

Appendix F — Tool Kit for Improving the Quality of Mediation in Your Geographic or Practice Area

Introduction

Background: This tool kit is based on the work of the American Bar Association Section of Dispute Resolution Task Force on Improving the Quality of Mediation. The Task Force developed the recommendations below and the documents attached over the course of more than 30 facilitated group discussions with mediation users and mediators. The Task Force conducted these discussions in nine cities in the US and Canada. A summary of comments shared during focus group discussions are available in appendix D.

Purpose: The purpose of this tool kit is to allow local and state mediation organizations and bar association to conduct their own local discussions, tailoring the discussion protocols and survey questionnaires attached to their local needs. This tool kit is not a guide to doing social science research in the academic sense. The recommendations below are merely guidelines and suggestions from the Task Force's experience conducting discussions on expectations, issues, concerns, and observations regarding local mediation practices. The Task Force encourages local and state groups to modify the process to suit their own local needs. If groups wish to conduct more rigorous social science research on mediation, we recommend that you partner with experts in your state's institutions of higher education.

Components: Section II lays out the steps for convening a discussion on mediation quality. Section III discusses how to convene an organizing committee and then how to identify and invite representative stakeholders to attend the discussions. Section IV covers how to use the information gathered during the discussions. Section V lists a number of documents that will assist organizing committees. The complete versions of these documents can be obtained from the Task Force's web site:
<http://www.abanet.org/dch/committee.cfm?com=DR020600>.

A. Recommendations for Convening Discussions about Mediation:

1. Convene a group of stakeholders to serve as the planning committee for the discussions. (See Section III on recommendations for convening a group of representative stakeholders.)
2. Create goals and strategy by having a planning committee discussion about specific goals. This tool kit assumes your overarching goal is to improve mediation quality in your geographic or practice area. Your group should discuss additional goals that you may have. These goals might include: substantive and procedural fairness, termination of disputes, satisfaction of disputants' substantive interest, efficiency in the process, increase in disputants' capabilities in handling other disputes, promotion of productive relationships, and increasing the market or demand for mediation.

3. Tailor the process of data collection to best meet the goals created by the planning committee. Ways to collect information include group discussions, individual in-person written or mail surveys (from mediators, lawyers, and/or their clients), telephone surveys or in-person interviews, and archival data (contained in case files or databases within the organization). When deciding on a data collection method, keep in mind some common data collection challenges, including the difficulty of getting opinions of parties who have only attended mediation once and the bias that can be created from surveying only repeat users of mediation services.
4. Review and revise survey protocols and questionnaires attached. The ABA Task Force used four separate tools for the group discussions:
 - a discussion protocol to use with a group of mediation users
 - a discussion protocol to use with a group of mediators
 - a questionnaire for mediation users
 - a questionnaire for mediators

The protocols provided structure for the discussions with small groups of mediators and users. The questionnaires were distributed at the end of these small group discussions and they allowed us to collect additional, individualized information. All of these protocols and questionnaires assume the participants are either repeat users of mediation services or mediators with significant experience. For guidelines on revising the questionnaires to meet your local needs, see the attached “Suggestions for Drafting Questionnaires.”

5. Determine the scope of your meeting. Do you want to learn about commercial mediation, family mediation, community mediation, or all of the above? Do you want to conduct these discussions with users of mediation services, mediators, or the parties themselves? The answers to these questions will help you focus your letter and your invitation list.
6. Find a location for your meeting. The ideal location is a law firm or other entity that has numerous small conference rooms available for the small group discussions.
7. Set the date for the meeting. The ABA meetings lasted almost three hours in total. We found that a 9-12 AM time frame worked best. When possible, we offered invitees breakfast as an extra incentive to attend.
8. Determine whether food and beverage will be served, and if so, how it will be paid for.
9. Determine what level of confidentiality you will provide to the participants in the discussions. Groups should be careful to protect confidentiality both in collecting data (without unnecessary identifying information) and storing data (to prevent unauthorized people to have access to the information). The participants will be more candid if they have assurances that their comments will be confidential. You can

inform the participants that their names and any other identifying information will be withheld from any notes or reports created. (The ABA Task Force group discussions were conducted under the auspices of the University of Missouri Institutional Review Board, which required strict confidentiality to protect the participants. Even though local groups are not subject these same restrictions, the ABA Task Force recommends that you establish and communicate a confidentiality protocol).

10. Draft the invitation letter. Where possible, the ABA Task Force asked a high-profile attorney, judge, or other appropriate person to sign the invitation letter. Make sure the person to whom RSVPs should be sent and the deadline for RSVPs is clear within the invitation letter.
11. Compile a list of invitees. For the ABA project, local and state bar associations, mediation associations, court-related programs, and ADR provider groups all helped identify appropriate invitees. The ABA effort found it to be somewhat of a challenge to identify individuals with significant experience representing parties in mediations. In many cities we relied upon word of mouth and informal networks to identify appropriate persons. We found it very difficult to identify parties (as opposed to representatives).
12. Send out the invitation letter at least 4 weeks in advance of the date scheduled for the meeting.
13. Create an agenda for the group discussions. A sample agenda is attached. The ABA Task Force focus groups typically started with a short (15 minute or so) welcome and explanation of the purpose and logistics of the meeting. We then split the participants up into smaller groups and adjourned to conference room for 90 minute or so discussions. At the end of the small group discussion, we handed out the questionnaires and collected them before the participants left the conference room.
14. Record the RSVPs. The Task Force developed a simple spreadsheet for keeping track of the RSVPs. A sample spreadsheet is attached.
15. Identify facilitators. Ideally, the facilitators will have some experience facilitating and will not be known to the participants in the focus group. We recommend assigning the facilitators to groups of 8-15 participants.
16. Identify note-takers. The Task Force found that graduate and law students made great note-takers. We asked the note-takers to load the focus group protocols onto their laptops and type the notes directly into the protocol. You will need one note-taker per focus group (8-15 people).
17. Send a reminder to the positive RSVPs a few days in advance of the meeting.
18. On the day of the focus groups, have a check in sheet. Be prepared for people who have not RSVPd to show up and even for people who did not receive an invitation to

show up. Try to separate participants into separate focus groups of mediators and users. If you have name tags for the participants you can write an identifier for the conversation group to which they are assigned on the name tag. You will likely find that the mediators want to sit in on the user focus groups. The ABA project tried to separate the groups so that the users would share their candid opinions about mediation, mediators, and the local mediation infrastructure.

19. Consider providing copies of the summary Task Force report so that participants can have a takeaway from the meeting.
20. After the focus groups, send thank you notes to all of the participants.

B. Recommendations for Convening an Organizing Committee and Inviting Representative Stakeholders to Participate in the Discussions

1. Those convening an organizing committee need to recognize that the field of mediation is diverse; it includes lawyer and non-lawyer mediators. Moreover, the field includes mediators in the court-connected sector, mediators who specialize in civil and commercial litigation, labor mediators, family mediators, community mediation centers, victim-offender reconciliation centers, public policy mediators, and mediators in government agencies and the executive branch, among others. The conventions of practice vary across sectors.
2. A state's bar does not always have representation from all sectors of practice. To maintain good relations and build the community of practice within a state, it is desirable to be inclusive. This is true even if the focus of your project is a single area of practice, for example, civil litigation. Having representation from other sectors may help insure good communication of your committee's purpose and mission.
3. Organizers should consider including representatives of those who make repeated use of mediation services, sometimes called users or consumers. These will vary with the focus of the discussion. For example, if the committee chooses to focus on civil litigation, it may wish to include a representative from the bench, plaintiff's bar, defense bar, insurance companies, and other repeat players. If the committee chooses to focus on family mediation, it may wish to include a representative from NGOs that specialize in providing services in cases of domestic abuse and social workers or family counselors. For small claims court mediation, organizers might consider representatives of the Better Business Bureau or Chamber of Commerce.
4. Academics from local colleges, universities, or law schools can provide many resources, including meeting space and student research assistance or note-taking support. Moreover, they may provide relevant expertise. For example, there may be scholars of family mediation in psychology or social work departments. Criminal justice scholars may have expertise on victim-offender mediation. Academics may also provide assistance with analysis of the information you collect.

5. Organizers should also consider including representatives from the policy community who are in a position to propose policy changes based on the committee's report. There may be an administrative office of the courts that has jurisdiction over mediation rules, for example.
6. One common method for identifying possible stakeholders is through what researchers call a snowball sample. The organizers should ask potential stakeholders whom else they think should be represented in the project. When all the stakeholders start to give a common set of names, you probably have an appropriate pool from which to select.

C. How to Use the Information Collected

1. The open-ended discussions suggested here collect information that is qualitative. It is not quantitative research. Questionnaires can provide quantitative data. However, the questionnaires will not provide data sufficient for social science research unless the people who fill them out constitute a scientific random sample of the appropriate population, and unless that sample is of sufficient size (30 at a minimum). The experience of the Task Force is that such a sample is very difficult to obtain. Thus, it is best to describe your results in terms of what your participants observe or report, not what the data shows or proves. See the attached, "Issues Doing Social Science Research" if your group would like to pursue social science research.
2. In deciding how to use this information, think about your original goals for these discussions. How do these discussions relate to your state's rules on mediation, to training, to court programs, or ethics guidelines? For example, this information can be used to develop policy on, among others, development of general protocols (such as guidelines and standards) in dispute resolution practice communities, training for disputants and professionals, use of dispute referral mechanisms, improvement of professionals' skills through peer consultation and mentoring, credentialing of dispute resolution professionals, and adoption and enforcement of legal rules. The information you collect can also be used to form the basis for ongoing discussions on dispute resolution policy.
3. When reporting your findings, take care to preserve the confidentiality of the people who participated in discussions. Also, consider the context of their comments and whether they might be perceived to criticize a specific, identifiable organization or court program or mediator. Edit the comments so that they are more general.
4. Remember that you should avoid drawing conclusions about causation. For example, it is inappropriate to conclude that a particular mediator practice either causes or inhibits settlement. Instead, you may report that participants in your group observed that this practice is either helpful or inappropriate. Your group might consider whether the results do seem to accurately represent the views of the population. Even if a majority of the population hold a certain view, if there is a significant minority

who believe otherwise, you should report this information so that decision-makers and practitioners can take it into account.

5. It may make your findings more accessible if you can report them in terms of what most or some versus few of your participants report. This requires coding the responses and counting frequencies. It is important to present the data in a way that audiences can easily understand. For example, often, a good quote can be very effective, or it may be helpful to use graphics instead of tables or numbers.
6. Analysis tools include different uses of statistics. Descriptive statistics are means or averages, percentages, and frequencies. These are the relatively easy to compile using the tools in typical spreadsheet programs.

D. Additional Resources

The Task Force developed a number of tools to assist local groups with convening their own discussions. The complete versions of these documents can be obtained from the Task Force's web site: <http://www.abanet.org/dch/committee.cfm?com=DR020600>.

1. Sample invitation letter
2. Sample agenda
3. Sample RSVP tracking spreadsheet
4. Discussion protocol to use with a group of mediation users
5. Discussion protocol to use with a group of mediators
6. Questionnaire for mediation users
7. Questionnaire for mediators
8. Suggestions for drafting questionnaires
9. Issues doing social science research
10. Summary of ABA Task Force on Mediation Quality Results