Child Custody Mediation: Negotiating Agreements and Renegotiating Relationships

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Custody/Divorce Mediation

- Recommended Resources

- The Truth About Children and Divorce
- Renegotiating Family Relationships
Custody/Divorce Mediation

- 3rd party helps parents negotiate
  - Mental health pro, lawyer, team
  - Meet parents together, separately
- Settle divorce disputes
  - Children
    - Legal and physical custody
    - Parenting and co-parenting
  - Money
    - Child support
    - Alimony
    - Property division
Custody/Divorce Mediation

- Mediator facilitates doesn't decide
  - May make suggestions
    - Evaluative vs. facilitative style
  - Med-arb(itation)
    - For example, parenting coordination
- Mediation generally is confidential
  - May be more protected than therapy
    - If not confidential, really is med-arb
- Recommend parents seek legal advice
  - Before signing Memorandum of Understanding
- Signed agreement to mediate detailing this
  - Sample agreement available
Custody/Divorce Mediation

• Two Broad Rationales
  • Clogged courts/procedural justice
    • Most common reason for legal action
    • Have voice in process (and keep agreement)
  • Well-being of children (and parents)
    • Law: *Children’s Best Interests*
    • Research: Conflict, co-parenting, parenting predict children’s well-being
Mediation Is One Of Many ADR Alternatives

Dispute Resolution Funnel

Pro se divorce (negotiate at kitchen table)
Divorce education
Mediation
Collaborative law
Adversary attorney negotiations
Guardians ad litem/child advocates
Early neutral custody evaluations
Full custody evaluations (arbitration?)
Arbitration, mini-trials
Judicial decision making
Parenting coordination
Settlement Methods for 933 Custody and Visitation Issues in California (Len Edwards) Court

Based on Maccoby and Mnookin 1992
Overview of Workshop

- Research on mediation
  - Highlighting my research
- Research on children in divorce
- Understanding emotional and relationship dynamics of divorce
- Mediation techniques
- Alternative, developmentally appropriate parenting plans
Research on Mediation and Litigation 12 Years Later

A RANDOMIZED TRIAL
Study Design

- Random assignment to mediation/litigation
  - Initial study and replication (combined for f/u)
  - 36 litigation families; 35 mediation families
  - 18 month and 12 year follow-ups
- High conflict families
  - All filed for contested court hearing (worst 10%)
  - Low income, racial diversity
- Short-term, problem-focused mediation
  - Average of 3 two hour sessions
  - Male-female co-mediators (6 different pairs)
- Focus on children’s issues
  - Addressed custody, visitation, and child support
Emotionally-Informed Mediation

- Problem solving informed by emotions
- Agreement focused but includes
  - Education about own emotions and referrals
  - Education about parenting, co-parenting
- Use middle role to understand child’s position
The Basics

• Relationships don’t end with divorce, so they need to be renegotiated
  • True for parents and children, and also for former partners who remain parents
• How do people ordinarily handle the hurt, shame, guilt, tension, and complications of lost love?
  • Too many divorced parents do what everyone does...
Father-Child Contact After Separation: By Length of Time Since Separation

Based on Seltzer, 1991
The Emotions

• Real, powerful, and painful feelings
• If you can’t be angry in middle of a divorce, when can you be?
• But much conflict and anger is emotional not rational – Example?
  Stubbing your toe
  - Hurt $\rightarrow$ anger
  - Love $\rightarrow$ anger
  - Fear $\rightarrow$ anger
  - Grief $\rightarrow$ anger
  - Guilt $\rightarrow$ anger
Process Themes

• Dealing with underlying emotions
  • Quick case example

• Exploring creative options (brainstorming)
  • Quick case example
Case Settlement Following Random Assignment

N=36 for adversary group and N=35 for mediation group

- Mediated Settlement
- Attorney Settlement
- Custody Hearing

Percentage of Cases

Adversary Group vs. Mediation Group

N=36 for adversary group and N=35 for mediation group
Mediated vs. Litigated Agreements Similar

- No spousal support or property division
- Primary mother custody is most cases
- No difference number of days with parents
- No difference in child support
- More joint legal in mediation
  - But still a minority of cases
- Today’s agreements very different
  - More joint legal and physical (less) custody
- Agreement rate range other work: 40-80%
  - Emery (2011); Emery, Sbarra & Grover (2005)
  - Mediation mandatory in many states (e.g., CA) and countries (e.g., AU)
  - Caution: “mediation” = 1 hr with untrained worker in some courts
Mothers and Fathers Satisfaction with Mediation and Adversary Settlement

Rights Protected

1=not at all; 2=a little; 3=somewhat; 4=quite a bit; 5=very much

Court Men
Mediate Men
Court Women
Mediate Women
Mothers and Fathers Satisfaction with Mediation and Adversary Settlement

Settled Problems

1 = not at all; 2 = a little; 3 = somewhat; 4 = quite a bit; 5 = very much

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Mothers and Fathers Satisfaction with Mediation and Adversary Settlement

Concern for Children

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Mothers and Fathers Satisfaction with Mediation and Adversary Settlement

Court Men
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Win-Win or Win-Lose?

Correlations for Mothers' and Fathers "Won" Ratings

- Litigation group = - .47** (Win-Lose)
- Mediation group = + .33* (Win-Win)
Other Research

- Higher satisfaction with mediation found consistently
  - Both men and women
- Some evidence that mediated agreements followed more
  - Emery: Better child support payment
- Compliance critical for courts
  - But returning to mediation good not bad
  - Expect (and welcome) change!
Long-Term (12 Year) Follow-Up

- Few happy endings in mediation
- Hope to plant a seed for future...
- Do we?
12 Year Follow-Up:
Outcomes of Mediation and Litigation

Contact with Nonresidential Parent

- 1X year or less
- Several times/year
- 1-3 times/month
- 1x a week or more

Mediation
Litigation
National
Father-Child Contact After Separation:
By Length of Time Since Separation
Based on Seltzer, 1991

<table>
<thead>
<tr>
<th>Years Since Separation</th>
<th>0 to 2</th>
<th>3 to 5</th>
<th>6 to 10</th>
<th>11 +</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all</td>
<td>100%</td>
<td>80%</td>
<td>60%</td>
<td>40%</td>
</tr>
<tr>
<td>Once a year</td>
<td>20%</td>
<td>40%</td>
<td>60%</td>
<td>80%</td>
</tr>
<tr>
<td>Several/year</td>
<td>0%</td>
<td>20%</td>
<td>40%</td>
<td>60%</td>
</tr>
<tr>
<td>Once a week</td>
<td>0%</td>
<td>20%</td>
<td>40%</td>
<td>60%</td>
</tr>
<tr>
<td>1-3/month</td>
<td>0%</td>
<td>20%</td>
<td>40%</td>
<td>60%</td>
</tr>
<tr>
<td>Several/week</td>
<td>0%</td>
<td>20%</td>
<td>40%</td>
<td>60%</td>
</tr>
</tbody>
</table>

Based on Seltzer, 1991
12 Year Follow-Up:  
Outcomes of Mediation and Litigation

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Mediation</th>
<th>Litigation</th>
<th>National</th>
</tr>
</thead>
<tbody>
<tr>
<td>1X year or less</td>
<td>60%</td>
<td>40%</td>
<td>20%</td>
</tr>
<tr>
<td>Several times/year</td>
<td>30%</td>
<td>20%</td>
<td>10%</td>
</tr>
<tr>
<td>1-3 times/month</td>
<td>20%</td>
<td>10%</td>
<td>5%</td>
</tr>
<tr>
<td>1x a week or more</td>
<td>10%</td>
<td>5%</td>
<td>2%</td>
</tr>
</tbody>
</table>
Nonresidential Parent-Child Involvement

Based on residential parent report

- Discipline
- Dress/grooming
- Religion/moral
- Errands
- Celebrate holidays
- Significant events
- School/church
- Recreation
- Discussing problems
- Vacations

Litigation vs. Mediation

Based on residential parent report
AMAZING!!! or Duh...
Other Findings at 12 Years

- Mediation
  - Less parent conflict despite increased parent contact
  - Increased ambivalence about ending marriage
- Mediation
  - More changes in children’s living arrangements
  - But only about 1 in 12 years (essentially 0 litigation)
    - Aren’t such infrequent changes normal? Healthy?
    - A parenting plan can be a “living agreement”
More Findings at 12 Years

- No differences in children’s mental health
  - Trend for differences to favor mediation
  - Statistically significant when few cases with 4 or more changes removed
- Two ways to end conflict
  - Children’s adjustment predicted by family relationships in mediation group
  - Not related in litigation group
Other Research

- No other long-term studies
- McIntosh – Australia
  - Child *inclusive* mediation better than child *focused* mediation
- Need more research!
Why Did So Little Mean So Much?

- Timing is everything
  - This is the time
- The right path (the road less traveled...)
  - Not just that mediation is “good;”
  - The alternative can be... disruptive
Why Did So Little Mean So Much?

Not the decisions reached (they were the same) but the process.

- Much more than “getting agreements”
- Recognizing grief and how it causes anger
- Parents having a voice
- Learning about children’s needs & co-parenting
- Taking the long view
- Parents working together as parents
Why Did So Little Mean So Much?

- Commitment and enthusiasm for mediation and ADR generally
  - Allegiance effect
- We constantly need to renew and remind ourselves of the importance of what we do, because this makes us better mediators (or better lawyers, social workers, psychologists, judges)
Mediation is Emotionally **Wrong**

- The usual way to end a relationship is...
  - “I never want to see you again!”
- Anger serves many functions
  - Covering up pain, fear, longing, guilt, and grief
- Can parents to break up differently?
  - For their children’s sake
  - Love their kids more than they hate their ex
- Mediation makes separation harder
  - More ambivalence, more pain
- But it is the right thing and it can work!
For More Information