

Community Mediation Services of Central Ohio (CMS)

Best practices for an On-site, Court-based Eviction Mediation Program

Introduction

This document describes CMS's process for providing Tenant-Landlord mediation services on-site daily at Franklin County Municipal Court during scheduled eviction hearings. This process begins with identifying the geographic area's need for eviction prevention services and ends with the case follow-up procedure necessary to determine the longer term impact of mediated eviction-prevention related agreements. This document is directed to other non-profit organizations interested in developing a similar program in their geographic area.

I. Identifying the Need

Before undertaking this program, research should be undertaken to determine the extent of the eviction problem in your county/geographic area. Determine the number of eviction filings and judgements issued by the court each year on average over the past several years; determine how many days a week eviction hearings are being conducted in the area and what hours of the day eviction hearings conducted. This information will help a would-be-provider of mediation services a good idea of the scope of court coverage that will be required to address the local eviction court's needs.

II. Soliciting Court Buy-in

Once you have researched the local need and developed and outlined your proposed program, approach appropriate Court officials. (Administrative Judge, Judges/Magistrates who are currently conducting most eviction hearings, Court Administrator, Court Clerk, etc.) Aside from providing the benefits of mediation generally, the focus of your message should be twofold: (1) This program is designed to reduce the rate of eviction and its attendant harmful consequences in the community and (2) The program will do so in a way that eases the court's administrative burden of handling these cases by eliminating the need for formal court disposition in a significant percentage of cases. The program goals will be met by mediating two basic types of agreements between tenants and landlords: a "pay and stay" arrangement whereby a Tenant and Landlord will agree to a plan that allows the Tenant to become current in their rent and stay in their housing or a "move out" agreement whereby a Tenant and Landlord will agree to a date certain by which the Tenant will vacate the property. From there, logistical support for the program to be requested from the Court may include:

(1) **Program Space at Court** Ideal set up is that mediation staff are able to be located near courtroom entrance, in plain view of parties as they arrive for court hearings. Easy access to conference rooms for mediation sessions is essential.

(2) **Program Promotion** Informational postcard about eviction mediation services may be inserted with summons to alert Tenants to availability of the program – either prior to hearing by phone or upon arrival at court on hearing date or both. Adequate signage to alert parties to availability of mediation services as they arrive at eviction court is critical.

(3) **Court Endorsement of the Process.** Court promotion of the mediation process as an important, legitimate means for resolving parties' eviction related issues may be exhibited by a willingness to make bench referrals of cases to mediation. Court monitoring of and willingness to address Landlord counsel pushback and potential bias against mediation process – especially if upsetting long-entrenched status quo where Landlord counsel had significant reign...will also be required. Mediators should be provided court identification credentials for ease of access to relevant "back of the house" court operation areas. Mediators should also be regularly provided weekly docket info in advance to help facilitate their staff scheduling at court. (CMS has found that the major factors that will increase how busy their mediators will be on any given day include: the number of cases scheduled for hearing, the number of pro se cases on the docket for the day, how likely the judge/magistrate on the bench for the day is to refer cases to mediation and the weather on any given day; i.e., cases where both parties are pro se lend themselves well to mediation; when the weather is terrible ...fewer tenants are likely to appear for their scheduled hearing. In addition, Mediators should be provided access to court case files as needed. After the court's hearing of cases, in the formal court public record, Court Clerk should enter reference to a Mediated Agreement being reached between parties on a case the same way it typically enters reference to an Agreed Entry/Agreed Judgement Entry (AJE) being reached on eviction cases at court. A physical hard copy of Mediated Agreements should be maintained by the court in their case files just as a copy of AJE's are maintained. (A copy of the mediated agreement or AJE that reflects the outcome of a mediated case should also be provided to each party, the mediation program provider and to counsel for the parties.)

(4) **Access to Equipment.** Mediator access to a copier and a **locked** storage space for mediation program equipment/supplies and mediator personal belongings etc. will be needed.

III. Coordinating with other Community Agencies

In the program planning stage, it is important for the mediation program provider to reach out to local public and private social services agencies to develop an understanding of other community resources available to assist the parties to be served by the program. These service providers will need to know how to refer tenants at risk of eviction and their landlords to the mediation program as soon as possible when the risk of eviction first emerges. Viable mediated agreements frequently require the ability of low income Tenants to obtain access to emergency rental/utility assistance and it is critical to have an understanding of what sources of such support are available in your community and how best

to link tenants to these services. Beyond just rental assistance, Tenants may benefit from being linked to other resources including: alternative available housing; senior citizen support; veterans' services; healthcare services/emergency food assistance/free legal assistance, etc. Establishing a mutual referral relationship with as many entities as you can will increase the number of people able to be served successfully by the program.

IV. Procuring Start-Up Funding

A three-year minimum of start-up funding is highly recommended. This is because it may take some time for the program to become an integral part of the eviction court process and for the tenant referral process to the program to become established in the community.

Potential start-up funding sources may include: local or state bar associations, city/county human services funds, state housing program related funding; social service agencies like HUD; private foundations and individual private donors. (Upon request CMS could provide a sample funding proposal that outlines a program summary and its proposed outcomes. For more information contact info@communitymediation.com).

V. Identifying Proposed Mediators

Eviction court mediation requires use of a hybrid form of interest-based mediation. Extensively trained and experienced professional Mediators with a legal/mental health or social services background are best suited for the fast-paced, emotional and sometimes volatile eviction court setting. In the beginning, eviction court mediation can overwhelm even seasoned Mediators based on the sheer volume of cases and nature of the human costs at stake. Given the magnitude of the court's case load and tight schedule, Eviction case Mediators generally do not have the luxury of same amount of time for a mediation session as is usually available in an off-site mediation. (E.g. The need to complete a face to face mediation session between a pro se tenant and landlord in 20 or so minutes max is not at all uncommon) Eviction court Mediators must also be able to forge and maintain strong professional relationships with key repeat players despite a frequently heated environment. (i.e., it is not uncommon for only a handful of attorneys to represent multiple landlords at eviction court day after day; as a result, mediators will be encountering the same landlord attorneys over and over and will need to be able to maintain a civil relationship with them in order to effectively facilitate negotiations between these attorneys and multi tenants.) Capacity to withstand the conditions specific to eviction court is a key consideration in hiring Mediators for this program. (CMS NOT recommend the use of volunteer mediators at court unless the mediator already has a significant amount experience mediating eviction related cases before coming on board or he/she will be available to work at court on a regular weekly basis to gain and maintain the extensive experience these high stakes cases require. The level of knowledge and skill required to handle these critical cases effectively is very difficult to achieve/maintain if a volunteer is only available to help at court a day or two a month.)

VI. Training the Mediators

In many ways, Tenant-Landlord mediation in the eviction court context is like any other form of interest-based mediation. However, there are important nuances specific to the eviction court setting. Consequently, effective Mediator training should include the specific context of eviction court. Comprehensive initial training, at a minimum, should include the following:

(A) General Facilitative Mediation Training. Recommended 16 hours. This basic training familiarizes all Mediators with interest-based mediation and drafting clear and concise agreements.

(B) Education re: the Eviction Process. (Recommend Min. 8 Hrs.). Mediators need to have a specific understanding of court vocabulary and the local and state eviction procedures/time lines for context in guiding the parties through the mediation process. Key elements for Mediators to understand include:

- (1) The legal timelines specifically relevant to the jurisdiction. E.g., 3-day notices; time between issuance of summons and court hearing)
- (2) Availability of continuances to the parties and process for requests
- (3) Judgements
- (4) Issuance of Writs of Restitution
- (5) The tenant set-out process
- (6) Rent escrow process
- (7) Tenant Filing Objections to Magistrate Rulings
- (8) Requests to Change Eviction Court Hearing Date

(C) Education re: Screening for Participant Capacity.

(D) Education re: court personnel roles, procedures and preferred practices and protocols; the daily flow of cases at eviction court; handling frequent flyer parties/counsel

(E) Education re: available court resources – Clerk’s office; any court-sponsored self-help center; access to interpreters; security

(F) Education re: available community resources. This information could include emergency rent assistance; alternative housing availability; senior citizen support services; veterans’ services; healthcare services (physical/mental); food assistance/legal assistance, etc.

(G) Trauma Informed Crisis Intervention Training.

(H) Education re: being alert to how legal issues can manifest and how Mediators can protect themselves and the process if this occurs.

(I) Cultural sensitivity, diversity training

(J) Additional Special Training on how to address **power imbalances** between tenants & landlords or tenants & landlord attorneys is also critical. (**Recommend Min. 4 Hours**)

1. By learning how to be an advocate for the mediation process rather than for the parties, in the face of significant power imbalances, the mediator can **promote informed decision making by both parties**. This is accomplished by asking both parties thoughtful questions about their respective interests and then by skillfully asking them both devil's advocate questions about the extent to which each of their proposed settlement elements meet both parties' needs. The mediator can also help by providing parties **information** about the existence of and logistics associated with the court's eviction case management processes and time lines. The mediator should **never**, however, give the parties **advice** about what they should or should not agree to in the settlement agreement or tell either party in the absence of an agreement between them... what a court is likely to do or not do based on the mediator's assessment of the facts of the case.

VII. Establishing Case Intake Procedure

It is crucial to start with the end in mind in designing the case intake process. Incorporate your required intake information to be gathered into a form to be used uniformly by all Mediators. Focus your intake process on collecting the data you will need for three specific and possibly overlapping purposes: (1) your agency's recordkeeping and (2) reports to your funders (3) reports back to the court.

Be flexible. More than one optional intake form may need to be used because some funders may require completion of their own form. For example, in Franklin County, Ohio our court mediation program is funded in part by our local County Job and Family Services agency. This public agency requires that our program have each tenant with children in their household that we serve complete and sign their agency's specific county intake form. To avoid the tenant being asked duplicated questions that are already being asked on the county's required form, we use a different intake form from our agency than we would ordinarily use so that we can leave off of our hybrid form any questions that the county's form has already asked.

Keep the intake process streamlined. Time is a very restricted commodity in the fast-paced world of eviction court. The bulk of a Mediator's time should be spent mediating with the parties, not completing unnecessary paperwork.

An effective Intake process is the key to all data collection, retention, and management.

Suggested data to be collected includes:

(A) Agency record-keeping data:

(1) Information re: pending court case

Court Case Number; Assigned judicial officer; first and continued hearing date/s

- Why this information? It allows for easy case retrieval from the court's database.

(2) Information re: parties served

Contact information for follow-up including mailing address, mobile/work phone numbers, and email address;
Tenant contact information
Landlord contact information
Landlord lawyer contact information

- Why this information? It assists in case management & follow-up. It also allows you to see patterns with respect to certain Landlords – e.g., is this Landlord a frequent flier? is this Landlord frequently open to mediation with Tenants; what types of agreements are certain Landlords inclined toward? etc.

(3) Case referral source (common options may include the following):

Tenant/Court Post Card Insert in Summons
Tenant Walk Up at Court
Landlord
Bench (including which magistrate)
Legal Aid
CMS Social Media
Other Public or Private Social Services Agency (List specific agencies by name if you want to be able to report back to certain agencies how many of their referred cases you are serving and the outcomes achieved for those cases)

- Why this information? It allows you to easily track how parties became aware of your mediation services so you can evaluate your outreach efforts

(B) Funder required data may include:

(1) Tenant Demographic data

E.g., tenant gender, race, age, ethnicity, total number of people in the household; number of children in household; specific zip code; veteran status; if not born in US, country of origin; number of infants 0-12 months in the household; # of pregnant individuals in household;

(2) Tenant Income related data

E.g., Monthly gross income; Employment status and employer information, Receiving Disability Benefits;

- Why this information? It will allow you to prepare reports for funders much more efficiently. It also will allow you to easily identify impacts on specific populations and patterns in the nature of those impacts.

(C) Data relating to current tenancy at issue, including:

Length of tenancy
On-going lease or month-to-month
Monthly rent amount
Type of housing, e.g., private landlord; subsidized housing...
Was Security deposit paid, and if so, amount
Current issues with Landlord (rent payment status; needed repairs; other)

- Why this information? For immediate mediation purposes, it provides information on the existing relationship between the Landlord and Tenant. On a broader note, it also is data that collectively can provide a picture of the rental market in your geographic area.

(D) Case-related data:

Did pre court move out agreement prevent filing of eviction?
Was case served and closed at intake or mediated
If mediated, was agreement reached
Nature of agreement if reached, pay and stay or move out
Was case to be dismissed if agreement was executed
Was judgement granted but agreement calls for the judgment to be vacated if agreement is complied with?
If move out agreement was reached, did tenant get extra time to move?

- Why this information? It allows you to report the impact of your program to the court, funders, relevant government or private social service agencies.

(E) Additional data:

What caused Tenant to be evicted a) behind in rent/utilities b) other alleged lease violation; c) both
If tenant behind in rent/utilities what caused arrearage? E.g., Medical condition, job loss/reduction in work hours, transportation issue...
Is tenant in need of emergency rental assistance?
Is landlord willing to accept rental assistance payment from third-party?
What resource referrals were provided to tenant?

- Why this information? It allows you to understand the economic forces in people's lives that lead to the eviction filing and what community resources Tenants facing eviction find most helpful.

VIII. Implementing the Program

Once you have obtained Court buy-in, refined your program details, and selected and trained the appropriate Mediators, it is time to implement your program. When your program goes live, the goal is for each day on-site at court to flow similarly. For an eviction court with a heavy caseload (100-150 cases scheduled for hearing each day), CMS has found that having 4-5

Mediators on-site daily at court to be an effective number. (Note: In many instances a significant number of tenants do not appear at their scheduled court hearing which reduces the number of cases needing to be served at court)

Mediators should expect on-site court mediations to be initiated through different avenues of referral – walk-up pro se tenants, Legal Aid (especially if such a program is available on site concurrent with a mediation program), a pro se Landlord or the bench. Bench referrals typically involve a pro se Tenant and a pro se Landlord. Some Tenant-initiated cases also involve pro se Landlords. The most frequent scenario, however, involves a pro se Tenant seeking to mediate with a Landlord who is represented by counsel.

Regardless of the method of initiation, Mediators should be prepared to undertake the following process as parties present themselves for mediation;

- Greet the parties and introduce themselves and their affiliated organization.
- Clarify the role of the mediator (to assist parties in discussing their areas of disagreement to help them try and reach a voluntary resolution that is acceptable to them both; if they reach an agreement it will be put in writing so that it may be presented to the Judge/Magistrate when the case is called; parties voluntary agreement then becomes part of the court record and becomes enforceable by the court)
- Clarify that the mediator can provide them with **information** about the court’s vocabulary and how the court’s eviction case processing/timelines work but cannot provide parties legal assistance. (Mediators should anticipate that for several reasons some tenants may benefit from a referral to a Legal Aid type organization **before** they may be willing or able to participate effectively in mediation – i.e. their concerns as they describe them exceed the Mediator’s capacity to address through education and facilitation, or despite the Mediator’s explanation of the mediation process, parties persist in asking the mediator for legal advice or in asserting legal arguments to justify their own behavior or that the other party has behaved “illegally.”)
- Confirm parties’ willingness to mediate. (do they appear willing/able to allow the mediator to facilitate their negotiations to at least try to look for a mutually acceptable settlement and agree to follow basic ground rules, likeone person speaking at a time and the other party not interrupting... and speaking to the mediator when asked to do so rather than to the other party)
- Ask preliminary questions to complete the proper intake paperwork. (Questions to the Tenant may include: Do you have children in the home? What are the sources of income for your household?)

(A) Mediations between Unrepresented Parties

Mediation between two unrepresented parties at eviction court generally is undertaken as a condensed version of typical mediation session. The Mediator explains his/her role, the goal of the process, confidentiality issues, confirms authority of parties to settle, screens for conflict of interest, secures agreement to the ground rules, etc. One at a time the Mediator then invites each of the parties’ to share their perspective and proceeds to identify the parties’ issues and interests.

Most of the time is devoted to helping the parties develop and evaluate settlement proposals. Ideally, these sessions should be undertaken in a private conference room. If a settlement is reached, the Mediator drafts the agreement for the parties' review and signature, keeping in mind all **court requirements for the required elements of drafted agreements**. In addition, the Mediator ensures that all case Intake paperwork is completed properly before completing the mediation process with the parties. When the unrepresented parties are done, the mediator makes multiple copies of their agreement and provides them each a copy, maintains a copy for the mediation case file, and provides a copy to the bailiff letting him/her know the case is ready to be called to the bench for the case outcome to be formalized by the bench.

When there is a **Bench Referral** of unrepresented parties, the Court may proactively provide the court case file to the Mediator for use during the mediation. When mediating between unrepresented parties in a party-initiated case, Mediators may need to go obtain the file from the Court bailiff. A file sign-out protocol to allow the Court bailiff to track the file location may be helpful. CMS uses a file sign-out form printed on blue paper to allow the Court's bailiffs to track that CMS has a court case file.

(1) Mediators should be aware of the following:

(a) Caucusing with parties separately may be required for any number of reasons but frequently it is necessary because of the breakdown in the Tenant-Landlord relationship and extremely volatile emotions. Unrepresented Landlords typically own only a few rental properties, may not be well-versed in the eviction process themselves, and frequently have a more personal rather than a professional relationship with their Tenants. Their more direct personal financial interest in the case outcome may also escalate their emotions.

(b) One or both parties may be relatively unsophisticated with respect to the eviction process. Education of the parties within the confines of the Mediator role and referral of parties out for help beyond the Mediator's capacity may be required. (Parties may need to ask the court to "continue" their case to a later date to allow for these additional resources to be tapped)

(c) Court requirements re: the drafted agreement content and format and the filing process of the drafted agreement. (When a mediated agreement is reached does the court prefer to call the case, confirm the parties' understanding of the agreement before dismissing the parties.)

(B) Issues Distinct to Pro se Tenant-Initiated Cases When Landlord is Represented:

Frequently, when a pro se Tenant seeks to mediate with a Landlord represented by counsel, the Landlord's counsel may have too heavy of a caseload to participate in a traditional face to face mediation session with the tenant. This typically occurs with counsel who are representing a significant number of corporate Landlords on the same time day at court. In this circumstance, Mediators should be prepared to adopt a shuttle diplomacy style of mediation to best assist the parties.

Further, in conducting the shuttle diplomacy, Mediators should be aware of the **power imbalance** inherent in this scenario and take appropriate impartial steps to minimize any harmful

effects resulting from this imbalance. Mediators also should develop an awareness of each frequent flyer counsel's case management process to be able to educate the Tenant on the way the shuttle diplomacy process will unfold.

Counsel with a less heavy caseload may be more inclined to be a direct part of the mediation process by talking with the Mediator and the Tenant together. Mediators should be prepared to tailor the delivery of the mediation service as the circumstances dictate.

(1) Suggested Methods of Effective Shuttle Diplomacy:

Mediator should locate quiet area or conference room outside court room. Mediator begins process with Tenant. After completing Intake paperwork, Mediator asks questions to understand Tenant's perspective on the specific issues leading to the eviction filing, e.g., –unpaid back rent or utilities, hold-over, other;

Mediator explores Tenant's need for emergency resources and makes appropriate referrals as needed.

Mediator clarifies the Tenant's preferred resolution – pay and stay agreement or move out date.

Mediator prepares written settlement **proposal** from Tenant to Landlord on form developed specifically for this purpose. It is helpful if the tenant proposal form is put on **colored paper** so it is distinct and readily identifiable by the landlord's attorney in a sea of paperwork. Proposal content should communicate to Landlord counsel any issues regarding the Tenant's proposed use of emergency rental assistance to resolve the case or any other information Mediator feels is relevant to convey to the Landlord.

Tenant signs proposal form that affirms their understanding that the proposal content reflects a mediation proposal and that they understand the Mediator is an impartial facilitator who is not providing them tenant legal advice or legal representation.

Mediator delivers Tenant's proposal form to Landlord's counsel.

After consulting with their landlord client, counsel returns proposal form to Mediator communicating the acceptance or rejection of Tenant's proposal, or a counter proposal. Mediator communicates Landlord's response to Tenant. If counter proposal is made, process continues until agreement is reached or no agreement is possible.

Once agreement is reached, Mediator should ensure that drafted agreement reflects parties' wishes. (The landlord's counsel or the Court may prefer that Landlord's counsel draft the parties' agreement rather than the Mediator. If this is the case, ideally, Mediator will review the agreement with Tenant and Landlord counsel together. However, Mediator should be prepared that Landlord's counsel may not have time to participate in the review of the written agreement with the tenant. In this case, Mediator should communicate any Tenant questions back to Landlord's counsel. Once questions resolved, or if there are no questions, Mediator obtains appropriate signatures.

Before concluding the shuttle diplomacy session, Mediator should confirm with the court the filing of the mediated agreement and the Tenant's freedom to leave the court hearing. Some courts may prefer to have the case called and to ensure all parties' understanding of the agreement and then to dismiss the parties; other courts may be comfortable with allowing the mediator to dismiss the tenant after the agreement is signed and relying on counsel's representations and filing of the agreement.

Certainly, shuttle diplomacy is not ideal. However, particular court case management protocols may necessitate it.

*Sometimes, it is difficult to begin shuttle diplomacy with the Tenant for any number of reasons – Tenant is too emotional to focus, Tenant lacks sufficient relevant information, etc. In this instance, the Mediator may find it easier to begin shuttle diplomacy with obtaining a proposed resolution from Landlord's counsel. This is an approach to consider in order to promote efficiency on high case load days.

IX. Program Follow-Up

Designate one or two people in your organization to conduct follow up inquiries on cases after mediation to confirm agreement compliance and the impact of the mediated agreement on the tenant's ability to maintain stable housing. (minimum of 6-month or one-year follow up is recommended). This case follow-up includes checking court records as well as reaching out to tenants by phone to determine whether the tenant is currently living in stable housing and if this Tenant has experienced any evictions after receiving mediation services.

Alternate follow-up procedures like checking court records are essential because the tenant population served may be difficult to track down by phone months after the mediation service has been provided. Further, some people served may be unwilling to provide accurate contact information. To counteract this potential, the designated follow-up person should be trained to read and interpret the court's publically available case records. With this training, the designated follow-up person would be able to research whether a served Tenant has experienced any evictions, in the identified geographic area, following the receipt of mediation services.

X. Database selection- Mediation Program providers will need to use an effective case management data base system to track a significant depth of data about case content and outcome details as well as tenant demographics. (For more info on data tracked by CMS, contact info@communitymediation.com)

XI. Communications to from the Court- Regular communication between the mediation program provider organization and the court should be maintained on a minimum of a bi-annual basis to keep the court apprised of the volume of cases being served at the court, the outcomes of those cases and the demographics of the tenants involved. In addition, as needed, the court should be kept apprised of Program's suggestions as to how the program and the court could work together more effectively to improve delivery of mediation services and/or to address any concerns that may from time to time arise between mediators and court personnel.

XII. Equipping the mediators.

At court Mediation Service Providers will need to be provided internet access, lap top computers, office supplies, and access to a printer, and informational handouts about community resources.

*Copies of CMS forms may be requested at info@communitymediation.com.

Respectfully Submitted,

Shelley Whalen, Executive Director

Swhalen@communitymediation.com

Mobile: 614-361-8031