



District & Municipal Court Mediation Guidelines

MWI is dedicated to providing mediation services to parties of the District and Municipal Court Departments, regardless of their capacity to pay, while creating an opportunity for mediators to enhance their skills and learn from other more experienced mediators.

This document is intended to provide MWI mediators with an understanding of MWI policy and procedure regarding the MWI District & Municipal Court Program. Please read and refer to this document as needed.

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Program Overview

Upon successful completion of MWI's Executive or Forty-Hour Mediation Training, interested new mediators can request the opportunity to participate in MWI's District and Municipal Court Mediation Program. The following steps, unless waived by the Executive Director, are prerequisites for being accepted onto the Panel:

1. Attend a New Mediator Orientation Session followed by,
2. Observing two District & Municipal Court cases and then,
3. Co-mediating at least four small claims cases.

After each observation and co-mediation, the mediator will need to call or email the Manager of Commercial & Corporate Programs to discuss what worked well and what could have been done differently. After these opportunities, the Manager of Commercial & Corporate Programs will discuss next steps for the mediator, which might include:

- Acceptance onto the Court Mediation Panel;
- Recommendation to enter into MWI's Mentor Program for additional skill development;
- Ending ties with MWI.

Decisions about specific mediators will be based on the debrief conversations with the Program Manager, feedback from co-mediators, feedback from parties as well as feedback from court staff.

Interested Mediators who have not taken MWI Training:

Candidates should submit two letters of reference or provide two names and contact information of people familiar with your mediation skills, a resume, and a photocopy of a basic mediation training certificate (minimum 30 hours).

If mediators are then invited to begin working with MWI, they are required to complete a MWI Refresher Mediation Program as well as a New Mediator Orientation Session. Following the Refresher Program and the New Mediator Orientation, interested mediators may be asked to take part in any of the following potential next steps:

- Acceptance onto the District & Municipal Court Panel;
- Recommendation to enter into MWI's Mentor Program for additional skill development;
- Ending ties with MWI.

Program Goals

- To provide parties with an opportunity to resolve their disputes in a mutually agreeable manner;
- To provide mediators with the opportunity to increase and enhance their mediation skills in a Court setting;
- To create a forum for court mediators to discuss mediation topics and to debrief cases in a group setting (MWI Roundtables);
- To use a co-mediation model whenever possible to:
 - Increase the perception of neutrality according to gender, age and ethnicity;
 - Model effective communication between parties;
 - Provide MWI's mediators with an opportunity to learn from one another by sharing skills and providing feedback.

Program Requirements

After being accepted as a member of MWI's District & Municipal Court Mediation Panel, the following is asked of our mediators:

- Uphold MWI's five principles of mediation;
- Co-mediate twice per month or keep to another plan established with the Manager of Commercial & Corporate Programs;
- Debrief with co-mediator and/or observer focusing on "worked-well" and "do-differently" style of feedback;
- Submit paperwork to MWI via email within 24 hours of mediating or by mail within one week;
- Co-mediate at least a total of four cases before solo mediating;
- Attend at least one MWI District & Municipal Court Roundtable each year;
- Mediate ten total small claims cases before mediating Summary Process cases;
- Enroll in and successfully complete the Refresher Mediation Training if you have not mediated with MWI in six months or longer.

Principles of Mediation

MWI requires its mediators to uphold the five principles of mediation:

1. VOLUNTARINESS: MWI mediators work to insure that each party is informed about the voluntary nature of mediation before the session begins. Parties are also informed of their right to withdraw from the mediation at any time once the process begins. Mediators will inform parties about their option to withdraw throughout the session, if necessary.

2. CONFIDENTIALITY: MWI believes that mediation is an opportunity for parties to discuss their issues openly with the reassurance that they will remain private and within their control. Given the private "closed door" nature of mediation, MWI mediators take extra precautions to ensure that parties do not feel pressure to settle. The Director of Mediation Services and other trained staff carefully conduct follow-up calls and review exit questionnaires to ensure that MWI neutrals are not pressuring parties towards settlement, especially in light of the confidentiality of the process.

3. SELF-DETERMINATION: The terms of an agreement will be determined by the parties. MWI mediators will not try to influence or direct either party in any way towards a particular agreement.

4. NEUTRALITY/IMPARTIALITY: MWI mediators work to ensure that they remain neutral and that each party is treated fairly and with respect by both mediators and the other party.

5. INFORMED CONSENT: MWI mediators work to ensure that each party is informed about the terms of an agreement to which they are planning to give their consent. The mediators will also ensure that the parties are fully informed about mediation before they give their consent to participate in the process. The mediator's role is to help each party identify their needs and build those interests into an agreement. Although counsel is not required for either party at the mediation table, both parties will be asked to review the terms of any potential agreement with an advocate away from the table before signing. It is neither MWI's nor the mediator's role to give legal advice, counsel, or to analyze either party's legal rights. Unrepresented parties are encouraged to review their legal rights and obligations before finalizing any mediated agreement.

Confidentiality Statute MGL Ch. 233 S. 23 C

Section 23C. All memoranda, and other work product prepared by a mediator and a mediator's case files shall be confidential and not subject to disclosure in any judicial or administrative proceeding involving any of the parties to any mediation to which such materials apply. Any communication made in the course of and relating to the subject matter of any mediation and which is made in the presence of such mediator by any participant, mediator or other person shall be a confidential communication and not subject to disclosure in any judicial or administrative proceeding; provided, however, that the provisions of this section shall not apply to the mediation of labor disputes.

For the purposes of this section a "mediator" shall mean a person not a party to a dispute who enters into a written agreement with the parties to assist them in resolving their disputes and has completed at least thirty hours of training in mediation and who either has four years of professional experience as a mediator or is accountable to a dispute resolution organization which has been in existence for at least three years or one who has been appointed to mediate by a judicial or governmental body.

Opportunities

MWI's District & Municipal Court Program mediates small claims and summary process cases in twelve different courts on weekdays. Times and days vary; check MWI's mediator resource page for specific information or contact the Manager of Commercial & Corporate Programs.

For all civil matters, mediators are present at the call of the list. Before the list is called, the clerk announces that a mediation program is present and that the court recommends mediation should be attempted as an alternative to their case being heard by a judge or clerk magistrate. Parties who consent to try mediation then go with the mediators to learn about the specifics of the mediation process by listening to the mediator's opening. If the parties voluntarily agree to try mediation, the parties sign an "agreement to participate" form. If the parties reach an agreement, the agreement is given to the clerk, who records the agreement as a judgment of the court. The parties are then given copies of the agreement and may leave. Parties who decline mediation or who do not reach an agreement are heard by a judge or clerk magistrate on the same day, unless the parties negotiate their own agreement or request a continuance.

Scheduling

Requests to mediate in the court program are accepted as early as three months in advance and are filled on a first come first served basis unless other arrangements are made. Please be aware that scheduling requests high in number, or exclusive only to specific sessions that block others from opportunities to mediate, will be held pending by the Commercial and Corporate Program Coordinator until fair chance is given to all members. To be added to the court calendars, please access the scheduling instructions located in the Mediator Resource Center.

Mediators who cannot keep a commitment to mediate in court must inform Vanessa Linsey as far in advance as possible for instructions on how to proceed. Mediators should never call the court, whether they have questions about a session, cannot attend, or for any other reason; Vanessa Linsey is always your point of contact for MWI court mediation related matters.

Pre-Mediation Check List & Time Commitment

Check the calendars online for time and co-mediator;

- Read court procedures if new to the court;
- Ensure that you have copies of forms, pens and paper;
- Dress nicely in business casual attire, no sneakers or jeans please;
- Bring name badge;
- Be early.

Panel members must agree to be in Court for the start of the small claims or summary process session. Mediators and observers are asked to commit at least two and a half hours of time.

Remaining on the Panel

Mediators who continue to mediate twice per month, follow the principles of mediation, adhere to MWI policy and procedure, attend roundtables and continue to uphold MWI's positive reputation will be encouraged to continue participating on the panel.

Diversity

MWI's policies prohibiting discrimination against staff, neutrals or clients: MWI has a policy not to discriminate against a qualified staff member or applicant for employment or neutral because of race, color, religion, gender, age, disability, national origin, marital status, sexual orientation, status as a veteran or against people who receive public assistance or housing subsidies. MWI also complies with all applicable provisions of federal and state statutes, rules and regulations that protect against such discrimination. MWI does not deny services to clients on the basis of race, color, religion, gender, age, disability, national origin, marital status, sexual orientation, status as a veteran or people who receive public assistance or housing subsidies.

Evaluating Mediators

Mediators are evaluated by the Manager of Commercial & Corporate Programs. Resources for this evaluation includes:

- Post session conversations with the mediator;
- Observation at select mediation sessions;
- Follow-up interviews with the parties;
- Conversations with other mediators;
- Regular follow-up phone calls to parties and court staff to determine whether parties are satisfied with the mediation process and with their mediated agreement, including the agreement's durability.

In the case of a mediator whose performance is unsatisfactory, the Manager of Commercial and Corporate Programs will discuss the problem with the mediator and define a methodology with the mediator for improvement. Methods of improvement include having the mediator observe or receive coaching from an experienced mediator, and/or receive additional training. Until the mediator has demonstrated satisfactory skills, no cases will be offered to the mediator, except with a designated coach or co-mediator attending. Any mediator who has not demonstrated satisfactory skills within three months will be dropped from the roster.

Introducing Mediation in Court

At least one MWI Mediator should make an announcement about mediation in the courtroom before the call of the list. Below please find a sample announcement:

Good morning. My name is __ and I am a mediator with MWI. I am here today (with other mediators) to work with anyone interested in resolving their case quickly and efficiently.

In a few minutes the clerk will be here and will call the case list. If both parties are here, the clerk will ask you to meet with the mediator(s) to learn more about mediation and how it can help you. In short, mediation provides an opportunity for each side to reach agreement quickly and on your own terms. You don't lose anything by participating in mediation and there is no additional cost to you. It's also important to know that mediation is voluntary and, if you are not able to reach an agreement, you still have the option of returning to the courtroom and having the case decided for you by the Clerk Magistrate. If you do reach an agreement, we as mediators can draft the agreement, file it with the court, and you'll be free to go.

The Court recommends mediation because mediation works. Most people who try mediation reach agreements quickly and on terms that they determine for themselves - even though they didn't really know what mediation was until they tried it. So, when the clerk calls your case, I hope you'll let them know that you're willing to talk with the mediator(s) to learn more.

Any questions about mediation before the clerk arrives?

Case Selection

MWI District & Municipal Court mediators will offer mediation to parties involved in any cases referred by a Clerk Magistrate or Judge, in accordance with MWI policies and requirements and the Uniform Rules on Dispute Resolution.

Forms

The following forms are needed for each mediation:

- Agreement to Participate in Mediation form;
- ADR referral form;
- Agreement for Judgment form;
- Mediation Memorandum form.

Mediators are required to bring blank forms to court. If forms are consistently filled out incorrectly, are incomplete or are not provided to MWI within a reasonable amount of time from when the case is mediated, mediators risk being removed from the panel.

District & Municipal Court mediation forms can be found at MWI's Mediator Resource Center on the web. Please do not ask the court for our forms, do not ask them to photocopy blank forms for you and do not ask them to fax MWI paperwork from cases mediated.

Note: Some courts (listed below) request that MWI mediators utilize courthouse-specific Agreement for Judgment forms. For Summary Process cases, Dorchester, East Boston and Quincy have their own court specific forms, which you will need to print from the Mediator Resource Center online. If you are in a courthouse that tells you they have a specific form which you were not aware of, you may ask for these forms in the Clerk's office.

Post-Mediation Procedures

- All original documents are placed in the court file.
- Make photocopies of all completed forms: one set for MWI, one for each mediator's personal records (if they require them). If the courthouse personnel is telling you that you are requesting too many copies, do not continue requesting copies for yourself. Make sure that you have one copy for MWI, and you can request that Vanessa Linsey provide you with a copy when you submit your paperwork to MWI.
- The parties each get a copy of the Agreement to Participate form, regardless of whether they settled the case or not. If they settle, they will also each get a copy of the Agreement for Judgment form and the Mediation memorandum (if used). Parties do not need a copy of the ADR Referral form, as that only needs to go back to Vanessa Linsey at MWI. Instructions as to where to get the documents photocopied are included in the online Mediator Resource Center sections on individual courts.
- Send copies of all the mediation documents to MWI within 24 hours of the case being mediated. If you have any questions or want to debrief the case, contact Megan Winkeler, MWI Director of Training & Engagement.
- For court-specific post-mediation procedures, please visit the Procedures and Directions page and select the appropriate court.

Feedback/Conversations

It is a policy of MWI to have mediators and observers participate in providing detailed feedback to each other after co-mediating or observing. The level of experience of the person providing feedback is irrelevant. Feedback is not an evaluation of how well one thinks a mediator did; rather, it is the sharing of observations and information. It is a conversation about the mediation, not a time to reach conclusions or evaluate performance.

Those providing feedback should ask the mediator(s) to explain the purpose or intention of specific actions and/or inquire about their reasoning for asking specific questions. Feedback conversations about what was observed should last 10-30 minutes, if not longer.

Guidelines for Observing Mediations

- Be on time. If the mediation has started when you get there, do not enter the room. You will have to wait until a new case begins or for your next scheduled opportunity.
- Before the mediation, discuss with the mediators whether they welcome your input, thoughts or suggestions during mediator caucuses. Some mediators don't mind, while others do not like it. Some mediators may want to wait until the end of the mediation to discuss the case with an observer.
- Observers, as a general rule, should refrain from speaking when the parties are present, in order to maintain a fair process for the mediators and the parties.
- Notes taken during the mediation by observers should not include details of the case, docket numbers or parties' names. Observers should identify elements of the mediation process that worked well, what the mediators might do differently in the future and other moments during the mediation that warrant discussion.
- Observer must sign the Agreement to Participate before the mediation starts, as must everyone in the room.
- Always plan time to debrief with the mediators after the mediation per the guidelines listed above. Your observation requirement is not complete until you have stayed for the entire case and debrief thereafter.

Mediation Promotion/Referrals

MWI hopes to create mutually beneficial relationships with District & Municipal court mediators who would like opportunities to mediate cases for pay through MWI. Mediators who are interested should contact the Director of Mediation Services to discuss participation in this program. Those accepted will be expected to promote MWI's mediation services. If a referral to MWI turns into a paid case, the referring mediator will have the opportunity to mediate the case for pay through MWI.

Social Media

MWI encourages trainees and panel members to follow our organization on Facebook and Twitter to keep up with what MWI is up to and current events in the ADR industry. Please visit and join the following pages:

- Facebook - www.facebook.com/mwi.org
- LinkedIn - www.linkedin.com/groups?mostPopular=&gid=1133487
- Twitter - <http://twitter.com/#!/mwiinfo>

Please know however that MWI cannot provide LinkedIn references for all of our volunteer mediators. Those references are reserved for paid mediators only.

Non-Compete

All MWI District & Municipal Court observers, mediators and panel members can not solicit clients while representing MWI in the District & Municipal Court program. Any potential referrals, clients, cases, trainings, or other services must be provided to the Director of Training & Engagement. Failure to comply with MWI's non-competes will result in immediate ending of ties with MWI. When in doubt, contact Megan Winkeler to be sure.

Removal from Panel

At MWI, we appreciate the work performed by our Panel Members and look forward to forming long-term working relationships with those who meet the requirements of membership. However, MWI reserves the right to change the Panel status of a mediator at any time. If the guidelines are not met, MWI will work with Panel Members to address the issue. If the cause for removing the mediator from the Panel is egregious or if working with the Panel Member does not resolve the concern, MWI will remove the Panel Member from the District & Municipal Court Program. Our goal is to maintain a committed Panel that serves the needs of the court in a professional manner while obtaining the unique opportunity to develop and maintain mediation skills in a court setting.

Conclusion

Thank you for being a part of MWI. We hope that the District & Municipal Court Mediation Panel serves a number of functions including providing a forum for mediators to grow their mediation skills and learn from other mediators. If you have any questions about the panel, contact Megan Winkeler at 617-895-4032 or mwinkeler@mwi.org. For questions about day-to-day interactions with the court, contact Vanessa Linsey at 617-895-4027 or mlinsey@mwi.org.