
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Research Question One: How can DRS's current mediation and mediator data collection and evaluation/monitoring processes be improved to better align with best practices in court-connected mediation program monitoring and evaluation?

Develop program goals and objectives for monitoring and evaluation	Develop and implement a mediation intake form	Develop an electronic mediator evaluation survey tool	Improve data collection practices	Incorporate additional training opportunities and incentive practices	Create an annual report
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## RECOMMENDATIONS

Based on the analysis of findings derived from the common themes found from the state comparative analysis, ADR state representative and leadership interviews, and Virginia mediator interviews. The following recommendations were developed to improve mediation and mediator data collection, monitoring and evaluation processes to better align with best practices in court-connected mediation program monitoring and evaluation:

- 1) Develop program goals and objectives for monitoring and evaluation
- 2) Develop and implement a mediation intake form
- 3) Develop and implement an electronic mediator evaluation survey tool
- 4) Improve data collection practices
- 5) Incorporate additional training opportunities and incentive practices
- 6) Create an annual report

### DEVELOP PROGRAM GOALS AND OBJECTIVES FOR MONITORING AND EVALUATION

The research team recommends that DRS develop program specific goals and objectives, which will drive monitoring and evaluation practices. Currently DRS does not have formal program goals and this was evident in the various explanations shared by mediators. Objectives should be specific to the program, measurable, realistically achievable, and stakeholder driven. This will establish criteria on which program and mediator performance can be measured and evaluated. DRS should then explicitly communicate these goals and objectives to mediators to ensure understanding and buy-in for administering the evaluation survey tool.

### DEVELOP AND IMPLEMENT A MEDIATION INTAKE FORM

The second recommendation is that DRS develop and implement intake forms that would be returned to DRS for every mediation within thirty days of that mediation. Currently, DRS does not have a mechanism to obtain demographic data or monitor the number of cases mediated in real time. Through the comparative analysis of the states, it was found that Maryland and Arkansas utilize intake forms to obtain demographic information for evaluation purposes. Demographic data and the actual number of cases mediated in the event that a mediator does not return an evaluation survey form or return it timely can be obtained to add an additional layer to evaluation and monitoring. Being able to obtain more useful data pertaining to the demographic that they serve for evaluation purposes and could provide a useful way to communicate with the courts or geographic areas to promote mediation.

### DEVELOP AND IMPLEMENT AN ELECTRONIC MEDIATION EVALUATION SURVEY TOOL

The third recommendation is that DRS develop and implement an electronic mediation evaluation tool. The majority of mediators and stakeholders suggested using electronic forms for the purpose of data collection and program evaluation. All of the mediators expressed

concern that the process was not truly confidential as the parties most times give the survey back to same mediator that is being evaluated. This creates a bias as parties might give honest and accurate feedback because it does not feel confidential. Converting the evaluation survey to an electronic format would help address issues of time and privacy, while also creating administrative efficiencies for data collection.

Based on mediator feedback, state examples, and RSI survey guidance, the research team recommends that DRS replaces the current paper tool with an amended electronic evaluation survey tool (see Appendix V). It is recommended that DRS use an electronic format and modify the questions as needed to address specific program goals and objectives when developed. The survey is geared toward mediation process perspectives and mediator performance. The form was restructured to address some commonalties identified by mediators such length of forms, redundancy, time restrictions, and of questions.

### IMPROVE DATA COLLECTION PRACTICES

The Director of research for RSI discussed the importance of making the administrative task as simple as possible. It is understood the volume of surveys that are being sent to DRS can reach about 30,000 returns annually. For a small staff to enter, verify, analyze, conceptualize, and file away thousands of paper surveys a month is over-bearing, unrealistic, and error-prone. The critical aspect of data collection for DRS is that it needs to be automated. For DRS to keep afloat of all their responsibilities but also be able to collect and use the data for monitoring and evaluating purposes beyond looking at “really positive and negative surveys,” the research team has a two-part recommendation: 1) standardization of data collection protocol and 2) creating an internship program.

A standardization of protocol can facilitate a comprehensive and detailed process of data collection. It is vital for DRS to decide on a consistent structure of data collection and how many surveys would give a realistic representation of the sample size. The current process of data collection is sporadic, as data is only entered two months out of the year. It is recommended that data be collected and organized quarterly. This protocol would entail that surveys be collected from January 1 through March 31 as part of quarter one. During this quarter, survey data received should be entered into the Access Database and verified for accuracy. Beginning in quarter two, April 1 through June 30, an additional set of survey data would be collected. This protocol would allow time for analyzing and summarizing the data collected, and when quarter two begins, the sole focus will be on entering and verifying. This process gives enough time to collect, verify, and analyze and when the end of the data year approaches. There will be four quarter summaries that have already been written, providing the staff an advantage when writing the annual report. To keep track of the entered surveys, a three-digit code should be given to every survey entered in the Access database. The coding is by year, quarter, and the numbered survey. For example, if ten surveys were collected on January 1st, 2018, the surveys would be coded as 18-1-1, 18-1-2, 18-1-3, etc. Following this approach allows for the data to be

organized and can be easily found when looking at data trends over the years. Once all of these decisions are made for the standardization of protocol, it is recommended that it should be written and part of the training plan for all of the future employees.

Secondly, it is recommended that DRS create an internship program. If DRS is unable to hire more research staff, building an internship program could offset labor costs while also encouraging young professionals or students in learning about DRS, ADR, and the Virginia Supreme Court. The internships could be for the summer or semester long. It is at the discretion of DRS of how many interns to bring along, but there would be more assistance in data entry and data collection. The internship could provide college credit or the promise of a recommendation letter if the intern is deserving. Additionally, DRS can have an essential part of investing in students' futures by providing real-world experience and networking opportunities. If the internship program is monitored well, this could also be a way for DRS to find future employees with new perspectives, fresh ideas, and skill sets.

#### INCORPORATE ADDITIONAL TRAINING OPPORTUNITIES AND INCENTIVE PRACTICES

The research team recommends that DRS use the feedback from the mediation evaluation survey to inform training offered throughout the year. DRS already implements training and education programs throughout the year for certification and recertification. Both state leaders and mediators felt that co-mediation would be vital to enhancing the training programs and incentivizing mediators to want to learn more and be more encouraged to become better mediators. Mediators also expressed that they were only contacted by DRS when they received negative feedback. Recently, co-mediation has been adopted into the certification requirements. To address the mediators' concerns with the feedback they receive it is essential that DRS use the evaluation feedback in a positive, skill-building capacity. If DRS is noticing trends on feedback tools from both participants and mediation observations, they should use this to develop specific training to model techniques that are getting positive feedback and more practice for those areas that could use improvement. Data-driven decision making allows for diversification in training to keep mediation concepts current and exciting.

#### CREATE AN ANNUAL REPORT

The final recommendation is that DRS begin creating annual reports. Currently, DRS collects data, but there have been no reports done since the 1990's. A well written annual report can lead to many benefits, most important buy-in from a variety of stakeholders. Highlighting DRS's, programs, goals and objectives, monitoring and evaluation data, and plans for the future allows those familiar and unfamiliar with DRS's services to understand what is being done and helps to develop credibility and value. It will provide a forum for DRS to give positive feedback to quality mediators and highlight program success. An annual report will also support requests for funding to make necessary program improvements.

## CONCLUSION

The Commonwealth of Virginia continues to strive to be a leader in the provision of dispute resolution systems offered through the judicial system. A significant component of evaluation is mediator performance from the perspectives of those participating in the mediation process. Mediators and leadership from across the field agree that a well-developed, accessible and efficient evaluation survey tool is a vital aspect of the mediation process. It gathers party feedback that contributes to data-driven decision-making, leading to mediator performance improvement and overall program health. With the knowledge and tools to streamline evaluation, DRS will be equipped to use that information to monitor and support certified mediators through curriculum development and technical assistance. What's more, feedback will give meaning to program requirements and give mediators a sense of purpose for implementation of the evaluation.

It is the research team's hope that the reported findings will encourage DRS to make small but impactful changes to their overall monitoring and evaluation system. These changes will allow for strengthened communication and understanding between the mediators and DRS as they take a skills-based approach to providing feedback. Celebrating the strengths of the program and the mediators at large through annual reporting will only add to the evidence of Virginia as an innovator in court-connected mediation.

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## APPENDICES

### APPENDIX A: PROTOCOL OF INTERVIEWS WITH STATE LEADERSHIP

#### Interview Protocol

#### Name of Representative Interviewed, State || Date || Time || Interviewer || Note taker || State ADR Programs and Mediation Evaluation Interview

##### Introduction

Thank you for participating in this interview. Our names are \_\_\_\_\_ and \_\_\_\_\_, and we are part of the VCU Capstone team that is conducting a study analyzing the Department of Judicial Services' Division of Dispute Resolution Services (DRS) current mediation program, with specific focus on the monitoring/evaluation process, and providing recommendations.

A fundamental aspect of evaluating court-connected mediation programs for best practices is the consideration of input provided from those who are implementing their own ADR programs. We would like to hear your perspective on what is currently happening in your state with monitoring and evaluating mediation, your assessment of the program, and any lessons learned and recommendations.

Your participation in this interview is completely voluntary and you may stop at any time or refuse to answer any question without penalty. By providing your verbal consent you are indicating your willingness to participate in this study.

The information you provide will be used to develop a report for the DRS. To ensure we capture what you say correctly we will tape record this interview, but we do not plan on transcribing word for word. Instead the tape will serve as verification for the field notes we are also taking. Do you have any questions?

##### Background/Overview of Program

1. Can you give us an overview of your mediation program in \_\_\_\_\_?
  - a. Can you walk us through how it works?
2. We understand that different states have different approaches to training and certifying mediators and monitoring the quality of their programs. How does it work in \_\_\_\_\_?

##### Evaluation Process

3. Can you give us an overview of how your mediation program is evaluated in \_\_\_\_\_?
  - a. Do you have a survey tool? (Can you provide us an example?)
  - b. How was this tool developed?
  - c. What resources did you use?

- d. Do you know about RSI? Did you use this to develop your tool?
4. What do you hope to gain from the monitoring/evaluation process?
5. What is data collected used for?
  - a. Is it used for data-driven decision making?
6. What are your guidelines/protocol for evaluation submission?
  - a. Is there a submission deadline?
  - b. Are there incentives provided or penalties enforced for compliance with the submission guidelines?
7. How would you assess the performance of your mediation program?
8. If you could change a couple of things about your monitoring/evaluation process what would it be?
9. What feedback have you received from mediators about the monitoring/evaluation process?
  - a. What are the strengths and challenges expressed by mediators?

**Lessons/Recommendations**

10. What advice do you have for administrators in other states for building successful monitoring and evaluation processes for mediation programs?
11. Can you recommend resources for best practices in monitoring/evaluating ADR programs?
12. As part of the project, we plan to interview other states that have effectively implemented evaluation systems for their mediation programs. Based on your experiences, would you recommend any other states for us to consider?
13. Is there anything else relative to mediator evaluation and monitoring that we did not ask about but is important for us to consider?

## APPENDIX B: PROTOCOL OF INTERVIEWS WITH ADR SECTION OF ABA REPRESENTATIVE Interview Protocol

**Name of Representative Interviewed, Organization || Date || Time || Interviewer || Note taker ||**

**ADR Section of ABA Interview**

### **Introduction**

Thank you for participating in this interview. Our names are \_\_\_\_\_ and \_\_\_\_\_, and we are part of the VCU Capstone team that is conducting a study analyzing the Department of Judicial Services' Division of Dispute Resolution Services (DRS) current mediation program, with specific focus on the monitoring/evaluation process, and providing recommendations. A fundamental aspect of evaluating court-connected mediation programs for best practices is the consideration of input provided from those who are implementing their own ADR programs. We would like to hear your perspective on what is currently happening in the American Bar Association with monitoring and evaluating mediation, your assessment of the program, and any lessons learned and recommendations.

Your participation in this interview is completely voluntary and you may stop at any time or refuse to answer any question without penalty. By providing your verbal consent you are indicating your willingness to participate in this study.

The information you provide will be used to develop a report for the DRS. To ensure we capture what you say correctly we will tape record this interview, but we do not plan on transcribing word for word. Instead the tape will serve as verification for the field notes we are also taking. Do you have any questions?

### **Background/Overview of Program**

1. Can you give us an overview of your background and your work in evaluating mediation programs?
2. Can you tell us about your work ABA Section of ADR?
3. We understand that different states have different approaches to training and certifying mediators and monitoring the quality of their programs. What kinds of approaches have you had experience with in your work in California and Maryland?

### **Evaluation Process**

4. Are you familiar with the RSI/ABA Model Surveys for program evaluation?
5. What resources informed the development of the RSI/ABA Model Surveys for program evaluation?

## **Lessons/Recommendations**

6. What advice do you have for state administrators for building successful monitoring and evaluation processes for mediation programs?
7. Can you recommend resources for best practices in monitoring/evaluating ADR programs?
8. As part of the project, we plan to interview other states that have effectively implemented evaluation systems for their mediation programs. Based on your experiences, would you recommend any other states for us to consider?
9. Is there anything else relative to mediator evaluation and monitoring that we did not ask about but is important for us to consider?

## APPENDIX C: PROTOCOL OF INTERVIEW WITH RSI REPRESENTATIVE

### Interview Protocol

**Name of Representative Interviewed, Organization || Date || Time || Interviewer || Note taker ||**

### RSI Interview

#### Introduction

Thank you for participating in this interview. Our names are \_\_\_\_\_ and \_\_\_\_\_, and we are part of the VCU Capstone team that is conducting a study analyzing the Department of Judicial Services' Division of Dispute Resolution Services (DRS) current mediation program, with specific focus on the monitoring/evaluation process, and providing recommendations.

A fundamental aspect of evaluating court-connected mediation programs for best practices is the consideration of input provided from those who are implementing their own ADR programs. We would like to hear your perspective on what is currently happening at the Resolution Systems Institute with monitoring and evaluating mediation, your assessment of the program, and any lessons learned and recommendations.

Your participation in this interview is completely voluntary and you may stop at any time or refuse to answer any question without penalty. By providing your verbal consent you are indicating your willingness to participate in this study.

The information you provide will be used to develop a report for the DRS. To ensure we capture what you say correctly we will tape record this interview, but we do not plan on transcribing word for word. Instead the tape will serve as verification for the field notes we are also taking. Do you have any questions?

#### Background/Overview of Program

1. Can you give us an overview of your background and your work in evaluating mediation programs?
2. Can you tell us about your work at RSI? (model surveys, ADDRESS, ABA partnership)
3. We understand that different states have different approaches to training and certifying mediators and monitoring the quality of their programs. What kinds of approaches have you had experience with in your work in Illinois? And other states?

#### Evaluation Process/Model Surveys

4. What resources informed the development of the RSI/ABA Model Surveys for program evaluation? (surveys, examples, literature)

- a. Did you consider program evaluation principles? (reliability, validity, sensitivity)
5. What accessibility was considered in developing the survey? Was it written with the user in mind? (Jargon, length, ESL, low-literacy)
6. What was the intent for survey use? (ongoing, monitoring, sampling)
7. What recommendations do you have for data collection and processing? What examples can you share about ADR programs you have worked with?

### **Lessons/Recommendations**

8. What advice do you have for state administrators for building successful monitoring and evaluation processes for mediation programs?
9. Can you recommend resources for best practices in monitoring/evaluating ADR programs?
10. As part of the project, we plan to interview other states that have effectively implemented evaluation systems for their mediation programs. Based on your experiences, would you recommend any other states for us to consider?
11. Is there anything else relative to mediator evaluation and monitoring that we did not ask about but is important for us to consider?

## APPENDIX D: PROTOCOL OF INTERVIEWS WITH VIRGINIA MEDIATORS

### Interview Protocol

Thank you for participating in this interview. Our names are \_\_\_\_\_ and \_\_\_\_\_, and we are part of the VCU Capstone team that is conducting a study analyzing the Department of Judicial Services' Division of Dispute Resolution Services (DRS) current mediation program, with specific focus on the monitoring/evaluation process, and providing recommendations. A fundamental aspect of evaluating court-connected mediation programs for best practices is the consideration of input provided from stakeholders - especially you, the mediator.

We'd like to hear your perspective on what is currently happening with the mediation evaluation surveys, your assessment on that process, and any ideas for the future.

Your participation in this interview is completely voluntary and you may stop at any time or refuse to answer any question without penalty. By providing your verbal consent you are indicating your willingness to participate in this study.

The information you provide will be used to develop a report for the DRS. Individuals will not be identified by name in reporting the results.

To ensure we capture what you say correctly we will tape record this interview, but we do not plan on transcribing word for word. Instead the tape will serve as verification for the field notes we are also taking. Do you have any questions?

**Name of Mediator Interviewed || Date || Time || Interviewer || Note taker ||**  
**Mediator Perceptions of Virginia's Mediation Evaluation Process**

#### Previous experience

1. Please tell me a little bit about your background. How long have you served as a mediator and why did you decide to serve in this role?
2. About how many cases have you mediated?

#### Assessment

3. Currently, DJS has an evaluation survey tool to evaluate mediator services. Are you familiar with the survey?

**If no. . . .go to question 4 and then next session**

**If yes. . . .go to question 5 and continue**



4. What are your primary reasons for not administering the evaluation?
5. Could you give us an overview of the process of mediating a case? Do you introduce and explain the survey, if yes, how so?
6. How do you typically administer the evaluation?
7. What are your general impressions of the evaluation? (Probe: Strengths and weaknesses)
8. Would you say you administer the evaluation almost all of the time, some of the time, occasionally, or rarely?
9. What suggestions do you have for improving the evaluation? (Probe for content and administration)
10. Do you have a sense of how the evaluation data is currently used by DJS?

#### **Ideas for the Future**

11. Looking forward, what are your recommendations for evaluating mediator services? (Probe: Surveys, other ideas for evaluation)
12. What would incentivize you to return evaluation surveys?
13. Are there any additional comments or thoughts regarding evaluating mediator services that you'd like to share?

**SUPREME COURT OF VIRGINIA**  
**Office of the Executive Secretary**

**Evaluation of Mediation Session(s) and Mediator(s)**

This information will be used to inform the court system and the mediator(s) about your experience with mediation. With your help, we can ensure that quality mediation services continue to be available to the citizens of the Commonwealth. This information may be shared with the mediator(s).

**I. Session Evaluation**

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_  
Street

\_\_\_\_\_

City

State

Zip

Phone Number: (Day) \_\_\_\_\_ (Evening) \_\_\_\_\_

1. I am (check one):  a party to the mediation  an attorney representing a party

2. For this case, mediation was (check one):

very appropriate

somewhat appropriate

not at all appropriate

Comments:

\_\_\_\_\_  
\_\_\_\_\_

3. Total hours spent in the mediation session(s): \_\_\_\_\_ Number of Sessions: \_\_\_\_\_

4. The mediation process was:

very helpful

somewhat helpful

not at all helpful

5. Mediation ended with an agreement on:

all of the issues

some of the issues

none of the issues

6. Would you use mediation again?  yes  no

7. Would you recommend mediation to others?  yes  no

**II. Mediator Evaluation**

Mediator A: \_\_\_\_\_  
 Print First & Last Name

Mediator B: \_\_\_\_\_  
 Print First & Last Name

\_\_\_\_\_  
 Mediator's Certification Number

\_\_\_\_\_  
 Mediator's Certification Number

Please rate your mediator(s) on the following. Circle the appropriate number.

**5 = Very Good 4 = Good 3 = Adequate 2 = Unsatisfactory 1 = Poor 0 = Does not apply**

The Mediator . . .	Mediator A	Mediator B
1. explained the mediation process and procedures.	5 4 3 2 1 0	5 4 3 2 1 0
2. provided useful information.	5 4 3 2 1 0	5 4 3 2 1 0
3. was a good listener.	5 4 3 2 1 0	5 4 3 2 1 0
4. allowed me to talk about issues that were important to me.	5 4 3 2 1 0	5 4 3 2 1 0
5. was respectful.	5 4 3 2 1 0	5 4 3 2 1 0
6. helped clarify issues.	5 4 3 2 1 0	5 4 3 2 1 0
7. encouraged us to come up with our own solutions.	5 4 3 2 1 0	5 4 3 2 1 0
8. informed me that I could consult an attorney. <input type="checkbox"/> yes <input type="checkbox"/> no		
9. was neutral. <input type="checkbox"/> yes <input type="checkbox"/> no		
10. wrote our agreement clearly and accurately <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> doesn't apply		
11. Share any comments on the mediation process and/or the mediator(s):		

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Please return this Form to the Mediator or Program Director, or mail directly to:  
 Dispute Resolution Services  
 Office of the Executive Secretary  
 Supreme Court of Virginia  
 100 North Ninth Street  
 Richmond, VA 23219

<b>FOR MEDIATOR USE ONLY</b>
Court: <input type="checkbox"/> JDR <input type="checkbox"/> GD/SC <input type="checkbox"/> Circuit
Type of Dispute: _____
Source of Referral: <input type="checkbox"/> Court <input type="checkbox"/> Coordinator <input type="checkbox"/> Private

**Form 10**

**IN THE OFFICE OF THE MEDIATION COORDINATOR**

**[CASE # AND STYLE]**

**MEDIATION EVALUATION**

**For Parties Only**

Please take a few minutes to complete this form and return it to the mediator in a sealed envelope

[Your responses will serve as a guide to the Court about changes or improvements which need to be made to the mediation program. Your responses are confidential and will not be part of the appellate court file.]

**1. WHAT KIND OF PROBLEM OR CASE WAS MEDIATED?**

(please select one)

- |  |  |
|--|--|
| <input type="checkbox"/> Business Tort           | <input type="checkbox"/> Contract                                |
| <input type="checkbox"/> Employment              | <input type="checkbox"/> Family matter (with children issues)    |
| <input type="checkbox"/> Insurance               | <input type="checkbox"/> Family matter (without children issues) |
| <input type="checkbox"/> Real Estate             | <input type="checkbox"/> Personal injury/wrongful death          |
| <input type="checkbox"/> Other (please describe) |  |

**2. WAS THE APPEAL FROM A:**

- |  |  |
|--|--|
| <input type="checkbox"/> Summary Judgment                    | <input type="checkbox"/> Final Judgment after jury trial |
| <input type="checkbox"/> Final Judgment after non-jury trial | <input type="checkbox"/> Other Final appealable order    |

**3. WAS THE PROBLEM OR CASE RESOLVED THROUGH MEDIATION AT THE APPELLATE LEVEL?**

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Yes, completely   | <input type="checkbox"/> No, made no progress | <input type="checkbox"/> Made situation worse |
| <input type="checkbox"/> Partially resolved (some issues stipulated to or resolved)                            |   |   |
| <input type="checkbox"/> Issues or disputes directly involved in this appeal partially resolved                |   |   |
| <input type="checkbox"/> Issues or dispute not directly involved in this appeal resolved or partially resolved |   |   |
| <input type="checkbox"/> Somewhat helpful in clarifying and simplifying issues for appeal                      |   |   |
| <input type="checkbox"/> Other (please describe)   |   |   |

**4. ARE ATTEMPTS TO SETTLE THE APPEAL STILL ONGOING?**



## ODR Mediator Satisfaction Survey 9th Judicial District

Thank you for taking the time to fill out this brief on-line survey as we appreciate feedback from mediation participants on the quality of service of our contract mediators.

### 1. Is this the first time you have participated in mediation?

Yes

No

### 2. If you answered "Yes" to Question 1, please state your prior mediator:

### 3. Who was your mediator?

Larry Dragon

Bryan Scott Henry

Sara Evanczyk

Deanna Tuley

Other: \_\_\_\_\_

### 4. On a scale of 1-4, with 1 being "not at all skillful" and 2 being "somewhat skillful," 3 being "very skillful," and 4 being "extremely skillful," how would you rate your mediator at remaining neutral?

<input type="text"/>	1
----------------------	---

<input type="text"/>	2
----------------------	---

<input type="text"/>	3
----------------------	---

<input type="text"/>	4
----------------------	---

4

**5. On a scale of 1-4, with 1 being "not at all skillful" and 2 being "somewhat skillful," 3 being "very skillful," and 4 being "extremely skillful," how would you rate your mediator at guiding you through the mediation process?**

 1 2 3 4

**6. On a scale of 1-4, with 1 being "not at all skillful" and 2 being "somewhat skillful," 3 being "very skillful," and 4 being "extremely skillful," how would you rate your mediator at reducing tensions and animosity, if any, between you and the other party?**

 1 2 3 4

**7. On a scale of 1-4, with 1 being "not at all skillful" and 2 being "somewhat skillful," 3 being "very skillful," and 4 being "extremely skillful," how would you rate your mediator at identifying the interests and concerns of both parties?**

 1 2

3 4

**8. On a scale of 1-4, with 1 being "not at all skillful" and 2 being "somewhat skillful," 3 being "very skillful," and 4 being "extremely skillful," how would you rate your mediator at overcoming obstacles and aiding in resolution?**

 1 2 3 4

**9. How satisfied are you with the outcome?**

- Very Satisfied
- Mostly Satisfied
- Neither Satisfied Nor Dissatisfied
- Somewhat Satisfied
- Not at all Satisfied

**10. How likely are you to refer someone to mediation?**

- Very Likely
- Most Likely
- Neither Likely Nor Unlikely
- Somewhat Likely
- Not at all Likely



The following response is optional: Please share any other information, including your name and case number, that you believe would help us in providing better service delivery:

Done

---

Powered by



See how easy it is to [create a survey](#).

**Office of Dispute Resolution Attorney Survey 2015**

**1. Thank you for taking the time to fill out this survey. Your input helps improve our services.**

**1. Why did you use the Office of Dispute Resolution (ODR) services?**

- Court order
- My client's suggestion
- My suggestion
- Suggestion by the other attorney/party

Other (please specify)

**2. How satisfied are you with the way the mediator (or other neutral) conducted the process?**

	<b>Very Dissatisfied</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>Very Satisfied</b>
<b>Please mark one:</b>	<input type="radio"/> Please mark one: Very Dissatisfied	<input type="radio"/> Please mark one: 2	<input type="radio"/> Please mark one: 3	<input type="radio"/> Please mark one: 4	<input type="radio"/> Please mark one: 5	<input type="radio"/> Please mark one: Very Satisfied

**3. What was the outcome of the mediation or other service? (check all that apply)**

- Resolved without trial
- Some issues resolved before trial
- Proceed to trial
- Mediation didn't take place
- Inappropriate for mediation

Other (please specify)

4. In your opinion, did this mediation reduce the time that your client's case stayed open or will stay open?

5. How would you rate ODR's service compared to other ADR service providers you have utilized?

	Very Dissatisfied	2	3	4	5	Very Satisfied
Please mark one:	<input type="radio"/> Please mark one: Very Dissatisfied	<input type="radio"/> Please mark one: 2	<input type="radio"/> Please mark one: 3	<input type="radio"/> Please mark one: 4	<input type="radio"/> Please mark one: 5	<input type="radio"/> Please mark one: Very Satisfied

6. Additional Comments

7. Mediator Name

8. Your Name (optional)

9. Case Name/Number (optional)

## APPENDIX I: COLORADO SURVEY FOR OTHER OFFICIALS

The Office of Dispute Resolution is committed to providing valuable service and support to our clients and the courts. Thank you in advance for participating in this survey to provide valuable feedback.

1) Please identify your role:

- a. District Administrator
- b. Judicial Officer
- c. Self Help Litigant Coordinator
- d. Family Court Facilitator
- e. Clerk of Court
- f. Other

2) TRUE OR FALSE: I understand what the Office of Dispute Resolution is and what types of services are provided.

COMMENT: \_\_\_\_\_

3) TRUE OR FALSE: In my professional role, I regularly refer parties to mediation or other ADR services.

COMMENT:

4) TRUE OR FALSE: I am familiar with the Colorado Dispute Resolution Act, 13-22-301, et seq., C.R.S.

COMMENT:

5) TRUE OR FALSE: I and/or my staff would benefit from further education about mediation and other forms of ADR including the differences between the various processes, best practices for drafting mediation/ADR orders, when ADR referrals are appropriate, using ADR as a case management tool, etc.

COMMENT: \_\_\_\_\_

6) TRUE OR FALSE: I and/or my staff would be interested in consultation and assistance in developing a local mediation program.

COMMENT: \_\_\_\_\_

7) Please rank the following functions of the Office of Dispute Resolution in order of importance to you in your professional role:

- a. management of state funds for indigent parties referred to mediation services
- b. procurement and management of grant funds, when applicable, to develop mediation and other ADR programs for specific populations (i.e. ODR currently manages the federal Access & Visitation grant which funds services targeting never married parents to develop parenting plans)
- c. provide quality control and oversight of mediators and other ADR professionals
- d. provide ongoing training and educational opportunities for

Class Climate	Baltimore County Circuit Court Alternative Dispute Resolution Office	
MEDIATION PARTICIPANT SURVEY - FAMILY		

Mark as shown:      Please use a ball-point pen or a thin felt tip. This form will be processed automatically.  
 Correction:      Black out the wrong answer and put an X in the correct box.

To improve our program, these results may be shared with the mediator in the future; however, your name will remain **confidential**. Thank you for your feedback.

1. Please evaluate the mediator and process. Mark *one* response for each statement.

	Strongly Disagree	Disagree	Neither	Agree	Strongly Agree	N/A
1.1 The mediation process was clearly explained.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.2 I had enough time to say what I wanted to say.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.3 The mediator(s) understood what I said I needed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.4 The mediator(s) helped me think about different ways to resolve our issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.5 I felt heard by the other participant(s).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.6 I understand the other participants' views better now than I did before the session.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.7 We discussed all issues that brought us to mediation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.8 The mediator(s) did not favor any party.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.9 I felt pressured by the mediator(s) to reach an agreement.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.10 The mediator(s) were good listener(s).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.11 The mediator(s) helped clarify issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.12 The mediator(s) were respectful to me.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.13 The mediator(s) told me what I should agree to.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.14 If the mediator(s) met with me/my side separately (caucus), it was helpful.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.15 If an agreement was reached, it met my needs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.16 If an agreement was written, I understood it.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.17 The mediator(s) helped me consider whether the agreement was realistic for me.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.18 I will be able to communicate better with the other party because of mediation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.19 I would suggest mediation to others.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.20 I am glad mediation services are available.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.21 Overall, I was satisfied with this mediation session.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Please complete side two of this form.**

## 2. General Questions

2.1 Case #: \_\_\_\_\_ Case Name (ex. Jane Doe v. John Doe): \_\_\_\_\_

2.2 Mediation date: \_\_\_\_\_ Mediator name or ID #: \_\_\_\_\_

2.3 I am the:  Plaintiff  Defendant

2.4 Who suggested the possible solutions? (Mark *all* that apply.)

I did  The other side(s)  The mediator(s)  
 The lawyers  No solutions were suggested

2.5 We: (Mark *all* that apply.)

Did *not* agree on any issues  Agreed on *some* issues  Agreed on *all* issues  
 Agreed to continue for another session

2.6 Do you think this case went to mediation:  Too early  Right time  Too late  
 Don't know

2.7 The mediator(s):  Ended the session too soon  Allowed the right amount of time  Made the session too long

2.8 I would use this process again:  Yes  No  Not Sure

2.9 What issues were addressed in this process? (Mark all that apply.)

Custody  Visitation  Use & possession of marital home  
 Marital property  Alimony  Monetary award  
 Child support

## 3. Please provide the following information VOLUNTARILY. It is for statistical purposes only.

3.1 Gender:  Female  Male

3.2 Age:  19 and under  20-29  30-39  
 40-49  50-59  60+

3.3 Mark *all* that apply:

Hispanic/Latino  American Indian/Alaskan Native  Asian  
 Black/African American  Native Hawaiian/Pacific Islander  White

3.4 Education (highest level achieved):  1-8th grade  High school/ GED  2-year college degree/ professional certificate

3.5 Household income:  4-year degree  Graduate degree  
 Up to \$14,999  \$15,000-\$24,999  \$25,000-\$34,999  
 \$35,000-\$49,999  \$50,000-\$74,999  \$75,000-\$99,999  
 \$100,000-\$149,999  \$150,000-\$199,999  \$200,000+

3.6 Military status:  Active military  Military veteran  N/A

3.7 Zip code: \_\_\_\_\_

Class Climate	Baltimore County Circuit Court Alternative Dispute Resolution Office	
CONFIDENTIAL ADR ATTORNEY SURVEY		

Mark as shown:     Please use a ball-point pen or a thin felt tip. This form will be processed automatically.  
 Correction:     Black out the wrong answer and put an X in the correct box.

To improve our program, these results may be shared with the mediator in the future; however, your name will remain **confidential**. Thank you for your feedback.

### 1. Questions

1.1 ADR session date: Case #:

1.2 ADR practitioner name or ID#:

	<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neither</i>	<i>Agree</i>	<i>Strongly Agree</i>
1.3 The ADR practitioner was attentive to my comments.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.4 The ADR practitioner helped clarify issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.5 The ADR practitioner maintained appropriate control over the session.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.6 The ADR practitioner pressured the parties to reach an agreement.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.7 The ADR practitioner did not favor any party.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.8 I was satisfied with the pace of the session.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.9 The ADR practitioner advocated for a specific outcome.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.10 The ADR practitioner allowed the parties to develop their own outcome.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.11 Overall, I was satisfied with this session.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.12 Overall, I was satisfied with the skills of the ADR practitioner.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.13 Overall, I was satisfied with the professionalism of the ADR practitioner.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.14 In approximately how many disputes, before this one, have you participated in a <b>mediation</b> :					
<input type="checkbox"/> 0	<input type="checkbox"/> 1-10		<input type="checkbox"/> 11-25		
<input type="checkbox"/> 26+					
1.15 In approximately how many disputes, before this one, have you participated in a <b>settlement conference</b> :					
<input type="checkbox"/> 0	<input type="checkbox"/> 1-25		<input type="checkbox"/> 26-75		
<input type="checkbox"/> 76+					
1.16 What is the status of discovery?	<input type="checkbox"/> Not Started	<input type="checkbox"/> Ongoing	<input type="checkbox"/> Concluded		
	<input type="checkbox"/> Not Requested				
1.17 I am counsel for the:	<input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant	<input type="checkbox"/> Third party defendant		
	<input type="checkbox"/> Counter plaintiff	<input type="checkbox"/> Counter defendant			
1.18 Do you think this case went to the ADR process:	<input type="checkbox"/> Too early	<input type="checkbox"/> Right time	<input type="checkbox"/> Too late		
	<input type="checkbox"/> Don't know				



## 1. Questions [Continue]

1.19 Did the ADR practitioner need substantive knowledge related to the issues in this case?  Yes  No  Not sure

1.20 Was ADR appropriate to resolve the issues of this case?  Yes  No  Not sure

1.21 The parties: (Mark *all* that apply.)

- Did *not* agree on any issues  Agreed on *some* issues  Agreed on *all* issues  
 Agreed to continue for another session

1.22 If this case was not completely resolved, **please mark all reasons** why you believe the case was not resolved:

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> My client wanted his/her day in court.                             | <input type="checkbox"/> The other side wanted his/her day in court.           | <input type="checkbox"/> My client was unwilling to compromise.            |
| <input type="checkbox"/> The other side was unwilling to compromise.                        | <input type="checkbox"/> Opposing counsel was not prepared.                    | <input type="checkbox"/> The ADR practitioner made it difficult to settle. |
| <input type="checkbox"/> My client refused to make a settlement proposal.                   | <input type="checkbox"/> The other side refused to make a settlement proposal. | <input type="checkbox"/> Continuing the ADR process was too expensive.     |
| <input type="checkbox"/> There was not enough time to continue the process to a conclusion. | <input type="checkbox"/> Opposing counsel was not willing to compromise.       | <input type="checkbox"/> I was not willing to compromise.                  |
| <input type="checkbox"/> N/A  |  |  |

1.23 If your case was completely resolved, did the final agreement include a clause to return to ADR if a problem arises?  Yes  No

1.24 Would you recommend this ADR process to other clients involved in a similar dispute?  Never  Sometimes  Always

1.25 Did you encourage or discourage your client from participating in this ADR process?  Encourage  Discourage  Neither

1.26 If applicable, settlement amount:

<input type="checkbox"/> \$1-\$25,000	<input type="checkbox"/> \$25,001-\$50,000	<input type="checkbox"/> \$50,001-\$100,000
<input type="checkbox"/> \$100,001-\$500,000	<input type="checkbox"/> \$500,001-\$1 million	<input type="checkbox"/> Over \$1 million

1.27 Any additional comments or suggestions:

Class Climate	Baltimore County Circuit Court Alternative Dispute Resolution Office	
MEDIATOR REPORT – FAMILY		

Mark as shown:      Please use a ball-point pen or a thin felt tip. This form will be processed automatically.  
 Correction:      Black out the wrong answer and put an X in the correct box.

**1. Case Information – Please fill out this section even if mediation did not occur.**

1.1 Date of mediation: \_\_\_\_\_ Case #: \_\_\_\_\_

1.2 Mediator name or ID#: \_\_\_\_\_

1.3 Did mediation take place?  Yes  No

**If mediation did not occur, please skip to section marked did not occur on the next page. If mediation did occur, please continue below.**

**2. About the mediation:**

2.1 Outcome (mark **all** that apply):

<input type="checkbox"/> Full agreement	<input type="checkbox"/> Partial agreement	<input type="checkbox"/> Temporary agreement
<input type="checkbox"/> No agreement		

2.2 Was a best interest attorney present?  Yes  No

2.3 How many people on the plaintiff's side were in the room?  1  2  3  4  5  6 or more

2.4 Mark **all** that apply for the plaintiff.

<input type="checkbox"/> Plaintiff in the room	<input type="checkbox"/> Plaintiff's attorney in the room	<input type="checkbox"/> Plaintiff has an attorney who did not attend
<input type="checkbox"/> Plaintiff did not have an attorney		

2.5 How many people on the defendant's side were in the room?  1  2  3  4  5  6 or more

2.6 Mark **all** that apply for the defendant.

<input type="checkbox"/> Defendant in the room	<input type="checkbox"/> Defendant's attorney in the room	<input type="checkbox"/> Defendant has an attorney who did not attend
<input type="checkbox"/> Defendant did not have an attorney		

2.7 If custody was an issue, what arrangement was reached? (Mark **all** that apply.)

<input type="checkbox"/> Joint legal	<input type="checkbox"/> Primary legal	<input type="checkbox"/> Joint physical
<input type="checkbox"/> Primary physical		

2.8 For this case, I practiced (mark **all** that apply):

<input type="checkbox"/> Solo mediation	<input type="checkbox"/> Co-mediation	<input type="checkbox"/> Facilitative
<input type="checkbox"/> Transformative	<input type="checkbox"/> Analytical	<input type="checkbox"/> Inclusive
<input type="checkbox"/> Settlement conferencing	<input type="checkbox"/> Other	

2.9 Number of sessions:  1  2  3  4  5  6 or more

2.10 Hours spent on this case (excluding travel, preparation, and follow-up time):

<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6
<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> 9
<input type="checkbox"/> 10	<input type="checkbox"/> 11	<input type="checkbox"/> 12 or more

**2. About the mediation: [Continue]**

2.11 Comments (**without** breaking confidentiality):

2.12 Mediator's signature:

**3. If the mediation **did not** occur:**

3.1 Why did the mediation not occur?

Agreement reached prior to mediation

Dismissed, stayed, transferred

Exempt by court

Domestic violence issue

Other (mark here and explain below)

3.2 If you marked *other*, please explain:

3.3 Mediator's signature:

Mark as shown:      Please use a ball-point pen or a thin felt tip. This form will be processed automatically.  
 Correction:      Black out the wrong answer and put an X in the correct box.

To improve our program, these results may be shared with the mediator in the future; however, your name will remain **confidential**. Thank you for your feedback.

**1. Background Questions**

1.1 Mediation date:

1.2 Mediator name or ID #:

**2. Please evaluate the mediator and process. Mark *one* response for each statement.**

	Strongly Disagree	Disagree	Neither	Agree	Strongly Agree	N/A
2.1 The mediation process was clearly explained.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.2 I had enough time to say what I wanted to say.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.3 The mediator(s) understood what I said I needed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.4 The mediator(s) helped me think about different ways to resolve our issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.5 I felt heard by the other participant(s).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.6 I understand the other participants' views better now than I did before the session.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.7 We discussed all issues that brought us to mediation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.8 The mediator(s) did not favor any party.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.9 I felt pressured by the mediator(s) to reach an agreement.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.10 The mediator(s) were good listener(s).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.11 The mediator(s) helped clarify issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.12 The mediator(s) were respectful to me.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.13 The mediator(s) told me what I should agree to.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.14 If the mediator(s) met with me/my side separately (caucus), it was helpful.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.15 If an agreement was reached, it met my needs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.16 If an agreement was written, I understood it.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.17 The mediator(s) helped me consider whether the agreement was realistic for me.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.18 I will be able to communicate better with the other party because of mediation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.19 I would suggest mediation to others.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.20 I am glad mediation services are available.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.21 Overall, I was satisfied with this mediation session.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**3. General Questions**

3.1 I am the:  Plaintiff  Defendant  Third party defendant  
 Counter plaintiff  Counter defendant

3.2 In approximately how many disputes, before this one, have you used mediation?  0  1  2  
 3  4  5  
 6  7  8+

**3. General Questions [Continue]**

- 3.3 Who suggested the possible solutions? (Mark *all* that apply.)  
 I did  The other side(s)  The mediator(s)  
 The lawyers  No solutions were suggested
- 3.4 We: (Mark *all* that apply.)  
 Did *not* agree on any issues  Agreed on *some* issues  Agreed on *all* issues  
 Agreed to continue for another session
- 3.5 If applicable, settlement amount:  
 \$1-\$25,000  \$25,001-\$50,000  \$50,001-\$100,000  
 \$100,001-\$500,000  \$500,001-\$1 million  Over \$1 million
- 3.6 Do you think this case went to mediation:  
 Too early  Right time  Too late  
 Don't know
- 3.7 The mediator(s) told me what outcome(s) might occur if my case went to trial.  
 Yes  No  Not sure
- 3.8 The mediator(s):  
 Ended the session too soon  Allowed the right amount of time  Made the session too long
- 3.9 I came to this session because: (Mark *all* that apply.)  
 My choice  Judge recommended  Judge ordered  
 My attorney recommended  Other
- 3.10 I would use this process again:  Yes  No  Not Sure
- 3.11 Please tell us why you checked Yes, No, or Not Sure.

- 3.12 What else would you like to tell us about your experience?

- 3.13 **I would like to help the program improve, so I agree to be contacted to discuss my ADR experience.** I understand that all of my case information and any discussions that occurred in the ADR process will remain confidential, even if I agree to be contacted.  
 Yes  No

- 3.14 If yes, please print your name and tell us when (day/evening) and how (phone #/email) to contact you.

**4. Please provide the following information VOLUNTARILY. It is for statistical purposes only.**

- 4.1 Gender:  Female  Male
- 4.2 Age:  19 and under  20-29  30-39  
 40-49  50-59  60+
- 4.3 Mark *all* that apply:  
 Hispanic/Latino  American Indian/Alaskan Native  Asian  
 Black/African American  Native Hawaiian/Pacific Islander  White
- 4.4 Education (highest level achieved):  1-8th grade  High school/ GED  2-year college degree/ professional certificate  
 4-year degree  Graduate degree
- 4.5 Household income:  Up to \$14,999  \$15,000-\$24,999  \$25,000-\$34,999  
 \$35,000-\$49,999  \$50,000-\$74,999  \$75,000-\$99,999  
 \$100,000-\$149,999  \$150,000-\$199,999  \$200,000+
- 4.6 Military status:  Active military  Military veteran  N/A
- 4.7 Zip code:



1. Questions [Continue]

1.24 If this case was not completely resolved, please mark all reasons why you believe the case was not resolved:

- My client wanted his/her day in court.
- The other side wanted his/her day in court.
- My client was unwilling to compromise.
- The other side was unwilling to compromise.
- Opposing counsel was not prepared.
- The ADR practitioner made it difficult to settle.
- My client refused to make a settlement proposal.
- The other side refused to make a settlement proposal.
- Continuing the ADR process was too expensive.
- There was not enough time to continue the process to a conclusion.
- Opposing counsel was not willing to compromise.
- I was not willing to compromise.
- N/A

1.25 Other reason(s) not specified above:

1.26 If your case was completely resolved, did the final agreement include a clause to return to ADR if a problem arises?  Yes  No

1.27 Would you recommend this ADR process to other clients involved in a similar dispute?  Never  Sometimes  Always

1.28 Why:

1.29 Did you encourage or discourage your client from participating in this ADR process?  Encourage  Discourage  Neither

1.30 Why:

1.31 If applicable, settlement amount:  \$1-\$25,000  \$25,001-\$50,000  \$50,001-\$100,000  \$100,001-\$500,000  \$500,001-\$1 million  Over \$1 million

1.32 Any additional comments or suggestions:

APPENDIX O: MARYLAND DISTRICT COURT MEDIATOR SURVEY

MEDIATOR REPORT – CIVIL 

Mark as shown:     Please use a ball-point pen or a thin felt tip. This form will be processed automatically.  
 Correction:     Black out the wrong answer and put an X in the correct box.

**1. Case Information – Please fill out this section even if mediation did not occur.**

- 1.1 Date of mediation:
- 1.2 Mediator name or ID#:
- 1.3 Did mediation take place?  Yes  No

**If mediation did not occur, please skip to section marked did not occur on the next page. If mediation did occur, please continue below.**

**2. About the mediation:**

- 2.1 Outcome (mark **all** that apply):  
 Full agreement  Partial agreement  Agreement placed on the record  
 No agreement
- 2.2 Mark **all** scheduling/mediation issues that you encountered in this case:  
 Party failed to contact mediator for scheduling as required by the Order  Party with settlement authority failed to appear  Mediation was not scheduled by ADR deadline  
 Mediator had to schedule date without input of parties
- 2.3 Was an insurance adjuster involved?  
 No  Adjuster involved but did not attend  Adjuster attended in person  
 Adjuster attended via telephone
- 2.4 How many people on the plaintiff's side were in the room?  1  2  3  
 4  5  6 or more
- 2.5 Mark **all** that apply for the plaintiff:  
 Plaintiff in the room  Plaintiff's attorney in the room  Plaintiff has an attorney who did not attend  
 Plaintiff did not have an attorney
- 2.6 How many people on the defendant's side were in the room?  1  2  3  
 4  5  6 or more
- 2.7 Mark **all** that apply for the defendant:  
 Defendant in the room  Defendant's attorney in the room  Defendant has an attorney who did not attend  
 Defendant did not have an attorney
- 2.8 For this case, I practiced (mark **all** that apply):  
 Solo mediation  Co-mediation  Facilitative  
 Transformative  Analytical  Inclusive  
 Settlement conferencing  Other
- 2.9 Number of sessions:  1  2  3  
 4  5  6 or more
- 2.10 Hours spent on this case (excluding travel, preparation, and follow-up time):  
 1  2  3  
 4  5  6  
 7  8  9  
 10  11  12 or more
- 2.11 Settlement amount:  
 N/A  Under \$7,500  \$7,501-\$50,000  
 \$50,001-\$100,000  \$100,001-\$500,000  \$500,001-\$1 million  
 Over \$1 million
- 2.12 Payment (mark **all** that apply):  
 Plaintiff paid  Defendant paid  Plaintiff has not paid (please contact ADR Coordinator)  
 Defendant has not paid (please contact ADR Coordinator)



**2. About the mediation: [Continue]**

2.13 Comments (**without** breaking confidentiality):

2.14 Mediator's signature:

**3. If the mediation **did not** occur:**

3.1 Why did the mediation not occur?

Agreement reached prior to mediation

Party failed to appear

Dismissed, stayed, transferred, remanded

Waived/exempt by court

Other (mark here and explain below)

3.2 If you marked *other*, please explain:

3.3 Mediator's signature:

CONFIDENTIAL ADR PARTICIPANT SURVEY 

Mark as shown:      Please use a ball-point pen or a thin felt tip. This form will be processed automatically.  
 Correction:      Black out the wrong answer and put an X in the correct box.

To improve our program, these results may be shared with the alternative dispute resolution (ADR) practitioner in the future; however, your name will remain confidential. Thank you for your feedback.

**1. Background Questions**

1.1 Trial date: \_\_\_\_\_ Case #: \_\_\_\_\_

1.2 ADR practitioner name and ID #: \_\_\_\_\_ If applicable, name and ID # of second ADR practitioner: \_\_\_\_\_

**2. Please evaluate the ADR practitioner and process. Mark *one* response for each statement.**

	Strongly Disagree	Disagree	Neither	Agree	Strongly Agree	N/A
2.1 The ADR process was clearly explained.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.2 I had enough time to say what I wanted to say.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.3 The ADR practitioner understood what I said I needed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.4 To help us check survey quality, mark N/A.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.5 The ADR practitioner helped me think about different ways to resolve our issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.6 I felt heard by the other participant(s).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.7 I understand the other participants' views better now than I did before the session.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.8 We discussed all issues that brought us here.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.9 The ADR practitioner did not favor any party.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.10 I felt pressured by the ADR practitioner to reach an agreement.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.11 The ADR practitioner was a good listener.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.12 The ADR practitioner helped clarify issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.13 The ADR practitioner was respectful to me.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.14 The ADR practitioner told me what I should agree to.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.15 If the ADR practitioner met with me/my side separately (caucus), it was helpful.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.16 If an agreement was reached, it met my needs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.17 If an agreement was written, I understood it.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.18 The ADR practitioner helped me consider whether the agreement was realistic for me.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.19 I would suggest this ADR process to others.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.20 I am glad ADR services are available.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.21 Overall, I was satisfied with this ADR session.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**3. General Questions**

3.1 How did you hear about ADR? (Mark *all* that apply.)  
 Word of mouth  Family/friend  Judge  
 Lawyer  Info from court  District Court web site  
 Video in court  Other

3.2 This court uses two ADR processes to see if an agreement can be reached before trial. The session today was: (Mark one)  
 Mediation  Settlement Conference  Not Sure

3.3 I am the:  Plaintiff  Defendant  Other

Please complete side two of this form.

**3. General Questions [Continue]**

3.4 Who suggested the possible solutions? (Mark *all* that apply.)  
 I did  The other side(s)  The ADR practitioner  
 The lawyers  No solutions were suggested

3.5 We: (Mark *all* that apply.)  
 Did *not* agree on any issues  Agreed on *some* issues  Agreed on *all* issues  
 Agreed to continue for another session

3.6 Do you think this case went to ADR:  Too early  Right time  Too late  
 Don't know

3.7 The ADR practitioner told me what outcome(s) might occur if my case went to trial.  Yes  No  Not sure

3.8 The ADR practitioner:  Ended the session too soon  Allowed the right amount of time  Made the session too long

3.9 I came to this session because: (Mark *all* that apply.)  
 My choice  Judge recommended  Judge ordered  
 My attorney recommended  Other

3.10 I would use this ADR process again:  Yes  No  Not Sure

3.11 Please tell us why you checked Yes, No, or Not Sure.

3.12 What else would you like to tell us about your experience?

3.13 I would like to help the program improve, so I agree to be contacted to discuss my ADR experience. I understand that all of my case information and any discussions that occurred in the ADR process will remain confidential, even if I agree to be contacted.  Yes  No

3.14 If yes, please print your name and tell us when (day/evening) and how (phone #/email) to contact you.

**4. Please provide the following information VOLUNTARILY. It is used for statistical purposes only.**

4.1 Gender:  Female  Male

4.2 Age:  19 and under  20-29  30-39  
 40-49  50-59  60+

4.3 Mark *all* that apply:  
 Hispanic/Latino  American Indian/Alaskan Native  Asian  
 Black/African American  Native Hawaiian/Pacific Islander  White

4.4 Education (highest level achieved):  1-8th grade  High school/ GED  2-year college degree/ professional certificate

4.5 Household income:  4-year degree  Graduate degree  
 Up to \$14,999  \$15,000-\$24,999  \$25,000-\$34,999  
 \$35,000-\$49,999  \$50,000-\$74,999  \$75,000-\$99,999  
 \$100,000-\$149,999  \$150,000-\$199,999  \$200,000+

4.6 Military status:  Active military  Military veteran  N/A

4.7 Zip code:

CONFIDENTIAL ADR ATTORNEY SURVEY	
----------------------------------	--

Mark as shown:      Please use a ball-point pen or a thin felt tip. This form will be processed automatically.  
 Correction:      Black out the wrong answer and put an X in the correct box.

To improve our program, these results may be shared with the alternative dispute resolution (ADR) practitioner in the future; however, your name will remain confidential. Thank you for your feedback.

**1. Background Questions**

1.1 Trial date:

1.2 Case #:

1.3 ADR practitioner name or ID#: If applicable, name or ID# of second ADR practitioner:

1.4 I am the attorney for:

<input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant	<input type="checkbox"/> Third party defendant
<input type="checkbox"/> Counter plaintiff	<input type="checkbox"/> Counter defendant	

**2. Please evaluate the ADR practitioner and process. Mark one response for each statement.**

		<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neither</i>	<i>Agree</i>	<i>Strongly Agree</i>
2.1 The ADR practitioner was attentive to my comments.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.2 The ADR practitioner helped clarify issues.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.3 The ADR practitioner maintained appropriate control over the session.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.4 The ADR practitioner pressured the parties to reach an agreement.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.5 I was satisfied with the pace of the session.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.6 The ADR practitioner advocated for a specific outcome.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.7 The ADR practitioner allowed the parties to develop their own outcome.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.8 Overall, I was satisfied with this ADR session.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.9 Overall, I was satisfied with the skills of the ADR practitioner.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.10 Overall, I was satisfied with the professionalism of the ADR practitioner.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.11 In approximately how many disputes, before today, have you participated in a <b>mediation</b> :	<input type="checkbox"/> 0 <input type="checkbox"/> 26-50	<input type="checkbox"/> 1-10 <input type="checkbox"/> 51-100	<input type="checkbox"/> 11-25 <input type="checkbox"/> 101+			
2.12 In approximately how many disputes, before today, have you participated in a <b>settlement conference</b> :	<input type="checkbox"/> 0 <input type="checkbox"/> 51-75	<input type="checkbox"/> 1-25 <input type="checkbox"/> 76-100	<input type="checkbox"/> 26-50 <input type="checkbox"/> 101+			
2.13 Today's session seemed like:	<input type="checkbox"/> Mediation	<input type="checkbox"/> Settlement conference	<input type="checkbox"/> Not sure			
2.14 Was discovery requested in this case?	<input type="checkbox"/> No <input type="checkbox"/> Yes, and has concluded	<input type="checkbox"/> Yes, but not started <input type="checkbox"/> N/A	<input type="checkbox"/> Yes, and is ongoing			
2.15 Do you think this case went to an ADR process:	<input type="checkbox"/> Too early <input type="checkbox"/> Don't know	<input type="checkbox"/> Right time	<input type="checkbox"/> Too late			
2.16 Did the ADR practitioner need substantive knowledge related to the issues in this case?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not sure			
2.17 Was ADR appropriate to resolve the issues of this case?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not sure			

2. Please evaluate the ADR practitioner and process. Mark one response for each statement. [Continue]

2.18 If no, what process would have been appropriate, and why?

[Empty text box for response to 2.18]

2.19 The parties: (Mark all that apply.)

- Did *not* agree on any issues
- Agreed to continue for another session
- Agreed on *some* issues
- Agreed on *all* issues

2.20 If this case was not completely resolved, please mark all reasons why you believe the case was not resolved:

- My client wanted his/her day in court.
- The other side was unwilling to compromise.
- My client refused to make a settlement proposal.
- There was not enough time to continue the process to a conclusion.
- N/A
- The other side wanted his/her day in court.
- Opposing counsel was not prepared.
- The other side refused to make a settlement proposal.
- Opposing counsel was not willing to compromise.
- My client was unwilling to compromise.
- The ADR practitioner made it difficult to settle.
- Continuing the ADR process was too expensive.
- I was not willing to compromise.

2.21 Other reason(s) not specified above:

[Empty text box for response to 2.21]

2.22 If your case was completely resolved, did the final agreement include a clause to return to ADR if a problem arises?

- Yes
- No
- N/A

2.23 Would you recommend this ADR process to other clients involved in a similar dispute?

- Never
- Sometimes
- Always

2.24 Why:

[Empty text box for response to 2.24]

2.25 Did you encourage or discourage your client from participating in ADR today?

- Encourage
- Discourage
- Neither

2.26 Why:

[Empty text box for response to 2.26]

2.27 Who suggested the possible solutions? (Mark all that apply)

- My client
- I did
- The other side(s)
- No solutions were suggested
- The ADR practitioner

2.28 Any additional comments or suggestions:

[Empty text box for response to 2.28]

2. Please evaluate the ADR practitioner and process. Mark one response for each statement.  
[Continue]

2.29 **I would like to help the program improve, so I agree to be contacted to discuss my ADR experience.** I understand that all of my case information and any discussions that occurred in the ADR process will remain confidential, even if I agree to be contacted.  Yes  No

2.30 If yes, please print your name and tell us when (day/evening) and how (phone #/email) to contact you.

Class Climate	District Court of Maryland Alternative Dispute Resolution Office	
<b>ADR PRACTITIONER ACTIVITY REPORT</b>		

Mark as shown:      Please use a ball-point pen or a thin felt tip. This form will be processed automatically.  
 Correction:      Black out the wrong answer and put an X in the correct box.

**1. About Today: If you conduct more than one case today, you only have to complete this side once. However, please paperclip all pages together (please do not staple).**

1.1 Today's date, courthouse, room number for ADR session if applicable:

1.2 Docket:  a.m.  p.m.

1.3 Total number of cases referred today:  0  1  2  
 3  4  5

1.4 ADR practitioner name and ID#. (Please note, Apprentices **must** be listed as practitioner 2, 3, or 4.)

1.5 **Full hours** donated today (including travel time).  0  1  2  
**Please note partial hours in the next question:**  3  4  5  
 6  7  8

1.6 **Partial hours** donated today (including travel time). Please round up to the quarter hour:  .25  .5  .75  
 RPD

1.7 If applicable, ADR practitioner #2 and ID#.

1.8 If applicable, practitioner #2 **full hours** donated today (including travel time). **Please note partial hours in the next question:**  0  1  2  
 3  4  5  
 6  7  8

1.9 If applicable, practitioner #2 **partial hours** donated today (including travel time), please round up to the quarter hour:  .25  .5  .75  
 RPD

1.10 If you are volunteering for a Day of Trial partner (i.e., community mediation center, law school clinic, MVLS), indicate the name of that entity:

1.11 If applicable, today, practitioner #2 is an Apprentice completing:  1st observation  2nd observation  3rd observation  
 1st review  2nd review  3rd review  
 Other

1.12 If applicable, ADR practitioner #3 name and ID#:

1.13 If applicable, practitioner #3 **full hours** donated today (including travel time). **Please note partial hours in the next question:**  0  1  2  
 3  4  5  
 6  7  8

1.14 If applicable, practitioner #3 **partial hours** donated today (including travel time), please round up to the quarter hour:  .25  .5  .75  
 RPD

1.15 If applicable, today, practitioner #3 is an Apprentice completing:  1st observation  2nd observation  3rd observation

1.16 If applicable, ADR practitioner #4 name and ID#:

1.17 If applicable, practitioner #4 **full hours** donated today (including travel time). **Please note partial hours in the next question:**  0  1  2  
 3  4  5  
 6  7  8

1.18 If applicable, practitioner #4 **partial hours** donated today (including travel time), please round up to the quarter hour:  .25  .5  .75  
 RPD

1.19 If applicable, today, practitioner #4 is an Apprentice completing:  1st observation  2nd observation  3rd observation

***Please complete side two for each case.***

**2. About this Case: Complete this side for each case you get today.**

- 2.1 Of the cases referred today, **this case** is the:
- |                                 |                                 |                                |
|---------------------------------|---------------------------------|--------------------------------|
| <input type="checkbox"/> First  | <input type="checkbox"/> Second | <input type="checkbox"/> Third |
| <input type="checkbox"/> Fourth | <input type="checkbox"/> Fifth  | <input type="checkbox"/> Sixth |
- 2.2 This case was sent to me by (mark only **one**):
- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Direct referral from judge | <input type="checkbox"/> Judge asked for volunteers | <input type="checkbox"/> Courtroom clerk referral |
| <input type="checkbox"/> Bailiff/sheriff referral   | <input type="checkbox"/> Party's request            | <input type="checkbox"/> Attorney's request       |
| <input type="checkbox"/> Other                      |   |   |

2.3 Name of Judge for this case:

2.4 Case number:

2.5 Case name (ex. Plaintiff v. Defendant):

- 2.6 Counsel represented:
- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Neither party | <input type="checkbox"/> Plaintiff(s) only | <input type="checkbox"/> Defendant(s) only |
| <input type="checkbox"/> All parties   | <input type="checkbox"/> Other             |  |

- 2.7 Amount in controversy (mark "N/A" for Peace Order/Replevin/Tenant Holding Over/Breach of Lease/Wrongful Detainer only)
- |   |   |  |
|---|---|--|
| <input type="checkbox"/> N/A                  | <input type="checkbox"/> \$1 to \$5,000       | <input type="checkbox"/> \$5,001 to \$10,000 |
| <input type="checkbox"/> \$10,001 to \$20,000 | <input type="checkbox"/> \$20,001 to \$30,000 |  |

- 2.8 What was the ADR outcome? (mark only one)
- |   |  |   |
|---|--|---|
| <input type="checkbox"/> After I explained the ADR process, participant(s) or their attorney(s) chose to return to the courtroom. | <input type="checkbox"/> The judge asked us to return to the courtroom before we finished. | <input type="checkbox"/> No settlement after trying the process |
| <input type="checkbox"/> Full settlement  | <input type="checkbox"/> Partial settlement  | <input type="checkbox"/> Screened out (P.O. only)               |
| <input type="checkbox"/> ADR Practitioner terminated the session  |  |   |

- 2.9 If applicable, the ADR Practitioner terminated the session (please select one):
- |   |  |
|---|--|
| <input type="checkbox"/> Before the signing of the Agreement to Participate | <input type="checkbox"/> After the signing of the Agreement to Participate |
|---|--|

2.10 If applicable, please indicate the reason for terminating the session, without breaking confidentiality. Note, only applicable if the ADR Practitioner ended the session (i.e. safety concerns, conflict of interest, not appropriate for ADR, other ethical concerns, etc.):

- 2.11 Full hours spent on **this** case. **Please note partial hours in the next question:**
- |                            |                            |                            |
|----------------------------|----------------------------|----------------------------|
| <input type="checkbox"/> 0 | <input type="checkbox"/> 1 | <input type="checkbox"/> 2 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |

- 2.12 Partial hours spent on **this** case. Please round up to the quarter hour:
- |                              |                             |                              |
|------------------------------|-----------------------------|------------------------------|
| <input type="checkbox"/> .25 | <input type="checkbox"/> .5 | <input type="checkbox"/> .75 |
|------------------------------|-----------------------------|------------------------------|

- 2.13 For this case, I practiced (mark **all** that apply):
- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Settlement conference          | <input type="checkbox"/> Solo mediation, facilitative | <input type="checkbox"/> Solo mediation, inclusive |
| <input type="checkbox"/> Solo mediation, transformative | <input type="checkbox"/> Co-mediation, facilitative   | <input type="checkbox"/> Co-mediation, inclusive   |
| <input type="checkbox"/> Co-mediation, transformative   |   |  |

2.14 Comments about anything that happened today (without breaking confidentiality):



**Children’s Court Mediation Program**

Date of Mediation \_\_\_\_/\_\_\_\_/\_\_\_\_ Mediator \_\_\_\_\_

Judicial District \_\_\_\_\_ County \_\_\_\_\_

**FAMILY PARTICIPANT FEEDBACK**

We would like your feedback about your mediation process. Please take a moment and respond to the items below. Your name is not needed on this form, and your responses will be kept confidential. **Thank you.**

**Please check one:** \_\_\_Parent \_\_\_Guardian \_\_\_Relative \_\_\_Youth/Teen \_\_\_Adopting Parent

**FOR EACH OF THE STATEMENTS BELOW, CIRCLE THE RESPONSE THAT BEST TELLS US WHAT YOU THINK.**

- |   |            |        |          |            |                |
|---|------------|--------|----------|------------|----------------|
| 1. I received a good introduction to the mediation process.   | Definitely | Mostly | Somewhat | Not at all | Does not apply |
| 2. The mediator treated everyone fairly, and did not take sides.  | Definitely | Mostly | Somewhat | Not at all | Does not apply |
| 3. I felt heard and understood.   | Definitely | Mostly | Somewhat | Not at all | Does not apply |
| 4. We talked about all the issues that were important to me.  | Definitely | Mostly | Somewhat | Not at all | Does not apply |
| 5. I had an opportunity to present my views in the mediation session.   | Definitely | Mostly | Somewhat | Not at all | Does not apply |
| 6. Other people listened to me during the mediation session.  | Definitely | Mostly | Somewhat | Not at all | Does not apply |
| 7. The mediation helped me understand other people’s points of view.  | Definitely | Mostly | Somewhat | Not at all | Does not apply |
| 8. I agreed with the decisions that were made today.  | Definitely | Mostly | Somewhat | Not at all | Does not apply |
| 9. I understand what I have to do next.   | Definitely | Mostly | Somewhat | Not at all | Does not apply |
| 10. The mediation helped me improve my relationship with one or more people in the room   | Definitely | Mostly | Somewhat | Not at all | Does not apply |
| 11. I would participate in mediation again.   | Definitely | Mostly | Somewhat | Not at all | Does not apply |
| 12. PLEASE tell us the most important thing that happened in the mediation today.<br>You may use the back of the form for additional space. |            |        |          |            |                |

**Programa de Mediación del Tribunal de Menores**

Fecha de la Mediación \_\_\_\_/\_\_\_\_/\_\_\_\_ Mediador \_\_\_\_\_

Distrito Judicial \_\_\_\_\_ Condado \_\_\_\_\_

**COMENTARIOS DE LOS PARTICIPANTES DE LA FAMILIA**

Deseamos obtener sus comentarios sobre el proceso de su mediación. Le pedimos que se tome un momento para responder a los siguientes enunciados. No es necesario que incluya su nombre en este formulario y sus respuestas serán confidenciales. **Muchas gracias.**

**Marque lo que corresponda:**  Padre/Madre  Tutor  Familiar  
 Joven/Adolescente  Padre/Madre adoptivo/a

**PARA CADA UNO DE LOS SIGUIENTES ENUNCIADOS, ENCIERRE CON UN CÍRCULO LA RESPUESTA QUE MEJOR REFLEJE LO QUE USTED PIENSA**

- |  |          |                   |                |           |                |
|--|----------|-------------------|----------------|-----------|----------------|
| 1. Me dieron una buena introducción sobre el proceso de mediación.   | Sin duda | En su mayor parte | En cierto modo | Para nada | No corresponde |
| 2. El mediador trató a todos de manera justa y no se puso a favor de nadie.  | Sin duda | En su mayor parte | En cierto modo | Para nada | No corresponde |
| 3. Sentí que me escucharon y me entendieron.   | Sin duda | En su mayor parte | En cierto modo | Para nada | No corresponde |
| 4. Hablamos de todos los asuntos que eran importantes para mí.   | Sin duda | En su mayor parte | En cierto modo | Para nada | No corresponde |
| 5. Tuve oportunidad de presentar mi propio punto de vista durante la sesión de mediación.  | Sin duda | En su mayor parte | En cierto modo | Para nada | No corresponde |
| 6. Las demás me escucharon durante la sesión de mediación.   | Sin duda | En su mayor parte | En cierto modo | Para nada | No corresponde |
| 7. La mediación me ayudó a entender el punto de vista de los demás.  | Sin duda | En su mayor parte | En cierto modo | Para nada | No corresponde |
| 8. Estuve de acuerdo con las decisiones que se tomaron hoy.  | Sin duda | En su mayor parte | En cierto modo | Para nada | No corresponde |
| 9. Entiendo qué debo hacer a partir de ahora.  | Sin duda | En su mayor parte | En cierto modo | Para nada | No corresponde |
| 10. La mediación me ayudó a mejorar mi relación con uno o más de los presentes.  | Sin duda | En su mayor parte | En cierto modo | Para nada | No corresponde |
| 11. Participaría nuevamente en una mediación.  | Sin duda | En su mayor parte | En cierto modo | Para nada | No corresponde |
| 12. Le agradeceremos que nos diga qué fue lo más importante que sucedió durante la mediación de hoy. Puede usar el reverso de este formulario si necesita más espacio. |          |                   |                |           |                |

PRE-MEDIATION	COMMENTS	
Did mediator pre-mediate with family?	Y / N	
Did mediator pre-mediate with professionals?	Y / N	

**E: Exceeds** expectations, demonstrates exceptional skill & knowledge  
**M: Meets** expectations consistently; is effective and reliable

**I: Improvement** needed, **Inconsistent**  
**N/A:** No opportunity to demonstrate skill

OPENING THE PROCESS	E	M	I	N/A	COMMENTS (please explain all scores that are not "M")
Sets up room appropriately					
Facilitates introductions					
Explains the mediation process & purpose					
Provides information about the role of the mediator					
Provides information about confidentiality					
Provides information about mediation as voluntary					
Provides information about caucuses and breaks					
Checks with parties about time constraints					
Helps parties develop their own guidelines, if appropriate					
Helps parties set the agenda (to define issues and decide order of discussion)					
Clarifies parties' expectations/outcomes					

## CCMP MEDIATOR ASSESSMENT

DURING THE PROCESS	E	M	I	N/A	COMMENTS (please explain all scores that are not "M")
Remains calm and centered					
Remains optimistic and encouraging					
Maintains neutrality and avoids taking sides					
Keeps focus on key issues, not on personalities					
Avoids giving own views and/or advice					
Maintains control of the process					
Demonstrates patience in listening to all					
Assists others in listening patiently					
Uses open-ended questions appropriately					
Responds to non-verbal cues and communications					
Manages heightened emotions					
Keeps track of important information					
Accurately/Appropriately reframes what is said					
Accurately/Appropriately reflects what is said					

Mediator \_\_\_\_\_ Date \_\_\_\_\_ Observer \_\_\_\_\_

## CCMP MEDIATOR ASSESSMENT

<b>DURING THE PROCESS</b>	<b>E</b>	<b>M</b>	<b>I</b>	<b>N/A</b>	<b>COMMENTS</b> (please explain all scores that are not "M")
Accurately/Appropriately summarizes what is said					
Clarifies areas of agreement and disagreement					
Creates opportunities to discuss the issues					
Assists parties to solve problems creatively					
Helps participants summarize progress and recognize accomplishments					
Makes sure discussion is clear and understood by all					
Frames group decisions clearly					
Helps parties test the do-ability of their decisions					
<b>ENDING THE PROCESS</b>					
Reviews areas of agreement or any written agreement with participants					
Identifies unresolved areas					
Identifies and clarifies next steps					
Distributes/collects Parent Evaluations					
Thanks everyone for participating					
Restores room to original conditions					

Mediator \_\_\_\_\_  
CCMP: 7/1/2017

Date \_\_\_\_\_

Observer \_\_\_\_\_

## CCMP MEDIATOR ASSESSMENT

**Additional observations of Reg. Coord.:**

### **Debriefing Questions for Mediator to Complete:**

Of the mediations you have facilitated, how typical was today's mediation?

What did you do in this session that you think worked well?

In what areas do you think you could improve?

Discuss your sense of your progress and overall skills as a mediator:

Mediator \_\_\_\_\_ Date \_\_\_\_\_ Observer \_\_\_\_\_  
CCMP: 7/1/2017

Date: \_\_\_\_\_

This information will be used to inform the court system and the mediator(s) about your experience with mediation.

With your help, we can ensure that quality mediation services continue to be available to the citizens of the Commonwealth. This information may be shared with the mediator(s). However, no identifying information about you will be released.

I am (check one): Plaintiff (person filing case) Defendant (person being sued)

Mediator Name and Certification Number: \_\_\_\_\_

Mediator Name and Certification Number: \_\_\_\_\_

Total hours spent in the mediation session(s): \_\_\_\_\_ Number of Sessions: \_\_\_\_\_

**Mediation Session** (check one for each question)

1. Were you able to talk about the issues/concerns that were most important to you?

- We talked about **none** of the issues/concerns
- We talked about **some** of the issues/concerns
- We talked about **most** of the issues/concerns
- We talked about **all** of the issues/concerns

2. Regardless of the outcome, how satisfied are your overall experience in the mediation session(s)?

- Very **un**satisfied
- Un**satisfied
- Satisfied
- Very Satisfied

3. Was the agreement written clearly and accurately?

- Yes
- No
- Does not apply

**Mediator Evaluation** (check one for each question)

4. Did the mediator explain the mediation process and procedures adequately?

- Yes
- No

5. Did the mediator protect confidentiality?

- Yes
- No

**6. Was the mediator neutral?**

Yes

No

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

Yes

No

**8. Did the mediator treat you fairly with respect?**

Very much

Somewhat

Not at all

**9. Did the mediator encourage you to come up with your own solutions?**

Very much

Somewhat

Not at all

**10. Please tell us the things that you liked or disliked about mediation:**

**11. Would you participate in mediation again?**

Yes

No

**I would like to help the program improve, so I agree to be contacted to discuss my ADR experience. I understand that all my case information and any discussions that occurred in the ADR process will remain confidential, even if I agree to be contacted.**       Yes     No

**If yes, please print your name and tell us when (day/evening) and how (phone #/email) to contact you.**

<b>Name:</b>	<input type="checkbox"/> Day <input type="checkbox"/> Evening
<b>Phone Number (Day):</b> <b>Phone Number (Evening):</b>	<b>Email:</b>