

CHILD PROTECTION MEDIATION:

**AN EVALUATION OF SERVICES PROVIDED
BY COOK COUNTY JUVENILE COURT**

RESOLUTION SYSTEMS INSTITUTE



RSI

CHILD PROTECTION MEDIATION: AN EVALUATION OF SERVICES PROVIDED BY COOK COUNTY JUVENILE COURT

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RESOLUTION SYSTEMS INSTITUTE

Formed in 1995 as the Center for Analysis of Alternative Dispute Resolution Systems (CAADRS) and based in Chicago, RSI's mission is to strengthen justice by enhancing court alternative dispute resolution systems through expertise in program development, research and resources. To accomplish this mission, RSI provides a range of information-gathering, clearinghouse, evaluation, analysis and training services.

RSI has worked from one end of Illinois to the other – from Rock Island to Carbondale – assisting state and federal courts with the establishment, monitoring and evaluation of mediation programs. With RSI's assistance, ten state circuits and one federal division planned and implemented civil mediation programs and monitored their progress. RSI also has worked with multiple family, child-related, and small claims mediation programs. Although direct services are focused in Illinois, courts and individuals across the country call on RSI for advice regarding program development and evaluation, to get information on the state of court ADR in the U.S., and to make use of CourtADR.org, RSI's Court ADR Resource Center.

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INTRODUCTION

This study is the result of a joint interest of the Presiding Judge of the Child Protection Division of the Juvenile Justice and Child Protection Department of the Circuit Court of Cook County and the staff of the division's mediation program in assessing the efficacy of the program, which provides mediation for cases that have entered the child protection system. To this end, the Child Protection Division asked Resolution Systems Institute (RSI) to help its mediation program create a system for monitoring the progress of the program over time and to provide an evaluation of its effectiveness. The court obtained a grant from the U.S. Department of Health and Human Service's Court Improvement Program to support a portion of RSI's costs for conducting this project. The project began in April 2004, with data collection ending March 31, 2005.

The court asked RSI to conduct this study with two goals in mind:

- To provide information to the court on whether the program is providing the benefits for which the program was established.
- To provide feedback to the mediation program on what improvements need to be made to provide better service to those who participate in the program, including family members,¹ judges, hearing officers,² attorneys and case workers.

1 In the Child Protection Division, natural, foster, guardian, and adoptive family members are simply referred to as "family members," which emphasizes the important role the foster family plays in the children's lives. This report uses that phrase in the same way. The terms "natural parent" and "biological parent" are used interchangeably in the child protection system. "Natural parent" has been selected for this study because it is more in keeping with the stated nature of the mediation program – it is less sterile and more relational.

2 Hearing officers were staff attorneys whose role was to conduct permanency hearings and make recommendations regarding the permanent custody of the child. Due to a decline in the number of children in care in Cook County, as well as budget cuts, the hearing officer program was ended in 2007.

MEDIATION

In the Cook County Child Protection Mediation Program, mediation is a non-adversarial process facilitated by two neutral co-mediators who facilitate communication between those involved in a case while also working to ensure that all have a say in the outcome. Those in attendance are generally the natural parents; the foster parents; other family members closely involved in the child's life; the attorney for the child, the attorneys for the parents, and, depending on the case, the attorney for the state; and the caseworker in charge of services and supervision of visitation (if needed). Each is given the opportunity to share his or her view on the case, as well as express any concerns about issues going forward. Cases can be referred to mediation at any time after the

The program works well, is well-regarded by almost everyone, and the participant families find it to be a rewarding experience, but it is underutilized.

hearing to see if the state will take temporary custody of the children and are referred for issues surrounding visitation, services, permanency, reunification and post-guardianship, among others.³

THE STUDY

Through a series of meetings over the period of three months, RSI and program staff decided that the evaluation of the program would look at three areas:

- Program performance – whether the program is serving the needs of children in the child

3 Cases can be referred whether or not the state takes custody.



protection system, mediation participants and other stakeholders (including judges hearing officers and attorneys who did not participate in mediation), as well as enhancing family member experience with the court system. This would be examined through data from the mediations and the court docket, as well as from participant questionnaires and stakeholder interviews.

- Program process – how well the process of getting the appropriate cases to mediation is working, as well as whether any problems arise in the post-mediation phase. This would be examined through data from the mediations and the court docket as well as through participant questionnaires and stakeholder interviews.
- Stakeholder understanding and assessment of mediation and its role and function within the child protection system – as a measure of how much support the program has as well as whether information is lacking in any area, as gathered through interviews with judges, hearing officers and attorneys.

RSI worked with program staff for six more months to create participant questionnaires and interview protocols, and to decide on what data would be collected for assessment purposes. At the same time, procedures were put in place that would allow tracking of responses without violating ethical standards of confidentiality for those participating in the study. RSI worked with the court's technology staff to create software for data input and reporting during that time as well. The evaluation began April 1, 2004, and concluded March 31, 2005. An interim report was submitted to the court in July 2005.

Since judges and hearing officers were the primary sources of referral to mediation, it was decided that all of them would be interviewed. In the end, interviews were conducted of 11 judges and 14 hearing officers. A sample of 36 attorneys for the parents, children, and state also would be interviewed, without regard to whether they had participated in mediation during the study period, as were caseworkers and family members who participated in mediation. These interviews were conducted not only because they gave insight into whether the program was working well, but also because all of these groups were

considered to be stakeholders in the mediation program who ultimately would benefit from its success. Knowing what “success” meant to them was essential to the evaluation.

Post-mediation questionnaires were distributed to all participants in mediation during the study period. These were connected to data from the cases regarding the program process and performance, including the referral process and appropriateness, resolution of the issues, time in mediation, other mediation program activities, and time to permanency.⁴ Mediators also were asked to complete a questionnaire for each mediation.

In response to the recommendations in the interim report, as well as in reaction to their own observations and research, Presiding Judge Patricia Martin and Program Director Susan Storcel instituted a number of changes to the program after the evaluation period. Those changes are discussed in an addendum to the study.

MAJOR FINDINGS

Participants, particularly family members, have very positive reactions to the program. However, very few are given the opportunity to experience it. Judges and hearing officers see the value in the program, but do not often make referrals to it. The majority of judges and attorneys interviewed believed mediation could occur early on, but almost always referred cases to the program after the disposition hearing.⁵ This is the paradox of the program. It works well, is well-regarded by almost everyone, and the participant families find it to be a rewarding experience, but it is underutilized.

The program is functioning well.

Very few inappropriate cases are being referred to mediation, the process of moving a case from referral to mediation runs relatively smoothly, the mediators have enough information to mediate the cases properly, and

4 This is the time between the petition for the state to take custody of the children and the point at which the court rules that their home is permanent, either through return home to their natural parents or termination of parental rights that leads to guardianship or adoption.

5 At the disposition hearing, which is held four or more months after the child is brought into the system, the court decides where the child will reside while the state maintains custody.



the participants are generally very positive about their experience.

The program is achieving its goals.

It is protecting the safety and best interests of the children. It is involving the parents more in decisions regarding their children. It is providing a forum for family members and the professionals who work with them to communicate and express their views and concerns.⁶ It is resolving conflict among those involved in the case so they can progress toward a permanent home for the children.

The mediation program is viewed positively by judges, attorneys and participants.

The majority of those interviewed and those who completed post-mediation questionnaires were positive about the program or their experience in mediation. Although not universal, the positive view of the program and of mediation cut across all groups of stakeholders – family members, judges, hearing officers, attorneys and case workers.

Two-thirds of referrals to mediation occur between disposition and termination of parental rights.

This occurs long after the family is brought into the child protection system, generally upwards of two years after intake. As family members stated in their interviews that mediation was the first opportunity they had to express themselves and have a part in the decision-making process, it would be of benefit to them for mediation referrals to occur earlier in the case.

Referrals are made mainly by judges and are concentrated in a few courtrooms.

More than half of all referrals are by judges. Attorneys and caseworkers are much less likely to request mediation. Only one mediation was requested by a family member. More than half of the referrals came from four of the fifteen referring courtrooms. This clustering of referrals can have detrimental effects on the program. Steps should be taken to broaden the referral base.

The program's impact on time to permanency is not known.

Although the program was not established with the goal of reducing the time it takes for a child to be placed in a permanent home (whether with her natural parents or someone else), this is a desired outcome. The impact of mediation on time to permanency could not be determined because too few cases closed within the study time frame. This is an indication of the overall need to reduce time to permanency.

Program users and referrers lack information.

- Family members and caseworkers lacked information about the availability of mediation and what the process is.
- Judges, hearing officers and attorneys asked to have more information about what cases to refer and when referral could benefit the family and the case.
- Mediators lack information on what agreements break down after mediation. This information can be helpful for adjusting mediation to address issues that lead to breakdown of agreements.

The program has been addressing the lack of information, with orientations to attorneys and caseworkers. The challenge is to provide a sufficiently frequent program of orientations in an environment in which there is rapid turnover among attorneys and caseworkers.

⁶ “Professionals” is used in this study to include all those who work in the child protection system and are involved in the case. These generally are attorneys, caseworkers and their supervisors, therapists and Court Appointed Special Advocates.





BACKGROUND OF MEDIATION

The picture of the average case that is referred to mediation in the Cook County Child Protection Division is one in which a neglect case is mediated for visitation or communication issues. Five to eight people participate, most likely including the natural mother and the guardian ad litem (GAL), along with the mother's attorney, the case worker, and the foster mother. On average, the mediation is completed in a single two-hour session and results in full or partial agreement.

When a case is referred, the program may perform functions other than the mediation itself. In some cases, children are interviewed before the session. If the mediation is not conducted because an essential party does not appear at the scheduled mediation time, the mediators may conduct informal discussions to facilitate communication about the case, which can help to move a case forward by providing a forum for the exchange of information between the professionals, helping them to make decisions that can move the children closer to having a permanent home.

NUMBER OF MEDIATIONS

During the study period, 165 mediations were held. These mediations involved 314 children ranging from infancy to 19 years of age. Just over half of all mediations involved only one child. Another 24% involved two children. The other 25% of mediations involved from three to seven children.

Finding: A small percent of children in care are being served through mediation.

The 314 children involved in mediated cases is a very small percent of the number of children in protective custody during that time. In FY 2005 (July 2004 – June 2005),

2,110 children were taken into protective custody in Cook County.⁷ Mediation was held for issues involving only 31 children brought into custody from April 2004 – March 2005. This is about 1.5% of all children brought into custody during that time. Approximately 12,000 children were in the system from previous years.⁸ Mediation was held for issues involving fewer than 3% of those children. Overall, mediation involved approximately 2.25% of children in care during the evaluation year.

SNAPSHOT OF MEDIATIONS	
Number of Cases Mediated	165 cases involving 314 children were mediated during the study period.
Type of Case Mediated	Neglect cases were the most likely to be mediated. However, the breakdown reflects the breakdown of cases in the child protection system.
Issues Mediated	The most common issues mediated were visitation, communication and permanency.
Mediation Length	Almost all mediation sessions were completed within three hours. Almost 75% were completed in one session.
Attendees	Most common attendees are the natural mother and the guardian ad litem. 40% more professionals than family members participated.

TYPES OF CASES MEDIATED

Finding: Neglect cases are more often mediated than those involving abuse or dependency.

- Of the 165 cases that went to mediation, 46% were brought in solely for neglect.
- Another 31% were almost equally divided between children brought in solely for abuse (17%) and

⁷ Illinois Department of Children and Family Services (<http://www.state.il.us/DCFS/docs/MonthlyCANStatsAug2008.pdf>)

⁸ Illinois Department of Children and Family Services (www.state.il.us/dcf/library/commfc.shtml). As of October 31, 2003, 12,140 children were in foster care in Cook County. As reported on <http://www.window.state.tx.us/forgottenchildren/appendices/a2.html>.



those brought in for dependency (14%).⁹

- The other 20% involved both neglect and abuse, both neglect and dependency, all three types, or were marked “other”.

LENGTH OF MEDIATIONS

Finding: Most mediations were completed in one session approximately two hours long.

- Almost 75% of mediations (120 of 165) were completed within one session
- Another 20% (33) were completed in two sessions, while 7% (12) continued for up to five sessions.
- Each session took between 30 minutes and four hours and fifteen minutes to complete.
- The majority of sessions (57%) took two hours or less, while 90% took three hours or less.
- The average amount of time in mediation was two hours and fourteen minutes.

ISSUES MEDIATED

The mediation program differentiates between issues that the court referred the case to mediation to address and those issues that were brought up in the mediation but were not requested by the court. So, for instance, the court may order that visitation and permanency be mediated, but when the participants are at the mediation table, they decide they also want to discuss communication between parents and foster parents. Communication is considered an issue that was mediated, but is marked as voluntary rather than court-ordered.

Eight issues were regularly discussed at mediation, whether ordered by the court or brought up by the participants:

- Visitation: logistics, timing, and other issues surrounding the natural parents’ visitation with their children.
- Permanency: whether the children will be returned to their natural parents, adopted or placed under guardianship.
- Case closure: dealing with roadblocks to closing the case when children are already returned to live at home with their natural parents or are transitioning from foster home to guardianship. Issues might include funds, furnishings and other

needs for the children.

- Communication: a broad issue that can include the opening of discussion between family members, between professionals, or between family members and professionals. The former is the most common.
- Reunification: barriers to overcome in order to have the children return to live at home with their natural parents, when the goal of reunification is already set.
- Post-guardianship: issues that arise once the case has been closed through guardianship.
- Placement: where the children will reside while in the state’s custody.
- Services for the natural parents, such as parenting classes, drug treatment or counseling.

Major Finding: The three issues most likely to be discussed were visitation, communication and permanency:

As seen in Table 1, three issues were discussed in more than half the mediations: visitation, communication and permanency. Of these issues, communication was the least likely to be the sole issue referred. This happened in nine cases. Visitation alone was referred for 26 cases, and 25 cases were referred for permanency only. Another 12 cases were referred for single issues. The remaining 93 cases were referred for more than one issue. The most common combination was visitation and communication, with 40 referrals. Visitation and permanency were referred together in 24 cases.

Another 12% of mediations involved issues other than those listed above. These issues tended to involve guardianship, such as stabilization of guardianship, and in which home the child should live. Also mediated were a change in custody, services for the child, a parenting agreement between the parents, parenting, sibling contact, and orders to mediate “related issues”. All but one of these was referred by the court.

Major Finding: In two-thirds of all mediations, participants asked to discuss issues not ordered by the court.

An interesting element of this is that certain issues were more often brought up voluntarily than ordered by the court. This is most pronounced for services, but also is apparent for reunification and case closure issues. The first two are issues of great interest to the natural parents.

⁹ Dependency relates to children whose parents are deceased or otherwise no longer able to care for them and the state has to decide who will have permanent custody of them.



Their voluntary discussion may indicate that the parents are being offered a forum for discussing issues they find to be important. This demonstrates the flexibility of the program and the process, and may be indicative that referrals are not being made as often as they could for some issues.

DISCUSSION

The program is mediating a small percentage of cases that come through the system, which means that few families are experiencing its benefits. Those who do participate in mediation have the ability to discuss the issues that they want to discuss. There is one significant contrast in the issues ordered by the court and those brought up voluntarily by the participants: participants are three times more likely to want to discuss services than the court is apt to refer that issue for discussion. There was also a greater probability of reunification and case closure issues being brought up by the participants on their own than there was for them to be referred by the court.

The heavy bias toward referral for visitation, permanency and communication and the number of times issues are brought up voluntarily leaves open the question of whether mediation is being fully utilized by referrers for other issues. However, the fact that the participants were able to bring up, discuss, and agree on issues that the court did not order demonstrates both the flexibility of the program and the amount to which the participants were able to make use of the time in mediation. It is also evidence of the control given to participants to discuss the issues that most concern them.





PROGRAM PERFORMANCE

The court and mediation program worked with the evaluator to decide which factors demonstrated program success. It was decided that these questions needed to be answered:

- What percentage of cases is resulting in full and partial agreement, and which issues are being settled?
- Is mediation ensuring the safety of the children?
- What is the effect of mediation on the case in terms of increasing understanding, moving the case forward and reducing time to permanency?
- What is the effect of mediation on the family members?
- How well is the program providing family

PERFORMANCE SNAPSHOT	
Agreements	Some form of agreement was reached in 74% of cases mediated. The agreements were seen as being effective.
Effect on Children	Almost all professionals and family members who participated in mediation believed that mediation helped the children. Most professionals believed the agreements reached were in the best interest of the children. All judges reported that they had never set aside an agreement because it was unsafe for the children, violated statute, or was not in the best interest of the children.
Impact on Case	75% of professionals who participated in mediation believed mediation helped to move the case forward. Mediators believed it moved the case forward in 87% of cases. Judges were evenly split as to whether hearings after mediation were shorter. Professionals and family members reported that the mediation enhanced communication, decreased conflict, and created better understanding among those involved with the case.
Participant Experience	Family members and professionals reported being satisfied with the mediation. Participants generally felt procedural justice to be an important part of their experience. This experience was overwhelmingly positive in mediation.
Understanding	More than 4 of 5 family members felt that they understood others' points of view better as a result of mediation, and that others understood their point of view better as well. The majority of professionals felt that they understood the family better because of mediation and felt that mediation enhanced communication with others involved in the case. Four in 10 felt that they were better able to communicate with their client.
Involvement	Most parents felt they were involved in finding the solution.
Time Spent on Case	One-third of professionals said mediation would reduce the amount of time they spent on the case; 50% said it would have no effect. Attorneys were more likely than caseworkers to say that mediation would reduce the amount of time spent on the case, while caseworkers were more likely to say it would increase the time they spent on the case.



members, children and professionals who participate in mediation an experience of procedural justice?

- What is the effect of the mediation on the time the professionals spend on the case?

SUMMARY

Most mediations end in some form of an agreement and the participants see that agreement as being beneficial for the children. The vast majority of participants found the mediation had positive impacts on the case and those involved. These impacts included moving the case forward, enhancing communication, decreasing conflict, and increasing understanding. Most of the participants had a positive experience of procedural justice as well, believing they were heard and respected in the mediation.

AGREEMENTS

Agreement Rate

In tracking settlement, the program uses a conservative definition for a settled case. Only those cases in which all issues for which a case is referred to mediation are settled and reduced to a written agreement that is presented to the court are considered to be fully settled. So, for example, if the court refers a case to mediation for the issues of visitation and permanency, and an agreement is made on visitation and communication, the outcome is marked as partially settled. If only communication is agreed upon, the outcome is marked as not settled because the court did not refer the case to mediation for that issue. Similarly, if an issue that was referred to mediation was only partially settled, that is considered a partial agreement, even if all other issues are settled. If an agreement is reached orally, but not formalized in written form, the program does not consider the issues agreed upon as settled.

Other Finding:

A moderate association was found between the type of case and the probability of settlement, with neglect cases more likely to settle than abuse cases, and cases involving both neglect and abuse being even less likely to settle.

Major Finding: Participants are most likely to reach agreement on services, communication and visitation.

The agreement rate for individual issues is presented here for all mediations involving those issues, whether ordered or voluntary.

- The greatest success at resolution was for the issue of services, with 83% fully or partially settled.
- Communication was also very likely to be resolved, with resolution in 79% of the cases in which it was at issue.
- This was closely followed by visitation, which was at least partially resolved in 77% of the cases in which it was at issue.
- The issue most often fully settled was visitation at 42%.
- Of the eight issues most often mediated, six were at least partially resolved more than 50% of the time.

Issue	Number of Cases	Full Agreement	Partial Agreement	Total
Visitation	130	42%	35%	77%
Placement	40	37%	24%	61%
Communication	114	36%	44%	79%
Services	58	31%	52%	83%
Case Closure	17	29%	24%	53%
Post-Guardianship*	11	27%	36%	64%
Permanency	106	26%	20%	46%
Reunification	20	25%	25%	50%

* Three of the 14 cases involving guardianship issues did not have information on whether mediation led to agreement on those issues.

Major Finding: In 74% of cases, some form of agreement was reached for the issues referred to mediation.

- Full settlement was reached in 35% of cases.
- Partial settlement, in which at least some of the issues referred to mediation are settled, was reached in 39% of cases.
- No agreement was reached in 26% of mediations.

☞ **Important Note:** Permanency was the only issue to be resolved in less than 50% of cases. Since permanency was discussed in 64% of the cases mediated, this low resolution rate should be examined more closely. Is the low rate of resolution a reflection of the difficulty of the issue, is it a result of parents putting it on the table when it has already been decided, or is there another reason? It may



be helpful to determine, as well, if greater understanding of the issue was gained through mediation even if it was not resolved, which means that it is useful to discuss permanency even if it does not result in resolution of the issue. This would require interviewing participants about their views on the effectiveness of mediation in dealing with permanency.

Finding: Agreement rate was generally similar for issues when they were ordered to be discussed as when they were voluntary.

Issues that the court did not order, but were discussed at the request of the mediation participants led to agreement in similar percentage as those issues that were ordered, with the main exception of case closure. Case closure was at least partially settled almost twice as often when it was ordered to be discussed than when it was voluntary. However, only five cases had been referred to mediation with an order to discuss case closure, so this difference may be artificial.

Issue	Voluntary Total Agreement	Ordered Total Agreement
Visitation	82%	74%
Placement	57%	61%
Communication	77%	79%
Services	86%	80%
Case Closure	42%	73%
Post-Guardianship	60%	67%
Permanency	48%	45%
Reunification	50%	50%

Efficacy of the Agreements

In order to explore whether the professionals believed that the agreement that was reached was going to be effective, two questions were asked: whether they believed that everyone would follow the agreement, and whether the agreement will be effective in dealing with the issues discussed at mediation.

Major Finding: Most professionals thought the agreements reached would be effective.

- More than two-thirds (68%, 309 of 455) believed that everyone would follow the agreement. Only 29 (6%) believed they would not.

- Slightly fewer professionals (64%, 302 of 475) believed that the agreement would be effective in resolving the issues discussed at mediation. About 16% (78) disagreed with that statement.

Family members were also asked whether they thought that everyone would fully follow the agreement. This was asked in order to gauge their faith in the agreement and through that their sense of whether the mediation has been beneficial.

Major Finding: The family members were satisfied with the agreements and positive about the probability that the agreement would be followed.

- In survey responses, 81% (271 of 333) thought the agreement would be followed. Only 7% (22) thought it would not be.
- In interviews, family members expressed satisfaction with the agreements reached in mediation and felt that they had input into what was in them. However, in only three cases were the interviewees sure that it would be followed by the other parties. In the others, they expressed doubt, sometimes saying that they knew they would follow the agreement, but that they were not sure the others involved would. Only one was certain the agreement would not be followed. Despite this uncertainty, they were happy with the outcome and with what was accomplished in the mediation.
- In interviews, all family members believed that if the agreement is followed, it will be good for the children.

EFFECT ON CHILDREN

Of paramount importance in any mediation program affecting children is whether the mediation is protecting their safety and best interests. Therefore, a number of questions were asked in interviews and on the questionnaires to see if mediation was harming or benefiting the children.

Major Finding: The mediations and agreements are in the best interest of the children.

A few of the GALs expressed concern that mediation



would lead to decisions that were not in the best interests of the child because a judge was not a part of the decision-making process. As this concern had been expressed in literature in the past, examination of the issue was included in the study, with questions for judges, professionals and family members.

Before a mediation agreement goes into effect, the sitting judge for the case must approve it. By rule, judges can only approve agreements if: 1) they are safe; 2) they are in the best interests of the child; and 3) they adhere to statute. Judges were asked in interviews if they had ever had an agreement returned from mediation that they could not approve. All judges interviewed stated that they have approved every agreement that was returned to them. By this measure, no agreement seen by the judges interviewed was unsafe or unlawful, and all were believed to be in the best interest of the child.

The professionals also believed that the agreement was good for the children. The professionals were asked two questions about mediation and the best interests of the children. The first was whether the agreement was the best solution for the children. Most professionals believed that it was, with 356 of 476 (75%) agreeing. Only 25 (5%) did not believe so.

Most also agreed with the statement, “Mediation led to greater agreement about the best interests of the child(ren).” Of the 531 professionals who answered this question, 80% agreed and only 4% disagreed. The others did not have an opinion.

The family members also were asked their views on whether the group arrived at the best solution for the children. The majority believed so, with 72% agreeing that they had, and 11% believing they had not.

A good number of professionals (20%) and family members (16%) were neutral regarding whether the agreement was the best solution for the children. This may be because the question was asked right after the mediation, before they could form an opinion.

Major Finding: Participants believe mediation helped the children.

The view of mediation participants was that the mediation

was beneficial for the children involved. Professionals and family members were asked whether the mediation helped or hurt the children involved. Most professionals (84%) believed that mediation helped the children. Only 2 felt it hurt them. The rest had no opinion.

Most family members also felt that the mediation helped the children. Eighty percent said it helped them, while only 2% said it hurt them. The other 18% had no opinion.

IMPACT ON CASE

The evaluation explored four important impacts that mediation should have on cases in order for it to be successful. These were increasing family involvement, enhancing understanding among participants, moving the case forward, and reducing time to permanency. These are inter-related. Family involvement requires, among other things, enhanced understanding. Enhanced understanding through greater communication among those involved in the case moves the case forward, thus, theoretically at least, reducing time to permanency.

Family Involvement

An important goal of the program is to get the family – most importantly, the natural parents - more involved in the case by getting them more involved in discussion issues and resolving conflicts. Both family members and professionals were asked to give their opinion as to whether this was happening.

Major finding: Mediation gets family members more involved in the case and the resolution of issues.

As part of the effort to determine whether the family members felt they were involved in decision-making, two questions were asked: whether they felt involved in the solution and whether they felt pressured into agreeing to a solution. The responses to both questions demonstrated that the parents felt they were a part of the process.

- Of those who answered, 89% said they felt involved in trying to find a solution. Only 5% felt they were not.
- Fewer felt free of pressure in agreeing to a solution, with 79% saying they did not feel pressured; however, fewer than 3% said they did.

The vast majority of professionals also felt that the



mediation helped the family to be more involved in the case – 90% said so. Most, 93%, also said they themselves were involved in the solution.

Enhanced Understanding

An important goal of mediation in the child protection context is to enhance understanding of others' views, the case, and the best interests of the children. This helps to defuse conflict, helps the parents understand their responsibilities, and helps focus the participants on the children. Most family members and professionals believed that they gained greater understanding through mediation.

Major Finding: Mediation enhanced understanding among participants.

Family Members

Whether family members felt there was increased understanding of others' views was tested through their agreements with two statements: 1) "Mediation helped me to understand the point of view of others;" and 2) "Mediation helped the others to understand my point of view." Both had very positive responses, with 83% agreeing others understood them better and 85% agreeing that they understood others better. Only 7% thought that mediation did not help others to understand their view, and even fewer – 5% - felt they left the mediation without a better understanding of the views of the other participants.

It is interesting that only slightly more believed they understood others' points of view than thought that others understood theirs. This is an indication that the family members felt heard by the other participants. This sense is backed up by the comments family members wrote to complete the sentence, "What I liked about mediation was..." More than half mentioned improved communication, increased understanding or the open forum for discussion.

Interviews with family members reflected this sentiment. All but two said they gained new understanding about others or the situation. For some, it was the first time they had met the parent or foster parent. Natural parents were able to see that the foster parents loved their children. As one said, "It was a big relief to know my child was being cared for." Others felt more ready for their children

to return home or for the termination of their parental rights.

As another measure of understanding and communication in the case, the family members were asked if everyone worked together to come to a solution. Most - 80% - believed this to be true, while 9% thought such cooperation was wanting.

Professionals

Like family members, professionals believed mediation increased communication and understanding, but to a lesser extent. They were asked whether mediation helped them to understand the family better, whether it helped them to communicate better with others involved in the case, and whether mediation helped them to communicate better with their clients.

More professionals believed that the mediation helped them to understand the family better than believed they were better able to communicate with others. Most professionals felt that mediation helped them to understand the family better – with 69% saying so. A majority - 60% - also said mediation helped them to communicate better with others involved in the case. There was a moderate correlation between the professional's role in the case and whether they believed that mediation helped them to better communicate with others. GALs and bar attorneys¹⁰ were most likely to believe so, while caseworkers were less likely to.¹¹

The professionals' comments on the questionnaires provide further insight into these responses. They gained understanding of others' motivations, the issues, and their own role in the case. In interviews, the GALs in particular noted that mediations helped them to make better decisions because they had a chance to meet the parents and get other perspectives.

Many attorneys saw mediation as helping them to communicate better with their clients, with almost twice as many believing it had that benefit than thinking it did not. The responses were highly likely to be neutral on

10 Bar attorneys are private defense attorneys for the natural parents who are assigned to the case by the court.

11 Cramer's V was .215. See Appendix E



this question (37%), leaving 41% stating that mediation helped them communicate better with their clients and 22% believing it did not.

The professionals overwhelmingly saw mediation as a way for everyone to work together. This measure of communication and understanding saw 93% believing that everyone worked together to come to a solution of the issues brought to mediation.

Moving the Case Forward

Major Finding: Participants believed mediation moved the case forward.

Another possible benefit of mediation is that the enhanced communication and understanding would overcome conflicts that were keeping the case from moving forward, even if agreement is not reached. The eleven judges interviewed were split as to whether mediation had an impact on later hearings. Six believed that hearings are shorter and less complicated when mediation has taken place. For three, this was the case whether or not an agreement is reached. One judge illustrated this view by saying, “I had a case in which there was a question of whether to return home or guardianship. Mediation helped the mom to see that guardianship was OK one hour into a hearing that was supposed to take two days.” The other five judges believed there was no impact.

A substantial majority – 75% - of professionals agreed on the post-mediation questionnaire that mediation succeeded in moving the case forward. Only 7% disagreed. Interestingly, this was not correlated to whether the mediation ended in settlement.¹² Caseworkers were less likely to say that the case was moved forward by mediation than any other category of professional. In interviews, the professionals were not asked this particular question. Nonetheless, several listed the case moving forward as a benefit of mediation.

The mediators believed in 87% of the cases that mediation helped to move the case forward. In 9% they believed it did not help.

¹² Ordinal regression was conducted to determine the effect of outcome and profession on whether the individual believed the case was moved forward by mediation. See Appendix E for further details.

Time to Permanency

One hope for the program was that it would reduce the time it took for a child to be placed in a permanent home. As part of the evaluation, cases mediated after the first permanency hearing were compared to other cases that had entered permanency prior to the study period to determine how many were closed within two years of the first hearing.

Important Note: No conclusions could be drawn about the impact of mediation on time to permanency because overall too few cases were closed within the evaluation time frame of two years. Anecdotally, judges, hearing officers and attorneys said that time to permanency was not being affected by the mediation program. Instead, mediation was enhancing the experience of the participants and decreasing conflict that is a barrier to moving the case forward by creating the need for further court hearings. Nevertheless, removing barriers to case progress should in general have an effect on moving the children toward a permanent home.

Hesitation to Refer Cases

Finding: Judge and hearing officers did not hesitate to refer cases.

As a gauge of the perceived program performance, judges and hearing officers were asked if they hesitated to refer cases to mediation. Almost all said they did not. One judge who said she did hesitate did so because she was afraid the program had too many cases and could not handle more. Two hearing officers who said they hesitated to refer cases said they feared that the mediation would go beyond its intended scope and would decide or change goals for the children. Another hearing officer said the mediators lacked legal experience.

PARTICIPANT EXPERIENCE

Overview

The program's performance in providing a positive experience for the participants was evaluated in two ways: through post-mediation questionnaires of all participants, which included closed response and open-ended questions, and through post-mediation interviews with randomly selected family members and caseworkers. The participants completed the post-mediation questionnaires in the mediation room just after the final mediation session. When they were done,



CASE STUDY I

Mediation had been requested by the state's attorney because the children were facing their third change in home and for the first time they were being placed outside the family. The reason for the change in placement was the difficulty that the foster parents were having with the children's natural mother. They said she was constantly combative and always questioning their parenting of her children. The state's attorney was attempting to create a more positive atmosphere so that some of the children did not have to be moved.

The case was a difficult one. The mother, who felt she had no one to turn to for help, had left her four children home alone while she went to work. The children played with matches and started a dangerous fire in the house. Fortunately, the children were unhurt. The mother was charged with neglect and her children placed in three different families, all relatives of the children.

At the mediation, the family members explained to the mother how her behavior was affecting them. They also listened as for the first time the children's mother described how she felt waking up every morning without her children. After opening up and having her feelings validated by other family members, the mother was able to then connect her behavior to her anger and sadness at not having her children. With this communication, agreement was reached as to how the family members and the mother were going to interact in the future and family members agreed to keep two of the children (it was too late to alter the course for the other two).

The mediation ended with hugs all around. In interviews after the mediation, family members expressed regret that mediation had not occurred sooner.



the participants placed the questionnaires in a file folder in the middle of the table. Interviews were conducted individually in private rooms just after the mediation ended and the questionnaires were completed.

Along with the topics discussed in previous sections, the questionnaires explored whether the program was providing all participants an experience of procedural justice and a sense of satisfaction. The participants' responses to these questions provide insight into whether they perceived the benefits that the court and the mediation program believed were being provided by the process. They also provide valuable information about what was important to them in their experience with mediation, as well as specific aspects of the process they found to be particularly good or bad. More in-depth examination of the participants' experience is presented later, in "Family Member Experience In Depth" and "Professional Experience In Depth."

The mediation program set forth a number of goals for the mediation:

- Discussion should be open.
- All participants should have an equal and sufficient opportunity to speak.
- The discussion should be confidential.
- The process and outcome should be fair.
- The participants should feel safe in the mediation.
- The process and the mediators should be neutral.
- The discussion should focus on the best interest of the children.
- All participants should feel respected within the process.

If the process works correctly, the program expected a number of outcomes or benefits to be the result:

- Increased voice for the family
- Increased involvement in the decision-making, and in the case, by the parents
- Decreased conflict between family members, etc.
- Greater acceptance of agreements (e.g., service plans, visitation, placement)
- More information for those making decisions
- Changes in behavior or attitude on the part of the family members
- Increased understanding of others' views

Minors

Of the nine older children who participated in mediation, four completed questionnaires. Those four were either positive or neutral in response to every question; none had anything negative to say about their experience. Two responded positively to every question. Two responded neutrally as to whether they had voice at the mediation. All believed they had voice before the mediation as well. See the questionnaire, Appendix C for full details.

Family Members

Major Finding: Most family members were satisfied

In interviews, the vast majority of participants projected a sense of accomplishment and satisfaction with their experience in mediation. Many saw it as the first chance they had to truly communicate, while others noted shortcomings in their ability to get through to others at the mediation table (generally another family member), but still felt satisfied that they were able to discuss their concerns. A number said that this was the first time they felt other professionals could understand where they were coming from, while some saw it as a way to understand the actions of others involved in the case.

**"I felt heard in mediation.
Some of my concerns were being brought into the decision."
- foster mother**

On the questionnaire and in the interviews, family members generally expressed satisfaction with their experience in mediation. Their responses on the questionnaire were very positive:

- Most family members were satisfied with how the mediation was handled. Of those who responded to this question, 86% agreed that they were satisfied. Only 6% were dissatisfied.
- In another measure of satisfaction, family members were also asked whether they felt mediation helped or hurt them. Most - 87% - said it helped,



while only 4% said it hurt. The other 9% said it had no impact.

- In another example of their satisfaction, 65% said they definitely would use mediation again, while 28% said possibly. Only 7% said they would not.

In interviews, all but two family members expressed satisfaction with their experience in mediation. Of the two who did not, one was frustrated with the case and felt that ongoing issues were not resolved. The other was focused on having her child return home, which became clear during mediation was not going to happen.

Procedural Justice/ Voice

One of the main goals of the program is to provide the family members with an experience of procedural justice. Procedural justice is considered to be one of the most important aspects of a party's experience with the justice system.¹³ Its presence or lack thereof has a profound impact on parties' satisfaction with the justice system and their perception of its fairness. Research has found that the most important characteristics of procedural justice are voice (the sense that one's voice has been heard in the process) and respect (the sense that one's feelings, ideas, and positions have been treated with respect in the mediation).¹⁴ Within the child protection context, procedural justice is seen as providing the families with a forum in which they can meet on a level playing field with the professionals involved to discuss their concerns and be heard. When the parties perceive this to happen, they believe that the system has been just, even if they did not obtain the result they wanted.

The importance of procedural justice to family members was demonstrated in both their comments on the questionnaires and in interviews. When asked very open-ended questions about what they liked or disliked about the mediation, 42% mentioned procedural justice issues. In interviews, as well, the family members independently brought up the positive impact of procedural justice issues on their experience. Their experience of procedural justice was assessed as well through a series

FAMILY MEMBER EXPERIENCE SNAPSHOT	
Satisfaction	86% of family members were satisfied with how the mediation was handled. 6% were not satisfied.
Voice	The vast majority of family members felt they had greater opportunity to express themselves than before, felt they had equal and enough chance to talk, felt listened to by both mediators and other participants, and did not feel ignored during the mediation.
Respect	The vast majority of family members felt they were treated with respect by both mediators and other participants.
Fairness	More than 4 in 5 family members felt the mediators treated everyone equally.
Pressure	13% of family members reported feeling pressured to agree to something they did not want to agree to.

of questions on the post-mediation questionnaire. The responses to these questions were very positive. Strikingly, their positive responses extended beyond their treatment by mediators to include all those who participated in the mediation.

For many of those interviewed, the mediators were integral to their in-

creased voice, seeing them as effective intermediaries who helped others see their point of view and controlled the flow of the conversation. As an example, one parent very emphatically noted that mediation was the first time that he felt treated fairly within the system. He believed every other process was rigged, but that in mediation the presence of the mediators leveled the playing field for him. He felt the mediators did this by not allowing his words to be turned around by the other participants. Even though he was not sure how effective mediation would be at getting him what he wanted, it gave him a sense of fairness that was very important to him.

Major Finding: Family members have an experience of procedural justice.

The program is successfully providing a forum for family members to have voice and feel respected:

- The family members were asked if mediation provided them with greater opportunity to express their point of view than they had before. The vast

13 Lind, Alan E. "In the Eye of the Beholder: Tort Litigants' Evaluations of their Experiences in the Civil Justice System," *LAW & SOCIETY REVIEW*, 24: 953-996 (1990).

14 *Id.*



majority – 87% – agreed with this. Only 7% felt they did not have greater opportunity for voice.

justice. Of the 42% who mentioned procedural justice issues, 80% mentioned their positive effect on their experience in mediation.

- Related was a question of whether they had enough chance to say what they wanted to say. Fewer – 79% – agreed with this, and 14% disagreed.

- In interviews, almost all natural and foster parents expressed their satisfaction with their ability to

- However, more – 92% – believed that everyone at the mediation had an equal chance to talk. Only 6% disagreed with this statement. This points to the family members feeling that the mediation was fair, even through they had more they wanted to say.

- A similar 91% agreed that the mediators really listened to what they had to say. Only 5% disagreed.

- What may be more important is that 85% believed that everyone at the table listened to them. Only 8% felt those at the mediation did not listen to them.

- Further, the family members felt that they were treated with respect by the mediators (95%) and by the others at the table (83%).

- The family members by and large did not feel ignored during the process: 8 of 10 said they did not, with almost half of all family members strongly disagreeing with the statement, “I felt ignored during the mediation.” Only 9% reported that they felt ignored.

- Although family members felt the mediators respected and listened to them, slightly fewer thought that the mediators treated everyone equally. Of those who answered this question, 82% said everyone was treated equally, while 13% said they were not. The other 5% answered neutrally.

- In free-response questions, family members were very positive about their experience of procedural

PROCEDURAL JUSTICE - FAMILY MEMBER RESPONSES			
	Agree	Neutral	Disagree
More opportunity to express point of view	87%	6%	7%
Equal chance to talk	92%	2%	6%
Enough chance to talk	79%	7%	14%
Mediators really listened	91%	3%	5%
Others really listened	85%	7%	8%
Treated with respect by mediators	95%	25	4%
Treated with respect by others	83%	7%	10%
Felt ignored	9%	9%	79%

discuss their concerns and to be listened to as an equal member of the group.

- As a measure of self-determination and control, the family members were asked if they were pressured into agreeing to something they did not want. Only 13% said they felt they were, while 79% said they were not.

These findings get at the heart of the perceived value of mediation in that it is supposed to level the playing field and help the parents feel less alienated from the process of determining what is best for their children. By feeling heard and respected, while also feeling they were not pressured to agree to specific solutions, the parents can “own” the decisions. This was borne out in the interviews, in which family members indicated they felt more in control and that their concerns were being taken seriously.

PROFESSIONALS

Major Finding: Almost all professionals were satisfied with the mediation.

The professionals were overwhelming in their satisfaction with the mediation – 93% of the 548 who responded



to this question were satisfied. Only 10 were not. In another measure of the professionals' satisfaction with their mediation experience, the professionals were asked if they would be willing to use mediation again. Almost all responded positively. Ninety percent said they would. Another 8% said they possibly were willing, while only 2% said they were not.

Major Finding: Attorneys liked family members' voice and the open, informal atmosphere.

In interviews, attorneys most noted the open, informal atmosphere, and seeing the parties have voice as what they appreciated about mediation. A few mentioned the mediators themselves. Bar attorneys also liked that they had the opportunity to speak openly.

The GALs and the Assistant State's Attorneys in particular liked the information they received about the parties and the case. They felt that getting to see the family members in this setting helped them to get more information and better assess the

case. One GAL stated that without mediation she would not have known that the parents and foster parents could work together. This changed her mind about what the goal should be. Another said that meeting the parents makes him feel more comfortable with his decisions. An Assistant State's Attorney mentioned that it gave her the opportunity to see the human side of the case, to see the foster parents and the natural parents as people, not just pieces of paper.

The three biggest items the attorneys disliked were the length of time spent in mediation, people arriving late for mediation, and emotional or long-winded parties. The first two were the most common responses, and have been long-standing issues that the program has been working to resolve.

Major Finding: Attorneys believed mediations were worthwhile, particularly when successful.

All attorneys interviewed were asked whether the

mediations they participated in were worthwhile. Of the 30 who had participated in mediation, 12 (40%) said the mediations were very worthwhile. Another six said they were somewhat worthwhile. Two said it was a complete waste of time. The other ten responded with greater nuance, rating mediation differently based on what happens in the mediation. For example, one bar attorney stated that if understanding results from mediation it was worthwhile; if not, then mediation was a waste of time. A GAL had a similar assessment, saying, "All mediations have been different. It's worthwhile if you learn something new or if it confirms what you know about case. It's a waste of time when parties arrive at mediation without being open to it."

Major Finding: The professionals have an experience of procedural justice.

While procedural justice is most important for family members, professionals also need to feel respected and to have voice. This is particularly true for case-workers, who straddle the space between the courts and the family members and tend to see themselves

as at the bottom of a hierarchy of professionals.

The professionals very much felt that measures of procedural justice were being attained.

- An overwhelming 99% believed that the mediator treated them with respect.
- Almost as many, 97%, believed that everyone participating in the mediation had voice.
- Another 97% agreed that the mediator listened to what they had to say.
- Not surprisingly, 91% said they did not feel ignored.
- The mediators were also seen to be impartial, with 91% stating that the mediator was not biased.
- No professionals felt pressured into agreeing to a solution.

In responding to questions about how they were treated by all the participants, the numbers were only slightly lower. In all, 89% said that everyone listened to them,

PROFESSIONAL EXPERIENCE SNAPSHOT	
Satisfaction	Almost all professionals were satisfied with how the mediation was handled.
Voice	Almost all professionals felt that everyone had voice, that the mediators really listened to them, and did not feel ignored.
Respect	Almost all felt the mediator treated them with respect, while more than 4 in 5 felt that all those around the table did.



while 94% said that they were treated with respect by all the participants.

In post-mediation interviews, caseworkers also noted their satisfaction with the respect and equality they felt in the mediation. They contrasted the hierarchy in the courtroom, in which they feel the attorneys are given more respect, to the level playing field in the mediation room in which they felt they had the same input into the process and the resolution as the attorneys.

Finding: Professionals were divided as to the impact of mediation on the time they spent on the case.

One suggested benefit of mediation is that it reduces the amount of time that professionals need to spend on a case by increasing communication and decreasing conflict. This possibility was explored in the questionnaire and in interviews with attorneys and caseworkers. The responses on the questionnaire were mixed: 33% said that mediation was going to greatly decrease or decrease somewhat the amount of time they would spend on the case. Conversely, 23% said it would somewhat or greatly increase their time spent on the case. The trend was for professionals to see mediation as having some to no effect on time spent on the case. Almost half said it would have no effect, while 22% believed it would somewhat decrease their time and 17% thought it would somewhat increase it. Only 17% were on the extremes (11% greatly decrease, 6% greatly increase).

Attorneys were moderately more likely to say that the time they spent on the case would decrease, while caseworkers were more likely to say that mediation was going to increase the amount of time spent on the case. This was explained in the interviews: the attorneys noted that mediation often reduces the number of phone calls they have to make to their clients and to the other attorneys about the case as much of the communication usually done by phone takes place in the mediation. Also, when conflict between their clients and others has been resolved, calls from their clients often decrease. For caseworkers, however, workload can increase because

mediation often leads to changes in service plans, visitation, or other arrangements that the caseworkers either have to organize or supervise.

In interviews, the GALs were most likely to say that mediation decreases their workload, but only as long as

Procedural Justice - Professionals' Responses			
	Agree	Neutral	Disagree
Mediators treated them with respect	99%	1%	0%
Everyone had voice	97%	2%	1%
Mediators really listened	97%	2%	1%
Did not feel ignored	91%	3%	6%
Mediator not biased	91%	2%	6%
Everyone treated them with respect	94%	3%	3%
Everyone listened	89%	2%	2%
Felt pressured	0%	7%	93%

the conflict was reduced or an agreement was signed. Bar attorneys were as likely to state that participating in mediation is burdensome as they were likely to say it is worth the burden. Likewise, public defenders were equally divided as to whether mediation reduces their workload or increases it.

Those attorneys who said it increases their workload talked about the amount of time spent in mediation as the cause of that increase. Those who said it decreases their workload viewed mediation as part of a whole, and spoke of how mediation affects what happens afterward. These attorneys said that the number of court dates and/or phone calls from clients declines after a successful mediation, thus freeing up time for other cases. Clients call them less often because they have received the information they needed or been able to speak to others involved in the case about their concerns, and the other attorneys in the case call them less often because issues have been discussed in mediation.

DISCUSSION

Mediation has been successful in resolving issues sent by the court. In addition, it has resolved issues important to the parties but not included in the referral. The agreements reached in mediation are generally seen as being in the



CASE STUDY II

The decision had already been made that the little girl was going to be placed for adoption. Her mother had not made any progress toward the goal of becoming drug free and the father had stopped visiting her for many months.

Mediation was ordered because the father was insistent upon gaining custody of his daughter. The agency was just as set that he give up his parental rights. The mediation was attended by the caseworker, the agency supervisor, the father and the father's attorney. The father talked about how much his daughter meant to him. The caseworker and her supervisor responded in disbelief, stating that since he had not seen his daughter for so long, he had slid too far backward in what the court had required him to do, including visits, to be given custody. With the mediators facilitating, the father was able to emotionally, but without anger, explain the circumstances that led to his inability to visit his daughter, including the financial collapse of his company and the loss of his car. By the end of the mediation, the caseworker and supervisor seemed to be really listening to the father and more open to his difficulties.

The mediation did not end with an agreement. However, in an interview later, the father expressed happiness at being able to explain his point of view and really be heard. He said he was hopeful for the first time. The supervisor, in turn, said that the mediation was the first time she was able to talk with the father without him yelling at her. This opened her more to what he had to say, and moved her off her position that the father did not care about his daughter. She did not know if this would lead her to change her mind about whether the father's rights to his child should be terminated, but she was open to re-examining her position.



best interest of the children, as safe for the children, and as effective in resolving the issues. Additionally, the participants believed that mediation increased understanding about the case and those involved. These outcomes have led to a sense in most cases that mediation helped move the case forward and helped the children.

Family members are highly satisfied with the mediation process and see it as providing procedural justice through fairness, being heard, being respected, and having voice in the decision-making process. Professionals report the same for both themselves and the family members. Family members and professionals report involvement in the case and in finding a solution to the conflict that brought them to mediation.

Concerns that mediation agreements endanger the safety of the children can be assuaged by these findings. The universal sense of judges and professionals who participated in mediation is that agreements in mediation are not putting the children at risk.



PROCESS CHARACTERISTICS

The procedural characteristics of a program have a significant impact on its effectiveness. Referral practices, timing, party preparation, and other factors all can play a role in what impact the program has and how well it functions. The evaluator worked with program staff to determine which characteristics would have the greatest influence on the program's effectiveness. Discussion led to a list of procedural aspects that were important to program functioning and perception of the program:

- The number and source of referrals.
- How and which cases are referred – what was taken into consideration by the judges and hearing officers when deciding whether to order or recommend mediation? Are the appropriate cases being referred to mediation?
- The percentage of cases referred that are mediated – how many cases reach mediation and what are the reasons that some do not?
- Scheduling issues – were the mediations easily scheduled before the next hearing date? Were the scheduled times convenient to the participants?
- Time from referral to mediation – did referral to mediation create a bottleneck for the progress of the case?

- Information exchange – were the mediators able to get the necessary information about the participants and the case to mediate effectively?
- Attendance issues – did the necessary parties attend the mediation? Did others lose valuable time waiting for parties who did not appear?

PROCESS CHARACTERISTICS SNAPSHOT	
Referral Timing	2/3 of cases were referred between disposition and termination of parental rights proceedings.
Referral Source	More than half of referrals were initiated by the judge.
Referral Appropriateness	Most referrals are appropriate.
Mediation Rate	Most referrals lead to mediation.
Scheduling	Very few scheduling issues were reported.
Timeliness	There were very few reports of difficulty scheduling mediations before the next court hearing.
Information	Mediators reported no problems with getting the information they needed.
Attendance	Only nine of the 144 cases that were referred were not mediated because of attendance issues.
Preparedness	Mediators reported that most participants were prepared for the mediation.
Time in Mediation	More than 80% of family members and professionals thought the amount of time spent in mediation was about right. The mediators concurred at about the same rate.

- Preparedness of the participants – did the participants have the necessary information about mediation and the case to mediate effectively and efficiently?
- Time spent in mediation – was mediation perceived to take too long, particularly by very busy professionals?

These questions were measured in two ways: objectively through reports provided by the mediators regarding the disposition of the case and subjectively through assessments made by the mediators, the professionals, and, in

some instances, the family members. These assessments were made through post-mediation questionnaires and through interviews with selected individuals.

The findings point to a process that is working well. Referrals are appropriate, intake runs relatively smoothly, and mediation takes place in a timely fashion. Further, participants are satisfied with the time they spend in mediation and mediators find them to be prepared



to mediate. The one difficulty may be in ensuring the attendance of all those ordered to mediate.

refer cases, it was clear that cases are screened into, rather than out of, mediation. Mediation is not automatically

REFERRAL PRACTICE

Referral Source

Major Finding: Judges refer the majority of cases.

Referrals were spread across role and courtroom; however, referral sources were relatively concentrated, with most referrals coming from a few courtrooms, and the majority of referrals being made by the judges.

- More than half the referrals were initiated by the judges.
- Three other referral sources accounted for another 40% of the referrals to mediation: guardian ad litem, hearing officers, and public defenders.
- The other 10% of referrals came from: private agencies/caseworkers, Assistant State’s Attorneys, bar attorneys, the Department of Children and Family Services, a mother, and a CASA.¹⁵

REFERRAL SOURCE	
Judges	53%
Guardian Ad Litem	15%
Hearing Officers	14%
Public Defenders	11%
Private Agencies/Caseworkers	4%
State’s Attorneys	3%
Bar Attorneys	2%
Dept. of Children and Family Services	1%
Natural Mothers	.5%
CASAs	.5%

Major Finding: The majority of referrals were from four courtrooms.

The referrals spanned all 14 juvenile dependency courtrooms with eligible cases. However, the number of referrals ranged greatly, from three to 27, and four courtrooms accounted for more than half of all referrals (see Appendix E for a list of the number of referrals by courtroom).

Important Note: Referral sources are relatively concentrated. Most referrals are coming from a few courtrooms, and in those courtrooms, most referrals are being made by the judges. This concentration puts the program at risk – if the high-referring judges leave juvenile court, the number of referrals could dramatically decline.

considered for all cases. There is also no preset trigger to refer cases to mediation or request that they be sent. Judges, hearing officers and attorneys each look at what is occurring in individual cases when deciding when to refer a case to mediation or to request that mediation occur. They look for a variety of individual circumstances when making that decision, although judges and attorneys focus more on the conflict, while hearing officers focused on the issues involved. The practice of screening cases into mediation has led to a low referral rate – fewer than 2% of all cases are referred.

Cases that were deemed inappropriate for mediation most often were those involving serious physical or sexual abuse, but this was not a universal opinion. Some judges said they consider these cases individually, and that referral depends as well on what issues are to be mediated.

Referral Prevalence

Major Finding: Referrers are open to mediation.

In interviews, judges, hearing officers and attorneys were asked a series of questions about their approach to and referral of cases. Their responses indicate that most are open to referring all types of cases to mediation, although guardians ad litem (GALs) and hearing officers showed greater hesitancy to do so. Despite this willingness to

Major Finding: Referrers seldom refer cases to mediation.

The number of referrals from judges, hearing officers and attorneys did not reflect the openness to mediation they expressed in interviews. Although all judges and hearing officers who were interviewed reported referring at least one case to mediation, and the majority of attorneys had requested a case be sent to mediation at least once, referral and request rates were low. The highest referral rate reported by a judge or hearing officer was 5% and

15 Court Appointed Special Advocate – volunteers who advocate for the interests of abused and neglected children.



most attorneys who were interviewed reported requesting mediation only occasionally. This fits with the data showing that mediation was held for fewer than 3% of children in care in 2004.

Judge Responses

Judges reported referral rates of between two cases total and 5% of all cases heard. Three reported referring less than 1%, and, on the upper side, four reported referring 5% of cases before them to mediation. The other four stated they referred between 1% and 3%.

The explanations offered by judges for their low referral rates varied. Two simply said they should refer more. One stated that he does not always remember to refer cases to mediation, that after presentations to the judges by program staff he refers more, but a month later it is no longer on his mind. Two judges noted that they do not have the opportunity to refer cases – one because most issues arise post-disposition (when cases are handed over to hearing officers) and one because most cases involve absent parents or parents who have ongoing drug use. Another two stated that because the attorneys in the courtroom get along well and resolve issues among themselves, there are few cases that need to be referred.

Hearing Officer Responses

Hearing officers reported referral rates of between one case and 5% of all cases heard; however, on average their reported referral rates tended to be lower than the judges'. Two reported referral rates of less than 1%, six reported referring 1% of their cases, and three reported referring 2%. On the upper end, two reported referring 5%.

A few hearing officers noted the reasons for not referring more cases. One explained that the parents were not involved in the majority of cases she heard. Another stated that when cases reach the hearing officers they were no longer ripe for mediation since mediation was most appropriate for visitation issues, which tended to be resolved before the cases reached the hearing officers. One other stated that the cases she recommended for mediation did not get referred to mediation by the judge.

Attorney Responses

Twenty of 36 attorneys stated that they had requested mediation at least once. Only one reported having that

request denied by the judge. Another had no opportunity to request mediation because she was a supervisor. Although the majority of attorneys had reported requesting mediation, only one said he requested mediation on a regular basis. Others had requested it one to five times.

When asked if there were circumstances under which they would request mediation, almost all said yes. Four said that they would try other avenues to resolve the issues, such as the Help Unit.¹⁶

These responses indicate a willingness to go to mediation that is not necessarily borne out in their actions. Despite the openness to mediate many issues, the attorneys do not automatically consider mediation for each case. Some see it as appropriate in many situations, but not for many cases, because of substance abuse, power imbalance or other factors. Further, some attorneys expressed a need for more information about what cases would be appropriate for mediation and how to best approach a request.

Major finding: There is a preference toward later referral.

During the evaluation period, judges wrote 163 orders to mediate, 144 of which led to mediation.¹⁷ There is a great preference toward referring cases after disposition.¹⁸

- Just over 2/3 of referrals to mediation occurred after

Referral Period	Cases
Temporary Custody to Adjudication	8
Adjudication to Disposition	10
Post-Disposition	110
Just prior to Termination of Parental Rights	15
Post-Guardianship	20

¹⁶ The Help Unit runs meetings (called “staffings”) among those involved in the case that have the purpose of getting everyone on the same page as to what services are necessary.

¹⁷ Because some referrals do not result in mediation, it was decided to separate the referrals from the mediations and examine each for the study period only. Therefore, the orders to mediate did not completely coincide with the mediations conducted during the study period as some mediations during the study were the result of referrals made prior to the study period and some referrals made during the study period resulted in mediations that occurred after the study period ended.

¹⁸ The progress of the case through the child protection system is outlined below, in Child Protection in Cook County.



the disposition hearing and before termination of parental rights was in process.

- The other cases were scattered across other stages of the case, with most being immediately prior to the termination of parental rights or after guardianship has been granted.
- Eighteen (12%) were referred before the disposition hearing.

This preference toward later referral is reflected as well in the number of days between petition for a temporary custody hearing and referral. Disregarding post-guardianship cases, the median number of days from petition to referral during the evaluation period was 1071 (2.93 years). The earliest referral was made 11 days after petition, while the latest was made 4953 days (13.5 years) after petition.

☞ **Important Note:** In contrast to actual referrals, those who were interviewed most often stated that referral should occur at all phases of the case, beginning at temporary custody. However, some did state that mediation is best held after disposition. (See the Judges, Hearing Officers and Attorneys Interviews In Depth section for more information on this.)

Professionals' Responses

Timing of referral can have a significant impact on the effectiveness of the program. Referring a case before enough information is gathered can impede the ability to resolve the issues at hand. For example, if a mother's therapist has not had enough time to assess her ability to cope with parenting, it will not be possible to resolve issues surrounding where the child will reside permanently. Conversely, referring a case too late can delay resolution of difficult conflicts and the case itself and lower the possibility of resolution because the parties have become entrenched in their positions over time.

Timing of referral was examined in two ways. The first was to look at whether the cases that were referred to mediation were referred at the appropriate time for mediation to be effective. This was done through questions posed to mediators and professionals at the end of the mediation. The second was to examine when in general it was appropriate to refer these cases to mediation. This

was done through interviews with judges, hearing officers, attorneys and mediators.

Finding: Timing of the mediation was appropriate in most cases.

Mediators

To determine whether cases were being referred to mediation at the best time for the process to deal successfully with the relevant issues, the mediators were asked if referral was "too early," "too late," or "about right" for the stage of the case during which it was referred. The stage of the case refers to whether it is pre-adjudication, pre-disposition, post-disposition, immediately prior to termination of parental rights, or post-guardianship. This question was asked because the mediators believed there were different reasons for mediating cases at different times and that mediation is effective in resolving issues at any stage when they are referred appropriately.

In most cases, the mediators felt the timing of the referral did not interfere with the effective mediation of the case: in 86% of the cases, the mediators felt the case was referred at about the right time for that stage of the case. When they believed it was not referred at the appropriate time, they were more likely to believe it was referred too late than too soon. In 16 cases they believed it was referred too late; in six cases they believed it was referred too early.

Professionals

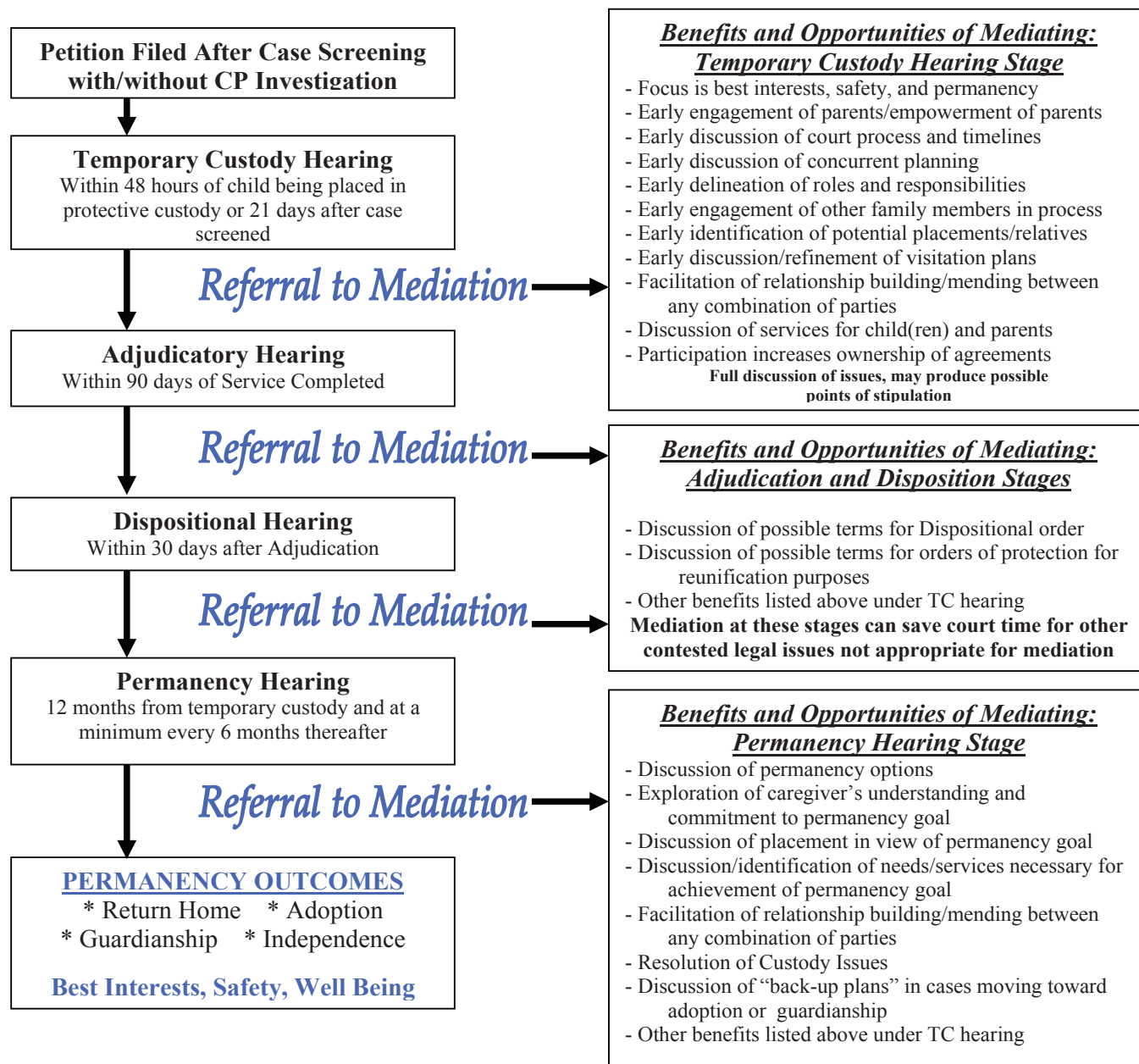
On the questionnaires, the professionals were asked a slightly different question than the mediators: whether the case was referred to mediation too early in the case, at the right time, or too late in the case. About 3/4 thought the timing was right. When they believed that the timing was not right, they were much more likely to think the case should have been referred earlier rather than later. Of the 114 who said the timing was not right, 101 thought the referral was made too late. Only 13 believed the case had been referred too soon.

Finding: Interviewees believed mediation was appropriate at any stage of a case.

In interviews, some judges, hearing officers and attorneys offered opinions as to when mediation is appropriate. The majority saw it as appropriate pre-adjudication.



Referral to Mediation Under the Illinois Juvenile Court Process



Benefits and Opportunities of Mediating at Other Points in the Juvenile Court Process

<i>Prior to and after Return Home</i>	<i>Goal Change back to Return Home</i>	<i>Goal Change from Return Home</i>	<i>Prior to Adoption or Guardianship</i>	<i>Post Guardianship</i>
<u>Develop</u> Care/ Safety plans	<u>Develop</u> Plan for achievement	<u>Discuss</u> Other permanency options	<u>Engage</u> Parents in planning for future of their child(ren)	<u>Discuss</u> Issues causing conflict Other remedies
<u>Engage</u> Family members and other support persons	<u>Engage</u> Family members and other support persons	<u>Engage</u> Parents in planning for future of their child(ren)	<u>Discuss</u> Post-case closure contact, visitation, back-up plans	<u>Build/mend</u> Relationships
<u>Discuss</u> House rules Discipline Visitation Relationship Issues	<u>Discuss</u> Timeframes	<u>Build/mend</u> Relationships	<u>Build/mend</u> Relationships	<u>Negotiate</u> Disposition of motion before the Court
	<u>Build/mend</u> Relationships	<u>Empowerment/Dignity</u> Discussion of consents	<u>Empowerment/Dignity</u> Discussion of consents	Visitation plans



Five judges mentioned a specific time frame for mediation. Three had sent cases as early as before trial, noting that it can be helpful for resolving visitation issues. One said that he would not send cases before trial, while another stated that she sent most cases after they reach the permanency stage.¹⁹ Only one hearing officer had an opinion, suggesting that mediation would be most effective if it took place within 45 days of intake. As hearing officers began working with cases at the permanency stage, the rest did not have an opinion on this topic.

Public defenders were divided as to when mediation should occur – of the five who gave specific information about timing, three said it could happen at any time, although after the issues in the case are clear, and two said the parents have to have the chance to get their children back before going to mediation, so mediation should not happen pre-adjudication. Bar attorneys were more likely than public defenders to say that pre-adjudication mediation was beneficial. Five were of this opinion, while one said it should be used only after other avenues have failed. Two GALs said that mediation should occur earlier than it currently does.

One of the bar attorneys who advocated for pre-adjudication mediation stated that the sooner the referral is made, the better. His experience with one case had convinced him of this. The case was sent too late, in his opinion, to help reduce the conflict. The parties by that time were too entrenched. Another bar attorney said essentially the same thing – that referral is happening too late in the case because problems have been festering for a while before being addressed. Mediation should occur as soon as a problem arises.

The Assistant State’s Attorneys were unanimous in stating that mediation could be appropriate at any stage, given that the circumstances of the case warranted it. However, three were explicit in stating that mediation is best post-disposition or adjudication, particularly if there are criminal charges against the parents.²⁰

When mediators were asked in interviews whether in general cases were being referred at the appropriate time, the mediators stated that they felt that timing of referral could be earlier in more cases. This did not mean they thought that the cases were being referred at the wrong time, but that mediation could help families and movement toward permanency if cases were referred as early as just after the temporary custody hearing. The thought was that earlier referral could help move the case forward through determination of services, resolving visitation issues, and getting the parents to be more aware and involved in what was going on with the case and their children’s lives.

Appropriate Referral

One major issue that can affect the quality of a program is whether appropriate cases are being sent to mediation

REASON NOT MEDIATED	
Party not present	9
Issues resolved	8
Domestic Violence	1
Investigation in process	1

and at the right time. If cases that are not appropriate are sent, this can mean not only that the time spent in mediation is inefficiently used, but it can turn those who participated against the program because it is ineffective. The same can be said for inappropriate timing of a referral – either too soon, before enough information is gathered about the parents to know what services they need or whether they are a risk for visitation, or too late, after conflicts become too entrenched and shifting of positions becomes too difficult. The timing could be an issue at each stage of the case, or during the life of the case.

Major Finding: Cases referred are appropriate for mediation.

Appropriate referral involves two issues: ensuring that cases that should be referred are and ensuring that cases that should not be referred are not. Discussion will begin with the latter. Referral of cases that should not be referred can lead to inefficient use of time on the part of the program and frustration on the part of the participants.

19 At the permanency stage, evidence is presented during a series of hearings to determine where the child should permanently reside.

20 Criminal charges might be filed if there is a finding that the children were abused or neglected.



The study found that the first issue – the referral of inappropriate cases – was not a problem. Almost all referrals resulted in mediation, and inappropriate referral was rare. During the study period, 163 referrals were made to mediation, with 144 being mediated and only 19 (12%) not being mediated. Most of the referrals that did not lead to mediation did so either because a necessary party did not appear or because the issues were resolved prior to mediation. In nine of the 19 cases that were referred but not mediated, the mediation did not go forward because a necessary party was not present. These parties included parents, foster parents, guardians and minors. Eight others were not mediated because the issues for which the cases were referred had been resolved prior to mediation. This means that only two cases were referred that could not be mediated because issues within the case prevented the program from doing so. In one case, domestic violence and the minor's emotional state were the reasons given for not moving forward with mediation, while in the other an investigation was being conducted by the Inspector General of the Department of Children and Family Services and the case could not be mediated at that time.

Mediators' Responses

Another way of looking at whether the cases referred were appropriate was to ask the mediators two questions on the assessment forms: whether they were appropriate, and whether they were referred at the appropriate point in that stage of the case. The response was overwhelming that the judges were doing a good job at referring cases. The mediators believed all but two cases referred and mediated were appropriate for mediation. They did not state why those two were inappropriate. In interviews, the mediators also noted that the cases being sent were appropriate.

Professionals' Responses

Professionals, too, were asked whether they believed the

referrals for cases in which they participated in mediation were appropriate. They were somewhat more apt to state that the cases mediated were inappropriate than mediators were, but still believed most cases were appropriately referred.

When professionals did not find the case to be appropriate, they generally were alone among the professionals participating in the mediation to think so. Of the 546 who responded to this question in the 158 mediated cases, only 32 (6%) thought that the case was not appropriate. This opinion was stated by at least one professional in 23 cases. In most cases, only one of the professionals present thought the case was inappropriate, meaning that the professionals did not agree about the appropriateness of the case for mediation. In only two cases did all participating professionals agree that the case was inappropriate for mediation. In one of those cases, they believed that the case was inappropriate because it was referred too early in the life of the case. In the other, they stated it was inappropriate either because the issues were not negotiable or the parties were too entrenched in their positions.

Professionals' Opinions About Inappropriate Cases		
	Individuals	Cases
Parties too entrenched	24	16
Issues not negotiable	20	15
Timing too soon/too late	6	4
Party not capable of mediating	4	3
History of abuse	3	3
Issue resolved prior to mediation	3	1
Legal issues needed to be resolved	2	1
Mother did not attend/was never going to attend	2	1
Case would have been appropriate in domestic relations court	1	1
Mother not yet in services	1	1
Case going to termination of parental rights and mother still wanted return home	1	1
Issues mediated were not relevant to the case	1	1

If the case was thought to be inappropriate, the most common reason was the belief that the parties were too entrenched (24 responses in 16 cases). In an almost equal number of cases at least one participant thought that the issues were not negotiable. These were often cited together for the same case.



The data shows that referrals have been appropriate in almost all cases. Whether the low number of attorneys who believed that the case was inappropriate for mediation was due to screening by attorneys at the time of referral is not known. However, both attorneys and judges report that attorney objections to referral are often heeded.

Finding: Objections to referral to mediation are becoming rarer.

The majority of judges and hearing officers reported having to deal with objections to their referral to mediation, and a significant number of attorneys said they had objected at least once. However, both judges and hearing officers noted that attorneys are increasingly accepting of mediation. They reported that the number of objections has declined over the years and attorneys are requesting mediation more often. Some judges see this as a result of experience with the process and an understanding that it can be beneficial. Hearing officers noted that inclusion of the GALs in mediation has led to decreased resistance from them, but that they continue to be the most resistant to referrals. Despite this change in attitude, some judges believe attorney resistance to mediation is an issue that needs to be resolved. They recommend educating lawyers about mediation as one way to reduce their resistance to the process.

The judges' and hearing officers' sense of declining resistance to mediation was reflected in some of the comments given by attorneys. One mentioned being resistant at first, but having become a convert. Another stated that she had participated in a few mediations during the pilot phase and had found them to be a waste of her time. She had not participated since, but noted that she had heard positive feedback from other attorneys about their more recent mediation experiences. Others stated that attorneys were requesting mediation all the time now. However, a guardian ad litem supervisor reported that the GALs are sometimes reluctant to go to mediation because of the amount of time it takes, their belief that the mediation puts the child at risk through agreements that increase natural parents' access to the child when they think such access would not be safe, or their belief that it would not be worthwhile.

INFORMATION ON THE PROGRAM

Finding: The referrers tend to say they are well-informed on the program.

The proper use of mediation requires that those who are most likely to refer cases be knowledgeable about which cases to refer and when to refer them. Because of this, the question of whether they felt they had the information necessary to feel comfortable referring cases was explored, although this is not a part of the mediation process.

Judge Responses

The judges tended to feel confident about their knowledge of the mediation program, stating they were either very informed or somewhat informed. All the judges but one (the Interim Director of the program for the first two years of the program) reported receiving an orientation about the mediation program, which included information on the appropriate cases to refer. Additionally, most indicated other ways in which they have been informed about the program: personal contact, updates, memos and additional meetings organized by mediation program staff.

Hearing Officer Responses

Hearing officers also had confidence in their knowledge of the mediation program, all saying they were very informed or somewhat informed. They reported a number of methods by which they received information about the program, including orientations, written memos from the program, and informal conversations with the mediators.

Attorney Responses

The attorneys were asked if they felt they had enough information about the mediation program to use it effectively. All but three of those interviewed said they strongly agreed or agreed with that statement. The attorneys most often reported learning of it either through orientations by the mediation program or through participation in mediation. Others stated they had learned about it from their office, with some saying that conversations with co-workers were helpful. Four said they had received no information about the program. Two of those said they did not know it existed until they had been ordered to mediate.



Finding: Judges want more information on what happens in mediation; attorneys want to learn about appropriate cases for mediation.

Although reportedly satisfied with the information they have been receiving from the program, judges, hearing officers and attorneys alike tend to want more information about mediation and about the running of the program. The judges and hearing officers are most interested in knowing how a mediation works and how to know when to send a case to mediation. They also want to know when there are changes to the program that affect their referrals. Many also noted an interest in seeing a mediation. There is overall a certain discomfort with their knowledge in these matters. Some of this discomfort may have been alleviated with the distribution of the benchbook for mediation that was distributed to all judges and hearing officers after the interviews were completed.

The attorneys were most interested in learning about the types of cases that would best benefit from mediation. A few others wanted to know what happens after mediation ends – what happens to the agreement, or if there is no agreement. Three attorneys wanted to know how the program functions and its rationale.

SCHEDULING OF MEDIATION

Finding: Scheduling is not difficult.

Under the court rules for the program, once a case is referred, mediation is to take place before the next scheduled hearing date. This helps to ensure that sending the case to mediation does not impede the progress of the case. One concern about the program was that the number of people involved, and the tight schedules they have would make it difficult to mediate the case within the time frame allowed by the court. Both mediators and professionals were asked in post-mediation questionnaires if this was an issue for them.

The consensus was that scheduling the mediation before the next hearing date was not generally a problem. The mediators stated that scheduling was not a problem in 87% of the cases. In 5%, they felt it was a problem. They did not respond for 8% of the cases. Professionals were more likely to report problems scheduling. The process of scheduling the mediation was found to be difficult by 14% of respondents (69) who answered the question.

TIME FROM REFERRAL TO MEDIATION

Finding: Most cases are mediated within 50 days of referral.

This ease of scheduling is reflected in the timeliness of the mediation session. Scheduling depends on coordination of multiple people’s schedules. The vast majority of cases were mediated within two months of referral, with 34 days being the median and 41 the mean. Twenty-five percent were mediated within 25 days, while 75% were mediated within 50 days. The range was 5 to 146 days. A few cases were mediated on an emergency basis as well, meaning that they were conducted on the day of referral. Because these cases do not have a bearing on the time from referral to mediation, they were not included in this calculation. Timeliness is also affected by the need to reschedule mediation when an essential party does not appear for the mediation.

Days from Referral to Mediation	
Mean	34
Median	41
75% of cases	<50
Low	5
High	146

PRE-MEDIATION INFORMATION AND PREPARATION

Part of the mediation process is for the mediators to help prepare the participants by informing them of what mediation is and what they should expect when they participate in the process. This is one of the ways in which the participants get the information needed to arrive prepared, ready to discuss the issues, and with an understanding of what their role in the mediation process is. To find out if this part of the process is working, family members and professionals were asked on the evaluation questionnaires if they had received information about what to expect in mediation prior to their arrival. In interviews, family members and case workers were asked to elaborate on this. The responses show that natural parents almost always received information, while information was less available to foster parents. Even with information, family members approached mediation with trepidation, not having a clear picture of what their role is supposed to be or how the session will play out.



Finding: Natural parents were much more likely to receive information on mediation than foster parents or guardians.

Most family members reported in the questionnaires that they received information on mediation: 77% said they were given information, while 13% said they were not. The others did not have an opinion. Natural parents were much more likely than foster parents and guardians to state that they received this information. While 80% of natural parents said they had information prior to mediation, only 64% of foster parents stated they did.

Similar differences were found in the interviews. Almost all natural parents said they had received information about mediation prior to arrival, but only six in 10 foster parents stated they did. They learned about it from program staff through mailings and phone calls, from the caseworker, or from the GAL.

Nonetheless, most participants interviewed did not have a clear understanding of what mediation would be like. Some of this can be explained by what one foster mother said: “I was told what it was going to be by the caseworker, but it’s like childbirth – you don’t know what it is until you experience it.” A number of foster parents, however, did not receive information on mediation prior to arriving for the session.

Because they did not have a good idea of what to expect, the participants tended to feel nervous before the mediation, a nervousness that dissipated once mediation started. Only a few were looking forward to mediation, seeing it as a chance for them to get to discuss their concerns and their feelings.

Finding: Most professionals received information prior to mediation.

Most professionals agreed that they had been provided with information regarding the mediation process prior to attending. Of the 515 who answered this question, 396 (77%) said they were provided with information, while 61 (12%) said they were not. The others had no opinion. Caseworkers were asked about this in post-mediation interviews; lawyers were not interviewed about specific mediations and thus were not asked this question.

The seven caseworkers interviewed who had not

experienced mediation previously tended to have vague notions about what mediation would be. One said that she spoke with the GAL prior to the GAL’s request for mediation. Two said they had not been told anything. The others said that the mediators had given them some information about mediation prior to the mediation.

Finding: Participants were prepared for mediation.

Professionals

It is widely believed that the effectiveness of mediation depends not only on the skill of the mediators, but also on the preparedness of the professionals.²¹ Do they know the issues? Do they know what is possible to agree to in the case? If they do not, it is difficult to move the mediation forward. According to the mediators’ assessments, the professionals came prepared for the mediation in almost all cases. In only eight cases the mediators said they did not. In interviews as well, the mediators said that the professionals were by and large prepared for the mediation.

Family Members

Family members, too, have to be prepared to mediate for the process to be effective. They are prepared if, among other things, they understand their role in the mediation as designers of the resolution and if they are ready to undertake that role by speaking openly and being willing to listen to others. The mediators felt the family members were prepared for the mediation in all but three of the 165 cases.

DISCUSSION

Overall, the process of moving cases through mediation is working well. The appropriate cases are being referred to mediation, most cases that are referred are mediated, and the mediators feel they have enough information to effectively mediate most cases. Intake forms are being completed, cases are easily scheduled prior to the next court date and, in most cases, the people necessary to the mediation were present. The judges are satisfied with the information they are getting after mediation.

There are three areas of the process that could be improved.

²¹ See, for example, *The Task Force on Improving Mediation Quality Final Report*, American Bar Association Section of Dispute Resolution, February 2008.



These are information about the program and mediation, the concentration of referrals from a few sources, and the late timing of referral. Improving these will help the program to have a greater impact and to continue to thrive.

The participants should be provided with more information on what mediation is and what to expect when they arrive. Referrers need more information on what cases would be best served by mediation, and at what stage they would benefit from the process. This was discussed in the interim report, and was recognized by the program. As will be discussed later, program staff has been taking steps to address this issue.

Another area that should be examined is the timing of mediation. In 2/3 of cases, the mediation is occurring well after adjudication and more than two years after the petition was filed. This late date can mean that early issues are not addressed and the positive effect of mediation will not be experienced by family members and children during the first two years.

The timing of the mediation appears to be more about practice than about attitude about mediation. In questionnaires, about 1/4 of the professionals believed that mediation occurred too late in the case. Most judges who were interviewed did not have a hard and fast rule about when to send a case to mediation. The same was found to be the case for the attorneys who were interviewed. Most of those attorneys who had an opinion believed that mediation should be conducted as early as possible in the case – generally from the temporary custody hearing onward. It should be noted, however, only 24 of the 60 interviewees expressed an opinion on this topic.

Another issue to address is that more than half of cases are referred by judges, and more than half are referred from four courtrooms. Although this demonstrates that in some courtrooms mediation has become integrated into the court process, it is also a weakness. The loss of one or more of these judges could cause a major reduction in the number of cases being mediated if the judges who replace them do not actively refer cases.





JUDGE, HEARING OFFICER AND ATTORNEY PERSPECTIVES ON MEDIATION

The role of judges, hearing officers and attorneys as both referrers and as sources of information for family members makes their views and knowledge of mediation very important to the success of the mediation program. Therefore, interviews with them focused on their perspectives on mediation and its role in the child protection system in order to gain an understanding of how much these stakeholders knew about mediation and, more importantly, their perceptions of the use of this process for child protection cases.

The program was put in place in an effort to reduce conflicts that were obstacles to the progress of cases, to increase parental involvement in and understanding of procedures, and to enhance communication among all involved. One goal of the study was to find out if this was how the role of the program was perceived by program personnel and stakeholders. In interviews, judges, hearing officers and attorneys were asked a series of questions regarding the function that mediation plays in the court system, where it might be beneficial, and where it would not be. Their responses were in general agreement with the already established understanding in the field of how mediation functions in child dependency cases.

OVERALL PERSPECTIVE

Judges, hearing officers and attorneys all tend to see mediation as providing a forum for discussion and voice that is not readily available through other court processes. This opportunity, they believe, leads to greater understanding among the parties, which in turn can reduce conflict and ease tensions in later proceedings even if resolution is not reached in mediation.

Mediation, however, is not seen as a panacea for all that ails these cases. Interviewees tend to believe that some issues

that require a legal decision to be made, such as whether visits must be supervised rather than unsupervised, cannot be mediated. Further, they see mediated agreements as unenforceable except through judicial action.

Mediation was considered to be appropriate for a variety of cases; however, in line with the belief that mediation's role is to enhance communication and understanding, the majority named the relationship between the parent and the foster parent or guardian as an appropriate issue

to mediate. This included related issues, such as visitation schedules, and issues arising from permanency (reunification, guardianship and termination of parental rights). However, some interviewees also saw conflict between other parties, such as case-workers and parents or children and their foster parents, as being appropriate for mediation.

PERSPECTIVES SNAPSHOT

Those interviewed saw the role of mediation as providing family members a chance to speak about their concerns, reducing conflict and increasing understanding of the issues. Its success is tied to whether these are achieved in mediation. It is not successful if it increases conflict or agreements are not followed or are not appropriate.

Almost all those interviewed believed mediation can be successful even if an agreement is not reached. For them, increased communication and understanding are important indicators of success. If an agreement is reached in mediation, success is most often marked by whether it is followed by the parties, fits with the direction the case has already taken, or is in the best interest of the child. However, many of those interviewed believe mediation that reaches agreement is always successful.

HOW MEDIATION FITS INTO THE CHILD PROTECTION SYSTEM

The manner in which mediation fits into the child protection system was examined through a series of questions, including:

- What is the role of mediation in child protection cases?
- What issues are appropriate for mediation?



- What can mediation provide for the family that can't be provided by other means?
- What can't mediation provide for the family that can be provided by other means in the court system?
- What makes a mediation successful even if agreement is not reached?
- What makes it unsuccessful even if agreement is reached?

What is the role in child protection cases?

Mediation's role is to resolve relationship and communication issues.

For some interviewees, the role of mediation in child protection cases was seen as broad, as it can be used in a variety of contexts, while others saw it as limited to specific issues or periods of time. In general, the interviewees tended to focus on the relationship and communication between parties, and the issues that can arise when these are not optimal. These issues are likely to create obstacles to the progress of the case toward permanency for the children and are often not amenable to legal recourse. Further, they take time to resolve, which judges and hearing officers often do not have.

Two interviewees, on the other hand, did not see a role for mediation in these cases.

What issues are appropriate for mediation?

Relationship issues are most appropriate for mediation.

As a natural extension of the interviewees' views on the role of mediation, they see relationship issues and related developments, specifically visitation, to be those issues most appropriate for mediation. Some mentioned termination of parental rights as well. Again, some limited the types of issues that are appropriate while others had a broader view: a few said all issues are appropriate, while some limited the appropriateness to relationship and visitation issues.

What can mediation provide for the family that can't be provided by other means?

Mediation provides family opportunity for voice and communication.

The interviewees overwhelmingly said that mediation provides family members the opportunity for voice and an opportunity to communicate with others that they do

not have at other times. Another frequent response was family empowerment and control. Hearing officers and attorneys commonly mentioned that mediation fosters greater understanding of the other participants' points of view. Only a few respondents believed that mediation could provide nothing to the family that they were not getting through other means.

What can't mediation provide for the family that can be provided by other means in the court system?

Mediation cannot decide legal issues, provide finality, or enforce agreements.

Legal decisions, finality and enforcement were overwhelmingly the answers given to the question of what mediation cannot provide, but that can be provided by other means in the court. Finality – a final decision that can be imposed by the judge – was seen as important if agreement is not reached in mediation. Many interviewees noted that when an agreement is reached, but its terms are not followed by the participants, that the mediation program has no authority to enforce it. Only the court, and not mediation, could provide an enforcement mechanism.

What makes a mediation successful even if agreement is not reached?

Mediation is successful if it provides voice, increases communication and enhances understanding.

The judges and hearing officers tended to see mediation as being successful so long as it is accomplishing its function of providing voice, increasing communication, and enhancing understanding among the parties. The attorneys were more likely to focus on the latter than the others. This may be because their experience with the process and their communication with family members post-mediation provides them with a perspective the others do not have of the ongoing impact of the mediation on the family. They also may see a greater impact on their own workloads when family members have gained greater understanding of the case and others' views, as many reported that the number of calls from their clients and others involved in the case decreased.

Although it is not surprising that the interviewees believe mediation is successful as long as it is accomplishing its goals, it is surprising that the vast majority of them



said that agreement is not necessary to the success of the mediation. Responses to other questions brought out a desire by some judges and hearing officers for agreement, however, which may indicate that although they see the benefit of mediation even without agreement, agreement is still more desirable.

Mediation is successful...

“If it gives people the chance to talk. If there’s increased harmony between the foster parent and parent. For example, in one case without agreement, they got a chance to air their views and hear the other side.”

- a judge

Judge Responses

All judges agreed that mediation can be successful even if agreement is not reached. The judges believe success is based upon whether a variety of things occur within the mediation. There was an even split across four measures by which they gauge the success of mediation: an increase in communication between the parties (5), increased understanding among the parties (5), the opportunity for family members to have voice (4), and a reduction in conflict between the parties (4). One stated that there is no unsuccessful mediation.

Hearing Officer Responses

Although they tend to place more emphasis on the importance of reaching agreement, the hearing officers had by and large the same measures of mediation success as the judges. However, understanding (7) and communication (6) were more often mentioned than voice (5). Conflict reduction was mentioned by only one hearing officer, while another mentioned an increase in trust. One hearing officer stated that the goal of mediation is to reach agreement and is the only measure of success. Therefore, the mediators should keep moving the case through until agreement is reached.

Attorney Responses

The attorneys tended to see mediation as successful for what it does for the family members, particularly the natural parents: increases their understanding of others’ point of view (15), enhances communication (12), or provides voice (7). Five said mediation was successful as long as it clarifies issues or provides information on the case, while another three focused on decreased hostilities among the parties. One said mediation is only successful if it lays the foundation for agreement since agreement is the ultimate goal. One was not sure.

What makes mediation unsuccessful even if agreement is reached?

Mediation agreements not being followed would detract from success.

When asked whether there were circumstances under which mediation is not successful even when agreement was reached, the interviewees focused on the whether the agreement was unsuccessful in some way. An agreement not being followed is the most prevalent answer, and the one that was most often seen to occur. Other responses, such as the agreement not being in the best interest of the child, or violating statute, were less common. Although they saw these as indicative of an unsuccessful mediation, all the interviewees who mentioned these situations stated that they had not seen them occur.

Judge Responses

Five of the judges stated that mediation is always helpful. The other six noted situations in which the agreement may not work. Of those, three believed mediation is not successful if the parties do not participate meaningfully or enter the agreement without meaning it. Another three mentioned an agreement that is not in the best interest of the child as a determinant of lack of success, although all stated that they had not had an agreement returned that was not in the best interest of the child.

Hearing Officer Responses

One hearing officer said mediation is always successful and another thought all mediations were successful in some way. All others noted situations in which it may not be. The majority of hearing officer responses focused on whether the agreement was workable: the best interests of the child were not met (2), the agreement does not address the issues (2), the agreement violates the statute or



is not possible administratively (2),²² and the agreement interferes with the progress of the case (1).²³ Another five mentioned an agreement that was not followed. One clarified this response by stating that this would reduce trust between parties. Two mentioned increased or stable levels of conflict due to mediation.

DISCUSSION

Those interviewed were generally open to mediation. They believed it provides benefits to both the family and the movement of the case. It provides family the opportunity to discuss their concerns, to learn about the case, and to resolve conflict. When mediation provides these opportunities, it removes obstacles to the advancement of the case and allows it to move forward. This is what makes mediation successful.

None of those interviewed, however, saw mediation as the sole course of action to take in a case, and many saw it as more relevant to resolving relationship issues, such as visitation, than other possible uses. This is borne out in the data on what issues are mediated. Most mediation referrals included visitation issues, and the majority included communication. One weakness of mediation in the minds of those interviewed is that mediation does not provide the finality of a judicial decision and its agreements are difficult to enforce. However, enforcement was not seen as a significant issue because most agreements were seen to be followed.

PERSPECTIVES ON THE PROGRAM

In interviews, referrers and participating professionals had mostly positive things to say about the administration and functioning of the mediation program and its place in the juvenile court. The mediators are almost universally seen as doing a very good job, and are often cited as the major strength of the program. The participants see them as providing the means through which greater understanding among those involved in the case can occur, while also

providing the control necessary to keep the conversation on track.

As judges and hearing officers had different roles within the program than the attorneys, they were asked different questions in interviews.

The judges and hearing officers were asked a number of questions about the program itself, including:

- Their view on how well the mediation program is achieving its goals or meeting their needs.
- Their perception of what the strengths of the program are.
- Their perception of what the weaknesses of the program are.
- Whether they had any hesitation to refer cases to the program.
- Any recommendations for improvement.

In addition, judges were asked:

- How mediation affected the hearings they held afterwards for those cases.
- Whether they had ever not approved an agreement signed in mediation.

Attorneys were asked a series of questions about their experience with the program, including:

- How participation affects their workload.
- How they thought participation affects their clients.
- The impact of the program on the child protection system.
- What they liked about participating in mediation.
- What they disliked about participating in mediation.

They, too, were asked about the strengths of the program, as well as recommendations for improvement. In addition, they were asked to rate and discuss the mediation facilities.

OVERALL PERSPECTIVE

The mediation program is viewed positively, with particular praise given to the mediators. The interviewees like having the option to send cases to the program, and see it as a useful tool. However, the impact of the program is seen as being less than it could be, in large

22 This was reported to have occurred when an agreement included guardianship for a two year-old, when administratively guardianship is not allowed until the child reaches the age of twelve.

23 The hearing officer mentioned this happening once when a case that was progressing toward return home was interrupted by items in the agreement that the parents now had to follow before the return could occur.



part because it is not used for the vast majority of cases. For many, this lack of use is an issue to be resolved; for others, mediation is being used for the cases for which it should be used and there is no need for more cases to be sent to the program.

Two attorneys had less positive perspectives on the program. One felt the program may be thought of as being able to deal with more than it really can. He believed that too many issues were being brought to mediation that should be dealt with elsewhere. The other said that it is not possible to have a good mediation or a good agreement because there is no equality of the parties.

INFORMATION ON THE PROGRAM

The interviewees were apt to respond to questions about whether they felt they had sufficient information in the positive; however, in answers to other questions, some made it clear that they felt they needed more information on what cases in general were appropriate for mediation. Additionally, several responses to interview questions indicated a lack of information about what issues are accepted by the program and what parameters the program has for inclusion of parties, such as whether referrals can be made for teens who have issues with their foster parents or guardians.

How informed about the mediation program do you feel you are?

Most judges and hearing officers thought they were well-informed about the program.

Judge Responses

The judges feel rather confident about their knowledge of the mediation program itself. Six said they are very informed about the program, while five stated they are somewhat informed. All the judges but one (the Interim Director of the program for the first two years of the program) reported receiving an orientation about the mediation program, which included information on the appropriate cases to refer. Additionally, most indicated other ways in which they have been informed about the program: personal contact, updates, memos and additional meetings put on by mediation program staff.

Hearing Officer Responses

Hearing officers also have confidence in their knowledge of the mediation program. They were evenly divided

between those who said they were very informed and those who said they were somewhat informed. They reported a number of methods by which they received information about the program, including orientations, written memos from the program, and informal conversations with the mediators.

I have enough information about the mediation program to effectively use it

Most attorneys thought they had enough information to use the program effectively.

Attorney Responses

All but three of the 36 attorneys interviewed said they strongly agreed or agreed that they had enough information about the mediation program to use it effectively. The attorneys most often reported learning of it either through orientations by the mediation program or through participation in mediation. A dozen stated they had learned about it from their office and a handful said that conversations with co-workers were helpful. Four said they had received no information about the program. Two of those said they did not know it existed until they had been ordered to mediate.

Referrers would like more information

Although reporting satisfaction with the information they have been receiving from the program, judges, hearing officers and attorneys tended to want more information about mediation and about the running of the program. The judges and hearing officers were most interested in knowing how a mediation works and how to know when to send a case to mediation. They also wanted to be informed when there were changes to the program that affected their referrals. Many also noted an interest in observing a mediation. In general, judges and hearing officers had a certain discomfort with their knowledge in these matters. In the course of the interviews, benchbooks were distributed to judges and hearing officers. This was seen as a great benefit, although some admitted that their busy schedule precluded close perusal of the book's contents.

The attorneys were most interested in learning about the types of cases that would best benefit from mediation. A few others wanted to know what happens after mediation ends – what happens to the agreement or if there is no agreement. Three attorneys wanted to know how the program functions and its rationale.



THE MOST CITED PROGRAM STRENGTH WAS THE PROGRAM STAFF

The staff have successfully inculcated confidence in their ability and in the program. Most of those interviewed believed the best asset of the program was its staff – particularly the mediators. The second most mentioned strength was the process itself.

“The mediation program was its best selling point because it did such a good job. After the first few cases, I saw immediate results. The Assistant State’s Attorneys said they liked it.”

- a judge

Judge Responses

When asked about the mediation program’s strengths judges most often noted the capabilities of the mediators (7) and their responsiveness when called to do intake for a referral (7). The program’s director (3) was also mentioned as a strength. Other responses regarding the program staff include that the staff deals with cases in a timely manner (2) and that the staff is flexible and accessible. Responses pertaining to the program itself include that the program works (3) and that multiple sessions are helpful (2). One each said that the program sometimes saves the court time, that the facility is on-site, and that the mediation area is welcoming.

The judges noted the mediators are very capable, know the law, and love what they do. One judge stated that he has the “highest respect” for the people in the program. The mediators’ quick response to referrals that the judges mentioned was very likely an effect of a change in the manner in which intake was conducted. The judges requested that intake be conducted immediately after the program was contacted, and the program staff acted on this request. This is an example of the flexibility and responsiveness that was noted by judges and hearing officers alike.

Hearing Officer Responses

The hearing officers were divided about whether the

strength of the mediation program was the program staff, the program’s structure, or the mediation process and outcomes. Seven hearing officers noted the capability of the mediators as a strength of the program; this was the most common response. They described the mediators as good at what they do, committed, friendly and calm. Five mentioned the responsiveness of program staff when called to do intake for a referral. Two more noted the accessibility of program staff, while one noted the staff’s diversity.

Three hearing officers see the strength to be in the process itself, while another three stated the strength is in the positive outcomes attained in mediation. Structurally, one hearing officer each mentioned the program’s location in the courthouse, the voluntariness of the program, the friendliness of it, that the program was well-organized, that the program had a narrow focus on visitation, and that the program had the support of the presiding judge.

Attorney Responses

Attorneys, too, were most likely to state that the mediators themselves were the strength of the program, with ten giving that answer. They see the mediators as competent, sensitive and flexible. Five other attorneys noted the flexibility of the program, and two mentioned the ability to mediate within a couple of weeks of referral. Another said the program was well-organized. Still another said that its location in the building was a strength.

Other attorneys focused on the process:

- Five mentioned the open communication that results from the process.
- Four mentioned the informality of the forum.
- Four said the ability to resolve issues was important.
- Two mentioned the confidentiality of the process.
- One mentioned that it is non-adversarial.
- Two noted the productivity of the sessions.
- One each stated that the program’s strength was that it clarifies issues and is informative.
- One mentioned the importance of having a written document at the end.
- Still one other said that it empowers the families and gives them a better understanding of what the court’s role is.



Six said either they did not know what the program's strengths were or had no experience with the program.

PROGRAM WEAKNESSES

A sizeable number of interviewees knew of no weaknesses in the program, while many others had concerns. The judges focused on shortcomings of the process or on marketing, while hearing officers were likely to note concerns regarding the expertise of the mediators and the outcomes of the mediations.

Judge Responses

Five judges stated either that they did not know what weaknesses the mediation program had or that they could think of none. Two others mentioned the lack of ability to enforce agreements. One each noted that the program is underutilized, the sessions take too long, the program lacks marketing, the judges do not get any information after a mediation session if no agreement is reached, and the mediations are not timely (meaning sometimes the next court date would come around before the mediation was conducted).

Hearing Officer Responses

Hearing officers noted greater concerns about mediation than did the judges. Five responses focused on the mediators' lack of legal expertise and the hearing officers' fear that the mediations are moving cases into new directions, which is not the purpose of mediation, or that the mediators are working beyond the scope of what mediation should do. An example was changing the permanency goal set by the hearing officer. This same hearing officer noted that mediation can get off track and set a new agenda.

Other reservations included the inability to enforce agreements, the lack of information after the mediation session, the ineffectiveness of the mediations in getting agreements, the lack of privacy in the facility, and the lack of acceptance of the program. Four stated that they did not know of any weaknesses or that there were none.

Attorney Responses

Initial responses to the question regarding the program's weaknesses showed that this question did not work well for attorneys. Therefore, they were asked for recommended improvements only, which will be discussed below.

QUESTIONS FOR JUDGES & HEARING OFFICERS ONLY

Goal Achievement/Meeting Needs

The judges were asked whether the mediation program is achieving its goals, while the hearing officers were asked whether it was meeting their needs. The judges were inclined to see the program as achieving its goals, in the main because it helps cases to move forward and to reach agreement. Hearing officers were less positive in their assessments, with varied reasons for why the program was or was not meeting their needs and expectations.

Judge Responses

The judges were unanimous in their belief that the mediation program is achieving its goals. A couple noted that mediation helps cases move forward faster or to close more quickly. Three more stated that the program has always done a good job with their cases. Two others noted that many cases reach agreement. One stated the program makes his job easier. Two did not know.

Hearing Officer Responses

“[The program is] non-adversarial and confidential, which makes it more likely to be open and honest. The mediators are very good. They don't put people's backs up. They're sympathetic and flexible.”

- an attorney

Hearing officer responses were more varied than those of the judges. The responses regarding how well mediation was meeting their needs ranged from “excellent” (1) to “not well” (1), with most answering along the lines of good to fairly well. Follow-up explanations fit those assessments. One hearing officer noted that most mediations have helped. Another said that she has only sent difficult cases, but has not seen agreements. Another stated that she does not depend on the program. One other stated that the program is not working well because the cases she has sent have not reached agreement, while a different view was presented by another, who said the program was a good asset and a way to show families they are important.



Hesitation to Refer Cases

Almost all judges and hearing officers stated that they had no hesitation to refer cases to mediation. One judge said she did hesitate, but this was because she was afraid that the program had too many cases and could not handle more. Two hearing officers said they hesitated to refer cases because they feared that the case would go beyond the scope of mediation to decide or change goals. One other hearing officer said the mediators' lack of legal experience made her hesitate to refer cases to the program.

Post-Mediation Hearings

This question was asked of judges only. Judges were divided as to whether hearings post-mediation are different from those of cases that are not mediated. Six stated that hearings are positively affected by mediation, while five said there is no difference. Those noting a positive effect mentioned that hearings are less time-consuming because issues are narrowed, and that they have to deal with less animosity. They stated that this was the case whether or not the mediation ended in agreement.

QUESTIONS FOR ATTORNEYS ONLY

Session Length and Number

When asked the question of what the ideal session length is, attorneys gave responses of one to four hours, with most staying in the middle of this range. The attorneys were also asked whether one long session or multiple shorter ones was preferable. All but one person stated that multiple sessions are better than one long session. Indeed, many stated that multiple sessions are an asset in themselves. They see them as a way to follow up on mediated agreements or to continue working through conflict.

Mediation Facility

Attorneys were asked to rank the facility in three areas – comfort, security and privacy – on a level of 1 to 5, with one being poor and 5 being excellent. For the most part they gave higher than average ranks to the facilities in all three categories.

Most attorneys were satisfied with the comfort of the mediation facility. Twenty of 28 gave them a 4 or 5: 11 attorneys gave the facilities a 5, ten gave them a 4, and eight gave them a 3. None ranked the facilities below

a 3. In general, the attorneys said that the facilities are fine, pleasant and clean. Aside from one complaint about uncomfortable seats, and a few statements about its drabness or coldness, the attorneys had no negative reactions to the comfort of the facility.

Attorneys were just as satisfied with the security of the facility. Twenty of 27 gave them a 4 or 5: 13 attorneys gave the facilities a 5, seven ranked them a 4, three gave them a 3, and four gave them a 2. The comments about the security of the facility were mixed. Most have no security concerns. The main issue was a concern that there was no way to deal with a mediation that turned violent. Only one, however, reported feeling insecure at a mediation. At this mediation, a parent had a history of belligerent and violent outbursts. She did not inform the mediators and the parent did not act out in the mediation. Another attorney said she would like to have an armed guard in the mediation area at the time mediation takes place.

The privacy of the facilities received similar ratings. Twenty of 29 attorneys rated them a 4 or 5: 11 attorneys ranked the facilities a 5 in this category, nine ranked them a 4, six gave them a 3, and two ranked them a 2.

Although the attorneys gave similar ratings to privacy, it received more negative comments than the other two categories. The attorneys mentioned people walking in and out of the mediation area; the fact that staff sit in the same room as the mediation; that they could not know who could be standing around listening; and that they would prefer an enclosed space, such as a conference room. One said that if she was a parent, she'd be wondering who was listening in.

Impact of Mediation Program on System

The attorneys were most likely to say that the mediation program somewhat improves the child protection system. In all, 24 attorneys gave that response, while five said it greatly improves it and three said it has no impact on the system. Three did not know. The responses were remarkably stable across each attorney type.

Those who said mediation greatly improves the system were more likely to see it as having a more universal role within the system, while those who said it somewhat improves the system saw it as beneficial for some cases or



in certain situations. A few who answered in this way felt that because mediation is not used for most cases, it could not have a significant impact on the system. Of those who answered that it has no impact on the system, two said it did not have an impact because it was little used. The other said it did not add anything to the system and that all issues could be dealt with through other venues.

DISCUSSION

Those interviewed had mainly positive things to say about the program. They were impressed by the capabilities of program staff, their responsiveness, and the flexibility that they have shown in making changes based upon the needs and feedback of the stakeholders.

There were a few criticisms of the program, although they were less pronounced than the more positive views. The judges in particular believed the program needed to do a better job of getting information out about the program to themselves and others.





DISCUSSION AND RECOMMENDATIONS

This study looked at three areas to gauge the effectiveness and strength of the Child Protection Mediation Program:

- Program performance – whether the program is serving the needs of children in the child protection system, mediation participants and stakeholders, as well as enhancing family member experience with the court system. This would be examined through data from the mediations and the court docket, as well as from participant questionnaires and stakeholder interviews.
- Program process – how well the process of getting the appropriate cases to mediation is working, as well as whether any problems arise in the post-mediation phase. This would be examined through data from the mediations and the court docket as well as through participant questionnaires and stakeholder interviews.
- Stakeholder understanding and assessment of mediation and its role and function within the child protection system – as a measure of how much support the program has as well as whether information is lacking in any area, as gathered through interviews with judges, hearing officers and attorneys.

The findings from these three areas show that the program is generally functioning well. The court is in the process of successfully integrating mediation into the child protection system. Through interviews and questionnaires, the judges and professionals presented positive views of both mediation and the program, as well as a willingness to use the process.

The positive perceptions of mediation and the program held by the judges are borne out in the responses of participants about their experience with them. Both family members and professionals largely saw mediation as achieving the goals of providing the family with the opportunity of voice, involvement in the case and decision making. Further, they saw mediation as safeguarding the children and as upholding their best interests.

However, the use of mediation remains low, in part because the judges and professionals see mediation as being appropriate in a limited number of cases, and in part because of their self-represented lack of knowledge of which cases are appropriate and when and, for attorneys, how to request that their case be mediated. Information is needed by all those involved in the case, both in terms of letting them know the program exists and what it can do for them and the case, and in terms of educating judges and attorneys about the appropriateness and timing of referral to mediation. This is an issue that the program has done much to address since the inception of this study.

Many positives have contributed to the program's success. One of the most important is that the Presiding Judge was the impetus behind the program and, according to the judges and program staff, continues to give it strong support. This type of support is essential for a program to take hold and flourish. Further, the program has been responsive to feedback and has made changes to make the program more efficient and better suited to the needs of the court and the participants. This has increased interest in its use, as well as been a factor in the respect that judges in particular have for the program, as is their view of the staff as being very capable.

PROGRAM PERFORMANCE STRENGTHS

Data shows that the program is performing well: most mediations end in some form of an agreement. Participants see the agreements as being beneficial for the children, and no judge reported setting aside an agreement because it was not in the best interest of the children involved, unsafe or against statute. The vast majority of participants felt they were treated with respect, the mediations were fair, and they had the opportunity to voice their concerns and have input into their and their children's futures.

Agreements

The program is doing a good job of resolving issues that come to it. It is resolving at least some issues in 74% of



the cases. All issues, save permanency, are resolved in more than 50% of cases. The low rate of resolution for permanency issues points to a need to investigate further the reasons for the low resolution rate and the possible other benefits to mediating permanency.

Effect on Children

It was beyond the scope of the study to directly examine the effect of the mediation on the children's well-being. Instead, this question was examined indirectly through the perception of the judges, hearing officers and professionals of the mediation and the agreements reached. The consensus was that mediation did not endanger the safety of the children. Judges approved all agreements reached in mediation, meaning that they were in the children's best interest and did not endanger them. Almost everyone who was interviewed felt mediation had a positive effect on the children by reducing conflict that stood in the way of the case progressing, and by improving relationships among those involved in the children's lives. Agreements that were reached in mediation were most often thought to be the best resolution for the children and no interviewee thought that the agreements reached in mediation were not in the best interests of the children.

Understanding, Resolving Conflict, and Reducing Time to Permanency

One of the main goals of the program was to enhance understanding and reduce conflict so that time to permanency would be reduced. Based on questionnaire and interview responses, the first two have been achieved. One of the most salient themes of the survey comments and interviews was the increased understanding mediation participants gained of others, the case and their own responsibilities. Another was the belief that communication in mediation led to agreement on issues and better relationships among family members.

The program staff, along with some of the stakeholders, hoped that through increased communication and understanding and reduced conflict that barred progress of the case, mediation would lead to earlier achievement of permanency for the children. It could not be determined if this outcome was attained because too few cases were closed within two years to make a comparison between cases mediated and those that were not. However, three in four professionals believed that mediation helped

move the case forward by resolving issues and overcoming interpersonal conflict that impedes progress of the case. Mediators said it did in 87% of the cases. Judges were evenly split as to whether hearings after mediation were shorter, but most noted that a reduction of conflict was achieved even when no agreement was reached. This was what they considered to be the most important effect of mediation on the case as a whole.

Family Experience

The court's goals for the program's impact on the families are:

- To increase the role of the natural parents in the progress and outcome of the case, while protecting the children
- To give family members voice and an opportunity to communicate
- To increase compliance with the plans laid out for the parents

The first two goals were addressed in this study. The program appears to be achieving those goals.

The program succeeded in having the family involved in the case. Most family members noted that they felt involved in the decisions that were being made, and most professionals who participated in mediation agreed that the family members were more involved in the discussion than they had been previously.

The program also succeeded in providing family members with a positive experience in mediation. Most importantly, it gave them the sense of procedural justice they needed to feel that the process was fair. Mediation gave family members their first experience of voice within the child protection system. It provided them with a sense of control and a feeling of respect they had not felt earlier. One reason for this sense of control and respect is that the family members were able to bring up, have discussed, and agree upon issues that were not referred by the court.

PROGRAM PERFORMANCE—AREAS FOR IMPROVEMENT

The mediation program received high marks from almost everyone interviewed. Survey responses and other data also show the mediation program to be successful in almost all areas. Nevertheless, this study identified two significant



areas for improvement: referral rate and provision of information to referrers and potential participants.

Referral Rate & Sources

Some judges and attorneys, along with the program's director, stated that strong support from Presiding Judge Patricia Martin has led to much wider acceptance of the program over the years, making the program sustainable. The program has been strengthened as well by a number of improvements it has made that were noted as beneficial by interviewees, including immediate response to referrals, shortening the mediations, regularly employing multiple sessions, and widening the scope of the program. In addition, the program has come up with a number of new ways to provide information to both referrers and participants.

Despite all the above and the almost universally positive views of the program, the number of reported referrals was low, with only 3% of cases being referred. Further, the referrals are relatively clustered – four of 16 referring courtrooms account for more than half of the referrals and the majority of the referrals originate from judges. As noted earlier, the tendency of all referring groups is to select individual cases to screen into mediation. A fully integrated program that has the greatest impact on the system overall would assume that cases go into mediation and then have these groups select individual cases to screen out of mediation. That is, those involved in a case would automatically consider mediation, and eliminate it as a possibility only when certain factors are present. A good number of attorneys and judges noted that the program does not have the impact it could have precisely because it is used in only a fraction of cases.

Not all cases are appropriate for mediation, and for many cases, processes such as family conferences and staffings can overcome some obstacles to the forward progress of the case; however, family members tend to see mediation as their unique opportunity to be heard and to feel that they are involved in their children's future. Because this is a major rationale for the program, this opportunity should be available to more families. The contradiction between the benefits seen from mediation and the low number of referrals can be tackled through providing more information, as is discussed below.

Referral Sources

Although referrals are being made from all courtrooms and a majority of attorneys state that they have requested mediation at least once, referrals are concentrated into a few courtrooms and more than half of all referrals are being made by judges. This can be detrimental to the program because referrals are so concentrated in a few sources. To be sustainable in the long run, it is best for programs have a broad base of referrals.

Further, although most judges and attorneys reported referring cases to mediation, each is referring only a small percent of cases for which they are responsible. Full integration happens when the culture of a system changes. Currently, the interviews demonstrate that there are differing levels of integration among the courtrooms, as each courtroom has its own mediation culture. In some courtrooms, mediation has become part of the normal process, although it is not automatic. In others, it is rarely brought up.

A difficulty in fully integrating mediation into the system is the quick turnover rate in the offices of the Public Defender, the Public Guardian, and the State's Attorney. Attorneys who may have become comfortable with mediation soon move to other areas, while new ones who may not have experience with or knowledge of the process enter into the system. These new attorneys need to be educated about mediation and provided with the tools to become comfortable with using the process so that they not only do not resist referral, but request mediation themselves.

The same is true for caseworkers, who in the past have not heard of mediation until their first case is referred. Because turnover is high at private agencies, this, too, is a difficult issue for the program.

In only one case did a family member request mediation. This fits in well with the information gathered from the family members during interviews, in which they stated that they had gotten information about mediation after referral was made. Families would have a greater sense of control if they had information early on about mediation and their right to request it.

Recommendations

The program should maintain frequent contact with



judges, attorneys' offices, and private agencies to keep mediation fresh in their minds and to answer any questions they may have about referrals, mediation and concerns about the program. This means face-to-face meetings as well as memos and phone calls. The program should also work with attorneys, intake officers and others to create a protocol for informing family members about the possibility of mediation and their right to request it. Other possible ways of enhancing the use of mediation are discussed below, in "Information."

Information

The interviews with judges, hearing officers and attorneys demonstrate that they are reasonably well informed about mediation and the program, but that more information would be helpful. All referring and participant groups could benefit from greater information on mediation, the program, and the cases to refer. A number of individual misunderstandings were brought to light through the interviews, including the belief that under the program only visitation issues can be mediated, that minors are not allowed to participate in mediation, and that only permanency issues are ripe for mediation.

While the judges indicated a certain amount of discomfort with knowing what cases to refer, mediators gave them generally high marks for their referrals. Though the mediators and the attorneys who were interviewed noted individual cases that were not appropriate for mediation, the mediators stated that most cases referred to mediation have been suitable. The mediators' main concern was that the referrals did not always reflect the broad range of issues that are appropriate for mediation, and that the timing of referrals could be earlier in the life of the case. More outreach to the judges may be of assistance with this.

The judges felt they would be better able to refer cases to mediation if they had more information on:

- Changes that occur in the program – what issues can be mediated, who can participate, when cases can be referred, and so on
- How the mediation process actually works
- What cases are appropriate and how to determine whether parties would benefit from mediation

Some also indicated a desire to observe a mediation and to

better understand what happens in mediation. They also had an interest in knowing the reasons for not reaching agreement. While they agreed that confidentiality precludes their receiving this information, they also stated that understanding the obstacles to agreement would help them to figure out how to move the case forward. Providing a general understanding of what the typical obstacles can be for different cases might help them to place particular cases in context, while also offering more information about what cases are appropriate for mediation.

Attorneys also noted a desire for more information, particularly the following:

- How to request mediation – what reasons to give for appropriateness of the case, what cases are appropriate.
- How to advocate for their client in mediation.

Through interviews with the family members, it also became clear that many attorneys need to provide more information to their clients about mediation – both at the outset so they know they can request it, and just prior to mediation. (Almost none of the parents said they learned about what mediation is from their attorneys.)

Recommendations

The program staff has undertaken a variety of efforts to increase the amount of information referrers and participants have regarding mediation and the program; however, given the misunderstandings of judges and hearing officers, and the admitted need for information on the part of attorneys, getting more information out to these groups would be beneficial to the program. An annual seminar on advocacy in mediation also would be helpful.

Information for Judges and Attorneys

Since the beginning of this evaluation, program staff has made a number of improvements to the provision of information to all involved in the child protection system. Judges and hearing officers have received benchbooks, brochures have been created for both attorneys and family members, the staff has regularly provided information to all attorney offices (Public Guardian, Public Defender, and State's Attorney), and the staff has conducted orientations for all the private social service agencies. Nonetheless, more can and could be done to increase the knowledge



base of all referrers.²⁴

- Provide an avenue for judges and hearing officers to be able to see how mediation works. One judge recommended they be able to observe a mediation of a case from a different courtroom. Another mentioned a simulation.
- Provide a seminar for attorneys on how to be the best advocate for their client in mediation. Include information on how to present a request for mediation, and when and how to inform their clients about mediation. This might also increase parental requests for mediation. Role plays in this seminar would be particularly effective.
- One attorney suggested that mediators should follow individual cases from intake to permanency – be in the courtroom for the hearings, etc. – and inform all involved of when mediation would be beneficial and why. Although this would help place mediation in context and may work to instill more of a mediation culture in courtrooms that are not referring cases, it is very time intensive. The better avenue may be to encourage judges and attorneys to contact mediators to ask whether a particular case might benefit from mediation.
- Provide referrers with case studies of mediations that worked well but were not typical referrals.
- Have program staff meet individually with judges on a regular basis to discuss the mediation program, referrals and any concerns they might have.
- Continue to provide manuals on the mediation program to new professionals in the child protection court.
- Continue to update judges and professionals regarding any changes to the program.

In terms of marketing the program to those who refer and attorneys, the following is recommended:

- Greater personal interaction between program staff and judges. This has been found to increase referral rates in other types of mediation programs. A good way to do this is to visit each courtroom once a month or more.
- Continue to market the program to attorneys. One recommendation is to get mediation into

the orientation for new bar attorneys. Continuing to work with the Chicago Bar Association to have presentations or talks on mediation is also recommended.

- Regularly provide information on mediation to the different attorney offices. As the turnover rate is high in these offices, this should be done every six months.
- Court administration should continue to promote the program actively.

Information for Family Members and Caseworkers

Interviews with family members and caseworkers showed that they need more information as well. Only one parent knew enough to ask for mediation herself, while others learned about it after referral, mostly from caseworkers or mediators. Many foster parents and caseworkers knew nothing about mediation prior to arriving for the first session.

Program staff has worked to change this. They have been conducting orientations for private agencies working with the Child Protection Division. Additionally, brochures explaining the mediation process have been created for family members. However, more can be done. Getting information out to the family members and caseworkers not only helps them to prepare for the mediation, but gives the program greater control over what they are told about the process.

- Get information to parents and foster parents early on and continue to place it in front of them at every step. This will help empower them to make the decision as to whether to mediate. A good idea is one that is already started – to have a video play in the courtroom waiting areas.
- Make sure that all participants get brochures on the mediation process before they arrive for mediation.
- Train lawyers to discuss the possibility of mediation with their clients. Help them to know how best to present mediation and prepare their clients for mediation.
- Continue the orientations for caseworkers.
- Work with the Illinois Department of Children and Family Services to put information on mediation into the foster parent manual. If there is an organization that supports foster families

²⁴ The first five items have been addressed since the original recommendations were made.



aside from DCFS, the program may want to work with them to help with outreach to foster parents.

Facilities

The facilities are seen in a positive light by most; however, there appears to be a significant concern about privacy. The room in which mediation takes place is a large open space with employee desks to one side and surrounded by offices that open into it. The mediation area is closed off from these by five-foot cubicle-type walls, within a larger area with staff desks and some foot traffic. This means that anyone sitting in or walking through the larger area can hear what is happening in mediation.

A lesser concern, but an issue nonetheless, is that of security. There are procedures in place to deal with escalating security threats during mediation. These include asking a sheriff's deputy to be in the vicinity (but not in the mediation room) in case intervention is needed. In addition, all family members and those who accompany them go through security before arriving at mediation. However, there is no procedure to routinely identify possible threats before mediation occurs beyond asking about the existence of an order of protection. Further, those who participate in the mediation may not know that such procedures are in place.

Recommendations

The best solution to privacy concerns would be to enclose the mediation area with walls. If this is not possible, or until this occurs, participants should be informed that all employees of the program are bound by rules of confidentiality not to speak about the mediation, and that this includes those who sit at desks in the mediation area.

For feelings of security, first and foremost, the participants should know that there is a procedure in place to protect the participants' safety. This would help to make participants feel more secure when another participant seems threatening. Security needs to be balanced by the need for parties to feel comfortable talking openly. It is therefore not recommended that armed guards be brought into the area on a routine basis, as two interviewees suggested.

PROCESS

The process of referring cases to and moving them through mediation is working well. The appropriate cases are

being referred to mediation, most cases that are referred are mediated, and the mediators feel they have enough information to mediate most cases effectively. Intake forms are being completed, cases are easily scheduled prior to the next court date, and in most cases, attendance issues did not completely derail the mediation process.

Referrals

The referral process works well. The judges and mediators agree that the procedures followed to refer cases to mediation and to gather information needed about the case and the participants have fit their needs.

The referrals that are being made are appropriate. Only two cases presented issues that the program felt made them inappropriate for mediation. Further, the mediators and the professionals agreed that the vast majority of cases mediated were appropriate for mediation. Despite this, judges and others remain unsure about what cases should be referred to mediation.

Recommendations

As noted above, judges, attorneys and caseworkers may benefit from greater education about what cases to refer, as well as confirmation that they are referring the correct cases.

Intake

The intake process is generally working well. The judges, attorneys and mediators all report that the process works well for them. Judges note that the program responds immediately when called to take a referral. Mediators report that the intake forms are being completed and that they have enough information to mediate the cases effectively. The one area that causes difficulty for the mediators is that bar attorneys have to move on to other cases in other courtrooms before the mediation has been scheduled and the intake forms completed.

Recommendations

The program should explore with judges the possibility of timing their referrals at a point in the hearings so that the mediators can arrive for intake before the attorneys leave the courtroom. Alternatively, the program could explore ways in which the bar attorneys can provide information on their availability for mediation before leaving the courtroom.



Timing of Mediation

Most mediations are occurring after the cases have been in the system for more than two years. This limits the ability for mediation to shorten time to permanency. Mediators and professionals are more apt to believe that the mediation should have occurred sooner than later. Most cases are also being referred after disposition. The judges and other professionals have expressed greater comfort with referral before disposition than the number of cases referred suggests. The family members see mediation as the only format in which they have voice and some amount of control.²⁵ Since most referrals occur two years or more after the family enters the system, this means that they spend a significant amount of time feeling powerless and without voice. Further, research has shown that early mediation in child protection cases has been successful in speeding up the progress of the case by identifying appropriate placement and getting parents suitable services early on.²⁶

Recommendations

Referral to mediation should be encouraged early in the case for issues such as placement, services and visitation. The court has explored the possibility of creating a pilot program to refer cases from specific courtrooms to early mediation for placement, visitation and services issues. If possible, this should be adopted. A pilot program would allow the court to properly assess the effectiveness of early mediation in the Child Protection Division.²⁷

Length of Mediation

The program has responded well to requests for shorter mediation sessions. This has been reflected in the responses of the family members and professionals, most of whom believed that the length of the sessions was fine. The shortening of the sessions has to some extent been made possible by the use of multiple sessions, which is seen as more desirable by participants.

Multiple Sessions

This program is unusual in that it routinely uses multiple sessions to follow up on cases that have reached agreement. This practice has proven to be rather popular, with many judges and attorneys mentioning the benefits derived from it. Further, those participants who were involved in more than one session felt fine, and sometimes eager, about returning. Multiple sessions are also seen by attorneys and family members as helpful to continuing to work out issues when agreement is not reached or to explore issues beyond those agreed to in the first session. Since the use of multiple sessions is based on the wishes of the participants in each mediation, they are not generally considered to be burdensome by the parties.

Recommendations

This practice of offering multiple sessions should continue as it is, with the decision based on the participants' feelings about returning as well as the mediators' belief that the parties will benefit by doing so.

Agreement Follow-up

Although tracking compliance with agreements was outside the parameters of this study, a good number of attorneys who were interviewed talked of agreements not being followed. This was seen to be detrimental to the parties on occasion when the family members felt betrayed by the lack of follow through. At other times, the attorneys reported they and the parents felt like they wasted their time if the agreement is not followed in good faith. Currently, the mediators do not receive feedback on which agreements are being followed and which are not.

Recommendations

It would be helpful to the mediators if the attorneys informed them of agreements that are not being followed. However, it is important that the program does not appear to be monitoring the participants, as this could both damage the participants' sense of the mediators' neutrality and dampen dialogue in future mediations. Further, pushing for enforcement may have the same effect. Judges, however, can be proactive in this area by emphasizing the importance of the agreements to the parties and following up with them about how things are going with the agreement over the course of the case. The mediators, too, can help in this process

25 See "Family Member Experience In Depth" for more details about this.

26 See Sophia I. Gatowski, *Mediation in Child Protection Cases: An Evaluation of the Washington, D.C. Family Court Child Protection Mediation Program*, National Council of Juvenile and Family Court Judges (April 2005). The findings of this study are discussed on page 113, below.

27 Early mediation was instituted in 2010. Please see the Addendum for details.



by continuing to offer the parties the opportunity for follow up sessions, which allows the parties to discuss any difficulties with the agreement and any need for its modification.

PERCEPTIONS OF MEDIATION

Almost every judge, hearing officer and attorney saw mediation as having a role in the Child Protection Division. Many saw this role in limited terms, specific to particular issues and stage of the case. Many others saw the role of mediation in much broader terms, stating it should be available at all times for a wide variety of issues. They saw its success in terms of whether family members were given the opportunity for voice, as well as whether conflict was reduced and understanding was increased. The major concern of judges, hearing officers and attorneys was whether the agreements would be followed.

PERCEPTIONS OF THE PROGRAM

The judges, participants and other stakeholders were on the whole very positive about the mediation program, its utility, and the competency of the program staff. Those who participate reported having good experiences. Referrers saw it as serving both the families and themselves. Mediation reduced conflict in the cases they referred, making their jobs easier and helping families to move forward. Participants felt relaxed and comfortable in mediation, and saw the mediators as facilitating understanding among the parties. Family members also saw it as their first opportunity to voice their concerns and be heard.

Hearing officers, while positive, had the most reservations about the program, mainly in terms of the scope of the discussion in mediation and the agreements reached. These reservations derived in part from court dynamics. During the course of the evaluation, some of those interviewed, along with court administrators, noted that some hearing officers saw their roles as being usurped by the mediation program, and also felt that the mediation program was being given greater priority than their program.

Staff Competence

Both those who participated in mediation and those who referred cases thought highly of program staff. Mediators were almost universally seen by participants as fair,

respectful, and open to all participant views. Additionally, a common theme in the comments and interviews of those who participated was the skill with which the mediators facilitate the discussion and manage any conflict that arises during mediation.

The judges and hearing officers, too, in general gave high marks to the skills of the mediators. In interviews, they expressed respect for their abilities, as well as the competence of the program's director.

Flexibility and Responsiveness

As noted by many judges and hearing officers, program staff has demonstrated an interest and ability to address concerns and make improvements to the program. The improvement most mentioned was a quicker referral process: intake is now being conducted at the time referral is made rather than at a later time, thereby streamlining the referral process. Another improvement mentioned was the addition of the use of multiple sessions for a single referral. This was lauded by judges, hearing officers and attorneys as providing follow up on issues and being an avenue for exploring later problems as they arise.

FUTURE RESEARCH

This study did not reach any conclusions about the effect of the program on time to permanency. Further research should be done to determine whether mediation has an effect on this important issue in child protection courts. Another area of research that may benefit the court is analysis of mediation regarding compliance with services, visitation schedules and other actions required by the court. A final area of research that would be beneficial is a more empirical examination of the impact of mediation on conflict between family members, between parents and foster parents, as well as between others involved in the case.

CONCLUSION

The Child Protection Mediation Program is attaining its goals of providing family members voice and more of a stake in the outcome of their case, as well as the goal of reducing conflict that bars the progress of the case. Due in large part to this success, the program is seen positively by its stakeholders – family members, judges, attorneys and case workers.



Despite all the above, the number of reported referrals remains low. This is the program's main obstacle to be overcome. Continued and enhanced marketing by both court administration and program staff is essential to doing so. Further, improving the information provided to all involved should increase the number of referrals, and may lead to earlier referrals as well. This can enhance the overall experience of family members who are brought into the child protection system.

Education is also necessary to ensure that all referrers and participants know about the program and its benefits. While education has always been a focus of both the program and court administration, the interviews indicate that the mediation program was not familiar to many potential users. All groups demonstrated a lack of knowledge in some areas as well as a desire to know more about the mediation process. While this shortfall is already being addressed by the program, more can be done. With greater education of all involved, a larger number of cases could be referred, attorneys would learn to make better use of the program and to better advocate for their client through the mediation process, and participants would be better prepared for the process and their role in it.

Family members and most professionals saw the mediation program as the most positive aspect of the family members' experience in the child protection system and as their only opportunity to be heard and to feel that they are involved in their children's future. If it is made available to more families, the Child Protection Mediation Program should have a greater positive impact on the child protection system and the families it serves.



ADDITIONAL MATERIALS





FAMILY MEMBER EXPERIENCE IN DEPTH

Family members and professionals were offered the opportunity to elaborate on their experience in mediation through a series of open-ended questions on the post-mediation questionnaire. Randomly selected family members and caseworkers were also asked to participate in semi-structured interviews post-mediation. The responses they gave to those open-ended and interview questions reinforced their responses to the scaled questions on the questionnaire and provided further insight into how they experienced the mediation process.

POST-MEDIATION QUESTIONNAIRE COMMENTS

The questionnaire the participants were asked to complete at the end of their mediation experience contained five open-ended questions about their experience. These questions were:

- A follow up to the question of whether they would use mediation again: Why or why not?
- Things I liked about the mediation
- Things I didn't like about the mediation
- If I leave with one new thought, it is...
- Any other comments on the mediators or the mediation

Response Logistics

Overall, 238 of 375 family members (63%) answered at least one of these questions. Since the questions invited the family members to list the “things” they did or did not like, the responses often incorporated multiple ideas into one answer. For example, in answer to what she liked about the mediation, one foster mother stated: “They were very helpful, listened to everyone. Gave me a chance to say things that you really wanted to say and get answers.” This lists a number of factors: an appreciation of the mediators, happiness at being able to speak and be heard, and at gaining new information. Each of these factors is dealt with separately in analysis of the response.

Since many respondents provided more than one answer to each question, the number of responses in each category does not total up to the number of respondents.

Therefore, it should be remembered that when it is stated, for example, that “68 respondents liked the opportunity to speak and be heard” and “40 family members noted improved communication,” some of the respondents may have given both these responses.

Responses

In broad terms, the participants elaborated on their responses to the scaled questions on the questionnaire, and confirmed both the perceptions of the judges and hearing officers regarding the role of mediation in the child protection system and were backed up by the participant interviews. Improved communication and the opportunity to have voice were the most often cited benefits of mediation.

Of the 238 family members who provided written responses, 100 were natural parents (64 natural mothers, 36 natural fathers), 78 were foster parents or guardians, and 9 were stepparents. Of others who provided written responses, 30 were aunts, 13 were grandparents, and three were godparents. Another three marked “other.” Twelve of the respondents responded to the questionnaire twice as they had two separate mediations during the study period.

A representative sample of the family members’ comments are presented below. To preserve authenticity, they are presented as they were written, with no changes to the text.

Most family members reported only a positive experience

The vast majority of family members – 77% – only had good things to say about their experience. Less than a quarter had any negative comments, despite the fact that they were asked specifically to comment on what they did not like about the mediation. More telling is that only seven family members (3%) wrote only negative comments and no positive ones, indicating that their experience was entirely negative. The low number of family members who gave only negative responses may have been influenced by their feeling obligated to answer the question regarding



what they liked about the mediation. However, since less than one quarter of all respondents answered the question regarding what they did not like about the mediation, it is evident that they did not feel obligated to answer that question. It is probable, then, that they similarly did not feel obligated answer the question about what they liked about the mediation.

Family members most valued communication and procedural justice

The family members placed importance mainly on the opportunities given to open communication with others involved with the case and on aspects of procedural justice, including the opportunity to speak for themselves, feeling respected, and their sense that all those at the table are being treated equally. More than half of them mentioned some aspect of communication in responses. They mainly noted that the mediation allowed for better communication and increased their understanding of others as well as of what they needed to do to regain custody of their children.

**“I loved my mediators.
They were really great
and super-polite. They
helped a lot.”
- a natural mother**

Procedural justice issues were important to more than 40% of family members. Of those, almost 8 in 10 saw mediation as positively affecting these issues, while 1 in 10 felt that their expectations of procedural justice were not met. The rest reported mixed experiences with procedural justice – with a positive experience of one aspect and a negative experience of another. By far, the most important aspect to family members was whether they had a chance to speak for themselves and be heard. Ninety family members (38%) mentioned this; 84 of these felt that mediation provided them this opportunity. Only six reported being unhappy that they did not have this opportunity.

Family member focus on communication and procedural justice issues ran across responses to all questions, with varying emphasis based upon the question. What came across most prominently is their sense that they had gained new understanding. This was particularly true when asked what new idea their time in mediation provided them.

There was general satisfaction with the mediation

Appreciation for the mediation process in general and for particular aspects of the process was noted by almost 40% of the family members. Of these, two-thirds made general statements of satisfaction with the process, while fewer than 8% wrote of general dissatisfaction with the process.

Focus in mediation was on the best interests of the child

Whether the mediation focused on what was best for the children was mentioned by only 29 of the 238 family members (12%) in the open-ended questions in the questionnaire. However, almost all family members who mentioned whether the participants focused on the children said that they did. Only two said the discussion did not focus on the children.

Few identified problems with the process

Although the vast majority of family members had only positive responses to mediation, 54 (23%) mentioned problems with the process. The family members most often complained about the discussion becoming too emotional or repetitive; lacking voice, respect, or a sense of fairness; and the actions and statements of others. Other complaints included a lack of resolution, the extended length of mediation, the presence of people that the respondent did not want at the mediation or the absence of those who they thought should have been present. Almost all of these comments came in response to the question regarding what they did not like about the mediation.

Family members saw mediators positively

In survey comments, the family members demonstrated a high opinion of the mediators. The mediators were cited for being fair, listening well, and being compassionate and understanding. The mediators were also seen as being professional and maintaining control of the discussion.

- “I loved my mediators. They were really great and super-polite. They helped a lot.” [mother]
- “They were very patient and understanding even



though we as a group may have been a little unbearable.” [father]

- “Keep up the outstanding job.” [step-parent]
- “Mediators were very respectful.” [guardian]
- “I have a degree in psychology and you guys did a good job facilitating.” [step-parent]
- “The mediators made this a lot more pleasant for me and treated me with respect. They were great!” [guardian]
- “The mediators were very professional and efficient in leading the meetings.” [mother]
- “To the staff, thanks for listening and being there and being a friend.” [mother]
- “Very professional - helped to keep things calm.” [foster parent]
- “The mediators were wonderful in helping all parties hear each other.” [foster parent]
- “Excellent mediators and they remained neutral.” [other]
- “Both mediators had calming voices which provided the correct atmosphere for the mediation and helped to squash any vocal conflicts before they began.” [godparent]

Answers to Particular Questions

Would you be willing to use mediation again?

Of the 83 family members who responded to this question, 78 gave positive responses. Twenty-three said they would use mediation again because of their greater ability to communicate with the other participants. Nineteen noted aspects of the process as reasons to use mediation again, with thirteen of those simply noting that the process was good. Three of the other six mentioned the neutrality of the process, while one each cited the benefits of being able to speak separately with the mediators away from the other parties, the ability to focus on the most important issues, and reduced or avoided time in court.

Procedural justice issues were mentioned by sixteen respondents as the reason they would use mediation again. Of those, twelve mentioned their opportunity to speak, while five noted the equality of all at the table. One said it was fair.

Other responses were that mediation helps resolve conflict (7), that it focused on the best interests of the children

(3) that the mediators were good (2), and that it led to a good solution (1). One said that future participation in mediation depended on whether all the people were present.

Of those who gave reasons for wanting to use mediation again, the following represent the most common:

- “I really was able to get a lot of info that I needed.” [foster mother]
- “It really helped me to understand my relationship with the brother.” [foster mother]
- “Gave me a chance to ask questions and find out information.” [mother]
- “It gave both parties a fair chance to express their point of view.” [other family member]
- “It allows all parties to have an understanding of one another’s perspective.” [mother]
- “Because mediation help both families see one another views.” [aunt]
- “Because I got to find out things about my son.” [mother]
- “Because it really helped me speak my mind.” [mother]

Only five family members gave reasons for not using mediation again. Two simply said they did not want to go through it again, one said that it prolonged return home, and another stated that it was not helping. One more said that the conflict could have been resolved more than a month earlier through the agency. Here is a sample of those responses:

- “I don’t want to go through anything like this again.” [mother]
- “Because it all about what’s with this agencies wants and I feel it not fair.” [cousin]
- “The longer we continue to have these meetings add to the child’s emotional stress of not fully bonding with his bio family, thus prolonging his return to home.” [other]
- “The visit schedule/activities could have been resolved over a month ago through the agency.” [foster father]

Things I liked about the mediation

The 215 family members who responded to this question were equally likely to concentrate on its communication benefits and its positive effects on procedural justice.



Seventy-four (34%) answered in some fashion about communication and understanding, with 34 stating that it improved communication and the flow of information among the participants. Another 24 family members said that it increased their understanding of the case or of the perspective of others involved in the case. Sixteen more

Family Member Things Liked Word Cloud



noted the openness of the discussion or forum as what they liked about the mediation.

- “Open discussion. Points brought out in front of attorneys and other parties involved.” [father]
- “A chance to hear the ideas and feelings of others interested.” [foster father]
- “I liked being able to talk to the foster mother and share thoughts.” [father]
- “I was able to better assess the viewpoint/feelings and biases of the extended family of the foster child.” [foster father]

The positive effect of mediation on procedural justice issues was noted by 73 respondents (34%). Almost all 73 remarked on the opportunity to speak and be heard, making this the benefit of mediation most mentioned by family members, while another 23 appreciated the equality of all participants in the mediation. Respect and fairness were also mentioned. Some representative responses were:

- “I got to speak for myself.” [mother]
- “Everyone told their point of view and place.” [aunt]
- “Everyone had a chance to give their input and feedback was given.” [other]
- “Everyone had a chance to talk.” [foster mother]

- “Everyone listens and you can actually talk.” [mother]
- “Speak my mind.” [father]
- “Everyone said what was on their mind and listened to one another.” [foster mother]

A significant portion of respondents noted a general appreciation for aspects of the mediation process. Of the 30 (14%) who mentioned this, just over half of these made general statements about liking “everything” or “the whole thing”. Others liked the fact that they could meet others involved in the case (6), the ability to focus on the issues (3), the ability to meet one on one with other family members without the professionals present, (3) the confidentiality of the process (1), and the fact that it was less rushed than court (1). Below are a few representative statements.

- “It gave me a chance to meet the ‘other side.’” [foster mother]
- “Got to meet all persons involved with the children.” [grandparent]
- “The mediators did a great job of being focused and keeping the group focused.” [step parent]
- “Allowed everyone to focus on today’s problem. Group participation emphasized.” [grandparent]
- “Everything went well in my eyes.” [father]

Sixteen family members mentioned the good work of the mediators as what they liked, while thirteen stated that they liked reaching resolution. Ten others remarked on the comfortable/friendly (8) or controlled (2) atmosphere, while another ten liked one or more aspects of the outcome – that it was agreed (4), that it benefited the children (4), that it was creative (1), or simply that it was good (4). Ten also liked the focus on what was best for the children, and not just on what the adults wanted. One liked the improved relationship with another family member that the mediation engendered.

- “Everyone had the child’s best interest in mind.” [mother]
- “The mediators were wonderful.” [guardian]
- “The mediators, the setting, the conversation.” [mother]
- “To get to know that the children are the issue.” [father]
- “[The mediators] worked hard to solve the problems.” [other]



- “Calm environment.” [father]
- “Everyone had the child’s best interest in mind.” [mother]
- “The fact everyone was talking about was best for the children.” [other]
- “It reminded all parties that this is about the children involved and their best interests.” [foster mother]

Things I didn’t like about the mediation

Fully 50% of the 112 family members who responded to this question did so with some form of “nothing”. The remaining 56 family members most commonly cited issues with the discussion or with other parties, which were mentioned by 15 and 14 participants, respectively. When unhappy with the discussion, they were equally likely to say it was too emotional or did not focus on the issues at hand, with a few mentioning that they did not like that a particular issue was discussed. When unhappy with other parties, it was either that they were or were not present, or that they in particular said or did something they did not like.

- “The point where it got slightly out of hand but it was expected.” [mother]
- “The unneeded parties.” [mother]
- “Individuals avoided issue at hand occasionally.” [grandparent]
- “The parties argued too much and brought out points relevant only to the adults.” [father]
- “How emotions got involved.” [other]
- “The father’s attitude.” [mother]
- “Always talking about adoption.” [mother]

A lack of procedural justice was cited by ten participants. Most of those with procedural justice issues felt they did not have the chance to speak (6), while three others felt it was not fair, and two more felt that they were not respected in the process.

- “I don’t feel my points were taken seriously and if you are a foster parent for 4 years who knows the children the best?” [foster mother]
- “Too one-sided. Too much negative remarks towards one person in particular.” [grandparent]
- “People couldn’t fully explain what they wanted to say without getting cut off.” [other]
- “Many things that were disregarded on my part.” [mother]

The final areas in which family members were dissatisfied are length of process, lack of resolution and administration. Eight noted problems with the process, most of whom thought it was too long. (6), while one thought that it was too short and another felt general dissatisfaction. Five were unhappy with the lack of resolution. Two were unhappy with the administration: one thought the atmosphere was uncomfortable, while one other had problems with both the food available and the timing of the mediation.

- “Nothing got solved.” [father]
- “Took too long, meaning the time it took as far as the meeting.” [father]
- “We didn’t reach a decision.” [foster mother]
- “Very long.” [mother]

If I leave with one new thought or idea, it is...

The 164 family members who responded to this question were almost always positive about their experience, with only eight (5%) responding negatively. It is apparent from the responses that mediation was a forum through which many felt they gained greater understanding about others, the case, or themselves. They most often completed the statement “If I leave mediation with one new idea, it

Family Member New Idea Word Cloud



is...” with a new understanding of others or the case (37). One particularly evident strain of comments was that natural parents gained greater understanding of the foster parents’ care for their children. Typical comments along this vein were:

- “Things are just as hard for the foster family as they are for me because of the love that we have



for [my child].” [father]

- “That my children foster mother really loves them and has sacrificed for their well-being.” [mother]
- “That my children has a lot of love among them.” [mother]
- “I know my children are in good hands with [the foster parent].” [mother]
- “That we all do want the children’s happiness.” [mother]

Foster parents also gained understanding, some good, some bad:

- “More concern for [the child].”
- “I am thankful and I feel much better toward my daughter now I had the chance to hear her side.”
- “Social workers aren’t so bad after all!”
- “Everyone loves [the child].”
- “I can communicate more with the brother also understand him.”
- “Some people think only of themselves and not what’s best for the child!”
- “The godmother who just have a job to do.”

Those who had a better understanding of the case and the system said things like:

- “The most important people in this situation are the children.”
- “[My child] will have a fair chance.”
- “To send the child to therapy or counseling.”
- “I gave my daughter an opportunity to feel secure, enjoy freedom, live happy with the caretaker.”
- “That the system is doing what is best for the child.”
- “That the mediation was there to help me not to hurt me.”
- “The system work once everyone has the same common objective.”
- “I can get help.”

However, a few wrote more negatively about what they learned about the child protection system and those in it:

- “That I am powerless.”
- “DCFS has the upper hand - they can turn your children against you in favor of foster parents. They have the money to do almost anything they want to.”
- “That the child is often the last party considered

in meeting the “needs” of the involved family members.”

A number of natural parents (24) said they gained greater understanding of their own responsibilities. Those who came to understand their own responsibilities said things like:

- “To make sacrifices.”
- “To move out on my own.”
- “To keep my focus on the children and what’s best for them.”
- “Be the best that I can to continue to do my best for anyone. For the children and anyone else.”
- “Try harder to proceed in [my child’s] life.”
- “I would like to work hard to get my child back.”
- “To keep the child in mind because feelings of the child should be thought about.”
- “Keep an open mind.”
- “Be more thoughtful.”
- “To better myself.”

A significant number (25) also noted the general importance of communication, while another six saw a possibility of improving their relationship with another party. Other factors that were noted: Happiness with the agreement was noted by 14 family members, while ten others realized that issues can be resolved. Another 9 left the mediation with new hope for the future.

- “Coming together and discussing the problem.” [foster parent]
- “It pays to work things out amongst each other.” [mother]
- “To talk everything out no matter what, and to come to a solution.” [other]
- “Family sitting down to discuss the issues can possibly pull and bridge them together.” [other]
- “Talk and listen to each other to work out problems.” [other]
- “People can discuss in a good format.” [foster parent]
- “Communication helps.” [mother]
- “To talk more about what is going on.” [father]
- “That getting together as a group solve problems. Talking make a change.” [other]
- “Communication is very important. A mediation represents the wisdom placed in order to communicate thoroughly.” [mother]
- “Everyone needs to be on the same page or get all

- “That the DCFS [Department of Children and Family Services] rep chose to show bias on a “culture” difference to build a case for the paternal family with no observation that 2 of our five children are African American. A cheap shot on having open dialogue.” [foster parent]
- “That you can sit down to mediate, but if all parties are not forthright and truthful with what they are doing in close session regarding a child and his parents, the parents will lose.” [other]

A word cloud centered around the word "mediators". The word "mediators" is the largest and most prominent, written in a bold, black, sans-serif font. Surrounding it are various other words in different sizes, colors (including red, yellow, and black), and orientations. The words include: "good", "great", "job", "Thank", "helpful", "really", "help", "work", "lot", "group", "mediation", "professional", "foster", "helped", "Good", "family", "Excellent", "parents", "parties", "helping", "feel", "able", and "well". The words are arranged in a circular pattern around the central word, with some overlapping.

- “They were very patient and understanding even though we as a group may have been a little unbearable.” [father]
- “Keep up the outstanding job.” [step-parent]
- “The mediators made this a lot more pleasant for me and treated me with respect. They were great!” [guardian]
- “Mediation is good to reunite families and

Thirteen of the twenty cases observed ended in agreement on at least some of the issues discussed at mediation. All five cases that were referred within a year or less of intake resulted in agreement, while eight of the fifteen cases referred two years or more after intake did so. While it might be tempting to see this as evidence that getting a case referred earlier makes it easier to resolve issues, the older cases tended to deal with the sometimes more complex issues surrounding permanency, whereas the earlier cases deal with family conflict that the families were often eager to resolve. Additionally, the subset of cases sent within a



year is very small. Therefore, no conclusions can be drawn from this.

Overall Experience

All but two of the 21 natural and foster parents interviewed were happy with their experience in mediation. Natural parents and foster parents saw mediation as a way to enhance communication with other family members, to see others as individuals and to better understand their perspectives, and to get their voice heard in the case.

Natural Parents

Representative comments from parents were:

- “If anyone else has a problem, go to mediation. They will get a chance to know what the other person is feeling and why, and how they can work together.”
- “Mediation was better than I expected.”
- “I really liked mediation and want to come back to speak with [the stepmother]... They should do this for a lot of relatives.”
- “It was cool that I got a feel about what everyone was trying to do, not just me.”
- “Mediation gave me a sense of fairness that was really important.”

The parent who was unhappy with the mediation said that parents should try to get into mediation as soon as possible. Once the case gets old, then “all they [the professionals] care about is closing the case”. She said she would have welcomed, and looked forward to, a more open discussion of the possibilities for return home.

Foster Parents and Guardians

Foster parents had similar reactions to their experience in mediation, stating, in part:

- “I finally got the stone over the hill through mediation...[mediation] should be the way.”
- “I enjoyed mediation. I’m looking forward to coming back in six months and seeing where we are.”
- “It’s good to have these meetings. They should do it with all foster parents and parents. It creates ties so parents can have a relationship with the children and children can get to know their siblings.”

- “Mediation was better than good. I had so many things to talk about with [the father] but I never could before today.”

The one foster parent who did not have a good experience in mediation stated that it was depressing and gave her a headache. She was caught in a power struggle between her son (the child’s father) and the child’s mother that mediation did not resolve.

Pre-Mediation

Information about Mediation

Family members were asked two questions about the information they received prior to mediation:

- What did you know about mediation before you first came?
- Who told you about what happens in mediation?

Natural Parents

All natural parents who were interviewed had received at least some information about mediation before they arrived. They received this information from a variety of sources, with most stating they got the information from the caseworker or the mediators (at intake or through pamphlets). One said that his attorney had told him what would happen at mediation, while one said the judge explained it. One parent said he learned about it from several people – the judge, the hearing officer, the GAL, and his attorney. Another learned about it from someone she knew who worked at the Department of Children and Family Services.

Foster Parents

Only six of ten foster parents who were interviewed received any information about what happens in mediation, and one of those sought out the information. This difference from the natural parents is explained by the fact that foster parents do not regularly attend court hearings, and therefore are not present at the time the case is referred. Of the six who received information on mediation, four were told by caseworkers, another said both the caseworker and the mediator talked with her about mediation, while another said a mediator discussed mediation with her.

Feelings about Referral

One concern was that family members might see referral



to mediation as one more thing they had no control over and therefore may approach mediation with anxiety. They were asked about this in interviews:

- How did you feel about being referred to mediation?

Natural Parents

Parents tended to feel nervous about mediating or did not want to participate, although two were happy that they were going to be able to talk about the issues. For all but one parent who felt nervous or negatively about being referred to mediation, that feeling was dispelled either with more information or after mediation began. They mentioned the open conversation as the main reason, and one said that knowing what was said in mediation was confidential made him feel more relaxed. Another parent said that she did not want to go to mediation until she received a pamphlet on mediation in the mail. Once she knew she was going to be able to speak, she felt better. The one parent who did not want to mediate had been through mediation before and said he did not understand how the issues at hand could have been mediated.

- “I didn’t expect to be dealt with honor, but I was.”
- “I thought there might be closure – that everybody would be able to tell their story.”
- “I thought “here we go again.” I didn’t understand why we were being referred to figure out transition if we were already making the transition. You can’t really plan what’s going to happen.”
- “I was nervous and had butterflies before mediation. But I felt more relaxed after mediation started because everyone talked, there was conversation.”

Foster Parents

Foster parents were similarly nervous or negative about the referral to mediation. Only two said that they were happy to be going to mediation. One wanted a chance to talk with everyone else involved in the case; the other said that she wanted to be heard. The others either expressed uncertainty/nervousness or skepticism. One saw it as another imposition on her time. Another said she was apprehensive and prayed about the mediation beforehand, and another said he was skeptical in the beginning, but in the end felt his time was not wasted.

- “I was nervous because I didn’t know what to expect from [the mother] or what I was going to be asked.”
- “I thought referral was ridiculous because I knew [the mother] wouldn’t show. But it would have been worth a shot if everyone showed up.”

Questions of Voice, Respect and Control

In post-mediation interviews, the participants were asked a series of questions to examine their sense of procedural justice. The participants were almost unanimous in their belief that they had been listened to by everyone else around the table, that they were treated as an equal member of the group, and that they had control over and input into any decisions made in the mediation.

Two participants – a natural parent and a foster parent – never felt the sense of control or inclusion that the others did. Not surprisingly, they had negative reactions to the mediation process.

For many participants, the mediators were integral to their increased voice, seeing them as effective intermediaries who helped others see their point of view and controlled the flow of the conversation. As an example, one parent very emphatically noted that mediation was the first time that he felt treated fairly within the system. He believed every other process was rigged, but that in mediation the presence of the mediators leveled the playing field for him. He felt the mediators did this by not allowing his words to be turned around by the other participants. Even though he was not sure how effective mediation would be at getting him what he wanted, it gave him a sense of fairness that was very important to him. Also integral was the sense of equality that was felt by almost everyone.

The perception of procedural justice was the same for both natural and foster parents:

- “I felt treated fairly. I was able to voice my opinion about what I would like – and I felt I had a lot of input into the decision.” [father]
- “I was listened to by everyone.” [mother]
- “My input has meaning to group regarding the decision.” [mother]
- “The stuff in the agreement is me.” [mother]
- “Everyone respected each other.” [father]
- “I was treated beautiful. The mediators were calm



and relaxed. They explained things well to me and [the mom].” [foster mother]

- “I felt heard in mediation. Some of my concerns were being brought into the decision.” [foster mother]
- “When I said what I wanted to happen, everyone else seemed to agree.” [foster mother]
- “Everyone was treated equally. Everyone had a turn to say what they had to say.” [guardian]

Difference from Other Court Processes

The sense of justice that participants had in mediation was most clear when they contrasted that experience with their sense of how things went in court.

Natural Parents

When asked if mediation differed from their experience with other processes in the court, the consensus was that mediation allowed them to talk. This was the answer of nine of the parents. While many had been frustrated with their silence in court, one said that he did not mind the fact that his attorney spoke for him in court. Two mentioned that they felt less rushed in mediation and one said that mediation was fair and that for the first time he did not feel outmanned. One added that more was accomplished in mediation.

- You get a chance to say something, give your opinion. In court, you just sit and look. No one talks to you. It makes you feel that you don’t mean anything to the system.”
- “In court, the lawyers talk.”
- “They don’t stop you from talking and they listen. The judge never gave me chance to express myself. Wasn’t willing to listen.” Gave court a 2 in terms of hearing her side, and mediation a 10.
- “Mediation is less hurried than court. I got to meet more people and we got a lot accomplished.”
- “More open than court – more time to talk about what was on my mind. Much different than court because everyone can talk. Court’s very rushed.”
- “In mediation you get the chance to say what you want to say. In court, it’s just the attorney.” She likes the attorney to speak sometimes because he knows more about some things, but she likes being able to talk, too.

Foster Parents

The foster parents, too, saw mediation as a forum in which they had the opportunity to speak. All but one said that this was what differentiated mediation from court. One also mentioned that there was more compassion in mediation.

- “There was a different demeanor from court. The mediators took charge and let everyone talk. Court is ruled by the judge and you don’t talk unless judge talks to you. Everyone just sits around getting frustrated because they can’t talk. You can’t ask questions or voice chagrin in court.”
- “I got a chance to talk. In court, you just sit and wait. I’m really nervous in court, so I can’t ask questions.”
- “You get a chance to talk. The court doesn’t hear what you have to say. Here everyone was listening to what I had to say.” She felt she was being treated fairly in mediation, that there was more compassion.
- “I can explain myself and have others listen. Mediators are able to explain things to the mother.”

A different view was given by another foster parent, who said that mediation is more stressful because everyone is talking and in court the judge says what is going to happen.

- “Mediation is more stressful. Everyone is talking, no advice is given, nothing gets done. In court, the judge says what’s going to happen. The lawyer talks.” – “How do you feel about that?” – “It’s fine.”

What They Hoped to Accomplish

Natural Parents

Most parents did not know how to answer this question, or answered it by stating what was accomplished, so it was difficult to know whether the answers reflected their true feelings before mediation.

- One, who had been through mediation at an earlier point in the case, stated that he hoped that the foster parents would listen to him and understand that they would be part of his extended family when his child was returned home. He felt that this did not happen.



- Another, who had requested mediation herself, said she hoped that she and the father would be able to get along without arguing and bickering. While she felt that mediation did not achieve this, she was confident that more sessions would get them there.

Foster Parents

Foster parents, too, seemed to have difficulty answering this question. One said she wanted to discuss things she disagreed with, and was able to accomplish more than she expected. She was able to give more input. Another wanted to accomplish something by speaking with others and have them understand where she was coming from, but said she did not get anywhere with the father.

What Was Gained Through Mediation

Natural Parents

Parents tended to focus on two areas of progress in mediation: getting a better understanding of others and feeling clearer about the case moving forward. Four stated the former – saying things like,

- “It gave me a good look at [the foster parents]. I realized that there are other people who love my kids.”
- “I got to meet [the foster mom] for the first time. I could see she loved [my child]. It was a big relief to know he was being cared for.”
- “I can see that me and [the mom] have something in common. We both don’t like being in this situation and we both want what’s best for [our child.]”
- “It was good to know what my mother and aunt want for my child.”

Four also mentioned that mediation helped them to understand what was going on in the case better, or to prepare for eventual closure. A mother stated that she now felt ready for return home. A father said it gave him a better understanding of why people were making the decisions they were and helped him to understand and deal with the possibility of his children being adopted. Still another said that through mediation he got answers he would never have gotten otherwise.

Being seen in a different light was important to two parents. One said he was seen as more of a person through mediation, while the other said the most important thing

he took from the mediation was that he was able to get things out and to let people see how much he wanted his child in his life.

In the three cases in which a child was being returned home to one of the natural parents, mediation played an important role in developing communication between the mother and father. One parent stated that this was the first time he had been able to talk to the mother, while another stated that without mediation she and the father could not have talked without one of them storming out of the room. The third parent said he now felt more comfortable talking with the mother.

These were similar to the written responses on the questionnaires. As noted above, many of the parents’ responses focused on the ability to talk with other family members or caseworkers.

Foster Parents

Foster parents tended to see mediation as providing a forum for gaining insight into others. Four said that what they gained through mediation was a better understanding of why people were doing what they were doing, a better understanding of each other’s views, or found out how the natural parent felt. One said it was the first time she had met everyone involved in the case, while another said that it was her first time to be able to talk with the natural mother and she now understood that she was willing to do more for the children.

A couple of foster parents noted that they had gotten information on the case that they had not had previously, while another couple stated that they were able to air their concerns for the first time and be heard. Getting a visitation schedule was particularly important for another parent. One, however, said she gained nothing through mediation and that now things were worse because the case was going back to court.

Agreements

Participants were for the most part happy with the agreements reached in mediation and felt that they had input into what was in them. However, in only two cases were the interviewees sure that it would be followed by the other parties. Despite this uncertainty, they were happy with the outcome and with what was accomplished



in the mediation. They all believed that if the agreement is followed, it will be good for the children.

Feelings after Mediation

Natural Parents

All parents but one were pleased with their experience in mediation. Statements expressing this included:

- “It feels like a huge burden is off my shoulders now. It’s a big relief. It’s like I’ve lugged a big bag of laundry to the Laundromat and have finally been able to put it down.”
- “I have a big sense of hope.”
- “I loved mediation.”

However, one felt tricked and betrayed by the mediation, saying that they were “doing things like always in the court.” This parent was disappointed not to have been able to talk about the possibility of her child returning home when the other participants saw guardianship as the only permanent placement option for the child.

Foster Parents

All foster parents but one were happy with their experience in mediation. Their responses were very similar to those of the natural parents:

- “I felt like I finally got a stone over the hill through mediation.”
- “I’m less frustrated now because I was able to air my concerns and be listened to.”
- “Mediation was better than good. I had so many things to talk to the father about, but I never could before today.”
- “I felt better being able to talk. I was glad to get some of it out.”
- “It’s good to have these meetings. They should do it with all foster parents and parents. It creates ties so parents can have a relationship with the children and the children can get to know their siblings.”

A contrary perspective was given by the foster parent who said it was depressing and gave her a headache.

COMPARISON OF FAMILY MEMBER RESPONSES

One of the most striking findings from the family questionnaires and interviews is how similarly the different family members reacted to and viewed their experience in

mediation. There was no correlation between relationship to the child and their responses to any of the questions. That overall the family members expressed the same feelings about the mediation and their experience demonstrates that mediation affected all categories of family members in the same way. Natural fathers as a group, for instance, did not respond differently than natural mothers or foster parents.

DISCUSSION

Family members view their experience with mediation positively. The vast majority of those who provided written responses to the open-ended questions took the opportunity to praise their experience. This positive response to mediation is similarly found in the post-mediation interviews and in their responses to the scaled questions on the evaluation form.

Many of the desired benefits of mediation were confirmed through the questionnaires and the interviews. In becoming involved in trying to find solutions to conflicts and problems, many parents felt they had the opportunity to voice their concerns and that they were being heard for the first time. Family members gained insight into the impact of their own behavior on the permanent residence of the children, and parents often got to know the foster parents and realize that their children were in good hands.



PROFESSIONALS' EXPERIENCE IN DEPTH

The professionals were asked to complete the same open-ended questions as the family members at the end of their mediation experience. These questions were:

- A follow up to the question of whether they would use mediation again: Why or why not?
- Things I liked about the mediation
- Things I didn't like about the mediation
- If I leave with one new thought, it is...
- Any other comments on the mediators or the mediation

Response Logistics

Caseworkers and their supervisors were the most likely to answer the free response questions. Of the 317 professionals who made comments, 72 were caseworkers and 35 were caseworker supervisors. The next greatest number were GALs (70, 22.1%). Another 41 (12.9%) were bar attorneys, with 33 public defenders also responding. Other professionals included 17 therapists, 15 CASAs, nine DCFS caseworkers, and two DCFS attorneys. Twenty respondents checked the box marked "other." It is probable that some GALs, bar attorneys and public defenders responded to the survey more than one time. Since names are not requested from respondents, and because it is not known which cases individuals are associated with, it is not known how many responses are from professionals who repeatedly participated in mediation.

The Responses

The professionals were most interested in procedural justice, communication, and the possibility of resolution, although the relative numbers varied by the position the professional played in the case. Procedural justice issues were most often noted, with almost two-thirds mentioning the positive effects of mediation on procedural justice. Thirty-five percent (111) noted that the process provided parties the opportunity for voice or to be heard. Another 15% (48) emphasized the equality of the parties, while 9% (27) focused on the respect given to the parties in the process.

Communication issues were mentioned by the majority of respondents as well. Improving communication and understanding was the single greatest interest for the professionals, with 51% (162) of them noting mediation's contribution to these. Sixteen others (5%) noted gaining information, the focus on issues, and the improved relationship among family members.

The case workers were more likely to mention the importance of voice and equality than the lawyers were. Fully 57% of case workers mentioned these issues, the vast majority of whom focused on the opportunity to speak. This reflects a pattern seen in interviews, in which case workers saw the mediation as leveling the field for them as well as for family members, and for providing an opportunity for their opinions to be considered. In contrast, 33% of GALs and 22% of bar attorneys mentioned procedural justice issues. In an interesting turn, 51% of public defenders focused on procedural justice issues. In interviews, public defenders also were likely to note the procedural justice benefits to their clients.

Use Mediation Again?

Of the 317 professionals who provided written responses, 137 answered gave further detail as to why they would or would not use mediation again. Of these, 135 gave reasons for why they would use mediation again. The other two provided reasons for why they would not.

The most common reason cited was that mediation enhances communication. This was the response given by 51 respondents (38%). Aspects of the process were noted by 50 respondents (37%), 30 of whom simply stated that it was a good process. Of the other 20, ten cited the neutrality of the forum, three said it saved them time in court, another three mentioned the non-adversarial nature, two stated that it focused on the issues, while two more said the confidentiality of the discussion.

Twenty-three (17%) mentioned procedural justice issues and the same number noted resolution as the reason to



mediate again. Sixteen of those citing procedural justice issues focused on the opportunity everyone has to speak. Six noted the equality of the parties, and three stated that it empowered family members.

Fewer than ten each mentioned the comfortable, controlled, and safe environment; the positive outcome; the quality of the mediators; the benefits to the children; and the appropriateness of the case for mediation.

Three professionals said they would use mediation again if the case was appropriate. Of the two who gave reasons for not using mediation, one said that mediation is too time consuming and the other said it brought in too many extraneous issues.

- “Mediators know precisely what they’re doing and how to interact.” [public defender]
- “I think it’s great to sit down and share honestly your views on the case.” [GAL]
- “The mediators are doing a great job in working out issues which cannot frequently be done in a courtroom setting.” [bar attorney]
- “Because the mediation process empowers the family members to look beyond the present problems and search for a solution that will aid their family best.” [bar attorney]
- “Useful for certain issues.” [public defender]
- “I found it a useful tool; allowed parties to feel empowered.” [GAL]
- “Because more can be accomplished in a shorter amount of time by bringing all parties face to face at the table to work out their differences.” [public defender]
- “Helpful in resolving issues so upcoming court date will not be adversarial, agreements and better relationships between the parties will help kids in the long run.” [GAL]

What Was Liked

Professionals most often noted procedural justice issues when answering this question, with 115 of 279 mentioning at least one of these issues. The most cited procedural justice item over all was the opportunity of the parties to speak, with 74 professionals mentioning this. Forty-three noted the equality of all those at the mediation

table. Another 21 appreciated the respect accorded to all participants.

Professionals were also highly likely to mention the benefits of enhanced communication. Ninety-eight noted this as a benefit. Of these, 69 liked the fact that communication was improved. Thirteen others liked the open discussion and twelve were happy with their improved understanding of others involved. Another four liked the opportunity it gave those involved in the case to meet (including two who appreciated the fact that natural and foster parents could meet, one who liked being able to meet the natural and foster parents, and one who generally appreciated the meeting between those involved). Two mentioned the improved relationship between the family members.

Professionals Things Liked Word Cloud



Satisfaction with aspects of the process was cited by 51 professionals. Sixteen of these expressed general appreciation of the process, while another thirteen liked the focus of the mediation on the relevant issues. Others mentioned the neutrality of the process, the benefits of caucus, the non-adversarial nature of the process, and confidentiality.

Achieving resolution was mentioned by 21 of those who responded as to what they liked about the mediation. Arriving at a unanimous agreement was noted by two more. Also important to many was the comfortable atmosphere that mediation creates. Twenty mentioned



this, while eleven appreciated the control and calm that pervaded the conversation. Another seven mentioned that it was a safe forum for family members.

- “Opens communication in neutral setting with all parties.” [caseworker]
- “Because it was confidential, it made the family more comfortable in talking about difficult issues.” [caseworker]
- “Everyone had the opportunity to tell their perspective of the case.” [GAL]
- “Very friendly environment conducted by professionals who are very respectful and good at what they do.” [GAL]
- “The moderators had good grasp of the issues and situations.” [public defender]
- “Respectful meeting where everyone had a voice. No right or wrong statements or feelings. No one was treated as if they had not done everything they should have with the cases.” [caseworker]
- “It was a nurturing environment - my client did not feel intimidated as she sometimes does in court.” [public defender]

What Was Not Liked

Twenty-seven of the 126 professionals who answered this question (21%) said they had no complaints. Of the remaining 99 professionals who responded to this question, 33 (33%) mentioned issues with the process itself. Thirteen of these were unhappy with the lengthiness of mediation. Eight did not like the issues that were discussed, or what they saw as the conversation straying from the problem at hand. Four (three for the same case) had concerns about not knowing what occurred during caucus between family members.

The second-most common complaint (13%) was that the mediation did not start on time or interfered with lunch. Also noted by eight professionals was the lack of coffee, food, or other items. Sometimes this complaint was from those who were used to coming to mediation to find coffee or other snacks but did not on this particular occasion. Others wanted a different selection.

Nine of the professionals had concerns about procedural justice, with five of those feeling that family members did not have (or use) the opportunity to speak. Two mentioned feeling pressure to accede to others' decisions.

Six said the case was not appropriate for mediation. Nine professionals were unhappy with the emotional nature of the discussion.

- “Sometimes I felt we were going in circles.” [GAL]
- “We weren't told that a mediation session (family) was rescheduled so when we arrived at the scheduled time, they were taking a break and we had to wait for an hour for it to begin. I also felt pressured to make a decision when I continued to say no.” [caseworker]
- “Only too long because father came 1 1/2 hours late.” [GAL]
- “Facial expressions revealed certain biases that are not always seen in the courtroom.” [caseworker]
- “It was hard to cover all the issues - the case was too old and complicated for one day.” [public defender]
- “Re the timing - I was thinking why would mom agree to the recommended goals when to her there would be no harm in contesting & seeing if she would win.” [GAL]
- “Caucus - felt like didn't know what was going on and was worried a decision would be made that the agency was not in agreement with.” [caseworker]
- “Often we spent a lot of time on a tangent.” [GAL]

Professionals Things Not Liked Word Cloud



New Idea

An increased understanding of and by others involved in the case and in what is possible was the most often cited “new idea” professionals said they were leaving the mediation with. Thirty-seven of 165 people said



this. Another 35 indicated that they felt better about communication, while 42 others provided positive views of different aspects of the process. The only other item that was mentioned by a significant number (15) was that resolution really is possible.

Professionals New Idea Word Cloud



Examples of this better understanding are:

- “A little more insight on the impact termination has on the parents.” [GAL]
- “Return home as a goal is not impossible.” [GAL]
- “My case is very tough and this helped illuminate the issues.” [GAL]
- “That I can work with the GAL better than I have thought in the past.” [bar attorney]
- “More insight into how we deal with the wishes of older (teen) wards.” [CASA]
- “Mom is more on top of the issues than I realized.” [Bar attorney for father]
- “Maybe return home is not the end.” [GAL]
- “That I have decision making power.” [caseworker]
- “Everyone wants the best for the children.” [caseworker]
- “Understanding of the complexity of people’s motivations and relationships.” [CASA]
- “My client gets bullied by current workers.” [public defender]
- “Having parents meet with foster parents is usually in the best interests of the child.” [GAL]
- “My client is firm in his decision and resolve.” [public defender]

Comments

As with the family members, the positive comments by

professionals outweighed the negative ones almost ten to one. More than a third (34) of the 89 who responded to the request to comment on the mediation took the opportunity to praise the efforts and skills of the mediators. A quarter (23) praised the process. Six commented on the comfortable and controlled environment. Six others mentioned the respect showed by the mediators and the fact they listened well. Three were pleased that resolution was reached, while one was unhappy that nothing was accomplished.

INTERVIEW RESPONSES

How worthwhile was mediation?

All attorneys interviewed were asked whether the mediations they participated in were worthwhile. Of the 30 who had participated in mediation, twelve (40%) said the mediations were very worthwhile. Another six said they were somewhat worthwhile. Two said it was a complete waste of time. The other ten responded with greater nuance, rating mediation differently based on what happened in mediation. Their reasons for their responses reflected this nuance:

Effect on Clients

The attorneys were asked what they thought the effect of the mediation was on their clients. The GALs’ clients are children, so they were asked about the effect on them. They saw mediation as helping the children because it speeds up the process, gets people to focus on best interests of the children, and when they participate it gives them a better sense of self-worth.

Bar attorneys and public defenders also saw mediation as benefitting their clients. Most said that mediation helped them by either giving them the opportunity to talk or by helping them to understand the case and the points of view of others. However, a few attorneys expressed concern that their clients could feel frustrated or “ganged up on” in mediation if the conflict is not resolved. Other concerns were that they would feel betrayed if the agreement was breached or if they said something “dumb” that hurt their chances of having their children returned to them.

CASEWORKER INTERVIEW RESPONSES ON MEDIATION EXPERIENCE

The caseworkers tended to be pleasantly surprised about their experience, finding that they had more voice and



that the discussion was more productive and controlled than they expected:

- “Mediation was different than I thought it would be. It was excellent.”
- “I was expecting it to be much worse, more emotional. But it was well-structured and controlled.”
- “Mediation went well – better than expected.”
- “I am pleased with the mediation. It was helpful, particularly with this case because both families are so involved.”
- “Mediation was definitely needed. . . Mediation gives the foster parents and caseworkers the opportunity to put everything on the table so the parent can best assess the best interests of the child.”
- “Mediation got to the root of services and reinforced to the parents and me what services to focus on. It brought everyone together on one page. . . We wouldn't have gotten this information if the case had not been mediated.”
- “Mediation was a good experience...It was extremely helpful.”

Not all caseworkers were this positive, however. One noted that the current mediation was just another opportunity to bring out the same information that was brought out before at seven staffings.²⁸ However, this supervisor also said she had attended several mediations prior to the one for which she was interviewed and that all her previous mediations had been productive. Another supervisor had this to say: “Mediation was okay. I would like to see more finalization. Coming together and discussing the case happens between me and the caseworker every time we go to court. I would have liked resolution instead of just talking. I have talked with everyone before regularly.” However, later in the interview she said that she was able to see the father in new light that was leading her to think about the case in a different way.

PRE-MEDIATION

Those caseworkers who had not experienced mediation before tended to be nervous about the referral, although one said she was relieved the case had been referred to mediation because the conflict among the family

members was out of her control. Others stated that they thought it would be like the Help Unit, in which they feel they are told what to do. Instead, they said they found an impartial process in which they were treated as equals to the attorneys.

One caseworker who had participated in numerous mediations before disagreed with the referral because she did not think mediation would be productive for that particular case.

- “I was relieved – I felt that the conflict was out of my control. It was time to do something. I would be getting help in dealing with the conflict.”
- “I thought it wasn't going to be productive.”
- “I thought ‘Oh my goodness, why are we reaching this point?’ And I was nervous because mediation is something that happens when there's big problem.”

QUESTIONS OF VOICE, RESPECT AND CONTROL

The caseworkers were asked a series of questions that examine their sense of procedural justice. They were unanimous in their belief that they had been listened to by everyone else around the table, that they were treated as an equal member of the group, and that they had control over and input into any decisions made in the mediation.

For many participants, the mediators were integral to their increased voice, seeing them as effective intermediaries who helped others see their point of view and controlled the flow of the conversation. Also integral was the sense of equality that was felt by almost all caseworkers. The caseworkers openly contrasted their feeling of equal importance in mediation to their sense of not being seen at the same level as attorneys in other court processes.

- “Everyone was treated as equals. No one felt intimidated or less important.”
- “I'm listened to more in mediation than in court.”
- “I felt listened to at mediation. All ideas were taken into consideration when discussing options.”
- “Caseworkers aren't heard in the Help Unit. Mediation is a lot better because they're not focusing on the caseworker. Everyone is working together to get a solution.”
- “They always listen in mediation.”

28 Staffings are meetings among those involved in the case. They are run by the Help Unit and have the purpose of getting everyone on the same page as to what services are necessary.



One caseworker had a very different experience, saying that she felt stressed by the father's attorney and that the mediators were placing more stress on her rather than pulling the attorney away. She felt her concerns were not listened to or considered by anyone, including the mediators.

DIFFERENCE FROM OTHER COURT PROCESSES

The sense of justice that participants had in mediation was most clear when they contrasted that experience with their sense of how things went in other court processes.

The caseworkers had more complex answers to this question. All but three noted the more relaxed, less formal, and less intimidating atmosphere in mediation. Six talked about the opportunity to express themselves. Three mentioned the sense that everyone was equal in mediation. Three more liked the fact that there was no fault-finding in mediation, and two noted that the focus was on the family. One said mediation was more productive. Much of this was due, they noted, to the manner in which the mediators ran the mediation – making people feel relaxed and free to speak openly, while also ensuring that there are no misunderstandings.

- “My experience with court was that everyone else in ‘cahoots’ with each other and against the caseworker. Mediation makes you feel like you’re there to talk about case. This is different from court, where you think there will be solution, but everyone has their own agenda. You leave that aside in mediation – everyone works in the best interests of the child. In court, it feels like the attorneys are treated as higher. Caseworker opinions are not treated with the same professional esteem as attorneys’. In mediation, we all have equal respect – attorneys aren’t treated as higher. Mediation revolves around the family. . . Everyone just gives their support.”
- “All parties get to speak and voice their concerns. At court, lawyers talk. Mediation is less intimidating. I got to say what I wanted and not just answer questions.”

WHAT THEY HOPED TO ACCOMPLISH

All but two of the caseworkers wanted to resolve conflicts among family members, saying that they wanted the families to come together and communicate and show commitment to the children, or to get the foster parent

and the parent to meet and have the parent know who was caring for his or her child. These caseworkers felt that their desired goal was accomplished. Two caseworkers wanted to get an agreement on a specific plan of action. In neither case did the worker feel that their desired goal was achieved.

- “I wanted it to resolve differences among family members and set a better example.” The caseworker stated that this was accomplished, noting that one of the children later said to her grandmother/foster mother: “I’m glad you went to that meeting because everyone’s friends now.”
- “I wanted to get the foster mom and father to meet and for father to know who was caring for child and to get a better idea of best interest.” The caseworker said this happened.
- “I didn’t expect to accomplish as much as we did – based expectations on what happens in court.”
- “A solid plan that mom came in with for when the kids would be returned. This didn’t happen. If it had happened, it might have changed minds.”

WHAT WAS GAINED THROUGH MEDIATION

Caseworkers tended to focus on the impact of mediation on the families. Three noted that the family members were able to communicate with each other – one stating that this was the first time the mother and foster mother could communicate without attorneys, and another stating that the foster parent and the father got to meet for the first time. One caseworker said that this communication was going to make her job easier because it decreased tensions in the family. One caseworker mentioned that the foster parents were able to be present and be heard.

Two caseworkers said that mediation helped them to see the family members in a different light, with one stating that she “really got a chance to really clearly understand [the father’s] feelings” and to see that he truly loved his son.

One other caseworker mentioned that it was very helpful that the parties had agreed to a goal change. One felt he gained insight into how parents viewed him – that they were trying to fault him for what was happening in the case.



- “It was my first time meeting a lot of people in the family. Mediation allowed me to see people in a different light, to get better feel for what they’re going through and why they’re doing what they’re doing.”
- “The parties agreed to a goal change. This was very helpful.”
- “I really got a chance to really clearly understand the father’s feelings and see him express his feelings - to see that he loves his son.”
- “It was good to see how families try to fault the caseworker – I will now be documenting all my actions. It’s upsetting to know that no matter how hard she works, someone will not like what she’s done, or like her as a caseworker. But you get more honesty and cooperation in mediation than outside.”

respected, treated fairly, and listened to. The caseworkers who had not experienced mediation previously moved from feeling nervous and uncertain at the beginning of the mediation to feeling happy and comfortable with the discussion at the end.

The caseworkers tended to arrive at the mediation hoping to reduce conflict among family members. Those who had that goal felt happy with what was accomplished in mediation. The ones who went into mediation wanting to achieve particular agreements were less satisfied because those agreements were not attained.

FEELINGS AFTER MEDIATION

The caseworkers were all happy with mediation, noting the progress made by the family members, the control the mediators had, and the information they were able to give and receive.

ASSESSMENT OF THE MEDIATORS

The caseworkers noted the mediators’ role in controlling the conversation and keeping people focused. A couple mentioned the usefulness of reframing what participants said to more neutral or positive language and summarization to decrease tensions and increase understanding. Some of their comments are:

- “The mediators are professional, respectful, give everyone an equal amount of time, keep the mediation focused, and bring calmness to the discussion.”
- “The mediators were pleasant and made me feel comfortable.”
- “The mediators were neutral...They brought the group back to focus – they let them air their feelings, then focus.”
- “The mediators maintained neutrality.”

DISCUSSION

Most caseworkers were positive about their experience in mediation. They were particularly pleased with the open communication of the process. In response to questions regarding procedural justice, they expressed that they felt





INTERVIEW OF JUDGES, HEARING OFFICERS AND ATTORNEYS IN DEPTH

Both mediation and the program were seen in a positive light by all groups, but not all individuals, interviewed. Most interviewees see the mediation program as beneficial, as providing an important service, and as achieving positive results. This sense of the program was more prevalent in some groups than others, with hearing officers and, to a lesser extent, the GALs having more mixed responses than those in the other groups (judges, bar attorneys, and public defenders).

The consensus of referrers is that to be successful mediation should provide voice for family members, increase communication, and reduce conflict. In their eyes, the program is doing just that and more. Participant responses show that this is occurring as well, and that their satisfaction with their experience in mediation rests on whether this occurs.

Despite the overwhelmingly positive response, judges and hearing officers reported low referral rates, and attorneys reported only requesting a handful of their cases go to mediation. Through the interviews it became apparent that some of this is due to differences in the culture of individual courtrooms, as some attorneys said mediation was pervasive within their assigned courtroom and others said it was seldom, if at all, mentioned.²⁹ This coincides with statistics from the mediation program, which show much higher rates of referral from some courtrooms than from others, as well as with the judges' and hearing officers' own differing self-estimates of referral rates. Judges and attorneys alike attributed this in part to lack of information, as to the benefits of mediation, the appropriateness of specific cases for mediation, and the parameters of the program.

Overview

The interviews focused on four areas: how the judges, hearing officers and attorneys saw mediation as fitting into the child protection system; the manner in which

they had utilized mediation; the interviewees' perceptions of and experience with the mediation program; and the information the interviewees' had received about mediation and the program.

Within those four areas, the interviews were conducted with an eye toward five issues that impact the effectiveness of the mediation program:

- How well the program is meeting the needs and expectations of those interviewed.
- The presence of any procedural, administrative, or competence issues within the program.
- The understanding of judges, hearing officers and attorneys of how mediation fits within the context of the child protection system. This could affect the number of referrals, the types of cases being referred, and the overall sense of program competency.
- The understanding of judges and hearing officers of how the program functions, such as the types of cases and issues accepted by the program, and at what point cases can be referred. This could affect the number of referrals and the types of cases being referred.
- How well information about mediation and the program is reaching those who use the program.

Who Was Interviewed

It had been decided to interview all 16 judges and 16 hearing officers. In the end, 11 judges and 14 hearing officers were available to talk. A random sample of attorneys for the children and natural parents was interviewed, with a total of 36 being interviewed (16 guardian ad litem, nine bar attorneys and nine public defenders). Five Assistant State's Attorneys were interviewed as well.

The judges had been on the bench in the Child Protection Division between one and twelve years at the time of the interviews, with the great majority having between three and five years experience. The judges' self-assessed knowledge of mediation varied between very

²⁹ As an illustration of this, one public defender said that he has had 73 cases and has used the mediation program three times.



knowledgeable (5), somewhat knowledgeable (4), and a little knowledgeable (2). The judges all learned about mediation through orientations provided by the mediation program. Some learned about it as well through their own reading, through informal conversations with mediation program staff, and through participation in mediation in other areas of law.

At the time of the interviews, the hearing officers had between eight and ten years of experience in their position. Hearing officers reported higher levels of knowledge of mediation than the judges, with eleven saying they were very informed, and three saying they were somewhat informed. All but four of the hearing officers had received mediation training at the Center for Conflict Resolution, a community mediation center, a decade before. The others had learned about mediation through orientation by and informal conversations with program staff.

Of the attorneys, the bar attorneys reported the longest tenure within the child protection system. Their experience ranged from two years to 25 years, with a median of eight years. GALs reported between two months and eight years' experience in the system, with a median of 2.5 years. The public defenders reported experience of between six months and five years in the child protection system, with a median of two years. The state's attorneys had between 1 and 10 years' experience.

Just as the bar attorneys tended to have greater experience within the child protection system, they also tended to have greater experience in mediation. Each had participated in at least one mediation, with half participating in six or more. The public defenders had some experience in mediation as well – each had participated in at least one mediation, and two had participated in eleven or more. The GALs interviewed were most varied in their experience with mediation. Nine had participated in at least one, five had participated in six to ten, and one had participated in at least eleven. Four had not participated in any mediations. All of the state's attorneys who were interviewed had participated in at least one mediation, with one attending six, one attending “three to five”, and three attending once.

The attorneys' self-reported knowledge of mediation

ranged from very knowledgeable to no knowledge at all. The public defenders and state's attorneys reported the greatest level of knowledge, with all but one in each group stating they were very knowledgeable. Bar attorneys were about equally divided between seeing themselves as very knowledgeable and somewhat knowledgeable. The GALs were the most varied in their responses. The majority said they were very knowledgeable, while three said somewhat, one said a little, and one said not at all.

The attorneys reported learning about mediation through a variety of sources, most commonly through participating in mediations. More than half the GALs named orientations by the mediation program as a source of their knowledge, while only three bar attorneys, one public defender, and one state's attorney said they learned about mediation this way. Other sources of information were law school courses, mediation training, other attorneys and memos from their office.

Overall Assessment

The response to mediation and the program was overwhelmingly positive, especially on the part of the judges. All but two people interviewed believed mediation had a role to play in the child protection system; those two said it possibly had a role. Three others limited that role.

Most interviewees saw mediation as providing voice, increasing communication, or improving relationships. They saw mediation either as the only way to open communication and understanding among the parties, or the only way to provide voice to parents. Some said both.

Despite the positive response to mediation and the program, referral rates remain low. Judges, hearing officers and attorneys do not routinely refer or request mediation for their cases. However, both judges and hearing officers report that the rates of objection have declined, and more attorneys reported requesting mediation than reported objecting to it.

Additionally, not all those interviewed were entirely convinced that mediation provides benefits beyond those found through other processes in the court system. A few hearing officers also noted a certain amount of concern regarding the scope of mediation discussions.



These hearing officers fear that decisions are being made in mediation sessions that are harmful to the progress of the case, or that agreements arrived at in mediation at times run contrary to decisions made during previous hearings.

VIEWS OF MEDIATION

Role of mediation in child protection cases

The interviewees were asked two questions regarding the role of mediation in child protection cases:

- Do you think mediation has a role in achieving the Child Protection Division's goals for the family and children?
- Please Explain.

Almost everyone interviewed believed that mediation had some role to play in child protection cases. Most often, they cited the provision of voice and control to the family, resolution of relationship issues and facilitation of communication.

Judge Responses

All judges who were interviewed believed that mediation has a role to play in child protection cases. However, the judges differed on the extent and nature of this role. Most of those interviewed (7) saw mediation as a way for parties to deal with relationship issues that can interfere with the progress of a case toward permanency. Related to this is the perspective of two judges that mediation's role is to increase communication and understanding. Four judges saw mediation's role as increasing the family's control over decisions that affect them. Individual judges noted that the role of mediation is to allow for creative solutions, to move the case forward, and to be a final path to deal with issues after other avenues do not work.

Comments on mediation's role:

- Non-legal issues; Parties make the decision; creative solutions
- It gives people voice. In court, they don't feel they can express their concerns. It helps get agreements. Good for visitation, services, overcoming roadblocks to reunification. The role of mediation isn't gauged solely by whether there's agreement. It can save the court a lot of time [because it helps case move the case forward]. This is not a goal, but a by-product. There's no need for a contested hearing if agreement is reached in mediation.

- If a child is going to go home and we want the transition to be smooth and there have been problems between the parents' relatives and the parents. Also, when going to guardianship with a relative and want a continued role for the parent without stress for child.
- Between parents and foster parents there are often issues, especially if they're related. It can be a huge help for guardianship issues because they will have to deal with each other for a long time. It could work for problems between the caseworker and parent - anyone who has to interact for the sake of the child.

“Family is a lifelong structure - mediation lets them participate in an outcome that they will have to live with for the rest of their lives”

- a judge

- It's good for issues of visitation and return home [when foster parents don't want to send the child home, conflicts arise], and for conflict between foster parents and parents. It's also good for non-legal issues and side issues to legal decisions. It also works for issues between the caseworker and parent about services. [He has not used this yet.]
- Mediation is an alternative that judges go to where other avenues don't work.
- Usually for disputes between parents or between foster parents and parents around visitation [how it will work out]. Conflict can be with the caseworker as well.
- The judicial process doesn't lend itself to problem solving. Mediation is a way to solve problems that come up with human interaction. Mediation is the way to get an approach to problem solving. Judges can decide, but sometimes it's better that people decide on their own. Family is a lifelong structure – mediation lets them participate in an



outcome that they will have to live with for the rest of their lives. It lets the family move in the direction they want to move in.

- It can be utilized in every area and every procedure. Mediation used to be only post-adjudication, but has been very helpful pre-adjudication. Good to set up a visitation plan. In court, specifics may not actually happen because they're ordered. They needed to be in neutral setting and still with some sense of court enforcement. It adds to compliance because they're making the decision.
- Mediation has educated particularly attorneys, parents and foster parents about each other's perspectives. It helps with the relationship between parties. Works for visitation issues in that it helps to mediate a schedule of visits. It's more humane. It helps them understand what's happening in their case. It helps them understand why the judge is making the decision she is.
- It helps people feel better about termination of parental rights. They sit down with the parent and it helps everyone. It can work out visitation issues. Sometimes they need to hear rules from someone other than the judge. It's good for communication, permanency and relationships, but it should always be post-adjudication.

Hearing Officer Responses

All the hearing officers that were interviewed believed that mediation has at least some role to play in child protection cases. In contrast to the judges, the hearing officers more often focused on the type of case mediation is best suited for, rather than on aspects of the mediation process that enhance the experience of the family or help to overcome obstacles to the progress of the case. This does not appear to be a difference in perspective from the judges, however, as their responses to the questions regarding what mediation can provide the family that cannot be provided elsewhere and the circumstances under which mediation can be successful even without agreement were very much focused on relationship and communication. However, hearing officers were more likely to limit the scope of the role of mediation in these cases.

Seven hearing officers noted that mediation's role is to resolve specific issues (which will be discussed in "Issues

Appropriate for Mediation" below). Other responses varied. Four hearing officers focused on mediation's role in increasing communication and understanding among the parties. Four further responses referred to mediation's ability to focus parents on the best interests of their children and to understand their own role in the case. Two hearing officers mentioned that mediation allows the time for parties to discuss and resolve non-legal issues – time that is not available through other avenues. One mentioned the control mediation gives to parents over decisions that concern them and their children, and one noted that the non-adversarial nature of the mediation process is beneficial for family members.

Comments on mediation's role:

- It opens the door of communication. It makes life easier for kids if foster and biological parents talk to each other and focus on kids. It works.
- In some cases, there is a possibility that there can be agreement to move the case along. There is a potential for common ground. This applies to different issues.
- Major personality conflicts, such as when foster parents don't want to talk with workers or parents. It's a way of letting everyone know where everyone else is coming from and to remove misunderstandings.
- When there is conflict and there will be an ongoing relationship. It helps people to understand what their responsibilities are. Also good for working out visitation schedules. It helps adults to focus on what's best for the child. Also, termination of parental rights and visitation.
- To assist in solving key problems in families, such as visitation, family relationships, foster parents and parents. Mediators have time to work with parties to resolve these issues.
- Interpersonal conflicts between foster parents and parents.
- To resolve disputes. Custody – who's going to get the child and how that will look. Visitation.
- Visitation issues. The relationship between the foster parent and parent.
- Mediate issues that no one else could resolve - get foster parents and parents ready for return home. When certain parties aren't getting along or foster parents aren't providing permanency. Teen wards



acting out, having problems in the home – to get the teen to cooperate.

- Child welfare is meant to be non-adversarial, but most lawyers approach it from adversarial perspective. The child welfare system deals with people who are disempowered. They have little ability to maneuver through the system, but have the ability to make decisions. Matters are better resolved when people have a say in the outcome. I'm a strong proponent of mediation for child welfare cases.
- Mediation's primary purpose is to get rid of obstacles to visitation.
- Issues between biological and foster parents – to make peace with the permanency goal or to deal with visitation conflicts. To develop a reunification plan through the collaboration of all parties.
- It's quite useful in some instances, such as in dealing with visitation issues between foster parents and relatives, and caseworkers and parents or teen wards. [She's not sure if you can do that.]
- To get people talking to each other. Communication between parents and foster parents so that they can work on planning for kids together instead of fighting each other. To work out visitation issues. To facilitate communication. It's nice not to have to take time to resolve these issues when they can better be dealt with in mediation.

Attorney Responses

All but two of the 35 attorneys interviewed believe that mediation has a role to play in child protection cases. The other two replied that it "potentially" or "possibly" does. Another three qualified their answers with "limited", "small role", and "sometimes". Three of these five attorneys reported participating in one to a couple of mediations. One had never participated (was a supervisor) and one had participated in at least six. Three were GALs and one each were a bar attorney and a public defender.

Most attorneys see mediation's role as opening up opportunities for families to communicate, have voice, increase their understanding of the court process or others' views, gain control over their case, or to resolve conflicts. A number of attorneys, including all Assistant State's Attorneys, believe the role of mediation is to

resolve particular issues, such as visitation, guardianship, and problems of teenaged wards with their parents or foster parents.

Comments on mediation's role:

- To determine what the true interests of parties are versus their position and to communicate those interests.
- It helps with more emotional cases, and in cases where there are conflicts between the parent and care provider. In other cases, no [there is no role].
- To work out visitation and placement issues. The opportunity to sit down together to talk about the issues.
- To get everyone talking. When there's lots of hostility between parties and outside of mediation they can't talk.
- Court is adversarial – kids understand this. Mediation offers an area in which grievances can be aired in an atmosphere of cooperation. When it comes to children, it's best if it's not adversarial. Parents feel they don't have voice but can have a voice in mediation.
- Being a neutral party to help come up with a solution.
- Service appeals are helpful. Can be helpful to bring everyone together. Staffings do this – as well as child and family meetings – so there are lots of chances to do this other than in mediation.
- Child protection is the ideal format because the law is looser – they need to figure out how to do what's best for the family. The goal is to get the court out of the situation. Mediation is good for this. It provides families with the tools to help them when the court is out of the picture. What's going to fix the family varies from case to case. Mediation allows the family to come up with healthy solutions – unique situations – are more helpful to families.
- When there's a strong possibility of children returning home. It can work out all issues - services, how children and parents feel, understanding real reason case came in. TPR [termination of parental rights], finding placement when the original placement broke down.
- It shouldn't be used for visitation issues. Possibly could be used in helping with conflicting goals.



Mediation can help people see why one goal is preferable and help to come to agreement. It helps parents and foster parents have better relationships. It helps people see other possibilities.

- To help parents and foster parents know what their rights are and what the process is. Sitting down with neutral parties, they get empowered and make better decisions about the best interests of the child. It helps everyone to work for better interests of the child.
- Any time you can keep issues out of courtroom, that's good. It helps with the relationship between everyone – especially when dealing with families and children. It helps ease antagonistic relationships.
- Child protection cases are not always cut and dry. They depend almost entirely on relationships, which the court atmosphere isn't good for. The court adds to animosity and strains relationships between parties.
- It solves all kinds of problems. It lets parents express themselves. It breaks down barriers between parents, foster parents, therapists and caseworkers.
- It's helpful to have a more informal forum to express differences. It's less intimidating. You can take a step back, but still know you're working toward resolution.
- It clarifies issues. Parents may not understand the court process, what their obligations are and mediation helps with this.
- Where problems stem from an acrimonious relationship between relatives and parents not understanding that acrimony is bad for the child. Also good when the caseworker and parent have tension – particularly when the caseworker has written off the parent.
- Sometimes – I'm hoping it will help in dealing with conflicts between the family members and will help resolve issues, such as visitation, between the foster parents and parents.
- It takes the adversarial perspective out of the process. All sides are involved. It provides an informal, relaxed atmosphere
- Visitation schedule. It lets parent who is still invested in the child show that investment and

be heard. They can articulate their concerns for themselves.

- Issues after permanency but before case closure – if parties can't get over differences. Mediation gets parties to see what they're doing to kids through conflict – and to come up with a way to get along. Also when both parents are ready for return home and have to determine who gets custody.
- To facilitate conversations between disparate positions of people around the child. To have a painful conversation – often between two people who both want the child. If you don't have the conversations, conflict and animosity will remain.
- It helps parties to be heard. Parties don't feel they have a chance to voice their opinion. It gives parties the opportunity to understand other parties' point of view. It gives older children a say in their future
- It's good for guardianship cases, but clients don't always get their say. There are many other services in court that they can use.
- Giving parties the opportunity to speak and be heard. Rephrasing/summarizing helps people feel heard and feel important.
- It's most useful for getting the parent and foster parent to get along and realize they're there to help the child. Often, getting parents to recognize that it's better to have the foster parent care for their kids and realize they are not being punished because their child was taken away.
- Guardianship cases, makes cases less messy. Consent signing. Teen ward – parent issues, possibly. It opens communication between parties.
- It's another forum to get together and talk like adults. You can sit with the GAL and have them listen and get them to state their reasons for their positions.
- There's a place for it. It has been somewhat successful. It can mediate relationship issues.
- Mediation is more effective in keeping peace in the family than court. Court is adversarial, which increases conflict. The objective of mediation is compromise, communication and understanding.



- Trying to work out problems that arise in relationships between parties so that they can focus on the best interests of the child.
- Issues surrounding relationships, generally affecting visitation. No legal issues.
- To foster communication among parties. It helps to leave attorneys out of it and give the family a chance to talk with someone who can focus them on the issues. People are often closer to agreement than they think they are.
- When emotions are very high it's hard for people to see through these emotions. Mediation provides a neutral, safe setting to express emotions and see what's best for the child. It's less intimidating, with no sense of being in the courthouse.
- Helping foster parents and parents deal with visitation and problems with case workers. It can resolve issues between all parties.

Issues Appropriate for Mediation

No question directly asked of judges and hearing officers about what issues are appropriate for mediation. The interviewees' ideas about this became clear in the course of their answers to several questions, including the role of mediation, what mediation provides the family and what criteria they use to determine whether to refer a case to mediation.

Attorneys were asked two questions:

- For what issues is mediation appropriate?
- For what issues is mediation not appropriate?

Judge Responses

The judges most often noted that mediation is beneficial for dealing with relationship issues (4) and the logistics of visitation— the who, when, and where questions that surround visitation (4). Some also see it as beneficial for smoothing the way for reunification (3) and for guardianship (3). Two judges suggested termination of parental rights issues as being appropriate for mediation, while one mentioned issues related to the provision of services to the parents. One stated that all issues are appropriate for mediation.

Hearing Officer Responses

Hearing officers tended to see issues involving relationships as being appropriate for mediation (8). This was followed

closely by visitation issues (7). Other issues mentioned were those regarding return home (2) and those involving teen wards (2). One each mentioned custody, services, and termination of parental rights. One said mediation is appropriate for a variety of issues.

Attorney Responses

The attorneys most often mentioned visitation issues as being appropriate for mediation (23). This was followed by working out relationship issues (16). There was a wide range of other responses:

- guardianship (6)
- services (6)
- any issue that could be dealt with through greater communication (6)
- goals (4)
- permanency (4)
- placement (4)
- issues with older children (misbehavior, runaways, and conflict with their parent or foster parent) (4)
- termination of parental rights (3)
- return home (2)
- post-adoption cases in which the adoption does not work out (1)
- conflicts between family and caseworkers (1)

What Mediation Can Provide the Family

All interviewees were asked the following question: In your opinion, is there anything that mediation can provide the family that isn't provided by other means?

Judge Responses

Judges most often see mediation as providing an opportunity for voice (5) or communication (4) that family members generally do not have in other court processes. Additionally, three mentioned that mediation gives family members control over the outcome, two mentioned the ability to arrive at creative solutions, and one noted that mediation empowers family members. Two judges stated they did not know or could not think of anything that mediation could provide the family that could not be provided by other means.

Comments:

- Interaction; creative solutions
- Voice, ability for them to express themselves, working through an agreement with a neutral



party that you can trust. It empowers family members and gives them control. It gives them a participatory role in agreements.

- The opportunity to talk and make their views known directly. Mediation can deal with issues in a complex way. In court, what the lawyer thinks is relevant is what you hear. Mediation can give the family a more inclusive forum about issues that need to be resolved. It can deal with issues that don't come out in court.
- It gets them sitting down talking to each other. [Sometimes this is a disaster, sometimes it works.] Mediation comes into effect when a parent or guardian has an issue. An adversarial proceeding can lead to conflict because people's interests are 180 degrees apart.
- They can sit down and voice their concerns and somebody listens to them. Other issues too – it can smooth the way to working out private guardianship. It gives parents a sounding board for what they want. It helps parents feel like they have some control.
- It teaches lawyers to step outside of their roles.
- Communication and the opportunity to have their voice heard. Parties are stifled in court by necessity. Mediation gives them the freedom to really express themselves. That relieves stress and gets people to come up with solutions.
- Understanding perspectives, having time to discuss the issues. It keeps them focused on what's practical. They can come up with their own solutions, which makes people happier. There's greater satisfaction with the outcome if they have input.
- Time that can be spent in mediation for parents to talk. It provides a free atmosphere to talk and is not intimidating. It gives encouragement to get on track before the nine month deadline [between disposition and the first permanency hearing].

environment of mediation, the control the family gains in mediation, and the empowerment of the family through mediation. One hearing officer stated that mediation provides nothing more to family members than could be found elsewhere in the system.

Comments:

- They finally get an audience for what they have to say. They like to feel like someone is really interested in what they have to say. It's a friendly environment.
- Parties can air their views with a neutral who can help them find common ground.
- A forum for them to air their problems without having to worry about the court coming down on them. They can speak freely and it's non-adversarial.
- *Time* to sit down and mete out highly emotionally charged issues for as long as it takes. A neutral, confidential setting that provides the freedom to say what they want to say. They can speak freely. Hearing officers are too busy to take this time because they hear 6 to 10 cases a day. Also, hearings are contentious.
- Time to deal with visitation and relationship issues. Better communication skills, understanding others' views so they can work in the best interest of the child. Helping them to reach common ground. It takes time to talk things through. I love that mediation takes all the time that's needed.
- A forum where they can air their views that they can't in hearings because it's not appropriate.
- It provides families the opportunity to speak their mind and have someone from court hear what they have to say. It recognizes families as stakeholders in the process. It gives them the opportunity to have more direct participation in outcomes and helps with conflicts between the parent and foster parent.
- There is no other place for dealing with relationship issues. It manages people's feelings and gives them voice.
- It levels the playing field. Courts are intimidating for non-court professionals. Attorneys, family members and social work professionals all meet at the same level. It gives people the opportunity to be heard [e.g. teenagers, family members].

Hearing Officer Responses

Most (11) hearing officers see mediation as a way to give family members voice. Four other responses pointed to the opportunity to find common ground, increase understanding, and improve communication. Three noted that mediation afforded the parties the time to work through issues. One each mentioned the friendly



In court they can't talk and won't be asked questions.

- It's the only chance people get to talk. It provides a level playing field for parents so they have more voice. This is not replicated elsewhere.
- More time, an environment where parents feel free to participate and contribute. It provides a greater role for parents and is a better environment for certain cases at certain times.
- Issues with teens feeling that the agency is not listening to them, for parents having a problem with service agencies. It's really helpful if they can be heard and have input.
- For relationships between parents and caseworkers, such as how to provide services and their expectations of each other.

Attorney Responses

All but one attorney felt that mediation did provide family members something that they could not find through the normal court process. The attorneys focused on mediation as a forum that enhances voice and communication. They emphasized the open, confidential, informal, and non-adversarial nature of the process, which lends itself to more open communication and gives the parents more freedom to speak without fear of repercussions. A few others noted that the amount of time available in mediation allows for a greater exploration of emotions and the issues. Three stated that it allows parties to understand each other better. Two mentioned the equality of the parties in mediation that is not found elsewhere, while another two stated that mediation allows for an agreed solution or more creative solutions. Two others mentioned that mediation empowers families. One stated that mediation provides professionals to facilitate the discussion and another said it offered accountability for caseworkers through a written agreement. One other said it offered a chance to think outside of the box and figure out alternatives.

Comments:

- It overlaps with other services in the court. It helps the family to identify services. If fosters communication between all parties.
- It gives the family a chance to express their point of view.
- Not really – a clinical staffing can do the same,

but mediation may be less threatening and a less biased atmosphere for parents.

- Giving everyone a chance to talk. Parties rarely get the chance to say what's important to them in formal proceedings. It provides for an exchange of ideas and giving people satisfaction to say what they want to say.
- Parents get the opportunity to be heard – attorneys can listen. In court, the only people heard are attorneys. In mediation, lawyers can get shunted to the side.
- An outlet that isn't adversarial and offers the opportunity to non-parties [church members, grand parents] to be more involved in the case and have voice. It can surface different solutions than had been explored or thought about previously.
- A trained professional facilitating the discussion.
- They have voice, mutual voice, not feeling "raped" by the system. A lot of times kids feel "raped" by the system. This empowers the entire family. After mediation, parents tend to be more appropriate in communicating with their children. Children in mediation get to have someone to listen to them.
- An open outlet for parents to vent.
- It's informal and they can talk without being formal, which allows for better communication.
- An open atmosphere to talk. People are free to say what's on their minds. To have everyone get together to work in the best interest of the child.
- A more relaxed setting in which the parents feel more free to talk. In court, parents have no chance to speak and are guarded in what they say.
- Provides more accountability on the part of the agency to provide what's necessary. At the end, you have a written list of points and assigned duties. You can point to things on paper and ask if it's done. This doesn't happen in court unless there's a court order. It avoids unnecessary litigation.
- A forum for honest conversation in a non-formal setting that's confidential.
- It's not binding. The key aspect is informality – clients can explain their problems more cogently and heartfully than attorneys can.
- Clarifying issues. Airing out of issues because it's an informal process.
- A judge or hearing officer doesn't want to get into the relationship between the parents, foster



parents and between the caseworker and parent. It provides more time and opportunity to be more open, and it's confidential.

- More time to explain, which helps parties understand the process.
- It's non-adversarial. You can talk freely. Everyone is equal. You can put heads together to have direct input in an agreeable/beneficial solution.
- It's the only place where an egalitarian approach is used and that helps them talk. Mediation is a relaxed and informal setting that lends itself to parents speaking openly.
- There's no legal redress for family conflict. Mediation doesn't put legal requirements. You get people talking in a venue where they can't yell. It gets people to see other perspectives.
- Conversation between parties. Have to have this conversation because there is uncompleted business – getting through emotions and conflict. It gets conflict off the table. Sometimes this conversation can happen at the staffing.
- The opportunity to talk openly without fear of saying something that will have repercussions in court.
- The opportunity for resolution of issues that everyone can agree with and are happy with. Everyone feels good about the outcome.
- It's the one time parents, foster parents and caseworkers can sit down and come to a meeting of the minds – and know that everyone cares for the kids. It helps foster parents to realize the parent is a human being.
- A forum for communication. It makes parties talk – otherwise they wouldn't talk to each other. The structured environment helps – it can get violent if not given structure.
- The opportunity to talk about what they think without fear of recrimination. An open forum to see where all parties stand. It can be open because it's confidential.
- Having voice, tell of their own feelings. They get to hear the other side with a referee there. In the courtroom I want my clients to "shut up" because they can get in trouble because it's on the record. In mediation, legal issues don't matter – I tell clients to say whatever they want, to express themselves.

- There is no place else where all parties can sit down and have an unbiased third party facilitate the conversation.
- The opportunity to sit down with everyone involved and address concerns because you're not dealing with legal issues, so you can be open. It deals with different issues than staffings [which are about services].
- The opportunity to talk, to be heard. It takes the time to air it all out.
- The ability to think outside the box, the time to talk about the case and figure out alternatives. You can delve into the issues.
- It's a non-confrontational arena.

What Mediation Cannot Provide the Family

The next question asked was of all interviewees: In your opinion, is there anything the family needs that mediation can't provide but that can be provided through hearings before a judge or hearing officer?

Judge Responses

Most judges noted that mediation cannot replace the legal decisions that judges and hearing officers are required by statute to make. A few others mentioned that mediation cannot force agreements nor enforce them. Judges and hearing officers can. One judge mentioned the security family members feel in court. With a sheriff in the room, family members feel more confident to speak up about other parties without fear.

Comments:

- Statutorily required hearings.
- Judges and hearing officers can make decisions – there is a definitive outcome when there is no agreement, an outcome that doesn't require compromise.
- If supervised-unsupervised visitation is the question, it can't be mediated because only a judge can decide if a parent is ready for unsupervised visitation. Corollary issues, such as how the child feels after visits or problems with visits can be mediated.
- Legal determinations – whether the child is abused or neglected. Conditions to a visitation order. Disposition. Rules of evidence apply because of statute.



- If they can't reach common ground – people who won't listen to anyone but a judge – they need a judge to get them to do what needs to be done. They either want or have to be told.
- There's no teeth in mediation [no enforceability of agreement]. You can't draw on the same resources because of confidentiality of the documents. Mediation doesn't have the intimidation factor of a black robe in the courtroom. All of it has to come back into the courtroom at some point.
- Legal issues. Whether or not to grant unsupervised visits; whether to return home. Even when parties agree, that's not in best interest of the child. You need to have legal evidence to support decisions about return and visitation.
- A judge can make a decision as to when mediation benefits the parties. If a legal decision has to be made, then there will be no mediation [e.g. termination of parental rights, what the goal is – return home or not]. Mediation doesn't obviate the need to make decisions.
- A final decision. Everything that comes from mediators needs to be checked by a judge to make sure it's in the best interest of children. Judges get more substantial information they can use to evaluate the case.
- Safety. If there is a violent parent, there are sheriffs in the courtroom. There's less fear among parties. It's easier to tell parties things while sheriffs are there. A violent parent stays calmer in the court. The other side feels braver saying things if they feel more secure with the sheriff there.
- Trials and legal decisions.
- The authority to recommend permanency goals or address the appropriateness of current placement. Legal decisions. The ability to engage other offices and supervisory authority to address safety concerns.
- Set goals and the primary direction of the case that is in the best interest of children. The nature of visitation. It cannot put pressure on DCFS or private agencies to provide the appropriate services.
- Finality - orders are binding on parties. Mediation agreements aren't binding.
- Finality, the rule of law, predictability, consistency in decisions. There is no judge saying "this is how it's going to be." Without judicial oversight you can have problems.
- Statutory authority.
- Anything written into statute. Nothing legal.
- Decisions that have to be made by a judge or hearing officer, such as no agreement in mediation, ensuring the best interests of the child is served.
- In court, lots of negotiation is going on – it's a "pseudo mediation." Mediation is a whole separate thing. The judge and hearing officer role is statutorily defined. There are times you have to apply the law and can't mediate - like safety.
- Highly contested cases - court procedures can be calming. Judges can offer a realistic road map to parents of what needs to be done in order to maintain contact with their kids. Legal time frames and procedures for permanency.
- Rulings/decisions/findings.
- Setting the goal should be done by the court. There is a statutory mandate for the court to do that. The court has the responsibility to decide what's in the best interest of the child.

Hearing Officer Responses

Hearing officers echoed the judges in stating that legal decisions and enforcement could only be provided by judges and hearing officers.

Comments:

- Set limits and targets. After they're in court, they're more open to mediation. It helps mediators.
- Make decisions – hearing officers have experience with the law and responsibility by law to make decisions.
- Enforcement of the agreement.

Attorney Responses

The attorneys focused on the judges' authority and ability to enforce orders (19), as well as the ability of judges to make final decisions if no agreement is reached in mediation (15). The inability of mediation to deal with legal decisions was mentioned by ten attorneys, while one said it cannot provide the family anything they cannot get through other means and another said there was nothing the court could provide that mediation could not. One said that since older children are not allowed to participate



in mediation, court is the only time older children get to talk.³⁰ Another said that the program does not deal with custody disputes, which occur when two parents are both eligible to have the child returned to them.

Many of the attorneys who brought up enforcement of orders specifically mentioned the need to hold caseworkers accountable or to order that services be provided. Mediation is seen as a process to get agreement on, or to suggest, the provision of services, but not to hold those who enter the agreement accountable. This contrasts with the thoughts of other interviewees, who feel that the written agreement signed at the end of mediation increases the accountability of those who sign it. Both of these assessments have basis in court practice. Agreements are entered by the judge, and by court rule they are enforceable by the court. However, in general, the judges do not act on them.

Comments:

- Decision-resolve issues by decision when the parties can't agree. The judge puts the hammer down. He has coercive powers.
- A legal order that's binding – you can enforce an order.
- Adjudication of the issues. The judge will ultimately decide. In 80% of cases the issues are not resolved through mediation.
- Legal remedies. Also, a caseworker being forced to provide services through a motion or hearing.
- A decision when an agreement is not reached. Enforcement.
- Orders and recommendations – a decision when no agreement is reached.
- Mediation lacks teeth. A judge's order has legal consequences.
- Orders, a legal decision. The authority of the judge can get parties to work things out. Hearing officers can be authoritative as well.
- They can't order services; they can only make recommendations. They can't determine the appropriateness of placement. They can't make a decision as to what to do if an agreement isn't reached.
- Legal questions – mediators can't get involved.

You need a judge for that. Finality.

- A judge can order that things occur.
- A final resolution through a judge or hearing officer. Minors don't go into mediation. If so, court proceedings are the only way minors get the chance to talk.
- Legal decisions. Stonewalling by a caseworker needs to be responded to by a court order. Emergency motions.
- A permanent decision. Mediation sometimes offers temporary solutions and compromises because that's as far as people can go.
- A decision. Many cases are referred to mediation when people can't agree.
- Decisions on things you can't negotiate. Mediation is not efficient – it's hard to sit through all the emotions and people wanting things that can never happen. They can't challenge the Department of Children and Family Services' rule.
- It's unable to deal with custody disputes. [He had asked the mediation staff if they could. They said they weren't sure.] Juvenile court clinic. Nothing about visitation orders and type of decision – this is something the judge must decide.
- Orders entered to make things happen. Court gets services for the family faster. People are held more accountable in the court process.
- A final decision and a record of what took place.
- Enforceable orders. Mediation isn't binding. I see mediation as a really effective staffing – there is no bias with a mediator. In staffing, there will be a bias toward the agency or the Department of Children and Family Services.
- The agreement isn't binding. The court offers a firm decision. It gives finality to decisions and recommendations.
- Everything.
- Enforceability. Getting caseworkers to do what needs to be done.
- Parents just need to hear some things from judges, like you have to do X to get your child back.
- Settlement – a final decision. A directive to do something. A judge sometimes has to decide [when the law is unclear].
- A judge can order the solution. The only problem with mediation is that an agreement is not enforceable. There's a lack of teeth in mediation.

30 This has since been changed. See the Addendum for more information.



[She has seen agreements not be followed through.]

- The judge's authority.
- The court can resolve things by fiat, not by agreement. Sometimes that is what you need to do, but a decision by fiat is not as good as an agreement.
- Some elements of cases can't be dealt with. Safety risks in some cases have to be dealt with in other manners as well as in mediation.
- The resolution of legal issues. DCFS decides placement.
- Legal decisions. Otherwise no. If it's not something a judge needs to decide, it's better to have people decide for themselves.
- Children need permanency, finality - if mediation can't resolve issues, you have to have decision in a timely manner. Also, the court can ensure that the best interests of the children are served.
- Services that should be provided.

Determinants of Success

The interviewees were asked: Are there any circumstances under which you would consider mediation to be successful even if an agreement is NOT reached? If necessary, this was clarified with another question: Are there any benefits to mediation aside from agreement that even if agreement isn't reached you would feel made mediation successful?

Judge Responses

All judges agreed that mediation can be successful even if agreement is not reached. The judges believe success is based upon whether a variety of things occur within the mediation. There was an even split across four measures by which they gauge the success of mediation: an increase in communication between the parties (5), increased understanding among the parties (5), the opportunity for family members to have voice (4), and a reduction in conflict between the parties (4). One stated that there is no unsuccessful mediation.

Comments:

- If there is discussion, the parents have voice and there is civility.
- If parents have a vehicle to express themselves, this is an end in itself. Through this expression, they may come to an agreement. Parents may

be more comfortable with term of parental rights or guardianship once they've met the foster parents.

- I don't think agreement needs to be reached. One or two sessions isn't going to forever shape what they do. If they just sat and talked they may see that there is an improvement in relationship. I'm looking for communication and improved relationships between parties.
- If it gives people the chance to talk. If there's increased harmony between the foster parent and parent. For example, in one case without agreement, they got a chance to air their views and hear the other side.
- If progress is made on taking the edge off and reducing conflict. If they find common ground, then decisions are easier.
- If agreement is the goal, that's shortsighted because some people are not going to agree. Sometimes you need to know this. If it clarifies issues. Mediation not "fixing it" is just as good as mediation fixing it because in mediation you find out what's not going to work. Mediation is another tool to gauge what can happen.
- In certain cases where it's calmed down parties and when there's less animosity next time they're in court. That they can at least discuss issues in mediation is a success.
- Yes – in relational conflicts between foster parents and parents or between the caseworker and the foster parent, mediation allows parties to understand what they need to do to work together even if there is no agreement. They can air out issues.
- If they have the opportunity to vent. Even if there is no resolution, parties know where everyone stands and why, and things are uncovered.
- In getting people to understand perspectives and process, they can understand a ruling better down the line. It also cuts down on the element of surprise when a decision is made.
- Yes – if they can hear the other side and can have their voice heard. No mediation is unsuccessful.

Hearing Officer Responses

Although they tend to place more emphasis on the



importance of reaching agreement, the hearing officers had by and large the same measures of mediation success as the judges. However, understanding (7) and communication (6) were more often mentioned than voice (5). Conflict reduction was mentioned by only one hearing officer, while another mentioned an increase in trust. One hearing officer stated that the goal of mediation is to reach agreement and is the only measure of success. Therefore, the mediators should keep moving the case through until agreement is reached.

Comments:

- If people are forced to hear the other guy talk and go away thinking about it. If they get to hear the other perspective.
- When parents and foster parents have the chance to hear the other side in greater detail. This is the fundamental dynamic in every mediation if they participate in good faith.
- If conflicts are alleviated.
- If parties have been given the opportunity to speak their minds and develop an awareness of the concerns of the others involved.
- Yes – when there are positive steps in communication between foster parents, parents and kids.
- Yes – it's beneficial because each party gets an understanding of each other's views.
- Yes – when it improves trust between parties and when there's improved communication.
- When they have the opportunity to have their say, it's like psychotherapy. When people get to have voice.
- No – they should keep moving case through until agreement is reached.
- If they intentionally work together to address issues, listen and be heard. But if there is no agreement, then it's not successful in the sense that it didn't resolve the issue. If the parent is heard, that is success.
- Being able to get people to communicate, understand other people's views and positions – it's easier on families. They might agree later if they are able to communicate in mediation.
- If it can help relationships and get people to see others' viewpoint. When it gets people talking to each other.
- If parties can communicate, if people are getting

voice, and foster parents or parents who've never spoken to each other are getting a chance to talk in a safe, facilitated environment.

- If people participate, talk to each other, listen to each other, and understand others' viewpoint.

Attorney Responses

The attorneys tended to see mediation as successful for what it does for the family members, particularly the natural parents: increases their understanding of others' point of view (15), enhances communication (12), or provides voice (7). Five said mediation was successful as long as it clarifies issues or provides information on the case, while another three focused on decreased hostilities among the parties. One said mediation is only successful if it lays the foundation for agreement since agreement is the ultimate goal. One was not sure.

Comments:

- Yes – when parties have the opportunity to meet each other and see each other as people. If it helps parties to understand others' point of view and to communicate.
- To get people to air out their differences – this helps in the long term by permitting better access to the children and each other and better communication, making them not as angry at each other.
- If it provides the opportunity for people to speak freely and get additional information that they didn't have before.
- Yes, when parties get the chance to discuss issues and haven't previously, particularly between parents and foster parents. Neutrals are present to keep a lid on things.
- Any time people are given the opportunity to be heard because the hostility level drops.
- If the parties are heard in a non-adversarial, confidential setting. People can be more open.
- If anything came out of it – opening up communication or a better understanding of the others' position.
- When it gets out information that will help move the case forward, to know what needs to be done for certain permanency. It will affect future actions of parties that will help move cases. It keeps focus



on best interests.

- If you get an understanding of how parents and children feel – and what the attorney's positions are in the case.
- If everyone feels they've been heard.
- If it clears up where parties coming from, what's expected, and leads to greater understanding.
- If it results in a better relationship, a behavior change or a greater understanding of the case and other parties. If there is better communication.
- If two opposing parties can talk out their differences. This is cathartic. If they can hear others' point of view.
- Clarification of what parents' obligations are and what repercussions are of non-compliance. Clarification of the difference between TPR [termination of parental rights] and guardianship. It helps to have all parties stating this together along with objective mediator.
- If there is a greater understanding of the problem and the other person's position.
- If it clarifies issues for both sides, and people understand everyone else's position.
- The ability of parties to speak in a relaxed manner. It can't hurt.
- If parties can come together and can understand other parties' positions. If parties can be seen in nonthreatening light, they can gain a better understanding because they are more receptive to others' views because they're not intimidated.
- In cases where it enlightens family member about what's really going on with the kids. This can lead to a more successful relationship even without agreement.
- If you can have a conversation that leads to a warming of a relationship or commitment, or an understanding of focus on the kids. Even if mediation fails, you tried the best possible means to deal with difficult issues between parties.
- It can be helpful as long as you have the chance to talk about the child and the future. If it gets everyone on the same page.
- If people walk out less hostile.
- If parties feel heard and get to hear other party's perspective and are getting to know each other.
- If foster parents and parents can realize they can share in the care of the child.
- It's always useful for getting parties to communicate. It also works for clarification of information. You can straighten things out.
- When you can find out information from others – their view and why they have the position they have.
- When you are laying the foundation for agreement. Otherwise no – the goal ultimately is to get an agreement.
- If the client feels that they have been heard.
- If the conversation starts for people who weren't communicating before.
- Any time people are sitting down talking about a problem, mediation is successful. Giving family members voice. Agreements aren't binding anyway.
- If parties have been able to communicate – this can lower animosity between parties and keep kids from being in the middle of tension.
- If parties can talk to each other and the lines of communication have been opened.
- None.

Detractions from Success

An opposite question from the previous one was asked: Are there any circumstances under which you would consider mediation NOT to be successful even if an agreement IS reached?

Judge Responses

Five of the judges stated that mediation is always helpful, and therefore successful. The other six noted situations in which the agreement may not work. Of those, three believed mediation is not successful if the parties do not participate meaningfully or enter the agreement without meaning it. The other three mentioned an agreement that is not in the best interest of the child as a determinant of lack of success, although all stated that they had not had an agreement returned that was not in the best interest of the child.

Comments:

- None.
- If the agreement is not heartfully felt. If it didn't resolve underlying concerns. [At times this can still work.]



- If it's just lip service and the parties don't communicate.
- Mediation needs to be an ongoing process because people reach agreement but don't follow it down the line or change their mind. [This doesn't mean mediation is unsuccessful.]
- If parties didn't participate meaningfully – they agreed just to get out of there.
- Hard to say – if agreement doesn't benefit the kid. [He has not seen this.]
- No, can't think of any.
- If the agreement is not in the best interest of the child.
- No – I can't think of any circumstances under which it hasn't been valuable.
- I have not seen that, but can imagine that if the agreement is unreasonable and not in the best interest of child.
- No.

Hearing Officer Responses

One hearing officer said mediation is always successful and another thought all mediations were successful in some way. All others noted situations in which it may not be. The majority of hearing officer responses focused on issues with the mediation agreement: the best interests of the child were not met (2), the agreement did not address the issues (2), the agreement violated the statute or is not possible administratively (2),³¹ and the agreement interfered with the progress of the case (1).³² Another five mentioned an agreement that was not followed. One clarified this response by stating that this would reduce trust between parties. Two mentioned increased or stable levels of conflict due to mediation.

Comments:

- No. It's still a success if you get them to come to the table together. It helps that they can't bring weapons. By coming to the table they realize that there's another way to deal with conflict.

- If an agreement isn't honored – they can be worse off than without mediation because the level of trust is eroded. [This happens but is not common.]
- If they don't abide by the agreement. [This happens a lot. She sees an agreement then in hearings is told by the lawyers that they're not “doing that.”]
- When the adoptive parent agrees to visitation but after adoption disallows visitation – there's no recourse legally.
- If it leaves the misimpression that the case is heading in a new primary direction. [This has happened – the goal was changed in mediation. He has had parties say that the mediators changed the goal to return home. He has heard it occasionally – enough to concern him.]
- Mediation made things worse. The parent was not happy at all – she thought she was coerced. So it was more adversarial than before. The case was more conflictual after mediation, so it was not successful.
- If the agreement isn't in the best interests of the child. If there are bad outcomes – if a child is hurt as result of an agreement [e.g. if the child is molested during an overnight visit with a parent].
- If actions are consistent with the agreement but feeling is not. If hostile feelings are still there, nothing is gained. If not talked about there, there is no understanding of the other side.
- If the agreement is to do nothing or if the agreement doesn't address the issues.
- When the agreement doesn't address issues that the case was sent to mediation for. [She has had those occur.] If the agreement is not in the best interests of the child.
- An agreement that violates statute. If it doesn't take into account important facts.
- When the agreement interferes with a pending legal matter or is contrary to the court position. [E.g., the court position was reunification. Sent to mediation to develop a reunification plan. The agreement included a parenting capacity assessment that the court hadn't seen as necessary, so it delayed further proceedings and reunification was delayed. Mom lost housing because reunification was delayed because the kids were not with her.]
- When the agreement isn't honored or when the agreement reached is not in the best interests of

31 This was reported to have occurred when an agreement included guardianship for a two year-old, when administratively guardianship is not allowed until the child reaches the age of twelve.

32 The hearing officer mentioned this happening once when a case that was progressing toward return home was interrupted by items in the agreement that the parents now had to follow before the return could occur.



the child. [She said she hadn't seen any – some she had a “wait and see” attitude on.]

- If they make an agreement and don't follow it. If they agree on things that aren't possible legally or administratively. [She has had that happen when they agreed to guardianship for a two-year-old. You can't do that until the child is 12.]

Attorney Responses

Attorneys were most likely to state that agreements that are not followed are not successful (13). The next most prevalent answer was either that all mediations are successful or that they have not seen a mediation that was not successful when agreement was reached (6). Other answers were if the agreement is not what people want (3), if the agreement is not effective (1), or the client is coerced into the agreement (2). Another said that a mediation in which the outcome is the same as could have been achieved in court is a waste of time. Another expressed frustration with agreements in which only minor issues are resolved, while three said they did not know.

Comments:

- Sometimes it would be better if the mediators would indicate those areas on which the parties couldn't reach agreement and why, rather than write up an agreement on some issues and not indicate that major ones not were resolved. Expert opinions might be important to review to see if the minor should participate in mediation and to know if impediments exist. The mediators should review the case history.
- If one of the parties is coerced into decision. [She hasn't seen this happen.]
- If the parties have no intention of following through on a recommendation.
- If there is no follow-through. This is a problem because you can't force people to do what they agreed to. [It doesn't happen very often, but she hasn't had a lot of detailed agreements with a list of things people are supposed to do.]
- When parties feel forced into an agreement or aren't happy with it. That agreement won't work. It's not successful if parties feel more frustrated at the end.
- When there's a really contested issue, people tend to go back on their word. There's no follow-

through. When people are reluctant to participate in the first place, they don't cooperate.

- If there's a negative impact on the client. [E.g., mediation with a teenager was awful. It was a child with clinical needs and the process was not therapeutic. The child got upset and ran out of mediation.]
- If agreement is not followed through, it can push things back because permanency is held off.
- I haven't come across that.
- If there is no intention of following through on a recommendation.
- No – the case is moved along if there's an agreement.
- If parties don't obey the agreement; if the agreement isn't effective and doesn't do what they want it to.
- When no one is happy with the agreement.
- When parties don't move forward in good faith – it's just words on paper.
- I don't know. Almost every case should be sent to mediation.
- I can't think of any.
- The parent or foster parent isn't interested or capable to do what they agree to do. [But he doesn't know if court would be more successful (e.g. parent borderline functional).] Cases where kids are older and have behavior problems.
- None.
- I'm not sure. Possibly if it's not best outcome.
- If you would get the same decision by the court – then mediation is a waste of time. It doesn't save time because you still have to get a court order.
- I haven't seen any situation like that.
- If the agreements are not followed – I've seen that happen a lot of times. There are times when I know the client doesn't follow through. Foster parents are used to this happening. It can lead to frustration.
- Agreements are not enforceable, so if they're not followed the agreement is useless – but mediation isn't. [E.g., when the guardian changes their mind on visitation – you have to struggle to get that back.]
- If the agreement is not followed through. This is particularly problematic when the agreement is not something that can be ordered.



- If the terms aren't followed.
- If the agreement didn't solve the problem or is not followed. [This happened in a termination case – the mother and foster mother had an agreement to do various things before a permanent goal was set and agreed that whether there was or wasn't an adoption they would keep each other in the child's life. What they wanted was that the case go to guardianship. In guardianship, the court would enforce the terms. The attorney who commented thought the foster mother would not follow the agreement – but was still happy the agreement was signed because he said it's better to have something in writing than nothing.]
- If the agreement is not followed.
- If the agreement deals with a legal issue and they come up with an agreement that is different from what you could do legally. [E.g., agreeing to guardianship prior to exploring adoption. He has seen something like this happen.]
- If parties are pressured into agreement and don't follow through because of this. [He hasn't seen this. However, he has heard that tension in someone else's case was increased by miscommunication over the agreement.]
- If the decision reached is not in the best interest of the child. [This is an extreme that she hasn't seen.]
- None.

Timing of Mediation

Most of those who had an opinion felt that mediation should be conducted as early as possible in the case – generally from the temporary custody hearing onward. It should be noted, however, that only nineteen of the 55 interviewees expressed an opinion on this topic. This sharply contrasts with another phase of this evaluation when actual mediations were observed; the great majority of the 21 mediations were for cases referred after the first permanency hearing.

Five judges mentioned a specific time frame for mediation. Three have sent cases as early as before trial, noting that it can be very helpful for resolving visitation issues. One said that he would not send cases before trial, while another stated that she sends most cases after they reach the permanency stage. Only one hearing officer had an opinion, suggesting that mediation would be most

effective if it took place within 45 days of intake. As hearing officers begin working with cases at the permanency stage, the rest did not have an opinion on this topic.

Two public defenders said that the parents have to have the chance to get their children back before going to mediation, so mediation should not happen pre-adjudication. Three others felt that pre-adjudication mediation was fine. Five bar attorneys also said pre-adjudication mediation was good, while one said that it should only be used after other avenues have failed. Two GALs said that mediation should occur earlier than it currently does.

One of the bar attorneys who advocated for pre-adjudication mediation stated that the sooner the referral is made, the better. His experience with one case made this clear to him. The case was sent too late, in his opinion, to help reduce the conflict. The parties by that time were too entrenched. Another bar attorney said essentially the same thing – that referral is happening too late in the case.

USE OF MEDIATION

To get an understanding of how cases are filtered in or out of mediation, the judges, hearing officers and attorneys were asked a number of questions about their own use of and experience with mediation referrals:

- How often they refer cases to mediation or request that they go.
- Whether they use any specific criteria to decide which cases to refer to mediation or for which cases to request mediation.
- Whether there are any cases they would absolutely not refer to mediation.
- Judges and hearing officers were asked how they respond to objections to their orders or recommendations to mediate.
- Attorneys were asked if they had ever objected to mediation and if so, why. They were also asked what would cause them to object to mediation.

The responses to these questions showed a willingness to refer or request mediation without reservation as to the type of case on the part of most of the interviewees, but hearing officers and GALs were less likely to do so. Alternatively, there was also a willingness to object to referrals to mediate, as well as a willingness on the part of the judges to hear those objections out.



Cases are considered for referral or request based upon whether the characteristics of the case are deemed to merit mediation. In essence, mediation is screened into rather than screened out of mediation by all groups. That is, mediation is not automatically considered for all cases by most of those interviewed.

Cases considered not appropriate for mediation are those involving serious physical or sexual abuse. Some judges said they consider those cases individually, and that referral depends as well on what issues are to be mediated.

Referral or Request Rate

Although all judges and hearing officers reported referring at least one case to mediation, and the majority of attorneys had requested their case be sent to mediation at least once, referral and request rates remain low, with the highest reported referral rate being 5% and most attorneys reporting requesting mediation only occasionally.

Judge Responses

Judges reported referral rates of between two cases total and 5% of all cases heard. Three reported referring less than 1%, and, on the upper side, four reported referring 5% of cases before them to mediation. The other four stated they referred between 1% and 3%.

The explanations offered by judges for their low referral rates varied. A couple simply said they should refer more. One stated that he does not always remember to refer cases to mediation, that after presentations on mediation to the judges by program staff he refers more, but a month later it is no longer on his mind. A couple of judges noted that they do not have the opportunity to refer cases – one because most issues arise post-disposition (when cases are handed over to hearing officers) and one because most cases involve absent parents or parents who have ongoing drug use. Another two stated that because the attorneys in the courtroom get along well and resolve issues among themselves, there are few cases that need to be referred.

Hearing Officer Responses

Hearing officers reported referral rates of between one case and 5% of all cases heard; however, on average their reported referral rates tended to be lower than the judges'. Two reported referral rates of less than 1%, six

reported referring 1% of their cases, and three reported referring 2%. On the upper end, two reported referring 5%.

A few hearing officers noted the reasons for not referring more cases. One explained that in the majority of cases she deals with the parents are not involved. Another stated that when cases reach the hearing officers they are no longer ripe for mediation since mediation is best reserved for visitation issues. One other stated that the cases she recommends for mediation do not get referred to mediation by the judge.

Attorney Responses

Twenty of 36 attorneys stated that they had requested mediation at least once. Only one reported having that request denied by the judge. Another had no opportunity to request mediation because she was a supervisor. Although the majority of attorneys had reported requesting mediation, only one said he requested mediation on a regular basis. Others had requested it one to five times.

When asked if there were circumstances under which they would request mediation, almost all said yes. Four said that they would try other avenues, such as the Help Unit, to resolve the issues.

These responses indicate a willingness to go to mediation that is not necessarily borne out in their actions. Consideration of mediation does not appear to be automatic. Further, some attorneys expressed a need for more information about what cases would be appropriate for mediation and how to best approach a request.

Individual Case Referral/Request

Judges and hearing officers were asked two questions on this topic:

1. What criteria do you use to determine which cases to refer to / recommend for mediation?
2. Are there any triggers that you wait for before referring cases to mediation– e.g. age of case, attitude of parties, particular stage of proceedings?

The interviewees indicated that there was no automatic referral or request trigger that sent cases to mediation. Judges, hearing officers and attorneys each looked at



what was occurring in individual cases when deciding when to refer a case to mediation or to request that mediation occur. They looked for a variety of individual circumstances when making that decision, although judges and attorneys focused more on the conflict, while hearing officers focused on the issues involved. Cases that were deemed inappropriate for mediation most often were those involving serious physical or sexual abuse.

Judge Responses

The judges tend to make referrals on a case-by-case basis. Generally, they look for personality or relationship conflicts or issues for which mediation would be helpful, such as working out visitation schedules. A couple of judges noted that they only refer cases when parties appear amenable to mediation, and another two look for conflicts that are resolvable. Another judge waits for the attorneys to request mediation. One judge said the hearing officer normally recommends mediation, but he would not enter the order if it was clear the parties did not want to mediate.

Only two judges stated that they wait for a specific time frame before referring the case. One stated that no case should be referred prior to adjudication and another said cases are best sent during the permanency stage because that is when the conflicts arise.

When asked if there were any cases they would never refer to mediation, seven judges said yes, while four said no. All seven stated that cases involving serious sexual or physical abuse or domestic violence should not be referred. Two noted as well that cases in which emotional or mental impairments are an issue should not be referred to mediation. One other stated that if a parent has a drug problem that has not been addressed, the case should not be referred.

Hearing Officer Responses

The approach of hearing officers to referrals is similar to that of the judges. They make referrals on a case-by-case basis with an emphasis on issues that are amenable to mediation. However, four responded that they only refer cases that cannot be worked out by other means, either among the parties themselves, or by the hearing officers. Thus, for them, mediation is a last resort. One hearing

officer stated that the determining factor is whether the judge is supportive of mediation.

Hearing officers had more varied responses to the question of whether there was a group of cases that they would not refer to mediation. Nine responded that there were. Of those, five mentioned the presence of physical or sexual abuse. Other responses (one each) were:

- The existence of mental or emotional impairment
- Dishonest parties
- The lack of conflict
- Parents not being present in court
- High risk cases
- Cases over which the hearing officer wants to maintain control
- Cases in which one parent is incarcerated
- Cases in which the rancor between the parties is too high
- When a trusted person says mediation will not work

Attorney Responses

Attorneys were asked a different set of questions:

1. Have you ever requested mediation for a case?
Y/N
Yes: What caused you to request mediation?
No: Are there any circumstances under which would you request mediation?

Many of the public defenders and bar attorneys said that conflict that was detrimental to their client or to the progress of the case toward permanency led them to request mediation. A couple saw a need to obtain a better position for their client – to ensure that visitation continued post-adoption, or to get better services. One saw the need to educate his client, while another wanted the decision to be made by the parties rather than the judge.

Not surprisingly, GALs had different goals when requesting mediation. Two felt that mediation would help the case move forward – either because of impasse or a feeling that a lot could be accomplished before the next hearing and two wanted to get the parents to be more comfortable with the pre-adoptive parents. Another saw it as a way to help the parent decide what goal he would like to see happen (guardianship, adoption, or return



home). One requested mediation directly for her client, who had significant conflict with her mother.

Only two Assistant State's Attorneys gave reasons they had requested mediation. One said the problems between the parties were slowing down the case. The other said that the parties needed to gain perspective and see the big picture.

Objections

In interviews, most judges and hearing officers reported that attorneys had objected to orders to mediate, while about 1/3 of attorneys said they themselves had objected to mediation. All had seen a reduction in the number of objections over time as the program and attorney attitudes toward it evolved. Most of the judges said they sent the cases to mediation despite the objections, while the majority of hearing officers said they referred the case to the judge for an order to mediate even if the attorneys objected.

Judges and hearing officers were asked the following set of questions regarding objections:

3. Have you ever had any parties object to mediation?
Y/N

Yes: How did you handle the objections?

Judge Responses

Nine of the eleven judges interviewed reported having had objections to their orders to mediate. However, they all noted that the number of objections has declined over time as attorneys have become less resistant and more supportive of mediation. Of those nine judges, all but one stated that they sent the case to mediation anyway. One of those who sent the case to mediation said the attorneys were allowed to decide if they would attend the mediation.

Hearing Officer Responses

Ten of the fourteen hearing officers interviewed reported that attorneys objected to their recommendation to refer their case to mediation, but that the number of objections had declined over time. Of those, eight reported sending the cases to the judge for an order to mediate, although two noted that the judge did not enter that order. Another two noted that they first allowed the parties to try to work out the issue before sending the judge a recommendation for them to mediate. Two hearing officers stated they did

not send cases to the judges for orders to mediate if the parties objected to the referral.

Attorney Responses

Attorneys were asked a different set of questions from judges and hearing officers:

4. Have you ever objected to mediation? Y/N

Yes: What were the reasons for your objection?

No: Are there any circumstances under which you would object to mediation? Y/N

Yes: What are they?

Twelve of 35 attorneys reported having objected to an order to mediate. One, as supervisor, never had the opportunity, and one other said she was never ordered to mediate. This means that fewer attorneys objected to mediation than requested it.

Those who objected to an order to mediate gave varying reasons for doing so. The two most common reasons given (by four each) were that the judge needed to make a decision in the case, and that the parties were too entrenched and mediation would not help. In two of those cases, the parties had already attended mediation. Two attorneys stated that the issue for which it was being referred was inappropriate. Neither remembered the issue, although one stated that even if the issue was resolved it would not have moved the case forward. One said he thought his client was not ready. Another attorney said she objected on general grounds.

VIEWS OF THE MEDIATION PROGRAM

The different experience and role of attorneys led to different questions being asked of them than of the judges and hearing officers.

The judges and hearing officers were asked a number of questions about the program itself, including:

- Their view on how well the mediation program is achieving its goals or meeting their needs.
- Their perception of what the strengths of the program are.
- Their perception of what the weaknesses of the program are.
- Whether they had any hesitation to refer cases to the program.
- Any recommendations for improvement.



In addition, judges were asked:

- How mediation affected the hearings they held afterwards for those cases.
- Whether they had ever not approved an agreement signed in mediation.

Attorneys were asked a series of questions about their experience in mediation, including:

- How participation affects their workload.
- How they thought participation affects their clients.
- The impact of the program on the child protection system.
- What they liked about participating in mediation.
- What they disliked about participating in mediation.

They, too, were asked about the strengths of the program, as well as for recommendations for improvement. In addition, they were asked to rate and discuss the mediation facilities.

Overall Perspective

The mediation program is viewed positively, with particular praise given to the mediators. The interviewees like having the option to send cases to the program, and see it as a useful tool. However, the impact of the program is seen as being less than it could be, in large part because it is not used for the vast majority of cases. For many, this lack of use is an issue to be resolved; for others, mediation is being used for the cases for which it should be used and there is no need for more cases to be sent to the program.

Judge Responses

The judges had a positive view of the mediation program as a whole. They saw it as a highly beneficial resource. The program staff has done a good job and achieved results. Some examples of their views are:

- “We have just scratched the surface of its potential.”
- “The program is working exceptionally well.”
- “The mediation program was its best selling point because it did such a good job. After the first few cases, I saw immediate results. The Assistant State’s Attorneys said they liked it.”
- “The program is a resource that all judges should use.”

Hearing Officer Responses

While positive, the hearing officers expressed a larger number and more serious reservations about the program than the judges. Fears of the program acting outside its scope or mediator lack of legal expertise were mentioned, along with less serious questions of whether the program produces positive results. Their mixed reactions to the program can be seen in the following statements:

- “The program brings humanism to the court.”
- “If it works, fine. If not, it doesn’t get in the way of what I do.”
- “Often agreements are right on target, sometimes they miss the mark.”
- “In those types of cases when I don’t have time to deal with emotional issues, they can give the necessary time.”
- “A lot of hearing officers question whether the mediators’ legal expertise was there, but this doesn’t bother me any more because they do a good job.”

Attorney Responses

Almost all of the attorneys interviewed were positive about the program, and particularly about the mediators, as demonstrated by the following typical comments:

- “The mediators relax people and make them feel welcome.”
- “The mediators are knowledgeable and help facilitate dialogue between the parties.”
- “Mediation did a world of good.”
- “The mediators are very good. They don’t put people’s backs up.”
- “Mediation has saved cases.”
- “The mediators are good at breaking down biases and frustrations.”
- “The mediators are sensitive, understanding and professional.”

How Informed About the Mediation Program do You Feel You Are?

Judge Responses

The judges feel rather confident about their knowledge of the mediation program itself. Six said they are very informed about the program, while five stated they are somewhat informed. All the judges but one (the Interim Director of the program for the first two years of the program) reported receiving an orientation about



the mediation program, which included information on the appropriate cases to refer. Additionally, most indicated other ways in which they have been informed about the program: personal contact, updates, memos and additional meetings put on by mediation program staff.

Hearing Officer Responses

Hearing officers also have confidence in their knowledge of the mediation program. They were evenly divided between those who said they were very informed and those who said they were somewhat informed. They reported a number of methods by which they received information about the program, including orientations, written memos from the program, and informal conversations with the mediators.

Attorney Responses

The attorneys were asked if they felt they had enough information about the mediation program to use it effectively. All but three of the 35 interviewed said they strongly agreed or agreed with that statement. More than half of the attorneys reported learning of it either through orientations by the mediation program or through other communications from the program. A dozen stated they had learned about it from their office and a handful said that conversations with co-workers were helpful. Eight said they had received no information about the program, but had learned about it through participation. Two of those said they did not know it existed until they had been ordered to mediate.

What Information is Requested

Although reportedly satisfied with the information they have been receiving from the program, judges, hearing officers, and attorneys alike tend to want more information about mediation and about the running of the program. The judges and hearing officers are most interested in knowing how a mediation works and how to know when to send a case to mediation. They also want to know when there are changes to the program that affect their referrals. Many also noted an interest in seeing a mediation. There is overall a certain discomfort with their knowledge in these matters. Some of this discomfort may have been alleviated with the distribution of the benchbook for mediation that was distributed to all judges and hearing officers after the interviews were completed.

The attorneys were most interested in learning about the types of cases that would best benefit from mediation. A few others wanted to know what happens after mediation ends – what happens to the agreement or if there is no agreement. Three attorneys wanted to know how the program functions and its rationale.

Program's Goal Achievement/Meeting Needs

The judges were asked whether the mediation program is achieving its goals, while the hearing officers were asked whether it was meeting their needs.

Judge Responses

The judges were unanimous in their belief that the mediation program is achieving its goals as they defined them. Goals the judges defined, along with the judges' assessment of achievement of those goals are below:

- Facilitate the goals of the court – that the child is safe, protected and loved.
 - Terrific. Nothing negative to say. We probably have just scratched surface of its potential.
- Opportunity for voice, a place to work out agreement as time efficiently as possible.
 - Reasonably well. Cases in the courtroom show a reasonable number of agreements. Has noticed a difference on the voice issue – parents have agreed to things once they had an opportunity for voice. Has moved cases forward.
- To resolve conflicts, to give people a sense that they have voice and control over decisions being made, teach people about the accommodation of other parties' views.
 - Doing very well. Very satisfied with it. In a large share of cases resolution is reached. In many cases law can't help – there is no substitute for mediation. It helps them close more quickly – couldn't ever devise orders for post-return issues between parents or between parents and guardians.
- Facilitate outcomes of the case, be a tool for judges and lawyers to prepare for what the outcome will be. It's not an end, but a means to an end.
 - It's always done what he asked them to do.
- Resolving non-legal disputes between parties.



- Pretty well. Pretty satisfied. Anything that makes my job easier makes me happier.
- To provide families with an avenue to reach outcomes in the best interest of the children. The opportunity to participate in the outcome.
 - It's done a very good job with the cases he's had.
- Be able to utilize it at every possible point – from beginning to end.
 - It's up to the judge and court personnel to get cases there. The program does a good job with everything they get.
- Get parties to understand what's happening in court, others' perspectives and their own options. To reach agreement on various issues that come up.
 - Very well.

One judge was asked the question: For you, how well is the program working?

- The program is working exceptionally well. This is based on the number of cases reaching agreement, the resolution it has to agreed permanency goals, and the satisfaction of the parents (based on their statements and demeanor).

Two said they did not know what the goals were.

Hearing Officer Responses

Hearing officer responses were more varied than those of the judges. The responses regarding how well mediation was meeting their needs ranged from “excellent” (1) to “not well” (1), with most answering along the lines of good to fairly well. Follow-up explanations fit those assessments. One hearing officer noted that most mediations have helped. Another said that she has only sent difficult cases, but has not seen agreements. Another stated that she does not depend on the program. One other stated that the program is not working well because the cases she has sent have not reached agreement, while a different view was presented by another, who said the program was a good asset and a way to show families they are important.

Comments on whether the program is meeting their needs:

- Quite well. The goal is to provide lines of communication for families - and they've done this.

- Good – they make a strong, sincere effort to work on issues that have been identified. They are skilled mediators. It's successful in many cases.
- Fine – I get the information I need post-mediation to know what's going on with the case.
- Excellent. In those types of cases when I don't have time to deal with emotional issues, they can give the necessary time.
- Only fairly well because of my concern regarding misimpressions about the role in court. The physical space given them made them feel they are more important than hearing officers are.
- Ok – most mediations have helped. There's not anything they're doing wrong. They're just dealing with the same people.
- Well – I sent stuff recently that's difficult, but they haven't gotten agreements. There were agreements before, when they were possible.
- If it works, fine. If not, it doesn't get in the way of what I do. My area of control is not affected adversely or positively. I don't depend on it.
- It's not working well because there are no agreements.
- They are very responsive when called down. Often, agreements are right on target, but sometimes they miss the mark.
- I heard really marvelous feedback from other courtrooms. [One mediator] does lot of public relations and outreach, and is well-liked.
- Very well. Good asset to the court. It's a way to show families they are important. It brings humanism to court.
- It seems to be doing well. It's handling larger number of cases. Delivery of services is better, and there is now a protocol in place to get someone down immediately to do scheduling and intake. They can now handle more cases.
- Right now, performing well. There's no issue of delay or not reaching out. They come down when called and they relate well to people in the courtroom.

Program Strengths

Judge Responses

When asked about the mediation program's strengths, judges most often noted the capabilities of the mediators (7) and their responsiveness when called to do intake for a



referral (7). The program's director (3) was also mentioned as a strength. Other responses regarding the program staff include that the staff deals with cases in a timely manner (2) and that the staff is flexible and accessible (3). Responses pertaining to the program itself include that the program works (3) and that multiple sessions are helpful (2). One each said that the program sometimes saves the court time, that the facility is on-site, and that the mediation area is welcoming.

The judges noted the mediators are very capable, know the law, and love what they do. One judge stated that he has the "highest respect" for the people in the program. The quick response to referrals that the judges mentioned was very likely in particular response to a change in the manner in which intake was conducted. The judges requested that intake be conducted immediately after the program was contacted, and the program staff acted on this request. This is an example of the flexibility and responsiveness that was noted by judges and hearing officers alike.

Their comments:

- Good mediators; the physical facility; that it's on-site; the quick response to requests for referral.
- Accomplishes the goals – helps work out hostility. Gives voice and occasionally saves court time. They come downstairs quickly, are responsive.
- Response time is good. It's really important that someone comes down as quickly as possible when a referral is made. Very capable staff. Set-up in the mediation area is welcoming/flexible.
- Gives people chance to air their problems and views. They feel like they can voice their issues. They can address issues not brought up in court. They are very responsive/quick when you call them. Get things done in timely fashion and stay on top of case.
- People in program – administration, mediators – are high quality. They know the law, are trained as mediators. Accessibility – available anytime for referral. Will come down to do intake or help judges decide whether to send the case. It's important for judges to be aware of cases that would be proper for mediation.
- Reports gotten in timely fashion. Mediation is done in timely fashion. With [the first program director] it was strength of personality (people

trusted her).

- It solves disputes. Affords all parties opportunity to be heard and can discuss the situation rationally. It alleviates problems of miscommunication. It made my job easier by settling disputes that aren't legal. I don't have to hear a motion.
- The abilities of individual mediators. Responsiveness. Procedurally it works, especially with the private bar and they're timely. I can't recall a lawyer waiting more than 10 minutes. They can deal with bar attorneys who have many cases in different courtrooms because they respond really quickly.
- The quality and experience of the mediators. They are people who love what they do. Multiple sessions – you don't have to wait for a referral from the court. The more mediation they have, the more resolution there is. By the time it gets back to court it's solved.
- The time that mediators are willing to spend on issues that I don't have time for and aren't necessarily legal issues. People in the program I have the highest respect for. They do reach agreement.
- They're flexible, willing to make changes to make the program work better (for example, changing to a 10 minute response time). Their response time. The mediators – tough cases are handled well. Multiple sessions.

Hearing Officer Responses

The hearing officers were divided about whether the strength of the mediation program was the program staff, the program's structure, or the mediation process and outcomes. Seven hearing officers noted the capability of the mediators as a strength of the program; this was the most common response. They described the mediators as good at what they do, committed, friendly and calm. Five mentioned the responsiveness of program staff when called to do intake for a referral. Two more noted the accessibility of program staff, while one noted the staff's diversity.

Three hearing officers see the strength to be in the process itself, while another three stated the strength is in the positive outcomes attained in mediation. Structurally, one hearing officer each mentioned the



program's location in the courthouse, the voluntariness of the program, the friendliness of it, that the program was well-organized, that the program had a narrow focus on visitation, and that the program had the support of the presiding judge.

Their comments:

- It's a non-threatening, voluntary, whole approach gentler than a court order. It's a friendlier program for families.
- The mediators are extremely good. The two program directors, too.
- Getting parties together to try and discuss issues.
- The quick response time. It's a good group of mediators. They are suited to the job and have a calmness about them. They often achieve their goal – agreement.
- The success rate. Mediators are doing well.
- Just having it is good. They're responsive – they come down right away. They even do emergency mediations. They're accessible and accommodating.
- They're well-organized. Procedurally, they're effective in communicating with the court.
- Capacity to oversee interactions for issues that don't fit in before a judge or hearing officer. Visitation or services. Kids need to be treated with dignity and respect. This enhances people's understanding that best interests of the child is most important. The mediators.
- Mediators are good, responsive and pleasant.
- The ability to resolve disagreement by reducing litigation. The cross-cultural staff. That it's on-site.
- It's narrow focus (on visitation) and how important that is.
- The director, in terms of her resourcefulness, ability to understand the legal system and flexibility. The presiding judge's commitment to it – feels like it's around to stay, so everyone is willing to put in time and resources. The ability to let families have voice in court.
- Responsiveness, availability and committed mediators.
- It can help me do my job – take on issues that the court can't intervene on. They're on the cases right away. The people are good. The schedule is good.

Attorney Responses

Attorneys, too, were most likely to state that the mediators themselves were the strength of the program, with ten giving that answer. They see the mediators as competent, sensitive and flexible. Five other attorneys noted the flexibility of the program, and two mentioned the ability to mediate within a couple of weeks of referral. Another said the program was well-organized. Still another said that its location in the building was a strength.

Other attorneys focused on the process:

- Five mentioned the open communication that results from the process.
- Four mentioned the informality of the forum.
- Two mentioned the confidentiality of the process.
- One mentioned that it is non-adversarial.

Four said the ability to resolve issues was important, while two each noted the productivity of the sessions. One stated that the program's strength was that it clarifies issues and another said it is informative. One mentioned the importance of having a written document at the end. And still one other said that it empowers the families and gives them a better understanding of what the court's role is. Six said either they did not know what the program's strengths were or had no experience with the program.

Their comments:

- Communication, people coming together.
- The people are very strong, good at what they do. They are flexible and prompt. You don't have to wait to get into mediation (within a couple of weeks). The process is good.
- The mediators are good.
- The availability of mediation. It's another resource. Their willingness to work with the attorneys' and court's schedules.
- The program is constantly trying to improve. Susan has actively worked to improve the program. They're open to anything – will try anything.
- The open discussion.
- The qualifications of the mediators. They're very competent and make people feel relaxed. Everything flows well and you can feel they are actually hearing you.
- The mediators themselves. They are really experienced in getting people to talk.



- The mediators are very good.
- The informality of the program. Speed – you get a lot of stuff done in one session. Flexibility with time.
- It provides a forum to communicate and clarifies issues.
- It's informative and helps people come to agreement.
- The ability to speak freely. The mediators' abilities and efforts to make people feel at ease. They're friendly and relaxed.
- The forum itself. It's an informal, relaxed meeting of peers.
- It's non-adversarial and confidential, which makes it more likely to be open and honest. The mediators are very good. They don't put people's backs up. They're sympathetic and flexible.
- The staff is what makes it good.
- The mediators are very good at what they do. They keep things focused and people on track. It validates parties – that someone's listening and will take their views into consideration.
- It provides a forum for open discussion.
- Good staff. The mediators are professional and competent. They offer different mediation for people to work through their differences. They allow people to think they have made a decision, and they are more likely to stand by that decision.
- It's good that it gets everyone to talk about sensitive issues. It allows people to talk freely.
- The open forum – no notes are taken and nothing is taken away. Nothing is reported.
- It opens up the case.
- Allowing people to have a forum to discuss issues with the help of a third party who is unbiased.
- It's voluntary. It gives a sense of power and control to family members if they have chance to decide whether to go. Different exposure for families to what we do – it gives parents a better understanding.
- It's well-organized and runs efficiently. Mediations are scheduled promptly and notices go out in a timely manner.
- It's in the building, not a burden to travel to participate. Accessibility (flexibility in scheduling).
- Resolving long-simmering family disputes.

Program Weaknesses

Judge Responses

Five judges stated either that they did not know what weaknesses the mediation program had or that they could think of none. Two others mentioned the lack of ability to enforce agreements. One each noted that the program is underutilized, the sessions take too long, the program lacks marketing, the judges do not get any information after a mediation session if no agreement is reached, and the mediations are not timely (meaning sometimes the next court date would come around before the mediation was conducted).

The judges comments were:

- It's underutilized.
- The time it takes in mediation. There's a perception that it takes too long. They should be around more often to let people know about mediation. Keep it in the forefront of people's minds.
- They can't force anyone to agree. They don't have enforcement powers and people know that they don't even have to participate in good faith. This is not necessarily a negative effect.
- Not getting an assessment if there was no agreement. It would be helpful to know whether or not I can get this type of information. Cultural aspects – the need for an interpreter or resource for other cultures. (I don't know if have it covered – I would like to know.)
- The court not giving information to the program about what happens to the case after mediation. There is no feedback as to whether agreement was abided by – if it's holding up. They're still having problems with food. There's no source of funding for food or furniture. The setting is not comfortable, too institutional. Not being able to enforce an order to attend mediation. Foster parents are not a party to the case, so the court has no jurisdiction over them.
- More people are referring cases, so you can't get cases scheduled right away. It used to be on same day, with no mediation dates too far off. Sometimes the court date arrives before mediation takes place.
- Previously it was response time, but that's been fixed.



Hearing Officer Responses

Hearing officers noted greater concerns about mediation than did the judges. Five focused on the mediators' lack of legal expertise and the hearing officers' fear that the mediations are moving cases into new directions, which is not the purpose of mediation, or that the mediators are working beyond the scope of what mediation should do. An example was changing the permanency goal set by the hearing officer. This same hearing officer noted that mediation can get off track and set a new agenda.

Other reservations included the inability to enforce agreements, the lack of information after the mediation session, the ineffectiveness of the mediations in getting agreements, the lack of privacy in the facility, and the lack of acceptance of the program. Four stated that they did not know of any or there were no weaknesses.

Comments:

- A lot of hearing officers question whether their legal expertise was there. Not knowing what their background is – but this doesn't bother me any more because they do a good job. There's been a lot of good feedback on [a couple of mediators].
- Agreements aren't binding; you can't force anyone to go to mediation.
- There is confusion about their specific role – the kinds of cases they can take. They have a lack of understanding of details of the law.
- It's subject to the whims of the adults in the process. Adults will act as children and mediation isn't a forum that corrects or compensates for that. It's not binding, so you can't enforce it. It's 100% based on party willingness to participate. No guarantees. Mediators don't have full control.
- No results. It's ineffective.
- It's not fully accepted. There is still resistance by judges, hearing officers and attorneys. The mediation space is challenging. There's not enough privacy.
- They're not communicating what they're doing. Mediation is voluntary. It's frustrating that I referred a case and a party refused to go, so it didn't happen. Areas need to be closed off. There's no privacy.
- The mediators don't understand the legal sequence and what it means to families. The mediators

need to support court-set goals of permanency – they haven't always done this and once changed the goal. Mediation has a tendency to get off track. Maybe they [the mediators] shouldn't be so involved in setting the agenda.

- Some people may view it as something that can solve all problems and it can't. The role mediation can play in people's lives is limited. The worst cases aren't going to be helped by mediation.
- They try to do things that are beyond the scope of what they can do. I haven't had that happen recently.

Attorney Responses

Initial responses to the question regarding the program's weaknesses showed that this question did not work well for attorneys. Therefore, they were asked for recommended improvements only, which will be discussed below.

Hesitation to Refer Cases

Almost all judges and hearing officers stated that they had no hesitation to refer cases to mediation. One judge said she did hesitate, but this was because she was afraid that the program had too many cases and could not handle more. Two hearing officers said they hesitated to refer cases because they feared that the case would go beyond the scope of mediation to decide or change goals. One other hearing officer said the mediators' lack of legal experience made her hesitate to refer cases to the program.

Post-Mediation Hearings

Have you noticed a difference between hearings for cases that have been mediated and those for cases that have not?

This question was asked of judges only. Judges were divided as to whether hearings post-mediation are different from those of cases that are not mediated. Six stated that hearings are positively affected by mediation, while five said there is no difference. Those noting a positive effect mentioned that hearings are less time-consuming because issues are narrowed, and that they have to deal with less animosity. They stated that this was the case whether or not the mediation ended in agreement.

Comments:

- Hearings are less time-consuming and people are



less apprehensive about what will happen. Issues have been clarified, so we can focus on what the real issue is. It refines the issue to be litigated

- Sometimes – when there was an agreement and things went well. It reduces hostilities, so I don't have to deal with some issues.
- There's no difference. Sometimes cases sent to mediation are just a problem from the start, so they just continue to have problems. (A big problem is the case worker/parent relationship.)
- There's no difference.
- If issues have been resolved it makes it easier for me to go on. There's no need for an evidentiary hearing in those issues.
- For particular issues dealt with in mediation, yes (hearings are better). Mediation is most successful in dealing with visitation between parents who are acting like children.
- There is less animosity, even if they haven't gotten an agreement. It eliminates some issues from discussion at the hearing.
- Yes – agreement will expedite the ultimate outcome of the case. It speeds up permanency because you get there more quickly with consensus.
- No.
- They're not different to me. Mediation doesn't make them shorter, longer or change my thinking. I don't see it as a time saving device.
- No – because all cases that need mediation are mediated and there's nothing to compare them to.

Agreements

All judges stated that they have approved every agreement that was returned to them. Therefore, all agreements have been seen to be in the children's best interest and to adhere to statute.

Post-Mediation Information

Judge Responses

The judges are by and large satisfied with the information they are receiving from the program. They feel that the mediator report and copy of the agreement provide all the information they need about the mediation if it ends in agreement. They are less satisfied with the information they receive if it does not end in agreement. Most mentioned their desire to know what happens in the mediation, and particularly their frustration at not

knowing why agreement was not reached. They believe this information would be helpful in understanding the obstacles that still exist in the case. However, the judges also stated they understood that the need for confidentiality outweighs their need to have information on these obstacles.

One judge thought it would be best if the parties came directly to the courtroom from the mediation to enter the agreement. This would add validity to the agreement.

Comments:

- Usually I get a one-page memo. It's nicely succinct. I don't care how the case got to agreement.
- It could be more detailed about what occurred that led to agreement and what are the issues and problems if there was no agreement. I might want to know of barriers that can't be addressed in mediation, but can be addressed in court (such as if a parent can't get services).
- It's not important to receive anything back – I get information by questioning the case worker about the progress of case at the next court hearing.
- I would like to know what actually goes on, but I understand the need for confidentiality, so the information I get is adequate.
- I'm curious as to how they get the resolution – what went into the process. It would give insight into the parties. I would like more detail. For example, was one party more involved?
- If there's no agreement, I don't get any information. I don't know if there was a good faith attempt to mediate, or if the reason for there being no agreement is something that can be dealt with through a finding of fact or a legal decision. Was anyone obstructing or they just can't get a meeting of minds? If there's no agreement, it helps to know why and what the barriers were.
- I would like for parties to come straight down and have an order entered right then. This would add more validity to the agreement and parties have a second chance to say they're committed to it. If you give too much time, there may be too much wiggle room or they may not commit until the next court date.
- I'm curious about what happened in mediation, but I don't need it. If I know a little bit more about



the needs expressed in mediation, it might change my perspective, but I know you have to balance getting that information with confidentiality.

- I would like detailed reports when agreement occurs. I also want to know to why there was no agreement – what happened in mediation.

Hearing Officer Responses

Almost all of the hearing officers are satisfied with the information they are receiving from the program after mediation. One, however, reported being very dissatisfied, noting that no copy of the agreement was provided, and that any information about the mediation had to be sought out from the program.

Comments:

- It's all OK.
- No, more than adequate.
- I get what I need; the reports tell as much as they can because nothing else can be discussed.
- No, more than adequate.
- I would like a copy of the agreement and would be interested to know how long it took and how much enmity was there – will parties still be at each other's throats when they come back to hearing room?
- Fine.
- I would like to be a fly on the wall so I know better how to deal with the parties.
- I would like more feedback about what happens in mediation – how they get agreement order, and what agreement was reached.
- Nothing.
- Unless I seek it out, I don't get any information – no copy of the agreement is given. I would like that.
- I would like information when there is no agreement. They're my cases and I would like to have more information, such as what the problem is, whether they're still working on it, whether the conflict escalated, etc. I don't always know if the case has been to mediation if the judge sent them before the case gets to me, or if there is an objection to her recommendation and then the judge orders anyway.

included:

- It's a very good program. I'm very glad we have it. I only regret not using it more. The geographic area of my cases is a gentrifying area, so my caseload is really decreasing. Almost all cases involve drug abuse, so parties don't tend to come to court on a regular basis. All this gives me a smaller pool to draw from. Also, attorneys in the courtroom get along and work well together. [judge]
- It's hard to tell which parties should go to mediation. If there is a problem between a caseworker and a parent, I don't think it's worth wasting resources to mediate it – you can just assign new caseworker. If the case is a problem case, the kneejerk reaction is to load up on services, mediation, etc. As a judge, you need to be careful not to just send the case to mediation – you need to know why you're sending it – what issues are involved. Sometimes attorneys do same thing – have a kneejerk reaction to send a case to mediation. I wish I used it more. There's no reason I don't. The program plays an important role. [judge]
- I'm interested in knowing if agreements are kept; if they work out. I have a vague recollection of a couple of cases in which people didn't follow through on the agreement. [judge]
- The program was its best selling point because it did such a good job. I called all courtroom staff in and told them I was going to send cases to mediation. After the few cases I saw immediate results. Assistant State's Attorneys said they liked it... Can't really get cases pre-disposition because issues don't pop up and a legal decision needs to be made... Full agreement makes me happier because everyone must have felt heard... Everyone is seeing each other's viewpoint and working together. I had a case in which there was a question of whether to return home or guardianship. Mediation helped the mom to see that guardianship was OK one hour into a hearing that was supposed to take two days. [judge]
- Sometimes mediation gets at subsidiary issues. Resistance to mediation may be based on others' views of family – if they think parents are bad, they may think mediation is useless. [hearing officer]

Any Other Comments

Other comments from the judges and hearing officers



- Teens are lost in the system. They need a forum in which their needs can be heard and they can get the services they need. [hearing officer]

QUESTIONS FOR ATTORNEYS ONLY

Attorneys were asked a number of questions regarding their experience with the program that the judges and hearing officers, as referrers only, were not. They reported positive experiences for both themselves and their clients. While many see participation as burdensome, the majority see it as either decreasing their workload in the long run (when mediation works) or as a burden that is worth undertaking.

The attorneys tend to like the ability to talk, to meet others, and to receive information at the mediation. They have difficulty with the length of the mediation, the late arrival of parties, and the times in which mediation becomes emotional or moves off track.

Effect on Workload

The program staff were concerned that the lengthy amount of time spent in mediation was disposing many attorneys against mediation. This does not appear to be the case. The attorneys were surprisingly positive about the effect on their workload. More than half declared it to decrease their workload. The GALs were most likely to say that mediation decreases their workload – as long as the conflict was reduced or an agreement was signed. Bar attorneys were as likely to state that participating in mediation is burdensome as were likely to say it is worth the burden. Public defenders were equally divided as to whether mediation helps reduce their workload or increases it.

Those who said it increases their workload focused on the amount of time they spent in mediation. Those who said it decreases their workload viewed mediation in a more global way, looking at how mediation affects what they need to do for the case after the mediation. These attorneys said that the number of court calls and/or phone calls from clients declines after a successful mediation, thus freeing up time for other cases. The reason for this decline was seen to be the exchange of information at the mediation and the parents' opportunity to both vent and get information on the case.

Comments:

- It can save time by resolving some issues. It's helpful to have mediation in the building and they're accommodating in terms of scheduling. And they're accommodating in that attorneys don't have to be there the whole time.
- It doesn't change it. In the short run, there's more work in preparation and mediation itself takes time. In the long term, if we reach agreement there are fewer court dates, so I don't have to prepare for contested hearing. Even if there is no agreement, it takes less time in the long run. It's less antagonistic in hearings, so it saves time.
- For the GALs I supervise, it depends – if mediation is long, then it takes away from other cases. But they're not up there the whole time.
- It adds to work because you will always have the same [?]. It feels different for different situations – if I feel something is accomplished, then it doesn't feel burdensome. But if not, it feels very burdensome.
- It exposes me to solutions that I might not have thought of. I get a different perspective. I get a broader picture because non-parties are participating. There's no effect on my workload because they're good with scheduling mediation.
- I look forward to mediation if need thorough discussion of issue. If I feel like I have all the information I need; it's frustrating to have to spend all that time. If others need information from mediation, I would want to mediate.
- It's never a bother to go. I like the snacks. Afterwards, it's like a long, hard day in court. You have to choose your words correctly. You have to take into account others' emotions. It's hard at the time, but often after mediation, you don't have to deal with the case for few months. You come out bummed because of the emotions involved, even if there is a "happy ending," but it's worth it.
- It helps me get a better understanding of the parents – I get a peek at how parents are and how they're functioning. It makes my job more personable. There are no barriers as there are in court.
- It helps in the sense that cases will move faster – get issue resolved quickly. Build better rapport



with all parties to show that not adversarial – focus is the best interests of the child.

- Made things a lot easier to work with all involved – when mediation worked. When it didn't work, it didn't help at all. It confused things more.
- It's a pain in the ass – today I was in mediation for four hours – but it's worth it. My clients won't call as much after because they aired their grievances and it would have taken more time to deal with all the issues in court.
- It doesn't affect my workload. I have had one case. It relieved a lot of work because I don't have to prepare as much, plus we reached agreement. But I don't really know.
- It can be cumbersome. Some mediations have lasted four days for several hours each session. This is too long. One lasted 6 hours. It's better to limit it to 2-3 hours in day and no more than 3 days.
- It can be a problem. I don't think attorneys should be there the whole time. We should just get a written report of what went on.
- I have to set aside a day, but I can leave for a while. The day is not really productive. I can't schedule other cases that day. Nothing changes after because there is no mindset change on the part of the parties.
- It's time-consuming. I have to block off more time than I would for a hearing. I never know how long mediation will take. But it's worth it.
- It doesn't impact my overall workload because it's relatively infrequent. If it allows for greater understanding, then it's a great asset for the entire process.
- It's not a problem. Mediators are good at recognizing when they can't do any more. The time is productive – parties are talking and talking in front of witnesses. It's a good tool for clients who change their story.
- It increases my workload, but that's not negative. The mediators are good at scheduling and are accommodating.
- It doesn't involve a lot of prep time. It doesn't add to my workload, but scheduling is an issue.
- It increases my workload.
- It didn't reduce it when it didn't work. It did reduce the number of phone calls from my client

because my client was not so upset.

- It can be difficult on my workload. It's always supposed to be in the courtroom. It's frustrating to sit in mediation for a long time. [He will come and go in a case, particularly in relationship cases.]
- In post-guardianship cases it decreased my workload in one case and in another it increased my workload. When it works, it decreases my workload a lot.
- It can reduce work on that case. You learn a lot about the case. Otherwise, it's just like scheduling court. In general, it benefits the workload. But if there's an explosion from mediation, it makes my job harder. I have to know whether my client can handle mediation.
- It adds a significant amount of time just being in mediation.
- It increases my workload in the short run, but in the long run it doesn't. It can decrease court motions if it works well.

Effect on Clients

The attorneys were asked what they thought the effect of the mediation was on their clients. The GALs' clients are children, so they were asked about the effect on them. All but one saw mediation as helping the children. The benefits to the children are that it speeds up the process, gets people to focus on the best interests of the children, and when they participate it gives them a better sense of self-worth.

Bar attorneys and public defenders also saw mediation as benefitting their clients, although four saw potential pitfalls as well. Most said that mediation helped them by either giving them the opportunity to talk or by helping them to understand the case and the points of view of others. The four attorneys who expressed concern said that their clients could feel frustrated or "ganged up on" in mediation if the conflict is not resolved. Other concerns were that they would feel betrayed if the agreement was breached or if they said something "dumb" that hurt their chances of having their children returned to them.

Comments:

GALs:

- It moves the case along. It gets people to think



of the best interests of the child. It can get better parent and foster parent because there are fewer conflicts.

- Only one kid participated and it didn't affect him. Kids rarely understand the process.
- I never had a case that was detrimental to kids, but could see it being detrimental if foster parents and parents ended up in greater conflict after mediation. It's beneficial if it reaches agreement where it becomes clearer faster what the goal will be.
- It's beneficial regardless of the outcome because they're not limiting themselves. Sometimes it can be a waste of time, but you learn something anyway.
- Overall, it's very, very good for clients. When they go to mediation, they see they're important. It's so much better to be able to be creative and have flexibility. You can come up with a better structure for the parents. There's a respect for the legal system on the part of the parents and foster parents that's passed onto the child. It gives kids a better sense of self-worth.
- Multi-sessions work for the best. You can know what to address with your client at the next session and can find out if progress has been made. You have a better handle on how things are going.
- It has a positive effect. In the issues that are mediated, the outcomes are favorable to clients.
- It improves the lives of children because parents could communicate with foster parents and have better a understanding.

Attorneys for the parents:

- It makes them happy because they got what they had to say off their chests. The mediators make them feel respected – they gain self-respect.
- They got to talk – it removed conflict.
- I fear that my client will say something "dumb." What they say can be thrown back adversely at my client even if mediation is confidential. [This has happened.] Mediation should be censored. The attorney should admonish their client that what is said can be used against them. Some [about one-half] attorneys don't take it seriously because they don't see the resolution – they just breeze in and out of sessions.
- Better understanding of the situation.
- They're not too much affected. It might have shown them the other person's point of view.
- They've had a positive response. I approach it positively and convey this to my clients. They get to speak freely. The mediators are warm and friendly. They got to be on equal footing.
- My client understands where others are coming from, so becomes less antagonistic toward them.
- Most of time when we have accomplished what we should have, my clients are happy with it. But I have gotten feedback that it's long. Some clients feel that they're being ganged up on. It's hard to get them to come back.
- Positively. It provides them the opportunity to talk about the issues with the foster parents. Clients have expressed resentment at having to mediate – they see it as another hoop to jump through, but it's a good thing to be heard. Others feel like it was good thing. It improved their relationship and got to know that everyone loves their child.
- It could affect them negatively if they feel everyone will attack them. But it could affect them positively because they have the chance to express themselves. It's a case-by-case situation.
- It might be another thing that makes them feel they have no say. It's good if it helps in their relationship with the foster parent.
- They walked out feeling like they'd been heard. My client was happy with the outcome. It brought her and the foster parent closer.
- It can be really helpful, especially when trying to get their child returned. They can be seen as a person and can see others in a better light. If my client is antagonistic toward what's going on, it helps too.
- Mostly it helps my client, but they can feel ganged up on. They can feel betrayed if the agreement is breached. If clients are told that mediations will be about getting information and they don't have to make decisions, it works better. It's most useful to open communication. Anything else can be harmful to the client because it's not enforceable.
- They get to say their opinion and get to hear what others say. They get a level of understanding they can't achieve elsewhere. But when there's



no agreement or the agreement is not followed through, it makes it worse – the client feels like it's a waste of time.

- It can ultimately benefit them if they come with an open mind.
- It has a beneficial effect. They get heard, settle down, feel listened to and hear the other side. Practical aspects can be worked out. It's never bad for them.

Likes and Dislikes about Participating in Mediation

Attorneys like most the open, informal atmosphere, and seeing the parties have voice. A few mentioned the mediators themselves. Bar attorneys also like that they have the opportunity to speak openly.

The GALs and the Assistant State's Attorneys in particular like the information they receive about the parties and the case. They feel that getting to see the family members in this setting helps them to get more information and better assess the case. One GAL stated that without mediation she would not have known that the parents and foster parents could work together. This changed her mind about what the goal should be. Another feels that meeting the parents makes him feel more comfortable with his decisions. An Assistant State's Attorney said that it gave her the opportunity to see the human side of the case, to see the foster parents and the natural parents as people, not just pieces of paper.

- The excitement of possibilities to change the case in a dramatic, meaningful and helpful way. [bar attorney]
- Getting to know the parents better. The mediators are sensitive, understanding, and professional. [GAL]
- The chance to talk to everyone at the same time, including the parents. As GAL, it's rare that I can talk to parents in an open forum. I want to get to know the parents in order to feel comfortable with decisions regarding the goal – especially return home.
- Seeing parties exchange ideas and have a frank discussion. It gives me a chance to assess the parties better than I could otherwise. It gives me a better sense of their strengths and weaknesses. [GAL]
- It's done a good job coming up with solutions for my client. I leave knowing the players – I can

make better decisions afterwards because I know those involved better. [GAL]

- Comfortable environment, mediators listen and bring out other issues that need to be discussed. People are more receptive to alternatives because it's more relaxed. It makes parents and foster parents feel like they're being heard. [GAL]
- The people who hold mediations are very skilled. I like the written document at the end about what was agreed upon. [GAL]
- We did a tremendous amount in a small span of time – three hours of mediation led to three months of no problems. It would have taken at least three court appearances and a lot longer to do the same thing. [bar attorney]
- The opportunity for parties to discuss issues that aren't legal issues, but are affecting the case. It's a safe forum. [bar attorney]
- It lets everyone state their point of view and be heard. It lets parents feel like they're part of the process. Parents work out their grievance rather than court. [bar attorney]
- It's non-adversarial. In an adversarial setting, some clients shut down and can't see reason. [bar attorney]
- Hearing everyone express how they see the situation. I like the caucus with just family members. It allows them to speak more openly to each other. It's less threatening. [public defender]

The three biggest items the attorneys dislike are the length of time spent in mediation, people arriving late for mediation, and emotional or long-winded parties. The first two were the most common responses, and have been long-standing issues that the program has been working to resolve.

- When the agreement being reached glosses over the big stuff because we can only reach agreement on the small stuff. It's not satisfying to have an agreement that doesn't deal with the big issues at hand; it should acknowledge the lack of agreement on major issues. [GAL]
- Too much time. It tends to drag on. Sitting through facts of the case when you already know the case is frustrating. [GAL]
- I'm bothered that minors don't come to mediation.



I would like to know why. Older minors should be included. When parties talk on and on and no one feels like they should shut them up. Cases in which people are late – that's really aggravating. There should be a strict time limit that all parties need to be aware of. [GAL]

- The drama. It makes it inefficient. Also, summarizing everything that's said. [GAL]
- It never starts on time – always waiting on other parties. [GAL]
- It takes a long time to cut through the core issues. [bar attorney]
- Wasted time in conversation – people don't stick to the topic and say same things over and over. [public defender]
- That so many parties are involved – some of whom are not necessary. If the conflict is between two parties, other parties can impede the process. Narrow mediation to people who are integral to conflict. [public defender]
- The lack of teeth. Also, mediators allow some people to go on too long and get verbally abusive – they let them have too much leeway. [public defender]
- When the mediators repeat what others say – it lengthens time. [public defender]

How Worthwhile Was Mediation?

All attorneys interviewed were asked whether the mediations they participated in were worthwhile. Of the 30 who had participated in mediation, twelve (40%) said the mediations were very worthwhile. Another six said they were somewhat worthwhile. Two said it was a complete waste of time. The other ten responded with greater nuance, rating mediation differently based on what happened in mediation.

The attorneys' reasons for finding mediation to be very worthwhile echo their likes about participating:

- We usually reach agreement, but I always get a different perspective, learn more about the parties. [GAL]
- People understanding other people, understanding time limitations. [GAL]
- It made things a lot easier to deal with all involved – when mediation worked. [GAL]
- It moves the case along, gets the case closed. It

helps the kids and helps the parents to get services. [bar attorney]

- If issues are aired out, then it's very helpful. [bar attorney]
- I found it to be beneficial. In four of six cases we reached agreement that everyone could live with and allowed children to come home. Mediation helped achieve that goal because it helped to find common ground. [bar attorney]
- It gets out understanding, clears up inaccuracies, so you don't have to haggle in front of the judge. It makes the case more efficient because the parties can do what needs to be done before going to court. [public defender]

Those who saw the benefit to mediation, but were less enthusiastic, said:

- Even when it failed [to reach agreement], it got parties talking and gave clients an idea of what's possible in the case. It's not as useful for changing others' positions, but is useful for finding out what their positions are. [public defender]
- Mediator can't solve all problems, but they can chip away at outstanding and significant issues. But the amount of time makes it seem like you're not accomplishing a lot for the time spent. I don't feel my presence is always needed, especially when the issue is relatives. [public defender]
- It gave parents and grandparents a forum to speak, to get their point of view across and see that people cared what they thought. [Assistant State's Attorney]

Those who rated mediation differently based on what happened in mediation had this to say:

- It's either very worthwhile or not enough accomplished for amount of time spent. It's worthwhile if parties get a lot out of it. When the mediators connect better with the parties and push the flow it gets more efficient. This makes a huge difference. When things don't move forward, mediation is not worthwhile. [GAL]
- All mediations have been different. It's worthwhile if you learn something new or confirms what you know about the case. It's a waste of time when parties arrive at mediation without being open to it. [GAL]



- It made things a lot easier to work with all involved when mediation worked. When it didn't work, it didn't help at all – it confused things more. [GAL]
- If you made real progress and did good, then mediation was very worthwhile. If there was no compromise between people you can feel like you didn't accomplish much. [bar attorney]
- Depends on what the issues are. It can be very worthwhile or a colossal waste of time. The difference is whether understanding was reached. [bar attorney]
- If mediation is successful – by the end there's been steps forward and movement in right direction – then it's very worthwhile. If it's not helpful except to get to know what people were like, then not enough was accomplished. [Assistant State's Attorney]

The two who thought that mediation was a complete waste of time said:

- I attended a couple of mediations when the program started and thought they were complete waste of time. I swore I'd never go back. I've heard better things since, so I'm open to changing my opinion. [public defender]
- In both cases, the parties were totally entrenched, so it didn't work. It was already predetermined what they wanted – nothing changed. So, mediation dragged the case on a little more. I have two cases going to mediation now that I have high hopes for. [GAL]

Impact of the Mediation Program on the System

Most attorneys said the program somewhat improves the child protection system, while five said it greatly improves it and three said it has no impact on the system. Three did not know.

Those who said mediation greatly improves the system were more likely to see it as having a more universal role within the system, while those who said it somewhat improves the system see it as beneficial for some cases or in certain situations. A few who answered in this way felt that because mediation is not used for most cases, it cannot have a significant impact on the system. Of those who answered that it has no impact on the

system, two said it did not have an impact because it was little used. The other said it did not add anything to the system and that all issues can be dealt with through other venues.

Greatly improves the system:

- It has the potential to improve it even more by getting cases earlier, by getting mental health professionals on staff (to deal with blowups and to identify parties not capable of mediating), and by increasing communications with professionals. They should define capabilities and limits of process. [GAL]
- Technically, it's not supposed to be adversarial – mediation gives a venue to work together to all be advocates for the child. [GAL]
- Limited because there are so few cases that get to go to mediation. [bar attorney]

Somewhat improves the system:

Leads to resolutions:

- It gives close call cases an appropriate forum. It's good for cases that can be resolved just by getting everyone together. [GAL]
- If the resolution really benefits all parties and makes a better permanency situation, then it's good. [GAL]

Provides options court cannot give:

- It complements the system. It could replace court family conference. The warm and fuzzy stuff could be done downstairs as well. [GAL]
- Because it fills in some holes in the system where judges can't intervene and workers are too close to the problem or are part of the problem. [bar attorney]
- It's a unique forum where my clients can say things without legal ramifications and a place where you can improve relationships for the child's sake. [public defender]
- It allows for a case to be totally opened up and can address issues that can't be addressed in court. It hammers out issues that are negatively affecting kids and parents. [public defender]

It frees up resources:

- Some co-workers had success. If there are instances in which it can deal with issues outside court, it will free up court resources for other cases. [GAL]



- Mediation has its value. Many cases can be diverted to free up time for courts. [bar attorney]

It reduces conflict:

- It's an opportunity to air grievances and differences, and to view the other party in a less antagonistic way. It engenders respect for the opposing position. [bar attorney]

Does not occur often enough to have larger impact:

- It can bring parties together. It happens too infrequently to improve it greatly. [GAL]
- Because a lot of times it doesn't resolve problems. [Assistant State's Attorney]
- I have had 73 cases and have used the mediation program three times – I would like to use it more... [public defender]
- A minority of cases are involved in mediation, so it can't have a great impact. [Assistant State's Attorney]

No impact on the system:

- I have never heard it mentioned in the courtroom, so it appears that it's not a big part of system. There's a missing link between mediation and the courtroom. [GAL]
- It can't resolve issues or the case already went through avenues that can resolve them. [GAL]
- Some good probably has come out of it. [public defender]

Session Length and Number

When asked the question of what the ideal session length is, attorneys gave responses of one to four hours, with most staying in the middle of this range. The attorneys were also asked whether one long session or multiple shorter ones was preferable. All but one person stated that multiple sessions are better than one long session. Indeed, many stated that multiple sessions are an asset in themselves. They see them as a way to follow up on mediated agreements or to continue working through conflict.

Mediation Facility

Attorneys were asked to rank the facility in three areas – comfort, security and privacy – on a level of 1 to 5, with one being poor and 5 being excellent. They for the most part gave higher than average ranks to the facilities in all three categories, with privacy receiving the lowest

ranking.

For comfort, nine attorneys gave the facilities a 5, nine gave them a 4, and six gave them a 3. None ranked the facilities below a 3. In general, the attorneys said that the facilities are fine, pleasant, and clean. Aside from one complaint about uncomfortable seats, and two statements about its drabness, the attorneys had no negative reactions to the comfort of the facility.

For security, eleven attorneys gave the facilities a 5, six ranked them a 4, three gave them a 3, and two gave them a 2. The comments about the security of the facility were mixed. Most have no security concerns. A couple said they had wondered what would happen if security became an issue in a mediation, while one reported feeling insecure at a mediation in which a parent had a history of belligerent and violent outbursts. This attorney did not inform the mediators of her feeling of unease and the parent did not act out in the mediation. Another attorney said she would like to have an armed guard in the mediation area at the time mediation takes place.

The privacy of the facilities received the lowest marks, but still had above average ratings overall. Eight attorneys ranked the facilities a 5 in this category, eight ranked them a 4, five gave them a 3, and two ranked them a 2.

Privacy also received more negative comments than the other two categories. The attorneys mentioned people walking in and out of the mediation area; the fact that staff sit in the same room as the mediation; that they could not know who could be standing around listening; and that they would prefer an enclosed space, such as a conference room. One said that if she was a parent, she'd be wondering who was listening in.

INTERVIEWEE RECOMMENDATIONS

There were three general areas in which judges, hearing officers and attorneys made recommendations: information on the program and the process, marketing of the program, and procedural changes. Judges tended to focus most on marketing and information, while hearing officers gave recommendations solely on procedural issues. Attorneys provided recommendations both for procedural changes and information dissemination.



Judge Recommendations

Most of the judges' recommendations revolved around getting information out to the stakeholders, either for marketing purposes, or to further educate them regarding the process. Other recommendations focused on improving the process.

On the marketing side, the judges had these recommendations:

- Have a mediation coordinator sit in the courtroom in order to remind the stakeholders of the program.
- Market more to the judges and attorneys.
- Make presentations every six months to public defenders, GALs, and Assistant State's Attorneys.
- Work with stakeholders to keep mediation in front of them and trigger them to mediate.
- Educate the lawyers to get them to see the value of mediation.

On the education side, the judges recommended:

- Doing presentations to show circumstances in which mediation has worked, but would not normally be considered.
- Providing a better understanding of what goes on in mediation – perhaps by allowing judges to sit in on a mediation for a case that is not theirs, or having a mini-seminar on the mediation process.
- Providing more information on the number of cases the mediation program can handle and the kinds of cases that can be mediated, including what has and what has not been working.
- Meeting with judges once a year to go over the program, updates and reminders to refer to mediation, and have them see the space and visualize what happens there. Perhaps show a simulated mediation.

Some of these recommendations have been addressed by the actions taken by mediation program staff since these interviews were conducted. The staff created a benchbook, which was distributed to all judges and hearing officers. The benchbook includes information on the types of cases that are best suited to mediation as well as case studies of how mediation benefited particular cases. In the past, staff have conducted orientations for bar attorneys, public defenders, guardian ad litem, and

Assistant State's Attorneys, and they continue to do so. The Program Director meets annually with the judges as well, and when time permits, staff will sit in courtrooms to remind judges of the program.

The judges recommended the following procedural improvements:

- Really try to get the parties there. Look at the reasons why they do not show up.
- Expand the program to include issues regarding the appropriate services, private guardianship issues, and conflicts between the guardian and the child.
- Try to get earlier mediation dates.
- Would really like to see adolescents be involved in mediation.³³
- Have a sheriff or plain clothes sheriff in the room or close by for some cases.

Some of these recommendations may reflect a lack of information regarding the changes that have been made to the program since it was first established. The program has expanded its scope since it first began to include private guardianship issues and conflicts between the guardian and child; services can also be mediated when they are not the sole issue to discuss. The fact that the judges do not know this, as well as the fact that a couple of judges and hearing officers said they did not know what changes had occurred in the program, means that despite the program's efforts to keep them informed, more still can be done.

Hearing Officer Recommendations

Hearing officers focused more on procedural issues than on marketing or information. Their recommendations were:

- Hire a Latino mediator so that there is someone in the program who is culturally similar to many of the families who use the program.
- Mediate conflicts between teen wards and caseworkers.
- Mediate more cases involving teen wards in order to stabilize placements.
- Make mediation mandatory.
- Mediation should take place in the first 45 days of

33 Adolescents now regularly participate in mediation.



the case. That is when it is most beneficial.

- A more detailed referral form is needed so that everyone can be on the same page regarding the issues to be mediated.
- A formal feedback mechanism to the mediators should be created so that they can know if an agreement was followed or not.
- There should be more training of the hearing officers about mediation.
- The mediators should sit down in a variety of hearings with a variety of hearing officers and judges to get a better grasp of court procedures.
- Mediators should show greater evidence of respect for the hearing officers' important role.

Attorney Recommendations

The attorneys that made recommendations for improving the program tended to focus on two things: the process and dissemination of information. Their recommendations for process improvement are:

- Try to stick to the topic more.
- Attorneys do not need to be there.
- More follow-up to be sure the parties abide by the agreement – perhaps in a 30 minute follow up session.
- Consider shorter sessions. Limit the amount of time people who are not integral to the conflict can talk.
- Mediators should present solutions.
- Speed up the process. Lawyers should not be involved unless their absence would create serious legal ramifications for their client.
- Outsource mediators so they are not affiliated with the courts to create more of a sense of neutrality.
- Tighten it up time-wise. Caucus time can drag for parties not in caucus.
- Make an allowance for reasonable note taking.
- Have children at the mediation where appropriate [two said this].
- The mediators need to know a little more about the juvenile court process. When they understand what can and cannot be done, the mediation goes faster.
- Do not go beyond three or three and a half hours per session.
- Reject issues that are not negotiable.
- Have more pre-trial and pre-disposition

mediation. This would speed up permanency. Mediation should be mandatory at this stage.

The attorneys' recommendations for increasing the information attorneys have are:

- Provide more information on how mediation can be used. Mediators should sit in court and follow one case to learn the facts, and then let everyone know "here's where mediation would help the case." Provide a list of issues and how they have been dealt with successfully in mediation.
- Advertise the program. Market it. Have it be part of the training for new bar attorneys.
- Get out more information regarding when mediation is more appropriate.
- Increase public relations.
- Get out more information regarding the program and how it operates in the juvenile justice system.
- Attorneys need more of an idea of positive outcomes and where mediation can help.
- Get more information out about mediation.
- Have ongoing communication so everyone knows what their roles and responsibilities are – how they can help or hurt the process.





MEDIATOR INTERVIEWS

The mediators were interviewed about the process followed by the program in order to see 1) whether the process was seen to be working and 2) whether they had any suggestions for improving the process.

The focus was on the process from intake to the mediation. Overall, their views of the process were that it was working well and that although a few things could be tweaked, no big changes were necessary. One issue did appear – that it was sometimes difficult to track down the attorneys if the mediators were called to the courtroom for intake at or near the end of a court hearing. When the mediators are called late in the hearing, bar attorneys often move on to other hearings in other courtrooms. Intake and scheduling of the mediation is then more difficult and complex. When asked what judges could do to improve the intake process, the unanimous response was to better time the calls to the mediators for intake. They also asked that attorneys stick around if they can and return intake forms so that the mediators do not have to track them down.

When asked if the cases being referred to mediation were appropriate, the mediators were unanimous in saying that they were, but that there are many more cases that would be appropriate that are not being referred to mediation. Further, they believed that referrals could be made earlier in the case.

In response to what improvements could be made to the program, the mediators suggested better education of possible referrers and users of the program, such as private agencies and judges.





CHILD PROTECTION AND MEDIATION BACKGROUND

The Child Protection System in the United States

A child is brought into the child protection system when there is reason to believe that abuse or neglect has occurred. The child is taken into custody when it is believed that he is in danger from his parent or guardian due to abuse or neglect. When this happens, finding the child a safe and permanent home is the main goal of the system. This is traditionally done through a combination of court hearings, and case management of services and visitation for the natural parents and the child.

In its ideal form, the child protection system would engender a non-adversarial process in which child welfare agencies, attorneys, family members, and the court work in concert to establish a safe and permanent placement for children as quickly as possible, whether that place be with their natural parents or elsewhere, while also protecting the rights of the natural family.³⁴ A number of programs have been instituted throughout the United States in order to make this ideal a reality. Among them is the mediation of conflicts and issues arising throughout the process of establishing a safe, permanent home for the children.

Those involved in the child protection system agree that it tends to be adversarial rather than cooperative, with some noting that it must necessarily be adversarial because of its fact-finding mission.³⁵ Within this mission, the professionals³⁶ have different roles to play that often

put them at odds with one another.³⁷ Further, the system is not set up to deal with interpersonal conflicts among family members and between family members and caseworkers that can stall progress toward permanency for the children.³⁸ The adversarial context also makes it difficult for caseworkers charged with ensuring the welfare of the children to collaborate with attorneys for the state, children, and parents.³⁹

Mediation in the Child Protection Context

It was due in part to the impact of such issues on the children that the United States Department of Health and Human Services created the Court Improvement Program in 1993, which funded initiatives to enhance family preservation, assist in child abuse prevention, and to provide services to at-risk families. This program was reauthorized as part of the Adoption and Safe Families Act of 1997 (ASFA).⁴⁰

ASFA outlined three primary outcomes that the child welfare system should achieve: safety for children in care, permanency for children in care, and child and family well-being. The emphasis in these three outcomes is on maintaining the family structure while ensuring the safety of the children in a permanent home that is preferably with their natural family. The achievement of permanency for children in the state's care in the shortest possible time is a part of this emphasis.

In the context of child protection cases, mediation is a non-adversarial process facilitated by a neutral mediator (or two mediators) who encourages communication between those involved in a case while also leveling the playing field so that all have a say in the outcome.⁴¹ Those

34 Illinois Department of Children and Family Services, Best Practices, found online at <http://dcfswebresource.prairienet.org/downloads/bp/>. Last accessed July 30, 2008.

35 Shimica Gaskins, *Is It Possible to Reform a Child Welfare System? An Evaluation of the Current Progress in the District of Columbia and the Advocacy Strategies that Led to Reform*, Whittier Journal of Child & Family Advocacy 165, 179 (Fall 2005). Leonard P. Edwards, *Mediation in Child Protection Cases*, 5 Journal of the Center for Families, Children and the Courts 57, 60 (2004).

36 Professionals include the attorneys, caseworkers, therapists, and all others who work with the families within the child protection system.

37 Mary Kay Kisthardt, *Working in the Best Interest of Children: Facilitating the Collaboration of Lawyers and Social Workers in Abuse and Neglect Cases*, 30 Rutgers L. Rec. 1, 16 (2006).

38 Id.

39 Id.

40 Amended Title IV-E of the Social Security Act.

41 Allan Edward Barsky, "Child Protection Mediation" in



in attendance are generally the natural parents; the family members most involved in the child's life; the attorneys for the child, and, depending on the program, the attorney for the state; and the caseworker in charge of services and supervision of visitation (if needed). Each is given the opportunity to share his or her view on the case, as well as express any concerns about issues going forward.

Proponents of the use of mediation for these cases have argued that the process benefits families and, by extension, children. Research suggests that parents often deal with the pain of loss of custody of their children by withdrawing from them, which causes the children to feel rejected and vulnerable.⁴² The theory behind child protection mediation is that the introduction of a neutral party balances the power of the participants and changes the communication dynamic in the case. In doing so, mediation allows all those involved in the case, including the parents, to give their point of view on an equal basis.⁴³

Giving parents voice – allowing them to present their point of view, discuss their concerns, and feel that others are listening to them – has been found to involve them more in the case, reducing their feelings of isolation and powerlessness while also increasing their understanding of their treatment plan and their willingness to follow it.⁴⁴ It is argued that this in turn increases the probability of the children returning home, as well as reduces the time it takes to reach permanency. This was found to be a benefit of mediation in a study of a mediation program in Denver.⁴⁵ Further, giving parents voice can increase the amount of information available to all involved in the case, thus allowing for better decisions to be made about the families' needs and the placement of the children.⁴⁶

Mediation and Conflict Resolution in Social Work and the Human Services, edited by E. Kruk. Chicago: Nelson-Hall, 1997.

42 Thoenes, Nancy. *Child Protection Mediation: Where We Started*, 35 Family Ct. Rev. 136 (1997).

43 Bernard Mayer. *Mediation in Child Protection Cases: The Impact of Third Party Intervention on Compliance Attitudes*. 24 Mediation Quarterly 89, 92.

44 Thoenes, N. *Mediation and the Dependency Court: The Controversy and Three Courts' Experiences*, 29 Family and Conciliation Courts Review 246, 248-249 (1991).

45 Mayer, *supra* note 28.

46 Thoenes *supra* note 29 at 249.

Beyond voice and communication, mediation has been shown to successfully reduce the level of conflict among those involved in the case, particularly between the parents and foster parents and between family members and social service providers.⁴⁷ These conflicts are obstacles to progress toward permanency, as they can impede the parent from obtaining the necessary visitation hours and services required for their children to return home. Mediation is used widely as well to work through issues surrounding visitation, placement, children's services, and other areas in a more collaborative way than through the traditional path.⁴⁸ It also is used to improve case management and overview.⁴⁹ All of these improve decision-making, family experience and understanding, and reduce the time it takes to provide the children with a permanent home.

Because of these benefits, mediation has been put in place in many courts as one way to abide by ASFA. Significantly, 23 of 25 Model Courts⁵⁰ around the United States have a mediation program.⁵¹ Mediation, however, has expanded well beyond the doors of these courts. An American Bar Association survey conducted in 2004 found that the majority of jurisdictions in the United States had implemented some form of alternative dispute resolution (ADR) for child protection cases.⁵² Mediation has also been put forward as a best practice by the National Council on Juvenile and Family Court Judges.⁵³

Nevertheless, some have raised concerns about the use of mediation in these types of cases. The main concerns are that the safety of the children can be compromised through mediation agreements. Another is that the natural parents'

47 Judicial Council of California, *Court-Based Juvenile Dependency Mediation in California*, 5 (March 2003)

48 Id. See also, Thoenes *supra* note 29.

49 Thoenes *supra* note 29 at 249

50 Model Courts work with the National Council for Juvenile and Family Court Judges Permanency Planning for Children Department to develop and pilot innovations.

51 Edwards, *supra* note 20 at 63

52 National Child Welfare Resource Center on Legal and Judicial Issues, *National Court Improvement Progress Report and Catalog*, <http://www.abanet.org/abanet/child/home.cfm>. Last accessed on March 2, 2010.

53 National Council of Juvenile and Family Court Judges, *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases (November 2000)*.



rights can be violated through mediation agreements. This is of particular concern prior to adjudication (at which it is determined whether the parent has abused or neglected the child) and at the termination of parental rights stage. The fear of some is that the parents waive their right to trial if mediation is done prior to adjudication and they have not had the opportunity to defend themselves against the charges of abuse or neglect. On the other end, the objections to the mediation of the termination of parental rights are two-fold: that since this is the most difficult stage of the case, agreement is not likely to occur, as well as a certain reluctance on the part of those involved in the system to have the parents voluntarily give up their rights to their children.⁵⁴

How Mediation Is Used

Courts differ in how their mediation programs are structured. This is particularly true of the timing of the referral to mediation. In some jurisdictions, the referral to mediation is only done at or near the time of intake.⁵⁵ In others, no referral is made until the point at which a parent's rights are being terminated.⁵⁶ Other programs refer to mediation at almost all phases of the case.⁵⁷

Mediation at intake can include the wording of the petition for the state to take temporary custody. Prior to adjudication, it can also include the merits of the case in some jurisdictions.⁵⁸ Usually, however, it has been found to be successful in identifying an appropriate temporary home for the children, and in setting up services for the parents and children in the interest of expediting return home.⁵⁹

Mediation between adjudication and the determination of permanent residence for the child focuses on treatment plans, visitation, compliance with both of the above, and conflicts arising between the natural parents and the foster parents or guardian, or the natural parents and the caseworker. Mediating these issues can overcome roadblocks to the progress of the case by helping the parents to understand what they need to do in order to effect reunification and by dealing with conflicts that can delay progress toward permanency.⁶⁰ It also serves to provide all those involved in the case with more effective exchange of information.⁶¹

The outcomes of mediation of the issues surrounding termination of parental rights have been mixed. In two studies of the mediation of termination of parental rights, 40% and 60% of cases reached agreement.⁶² Of these, approximately 1/3 of parents in one study, and 3/4 of parents in the other voluntarily relinquished their rights. In the other cases, the agency either agreed to permanent custody without termination of rights or agreed to give the parents another chance at reunification. Also mediated in most of these cases is post-adoption contact between the natural parents and child, which serves to help the parents to feel more comfortable with the termination of their rights as well as to allow the child to maintain contact with her parents.

PREVIOUS STUDIES OF MEDIATION

Studies of child protection mediation programs have found that the benefits touted by proponents of mediation for these cases are real. Further, the concerns regarding mediation have proven to be unfounded. Study results show that programs have high rates of settlement, reducing the number of contested hearings; have lowered costs to the courts; have reduced time to permanency; have increased parental participation and voice; and have increased collaboration and problem-solving among professionals and parents. At the same time, the studies have found that participants believe the process safeguards the children and the rights of parents.

54 Nancy Thoennes, *Permanency Custody Mediation Lucas County Court of Common Pleas Juvenile Division* (November 2001).

55 Sophia I. Gatowski, *Mediation in Child Protection Cases: An Evaluation of the Washington, D.C. Family Court Child Protection Mediation Program*, National Council of Juvenile and Family Court Judges (April 2005).

56 See, for example, Nancy Thoennes, *Permanent Custody Mediation: Lucas County Court of Common Pleas Juvenile Division* (November 2001); Nancy Thoennes, *Hamilton County Juvenile Court: Permanent Custody Mediation* (October 2002)..

57 See Judicial Council of California, noting that mediation occurs at most stages of the case in most programs

58 Thoennes, *supra* note 27.

59 Gatowski, *supra* note 39.

60 Thoennes, *supra* note 29.

61 Barsky, *supra* note 26.

62 Thoennes 2001, *supra* note 40 and Thoennes 2002, *supra* note 40.



Settlement

Studies have found settlement rates to be universally high, no matter at what stage the case is mediated. In Michigan, permanency planning mediation in which mediation occurred at every stage in the case resulted in agreement in more than 75% of cases over a three-year period.⁶³ A study of a program in which mediation occurs early in the case in Washington, DC, had similarly high agreement rates: 93% were resolved to some extent.⁶⁴ In five programs in the California courts in which mediation occurred at every stage of the case, each site attained agreements on at least some issues in more than 90% of cases, with full agreements in 60-80% of cases. This led to lower numbers of hearings for mediated cases: 88% of mediated cases did not require a contested 6-month review hearing, compared to 53% of control.⁶⁵ A cross-site comparison of 2070 cases in ten jurisdictions in three states found that settlements rates averaged between 70% and 90%.⁶⁶ However, in the two Ohio programs that mediate termination of parental rights, resolution rates were lower, at 40% and 60%.⁶⁷ A study of a program in which mediation takes place at all stages of a case found that no case characteristics were linked to whether the case settled or not.⁶⁸ The same was found in a study of mediation in Colorado.⁶⁹ However, in a study of permanent custody mediation, cases involving physical abuse were more likely to settle.⁷⁰

63 Gary R. Anderson & Peg Whalen. *Permanency Planning Mediation Pilot Program: Evaluation Final Report*. Michigan State Court Administrative Office (June 2004). Online at courts.michigan.gov/scao/resources/publications/reports/PPMPevaluation2004.pdf.

64 Gatowski, *supra* note 39.

65 Thoennes, *supra* note 27.

66 Center for Policy Research, *Alternatives to Adjudication in Child Abuse and Neglect Cases: Final Report* (1992).

67 Thoennes 2001, *supra* note 40; Thoennes 2002, *supra* note 40.

68 Nancy Thoennes, *Dependency Mediation in the San Francisco Courts*. Center for Policy Research (March 1998). However, cases in which the perpetrator was mentally ill was less likely to settle.

69 Nancy Thoennes, *Dependency Mediation in Colorado's 4th Judicial District*. Center for Policy Research, (October 1999). Found online at http://www.centerforpolicyresearch.org/reports/elpaso_report.pdf. Last accessed on July 30, 2008

70 Thoennes, 2002, *supra* note 40.

Time to Permanency

Reduced time to permanency has also been found to be a result of mediation. It appears that this is the case no matter when the case is referred. In the study of early child protection mediation in Washington, DC, mediated cases reached adjudication, disposition, and case closure significantly more quickly than non-mediated cases: 49 days v 86 days to adjudication, 69 days from first hearing to disposition v 132 days, 7.0 months from initial hearing to case closure v 8.6 months.⁷¹ Reduced time to permanency was also found when mediation is of the termination of parental rights. In a study of such a program in Ohio, permanency was found to be achieved earlier when the case is mediated, even if it is not settled. Mediated cases that settled took 2.2 months to move from permanent custody filing to entry of agreement. Mediated cases that did not settle or in which the parent failed to appear took 3.7 months. Cases that were not mediated took 4.6 months.⁷²

Compliance

The theory that mediation will lead to greater rates of compliance with treatment plans has been less often studied than other factors. Nevertheless, those studies that have looked at it have shown a positive impact. In a study of three mediation programs (in Hartford, Connecticut; Los Angeles; and Orange County, California), it was found that participation in mediation led to greater commitment to the agreement.⁷³ In the above-mentioned study of five programs in California, mediated cases showed better compliance with treatment plans than those that did not mediate: at six months post-disposition 42% of mediated cases had complete compliance, as compared to 25% of non-mediated cases. In another study of seven programs in Michigan, full compliance 60-90 days after agreement was found in 73% of mediated cases.⁷⁴ In San Francisco, cases settled in mediation were less likely than non-mediated cases to return to court with a contested review hearing 12-24 months following the disposition hearing (11% v 28%).

71 Gatowski, *supra* note 39.

72 Thoennes, 2001, *supra* note 40..

73 Center of Policy Research, *supra* note 50

74 Anderson & Whalen, *supra* note 47.



Cost Savings

Reduced time to permanency, reduced number of hearings, and greater compliance all point to savings of court costs. Those few studies that have looked empirically at the impact of mediation on court costs have indeed found the costs to be reduced. In a child protection mediation program in Colorado the court's costs were reduced by \$637 per case, whether mediation resulted in settlement or not.⁷⁵ In the Superior Court of San Francisco, savings from mediation were estimated to be about \$2505 per case settled in mediation.⁷⁶ In Hamilton County Juvenile Court in Ohio, cost savings for settling cases through mediation were estimated to be as much as 39%.⁷⁷

Satisfaction

Parent satisfaction with mediation has been universally high in all programs studied, as represented by feelings of fairness and voice. In Washington, DC, 97% of parents who responded to exit surveys believed the mediation process was "fair".⁷⁸ In a survey of programs in Texas, 76% of parents, relatives, and children thought the process was fair, whereas 88% of non-relative participants thought so. In addition, 88% of parties felt understood, 89% felt listened to, and 88% felt all issues were equally presented.⁷⁹ In a permanency mediation program in Hamilton County, Ohio, 89% of parents who settled and 57% of parents who did not (69.6% overall) said that mediation was better than court.⁸⁰ In a similar program in another Ohio county, 68% of parents (87% of those who settled and 40% of those who did not) said mediation was better than going to court.⁸¹

Satisfaction was also high for the professionals who participated in mediation. Through interviews, studies have found that mediation leads to enhanced communication and problem-solving, as well as increased

participation of the family members in the decision-making process.⁸²

Safety of Children

The concern that mediation would not properly safeguard the children was examined in Washington, DC. The study, which randomly assigned cases to mediation or to be handled through the traditional hearing process, found that mediation in fact decreased the probability of future allegations of abuse or neglect over the two-year period following case closure. Seven percent of mediated cases returned to court with an additional petition, while 21% of cases that were not mediated returned to court after case closure.⁸³

Outcomes

Also examined in the Washington, DC, study were the permanency outcomes of mediated and non-mediated cases. This indirectly measures whether the natural parents' rights are violated: if the case ends in reunification, the overall interest of the parents in raising their children has been met. The study found that 46% of mediated and 42% of non-mediated cases resulted in reunification.⁸⁴ This demonstrates that mediation does not reduce, and may increase, the probability of reunification. Another study of dependency mediation in San Francisco found similar results: placement outcomes were no different whether they were mediated or litigated.⁸⁵

75 Thoennes, *supra* note 53.

76 Thoennes, *supra* note 52.

77 Thoennes 2002, *supra* note 40 at 65-72.

78 Gatowski, *supra* note 39.

79 Carol Nasworthy & Tracy Tarver. *Report on the Implementation of the Children's Justice Act Mediation Pilot Projects*. Center for Public Policy Dispute Resolution, The University of Texas School of Law (November 2000).

80 Thoennes 2002 *supra* note 40.

81 Thoennes 2001, *supra* note 40.

82 See, for example, Barsky *supra* note 36 at 111-134; Alan Barsky & Nico Trocme, *The Essential Aspects of Mediation in Child Protection Cases*. 290 Children and Youth Services Review 629 (1998)

83 Gatowski *supra* note 39 at 18

84 Gatowski *supra* note 39 at 15

85 Thoennes, *supra* note 52 at 23.





CHILD PROTECTION IN COOK COUNTY

Court Process for Child Protection Cases

When a child is taken into protective custody because it is believed the child is in danger from his or her parent or guardian due to abuse or neglect,⁸⁶ a petition is filed for a temporary custody hearing, which must take place within 48 hours. At this time, the child is appointed a guardian ad litem (an attorney whose role is to protect the safety and best interests of the child). The parents are appointed counsel as well. At the temporary custody hearing, two decisions are made: whether there is probable cause that abuse or neglect occurred and, if so, whether the child is in sufficient danger to be taken into custody by the state pending the result of the adjudication hearing. The adjudication hearing is to take place within 90 days of the temporary custody hearing if the state has taken custody of the child. At that hearing, the court determines whether the child has been abused or neglected by a parent or guardian. If such a determination is made, a disposition hearing is held within 30 days to decide where the child will reside while the court retains jurisdiction over the child – with the parents, or in foster care.⁸⁷ Present at the hearing are the parents and foster parents, attorneys for the parents and child, the Assistant State's Attorney, a representative of DCFS, and the caseworker. At this point, those involved in the case work together to determine what the natural parents must accomplish in order for the state to find that it is safe to relinquish custody to the parents and return the child to them. This may include the completion of parenting classes or

drug treatment programs, demonstrating good parenting during supervised visitation, and an ongoing interest in the child's welfare, among other things.

Child Protection Process

- Petition for temporary custody
- Temporary custody hearing within 48 hours
- Adjudication hearing within 90 days
- Disposition within 30 days of adjudication
- Permanency hearings start at 9 months
- Permanency at 2 years
 - return home
 - guardianship
 - adoption (termination of parental rights)

The next goal for the court is to determine where the child will permanently reside. This is decided by the judge based upon the evidence presented at a series of permanency hearings, the first of which is to take place twelve months after the temporary custody hearing. The next hearings are to take place every six months after that. During the study period, the hearing officer conducted the permanency hearings and made recommendations to the court.⁸⁸ Ideally, the entire process from temporary custody to permanent placement in a safe home should be completed

within two years.⁸⁹

The Mediation Program

The Child Protection Mediation Program began as a six-month pilot program at the beginning of 2001 under Circuit Judge Patricia M. Martin, Presiding Judge of the Child Protection Division, Circuit Court of Cook County. The program was modeled after a program successfully implemented in Santa Clara County, California, and later incorporated elements seen to be successful in other jurisdictions. When the program started, two pilot courtrooms were selected to refer cases involving neglect or dependency to mediation post-adjudication. Mediation

⁸⁶ See the glossary for definitions of these terms.

⁸⁷ This is by statute. See IL JUVENILE COURT ACT, 705 ILCS 405

⁸⁸ Hearing officers were staff attorneys whose role was to conduct permanency hearings and make recommendations regarding the permanent custody of the child. Due to a decline in the number of children in care in Cook County, as well as budget cuts, the hearing officer program was ended in 2007.

⁸⁹ DCFS Best Practices, *supra* note 1



was opened to all fourteen courtrooms when the program changed to permanent status in 2002. In 2003, referral to mediation was opened to all stages of a case, from immediately after the temporary custody hearing to post-guardianship, and all cases became eligible. However, cases involving sexual or physical abuse are to be referred only at the judge's discretion. Cases are most often referred to mediation by Child Protection Division judges; however, attorneys involved in active child protection cases also routinely request mediation, and family members and caseworkers do so as well, though rarely.

The court's goals focus on enhancing the role of the family members in the system. They include increasing the role of the natural parents in the process and outcome of the case, giving family members a sense of procedural justice and an opportunity to communicate, and increasing compliance with the plans laid out for the parents. At the same time, the program is considered a good avenue for reducing time to permanency and saving court time.

Family members experience procedural justice when they feel they have voice and respect. Voice provides parents a role in the case and helps to reduce conflict, thereby increasing parental compliance with services and visitation, and overcoming obstacles to moving the children toward a permanent home. Voice is defined as the ability to speak about one's thoughts, feelings, and concerns, and to believe that these are being listened to and taken into account by the others involved in the case. For example, a natural parent's concern that their child is not being properly cared for by the foster family is often discussed and allayed at mediation. This reduces conflict between the natural and foster parents, and increases the probability that visitation will occur.

The mediation program is housed in the courthouse, but on a different floor from the courtrooms. This location is meant to be convenient to those attending mediation, while also separating it from the formality and influence of the courtrooms. The atmosphere is intended to be more relaxed and comfortable than that of the courtrooms, including the provision of refreshments, and emphasis is placed on separating the mediation area from the idea of the "court" in the minds of family members. The staff makes every effort to treat family members in the same way as the lawyers

and caseworkers.

During the evaluation period, four staff mediators (and at times the Program Director) did intake of cases and conducted all mediations. Three of the staff mediators were lawyers who had extensive mediation experience prior to coming to the program. The fourth, hired six weeks after the evaluation began, was a social worker who had more than a decade of experience in child welfare. All had been trained in facilitative mediation by the Center for Conflict Resolution (CCR) in Chicago.⁹⁰ The program director was a supervisor in the office of the Cook County Public Guardian before accepting her position in the program and had also been trained by CCR.⁹¹ She had been with the program for one year when the evaluation period began.

The Process

Referral to Mediation

At the time of the study, Circuit Court Rule 19A.19 stated that mediation could be referred for any neglect or dependency case both pre- and post-adjudication. Abuse cases could be referred to mediation at the judge's discretion as well. The rule also stated that "the mediation program focuses on issues of return home, visitation, placement stabilization, and any issues that are barriers to permanence."⁹² In practice, these were the issues most

90 CCR's training at the time was 32 hours and provided participants the opportunity to mediate in three coached simulated mediations in which experienced mediators provided feedback to the trainees.

91 In Cook County, the Public Guardian serves as attorney and guardian ad litem for all children in child protection cases.

92 Rule 19A.19 was amended in July 2006 to comply with Illinois Supreme Court Rule 905. It currently states: **(i) Actions eligible for referral to mediation.**

(a) All cases involving the custody of children initiated under article II of the Juvenile Court Act of 1987 are eligible for mediation at any stage of the Child Protection proceeding. The mediation program focuses on issues pertaining to temporary or permanent custody and visitation. Any matter or conflict that may be delaying or impeding visitation or any custody determination is appropriate for mediation. Mediation will be provided unless the court determines an impediment to mediation exists. Hearing Officers, attorneys, social workers, CASA volunteers, family members, or any other individual involved in the case may request that the case be referred to mediation. The Court may also refer cases to mediation *sua sponte* and over any party's objection.

(b) Cases involving issues of visitation or the custody of a child that are initiated under articles III and IV of Juvenile



often referred for mediation.

Referral to mediation requires a court order. The order can arise through various avenues. The judge can decide individually to send the case to mediation. Additionally, the hearing officer in a case can recommend that the judge order the parties to participate in mediation. Anyone involved in a case can request that the judge order mediation as well. This includes the attorneys, assigned social workers, case professionals, CASA (Court Appointed Special Advocate) volunteers who work with a single case at a time to help make sure the child's best interests are served, and the family members. The judge makes the final decision as to whether to send the case to mediation. The judge can order mediation without the consent of the parties; however, in practice, judges report listening to reasons for objections to the referrals and at times granting motions to set aside the order.⁹³

When a referral to mediation is made, the mediators are paged to come to the courtroom to conduct intake with all parties that are present. Those present complete intake forms with information on the case, including contact information for each party, the issues to be discussed at mediation, visitation information, and the existence of an order of protection, if one is in place. The date of the mediation is agreed upon at that time as well. Mediation takes place before the next hearing date whenever possible.

Prior to the mediation date, the mediators send out confirmation letters to the expected participants that include a brochure explaining the mediation process. They also call each of the participants the day before the mediation to confirm that they will be attending the mediation.

Court Act of 1987, the Uniform Child Custody Jurisdiction and Enforcement Act, and guardianship matters involving a minor under article XI of the Probate Act of 1975 are also eligible for referral to the Child Protection Mediation Program at any stage of the proceeding. Any matter or conflict that may be delaying or impeding visitation or any custody determination is appropriate for mediation. Mediation will be provided unless the court determines an impediment to mediation exists.

93 In 2010, the court began mandating mediation for all cases just after the temporary custody hearing.

On occasion, the judge may call the program to conduct mediation on an emergency basis. In these cases, the mediation takes place that day to resolve issues that have flared to a point that makes immediate resolution necessary.

Who Participates?

Practically anyone involved in the case or with the family can participate in mediation. The number of participants can number from two to twenty or more depending on the issues being mediated and the number of support people family members bring. For purposes of compliance reporting, the mediation program distinguishes between those ordered to participate and those who come voluntarily. The court's order to mediate lists those who are required to participate in the mediation. Those ordered to mediate typically include the natural parents, their attorneys, the guardian ad litem (GAL), the caseworker, and the foster parents. The Assistant State's Attorney is also generally ordered to mediate; however, by court rule, Assistant State's Attorneys are permitted to waive participation and usually do.⁹⁴ At times, DCFS regional counsel will be ordered to participate as well. Any person ordered to mediate who does not attend may be sanctioned by the court, although this does not generally happen. All those ordered to participate in mediation are required to make a good faith effort to resolve the issues specified in the order.

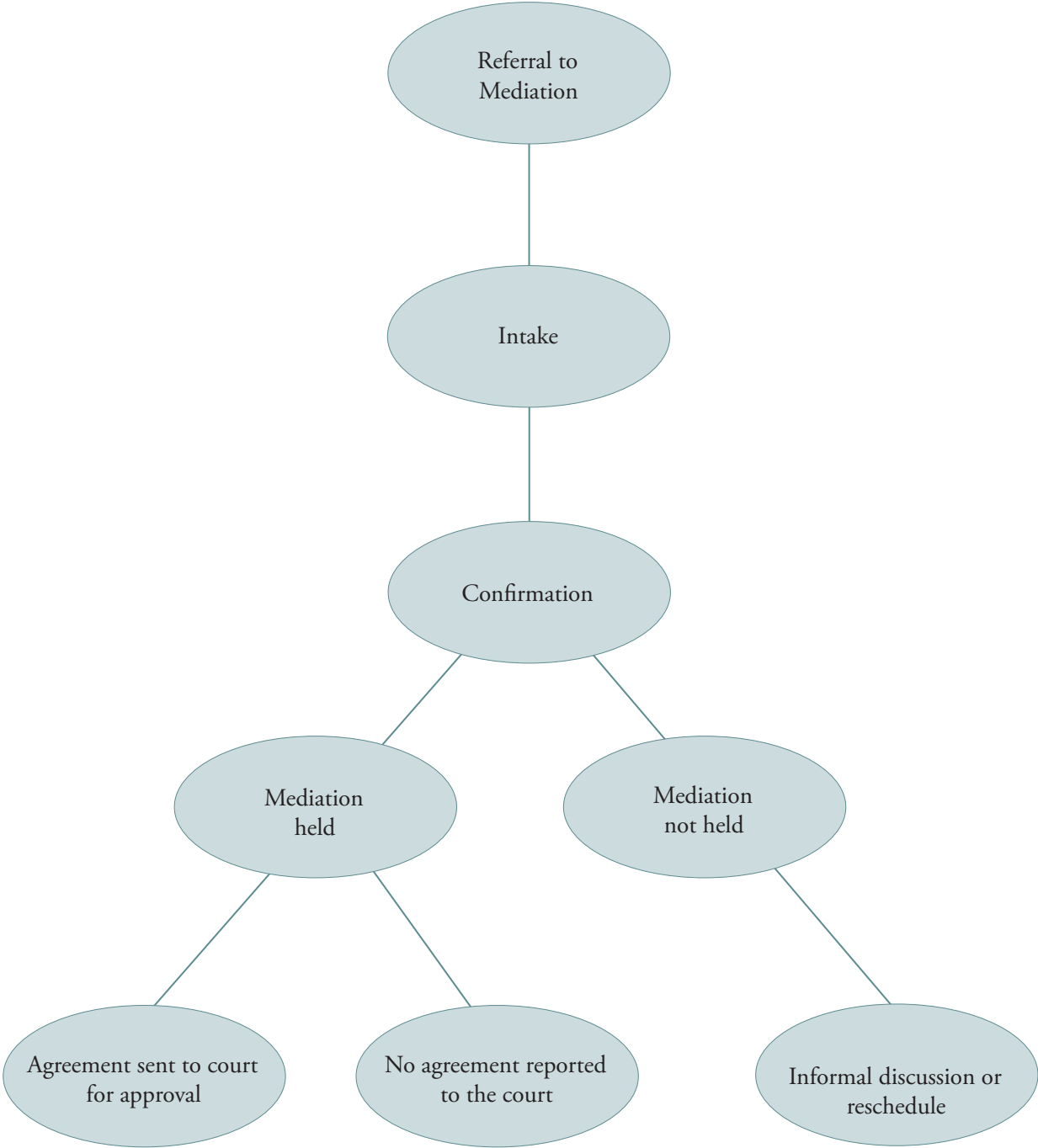
In addition to those ordered to mediate, parents and foster parents are encouraged to bring support people with them to the mediation. These have been relatives, family friends, pastors, and addiction recovery coaches. CASAs, therapists and others who have a perspective on the parents or children also routinely participate.

Older children may participate in the mediation as well if program mediators determine that their participation is appropriate and with the consent of their attorney. At the time of the evaluation, children who do not participate were often interviewed by the mediators prior to the mediation to give the mediators a better understanding of the child's view when facilitating the discussion. This

94 To waive participation, the Assistant State's Attorney signs a document stating that he or she will accept any agreement that may be reached in mediation.



MEDIATION PROCESS FLOW





is no longer done because program staff believed that mediators could be seen as advocating for the children if they brought up their interests during the mediation. However, children are currently more likely to participate in mediation than they were during the evaluation period.

Because of the nature of the court system, in which public defenders and GALs are appointed to a particular courtroom, many of the professionals who participate in mediation do so repeatedly. Those assigned to courtrooms in which many referrals are made participate regularly in mediation and in some cases have forged professional relationships with the mediators.

The Mediation

The program uses a facilitative co-mediation model. In this model, two mediators facilitate the conversation, with one acting as the lead.⁹⁵ The two mediators focus on bringing to light the underlying needs and interests of the parties in order to enhance understanding among them. They do not provide an evaluation of the case, but help the parties to educate each other and do their own evaluation. Mediation is particularly useful in assisting public defenders and bar attorneys to provide a realistic picture of the case to their clients and helping GALs to inform foster parents about what is happening in the case.⁹⁶ Most of all, mediation provides a forum for discussion and communication that can go beyond the legal issues involved in the case, to explore the emotions that bringing a family into the system engenders. These benefits can in turn engender other benefits to the court and the families. In some cases, it can reduce the number of issues brought out in hearings. It also can make hearings less contentious as the emotional issues are dealt with in mediation and not the courtroom.

The mediation process begins with an opening statement during which the lead mediator explains the mediation process and goals to the parties, attorneys, and other participants. The mediators then have each party sign an

agreement to mediate (see Appendix B), which outlines the rules of the mediation and the rights of the participants. Next, each participant in the mediation presents the issues he or she would like to discuss.⁹⁷ This begins with the family members, then proceeds to the caseworkers and therapists, and ends with the attorneys.⁹⁸ At the end of the round of party statements, the mediators identify and narrow the issues to be discussed. The mediators then facilitate a discussion of those issues among the participants.

Generally, the mediators will speak with smaller groupings privately. This most often is done when there are conflicts between family members (for example, visitation issues between the foster parents and the parents) that the mediators feel are best addressed without lawyers or case managers present. At these times, the mediators offer the professionals the opportunity to leave the mediation area so they can get other work done, and discussion is facilitated between the family members alone.

Mediation sessions generally last about two hours, although sessions as long as five hours take place on occasion. The majority of mediations are completed in one session; however, in many others the participants and mediators agree to return for further sessions to continue discussion of those issues not resolved in the first session. In other cases, the mediators, or the participants themselves, suggest that the parties return at a later date to follow up on how well the agreement is working, or to discuss changes in the family members' situation. Follow up sessions may be added for as long as the participants and mediators feel it is helpful to meet. These return sessions are often shorter than the initial ones.⁹⁹ The court, too, will sometimes refer the same case more than one time to mediation as new issues arise.

To maintain neutrality, a mediator who is not involved in the case welcomes all the parties to the mediation area

95 In a study of a Washington DC mediation program, it was found that cases that used a co-mediator were more likely to reach full agreement than those that used a single mediator. See Gatowski, *supra* note 39, at 16.

96 Bar attorneys are private attorneys paid by the court to represent natural parents during the time in which their children are in the child protection system.

97 In return sessions, the parties are asked if they would like to go over and discuss the points of the agreement reached in the previous session, or if they would like to proceed with these initial statements.

98 At the beginning of the evaluation period, this sequence was in reverse: attorneys spoke first, then the social workers, and then the family members. This was changed early on in order to put the family members at the center of the process.

99 See p. 44 for further discussion of multi-session mediations.



and keeps them updated if there is a delay in the start of the mediation (generally due to a party arriving late). That same mediator then assists the parties after mediation. This reduces the possibility of participants attempting to discuss what happened in mediation with the mediators, thus eroding the sense of neutrality of the mediator. As the director said, the mediators do not want the last thing the participants hear to be “I’m sorry, but I can’t talk with you.”

Informal Discussion

If a party does not appear for the mediation, the mediators confer with those present about whether to continue with the mediation, to discuss some issues informally, or simply to leave. Mediation is not suggested if a party who is integral to the issue at hand is missing, but may proceed in other cases in which all parties necessary to the discussion of at least some of the issues are present. For example, in cases involving two or more parents, mediation may proceed for the issues relating to the parents who are present, but not for the issues relating to those who are not.

Informal discussions are conducted in a similar manner to mediations, but with an eye toward enhancing communication among the parties and problem-solving and not on reaching resolution on the issues. They are generally shorter than mediation. If the parties agree that it would be helpful, mediation may be rescheduled for a later date as well.

Post-Mediation

In any mediation in which an agreement is reached, the agreement is reduced to writing, signed by all present, and taken to the referring courtroom for the judge to review and approve. Approval is based upon whether the agreement is in the children’s best interest, whether it protects their safety, and whether it is statutorily compliant. Once approved, the judge enters the agreement as a court order.

Mediators complete reports for the court for each scheduled mediation (see Appendix C). If mediation is not held, this is reported along with the reason and any possible rescheduled date. If mediation is held, the mediators inform the court of who participated and what the outcome was.



THE STUDY

The evaluation looked at both the process followed by the program and the outcomes of the program. The process followed by the program is the entire set of activities from deciding which cases to send to mediation to the report on the mediations after each session. The interest in studying the process was two-fold: to see if the process was what the court and program intended it to be and to see if there were any issues with the process that could affect the effectiveness of the program. This aspect of the program was examined through case files; participant questionnaires, mediator reports; and interviews with judges, lawyers, and mediators.

The main purpose of looking at outcomes is to determine whether goals are being achieved, intended impacts are being effected, and participant experience is positive. These were examined through case files, interviews, and evaluation forms.

METHODOLOGY

The program was studied for the period April 1, 2004 through March 31, 2005. For purposes of the study, mediations were included if they began during the study period regardless of whether any sessions were completed after the study period. Prior to the study period, the evaluator observed mediations and worked with the program to create evaluation instruments that reflected both the program and its goals. The instruments were tested during the first three months of 2004. During that time mediations were observed and participants were interviewed regarding their understanding of the questionnaires and the responses they gave on them.

Several methods were used to gather data:

- Case files
- Mediator reports
- Mediator questionnaires
- Participant questionnaires
- Interviews with participating natural and foster parents

- Interviews with caseworkers
- Interviews with other stakeholders: judges, hearing officers, and attorneys

Case Files

Case files were used to gather background information on the cases referred to mediation. Information from case dockets for cases referred to mediation was gathered through online files and entered into the study database.

Statistics regarding referrals to mediation were gathered for mediations conducted during the study period. This means that the referrals do not completely coincide with the mediations conducted. Because some referrals do not result in mediation, it was decided to separate the referrals from the mediations and examine each for the study period only. Therefore, the orders to mediate did not completely coincide with the mediations conducted during the study period as some mediations during the study were the result of referrals made prior to the study period and some referrals made during the study period resulted in mediations that occurred after the study period ended.

Post-Mediation Questionnaires

Questionnaires were distributed to all mediation participants at the end of each session (see Appendix C). Minors, family members, and professionals each had separate questionnaires, although many of the questions overlapped. Participants completed them at the mediation table and placed them in a folder in the middle of the table. The folder was then placed in the mediation file for later entry by program administrative staff into the evaluation database. These were not shared with the court.

If mediation continued to another session, the questionnaires were distributed again for completion by the participants and the previous set of questionnaires was removed from the file. The decision to have the parties complete the questionnaires at the end of each session but to include only those from the last session was made



because the program feared that data would be lost from those mediations in which a scheduled session was later cancelled. Keeping the forms from every session of a mediation would skew the data toward multi-session mediations.

Family Members

Over the course of the study period, 375 of 397 family members (95%) who participated in mediation responded to post-mediation questionnaires in 160 cases.¹⁰⁰ Natural mothers and fathers made up 41% of those who responded, with mothers comprising a quarter of family member respondents. Foster parents made up another third of those who responded, and another 13% were grandparents, stepparents, and godparents. Fourteen percent marked “other”.

Professionals

Over the course of the study period, 559 of 748 professionals (75%) who participated in mediation responded to post-mediation questionnaires. Just over a third (191) were case workers and their supervisors. Private agency caseworkers were by far the most represented within this group, with 107 respondents. Attorneys for the parents comprised a quarter of all respondents. These were evenly split between bar attorneys and public defenders. Almost another quarter (23%) of respondents were GALs. Others who responded were CASAs (5%), therapists (4%), Assistant State’s Attorneys (1%), DCFS attorneys (1%) and 37 who marked “other” (7%).

Many of these participated in more than one mediation during the study period. It was not possible to determine which responses were from those who had previously completed questionnaires for other cases. However, analysis was conducted to determine if there was any correlation between the number of times someone had participated in mediation and their responses.¹⁰¹ None was found, pointing to no skewing of the responses due to repeated responses by particular individuals.

¹⁰⁰ Five mediations were completed after the study date and were therefore not included in the questionnaire data.

¹⁰¹ Ordinal regression was done, showing a non-significant positive correlation between the number of prior mediations and a series of measures of satisfaction with the mediation. See Appendix E for specifics.

Mediator Reports and Questionnaires

The lead mediator completed a report and assessment of the case after each mediation session. If mediation continued to another session, the initial reports were replaced with ones that corresponded with the later session. This process was followed in order to have accurate information about what happened in the mediation; however, it did not allow for tracking of the number of times that mediations had to be rescheduled because an essential party did not appear at the scheduled time. Mediator reports were delivered to the judge presiding in the case, with a copy kept to be entered into the evaluation database. Mediator-completed assessments were left in the mediation file for later entry into the database. These were not shared with the court.

Interviews

Interviews were conducted with program stakeholders, and were divided into two categories: 1) family members and caseworkers who participated in mediation, and 2) judges, hearing officers and attorneys, who were commonly the sources of referral and, in the attorneys’ case, possible participants in mediation. Family members and caseworkers were treated separately because their role in the system differs from the others.

Family members – both natural and foster – are the mediation program’s primary clients. Whether mediation is working for them and providing what is intended is the key to whether it is a worthwhile and viable program. In many ways, their responses to the interviews are the most important in the evaluation.

Caseworkers have a unique perspective on the program, being both a part of the child protective system and courtroom outsiders. Their perspective on their experience is of great value to the program in determining how it is serving all constituents.

Judges and hearing officers are the largest source of referrals; therefore, their perspective is of great importance to the program. Further, their insight into the program as stakeholders with an interest in positive program performance can provide valuable feedback regarding how well the program is doing.

Attorneys, too, are important for their ability to request



referral to mediation and object to orders to mediate. Therefore, even those who had not participated in mediation were interviewed to determine their sense of mediation and their knowledge of the program. Further, those who have participated in mediation can provide insightful feedback regarding the program.

Methodology

The interviews were organized by the role each group plays, with judges and hearing officers being asked similar questions, while attorneys, family members and private agency caseworkers were each asked different sets of questions (See Appendix D for the interview protocols). All the interviewees in each grouping were asked the same initial set of questions; however, individualized follow-up questions were asked to elucidate and expand upon the original responses.

Interview of Family Members and Caseworkers

The difficult logistics of trying to contact family members and caseworkers who participated in mediation led to the decision to interview them in person directly after the mediation took place. Because caseworkers function outside the court system, their interviews were similar to those of family members, rather than to those of attorneys, who work within the system.

For each interview conducted with participants, the evaluator first observed the mediation in order to understand the context in which the interviewees were responding to questions. To observe the mediations, the evaluator was introduced to the participants, with the explanation that an evaluation was being conducted of the mediation program, and that the evaluator was bound by the court's confidentiality rules. The participants were then asked if they agreed to proceed with the mediation with the evaluator in the room. Once the participants agreed (in no instance was there an objection), the evaluator explained the purpose of the observation and that she would select participants to interview at the end of the mediation, as long as the participants agreed. The evaluator then selected who would be interviewed based on rotation between natural parents, foster parents, and caseworkers. Eleven natural parents,¹⁰² ten foster parents

and guardians,¹⁰³ and ten caseworkers were interviewed after observations of 20 mediations and one informal discussion. The interviews ranged from twenty minutes to an hour. All but one took place in person directly after mediation. One caseworker was interviewed by phone three weeks after mediation – the first time she was available.

The interviews took place in March and April of 2005.

Interview of Judges and Hearing Officers

It was decided that, as the primary source of referrals, all sixteen judges and sixteen hearing officers should be interviewed. Not all, however, were available at the time the interviews took place. In the end 11 judges and 14 hearing officers were interviewed. Most were interviewed in person, with two hearing officers being interviewed over the phone. The interviews ranged from 25 to 75 minutes.

The interviews took place from May through September 2004.

Interview of Attorneys

Attorneys involved in the child protection system were randomly selected to be interviewed for this evaluation regardless of whether they had participated in the program. Thirteen guardians ad litem (GALs), nine public defenders, and nine bar attorneys were interviewed.¹⁰⁴ Five Assistant State's Attorneys were also interviewed for this study.

Most of the interviews were conducted by phone, with a few being done in person. The interviews ranged from

103 Nine foster parents and one guardian were interviewed. All but one were women.

104 Twenty-eight guardians ad litem were called to get the thirteen responses. Four scheduled times for interviews, but were not in their office at the scheduled time, and did not return later calls. The other eleven did not return calls to schedule interviews. This low rate of response means that those interviewed were not necessarily a representative sample. Ten public defenders were called to get the nine responses. One did not return repeated calls. Sixteen bar attorneys were called to get the nine responses. One was no longer a bar attorney, three were no longer accessible at the number given, and three did not return repeated calls. The high rate of response for both public defenders and bar attorneys means that those interviewed do represent a representative sample.

102 Six fathers and five mothers were interviewed.



25 minutes to an hour and a half. The interviews of the GALs took place from June to September 2004, while the interviews of public defenders and bar attorneys took place over several months beginning in November 2004.

Mediator Interviews

The four program mediators were interviewed to get their views on the process from intake to post-mediation reporting. The mediators were interviewed in their offices. The interviews lasted approximately 20 minutes. The questions focused on whether the process was functioning well and allowing them to effectively conduct mediations.

Limitations of the Study

In order to increase the probability that questionnaires would be completed and returned, the study design called for the participants to complete the questionnaires at the end of each mediation session and place them in a folder on the mediation table. This could effect the responses three ways. First, for those who had participated in more than one session, they may have tired of responding to the same questions, leading either to automatic responses or to lowered rate of or shorter responses to the open-ended questions. Second, the participants may have felt compelled to respond more positively because of the possibility of the mediators reading their responses. Third, they may have responded more positively than they would later on because of a post-mediation “high” and because they had not yet seen the agreements play out.

ADDENDUM





ADDENDUM

Since the evaluation was conducted, Judge Martin and mediation program staff have instituted a number of changes that addressed some of the areas for improvement identified in the interim report, as well as changes they felt would improve services to the family.

Information

The interim report included the following recommendations for enhancing information to referrers and mediation participants, which have been addressed:

1. That the judges have the opportunity to observe a mediation in order to better understand what happens in the sessions. The program now provides this opportunity.
2. That the program conduct a seminar for attorneys on how to best advocate for their clients in mediation. The program has now conducted a few of these seminars.
3. That the program encourage attorneys and judges to contact them if they are unsure whether a case is appropriate for mediation. The program does currently do this, and staff receive calls regularly to discuss the appropriateness of mediation for particular cases.
4. That the program develop some case studies in which mediation has worked well for atypical situations. This has now been done. Staff wrote an 11-page document detailing scenarios in which judges and attorneys would not generally consider mediation, but for which mediation was successful.
5. That program staff meet individually with judges on a regular basis to talk about the program and referrals. This is happening. The Program Director meets with the judges every 12 to 18 months. She also tries to have staff in the courtrooms to remind the judges about referring cases to mediation.
6. That the program pursue its interest in developing an informative video to play outside of each courtroom throughout the day. This video has been completed.

Security

Security during mediation sessions had been a concern of some of the professionals who were interviewed. These concerns were reported in the interim report. Since then, the program has installed panic buttons in each mediation room. These buttons are connected to the sheriff's office on the 8th floor of the courthouse.

Another noted security concern was that there was no system set in place to know if someone might be a security threat beyond asking if an order of protection has been issued. The staff has since been trained in testing for domestic violence. The program now tests for domestic violence whenever there will be two parents in attendance at the mediations. This is done in all instances, including cases in which there is no known history of domestic violence or in which the parents are no longer together.

Privacy

It was recommended in the interim report that privacy be increased in the mediation area, so that those participating feel that their conversation is not being overheard. Since then, the program has obtained more space and, with that space, has been able to create private mediation rooms.

Process

Timing of Referral

When the evaluation was conducted, mediation was ordered when the judge deemed appropriate. In practice, judges tended to refer cases later in the case, more than two years after the children had been taken into custody. In 2010, the court instituted mandatory early mediation for all cases in which the children are taken into custody. Mediation now occurs just after the temporary custody hearing. This provides an avenue for setting up services for the children and their natural parents, and for identifying family members who are willing to care for the children.

Participants

At the time of the evaluation, the program generally did not include children in mediation. This has since changed.



The program now does encourage minors to participate. There is no age cutoff, but generally children 15 and older participate. The mediators always meet with them before the mediation starts. They talk about a sign they can give the mediators if they begin to feel uncomfortable. When a child participates, the co-mediator (the second chair) is focused on that child throughout the session. The child sometimes asks to sit next to the co-mediator. The mediators strive not to reduce neutrality to help the child, but do work to make them comfortable.

APPENDICES



APPENDIX A



GLOSSARY





GLOSSARY OF TERMS

CASE TYPES

Abuse Cases: those which involve an allegation of physical, sexual, or emotional abuse of a child. “The mistreatment must cause injury or must put the child at risk of physical injury.” Illinois Department of Children and Family Services (http://www.state.il.us/dcf/FAQ/faq_faq_can.shtml).

Dependency Cases: those in which the natural parents have passed away or are mentally ill or incapacitated and the state must determine who will have permanent custody.

Neglect Cases: those which involve the neglect of the physical or emotional well-being of a child. “Neglect happens when a parent or responsible caretaker fails to provide adequate supervision, food, clothing, shelter or other basics for a child.” Illinois Department of Children and Family Services (http://www.state.il.us/dcf/FAQ/faq_faq_can.shtml).

CASE STAGES

Petition: This is filed by the state for a temporary custody hearing within 48 hours of the child being taken into protective custody.

Temporary Custody Hearing: At this hearing, the judge decides whether there is probable cause of abuse or neglect. If the judge finds no probable cause, the petition is dropped. If probable cause is found, the court then decides whether there is an urgent need to remove the child from his home. If not, court maintains jurisdiction, but the child goes home with his parents.

Adjudication: At this hearing, the court rules based on the preponderance of the evidence, whether the parent is guilty of abuse or neglect.

Disposition: At disposition, the court decides whether the child will be a ward of the court or returned to his parents. This is based upon whether the parent is fit, willing, and able.

Permanency: The point at which the goal for permanent residence for the child is decided. The court must determine the feasibility of return home or adoption first. Once these are ruled out, it can decide on guardianship.

Termination of Parental Rights: Once the court has determined that adoption is the best goal for the child, it then moves to terminate the rights of the natural parents and paves the way to adoption.

PEOPLE INVOLVED IN THE CASE

Bar Attorney: A private attorney hired by the court to represent a natural parent, or to act as Guardian Ad Litem when there are conflicts, during the child protection proceedings.

CASA: Court-Appointed Special Advocate. These are volunteers who follow a single case and work for the child’s best interest until the child is in a safe, permanent home.

GAL: Guardian Ad Litem. The court-appointed attorney for the child.

Hearing Officer: These were staff attorneys whose role was to conduct permanency hearings and make recommendations regarding the permanent custody of the child.



APPENDIX B



PRE-MEDIATION FORMS





Order to Mediation

(Rev. 7/20/07) CCJP 0002

 STATE OF ILLINOIS }
 COUNTY OF COOK } ss:

☐ 4310

 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 DEPARTMENT OF JUVENILE JUSTICE AND CHILD PROTECTION
 CHILD PROTECTION DIVISION

IN THE INTEREST OF

 _____ } No(s): _____
 _____ } Calendar #: _____
 Minor(s)

ORDER TO MEDIATION

 THIS MATTER COMING on to be heard before the Honorable _____,
 the parties being present and/or represented by counsel, and the Court being fully advised in the premises:

THE COURT FINDS:

1. The referral to Mediation was made by:

- | | |
|--|--|
| <input type="checkbox"/> 4135 Judge | <input type="checkbox"/> 4129 Caseworker from _____ |
| <input type="checkbox"/> 4126 Assistant Public Defender | <input type="checkbox"/> 4130 Private Attorney for _____ |
| for _____ | <input type="checkbox"/> 4131 Assistant Public Guardian |
| <input type="checkbox"/> 4127 Private Attorney for the Minor | <input type="checkbox"/> 4132 Assistant State's Attorney |
| <input type="checkbox"/> 4128 DCFS Regional Counsel | <input type="checkbox"/> 4133 Other _____ |

IT IS HEREBY ORDERED THAT:

2. The following persons are ordered to participate in Mediation:

- | | | |
|---|--|--|
| <input type="checkbox"/> Assistant State's Attorney | <input type="checkbox"/> Mother | <input type="checkbox"/> Father(s) _____ |
| <input type="checkbox"/> Attorney for Minor(s) | <input type="checkbox"/> Attorney for Mother | <input type="checkbox"/> Attorney(s) for Father(s) |
| <input type="checkbox"/> DCFS Regional Counsel | <input type="checkbox"/> DCFS Worker(s) | <input type="checkbox"/> POS Worker(s) |
| <input type="checkbox"/> Foster Parent(s) _____ | <input type="checkbox"/> Court Certified _____ | Interpreter |
| <input type="checkbox"/> CASA Representative | <input type="checkbox"/> Other _____ | |

3. The individuals identified in paragraph two shall cooperate in scheduling and shall participate in all sessions needed to fully address the issues identified below.

4. The individuals identified in paragraph two of this order shall make a good faith effort to resolve the following issue(s) through mediation: _____

 5. Mediation will occur on ____/____/____ at ____ a.m./p.m. at the Child Protection Mediation Program 2245 West Ogden Avenue, 8th Floor, Chicago, Illinois. Individuals identified in paragraph two shall report at least fifteen minutes early and should reserve three and one half hours for each session.

6. This order shall remain in effect until the filing of the Final Mediation Report.

This matter set before the Court ____/____/____ at ____ a.m./p.m. in Courtroom _____.

 Dated: _____, _____ Entered: _____
 Judge Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS



CIRCUIT COURT OF COOK COUNTY CHILD PROTECTION MEDIATION AND FACILITATION
FAX (312)433-5264
CONFIDENTIAL MEDIATION/FACILITATION INTAKE FORM

Guardian *ad litem* (GAL)

Family Folder # _____

Child's Name

DOB

Docket #

of Placements

Has this case been referred to MEDIATION/FACILITATION before? YES / NO If so, when: _____

Stage of the Proceedings: ☐ Pre-adjudication ☐ Post-adjudication & pre-disposition
☐ Post-disposition ☐ Immediately prior to TPR ☐ Post-guardianship

Are any motions currently pending before this court? If so, please describe the relief being sought: _____

GAL Name: _____ Phone : _____

E-Mail Address: _____ FAX: _____

Address (If other than OPG) : _____

Current Permanency Goal : _____ Entered on: _____

Facts that brought the case into the system: _____

Issues you feel should be discussed at mediation/facilitation and other information you feel is relevant to mediation/facilitation: _____

Have the parents or child(ren) been offered a mental health assessment? ☐ Yes ☐ No

Please explain: _____

Are there any reports you feel the mediators should review before the session? ☐ No ☐ Yes

If so, please attach a copy or FAX it to 312/433-5264. Please include the case name on the cover sheet.

Do you think it would be helpful if a mediator interviewed the child(ren) prior to the mediation/facilitation?

☐ Yes ☐ No Please explain: _____

To your knowledge, are there any outstanding orders of any kind issued by a court in ANY jurisdiction which names any mediation/facilitation party as a petitioner, protected party, or respondent or defendant, or may otherwise impact the discussion? ☐ No ☐ Yes. PLEASE EXPLAIN ON BACK.

To your knowledge, is there a dissolution of marriage action pending in any court that involves any of the individuals being ordered to mediation/facilitation? ☐ No ☐ Yes.

GAL Signature

Date

☐ Mediator, please see reverse for additional information.

THIS SECTION FOR
PROGRAM USE ONLY: Med. Date. ____ / ____ / ____ Med. Name: _____ (Rev. 11/5/09)



CIRCUIT COURT OF COOK COUNTY CHILD PROTECTION MEDIATION AND FACILITATION

FAX (312)433-5264

CONFIDENTIAL MEDIATION/FACILITATION INTAKE FORM

Child's Name	Attorney for Parent or Guardian	Docket #
_____	_____	_____
_____	_____	_____
_____	_____	_____

Has this case been in MEDIATION/FACILITATION before? YES / NO If so, what year: _____

Stage of the Proceedings: ☐ Pre-adjudication ☐ Post-adjudication & pre-disposition
☐ Post-disposition ☐ Immediately prior to TPR ☐ Post-guardianship

Current Permanency Goal : _____ Entered on: _____

Are any motions currently pending before this court? If so, please describe the relief being sought:

Attorney Name: _____

Office/Firm Address (other than Public Defender): _____

Phone: _____ Cell: _____

FAX: _____ E-MAIL _____

Client's name: _____ Relationship to minor(s): _____

Does your client have a legal guardian? ☐ Yes ☐ No Should that person be present? ☐ Yes ☐ No
 If yes, please advise the mediator immediately.

Facts that brought the case into the system: _____

Is your client a ward of DCFS? ☐ Yes ☐ No If yes, how old is your client? _____Have the parents or child(ren) been offered a mental health assessment? ☐ Yes ☐ No

Please explain: _____

Are there any reports you feel the mediators should review before the session? ☐ No ☐ Yes

If so, please attach a copy or FAX it to 312/433-5264. Please include the case name on the cover sheet.

Issues you feel should be discussed at mediation/facilitation: _____

To your knowledge, are there any orders of any kind issued by a court in ANY jurisdiction which names any mediation/facilitation party as a petitioner, protected party, or respondent or defendant, or may otherwise impact the discussion? ☐ No ☐ Yes. PLEASE EXPLAIN ON BACK.

To your knowledge, is there a dissolution of marriage action pending in any court that involves any of the individuals being ordered to mediation/facilitation? ☐ No ☐ Yes.

Does your client require an interpreter? ☐ No ☐ Yes. If yes, what kind? _____

_____ Attorney Signature	_____ Date
-----------------------------	---------------

☐ Mediator, please see reverse for additional information

THIS SECTION FOR PROGRAM USE ONLY: Med. Date. ____ / ____ / ____	Med. Name: _____	(Rev. 11/5/09)
---	------------------	----------------



CIRCUIT COURT OF COOK COUNTY CHILD PROTECTION MEDIATION AND FACILITATION
FAX (312) 433-5264
CONFIDENTIAL MEDIATION/FACILITATION INTAKE FORM

☐Mother ☐Father

Child's Name

Child's Date of Birth

Your Name: _____

Your Address: _____ **Apartment #** _____

Post Office Box (If Applicable): _____

City, State _____ **ZIP Code** _____

Home Phone (Include area code): (_____) _____

Cell Phone (Include area code): (_____) _____

Work Phone (Include area code): (_____) _____

E-Mail Address: _____ **What year were you born?** _____

Name of your attorney: _____

What would you like to talk about at mediation/facilitation ? _____

Is there any other information you think the mediators should know about the case ? _____

As far as you know, has any court issued an order of protection concerning anyone involved with your child's case? ☐No ☐Yes. **PLEASE EXPLAIN ON BACK.**

As far as you know, is there a divorce case pending that involves any of the individuals being ordered to mediation/facilitation? ☐No ☐ Yes.

Signature

Date

THIS SECTION FOR

PROGRAM USE ONLY: Med. Date. _____ / _____ / _____

Med. Name: _____

(Rev. 11/5/09)



**CIRCUIT COURT OF COOK COUNTY CHILD PROTECTION MEDIATION AND FACILITATION
FAX (312)433-5264
CONFIDENTIAL MEDIATION/FACILITATION INTAKE FORM**

YOUTH

Your Name: _____ Date of Birth: _____

Your Address: _____

Apartment #: _____ Post Office Box (If Applicable): _____

City, State: _____ ZIP Code: _____

Home Phone (Include area code): (_____) _____

Cell Phone (Include area code): (_____) _____

E-Mail Address: _____

Your Attorney's Name: _____

What would you like to talk about in mediation/facilitation? _____

Is there anyone you would like to invite to mediation/facilitation? ☐Yes ☐No If yes, what is your relationship to the person (or persons) and please write down their name(s), address(es), and phone number(s):

Is there any other information you would like the mediators to know? _____

Signature

Date

THIS SECTION FOR PROGRAM USE ONLY: Med. Date. ____/____/____	Med. Name: _____ (Rev. 11/5/09)
---	---------------------------------



COOK COUNTY
CHILD PROTECTION MEDIATION AND FACILITATION PROGRAM
CONFIDENTIAL AGREEMENT TO MEDIATE

Case Name:

Mediators:

Docket No(s):

Date:

1. I understand that mediation/facilitation provides a confidential forum for all participants to share concerns, hear the concerns of others, and participate in a full and open discussion on all issues raised.
2. I understand that the mediators/facilitators can not give any legal or professional advice and will not tell participants how to resolve the issues discussed.
3. I understand that the individuals at the table are permitted to take notes during the session, but those notes will be collected by the program staff and destroyed at the conclusion of the session.
4. I understand that although I have been ordered to participate in mediation/facilitation and make an effort to resolve the issues raised, entering into any Memorandum of Agreement is strictly voluntary.
5. Whether or not an agreement is reached, I understand that everything that occurs in mediation/facilitation is privileged and confidential and cannot be disclosed outside of the session with the following exceptions:
 - a. New allegations of abuse or neglect that are disclosed;
 - b. Threats or statements made where failure to disclose is likely to result in serious or imminent harm to any person;
 - c. Communications that activate mandatory reporting obligations, in accordance with provisions of the Abused and Neglected Child Reporting Act;
 - d. Mediation/facilitation communications that are included in any Memorandum of Agreement; and
 - e. As otherwise expressly provided by law.
6. I understand that participants will be bound to any Memorandum of Agreement they sign at the end of mediation/facilitation, and participants have the right to talk with an attorney before signing.
7. I understand that everything discussed or disclosed in mediation/facilitation is not discoverable, and I will not subpoena the mediators/facilitators or otherwise attempt to compel them to testify.
8. I understand that it may be necessary for professionals at the table to share some information disclosed during the mediation/facilitation with other professionals within their office or agency for the purpose of thorough representation, case management, and service provision.
9. I understand the mediators/facilitators must file a mediation/facilitation report with the court for every scheduled session.
10. I understand that any Memorandum of Agreement resulting from the mediation/facilitation will be copied for all participants, tendered to the court for review, and become part of the court file.
11. I understand that non-identifying information about this session may be used for program evaluation.

 Print name

 Signature



Print name

Signature

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Signature



APPENDIX C



POST-MEDIATION FORMS





COOK COUNTY CHILD PROTECTION MEDIATION PROGRAM EVALUATION FOR MINORS



Please answer the questions below about how you felt about the mediation. This will help us make sure that other young people will be helped by mediation. Your answers will be used only to see how well the mediation program is working. Your answers will not be shared with other people.

Date: _____

Have you attended a mediation here before today? ☐ Yes ☐ No
If yes, how many other mediations have you attended here? _____

Please check the box next to your answer to the questions:

- 1) I understood what was going on in the mediation:
 1. ☐ Very well
 2. ☐ A little
 3. ☐ Not at all
- 2) Before the mediation I had the chance to tell how I felt to the caseworkers, the lawyers, and the judge:
 1. ☐ Yes, a lot
 2. ☐ Yes, a little
 3. ☐ No
- 3) At the mediation I had the chance to tell how I felt:
 1. ☐ Yes, a lot
 2. ☐ Yes, a little
 3. ☐ No
- 4) The mediators really listened to what I had to say:
 1. ☐ Yes, a lot
 2. ☐ Yes, a little
 3. ☐ No
- 5) Everyone at the mediation really listened to what I had to say:
 1. ☐ Yes, a lot
 2. ☐ Yes, a little
 3. ☐ No
- 6) Do you feel the mediation helped or hurt you?
 1. ☐ Helped me a lot
 2. ☐ Helped me a little
 3. ☐ Didn't help or hurt me
 4. ☐ Hurt me a little
 5. ☐ Hurt me a lot
- 7) How old are you? _____



8) What did you like about the mediation?

9) What didn't you like about the mediation?

10) Is there anything that could have been done to make mediation better for you?

THANK YOU!!

For office use only

Family Folder Number: _____



COOK COUNTY CHILD PROTECTION MEDIATION PROGRAM

EVALUATION FOR FAMILY MEMBERS & PEOPLE SUPPORTING THE FAMILY

To help us to improve the mediation program, please answer all of the questions below. Your responses will be kept confidential and will be used for evaluative purposes only. No identifying information will be released.

Date: _____

You are the child(ren)'s:

- | | | |
|---------------------------------------|---|--|
| 1. <input type="checkbox"/> Mother | 4. <input type="checkbox"/> Foster Mother | 7. <input type="checkbox"/> Step-Parent |
| 2. <input type="checkbox"/> Father | 5. <input type="checkbox"/> Foster Father | 8. <input type="checkbox"/> Guardian |
| 3. <input type="checkbox"/> Godparent | 6. <input type="checkbox"/> Grandparent | 9. <input type="checkbox"/> Other: _____ |

Have you attended a mediation here before today? ☐ Yes ☐ No
If yes, how many other mediations have you attended here? _____

Please circle the number for how much you disagree or agree with the statements below. Circle N/A if you don't know or if the question does not apply to you.

- | | | | | | | |
|---|------------------------|---------------|---------------------------------|------------|---------------------|-----|
| 1. I was provided information on the mediation process before coming to mediation. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 2. The mediation gave me greater opportunity to discuss my point of view than I had before. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 3. The mediators made sure everyone had an equal chance to talk. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 4. I felt ignored and unimportant during the mediation. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 5. The mediators really listened to what I had to say. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 6. Everyone at the mediation really listened to what I had to say. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 7. I didn't have enough chance to talk during the mediation. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 8. The mediators treated me with respect. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 9. Everyone at the mediation treated me with respect. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |



- | | | | | | | |
|--|------------------------|---------------|---------------------------------|------------|---------------------|-----|
| 10. Mediation helped the others understand my point of view. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 11. Mediation helped me understand the point of view of the others. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 12. The mediators didn't treat everyone equally. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 13. Everyone worked hard to find a solution. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 14. I felt involved in trying to find a solution. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 15. I felt pressured into agreeing to a solution. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 16. The group reached best solution for the child(ren) (if reached). | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 17. All parties will follow the agreement fully. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
| 18. I am satisfied with how the mediation was handled. | Strongly Disagree
1 | Disagree
2 | Neither Agree Nor Disagree
3 | Agree
4 | Strongly Agree
5 | N/A |
19. Do you feel the mediation helped or hurt you?
1. ☐ Helped me a lot
 2. ☐ Helped me somewhat
 3. ☐ Didn't help or hurt me
 4. ☐ Hurt me somewhat
 5. ☐ Hurt me a lot
20. The time spent in the mediation was:
1. ☐ Too long
 2. ☐ About right
 3. ☐ Too short



21. Having the mediation:

1. ☐ Helped the child(ren) a lot
2. ☐ Helped the child(ren) somewhat
3. ☐ Didn't change anything for the child(ren)
4. ☐ Hurt the child(ren) somewhat
5. ☐ Hurt the child(ren) a lot

22. Was there anyone who should have been at the mediation who wasn't there?

☐ Yes ☐ No

If so, who? _____

23. Was there anyone who was at the mediation who should not have been there?

☐ Yes ☐ No

If so, who? _____

24. I would use mediation again

☐ Yes ☐ No ☐ Possibly

Why or why not? _____

25. Things I liked about the mediation:

26. Things I didn't like about the mediation:

27. If I leave with one new thought or idea, it is...

28. Any other comments on the mediators or the mediation:



COOK COUNTY CHILD PROTECTION MEDIATION PROGRAM

EVALUATION FOR PROFESSIONALS

To help us to improve the mediation program, please answer all of the questions below. Your responses will be kept confidential and will be used for evaluative purposes only. No identifying information will be released.

Date: _____

What is your position?

- | | | |
|---|---|---|
| 1. <input type="checkbox"/> GAL | 5. <input type="checkbox"/> Private/Bar Attorney | 9. <input type="checkbox"/> CASA |
| 2. <input type="checkbox"/> ASA | 6. <input type="checkbox"/> Parent Advocate | 10. <input type="checkbox"/> Agency/DCFS Supervisor |
| 3. <input type="checkbox"/> PD | 7. <input type="checkbox"/> DCFS Caseworker | 11. <input type="checkbox"/> Therapist/Counselor |
| 4. <input type="checkbox"/> DCFS Attorney | 8. <input type="checkbox"/> Private Agency Caseworker | 12. <input type="checkbox"/> Other: _____ |

How many child protection mediations have you participated in prior to this case?

- | | |
|-----------------------------------|--|
| 1. <input type="checkbox"/> None | 3. <input type="checkbox"/> 6 – 10 |
| 2. <input type="checkbox"/> 1 – 5 | 4. <input type="checkbox"/> More than 10 |

1. On a scale of 1 – 5 (1 = strongly disagree, 2 = disagree, 3 = neither agree nor disagree, 4 = agree, 5 = strongly agree), please respond to the following:

	SD	D	N	A	SA	
a) The mediation was held at a convenient time	1	2	3	4	5	N/A
b) The mediation was held at a convenient place	1	2	3	4	5	N/A
c) It was difficult to schedule the mediation before the next hearing	1	2	3	4	5	N/A
d) I was provided with information regarding the mediation process prior to attending	1	2	3	4	5	N/A
e) The mediators made sure everyone had an equal chance to talk	1	2	3	4	5	N/A
f) I felt ignored and unimportant during the mediation	1	2	3	4	5	N/A
g) The mediators really listened to what I had to say	1	2	3	4	5	N/A
h) Everyone at the mediation really listened to what I had to say	1	2	3	4	5	N/A
i) The mediators treated me with respect	1	2	3	4	5	N/A
j) Everyone at the mediation treated me with respect	1	2	3	4	5	N/A
k) The mediators did not treat everyone equally	1	2	3	4	5	N/A
l) I was able to communicate better with my client than I would have without mediation	1	2	3	4	5	N/A
m) I was able to communicate better with the other parties than I would have without mediation	1	2	3	4	5	N/A
n) I have a better understanding of the family's needs as a result of mediation	1	2	3	4	5	N/A
o) The family members were more involved in discussing the issues than they would have been without mediation	1	2	3	4	5	N/A
p) It would have been harder to discuss the issues if only one mediator was there	1	2	3	4	5	N/A



	SD	D	N	A	SA	
q) Everyone worked hard to find a solution	1	2	3	4	5	N/A
r) I felt involved in trying to find a solution	1	2	3	4	5	N/A
s) I felt pressured into agreeing to a solution	1	2	3	4	5	N/A
t) Mediation led to greater agreement about the best interests of the child(ren)	1	2	3	4	5	N/A
u) The group reached the best solution for the child(ren) (if reached)	1	2	3	4	5	N/A
v) All parties will follow the agreement fully	1	2	3	4	5	N/A
w) The agreement will not be effective in resolving the issues discussed today	1	2	3	4	5	N/A
x) I am satisfied with how the mediation was handled	1	2	3	4	5	N/A
y) The mediation moved the case forward	1	2	3	4	5	N/A
z) The case was appropriate for mediation	1	2	3	4	5	N/A

2. If the case was not appropriate for mediation, why not? (Please check all that apply.)

1. ☐ The issues were not negotiable
2. ☐ At least one party was mentally incapable of mediating
3. ☐ Domestic abuse was involved
4. ☐ At least one party was too entrenched in his/her position
5. ☐ Timing of referral
6. ☐ Other: _____
7. ☐ The case was appropriate for mediation

3. The mediation was referred:

1. ☐ Too early in the case
2. ☐ At the right time
3. ☐ Too late in the case

4. The time we spent in the mediation was:

1. ☐ Too long
2. ☐ About right
3. ☐ Too short

5. Having the mediation:

1. ☐ Helped the child(ren) a lot
2. ☐ Helped the child(ren) somewhat
3. ☐ Didn't change anything for the child(ren)
4. ☐ Hurt the child(ren) somewhat
5. ☐ Hurt the child(ren) a lot

6. What effect will mediation have on the amount of time you spend on the case?

1. ☐ Greatly decrease
2. ☐ Somewhat decrease
3. ☐ No impact
4. ☐ Somewhat increase
5. ☐ Greatly increase

7. Was the mediation less effective because a party did not attend? ☐ Yes ☐ No
If so, who? _____



8. Was the mediation less effective because a party who should not have attended was there? ☐ Yes ☐ No
If so, who? _____

9. Would you be willing to use mediation again?
☐ Yes ☐ No ☐ Possibly

Why or why not? _____

10. Things I liked about the mediation:

11. Things I didn't like about the mediation:

12. If I leave with one new thought or idea, it is...

13. Other comments on the mediators or the mediation process:

Thank you!!

For office use only: _____

Family folder number: _____



COOK COUNTY CHILD PROTECTION MEDIATION PROGRAM

MEDIATORS' ASSESSMENT

Case Name: _____ Family Folder Number: _____

Case Numbers: _____ Petition Date: _____ Age of Child: _____

Date of referral to mediation: _____ [] New Referral [] Return [] Re-referral

Referring Calendar: _____ Referring Party: _____
 (Includes Judge, Hearing Officer, DCFS, GAL, ASA, etc.)

1. Period during which the case was referred to mediation:

- | | |
|--------------------------------------|---|
| 1. [] Pre-adjudication | 4. [] Immediately prior to TPR |
| 2. [] Adjudication to dispo hearing | 5. [] Post guardianship |
| 3. [] Post-disposition | 6. [] Multiple periods (more than one child) |

2. Case Type (check all that apply):

- | | |
|----------------|---------------------|
| 1. [] Neglect | 3. [] Dependency |
| 2. [] Abuse | 4. [] Other: _____ |

3. Number of interviews of minors for this mediation: _____

3a. Total time spent in interviews: _____

4. Was the case mediated? (Please check all that apply.)

1. [] Yes (*Skip to Question 6*)
2. [] No, required parties not present – Missing parties (title only): _____
3. [] No, at least one party not capable of mediating
4. [] No, issues required judicial action or determination
5. [] No, domestic violence involved
6. [] No, other reason: _____

5. If not mediated, was an informal discussion held? [] Yes (If yes, complete question 6) [] No (If no, STOP HERE)

5a. Number of hours in informal discussion: _____

5b. What was accomplished? (Please check all that apply.)

- [] Issues clarified
- [] Identification of tasks to complete prior to mediation session
- [] Other: _____

IF MEDIATION WAS NOT HELD DO NOT ANSWER FURTHER QUESTIONS

6. Who attended:	Check if Court-Ordered	Check if Court-Ordered
[] Mother	[]	[] ASA
[] Father(s) (#: _____)	[]	[] GAL
[] Foster Mother(s) (#: _____)	[]	[] PD
[] Foster Father(s) (#: _____)	[]	[] DCFS Attorney/ OLS
[] Guardian	[]	[] Private/Bar Attorney(s) (#: _____)
[] Grandparent(s) (#: _____)	[]	[] CASA
[] Godparent	[]	[] Private Agency Caseworker
[] Step-parent	[]	[] DCFS Caseworker (#: _____)
[] Minor(s) (#: _____)	[]	[] Agency/DCFS Supervisor(s) (#: _____)
[] Parent Advocate	[]	[] Therapist/Counselor (#: _____)
[] Other: _____	[]	

**Answer the following questions for this order of referral only:**Dates of Mediation: 1st Session _____ Final Session _____

Mediators: Lead: _____ Second: _____

7. Number of hours in this mediation session: _____ Total Hours in mediation (all sessions): _____

8. Total number mediation of sessions held for current order: _____

9. Date of next court hearing: _____

10. Issues on court order (check all that apply):

- | | | |
|---|--|--|
| 1. <input type="checkbox"/> Visitation | 4. <input type="checkbox"/> Communication/Relationship | 7. <input type="checkbox"/> Placement |
| 2. <input type="checkbox"/> Permanency issues | 5. <input type="checkbox"/> Reunification | 8. <input type="checkbox"/> Services |
| 3. <input type="checkbox"/> Case closure | 6. <input type="checkbox"/> Post-guardianship | 9. <input type="checkbox"/> Other: _____ |

11. All issues discussed in mediation:

(Check all that apply)

	Fully settled	Partly settled	Not settled
1. <input type="checkbox"/> Visitation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. <input type="checkbox"/> Permanency issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. <input type="checkbox"/> Case closure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. <input type="checkbox"/> Communication/Relationship	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. <input type="checkbox"/> Reunification	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. <input type="checkbox"/> Post-guardianship	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. <input type="checkbox"/> Placement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. <input type="checkbox"/> Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. <input type="checkbox"/> Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12. On a scale of 1 – 5 (1 = strongly disagree, 2 = disagree, 3 = neither agree nor disagree, 4 = agree, 5 = strongly agree), please respond to the following:

	SD	D	N	A	SA	
a) We had the necessary information to effectively mediate this case:	1	2	3	4	5	N/A
b) The intake forms were filled out completely:	1	2	3	4	5	N/A
c) It was difficult to schedule the case before the next hearing date:	1	2	3	4	5	N/A
d) The professionals were prepared for the mediation:	1	2	3	4	5	N/A
e) The family members were prepared for the mediation:	1	2	3	4	5	N/A
f) There was not sufficient time to effectively mediate this case:	1	2	3	4	5	N/A
g) All the parties participated to the extent necessary to move the case forward:	1	2	3	4	5	N/A

If not, who did not: _____

(provide title only)



13. This case was appropriate for mediation:

- 1. ☐ Strongly disagree
- 2. ☐ Disagree
- 3. ☐ Neither agree nor disagree
- 4. ☐ Agree
- 5. ☐ Strongly Agree

13a. If the case was not appropriate for mediation, why not? (Please check all that apply.)

- 1. ☐ The issues were not negotiable
- 2. ☐ At least one party was mentally incapable of mediating
- 3. ☐ Domestic abuse was involved
- 4. ☐ At least one party was too entrenched in his/her position
- 5. ☐ Timing of referral
- 6. ☐ Other: _____

14. At this stage of the case, the mediation was referred:

- 1. ☐ Too early because _____
- 2. ☐ At the right time
- 3. ☐ Too late because _____

15. The time we spent in the mediation was:

- 1. ☐ Too long
- 2. ☐ About right
- 3. ☐ Too short

16. Having the mediation:

- 1. ☐ Helped the child(ren) a lot
- 2. ☐ Helped the child(ren) somewhat
- 3. ☐ Didn't change anything for the child(ren)
- 4. ☐ Hurt the child(ren) somewhat
- 5. ☐ Hurt the child(ren) a lot

17. Was the mediation less effective because a party did not attend? ☐ Yes ☐ No

17a. If so, who? _____
(provide title of person)

17b. Was this person ordered to attend? ☐ Yes ☐ No

18. Other Comments:

Thank you!!

STATE OF ILLINOIS }
COUNTY OF COOK } ss:☐ 2100IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
DEPARTMENT OF JUVENILE JUSTICE AND CHILD PROTECTION
CHILD PROTECTION DIVISION

IN THE INTEREST OF

Minor(s)

No(s). _____

Calendar # _____

MEDIATION REPORT

☐ Interim☐ Final

Order to Mediation

Scheduled

Entered on: _____, _____

Mediation Date: _____, _____

The following individuals did not participate in and/or report to the scheduled mediation: _____

☐ MEDIATION OCCURREDThis is the (1st 2nd 3rd 4th 5th _____) mediation
session conducted pursuant to this order.

Start time: _____ a.m./p.m.

End time: _____ a.m./p.m.

The mediation parties have reached:

2101 ☐ Full agreement☐ The memorandum of agreement is attached2102 ☐ Partial agreement☐ The mediation participants agreed to return to mediation on:2103 ☐ No agreement

_____/_____/_____ at _____ a.m./p.m.

☐ MEDIATION DID NOT OCCUR2104 ☐ At the time the group convened it determined that mediation would not be beneficial.2105 ☐ Mediation did not occur because the above named individual(s) failed to attend.2106 ☐ Mediation did not occur for the following reason(s): _____☐ An informal discussion was facilitated amongst the individuals in attendance.☐ This mediation will be rescheduled.☐ This mediation has been rescheduled to _____, _____ at _____ a.m./p.m.☐ This mediation will not be rescheduled.

Next court date: _____, _____ at _____ a.m./p.m.

Mediator's Signature

Mediator's Signature

Name: Child Protection Mediation Program

Address: 2245 West Ogden Avenue, 8th Floor
Chicago, Illinois 60612

Phone: (312) 433-5259

Atty. Code: 40305

Filing date: _____, _____

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

APPENDIX D



INTERVIEW PROTOCOLS





Cook County Child Protection Mediation Program
Interview Protocol

Questions for Judges

All responses will remain confidential. My notes will be kept with me and no one else will see them. In addition, I am only using a code on my notes, not your name. Any report based on this interview will contain only aggregate data or anonymous references.

I will be asking questions in three categories – your views and expectations of mediation in general, your use of mediation, and your views and expectations of the mediation program.

Demographics

1. Code: _____
2. Position: ☐ Judge ☐ Hearing officer
3. How long have you been a judge / hearing officer? _____
4. How long have you been a judge / hearing officer in this division? _____
5. Did you have experience in this division prior to becoming a judge / hearing officer?
☐ Yes
☐ No

Yes: What as?

6. How informed about mediation in general do you feel you are?
☐ Very
☐ Somewhat
☐ Little
☐ Not at all

Views of Mediation

7. What in your view are the Child Protection Division's goals for the family and children?
8. Do you think mediation has a role in achieving these goals?
☐ Yes
☐ No

Explain:
9. In your opinion, is there anything that mediation can provide the family that isn't provided by other means?
10. In your opinion, is there anything the family needs that mediation can't provide but that can be provided through hearings before a judge or hearing officer?



11. Are there any circumstances under which you would consider mediation to be successful even if an agreement is NOT reached? (are there any benefits to mediation aside from agreement that even if agreement isn't reached you would feel made mediation successful)
12. Are there any circumstances under which you would consider mediation NOT to be successful even if an agreement IS reached? (what do you want mediation to do other than settlement that if it doesn't do that, you would feel mediation didn't work)

Mediation Use

13. Approximately what percent of cases do you refer to / recommend for mediation?
- ☐ None (*go to question 15*)
 - ☐ 1 in 100 or less
 - ☐ About 1 in 20
 - ☐ About 1 in 10
 - ☐ About 1/4
 - ☐ About half
 - ☐ About 3/ 4
 - ☐ Almost all
 - ☐ All
14. What criteria do you use to determine which cases to refer to / recommend for mediation?
15. Are there any triggers that you wait for before referring cases to mediation– e.g. age of case, attitude of parties, particular stage of proceedings?
- ☐ Yes
 - ☐ No

Yes: What are they?

16. Are there any cases that you would absolutely not refer to mediation?
- ☐ Yes
 - ☐ No

Yes: What are they?

17. Have you ever had any parties object to mediation?
- ☐ Yes
 - ☐ No

Yes: How did you handle the objections?

18. *If no cases referred:* What is your reason for not referring any cases?

Mediation Program

19. How informed about the mediation program do you feel you are?
- ☐ Very



- ☐ Somewhat
- ☐ A little
- ☐ Not at all

20. By what means have you been informed of the program?

- ☐ Orientation by program staff
- ☐ Brochure
- ☐ Rule
- ☐ Presiding judge
- ☐ Other judges
- ☐ Hearing officers
- ☐ Lawyers
- ☐ Other professionals
- ☐ I haven't been informed

21. Given what you know about mediation, what do you think the goals of the mediation program should be?

22. How well do you think the mediation program has been achieving those goals?

23. What are the strengths of the program?

24. What are the weaknesses of the program?

25. Have you noticed a difference between hearings for cases that have been mediated and those for cases that have not?

26. Is there anything about the program that makes you hesitate to refer cases?

IF NO CASES REFERRED, SKIP TO QUESTION 29.

27. How satisfied are you with the information provided you by the program once mediation has been completed?

- | | |
|---|--|
| <input type="checkbox"/> Very satisfied | <input type="checkbox"/> Somewhat dissatisfied |
| <input type="checkbox"/> Somewhat satisfied | <input type="checkbox"/> Very dissatisfied |
| <input type="checkbox"/> Neutral | |

What information would you like to receive that you aren't currently getting?

28. Have there been agreements that you did not sign off on?

- ☐ Yes
- ☐ No

Yes: What were the reasons for doing so?

29. Do you have any other recommendations for the mediation program?



Cook County Child Protection Mediation Program
Interview Protocol

Questions for Hearing Officers

All responses will remain confidential. My notes will be kept with me and no one else will see them. In addition, I am only using a code on my notes, not your name. Any report based on this interview will contain only aggregate data or anonymous references.

I will be asking questions in three categories – your views and expectations of mediation in general, your use of mediation, and your views and expectations of the mediation program.

Demographics

1. Code: _____
2. How long have you been a hearing officer? _____
3. Did you have experience in this division prior to becoming hearing officer?
[] Yes
[] No

Yes: What as?

4. How informed about mediation in general do you feel you are?
[] Very
[] Somewhat
[] Little
[] Not at all
5. How have you learned about mediation?

Views of Mediation

6. What, if any, role does mediation have in child protection cases?
7. In your opinion, is there anything that mediation can provide the family that isn't provided by other means?
8. In your opinion, is there anything the family needs that mediation can't provide but that can be provided through hearings before a judge or hearing officer?
9. Are there any circumstances under which you would consider mediation to be successful even if an agreement is NOT reached? (are there any benefits to mediation aside from agreement that even if agreement isn't reached you would feel made mediation successful)
10. Are there any circumstances under which you would consider mediation NOT to be successful even if an agreement IS reached? (what do you want mediation to do other than settlement that if it doesn't do that, you would feel mediation didn't work)

**Mediation Use**

11. Approximately what percent of cases that you hear do you recommend for mediation?
- ☐ None (*go to question 15*)
 - ☐ 1 in 100 or less
 - ☐ About 1 in 20
 - ☐ About 1 in 10
 - ☐ About 1/4
 - ☐ About half
 - ☐ About 3/4
 - ☐ Almost all
 - ☐ All
12. What criteria do you use to determine which cases to recommend for mediation? What makes some cases more appropriate than others?
13. Are there any cases that you would absolutely not refer to mediation?
- ☐ Yes
 - ☐ No

Yes: What are they?

14. Have you ever had any parties object to mediation?
- ☐ Yes
 - ☐ No

Yes: Did you send your recommendation to mediate to the judge despite the objections?

15. *If no cases referred:* What is your reason for not referring any cases?

Mediation Program

16. How informed about the mediation program do you feel you are?
- ☐ Very
 - ☐ Somewhat
 - ☐ A little
 - ☐ Not at all
17. By what means have you been informed of the program?
- ☐ Orientation by program staff
 - ☐ Brochure
 - ☐ Rule
 - ☐ Presiding judge
 - ☐ Other judges
 - ☐ Hearing officers
 - ☐ Lawyers
 - ☐ Other professionals
 - ☐ I haven't been informed

Are there any other ways you would like to be informed?



Is there other information that you would like to have from the program?

18. How well has the mediation program met your needs? Explain.
19. What are the strengths of the program?
20. What are the weaknesses of the program?
21. Is there anything about the program that makes you hesitate to refer cases?

IF NO CASES REFERRED, SKIP TO QUESTION 29.

22. What information do you receive from the program once mediation has been completed?
23. How satisfied are you with the information provided you by the program once mediation has been completed?

<input type="checkbox"/> Very satisfied	<input type="checkbox"/> Somewhat dissatisfied
<input type="checkbox"/> Somewhat satisfied	<input type="checkbox"/> Very dissatisfied
<input type="checkbox"/> Neutral	

What do you like about the information? / What needs to be done to improve the information provided you?

24. Do you have any recommendations for the mediation program?



**Cook County Child Protection Mediation Program
Interview Protocol**

Questions for Attorneys

All responses will remain confidential. My notes will be kept with me and no one else will see them. In addition, I am only using a code on my notes, not your name. Any report based on this interview will contain only aggregate data or anonymous references.

I will be asking questions in three categories – your views and expectations of mediation in general, your use of mediation, and your views and expectations of the mediation program.

Demographics

1. Code: _____
2. Position: _____
3. How long have you worked in the child protection division? _____
4. How long have you worked at this position? _____
5. *If you worked at this division at a prior position, what was it?* _____

Attitude toward Mediation

6. How informed about mediation do you feel you are?
[] Very
[] Somewhat
[] A little
[] Not at all
7. How have you learned about mediation?
8. Does mediation have a role in child protection cases?
[] Yes
[] No

Yes: What is this role?

9. Is there anything that mediation can provide the family that isn't provided by other means?
10. Is there anything the family needs that mediation can't provide but that can be provided through hearings before a judge or hearing officer?
11. Under what circumstances, if any, would you consider mediation to be successful even if an agreement is NOT reached?
12. Under what circumstances, if any, would you consider mediation NOT to be successful even if an agreement



IS reached?

13. For what issues is mediation appropriate?

14. For what issues is mediation not appropriate?

Mediation Use

15. Approximately how many times have you participated in mediation in this program?

☐ None (*go to question 14*)

☐ 1 to 5

☐ 6 to 10

☐ 11 to 20

☐ 21 to 30

☐ More than 30

16. How does participation in mediation affect your workload?

17. In general, how does mediation affect your client?

18. In general, how would you characterize the mediations in which you have participated?

☐ Very worthwhile

☐ Somewhat worthwhile

☐ Not enough accomplished for the amount of time spent

☐ A complete waste of time

Explain you answer:

19. Have you ever objected to mediation?

☐ Yes

☐ No

Yes: What were the reasons for your objection?

No: Are there any circumstances under which you would object to mediation?

☐ Yes

☐ No

Yes: What are they?

20. Have you ever requested mediation for a case?

☐ Yes

☐ No

Yes: What caused you to request mediation?

No: Are there any circumstances under which would you request mediation?

21. What do you like most about participating in mediation?



22. What do you like least?

Mediation Program

23. By what means have you been informed of the program?

24. How would you answer the following: I have enough information about the mediation program to effectively use it.

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

If disagree: what information would you need to feel adequately prepared for mediation?

25. What impact does the mediation program have on the child protection system?

- ☐ Greatly improves it
- ☐ Improves it somewhat
- ☐ It has no impact on the system
- ☐ Makes the system somewhat worse
- ☐ Makes the system much worse

Explain your answer:

DO NOT GO BEYOND HERE IF NO EXPERIENCE WITH THE PROGRAM

26. How well do you think the mediation program has been fulfilling your needs and expectations?

- ☐ Very well
- ☐ Somewhat well
- ☐ Somewhat poorly
- ☐ Very poorly

Explain your answer:

27. What do you think are the best aspects of the program?

28. In what ways can the mediation program be improved?

29. Please rank the mediation facilities on a scale of 1-5 with 5 being excellent, one being poor, on the following characteristics:

Comfortable	1	2	3	4	5
Secure	1	2	3	4	5
Private	1	2	3	4	5

Please comment on your answers.

Any other comments on the facilities?

30. Any other comments about the program?



Cook County Child Protection Mediation Program Interview Protocol

Questions for Family Members

Everything said here will be completely anonymous. Your name will not be mentioned anywhere in the evaluation and no case identifying information will be mentioned either.

Date: _____

Relationship to child: _____ Length in system: _____

Issues mediated: _____

No of Sessions: _____ First Session Date: _____

Pre-Mediation Questions:

1. What did you know about mediation before you first came?
2. Who told you about what happens in mediation? Were you given any written materials?
3. How did you feel about being referred to mediation?

The Mediation

4. How is mediation different from your other experiences with the court?
5. Were you able to talk about your concerns more or less in mediation than at other times?
6. How did mediation affect your understanding of the other people's concerns? Their understanding of yours?
7. Where do you feel you fit in the group? Were some treated better than others? Were you treated equally?
8. Does having been in mediation make you feel differently about the other people involved in the case? How so?
9. How much were your ideas listened to when the group was coming to a decision?
10. Did you feel like you had control over whether you agreed or not?
11. What did you expect to accomplish in the mediation? How did this compare to what you did accomplish?
12. What could have been done to improve the mediation?
13. IF RETURN: How do you feel about returning? Did it help? In what way?

The Agreement

14. How do you feel about the agreement reached?
15. Does the agreement take into account your ideas?



16. Will the agreement be followed?

17. How will the agreement affect the children?

18. Will the agreement fix the problems you talked about?

19. COMMENTS



**Cook County Child Protection Mediation Program
Interview Protocol**

Questions for Private Agency Case Workers

Everything said here will be completely anonymous. Your name will not be mentioned anywhere in the evaluation and no case identifying information will be mentioned either.

Date: _____

Years as caseworker: _____

Number of mediations participated in prior to this case: _____

Issues mediated: _____

No of Sessions (this med): _____ First Session Date: _____

Pre-Mediation Questions:

1. What did you know about mediation before you first came?
2. How did you learn about it? Were you given any written materials?
3. How did you feel about being referred to mediation?

The Mediation

4. How does mediation differ from what you have experienced elsewhere in the court?
5. How does mediation compare to other processes in terms of being able to state your ideas and concerns?
6. How did mediation affect your understanding of others' concerns? Their understanding of yours?
7. Does having been in mediation make you feel differently about the other people involved in the case?
8. How much were your ideas listened to when the group was coming to a decision?
9. Did you feel like you had control over whether you agreed or not?
10. What did you expect to accomplish in the mediation? How did that compare to what you did accomplish?
11. Anything that could have been done to improve the mediation?
12. IF RETURN: How do you feel about returning? Did it help? In what way?

The Agreement

14. How do you feel about the agreement reached?
15. Does the agreement take into account your ideas?



16. Will the agreement be followed?
17. How will the agreement affect the children?
18. Will the agreement fix the issues you had problems with?
19. COMMENTS



APPENDIX E



STATISTICS





REFERRALS BY CALENDAR

Calendar	Frequency	Percent	Valid Percent
1A	9	5.5	5.5
2B	9	5.5	5.5
3C	8	4.8	4.8
4D	26	15.8	15.8
5E	15	9.1	9.1
6F	20	12.1	12.1
7G	26	15.8	15.8
8H	7	4.2	4.2
9I	8	4.8	4.8
10J	6	3.6	3.6
12L	4	2.4	2.4
13M	8	4.8	4.8
14N	4	2.4	2.4
17K	15	9.1	9.1
Total	165	100.0	100.0



EFFECT OF CASE TYPE ON OUTCOME

Case Processing Summary

	Valid		Cases Missing		Total	
	N	Percent	N	Percent	N	Percent
Case type * Outcome - all	162	98.8%	2	1.2%	164	100.0%

		Outcome - all			
		FULL	NONE	PART	Total
Neglect	Count	20	15	38	73
	Expected Count	19.4	14.9	38.8	73.0
	% within Case type	27.4%	20.5%	52.1%	100.0%
	% within Outcome - all	46.5%	45.5%	44.2%	45.1%
	% of Total	12.3%	9.3%	23.5%	45.1%
Abuse	Count	7	5	16	28
	Expected Count	7.4	5.7	14.9	28.0
	% within Case type	25.0%	17.9%	57.1%	100.0%
	% within Outcome - all	16.3%	15.2%	18.6%	17.3%
	% of Total	4.3%	3.1%	9.9%	17.3%
Dependency	Count	7	2	15	24
	Expected Count	6.4	4.9	12.7	24.0
	% within Case type	29.2%	8.3%	62.5%	100.0%
	% within Outcome - all	16.3%	6.1%	17.4%	14.8%
	% of Total	4.3%	1.2%	9.3%	14.8%
Neglect & Abuse	Count	1	1	4	6
	Expected Count	1.6	1.2	3.2	6.0
	% within Case type	16.7%	16.7%	66.7%	100.0%
	% within Outcome - all	2.3%	3.0%	4.7%	3.7%
	% of Total	.6%	.6%	2.5%	3.7%
Neglect & Dependency	Count	2	7	10	19
	Expected Count	5.0	3.9	10.1	19.0
	% within Case type	10.5%	36.8%	52.6%	100.0%
	% within Outcome - all	4.7%	21.2%	11.6%	11.7%
	% of Total	1.2%	4.3%	6.2%	11.7%
Neglect, Abuse & Dependency	Count	6	2	3	11
	Expected Count	2.9	2.2	5.8	11.0
	% within Case type	54.5%	18.2%	27.3%	100.0%
	% within Outcome - all	14.0%	6.1%	3.5%	6.8%
	% of Total	3.7%	1.2%	1.9%	6.8%
Other	Count	0	1	0	1
	Expected Count	.3	.2	.5	1.0
	% within Case type	.0%	100.0%	.0%	100.0%
	% within Outcome - all	.0%	3.0%	.0%	.6%
	% of Total	.0%	.6%	.0%	.6%
Total	Count	43	33	86	162
	Expected Count	43.0	33.0	86.0	162.0
	% within Case type	26.5%	20.4%	53.1%	100.0%
	% within Outcome - all	100.0%	100.0%	100.0%	100.0%
	% of Total	26.5%	20.4%	53.1%	100.0%

Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.312	.200
	Cramer's V	.221	.200
	N of Valid Cases	162	



EFFECT OF PROFESSIONAL'S POSITION ON RESPONSES

Everyone Treated Me with Respect

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Position * All respected	556	99.3%	4	.7%	560	100.0%

		All Respected			
		Disagree	Neutral	Agree	Total
Assistant State's Attorney	Count	0	0	6	6
	Expected Count	.1	.2	5.7	6.0
	% within Position	.0%	.0%	100.0%	100.0%
GAL	Count	1	2	127	130
	Expected Count	3.0	3.7	123.2	130.0
	% within Position	.8%	1.5%	97.7%	100.0%
Public Defender	Count	1	2	69	72
	Expected Count	1.7	2.1	68.2	72.0
	% within Position	1.4%	2.8%	95.8%	100.0%
Dept of Children and Family Services Attorney	Count	0	0	5	5
	Expected Count	.1	.1	4.7	5.0
	% within Position	.0%	.0%	100.0%	100.0%
Private/Bar Attorney	Count	0	3	67	70
	Expected Count	1.6	2.0	66.3	70.0
	% within Position	.0%	4.3%	95.7%	100.0%
Parent Advocate/CASA	Count	3	4	88	95
	Expected Count	2.2	2.7	90.0	95.0
	% within Position	3.2%	4.2%	92.6%	100.0%
Caseworker/Supervisor	Count	7	5	131	143
	Expected Count	3.3	4.1	135.5	143.0



Everyone respected me, continued

	% within Position	4.9%	3.5%	91.6%	100.0%
Other	Count	1	0	34	35
	Expected Count	.8	1.0	33.2	35.0
	% within Position	2.9%	.0%	97.1%	100.0%
Total	Count	13	16	527	556
	Expected Count	13.0	16.0	527.0	556.0
	% within Position	2.3%	2.9%	94.8%	100.0%

Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.145	.636
	Cramer's V	.102	.636
	N of Valid Cases	556	

I felt ignored and unimportant during the mediation Crosstabs

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Position Modified * felt ignored mod	543	97.0%	17	3.0%	560	100.0%

		Felt Ignored			
		Disagree	Neutral	Agree	Total
Assistant State's Attorney	Count	5	0	0	5
	Expected Count	4.7	.1	.2	5.0
	% within Position	100.0%	.0%	.0%	100.0%
GAL	Count	125	1	3	129
	Expected Count	120.9	3.3	4.8	129.0
	% within Position	96.9%	.8%	2.3%	100.0%



I felt ignored, continued

Public Defender	Count	69	1	1	71
	Expected Count	66.6	1.8	2.6	71.0
	% within Position	97.2%	1.4%	1.4%	100.0%
Dept of Children and Family Services Attorney	Count	5	0	0	5
	Expected Count	4.7	.1	.2	5.0
	% within Position	100.0%	.0%	.0%	100.0%
Private/Bar Attorney	Count	66	2	2	70
	Expected Count	65.6	1.8	2.6	70.0
	% within Position	94.3%	2.9%	2.9%	100.0%
Parent Advocate/CASA	Count	85	3	5	93
	Expected Count	87.2	2.4	3.4	93.0
	% within Position	91.4%	3.2%	5.4%	100.0%
Caseworker/Supervisor	Count	121	7	8	136
	Expected Count	127.5	3.5	5.0	136.0
	% within Position	89.0%	5.1%	5.9%	100.0%
Other	Count	33	0	1	34
	Expected Count	31.9	.9	1.3	34.0
	% within Position	97.1%	.0%	2.9%	100.0%
Total	Count	509	14	20	543
	Expected Count	509.0	14.0	20.0	543.0
	% within Position	93.7%	2.6%	3.7%	100.0%

Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.283	.125
	Cramer's V	.127	.125
	N of Valid Cases	559	



I was able to communicate better with the other parties than I would have without mediation

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Position * comm better others	508	90.7%	52	9.3%	560	100.0%

		comm better others			
		Disagree	Neutral	Agree	Total
Assistant State's Attorney	Count	0	1	4	5
	Expected Count	.5	1.2	3.2	5.0
	% within Position	.0%	20.0%	80.0%	100.0%
GAL	Count	4	20	96	120
	Expected Count	12.8	29.8	77.5	120.0
	% within Position	3.3%	16.7%	80.0%	100.0%
Public Defender	Count	6	13	52	71
	Expected Count	7.5	17.6	45.8	71.0
	% within Position	8.5%	18.3%	73.2%	100.0%
Dept of Children and Family Services Attorney	Count	0	1	3	4
	Expected Count	.4	1.0	2.6	4.0
	% within Position	.0%	25.0%	75.0%	100.0%
Private/Bar Attorney	Count	2	15	52	69
	Expected Count	7.3	17.1	44.6	69.0
	% within Position	2.9%	21.7%	75.4%	100.0%
Parent Advocate/CASA	Count	13	25	45	83
	Expected Count	8.8	20.6	53.6	83.0
	% within Position	15.7%	30.1%	54.2%	100.0%
Caseworker/Supervisor	Count	25	43	61	129
	Expected Count	13.7	32.0	83.3	129.0
	% within Position	19.4%	33.3%	47.3%	100.0%
Other	Count	4	8	15	27



Communicate better with others, continued

Expected Count		2.9	6.7	17.4	27.0
% within Position		14.8%	29.6%	55.6%	100.0%
Total	Count	54	126	328	508
	Expected Count	54.0	126.0	328.0	508.0
	% within Position	10.6%	24.8%	64.6%	100.0%

Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.304	.000
	Cramer's V	.215	.000
	N of Valid Cases	508	

I felt involved in the solution

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Position * felt involved	535	95.5%	25	4.5%	560	100.0%

		felt involved mod			
		Disagree	Neutral	Agree	Total
Assistant State's Attorney	Count	0	0	4	4
	Expected Count	.1	.4	3.4	4.0
	% within Position	.0%	.0%	100.0%	100.0%
GAL	Count	3	8	113	124
	Expected Count	4.6	13.2	106.2	124.0
	% within Position	2.4%	6.5%	91.1%	100.0%
Public Defender	Count	1	13	56	70
	Expected Count	2.6	7.5	59.9	70.0
	% within Position	1.4%	18.6%	80.0%	100.0%



Felt involved in the solution, continued

Dept of Children and Family Services Attorney	Count	0	1	4	5
	Expected Count	.2	.5	4.3	5.0
	% within Position	.0%	20.0%	80.0%	100.0%
Private/Bar Attorney	Count	1	5	62	68
	Expected Count	2.5	7.2	58.2	68.0
	% within Position	1.5%	7.4%	91.2%	100.0%
Parent Advocate/CASA	Count	4	17	72	93
	Expected Count	3.5	9.9	79.6	93.0
	% within Position	4.3%	18.3%	77.4%	100.0%
Caseworker/Supervisor	Count	7	12	120	139
	Expected Count	5.2	14.8	119.0	139.0
	% within Position	5.0%	8.6%	86.3%	100.0%
Other	Count	4	1	27	32
	Expected Count	1.2	3.4	27.4	32.0
	% within Position	12.5%	3.1%	84.4%	100.0%
Total	Count	20	57	458	535
	Expected Count	20.0	57.0	458.0	535.0
	% within Position	3.7%	10.7%	85.6%	100.0%

Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.224	.020
	Cramer's V	.159	.020
	N of Valid Cases	535	



What effect will mediation have on the amount of time you spend on the case?

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Position * Effect on time	520	92.9%	40	7.1%	560	100.0%

		Effect on time			
		Decrease	No impact	Increase	Total
Assistant State's Attorney	Count	3	1	2	6
	Expected Count	2.0	2.7	1.4	6.0
	% within Position	50.0%	16.7%	33.3%	100.0%
GAL	Count	52	57	15	124
	Expected Count	40.8	54.8	28.4	124.0
	% within Position	41.9%	46.0%	12.1%	100.0%
Public Defender	Count	30	25	13	68
	Expected Count	22.4	30.1	15.6	68.0
	% within Position	44.1%	36.8%	19.1%	100.0%
Dept of Children and Family Services Attorney	Count	1	0	4	5
	Expected Count	1.6	2.2	1.1	5.0
	% within Position	20.0%	.0%	80.0%	100.0%
Private/Bar Attorney	Count	30	23	13	66
	Expected Count	21.7	29.2	15.1	66.0
	% within Position	45.5%	34.8%	19.7%	100.0%
Parent Advocate/CASA	Count	24	45	19	88
	Expected Count	28.9	38.9	20.1	88.0
	% within Position	27.3%	51.1%	21.6%	100.0%
Caseworker/Supervisor	Count	21	67	46	134
	Expected Count	44.1	59.3	30.7	134.0
	% within Position	15.7%	50.0%	34.3%	100.0%
Other	Count	10	12	7	29



Effect on time spent, continued

Total	Expected Count	9.5	12.8	6.6	29.0
	% within Position	34.5%	41.4%	24.1%	100.0%
	Count	171	230	119	520
	Expected Count	171.0	230.0	119.0	520.0
Total	% within Position	32.9%	44.2%	22.9%	100.0%
	Count	171	230	119	520
	Expected Count	171.0	230.0	119.0	520.0
	% within Position	32.9%	44.2%	22.9%	100.0%

Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.317	.000
	Cramer's V	.224	.000
	N of Valid Cases	520	

I have a better understanding of the family's needs as a result of mediation

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Position * understand fam better	546	97.5%	14	2.5%	560	100.0%

		understand fam better			
		Disagree	Neutral	Agree	Total
Assistant State's Attorney	Count	0	1	5	6
	Expected Count	.5	1.2	4.3	6.0
	% within Position	.0%	16.7%	83.3%	100.0%
GAL	Count	8	19	101	128
	Expected Count	9.6	25.8	92.6	128.0
	% within Position	6.2%	14.8%	78.9%	100.0%
Public Defender	Count	4	17	50	71
	Expected Count	5.3	14.3	51.4	71.0
	% within Position	5.6%	23.9%	70.4%	100.0%



Better understanding of family's needs, continued

Dept of Children and Family Services Attorney	Count	0	2	2	4
	Expected Count	.3	.8	2.9	4.0
	% within Position	.0%	50.0%	50.0%	100.0%
Private/Bar Attorney	Count	0	7	64	71
	Expected Count	5.3	14.3	51.4	71.0
	% within Position	.0%	9.9%	90.1%	100.0%
Parent Advocate/CASA	Count	11	27	52	90
	Expected Count	6.8	18.1	65.1	90.0
	% within Position	12.2%	30.0%	57.8%	100.0%
Caseworker/Supervisor	Count	16	33	92	141
	Expected Count	10.6	28.4	102.0	141.0
	% within Position	11.3%	23.4%	65.2%	100.0%
Other	Count	2	4	29	35
	Expected Count	2.6	7.1	25.3	35.0
	% within Position	5.7%	11.4%	82.9%	100.0%
Total	Count	41	110	395	546
	Expected Count	41.0	110.0	395.0	546.0
	% within Position	7.5%	20.1%	72.3%	100.0%

Symmetric Measures

	Value	Approx. Sig.
Nominal by Nominal Phi	.253	.002
Cramer's V	.179	.002
N of Valid Cases	546	

I felt pressured into agreeing to a solution

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Position * felt pressured	518	92.5%	42	7.5%	560	100.0%



Felt pressured, continued

		felt pressure mod			
		Disagree	Neutral	Agree	Total
Assistant State's Attorney	Count	4	0	0	4
	Expected Count	3.3	.5	.3	4.0
	% within Position	100.0%	.0%	.0%	100.0%
GAL	Count	104	8	8	120
	Expected Count	98.2	13.7	8.1	120.0
	% within Position	86.7%	6.7%	6.7%	100.0%
Public Defender	Count	61	7	1	69
	Expected Count	56.5	7.9	4.7	69.0
	% within Position	88.4%	10.1%	1.4%	100.0%
Dept of Children and Family Services Attorney	Count	3	2	0	5
	Expected Count	4.1	.6	.3	5.0
	% within Position	60.0%	40.0%	.0%	100.0%
Private/Bar Attorney	Count	54	6	5	65
	Expected Count	53.2	7.4	4.4	65.0
	% within Position	83.1%	9.2%	7.7%	100.0%
Parent Advocate/CASA	Count	61	21	5	87
	Expected Count	71.2	9.9	5.9	87.0
	% within Position	70.1%	24.1%	5.7%	100.0%
Caseworker/Supervisor	Count	109	13	15	137
	Expected Count	112.1	15.6	9.3	137.0
	% within Position	79.6%	9.5%	10.9%	100.0%
Other	Count	28	2	1	31
	Expected Count	25.4	3.5	2.1	31.0
	% within Position	90.3%	6.5%	3.2%	100.0%
Total	Count	424	59	35	518
	Expected Count	424.0	59.0	35.0	518.0
	% within Position	81.9%	11.4%	6.8%	100.0%

**Symmetric Measures**

		Value	Approx. Sig.
Nominal by Nominal	Phi	.245	.005
	Cramer's V	.173	.005
	N of Valid Cases	518	

I am satisfied with how the mediation was handled**Case Processing Summary**

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Position * satis w/ med	547	97.7%	13	2.3%	560	100.0%

		satis w/ med			
		1	2	3	Total
Assistant State's Attorney	Count	0	0	6	6
	Expected Count	.1	.3	5.6	6.0
	% within Position	.0%	.0%	100.0%	100.0%
GAL	Count	2	3	123	128
	Expected Count	2.3	6.1	119.6	128.0
	% within Position	1.6%	2.3%	96.1%	100.0%
Public Defender	Count	1	0	69	70
	Expected Count	1.3	3.3	65.4	70.0
	% within Position	1.4%	.0%	98.6%	100.0%
Dept of Children and Family Services Attorney	Count	0	1	4	5
	Expected Count	.1	.2	4.7	5.0
	% within Position	.0%	20.0%	80.0%	100.0%
Private/Bar Attorney	Count	1	1	69	71
	Expected Count	1.3	3.4	66.3	71.0
	% within Position	1.4%	1.4%	97.2%	100.0%



Satisfied with mediation, continued

Parent Advocate/CASA	Count	1	11	80	92
	Expected Count	1.7	4.4	85.9	92.0
	% within Position	1.1%	12.0%	87.0%	100.0%
Caseworker/Supervisor	Count	5	10	124	139
	Expected Count	2.5	6.6	129.9	139.0
	% within Position	3.6%	7.2%	89.2%	100.0%
Other	Count	0	0	36	36
	Expected Count	.7	1.7	33.6	36.0
	% within Position	.0%	.0%	100.0%	100.0%
Total	Count	10	26	511	547
	Expected Count	10.0	26.0	511.0	547.0
	% within Position	1.8%	4.8%	93.4%	100.0%

Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.226	.015
	Cramer's V	.160	.015
	N of Valid Cases	547	

The mediation moved the case forward

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Position * Moved Case Forward	534	95.4%	26	4.6%	560	100.0%

		Moved case forward			
		Disagree	Neutral	Agree	Total
Assistant State's Attorney	Count	0	0	6	6
	Expected Count	.4	1.0	4.5	6.0
	% within Position	.0%	.0%	100.0%	100.0%



Mediation moved case forward, continued

GAL	Count	10	17	97	124
	Expected Count	9.3	21.1	93.6	124.0
	% within Position	8.1%	13.7%	78.2%	100.0%
Public Defender	Count	2	10	56	68
	Expected Count	5.1	11.6	51.3	68.0
	% within Position	2.9%	14.7%	82.4%	100.0%
Dept of Children and Family Services Attorney	Count	0	3	2	5
	Expected Count	.4	.9	3.8	5.0
	% within Position	.0%	60.0%	40.0%	100.0%
Private/Bar Attorney	Count	1	4	65	70
	Expected Count	5.2	11.9	52.8	70.0
	% within Position	1.4%	5.7%	92.9%	100.0%
Parent Advocate/CASA	Count	7	18	66	91
	Expected Count	6.8	15.5	68.7	91.0
	% within Position	7.7%	19.8%	72.5%	100.0%
Caseworker/Supervisor	Count	16	34	84	134
	Expected Count	10.0	22.8	101.1	134.0
	% within Position	11.9%	25.4%	62.7%	100.0%
Other	Count	4	5	27	36
	Expected Count	2.7	6.1	27.2	36.0
	% within Position	11.1%	13.9%	75.0%	100.0%
Total	Count	40	91	403	534
	Expected Count	40.0	91.0	403.0	534.0
	% within Position	7.5%	17.0%	75.5%	100.0%

Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.263	.001
	Cramer's V	.186	.001
	N of Valid Cases	534	