Child Protection Mediation in Texas: Past, Present, and Future

University of Texas School of Law Mediation Clinic
Inspiration

...mediation and non-adversarial family group decision making can be effective means to final resolution and are underutilized through the state....

Texas Supreme Court’s Order Establishing Permanent Judicial Commission for Children, Youth and Families, November 2007
The Past: CJA

- 1997-2005
- 50 counties, mostly through cluster courts
- Training developed and delivered
- Evaluation by CPPDR
- The Bottom Line: CPM effective and efficient process for resolving child protection litigation
Key CJA Results

• Variety of disputes, including termination
• Most resulted in agreements
  – Full or partial agreements in 76% of cases
• Used at all stages in case lifecycle
  – Trend toward later mediation during CJA period
  – 2003-2005: 86% of mediations occurring later than 90 days after litigation began
Key CJA Results

• Process seen as fair and effective → very satisfied participants
• Anecdotal reports of savings but data inconsistent
• Participants considered CPM more effective than resolution through court hearing
• Training and paying mediators important
The Present: UT Mediation Clinic Assessment

• In the absence of useful quantitative data, we surveyed and reviewed surveys of
  – Judges
  – Mediators
  – CASA programs
  – DFPS staff
  – Lawyers in CP cases

• We also looked at reported research
Caveat
What We Learned

• Judges strongly believe that CPM serves the best interest of children
  – 88% satisfied or very satisfied
  – NO judge dissatisfied or very dissatisfied
• Reports indicate mediation is widely used
• No consistent criteria for referring cases to mediation
What We Learned

• Courts refer at all stages
  – Most mediations occur later in case lifecycle
    • Focus on settlement of litigated case
  – A minority occur early
    • Focus on TMC, placement, services
    • Coordination with FGDM?

• Most mediations result in settlement
What We Learned

• Mediators
  – 2/3 lawyers
  – 40 hours basic + 24 hour family law mediation training
    • All mediators surveyed had 40 hours basic + 24 hour family law mediation training
    • 87% of judges required basic + either 24 hour family law or CPM training
  – Experience also important to judges’ selection
  – Training needs to include
    • Unique characteristics of child protection system and litigation
    • Role plays that reflect real world experience
What We Learned

• Funding
  – Multiple sources
  – Primarily county $
  – Some sites make extensive use of volunteers
  – Lack of funding reported as significant barrier to expansion
Concerns of Judges

• Mediation confidentiality limits access of judges to facts related to best interests of children
• Quality of participation
  – Parties other than AALs, GALs not focused on best interests
  – Impact of multiple representatives of DFPS

Even so, judges overwhelmingly see mediation as serving best interests of children
Advantages

• Cases resolved earlier
  – Avoid trial and contested hearings
  – Avoid appeals
  – By removing settled cases from the docket, allowed judges to focus valuable docket time on truly contested cases
  – Narrowed issues even when settlement did not occur
  – Child reaches permanency sooner
  – Cost savings
Advantages

• Flexibility and participation in case resolution
  – Parents voices heard
  – Individualized agreements
  – Empowers parents to be more responsible for decisions about children
  – Less stressful on parents than court
Research Elsewhere Reveals Consistent Results

- Mediation results in agreement
  - 60-80% full agreement + 10-20% partials
  - Agreements at all stages
    - Termination settlements ~ 50-60%
    - Mediated treatment plans provide more services and details

- Mediation results in quicker resolution

- Mediation engages parents
Research Elsewhere Reveals Consistent Results

• Program success depends on participant buy-in
• Consistent funding remains a struggle
• For consistency and quality statewide, check out NM model for central coordination with local autonomy
Six Factors
Found by the Think Tanks

- Local judicial support
- Central coordination with local autonomy
- Ample resources and funding
- Quality assurance
- Highly-trained mediators
- Buy-in from other participants
The Future: Guiding Principles

• Establish the expectation that judges will authorize mediation in appropriate cases
• Assure consistency and quality in the delivery of mediation services by developing best practices based on comparable quantitative data
The Future: Guiding Principles

• Assure reliable mediation services and secure stable funding.

• Provide to mediators training focused on the unique characteristics of child protection mediation.

• Provide lawyers, CASAs, and DFPS staff training focused on effective participation in the mediation process.