

MONITORING AND EVALUATING COURT-BASED DISPUTE RESOLUTION PROGRAMS:

A GUIDE FOR JUDGES AND COURT MANAGERS

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ACKNOWLEDGMENTS

The idea for this guide began to germinate about five years ago. At that time, the body of evaluation on court-connected dispute resolution had grown large and diverse, but was producing information that was difficult to reconcile. Following a national symposium on court-connected dispute resolution research in 1993, judges and court managers became more inspired to undertake evaluations of their own programs. The National Center for State Courts and the State Justice Institute, which had collaborated to sponsor the research symposium, embarked on a new venture to provide court-based dispute resolution programs the tools for monitoring their performance and for conducting periodic self-evaluations. This guide is the result of that venture.

The guide draws from the collective experience of many individuals. The project's advisory committee (please see the committee roster on page iii) helped develop the framework for the guide, specify its content, and ensure that the focus of the guide remained on practical issues. Marilyn Slivka, Chief, Complementary Dispute Resolution for the New Jersey Administrative Office of the Courts, provided the opportunity to test in a real-life setting the utility of the concepts of the guide and its original data collection protocols. She also offered comment on draft materials throughout the development of the guide. At the second advisory committee meeting, Joretta Meyer, Prince George's County, Maryland, provided the perspective of a jurisdiction on the brink of program implementation. Chief Justice Thomas J. Moyer contributed his support for the principle that monitoring and evaluating dispute resolution program quality is a court responsibility.

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Preface:

Why Should I Read This Guide?

Citizens bring their disputes to our courts to obtain resolutions in a peaceful, fair forum. Most expect that their disputes will be subject to an adversary process of determining who wins or who loses. One of the alternatives to the traditional system is mediation. For those exposed to mediation in a court setting, the belief is that mediation is an integral part of the judicial system. They should therefore be confident in the fact that the justice system is vouching for the integrity of the mediation process, i.e., the court would refer disputants only to qualified mediators or mediation programs that meet minimum standards. Without routine monitoring and periodic evaluation of program performances, courts cannot carry through on their obligation to provide quality resolution to the people who use the justice system.

-Chief Justice Thomas J. Moyer, Supreme Court of Ohio

WHAT'S IN THE GUIDE?

This guide is intended to give courts the tools they need to develop monitoring and evaluation initiatives so that they can systematically identify the strengths and areas for improvement of court-based alternative dispute resolution (ADR) programs. The guide provides valuable information on the following topics:

- The use of ADR as a case management tool and as a method for improving the justice system;
- The advantages and disadvantages of gathering systematic information;
- The purposes for monitoring and evaluating ADR programs;
- Planning and implementing a monitoring or evaluation project;
- Applying monitoring and evaluation strategies in a hypothetical court; and
- Selecting an external evaluator.

The guide also contains vital resources, including a monitoring and evaluation worksheet, prototypes of data collection forms, various standards for court-based ADR programs, and recommended readings.

WHY HAVE COURTS IMPLEMENTED ADR PROGRAMS?

A New Case Management Tool

Over the past 25 years, judges and court managers have explored innovative applications of human and technological resources to address growing caseloads and responsibilities. Automated management information systems are now commonplace, and case management methodologies, such as differentiated case management, are becoming institutionalized. ADR can now be counted among these major developments in the evolution of court management, and the use of ADR has proliferated across all jurisdictions and areas of law. Once considered an adjunct to court management, ADR has become a mainstream case management tool for both local and statewide court systems. Common benefits of using ADR as a case management tool include:

- Specific deadlines by which attorneys must prepare for the ADR process, which may increase the likelihood that parties will actively consider the resolution of their disputes earlier than they might without the ADR intervention;
- Expedited actions, such as the exchange of information or deposition of critical individuals, which may improve disposition possibilities and maximize the effectiveness of the ADR process;
- Narrowed scope or number of issues that may require judicial attention after the ADR process has been completed; and
- Identified deficiencies in the policies or procedures used in the case management system.

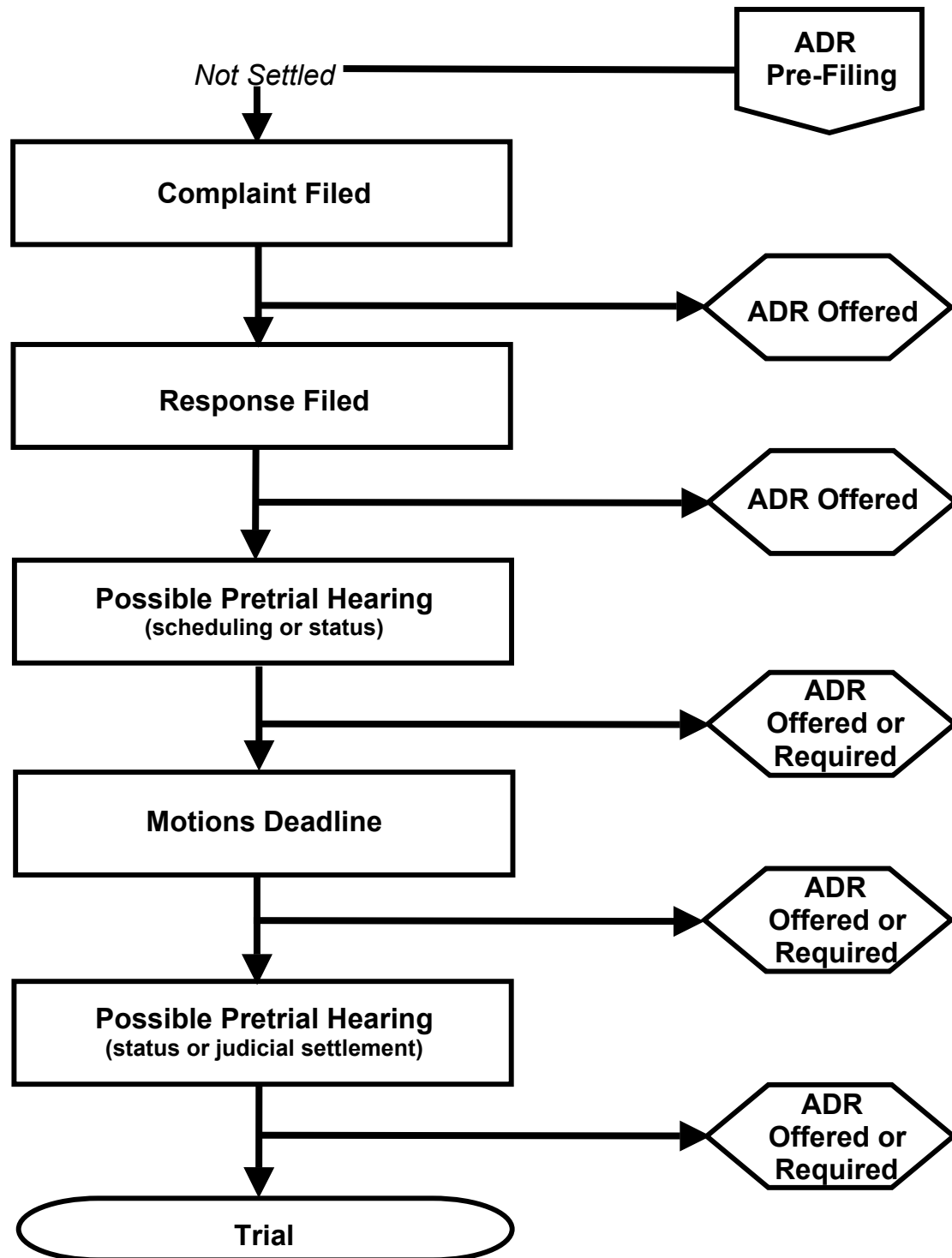
Given the goals of the ADR program, the type of ADR process used, and the specific fluctuations of the work of individual courts, the intervention of ADR at a specific point in time may have a greater impact on improving the efficiency of a case processing system. Several points of intervention are possible between the time a case is filed – or even before it is filed – and the time a trial begins. The potential points of ADR intervention are outlined on the following page.

An Improvement in the Justice System

Courts are considering whether the use of ADR improves the *quality* of justice as well as the speed of justice. For example, ADR is often credited with benefiting individual litigants and the general public as a whole by:

- Providing litigants with varied forums in which to resolve their disputes – an appropriate forum can be selected that better serves individual interests, such as the need for privacy;
- Developing creative and workable agreements;
- Helping disputing litigants to maintain or even improve their relationships;

ADR Referral Opportunities During Case Processing



- Reducing the potential for future conflict;
- Empowering litigants to handle the problems of their life and to recognize and empathize with the situation of the opposing litigant; and
- Ensuring that litigants are given an opportunity to control their own destiny through processes that promote informed and collaborative decision making.

WHY EVALUATE ADR PROGRAMS?

Regardless of whether courts utilize ADR as a case management tool or as a way to enhance the administration of justice in other ways, courts are continually striving to improve the efficiency and effectiveness of their ADR programs. Changes in the policies and procedures of ADR programs may be relatively easy to implement, but to ensure improvements in program operations, courts should base any changes on data that is systematically collected and analyzed.

In both the public and private sectors, a key tenet of modern management philosophy is information-based decision making. Without current and accurate information to guide them, organization leaders risk taking paths that lead to depleted resources, deficient performance, and loss of credibility. In today's environment, accountability is the watchword, and nowhere is this more evident than in the public's expectations for all branches and levels of government. The public sector is particularly vulnerable to scrutiny, criticism, and withdrawal of support for ineffective and wasteful policies and programs.

The state courts are neither immune to nor isolated from the forces that are demanding more efficient and effective performance. Shrinking budgets are only one of today's challenges to judges and court managers. The development of a consumer orientation to serving the needs of an ever more diverse community has dramatically changed the business of courts.

Ensuring the quality of justice in the face of fiscal constraints, growing responsibilities, and diminished confidence in the justice system is a complex management undertaking. It requires meaningful information about the court's business, not only to manage daily operations but also to assess how well the court is performing its many functions and to plan effectively for the future. The efficient collection of information and use of that information in the decision-making process are therefore vital to court management.

In a broad sense, all program monitoring or evaluation efforts are directed at determining:

- The degree to which ADR is utilized by the appropriate target populations or caseloads;
- Whether or not ADR services are provided in accordance with program goals, policies, procedures, and standards, and with legal requirements;

- Whether administrative and policy changes should be made to improve service delivery;
- The perceptions of litigants, judges, attorneys, and administrators about the effectiveness of ADR techniques and the efficiency of program operations;
- Whether ADR results in higher-quality resolution of disputes (e.g., longer-lasting and workable agreements, maintained relationships); and
- The extent to which resources are expended and/or saved through the use of ADR processes.

This guide is intended to provide courts with various monitoring and evaluating strategies to answer these questions and many more. Courts should not feel as if they must complete every task outlined in the guide in order to monitor or evaluate their ADR programs. Rather, courts should select those elements most appropriate and achievable for each jurisdiction-keeping in mind that monitoring and evaluation efforts can be expanded or reduced over time.

Introducing the Hypothetical Court:

Bickering County Superior Court

The concepts outlined in the guide may seem theoretical or abstract, and at first glance, specific application to a court ADR program or a statewide ADR system may seem difficult. To assist with the real-world application of these concepts, we chronicle the monitoring and evaluation efforts of a hypothetical court-Bickering County Superior Court-throughout this guide.

The Bickering County experience presents *only one possible approach* to designing a monitoring program and utilizing the worksheet provided in the resource section of the guide. The hypothetical court focuses on the use of one ADR process in one context: mediation of pending general jurisdiction civil cases. However, steps taken by the Bickering County Court to develop its monitoring and evaluation projects are the same steps needed to assess the effectiveness of other ADR processes used for various types of cases.

Courts are cautioned from automatically following Bickering County's approach to implementing a monitoring program. For example, courts may not necessarily adopt Bickering County Court's objectives or measures for performance. Rather, courts are encouraged to utilize the ideas and worksheets presented in this guide to devise a tailored approach to monitoring or evaluating individual ADR programs.



Introducing the Bickering County Superior Court

The Bickering County Superior Court is a mid-sized court of general jurisdiction. The minimum monetary jurisdiction of this civil court is \$5,000. Approximately 30 percent of its caseload comprises collection disputes, and 20 percent consists of personal injury or property damage claims arising from automobile accidents. Contract disputes also constitute 20 percent of its civil case docket, and medical malpractice and other personal injury claims account for the remaining 30 percent. The court averages approximately 5,000 civil case filings per year.

The Bickering County Court implemented a new civil delay reduction program two years ago. Civil cases are assigned to an individual judge, who, during a scheduling conference held three months after the pleadings are filed, sets specific dates for completing discovery, filing motions, and holding a pretrial conference. One year ago, the legislature gave judges discretionary authority to mandate referral of the parties in any civil or domestic case to mediation. Immediately thereafter, Bickering County Court incorporated mediation into its civil case processing system. However, the court decided that collection cases would be ineligible for referral to mediation. The mediation program's resources were limited, and the court felt that collection cases typically settled on their own, without special

intervention. Some Bickering County Court judges routinely referred other types of civil cases to mediation, some judges sporadically referred cases, and some judges never referred cases to mediation.

Judges who referred parties to mediation felt intuitively that mediation provided litigants with *better* justice, because it helped them maintain relationships and actively participate in resolving their own disputes. Other judges felt mediation assisted in expediting their case calendars, but no one knew for sure whether either of these perceptions was accurate. A few judges were imposing increasingly stringent administrative requirements for mediation; for example, some judges required their approval before rescheduling mediation sessions. Yet, other judges provided little or no oversight of the case while it was pending in mediation. The inconsistency of procedures was causing Chief Judge Helen Resolute some concern. In addition, the informal comments she was hearing from attorneys participating in the civil mediation program were mixed—some attorneys favored mediation and felt it was beneficial to their clients, while others indicated that mediation was burdensome to their clients and did nothing to expedite court dockets.

Largely as a result of the advocacy of judges who refer a large number of civil cases to mediation, Judge Resolute was contemplating starting a domestic relations mediation program. She felt certain that mediation was the best way to bring warring parents together to talk about the amicable dissolution of their marriage and, if they had children, to focus on the ongoing parenting of their children. She personally believed that mediation could teach them skills to resolve the inevitable conflicts that were going to arise in the future. However, she was hesitant to embark on this new project until she felt confident that the civil mediation program was working effectively.

Judge Resolute received *Monitoring and Evaluating Court-Based Dispute Resolution Programs* in the mail one day. After perusing the guide, she realized the court needed a monitoring system for its civil mediation program and she was pleased to have the tools to develop such a system. She delegated the project to Jerry Ramrod, the court administrator, and Sally Mollify, the mediation program coordinator.

Ramrod and Mollify would make a good team for this project. Ramrod was known as a "get things done kinda guy," but his approach had made him some opponents over the several years he had worked at the court. On the other hand, Mollify had only recently joined the court, but in a short time she had been praised for her ability to achieve consensus among people with differing views.

Both Ramrod and Mollify looked at this project with a combination of fear and excitement. Neither had ever tackled a monitoring project like this, and they felt their mutual lack of expertise was problematic. Ramrod was a big supporter of the mediation program, and Mollify's job depended on the court's ongoing use of mediation, so they both were apprehensive about the possible ramifications if the results of the monitoring system were less than positive. On top of it all, they were overworked and underpaid, and one more task was the last thing either of them wanted or needed. Even so, they were enthusiastic because they agreed a monitoring system was needed, and they preferred to play key roles in the system's development.



Practical Application: Is It Really All That Important?

USING INFORMATION FOR MONITORING AND EVALUATION

The terms *monitoring*, *evaluating*, and *evaluation* are used throughout this guide. *Monitoring* refers to collecting and analyzing data in order to assess ongoing operations. *Evaluating and evaluation* refer to the comparison of cases referred to ADR with similar cases not referred to ADR. Monitoring can begin on day one of an ADR program's operation and continue throughout the life of the program. The strategies put in place for monitoring can serve as the basis for evaluation initiatives that should be undertaken periodically.

Monitoring and evaluating have some common characteristics. Both allow judges and court managers to make judgments about how the ADR program is performing and what changes might be necessary to improve performance. Information derived from evaluation can be used to refine monitoring processes, while information derived from monitoring can provide a foundation for evaluation projects to proceed more efficiently and at less cost. Effective monitoring and evaluation efforts also both depend upon the availability of information that is routinely and consistently gathered. Other principles for assessing and gathering data discussed in this guide are the same for both monitoring and evaluation efforts; therefore, the terms are frequently used simultaneously.

Monitoring

Program monitoring has several purposes. The data from monitoring systems helps identify whether an ADR program is working effectively so that courts can make appropriate decisions about the continued use of ADR. Monitoring also helps identify which aspects of a program contribute to its success and provides documented evidence of success that can be used in public awareness efforts. In addition, monitoring promotes continuous improvement of program operations by providing vital information about key practices and policy issues and by requiring program planners to focus on the original goals set out for the ADR program.

Monitoring also serves a basic case management purpose. It provides information about the volume of cases referred to ADR, the types of cases and parties that are using ADR, the time cases are pending in ADR, and the proportion of cases that are resolved through ADR. This information helps answer various questions about day-to-day program operations. For example, is there sufficient court or program staff to handle the case volume? Are there an adequate number of ADR service providers? Is ADR accessible to all

litigants, or are particular types of litigants and cases routinely excluded? Are particular case types more likely to be resolved through ADR? Answers to these questions can be used to screen cases more effectively and to detect bottlenecks in or barriers to the ADR process that could be alleviated by revising procedures or recruiting more ADR providers.

Measuring the quality of an ADR process is another important purpose of monitoring. Are litigants and attorneys satisfied with ADR? Do they believe that ADR is a fair process? Is the ADR practice what the court expects it to be, or are providers substituting another process? Information on these issues might point to the need for more effective recruitment and training of ADR providers.

Furthermore, managers of statewide programs can monitor for consistency across local jurisdictions. For example, is the ADR case volume disproportionately higher in some courts? Is user satisfaction greater in some jurisdictions? Are disposition rates higher in some locations? Information about consistencies and variations in performance can be applied to make improvements in underperforming jurisdictions, and lessons learned in individual jurisdictions can be shared with others.

Evaluation

Evaluation differs from monitoring in that evaluation can be used to draw inferences about the reasons for particular outcomes. For purposes of this guide, evaluating entails comparing ADR cases and non-ADR cases. For example, evaluation is required to determine if ADR has particular advantages over the existing process and whether it achieves the goals the court has set for it. Does ADR reduce backlogs, reduce court costs, reduce litigant costs, improve access to justice, or instill greater satisfaction with the justice system? Valid answers to these questions can only be obtained by comparing groups of similar cases that were either referred to ADR or not.

ADVANTAGES AND RISKS OF MONITORING AND EVALUATION

The information derived from monitoring and evaluation often effectuates change. Change typically makes people anxious, particularly when some may be happy with the status quo. Courts should consider the potential impact of the positive and negative findings that might result from monitoring and evaluation. What stakeholders will be affected? Is the court prepared to discontinue or aggressively revamp a poorly operating program? Will positive findings generate pressure to increase the use of ADR, and if so, does the court have the needed resources to do so? Thinking through these various scenarios will help better prepare decision makers to respond to various findings.

Advantages

Several advantages flow from monitoring and evaluating ADR performance:

- Monitoring and evaluation help courts identify the need for program improvements and offer the opportunity to turn an unsuccessful program into a successful one.
- Programmatic decisions based on systematic information gathered specifically to aid decision makers have a greater likelihood of addressing real problems than would hunches or conclusions drawn from isolated incidents; consequently, the probability of success in resolving identified problems is higher.
- Case monitoring systems can serve as the basis for automating routine case management functions, such as printing scheduling notices and generating select case lists.
- The consistency of information gathered in monitoring and evaluation facilitates comparisons among different ADR processes within a jurisdiction (e.g., mediation, arbitration, case evaluation) and across jurisdictions within a statewide ADR program.
- The credibility of evaluation findings is vital for obtaining and maintaining support for the ADR program from the general public, judges, the bar, ADR providers, the business sector, insurance carriers, community organizations, the local government, and the state legislature.

Risks

The risks of monitoring and evaluation are far fewer than the advantages, but judges and court managers should know they exist. Heeding the potential for negative consequences to emerge from monitoring and evaluation can minimize the probability of their occurrence. Possible risks include:

- Relying on only a few measures of success will give short shrift to factors not measured and will produce a distorted picture of the program.
- Lack of evidence that ADR reduces case processing time and costs may overshadow less tangible benefits such as increased access, perceived fairness, and high levels of satisfaction.
- Current methodologies for measuring cost savings for the court and for litigants of ADR are inadequate and may overstate unfavorable findings.
- Programs favored by the court may lose support or funding sources.
- There may be little political support for addressing identified needs or problems by key stakeholders.

Planning and Implementation: How Do We Put It All Together?

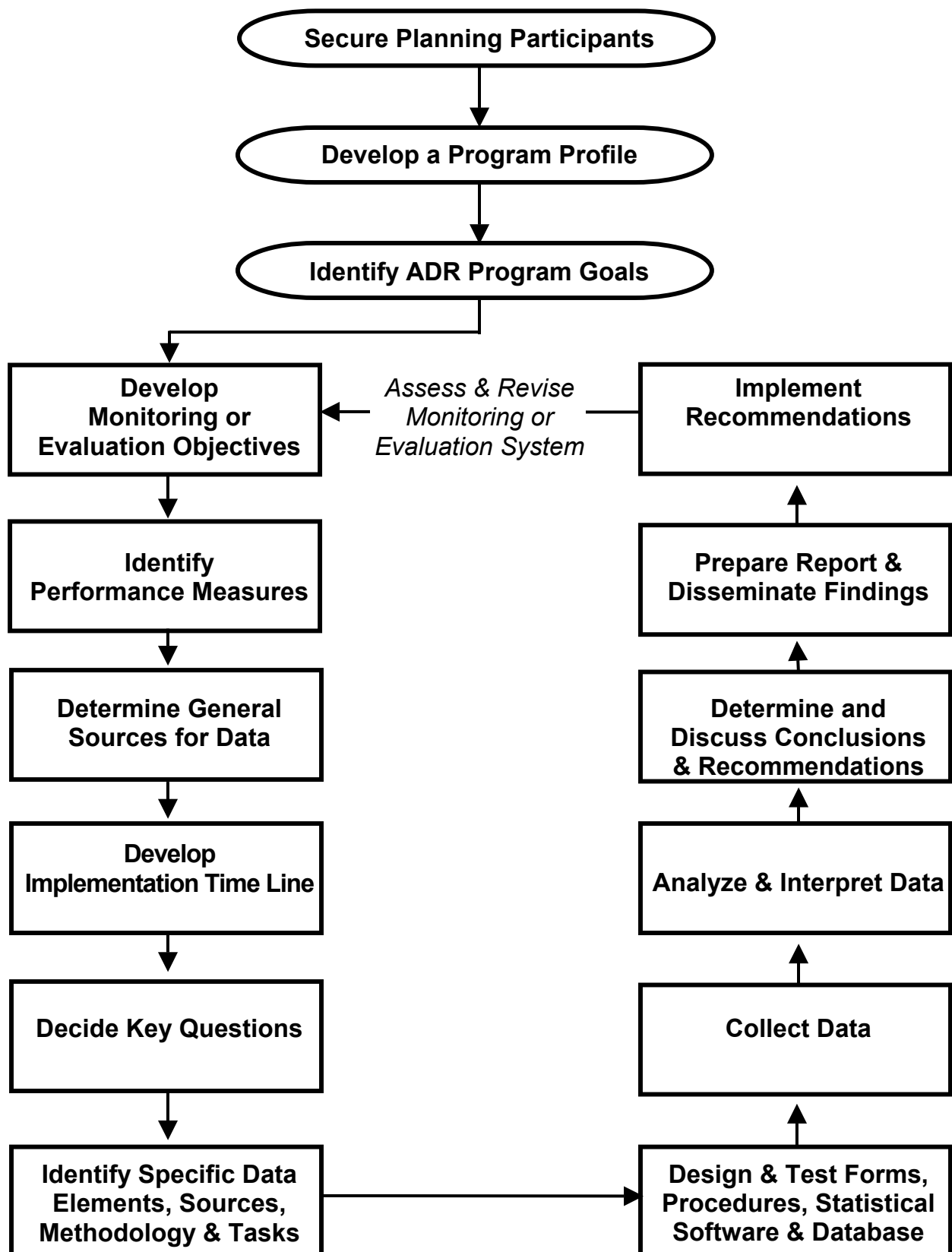
PLANNING A MONITORING OR EVALUATION PROJECT

Successfully implementing a monitoring or evaluation project requires planning and cooperation among those involved in the project and the commitment of the court leadership, the collaboration of the bar, and the participation of citizens. Among other issues, the court will need to consider and be prepared to address the following questions related to a monitoring or evaluation project:

- Why should the court devote scarce resources to set up the system and engage in monitoring or evaluation?
- How will the court maintain its momentum and commitment after the people who initiated the monitoring or evaluation project are no longer there?
- Which units of the court will be involved and how will their cooperation be obtained?
- Whose jobs will be expanded to set up a new system or modify a current system and to collect, code, and analyze the data?
- Will new staff or consultants be needed to conduct a monitoring or evaluation project?
- How will the bar be involved in planning, promoting, and carrying out monitoring or evaluation?
- How will the results be used when assessing policies and making program decisions?

The flowchart on the next page outlines the steps of a monitoring or evaluation project, which apply regardless of the ADR process (mediation, arbitration, case evaluation, etc.) and regardless of the case type (civil, family, victim-offender, etc.). Securing a small group of key participants to oversee the project can ensure that decisions are made based on varying perspectives and that necessary resources and information are readily available. Once the court has established the goals of the ADR program and the objectives for the monitoring or evaluation project, specific measures of performance and the sources from which data will be derived can be identified. An implementation plan will help keep the collection and analysis of data on track. The final steps include preparing a report, disseminating findings, implementing recommendations to improve

Planning Steps for Monitoring or Evaluating



the ADR program, and assessing and revising the system for continued monitoring or evaluation.

Develop a Program Profile

A detailed program profile including a history of the development of ADR in the court, the administrative procedures used, and the philosophical approach for providing services helps define what is being evaluated. This program profile also assists planners in identifying the issues related to the administration and delivery of services that a court might need to monitor. Sometimes having a person outside of the court develop this program profile raises issues not readily apparent to someone working with the program on a daily basis. In addition, particularly in statewide systems, the program profile may be the first opportunity to identify the specific level of ADR activity occurring throughout the state. The program profile helps courts concentrate on a "systems approach" to improving operations rather than on narrow issues that seem to interest only a select few.

Secure Planning Participants

Primary planners should tackle the initial steps, including developing the monitoring or evaluation goals, selecting measures for assessing performance, and identifying the basic sources from which data could be collected. Thereafter, it may be necessary to secure other individuals who will be involved in the actual day-to-day implementation of the monitoring and evaluation effort. These individuals may assist the court in focusing on the key questions to be addressed, identifying the best methods for data collection and analysis, and writing the report. The core group of planning participants should represent those individuals influential enough to shape policy and to secure necessary resources, as well as those individuals who are knowledgeable about the daily operations of the court and the ADR program.



First things first

Mollify began pulling together the program profile by gathering information about the historical development and current operating procedures of the mediation program. By rooting through old archived files and talking with court representatives active in developing the new civil case processing system and the original design of the mediation program, she was surprised to find such a wealth of information about the rationale behind various program policies.

While Mollify was locked away in the file storage room, Ramrod set about recommending to Judge Resolute the key individuals he felt should be involved in the subsequent planning and execution of the monitoring system. Several judges and attorneys with strong opinions about the use of mediation in the Bickering County Court expressed keen interest in participating in the project. Having been the victim of several large committees, Ramrod wanted to limit the number of participants in the planning group, so

he identified individuals who could serve multiple purposes. After several revisions of Step One of the Monitoring and Evaluation Worksheet and with the not so subtle persuasion of Ramrod, Judge Resolute decided that the planning group would comprise the people listed in the chart on the next page.



Set Program Goals

Before the court puts a monitoring system in place or launches an evaluation, judges and court managers should define the goals or the scope and desired outcomes of the ADR program. What are the specific results a court expects to achieve by using ADR? What ADR process and procedures have the greatest likelihood of achieving those results?

An understanding of the program's goals is essential for determining what information will be required to assess the program's performance. The greater the consideration given to program goals at the outset, the more efficient and effective monitoring or evaluation will be. For example, if a goal of ADR is to reduce case disposition time, the court should track dates for case filing, ADR referral, various judicial conferences, and disposition. If empowering citizens to resolve their own disputes is a program goal, the court will need to survey the opinions of litigants. If a program goal is to resolve through ADR a given number of cases or a particular proportion of the case load, the court must track the number of cases referred to and disposed by ADR.

The court may, and usually does, have more than a single goal that it would like to achieve through the use of ADR. Some goals are relatively straightforward and susceptible to ready measurement. Others are complex and their achievement is more difficult to gauge. The following examples are some of the most commonly adopted goals for ADR:

- To reduce backlog of older cases,
- To reduce case disposition time,
- To expedite particular categories of cases,
- To save judicial resources (i.e., time spent on motions, hearings, and trials),
- To reduce litigant costs,
- To produce high litigant satisfaction,
- To produce high attorney satisfaction,
- To produce high judicial satisfaction,
- To increase "pre-event" dispositions (i.e., prior to judicial intervention, etc.),
- To streamline litigation,
- To find the best forum for resolving the presented and underlying issues,
- To empower citizens to resolve their own disputes while developing conflict resolution skills that reduce future conflict,
- To produce better outcomes, and

Step One:

Identify the key individuals who should be involved in the planning and execution of the monitoring or evaluation project and the purpose of their involvement.

Planning Group Participants in Bickering County Court	Purpose of Involvement
Bickering County Court Administrator	<ul style="list-style-type: none"> • To oversee the monitoring and evaluation project • To secure necessary personnel and resources • To provide information to the chief judge and other judges as needed
Civil Mediation Program Coordinator	<ul style="list-style-type: none"> • To provide mediation records and procedural information • To design and distribute survey forms to mediators, attorneys, and parties • To provide the primary administrative support to the monitoring project • To assist in collecting and interpreting the data • To write the report and recommendations
Two Bickering County Court Judges (one judge routinely refers cases to mediation; the other has yet to utilize mediation)	<ul style="list-style-type: none"> • To encourage participation from the judges • To provide guidance in the selection of key monitoring questions • To assist in the interpretation of data based on personal experience referring and not referring cases to mediation
MIS Data Processing Specialist	<ul style="list-style-type: none"> • To advise on the capabilities of the MIS • To develop any necessary MIS database programs • To provide judicial calendars, reports, or statistical information produced by the MIS
Civil Case Administrative Director	<ul style="list-style-type: none"> • To serve as a liaison between the planning group and civil personnel involved in data collection, such as judicial clerks, file room staff, and data entry clerks
University Social Science Professor	<ul style="list-style-type: none"> • To review survey questions and forms • To advise on methodology and statistical software • To secure research students to assist in collecting and analyzing data • To review the final report and recommendations
Attorney-Mediator	<ul style="list-style-type: none"> • To serve as a liaison between the bar and mediator corps • To represent the interests of attorneys, mediators, and litigants • To assist with the interpretation of data based on personal experience with mediation and litigation
Mediation Participant (a recent litigant)	<ul style="list-style-type: none"> • To represent the interests of litigants and the general public • To assist with the interpretation of data based on personal experience with mediation and litigation

- To involve the bar and public in effective problem solving and the administration of justice.

Establish Monitoring or Evaluation Objectives

Before undertaking a monitoring or evaluation initiative, judges and court managers should define the objectives or the reasons for the initiative. What specifically does the court hope to achieve through monitoring or evaluation?

For example, is the purpose of monitoring or evaluation to gain information? If so, exactly what type of information is desired - descriptive information on the ADR caseload? Or, is the purpose of monitoring and evaluation to determine whether the use of ADR is achieving its goal of disposing cases in less time than it takes to dispose similar cases not referred to ADR?

Rarely does a single monitoring or evaluation project effectively accomplish a large number of objectives. It is important for a court to establish the monitoring or evaluation objectives before embarking upon a comprehensive data collection and analysis effort. Possible monitoring or evaluation objectives include:

- Assessing whether ADR is fulfilling its programmatic goals;
- Rating ADR provider and/or administrative performance;
- Learning the opinions of ADR participants about the ADR provider or the ADR process, policies, or procedures;
- Identifying whether the use of ADR has had a positive impact on the way ADR participants deal with other conflicts;
- Isolating the impact of specific procedures and policies or comparing administrative procedures;
- Determining cost and time reduction/avoidance figures;
- Deciding future resource allocation;
- Securing input from key participants about current or future operations;
- Educating judges, attorneys, and citizens about current operations; and
- Fulfilling funding or legislative mandates.



Everybody wants something different from mediation

Before the work of the Bickering County Court monitoring group had even gotten started, Judge Resolute began to understand the importance of having a monitoring system in place *before* an ADR program is up and running. A large part of the problem seemed to be that "success" is in the eye of the beholder. She had been on the phone ever since the monthly judges' meeting when she announced the development of a monitoring system for the mediation program. Some judges expressed frustration at the resources being expended on a monitoring system— they *knew* mediation settled cases, and to them, a settled case was

the sole indicator of success. Others had extremely high expectations of mediation in terms of early and frequent case disposition, litigant satisfaction, cost savings to litigants and the court, and its positive impact on the community at large and the ongoing resolution of conflicts between citizens.

Judge Resolute realized that mediation could not be all things to all people. As a first step, the court would have to do what it should have done before the mediation program began - establish its standards for success. The planning group also would have to set realistic expectations about what information the monitoring system could produce. One judge jokingly wanted to know whether his green-eyed litigants fared better in mediation or in his court. Even though the comment was made in jest, Judge Resolute was getting the message that many judges were interested in what she considered to be minute details. Given her experience with the local bar, she guessed that the attorneys were going to want to explore equally esoteric issues.

While Judge Resolute was open to whatever resulted from the monitoring project, she knew that given the strong views of those "for and against" mediation, the project would carry with it political and practical ramifications. Exactly what the benefits and risks were she wasn't sure, but she figured she would find out soon enough.

As the members of the planning group were being recruited, Ramrod and Mollify developed a list of specific goals for the mediation program as suggested in Step Two of the Monitoring and Evaluation Worksheet. Since they hoped to provide substantial direction to the planning group the about monitoring objectives as well, they decided to complete Step Three of the Monitoring and Evaluation Worksheet, linking program goals to the monitoring objectives.

Ramrod assumed the planning group would sign off on the mediation program goals and the monitoring objectives with little discussion. In fact, he was so sure that he scheduled another meeting to begin at 11:00 a.m., immediately after the 10:00 planning group meeting. He was sorely mistaken and his 11:00 meeting proceeded without him.

Just as judges and attorneys had been calling Judge Resolute to voice their opinions, many members of the planning group had received calls. As a result, during its first meeting, the planning group held a lively debate about the standards of success proposed by Ramrod and Mollify.

Mollify had secretly anticipated this great debate. Staying true to her role as consensus builder, she came to the meeting armed with standards provided in the resource section of the guide and with relevant literature written by ADR experts and researchers.

This information helped guide the group discussion. As Ramrod wrung his hands in frustration, Mollify took great pains to make sure that all group members had an opportunity to express their views about the desired impact of mediation on the Bickering County Court, its litigants, its cases, and citizens of Bickering County. Ultimately, the group was able to reach consensus about the goals of the mediation program, which were recorded on Step Two of the Monitoring and Evaluation Worksheet.

Ramrod left the meeting exhausted, and he was dreading the next meeting to decide the objectives of the monitoring project. Mollify left the meeting elated that the group had been able to work through this controversial issue.



Step Two:

Check the goals that have been established for the ADR program and identify the standards for success for each goal.

	Bickering County Court's Goals for ADR	Standards for Success
	To find the best forum for case disposition	
	To reduce backlog of older cases	
✓	To reduce case disposition time	<ul style="list-style-type: none"> On average, cases referred to mediation should be disposed through settlement at least 30 days earlier than similar cases not referred to mediation
✓	To save judicial resources (i.e., time spent on motions, hearings, trial, etc.)	<ul style="list-style-type: none"> On average, 15% fewer motions should be filed in cases referred to mediation than are filed in similar cases not referred to mediation. On average, 10% fewer pretrial conferences should be conducted by judges for cases referred to mediation than are conducted in similar cases not referred to mediation.
✓	To achieve high litigant satisfaction	<ul style="list-style-type: none"> On average, 70% of the litigants participating in mediation should feel that mediation is worthwhile. On average, 70% of the <i>pro se</i> litigants should feel that the mediation office is responsive and efficient.
✓	To achieve high attorney satisfaction	<ul style="list-style-type: none"> On average, 70% of the attorneys participating in mediation should feel that mediation is worthwhile On average, 70% of the attorneys participating in mediation should feel that the mediation office is responsive and efficient.
	To achieve high judicial satisfaction	
	To streamline litigation	
	To reduce litigants' costs	
	To increase "pre-event" dispositions (i.e., pre-ADR, pre-judicial conference, pre-discovery)	
	To expedite categories of cases	

Step Two (continued):

Check the goals that have been established for the ADR program and identify the standards for success for each goal.

	Bickering County Court's Goals for ADR	Standards for Success
✓	To empower citizens to resolve their own disputes	<ul style="list-style-type: none"> On average, 70% of the litigants participating in mediation should feel that mediation gave them an opportunity to actively participate in solving their own dispute.
✓	To involve the bar and public in the administration of justice	<ul style="list-style-type: none"> On average, 70% of the litigants and attorneys participating in mediation should feel that mediation gave them an opportunity to actively participate in the administration of justice.
Other goals not listed above		
✓	To provide effective mediation services	<ul style="list-style-type: none"> On average, 65% of the cases referred to mediation should be disposed between the time the case is referred to mediation and within 30 days after the last mediation session. On average, 70% of the litigants and attorneys participating in mediation should feel that their mediator was neutral and skilled at helping them consider the settlement of their dispute. Mediators should resolve approximately 65% of the cases that are referred to them. On average, 75% of the attorneys participating in mediation should indicate that they would request mediation in the future.



Remind me again – why do we want to do all of this?

Once the planning group agreed upon the goals of the ADR program and the respective standards for success, its next meeting was devoted to the equally difficult task of defining the scope of the monitoring project. Why did the court want to implement a monitoring project? What were the primary objectives of this effort? What did the court hope to gain from such an initiative? Given the court's limited financial and human resources, what was the most crucial information needed to make program decisions? And, in broad terms, how would the court achieve each of the monitoring objectives?

This time Ramrod was ready for a lengthy debate. He had devoted the whole day for this discussion, and he had made it a point to drink decaffeinated coffee before coming to the meeting.

Using Step Three of the Monitoring and Evaluation Worksheet, the planning group members decided to vote on their top five objectives for the monitoring effort. Interestingly, unlike their views about the goals of the mediation program itself, their ideas about what they wanted to achieve through monitoring were very similar. In less than an hour, they had determined the objectives of the project. They now had the necessary direction to focus their efforts.

Ramrod was very pleased about the progress achieved during the meeting. It had been almost a year since he had taken a well-deserved vacation day. Having reserved the entire day for a meeting that took only an hour, Ramrod decided to take the rest of the day off to play golf. He came back the next day rested and refreshed to tackle the work ahead.



Step Three:

Check the objectives that have been established for the monitoring or evaluation project and indicate how each objective will be achieved.

	Monitoring or Evaluation Objectives for Bickering County Court	How will each objective be achieved?
✓	To assess goal fulfillment	<ul style="list-style-type: none"> • By assessing the impact of mediation on case disposition time and on use of judicial resources • By determining the timing of case dispositions and rates of settlement in mediation • By assessing (1) litigant and attorney satisfaction; (2) the impact of mediation on involving litigants in the resolution of their own disputes; and (3) the impact of mediation on litigants' and attorneys' perceptions that they are actively participating in the administration of justice
✓	To monitor neutral performance	<ul style="list-style-type: none"> • By assessing mediator performance based on litigant perceptions of neutrality and skill and mediators' average settlement rates
✓	To isolate the impact of specific procedures/policies (i.e., case assignment methods, sanctions for non-appearance, etc.)	<ul style="list-style-type: none"> • By assessing the effects of judges requiring judicial approval to reschedule the mediation on the time cases are pending in mediation and the number of rescheduled mediation sessions
✓	To determine cost reduction or avoidance figures and/or resource allocation needs	
✓	To secure input from key participants	<ul style="list-style-type: none"> • By soliciting the views of litigants and attorneys participating in mediation about (1) the neutrality and skill of their mediator, (2) the value of mediation, (3) the responsiveness and efficiency of the mediation office, and (4) the impact of mediation on involving litigants in the resolution of their own disputes and making them feel as if they are actively participating in the administration of justice
	To fulfill funding or legislative mandates	
	To compare different administrative procedures	
Other goals not listed above		
✓	To educate the bench and bar about mediation	<ul style="list-style-type: none"> • By informing key groups about the impact of mediation on court dockets, the effectiveness of the mediation program, and the views of litigants and attorneys about mediation

Develop an Implementation Plan

Once the basic framework for the monitoring or evaluation project has been identified, it is helpful to devise an implementation time line for the project. Multiple tasks will need to be completed, and unless a detailed plan exists to keep the project on track, it is likely to stray from its original objectives.

After determining the objectives of the monitoring or evaluation project, a planning group should focus on the key questions it hopes will be answered by an analysis of the data. These key questions serve as the basis for determining the more detailed bits or elements of information that must be collected, such as dates, case characteristics, and case activity. The specific sources from which these bits of information will be derived (e.g., case files, litigants), and the manner in which data will be collected (e.g., case reporting forms, interviews) should be mapped out for each key question.

The implementation plan also establishes time frames for collecting and analyzing the data. Data collection forms and procedures will have to be developed, as will any specialized database and/or statistical software used for data analysis.

The plan should allow time for writing a draft report and for revising the draft based on feedback. Discussions about the findings and recommendations with individuals involved in the ADR program will assist in the accurate interpretation of the data. Often, soliciting the views of several individuals will shed light on differing interpretations of the data, and these varying interpretations should be included in the final report, as should recommendations for program improvement.

Assess the Monitoring or Evaluation System

Once program recommendations are implemented, the planning cycle should begin again, with an assessment of changes needed in the monitoring system itself and, thereafter, with the ongoing monitoring or evaluation of the retooled ADR program. It is important to assess periodically whether the monitoring or evaluation system devised continues to meet the court's needs. Is the information being collected relevant on an ongoing basis, or is it more cost- and time-efficient to occasionally collect specific types of data? Have changes in administrative procedures or policies affected the monitoring or evaluation process? Can data collection methods be enhanced, made more efficient, or made less labor-intensive? Periodic updates to the system will also generate renewed interest by decision makers and by individuals participating in monitoring or evaluation.



Details, details, details

Judge Resolute was delighted that the monitoring project was moving along at a fast pace. The planning group was meeting weekly, and a tremendous amount of work had been completed thus far.

Even so, Ramrod was concerned that the project would take years to complete if it was not organized efficiently. Mollify was enjoying the methodical way the planning group was working through the steps of the Monitoring and Evaluation Worksheet. She always enjoyed "process" over "details." Ramrod had little patience for process, but he reveled in detail. The tension caused by their different approaches was actually the strength of their two-person team. It also caused both of them to need an occasional drink after work, as they complained about the other to their respective spouses.

Ramrod was particularly concerned that the demands placed on the MIS specialist for other projects would impede the progress of the monitoring system. Judge Resolute had recently directed him to put a new juvenile tracking system in place so that the court could monitor whether juvenile offenders were also showing up in abuse and neglect and divorce actions. When Ramrod had asked Judge Resolute which of these two projects should take priority for the MIS specialist, the judge responded as usual with, "Well, all our projects are of equal importance." He knew it would not be good if poor planning meant the two projects were in competition for the services of the MIS specialist. More than anything else, Ramrod wanted to please Judge Resolute, and it was this desire that made him such a "get the job done kinda guy."

Therefore, it was imperative that the planning group agree upon a general time line for completing the monitoring project. The actual data collection and analysis would need to be efficiently organized and executed. Planning was key to the project's success. Ramrod and Mollify spent the better part of a day completing Step Four of the Monitoring and Evaluation Worksheet and mapping out an implementation plan.



Step Four:

Develop an implementation plan for executing the monitoring or evaluation project.

Tasks for Bickering County Court	Time Line
Identify key planning participants	Chief judge receives recommendations by 1/3, and invitation letters are mailed by 1/5. First meeting takes place on 1/15, and at least weekly meetings are to be scheduled thereafter.
Identify ADR program goals and monitoring or evaluation objectives	Ramrod and Mollify develop goals by 1/15. Goals and objectives are discussed and revised during initial planning group meetings and are approved by the chief judge by 1/20.
Identify broad performance measures and potential data sources	Planning group identifies performance measures by 1/22. Ramrod, Mollify, and MIS specialist identify potential data sources by 1/25.
Develop research questions (link to objectives)	Each planning group member submits a list of possible research questions that relate to the performance measures and research goals by 1/28. The planning group finalizes the list at the 1/29 meeting. The chief judge approves the questions by 2/5.
Select data elements relating to research questions	Ramrod, Mollify, and MIS specialist identify the specific elements and sources of data for each research question by 3/4.
Identify data sources for each data element	
Develop data collection methodology and implementation plan	Mollify devises data collection forms and a system for collecting data from the court files, the MIS, judges, attorneys, and litigants by 3/26. Professor Tutor revises the forms and comments on the procedures by 4/11. The planning group approves the plan by 4/25. The chief judge approves the plan by 5/6. Training of key participants involved in data collection is conducted by 5/31.
Test methodology and revise as needed	A test period is conducted between 5/31 and 6/30. Revise forms and procedures by 7/15.
Implement data collection plan	Data is collected between 7/15 and 12/31.
Interpret data	Data is analyzed by 1/31 and reviewed by planning committee by 2/15. Small focus groups of judges, practitioners, and attorneys meet to help assess the data by 3/1.
Tailor dissemination of findings to specific audiences	Basic report drafted by 3/15; revised and approved by the planning group by 3/30; and revised and approved by the chief judge by 4/15. Report is adapted as appropriate and disseminated to select groups by 5/1.
Implement recommendations	A plan for implementing the recommendations is developed by 6/30 and is revised and approved by the chief judge by 7/15.
Revise monitoring and evaluation strategy	A revised monitoring system is designed in conjunction with the implementation of program recommendations.

Measuring Performance: What Information Is Relevant?



The bottom line is performance

Being the detail man he was, Ramrod began to enjoy the project more as the planning group continued to move from the "broad" to the "specific." With the broad objectives of the monitoring project decided, the question then became, specifically, what factors did the planning group need to look at for each objective?

For example, determining whether the mediation program fulfills its program goals related to disposition of cases would presumably require measuring, among other factors, settlement rates. The next question would be, what bits of information about individual cases would need to be gathered to accurately measure settlement rates? Deciding which aspects of the mediation program's performance should be measured and then how to go about measuring each aspect was like figuring out a Rubik's Cube. In fact, playing with a Rubik's Cube had become Ramrod's new passion. The similarity of emotions evoked by working on this project and by working on a Rubik's Cube were striking—frustration, challenge, achievement, and sometimes anger were only a few of his daily reactions.

Unlike Ramrod, Mollify was loving every minute she worked on developing the monitoring system, except for those times when she butted heads with Ramrod. She was particularly pleased that Ramrod had insisted that Harry Tutor, a social science professor, be included on the planning group. Even though Ramrod's interpersonal skills often left a lot to be desired, she respected that he knew what he didn't know. Professor Tutor's expertise and guidance became invaluable as the work of the planning committee progressed.



WHAT SHOULD BE MEASURED

The degree to which ADR is successful in meeting its goals should not be measured by only a few indicators—courts need to get a complete picture. Just as the court may have multiple goals for ADR, the measures of success also should be varied and may depend on the ADR process used. Relying on only a few measures can be misleading and might ignore other equally important effects. Implementing information-gathering efforts for monitoring and evaluation can be accomplished incrementally. At a minimum, however,

information on case disposition time, court and litigant costs, fairness, and user satisfaction should be collected. A more thorough assessment of program performance would include measures of ADR disposition rates and the performance of ADR providers.

Courts should consider and devise their own standards of success and related measures of performance. Table 1 matches possible goals of an ADR program with potential measures of performance and the data elements for those measures of performance.

Disposition Time

At a minimum, dates of case filing and disposition are needed to measure case processing time. This information is readily available from nearly all case management information systems. For a more accurate picture of the effects of ADR on case disposition time, the date of referral to ADR also should be collected. This additional data item allows the court to determine if ADR has varying effects based on the age of the case at the time of the ADR referral. If the ADR process specifies returning the case to the court's docket, the date of this event also should be gathered. This information would allow the court to see how long cases are pending in the ADR process and could allow the court to monitor compliance with ADR time lines and identify bottlenecks in the process.

Disposition Rates

Measuring disposition rates through ADR may at first appear to be a very straightforward task—a simple calculation of the ratio of the number of cases disposed in ADR to the number of cases referred to ADR. However, this apparent simplicity belies a much more complex set of factors and concerns that the court must consider. For example:

- Should one attribute case dispositions that occur after the referral to ADR but before the ADR session itself to the availability of the ADR process, to the requirement to take some action in response to the ADR referral, or to nothing related to ADR? Knowing the reasons for these dispositions may be valuable when making programmatic decisions designed to maximize disposition. However, an equally important issue for monitoring and evaluation is that the courts account in some way for these pre-ADR dispositions when assessing the overall value of ADR.
- How should the court count dispositions that are not directly attributable to ADR, that is, that do not occur during the ADR session itself or immediately thereafter? Or, how should the court count dispositions when the ADR session resolved some but not all of the issues in dispute? Excluding these cases from the tally of disposed cases takes no account of the possibility that ADR contributed significantly to resolving the case. Typically, courts measure cases that were disposed within 30 days of the ADR session as well as cases that were disposed during ADR. The prototype questionnaires for attorneys and ADR providers (see the resource section)

attempt to address this measurement problem by probing the effects of ADR on the resolution of the case.

- What constitutes a desirable disposition rate? If disposition rates are consistently low, the benefits of ADR may be too limited to warrant the effort of making ADR available. On the other hand, very high disposition rates might indicate coercion in ADR.

Litigant Costs

The most commonly used method for measuring litigant costs is to ask attorneys and litigants to assess whether the costs incurred in the ADR process are the same, more, or less than they would be in a similar case not referred to ADR. Attorneys and litigants are more likely to respond to this type of question because it requires minimal time to answer and does not require them to reveal potentially sensitive information. Attorneys generally are presumed to have a greater ability than do litigants to make this comparison because attorneys generally have more litigation experience than do the litigants in a given case. However, some types of litigants, such as larger businesses and liability insurers, also have significant litigation experience and can readily compare their costs in ADR with costs in traditional litigation.

Measuring litigant costs with subjective comparisons may be the least intrusive method, but it is inherently less accurate and reliable than finding out actual or estimated costs. To paint a more accurate picture of cost savings to litigants, the court should try to persuade the bar, litigants, ADR providers, and insurance carriers to provide actual or estimated cost information rather than subjective comparisons. This methodology has rarely been used, however, because it is costly to conduct and it is fraught with problems such as attorney-client privilege, confidentiality, and resistance from the bar. Perhaps a short-term study of actual or estimated costs in selected case types might warrant the time investment and be accepted by the bar and the affected litigants.

Court Costs

Obtaining information on cost savings that might accrue to the court through the use of ADR is even more problematic than measuring litigant costs. Calculating ADR program costs may be the least difficult task in this process, but it also can become complicated if staff for the ADR program are not assigned exclusively to its administration and overhead expenses, such as costs of facilities, automation, telephone, and supplies, cannot be accounted for separately from the court's overall budget.

The harder and perhaps more useful task is measuring the relative demands of ADR and traditional litigation on the time of judges and other court staff. As a basic matter, most courts cannot determine the average cost of processing each case in order to make a comparison with the average cost of processing an ADR case. Furthermore, it is difficult to first determine how much later an ADR case might have been resolved without ADR, and then to quantify how much judicial time might be saved by earlier disposition of

Table 1: ADR Program Goals, Measures of Performance, and Data Elements

ADR Program Goals	Measures of Performance	Data Elements
To reduce backlog of older cases To reduce case disposition time To increase “pre-event” dispositions To streamline litigation To expedite particular case categories To save judicial resources To reduce litigant costs To produce high judicial satisfaction To find the best forum for the dispute	Case Disposition Time	Date case filed Date referred to ADR Date practitioner/provider assigned Date ADR completed Date case disposed
To reduce backlog of older cases To reduce case disposition time To increase “pre-event” dispositions To streamline litigation To expedite particular case categories To save judicial resources To produce high judicial satisfaction To find the best forum for the dispute	ADR Disposition Rates	Number of cases referred to ADR Number of partial ADR dispositions Number of pre-ADR dispositions Number of ADR dispositions Number of post-ADR dispositions
To reduce litigant costs To produce high litigant satisfaction To empower citizens	Litigant Costs	Actual/estimated cost of ADR process Actual/estimated cost of resolving case without ADR Actual/estimated cost of resolving case with ADR Attorney comparisons of resolving case with and without ADR
To increase “pre-event” dispositions To streamline litigation To expedite particular case categories To save judicial resources To produce high judicial satisfaction	Court Costs	Staff salaries ADR practitioner fees Facility costs Utility costs Number of pre-judgement motions Number of pre-judgement hearings/conferences

Table 1: ADR Program Goals, Measures of Performance, and Data Elements (continued)

ADR Program Goals	Measures of Performance	Data Elements
To produce high litigant satisfaction To produce high attorney satisfaction To produce high judicial satisfaction To find the best forum for the dispute To empower citizens To involve the bar and citizens in justice	Fairness	Attorney ratings Litigant ratings
To reduce case disposition time To streamline litigation To reduce litigant costs To produce high litigant satisfaction To produce high attorney satisfaction To produce high judicial satisfaction To find the best forum for the dispute To empower citizens To involve the bar and citizens in justice	Participant Satisfaction	Attorney ratings Litigant ratings
To reduce case disposition time To increase "pre-event" dispositions To expedite particular case categories To reduce litigant costs To produce high litigant satisfaction To produce high attorney satisfaction To produce high judicial satisfaction To empower citizens	ADR Provider Performance	Attorney ratings Litigant ratings Peer ADR practitioner ratings Dispositions

ADR cases. Finally, using average case disposition rates disguises the differences among cases in the level of demand on court resources. Resolving a particularly contentious or complicated case that might have required several days or weeks of trial frees a greater amount of judicial and staff time than resolving a less complex case.

For these reasons, most evaluations use surrogate measures of court costs. These measures most commonly include litigation-related events that require staff and judge time, such as the number of motions filed in a case, pretrial hearings scheduled, and pretrial conferences held. The relative level of attention the court must give ADR and non-ADR cases can be ascertained using these workload measures. Of course, any additional time required for notices of referral to ADR and other administrative procedures related to the ADR program must also be taken into account.

Fairness

Above all else, ADR should be fair. Determining what constitutes fairness and then measuring it, however, are elusive undertakings. Legal scholars, researchers, and ADR practitioners have devoted much deserved attention to the subjects of defining and measuring fairness. Because simply asking a litigant to say whether a process or outcome is fair is an inadequate measure, they have produced scales for measuring litigants' perceptions of procedural justice and the fairness of outcomes. These scales are very useful for studies that compare ADR and non-ADR cases.

For the general purposes of monitoring or evaluation, however, a reduced set of questions can be posed to litigants and attorneys. These items pertain to the ADR providers' behaviors that the participants can directly observe and about which they can express an opinion based on their direct experience. For example, the prototype questionnaires for attorneys and litigants provided in the resource section of this guide ask whether the ADR provider (1) allowed the client's interest to be fully conveyed, (2) was impartial, (3) understood the issues in the case, and (4) was knowledgeable about the law. These are qualities of the ADR process and the providers' skills that should result in a fair process.

Courts may also develop other strategies to measure fairness, such as comparing agreements and awards against predetermined standards or against outcomes from other similar ADR cases or by comparing outcomes in ADR with outcomes in similar cases not participating in an ADR process.

Participant Satisfaction

The satisfaction of litigants and attorneys with ADR is another important quality control measure. The method most often used to measure satisfaction is to survey litigants and attorneys for their opinions. Focus group discussions are another excellent approach for gathering qualitative data on satisfaction. Like the concept of fairness, satisfaction is an abstract and value-laden concept. For example, the outcome itself, rather than the process that produced the outcome, may influence satisfaction significantly. It is most useful to

measure particular indicators of satisfaction, such as whether the litigant would recommend the ADR process to a friend, rather than asking whether the litigant was satisfied with the process or outcome. Satisfaction also has been shown to be associated with the participant's perceptions of the fairness of the process. Because efficiency is always an important issue for implementing a monitoring or evaluation process, the items relating to fairness on the prototype questionnaires also can be used as measures of satisfaction.

ADR Provider Performance

There are multiple purposes for assessing ADR provider performance, including qualifying providers for court-approved rosters, improving provider performance, and ensuring that those on the roster remain qualified. Assessments of provider competency should occur both upon entry into the practice and at periodic times during service. The assessment process should entail multiple methodologies, including participant surveys, observations, continuing education, and, with some caution, ADR disposition rates.

Settlement rates in the instance of mediation or case evaluation, and the parties' acceptance of a non-binding arbitration award in the instance of arbitration, should not be the sole factor used to assess the performance of ADR providers. Either unusually high or low case disposition rates may indicate the need to monitor an ADR provider's performance. While consistently low disposition rates may indicate inferior dispute resolution skills, extremely high disposition rates may indicate that the provider exerts a high degree of coercion. Relying on disposition rates to evaluate performance also discounts other factors that might influence disposition, such as undertaking a higher number of complex cases or cases involving parties with well-entrenched positions. Although using an easily observed and recorded outcome measure such as disposition rates requires fewer administrative resources, other more probative measures are helpful in determining the quality of ADR and ways in which providers can improve their performance. For example, a mediator or case evaluator may be perceived as fair by the ADR participants. However, the court may be interested in determining the ADR provider's level of skill. If so, participants may be asked to rate the provider's effectiveness at (1) generating options, (2) eliciting the active participation of all participants, (3) narrowing the areas of disagreement, and (4) moving the participants toward collaborative problem solving.

Furthermore, when assessing the provider's performance, courts should keep in mind the way in which they define the ADR process and therefore the preferred approach of the ADR provider. For example, some courts emphasize the evaluative role of the mediator, while other courts strive for a facilitative approach by the mediator. The user survey form provided in the resource section of the guide exemplifies assessment of a mediator's performance assuming the mediator is expected to provide a facilitative role. If a court prefers an evaluative approach, the questions should be changed to reflect this preference.



You can't find the answer without first asking the question

The upcoming tasks of Bickering County's planning group became more clear upon identifying the following factors that would need to be measured:

- Case disposition time,
- Settlement rates,
- Participant satisfaction,
- ADR practitioner performance,
- Judicial workload, and
- Administrative procedures.

Given that the monitoring system would focus on these aspects of performance, the planning group had to identify specific questions to be answered about each aspect. Ramrod knew he couldn't bear coming up with these questions during a meeting of the whole planning group. He just didn't have the time or the patience for such an exercise.

Ramrod suggested that each group member individually submit 25 potential questions. He directed Mollify to organize the questions such that they could easily identify similar questions submitted by group members. He offered to buy Professor Tutor dinner if Tutor would draft a list of questions that reflected the interests of the group. Tutor agreed, but knowing Ramrod's reputation for being cost conscious, he made Ramrod promise that they would go to a moderately expensive restaurant, not Ramrod's usual favorite greasy diner. Ramrod felt the expense would be worth it if Tutor could expedite the group's decision making.

Ramrod's strategy worked. With only a few changes, the group wholeheartedly accepted the list of questions prepared by Tutor. Step Five of the Monitoring and Evaluation Worksheet was complete.



Step Five:

List the primary questions to be addressed as a result of the monitoring or evaluation project.

Key Questions for Bickering County

1. Is the timing of the referral to mediation related to the number of motions filed?
2. Is the timing of the referral to mediation related to the number of pretrial conferences scheduled?
3. Are cases pending in mediation for a shorter time when judicial approval is required to reschedule the mediation than when judicial approval is not required?
4. Are fewer mediation cases rescheduled when judicial approval is required to reschedule the mediation than when judicial approval is not required?
5. What are the primary reasons for rescheduling or requesting to reschedule mediation cases?
6. Do litigants participating in mediation feel that mediation is worthwhile?
7. Do attorneys participating in mediation feel that mediation is worthwhile?
8. Do *pro se* litigants participating in mediation feel that the mediation office was responsive to their inquiries?
9. Do attorneys participating in mediation feel that the mediation office was responsive to their inquiries?
10. Do *pro se* litigants participating in mediation feel that the mediation office administered their case efficiently?
11. Do attorneys participating in mediation feel that the mediation office administered their case efficiently?
12. Do litigants participating in mediation feel that the mediator was neutral?
13. Do attorneys participating in mediation feel that the mediator was neutral?
14. Do litigants participating in mediation feel that the mediator helped them consider the settlement of their dispute?
15. Do attorneys participating in mediation feel that the mediator helped them consider the settlement of their dispute?

Step Five (continued):

List the primary questions to be addressed as a result of the monitoring or evaluation project.

Key Questions for Bickering County

16. What percentage of attorneys participating in mediation would request mediation in the future for other cases?
17. What percentage of cases are resolved through mediation?
18. What combination of case factors are more likely to result in settlement of a case in mediation?
19. Does mediation narrow the issues in dispute?

Data Collection Strategies: How Do We Get the Information We Need?



Let's hope this doesn't cost us too much

Thus far, Bickering County Court had incurred minimal cost for the monitoring project. Ramrod personally had shelled out a pretty penny for the upscale dinner with Professor Tutor, but that had been money well spent. Not only had it been an excellent meal—he always enjoyed a good meal, even more so since his wife put him on a strict diet—but the members of the planning group had been pleased about the way they went about deciding the key questions for the monitoring project. But now he had another bridge to cross.

As decisions were made about how the data would be collected, he could just hear all the jokes about his cost consciousness. But what could he do? The court was operating on limited financial resources and had not budgeted for the monitoring project. The legislature had cut its budget last year, just as it had the year before, and he was responsible for making sure every penny was spent wisely.

Now that the members of the planning group had decided what factors needed to be measured and what key questions they wanted to answer, they had to decide how to collect the information. What was the easiest way to capture the data? Should they expend the time and resources to review each case file? Were surveys a better approach, and if so, should the surveys be written or should individuals be interviewed by telephone or in person? What information was already available through the court's computerized system?

Ramrod would be looking at the answers to these questions with a constant eye on dollars. Whenever you talked about money, people turned a deaf ear. That didn't bother him; he could speak loudly enough and long enough to make them listen. And if that didn't work, Judge Resolute always supported him in his effort to save the court a buck. Yet, he didn't want to sacrifice quality. They had come this far, and he didn't want to cut corners to such a degree that they ended up not having the data they needed. But costs in terms of time, effort, and expense had to be within reason. Therein lay the challenge. It seemed that the work of the planning group was getting more tedious and complex with every meeting.



TYPES OF DATA

Systematic data collection efforts that capture relevant and accurate information are necessary for program monitoring and evaluation. Information must be consistently

collected and uniformly analyzed before conclusions can be made about ADR program operations or effectiveness. Data can be collected in a number of different ways and from a number of different sources. Two basic types of data are used to measure performance: quantitative and qualitative data.

Information You Can Count

Quantitative data is information to which a numerical value can be applied so that the data can be counted and calculated. Examples of quantitative data include the number of cases settled, the number of days a case is pending, and the number of motions filed. Although it sometimes is referred to as "soft" data, information on opinions can also be quantified. For example, the degree to which a litigant thinks ADR is fair can be counted on a five-point scale, where 1 = total agreement and 5 = total disagreement. Averages of numerical responses to individual questions can be calculated. The responses of one group of litigants can be compared statistically to the responses of another group. Quantitative data can be gathered and analyzed more readily than qualitative data, but quantitative data may not adequately capture nuances and shades of meaning.

Information You Can't Count

Qualitative data consists of information that cannot be directly quantified or counted, but rather is open-ended. For example, information gathered from observations of mediation sessions, interviews with program administrators, and open-ended survey questions provide qualitative data. Because the information cannot be assigned a numerical value, qualitative data cannot be manipulated to produce statistical comparisons. However, qualitative data can sometimes be coded, categorized, and compared, and judgments can be made based on it. Qualitative data allows a more probing examination through follow-up questions to clarify responses and therefore is extremely helpful when interpreting quantitative data. Analyzing qualitative data can be time-consuming and costly, but costs can be minimized with a limited number of interviews or focus groups that can often shed light on numerical results.

DATA SOURCES

Typically, quantitative and qualitative data are gathered from five basic sources:

- ADR service providers, such as mediators, arbitrators, and ADR trainers;
- ADR program participants, such as litigants and attorneys;
- Related court groups, such as judges and court personnel;
- Records, such as court case files, ADR documents, MIS data; and
- Interested non-court groups, such as local bar ADR committees, citizen groups, insurance companies, legal aid offices, special awareness associations, oversight committees, and funders.

Table 2 links sample measures of performance with data elements and possible sources of the data.

DATA COLLECTION METHODS

Several methods can be used for collecting data from these sources. Courts should consider a number of issues when determining the most effective data collection approach. Which approach is the most expedient? Which approach requires the least amount of time and effort? Which approach provides the most reliable and consistent data? Which approach is most appropriate for the type of ADR process being monitored or evaluated?

Various methods and implications for their use are described below. However, cost is one of the greatest considerations courts face when choosing data collection methods. Accordingly, courts should consider mixing various approaches. For example, more costly methods, such as interviews and observations, could be used on an intermittent or limited basis to supplement data gathered through written surveys. Practical feedback systems, such as periodic meetings with groups of judges to discuss how ADR is working, cost little and provide a wealth of valuable information.

The prototype data collection forms provided in this guide (see the resource section) cover case record data, attorney surveys, litigant surveys, and surveys of ADR practitioners. The prototype forms are designed to capture basic information and can be modified to add measures needed to address issues of interest to individual jurisdictions. The prototype forms can also be adapted to collect information on cases referred to private ADR providers not under the auspices of the court. While this type of data may be more difficult to collect, it is important that courts gather information on all of the cases being referred to various ADR processes and providers.

For most of the data collection methods and sources described below, individual data elements should be assigned a numerical code. Coding allows more efficient collection, maintenance, and analysis of the data. Coding also is essential for statistical analysis and for maintaining the anonymity of specific individual cases and individuals participating in the evaluation. Examples of data elements that should be coded are the type of case, the type of party, whether the parties have counsel, and participant satisfaction ratings. The prototype data collection forms provide additional examples of coded case data elements and responses to survey items.

Written Surveys

Written surveys are the most common method of data collection. Typically, surveys should be brief, one or two pages, and include various types of questions. Surveys should also include questions that can be quantified, in that participants' responses are limited to a prescribed rating scale. Questions should be phrased in a neutral manner, and a few questions should be inverted so that participants will not automatically respond one way to all questions. For example, an inverted question would be phrased in a way that would

Table 2: Measures of Performance, Data Elements, and Sources

Measures	Data Elements	Possible Sources
Case Disposition Time	Date case filed Date referred to ADR Date practitioner assigned Date ADR completed Date case disposed	Court case files ADR case files/records/database Management Information System
ADR Disposition Rates	Number of cases referred to ADR Number of partial ADR dispositions Number of pre-ADR dispositions Number of ADR dispositions Number of post-ADR dispositions	Judicial or court clerk survey Court case files ADR case files/records/database Management Information System Practitioner case reporting form Attorney and litigant survey
Litigant Costs	Actual/estimated cost of the ADR process Actual/estimated cost of resolving case without ADR Actual/estimated cost of resolving case with ADR Attorney comparisons of resolving case with and without ADR	Attorney and litigant survey/interviews Attorney and litigant focus groups
Court Costs	Staff salaries ADR provider fees Facility costs Utility costs Number of pre-judgment motions Number of pre-judgment hearings/conferences	Court budgets/expense reports ADR program records Management Information System Court files Judicial or court clerk survey
Fairness	Attorney ratings Litigant ratings	Attorney and litigant survey/interviews Attorney and litigant focus groups
Participant Satisfaction	Attorney ratings Litigant ratings	Attorney and litigant survey/interviews Attorney and litigant focus groups
ADR Provider Performance	Attorney ratings Litigant ratings Peer ADR practitioner ratings Disposition ratings	Attorney and litigant survey Court case files ADR case files/records/database Management Information System Practitioner case reporting form Observation and rating of performance measures Standardized review of agreements/awards

prompt a participant to break a sequence in which positive ratings receive a "4" or "5." Participants would have to answer the question with a "1" or "2" in order to continue to respond positively.

In addition, open-ended questions that allow for free-flowing responses can provide valuable qualitative information. For example, a supplementary question might ask, "What is important to you-good or bad-about this mediator's (arbitrator's, case evaluator's, etc.) performance which this form fails to capture?" Analysis of these narratives often requires interpretation by an evaluator, so courts should be cautioned that conclusions may sometimes inaccurately reflect the actual intentions of respondents. Courts should consider the possibility of supplementing written surveys with a small number of telephone or in-person interviews. The information gathered through a limited number of interviews will assist with the interpretation of quantifiable data and reduce the cost of data collection.

Surveys should always be pre-tested so that courts can discern additional questions that might be needed. It is beneficial to talk with participants after they have completed the pre-test survey in order to confirm their understanding of the questions and to determine whether questions should be rephrased. In addition, when written surveys are used, procedures should be developed to obtain responses from parties who cannot read, who have visual impairments, or who do not speak English well.

In-Person Survey Distribution

Court staff or staff of an ADR provider organization may distribute surveys to parties following an ADR session or may be available to collect forms or to direct parties to a "survey return box." However, because staff members often are not readily available for this task, having ADR practitioners hand out surveys at the conclusion of ADR sessions is an efficient way to distribute questionnaires to program participants.

The risks of having the ADR practitioner distribute the survey are that the parties may feel unintended pressure from the practitioner and may be concerned that the provider will see their responses. Therefore, it is best if providers give surveys to parties with an envelope and leave them alone as they complete the form. Parties should be asked to put the completed survey in the envelope and to sign the envelope seal. Thereafter, parties may be directed to deposit the envelope in a "survey return box" located in a centralized location. Alternatively, parties may drop the envelope in the mail or give the envelope to the ADR provider, who returns it to the evaluator. Providing a self-addressed, stamped envelope will increase the likelihood that parties will return the form, but this method considerably increases the expense of data collection. Asking participants to return surveys by mail is also a less effective method of data collection.

The greatest number of questionnaires will be collected if parties are asked to submit the forms before leaving an ADR session. However, courts should consider whether distributing surveys immediately following the conclusion of the ADR session may result in data that reflects intensified emotions of joy or despair. For example,

participants who resolve their dispute may feel particularly elated, a feeling which may change after they have had time to consider more fully the ramifications of the settlement or the process by which the settlement was reached.

Survey Distribution Through the Mail

Surveys targeting a select population or surveys that are intended to gather data from parties about their experience after a period of time has elapsed since the ADR session most likely will be mailed. This method of data collection may result in a higher quality of data because of the time participants have had to reflect on the ADR process. A cover letter from an influential person explaining the purpose of the survey and encouraging participants to respond will be critical. A problem with mailing surveys is a low return rate. In some cases, parties will have relocated or an address will be inaccurate. In other cases, parties will feel less pressure to complete a mailed survey or will procrastinate beyond the deadline.

Because a low response rate is to be expected, the number of survey recipients should be at least twice the number of participants desired for the evaluation. Again, a self-addressed, stamped envelope will increase the likelihood that participants will return the form. A follow-up letter or telephone call to participants who have failed to respond in a timely manner will also boost the number of responses but will increase costs.

It should be noted that mailing survey forms may, in and of itself, breach a certain level of confidentiality. For example, a person may have participated in an ADR session without the knowledge of other household members, and the receipt of a letter from the court or ADR program may raise questions. Similarly, mail may be inadvertently opened by someone other than the addressee.

Interviews

Collecting survey information through telephone or in-person interviews is labor-intensive and can be costly. If someone other than the evaluator, such as a student or volunteer, is conducting the interviews, he or she should be trained and monitored to ensure the consistency and validity of the data. An opening statement should be given to inform participants of the purpose and length of the interview and that participation is voluntary. Interviews should be kept as short as possible. It is sometimes easier to get answers to open-ended questions, which will require extra effort to analyze the results. In the case of telephone interviews, it will add to the time and financial costs, but a second or third call back may be necessary to ultimately reach participants and to complete the interview. Interview participants are sometimes concerned about remaining anonymous and, especially during in-person interviews, may not feel free to answer questions openly and honestly because of their fear of embarrassment, retaliation, or judgment by an interviewer.

Observation

An essential part of any observation effort is a plan for systematically recording the observations. Observers must be trained in how to make observations and how to record them uniformly. There are three common ways of making systematic observations. First, the observer records the events in as much detail as possible. Second, the observer is given a set of questions that he or she is required to answer from his or her observation. The final approach requires the observer to use a rating scheme, such as a descriptive check-off list specifying a portion of time devoted to different kinds of activities or a ranking scale indicating how well or how often different kinds of activities were performed.

Observation is sometimes used to conduct time/motion studies to determine the average length of time it takes to complete a task or to assess how staff interact with clients or coworkers. Observations of ADR personnel administering services and of judges and court personnel conducting judicial proceedings may provide valuable information.

Monitoring or evaluation systems for ADR most commonly use observation to assess the performance of ADR providers. Mock ADR sessions or actual case sessions are observed live or videotaped and watched later. The evaluator completes a standardized rating form that typically includes quantifiable information as well as the evaluator's narrative assessment the ADR provider's performance. The data is combined with the provider's previous performance evaluations and is aggregated with performance evaluations of all the ADR providers. This information allows courts to assess trends, identify training needs, fulfill certification requirements, determine the types of cases a practitioner should be referred, and make decisions about a provider's ongoing participation in the ADR program.

Case File Review

Courts may need to be concerned about the validity and reliability of reviewing preexisting court case files or ADR program files-particularly if several individuals have participated in maintaining relevant documents or recording case activity. It is likely that these individuals' different interpretations will result in variations in the accuracy, completeness, and types of data recorded.

Data Collection Forms

Rather than distilling information from voluminous case files, courts should devise record forms before the data collection effort begins. The forms should be structured as checklists whenever possible so that items can be standardized. Concise and easy-to-understand definitions should be clearly articulated to reduce the likelihood of varying interpretations. Forms should be designed so that information is recorded from top to bottom, in a logical sequence. Recording duplicate information on more than one form, or on different locations on the same form or in the same file, should be kept to a minimum. Forms should allow sufficient space for large and legible writing. Finally, courts should

resist the temptation to gather irrelevant information, which places an unnecessary burden on personnel.

MIS and ADR Database Systems

Retrieving information from a management information system or computerized ADR database system may expedite data collection and analysis. However, courts must keep in mind that the usefulness of this information depends upon the definitions and rules used in developing and maintaining the computerized system. Is data consistently and accurately entered? What interpretations of the raw information are made by data entry clerks? Can the data be manipulated in the ways necessary for analysis? Is sufficient information available through the MIS to assess the effectiveness of ADR? Must information be gathered from other non-court sources?

Courts will need to decide whether the ADR program's data collection efforts should be automated by a set of functions grafted onto the court's existing MIS or whether a self-contained or stand-alone computerized database should be developed just for the ADR initiative. If the court's existing MIS is reliable, easy to use, and easily modified to serve ADR purposes, then conjoining the two systems may be the most efficient way to proceed. An important part of the decision will be related costs, the degree to which the MIS software can be amended, and the responsiveness of its programmers to requests and problems presented by the ADR program.

If an existing MIS does not have all of the necessary data for ADR monitoring or evaluation, modifications may include simply adding a field for ADR information or using an existing field that is no longer deemed crucial for the court's database. On the other hand, MIS modifications may need to be more extensive, requiring reprogramming and the purchase of additional memory, equipment, or software.

If the court's existing MIS is incapable of meeting the data collection needs of the ADR program—such as maintaining information on ADR providers, cases, agreements, and case administration—or its case management needs—such as manipulating rosters of providers, matching ADR cases to providers, and scheduling functions—it may make sense to build a parallel system from scratch. The benefit of this approach is that comprehensive information can be more readily maintained about ADR cases and providers and changes to the system may be more easily made without affecting other aspects of the MIS. The downsides of this approach include the cost of setting up, programming, and maintaining a parallel system and the potential difficulty in linking the ADR system and the MIS when assessing the impact of an integrated ADR program on court case processing. Even if the court initially establishes a stand-alone computerized database for the ADR program, the court should investigate the technology that is increasingly available to ultimately link an independent ADR database with the MIS.

CONFIDENTIALITY OF DATA

Monitoring and evaluating necessarily entail collecting data from a variety of sources, including case files, ADR providers, attorneys, and parties. Parties and attorneys may expect that ADR proceedings, information maintained in separate non-court ADR files, and responses to surveys and interviews will remain confidential. The parties may also wish to limit the prospect of public scrutiny of official case files that are part of the public record. Courts therefore should develop and implement policies and procedures to safeguard the anonymity of individuals and confidentiality of information they provide both during data collection and in the subsequent reporting of evaluation findings.

When developing policies about confidentiality relating to ADR data collection, analysis, and reporting, courts should consider several issues:

- Do legislative or other safeguards exist to ensure the anonymity of participants in monitoring or evaluation projects and the confidentiality of the information they provide?
- Is participation in an ADR process considered to be confidential, or is the scope of confidentiality restricted to the discussions and materials related to the ADR session?
- What monitoring or evaluation information is a matter of public record and what information is generally not available for public review?
- Is there a need to be able to link monitoring or evaluation information to a specific case? For example, if an ADR program is monitoring the individual performance of ADR providers through user surveys, both the ADR provider and the participants should be identified so that follow-up inquiries can be made if the participants expressed negative reactions to the specific ADR provider or process. However, if only general trends in ADR provider performance are being assessed, aggregate data will suffice and it is not necessary to track who participates in evaluations.
- Even when reporting data in the aggregate, courts should determine whether a specific case has unique characteristics sufficient to make its identity readily discernible among the aggregated data set. How sensitive is the information being collected, and would it be of interest to the media or other groups? Is the information being collected absolutely necessary to accomplish the monitoring or evaluation goals? What steps would be taken to safeguard the data if an outside entity requested access to it? Is a list maintained that links coded surveys to their respective cases?

No matter what policies a court establishes, the procedures should be determined before the data collection effort is underway and participants in the study should be made aware of the policies. Every effort should be made to maintain the confidentiality of evaluation information so that evaluation participants will be more willing to engage openly and honestly in the data collection effort.



Let the data collection begin

Ramrod and Mollify felt like celebrating. Members of the planning group had successfully figured out the factors they needed to examine, the data elements necessary to measure those factors, and the most appropriate sources from which to gather the data.

As anticipated, figuring out exactly how they would go about gathering the data was a difficult issue. Some members wanted one-on-one interviews conducted with all judges, attorneys, and litigants. Other members wanted all ADR providers to be observed to assess their performance. Ramrod, in his usual direct style, informed them that the court had neither the time nor the money to conduct such an exhaustive data collection effort. With the help of Mollify, the group members compromised and agreed to conduct a small number of interviews and focus groups. Assessing ADR provider performance through observations would have to wait until a later time.

Ramrod expressed his concern that court staff would be overburdened with recording data from case files, so the group decided to rely to every extent possible on the court's computerized information system. The MIS data processing specialist would develop a special computer program that would allow the planning group to easily retrieve relevant information. Brief case reporting forms completed by judges would supplement the information already available through the court's MIS and the mediation program's records. Step Six of the Monitoring and Evaluation Worksheet was complete.

Prototype litigant and attorney surveys provided in the resource section of the guide would be adapted for use in Bickering County Court. And, a brief training session about the accurate reporting of case information would be conducted for judges and their courtroom clerks. Soon, almost everything would be in place for data collection to begin, and believe it or not, the planning group was right on schedule with its implementation plan.



Step Six:

Check the performance measures that relate to the court's monitoring or evaluation goals. Identify the data elements for each performance measure and the possible sources for data.

	Performance Measures for Bickering County Court Data Elements	Potential Data Sources
✓	Disposition Time Date case filed Date case referred to mediation Date practitioner assigned Date ADR completed Date case disposed Method of case disposition Number of requests for continuances Number of continuances for mediation	MIS Court file Judge's case reporting form
✓	ADR Disposition Rates Cases referred to mediation Cases settled before mediation Cases settled during mediation Cases settled 30 days after mediation	MIS Mediation program records Mediator reporting form Judge's case reporting form
	Litigant Costs	
	Court Costs	
	Fairness	
✓	Participant Satisfaction Opinions of attorneys in mediation Opinions of litigants in mediation	Attorney and litigant surveys Attorney interviews
✓	ADR Provider Performance Opinions of attorneys in mediation Opinions of litigants in mediation Settlement ratings	Attorney and litigant surveys Mediation program records Mediator reporting form
Other measures not listed above		
✓	Judicial Workload Number of pre-judgment motions Number of pre-judgment hearings/conferences Number of requests for continuances Number of continuances for mediation	MIS Court file Judge's case reporting form Judges focus group
✓	Administrative Effectiveness Opinions of attorneys in mediation Opinions of litigants in mediation Opinions of judges referring to mediation Opinions of mediators	Attorney, litigant, and mediator surveys Judges focus group

Chapter V

Analyzing Data: What Does It All Mean?



In search of the answers

Ramrod sat playing with his Rubik's Cube. It helped calm his nerves while he contemplated the next issue facing the members of the planning group. Until they figured out how the data was going to be analyzed, they couldn't be sure that they were collecting all the information necessary to answer their key questions. What techniques would they use to find the answers to these questions? For example, once they had the data, how would they determine whether a specific type of case was more likely to settle in mediation, whether differing judicial procedures affected the number of times a case was rescheduled for mediation, and whether litigants felt the mediator was fair?

Before the planning group met again, Ramrod knew he had to do two things. First, he needed to review *Monitoring and Evaluating Court-Based Dispute Resolution Programs* to brush up on the terms and procedures the planning committee would be discussing. Second, he needed to call Professor Tutor and make sure he was going to be at the next meeting.



ANALYZING DATA

Analyzing data can be as simple as reporting the number of cases referred to ADR or as complex as determining cause and effect relationships. Complex data analysis is often not necessary for program monitoring, and courts can easily do this type of analysis on their own. For example, knowledge of the number of cases referred to ADR in a year and the number that actually participated in an ADR process can help a court determine how many ADR providers are likely to be needed the following year if the caseload remains about the same. The ratio of cases referred to ADR to cases actually participating in ADR may be significantly lower than program planners had anticipated. If so, the court may wish to survey the attorneys who participated in ADR and those that decided against it and then compare the two groups to determine if any patterns or variations between them explain the low ADR utilization rate.

Other more advanced evaluative methods may need to be conducted by an expert familiar with analytical equations and statistical software packages. The following

information is not intended to turn court personnel into professional evaluators. Rather, it is provided to give courts an understanding of the types of simple and complex data analysis that might be conducted.

Providing Descriptions

A descriptive analysis provides information about the composition of caseloads and types of litigants included in the study. For example, how many cases were referred to ADR; what types of cases were monitored; and who were the litigants—individuals, small businesses, corporations, or governmental entities? In addition, this type of analysis describes the results of the study in basic numbers and percentages. How many cases were settled through ADR? What was the average disposition time of cases referred to ADR? What proportions of attorneys and litigants indicated that they were satisfied with the ADR process? All monitoring systems should include ongoing assessment of this type of descriptive information in order to discern shifts in basic trends and to identify program needs.

Determining Relationships

Sometimes it is helpful to determine if specific factors are related to other factors. For example, does the type of case referred to ADR have a significant impact on case disposition rates? Or, does the subject matter expertise of the ADR provider have an impact on the level of satisfaction of attorneys participating in ADR? These types of correlations can provide courts with vital information about a wide range of issues, such as the most appropriate allocation of program resources and the most successful ADR providers for specific types of cases.

Making Comparisons

Comparisons can be between groups of cases or among cases in the same group. To determine whether ADR has advantages over the traditional litigation process, the court will need to compare a group of ADR cases to a group of non-ADR cases. To compare different types of cases referred to ADR, the court will need to establish subgroups of cases referred to ADR. These ideas are briefly discussed below. For further information on evaluation design, courts may wish to consult the literature on program evaluation to supplement the information presented here.

Comparisons Within Groups of Cases Referred to ADR

Data collected through most monitoring systems can be used to compare outcomes and characteristics within the group of cases referred to ADR. Such comparisons can be very helpful in evaluating how well ADR performs for particular cases or under different conditions. For example, the outcomes in cases may vary depending on the litigation stage at which the ADR process took place. Other factors that might affect how well ADR

achieved its purpose include the case type, the age of the case at referral, the number of parties involved, the amount of money at stake, and the area of law. Variation in the performance of individual ADR providers and their approach—a facilitative or evaluative approach in mediation or a legalist or interest-based approach in arbitration and case evaluation—also might influence outcomes and participant satisfaction. Courts can compare all of these factors within the group of ADR cases.

In many circumstances, the court may not need or have the resources to examine all of the cases in ADR. A sample of the cases may suffice to reveal trends or variations among cases, particularly if the ADR caseload is approximately 500 cases or more. Sampling may be necessary for more time-intensive activities, such as surveys of litigants, attorneys, and ADR providers.

If the court wishes to make comparisons within groups of cases, such as whether ADR produces higher disposition rates in cases with particular characteristics, each group must contain sufficient numbers of each targeted case type to ensure meaningful statistical analysis of the information. These smaller groups of cases are called subgroups. The greater the detail in the subgroups, the finer the examination of variations can be. For example, if the court wants to get a detailed picture of which types of cases fare better or worse in ADR, factors that might be considered include the case type, the amount claimed, the number of parties, the type of party, the age of case at referral, and the litigation stage at referral.

Comparisons Between Groups of ADR and Non-ADR Cases

Sampling a smaller group of cases or creating subgroups of cases also may be necessary or useful when comparing cases referred to ADR and cases not referred to ADR. There can be, and almost always is, variation within the two groups of cases, but each group (i.e., ADR and non-ADR) should have the same overall composition. The best way to ensure that the two groups of cases are sufficiently similar on both case characteristics and litigation conditions is to randomly assign similar cases to either ADR or to the traditional process. Case similarity for both groups should hinge on whether each case assigned to one of the groups is eligible for the ADR process and is filed within the same time period.

In many instances, for both practical and political reasons, a court will not be able to establish the contemporaneous groups of ADR and non-ADR cases through random assignment. For example, if a court wishes to begin monitoring or evaluating an existing ADR program, it probably would not make sense to interrupt the existing process to randomly refer cases to ADR. This would likely cause confusion for everyone and might dampen interest in ADR. However, it still may be possible to establish a comparison group of non-ADR cases. A non-ADR group could be composed of cases that are like the cases in the ADR program but were filed in a given period before the ADR program was instituted. Or, a non-ADR group could be composed of cases that are like the cases in the ADR program but are filed in another jurisdiction or in another similar court that does not offer

ADR services. A statewide ADR program might use this approach to assess ADR in another jurisdiction.



After we have the data, what do we do with it?

Professor Tutor helped the group to understand what types of data analysis could be conducted without the assistance of an expert evaluator. He did so by using Step Seven of the Monitoring and Evaluation Worksheet. Using the worksheet matrix, the group finalized the methods of data collection, the tasks that needed to be completed before data collection could begin, and the method of data analysis necessary to answer each question. (The matrix for one of the planning group's questions is presented on the sample worksheet.)

The group members decided that they would need to conduct a detailed descriptive analysis of the cases and participants involved in the study. Furthermore, they would analyze basic relationships between various factors, such as the impact of case type on settlement and the effect of the timing of the referral to ADR on case disposition time. Finally, they would compare specific subgroups of cases referred to ADR to discern any relevant trends.

Ramrod was getting more and more excited. The planning group was ready to embark on data collection and would be ready to analyze the data shortly thereafter. All the pieces of the puzzle were in place. The monitoring system would be operational soon, the court hadn't spent a lot of money, and most of the members of the planning group were still talking to him. As much as he hated to admit it, Mollify had something to do with that. But, he was even more excited that he had almost mastered the Rubik's Cube. He hadn't worked it out just yet, but like finding the answers to their key monitoring questions, it was only a matter of time.



Step Seven:

Complete the following matrix for each key question.

Key Question: What combination of case factors are more likely to result in settlement of a case in mediation?			
Data Elements	Data Sources	Methodology	Things To Do
1. Date of the original scheduling conference 2. Case type 3. Monetary demand 4. Complexity of case rated by the judge on a five-point scale 5. Date of mediation referral 6. The number of pretrial conferences held 7. The number of motions filed 8. Method of case disposition 9. Date of case disposition	For a six-month period, three judges who routinely refer cases to mediation will complete a case reporting form on every case referred to mediation.	Correlations of various case factors will be analyzed to determine if significant relationships exist between specific case factors or combination of case factors and settlement. Subgroups of cases referred to mediation will be compared to determine differences and trends.	Select the participating judges. Develop the case reporting form and complexity criteria. Provide procedural training for the participating judges and their clerks. Periodically monitor data collection. Enter data into the statistical software and analyze data.

A Consumer's Guide: How Do I Select an External Evaluator?



Where do we go from here?

Judge Resolute and the planning group were very pleased with the results of the monitoring project. Mollify was particularly relieved; the results of the study were generally positive, which meant she was no longer in fear of losing her job. A few key results of the data analysis showed that:

- The majority of litigants and attorneys involved with mediation felt that mediation was worthwhile. Litigants felt that the process did empower them to resolve their own disputes, and they indicated that they were more likely to attempt to resolve further disputes on their own rather than immediately consider filing a lawsuit.
- While most litigants and attorneys felt that their mediator was fair, they also expressed concerns that the mediator could have helped them to a greater degree in generating options, narrowing areas of disagreement, and ultimately moving them to closure.
- The judges' policy requiring judicial consent to reschedule the mediation had no impact on the number of requests to reschedule mediation or on the number of cases ultimately rescheduled for mediation. Attorneys did resent the additional burden of having to receive approval from the judge to reschedule a mediation and indicated they would therefore hesitate to engage willingly in mediation in the future.
- At least 55 percent of the cases referred to mediation were resolved between the time they were referred to mediation and 30 days following the mediation, regardless of case characteristics. The settlement rate was good, but considerably lower than the 65 percent standard for success established by the planning group.
- Simple to moderately complex contract cases with a demand of less than \$300,000 settled at a higher rate than all other cases referred to mediation. Automobile accident cases, regardless of complexity or demand, were the next most likely type of case to settle as a result of mediation.

Professor Tutor had helped the planning group understand that in order to determine whether the mediation program achieved two of its goals—reducing case disposition time and saving judicial resources—the court had to compare cases referred to mediation to cases not referred to mediation. The planning group was particularly interested in whether contract cases were disposed earlier if referred to mediation.

In addition, as a result of the findings, Judge Resolute considered reallocating the court's mediation resources. Should the court refer a variety of cases to mediation or target

the case types most likely to be disposed early through settlement? Or, since 30 percent of the court's caseload consisted of collection cases, should the court lift the restriction against referral of collection cases to mediation? Even though collection cases typically settled immediately before or just after a judicial pretrial conference, would judicial and court resources be saved if these cases were disposed earlier than they would otherwise? The answers to these questions could be found only by comparing mediated and non-mediated cases.

Judge Resolute surmised that collection cases probably would be disposed earlier through mediation, but how much earlier? Would the amount of time saved through early case disposition be sufficient to justify expending mediation resources for collection cases, thereby limiting the court's ability to increase the use of mediation for other types of cases? Again, more data was needed before an informed decision could be made about the most effective allocation of mediation resources.

Much to Ramrod's dismay, the planning group proposed and Judge Resolute agreed that they needed a professional evaluator to assist them with this type of evaluative data collection and analysis. Ramrod wanted to do whatever he could to limit the cost of using a professional evaluator. Unfortunately, Professor Tutor could not agree to spearhead the more in-depth evaluation. Now the planning group was faced with locating an affordable external evaluator who knew about mediation in a court context and who would "blend" well with people who had somewhat "unique" personalities. Ramrod also hoped the evaluator would know the statistical odds of resolving a Rubik's Cube – surely with all his effort he was getting close to beating the odds, whatever they were.



RECOMMENDATIONS FOR SELECTING AN EVALUATOR

Evaluation projects can be costly and time-consuming. Courts may lack the expertise or the time necessary to conduct an in-depth evaluation. Therefore, it may be necessary to contract with a professional evaluator to conduct more complex data analysis. Yet, the process of selecting the right evaluator can be an overwhelming process for individuals unfamiliar with the field of research and evaluation. The following recommendations may assist courts in making an informed decision when choosing a potential evaluator.

Be familiar with terminology

The court should review the definitions provided in this guide (see the resource section) to become familiar with terms that might be used by an evaluator. Being familiar with relevant terminology will help the court formulate appropriate questions during interviews with potential evaluators and better understand the validity of proposals they submit.

Clearly define the scope of the work

The court should provide potential evaluators with a detailed explanation of the ADR program, its goals, the purpose of the evaluation, and the expected work product. A planning group should determine whether a summative or formative evaluation is desired. A summative evaluation entails an assessment of the program's effectiveness after all the evaluation findings have been analyzed. In a formative evaluation, the evaluator offers suggestions for improving the effectiveness of the program as the evaluation proceeds.

It is helpful to give the potential evaluator a list of questions that the evaluation is intended to address and to provide him or her with information about the availability of existing data and sources, such as computerized records or case files. The scope of work also should indicate any necessary time and funding limitations, an outline of the tasks to be completed by the evaluator, and the categories of information to be included in the final report. The evaluator should be given preliminary information sufficient to allow him or her to develop an accurate proposal of the cost and methodology required to conduct the desired evaluation project.

Solicit the help of a local university

A local university may have the resources to conduct the evaluation or to supplement the data collection and analysis efforts of an independent evaluator to reduce costs and minimize time devoted to the project. Alternatively, a university-based evaluator may be able to help the court assess the qualifications of potential evaluators and to comment on the validity of their prior evaluation projects.

Request a tentative evaluation proposal

Potential evaluators should submit a tentative proposal outlining a suggested methodology, any available resources (such as students who might code and enter data), a possible time line and plan for completion of the study, and a projected budget. Any proposal most certainly will need to be revised as the chosen evaluator embarks on the research project. However, a tentative proposal will provide the court with valuable information about the evaluator's knowledge of fundamental research principles, ADR concepts, and court procedures.

Request a detailed resume

Potential evaluators should submit a detailed resume including information about relevant professional experience, education, and prior evaluation projects. The courts should assess the evaluator's knowledge of ADR and civil justice systems to discern how readily familiar the evaluator will be with the concepts, procedures, and subject matter of the evaluation. The court also should consider whether the evaluator has *experience* evaluating ADR and court-related projects to determine whether he or she has dealt with

the special considerations of conducting research in a court environment and maintaining the confidentiality of ADR processes.

Request a list of prior evaluation projects

Potential evaluators should provide a list of prior evaluation projects. Each project summary should describe the methodology, scope, and results of the project and should include any publications in which the evaluation results were published and a list of references.

Review recent written products by the evaluator

Potential evaluators should provide at least one or two published works, preferably work that has been reviewed by another professional evaluator. The product from a comparable evaluation project would be most beneficial. A court should critique the product for its clarity, tone, and organization and for its overall methodology and conclusions.

Contact institutions for which the evaluator has conducted similar research projects

References of potential evaluators should be contacted to ascertain the overall professional demeanor of the applicant, his or her ability to work with members of the organization, the timeliness with which the work was completed, and the organization's level of satisfaction with the evaluator's methodology and final product.

Engage in a contract

Courts should engage in a specific contract with the selected evaluator. The contract should include the tasks to be completed by the evaluator, the tasks to be completed by the court, the time frames for completion of the evaluation, compensation, and the expected work products (e.g., final report, data collection forms, interview protocols, raw data, and the computerized database).

The Bickering County Court Experience: What Did the Bickering County Court Learn?



Here we go again!

Professor Tutor agreed to participate in the selection of another professional evaluator, and so Ramrod, Tutor, and Mollify conducted a search. Using the consumer's guide to selecting an evaluator, they were able to quickly hire an evaluator to work with the planning group. They decided to conduct two limited evaluation projects.

1. Mediated Civil Cases vs. Non-mediated Civil Cases

Since the court had extensive data available about cases referred to mediation, the evaluator suggested creating a comparison group of non-mediated contract cases. On the dockets of judges who never referred cases to mediation, the MIS specialist was able to identify a group of cases that mirrored the group of mediation cases. The non-mediated cases were selected according to the case scheduling conference date, case type, and demand. Thereafter, the judges on the planning group reviewed these cases on a number of factors: case complexity based on the same rating scale used to rate the complexity of the mediated cases; the number of pretrial conferences held with the judge; the number of motions filed; and the type of case disposition. The evaluator then compared the group of mediated cases with the group of non-mediated cases.

2. Collection Cases

The Bickering County Court had no experience mediating collection cases, but the Quibble County Court, serving a neighboring jurisdiction, had been referring collection cases to mediation for over a year. Mediated collection cases from the Quibble County Court could be compared to non-mediated collection cases from the Bickering County Court. This approach seemed to be the most expedient method of obtaining a comparison group, but the court had concerns about the validity of the comparison. Quibble County Court required much less stringent mediator selection and training requirements than did Bickering County Court. Ultimately, the court determined the potential difference in mediators' skills might skew the study's results.

Bickering County Court also considered whether every other collection case filed should be randomly assigned to mediation. This evaluation methodology not only would require the greatest period of time to complete the study, but also met with great resistance from judges. Judges who advocated the use of mediation wanted all of their cases to be mediated. Judges who were not yet convinced of the effectiveness of mediation wanted to remain in control of which cases were and were not referred to mediation. Judge Resolute decided that mandating the judges' participation in a random referral experiment would negate some of the goodwill recently generated toward mediation.

The planning group and the evaluator decided to use a pre-post evaluation methodology. For three months, selected judges would refer to mediation all collection cases with scheduling conferences between January 1 and March 31. Subsequent case disposition results would be monitored for three months after the final mediation session. The MIS specialist identified collection cases similar to those referred to mediation that had scheduling conferences during that same time period the previous year. The case disposition results of these cases were compared with the case disposition results of the collection cases mediated during the experimental period.

What happened then?

The analysis of mediated and non-mediated civil cases showed that moderately complex contract, personal injury, and automobile accident cases referred to mediation were disposed 30 to 60 days earlier than similar cases not referred to mediation. Yet, insignificantly fewer motions were filed and pretrial conferences held in the mediation cases. Since these cases represented a substantial portion of the court's caseload, even without a discernible impact on motions filed and pretrial conferences held, Judge Resolute was convinced that the use of mediation should be increased. She had to take considerable ribbing from a number of judges who couldn't resist saying, "I told you so."

The study also confirmed predictions that mediation of collection cases would reduce the amount of time these cases were pending on court dockets as well as the amount of time judges devoted to collection cases. Approximately 40 percent of the collection cases mediated were disposed 60 days earlier than collection cases studied from the previous year. In addition, the findings showed that the percentage of case dispositions increased significantly if cases were referred to mediation within 30 days of the scheduling conference. The number of motions filed increased significantly if the referral was made more than 60 days after the scheduling conference.

Based on this data, together with the percentage breakdown of the court's total caseload by case type, Judge Resolute instituted a system for judges to prioritize referrals to mediation in the following order:

1. Collection cases, regardless of the case complexity or demand (referral to mediation within 30 days of the scheduling conference)
2. Contract cases, regardless of case complexity or demand
3. Less complex automobile cases with a demand of no more than \$100,000
4. Moderately complex personal injury cases, regardless of the monetary demand
5. Cases of all other types, regardless of complexity or demand

After this experience, Judge Resolute became a believer in the importance of having a monitoring system in place before a program became operational and in the benefit of occasional evaluation projects. The results of the civil mediation study boosted her confidence that mediation might be appropriate for domestic relations cases as well. She agreed to a one-year pilot project, and she directed the planning group to:

- Periodically assess and revise the monitoring system for the civil mediation program;
- Develop a monitoring system that would be implemented simultaneously with the first referral of a domestic case to mediation; and
- Plan for an evaluation of the pilot domestic mediation program at the end of one year.



Chapter VIII

Reporting: Who Should Know What?



Hear Yea, Hear Yea: It's good news!

Judge Resolute was beside herself with the good news. She planned to lobby the legislature for funds to increase the mediation program services, and she was going to use the findings to generate increased support for mediation within her own court and throughout the state. But she was hesitant to distribute the full report to diverse audiences. Specific audiences would be interested only in select aspects of the report, which might be difficult to glean from the lengthy document. Even as interested as she was, it had been difficult for her to find the time to read the report in its entirety.

She walked into Ramrod's office and interrupted him deep in thought. He was still working on that Rubik's Cube. She knew she was going to have to do something about this newfound obsession of his. They began to discuss the best ways to go about getting the results of the ADR studies known throughout Bickering County and the state. As they talked, Ramrod continued to play with the Rubik's Cube.



REPORT FORMAT AND CONTENTS

Initially, one comprehensive report should be written that includes a full description of the ADR program, its goals, the reasons for undertaking the monitoring or evaluation initiative, the purposes of the study, the methodology of the study, and the findings, conclusions, and recommendations. The comprehensive report can then serve as the basis for tailoring other reports for distribution to select audiences, such as the legislature, the bar, community organizations, the business community, and national organizations with interests in judicial administration and dispute resolution.

The monitoring or evaluation report should be visually appealing, with wide margins and section and subsection headings for quick reference. The report should contain separate sections to:

Acknowledge those who assisted the monitoring or evaluation effort

Monitoring and evaluation projects can be labor-intensive and recognizing all individuals who contributed to the effort is a good way to ensure their support in the

future. Acknowledgments should include planning groups, court personnel, and others who provided their assistance; groups of individuals who cannot be recognized personally, such as attorneys, litigants, and ADR practitioners; and organizations such as funding agencies, universities, and other entities that provided technical assistance.

Describe the court and the ADR program's developmental history, administrative procedures, and goals

The program profile developed at the beginning of the monitoring or evaluation project helps the reader analyze the findings in relation to the structure of the ADR program. In addition, this program profile is beneficial to other jurisdictions interested in replicating successful programs.

Describe the methodology

The report should include an explanation of the resources available to conduct monitoring or evaluation, the rationale for crucial decisions about the methodology, any significant problems encountered during the study, and the steps taken to address these problems.

Present the findings

The use of technical terms should be kept to a minimum, and any terms used should be defined in the text or in a glossary. Readers unfamiliar with monitoring or evaluation methodology, ADR terminology, or the specialized nuances of the court should be able to understand easily the relevance of the data. Whenever possible, tables, graphs, and charts should accompany narrative explanations in order to make the report reader-friendly.

Offer conclusions derived from an analysis of the findings

Often, varying and sometimes conflicting conclusions can be drawn by different individuals. It is wise to avoid criticism of the study by those with differing views by discussing dissenting opinions, the rationale for them, and the reasons why the court relied on particular conclusions to justify its recommendations.

Indicate recommendations for program improvement

Based on the analysis of data and the subsequent conclusions reached, the report should outline any recommendations for changes in the administration of the ADR program or the court's case management system. Any other action deemed necessary, such as training for judges, practitioners, or attorneys, or intensified public awareness initiatives, also should be noted.

Attach relevant documents

The report should include sample data collection forms, interview protocols, surveys, program descriptions, and a glossary of terms.

DISTRIBUTION OF THE REPORT

The court should devise a plan for disseminating the monitoring or evaluation report. The amount of information provided, the format of the report—a full narrative, summary explanation, or outline of key findings—and the most appropriate method of transmitting the results will vary based on the target audiences. For example, it may be appropriate to submit the comprehensive report to a funding agency or to the legislature. However, having a chief judge give a presentation at a statewide judicial conference may be more effective in informing the state's judiciary about the evaluation than sending a written report to each judge. An article in a local or state bar association magazine may serve as an appropriate vehicle to educate attorneys in the jurisdiction about the status of ADR.

Furthermore, it is important to inform individuals outside of the court's jurisdiction about court-based ADR monitoring and evaluation projects. The court should consider submitting articles to national judicial administration or ADR-related journals and making its report available through national organizations that sponsor clearinghouses of information.



Who should know what?

Using Step Eight of the Monitoring and Evaluation Worksheet, Judge Resolute and Ramrod worked out appropriate methods for distributing the monitoring and evaluation findings to various target audiences. As Mollify walked past Ramrod's office, she actually saw Ramrod dancing a little jig. She couldn't resist knocking on his door so he would be sure to know she saw him acting so silly. She was disappointed to find that he wasn't embarrassed at all. He was just so ecstatic over having completed the final step of the worksheet that all he could do was smile. Mollify and Ramrod had grown to be good friends during the development of the monitoring system and the subsequent evaluation effort. Judge Resolute patiently looked on while they gave each other congratulatory pats on the back for a job well done. When Judge Resolute could contain herself no longer, she turned to Ramrod and said, "Now that you've got that little job behind you, I'd like to talk to you about a really big project you're going to head up as of tomorrow." As Mollify left and closed the door behind her, she could hear the clicking of a Rubik's Cube.



Step Eight:**Identify target audiences and methods for distributing the monitoring or evaluation results.**

Audiences	Interest in Project	Best Method for Distributing Information
Bickering County Court Judges	A summary of the results of both evaluation projects	<ul style="list-style-type: none">• A brief outline of the results presented by the chief judge during the monthly meeting of all judges• One-on-one meetings between the chief judge and selected judges who currently do not refer cases to mediation
Other Courts	The impact of mediation on judicial workload and case disposition time	<ul style="list-style-type: none">• A brief outline of the results sent by the chief judge to other chief judges in the state• Submission of the full report to the National Center for State Courts, the State Justice Institute, national ADR organizations, and the National Conference of Chief Justices and the Conference of State Court Administrators• Submission of an article to court-related publications• A presentation by the chief judge at the state judicial conference
Court Personnel	The impact of mediation on judicial workload and case disposition time	<ul style="list-style-type: none">• A brief outline of the results presented by the court administrator to the court management team• An article in the court employee newsletter
Court Mediators	A summary of the results highlighting litigant/attorney satisfaction.	<ul style="list-style-type: none">• A brief outline of the results sent by the mediation program coordinator
State and Local Bar Associations	A summary of the results highlighting litigant/attorney satisfaction	<ul style="list-style-type: none">• Presentations during bar gatherings• Press release issued to state and local bar association publications• A brief outline of the results sent by the chief judge to bar leaders
General Public	A summary of the results highlighting the impact of mediation on case disposition time and on litigant/attorney satisfaction	<ul style="list-style-type: none">• Inclusion of selected statistical information in the public information pamphlet distributed by the court• Press release issued to the media• Submission of articles to ADR publications• Presentations to ADR groups at local and national conferences



Epilogue

A year after the results of the monitoring and evaluation projects were disseminated, Judge Helen Resolute was appointed to the state supreme court. During her swearing-in ceremony, the supreme court's chief justice praised Judge Resolute for her contributions to the judicial system, particularly in the area of alternative dispute resolution.

Sally Mollify was promoted from civil mediation program coordinator to director of the court's newly created ADR division that provides mediation and arbitration services for civil, small claims, collection, and family cases. She continues to nurture the monitoring system and coordinates periodic evaluations of the Bickering County Court's ADR services, believing that monitoring and evaluation are the only ways to ensure quality.

Harry Tutor left academia to become the court administrator of the Bickering County Court. He filled the position upon the early retirement of Jerry Ramrod, who can be found most any time of the day and night still trying to figure out the Rubik's Cube.



RESOURCES

WHERE DO I GO FROM HERE?

RESOURCE ORGANIZATIONS

Academy of Family Mediators

4 Militia Drive
Lexington, MA 02173-4705
(617) 674-2663 (617) 674-2690 (fax)
E-mail: afmoffice@igc.apc.org

American Arbitration Association

140 W 51st Street
New York, NY 10020-1203
(212) 484-4000 (212) 765-4440 (fax)
E-mail: usadrsrvcs@arb.com

American Bar Association

Section of Dispute Resolution
740 15th Street, NW
Washington, DC 20005-1009
(202) 662-1680 (202) 662-1683 (fax)
E-mail: dispute@attmail.com

Association of Family

and Conciliation Courts
329 West Wilson Street
Madison, WI 53703-3612
(608) 251-4001 (608) 251-2231 (fax)
Internet: www.igc.apc.org/afcc

Center for Public Resources

366 Madison Avenue, 14th Floor
New York, NY 10017-3122
(212) 949-6490 (212) 949-8859 (fax)
E-mail: info@cpradr.org

Institute for Civil Justice

RAND
1700 Main Street
P.O. Box 2138
Santa Monica, CA 90407-2138
(310) 393-ext 7628 (310) 451-6979 (fax)
E-mail: mary_vaiana@rand.org

International Center for Dispute Resolution

333 Holcomb Avenue, Suite 150
Reno, NV 89502-1648
(702) 333-7366 (702) 333-7360 (fax)

National Association for Community Mediation

1726 M Street, NW, #500
Washington, DC 20036
(202) 467-6226 (202) 466-4769 (fax)
E-mail: nafcm@igc.apc.org

National Center for State Courts

300 Newport Avenue (23185)
P.O. Box 8978
Williamsburg, VA 23187-8798
(757) 253-2000 (757) 220-0449 (fax)
Internet: www.ncsc.dni.us

National Institute for Dispute Resolution

University of Nevada
Reno, NV 89557
(202) 466-4764 (202) 466-4769 (fax)
E-mail: nidr@igc.apc.org

Society for Professionals In Dispute Resolution

815 15th Street, NW, Suite 530
Washington, DC 20005
(202) 783-7277 (202) 783-7281 (fax)
E-mail: spidr@spidr.org

State Justice Institute

1650 King Street, Suite 600
Alexandria, VA 22314
(703) 684-6100 (703) 684-7618 (fax)
E-mail: sji@clark.net

Urban Institute

2100 M Street, NW
Washington, DC 20037
(202) 833-7200 (202) 429-0687 (fax)
E-mail: paffairs@ui.urban.org

William and Flora Hewlett Foundation

525 Middlefield Road, Suite 200
Menlo Park, CA 94020
(415) 329-1070 (415) 329-1070 (fax)
Internet: www.hewlett.org

Glossary

ADR Disposition Rate — The percentage of cases resolved through an ADR process. The period of time during which cases are considered to be resolved as a result of ADR may be differentiated. For example, pre-ADR dispositions may occur between the time of referral up to the first ADR meeting. The number of cases disposed in ADR may include cases disposed during the first ADR meeting up to, and including, immediately after the final ADR meeting. Post-ADR dispositions may occur immediately following the final ADR meeting up to a specified number of days thereafter.

ADR Practitioner — A third party who facilitates an ADR process (i.e., a mediator, arbitrator, or case evaluator).

Alternative Dispute Resolution (ADR) — Various confidential processes facilitated by a neutral third party for the purpose of helping parties consider ways to resolve their dispute.

Arbitration (court-ordered) — An ADR process that involves an impartial third party (or a panel) who meets with the parties, listens to presentations of fact and law, and renders a non-binding award; any party may appeal the award and request a trial if he or she is dissatisfied with the outcome.

Case Disposition Time — The duration between the date a complaint was filed in court and the date a case was settled or a verdict was rendered.

Case Evaluation — An ADR process that provides the parties with a confidential, non-binding assessment of their case by an impartial, experienced expert, usually an attorney. Counsel present the case to the evaluator in the presence of the parties; thereafter, the evaluator discusses the strengths and weaknesses of the case and its likely outcome at trial.

Case Management System — A set of organized and coordinated procedures that dictate how a case will be processed from the point of initiation (i.e., the date a complaint is filed or the date of referral to ADR) until the case is concluded (i.e., the date a court disposes of a case or the date a case has completed an ADR process).

Case Processing Time — The duration between entering and completing a process (i.e., the duration between referral of a case to ADR and disposition or the subsequent reinitiation of court proceedings).

Case Tracking — The monitoring of the progress of a case through traditional court and/or ADR case processing.

Comparison Design – A study that evaluates the differences and similarities of two or more groups of cases. Conclusions may be drawn by studying variations *among two* groups or within one group of cases. For example, case disposition time may be assessed for cases referred to ADR and similar cases not referred to ADR. Or, the number of ADR dispositions resulting from ADR may be assessed for different types of cases.

Control Group – A cluster of cases processed in the traditional manner. This cluster is compared with a similar cluster of cases referred to ADR.

Evaluation – A study that compares a group of cases referred to ADR (experimental group) with similar cases processed in the traditional manner (control group).

Experimental Design – A methodology that compares experimental (ADR) and control (non-ADR) groups; the groups are formed through the *random assignment* of cases into each group.

Experimental Group – A cluster of cases that are referred to ADR. This cluster is compared with a similar cluster of cases processed in the traditional manner.

Goal – The purposes toward which the ADR effort is directed (i.e., a specific number of cases settled as a result of ADR or a reduction in the number of court appearances scheduled for cases referred to ADR).

Management Information System (MIS) – A court's computerized method of maintaining case information.

Measures – Indicators of performance that can be used to make comparisons.

Mediation – An ADR process in which a neutral third party helps parties discuss their dispute and explore possible solutions or settlements that meet their interests.

Methodology – A technique or procedure for collecting, analyzing, and interpreting data.

Monitoring – The collection and analysis of data for the purpose of assessing ongoing operations.

Multivariate Analyses – An examination of various factors to determine their relative influence on a process or outcome.

Performance Monitoring Techniques – The methods used to assess the behavior of an ADR practitioner during the execution of his or her ADR duties.

Pre-post Design — A study that compares an experimental group with a control group. The control group comprises cases similar to cases in the experimental group, but cases in the control group were filed prior to the initiation of the study.

Qualitative Data — Information that cannot be quantified and typically is gathered through interviews, observations, and open-ended survey questions.

Quantitative Data — Information that is counted and to which a numerical value can be applied.

Quasi-experimental Design — A study that compares experimental and control groups; the groups are formed without the random assignment of cases into each group.

Referral — The process of recommending or directing parties to an ADR program or process.

Sampling — An examination of only a portion of a larger group of cases; for example, studying every third case referred to an ADR process.

Screening — A process of case analysis that identifies the most appropriate ADR method through which a case might be resolved. The term is also used when referring to a process of selecting eligible cases for evaluation purposes.

Stratification — The creation of smaller groups of cases for the purpose of comparing the subgroups. Each subgroup consists of cases with similar characteristics. For example, comparing subgroups of ADR cases in which the parties are represented and cases in which the parties are pro se to determine if one subgroup is more likely to settle than the other.

Surrogate Measures — Indicators that are analyzed for the purpose of drawing conclusions about related factors. For example, reduced costs to a court can be surmised if it is shown that a reduced number of court hearings (workload indicators) are required in cases referred to ADR.

Systematic Information — Data gathered through techniques or procedures that are standardized, routine, and consistent.

COMMON MONITORING AND EVALUATION PROBLEMS

- The ADR caseload is not as anticipated, which extends the period of time necessary to secure sufficient data for valid results.
- Key planning and implementation participants lose enthusiasm for the monitoring or evaluation project.
- Key personnel change jobs or no longer work for the court or the ADR program.
- Limited personnel delay distribution of forms, collection of data, data entry, or analysis.
- Financial resources are limited or are not available to hire an external evaluator to assist with more in-depth data collection and analysis.
- Data collection forms, court records, or ADR records are incomplete or inaccurate.
- Too few data collection forms are returned for meaningful analysis.
- Data crucial to analysis is not collected or unavailable.
- Questions arise in analysis because problems with statistical software, the MIS, or ADR database occur.
- Political considerations or other court priorities delay or terminate execution of the monitoring or evaluation project.

SAMPLE MEDIATION USER QUESTIONNAIRE

(to be completed by parties/litigants)

Please fill out this form immediately after the mediation session and drop it in the "survey form" box.

Name of Mediator(s) _____

Case Name _____

Date of Mediation _____ I am the: ☐ plaintiff ☐ defendant

Did you reach an agreement today? ☐ yes ☐ no

Do you think you will reach an agreement later as a result of mediation? ☐ yes ☐ no

Please circle the number which best reflects how you feel about each of the following statements:

	1-strongly disagree	2-disagree	3-not sure	4-agree	5-strongly agree
1. I would recommend mediation to others.	1	2	3	4	5
2. The mediator explained the mediation process clearly so that I knew what to expect during the mediation session.	1	2	3	4	5
3. The mediator did not allow me or my attorney to fully explain the case	1	2	3	4	5
4. The mediator asked appropriate questions to better understand the case.	1	2	3	4	5
5. The mediator helped me/my attorney consider different ways to settle the dispute.	1	2	3	4	5
6. The mediator treated all parties equally.	1	2	3	4	5
7. The mediator gave me his/her opinion about whether or not I should settle my case.	1	2	3	4	5
8. Overall, I was satisfied with the way the mediator handled the session.	1	2	3	4	5

Please provide any other comments about the mediator or the mediation process on the back of this form.
Thank you.

Note: This form reflects a facilitative role for the mediator. Courts that prefer an evaluative role for the mediator should change the questions accordingly.

SAMPLE MEDIATION USER QUESTIONNAIRE

(to be completed by attorneys)

1. Did you represent the plaintiff or the defendant in this case?

_____ Plaintiff _____ Defendant

2. The mediator for this case was selected by:

_____ Parties/attorneys _____ Court/judge

	1-strongly disagree	2-disagree	3-not sure	4-agree	5-strongly agree
3. Do you think the mediator in this case:					
a. gave you a full opportunity to convey your client's interests?	1	2	3	4	5
b. was impartial?	1	2	3	4	5
c. understood the issues in the case?	1	2	3	4	5
d. was knowledgeable about the law relative to the case? the case.	1	2	3	4	5
4. Do you think mediation in this case saved money?	1	2	3	4	5
5. Do you think mediation in this case saved time?	1	2	3	4	5
6. Would you consider mediation for other matters?	1	2	3	4	5

7. What impact did mediation have on this case?

_____ Settled the case	_____ Clarified positions
_____ Settled some of the issues	_____ Moved the case significantly toward settlement
_____ Other: _____	

8. At what stage in the case did the mediation session take place? Please check all that apply.

_____ Before any discovery	_____ After depositions
_____ After interrogatories and document production	_____ After first trial date scheduled
_____ Before depositions	

9. Do you think this case was referred to mediation:

_____ Too early?

_____ At about the right time?

_____ Too late?

10. What suggestions do you have to improve the mediation program?

11. Please provide any other comments you think would be helpful in evaluating the effectiveness and quality of mediation.

SAMPLE MEDIATOR QUESTIONNAIRE

Case docket number:	_____
Name of mediator:	_____

Outcome/nature of agreement:	_____
MEDIATION HELD/FULL AGREEMENT ON ALL ISSUES = 1	
MEDIATION HELD/SOME ISSUES PENDING = 2	
MEDIATION HELD/NO AGREEMENT = 3	
NO MEDIATION HELD/PARTIES SETTLED CASE BEFORE MEDIATION SESSION = 4	
NO MEDIATION HELD/A PARTY FAILED TO ATTEND = 5	
NO MEDIATION HELD/A PARTY FAILED TO PARTICIPATE = 6	

Source of referral:	_____
BENCH REFERRAL = 1	
MOTION/REQUEST OF PLAINTIFF = 2	
MOTION/REQUEST OF DEFENDANT = 3	
CONSENT BY BOTH PARTIES = 4	

Manner of selection:	_____
ASSIGNED BY COURT = 1	
SELECTED BY PARTIES = 2	

Date case assigned to mediator:	_____
Date of initial mediation session:	_____
Date of final mediation session:	_____

Number of mediation sessions:	_____
Number of hours preparation time:	_____
Number of hours in sessions:	_____
Number of hours paid by parties:	_____

Did the attorneys submit proper case summaries?	_____
YES = 1	
NO = 2	

Did the attorneys submit case summaries on time? _____

YES = 1

NO = 2

Were the attorneys prepared for the mediation sessions? _____

WELL PREPARED = 1

ACCEPTABLY PREPARED = 2

NOT PREPARED = 3

Were the parties prepared for the mediation sessions? _____

WELL PREPARED = 1

ACCEPTABLY PREPARED = 2

NOT PREPARED = 3

At what stage in the case did the mediation session take place? _____

(Note all that are applicable)

BEFORE ANY DISCOVERY = 1

AFTER INTERROGATORIES AND DOCUMENT PRODUCTION = 2

BEFORE DEPOSITIONS = 3

AFTER DEPOSITIONS = 4

AFTER EXPERTS' REPORTS SERVED = 5

AFTER FIRST TRIAL DATE SCHEDULED = 6

Was the timing of referral to mediation appropriate? _____

TOO EARLY = 1

APPROPRIATE TIME = 2

TOO LATE = 3

If the case did not settle in mediation, what were the reasons? _____

(Note all that are applicable)

THE PROPER PARTIES WITH AUTHORITY TO SETTLE WERE NOT PRESENT = 1

ONE OR BOTH PARTIES DID NOT MEDIATE IN GOOD FAITH = 2

ISSUES WERE TOO COMPLEX = 3

ISSUES WERE TOO NUMEROUS = 4

ONE OR BOTH PARTIES TOO ENTRENCHED IN THEIR POSITIONS = 5

MONITORING AND EVALUATION WORKSHEET:
FOR PLANNING AND EXECUTING A MONITORING AND EVALUATION PROJECT

Step One:

Identify the key individuals who should be involved in the planning and execution of the monitoring or evaluation project and the purpose of their involvement.

Planning Group Participants	Purpose of Involvement

Step Two:

Check the goals that have been established for the ADR program and identify the standards for success for each goal.

✓	Court's Goals for ADR	Standards for Success
	To find the best forum for case disposition	
	To reduce backlog of older cases	
	To reduce case disposition time	
	To save judicial resources (i.e., time spent on motions, hearings, trial, etc.)	
	To achieve high litigant satisfaction	
	To achieve high attorney satisfaction	
	To achieve high judicial satisfaction	
	To streamline litigation	
	To reduce litigants' costs	
	To increase "pre-event" dispositions (i.e., pre-ADR, pre-judicial conference, pre-discovery)	
	To expedite categories of cases	
	To maximize efficiency of the ADR program	
	To involve the bar and public in the administration of justice	
	To empower citizens to resolve their own disputes	
	To involve the bar and public in the administration of justice	
Other goals not listed above		

Step Three:

Check the objectives that have been established for the monitoring or evaluation project and indicate how each objective will be achieved.

✓	Monitoring or Evaluation Objectives	How will each objective be achieved?
	To assess goal fulfillment	
	To monitor practitioner performance	
	To isolate the impact of specific procedures/policies (i.e., case assignment methods, sanctions for non-appearance, etc.)	
	To determine cost reduction or avoidance figures and/or resource allocation needs	
	To secure input from key participants	
	To fulfill funding or legislative mandates	
	To compare different administrative procedures	
Other goals not listed above		

Step Four:

Develop an implementation plan for executing the monitoring or evaluation project.

Tasks	Time Line
Identify key planning participants	
Identify ADR program goals and monitoring or evaluation objectives	
Identify broad performance measures and potential data sources	
Develop research questions (link to goals)	
Select data elements relating to research questions	
Identify data sources for each data element	
Develop data collection methodology and implementation plan	
Test methodology and revise as needed	
Implement data collection plan	
Interpret data	
Tailor dissemination of findings to specific audiences	
Implement recommendations	
Revise monitoring and evaluation strategy	

Step Five:

List the primary questions to be addressed as a result of the monitoring or evaluation project.

Key Questions
1.
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.
15.

Step Six:

Check the performance measures that relate to the court's monitoring or evaluation goals. Identify the data elements for each performance measure and the possible sources for data.

✓	Performance Measures Data Elements	Potential Data Sources
	Disposition Time	
	ADR Disposition Rates	
	Litigant Costs	
	Court Costs	
	Judicial Workload	
	Fairness	
	Participant Satisfaction	
	Practitioner Performance	
Other measures not listed above		

Step Seven:

Complete the following matrix for each key question.

Key Question:			
Data Elements	Data Sources	Methodology	Things To Do

Step Eight:

Identify target audiences and methods for distributing the monitoring or evaluation results.

Audiences	Interest in Project	Best Method for Distributing Information
Judges		
Other Courts		
Court Personnel		
Practitioners		
State and Local Bar Associations		
General Public		
Others		

RECOMMENDATIONS FROM "QUALIFYING DISPUTE RESOLUTION PRACTITIONERS: GUIDELINES FOR COURT-CONNECTED PROGRAMS"

1. The courts' responsibilities for ensuring competency and quality in dispute resolution

Recommendation 1.1: Courts are responsible for assuring the quality of the dispute resolution process when they make referrals to a process, practitioner, or provider; provide specific information on a practitioner or provider, or maintain a list of practitioners or providers.

Recommendation 1.2: The scope of the court's responsibility for ensuring the competence of practitioners increases as the extent to which parties may choose a practitioner decreases.

Recommendation 1.3: Courts should ensure wide access to services, encourage the availability of an array of services to meet the differing needs of various types of parties, and promote innovation and experimentation in the types of services available.

Recommendation 1.4: Courts should establish a dispute resolution referral system if they refer parties to dispute resolution services.

Recommendation 1.5: Courts should use procedures for making referrals that: (1) create equal opportunity for qualified practitioners to be eligible to receive court referrals, (2) rotate referrals among qualified practitioners, (3) require competitive bidding for exclusive arrangements between courts and particular providers, and (4) refer parties to particular practitioners only in exceptional circumstances in which the special needs of the parties warrant such a referral. When the court makes a referral to a specific provider not selected by the parties, the referral should be accompanied by a written statement explaining the exceptional circumstances that warrant such action. The parties should have the opportunity to override a court referral to a specified practitioner by selecting their own practitioner within a specified period of time.

2. The courts' responsibilities for establishing and maintaining competency standards

Recommendation 2.1: Courts should (1) adopt or create standards for ensuring the competency of practitioners and providers and (2) implement a plan for maintaining these standards.

Recommendation 2.2: Courts should ensure that qualification requirements do not systematically exclude dispute resolution practitioners from any racial, ethnic, or cultural groups.

Recommendation 2.3: Courts should ensure that practitioners of particular dispute resolution processes have mastery of the specific set of skills and knowledge needed to conduct that process.

Recommendation 2.4: Courts should not rely solely on academic degrees or professional licenses in a specific discipline to determine the competency of practitioners.

Recommendation 2.5: Courts should not rely solely on performance on written tests to determine the competency of practitioners.

Recommendation 2.6: Courts should determine whether specific substantive knowledge should be required of the practitioner in certain types of disputes.

Recommendation 2.7: The minimum criteria courts should require for a practitioner to be included on a roster that the court maintains, uses, or approves are: (1) a demonstration that the practitioner has attained the court adopted competency standards and (2) the practitioner's consent to participate in the process the court adopts to monitor the quality of the programs.

Recommendation 2.8: Courts should periodically re-evaluate the competency of dispute resolution practitioners.

Recommendation 2.9: Courts should not use settlement rates as the sole factor to determine whether dispute resolution practitioners are retained.

Recommendation 2.10: Courts should ensure that practitioners participate in continuing education to maintain currency in their field of practice.

3. The courts' responsibilities for establishing and maintaining training standards

Recommendation 3.1: Courts should specify the content of the training curriculum, the methods of training used, and qualifications of trainers.

Recommendation 3.2: Courts should establish and adopt criteria for court approval of dispute resolution training programs and a process for demonstrating compliance with those criteria.

Recommendation 3.3: Courts should require "satisfactory completion" of the requisite hours of training in the dispute resolution process. Training providers should assess participant performance.

Recommendation 3.4: Courts should encourage practitioners to participate in an experiential learning setting, such as an internship, apprenticeship, or mentorship. Experimental learning should be required for mediators.

Recommendation 3.5: Courts should not accept prior professional experience as a substitute for training in dispute resolution.

Recommendation 3.6: Courts should not accept prior training in a dispute resolution process as adequate to meet the court's training requirement unless the court determines that the prior training is substantially equivalent to that which is required by the court for the same process.

Recommendation 3.7: Courts should ensure that a practitioner approved for a dispute resolution process in another jurisdiction is eligible for reciprocal approval only if the qualification standards in the other jurisdiction are substantially equivalent to those applicable in the jurisdiction to which the practitioner has applied.

4. The courts' responsibilities for assuring program quality

Recommendation 4.1: Court-connected programs should clearly identify the person or entity responsible for the oversight and evaluation of court-connected dispute resolution programs and practitioners.

Recommendation 4.2: Courts should periodically review the operation of court-connected dispute resolution services and make adjustments in their policies and procedures to ensure that established goals are being met.

Recommendation 4.3: Courts should require that practitioners or programs conduct periodic surveys of participants in the dispute resolution processes. The consumer survey results should be analyzed and shared among the court, practitioners, and programs.

Recommendation 4.4: Courts should require practitioners to adhere to an ethics code and to be subject to a grievance process.

Recommendation 4.5: Courts should consider the potential civil liability of practitioners and providers in the design of dispute resolution programs. The issue of civil liability may be addressed through ethical standards, specialized training, malpractice insurance and development of qualified immunity for neutrals in court-connected programs.

OUTLINE OF THE NATIONAL STANDARDS FOR COURT-CONNECTED MEDIATION PROGRAMS

Access to mediation

- Mediation should be available as other court services
- Program operations should reflect diversity
- Early and frequent public information should be distributed about mediation

Courts' responsibility when referring cases to mediation

- Monitor and evaluate the quality of internal and external mediator services
- Provide information to mediators about cases and policies
- Monitor the status of cases while in mediation
- Disseminate policies on confidentiality to mediators and litigants
- Restrict communication between mediators and courts
- Collect aggregate information on cases and program operations
- Designate personnel for supervision, monitoring, and program administration
- Ensure the availability of complaint mechanisms about mediators

Selection and timing of case referrals

- Develop selection criteria and conduct individual case assessments
- Make mediation available throughout the litigation process
- Refer cases early in the litigation process
- Set and monitor deadlines for completion of mediation

Compulsory participation is appropriate only when:

- Quality programs are assessable and evaluated
- Party participation is permitted
- Lawyer participation is permitted
- Procedures are clear and procedural information is widely disseminated

Qualifications and selection of mediators

- Use skill-based selection criteria
- Require experiential training and processes to monitor ongoing performance
- Establish procedures for removal of mediators
- Maximize party choice when assigning mediators to specific cases

Funding and compensation of mediators

- Mediation should be available regardless of the ability of litigants to pay
- When parties are required to participate, the costs of mediation should be publicly funded
- When public funds compensate private mediators, fee schedules should be set by the court

Liability

- Protections against liability suits should not be designed for mediators
- Indemnity or insurance should be provided to mediators

Mediated agreements

- Mediated agreements should be as enforceable as non-mediated agreements

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RECOMMENDED READINGS

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