



Mediator Evaluation Program: Introduction

The Mediation Program for the U.S. District Court for the Southern District of New York has developed a program for ongoing assessment and skills development of panel mediators.

GOALS:

The goals of the program are to: 1) generate a picture of a mediator's strengths and weaknesses both for the mediator's own development and to assist the Mediation Program in determining whether or not the mediator should continue to serve on the panel; 2) support mediators in self-reflective practice; 3) enhance collegiality and sense of community among mediators; and 4) assist the Mediation Program in identifying specific topics for further training and skills enhancement.

EVALUATION PROCESS:

Evaluations will be conducted by mediators who have been trained in the evaluation protocol and in giving constructive feedback. After the evaluation, evaluators will recommend that the mediator should a) continue to mediate for the Court or b) not continue to mediate for the Court. Mediators who receive a "should not continue to mediate" recommendation will be offered the opportunity to participate in the observation/mentoring process that is now mandatory for potential new panel mediators; they will have six months to observe at least three other SDNY mediations, participate in any training offered by the Court, and will be invited to participate in a second evaluation with another evaluator. Mediators who choose not to participate in the evaluation program, who do not pass the initial evaluation and choose not to participate in the observation/mentoring process, or who do not pass a second evaluation, will be removed from the panel. Depending on the needs of the program, mediators who do particularly well in the evaluation may be offered the opportunity to be trained as an evaluator for other panel mediators.

WHEN WILL MEDIATORS BE EVALUATED?

To remain in good standing on the SDNY mediation panel, all panel mediators will participate in an evaluation approximately every four years. Mediators who joined the panel after 2014 will be evaluated approximately four years after the mentor mediation which resulted in their addition to the panel. All mediators who joined the panel prior to 2014 will be evaluated over time, based on the availability of evaluators, and will have subsequent evaluations four years from the date of their initial evaluation.

CONFIDENTIALITY OF PROCESS:

The Mediator Evaluation program has been developed for the benefit of SDNY panel mediators and to enhance the overall effectiveness of the Mediation Program. The success of the evaluation process is

dependent on the full and complete participation by both mediators and evaluators, including candor and openness during feedback conversations. To that end, evaluators and mediators will not share any information, communications, or written materials related to the evaluation with anyone outside of the Mediation Program. In particular, mediator evaluations may not be used as letters of reference or to provide any information to other ADR programs. Any information, communications, or materials related to the evaluation process may be shared with the mediator being evaluated at that mediator's request.

TIMELINE:

1. Mediator accepts a case and evaluator clears conflicts and is assigned.
2. Mediation Office confirms attendance of evaluator with mediation participants.
3. Evaluator/mediator commence pre-mediation process (contacting each other and the participants for scheduling of pre-mediation calls and initial mediation session, reading of pre-mediation submissions).
4. First in-person mediation session.
5. Evaluator completes competencies form.
6. Mediator and evaluator have debrief discussion.
7. Process checklist, final recommendation, and competencies forms submitted to Mediation Program within 48 hours of feedback discussion, and to the mediator if requested.
8. Mediation Program discusses conclusions with mediator and plans next steps.

Role and Expectations of Evaluators

All evaluators for the program have extensive mediation experience and have received an orientation to the process and goals of this program. Evaluators will be assigned before the mediator makes initial contact with the participants. Each evaluator will observe a particular case from the pre-mediation communications through the initial session and, using a form provided by the Mediation Program, will assess the mediator's core mediation competencies. The evaluator will not mediate the case and will endeavor to be as unobtrusive as possible in the presence of parties and lawyers. However, at the request of the mediator, made out of the presence and hearing of parties and counsel, the evaluator may provide limited suggestions or advice to the mediator. The evaluator will sign the confidentiality agreement.

PRE-SESSION PARTICIPATION

The evaluator will speak with the mediator prior to the mediator's contact with counsel in order to review the mediator's planned pre-mediation activities and to coordinate scheduling. Where possible, the evaluator should "observe" all mediator contact with counsel and/or the parties prior to the mediation. When pre-mediation sessions are conducted by telephone, the mediator will conference in the evaluator before the call begins so the evaluator can listen without contributing to the pre-mediation call. In instances where pre-mediation process is extensive, the evaluator will "observe" enough of the communications to be able to make an assessment as to the mediator's demonstration of competencies related to this phase. The evaluator will review all written submissions to the mediator prior to the first session.

PARTICIPATION IN THE FIRST MEDIATION SESSION

During the mediation session, the evaluator will strive to be in the presence of the mediator at all times. As noted above, the evaluator will not participate in or intervene in the mediation process in any way, or communicate with counsel or the parties beyond simple neutral pleasantries.

PARTICIPATION AFTER THE FIRST SESSION

Although it is not required, where possible, the evaluator will continue the evaluation by observing post-session activities of the mediator, including, for example, follow-up telephone calls and scheduling and holding additional mediation sessions.

FEEDBACK MEETING AND SUBMISSION OF FORMS

At the conclusion of the initial mediation session the evaluator will meet with the mediator to share and discuss the results of the evaluation, provide constructive feedback, and encourage positive, neutral, and critical self-reflection by the mediator. The evaluator may choose whether to share the actual evaluation form or to simply use the form as a guide for the conversation. This feedback meeting should begin with the evaluator asking the mediator to reflect on what was done well and what could have been done better in that particular mediation, using the competencies form as a guide to ask about

specific interventions. The focus of the feedback meeting should be the mediator's performance, not the specifics of the case. In the event that the mediation continues past one session, or other information is received such as the participant feedback forms, subsequent feedback meetings may take place. Mediation Program staff may participate in the feedback meeting or in post-process discussions with the mediator or evaluator.

The evaluator will not discuss the mediator's strengths and weaknesses or any contents of the evaluation form with anyone outside of the Mediation Program. Nothing contained within the evaluation form may be used for any purpose other than the Mediator Evaluation Program.

Within 48 hours of the feedback meeting the evaluator will submit the evaluation forms to the Mediation Office. Failure to submit the evaluation forms may result in removal from the list of evaluators.