

## District Court Day of Trial/Pre-Trial Best Practices-Working Document

**November 10, 2021**

The District Court Best Practices work group was tasked with developing Best Practices for Community Mediation Centers participating in the Day of Trial Mediation Program. This group included members of the District Court ADR office staff, staff and volunteers from Community Mediation Centers using the Transformative, Facilitative and Inclusive Models of Mediation. Attached are the Best Practices for Day of Trial mediations in each model of mediation practiced in the District Court ADR program. Because this group was meeting during Covid, some pre-trial best practices are included.

<b>Best Practices for Day of Trial Program</b>		
Goals	Best Practices	Ideas & Strategies
<b>A. Volunteer recruitment</b>	<b>A1.</b> Establish some type of criteria for recruiting volunteer mediators to participate in the Day of Trial program.	<b>A1.1</b> The criteria may be specific to the mediation framework.  <b>A1.2</b> Volunteers should be able to demonstrate a basic understanding of the tenets of the mediation model in which they practice.  <b>A1.3</b> Basic requirements are Volunteers must be 21 years of age by the time they will start their apprenticeship, volunteers should make a commitment to regularly mediate each quarter and volunteers should have availability to mediate when Court happens.
	<b>A2.</b> Centers should have some type of center specific interview/discussion/orientation/in-service training to fully and explicitly outline the District Court Day of Trial program to potential volunteers before they complete their application to the District Court ADR office.	<b>A2.1</b> One idea suggested was to have volunteers participate in Day of Trial role play scenarios with center staff or other volunteers who have mediated in the Day of Trial Program before applying to the District Court Day of Trial Program, including paperwork, etc.

<p><b>B. Volunteer Training</b></p>	<p><b>B1.</b> All volunteers who will be mediating in the Day of Trial program must complete the Basic Mediation Training in the model of mediation utilized by the Mediation Center they will be volunteering with.</p>	
	<p><b>B2.</b> All volunteers will need to complete the District Court ADR office orientation and apprenticeship.</p>	<p><b>B2.1</b> A CMC representative should be present for the entire Day of Trial Orientation to answer any center specific questions as they arise.</p> <p><b>B2.2</b> The CMC and the ADR office will collaboratively facilitate the Day of Trial Orientation.</p> <p><b>B2.3 (B1.1?)</b> Volunteer mediators should complete an Advanced Training for Day of Trial Mediations provided by their center 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.</p>
<p><b>C. Apprenticeships</b></p>	<p><b>C1.</b> All volunteers will complete an Apprenticeship for Day of Trial Mediations consisting of two observations and two co-mediations, which are reviewed.</p>	<p><b>C1.1</b> If a volunteer is on the CMC’s roster for Day of Trial mediators and will be co-mediating as a representative of the center, they will complete the apprenticeship in the co-mediation model the center uses.</p> <p><b>C1.2</b> If a volunteer is on the District Court’s roster and will be mediating as a solo practitioner, they will go through the apprenticeship in the solo mediator model they will be using.</p> <p><b>C1.3</b> If a volunteer is on the CMC’s roster and the District Court’s roster, they will go through an apprenticeship that reviews/evaluates both their solo practice and co-mediation practice.</p>

		<p><b>C1.4</b> Centers will inform the District Court and the volunteer when they are no longer an active volunteer for the mediation center and the effective date.</p>
	<p><b>C2.</b> All volunteers should use the District Court Day of Trial observer and review forms.</p>	<p><b>C2.1</b> These forms are currently being reviewed to accommodate each model of mediation practiced in the Day of Trial program.</p>
<p><b>D. Arrival at Court</b></p>	<p><b>D1.</b> Volunteers should arrive at the Courthouse 30 minutes before the scheduled docket with their District Court ADR Volunteer badge.</p>	<p><b>D1.1</b> Volunteers will go through the local court’s security entrance procedures, obtain the District Court materials, and set up their mediation space.</p> <p><b>D1.2</b> Volunteer mediators should check in with the Court personnel to let them know they are available to mediate.</p> <p><b>D1.3</b> Once the Court has been informed volunteer mediators are available, the mediators should prepare for the mediation.</p>
	<p><b>D2.</b> Since volunteers are representing both the District Court ADR Office and the local Mediation Center they should dress appropriately for the Court.</p>	<p><b>D2.1</b> Volunteers should be informed of their local Court’s dress code and dress accordingly.</p>
<p><b>E. Mediation Process</b></p>	<p><b>E1.</b> The Transformative, Facilitative and Inclusive Models have each outlined their Day of Trial mediation process (attachments)</p>	<p><b>E1.1</b> To protect confidentiality, all conversations with the potential participants should be held in the mediation room.</p> <p><b>E1.2</b> All named litigants, agents of landlords, all Attorney of record, interpreters may participate in the mediation. Any additional potential participants need to be agreed upon by all the named participants. The additional participant should go through a brief</p>

		<p>intake prior to entering the mediation. Other than Apprentice observers, the mediators treat everyone present as a participant.</p> <p><b>E1.3</b> The Parties determine whether they want to proceed with mediation if there are missing parties. Only limitation is in agreement writing, which cannot obligate a missing person.</p> <p><b>E1.4</b> Mediators should take the time needed for the mediation and not be rushed by judges and bailiffs.</p> <p><b>E1.5</b> If bailiffs are knocking or are instructed by the Judge to check on the mediation, mediators should pause the process and ask how much time is available for the mediation or is there a certain time frame when the parties need to be back into the courtroom. Mediators should not try to predict how much time they may need or any outcome.</p> <p><b>E1.6</b> If mediators are rushed on a particular docket or on a regular basis, the best practice is for volunteers to notate the incidents on their ADR Practitioner Activity report and notify their CMC. The Center and District Court staff should meet with Judges to establish clarity on this. This may take place at the Annual Stakeholder’s Meeting and if needed CMM can be available to assist.</p> <p><b>E1.7</b> Centers should have a clear written policy which is communicated to each volunteer mediator on its District Court Roster about what to do in case the Court requests co-mediators split up and mediate solo and what they should do when their co-mediator has a last minute emergency and is not able to co-mediate. Volunteer mediators should adhere to the model of mediation (framework, co-mediation, solo mediation) they completed in their District Court Apprenticeship in. If a center determines certain mediators are authorized by the Center to mediate solo in emergency</p>
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	<p><b>E2.</b> Materials for mediations at Day of Trial</p>	<p><b>E2.1 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 parties 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>E2.2</b> At the end of the mediation mediators should 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>E2.3</b> Remind participants mediation can help with future situations and that they should let others in the community know how it has helped them.</p> <p><b>E2.4</b> Give participants brochures to share with others.</p>

	<p><b>E3. Post Mediation Documents</b></p>	<p><b>E3.1</b> Mediators should 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 original ADR Settlement Agreement to the appropriate court personnel.</p> <p><b>E3.2</b> Post Mediation Contact/communication with participants- Mediators should not continue to have communication with the participant's after the mediation and should avoid communication with the Judge about the case.</p> <p><b>E3.3</b> If you receive multiple cases, you may need to delay your feedback session until all cases are completed.</p> <p><b>E3.4</b> If you receive multiple cases, you may need to delay your feedback session until all cases are completed.</p> <p><b>E3.5</b> Mediators complete the ADR Practitioner Activity Report and paper clip it to the sealed envelope containing the completed surveys.</p> <p><b>E3.6</b> If no other cases are referred, return to the mediation space, and complete all required paperwork and feedback.</p>
<p><b>F. Interpreters in Day of Trial and Pre-Trial Mediations</b></p>	<p><b>F1.</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 any participant needs interpretation/translation services mediators should support and</p>	<p><b>F1.1</b> If a participant wants a family member/friend to act as a translator/interpreter in the mediation the mediations should check with all the participants. If everyone agrees the mediators should proceed with the mediation and continue to assess the participant's ability to comprehend the discussion.</p> <p><b>F1.2</b> If at any time the mediator believes the participant is not able to comprehend or fully participate in the mediation the mediator should end the mediation and inform the participant of the process to request a Court interpreter/translator.</p>

	<p>respect party’s self-determination around language accommodations and support the quality of the process.</p>	<p><b>F1.3</b> If everyone does not agree to this person acting as an interpreter/translator, the mediators should cancel the mediation and inform the participants of the process to request a Court interpreter/translator.</p> <p><b>F1.4</b> Any agreement that comes out of the mediation will be written in English in order to submit it to the Court. The translator/interpreter should read the agreement in the participant’s native language before having participants sign the agreement.</p>
<p><b>G. Scheduling process</b></p>	<p><b>G1.</b> The District Court ADR Office sends an invitation to sign up for Day of Trial dockets to the point of contact at the CMCs that use a co-mediation model. The District Court ADR Office sends the invitation to sign up for Day of Trial dockets directly to volunteer mediators at Centers that use a solo mediator model.</p>	<p><b>G1.1</b> The CMC point of contact determines which dockets the Center will cover and informs the ADR office. The Center contacts its District Court volunteers to have them sign up for the specific dockets and CMC staff makes the final determination on the co-mediator pairs who will cover the dockets.</p> <p><b>G1.2</b> All Volunteers should be given a reminder of their docket coverage a few days beforehand.</p> <p><b>G1.3</b> If the Regional ADR Representative “calls off” or cancels volunteers on a docket he/she will inform the CMC contact person who will notify the volunteers.</p> <p><b>G1.4</b> The ADR Regional Rep will communicate any pertinent Day of Trial information (potential cases identified for mediation, etc.) to the CMC contact person who informs the volunteers covering the docket.</p> <p><b>G1.5</b> If a scheduled volunteer cannot make a docket they signed up for, the Center will arrange to replace that volunteer, so the docket is still covered. The CMC point of contact lets the ADR Regional Rep know if someone is not able to cover a docket.</p>

<p><b>H.</b> Quality assurance</p>	<p><b>H1.</b> Quality assurance for Mediators on the CMC’s District Court Roster is the responsibility of the CMC.</p>	<p><b>H1.1</b> Centers will conduct reviews for each of their Day of Trial mediators in the Day of Trial mediation setting every two years using the Center’s review/evaluation process.</p> <p><b>H1.2</b> The Center will document the review of the volunteers.</p> <p><b>H1.3</b> If a Center uses multiple mediation models volunteers will be reviewed/evaluated in each model they mediate in every two years.</p>
	<p><b>H2.</b> Quality assurance for Mediators who volunteer the District Court and for the CMC in other areas but not on the Center’s District Court roster is the responsibility of the District Court.</p>	
	<p><b>H3.</b> CMCs and the District Court ADR office will share information about volunteer mediator’s skills with each other.</p>	<p><b>H3.1</b> When concerns arise about a particular mediator the CMC/District Court will work with the volunteer to provide support to address the concerns.</p> <p><b>H3.2</b> If no improvement is seen, the CMC/District Court may remove the volunteer from their respective roster.</p> <p><b>H3.3</b> CMCs and the District Court should inform each other when they remove a volunteer from their roster.</p>
	<p><b>H4.</b> Centers will facilitate or coordinate a Day of Trial specific In-Service training once a year.</p>	<p><b>H4.1</b> These may be coordinated regionally or by mediation model. Centers may request and the District Court ADR office will provide one In-Service training per year.</p> <p><b>H4.2</b> Additional requests will be considered by the District Court ADR office and provided, if feasible.</p>



		<b>H4.3</b> These trainings should be offered to all Center volunteers who mediate Day of Trial or Pre-Trial District Court cases.
<b>I. Data Collection and Reporting</b>	<b>I1.</b> Case data should be collected and entered into the Center’s database accurately and timely.	<p><b>I1.1</b> How a Center collects or receives case data may vary depending on the volume of cases they handle and/or their Center specific arrangements with the District Court ADR Regional Representative.</p> <p><b>I1.2</b> Centers 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 Centers their case data once a week in a non-reconciled format, the Regional Representative may send Centers their case data once it is reconciled.</p> <p><b>I1.3</b> Evaluation responses should not be reviewed by the mediators who mediated the case.</p>
<b>J. Pre-Trial/Pre-File Program</b>	<b>J1.</b> Pre-Trial Agreements, in-person and online with the Center’s platform	<p><b>J1.1</b> When participants reach agreements in Pre-Trial mediations the Center will be responsible for obtaining participant’s signatures and submitting the fully signed agreement directly to the Court.</p> <p><b>J1.2</b> The process of submitting agreements to the Court may vary by Center. The Center should work with their District Court ADR Regional Representative to determine the process for their Court.</p>
	<b>J2.</b> Pre-Trial Mediations referred by the District Court ADR Office	<p><b>J2.1</b> When the District Court ADR office refers a Pre-File or Pre-Trial case to the CMC it will add participants and case information to the Pre-Trial spreadsheet.</p> <p><b>J2.2</b> The CMC should contact the potential participants within 24 hours of receiving the referral.</p>

		<p><b>J2.3</b> The CMC should attempt to contact potential participants in multiple ways (U.S. mail, email, phone, etc.) and varied times of the day.</p> <p><b>J2.4</b> CMC staff should update the District Court ADR spreadsheet as the referral proceeds through the Center’s mediation coordination process.</p> <p><b>J2.5</b> Centers will complete the Quarterly Aggregate data on District Court Spreadsheet and submit it to the District Court ADR office quarterly by the 10th of the month following the end of the quarter (April 10th, July 10th, October 10th, January 10th).</p> <p><b>J2.6</b> When entering and closing a case in their database the center should insure the most up to date Trial date is entered for the case.</p> <p><b>J2.7</b> The District Court ADR office will be responsible for updating any changes to Trial dates on the spreadsheet.</p> <p><b>J2.8</b> If a case does not have a current Trial date because it has been postponed, the Center should use the last known Trial date.</p>
	<p><b>J3.</b> Communication between CMC’s and the District Court ADR Office</p>	<p><b>J3.1</b> The point of contact for the District Court ADR Office will be the Regional Representative for the CMC’s in their areas.</p> <p><b>J3.2</b> The CMC should designate one point of contact person for all communications regarding the District Court ADR partnership regardless of the size of the center.</p> <p><b>J3.3</b> The CMC contact person may have another person respond to a question or inquiry if appropriate (Questions regarding volunteers may be answered by a volunteer coordinator).</p>

		<p><b>J3.4</b> The CMC contact person and the District Court ADR office contact person should add each other's email addresses, so emails do not get sent to spam or blocked.</p> <p><b>J3.5</b> The CMC's and the District Court ADR office should 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>J3.6</b> The District Court ADR Office and the CMC's will put processes in place internally to account for a staff member being out for a period of time (for example, automatic forwarding of emails to whoever will be covering).</p> <p><b>J3.7</b> The CMC contact person and the District Court ADR contact person should have regular check in meetings.</p> <p><b>J3.8</b> The partnership should specify clear communication expectations on when responses can be expected from one another. Include steps to take when either is not receiving responses as expected (call the CMC's main phone number, contact Shannon or Moe).</p> <p><b>J3.9</b> The partnership should outline proactive communication expectations to address circumstances that could impact the partnership (technology or resource challenges, anticipated staffing changes).</p> <p><b>J3.10</b> When challenges arise, the CMC contact person and the District Court ADR contact person should schedule a time to meet to discuss and develop plans to address any partnership challenges.</p>
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