

# **Preliminary Recommendations on Data Elements for Courts to Collect Regarding ADR/Settlement Assistance**

**Version 2.0 (September 14, 2019)**

## **ABA Section of Dispute Resolution, Advisory Committee on Dispute Resolution Research<sup>1</sup>**

### **Explanation of Classification of the Data Items**

The data items below are presented in two parts: Part A consists of data items routinely recorded in case management systems (CMSs) or in ADR information systems, and Part B consists of data items obtained through surveys or mediator reports. Note, however, that with the increased use of electronic filing and case management and the implementation of ODR systems, it is becoming increasingly possible to provide all court users with an electronic means of reporting their assessments of access and fairness regarding their court experience. Therefore, items contained in Part B may have the potential to be part of a routine collection process in some courts.

Taking Part A's routinely-recorded data first, these are divided into two sections. The first section lists data collected for every case that will also be essential to evaluating and maximizing the effectiveness of ADR/settlement assistance processes. The collection of every one of these items is essential. The second section in Part A lists data that are particularly about ADR/settlement assistance and would be recorded for every case referred to ADR or judicial settlement conferences. Again, every one of these items is essential.

Part B's data consist of three sections. All data items would come from surveys. The first section consists of data items that are about the case; the second section lists items that involve party and attorney assessments of the ADR/settlement assistance process; and the third section consists of items that assess or are from the neutral providing ADR/settlement assistance.

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To the extent possible, it will be important to collect the same data from both the cases referred to ADR/settlement assistance and the cases not referred to ADR/settlement assistance. This will permit valid comparisons between them (e.g., to examine which types of cases are referred and which are not).

**Note: Bold** = Essential. If the first line in a row is in bold and nothing below is, then all items in that row are considered to be essential. Otherwise, the item(s) in bold are the only ones in that row that are considered to be essential.

**PART A: INFORMATION RECORDED IN CASE MANAGEMENT OR ADR MANAGEMENT SYSTEMS**

Item	Reason
<b>Section 1: Information recorded on all court dockets and relevant to ADR/settlement</b>	
<b>Case characteristics</b> <ul style="list-style-type: none"> <li>• <b>Case type</b></li> <li>• Amount in controversy</li> </ul>	Needed for determining whether case characteristics affect outcomes. Case type is needed for knowing the cases for which ADR/settlement assistance is being used.
<b>Party represented by counsel?</b> <ul style="list-style-type: none"> <li>• Full representation</li> <li>• Limited representation</li> <li>• No representation</li> </ul>	A focus of access to justice, this information is used to determine how many parties have counsel, as well as whether representation has an impact on case and ADR/settlement assistance outcomes.
<b>Benchmark dates<sup>2</sup></b> <ul style="list-style-type: none"> <li>• Case filing date</li> <li>• Date discovery commenced</li> <li>• Date discovery closed</li> <li>• Dates dispositive motions filed and decided (by type of motion)</li> <li>• Start date of trial</li> <li>• End date of trial</li> <li>• Case closing date</li> </ul>	Needed for case management. Also required for determining: 1) time from filing to disposition, 2) whether ADR/settlement assistance is used at all appropriate times, 3) whether the occurrence of some types of case events (e.g., filing of a summary judgment motions) make ADR/settlement assistance more or less effective, 4) whether education is needed to promote earlier referral and 5) relationship of ADR/settlement assistance to duration of case (e.g., do cases referred to ADR resolve more quickly).
<b>Was case eligible for referral to ADR?</b>	Needed for case management purposes and to track the percentage of the caseload that is referred to ADR. Should be recorded for every filed civil case.

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<sup>2</sup> This is the list of dates for civil cases. The list may vary for other case types. For example, for child protection cases, the list would include the dates of petition, initial hearing, adjudication, disposition, and so on.

<p><b>Case outcome, including dates</b></p> <ul style="list-style-type: none"> <li>• Default</li> <li>• Settlement</li> <li>• Agreed/consent judgment</li> <li>• Judgment on motion</li> <li>• Judgment at trial</li> <li>• Dismissal by plaintiff</li> <li>• Joint dismissal by parties</li> <li>• Dismissed by the court or transferred to other venue</li> <li>• Other</li> </ul>	<p>Needed for case management. Also required to know the outcomes of cases referred to ADR/settlement assistance. Information could come from a required case closing form, to be filed by the parties.</p>
<p><b>Case outcome: process that led to settlement</b></p> <ul style="list-style-type: none"> <li>• Party negotiations not assisted by a third-party neutral</li> <li>• Settlement conference</li> <li>• Mediation</li> <li>• Non-binding arbitration</li> <li>• Early neutral evaluation</li> <li>• ODR</li> <li>• Other</li> </ul>	<p>For courts that offer many options for settlement assistance, needed to know whether settlement is due to ADR or other settlement assistance and what the outcomes of such processes are.</p> <p>This data element may not be currently captured by courts, but it should be. Parties can be required to provide this information on a consent judgment, voluntary dismissal, or case closing form.</p> <p>Another option is to gather this information from post-disposition surveys.</p> <p>ODR may take a variety of forms. We are recommending that the use of ODR be recorded. Different forms of ODR (e.g., facilitation of negotiation, mediation, evaluation) could be listed separately.</p>
<p><b>Section 2: Information about ADR/settlement assistance recorded on court dockets or in ADR management systems</b></p>	
<p><b>ADR/settlement assistance process(es) used</b></p> <ul style="list-style-type: none"> <li>• Party negotiations not assisted by a third party neutral</li> <li>• Settlement conference</li> <li>• Mediation</li> <li>• Non-binding arbitration</li> <li>• Early neutral evaluation</li> <li>• ODR</li> <li>• Other</li> </ul>	<p>This is needed for case management generally, even in courts with only one ADR/settlement assistance process in addition to traditional bilateral negotiations by lawyers. It is also needed for specific ADR/settlement assistance purposes, including the degree of use of various types of ADR/settlement assistance processes and whether party assessments and case outcomes differ by type of ADR/settlement assistance process.</p> <p>ODR may take a variety of forms. We are recommending that the use of ODR be recorded. Different forms of ODR (e.g., facilitation of</p>

	negotiation, mediation, evaluation) could be listed separately.
<p><b>Benchmark dates</b></p> <ul style="list-style-type: none"> <li>• Date(s) referred/ordered to ADR/settlement assistance process(es)</li> <li>• Date neutral selected</li> <li>• Date(s) ADR/settlement assistance session(s) held (see the row above for the processes for which session dates should be recorded)</li> <li>• Date ADR/settlement assistance referral period ended</li> </ul>	<p>Needed for case management and to know whether cases are going to ADR/settlement assistance. Also required for determining: 1) time required for the ADR/settlement assistance process, 2) whether timing of ADR/settlement assistance affects settlement and participant assessments, and 3) efficiency of the ADR/settlement assistance process.</p>
<p><b>Information on neutral</b></p> <ul style="list-style-type: none"> <li>• <b>Name of neutral or dispute resolution organization</b></li> <li>• <b>Current position of neutral, relevant to process</b> <ul style="list-style-type: none"> <li>• <b>Presiding judge</b></li> <li>• <b>Non-presiding judge</b></li> <li>• <b>Former judge</b></li> <li>• <b>Non-judge neutral</b></li> <li>• <b>Attorney</b></li> </ul> </li> <li>• Gender</li> <li>• Race</li> <li>• Ethnicity</li> <li>• Disability</li> <li>• Sexual orientation</li> <li>• Paid/pro-bono</li> <li>• Who selected neutral</li> </ul>	<p>The name of the neutral or dispute resolution organization is needed in order to monitor the extent of use of particular neutrals or organizations and the quality of the neutrals. The current position of the neutral is particularly relevant in order to distinguish between settlement assistance processes conducted by current judges (presiding and non-presiding) and processes conducted by other neutrals.</p> <p>Gender, race, ethnicity, disability and sexual orientation can be used to determine the diversity of the neutrals providing services. This information can be retrieved from a roster module of the CMS if it is being used. Gender, race, ethnicity, and the other variables are useful for determining whether neutral characteristics affect outcomes. Parties' involvement in selection of the neutral is also useful for assessing the effect of their involvement or non-involvement on settlement, timing, and party assessments.</p> <p>If it isn't possible to record this information in the CMS or an accompanying module, it can be obtained through a neutral survey.</p>

**PART B: INFORMATION OBTAINED THROUGH SURVEYS**

<b>Section 1: Case information that is obtained through surveys</b>	
<p><b>What led to use of ADR/settlement assistance?</b></p> <ul style="list-style-type: none"> <li>• Automatic referral</li> <li>• Multi-door courthouse</li> <li>• Court ordered on own motion and parties agreed with the referral</li> <li>• Court ordered on own motion and parties did not agree with the referral</li> <li>• Party requested</li> <li>• Other</li> </ul>	<p>For programs in which cases can be referred to ADR/settlement assistance by various means. This information can be used in at least two ways: 1) to understand who is requesting cases go to ADR/settlement assistance so that education and outreach efforts can be tailored to those groups that do not request (e.g., judges, parties), and 2) to match outcomes and participant assessments to whether the case was mandated to ADR/settlement assistance or not (a procedural fairness issue). A court may use a referral process different from those listed, but courts should routinely record the referral method used in each case.</p>
<p>Case characteristics</p> <ul style="list-style-type: none"> <li>• Amount in controversy</li> <li>• Contentiousness</li> <li>• Degree to which party assessments of the case differed</li> </ul>	<p>Helpful for determining whether case characteristics affect outcomes.</p>
<p><b>ADR/settlement assistance outcome: occurrence of settlement</b></p> <ul style="list-style-type: none"> <li>• Settlement: <ul style="list-style-type: none"> <li>○ Full</li> <li>○ Partial</li> </ul> </li> <li>• No settlement</li> </ul>	<p>Needed for case management purposes. Also needed for determining the outcomes of cases referred to ADR/settlement assistance.</p>
<p><b>ADR/settlement assistance outcome: nature of settlement</b></p> <ul style="list-style-type: none"> <li>• Monetary</li> <li>• Non-monetary</li> <li>• Combination of monetary and non-monetary</li> </ul>	<p>Some ADR processes, such as mediation, are considered to provide the benefit of settlements that address underlying issues. This information is needed in order to assess whether this is happening.</p>

<p><b>Case outcome: process that led to settlement</b></p> <ul style="list-style-type: none"> <li>• Party negotiations not assisted by a third-party neutral</li> <li>• Settlement conference</li> <li>• Mediation</li> <li>• Non-binding arbitration</li> <li>• Early neutral evaluation</li> <li>• ODR</li> <li>• Other</li> </ul>	<p>For courts that offer many options for settlement assistance, needed to know whether settlement is due to ADR or other forms of settlement assistance and what the outcomes are.</p> <p>If a survey is used to obtain this information, the survey must be conducted on a post-disposition basis, not a post-session or post-hearing basis.</p> <p>ODR may take a variety of forms. We are recommending that the use of ODR be recorded. Different forms of ODR (e.g., facilitation of negotiation, mediation, evaluation) could be listed separately.</p>
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**Section 2: Information about and from parties and attorneys that is obtained through surveys**

<p><b>Party type</b></p> <ul style="list-style-type: none"> <li>• Individual</li> <li>• Business</li> <li>• Education</li> <li>• Non-profit</li> <li>• Government</li> <li>• Other</li> </ul>	<p>This information has two purposes: 1) to determine whether parties are being served equally depending on their type and 2) to determine if use of the process, its timing, and/or its outcomes vary by party type.</p>
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<p><b>Party demographics</b></p> <ul style="list-style-type: none"> <li>• Gender</li> <li>• Race</li> <li>• Ethnicity</li> <li>• Disability</li> <li>• Sexual orientation</li> <li>• Income</li> <li>• How many times has party been in court case</li> <li>• How many times has party used ADR/settlement assistance process before</li> </ul>	<p>This is needed to address access to justice. It is needed to determine who is using the program and, by looking at outcomes based on demographics, understand whether outcomes differ based on demographics.</p> <p>The best method for obtaining this information is through an intake process. If this is not possible, these should be included as questions on a post-session survey. The party should retain discretion to decide whether or not to provide this information.</p>
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<p><b>Party represented by counsel?</b></p> <ul style="list-style-type: none"> <li>• Full representation</li> <li>• Limited representation (only before ADR, only for ADR)</li> <li>• No representation</li> </ul>	<p>A focus of access to justice, this information is used to determine how many parties have counsel, as well as whether representation has an impact on case and ADR/settlement assistance outcomes.</p> <p>Although information on representation is recorded in the CMS, survey questions can be used to obtain further information on the type and extent of representation provided.</p>
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<p>Assistance received by party</p> <ul style="list-style-type: none"> <li>• Help desk</li> <li>• Expert assistance (e.g., housing counseling)</li> </ul>	<p>This information helps courts to know how often parties are receiving assistance and whether that assistance has an effect on case and ADR/settlement assistance outcomes.</p> <p>If possible, this information may be collected through the CMS so that information can be obtained for all parties.</p>
<p><b>Attorney demographics</b></p> <ul style="list-style-type: none"> <li>• Years in practice</li> <li>• How many times has handled cases in a particular ADR/settlement assistance process in the past 3 years</li> </ul>	<p>Needed to understand who is using the program and, by looking at outcomes based on demographics, understanding whether outcomes differ based on demographics.</p> <p>Experience in ADR in a particular court may be obtained through CMS reports. However, this won't provide information on an attorney's overall experience with the ADR.</p>
<p><b>Cost to parties to participate</b></p> <ul style="list-style-type: none"> <li>• Money spent</li> <li>• Time spent</li> </ul>	<p>Access to justice issue. Can those with low incomes afford to participate in the process?</p>
<p><b>Party/attorney assessment of process and outcome</b></p> <ul style="list-style-type: none"> <li>• Procedural fairness</li> <li>• Outcome fairness</li> <li>• Procedural satisfaction</li> <li>• Coercion/pressure</li> <li>• Outcome satisfaction</li> <li>• Whether cost of ADR in time and money is too much</li> </ul>	<p>Needed to monitor the quality of services provided.</p>

**Section 3: Information about and from neutrals that is obtained through surveys**

<p><b>Information on neutral</b></p> <ul style="list-style-type: none"> <li>• <b>Name of neutral or dispute resolution organization</b></li> <li>• <b>Current position of neutral, relevant to process</b> <ul style="list-style-type: none"> <li>• <b>Presiding judge</b></li> <li>• <b>Non-presiding judge</b></li> <li>• <b>Former judge</b></li> <li>• <b>Non-judge neutral</b></li> <li>• <b>Attorney</b></li> </ul> </li> <li>• Gender</li> <li>• Race</li> <li>• Ethnicity</li> <li>• Disability</li> <li>• Sexual orientation</li> <li>• Paid/pro-bono</li> <li>• Who selected neutral</li> </ul>	<p>If information on neutrals can't be obtained from the case management or ADR management system, it can be obtained through survey questions. The name of the neutral or dispute resolution organization is needed in order to monitor the extent of use of particular neutrals or organizations and the quality of the neutrals. The current position of the neutral is especially important to distinguish between current judges (presiding and non-presiding) and other neutrals.</p> <p>Gender, race, ethnicity, disability, and sexual orientation can be used to determine the diversity of the neutrals providing services. Gender, race, ethnicity, and the other variables are useful for determining whether neutral characteristics affect outcomes. The neutral should retain discretion to decide whether or not to provide this information. Parties' involvement in selection of the neutral is also useful for assessing the effect of their involvement or non-involvement on settlement, timing, and party assessments.</p>
<p><b>Party/attorney assessment of neutral</b></p>	<p>Needed to monitor the quality of the neutrals providing services. For mediation, research indicates that attorney survey responses represent one relatively accessible and reliable means to assess mediators' ability.</p>
<p><b>Actions taken by mediator</b></p> <ul style="list-style-type: none"> <li>• <b>Required actions</b></li> <li>• Not required actions</li> </ul>	<p>Information on whether mediators took required actions (IPV screening, explanation of confidentiality) is needed to monitor mediator quality. Information on other actions can help in research/evaluation into what mediator actions are associated with better outcomes (including more positive participant assessments)</p>
<p><b>Neutral's assessment of case</b></p>	<p>Neutrals can provide useful feedback to the court regarding the appropriateness of their case referrals and systemic issues that may affect the quality, fairness, efficiency or cost of ADR.</p>