

Divorce and custody mediation: What we know now about the impact on time and costs

By Annie Tucker*

The Sixth Judicial District Family Mediation Program was implemented in August 1996. Originally, parties in divorce and custody cases were ordered to mediate before a temporary hearing or before they could get a trial date. In September 2006, the court began ordering parties in all custody and visitation cases to mediation, based on a study of Virginia family courts.

In our first 15 years, we have found benefits to the parties and the court. We have developed policies crucial to the safety of all involved and identified best practices fundamental to professional effectiveness. These policies are part of the program document for the Sixth Judicial District Family Mediation Program (6JDFMP), which has been approved by the district court judges.

Impact on the courts

The number of temporary hearings dropped 60 percent during the first year. The number of days per trial dropped significantly in Linn County, based on court staff observations. Before the program was implemented, at least 25 percent of the trials lasted three to five days. After the first five years, more than 85 percent lasted from one hour to two days, due to the parties' reaching agreement on some of their issues in mediation.

There are fewer modifications in cases with mediated agreements, based on a study of 150 Linn County cases: 50 cases which had mediated an agreement, 50 where the parties stipulated/reached agreement without mediation and 50

where the parties went to court for a decision. The study showed that divorced parents who had mediated their divorce decisions were seven-to-eight times less likely to return to the court for further decisions on custody and visitation issues.

Impact on parties

In 2010, parties in 544, or approximately 25 percent, of the 2,133 family law cases disposed of in the Sixth Judicial District were mediated. These cases involved dissolutions and modifications with children. Parties reached agreement on all or some issues in 67.9 percent of the reporting cases. Of those, 30.7 percent mediated for up to one hour, 60.1 percent mediated for one to three hours and 4.3 percent mediated for three to five hours.

Attorneys were present in 9.5 percent of the reporting cases. Party surveys indicated that 84.6 percent had an attorney and 13.9 percent were not represented. The balance (1.5 percent) had no answer to the question.

Cost to parties

Parties can manage the cost of mediation in a number of ways: They select their own mediator; either party can terminate mediation at any time, and both still get credit for attending mediation.

Low income parties can apply to the court for a pro bono mediator. Roster mediators are required to provide pro bono mediations on a rotating basis.

There are 40 mediators on the 6JD roster. Two thirds are attorneys. The range of hourly fees is \$70-250 an hour;

the average fee is \$152 per hour. Each party pays half of the hourly fee. If the parties mediate for two hours with a mediator that charges the most common fee, \$150 an hour, each party pays \$150 for mediation.

Party satisfaction

On a scale of 1-5, with 1 indicating 'Not at all' and 5 indicating 'Completely,' more than 90.1 percent of those who responded to the statement 'I was satisfied with my mediator' indicated a 4 or 5 (Completely).

Critical Policies Promote Safety and Best Practices

Fifteen years has provided us time to understand concerns related to divorce and custody mediation and to develop policies that address those concerns and promote best practices.

Screening for domestic abuse is essential

Mediation is not appropriate in every case. The time of separation for a couple with domestic abuse is the time of greatest risk for serious violence. This is often the time mediation is ordered in divorce and custody cases.

Batterers are more likely to stalk, harass, batter, injure or kill their intimate partners when the victim takes steps to end the relationship. Domestic abuse can affect nearly 40 percent of the cases. It is not safe to bring both parties to the same location before determining whether there are safety risks and whether both parties have

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the capacity to use the process.

The courts do not screen cases for appropriateness before they order parties to mediation. Attorneys have the primary responsibility to screen their clients for domestic abuse and to file the appropriate request for waiver of mediation with the court if they believe that mediation is not appropriate. "Mediators, or their trained employees, are required to have a screening discussion with both parties separately, by telephone or in person, before the parties arrive at the mediator's office for mediation." (6JD program document)

Mediation may not be appropriate if a mediator determines that a party is afraid to be in the same room with the other party, does not feel able to speak openly or disagree with the other party, or is concerned that they or their child(ren) may be harmed later if they do speak up in mediation.

A party can request a waiver. Or, if the fearful party still wants to mediate and the mediator is willing, the process can be adapted to address the needs of the vulnerable party. For example, the party may bring an attorney or another party to the mediation. The mediation may be held in the courthouse with a metal detector and an armed guard nearby. The mediation may be caucus-based (the parties are kept separated) or mediation can be held by telephone.

All 6JD roster mediators are required to take the course *Introduction to Mediation and Domestic Abuse*, which includes information on effective screening.

Parties do not sign an agreement in mediation

This policy primarily protects parties who do not have their attorneys present at mediation, which is most common in our judicial district. It protects parties who do not have full information from their attorneys before mediating. It also protects victims of domestic violence who might choose to 'go along with the abuser' in mediation to avoid risk or harm later but who do not actually agree with the abuser. They deserve the right to keep themselves safe in the moment and not lose their right to have the court make a decision in their case.

Mediators may draft a memorandum of understanding and give it to the parties. The 6JD program document states: "Parties do not sign any agreement in mediation. The memorandum of understanding is a draft and shall not be considered an agreement unless both

parties have signed it outside of the mediation session and, preferably, after consultation with counsel. The parties and their lawyers, if any, shall prepare all documents submitted to the court, incorporating any agreement. Unsigned agreements cannot be submitted to the court by an attorney as an 'agreement' in a case."

All parties in divorce and custody cases are required to attend a half-hour Mediation Education Class

This class is offered with the Children in the Middle course, to help the parties understand how mediation works, how to prepare and whether it is appropriate in their cases. A percentage of the class fees funds the nonprofit — Mediation Services of Eastern Iowa (MSEI) — that manages the mediation program. MSEI is producing an educational film to standardize the classes and convey what is possible in mediation. See mediateiowa.org for more information.

All mediation trainings are not created equal

6JD roster mediators are required to take a 40-hour Association for Conflict Resolution (ACR) — certified divorce and custody mediation trainings. "These trainings require 15 identified training outcomes, six of which deal with helping trainee mediators develop the skills to help the parties communicate and six hours of supervised mediation role plays. Not all professional 40-hour mediation trainings emphasize gaining the skills needed to help people have a difficult conversation, an ability that is particularly important in mediating family issues, where parties with children will have an ongoing relationship." (6JD program document)

Family mediation is not a complicated civil case, and direct communication can be instrumental in the parties reaching agreements and/or being better able to move on emotionally.

There are currently two ACR-certified mediation trainings in Iowa. You can find a list including

them and others throughout the country at acrnet.org.

Continuing Education Requirement are: Mediation and Domestic Abuse

To keep the parties safe, and to keep the mediator, any attending attorneys, and office staff safe, it is essential for the mediator to screen both parties separately before they arrive for mediation. MSEI (6JD) and the Iowa Coalition Against Domestic Violence have developed an Introduction to Mediation and Domestic Abuse course that is required for 6JD roster mediators within the first six months of being on the roster. This training is essential.

As other districts develop family mediation programs and as more attorneys get mediation training, the Sixth Judicial District and other family mediation programs in the state are glad to share what we know now, so all of Iowa can benefit from what we've learned so far. Please visit the MSEI website: mediateiowa.org

**Annie Tucker has been the director of the Sixth Judicial District Family Mediation Program since the initial planning stages almost 15 years ago. She is a mediator and has her Master's degree in Conflict Resolution from McGregor School at Antioch University. She helped found Mediation Services of Eastern Iowa, the nonprofit that is the court-appointed administrator of the family mediation program.*



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