

MEMORANDUM

To: Court Administrators and ADR Program Administrators
From: American Bar Association Section of Dispute Resolution Task Force on Research and Statistics
Date: June 9, 2006
Re: Top Ten Pieces of Information Courts Should Collect on ADR

The American Bar Association Section of Dispute Resolution Research and Statistics Task Force conducted a survey of court administrators and administrators of court ADR programs to assess what information they need to evaluate and demonstrate the effectiveness of their programs. What follows are the top ten pieces of information these administrators identified, together with a brief sentence or two explaining why this information is important and how courts might use it, as well as recommendations for how to collect the information.¹ The Section of Dispute Resolution is aware that there are significant constraints on the information management systems in many courts and that recording the information will impose an additional responsibility. To ease that burden, we recommend that the data collection be integrated into forms and procedures the court already uses to enhance the likelihood that some ADR information will be recorded.

The Section of Dispute Resolution urges all court administrators to consider recording these pieces of information in the court's information management system or in a database maintained by the ADR office. This recommendation envisions an electronic record for each case referred to ADR, in which information is recorded about the ADR process in that case. Ideally, the case-specific ADR information would be part of the court's regular database of cases filed in the court so that information about non-ADR cases would also be available for comparison purposes.

The top ten pieces of information are:

#1 Was ADR used for this case (yes/no)?

Explanation: This indicator tracks how much ADR is used in civil litigation and provides a baseline for determining what percentage of civil litigation uses an ADR intervention. It is the fundamental minimum information necessary.

Recommended collection method: Integrated into the court's information management system.

#2 What ADR process was used in this case? (Mediation, early neutral assessment, non-binding arbitration, fact-finding, mini-trial, summary jury trial, other)

¹ A complete draft report of the survey results appears on the Section's website at: www.abanet.org/dispute/court.html. Your comments on this report are welcome. Please send them to Lbingham@indiana.edu.

Explanation: There is a great diversity of court ADR programs. The parties themselves elect from a variety of processes. This information permits examination of differences across courts in the type of ADR used and the frequency of use. Within courts, it allows for a comparison of the results of different processes and an examination of the kinds of cases for which parties use different processes.

Recommended collection method: Integrated into the court's information management system or in the database maintained by the ADR office.

#3 Timing Information (the date the claim was docketed; Date of referral to ADR; Date of first ADR session; Date of close of ADR referral period; At what point in the docket duration did ADR occur (Before suit, after filing suit, before discovery, just before trial) the final disposition date of the case; the date of post-trial motions).

Explanation: ADR is used at different points in time in the life of a case. This information will help determine what timing is most effective to use ADR and how early or late a case might be referred to ADR..

Recommended collection method: Integrated into the court's information management system or in the database maintained by the ADR office.

#4 Whether the case settled because of ADR. If settled, whether the case settled in full or settled in part.

Explanation: Advocates claim that ADR settles cases or at least narrows the issues in dispute. This question helps examine that claim.

Recommended collection method: Integrated into the court's information management system or in the database maintained by the ADR office.

#5 What precipitated the use of ADR? (Court order *sua sponte*, party consent to the process, party motion with one or more parties opposed and a court order for ADR following, automatic referral per court rule due to kind of case)

Explanation: Court programs vary widely in how cases enter ADR. This question allows for a comparison of different methods for intake and an exploration of whether voluntary or mandatory programs are more effective.

Recommended collection method: Questionnaires of participants.

#6 Was there a settlement without ADR (yes/no)? If so, how was the case terminated—e.g., dispositive motion, settlement in ADR, settlement by some other process, during or after trial, removal to another court, etc.

Explanation: Some cases referred to ADR settle before the process—or after the process but because of factors other than ADR. Many argue that 90% of all cases settle anyway, so it is hard to identify whether ADR is making a difference. This information permits comparison of the outcomes for ADR and non-ADR cases.

Recommended collection method: Integrated into the court's information management system or in the database maintained by the ADR office.

#7 Case type (general civil, criminal, domestic, housing, traffic, small claims)

Explanation: This information will permit examination of a number of claims and questions about ADR: For which cases is ADR most effective? Does ADR use and effectiveness vary by subject matter in dispute? Do more small claims cases settle in ADR than housing claims, for example? If the court has limited ADR funds, what kinds of cases should get priority for ADR?

Recommended collection practice: Integrated into the court's information management system or in the database maintained by the ADR office. A court with an IT system should use the same coding scheme for ADR cases as it does for litigation case types.

#8 The cost of the ADR process to the participants (cost of neutral, filing fees, attorneys' fees of disputants, time spent by disputants in ADR, costs of experts, etc.)

Explanation: Critics suggest that the ADR process simply adds transaction costs to litigation. Advocates suggest ADR saves money. This question allows us to compare ADR costs to other studies on litigation costs.

Recommended collection practice: Questionnaires directed to the litigants and/or their attorneys. Programs may also want to query litigants about the cost savings of not proceeding. For comparison purposes, program administrators should consider surveying non-ADR cases, too.

#9 Did the disputants use more than one form of ADR? If so, which?

Explanation: In order to know which form of ADR is most effective for which cases, we need to be able to separate cases by process and identify those with more complex sequences of process.

Recommended collection practice: Integrated into the court's information management system or in the database maintained by the ADR office. A court with an IT system should use the same coding scheme for ADR cases as it does for litigation case types.

#10 Satisfaction data: How satisfied are the participants with the process, the outcome, and the neutral:

Explanation: A key value in the justice system is that people who use it believe it to be fair and to provide justice. These questions are ways to determine how people who use ADR feel about their experience.

Recommended collection practice: Questionnaires directed to the litigants and/or their attorneys.