

## District Court Day of Trial Best Practices

August, 2022

The District Court Best Practices work group developed these Best Practices for Community Mediation Centers (CMCs) participating in the Day of Trial Mediation Program. This group included members of the District Court ADR office staff, staff and volunteer mediators from Community Mediation Centers using the Transformative, Facilitative and Inclusive Models of Mediation.

The Best Practices outlined in this document are for the logistics of the partnership and management of the mediation program. These best practices work in partnership with the best practice standards for Inclusive, Facilitative, and Transformative processes, which provide guidance for the mediation process itself, within each approach.

<b>Best Practices for Day of Trial Program</b>		
<b>Goals</b>	<b>Best Practices for CMCs</b>	<b>Ideas &amp; Strategies</b>
<b>A. Partnership with local court</b>	<b>A1.</b> Establish clear expectations with local court staff to support mediation best practices.	<b>A1.1</b> CMC, District Court ADR staff, judge, and local court personnel meet as program is beginning and on an annual basis to ensure local court logistics support mediation best practices.  <b>A1.2</b> CMC and District Court ADR staff meet with judges to establish clarity on the amount of time allotted to mediation sessions. This may take place at the Annual Stakeholder’s Meeting and if needed CMM can be available to assist. CMC and District Court staff ensure that no mediation will be started unless there is at least an hour to complete it (preferably longer) before the court needs an outcome.  <b>A1.3</b> CMC staff contacts Regional ADR Representative to address any issues with running a quality mediation process during Day of Trial mediations.

		<b>A1.4</b> CMC staff reach out to CMM for support as needed to ensure local court logistics support mediation best practices.
<b>B. Volunteer recruitment</b>	<b>B1.</b> Establish criteria for recruiting volunteer mediators to participate in the Day of Trial program.	<p><b>B1.1</b> The criteria may be specific to the mediation framework.</p> <p><b>B1.2</b> Mediators are able to demonstrate a basic understanding of the tenets of the mediation model in which they practice.</p> <p><b>B1.3</b> Mediators have availability to mediate when Court happens.</p> <p><b>B1.4</b> The District Court requires mediators to be 21 years of age by the time they will start their apprenticeship.</p>
	<b>B2.</b> Conduct orientation to explicitly outline the District Court Day of Trial program to potential mediators before they complete their application to the District Court ADR office.	<p><b>B2.1</b> Conduct a Day of Trial role-play</p> <p><b>B2.2</b> Include volunteer mediators or staff who have participated in Day of Trial mediation.</p>
<b>C. Volunteer Training</b>	<b>C1.</b> Ensure that mediators who will be mediating in the Day of Trial program complete the Basic Mediation Training in the model of mediation utilized by the CMC they will be volunteering with.	<b>C1.1</b> Mediators complete an Advanced Training for Day of Trial Mediations provided by their CMC or CMM if they are using a modified/adapted model of mediation different from what they use in other mediations prior to attending the Day of Trial Orientation.
	<b>C2.</b> Support mediators to complete the District Court ADR office orientation and apprenticeship.	<p><b>C2.1</b> CMC representative is present for the entire Day of Trial Orientation to answer any CMC specific questions as they arise.</p> <p><b>C2.2</b> CMC and the ADR office collaboratively facilitate the Day of Trial Orientation.</p>

<p><b>D. Apprenticeships</b></p>	<p><b>D1.</b> Support mediators to complete an Apprenticeship for Day of Trial Mediations consisting of two observations and two co-mediations, which are reviewed.</p>	<p><b>D1.1</b> If a mediator is on the CMC’s roster for Day of Trial mediators and will be co-mediating as a representative of the CMC, they complete the apprenticeship in the co-mediation model the CMC uses.</p> <p><b>D1.2</b> If a mediator is on the District Court’s roster and will be mediating as a solo practitioner, they complete the apprenticeship in the solo mediator model they will be using.</p> <p><b>D1.3</b> If a mediator is on the CMC’s roster and the District Court’s roster, they complete an apprenticeship that reviews/evaluates both their solo practice and co-mediation practice.</p> <p><b>D1.4</b> CMCs inform the District Court and the mediator when they are no longer an active mediator for the CMC and the effective date.</p>
	<p><b>D2.</b> Support mediators to use the District Court Day of Trial observer and review forms.</p>	<p><b>D2.1</b> CMC works with District Court, Day of Trial program staff to ensure the forms are consistent with each model of best practices.</p>
<p><b>E. Arrival at Court</b></p>	<p><b>E1.</b> Support mediators to arrive at the Courthouse 30 minutes before the scheduled docket with their District Court ADR Volunteer badge.</p>	<p><b>E1.1</b> Mediators go through the local court’s security entrance procedures, obtain the District Court materials, and set up their mediation space.</p> <p><b>E1.2</b> Mediators check in with the Court personnel to let them know they are available to mediate.</p> <p><b>E1.3</b> Once the Court has been informed that mediators are available, the mediators prepare for mediation.</p>
	<p><b>E2.</b> Inform mediators of court dress code.</p>	<p><b>E2.1</b> Mediators dress accordingly to local court dress code.</p>

<p><b>F. Mediation Process</b></p>	<p><b>F1.</b> Support high quality, ethical mediation process in the Day of Trial context.</p>	<p><b>F1.1</b> Mediators only begin the mediation if they are sure they have at least an hour to complete it and preferably more. While some cases may be resolved in less time, mediators should not begin the process if they know before starting that, based on either court or participant schedule, the session cannot go for at least an hour.</p> <p><b>F1.2</b> Mediators should take time needed for the mediation and are not to be rushed by judges and bailiffs.</p> <p><b>F1.3</b> To protect confidentiality, all conversations with the potential participants are held in the mediation room.</p> <p><b>F1.4</b> All named litigants, agents of landlords, all attorney of record, interpreters may participate in the mediation. Any additional potential participants are agreed upon by all the named participants.</p> <p><b>F1.5</b> Mediators conduct a brief intake with additional participants prior to entering the mediation.</p> <p><b>F1.6</b> Other than apprentice observers, the mediators treat everyone present as a participant.</p> <p><b>F1.7</b> Participants determine whether they want to proceed with mediation if there are missing parties.</p> <p><b>F1.8</b> If bailiffs are knocking or are instructed by the judge to check on the mediation, mediators pause the process and ask how much time is available for the mediation or if there is a certain time frame when the parties need to be back into the courtroom. Mediators do not try to predict how much time they may need or any outcome.</p>
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	<p><b>F2.</b> Ensure that mediators have access to all materials for Day of Trial mediations.</p>	<p><b>F2.1 Materials include:</b></p> <ul style="list-style-type: none"> <li>• Check-In Form (aka “<i>Good Morning Sheet</i>”) <i>Identifies practitioners available and the process they will be providing</i></li> <li>• Case information-names of participants and case number</li> <li>• Agreement to Participate in ADR: Mediation</li> <li>• ADR Settlement Agreement form</li> <li>• Laminated versions of forms</li> <li>• ADR Practitioner’s activity report</li> <li>• ADR Participant and Attorney surveys</li> <li>• Civil Case Disposition Information Sheet</li> <li>• Mediation Manual</li> <li>• Pens/paper for each participant</li> <li>• Tissues</li> <li>• Peace order, landlord/tenant, specialty dockets may have additional documents in those programs</li> </ul>

		<p><b>F2.2</b> At the end of the mediation, mediators ask participants to complete the ADR Participant Survey and attorneys to complete the ADR Attorney Survey, place them in the envelope provided, and seal it.</p> <p><b>F2.3</b> Mediators remind participants that mediation can help with future situations and that they should let others in the community know how it has helped them.</p> <p><b>F2.4</b> Mediators give participants brochures to share with others.</p>
	<p><b>F3.</b> Support mediators to complete and deliver post mediation documents.</p>	<p><b>F3.1</b> Mediators return with the participants to the courtroom and deliver the signed Agreement to Participate in ADR: Mediation form and, if an agreement was reached the signed, the original ADR Settlement Agreement to the appropriate court personnel.</p> <p><b>F3.2</b> Mediators avoid communication with the participants after the mediation and avoid communication with the judge about the case.</p> <p><b>F3.3</b> Mediators complete the ADR Practitioner Activity Report and paperclip it to the sealed envelope containing the completed surveys.</p> <p><b>F3.4</b> Once all cases are completed, mediators return to the mediation space and complete feedback process as well as all required paperwork.</p>
<p><b>G.</b> Interpreters in Day of Trial and Pre-Trial Mediations</p>	<p><b>G1.</b> Ensure mediators understand the process for interpretation/translation and how to maximize access and participation for all participants.</p>	<p><b>G1.1</b> If a participant requests interpretation/translation services prior to the mediation, the Court is obligated to provide this service in both Day of Trial and Pre-Trial mediations. If no request was submitted to the court and a participant needs interpretation/translation services, mediators support and respect party's self-determination around language accommodations and support the quality of the process.</p>

		<p><b>G1.2</b> If a participant wants a family member/friend to act as a translator/interpreter in the mediation, the mediators check with all the participants. If everyone agrees, the mediators proceed with the mediation and continue to assess the participant’s ability to comprehend the discussion.</p> <p><b>G1.3</b> If everyone does not agree to this person acting as an interpreter/translator, the mediators cancel the mediation and inform the participants of the process to request a Court interpreter/translator.</p> <p><b>G1.4</b> If at any time the mediators believes the participant is not able to comprehend or fully participate in the mediation, the mediators end the mediation and inform the participant of the process to request a Court interpreter/translator.</p> <p><b>G1.5</b> Any agreement that comes out of the mediation is written in English in order to submit it to the Court. The translator/interpreter reads the agreement in the participant’s native language before having participants sign the agreement.</p>
<p><b>H. Scheduling process</b></p>	<p><b>H1.</b> Coordinate sign-up process with District Court ADR Office and mediators.</p>	<p><b>H1.1</b> The District Court ADR Office sends an invitation to sign up for Day of Trial dockets to the point of contact for the CMCs that use a co-mediation model.</p> <p><b>H1.2</b> The District Court ADR Office sends the invitation to sign up for Day of Trial dockets directly to mediators of CMCs that use a solo mediator model.</p> <p><b>H1.3</b> The CMC point of contact determines which dockets the CMC will cover and informs the ADR office. The CMC contacts its District Court mediators to have them sign up for the specific</p>

		<p>dockets, and CMC staff makes the final determination on the co-mediator pairs who will cover the dockets.</p> <p><b>H1.4</b> All mediators are given a reminder of their docket coverage a few days beforehand.</p> <p><b>H1.5</b> If the Regional ADR Representative cancels mediators on a docket, he/she informs the CMC contact person who notifies the mediators.</p> <p><b>H1.6</b> The ADR Regional Representative communicates any pertinent Day of Trial information (potential cases identified for mediation, etc.) to the CMC contact person who informs the mediators covering the docket.</p> <p><b>H1.7</b> If a scheduled mediator cannot make a docket they signed up for, the CMC arranges to replace that mediator, so the docket is still covered. The CMC point of contact lets the ADR Regional Representative know if someone is not able to cover a docket.</p>
<p><b>I.</b> Quality assurance</p>	<p><b>I1.</b> Ensure quality assurance for mediators on the CMC’s District Court Roster.</p>	<p><b>I1.1</b> CMCs conduct reviews for each of their Day of Trial mediators in the Day of Trial mediation setting every two years using the CMC’s review/evaluation process.</p> <p><b>I1.2</b> The CMC documents the review of the mediators.</p> <p><b>I1.3</b> If a CMC uses multiple mediation models, mediators will be reviewed/evaluated every two years in each model they mediate in for Day of Trial.</p> <p><b>I1.4</b> Quality assurance for mediators who volunteer for the District Court and for the CMC in other areas, but not on the CMC’s District Court roster, is the responsibility of the District Court.</p>

	<p><b>I2.</b> CMCs and the District Court ADR office share information about mediators' skills with each other.</p>	<p><b>I2.1</b> When concerns arise about a particular mediator, the CMC/District Court works with the mediator to provide support to address the concerns.</p> <p><b>I2.2</b> If no improvement is seen, the CMC/District Court may remove the mediator from their respective roster.</p> <p><b>I2.3</b> CMCs and the District Court inform each other when they remove a mediator from their roster.</p>
	<p><b>I3.</b> Facilitate or coordinate a Day of Trial specific in-service training at least once a year.</p>	<p><b>I3.1</b> These may be coordinated regionally or by mediation model. CMCs may request and the District Court ADR office will provide one in-service training per year.</p> <p><b>I3.2</b> Offer these trainings to all CMC mediators who mediate Day of Trial District Court cases.</p>
<p><b>J.</b> Data Collection and Reporting</p>	<p><b>J1.</b> Collect case data and enter it into the CMC's database accurately and in a timely fashion.</p>	<p><b>J1.1</b> How a CMC collects or receives case data may vary depending on the volume of cases they handle and/or their CMC-specific arrangements with the District Court ADR Regional Representative.</p> <p><b>J1.2</b> CMCs may collect case data (participant information, demographics, evaluation responses, case number, case type, case disposition and volunteer time) from the District Court paperwork on the day of trial. The Regional Representative may send CMCs their case data once a week in a non-reconciled format, and the Regional Representative may send CMCs their case data once it is reconciled.</p> <p><b>J1.3</b> Mediators do not review the evaluation responses from the case.</p>

<p><b>K. Ongoing Communication</b></p>	<p><b>K1. Engage in ongoing and dependable communication with District Court ADR Office.</b></p>	<p><b>K1.1</b> CMCs identify the point of contact for the District Court ADR Office who will be the Regional Representative.</p> <p><b>K1.2</b> The CMC designates one point of contact person for all communications regarding the District Court ADR partnership, regardless of the size of the CMC.</p> <p><b>K1.3</b> The CMC contact person and the District Court ADR contact person meet to check in regularly.</p> <p><b>K1.4</b> The CMC and the District Court ADR office keep each other updated on any changes to the designated contact persons. This includes any permanent or temporary staffing changes to keep cases moving and up to date.</p> <p><b>K1.5</b> The District Court ADR Office and the CMCs establish processes internally to account for a staff member being out for a period of time.</p> <p><b>K1.6</b> The CMC and District Court Regional Representative establish clear communication expectations, including back-up plans.</p> <p><b>K1.7</b> The CMC and District Court Regional Representative establish proactive communication plans and strategies for technology or resource challenges.</p>
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