

CHILD PROTECTION MEDIATION IN TEXAS:  
PAST, PRESENT, AND FUTURE

A REPORT BY

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## EXECUTIVE SUMMARY

The Texas Supreme Court has charged the Permanent Judicial Commission on Children, Youth & Families to identify and assess needs for courts to be more effective in achieving child-welfare outcomes. The Court has noted that mediation is underutilized to resolve child protection cases, notwithstanding its track record of improving the administration of justice for children. This report aims to assist the Commission by examining the use of mediation in child protection cases in Texas.

Mediation in Texas child protection cases dates from the late 1990s, when the Children's Justice Act (CJA) funded a series of pilot projects in rural and urban courts. Evaluation of the CJA pilot projects revealed that mediation was effective in settling child protection case and preferred by most participants. After CJA funding ended, mediation of child protection cases expanded throughout the State. However, currently no comparable, consistent, statewide data about the use and effectiveness of child protection mediation exists. In the absence of these data, we conducted surveys in 2008 and 2009 with key participants in child protection litigation, including judges, mediators, lawyers, child protection agency staff, and CASA programs. The surveys reveal that courts overwhelmingly affirm that mediation serves the best interest of children in child protection cases. Courts refer cases to mediation throughout the life cycle of a child protection case, but mostly in the later stages near trial. Mediation of child protection cases frequently results in settlement, saving time and scarce government resources as well as resolving legal issues related to permanency for children sooner than resolution through litigation. Mediation is flexible, yielding individualized agreements that engage parents in resolving litigation about their children.

Despite the support of the judiciary, mediators, and litigants for child protection mediation, challenges remain. First, to determine best practices and to assess the effectiveness of mediation to resolve child protection cases, courts need consistent and comparable data. Other challenges include assuring reliable funding for mediation services; educating judges about its use; providing effective training for mediators and for participants in mediation; determining when mediation should occur; and maintaining quality mediation services throughout this diverse and large state.

To encourage the appropriate and effective use of mediation to improve the administration of justice in child protection cases, we propose these guidelines for the Commission:

- Establish the expectation that judges will authorize mediation in appropriate child protection cases.
- Assure consistency and quality in the delivery of mediation services by developing best practices based on comparable quantitative data.
- Assure reliable, high-quality mediation services and secure stable funding.
- Provide mediators with training focused on the unique characteristics of child protection cases.
- Provide lawyers, CASAs, and child protection agency staff with training focused on effective participation in the mediation process.

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## Introduction

In November 2007, the Texas Supreme Court created its Permanent Judicial Commission on Children, Youth, and Families (hereafter, the Commission). In establishing the Commission, the Court identified a number of problems in the administration of justice for children in civil cases involving alleged abuse and neglect. Among other concerns, the Court noted that “mediation and non-adversarial family group decision making can be effective means to final resolution and are underutilized through the state.”<sup>1</sup> To address this and other problems, the Court charged the new Commission to “...identify and assess current and future needs for the courts to be more effective in achieving child-welfare outcomes of safety, permanency, well-being, fairness and due process; [and to] promote best practices and programs that are data-driven, evidence-based, and outcome-focused...”<sup>2</sup>

The Commission’s work to promote “data-driven, evidence-based, and outcome-focused” practices is timely. The crucial role played by the courts in resolving child protection cases has led to the development of outcome measures for courts that assess progress toward achieving the goals of safety, permanency, and well-being of children. For several of these measures (*e.g.*, time to adjudication, time to permanency), mediation holds the promise of improving the administration of justice, assuring timely dispute resolution, and supporting family self-determination.<sup>3</sup> Furthermore, the Association for Family and Conciliation Courts along with the American Humane Association and other partners are in the process of developing guidelines for child protection mediation. The focus on child protection mediation by these entities outside the State informs the Commission’s work within Texas on this same issue.

To assist the Commission in its efforts, the Mediation Clinic at the University of Texas School of Law prepared this report on mediation in child protection cases in Texas. Our report looks both at past efforts to develop and implement child

protection mediation programs in our state and at current practices used in Texas courts. We also look outside of Texas for research into effective use of mediation in child protection cases. Finally, we propose guiding principles for the Commission to consider in its work to improve the administration of justice for children in child protection cases.

Mediation is often said to occur “in the shadow of the law,” reflecting the necessity to take legal requirements into account when reaching mediated settlements in litigated cases. Consequently, we first examine the legal framework of mediation in Texas, with a specific focus on family law litigation involving protection of children from abuse and neglect.

## Legal Framework for Child Protection Mediation in Texas

Since 1987, the policy of the State of Texas has been “to encourage the peaceable resolution of disputes, with special consideration to disputes involving the parent-child relationship, including the mediation of issues involving conservatorship, possession and support of children....”<sup>4</sup> Mediation is a form of alternative dispute resolution. Specifically, it is “a forum in which a neutral party, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them.”<sup>5</sup> Like a judge, the mediator is an impartial third party. Unlike a judge, the mediator does not render a judgment or decide issues in dispute.<sup>6</sup>

Resolving a dispute in mediation is voluntary; participants in mediation may choose to reach an agreement or not. Although the decision to resolve a dispute in mediation remains a party’s choice, courts may require parties to participate in mediation. Courts may refer pending disputes to mediation and other alternative dispute resolution procedures.<sup>7</sup> Parties may object to a court’s referral to mediation, and the court may not refer the matter to mediation if there is a



reasonable objection.<sup>8</sup> Objections based on family violence are singled out for special consideration by the courts. However, the Texas Family Code provision covering objections to mediation based on family violence specifically excludes from its application government-initiated child protection cases.<sup>9</sup>

Unlike lawyers, mediators are not licensed by the State. However, qualifications of mediators appointed by Texas courts, as well as standards and duties of mediators, are set out in the Texas Alternative Dispute Resolution (ADR) Act.<sup>10</sup> Ordinarily, mediators of cases referred from Texas courts must have a minimum of 40 hours of classroom training in dispute resolution, plus an additional 24 hours of specialized training to mediate disputes involving the parent-child relationship.<sup>11</sup> There are no additional statutory training requirements for lawyers representing parties in child protection mediation or for mediators in child protection cases. The court may set a reasonable fee for the appointed mediator's services.<sup>12</sup> Ordinarily, parties agree among themselves on payment for mediation services. In child protection cases, however, many litigants are indigent and unable to pay mediation fees, giving rise to the need to develop alternate funding mechanisms.

Consistent with the absence of a state-sponsored licensing scheme for mediators, ethical standards for mediators are voluntary. The Texas Supreme Court has approved Ethical Guidelines for Mediators.<sup>13</sup> Other voluntary standards include the American Bar Association's Model Standards of Conduct for Mediators,<sup>14</sup> the Model Standards of Practice for Family and Divorce Mediation<sup>15</sup>, as well as standards of voluntary organizations related to credentialing of mediators, such as the Texas Mediator Credentialing Association.<sup>16</sup>

A key feature of mediation is its confidentiality. With very limited exceptions, a communication made in mediation "is confidential, is not subject to disclosure, and may not be used as evidence against the [mediation] participant in any

judicial or administrative proceeding.”<sup>17</sup> However, this strong confidentiality requirement does not affect the duty to report child abuse or neglect<sup>18</sup> if previously unreported allegations were to come to light during the mediation process.

To be enforceable, a mediated settlement agreement must be in writing. This requirement is also consistent with Rule 11 of the Texas Rules of Civil Procedure. The Texas ADR Act provides that when the parties execute a written mediated settlement agreement that disposes of a dispute, it is enforceable in the same manner as any other contract.<sup>19</sup> Because mediated settlement agreements are enforceable as any other contract, they may also be challenged on the same bases as other contracts, *e.g.*, duress, fraud, mutual mistake.

Further, courts may incorporate the terms of mediated settlement agreement into a final decree disposing of a litigated case.<sup>20</sup> If a mediated settlement agreement has also been incorporated into a final order disposing of a litigated case, the order may be enforced as any other court order. In suits affecting the parent-child relationship, Texas Family Code section 153.0071 imposes additional requirements, beyond those in the Texas ADR Act, for incorporating mediated settlement agreements into court orders. The Family Code provisions make certain mediated settlement agreements irrevocable and entitle the signatory parties to judgment based on the irrevocable agreement. Specifically, the Family Code provides:

- (d) A mediated settlement agreement is binding on the parties if the agreement:
  - (1) provides, in a prominently displayed statement that is in boldfaced type or capital letters or underlined, that the agreement is not subject to revocation;
  - (2) is signed by each party to the agreement; and
  - (3) is signed by the party’s attorney, if any, who is present at the time the agreement is signed.
- (e) If a mediated settlement agreement meets the requirements of Subsection (d), a party is entitled to judgment on the

mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.<sup>21</sup>

The obligation to grant judgment based on a mediated settlement agreement that complies with these requirements limits judicial review of the agreements of litigants. Further, the additional requirements protect agreeing parties from “buyer’s remorse” by signatories who change their minds after mediation. Even in cases involving termination of parental rights, properly executed mediated settlement agreements containing the appropriate language are irrevocable and binding on parents.<sup>22</sup> Even so, a court may take into account family violence considerations in some cases. The Family Code allows courts to “decline to enter a judgment on a mediated settlement agreement if the court finds that: (1) a party to the agreement was a victim of family violence, and that circumstance impaired the party’s ability to make decisions; and (2) the agreement is not in the child’s best interest.”<sup>23</sup> Absent considerations related to family violence, however, a court is not required to conduct a hearing to determine whether the mediated settlement agreement is in the best interests of the children before rendering judgment on the mediated settlement agreement<sup>24</sup>.

Despite Family Code requirements to render judgment on properly executed irrevocable mediated settlement agreements, court approval is still required for dismissal of suits to terminate parental rights.<sup>25</sup> If a mediated settlement agreement includes dismissal of termination claims, the court may exercise its authority to disapprove the dismissal, subject to review for abuse of discretion. The effect of disapproving the dismissal may make it impossible to render judgment on a mediated settlement agreement that includes dismissal of termination claims. The refusal of a court to approve dismissal of termination claims in a mediated settlement agreement sets up the perception of a conflict between different provisions of the Family Code, specifically between the requirement of Section 154.0071 to render judgment on a properly executed irrevocable mediated settlement agreement that dismisses termination claims, and the power of the court to disapprove dismissal of termination claims under

Section 261.203. Applying the rules of statutory construction to this apparent conflict, however, permits the more specific requirement in Section 261.203 to control.<sup>26</sup>

## Differences with Family Group Decision-Making

Significant differences exist between mediation and another dispute resolution process used in child protection cases, family group decision-making (sometimes called family group conferencing). Family group decision-making (FGDM) is widely used by child protection agencies from New Zealand to the United States. In Texas, the Department of Family and Protective Services (DFPS) began offering FGDM statewide following an evaluation of a pilot project in 2006. Like mediation, FGDM is a voluntary process focused on problem-solving, engagement, and empowerment.<sup>27</sup> Indeed, the responsibility of the family to engage in solving its own problems is a hallmark of FGDM, leading to increased relative placements and avoidance of foster care in many cases.

The focus of FGDM is addressing the safety of the children, including services for family members and placement of children outside of foster care.<sup>28</sup> Although child protection mediation may include resolution of these same concerns, as currently practiced in Texas, mediation usually focuses on issues related to pending litigation and upcoming hearings or trials. FGDM engages participants beyond those who have authority to settle a litigated child protection case, by including extended family members and friends.<sup>29</sup> In fact, necessary parties to the litigated child protection case may be excluded from FGDM, consistent with its focus on family responsibility and empowerment.<sup>30</sup> Mediation, on the other hand, ordinarily requires the participation of those who have authority to settle the litigated case and may include others with the consent of the parties. In contrast with FGDM, the mediator must be neutral and impartial.<sup>31</sup> Facilitators of FGDMs are employees or contractors of the Department, an interested party.<sup>32</sup> Although they may be trained and effective facilitators, they have an inherent

conflict of interest and, consequently, they cannot be truly impartial as a mediator is required to be. Also, FGDM lacks the confidentiality protections that the Texas ADR Act provides for mediation.<sup>33</sup>

In sum, FGDM is an effective process for resolving issues of placement of children and services for families, and so is mediation. However, mediation is an effective process for resolving litigated child protection cases, and FGDM by itself is not, nor is that the purpose of FGDM.

## The Past: CJA Mediation Pilot Projects

*“Mediation is a faster, less expensive, and more humane alternative to CPS litigation.”*  
Texas Children’s Justice Act  
Task Force

Texas has been a national leader in resolution of litigated cases through mediation, with significant expansion of the use of mediation following the passage of the Texas ADR Act in 1987. However, for ten years after the passage of the Texas ADR Act, few Texas courts referred child protection cases to mediation. Then, key statutory changes made 1997 a watershed year in child protection litigation. That year, Texas enacted a one-year time limit for temporary foster care, with a provision for a single extension for up to six months.<sup>34</sup> Later in 1997, Congress passed the Adoption and Safe Families Act, which also aimed at limiting lengthy stays in foster care.<sup>35</sup> These statutory changes provided the impetus for courts to resolve child protection litigation in a more timely fashion, leading to an exploration of mediation as a way to achieve that goal. Starting in 1997, the Texas Children’s Justice Act (hereafter CJA) provided funding to test child protection mediation, beginning in five counties and ultimately creating pilot projects in thirteen counties and three specialty child protection courts.<sup>36</sup> For the locations of the pilot projects, see Appendix A.

*“In mediation, with everyone sitting around the table, there is more give and take. Parents are not as intimidated by the setting as they would be in the courtroom, and they have an opportunity to talk.”*

Prosecutor

At the conclusion of the first year, a preliminary evaluation found that mediation was both effective in settling child protection cases and preferred by most participants.<sup>37</sup> Seventy-six percent of the participants reported that mediation resulted in agreement,<sup>38</sup> and

79 percent of participants strongly agreed or agreed that “mediation helped me to understand what I needed to do.”<sup>39</sup> The early support for child protection mediation continued to bear fruit as the number of pilot projects expanded, through 2005 when 50 counties were affected. Ultimately, large urban areas – Dallas and Harris Counties – as well as small counties in East, South, and West Texas developed pilot projects.

By the time of the final evaluation report for 2003-2005, the results of the CJA pilot projects revealed that mediation was an effective and efficient process for resolving child protection litigation. The final report found that child protection mediation significantly reduced the number of cases that require full adjudication, as well as their cost, by resulting in settlements before final trial. Judges found that mediation produced settlement at every stage in the life cycle of a case and saved the court time and money. Mediated settlement agreements were more likely to result in voluntary relinquishments and open adoptions. Parents felt that mediation provided them with an opportunity to be heard.<sup>40</sup>

Furthermore, there was unanimous agreement across sites and participants “that mediation is a positive strategy for resolving Child Protective Services (CPS) cases.”<sup>41</sup> Even though mediation was initially met with some resistance by participants, after attending mediation, participants preferred mediation to a judicial hearing. Overall, a large majority of mediation participants were highly satisfied with the process and considered the process to be both fair and effective.<sup>42</sup> Over the course of the CJA pilot projects, participants increasingly

gave positive responses to the following statements: “I got a chance to talk about what I wanted to talk about;” “I felt that what I had to say was understood;” “I understood what we were trying to do in the mediation;” and “I felt listened to in the mediation.”<sup>43</sup>

*“It allows parents to understand as well as to hear. Often parents say they heard the judge say something in the courtroom, but they are so nervous and intimidated by the setting that they do not understand the implication.”*

Judge

The evaluation reports of the CJA projects revealed important details about the kinds of disputes mediated, the timing of the mediations, the outcomes of the mediations, and its effectiveness, including costs avoided thanks to mediation.

### ***Nature of the Disputes***

The CJA mediations included cases with both abuse and neglect allegations. In all years, the mediators reported “neglect” as the type of case most commonly presented in mediation, and made up 30 percent to 38 percent of all mediated cases.<sup>44</sup> Cases of “physical abuse” and “failure to protect” were also commonly reported by the mediators.<sup>45</sup> Cases involving sexual abuse declined each year, beginning with a high of 16 percent in 1997-1998, and ending with a low of 8 percent in 2002 and 2003-2005.<sup>46</sup>

The issues that parties sought to resolve through mediation were even more varied, and interesting trends developed over time. Resolution of permanent managing conservatorship increased as an issue in mediations each year, jumping from 3 percent in 2000 to 13 percent in 2005; termination of parent rights and open adoption jumped from 5 percent in 2000 to 10 percent in 2005. On the other hand, issues of rehabilitation services progressively dropped each year, going from 15 percent in 2000 to 9 percent in 2005; and temporary managing conservatorship ranged at a high of 13 percent in 2001 to a low of 4 percent in

2005.<sup>47</sup> Figure 1 shows the cumulative results of CJA evaluation reports from 2000 to 2005.

**Figure 1: Issues the Parties Sought to Resolve – Comparative Results**

	Return of Child to Parental Home	Placement of Child W/ Relative or Other Person	Termination of Parental Rights/Open Adoption	Termination of Parent-Child Relationship	Rehab Services	TMC
2003-2005 Report	11%	15%	10%	9%	9%	4%
2002 Report	16%	16%	6%	5%	13%	9%
2001 Report	15%	15%	4%	4%	14%	13%
2000 Report	16%	15%	5%	5%	15%	11%

	PMC	Child Support	Visitation	School	Other
2003-2005 Report	13%	11%	15%	1%	2%
2002 Report	6%	9%	16%	1%	1%
2001 Report	5%	9%	17%	2%	3%
2000 Report	3%	8%	17%	3%	3%

***Trend toward Later Mediation***

Reports of the CJA projects do not provide a clear answer to the question of when mediation should occur in the life cycle of a child protection case. However, comparing four reports for the period between 2000 and 2005 reveals a significant trend away from early mediation to later mediation,<sup>48</sup> as Figure 2 illustrates.

**Figure 2: Timing of Mediation – Comparative Results**

	≤ 14 Days	15-60 Days	61-90 Days	≥ 91 Days
2003-2005 Report	10%	2%	3%	86%
2002 Report	59%	3%	2%	36%
2001 Report	77%	4%	1%	17%
2000 Report	77%	3%	1%	19%

What lead to the change over time is unclear.



**Most Mediations Resulted in Agreements**

Complete or partial agreements were reached in 76 percent of cases by the end of the CJA projects. Figure 3 below illustrates the levels of agreement over time. From 2003-2005, a full agreement was reached in 58 percent of the mediations, with an additional four percent reported as “complete, pending information”.<sup>49</sup>

**Figure 3: Mediator Reported Levels of Agreement – Comparative Results**

	Complete	Complete, Pending Info	Partial	Partial, Pending Info	None	Other
2003-2005 Report	58%	4%	11%	3%	19%	5%
2002 Report	63%	3%	9%	3%	16%	6%
2001 Report	71%	5%	7%	1%	12%	4%
2000 Report	66%	4%	11%	3%	12%	4%
1997-1998 Report	39%	24%	12%	9%	6%	9%

Reasons why cases did not settle varied through the years. In the 2000, 2001, and 2002 Reports, mediators and participants both indicated the most common reason for not reaching settlement was “parties disagreed.”<sup>50</sup> In the 1997-1998 and 2003-2005 Reports, the most common reason was “missing party.”<sup>51</sup> Other reasons a case did not settle included “facts in dispute,” “legal issues unresolved,” and “missing information.”<sup>52</sup>

**Cost Savings and Effectiveness of Mediation**

Traditionally, judicial support for mediation arises from its value as a cost-effective docket management tool, and the reports of the CJA pilot projects bear this out. However, the CJA projects followed no consistent methodology to account for cost-savings, relying instead on estimates provided by some of the projects, as the following reports indicate. The Ellis County project reported that it did not have a single jury trial during the time it mediated child protection cases.<sup>53</sup> The county was not sure of the specific cost savings, but the judge and prosecutor noted that mediation was more economical because trials normally

lasted an entire week.<sup>54</sup> In 2001, Dallas County estimated a savings of \$67,022 for thirteen cases.<sup>55</sup> The biggest expense of trial, a Dallas County judge reported, is attorney's fees, with fees that may reach \$20,000 during trial.<sup>56</sup> Mediation lessened that cost because cases were concluded in less than a day. In 2001, Harris County estimated a savings of \$200,940.52 in 166 cases.<sup>57</sup> In May 2002, Harris County had 100 percent settlement for nine mediated cases.<sup>58</sup> Avoiding a jury trial during that month saved \$17,049.33, or \$1,894.37 per case.<sup>59</sup> With regard to cost-savings, the South Texas Cluster Court estimated these savings from 2001-2003:

- 2001, 22 cases, \$44,238 in savings
- 2002, 27 cases, \$162,655 in savings
- 2003, 9 cases, \$27,370 in savings<sup>60</sup>

Reports of the participants in pilot project mediations echo these assessments. At least two-thirds of respondents who stated they had previously been involved in a mediation considered the process to be more effective than a legal hearing, less costly, and more efficient by reducing the number of back-logged cases.<sup>61</sup> A child protection agency attorney noted that a successful mediation reduced the amount of time it takes to prepare a case for trial.<sup>62</sup> Prosecutors supported mediation because the time saved allowed overloaded district attorney offices to concentrate on other cases.<sup>63</sup> "CPS cases clog the courts. We are now (2004) docketing into next June (2005). Lots of mediated cases get settled without actual court time."<sup>64</sup> In terms of effectiveness, one attorney commented "the case is over when the agreement is signed."<sup>65</sup>

The legal and agency representatives who had been involved in a previous child protection mediation and a previous child protection hearing were asked to rate their preference. Those who expressed a preference found mediation more effective, by substantial percentages; Figure 4 compares the results of the last several program years.

**Figure 4: Process More Effective – Comparative Results**

	Child Protection Mediation	Child Protection Hearing
2003-2005 Report	57%	4%
2002 Report	86%	14%
2001 Report	65%	20%
2000 Report	77%	15%

***Impact of the CJA Pilot Projects***

Children’s Justice Act funding provided a kick-start for child protection mediation in Texas. For the first time, courts and counties established formal structures for mediation of child protection cases and funded mediation services. Importantly, CJA dollars also funded the development and delivery of specialized training for mediators in child protection cases. Funding through CJA made these changes possible, and the importance of financial resources was not lost on the pilot project participants. For example, CJA evaluation reports often emphasized the importance of paying the mediators. Participants expressed concern that volunteers would not have the skills or the time to dedicate to the child protection mediation process.<sup>66</sup>

**The Present: Child Protection Mediation in Texas Today**

With the impetus of CJA funded pilot projects, use of mediation to resolve child protection cases spread widely in Texas. Courts, mediators, and disputants developed home-grown practices for mediating child protection cases and cultivated new funding sources after CJA funding ended. These developments demonstrate both creative problem-solving by Texas courts and their responsiveness to local needs. However, the effectiveness and efficiency of these home-grown practices remain untested. Whether they are “data-driven, evidence-based, and outcome-focused” remains unclear because it is not possible to quantify accurately the use of mediation in child protection cases in Texas today. Regular public reports of case disposition by the judiciary do not

separately identify child protection cases or cases resolved through mediation. Some mediation data may be gleaned from the case management system used by specialized child protection courts. However, these data are not consistently entered into the system by all courts, limiting their usefulness. Some courts keep track of child protection mediations by using county-based case management systems, spreadsheets, or low-tech, paper-and-pencil recordkeeping.

In the absence of consistent, comparable, statewide quantitative data, in 2008 and 2009, the Mediation Clinic at the University of Texas School of Law surveyed courts and mediators. With the help of the Commission staff and TexasCASA, we also surveyed DFPS staff, CASA programs, and attorneys who handle child protection cases. In the absence of quantitative data, the survey results reveal a picture of child protection mediation today in Texas. Specifically, we surveyed:

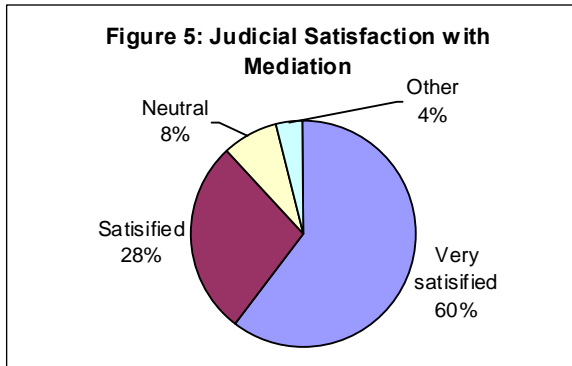
- Judges: At the 2008 CPS Judicial Conference, we requested that the attending judges complete a Judicial Survey; a copy of the survey may be found in Appendix B along with a list of the judges who responded. In total, 27 judges submitted responses to the Judicial Survey, and the respondents reflect both elected and child protection judges from rural and urban areas. The Judicial Survey provided flexibility in the responses, allowing judges to individualize their answers to a great extent.
- Mediators: Between January and April 2009, we distributed a Mediator Survey to individual mediators who conduct child protection mediations. Twenty-eight mediators completed the survey.<sup>67</sup> In addition, we conducted telephone interviews with 15 of the 28 responding mediators, plus one in-person interview. To encourage candid responses, we assured the mediators that they would not be identified by name; instead, we identified the counties where they mediated. The mediators were an experienced group. Of the 28 mediators surveyed, 23 had more than six years of mediation experience, with 14 having more than eleven years

experience. No mediator had conducted fewer than 25 mediations of any kind. Twenty-seven mediators had conducted more than ten child protection mediations; eleven had mediated more than 100 child protection cases. Almost half, 13 out of 28, were also lawyers. The Mediation Survey and the counties of the responding mediators are found in Appendix C.

- CASA: In February 2009, TexasCASA surveyed its local programs concerning their experiences with child protection mediation; the nonprofit children's advocacy group provided these results to the Commission and to us. Forty-seven local Court Appointed Special Advocate (CASA) programs responded; the CASA survey appears in Appendix D.
- DFPS staff: In April 2009, the Department of Family and Protective Services (DFPS) asked selected members of its Child Protective Services staff to respond to a survey developed with the assistance of the Commission staff, using the Survey Monkey tool. One hundred eleven DFPS staff responded to the survey. Of the staff, about 25 percent worked as regional attorneys or in other attorney functions. Most of the other staff respondents were supervisors (33 percent) and higher administrative personnel (19 percent). Caseworkers made up almost 20 percent of the respondents. This survey appears in Appendix E.
- Lawyers in child protection cases: Also in April 2009, and using the Survey Monkey tool, the Commission sent a survey to Texas attorneys that it had identified as handling child protection cases; the survey was also made available to attorneys through the website [www.TexasLawyersforChildren.org](http://www.TexasLawyersforChildren.org). In total, 138 attorneys responded; 24 percent were county or district attorneys, with the other 76 percent in private practice. Over 60 percent of attorneys have participated in fifteen or more mediations. The Lawyer Survey appears in Appendix F.

Each survey differed somewhat from the others. The survey data present a picture of child protection mediation in Texas compiled from the perspectives of judges, mediators, and key professionals actively engaged in these cases. It is a picture based on the perceptions of those most closely involved in and knowledgeable about child protection mediation and litigation in Texas. Consequently, the results provide a viable starting point for identifying future needs of Texas courts and litigants in child protection cases.

### ***Mediation Serves the Best Interest of Children***



Judges overwhelmingly conclude that mediation serves the best interests of children; see Figure 5. Eighty-eight percent of the respondent judges indicated they are either very satisfied or satisfied that mediation in child protection cases serves the best

interest of the children. In fact, not a single judge indicated that she or he was dissatisfied or very dissatisfied. One judge noted that “mediation allows the parties (and at times, extended family) to become part of the process in a non-adversarial setting.”

### ***Advantages of Mediation in Child Protection Cases***

Judges identified several advantages of using mediation to resolve child protection cases. The most frequently identified advantage was earlier resolution of the case, with over half of the judges identifying some variation of this particular advantage. Four judges mentioned the ability to avoid trials, contested hearings, and appeals as an advantage of mediation. Several judges noted that mediation saves the court’s time and improves docket management. A judge

from the 309<sup>th</sup> District Court elaborated on this point, saying that “cases that settle allow us more quality time on cases that aren't settled.” Another frequent response was that the shortened time frame allows for the child to reach permanency and stability sooner. A judge from the East Texas Cluster Court indicated that mediation allows a case to conclude in six months rather than the ten to eleven months it would take if the case went to trial. In addition, a judge from the Children’s Court in Bexar County mentioned that even if the case does not settle, the mediation process still saves court time by narrowing the issues and limiting the scope of trial. Related to prompt resolution, seven judges specifically mention cost savings as a benefit of mediation, including savings to the court and the public as well as savings for the parents.

Twelve of the 27 responding judges identified the flexibility and participation that distinguishes mediation from the litigation process as an advantage. Generally, judges felt that mediation allows for a mutually agreeable result, where all parties have an opportunity to address their concerns. Some judges felt that allowing parents to have their voices heard and to have input into the resolution of the cases creates agreements that fit the individual circumstances of the parents and children. Furthermore, mediation allows the parents to play a role in making the home safe, and it empowers them to make good decisions for the children. Similarly, judges also found that the less adversarial process of mediation creates less stress for the parents and leads to the cases being less contentious from the start.

*“Parents can reach a resolution  
and keep their dignity in tact.”*

*Judge*

### ***Judges’ Concerns About Mediation in Child Protection Cases***

Some judges expressed concerns about the use of mediation in child protection cases. Even though judges overwhelmingly endorsed the view that mediation serves the best interests of children, a minority expressed concern that they

could not assure that mediated settlement agreements reflect the best interests of children in the case. Strong statutory confidentiality protections prevent disclosure of mediation communications on which the parties relied in reaching mediated settlement agreements. Specifically, some judges were dissatisfied with their lack of access to facts about cases settled in mediation, information that they would otherwise learn in evidentiary hearings and trials. A judge from Dallas County expressed concern that mediation keeps the court “in the dark on what could be a pivotal issue for the child.” Some of this judicial concern was specifically focused on mediation of cases involving young children, in which the mediated settlement agreement provided for permanent managing conservatorship without termination of parental rights.

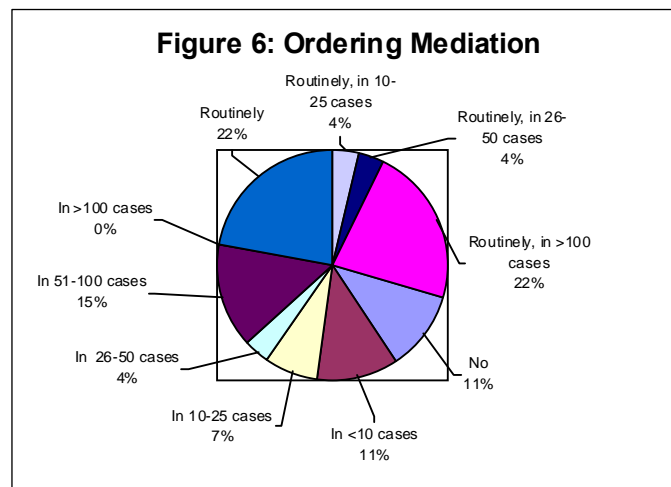
These concerns about the confidentiality of mediation and its impact on judicial discretion reflect tensions inherent in mediation of any family law matter. To some extent, similar tensions are inherent in mediation of any litigated case. However, perhaps related to this concern is another issue that some judges noted, and that is a concern about the *quality* of participation in mediation by some parties. Apparently, some judges did not trust mediation participants to ensure the well-being of the children. One judge was concerned that the participants, except for attorneys ad litem and guardians ad litem, were not thinking of the best interests of the children. Another was concerned that mediation could be used merely to avoid statutory deadlines and that the resulting agreement might not be in the child’s best interest. A couple of judges expressed concern that DFPS was disrespectful and intimidating toward parents in mediation, noting that the agency often brings four to five workers to mediation.

***Mediation is Widespread but Criteria for Referral to Mediation are Unclear***

All surveys report widespread use of mediation in child protection cases. The map in Appendix G reflects the reports of DFPS staff and attorneys in child protection cases that mediation is either not available or its use is unknown in



fewer than 50 counties (out of 254). Every major population center made at least some use of mediation except for the Lower Rio Grande Valley. The same conclusion is reflected in the CASA survey results, which report that over 87 percent of its programs work in courts that use mediation. The survey of judges also indicates the use of mediation in child protection cases. Responding judges estimated the child protection cases they referred to mediation over the past three years; Figure 6 reflects their responses. A total of 20 of the 27 responding judges reported referring child protection cases to mediation routinely, with six of those reporting referrals in more than 100 cases in the past three years. Four judges indicated they ordered mediation in 51 to 100 cases, and three reported that they had ordered mediation in between 10 and 50 cases. Of the 27 judicial respondents, only 3 reported that they had not done so, and all 3 were located in South Texas and the Lower Rio Grande Valley.



Although the overwhelming majority referred child protection cases to mediation, there was no consensus among the judges on the criteria for referring cases to mediation. In fact, some judges report that they assign cases to mediation when the parties *disagree* on issues, while others refer cases to mediation when the parties *do agree*. Generally, judges indicated that they perform case-by-case assessments of the propriety for mediation, considering factors including whether parties will mediate in good faith, the permanency goals of the parties, and whether mediation is likely to be fruitful and result in settlement.

*“I refer cases at the parties’ request; cases in which a family member is an appropriate long-term placement option; cases in which the parent(s) have not engaged in services or only marginally participated in services; or cases in which there are aggravated circumstances.”*

*--The Child Protection Court of Central Texas*

### **Most Mediations Result in Settlement**

Nineteen of the judges who referred cases to mediation in the last three years, indicated that a vast majority of referrals to mediation result in either full or partial settlement. At least half of cases referred to mediation resulted in full settlement. Seven courts report settlement agreements in over 90 percent of cases. Only two responding courts, the Permian Basin Child Protection Court and the Bexar County Children’s Court, indicated that over 50 percent of cases result in no agreement.

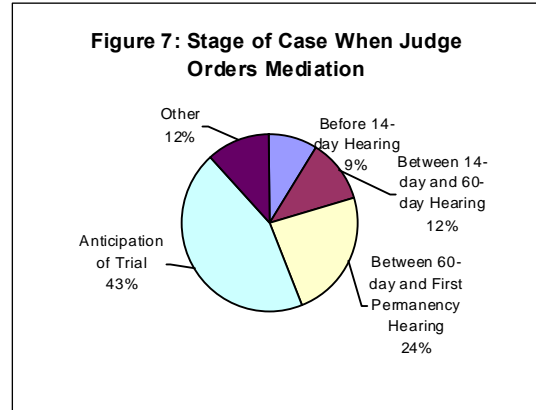
*Seven courts in Texas have a child protection mediation settlement rate of 90 percent or higher.*

### **When to Refer Cases to Mediation**

Prior to disposition, lawsuits in Texas child protection cases have a life cycle that revolves around hearings scheduled according to statutory requirements. These hearings include the full adversary hearing conducted not more than fourteen days after removal of children from their families, the 60-day status hearing, the 180-day permanency hearing, a subsequent permanency hearing 120 days later, and trial before one year elapses.<sup>68</sup> Absent an extension, the case must be resolved within a year of the appointment of DFPS as temporary managing conservator of a child. We asked judges when in this case life cycle they referred cases to mediation, and we asked mediators what they considered the best stage for referring a case to mediation. CASA programs, DFPS staff, and

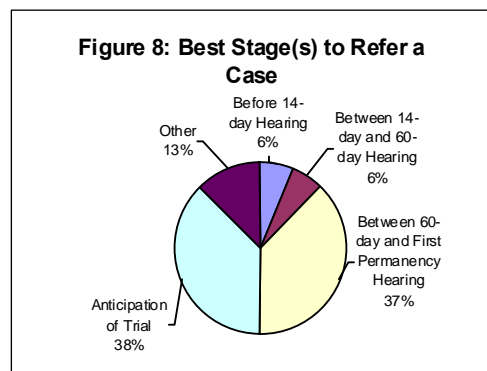
attorneys in child protection cases also reported their experiences with the timing of mediation.

Although Texas judges order mediation at every stage of a case, the judicial survey reveals that mediation occurs most often in anticipation of trial, according to 43 percent of the responding judges; see Figure 7. Judges order mediation before the fourteen-day full adversary hearing only 9 percent of the time, between the



full adversary hearing and the 60-day status hearing 12 percent of the time, between the 60-day status hearing and at the first permanency hearing 24 percent of the time. Cases that were referred to mediation on request, or cases that were referred at times not listed above were placed in the “other” category, and these account for 12 percent of referrals.

Mediators also supported using mediation in the later stages of child protection cases. The mediator survey asked when was the best time for a child protection case to be referred to mediation. Thirty-seven percent of mediators selected between the 60-day status hearing and the first permanency hearing, and 38 percent selected in anticipation of trial. Only 6 percent of mediators felt the best time to mediate was before the fourteen-day full adversary hearing, and another six percent felt the best time was between the full adversary hearing and the 60-day status hearing.



Two mediators indicated that a referral to mediation is fact-dependent. Another mediator suggested that cases involving issues of substance abuse should be mediated between the 60-day status hearing and the

first permanency hearing, to provide a party the opportunity to take steps toward sobriety. Where placement with a relative versus foster care was in question, one mediator had a preference for mediation before the fourteen-day full adversary, or immediately following it. Another mediator preferred to have two mediations, “once after the parties have been given their parenting plan, assigned attorneys and have a caseworker, and then again just before trial.” Mediators who thought it best to conduct mediation in anticipation of trial pointed out that later mediation allows all the participants to have an honest and realistic conversation about the placement of the children. The closer the trial date, the less uncertainty exists about a party’s ability to comply with the parenting plan. At that point in the case life cycle, mediation participants are better able to recognize their individual chances of success at trial and to assess realistically the viability of both trial and alternative settlement options.

CASA programs also reported that mediation was ordered most often for the purpose of settling a case prior to a trial on the merits. CASA reported that mediation was most often ordered, 56 percent of the time, prior to the trial on the merits and 39 percent of the time before the twelve-month dismissal date.

Similar to other participants in child protection litigation, the DFPS staff and child protection attorneys report that mediation is used most often at the later stages of a case. Although both DFPS staff and child protection attorneys reported that mediation was used to resolve placement issues, to achieve permanency early in a case, and to develop a permanency or service plan, both groups noted that mediation was most often used to settle a case prior to trial. Fifty-four percent of DFPS staff and 64 percent of the attorneys reported that mediation occurred in anticipation of trial on the merits, with frequent usage also reported around the twelve-month and eighteen-month dismissal dates.

Referring a case to mediation later, rather than earlier, follows the trend noted, above, during the last years of the CJA pilot projects. Even so, nine percent of

judges report ordering mediation before the fourteen-day full adversary hearing and another twelve percent order mediations between that hearing and the 60-day status hearing. Furthermore, interviews revealed that a minority of mediators prefer to conduct two mediations: the first centered around mediating details of the family plan, and the second as a follow up several months later to determine if the parents have been able to successfully comply with the family plan. For some mediators, the two-mediation approach arose from the perception that DFPS forced unrealistic family plans on the parties. The presence of a mediator at the case planning meeting provided neutrality and a sense of self-determination for the parents. In the words of one mediator, “Mediating the family plan allows the parties to feel like they are buying into the process.” However, other mediators interviewed favored the one-mediation approach, sometimes tying this preference to the timing of discussion of the case plan. One mediator preferred mediation to occur at the beginning of the case because “at the end, it’s just fixing what didn’t get done right in the first place.” Another said “Mediation is the first time to get all the decision-makers in one room to explore options. Shouldn’t this happen at the very beginning, and not the very end of a case?”

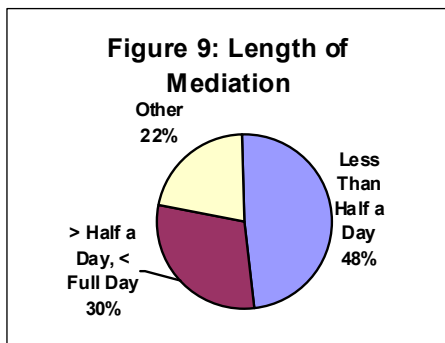
*“Shouldn’t we encourage the use of a program that takes children out of the system sooner and gives them permanency?”*  
Mediator

This preference by some mediators for early and multiple mediations raises questions about the relationship of mediation to family group decision-making (see earlier discussion of the differences between FGDM and mediation) and about the nature of the interaction between DFPS and parents. We asked DFPS staff and attorneys in child protection cases whether they had participated in FGDM and about the effect of mediation on FGDM. Almost 67 percent of attorneys and about 83 percent of DFPS staff had participated in FGDM, and a majority of both sets of respondents reported that mediation did not affect FGDM. Moreover, comments of respondents to this question revealed that several saw

FGDM and mediation as complementary dispute resolution processes, with different purposes and used at different stages in a case life cycle. These results raised questions about the connection between early mediation and FGDM: Are early mediations duplicating what occurs in FGDM? Even if early mediations duplicate FGDM, do the justifications for early mediation, such as the presence of a neutral mediator or creation of realistic parenting plans, outweigh duplication of services and the associated costs?

### ***The Mediation Process in Child Protection Cases***

We asked the mediators about some aspects of the mediation process for two reasons: first, to give judges a view into an otherwise confidential process; and, second, to identify factors that may impact the cost and effectiveness of mediation.



*How long does mediation take?* We asked the approximate length of child protection mediations. Thirteen mediators (48 percent) indicated that a child protection mediation lasts less than half a day. Eight mediators indicated that mediation lasts more than half a day but less than a full day, and no mediators indicated that mediation lasts longer than one day. Of the six mediators that indicated “other,”

one noted that “a few recess for a specific time for compliance issues,” and another indicated that 50 percent of the mediations last less than half a day and 45 percent last more than half a day but less than a full day.

*Who attends child protection mediations?* Twenty-six mediators responded to this question. Not surprisingly, a high number of participants usually attend child protection mediations, in part reflecting the number of parties in child protection lawsuits. Most of the mediators interviewed encourage as many participants as

possible. One mediator commented that “the more people that are willing to invest in the child’s future and the parents, the better.”

*“CPS mediations are like the village raising the child.”*  
Mediator

On the other hand, some mediators prefer to limit the number of attendees at mediation. The mediators expressed concern that the parents feel “ganged-up on” when too many employees from DFPS attend the mediation. One mediator requires that the names of all attendees be submitted prior to the mediation; if someone shows up unannounced and does not have the authority to settle the case, that person is not admitted. “This avoids any unnecessary surprises,” the mediator explained. Another mediator only permits named parties and court-appointed representatives in the mediation.

Parents and their lawyers. Seven mediators indicated that parents always attend, and sixteen mediators indicated that parents usually attend. One mediator indicated that the mother usually attends and the father sometimes attends. Another mediator indicated that the parents both always and usually attend. Nineteen mediators indicated that the parents’ lawyer always attends mediation, and six mediators indicated that the parents’ lawyer usually attends. Several mediators confirmed an alarming and growing trend: they have participated in many child protection mediations in which the parent’s attorney met the parent for the first time at the mediation. Some mediators also had the impression that mediation was the first time the parent’s attorney had ever spoken to the client.

DFPS Participants. Twelve mediators indicated that the DFPS supervisor is always in attendance, twelve mediators indicated that the supervisor is usually in attendance, and two mediators indicated that the supervisor is sometimes in attendance. Nineteen mediators indicated that the DFPS caseworker is always in attendance, and seven mediators indicated that the caseworker is usually

there. Twenty-one mediators indicated that the lawyer for DPFS is always present, and three mediators indicated that the lawyer is usually present. Many of the mediators interviewed preferred to have the supervisor in attendance with the caseworker. One mediator remarked that “decisions are reached easier when the supervisor is there.” Some questioned the usefulness of the caseworker at mediation, especially if the supervisor was also in attendance. One mediator indicated a preference for the lawyer to be in attendance rather than the DFPS supervisor.

Children. Eight mediators indicated that children rarely attend mediation, and eighteen mediators indicated that children never attend mediation. Most preferred not to have children in attendance. One mediator only permitted children to attend if they were over the age of twelve and then limited their participation only to indicate placement preference. Another mediator discouraged children under the age of sixteen from attending.

Children’s Representatives. Children may have attorneys ad litem (AAL), guardians ad litem (GAL), and court appointed special advocates (CASAs) representing them and their interests in child protection cases. These children’s representatives participate in most mediations. Twenty mediators indicated that the AAL always attends mediation, and six mediators indicated that the AAL usually attends mediation. Fourteen mediators indicated that the GAL always attends mediation; five mediators indicated that the GAL usually attends; five mediators indicated that the GAL sometimes attends. One mediator from Bexar County indicated that the children’s GAL is never present. Fifteen mediators indicated that the children’s CASA always attends mediation, five mediators indicated usually, five mediators indicated sometimes, and one indicated rarely.

Foster Parents. One mediator indicated that foster parents usually attend mediation, fifteen mediators indicated sometimes, eight indicated rarely, and two indicated never.



On additional attendees in mediation:

*“If the Cowboys need a wide receiver and the Eagles don’t want to trade, you bring in a third team.”*

Mediator

Others. Mediators also listed other attendees at child protection mediations. Most mediators listed grandparents, relatives of the family, or friends of the parents. Some mediators listed mentors, therapists,

counselors, and step-parents, interveners and potential adoptive parents.

*Where do they meet for the mediation?* The location of the mediation, by itself, may send a message to the participants. Most mediators agreed that mediations should occur at a neutral location whenever possible. Certain locations, however, created different, and problematic, perceptions. Conducting the mediation at the DFPS office is discouraged because it is not neutral ground. Conducting mediations at a courthouse improves neutrality, but one mediator noted that the attorneys will often wander off to check a court’s docket or a client’s file. Mediators find that mediations conducted at the police department rarely are successful because incarcerated parents feel intimidated.

*Do they mediate in the same room?* The use of caucusing during mediation is a common practice in Texas. Caucusing allows individual parties and their counsel to speak to the mediator in private, to discuss issues outside the hearing of the other parties and to reflect with the mediator on matters discussed in joint session. Communications that occur within a caucus are confidential and may not be revealed to other mediation participants absent agreement.<sup>69</sup> All 27 responding mediators indicated that they use caucuses at some point during mediation. Sixteen mediators routinely use caucuses, and five mediators indicated they rarely use caucuses. Three mediators like to start the mediation in joint session, and will caucus after the parties have given their opening statements. Some mediators will conduct mediations in joint session, but one party may step out to discuss an option with the lawyer. One mediator likes to

meet with only the attorneys toward the end of the mediation. Finally, one mediator indicated that caucusing is more common when the attorney has never met the client before the mediation.

***Mediator Selection: Training and Experience***

All mediators surveyed, as mandated for court-appointed mediators by the Texas ADR Act, possessed 40 hours of basic training and 24 hours of family mediation training.<sup>70</sup> Nineteen mediators had also received specialized training in mediating child protection cases. Sixty-one percent of CASA programs reported that mediation training was not available in their jurisdictions. For mediator respondents who had specialized child protection mediation training, most were trained at the Harris County and Bexar County Dispute Resolution Centers. Some mediators received additional training through the CJA program, the Department of Justice, or the Texas Attorney General's Office. About half of the mediators whom we surveyed are also lawyers. Both CPS staff and child protection attorneys surveyed reported that around 67 percent of the mediators are attorneys.

Mediators preferred training that involved them in experiential learning. Specifically, they wanted training that included role-playing at each stage of a case and active participation, rather than listening to a lecture. One mediator urged an emphasis in training on the responsibility and power of a mediator. Also helpful to mediators in training was guidance for facilitating mediation when unruly parents or attorneys participate.

In selecting mediators, 87 percent of the responding judges strictly require either family mediation training or child protection mediation training, in addition to the basic 40-hour mediation training course. Three courts indicated that in certain cases, they look beyond these basic requirements: Ellis County Court at Law #1 indicated it will waive an additional training requirement on a case-by-case basis;

the 301<sup>st</sup> District Court appoints mediators based on experience as well as training; and the East Texas Cluster Court appoints mediators based on previous results.

Experience was just as important to judges as training. The judges were asked what experience they looked for in selecting mediators in child protection

*“The best training is experience.”*

Mediator

cases. The judges were asked to indicate up to four listed criteria related to experience as: mediators, lawyers, handling child protection cases, and in family law. The judges also had the opportunity to add additional criteria. Eight of the responding judges reported that they look for all four criteria in selecting mediators for child protection cases. Thirteen judges only appoint mediators who are also lawyers, ten judges appoint mediators who have family law experience, eighteen appoint mediators who have experience handling child protection cases, and sixteen look for experience as mediators. Courts listed additional criteria of professionalism, demeanor, and settlement rate.

### ***Funding for Mediation***

Since CJA funding ended in 2005, some courts have developed new ways to fund mediation services. Most courts indicated that mediator compensation funds come from the county’s budget. Others indicated that DFPS pays for the mediation. The Child Protection Court of the Permian Basin pays mediators through crime victims’ funds or fines collected by the district clerk. The Child Protection Court of Central Texas indicated that in rare cases parties will pay for mediation themselves.

The surveys of DFPS staff and child protection attorneys also reported on funding for mediation. Fifty-eight percent of DFPS staff and 71 percent of child protection attorneys reported that most mediators in child protection cases are

paid. Most respondents reported that county funds paid for these services (50 percent of DFPS staff reported this and over 64 percent of attorneys). Funding was also reported as paid by DFPS (9 percent and 15 percent) and by local dispute resolution centers (14 percent and 18 percent).

Some courts report that lack of funding for mediation prevents them from referring cases to mediation. Similarly, both CPS staff and attorneys who handle child protection cases also reported that the most significant reason why mediation was not used in a jurisdiction was lack of funding.

Other courts refer cases to mediation without providing funds to pay mediators, and mediators serve on a pro bono basis. Four courts indicated they use only pro bono services, and five courts indicated that they use both paid mediators and volunteer mediators. Several courts utilize the services of the local dispute resolution centers. DFPS staff and child protection attorneys also reported mediators served as volunteers directly (14 percent reported by DFPS staff and 17 percent by attorneys) or through local dispute resolution centers (17 percent reported by DFPS staff and 26 percent by attorneys). Bexar County is one area that relies solely on volunteer mediators from the Bexar County Dispute Resolution Center.<sup>71</sup>

### ***Present Challenges***

The surveys and interviews conducted in 2008 and 2009 reveal support for the use of child protection mediation. However, there are significant inconsistencies in provision of child protection mediation, starting with the court's decision to refer cases for mediation. Indeed, the decision to refer and the availability of quality mediation services appears to depend on where the court is located, leading to the unfortunate situation where some Texas families receive have access to child protection mediation and other Texas families in similar circumstances do not. Providing consistent, high quality mediation across this large and diverse state

presents challenges shared by all Texas courts and the Commission. One step in addressing the challenges is to expand the horizon beyond our borders and learn from the work of others.

## What Research Reveals about Child Protection Mediation

The rise of child protection mediation in Texas reflects the development and evolution of child protection mediation programs across this country and in Canada, New Zealand, and Australia, among other nations. Research on programs elsewhere has answered some questions about the effectiveness and the limitations of child protection mediation, revealing similarities between the picture of child protection mediation in Texas and the view in other jurisdictions.

### ***Research Elsewhere: A 25-Year Retrospective***

After reviewing research reports from programs in Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Iowa, Louisiana, Michigan, New Jersey, New York, Ohio, and Virginia, Nancy Thoennes summarized research on child protection mediation in early 2009.<sup>72</sup> She concluded that mediation “is a cost-effective means of resolving problems and engaging parents in their child welfare cases.”<sup>73</sup>

Some results reported by Thoennes, as well as by other researchers, must be read with a recognition that the Texas unified legal process for handling child protection litigation differs significantly from that of many jurisdictions. A number of jurisdictions that use child protection mediation follow a two-step approach in civil litigation to protect children following allegations of abuse or neglect. First, they begin with an initial legal proceeding to intervene, perhaps to remove children to foster care or to make other care arrangements, and to provide family services. Then, if the first legal proceeding does not result in safely returning the children to the family, they initiate a second legal action for termination of

parental rights. In jurisdictions that follow the two-lawsuit approach, child protection mediation may occur in both legal proceedings. In contrast, Texas law provides for one legal action which may seek a final court order for termination, as well as for alternative claims such as conservatorship with family members or with DFPS. The initial intervention to remove children and to provide services, in Texas, takes the form of temporary orders in the lawsuit, rather than in a separate legal proceeding. With this difference in legal process in mind, we turn to what the research elsewhere reveals about child protection mediation.

First, mediation results in agreement. Thoennes reports that 60 to 80 percent of mediated cases end in complete agreements and another 10 to 20 percent result in partial agreements.<sup>74</sup> Mediations occurred at every stage of a case, both early in the legal process, as well as in cases for termination of parental rights near trial. Cases for termination resulted in settlement rates around 50 to 60 percent while cases mediated earlier in the process settled at somewhat higher rates.<sup>75</sup> For some programs, mediated treatment plans made earlier in the case resulted in more specific and more generous visitation agreements, more services for children, and more detailed service provisions for parents and children than did non-mediated cases.<sup>76</sup> Mediating treatment plans in two-lawsuit jurisdictions is roughly equivalent to early mediation in Texas cases, a practice supported by a minority of mediators surveyed in Texas as noted above.

Second, research in child protection mediation indicates cases are resolved more rapidly. For example, results from a Louisiana program indicate that more children achieve a permanent home in a twelve-month period in mediated cases (71 percent) as compared to non-mediated cases (44 percent).<sup>77</sup>

Third, the research tells us that a mediation program is more likely to be successful once buy-in from all participants is achieved. Thoennes quotes a California attorney saying “The problems with mediation are all with the referral process, not once you are in mediation. There are glitches getting in.”<sup>78</sup>

Problems with “getting in” start with resistance to mediation, creating a lack of referrals to mediation.<sup>79</sup> Another consistent factor in the survival and success of a child protection mediation program is judicial support. A New York study concluded that “getting parties to try mediation was in large part a function of creating an atmosphere in which referrals from judges are expected or required.”<sup>80</sup>

Fourth, the mediation process engages parents. Much of the value found in research on child protection mediation focuses on its benefits to the family. A New Jersey study reported that 80 percent of professionals participating in child protection mediation believed mediation increased the involvement of parents in case planning.<sup>81</sup> Overwhelmingly – “usually around 90 percent” – parents report that they could discuss what was important to them.<sup>82</sup> Parents felt they were listened to and treated respectfully. Moreover, “parents report that mediation helped them to better understand what they will need to do to have their case closed.”<sup>83</sup> Also, the confidentiality and informality of mediation led to candid conversations among the participants, allowing them to address issues that may not be relevant to court.<sup>84</sup> These include intrafamily relationship and communication issues between parents and extended family members who also participated in mediation. Thoennes notes:

One result of candid conversations can be a change in relationships. Parents’ attorneys often mention the valuable service mediation plays in providing families with a reality check. During mediation, families often hear from other professionals what their attorneys have been saying for some time, with the result that they begin to hear the message. Likewise, attorneys for social services report that mediation may be a diplomatic and persuasive way to encourage the caseworker to reevaluate his or her position. More than one caseworker has noted that mediation changed the

parents' perspective of the worker and the agency and led to a less adversarial relationship.<sup>85</sup>

Finally, child protection mediation programs across the country struggle with consistent funding. Research on funding is not well documented, and differences in programs and the legal context of child protection make comparisons difficult. However, Thoennes reports that a 2005 survey revealed the funding source for most programs is court funds.<sup>86</sup> A little less than a quarter of programs report funding through Court Improvement Program sources and a similar percent report other federal or state grants a funding sources.<sup>87</sup> A few programs received funding from the jurisdiction's child welfare agency, and even fewer received funding from Title IV-E or from private foundations.<sup>88</sup>

Finally, Thoennes lists research questions that remain unanswered, including:

- How should mediation be used – for case updates and monitoring, only at key decision points (e.g., trial), only for clear disputes among the parties
- How can mediation and processes like FGDM be integrated?
- Why do even programs with good support from professionals involved still have low referrals?
- Does it matter who participates in mediation and how they take part?
- Does mediation contribute to better compliance with case plans and services?<sup>89</sup>

Similar questions also remain unanswered in Texas.



***New Mexico: Implementing Mediation Statewide***

An important challenge for Texas is assuring the availability of high-quality mediation services throughout this large and diverse state, from Houston and Dallas, from Edinburg and Longview, from El Paso to Nacogdoches, from Muleshoe to Orange. New Mexico faced a similar challenge when it designed and implemented a statewide mediation process for child protection cases. The New Mexico Children's Court Mediation Program incorporates a flexible organizational structure that allows centralized coordination through the administrative court offices with local autonomy by the district courts and local Children, Youth, & Families Department offices.<sup>90</sup> The statewide coordinator supervises local coordinators who work directly with the implementation teams comprised of judges, respondent's attorneys, GALs, youth attorneys, child protection agency staff and attorneys, CASAs, and other interested parties.<sup>91</sup> The teams are a decision-making body responsible for developing protocols that meet the needs of that particular court.<sup>92</sup> The statewide coordinator works with each site to provide quality assurance by offering ongoing training and education for mediators, professionals, and families with supervising program evaluations.<sup>93</sup> Stakeholders meet with a trained mediator who must have a minimum of 56 hours of training; 16 of those in mediating abuse and neglect cases.<sup>94</sup>

Program quality has improved since 2000 and evaluation results have been positive. Referrals for mediation in this program have increased steadily each year from 115 during the first full year of the program in 2000, to 516 cases for 2006–2007.<sup>95</sup> Since 2000, over 2,200 cases have been mediated, at all stages of the case.<sup>96</sup> Results demonstrate family satisfaction, cases moving faster through the system, and less strain on judicial resources with more detailed plans that are upheld by parents.<sup>97</sup>

### ***Think Tanks and Development of Guidelines***

Finally, the Association of Family and Conciliation Courts and the National Council of Juvenile and Family Court Judges, along with the National Center for State Courts, the American Humane Association, and Creighton University, sponsored Think Tanks on Child Protection Decision Making in September 2007 and May 2008.<sup>98</sup> Several common themes emerged from the work of the Think Tanks. Obstacles to a successful child protection mediation program continue to be: issues with parent empowerment; resistance from state, judicial, and professional parties; and support issues like funding and treatment resources.<sup>99</sup> However, six factors were identified that contribute toward best practices and are critical to a successful mediation program:

- *Local Judicial Support*—The support of the local children’s court judge is crucial to success and to launching any child protection mediation program.
- *Central Coordination with Local Autonomy*—Centralized oversight and assessment of the program (*i.e.*, accountability, evaluation, training, technical assistance) must be balanced with localized control (*i.e.*, courts, child protection agency, and all other professionals involved) and day-to-day operations.
- *Ample Resources and Funding*—Attracting highly qualified mediators and establishing trust and confidence in the program is difficult without stable and consistent funding. Potential funding sources include recurring state funds, private, state and federal grants.
- *Quality assurance*—To guarantee high quality mediation services, the creation of a program evaluation system that monitors and evaluates outcomes, mediator qualifications, and provides ongoing training and education for mediators, professionals and families is a must.
- *Highly-Trained Mediators*—Mediators must have the expertise, experience, and specific training to handle child abuse and neglect

cases; specifically the emotional and psychological issues relevant to these types of cases. They should understand the legal issues as well as the child welfare system.

- *Buy-In from Other Participants*—Personal investments and buy-in made by lawyers, social workers, treatment service providers, CASAs, and others is critical during the planning and implementation stages. Once the program is up and running, regular contact with all stakeholders to address issues of concern is needed.<sup>100</sup>

Following the Think Tanks, the organizations that sponsored them have continued to work together by sponsoring a work group of experts that is drafting guidelines for effective child protection mediation.

## Guiding Principles for the Future of Child Protection Mediation in Texas

Examination of the past and the present, as well as research about child protection mediation, guides the way forward. Effective and efficient use of mediation to resolve child protection cases holds the promise of improving the well-being of children by improving both court performance and the administration of justice in these cases. To fulfill that promise, we propose these guiding principles for the future of child protection mediation in Texas:

1. ***Establish the expectation that judges will authorize mediation in appropriate child protection cases.*** Over the past twelve years, judicial support for mediation has led to its use in most of Texas. Where mediation is used infrequently or rarely, judges should consider expanding its use. Courts should take the lead to implement mediation where mediation is not available. Although mediation is not appropriate for some cases, the experience of courts that routinely use mediation to resolve child protection cases indicates that it is appropriate for many cases. In order for judges to adopt and support mediation, they need to become

knowledgeable about it. Consequently, judicial education about child protection mediation is key.

2. ***Assure consistency and quality in the delivery of mediation services by developing best practices based on comparable quantitative data.***

Responding both to the promise of mediation and local circumstances, trial courts across Texas have developed their own individual approaches to using mediation in child protection cases. This innovation contributed to the spread of mediation around the state. In the words of the Commission's mandate from Supreme Court, it is now time to determine which practices are "data-drive, evidence-based, and outcome-focused." First, courts should collect consistent, relevant data about court-ordered child protection mediation. Analysis of these data allows courts to document improvement in measurable outcomes for children. Sharing these data through widely available reports and at judicial and other conferences provides evidence of the value of child protection mediation. Over time, these data support the development of best practices based on consistent, comparable quantitative data. Best practices developed in this way should guide courts in:

- Selecting cases for mediation
- Determining when mediation should occur
- Assuring mediator qualifications
- Monitoring outcomes
- Documenting cost savings, and
- Assuring that courts through the state provide consistent mediation services.

Along these lines, the practice of mediating at early stages in a case life cycle should be examined in light of the use of FGDM. Although a minority of judges and mediators support early mediation, the availability of FGDM, another dispute resolution process, early in a case raises two questions: does early mediation duplicate FGDM and, if so, are there

good reasons that justify this duplication. The development of best practices should address these questions.

3. ***Assure reliable mediation services and secure stable funding.***

Providing mediation services depends upon more than a willingness of courts to refer child protection cases for mediation. It depends on the availability of qualified mediators willing to handle these difficult, often contentious cases. Both the CJA evaluations and the recent Think Tanks note the importance of funding for mediators. Our surveys indicate that the lack of reliable funding limits the use of mediation in child protection cases in Texas. Addressing this barrier will require judicial leadership to investigate alternative funding sources and to develop new ones. In some jurisdictions, mediators volunteer for child protection mediations. Both volunteer and paid mediators should be expected to have similar expertise and to provide services of comparable quality.

4. ***Provide mediators with training focused on the unique characteristics of child protection cases.***

Effective and efficient mediation of child protection cases requires expertise outside the experience of most mediators, even those who routinely handle other family law matters. Mediators need to know the law related to child protection litigation as well as the operations and relevant policies of DFPS. In addition, mediators must facilitate negotiations among a very large number of parties and court-appointed representatives. These negotiations involve the most personal and emotional issues, including termination of parental rights. Child protection mediators should have training that addresses these unique challenges.

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

Effective advocacy in mediation requires preparation, just as effective advocacy at trial does.

No lawyer would meet a client for the first time at the beginning of a trial, and no lawyer should meet a client for the first time at the beginning of mediation, as our surveys indicate many do now. Also, both litigation and mediation require that lawyers in child protection cases be knowledgeable about this very specialized field of law and about the workings of DFPS. However, an aggressive adversarial approach often seen at trial may be counterproductive in child protection mediation. To address the qualms of both judges and mediators about the quality of legal advocacy in mediation, training for lawyers in child protection cases should address advocacy in mediation. Less critical but also useful is training for CASAs, GALs, AALs, and DFPS staff regarding the mediation process, the effect of a mediated settlement agreement, and effective advocacy on behalf of children in mediation.

We hope the Commission will turn these guiding principles into concrete programs and practices that will fulfill its mission to strengthen courts and improve safety, permanency, well-being, fairness, and due process for children.







## Acknowledgements

We thank the judges, mediators, CASA programs, child protection lawyers, and the staff of the Department of Family and Protective Services (DFPS) for sharing their expertise, their time, and their insights with us. Without their cooperation and support of our efforts, we could not have prepared this report. We are also grateful to the Texas Supreme Court's Permanent Commission on Children, Youth & Families for their encouragement and advice, especially to Justice Harriett O'Neill, Executive Director Tina Amberboy, Deputy Director Tiffany Roper, and staff members Teri Moran and Bryan Wilson. The Center for Public Policy Dispute Resolution at the University of Texas School of Law provided access to its evaluation reports of the CJA projects as well as valuable advice and expertise. For this, we thank former Center staffer Tracy Tarver and the current Deputy Director of the Center, Susan Schulz. John J. Sampson, Lori Duke, and Leslie Strauch of the Children's Rights Clinic at the University of Texas School of Law also contributed their experience and expertise. In addition, we thank Anita Stuckey, now retired from the Office of the Attorney General's Child Support Division, for sharing her experience in child protection mediation.

This report reflects the work of students in the University of Texas School of Law Mediation Clinic. All of the students are mediators, and several of them have completed the University's interdisciplinary graduate Portfolio Program in Dispute Resolution. They conducted research for this report, developed surveys, interviewed mediators, and analyzed preliminary results. The students were Monica Aleman, Ryan Buechner, Eric Christensen, George Andrew Lever, Eric Lim, Jessica Lynch, Kathleen Oliver, Ian Pittman, Rosemary Reynolds-Sundet, and Andrew Van Noord.



## Endnotes

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- <sup>1</sup>Tex. Sup. Ct., *Order Establishing Permanent Judicial Commission on Children, Youth and Families*, Order No. 9293 (Nov. 20 2007), <http://www.supreme.courts.state.tx.us/MiscDocket/07/07919300.pdf>.
- <sup>2</sup> *Id.*
- <sup>3</sup> The American Bar Association et al., *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases*, [http://www.ncsconline.org/D\\_Research/publications.html](http://www.ncsconline.org/D_Research/publications.html) (follow “B” hyperlink).
- <sup>4</sup> Tex. Civ. Prac. & Rem. Code § 154.002.
- <sup>5</sup> Tex. Civ. Prac. & Rem. Code § 154.023(a).
- <sup>6</sup> Tex. Civ. Prac. & Rem. Code § 154.023(b).
- <sup>7</sup> Tex. Civ. Prac. & Rem. Code § 154.021; Tex. Fam. Code § 153.0071(c).
- <sup>8</sup> Tex. Civ. Prac. & Rem. Code § 154.022 (West 2008); § 153.0071(c).
- <sup>9</sup> Tex. Fam. Code § 154.0071(f).
- <sup>10</sup> Tex. Civ. Prac. & Rem. Code § 154.051; Tex. Civ. Prac. Rem. Code § 154.052.
- <sup>11</sup> Tex. Civ. Prac. & Rem. Code § 154.052.
- <sup>12</sup> Tex. Civ. Prac. & Rem Code § 154.054.
- <sup>13</sup> Tex. Sup. Ct., *Approval of Ethical Guidelines for Mediators*, Order No. 05-9107 (June 13, 2005).
- <sup>14</sup> <http://www.abanet.org/dch/committee.cfm?com=DR018000>
- <sup>15</sup> [http://www.afccnet.org/resources/resources\\_model\\_mediation.asp](http://www.afccnet.org/resources/resources_model_mediation.asp)
- <sup>16</sup> <http://www.txmca.org/ethics.htm>
- <sup>17</sup> Tex. Civ. Prac. & Rem. Code § 154.073(a).
- <sup>18</sup> Tex. Civ. Prac. & Rem. Codes § 154.073(f).
- <sup>19</sup> Tex. Civ. Prac. & Rem. Codes § 154.0731(a).
- <sup>20</sup> Tex. Civ. Prac. & Rem. Code § 154.071.
- <sup>21</sup> Tex. Fam. Code § 153.0071(d – e).
- <sup>22</sup> *In the Interest of A.H.*, 114 S.W. 3<sup>rd</sup> 750 (Tex. App. – Dallas, 2003, no pet.).
- <sup>23</sup> Tex. Fam. Code § 153.0071(d – e) (e-1).
- <sup>24</sup> *Beyers v. Roberts*, 199 S.W.3d 354 (Tex. App. – Houston [1<sup>st</sup> Dist.], 2006, rev. denied).
- <sup>25</sup> Tex. Fam. Code § 261.203.
- <sup>26</sup> Tex. Govt. Code §311.026(b).
- <sup>27</sup> Tex. Dep’t of Fam. & Protective Services, *Family Group Decision-Making: October 2006 Final Evaluation*, [http://www.dfps.state.tx.us/Documents/about/pdf/2006-10-09\\_FGDM\\_Evaluation.pdf](http://www.dfps.state.tx.us/Documents/about/pdf/2006-10-09_FGDM_Evaluation.pdf).
- <sup>28</sup> *Id.*
- <sup>29</sup> *Id.*
- <sup>30</sup> *Id.*
- <sup>31</sup> *Id.*
- <sup>32</sup> *Id.*
- <sup>33</sup> *Id.*
- <sup>34</sup> Tex. Fam. Code § 263.401 *et seq.*
- <sup>35</sup> Adoption & Safe Families Act, 42 U.S.C. § 1305 (2007).
- <sup>36</sup> Andy Bowman & Carol Nasworthy, *Evaluation of the Children’s Justice Act 1997-98 Mediation Pilot Project*, 4 (The University of Texas School of Law Center for Public Policy Dispute Resolution 1999).
- <sup>37</sup> *Id.* at 34.
- <sup>38</sup> *Id.* at 10.
- <sup>39</sup> *Id.* at 11.
- <sup>40</sup> CAROL NASWORTHY & TRACY TARVER, *REPORT ON THE IMPLEMENTATION OF THE CHILDREN’S JUSTICE ACT MEDIATION PILOT PROJECTS 2003-2005*, 38 (The University of Texas School of Law Center for Public Policy Dispute Resolution), <http://www.utexas.edu/law/academics/centers/cppdr/resources/publications/2003-05%20CJA%20Report.pdf>.
- <sup>41</sup> *Id.* at 5.

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- <sup>42</sup> CAROL NASWORTHY AND TRACY TARVER, 2002 REPORT ON THE IMPLEMENTATION OF THE CHILDREN'S JUSTICE ACT MEDIATION PILOT PROJECTS, 4 (The University of Texas School of Law Center for Public Policy Dispute Resolution 2002), [http://www.utexas.edu/law/academics/centers/cppdr/resources/publications/2002CJARReport\\_Final.pdf](http://www.utexas.edu/law/academics/centers/cppdr/resources/publications/2002CJARReport_Final.pdf).
- <sup>43</sup> NASWORTHY & TARVER, 2003-2005 REPORT, *supra* 17 (1997-1998 results were not included).
- <sup>44</sup> *Id.* at 14; Bowman & Carol Nasworthy, 1997-1998 Report, *supra* 8.
- <sup>45</sup> *Id.*
- <sup>46</sup> *Id.*
- <sup>47</sup> See CAROL NASWORTHY AND TRACY TARVER, 2000 REPORT ON THE IMPLEMENTATION OF THE CHILDREN'S JUSTICE ACT MEDIATION PILOT PROJECTS, 6 (The University of Texas School of Law Center for Public Policy Dispute Resolution 2000), <http://www.utexas.edu/law/academics/centers/cppdr/resources/publications/Nov2000Report.pdf>; see CAROL NASWORTHY AND TRACY TARVER, 2001 REPORT ON THE IMPLEMENTATION OF THE CHILDREN'S JUSTICE ACT MEDIATION PILOT PROJECTS, 11-12 (The University of Texas School of Law Center for Public Policy Dispute Resolution), [http://www.utexas.edu/law/academics/centers/cppdr/resources/publications/2001CJARReport\\_Final.pdf](http://www.utexas.edu/law/academics/centers/cppdr/resources/publications/2001CJARReport_Final.pdf); see NASWORTHY & TARVER, 2002 REPORT, *supra* 10; see NASWORTHY & TARVER, 2003-2005 REPORT, *supra* 14 (in the 1997-1998 Report, 15 percent were mediated at day 0, 14 percent at day 14, 15 percent by day 60, 10 percent by day 180, 22 percent by day 300, 15 percent by day 365, and 7 percent by day 420).
- <sup>48</sup> Bowman & Nasworthy, 1997-1998 Report, *supra* 8.
- <sup>49</sup> Nasworthy & Tarver, 2003-2005 Report, *supra* 15
- <sup>50</sup> Nasworthy & Tarver, 2002 Report, *supra* 12.
- <sup>51</sup> Bowman & Nasworthy, 1997-1998 Report, *supra* 10; Nasworthy & Tarver, 2003-2005 Report, *supra* 16.
- <sup>52</sup> *Id.*
- <sup>53</sup> Nasworthy & Tarver, 2003-2005 Report, *supra* 34.
- <sup>54</sup> *Id.*
- <sup>55</sup> *Id.*
- <sup>56</sup> *Id.*
- <sup>57</sup> Nasworthy & Tarver, 2001 Report, *supra* 26.
- <sup>58</sup> Nasworthy & Tarver, 2002 Report, *supra* I-2.
- <sup>59</sup> *Id.*
- <sup>60</sup> Nasworthy & Tarver, 2003-2005 Report, *supra* 35.
- <sup>61</sup> Nasworthy & Tarver, 2003-2005 Report, *supra* 22.
- <sup>62</sup> *Id.* at 34.
- <sup>63</sup> *Id.* at 33.
- <sup>64</sup> *Id.* at 34.
- <sup>65</sup> *Id.*
- <sup>66</sup> Bowman & Nasworthy, 1997 Report, *supra* 30-31.
- <sup>67</sup> Two mediators submitted their results jointly because they co-mediate the majority of their cases. For the purpose of tabulating results, only one of their responses will count--only twenty-eight mediators will be referenced.
- <sup>68</sup> Tex. Fam. Code § 262.201; see Tex. Fam. Code § 263.
- <sup>69</sup> Tex. Civ. Prac. & Rem. Code Sec. 154.053(b).
- <sup>70</sup> Tex. Civ. Prac. & Rem Code 154.052.
- <sup>71</sup> <http://www.txmediator.org/bios/drcs/bexardrc.htm>
- <sup>72</sup> Nancy Thoennes, *What We Know: Findings From Dependency Mediation Research*, 47 FAM. CT. REV 21 (2009), available at <http://www3.interscience.wiley.com/cgi-bin/fulltext/121591164/HTMLSTART>.
- <sup>73</sup> *Id.* at 35.
- <sup>74</sup> *Id.* at 29.
- <sup>75</sup> *Id.* at 30.
- <sup>76</sup> *Id.*
- <sup>77</sup> *Id.* at 31.
- <sup>78</sup> *Id.* at 26.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 32.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 33.

<sup>85</sup> *Id.* at 34.

<sup>86</sup> *Id.* at 29.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 35-36.

<sup>90</sup> INSTITUTE OF PUBLIC LAW, JUDICIAL EDUCATION CENTER, NEW MEXICO, CHILD WELFARE HANDBOOK, OVERVIEW OF MEDIATION IN ABUSE AND NEGLECT CASES, 29.4.3.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> A copy of the Think Tanks report can be found on the Association of Family and Conciliation Courts' website at [http://www.afcnet.org/resources/resources\\_professionals.asp](http://www.afcnet.org/resources/resources_professionals.asp) (follow: Think Tank Report).

<sup>99</sup> [http://www.afcnet.org/resources/resources\\_professionals.asp](http://www.afcnet.org/resources/resources_professionals.asp) (follow: Think Tank Report).

<sup>100</sup> See INSTITUTE OF PUBLIC LAW, CHILD WELFARE HANDBOOK, *supra*; see Merilou Giovannucci and Karen Largent, *A Guide to Effective Child Protection Mediation: Lessons from 25 Years of Practice*, 47 FAM. CT. REV (2009) at 38.

# APPENDICES



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## Appendix A: Locations of the CJA Mediation Pilot Project

County	Year Initiated	Project
El Paso	1997-1998	
Galveston	1997-1998	
Gregg	1997-1998	
Jefferson	1997-1998	
Lubbock	1997-1998	
Webb	1999	
Bowie	1999	
Ellis	1999	
Harris	1999	
Child Protection Court of the Permian Basin (Andrews, Crane, Ector, Glasscock, Howard, Martin, Reeves, Ward, and Winkler County)	1999	
Potter	1999	
Child Protection Court of South Texas (Atascosa, Bandera, Frio, Gillespie, Karnes, Kendall, Kerr, LaSalle, Medina, Real, Uvalde, and Wilson County)	1999	
Travis	1999	
Dallas	2000	
North East Texas Foster Care Docket (Bowie, Camp, Cass, Delta, Franklin, Hopkins, Hunt, Kaufman, Marion, Morris, Rains, Red River, Titus, Upshur, Van Zandt, and Wood County)	2001	
Smith	2001	



## Appendix B: Judicial Survey and Judicial Participants

### TEXAS CHILD PROTECTION MEDIATION JUDICIAL SURVEY 2008

My court is \_\_\_\_\_  
*e.g., 555<sup>th</sup> District Court; County Court at Law #8 in Fredonia  
County; Child Protection Court of the Valley*

We may want to learn more about your best practices. How can we follow up?

contact me at \_\_\_\_\_

contact this person at my court \_\_\_\_\_

at \_\_\_\_\_

Have you ordered mediation in child protection cases over the past 3 years?

\_\_\_ **NO**

If no, why not?

\_\_\_ **YES**

If yes, please estimate the number of cases:

\_\_\_ in fewer than 10 cases

\_\_\_ in about 10-25 cases

\_\_\_ in about 26-50 cases

\_\_\_ in about 51-100 cases

\_\_\_ in more than 100 cases

\_\_\_ I routinely order mediation in child protection cases.

**My court maintains data about the use of use of mediation in child protection cases.**

\_\_\_\_\_ **NO**

\_\_\_\_\_ **YES**

**If yes,**

\_\_\_\_\_ We record this information on a case-by-case basis in the CPC docketing system.

\_\_\_\_\_ We record this information on a case-by-case basis in my court's docketing system.

\_\_\_\_\_ We keep records of this outside our docketing system.

\_\_\_\_\_ We prepare reports concerning the cases we refer to mediation.

\_\_\_\_\_ **We do it this way:**

**Please identify the stage(s) of the case when you order mediation (check all that apply):**

\_\_\_\_\_ before the 14-day full adversary hearing

\_\_\_\_\_ between the 14-day full adversary hearing and the 60-day status hearing

\_\_\_\_\_ between the 60-day status hearing and the first permanency hearing

\_\_\_\_\_ in anticipation of trial

\_\_\_\_\_ **We do it this way:**

**If you use specific criteria in deciding whether to refer a child protection case to mediation, what are the criteria that you use?**

**Please estimate the percentage of cases ordered to mediation that result in**

Full agreement \_\_\_\_\_%

Partial agreement \_\_\_\_\_%

No agreement \_\_\_\_\_%

**Please identify the mediators you appoint in child protection mediation cases, either by name or by organization:**

**How are mediators compensated?**

- they do it for free, pro bono
- they are paid by \_\_\_\_\_
- If they are paid, how much are they paid?

**What experience do you look for in selecting mediators in child protection cases?**

- I only appoint mediators who are also lawyers
- family law experience
- experience handling child protection cases
- experience as mediators
- We do it this way:**

**What training do you require for mediators in child protection cases?**

- 40-hours of mediation training
- 24-hours of family mediation training
- specialized training in mediating child protection cases
- Our specialized training is provided by: \_\_\_\_\_
- We do it this way:**

**Are you satisfied that mediation in child protection cases in your court serves the best interests of children?**

- Very satisfied
- Satisfied
- Neutral
- Dissatisfied
- Very dissatisfied

Feel free to provide comments about your level of satisfaction:

**What, if any, are the advantages of using mediation in child protection cases in your court?**

**What, if any, concerns do you have about the use of mediation in child protection cases in your court?**

**What, if any, complaints have you heard concerning the use of mediation in child protection cases in your court?**

### **JUDICIAL PARTICIPANTS**

16<sup>th</sup> District Court

65<sup>th</sup> Family District Court (a model court with the National Council of Juvenile and Family Court Judges)

126<sup>th</sup> District Court

225<sup>th</sup> District Court

301<sup>st</sup> District Court

302<sup>nd</sup> District Court

305<sup>th</sup> District Court

306<sup>th</sup> District Court

309<sup>th</sup> District Court

321<sup>st</sup> District Court

323<sup>rd</sup> District Court

325<sup>th</sup> District Court

328<sup>th</sup> District Court

336<sup>th</sup> District Court

365<sup>th</sup> District Court

Central Texas CPC

Children's Court Bexar County

County Court of Law for Kleberg County

East Texas Cluster Court

Ellis County Court at Law #1

Northern Panhandle CPC

Permian Basin CPC

Rio Grande Valley CPC

Sabine Valley CPC

South Texas CPC

## Appendix C: Counties of Mediator Participants and Survey

### ***Counties where mediators practice:***

- Bexar
- Brazos
- Caldwell
- Dallas
- Fort Bend
- Harris
- Hill Country Area (Mason, Gillespie, Bandera, Kimble, Kendall, Menard, Kerr, & McCulloch)
- McLennan
- Travis
- Waco
- Washington
- Williamson





## Appendix D: CASA Survey

### CASA SURVEY QUESTIONS

1. Do the courts that you work with use mediations in CPS cases?
2. What is the purpose of mediation in your cases? Check all that apply.
  - Resolve placement issues
  - Develop permanency or service plan
  - Achieve permanency for child early in case
  - Settle case prior to final merits trial
3. Prior to which hearing/event do mediations most often occur?
  - 14 day hearing
  - Status hearing
  - First permanency hearing
  - Second permanency hearing
  - 12 month dismissal date
  - 18 month dismissal date
  - Final trial on the merits
4. How does the case most often end up in mediation?
  - Ordered by the court
  - Agreement of the parties
  - Both
5. Who conducts the mediations?
  - Mediator (Non-Attorney)
  - Mediator (Attorney)
  - Both
6. To your knowledge, is mediation training available in your county or counties? If yes, please answer question 7.
  - Yes
  - No
7. If mediation training is available, who is the targeted audience? Please check all that apply.
  - Judges
  - Attorneys
  - Mediators
  - DFPS
  - CASA



## Appendix E: DFPS Staff Survey

### QUESTIONS FOR DFPS/CPS STAFF

#### 1. DFPS Staff - COMPLETE BY APRIL 30, 2009

This survey was designed to collect responses about the use of mediation in CPS cases in Texas. Please complete the survey. The information will be used to help the Children's Commission understand the use of mediation and inform overall strategic initiatives. Please complete the survey before Thursday, April 30, 2009. Thank you for your time and assistance.

**\* 1. Please provide basic information about yourself.**

Name: \_\_\_\_\_  
DFPS Region: \_\_\_\_\_  
Address: \_\_\_\_\_  
Address 2: \_\_\_\_\_  
City/Town: \_\_\_\_\_  
State: \_\_\_\_\_  
ZIP/Postal Code: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

**2. What is your job title? If your job title is not listed, please provide your title.**

- Regional Attorney
- Other attorney
- Program Administrator
- Regional Director
- Program Director
- Supervisor
- Caseworker
- Other

Other (please specify)

\_\_\_\_\_

## QUESTIONS FOR DFPS/CPS STAFF

**3. In the all of the counties where you work, please select whether mediation is available, even if you have not participated in a mediation in that county.**

	Yes	No
Anderson	<input type="radio"/>	<input type="radio"/>
Andrews	<input type="radio"/>	<input type="radio"/>
Angelina	<input type="radio"/>	<input type="radio"/>
Aransas	<input type="radio"/>	<input type="radio"/>
Archer	<input type="radio"/>	<input type="radio"/>
Armstrong	<input type="radio"/>	<input type="radio"/>
Atascosa	<input type="radio"/>	<input type="radio"/>
Austin	<input type="radio"/>	<input type="radio"/>
Bailey	<input type="radio"/>	<input type="radio"/>
Bandera	<input type="radio"/>	<input type="radio"/>
Bastrop	<input type="radio"/>	<input type="radio"/>
Baylor	<input type="radio"/>	<input type="radio"/>
Bee	<input type="radio"/>	<input type="radio"/>
Bell	<input type="radio"/>	<input type="radio"/>
Bexar	<input type="radio"/>	<input type="radio"/>
Blanco	<input type="radio"/>	<input type="radio"/>
Borden	<input type="radio"/>	<input type="radio"/>
Bosque	<input type="radio"/>	<input type="radio"/>
Bowie	<input type="radio"/>	<input type="radio"/>
Brazoria	<input type="radio"/>	<input type="radio"/>
Brazos	<input type="radio"/>	<input type="radio"/>
Brewster	<input type="radio"/>	<input type="radio"/>
Briscoe	<input type="radio"/>	<input type="radio"/>
Brooks	<input type="radio"/>	<input type="radio"/>
Brown	<input type="radio"/>	<input type="radio"/>
Burleson	<input type="radio"/>	<input type="radio"/>
Burnet	<input type="radio"/>	<input type="radio"/>
Caldwell	<input type="radio"/>	<input type="radio"/>
Calhoun	<input type="radio"/>	<input type="radio"/>
Callahan	<input type="radio"/>	<input type="radio"/>
Cameron	<input type="radio"/>	<input type="radio"/>
Camp	<input type="radio"/>	<input type="radio"/>
Carson	<input type="radio"/>	<input type="radio"/>
Cass	<input type="radio"/>	<input type="radio"/>
Castro	<input type="radio"/>	<input type="radio"/>
Chambers	<input type="radio"/>	<input type="radio"/>
Cherokee	<input type="radio"/>	<input type="radio"/>
Childress	<input type="radio"/>	<input type="radio"/>

## QUESTIONS FOR DFPS/CPS STAFF

Clay	<input type="radio"/>	<input type="radio"/>
Cochran	<input type="radio"/>	<input type="radio"/>
Coke	<input type="radio"/>	<input type="radio"/>
Coleman	<input type="radio"/>	<input type="radio"/>
Collin	<input type="radio"/>	<input type="radio"/>
Collingsworth	<input type="radio"/>	<input type="radio"/>
Colorado	<input type="radio"/>	<input type="radio"/>
Comal	<input type="radio"/>	<input type="radio"/>
Comanche	<input type="radio"/>	<input type="radio"/>
Concho	<input type="radio"/>	<input type="radio"/>
Cooke	<input type="radio"/>	<input type="radio"/>
Coryell	<input type="radio"/>	<input type="radio"/>
Cottle	<input type="radio"/>	<input type="radio"/>
Crane	<input type="radio"/>	<input type="radio"/>
Crockett	<input type="radio"/>	<input type="radio"/>
Crosby	<input type="radio"/>	<input type="radio"/>
Culberson	<input type="radio"/>	<input type="radio"/>
Dallam	<input type="radio"/>	<input type="radio"/>
Dallas	<input type="radio"/>	<input type="radio"/>
Dawson	<input type="radio"/>	<input type="radio"/>
Deaf Smith	<input type="radio"/>	<input type="radio"/>
Delta	<input type="radio"/>	<input type="radio"/>
Denton	<input type="radio"/>	<input type="radio"/>
DeWitt	<input type="radio"/>	<input type="radio"/>
Dickens	<input type="radio"/>	<input type="radio"/>
Dimmit	<input type="radio"/>	<input type="radio"/>
Donley	<input type="radio"/>	<input type="radio"/>
Duval	<input type="radio"/>	<input type="radio"/>
Eastland	<input type="radio"/>	<input type="radio"/>
Ector	<input type="radio"/>	<input type="radio"/>
Edwards	<input type="radio"/>	<input type="radio"/>
El Paso	<input type="radio"/>	<input type="radio"/>
Ellis	<input type="radio"/>	<input type="radio"/>
Erath	<input type="radio"/>	<input type="radio"/>
Falls	<input type="radio"/>	<input type="radio"/>
Fannin	<input type="radio"/>	<input type="radio"/>
Fayette	<input type="radio"/>	<input type="radio"/>
Fisher	<input type="radio"/>	<input type="radio"/>
Floyd	<input type="radio"/>	<input type="radio"/>
Foard	<input type="radio"/>	<input type="radio"/>

## QUESTIONS FOR DFPS/CPS STAFF

Fort Bend	<input type="radio"/>	<input type="radio"/>
Franklin	<input type="radio"/>	<input type="radio"/>
Freestone	<input type="radio"/>	<input type="radio"/>
Frio	<input type="radio"/>	<input type="radio"/>
Gaines	<input type="radio"/>	<input type="radio"/>
Galveston	<input type="radio"/>	<input type="radio"/>
Garza	<input type="radio"/>	<input type="radio"/>
Gillespie	<input type="radio"/>	<input type="radio"/>
Glasscock	<input type="radio"/>	<input type="radio"/>
Goliad	<input type="radio"/>	<input type="radio"/>
Gonzales	<input type="radio"/>	<input type="radio"/>
Gray	<input type="radio"/>	<input type="radio"/>
Grayson	<input type="radio"/>	<input type="radio"/>
Gregg	<input type="radio"/>	<input type="radio"/>
Grimes	<input type="radio"/>	<input type="radio"/>
Guadalupe	<input type="radio"/>	<input type="radio"/>
Hale	<input type="radio"/>	<input type="radio"/>
Hall	<input type="radio"/>	<input type="radio"/>
Hamilton	<input type="radio"/>	<input type="radio"/>
Hansford	<input type="radio"/>	<input type="radio"/>
Hardeman	<input type="radio"/>	<input type="radio"/>
Hardin	<input type="radio"/>	<input type="radio"/>
Harris	<input type="radio"/>	<input type="radio"/>
Harrison	<input type="radio"/>	<input type="radio"/>
Hartley	<input type="radio"/>	<input type="radio"/>
Haskell	<input type="radio"/>	<input type="radio"/>
Hays	<input type="radio"/>	<input type="radio"/>
Hemphill	<input type="radio"/>	<input type="radio"/>
Henderson	<input type="radio"/>	<input type="radio"/>
Hidalgo	<input type="radio"/>	<input type="radio"/>
Hill	<input type="radio"/>	<input type="radio"/>
Hockley	<input type="radio"/>	<input type="radio"/>
Hood	<input type="radio"/>	<input type="radio"/>
Hopkins	<input type="radio"/>	<input type="radio"/>
Houston	<input type="radio"/>	<input type="radio"/>
Howard	<input type="radio"/>	<input type="radio"/>
Hudspeth	<input type="radio"/>	<input type="radio"/>
Hunt	<input type="radio"/>	<input type="radio"/>
Hutchinson	<input type="radio"/>	<input type="radio"/>
Irion	<input type="radio"/>	<input type="radio"/>

## QUESTIONS FOR DFPS/CPS STAFF

Jack	<input type="radio"/>	<input type="radio"/>
Jackson	<input type="radio"/>	<input type="radio"/>
Jasper	<input type="radio"/>	<input type="radio"/>
Jeff Davis	<input type="radio"/>	<input type="radio"/>
Jefferson	<input type="radio"/>	<input type="radio"/>
Jim Hogg	<input type="radio"/>	<input type="radio"/>
Jim Wells	<input type="radio"/>	<input type="radio"/>
Johnson	<input type="radio"/>	<input type="radio"/>
Jones	<input type="radio"/>	<input type="radio"/>
Karnes	<input type="radio"/>	<input type="radio"/>
Kaufman	<input type="radio"/>	<input type="radio"/>
Kendall	<input type="radio"/>	<input type="radio"/>
Kenedy	<input type="radio"/>	<input type="radio"/>
Kent	<input type="radio"/>	<input type="radio"/>
Kerr	<input type="radio"/>	<input type="radio"/>
Kimble	<input type="radio"/>	<input type="radio"/>
King	<input type="radio"/>	<input type="radio"/>
Kinney	<input type="radio"/>	<input type="radio"/>
Kleberg	<input type="radio"/>	<input type="radio"/>
Knox	<input type="radio"/>	<input type="radio"/>
La Salle	<input type="radio"/>	<input type="radio"/>
Lamar	<input type="radio"/>	<input type="radio"/>
Lamb	<input type="radio"/>	<input type="radio"/>
Lampasas	<input type="radio"/>	<input type="radio"/>
Lavaca	<input type="radio"/>	<input type="radio"/>
Lee	<input type="radio"/>	<input type="radio"/>
Leon	<input type="radio"/>	<input type="radio"/>
Liberty	<input type="radio"/>	<input type="radio"/>
Limestone	<input type="radio"/>	<input type="radio"/>
Lipscomb	<input type="radio"/>	<input type="radio"/>
Live Oak	<input type="radio"/>	<input type="radio"/>
Llano	<input type="radio"/>	<input type="radio"/>
Loving	<input type="radio"/>	<input type="radio"/>
Lubbock	<input type="radio"/>	<input type="radio"/>
Lynn	<input type="radio"/>	<input type="radio"/>
Madison	<input type="radio"/>	<input type="radio"/>
Marion	<input type="radio"/>	<input type="radio"/>
Martin	<input type="radio"/>	<input type="radio"/>
Mason	<input type="radio"/>	<input type="radio"/>
Matagorda	<input type="radio"/>	<input type="radio"/>



## QUESTIONS FOR DFPS/CPS STAFF

Maverick	<input type="radio"/>	<input type="radio"/>
McCulloch	<input type="radio"/>	<input type="radio"/>
McLennan	<input type="radio"/>	<input type="radio"/>
McMullen	<input type="radio"/>	<input type="radio"/>
Medina	<input type="radio"/>	<input type="radio"/>
Menard	<input type="radio"/>	<input type="radio"/>
Midland	<input type="radio"/>	<input type="radio"/>
Milam	<input type="radio"/>	<input type="radio"/>
Mills	<input type="radio"/>	<input type="radio"/>
Mitchell	<input type="radio"/>	<input type="radio"/>
Montague	<input type="radio"/>	<input type="radio"/>
Montgomery	<input type="radio"/>	<input type="radio"/>
Moore	<input type="radio"/>	<input type="radio"/>
Morris	<input type="radio"/>	<input type="radio"/>
Motley	<input type="radio"/>	<input type="radio"/>
Nacogdoches	<input type="radio"/>	<input type="radio"/>
Navarro	<input type="radio"/>	<input type="radio"/>
Newton	<input type="radio"/>	<input type="radio"/>
Nolan	<input type="radio"/>	<input type="radio"/>
Nueces	<input type="radio"/>	<input type="radio"/>
Ochiltree	<input type="radio"/>	<input type="radio"/>
Oldham	<input type="radio"/>	<input type="radio"/>
Orange	<input type="radio"/>	<input type="radio"/>
Palo Pinto	<input type="radio"/>	<input type="radio"/>
Panola	<input type="radio"/>	<input type="radio"/>
Parker	<input type="radio"/>	<input type="radio"/>
Parmer	<input type="radio"/>	<input type="radio"/>
Pecos	<input type="radio"/>	<input type="radio"/>
Polk	<input type="radio"/>	<input type="radio"/>
Potter	<input type="radio"/>	<input type="radio"/>
Presidio	<input type="radio"/>	<input type="radio"/>
Rains	<input type="radio"/>	<input type="radio"/>
Randall	<input type="radio"/>	<input type="radio"/>
Reagan	<input type="radio"/>	<input type="radio"/>
Real	<input type="radio"/>	<input type="radio"/>
Red River	<input type="radio"/>	<input type="radio"/>
Reeves	<input type="radio"/>	<input type="radio"/>
Refugio	<input type="radio"/>	<input type="radio"/>
Roberts	<input type="radio"/>	<input type="radio"/>
Robertson	<input type="radio"/>	<input type="radio"/>

## QUESTIONS FOR DFPS/CPS STAFF

Rockwall	<input type="radio"/>	<input type="radio"/>
Runnels	<input type="radio"/>	<input type="radio"/>
Rusk	<input type="radio"/>	<input type="radio"/>
Sabine	<input type="radio"/>	<input type="radio"/>
San Augustine	<input type="radio"/>	<input type="radio"/>
San Jacinto	<input type="radio"/>	<input type="radio"/>
San Patricio	<input type="radio"/>	<input type="radio"/>
San Saba	<input type="radio"/>	<input type="radio"/>
Schleicher	<input type="radio"/>	<input type="radio"/>
Scurry	<input type="radio"/>	<input type="radio"/>
Shackelford	<input type="radio"/>	<input type="radio"/>
Shelby	<input type="radio"/>	<input type="radio"/>
Sherman	<input type="radio"/>	<input type="radio"/>
Smith	<input type="radio"/>	<input type="radio"/>
Somervell	<input type="radio"/>	<input type="radio"/>
Starr	<input type="radio"/>	<input type="radio"/>
Stephens	<input type="radio"/>	<input type="radio"/>
Sterling	<input type="radio"/>	<input type="radio"/>
Stonewall	<input type="radio"/>	<input type="radio"/>
Sutton	<input type="radio"/>	<input type="radio"/>
Swisher	<input type="radio"/>	<input type="radio"/>
Tarrant	<input type="radio"/>	<input type="radio"/>
Taylor	<input type="radio"/>	<input type="radio"/>
Terrell	<input type="radio"/>	<input type="radio"/>
Terry	<input type="radio"/>	<input type="radio"/>
Throckmorton	<input type="radio"/>	<input type="radio"/>
Titus	<input type="radio"/>	<input type="radio"/>
Tom Green	<input type="radio"/>	<input type="radio"/>
Travis	<input type="radio"/>	<input type="radio"/>
Trinity	<input type="radio"/>	<input type="radio"/>
Tyler	<input type="radio"/>	<input type="radio"/>
Upshur	<input type="radio"/>	<input type="radio"/>
Upton	<input type="radio"/>	<input type="radio"/>
Uvalde	<input type="radio"/>	<input type="radio"/>
Val Verde	<input type="radio"/>	<input type="radio"/>
Van Zandt	<input type="radio"/>	<input type="radio"/>
Victoria	<input type="radio"/>	<input type="radio"/>
Walker	<input type="radio"/>	<input type="radio"/>
Waller	<input type="radio"/>	<input type="radio"/>
Ward	<input type="radio"/>	<input type="radio"/>

## QUESTIONS FOR DFPS/CPS STAFF

Washington	<input type="radio"/>	<input type="radio"/>
Webb	<input type="radio"/>	<input type="radio"/>
Wharton	<input type="radio"/>	<input type="radio"/>
Wheeler	<input type="radio"/>	<input type="radio"/>
Wichita	<input type="radio"/>	<input type="radio"/>
Wilbarger	<input type="radio"/>	<input type="radio"/>
Willacy	<input type="radio"/>	<input type="radio"/>
Williamson	<input type="radio"/>	<input type="radio"/>
Wilson	<input type="radio"/>	<input type="radio"/>
Winkler	<input type="radio"/>	<input type="radio"/>
Wise	<input type="radio"/>	<input type="radio"/>
Wood	<input type="radio"/>	<input type="radio"/>
Yoakum	<input type="radio"/>	<input type="radio"/>
Young	<input type="radio"/>	<input type="radio"/>
Zapata	<input type="radio"/>	<input type="radio"/>
Zavala	<input type="radio"/>	<input type="radio"/>

**4. If the answer to question #3 was "No" for any county please answer this question. In your opinion, why is mediation not used? (Rate all that apply).**

	Not Significant	Not Very Significant	Somewhat Significant	Very Significant	N/A
Lack of funding	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
No available mediators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of support or interest by the courts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of support or interest by local prosecutors or regional attorneys representing DFPS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of support or interest by attorneys representing parents	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of support or interest by attorneys representing children	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Use of other dispute resolution tools	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other:	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify)	<input style="width: 100%;" type="text"/>				

## QUESTIONS FOR DFPS/CPS STAFF

### 5. For what purpose is mediation used? (Check all that apply).

- a. Resolve placement issues
- b. Develop permanency or service plan
- c. Achieve permanency for child early in case
- d. Settle case prior to final trial on merits
- e. Other: \_\_\_\_\_

Other (please specify)

### 6. At what point in the case do mediations typically occur? (check all that apply)

	Rarely	Sometimes	Often	Usually
Before the 14th day hearing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Before the status hearing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Before the first permanency hearing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Before the 2nd permanency hearing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Before the 12-month dismissal date	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Before the 18th-month dismissal date	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Before the final trial on the merits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

### 7. How is the case referred to mediation?

- a. Ordered by court
- b. Agreement of parties
- c. Both

### 8. Who are the mediators? Check all that apply

- a. Paid mediators
- b. Volunteer mediators
- c. Volunteers from the local dispute resolution center
- d. Attorney - mediators
- e. Non- attorney mediators
- f. Other: \_\_\_\_\_

Other (please specify)

**QUESTIONS FOR DFPS/CPS STAFF**

**9. To your knowledge, is CPS mediation training available in your county?**

- Yes
- No

## QUESTIONS FOR DFPS/CPS STAFF

### 2. CPS Mediation Available

Answer these questions if CPS mediation training is available.

**1. Who is the targeted audience for training? (Please check all that apply).**

- a. Judges
- b. Attorneys
- c. Mediators
- d. DFPS
- e. CASA

**2. Who provides mediation training (if known)?**

## QUESTIONS FOR DFPS/CPS STAFF

### 3. Continued Survey about Mediation

**1. What agency or entity pays for mediators in counties where you work?**

- County
- DFPS
- Parties
- Provided Through Dispute Resolution Center
- I do not know
- Other

Other (please specify)

**2. Please state any advantages or concerns you see with using mediation in CPS cases?**

**3. Do you participate in family group conferencing or similar programs?**

- Yes
- No

**4. If yes, does the use of mediation in CPS cases affect the use of family group conferencing or similar programs?**

- Yes
- No

Please explain.

## Appendix F: Lawyers Survey

**Survey for CPS Case Attorneys**

**1. Attorneys Serving on Child Abuse and Neglect Cases - COMPLETE BY APRIL 30, ...**

This survey was designed to collect responses about the use of mediation in CPS cases in Texas from practicing attorneys. Please complete the survey. The information will be used to help the Children's Commission understand the use of mediation and inform overall strategic initiatives. Please complete the survey before Thursday, April 30, 2009. Thank you for your time and assistance.

**\* 1. Please provide basic information about yourself.**

Name:

DFPS Region:

Address:

Address 2:

City/Town:

State:

ZIP/Postal Code:

Email Address:

Phone Number:

**2. Attorney Type**

County/District Attorney

Private Practice

**3. In all of the counties where you work, please select whether mediation is available, even if you have not participated in a mediation in that county.**

**4. If the answer to question #3 was "No" for any county please answer this question. In your opinion, why is mediation not used?**



## Survey for CPS Case Attorneys

### 5. For what purpose is mediation used? (Check all that apply).

- a. Resolve placement issues
- b. Develop permanency or service plan
- c. Achieve permanency for child early in case
- d. Settle case prior to final trial on merits
- e. Other: \_\_\_\_\_

Other (please specify)

### 6. How did you first hear about CPS mediations?

### 7. In approximately how many CPS mediations have you participated?

- 1-3
- 4-6
- 7-9
- 10-12
- 13-15
- more than 15

### 8. When do you recommend not using mediation in a CPS case?

### 9. At what point in the case do mediations typically occur? (check all that apply)

	Rarely	Sometimes	Often	Usually
Before the 14th day hearing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Before the status hearing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Before the first permanency hearing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Before the 2nd permanency hearing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Before the 12-month dismissal date	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Before the 18th-month dismissal date	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Before the final trial on the merits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## Survey for CPS Case Attorneys

### 10. How is the case referred to mediation?

- a. Ordered by court
- b. Agreement of parties
- c. Both

### 11. Who are the mediators? Check all that apply

- a. Paid mediators
- b. Volunteer mediators
- c. Volunteers from the local dispute resolution center
- d. Attorney - mediators
- e. Non- attorney mediators
- f. Other: \_\_\_\_\_

Other (please specify)

### 12. To your knowledge, is CPS mediation training available in your county?

- Yes
- No

## Survey for CPS Case Attorneys

### 2. CPS Mediation Available

Answer these questions if CPS mediation training is available.

#### 1. Who is the targeted audience for training? (Please check all that apply).

- a. Judges
- b. Attorneys
- c. Mediators
- d. DFPS
- e. CASA

#### 2. Who provides mediation training (if known)?

## Survey for CPS Case Attorneys

### 3. Continued Survey about Mediation

**1. What agency or entity pays for mediators in counties where you work?**

- County
- DFPS
- Parties
- Provided Through Dispute Resolution Center
- I do not know
- Other

Other (please specify)

**2. Please state any advantages or concerns you see with using mediation in CPS cases?**

**3. Do you participate in family group conferencing or similar programs?**

- Yes
- No

**4. If yes, does the use of mediation in CPS cases affect the use of family group conferencing or similar programs?**

- Yes
- No

Please explain.

