

CREATIVE CONFLICT RESOLUTION APPROACHES FOR DEPENDENCY CASES

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Trends Statement

Some 25 years ago, using conflict resolution procedures to aid courts in dealing with child welfare was viewed with substantial trepidation. In the ensuing years, much has changed, and mediation and other dispute resolution processes are now an integral component of court practice in dependency proceedings.

Historical Basis

The federal Adoption Assistance and Child Welfare Act (P.L. 96-272), and its subsequent amendment in 1983, set guidelines for state foster-care processes. P.L. 96-272 placed new requirements on state courts handling dependency proceedings.¹ The courts were required to conduct periodic reviews and make a series of formal findings before disposition of these cases. The law prescribed time frames for submission and review of permanency plans for children in out-of-home care. While the emphasis remained on the “best interest of the child” and full procedural protections for all parties to child protection proceedings, the result was an increasingly adversarial system of adjudicating and resolving dependency cases. The force behind the move to alternative dispute resolution came because of the recognition that the adversarial process was often time-consuming and delayed permanency for children.

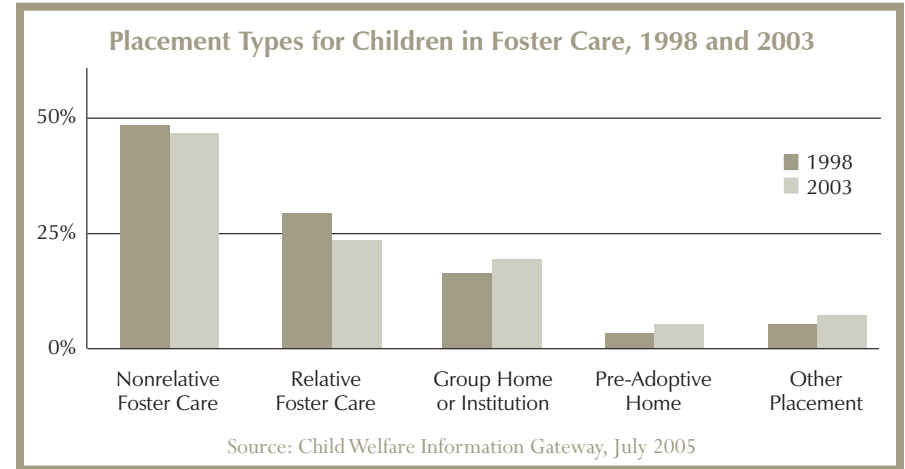
Three jurisdictions, the dependency courts in Los Angeles County and Orange County, California, and the Connecticut Juvenile Courts, began using mediation in the early and mid-1980s to provide an alternative to the traditional trial-court approach to dependency cases. Other jurisdictions and state courts, including Santa Clara County (California), Ohio, Florida, Michigan, the

“The proceedings tend to be subject to court delays and continuances and are therefore time consuming and expensive to operate, as well as detrimental to the well-being of the families involved”

Source: Family and Conciliation Courts Review, 1991

District of Columbia, and Massachusetts, followed shortly thereafter. In California and Florida, dependency mediation practices have been incorporated into statutes and rules. Alternative dispute resolution processes gained more momentum, aided by the infusion of federal Court Improvement Program (CIP) dollars provided to the state courts beginning in 1994 in response to the dramatic increase in child abuse and neglect cases and the expanded role of courts in achieving stable, permanent homes for children in foster care.²

The Adoption and Safe Families Act (ASFA), passed by the U.S. Congress in 1997, added more-stringent requirements on the state courts and child welfare agencies. Further emphasis was placed on time frames for the placement of children out of their homes to permanency. Notably, a 15-month mandatory time line for filing for termination of parental rights was established. ASFA placed further pressure on state courts to provide oversight of dependency cases and promote timely permanency planning for children in out-of-home care. State courts had to look at innovative ways to resolve cases within the framework of crowded dockets and few additional judicial resources.



Present Conditions

The evolution of the use of conflict resolution methods in dependency proceedings has in many ways been driven by significant changes in public policy with respect to children in out-of-home care. There is a greater emphasis on court case

management and pressure to “settle” cases. Various conferencing models have emerged. The models represent a broad spectrum of alternative dispute resolution models.³ The types of conferences that evolved can be attributable to a particular jurisdiction’s structure, judicial and staffing resources, available funding, and the need to address particular case management and program objectives.

These conferencing models use a neutral third party to convene with parents, child protective agencies, attorneys, and others. They promote a more collaborative and less adversarial approach to case settlement and allow parents to have greater participation in the court process. The conferencing models are sometimes referred to as settlement conferences, case status conferences, or case management conferences. Mediation and negotiation techniques are used by the “neutral third party” who facilitates the discussions. They assist the participants to understand each other’s point of view and collaborate to develop solutions. Individual programs and processes often have additional components that are likened to traditional mediation.

Many dependency courts and jurisdictions around the country have developed and operate dependency or child-protection mediation programs. These programs are designed using commonly accepted mediation standards of practice and are primarily court connected or court referred. They take effect after the filing of a petition or complaint by the child welfare agency that alleges abuse and neglect and seeks some remedy or relief from the court, which may include placement of a child out of the home, permanency guardianship, or termination of parental rights, or placement in adoption.

The mediation conferences include participants who are not customarily involved in court proceedings. Foster and adoptive parents, other family members, and service providers join parents, agency social workers, and attorneys in the mediation.

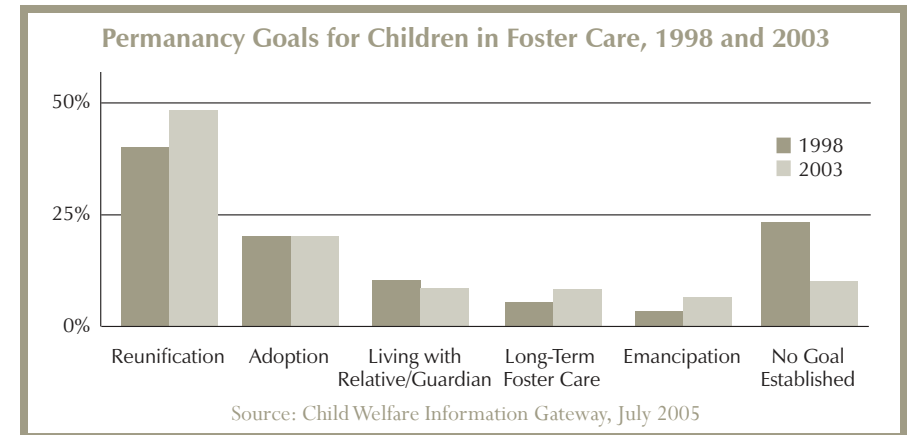
Mediators can be court employees, contractors, or volunteers. In most instances, the mediators are highly skilled and receive rigorous training and supervision. The mediators possess

Key Components of Mediation

- The process is private and informal;
- Mediation is confidential;
- Parties have self-directed decision making;
- Mediators are neutral and impartial;
- The process supports full participation;
- Agreements must be mutually acceptable.

knowledge not limited to mediation techniques. They are well-informed about child protection law, child development and child abuse, family dynamics, mental health, substance abuse, and domestic violence.

Research about the mediation of dependency cases is somewhat limited. However, the research that has been done concluded that the benefits derived from mediation included greater participant satisfaction with the court process, improved communication between participants, early case resolution, and identification of more effective and comprehensive services for children and families. There is also some data to suggest that mediation reduces costs associated with the amount of time children spend in out-of-home placements and the amount of time in court hearings.



Family group conferences, another conferencing model, were first developed in New Zealand. “Since the introduction of the New Zealand model for family group conferencing in the U.S., a variety of similar models have been developed in order to suit specific program needs. The term ‘family group conferencing’ now encompasses ‘Family Group Decision-Making,’ ‘Family Unity Meetings,’ ‘Team Decision-Making Meetings,’ and ‘Family Team Meetings.’”⁴ Many of these models were designed as community-based processes to divert families from unnecessary court involvement while addressing child safety, supporting family integrity whenever possible, and promoting family reunification or finding permanent

homes for children who could not safely be reunited with their families. A key component was the courts working in partnership with the child welfare agencies to develop and support the practice model. In other programs, such as the Miami-Dade Juvenile Court and Alaska's dependency courts, the court is the sponsoring organization and is responsible for the implementation and management of the family-group-conferencing process.

Probable Future

There will be continuing pressure on dependency courts to provide judicial oversight and to ensure that children attain permanency in a timely manner. Most recently, the U.S. Congress codified into law the expanded role of foster parents and age-appropriate children and youth in court proceedings.⁵ Within this context, the future of mediation and other dispute resolution processes is assured. As dependency courts strive to codify and institutionalize these public policies, additional creative alternatives to formal litigation are needed. Models for dispute resolution provide expanded opportunities for parents and foster parents to take an active role in cases. In those jurisdictions and courts where it is not customary for children and youth to participate in proceedings, court administrators and judges will likely begin to encourage age-appropriate children and youth to be included in conferencing processes.

"Open adoption" or "cooperative adoption" has become increasingly more recognized as a permanency option. "Cooperative adoption refers to an adoption in which the parties agree to allow some element of continuity between the birth family and the adoptive family. The continuity may range from exchanging information and photographs to ongoing contact. . . . Birth relatives and adoptive parents together decide on the comfortable level of openness and involvement of a child's birth family while protecting the integrity of the adoptive family."⁶ As jurisdictions and states become more familiar and comfortable with open adoption and cooperative adoption laws are enacted, mediation and other forms of dispute resolution provide an ideal setting for collaborating and crafting such arrangements.

What were once seen as "experimental" models for dispute resolution in dependency cases will continue to expand. Innovations will include guidelines, standards of practice, and codification in laws and court rules. The courts will see distinct models for mediation, and other dispute resolution techniques will emerge.

The shift will not be without challenges. Sustained funding for programs, judicial and professional commitment to programs, confidentiality of the process, reluctance of professionals to acknowledge the need to empower parents as full participants in decision making about their cases, and the ever-present pressure upon the courts and the child welfare agencies to "move" cases will remain at the forefront for courts and programs.

The body of knowledge about what encompasses best practices will continue to grow and provide much needed information for courts that are contemplating new programs or working to sustain existing programs. In the interim, court administrators and program managers will continue to find new and innovative ways to encourage the use of mediation and other dispute resolution programs.

Summit on Children

A National Judicial Leadership Summit on the Protection of Children was held in 2006. The summit objective was highlighting implementation accomplishments and events throughout the country related to child protection. The series of e-newsletters below describe follow up activity resulting from the summit.

Continuing Upward From the Summit

E-Newsletter can be found at http://www.ncsconline.org/D_Consum/index.htm

Volume 1 - March 2007: How States Have Implemented Their Summit Action Plans – An Overview

Volume 2 - May 2007: National Summit on Children - An Overview

Volume 3 - July 2007: States Outline "Next Steps" For Improving Child Protection

Volume 4 - September 2007: Progress in Select States

Source: The National Center for State Courts - Court Services

ENDNOTES

¹ *Dependency* for purposes of this article refers to emergency removal, neglect and abuse, guardianship, and termination-of-parental-rights proceedings.

² The State Court Improvement Program began as part of the Omnibus Budget Reconciliation Act of 1993, also known as the Family Preservation and Support Act. Congress set aside \$35 million in entitlement grants to state courts over a four-year period. The funding was specifically to improve court handling of abuse, neglect, foster-care, and adoption cases. 42 U.S.C. 670 Note, Public Law 103-66, 13711(d) (2) and 13712. The Safe and Stable Families Amendments of 2001 extended the Court improvement Program through federal fiscal year 2006. The U.S. Congress reauthorized and expanded funding in 2006 through 2010.

³ These models include mediation, family group decision making, facilitated conferences, family team meetings, and case management conferences.

⁴ See Melissa M. Litchfield, Jason A. Oetjen, Dionne M. Maxwell, Sophia I. Gatowski, and Shirley A. Dobbin, "Empowering Families in Child Protection Cases: An Implementation Evaluation of Hawai'i's 'Ohana Conferencing Program," *Technical Assistance Bulletin* 7, no. 2 (April 2003).

⁵ 42 U.S. Code Section 629h(b)(1) and Section 675(5)(C)(iii).

⁶ See Susan L. Brooks, "The Case for Adoption Alternatives," *Family Court Review: An Interdisciplinary Journal* 39 (2001): 51.

RESOURCES

Judge Leonard P. Edwards. "Achieving Timely Permanency in Child Protection Courts: The Importance of Frontloading the Court Process." *Juvenile and Family Court Journal* 58, no. 2 (Spring 2007).

Kelly Browe Olson. "Lessons Learned from a Child Protection Mediation Program: If At First You Succeed and Then You Don't..." *Family Court Review* 41, no. 4 (October 2003).

Margaret Shaw and W. Patrick Phear. "Innovation in Dispute Resolution: Case Status Conferences for Child Protection and Placement Proceedings in the State of Connecticut." *Family and Conciliation Courts Review* 29, no. 3 (July 1991).

Sophia I. Gatowski, Shirley A. Dobbin, and Melissa Litchfield. "The Miami Model Court Family Decision-Making Conference Program Evaluation Results." *Technical Assistance Bulletin* 5, no. 3 (November 2001).

Association of Family and Conciliation Courts
www.afcnet.org

National Council of Juvenile and Family Courts Permanency Planning Department
www.ncjfcj.org

National Center for State Courts
www.ncsconline.org

American Bar Association National Child Welfare Resource Center on Legal and Judicial Issues
<http://www.abanet.org/child/rclji/home.html>