



Mediation meets judges – FINAL fact sheet – WS2

The Court annexed mediation pilot scheme fact sheet aims to provide information about the experiences of mediation projects in Courts that have been developed during the project.

Description

- Who is involved:
 - Which court (or judge/clerk)? Number of judges?
[Mercantil Court nº 2 Málaga. 1 Judge: Ms. Rocío Marina Coll](#)
 - Name and contact person in the Court/Tribunal.
[Secretary Judicial Ms. Catalina Cadenas de Gea](#)
 - Number of mediators involved in the or on call
 - [CHAMBER OF COMMERCE OF MÁLAGA \(on behalf of Council of Chambers of Commerce of Andalusia\)](#)
 - [INTERMEDIA Institution](#)
 - [SOLUCIONA Institution](#)
 - [MEDIAMOS Institution](#)
 - [AMFIMA Institution](#)
 - [ACUERDATE Institution](#)
 - [ITER Institution](#)
 - Name and contact details of concerned MmJ partner/Chamber

Chamber of Commerce of Málaga	Council of Chambers of Commerce of Andalusia
Mr. Juan Gutierrez Campos C/ Cortina del Muelle, 23, 29015 Málaga juan.gutierrez@camaramalaga.com	Ms. Eva Ángel Lagares C/ Santo Tomás, 13, 41004 Sevilla eva.angel@camarasandalucia.org

- When did it start? [On October 15, 2015.](#) Is there a date foreseen for review/evaluation? [Intrajudicial referral procedure is reviewed every 2 weeks with the aim to correct any possible incidents, malfunctioning or ineffectiveness of referrals made by the Court. The final evaluation of the pilot project is scheduled to be held in May 2016; after 6 months of operation have elapsed.](#)
- What is the process?
[To disseminate the mediation to citizens, intrajudicial referral protocol is focused on the realization of the Informative Session for Mediation to the parties. This session is an important resource for mediation because it is the best opportunity to define a different judicial space which encourages the parties to try to resolve their dispute otherwise.](#)

[As the method, principles, rules, etc., be explained by involving the parties and their lawyers with questions and comments that establish a conversational dialogue between all. Therefore, making](#)



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communication between the parties begin to become more fluent in the briefing is already a breakthrough.

The protocol to the informative session takes place in various stages:

I. In a first phase is the Judicial Secretary who makes the first selection of issues that may be amenable to mediation. The Judicial Secretary communicates to the Judge the matters in which have to decide whether derived or not mediation, according to the list of disputes of commercial nature that have previously established jointly.

These previous list contents the following matters:

- Management of family businesses
- Relationship between holders and / or administrative bodies of companies
- Consumer complaints against the employer
- Small Claims
- Bank mortgages floor clauses

II. Referral File to Mediation Prior Briefing. It occurs in two distinct procedural moments:

1. In the time prior to the hearing, in writing, by diligence or providence aimed at hearing the parties stated. In this paper they are informed of the following:

- ✚ The matter is likely to be referred to mediation.
- ✚ Why the matter is amenable to mediation and the reasons why the parties are invited to attend this conflict resolution procedure d.
- ✚ Voluntary mediation: This diligence is emphasized that the parties may attend or not to the briefing, ie it is entirely voluntary.
- ✚ Marking of Information session: it is communicated to the parties, the date, time and place to come to it.
- ✚ It is reported that the parties must appear in person and accompanied by their lawyers
- ✚ The parties are informed that the fact attend the briefing mediation does not entail suspension of the preliminary hearing or the designated view.

2. At the time of conclusion of the preliminary hearing:

In this stage, at the time the parties before the court, Judge Marina Rocio Coll orally, invites the parties again to go to mediation. At this time, the judge tells them that there is an information mediation in the same City of Justice where the mediators on call and where they can go directly accompanied by their lawyers for mediation briefing. At the same moment the judge also explains why the conflict is likely to be referred to mediation, which is a free and voluntary service and if they come to mediation, pointing out the trial is not going to stop.

III. Referral file to mediation in Judicial Proceedings to be completed by the court.

The Court referred to the Mediation Service the Referral File with the minimum essential data:

- judicial body which derives



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- Type and number of process and procedural moment that is the cause and, if applicable, the date of the next remark or act.
- Data lawyers and / or prosecutors.
- ** Personal and contact information of litigants. No contact details of litigants are treated include only a single briefing entirely voluntary, so it is understood that it is not necessary that mediators make contact with the parties.

REFERRAL FILE TO MEDIATOR PRIOR BRIEFING OR "TRAVELLER FILE"

Get this nice name, because the same sheet mediation "travels several floors of the City of Justice" as shown below:

1. This file starts as indicated by the Secretary Judicial own on the premises of the court that is located in the number 1 floor of the City of Justice, completing all required information from those cases that the discretion of the court will derive to mediation.
2. Given the confidential information contained in these files; states that to ensure the protection of these data and ensure at all times the custody of these data, shall be held in the office of the Management of the City of Justice. Therefore the tab "travels from the first floor to the fourth floor" where is located the office of the Manager Rosario García Morillas.
3. Once there, mediators daily service covering come to collect the referral files to dispose of them in holding briefings. The files to the second floor, where the mediation service in the City of Justice is carried.

After making the briefings, the traveling file back to the fourth floor to be collected weekly by Court No. 2 for the statistics branch intrajudicial pilot project.

- Where/when is info about mediation communicated
In a first phase is the Judicial Secretary who makes the first selection of issues that may be amenable to mediation. Then she communicates to the Judge the matters in which have to decide whether derived or not mediation, according to the list of disputes of commercial nature that have previously established jointly.
- Who receives the info (lawyers, parties)
Both
- How is the communication made (individual meeting, permanence, group meetings, written...)?
II. Referral File to Mediation Prior Briefing. It occurs in two distinct procedural moments:
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 2. At the time of conclusion of the preliminary hearing: At this time, the judge tells them that there is an information mediation in the same City of Justice where the mediators on call and where they can go directly accompanied by their lawyers for mediation briefing. At the same moment the judge also explains why the conflict is likely to be referred to mediation, which is a



free and voluntary service and if they come to mediation, pointing out the trial is not going to stop.

- Is it an invitation or an order by the judge? (discretional)

Invitation

- Is there a feedback given to the judge? (discretional)

Yes

- Are there statistics collected and how? (discretional)

Yes.

- Where there any prerequisite? (such as trainings for the judges)

No

Evaluation of the scheme

In the months of pilot is functioning, it has been estimated that the objectives have been met in the project:

a) Information on mediation in general to any citizen who comes to the premises where the pilots are located.

b) Development of classroom briefing prior to the mediation process.

From the first moment, citizens were invited to attend to the informative sessions prior to the voluntary acceptance of mediation, welcomed the invitation by the court positively.

It has been observed that drives users justice attending the briefing, not only were not displayed uncomfortable or annoying, but they were grateful - accept or not mediation- and they were glowing with the possibility that had been offered to solve its conflict of a different way to trial.

Durante los meses de funcionamiento del piloto, se han derivado 991 casos por el Juzgado Mercantil nº 2 de Málaga, tanto de procedimientos ordinarios como verbales.

Due to the pilot project developed in the commercial court No. 2, only considers the referral intrajudicial information session prior to mediation, the statistics presented below collected data to the informative session. No data on mediations performed as a result of this pilot are known.

Month Referral	Nº Matters Referred	No Part Did Not Attend	Came Both Parties	Came Some Part	One Or Both Parties Declare Interest In Attend Mediation	It Affects To The Process
OCTOBRE	96	41	10	45	14	3
NOVEMBRE	261	182	9	70	15	10
DECEMBRE	204	129	4	71	18	4
JANUARY	210	136	1	73	5	1
FEBRUARY	220	196	2	22	19	1
TOTALS	991	684	26	281	71	19
PERCENTAGES		69,02	2,62	28,35	7,16	1,91



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Conclusions

The above table can draw the following conclusions:

Of the total referrals made by the Court, 69% of cases did not go to the information session; 28% only one party and around 3% attended both parties. The data that detected the Commercial Court number 2 of Malaga is that 2% of derivatives cases have been filed on request of the parties after they have attended the information session.

It is, so to speak, a side effect of information session: the parties are involving, talk - and within or outside process mediation- decide not to continue the courts.

The practical consequences of the Commercial Court No 2 has drawn from this pilot project would highlight the following:

1. The importance of the work of the judge or judges to determine the problems derived from mediation. This moment is crucial; and good choices of disputes have to go to mediation will depend much development effectiveness of the process.
2. The non-cooperation of the lawyers is the greatest difficulty we have encountered in the development of pilot 2 Commercial Court of Malaga.

It has been found that there is great ignorance of what is mediation. Only a few lawyers of who attended the service were aware of it and had a small part in mediation training.

3. Notwithstanding the overburdened that registers the Commercial Court 2, include the climate of excellent cooperation at all times has made all court staff itself and the invaluable assistance of the management of the City of Justice Malaga.

Currently it is studied by several courts of Malaga tried adherence to this pilot project, which so far is being developed by the Commercial Court 2 alone. These courts whose headquarters are in the City of Justice are:

- Commercial Court No 1
- Court of First Instance No 8
- Court of First Instance No 12
- Court of First Instance No 11
- Court of First Instance No 19