



Eviction Diversion Considerations - Building Effective Partnerships with Court-Based and Community Mediation Programs

Eviction diversion programs use the court process to provide landlords and tenants with time, information, and resources to resolve their housing problems outside of the traditional litigation process. Mediation can be a powerful tool for helping landlords and tenants find common ground and mutually agreeable resolutions outside of the courtroom. This guide will help courts understand how they can effectively partner with existing mediation programs or launch new ones.

Mediation Overview

Mediation is the use of a neutral, third party to attempt to resolve a dispute. During a mediation session, landlords and tenants can discuss the case (actual or potential) and any underlying issues that might impact both parties. The mediator facilitates negotiations between the parties, often by asking questions and supporting focused and productive conversation. Mediators are trained to be neutral and are not otherwise invested in the parties or the issues of the case.

Benefits of Mediation

Well-designed mediation programs can provide many benefits to both the parties and to the court. Some common benefits include:

- Reducing the number of cases that require judicial involvement,
- Reducing the number of eviction judgments entered in court by providing alternate pathways for parties to resolve disputes,
- Increasing party autonomy and party satisfaction by giving individuals greater control over the outcome of their cases,
- Improving relationships between parties,
- Decreasing repeat eviction filings by allowing parties to reach long-term, sustainable outcomes,
- Saving parties time and money by offering earlier opportunities to resolve cases outside of court, and
- Rebuilding trust and confidence in the justice system.

A mediation program should determine its goals based on the primary objectives of the stakeholder community. These goals may inform the answers to the key considerations listed below.

Core Principles

Successful mediation programs provide an opportunity for parties in conflict to discuss and possibly resolve their dispute. Universal mediation values include:

- **Confidentiality:** The mediator is expected to keep all mediation communications confidential.
- **Party Self-Determination:** Through collaboration, the parties should develop any agreement that resolves their case. Agreements created without collaboration and party buy-in are at very high risk for breach. This is particularly true for eviction cases.
- **Voluntariness:** Landlords and tenants should not be forced to participate in mediation. Even where the case is referred or ordered to mediation, parties or the mediator may end or postpone a mediation session at any time. If mediation is mandated by state or local law, mediation programs should still provide an opportunity for mediators to determine if a case is not appropriate for mediation.

Key Considerations

1. How will the mediation program be structured?

As a first step, courts should determine where the mediation program will be housed, how it will be staffed, and who will serve as mediators. The following threshold questions should be answered at the earliest stages of planning:

- Will this program become part of an existing community mediation center or court mediation program? Will it be a completely new program?
 - Look for established mediation centers and programs that might serve as a primary touchstone for the program.
 - The National Association for Community Mediation (nafcm.org) maintains a directory of community mediation centers.
 - Check with your state or local Alternate Dispute Resolution office to see if there are court-based mediation programs already operating in the jurisdiction.
- Who will mediate the cases?
 - Mediations may be provided by staff mediators, contract mediators, or volunteer mediators. Resources should be dedicated to support all mediators either through stipend, training, or both.
 - Mediators should receive basic mediation skills training, eviction mediation training, and an overview of local eviction court processes.

- Mediators are not responsible for giving legal information to parties; however, understanding the court process will support mediators in effectively reality-testing parties.
- What other stakeholders are needed to help the program function?
 - **Program Staff:** Successful programs will have dedicated staff that are trained in mediation, case management, and dispute system design.
 - While the size of the program will determine what staff capacity is necessary, it is not generally recommended have an existing staff person take on the establishment and maintenance of a mediation program alongside their regular responsibilities.
 - Staffing might exist as part of a local trial court, an Access to Justice Commission, the State Administrative Office of the Court, a community partner, a bar association, or an existing dispute resolution department.
 - **Referring Partners:** Anyone who will support party access to mediation, such as referring personnel (court staff or community organizations) and administrative staff (case managers or court facilitators).
 - **Community Partners:** Successful programs will also coordinate with community partners such as rental assistance programs, legal aid organizations, and other service providers who serve the same population.
- What statutes, rules, or court policies will govern the mediation program?
 - State or local statutes, rules, and policies can impose requirements on how a mediation program operates.
 - Some states require training or credentialing before a mediator is authorized to provide mediation services.

2. Who should be involved in designing and operating a mediation program?

The following stakeholders are critical to a mediation program's success and should be engaged in any planning conversations from the beginning:

- **Judges:** Judicial officers may support mediation programs in several ways including referring cases to mediation, continuing cases to allow time for the parties to mediate, or adopting local rule changes that support the effective operations of a mediation program.
- **Tenant Advocates:** Legal aid attorneys, private bar attorneys, and self-help center staff who work with tenants may refer cases to mediation or help tenants prepare for mediation or comply with a settlement agreement after

mediation. They may also play a role in issue-spotting legal defenses or complicating factors that could make a case less appropriate for mediation.

- **Landlord Attorneys:** Private bar attorneys who specialize in representing landlords may refer their clients to mediation, represent their clients in mediation, or provide support to their clients after a mediation. Cultivating support from the landlord community and working to address their concerns can be critical to a program success, as voluntary mediation programs rely on both the landlord and tenant being active and engaged participants.
- **Tenant Community:** People with lived experience in eviction court can give feedback that will make mediation programs stronger and ensure the programs are user centered.
- **Landlord Community:** The landlord community includes small landlords, large property management companies, and public housing authorities. Each group may have their own unique perspectives on what will make a mediation program attractive and effective for them.

When courts have identified their stakeholder community and answered preliminary questions about program design and operations, they should engage the stakeholders in conversations about program development, operations, and evaluation. Courts may wish to create a working group to bring together stakeholders at a regular cadence to discuss the program. They may also conduct listening sessions or focus groups to gather feedback from the community about potential or existing mediation programs and to determine the needs of their community.

3. Which cases will go through mediation?

A mediation program may have a specific and limited case type that will be referred to mediation, such as pending cases in one courtroom. Alternatively, the program may be able to serve parties at any time during the court process, including pre-filing.

Programs with limited capacity may choose to focus on a subset of cases or litigants, such as cases filed by self-represented landlords or non-payment cases where the amount in controversy falls under a certain dollar amount. New programs may benefit from a pilot phase that serves a limited number or narrow scope of cases while creating the foundations for a program. Programs can always be scaled up or down depending on need and resources.

Depending on the capacity and priorities of a mediation program, the parties may self-refer to mediation or may need to be referred by the court or a partner agency. If the mediation program is established by a statute, rule, or order, one or both parties may be required to choose mediation. Whenever possible, creating an opt-out program is preferable to an opt-in program. Under this model, the case will go

to mediation unless both parties select not to participate, or the case is determined to be inappropriate for mediation.

4. Where will the mediation take place?

Like court proceedings, mediation sessions may be provided in-person, virtually, or offered in hybrid options to parties. When making this determination courts should consider multiple factors including the preference of the mediators, the format used for eviction court proceedings (if the mediations will take place during court), and the technological requirements. For more information on remote and hybrid court proceedings, see the [NCSC Remote Proceedings Toolkit](#).

- **In-Person Mediation**
 - Mediation spaces require at least one private room and a separate waiting area. (Ensure people in the waiting area cannot possibly overhear the conversation in the private room.)

- **Virtual Mediation**
 - Many virtual platforms work for virtual mediation. To create the best possible experience, have the mediator serve as host for the meeting, employ the waiting room feature for parties, and use breakout rooms for individual caucuses. Whenever possible create a unique virtual room for each mediation session.
 - Alternatively, when hosting multiple virtual mediation sessions at the same time, a staff member can serve as a central support to the virtual room and mediations can occur in breakout rooms. In this model, using the same virtual room each day is recommended.

- **Hybrid Mediation**
 - Hybrid programs provide services virtually or in person, but it is a best practice to have all parties experience the mediator the same way. It would be inappropriate to have one party meet with the mediator in person and have the other participate virtually. If the parties will appear in the same location as the mediator, use additional staff or volunteers to support that party in accessing the mediation process virtually.
 - If a program offers services both virtually and in-person, establish a default service method (likely whatever is easiest for the program) and offer the other as an alternative if both parties agree. This will eliminate the possibility of negotiating the mediation location in advance of the session.

Mediators, case managers, intake specialists, and referring partners should still use best practices to maintain safe access to mediation, including but not limited to screening practices.

5. When will the parties have access to mediation?

Mediation may be available during a specific window of time (e.g. during the initial court date) or may be available during a wider range of dates (e.g. at any point between filing and the trial date). Some mediation programs also offer pre-filing mediation, which allows landlords and tenants an opportunity to resolve cases upstream before a court case has been initiated.

Mediations can be conducted on the same day that a case is referred to mediation, or they can be scheduled for a later date.

- **Same-Day Mediation Programs:** Same-day mediation programs require on-site or virtual resources available in real time. While parties may feel rushed, they sometimes benefit from the expedited nature of same-day mediations. In jurisdictions where short and strict time frames govern eviction proceedings, same day mediation may be the only option. Parties should know before the mediation begins if they will have a hearing at the conclusion of the mediation or if they will return on another day - this will help the mediators reality test the impact of the court case on the parties.
- **Scheduled Mediation Programs:** Scheduled mediations require additional staffing to schedule a mediation session and parties often experience three different formal proceedings - the initial day where the case is referred, the mediation session, and any follow-up court date. While this does require an investment of time, parties often benefit from the opportunity to prepare for the mediation and mediators often have more time for the session.
- **Pre-Filing Mediation Programs:** Landlords and tenants can access mediation services in advance of filing a court case. This option can decrease unnecessary cases on a court docket, alleviating court resources for higher needs cases. Special consideration should be given to enforcement mechanisms for agreements reached in pre-filing mediations.

6. Who will attend the mediation?

In general, a mediation session should only be attended by the parties and the mediator. In some situations, there may be additional attendees including:

- **Counsel:** Landlords and tenants who are represented by counsel should be able to bring their attorneys to a mediation session if they want to have them present.
- **Interpreters:** Parties with limited English proficiency should have a court-provided interpreter present during the mediation session.
- **Other Attendees:** Some jurisdictions have statutes that govern mediation (e.g. the Uniform Mediation Act) that may authorize additional attendees such as family members, support people, or witnesses.

If the mediation occurs during a physical or virtual court hearing, it should still be held in a private setting where no one else, including court personnel, can hear the mediation.

7. Which mediation model is best for the program?

There are many different types of mediation models. Most programs use facilitative mediation (where the mediator gives no advice, opinion, or assessment) or directive mediation (where the mediator remains neutral but may give the parties a mediator's opinion). The case type, jurisdiction, referral partner, and established mediation practices and trainings will all determine the mediation model. The mediation model should be consistent regardless of mediator to ensure that parties receive a similar service regardless of the mediator they are assigned. Parties should know in advance of the session what type of mediation model they will experience in the session.

8. Other considerations

- **Establish an intake process for all cases.**
 - Parties are often uncertain of what to expect from mediation and can benefit from light intake before the mediation session begins.
 - Some case types require pre-mediation screening to ensure there is no history of violence, abuse, power, or control between the parties that would make it impossible for a party to safely advocate for themselves during the session.

- **Determine the amount of time mediators will have for an individual mediation session.**
 - Allow sufficient time for an eviction mediation, regardless of in-person or virtual. The recommended time for an eviction mediation is 90 minutes to ensure the parties are not rushed. If that is not possible during a court proceeding, the case can be continued for another date to allow the parties sufficient time to mediate.
 - Consider if more than one session is possible. (Typically, where both parties and the mediator agree, a second session can be effective if timing allows.)
 - For same day mediations, referrals to mediation should be made at the very beginning of the docket to ensure mediators have enough time to provide a full mediation session.

- **Collect data on the mediation program.**
 - Mediation programs should establish a process for receiving feedback from mediators and mediation participants for each mediation session.
 - Use this data to regularly evaluate the effectiveness of the program and make data-informed decisions about program operations.

- Compare data to established primary objectives of the program.
- **Check for state and local rules to understand any additional requirements.** Confirm the mediation program meets any requirements established by state statutes, local rules, and court policies.
- **Create an outreach and engagement plan.** Mediation requires buy-in from all parties to be successful. Consider creating print and digital materials to educate landlords and tenants about the mediation program and its benefits.
- **Ensure the mediation program is accessible and inclusive for all litigants.**
 - Ensure mediation is accessible to all parties regardless of income, language, physical ability, or any other status.
 - Develop a language access plan to provide interpretation services for mediations involving one or more parties who do not speak English.
 - Accommodate disabilities using closed-captioning, ASL interpreters, and accessible in-person spaces.
 - For virtual programs, identify public access computers in community settings that litigants can use if they do not have access to technology and privacy at home.

Promising Practices

The following practices can strengthen mediation programs to ensure they work for court stakeholders and provide a positive experience for the participants.

- **Provide mediators with initial training and ongoing support.**
 - Mediation training is often determined by local practices and any policies governing mediation. Resources should be dedicated to hiring professional mediation trainers.
 - Hold regular check-ins for mediators to discuss best practices, give feedback, and receive updates on the program.
 - Many mediators benefit from an intentional [Reflective Practice Model](#). While these tools are designed for solo-practicing mediators, the methodology is easily replicable for court-based mediation programs. More information about this practice can also be found in [Michael Lang's work](#).
- **Adopt policies to protect client confidentiality.**
 - Mediations are always confidential. This limits the mediators' ability to support parties outside of the mediation session.
 - Mediators cannot serve as a mediator and work with parties individually. For example, they cannot also serve as housing

counselors, report to the court regarding details of the mediation session, or advocate for either party.

- A Confidentiality Agreement, Policy Statement, or something similar can be shared with parties in advance of the mediation. Any policies established by the mediator or obligations bestowed on the parties should be included in the document. All parties should sign the document at the start of the mediation.
 - If partnering with an established mediation provider, review the document used and update or adjust as appropriate for the mediation program.
- **Engage landlords and landlord attorneys to build support for mediation programs.**
 - Cultivate buy-in and support from Landlord Attorneys. Work directly with attorneys to identify opportunities for the mediation model to support Landlords and Landlord Attorneys. Persuasive incentives will vary by jurisdiction, but successful models might include:
 - Decreased wait times in accessing court for a mediation case with an agreement breach,
 - Certification for the Landlord through the city or municipality that is earned by a willingness to participate in the mediation program, or
 - Access to mediation without paying a filing fee or paying a decreased filing fee.
- **Develop metrics for success**
 - Programs should identify metrics that will be used to measure success and build in opportunities for continuous improvement based on feedback from the stakeholder community.
 - When considering metrics of success, programs should think more expansively than case settlement statistics. Parties often receive other benefits from participating in mediation, and relying on only one metric of success may not fully illustrate the many different benefits of mediation.
 - Other metrics of success may include party satisfaction rates and improved court experience.
- **Cultivate program champions**
 - Champions include all people whose support of a mediation program will help ensure its continued success.
 - Identify both financial champions (like grantors or funders) and leadership champions (like community leaders or judges).
 - Also consider anyone who might have questions or concerns about the mediation program (like local bar associations or legal aid

organizations) and engage those groups and individuals early in the process to understand and address concerns. Creating support for the program from potential skeptics will help with establishing the mediation program.

Additional Resources

For more information on mediation programs and dispute resolution system design more generally, visit the following websites:

- National Association for Community Mediation (nafcm.org)
- American Bar Association Dispute Resolution Section (americanbar.org/groups/dispute_resolution)
- Association for Conflict Resolution (acrnet.org)
- Resolution Systems Institute (aboutrsi.org)

Visit ncsc.org/eviction for more information and resources from the NCSC Eviction Diversion Initiative.

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To learn more, visit calderadialogue.com



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