

The newsletter of *The Judges' Page* website—October 2008

The *Judges' Page* newsletter is a publication of **The National CASA Association** in partnership with **The National Council of Juvenile and Family Court Judges**. Find *The Judges' Page* newsletter at nationalcasa.org/JudgesPage

Alternative dispute resolution programs, often created through partnerships with private organizations, have been vital to improving outcomes for children and families, as well as to achieving timely permanency. Articles in this issue of The Judges' Page describe the types of dependency court alternative dispute resolution programs and their key elements.

~ Judge J. Dean Lewis, Editor

Topics in this issue:

[Alternative Dispute Resolution Programs in Child Protection Cases](#)

J. Dean Lewis, Judge (retired), Former Member, National CASA Association Board of Directors and Past President, National Council of Juvenile and Family Court Judges

Page 3

[Child Protection/Dependency Mediation](#)

Steve Baron, Consultant, Santa Clara County, CA

Page 5

[Family Group Decision Making](#)

Anita Horner, Manager of Practice Advancements in Child Welfare, American Humane Association

Page 7

[Effective Child Protection Mediation and Domestic Violence](#)

*Judge Leonard Edwards (ret)
Steve Baron, Consultant, Santa Clara County, CA*

Page 9

[Family Finding from a Judicial Perspective](#)

Judge Leonard Edwards (ret)

Page 11

[Engaging and Empowering “Non Professionals” as Participants in Child Protection Mediation](#)

Mariou Giovannucci, MS, Manager, Connecticut Judicial Branch Court Operations Division

Page 13

[Ohana Conferences: A Collaborative Approach to Meeting the Needs of Abused and Neglected Children](#)

Wilma Friesema, MFT, Hawaii Model Court

Page 15

[The Success of Permanency Mediation in Mecklenburg County, NC](#)

*Judge Louis A. Trosch, Jr., District Court Judge, 26th Judicial District, Mecklenburg County, NC, and Member, NCJFCJ Board of Trustees
Erin Mack Stack, Permanency Mediation Coordinator, 26th Judicial District, Mecklenburg County, NC*

Page 17

The Consistent Use of Child Protection Mediation: A Key to Timely Permanency in Neglect, Abuse and Permanent Custody Cases

Magistrate Linda Sorah, Mediation Coordinator, Lucas County Juvenile Court, OH

Page 19

Family Team Meetings: One Approach to Front-End, Time-Sensitive Decision Making

Lisa Merkel-Holquin, Director, American Humane National Center on Family Group Decision Making

Page 21

Considering Culture in Mediation of Child Protection Cases

*Katy Gallagher-Parker, Staff Attorney, 126th District Court, Austin, TX
Judge Darlene Byrne, 126th District Court, Austin, TX*

Page 23

Child Advocates' Mediation Project: Seven Years of Working Together for Children

Cindy Booth, Executive Director, Child Advocates, Inc.

Page 25

Web Resources: Alternative Dispute Resolution Practices in Dependency Court

Paula Campbell, Permanency Planning for Children Department, NCJFCJ

Page 27

The comments of article authors do not necessarily reflect the policies of the National CASA Association or the National Council of Juvenile and Family Court Judges.



The National Council of Juvenile and Family Court Judges is dedicated to serving the nation's children and families by improving the courts of juvenile and family jurisdictions. Visit the NCJFCJ website: ncjfcj.org

© 2008 National CASA Association

Editor's Page—Alternative Dispute Resolution Programs in Child Protection Cases



J. Dean Lewis, Judge (retired); Former Member, National CASA Association Board of Directors and Past President, National Council of Juvenile and Family Court Judges

Summary

The articles in this issue of *The Judges' Page* explain the types of dependency court alternative dispute resolution programs and the key elements involved in developing a competent program. Jurisdictions across the nation share how they have implemented successful dependency court ADR programs.

Dependency courts and child welfare agencies have developed a variety of successful alternative dispute resolution (ADR) programs. These programs, often created through partnerships with private organizations, have been vital to improving outcomes for children and families, as well as to achieving timely permanency. Known by various names including mediation; family group decision making; family group conferences; team decision making; and family team meetings, these programs report great success in settling the issues involved in child protection proceedings. Resolution rates usually are over 75%. Parties are satisfied with the results because all participants had a hand in shaping the solution, and the plans prove more effective than those imposed by the state, whether that be by a social worker or the court.

It is clear that to achieve successful outcomes for the children and families involved, certain key components should be included in dependency court ADR programs:

1. Parents and appropriate relatives must be located and invited to participate in the ADR process.
2. All stakeholders must be educated about ADR and actively involved.
3. The ADR process should afford the participants the opportunity to speak openly about the issues, and an agreement regarding expectations as to confidentiality should be established.
4. Professionals conducting the ADR program must be highly trained, culturally competent and neutral throughout the process.
5. Specialized protocols and practices must be in place in cases that involve domestic violence, substance abuse and mental health issues.
6. The program should build upon the family's strengths and encourage the family to develop solutions and take ownership of the issues.
7. Child safety and well-being must be of paramount concern in reaching an agreement that is in the best interest of the child.
8. Mediated agreements need to be formalized, signed by all parties and incorporated into the court's order resolving the issues in the case.

The articles in this issue of *The Judges' Page* explain the types of dependency court ADR programs and the key elements involved in developing a competent program. Jurisdictions across the nation share how they have implemented successful dependency court ADR programs. Paula Campbell of the National Council's Permanency Planning for Children Department shares online resources on the topic.

- **Mediation**—Steve Baron, a consultant in Santa Clara County, CA, gives an overview of mediation and its success in dependency cases in California.
- **Family Group Decision Making (FGDM)**—Anita Horner of the American Humane Association explains the critical components of the FGDM process and the value of involving family members in the decision-making process.
- **Child Protection Mediation and Domestic Violence**—Judge Leonard Edwards (ret.) and Steve Baron relate how the development of appropriate protocols and practices has enabled ADR to be successful in cases involving child protection, domestic violence and mental health challenges.
- **Family Finding**—Judge Leonard Edwards (ret.) shares the important role of the judicial officer in achieving timely permanency for dependent children by identifying, locating and engaging fathers and extended maternal and paternal family members in the court process.

- [Engaging Non-Professionals in ADR](#)—Marilou Giovannucci shares ways in which the birth parents, foster and adoptive parents as well as other relatives invited to participate in the ADR process can be engaged and empowered.
- [`Ohana Conferencing in Hawaii](#)—Developed in Hawaii using concepts of its New Zealand counterpart, the `Ohana Conferencing Project looks to the child’s family and community to develop a solution that will ensure the child’s safety and address risk factors effectively.
- [Mediation in Mecklenburg County, NC](#)—Judge Louis A. Trosch, Jr., and Erin Mack Stack share the documented success of the dependency court mediation program in Mecklenburg County. An independent evaluation of this program persuaded the 2005 North Carolina General Assembly to institute the development of state-funded permanency mediation programs statewide.
- [Mediation in Lucas County, OH](#)—Magistrate Linda Sorah relates how Lucas County incorporated the principles for ADR established in the National Council of Juvenile and Family Court Judges’ publication *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* to develop a successful mediation program.
- [Family Team Meetings in Washington, DC](#)—Lisa Merkel-Holguin, director of the American Humane National Center on Family Group Decision Making, provides an overview of the ADR process used by Washington, DC’s Child and Family Services Agency and shares the results of the AHA evaluation of this program.
- [Cultural Differences and Power Imbalances Addressed in Texas](#)—Kathy Gallagher- Parker and Judge Darlene Byrne share the results of a survey that identified obstacles to successful mediation and describe how Texas courts resolved the issues.
- [Mediation Project in Marion County, IN](#)—Cindy Booth of Child Advocates, Inc. in Indianapolis, IN, relates how the CASA program secured a grant from Lilly Endowment to implement a mediation program for TPR cases.

The articles in this edition of *The Judges’ Page* review a number of the ADR processes currently being used in child protection systems around the country and around the world. In addition to the articles on the page, the reader can access additional articles relating to these topics.¹

Footnotes:

1. Edwards, L., and Sagatun, I., “The Transition to Group Decision Making in Child Protection Cases: Obtaining Better Results for Children and Families,” (nationalcasa.org/download/Judges_Page/notes-1008/0810-TransitiontoGroupDecision-0019.pdf) *Juvenile and Family Court Journal*, Vol. 58, No. 1, Winter, 2007; Edwards, L., “Achieving Timely Permanency in Child Protection Cases: The Importance of Frontloading the Court Process,” (nationalcasa.org/download/Judges_Page/notes-1008/0810-AchievingTimelyPermanency-0019.pdf) *Juvenile and Family Court Journal*, Vol. 58, No. 2, Spring, 2007, at pp 12-14; Edwards, L., “Mediation in Child Protection Cases,” *Journal of the Center for Families, Children & The Courts*, Vol. 5, 2004, at pp 57-70; Dobbin, S., Gatowki, S., Litchfield, M., Robinson, S., “Family Conferencing: A Success for Our Children,” (nationalcasa.org/download/Judges_Page/notes-1008/0810-FamilyConferencing-0019.pdf) *Juvenile and Family Court Journal*, Fall, 2002, at pp. 43-48; Barber, G., Landsman, M., Thompson, K., “Expediting Permanency Through Community Decision Making,” (nationalcasa.org/download/Judges_Page/notes-1008/0810-ExpeditingPermanency-0019.pdf) *Juvenile and Family Court Journal*, Fall, 2002, at pp. 79-90. Resolution Systems Institute (RSI), *Court ADR Connection* monthly e-newsletter covering court-related ADR programs, court rules, statutes, case law and academic research, and updates on RSI projects and publications. View past publications and subscribe (aboutrsi.org/courtADR-connection.php).

Editor’s Note: The Fostering Connections to Success and Increased Adoptions Act was enacted on October 7, 2008 (PL 110-351). The new legislation provides for sweeping reforms to improve the well-being of children in foster care. It includes a new federal Family Connections grants program, with funding available beginning in 2009. The two principal programs discussed in this issue of *The Judges’ Page*—intensive family-finding efforts and family group decision making—are eligible for funding under the new grants program (frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h6893enr.txt.pdf).

[Back to Top](#)

Child Protection/Dependency Mediation

Steve Baron, Consultant, Santa Clara County, CA

Summary

Steve Baron outlines the process and benefits of child protection/dependency mediation.

"I wanted to have a trial because going along with everyone just wasn't working. I was mad at my attorney and didn't really want a mediation....I couldn't figure out why they weren't giving me my children back and so I wanted to fight. I thought I had done everything....But I felt totally different about everything after (mediation). I could tell the mediators were actually listening. It seemed like I was getting some respect. It didn't seem like I was fighting....For the first time what the social worker said made sense....I was crying a lot and explaining about everything and then just felt OK about it all....All of a sudden I could tell that I had made a lot of mistakes. I felt so much better about everything after the mediation. I couldn't understand why I didn't get it sooner." - Karen H.

Child protection/dependency mediation is a confidential process in which specially trained neutral people—mediators who have no decision-making authority and make no recommendations to the court—help the family, social workers, attorneys, CASA volunteers and others involved in the case discuss and resolve disputes and problems. The process provides for a full, open and frank discussion of the most current and accurate case information in a confidential, informal setting. Family members and other participants are able to participate in the problem solving, express themselves, share information, correct misinformation, ask questions and focus on the children's needs and safety. The mediators help families identify their strengths and use their resources. The goal is to come up with a plan that all the parties agree is safe and best for the children and safe for all family members. Specialized protocols are required for mediation of cases in which domestic violence is an issue.

If mediation does not result in an agreement, the parties can still have a trial. Going to trial, however, is often not the best way of working out disagreements and can result in additional problems such as increased anger and conflict, breakdowns in communication and damage to existing relationships within the family and between the family and the child protection system. Mediation, on the other hand, tries to work out disagreements by going down a different road, as best described by former Dependency Mediator Brendan Cuning in Santa Clara County, CA, while orienting family members to the mediation process:

Today, we are going to do the most natural thing in the world. We are going to have a conversation about your child, and try to work out a plan that everybody agrees is safe and in her best interests.

Child protection/dependency mediators must be highly skilled, culturally competent and have specialized training in subject areas beyond mediation that are directly related to the types of problems that are likely to arise in dependency cases. These include child abuse and neglect; substance abuse; domestic violence; the workings of the dependency court and child protection systems; the developmental needs of children; and family systems. There are a number of advantages to using a male/female co-mediation team when resources permit.

The judicial officer functions as the "gatekeeper" to mediation and chooses to order the case to mediation either based on his or her own judgment or at the request of a party or attorney. Depending on local policy, referral to mediation may occur at any time during the history of the case, from the initial hearing through termination of parental rights. Any issue in dispute may be sent to mediation, including, but not limited to, the following: language of the petition; the case plan and/or services; placement or return of the child to a parent; placement problems or change of placement; visitation; parental non-compliance with court-ordered conditions; intra-familial, parent-social worker, or other conflicts that interfere with implementation of the case plan or otherwise cause problems; termination or continuation of services; dismissal versus continuation of dependency status; custody and visitation exit orders; and issues related to termination of parental rights.

The mediation process has four interdependent stages: (1) orientation; (2) fact-finding and issue development; (3) problem solving; and (4) agreement/disagreement and closure.

The Center for Policy Research in its Report to the California Legislature on Mediation found that:

- *Mediation is preferred by parents and most professional participants.*
- *Mediation is effective with all types of maltreatment and at all stages of case processing.*
- *Most mediations do result in agreements.*
- *Cases mediated, rather than adjudicated, at jurisdiction and disposition are less likely to result in subsequent contested review hearings.*

The report also found that there is some evidence that mediated agreements enjoy better compliance by parents.

References

Edwards, L. et al., Mediation in Juvenile Dependency Court: Multiple Perspectives (nationalcasa.org/download/Judges_Page/notes-1008/0810-MediationInJuvenile-0019.pdf), National Council of Juvenile and Family Court Judges, *Juvenile and Family Court Journal*, (2002) vol. 53, no. 4, pp. 49-65.

Thoennes, Nancy, and Jessica Pearson, *Mediation in the Santa Clara County Dependency Court, Report to the California Legislature in Compliance with S.B. 1420*, Denver: Center for Policy Research (1995).

[Back to Top](#)

Family Group Decision Making

Anita Horner, Manager of Practice Advancements in Child Welfare, American Humane Association

Summary

When exemplary practices are followed in family group decision making, significant improvements in child and youth safety, permanency and well-being are seen.

Family group decision making (FGDM) offers a strongly inclusive approach to working with families involved with the child welfare system. Family groups (composed of extended family and kin) are engaged and empowered by child welfare agencies to make decisions and develop plans that protect their children from further abuse and neglect. The FGDM process inherently fosters cooperation, collaboration and communication between professionals and families. FGDM is being used in more than 35 states and 22 countries. The practice is also being used in juvenile justice and TANF cases, though not as commonly. The family group conference (FGC) is the model most frequently used, under the FGDM rubric.

As the Hon. Todd A. Hoover, Dauphin County Pennsylvania Juvenile Dependency/Orphan's Court Judge, remarked:

"I put this frankly: I am not a social worker. I am a judge. My professional training is in the legal field, and while I absolutely mean no disrespect to social workers, I never signed up to be one. Rather, I signed up to make judicial decisions when parties come together and cannot resolve issues. That works well in many situations, but not all, and often not when complicated family issues need to be decided. Inevitably, in litigation, there is a winner and a loser. Family group conferencing allows for win/win resolutions....Listening to FGC participants discuss the worries they have for the children, family strengths and community assets, and then tapping their collective wisdom to develop and implement a plan makes sense. Bringing these "common sense" plans into the courtroom—plain and simple—works!"

FGDM processes are carefully managed and crafted to ensure fidelity to the FGDM values and to ensure that those values drive practice. The following five items are critical to supporting exemplary practice in FGDM⁴:

1. **An independent (i.e., non-case carrying) coordinator is responsible for convening the family group meeting with agency personnel.** When a critical decision about a child is required, dialogue occurs between the family group and the responsible child protection agency personnel. Providing an independent coordinator who is charged with creating an environment in which transparent, honest and respectful dialogue occurs signifies an agency's commitment to empowering and non-oppressive practice.
2. **The child protection agency personnel recognize the family group as their key decision-making partner, and time and resources are available to convene this group.** Providing the time and resources to seek out family group members and prepare them for their role in the decision-making process signifies an agency's acceptance of the importance of family groups in formulating safety and care plans.
3. **Family groups have the opportunity to meet on their own, without the statutory authorities and other non-family members present, to work through the information they have been given and formulate their responses and plans.** Providing family groups with time to meet on their own enables them to apply their knowledge and expertise in a familiar setting and to do so in ways that are consistent with their ethnic and cultural decision-making practices. Acknowledging the importance of this time and taking active steps to encourage family groups to plan in this way signifies an agency's acceptance of its own limitations, as well as its commitment to ensuring that the best possible decisions and plans are made.
4. **When agency concerns are adequately addressed, preference is given to a family group's plan over any other possible plan.** In accepting the family group's lead, an agency signifies its confidence in, and its commitment to, partnering and supporting family groups in caring for and protecting their children, and to building the family group's capacity to do so.
5. **Referring agencies support family groups by providing the services and resources necessary to implement the agreed upon plans.** In assisting family groups in implementing their plans, agencies uphold the family group's responsibility for the care and protection of their children, and contribute by aligning the agency and community resources to support the family group's efforts.

What Does the Data Tell Us?

While FGDM remains today a core strategy to child welfare system reform, the majority of studies conducted occurred between 2000 and 2006. Collectively, the data demonstrates significant improvements in child and youth safety, permanency and well-being.

For example, a Washington state study of FGCs found that 34% of the 11 to 18 year olds in group care for at least two years returned home or were placed with relatives within six months of an FGC (Gunderson, 2005). In a meta-analysis of 25 studies, Merkel-Holguin, Nixon and Burford found that in family group conferencing:

- Families develop plans that are seen to be safe.
- Plans blend requests for formal services with family-delivered supports and are rich, diverse and original.
- Family members perceive they have considerable voice and decision-making authority.
- Fathers' and paternal relatives' involvement is increased.
- Social workers and service providers are satisfied with the process.
- A high percentage of children who require out-of-home placement remain with extended family.
- Decisions and results are timely and plans create stability for children.
- Family supports are increased and family functioning is supported.
- Interests of other family members are safeguarded (Merkel-Holguin et al, 2003).

To learn more about the FGDM process, please visit the American Humane Association's National Center on Family Group Decision Making at fgdm.org

Footnotes:

1. Adapted from Doolan, M. (2007). "Duty Calls: The Response of Law, Policy and Practice to Participation Rights in Child Welfare Systems." *Protecting Children*, 22(1), 10-19.

References:

Gunderson, K. (2001). *Connected and Cared for: Using Family Group Conferencing for Children in Group Care* (americanhumane.org/site/DocServer/pc_fgdm_research_NWinstitute.pdf?docID=1202). Northwest Institute for Children and Families, University of Washington School of Social Work, Seattle. Retrieved May 14, 2005.

Hoover, Honorable Todd (2005) Family Group Conferencing: A Message from the Bench. *American Humane Association FGDM Issues in Brief*.

Merkel-Holguin, L., Nixon, P., & Burford, G., (2003). "Learning with Families: A Synopsis of FGDM Research and Evaluation in Child Welfare." *Protecting Children. A Professional Publication of American Humane*, 18 (1&2), 2-11.

Editor's Note: Anita Horner, manager of practice advancements in child welfare, has been employed with the American Humane Association since 2005 and involved with family group decision making since 1996.

[Back to Top](#)

Effective Child Protection Mediation and Domestic Violence

Judge Leonard Edwards (ret)

Steve Baron, Consultant, Santa Clara County, CA

Summary

Mediation and other forms of alternative dispute resolution must address issues that can make the decision-making process unfair or unsafe. The developments of the past 25 years have resulted in practices that promote a fair and safe process for all involved.

Child protection mediation and other forms of alternative dispute resolution (ADR) have been resisted by a number of professionals, domestic violence advocates and other people for decades. Many lawyers and judges believe that going to court is the preferred way of dealing with all legal problems. Having been trained in the adversarial process, some have a suspicion that mediation will reduce their control over the outcome of cases, believe that it is less efficient, and think that safety of the parties may be compromised. Some domestic violence advocates believe that the victim (usually a woman) will be participating in an unfair process that will subject her to the power and control of her abuser. Still other critics believe mediation and other forms of ADR are inappropriate for people with serious substance abuse or mental health problems because their disability prevents them from fully participating in the process. They argue that power imbalances prevent the process from being fair to all sides.¹

All of these concerns have been addressed by practitioners over the past 25 years. We can now confidently state that properly conducted mediation and other forms of ADR can be safe for all parties, can effectively address so-called power imbalances, and will produce better, longer-lasting results for the parties.² These conclusions have been affirmed by national policy documents.³

We start from the proposition that the mediation process must be safe for everyone. Child protection cases often involve substance abuse, domestic violence, mental health, child abuse and similar issues. While mediators are trained to deal with interpersonal dynamics so that everyone's voice is heard in the mediation process, parties may be intimidated by other family members. These realities have led to the development of protocols and practices that enable mediation to take place even when there are issues of domestic violence or when one party has mental health challenges.⁴

Nancy Marshall, a domestic violence victim advocate and a marriage and family counselor, has advocated for hundreds of victims of violence and has also participated in many child protection mediation sessions. She has written that "[m]ediation should be done separately, for safety reasons, in most domestic violence cases...Mediation should always start with the victim of domestic violence being seen separately."⁵ Throughout her comments on working with the victim of domestic violence, Marshall stresses the importance of providing basic education about domestic violence to the victim so that she is able to make informed decisions about what is safe for her.

Marshall agrees with most commentators that domestic violence protocols and practices must be in place when establishing a child protection mediation program.⁶ These include the necessity of having mediators who are trained in the dynamics of domestic violence and who also have continuing education in that area, as well as in substance abuse and mental health issues. She concludes that mediation practiced in the proper environment:

"...can enhance survivor safety, empowerment and self-esteem when the mediators understand domestic violence, provide separate mediation for the parents, work with a domestic violence protocol, and have the support of the court."⁷

Some argue that mediation and other forms of ADR are inappropriate for child protection cases because child abuse cannot be mediated or marginalized. This argument has been dispelled by over 20 years of practice and consistent findings that child safety is not jeopardized with properly conducted mediation. Several protections are built into the mediation process including participation by a GAL and/or attorney for the child; the presence of the social worker; facilitation by trained mediators who are focused on the best interests of the child; and, finally, judicial review of all proposed agreements. More importantly, everyone in the mediation process understands that the issue of child abuse or neglect cannot be mediated or marginalized. All circumstances surrounding the allegations can, however, be discussed and heard, as can all issues related to the safety and best interest of the child and the safety of the family members. After all, talking about issues, listening and being heard and understood are often helpful in focusing attention on the safety and best interest of the children and reducing

overall acrimony and increasing cooperation between the participants, whether or not an agreement is reached. Indeed, that is the power of mediation.

The protocols and practices for all forms of ADR must address issues relating to the safe arrival at and departure from the courthouse or other setting where the ADR is to take place. Moreover, just being in the courthouse does not ensure safety from threats or intimidation by a batterer. In fact, the courthouse environment may increase the possibility of such violence or threats of violence. Separate waiting rooms and the availability of law enforcement trained in the dynamics of domestic violence are recognized best practices.

Domestic violence protocols were late in coming to some types of ADR. In Santa Clara County, the local domestic violence advocates worked with court professionals to develop domestic violence protocols for team decision making and family group conferencing.⁸ These have been widely distributed to other jurisdictions.

Conclusion: Mediation and other forms of ADR must address issues that can make the decision-making process unfair or unsafe. The development of protocols and practices over the past 25 years has resulted in a fair and safe process for all involved.

Footnotes:

1. Howe, W., and Mclsaac, H., "Finding the Balance," *Family Court Review*, vol. 46, no. 2, January, 2008. See Edwards, L., Baron, S., and Ferrick, G., "A Comment on William J. Howe and Hugh Mclsaac's Article 'Finding the Balance'" and "Surreply" *Family Court Review*, vol. 46, no. 4, October, 2008, at pp 586-591 and 595-597.
2. Trosch, L., et.al., "Child Abuse, Neglect, and Dependency Mediation Pilot Project," (nationalcasa.org/download/Judges_Page/notes-1008/0810-ChildAbuseNeglectDependency-0019.pdf) *Juvenile and Family Court Journal*, vol. 53, no. 4 (Fall, 2002) at pp 67-77; Kelly, J., & Johnson, M., "Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions," *Family Court Review*, vol. 46 X (Forthcoming, October 2008); Emery, R., Sbarra, D., & Grover, T., "Divorce Mediation: Research and Reflections," *Family Court Review*, vol. 39, (Jan. 2005) at p. 37. Trosch, Kelly, and Emery here.
3. Where mandated or permitted, mediation and similar approaches such as family group conferencing, should be used only in settings that develop protocols on its appropriate and safe use, conduct appropriate agency training, and regularly supervise staff about victim safety needs. *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice*, ("Greenbook"), 1998, NCJFCJ, Reno, p. 67. Also see Pages 101-102; Sections 408(A) & (B), *Family Violence: A Model State Code*, NCJFCJ, Reno, 1994, at pp 36-37.
4. See for example, California Rules of Court 5.518(d), 1405.5, and 5.135. For a full discussion of why mediation can be safely conducted even when there are issues of domestic violence, see Edwards, L., "Achieving Timely Permanency in Child Protection Courts: The Importance of Frontloading the Court Process," (nationalcasa.org/download/Judges_Page/notes-1008/0810-AchievingTimelyPermanency-0019.pdf) (*Juvenile and Family Court Journal*, vol. 58, no. 2, Spring, 2007, at pp 1-37 at pp. 12-13.
5. Edwards, L., et.al., "Mediation in Juvenile Dependency Court: Multiple Perspectives," (nationalcasa.org/download/Judges_Page/notes-1008/0810-MediationInJuvenile-0019.pdf) *Juvenile and Family Court Journal*, vol. 53, no. 4, Fall, 2002, pp 49-65, at p. 61.
6. *Id.*
7. *Id.*, at p. 62.
8. For a discussion of other types of ADR used in child protection cases, see Edwards, L., and Sagatun, I., "The Transition to Group Decision Making in Child Protection Cases: Obtaining Better Results for Children and Families," (nationalcasa.org/download/Judges_Page/notes-1008/0810-TransitiontoGroupDecision-0019.pdf) *Juvenile and Family Court Journal*, vol. 58, no. 1 (Winter 2007) (available by link to this edition of *The Judge's Page*)

[Back to Top](#)

Family Finding from a Judicial Perspective



Judge Leonard Edwards (ret.)

Summary

The situation facing many judges is that family members have not been identified and foster care becomes a necessary fall-back position. Family finding is important and everyone involved in child-protection proceedings should take steps to see that family is identified.

Judges need to know about family finding and they need to encourage the child protection system to use family finding whenever possible. One of the most difficult problems facing a judge in child protection proceedings is finding the right placement for a child. Sadly, too many children end up in foster care. This is unfortunate because the law favors placement with family members. The situation facing many judges is that family members have not been identified and foster care becomes a necessary fall-back position.

Judges can make a difference on this issue. First, judges need to be aggressive in identifying, locating and engaging fathers. Many in the child protection system seem to prefer to work with mothers and ignore fathers.¹ Yet fathers can be a significant resource for the child and for the court. First, the father may be a possible placement. Second, the father's side of the family will, on average, consist of one-half of the child's relatives. This means the judge should insist that the social worker immediately identify and locate the father (or potential fathers) and give them notice of the legal proceedings. The agency must be prepared to provide testing to determine paternity at agency expense, and the court must appoint counsel to help the father participate in the legal proceedings.

Second, the judge must insist that the social worker identify extended family from both sides of the family, the mother's and the father's.² Again this must be done immediately, from the start of the case.³ A judge can monitor social worker actions by asking at the initial (shelter care) hearing about the steps that have been taken to identify extended family members.

Third, the judge should invite all family members to attend court proceedings so that they can be identified, their wishes can be known, and the possibility of placement can be explored. The earlier this happens, the more likely that the family will respond. The judge should also encourage the agency to offer group decision-making alternatives, such as family group conferencing, team decision making and family team meetings.⁴ These meetings engage family members, significant people in the child's life and professionals in an effort to find solutions to the problems facing the child. They are recognized best practices. Moreover, if extended family members are identified, there is a greater likelihood that the family will be able to take responsibility for the placement and care of the child.

Fourth, the judge should be prepared to use the "no reasonable efforts" finding if the agency refuses to take immediate action to identify fathers or extended family members.⁵ The agency has an obligation to take steps to prevent removal both before the initial hearing and prior to the dispositional hearing. Failing to identify possible relative placements is arguably a failure to take reasonable steps to find those placements.

Finally, the judge sets the tone for all child protection proceedings whether he or she knows it or not. When the judge assumes that the agency is doing all that is possible, no one will question the agency's actions. But when the judge announces that identifying relatives is a high priority, when the judge asks questions about finding extended family members, when the judge arranges for trainings so everyone in the dependency system can learn about family finding, and when the judge makes "no reasonable efforts" findings when the agency fails to do so, the message to all members of the court process is clear: family finding is important and everyone should take steps to see that family is identified.

Footnotes:

1. Harris, L., "Involving Nonresident Fathers in Dependency Cases: New Efforts, New Problems, New Solutions," *Journal of Law & Family Studies*, vol. 9, no. 2, 2007; Malm, K., Murray, J., and Geen, R. *What About the Dads? Child Welfare Agencies' Efforts to Identify, Locate and Involve Nonresident Fathers*, (Washington, D.C.: The U.S. Department of Health and Human Services, Office of the Assistant Secretary of Planning and Evaluation, 2006), at pp. ix, 85-86.
2. Edwards, L., "Improving Juvenile Dependency Courts: Twenty-Three Steps," (nationalcasa.org/download/Judges_Page/notes-1008/0810-ImprovingJuvenileDependencyCourt-0019.pdf) *Juvenile and Family Court Journal*, vol. 48, no. 4, (1997) 1 – 23, at p. 6.
3. On the emergency nature of child protection proceedings, see Edwards, L., "Achieving Timely Permanency in Child Protection Cases: The Importance of Frontloading the Court Process," (nationalcasa.org/download/Judges_Page/notes-1008/0810-AchievingTimelyPermanency-0019.pdf) *Juvenile and Family Court Journal*, vol. 58, no. 2, (Spring 2007).
4. Edwards, L., Sagatun, I., "The Transition to Group Decision Making in Child Protection Cases: Obtaining Better Results for Children and Families," (nationalcasa.org/download/Judges_Page/notes-1008/0810-TransitiontoGroupDecision-0019.pdf) *Juvenile and Family Court Journal*, vol. 58, no. 1, (Winter, 2007).
5. Edwards, L., "Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980," *Juvenile and Family Court Journal*, vol. 45, no. 3, (1994), 3-28 at 19-21.

[Back to Top](#)

Engaging and Empowering “Non Professionals” as Participants in Child Protection Mediation

Marilou Giovannucci, MS, Manager, Connecticut Judicial Branch Court Operations Division

Summary

Mediation proceedings are most effective when all participants are connected, educated and fully involved in the process. The author provides methods for engaging and empowering parents and others to make their experience in mediation valuable.

Who are the “non-professionals” and why do they need to be engaged and empowered to participate in mediation?

The term “non-professional” is often associated with parents, foster and adoptive parents, and other relatives who are invited to participate in child protection mediation. The description of these individuals as “non-professional” conjures a picture of someone less important, less capable and not worthy of attention.

This article begins by suggesting a redefinition of terms. Replace “non-professional” with “individuals who are part of child protection cases whose interest is personal” and replace “professional” by referring to people as having involvement that is “defined by their career in the workplace.”

The intent is not to place weight or importance on one group over another, nor to suggest that the distinction has any bearing on an individual’s commitment to children and families. Rather, it is illustrative of the need to realign our thinking and actions regarding participant engagement and empowerment in the context of child protection mediation.

We often define child protection mediation as a multi-party conflict resolution process that utilizes a specially trained neutral and impartial person to assist families, attorneys and child protective services agency representatives with complex and emotionally laden issues related to child abuse and neglect, custody, guardianship and adoption. Participants can include parents and others with significant ties to the child or the family who may have a role in the case, such as foster parents. People who can provide support or assistance at or after the mediation, such as service providers and advocates, and individuals who may have a cultural role, such as a tribal representative, may also attend.

Given the definition of individuals with a personal interest in a child protection case, the need for education, engagement and empowerment becomes clear. Child protection cases are fraught with rules, policies, terminology, culture and idiosyncrasies that are foreign to those who do not work within the system. The situation can be additionally complicated by the involuntary and adversarial nature of proceedings; the compromising conditions of poverty; unfamiliar language and culture; participants’ cognitive, emotional, physical problems and limitations, substance abuse and psychiatric disorders; and the parent’s fear of losing one’s children.

So how do we engage and empower parents and others to make their experience in mediation valuable to them and to other participants? *Here are some basics to consider:*

Connecting Parents:

Do not assume that parents are aware of or understand the mediation process. In the hurried, fast paced environments that constitute child welfare agencies and courts, parents are often left with limited time to speak to their attorneys; may be apprehensive about conferring with a CPS worker; and may be intimidated by the case proceedings they attend, whether at the child welfare agency or the court.

It is essential that someone, preferably someone not connected with the child welfare agency or the case, contact the parents to begin the process of engagement. In various programs, a coordinator may take on this role. In others, it may be the mediator assigned to the case.

Making an initial contact to explain how a case found its way to mediation is a first step to ensuring cooperation and participation. It is at this point that the parents can clarify what has happened in their case and how the case was referred to mediation.

Education:

Once the initial contact has been made, the next step is to help the parents understand what mediation is, what the mediator's role will be and how the parents fit into the mediation process.

Before any mediation session can take place, a thorough explanation—including how the mediation will take place, any limitation on the process and who will and can participate in the process—must be given. It is important for the parent to have concerns about participation understood and acknowledged. In a sense, the education process serves to “normalize” the experience across the entire spectrum of participants.

Preparation:

Participant preparation includes allowing the parents to articulate any issues and concerns that they would like discussed at mediation. A neutral person can help the parents to frame what they would like to say and what they would like to take away from the session. Parents should also be invited to identify other individuals who might serve as a resource or support for them during or after the mediation. A sense of ownership of the issues and outcomes is accomplished through preparation.

The second aspect of preparation is mediator preparation. The mediator, after conferring with the parents, should have a plan for ensuring that the parents can fully participate. Mediator training and experience improve the likelihood that a parent's participation will be a positive experience.

Accommodation:

Factors that must be recognized and accommodated to allow for unimpeded participation by parents and others include the following: cultural and ethnic differences; social norms and values; power structure; communication styles; personal constraints (such as cognitive, physical and mental health impairments; and concern for one's safety and well-being).

When information is gathered in advance by the program coordinator or mediators about these factors, it is more likely that accommodations can be made. Failure to address these factors can result in a participant not feeling heard or being able to engage in the mediation in a manner that is satisfying to them. Controlling for or limiting the affect of these nuances can promote mutual respect and understanding.

Conclusion:

Every effort should be made to demystify the mediation process and to create a mutual understanding of participants' motivation, issues, limitations and desired outcomes. Parents and others should be made to feel that the mediation process belongs to them as much as anyone else and that they have control over their participation and the ultimate outcome of the case.

References:

Anderson, Gary R. and Whalen, Peg, *Permanency Planning Mediation Pilot Program: Evaluation Final Report*, Michigan State University School of Social Work (June 2004).

Gatowski, Sophia I, Dobbin, Shirley A, Litchfield, Melissa, Oetjen, Jason. *Mediation in Child Protection Cases: An Evaluation of Washington D.C. Family Court Child Protection Mediation Program*, (ncjfcj.org/content/blogcategory/355/424/) National Council of Juvenile and Family Court Judges, Technical Assistance Brief. (April 2005).

Mayer, Bernard. *Mediation in Child Protection Cases: The Impact of Third-Party Intervention on Parental Compliance Attitudes*. *Mediation Quarterly*, no. 24 (1985).

Thoennes, Nancy. *Hamilton County Juvenile Court, Permanent Custody Mediation*. (October 2002).

Editor's Note: Marilou Giovannucci is a manager in the Connecticut Judicial Branch Court Operations Division. Marilou is a member of the Association of Family and Conciliation Courts. She has provided consultation and training in the area of the use of mediation in child welfare cases for many years.

[Back to Top](#)

`Ohana Conferences: A Collaborative Approach to Meeting the Needs of Abused and Neglected Children

Wilma Friesema, MFT, Hawaii Model Court

Summary

`Ohana Conferencing is a powerful community-based intervention strategy to divert child abuse and neglect cases from court and assist families involved in the court process.

In 1989, a legal shock wave reverberated throughout human service departments and local communities in the Polynesian world. A new law, the New Zealand Children and Young Persons and Their Family Act, went into effect. The act fundamentally shifted how government went about protecting children from abuse and neglect. At the heart of the change were the engagement and empowerment of immediate and extended family to respond to the needs of their own kin through a process called the family group conference.

Family group conferences are single or serial meetings that highlight family strengths and draw upon the family's wisdom and bonds. Social workers stress the standard of care; the family develops the solution to meet that standard. Personal and community support resources are shared, but the family is given private time to discuss the situation, take ownership of the problem and devise a course of action. Once the group is reconvened, the family, social worker and other service providers agree to, or build on, the family's plan to meet the child's need for safety and security.

The act's shock wave fully hit the shores of the US in 1996 when the `Ohana Conferencing Project began in Honolulu, Hawaii. Begun as a collaborative effort by the Family Court of the First Circuit, the Department of Human Services—Social Services Division, and the Wai`anae community on the island of O`ahu, the project was one of four nationwide family group conferencing pilots funded by the Edna McConnell Clark Foundation with support from the National Council of Juvenile and Family Court Judges. The project developed a model for Hawaii that soon became a powerful community-based intervention strategy to divert child abuse and neglect cases from court and assist families involved in the court process.

In 1998, EPIC, Inc., a nonprofit 501(c)(3) Hawaii corporation was formed to provide `Ohana Conferencing throughout the state. "Ohana" means family in Hawaiian, and like its New Zealand counterpart, an `Ohana Conference pulls on existing family ties to "build and strengthen the network of protection of the extended family and the community for the child." (Hawaii Revised Statutes Sec. 587-2) Participation is inclusive of any family or community member who may be able to assist in addressing the child's safety and risk factors or transition planning. All requests by an active case participant for an `Ohana Conference are honored. The result is a culturally relevant, community-consistent response for children brought into the child welfare services (CWS) system.

Respect for all participants and an emphasis on the needs of the children are at the heart of `Ohana Conferences. This was true in the recent case of Helen (not her real name), a young mother whose three children were deemed at risk because of Helen's drug use.

Helen's mom, the primary caregiver of the children, died in the spring of 2008 and Helen was overwhelmed with grief and the responsibility of single parenthood. CPS became involved after receiving a report of neglect, and an `Ohana Conference was requested to explore options for the children and their mother.

The children's father was in prison and did not want his family involved, but the extended maternal family stepped up to the plate. Two aunts, three uncles, four cousins, along with Helen, her social worker, two child welfare services observers and an EPIC facilitator and recorder were present at the `Ohana Conference. Family strengths were identified; service options clarified and legal repercussions were explained. Helen and her family felt the social worker was rooting for them; the social worker saw the resourcefulness and love that existed in Helen's family. An uncle and aunt agreed to take all three children into their home while other family members agreed to supply respite services. Helen, the aunts and uncles cooperated to arrange medical and dental care for the children. Counseling services to help the children and Helen deal with their grief were recommended and accepted. The family, in a supportive tone, expressed their wish for Helen to follow through on substance abuse treatment services so she could be reunited with her children. In the end, a service plan was drawn up that included such treatment. Everyone, including Helen, signed it. To date, Helen and her children are doing very well and reunification is now a viable option.

Since its inception, EPIC has conducted over 8,000 conferences, which have served more than 80,000 participants. In *A Cohort Study of `Ohana Conferencing in Child Abuse and Neglect (American Humane Association Journal, Vol. 19, number 4, 2005, pg. 36)*, which compared conferenced and non-conferenced CWS cases, `Ohana Conferences resulted in cases of shorter duration with fewer court hearings, fewer foster home and shelter placements, and fewer ending in permanent custody (a status similar to that resulting from the termination of parental rights). Satisfaction with the CWS system was also rated higher when conferences were utilized. What was once an often tense relationship between the state and families has turned into one of deeper collaboration due to a concerted effort to use `Ohana Conferences. The result is children in foster care are less displaced, which, in turn, strengthens their sense of identity, security and long-term stability. Lead Juvenile Division Judge Bode Uale, observed: "The value of `Ohana Conferencing is immeasurable. It is the act of getting an extended family together to ask for help for family members and their children who are going to be forever affected by their involvement in the child welfare system. It is reaching for family support when it is most needed. It is giving the opportunity for family to surround their family members and to extend their love by caring for relative children who would otherwise be placed with strangers. It is also giving family members a voice to offer solutions to resolve problems of their own family members. `Ohana Conferencing takes advantage of family strengths to help their own."

Honolulu Model Court

The Honolulu Model Court at the Family Court of the First Circuit, Hawaii, has been a part of the Victim's Act Model Courts Project in the Permanency Planning for Children Department (PPCD) of the National Council of Juvenile and Family Court Judges (NCJFCJ) since November 1997. The Hon. Bode Uale is the current lead judge.

[Back to Top](#)

The Success of Permanency Mediation in Mecklenburg County, NC

Judge Louis A. Trosch, Jr., District Court Judge, 26th Judicial District, Mecklenburg County, NC, and Member, NCJFCJ Board of Trustees

Erin Mack Stack, Permanency Mediation Coordinator, 26th Judicial District, Mecklenburg County, NC

Summary

Permanency mediation in Mecklenburg County, NC, benefits the court system, attorneys, Department of Social Services and, most importantly, children and families.

A Success Story

The employment of mediation in abuse, neglect and dependency cases has been a resounding success in Mecklenburg County, NC. Implemented as a grant-funded pilot program in 2001, Mecklenburg's permanency mediation program saves the court system and social services both time and money. Indeed, judges, practitioners and advocates alike now rely on mediation as a critical element of our juvenile court system. Even more valuable is the benefit to children and families. Mediation both increases rates of permanence for children and reduces the elapsed time for that permanence. Further, children are more likely to be reunified with their parents in mediated cases. These results were evidenced by an exhaustive 2002 evaluation conducted by the Institute for Families in Society at the University of South Carolina (USC).

In 2000–2001, the 26th Judicial District Family Court contracted with USC to assess the feasibility, cost effectiveness and additional benefits of mediation. Evaluations from similar mediation programs across the country had been incomplete and too subjective. Confident in our program, we worked with USC to develop more objectively measurable criteria. The USC study compared mediated and non-mediated cases with regard to time to permanence and case plan compliance. In addition to the traditionally used parent satisfaction surveys, an innovative blind panel review was developed to better evaluate case plan quality. The results of this unique evaluation indisputably proved the advantages of mediation for the court system, attorneys, social workers and, most significantly, for children and families. In conjunction with an analysis of the cost savings, the USC evaluation persuaded the 2005 North Carolina General Assembly to pass Article 2 of Chapter 7B of the general statutes instituting the development of state-funded permanency mediation programs statewide.

Who Participates?

Permanency mediation requires the active participation of parents, parents' attorneys, guardian ad litem attorneys for the child, Department of Social Services (DSS) social workers and DSS attorneys. Others are included as appropriate, such as extended family and foster parents. Children are not routinely included in the mediation. A child may attend if he is old enough to be able to express his needs and benefit from the process, and the child's attendance is deemed appropriate by the judge or by the child's attorney advocate. Additional relevant factors in that decision may include the viewpoint of the parents; the child's desire to participate; the relevancy to the child's placement; and the child's age, developmental stage, emotional status, mental health, adjustment level and basic understanding of the mediation process. The child's attorney is present during all conversations with the child throughout the mediation process. Any potential for harm to the child, physical or emotional, will result in removal of the child from the mediation session and/or termination of the mediation session. Whether or not a child is in attendance, his wishes are shared with the other participants by the guardian ad litem. Of course, the safety and well-being of the child are the primary concerns during all mediation sessions. The mediators, in providing for the best interest of the child, reinforce to all participants that the purpose of the mediation is to protect the child from harm and to protect the child's best interests.

The Process

Known in some states as dependency mediation or child protection mediation, permanency mediation in Mecklenburg County, NC, focuses primarily on pre-adjudication cases. A case is typically ordered to mediation by the judge at the first court hearing after removal of the child. Any party involved in the case may request mediation.

North Carolina's permanency co-mediators facilitate productive discussion among the participants. Sessions can be roughly divided into two parts. During the first phase, mediators guide the disputants toward defining and clarifying the legal issues, removing obstacles to communication, exploring solutions and reaching a mutually satisfactory agreement. Decision-making authority rests not with the mediators, but with the parties themselves. During mediation, the parties may stipulate to the facts alleged in the petition, but may not stipulate to the legal status of the child, i.e., whether the child was abused, neglected, and/or dependent. The court determines legal status. Once the legal issues are resolved, the mediators focus on the development of individualized case plans designed to achieve the permanent plan for the child. This second phase has proved to be especially valuable to our families and our court system.

Mediated agreements are drafted at the session and signed by all parties. The DSS attorney is responsible for taking the original agreement to the court on the set adjudication date and reading the agreement into the court record. Once adopted by the court, the agreement becomes an enforceable court order. We were pleased by a January 2008 NC Court of Appeals decision that upheld a case where a mediated agreement was called into question. It signified that our appellate courts recognize the worth and durability of mediated agreements, a victory for mediation programs across the state.

The Trifecta – Saving Time, Saving Money and Improving Outcomes for Children

Our 2002 financial analysis conducted in conjunction with the USC evaluation calculated that our permanency mediation program saved Mecklenburg County \$88,340 per year in case processing costs and \$269,220 per year in foster care costs. This analysis was based on the 70 cases per year that we mediated in 2002. By 2007 more than twice as many cases came through our program, so the cost savings have roughly doubled. The costs associated with abuse, neglect and dependency cases are reduced in three ways. On the front end of the process, the mediated agreement is read into the court record at the adjudication. This so minimizes the time needed for adjudication that we are able to combine adjudication and disposition hearings into a single hearing. On the back end of the process, the number of review hearings is reduced since children are more likely to reach permanence in less time. By virtue of this faster route to permanence, foster care costs are also drastically slashed.

Saving time and money are undeniably important factors. However, we are most proud of the improved services permanency mediation provides to children and families. One of the greatest achievements of our program is the development of thoroughly individualized case plans. Parents have a forum to be heard, to have input, to ask questions, to understand and access available services and to receive a unified set of expectations from all major players in their case. In abuse, neglect and dependency cases, communication is sometimes hindered by language, literacy and homelessness or relocation. In these cases the advantage to mediating case plans is even greater. The court provides interpreters as needed and each portion of the case plan is reviewed orally. All of the stakeholders in the case are present, providing the opportunity for direct conversation. The improved quality of case plans produced through mediation has led to increased parental compliance, which is apparent in our increased rates of reunification.

Permanency mediation in Mecklenburg County, NC, is facilitating the permanent placement of children into safe, stable homes more quickly. It has fostered a spirit of cooperation across our child welfare system and a team-based approach to each family. Most importantly, mediation has drastically improved the well-being of our children. Eight years into our program, it is difficult to imagine how we ever operated juvenile court without mediation.

Charlotte Model Court (Mecklenburg County)

The Charlotte Model Court at the Mecklenburg County, North Carolina Juvenile Court has been a part of the Victim's Act Model Courts Project in the Permanency Planning for Children Department of the National Council of Juvenile and Family Court Judges (NCJFCJ) since October 1998. Judge Louis A. Trosch Jr. has been the lead judge of the model court site since 2003.

[Back to Top](#)

The Consistent Use of Child Protection Mediation: A Key to Timely Permanency in Neglect, Abuse and Permanent Custody Cases

Magistrate Linda Sorah, Mediation Coordinator, Lucas County Juvenile Court, OH

Summary

The application of guidelines outlined in the National Council of Juvenile and Family Court Judges publication *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, along with the consistent use of mediation in child protection and permanent custody cases, has effectively assisted this Ohio Model Court in achieving timely permanency for children.

Achieving timely permanency for the children involved in child protection cases is a critical goal for the courts. The consistent use of mediation in child protection cases—including those of neglect or abuse and of termination of parental rights—will achieve more timely permanency for children in placement while providing the court with an effective and productive alternative to formal adversarial proceedings.

As recognized by the National Council of Juvenile and Family Court Judges (NCJFCJ) in the 1995 publication *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (nationalcasa.org/download/Judges_Page/notes-1008/0810-ResourceGuidelinesImproving-0019.pdf), hereinafter referred to as *Resource Guidelines*, mediation offers courts an alternative means to handle escalating child protection caseloads through the free exchange of information in a less formal and neutral setting. The practical results of the consistent use of child protection mediation in a court-based program with strong judicial support are persuasive.

The Lucas County Juvenile Court began a pragmatic implementation of the *Resource Guidelines* and initiated its child protection mediation program in neglect and abuse cases in 1997. Soon thereafter, the pilot project of its current permanent custody mediation program in termination of parental rights cases was initiated in 1999. Since that time, the consistent use of child protection mediation is supported by local rule and has resulted in the complete resolution of the initial adjudication/disposition in 74% of neglect and abuse cases mediated and the complete resolution of 36% of permanent custody cases mediated in 2007. These child protection mediations usually occur as the first court event upon filing a petition, and always within 30 days of the filing of a petition in a neglect or abuse case.

The implications of these statistics for child protection case flow and docket management are clearly positive and consistent with the critical goal of timely permanency for children. More than a decade of experience tells us that the fundamental keys to the success of any child protection mediation program are readily adopted from the *Resource Guidelines* and can be practically implemented by interested courts:

- Child protection mediation programs should be court-based or court-supervised and have strong judicial and interdisciplinary support. (*Resource Guidelines*, page 135)
- Child protection mediators must be highly trained, experienced and skilled professionals, have credibility with the court and related professionals and be perceived by family members as being neutral and having the best interests of children and family at heart. (*Resource Guidelines*, page 135)
- Initial resistance to child protection mediation can be minimized by engaging representatives from all professions involved in the child protection court process in initial mediation program planning and encouraging a continuing problem-solving dialogue between all stakeholders at all times.
- Each petition filed in dependency, neglect or abuse cases and termination of parental rights cases should be screened for mediation. This level of consistency is accomplished only with direct judicial support and may be enacted by local rules or procedures.
- Although mediation may not be appropriate in every neglect, abuse or termination of parental rights case, participation in mediation should be mandatory when a child protection case is determined appropriate for mediation and ordered by the court. This, too, may be accomplished by local rule or practice.
- Child protection mediation must be confidential. (*Resource Guidelines*, page 137) This is often accomplished by the adoption of local confidentiality rules, through the use of agreements to confidentiality signed by all child protection mediation participants, or when a state adopts a Uniform Mediation Act making mediation communications privileged and/or confidential.
- Mediated agreements in each child protection case must be specific and detailed, setting forth the specifics of the factual basis of the agreement and of what is expected of the parties. (*Resource Guidelines*, page 138)

- Mediation agreements should be signed by all participants and immediately reported to the judicial officer on the record. (*Resource Guidelines, page 137*)

The application of the NCJFCJ *Resource Guidelines*, along with the consistent use of mediation in child protection and permanent custody cases, has effectively assisted this Ohio Model Court in the achievement of timely permanency for children.

Toledo Model Court (Lucas County)

The Toledo Model Court at the Lucas County Ohio Juvenile Court has been a part of the Victim's Act Model Courts Project in the Permanency Planning for Children Department of the National Council of Juvenile and Family Court Judges since March 2003. The Hon. Denise Cubbon is the model court lead judge.

[Back to Top](#)

Family Team Meetings: One Approach to Front-End, Time-Sensitive Decision Making

Lisa Merkel-Holguin, Director, American Humane National Center on Family Group Decision Making

Summary

This short article focuses on Washington, DC's Child and Family Services Agency's family team meeting initiative, which has been operational since January of 2005.

In the past 10 years, public child welfare and community-based organizations have been implementing numerous family involvement and case decision-making models as a way to provide inclusive and culturally respectful processes when critical safety and permanency decisions are being made about children. These models include front-end, time-sensitive decision-making approaches (team decision meetings, family team meetings, or emergency family group conferences) that occur within 24 to 72 hours of children coming into care or that prevent the need for children to enter foster care, as well as forms of family group decision making meetings (family group conferences and family conferences) that can occur at any decision-making juncture.

This short article focuses on Washington, DC's Child and Family Services Agency's (CFSA) family team meeting initiative, which has been operational since January of 2005. Family team meetings are "structured planning and decision-making meetings that use skilled and trained facilitators to engage families, family supports and professional partners in creating plans for children's safety and in laying the groundwork for permanency."

The Why

While CFSA's family team meeting initiative builds on the promising body of international family group decision making research, the rationale for advancing this practice is more philosophical. It is believed that a genuine partnership between families and their informal networks, resource parents, the broader community, professionals and CFSA will result in decisions and plans that have an enhanced focus on safety, permanency and well-being, increased family supports and a sense of team ownership to move the consensually-agreed upon plans forward.

The What

Family team meetings (FTMs) are held *before the initial court hearing when removal of children from their home has occurred or is at imminent risk of occurring*. These meetings will be held within 72 hours of the removal or the determination that removal is imminent. To implement FTMs, there is a coordinator who rapidly engages the broadest family group possible for the meeting and a facilitator who facilitates the meeting of all the invited participants. The people invited to FTMs in Washington, DC typically include: the parent, guardian, and/or caregiver of the child/young person involved; members of the extended family; the referring worker (intake and ongoing) as well as supervisor whenever possible; the ongoing worker and supervisor who will be assigned the case at the conclusion of the FTM (case referred from intake); an FTM coordinator and CFSA facilitator; any person identified by the family as having a significant supportive connection to the family (e.g., family friends, neighbors, mentors, clergy); any person who can contribute to securing services or treatment and providing support to the family (e.g., public, private, community-based and school based service providers); and attorneys as assigned by the court.

The purpose of the meeting is to bring everyone together who has a stake in the well-being of the child(ren) and crafting a plan that will ensure their future safety, permanency and well-being. The coordinator encourages all information providers to take a non-prejudicial stance of giving clear, detailed and factual information. In the case of the referring worker, it is her responsibility to share all safety and permanency issues involving the child(ren) that the team needs to address at the FTM. During the engagement process, the coordinator discusses the meeting structure with the family and explains that information shared in the meeting is confidential. Information providers may also bring important documents and reports to share with the family upon request for clarification.

The family creates a plan and a back-up plan (if necessary) at the FTM. If the initial plan is not implemented as planned, the ongoing social worker and the family can move to implementing the back-up plan without convening an additional FTM. If neither plan achieves the outcomes desired for the children, an additional FTM can be scheduled at the request of the family or the ongoing worker. Follow-up FTMs, scheduled by CFSA at certain time intervals (60 or 90 days) may be necessary for a small number of family teams. Occasionally, a family will schedule a follow-up meeting to review the status of the plan—or revisit temporary decisions—once the family has further information or experience.

What Do the Results Say?

The American Humane Association served as the external evaluator in 2005 and 2006 for Washington, DC's FTM initiative. According to AHA (2006), there are three findings that are important to understanding the impact of the FTM program on child¹ safety and permanency:

1. There has been a statistically significant increase in the rate of relative foster care placements for children whose families participated in FTMs as compared to children whose families did not participate in FTMs.
2. Reunification upon exiting foster care is greater at a statistically significant rate for children whose families participated in FTMs compared to children whose families did not participate in FTMs.
3. Safety, as measured by recurrence of substantiated maltreatment, was similar for children whose families participated in FTMs and those whose families did not participate in FTMs.

Since American Humane concluded its aggressive and broad-reaching FTM training program in 2005 and finalized the formal external evaluation in 2006, CFSA, like child welfare agencies throughout the country, has implemented continuous quality improvement activities. Through these efforts, we've achieved model fidelity, honored families' desires to have an increased role in decision making, and improved outcomes for some of the most vulnerable children and families. Given the increased federal and state investment in processes like FTMs and other family engagement approaches, these experiences and results hold promise for other child welfare agencies looking to create systematic, progressive change that ultimately benefits children and their families.

Footnotes:

1. While youth in foster care span a large age range, this report uses the term "children" to represent all individuals under the care, custody, and supervision of CFSA.

[Back to Top](#)

Considering Culture in Mediation of Child Protection Cases

*Katy Gallagher-Parker, Staff Attorney, 126th District Court, Austin, TX
Judge Darlene Byrne, 126th District Court, Austin, TX*

Summary

As in litigation, a variety of cultural factors come into play in the mediation of civil child protection cases.

Broadly defined, “culture” refers to shared experiences or commonalities that have developed and continue to evolve in relation to changing social and political contexts, based on race, ethnicity, class, gender, sexuality, religion, age and numerous other factors.¹ Each participant (caseworker, parent, attorney, CASA volunteer, agency representative, mediator) has a different cultural lens through which they view the mediation process and the issues involved. Because the ultimate goal of mediation is for parties to arrive at a mutually acceptable resolution of the dispute, cultural differences can pose challenges when they threaten to impede the willingness or ability of one or more parties to engage in consensus building.

In a 2003-2005 Texas study of child protection mediations, one cultural obstacle reported was a power imbalance between the child welfare agency and parents.² Misinformation, bias and resentment are other cultural obstacles which may arise in these cases. Texas mediators surveyed noted that, by the time of the mediation, a parent may feel oppressed by the state or as though all parties have “ganged up” against them.³ As a result, a parent may develop resentment against caseworkers or may hold a bias against the mediation process. Likewise, caseworkers may subconsciously form stereotypes of parents. Even the mediator’s own cultural values may play a role in mediation.

To attempt to overcome cultural obstacles, mediators may choose to rely on various strategies or intervention techniques.

Many mediators focus on building trust and rapport with participants. To do so, they may distribute a copy of the mediation and confidentiality rules to all participants as soon as the mediation is scheduled. These rules can set the tone for mediation as distinct from litigation and help the parties begin to understand the mediation process. Child protection mediators in the Texas study reported that they worked to develop credibility with participants so they would not be seen as merely “an extension of the court or [the agency] or the DA’s office.”⁴ These mediators deliberately emphasized similarities with participants to attempt to bridge cultural gaps.⁵ A mediator might subtly attempt to build rapport with all participants by simply providing food and drinks. Sharing a meal and snacks may lighten the atmosphere of mediation and establish a framework of commonality for the participants to help them engage in the process.

Mediators may employ various strategies to attempt to level the playing field for participants. Some believe it is critical that parties bring their attorneys with them to child protection mediations. A mediator might ask participants if they are comfortable adopting a rule to use first names during the mediation instead of surnames or job descriptions. When party differences result in entrenchment or impasse, a skilled mediator may reframe the issues in a manner that enables the parties to work together toward a common goal such as the children’s future. One pilot project in Texas has employed a timeout technique to allow any participant to request a brief pause in the mediation when necessary to diffuse a tense moment or allow a participant to consider an option.⁶ Finally, separate caucuses are a tool commonly utilized in mediation to help manage emotions and support participants who might feel threatened by the presence of other parties in the joint session. Caucuses may be useful when a party needs to vent in private to avoid damaging the relationship between parties or when parties are not comfortable exploring options in front of one another.⁷ One mediator suggested she is careful to establish separate spaces similar in atmosphere so each party feels they are equally valued by the mediator.

It is important to note that, while cultural differences and power imbalances may impede the ability of parties to reach agreement, they may also lead a party to concede to a mediated settlement agreement which they do not truly agree with and later regret. Thus, the mediator should make clear to the parties and their attorneys that they will not be forced to agree to anything. When mediation ends in a stalemate, the mediator might follow up with the parties at a later date to explore whether a post-mediation conference might assist the parties in reaching a settlement.

Ultimately, the challenge for all mediation participants is to transcend cultural barriers, so that they may examine the facts and circumstances of cases on an individual basis and use their creativity to help develop positive outcomes for the children involved. Jon Olson, a facilitator of family team meetings in Travis County, suggests: "Let families come to the table as experts on themselves, so that power does not lie with one party or with the caseworker. When people feel engaged in the process, great things can happen."⁸

Austin Model Court

The Austin Model Court was established in October 2008 at the 126th District Court, Austin, TX. The model court is a part of the Victim's Act Model Courts Project in the Permanency Planning for Children Department of the National Council of Juvenile and Family Court Judges (NCJFCJ). The model court lead judge is Judge Darlene Byrne. Judge Darlene Byrne is also a member of the board of trustees of NCJFCJ.

Footnotes:

1. Sujata Warrior, "Fairness and Cultural Considerations in Domestic Violence Cases," presentation at National Judicial Institute on Domestic Violence: Enhancing Judicial Skills in Domestic Violence Cases, Chicago, IL (April 25-28, 2004).
2. Carol Nasworthy and Tracy Tarver (eds.), *Report on the Implementation of the Children's Justice Act Mediation Pilot Projects 2003-2005*, p. 31 (utexas.edu/law/academics/centers/cppdr/resources/2003-05%20CJA%20Report.pdf).
3. Id.
4. Id at 32.
5. Id.
6. Id.
7. Id at 31.
8. Telephone interview with Jon Olson, August 27, 2008.

Suggested Additional Resources:

Isabelle R. Gunning, "Diversity Issues in Mediation: Controlling Negative Cultural Myths," 1995 J. Dis. Resol. 55 (1995).

Cynthia A. Savage, "Culture and Mediation: A Red Herring," 5 Am. U.J. Gender & Law 269 (1996).

Kelly Browne Olson, Lessons Learned From a Child Protection Mediation Program, 41 Fam. Ct. Rev. 480 (October, 2003).

Report on the Implementation of the Children's Justice Act Mediation Pilot Projects 2003-2005, p. 31 (utexas.edu/law/academics/centers/cppdr/resources/2003-05%20CJA%20Report.pdf).

[Back to Top](#)

Child Advocates' Mediation Project: Seven Years of Working Together for Children

Cindy Booth, Executive Director, Child Advocates, Inc.

Summary

Child Advocates' CASA volunteers and staff have been successful in leading our system to participate in, understand and support alternate dispute resolution by helping to establish mediation as a tool in termination of the parent/child relationship cases.

In 1999, the juvenile court in Indianapolis, IN, was experiencing a record number of termination of the parent/child relationship (TPR) cases. As the entity representing the best interests of children in those cases, Child Advocates had a unique perspective on how TPR was affecting children, how the TPR process was needlessly delaying permanency for children, and how frustrating the process was for children and other stakeholders. We believed that mediation in TPR cases would result in a process that was shorter and healthier for children and families.

A senior staff member who was also a certified family law mediator and I began to talk about how alternative dispute resolution could improve the TPR process in Indianapolis. We obtained a commitment to ADR from the major participants and stakeholders in the system—our juvenile court judge, the public defender agency, and the Office of Family and Children (now called the Department of Child Services)—and met with them regularly throughout the process. We received funding from Lilly Endowment to begin planning and implementing the Mediation Project in 2000.

During our stakeholder meetings, we developed a checklist that assisted all parties in identifying which cases would be most appropriate for referral to the Mediation Project:

- All parties agreed to mediate.
- Biological parents had legal counsel. (At that time, Marion County Juvenile Court did not routinely appoint public defenders to parents.)
- An approved pre-adoptive home would be willing to offer parents post-adoptive contact with the children.
- Biological parent was not incarcerated out of state, had no severe mental health issues, was not transient and had a reliable means of contact.
- Children over the age of 12 years desired contact with biological parent and children's counselors or therapists (regardless of child's age) agreed that such contact was in the child's best interest.

This checklist served as a funnel to bring cases that were likely to settle "on the courthouse steps" to resolution at an earlier stage in the TPR phase. Cases were referred to the Mediation Project by agreement of the parties at the beginning stage of the TPR process. During 2001, the first year of the project, staff member Julie Petty mediated 33 cases, serving 79 children, with 110 hours of mediation. In 2007, she mediated 72 cases, serving 140 children, with 192 hours of mediation. We avoid any real or perceived conflicts of interest that might arise from having a staff member serve as a mediator by making it a policy that Petty has no contact with the case or the volunteers on the case until the day of mediation.

Use of mediation as an ADR tool saved the system hundreds of thousands of dollars in resources and foster care costs. Even when cases did not resolve through mediation (and the vast majority did), parties were able to discuss other important issues. And, most often, cases that did not resolve through mediation were resolved on the scheduled date of trial. Only 8 of the 72 mediated cases required a full trial.

CASA volunteers and staff from Child Advocates participated regularly in the mediations. Petty would begin each session by asking every person seated at the table, "What would you like to see happen?" Often, the voice most listened to, even by biological parents, would be the volunteer. Child Advocates' volunteers and staff typically viewed the case from the child's perspective and frequently communicated and facilitated the discussion from that perspective. CASA volunteers, by virtue of their role in the case as the monitor and advocate of the child's best interests, were able to look at biological parents and say, "I've seen your children in their present environment; I've been your child's voice in court. What you hear today is what you'd hear at trial. Here's what your child would like or here is what I believe is in your child's best interest."

Petty reported that CASA volunteers and staff were typically candid about the parents' performance of services, were never unkind to them and most often made a point of saying something positive to the parents. Often, we found that the CASA volunteer could bridge for the parents the harsh reality of the evidence that had mounted against them to the reasonable, child-centered resolution that others seated at the table could clearly envision.

Volunteers reported that parents often paid close attention to the volunteer's thoughts and comments on how the children were doing; parents realized that there was no ulterior motive that a volunteer from the community would have regarding their children. Volunteers also served as a bridge in connecting the prospective adoptive parents to the biological parents in a way that was respectful of each set of parent's needs.

In 2005, the Hon. Marilyn Moores, a juvenile court judge, requested that Child Advocates continue its work in ADR by providing facilitations immediately following the filing of the TPR petition. Facilitations are used to exchange information and to ensure that all parties understand the TPR issues and mediation, if appropriate. Additionally, the judge has obtained funding for the court to begin facilitations in the child in need of care (CHINS) stage. Our state has also undergone a child welfare practice reform that emphasizes the use of child and family team meetings to navigate the CHINS process issues. To be sure, Child Advocates' Mediation Project laid the foundation for our system to consider alternative dispute resolution as an effective and child-focused approach to permanency.

Indianapolis Model Court (Marion County)

The Indianapolis Model Court was established in October 1999 at the Marion Superior Court, Indiana Juvenile Division. The model court is a part of the Victim's Act Model Courts Project in the Permanency Planning for Children Department of the National Council of Juvenile and Family Court Judges. The lead judge is Marilyn Ann Moores.

[Back to Top](#)

Web Resources: Alternative Dispute Resolution Practices in Dependency Court

Paula Campbell, Permanency Planning for Children Department, NCJFCJ

Summary

Alternative dispute resolution (ADR) has gained widespread acceptance in recent years. Some courts now even require parties to resort to ADR of some type, usually mediation, before permitting a case to be tried. Following are resources, tools and publications on ADR, mediation and family group decision making.

Alternative Dispute Resolution (ADR)

National Center for State Courts, *Alternative Dispute Resolution Resource Guide*
[ncsconline.org/WC/CourTopics/ResourceGuide.asp?topic=ADRMed\\$guide=122](http://ncsconline.org/WC/CourTopics/ResourceGuide.asp?topic=ADRMed$guide=122)

Alternative Dispute Resolution and Mediation Publications and Resources, Child Information Gateway Website
childwelfare.gov/systemwide/courts/specialissues/alternative.cfm#state_local_ex

Alternative Dispute Resolution FAQ Guide, National Center for State Courts
ncsconline.org/wc/CourTopics/FAQs.asp?topic=ADRMed

Alternative Dispute Resolution, State Resources for Mediation, State Links
ncsconline.org/wc/CourTopics/StateLinks.asp?id=59&topic=ADRMed
<http://www.ncsconline.org/wc/CourTopics/StateLinks.asp?id=59&topic=ADRMed>

Mediation Programs

Santa Clara County Dependency Mediation Protocol
scselfservice.org/juvdep/dmdvprot2000f.pdf

Utah Child Welfare Mediation Best Practices
utcourts.gov/mediation/cwm/forms/bestpractices04.pdf

National Resource Center for Foster Care & Permanency Planning, Hunter College School of Social Work, "Information Packet: Child Welfare Mediation"
hunter.cuny.edu/socwork/nrcfcpp/downloads/child-welfare-mediation.pdf

National Center for State Courts (2001), "Child Protection Mediation" information sheet
ncsconline.org/WC/Publications/KIS_ADRMed_Trends99-00_Pub.pdf

Thoennes, N. (1991). "Mediation and the Dependency Court: The Controversy and Three Courts' Experiences," *Family and Conciliation Courts Review*
www3.interscience.wiley.com/journal/119362421/abstract

"Juvenile Dependency Court Mediation: An Alternative to Trial for Resolving Disputes," Santa Clara County, CA
scselfservice.org/juvdep/juvenile_mediation_brochure.pdf

"Permanency Planning Mediation Pilot Program: The Michigan Experience," *Michigan Child Welfare Law Journal* (Spring 2007)
chanceatchildhood.msu.edu/pdf/CWLJ_sp07.pdf

Kerr, B. (2001). The Cooperative Permanency Project. Virginia State Dept. of Social Services, Richmond, Final Report
[basis.caliber.com/cwig/ws/library/docs/gateway/Record?rpp=10&upp=0&m=1&w+=NATIVE\('an="cd-38788"&r=1](http://basis.caliber.com/cwig/ws/library/docs/gateway/Record?rpp=10&upp=0&m=1&w+=NATIVE('an=)

Family Group Conferencing

Wolf, R. (2003). "Promoting Permanency—Family Group Conferencing at the Manhattan Family Treatment Court," *Journal of the Center for Families, Children and the Courts*
courtinfo.ca.gov/programs/cfcc/pdffiles/133Wolf.pdf

A Comprehensive Service Model for Resolution of Parenting Issues. Florida Supreme Court. Family Court Steering Committee. Alternative Dispute Resolution Subcommittee Technical Report. This is a proposed service model that offers a continuum of services for families involved in custody proceedings.
<http://www.afccnet.org/pdfs/parenting%20continuum.pdf>

"Family Group Decision-Making (FGDM) in Child Welfare Purposes, Values and Processes" fact sheet, *American Humane Association*
americanhumane.org/site/DocServer/FGDM_Statements.pdf?docID=6781

Roberts, D. (2007). "Toward a Community-Based Approach to Racial Disproportionality," *Protecting Children*, vol. 22, *American Humane Association*. This essay explores a community-based approach to child welfare theory, policy, and practice, and its relationship to racial disproportionality.
www.f2f.ca.gov/res/pdf/TowardsACommunity.pdf

Crampton, D. & Jackson, W.L. (May/June 2007). "Family Group Decision Making and Disproportionality in Foster Care: A Case Study." *Child Welfare*, vol. 86, no.3
[olc.edu/~jolson/433/Crampton%20&%20Jackson%20\(2007\)%20Family%20Group%20Decision%20Making%20and%20disproportionality%20in%20foster%20care%20-%20A%20case%20study.pdf](http://olc.edu/~jolson/433/Crampton%20&%20Jackson%20(2007)%20Family%20Group%20Decision%20Making%20and%20disproportionality%20in%20foster%20care%20-%20A%20case%20study.pdf)

Publications

Alternative dispute resolution and mediation publications list, National Council of Juvenile and Family Court Judges
ncjfcj.org/content/blogcategory/355/424/

[Back to Top](#)