

Using Mediation Effectively in Child Protection Cases

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1

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Overview

- Background on the use of mediation in CPS cases
- Prior research on the use of mediation in CPS cases
- The Children's Commission and Judge Byrne's interest in mediation for CPS cases
- Research questions of current study
- Preliminary findings from focus groups
- Extension of current study to other jurisdictions

2

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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

3

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Background

- 1987, Texas ADR Act
- 1997-2005: Pilot projects funded through CJA
- 2010: UT Law Mediation Clinic Study
- 2012: AFCC Guidelines for Child Protection Mediation

4

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The Past: CJA, 1997-2005

- The Bottom Line: CPM effective and efficient process for resolving child protection litigation
- Full or partial agreements in 76% of cases
- Participants see mediation as fair and effective
- Training and paying mediators important
- Anecdotal reports of cost savings but data inconsistent

5

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Prior Research on Mediation

- Mediation results in agreement
- Mediation results in quicker resolution
- Mediation engages parents
- Program success depends on participant buy-in
- Consistent funding remains a struggle

6

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UT Law Study on CPM in Texas

- Judges strongly believe that CPM serves the best interest of children
- Reports indicate mediation is widely used
- No consistent criteria for referring cases to mediation
- Courts refer at all stages & most mediations occur later in case lifecycle
- Most mediations result in settlement
- Funding presents a challenge

7

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Current Use and Interest

- The Honorable Judge Byrne has used mediation regularly for CPS cases for more than a decade
- Mediation generally occurs toward later stage of case, prior to trial preparation
- Interested in learning if it is an effective strategy for resolving the legal issues of case and improving child outcomes; also, is it a cost-effective strategy?
- Commission hopes to encourage effective and high-quality mediation services by developing best practices based on comparable quantitative data

8

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Research Questions

- What types of cases are best suited for resolution through mediation?
- When in the life-cycle of a case is the optimal time for mediation to occur?
- How are outcomes (legal resolution, child wellbeing, time to permanency) affected by mediation?
- Is mediation a cost-effective strategy for resolving child protection cases?

9

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Focus Group Findings

- Conducted 2 focus groups with lawyers, CPS workers, and CASA advocates
- All believe mediation is a useful tool for almost all cases
 - Benefit is that all parties are “on same page” and results in a legal resolution
 - Exceptions are cases that should be resolved prior to mediation and when parties will not attempt to agree
 - No target case is best for mediation – interveners are most difficult cases to resolve
- All assert that mediation saves time and dollars, as compared to trial
- Quality of mediation is KEY!

10

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Next Steps in Research

- Interviews with Travis County mediators
- Analysis of Travis County court and CPS data
- Develop a “cost” model that includes all costs associated with mediation and trial
- Expand research to other Texas counties