

**Public Comments Regarding Family Law Task Force Proposed Mediation
Program in Family Law Cases (due April 17, 2017)**

Table of Contents

	(received)
Paul W. Demro	2-15-17
Jane Snow	3-8-17
David Reedy	3-29-2017
Tamra Roberts	4-6-2017
Carol Chase	4-10-17
Chris Luzzie	4-12-17
Gary D. McKenrick	4-14-17
Esther Dean	4-17-17
David Cox	4-17-17
Jenny Schulz	4-17-17
Annie Tucker	4-17-17
Mathew Brandes	4-17-17

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FEB 15 2017

CLERK SUPREME COURT



Proposed Mediation Program

Paul Demro

to:

rules.comments@iowacourts.gov

02/15/2017 03:19 PM

Sent by:

Caryn Schipper <cschipper@cedarvalleylaw.com>

Hide Details

From: Paul Demro <pdemro@cedarvalleylaw.com>

To: "rules.comments@iowacourts.gov" <rules.comments@iowacourts.gov>,

Sent by: Caryn Schipper <cschipper@cedarvalleylaw.com>

1 Attachment



Mediation response.pdf

See attached response from Paul W. Demro.

Caryn Schipper, Legal Assistant

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Engels, Galles & Demro, P.L.C.

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FEB 15 2017

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DAVID H. CORRELL, 1944-2015
R. JAMES SHEERER, Retired

February 15, 2017

Rules.comments@iowacourts.gov

RE: Proposed Mediation Program

I have no problem with mediation but I do not believe it should be mandatory in family law cases. Mediation is not required in any other legal dispute and making mediation mandatory places another hurdle or roadblock to the judicial system just because it is a family law matter. Family law litigants have the right to use the judicial system as much as any other case and making the process mandatory makes use of the system more complicated and more expensive.

There are three main problems with mandatory mediation. First, mediation is usually required to be conducted soon after the case was filed. This automatically reduces the likelihood of success in the mediation as the parties are often not interested in prompt, informal resolution. Many marriages break up over marital infidelity or other breaches of trust and the parties are in no mood to civilly discuss their problems soon after filing.

Second, forcing all of this mediation necessitates a lot of mediators. This draws a lot of inexperienced attorneys and others who simply do not have enough to do into the pool of mediators. Randomly assigning all of these mediators automatically provides work for inferior mediators.

Third, there are a lot of experienced attorneys who handle family law. These practitioners know best whether mediation is the appropriate forum and the timing for such mediation. With nearly 30 years as a lawyer I find it rather insulting to be told that I need assistance in doing my job on work as ordinary as family law. Many recent rule changes seem to insinuate that we do not know what to do or are lazy.

I would suggest that the State follow the lead of Iowa's Second Judicial District. This District requires at least one face-to-face settlement conference not less than 7 days prior to trial. In my experience, these conferences work very well. At this stage of the litigation the parties are well informed on the issues and they are often motivated to try and settle the case if they can. The parties have often come to grips with the failure of their marriage and typically have had quite a course of separation on which to gauge what may or may not be the right new course for

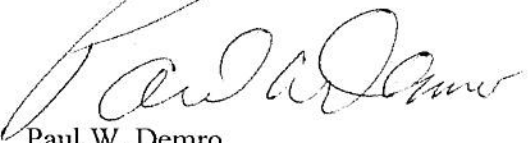
the parties. Even if this settlement conference does not result in a settlement it does allow the lawyers another chance to exchange exhibits, and other items necessary for final trial preparation.

Thank you.

Very truly yours,

CORRELL, SHEERER, BENSON
ENGELS, GALLES, & DEMRO, P.L.C.

By



Paul W. Demro

PWD/cs

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MAR 08 2017

CLERK SUPREME COURT



Proposed Mediation Program

Jane Snow

to:

rules.comments

03/08/2017 02:12 PM

Hide Details

From: Jane Snow <betteraccesstojustice@gmail.com>

To: rules.comments@iowacourts.gov

1 Attachment



Proposed Mediation Program .docx

March 6, 2017

CLERK SUPREME COURT

Greetings,

I am reaching out to you regarding the Court seeking comment on the Family Law Mediation Proposal. I think mediation is a good option and would also be a great tool paired with an Iowa Licensed Paralegal Practitioner.

I have been following what some other states are doing to offer an affordable legal support option to help meet the needs of those unable to afford the services of an attorney. If mediation were to be a requirement, this would only impose additional legal representation expenses for Iowans.

According to the Iowa Supreme Court Order filed June 27, 2016, the Iowa Courts are seeing an increasing number of self-represented litigants, many of whom have no choice but to proceed without the assistance of counsel. Inability to afford the cost of legal representation and other barriers to access to justice unfairly impact the lives of too many Iowans. Despite the outstanding contributions from legal aid organizations in Iowa and the steadfast volunteer service of thousands of committed Iowa attorneys, Iowa must do more to assure meaningful and informed access to justice for all persons.

Washington is the first state in the country to offer Limited License Legal Technicians (LLLT) who are trained and licensed to advise and assist people going through divorce, child custody and other family-law matters in Washington. Think of them like nurse practitioners, who can treat patients and prescribe medication like a doctor. Licensed Legal Technicians bring a similar option to the legal world, making legal services more accessible to people who can't afford an attorney. While they cannot represent clients in court, Legal Technicians are able to consult and advise, complete and file necessary court documents, help with court scheduling and support a client in navigating the often confusing maze of the legal system.

The Utah Supreme Court has recently given the green light to allow licensed paralegal practitioners to help clients navigate the legal system, though the new professionals won't be allowed to appear in court. The new LPP could help clients fill out legal forms, prepare settlements and represent them in mediated negotiations. Utah Supreme Court Justice Deno Himonas, who chaired a task force on limited legal licensing, told the council that a licensed paralegal practitioner could help people who can't afford a lawyer or who don't want to pay for one. The task force report recommended that LPPs be allowed to provide help in specific areas of family law, eviction and debt collection. The task force report said LPPs should have a law degree; or an associate degree with a paralegal certificate, paralegal certification, paralegal experience and additional coursework in their practice area. The Utah State Bar would oversee licensing and discipline. Now that the state supreme court has backed LPPs, the Salt Lake Tribune reports, the next step is appointment of a committee "to figure out the nuts and bolts of how the program will work, including what educational requirements will be needed and what the exact limitations will be."

People need to be able to get professional help with their legal problems. If people do not have access to justice, they have been denied justice. The Iowa Supreme Court Order filed June 27,

2016 mentions that Iowa must do more to assure meaningful and informed access to justice for all persons. Another tool in the toolbox would be beneficial to Iowans.

In Conclusion, Washington has already laid the framework for a program, and this type of program would help meet the unmet civil legal needs in our state. Please consider adopting an Iowa Licensed Paralegal Practitioner program, a new class of legal professionals for better access to the judicial system.

Thank you for your time.

REFERENCES:

The Iowa Lawyer Weekly – Supreme Court establishes Access to Justice

Commission: <https://iowabar.site-ym.com/page/IAWeekly062916>

Washington State Bar Association-Limited License Legal Technician

Program: <http://www.wsba.org/licensing-and-lawyer-conduct/limited-licenses/legal-technicians>

ABA Journal-Utah Supreme Court backs licensed paralegal

practitioners: http://www.abajournal.com/news/article/utah_supreme_court_backs_limited_practitioner_paralegals

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MAR 29 2017

CLERK SUPREME COURT



[EXTERNAL] Proposed Mediation Program

David Reedy

to:

rules.comments@iowacourts.gov

03/29/2017 09:34 PM

Hide Details

From: David Reedy <David-Reedy@hotmail.com>

To: "rules.comments@iowacourts.gov" <rules.comments@iowacourts.gov>

1 Attachment



Mediation Report.docx

As requested, attached to this is my commentary in Microsoft word format.

My name is David Reedy, and I've been a roster mediator in the 6th judicial district. I am not an attorney, but rather I have my BS and MA in psychology, with my Master's emphasis in Conflict Resolution and Mediation. I have a passion for mediation to the point that I am doing everything in my power to escape the clutches of my day job and to turn mediation into my full-time, everyday career. And I am a husband and a father. I tell you this so you can imagine who it is that is writing you. I have the following thoughts and recommendations following my reading of the Task Force and ADR subcommittee reports:

1. Uniformity of the mediation program, if it is designed and implemented correctly, would be a fantastic thing. I currently, travel all over the 6th Judicial District for mediation. I have been developing a plan to learn about the existing programs of, and where possible to travel to, several counties in the 1A, 1B, 2B, 7, and 8A districts, (that are counties surrounding my 6th district area of practice.) As an itinerant mediator practicing in those counties I would provide the actual benefits (as would any other itinerant mediators) of A. being available to more counties/districts and B. as a result of that further area of practice, become a much more competent, experienced, and known mediator. The uniformity of practice and statewide practice COULD possibly be highly beneficial and a win-win all around. I would, however, suggest, that for some of the more rural counties, esp., some kind of flexibility and contingencies may be necessary.
2. As a court-ordered mediator, I often wonder what incentives do I have to offer those more negative persons looking to get out of mediation. I wonder how often is mandatory mediation enforced. I have experienced a participant being advised by her attorney not to mediate—not to even try to schedule a mediation. So what could be/should be communicated to both disputants and attorneys, (and also to mediators) so everyone is on the same page with the requirements, and frankly, in terms of those in service of and working with the court, on the same team?
3. Could there in the uniformity effort, and further development of the program, be more trainings offered/referred to/etc., for the purpose of keeping participants and mediators safe? Screening and training to do so is wonderful and necessary. But, in practice, it doesn't necessarily help provide/build the skills if and when someone get past the screening questions or becomes completely enraged.
4. In line with and light of item [3] is the possibility of promoting the allowance of mediations to take place in all courthouses and/or additional partnerships (such as sheriff's departments, ADR offices, etc.) to provide optimally safe locations for all mediation participants.
5. More clarity, perhaps in court orders and/or in other communiques that further prepare

participants how to and on what to mediate about. Perhaps, more certainty that participants have attended the mediation class prior to mediation.

6. Please continue to keep mediation, and other ADR measures open to non-attorneys.
7. Please consider other means throughout the courts that mediators and ADR may be implemented.

I thank you full-heartedly for your time.

David A. Reedy, MA

Sixth Judicial Roster Family and Divorce Mediator

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David A. Reedy, MA

Family and Divorce Mediator

319.558.8985

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APR 06 2017

CLERK SUPREME COURT



[EXTERNAL] Proposed Mediation Program

Tamra Roberts

to:

rules.comments

04/06/2017 04:50 PM

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From: "Tamra Roberts" <tamra@beinerobertslaw.com>

To: <rules.comments@iowacourts.gov>

1 Attachment



Letter to supreme court.docx

See attached.

Best,

Tamra J. Roberts

Beine & Roberts Law Firm, PLC

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tamra@beinerobertslaw.com

April 11, 2017

Clerk of the Supreme Court
1111 East Court Ave
Des Moines, IA 50319

Re: *Proposed Mediation Program*

Dear Chief Justice Cady:

I am an attorney practicing in Tipton, Cedar County, Iowa. Currently I am serving on Seventh Judicial District Mediation Committee which has allowed me to consider several aspects of the imposition of statewide or even district wide mandatory mediation on family law cases. I have reviewed the many studies and have spoken with people who are well versed in the current mediation programs in other districts. During law school I took the 40 hour family law mediation class in addition to a hands on class for alternative dispute resolution. As an attorney, I opposed any mandatory mediation program.

It seems more efficient to allow each district to do what makes the most sense for that district. Geographical considerations and resources vary from each district, so it would be more beneficial to allow each district to impose what works for them.

In the Seventh District, there are geographic difficulties with having mediation. There are not enough attorneys to represent the parties and have a mediator. Mediators would need to drive in from different counties or the clients would have to travel at least 25-45 minutes to them. We are a small Bar, but our service to the communities is invaluable. Adding an additional role in a case would create more conflict issues than we already face.

Another concern is that my clients could not afford to pay a mediator and myself for the additional time spent on mediation. If mediation takes one hour, it would likely cost the parties a minimum of \$600.00 with no attorney preparation. In the Seventh Judicial District, we have settlement conferences. These conferences take up very little judge time, usually no more than 5 minutes on each case. The parties treat the session as a negotiation session and only seek the judges help if they parties reach a stand still. Usually the judge (who is then disqualified as the trial judge) renders his opinion on who would prevail if the matter were to proceed to trial. It is quite effective in cases where a litigant needs a dose of reality. Under this system, a one hour settlement conference would likely cost the parties \$400.00. In my practice, this system is incredibly successful in obtaining settlements. Very few cases continue past this stage and the ones that go to trial are the same cases that I do not believe would be settled at mediation. I am afraid mandatory mediation will impose an additional burden on the access of justice as clients will be priced out during the settlement stages.

The mediation should not be required prior to a temporary hearing. First, I believe that attorneys are very responsible in selecting only the true urgent type situations in settling a temporary hearing. Imposing a mediation requirement prior to the temporary hearing would create a delay in these urgent cases from being heard. Second, the parties are nowhere near in a position to settle financial matters at this stage. Even with responsive clients, it takes time to gather their retirement information or information on other assets. Appraisals can take a couple months. Nearly all cases in my practice would not be prepared to settle at the temporary matters stage.

I think mediation is a good idea and should be a service that communities offer. Perhaps attorney awareness would help increase the use of mediators. I do not believe that mandatory mediation would be a wise path. Although I cannot speak for all attorneys, the ones I regularly practice with are excellent in reaching settlement at our settlement conferences. I hope that the Court System will allow us to continue with that method rather than impose mandatory mediation for our district.

Best,

Tamra J. Roberts



[EXTERNAL] comments from parents about mediation who attend children Cope with
Divorce class
Carol Chase
to:

rules.comments

04/10/2017 03:35 PM

Hide Details

From: Carol Chase <childrenfirst51104@gmail.com>

To: rules.comments@iowacourts.gov

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APR 10 2017

CLERK SUPREME COURT

I teach the Children Cope with Divorce class in the third Judicial District. During the class I show a cd of an actual mediation for 15 minutes of the mediation which is done by John Haynes. Then I discuss mediation with the class. A few in each class ((one or two) in a class of 25 may have had a mediation session. Almost all parents have no idea what mediation is. Their comments have dismayed me. Some have said they had a mediation session, at least called a mediation session by their attorney, with both parties and both attorneys present. Nothing was resolved because the attorneys told their clients to not agree. At my most recent class, April 8, one dad said that he and the mother of his children already have an agreement they want to work out but their attorneys keep arguing over little things. Another parent in the class said she had to tell her attorney to stop and let the parents work out the agreement. The dad in class as well as others think the attorneys are doing this to run up the bill. I directed him to the web page for mediators, parenting plan, etc and encouraged him and the mother of his children to prepare their own parenting plan and use a session with a mediator with no attorneys present to prepare a parenting plan presentable to the court.

Others who have been to mediation have said that once the attorneys left mediation, the parties were able to reach an agreement.

Encouragingly, those parents who used mediation successfully really spoke enthusiastically about the mediation and being able to work out an agreement. They saved money. Most importantly many said it was the beginning of the parents being able to talk to each other.

Some attorneys have said nothing to their clients about mediation. (Actually most!) One parent in a recent class wanted to know if a settlement conference was mediation. Put lipstick on a pig!

About a year ago, I had a mom stay after class. She was involved in a modification of a custody order which was four years old. She said her attorney fees for the modification are approaching \$100,000. That is insanity!.

The time I use in the Children Cope with Divorce class to show a mediation and to talk about it (about 10 minutes) has most parents interested it, except of course for those who have domestic violence in the relationship. I do point out using the video that both parties need to be out of denial to be able to negotiate a sustainable agreement.

Hope these comments help. For the kids, I am respectfully Carol Chase 402-681-1983 in Sioux City, Iowa. Call if you want more info or you would like something brought up to the parents at these classes. They cannot afford litigation financially or emotionally.

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APR 12 2017

CLERK SUPREME COURT



[EXTERNAL] Proposed Mediation Program

Chris Luzzie

to:

rules.comments@iowacourts.gov

04/12/2017 06:14 PM

Cc:

Evie Ocheltree

Hide Details

From: Chris Luzzie <cluzzie@iowalaw.org>

To: "rules.comments@iowacourts.gov" <rules.comments@iowacourts.gov>

Cc: Evie Ocheltree <eocheltree@iowalaw.org>

1 Attachment



Iowa Legal Aid Comments to Proposed Mediation Program.docx

Please see attached comments.

Christine M. Luzzie
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Iowa Legal Aid
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319 351 6570

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Iowa Legal Aid Comments to Proposed Mediation Program for Family Law Cases

Iowa Legal Aid provides free legal assistance in civil cases to low-income Iowans and seniors. In 2016 Iowa Legal Aid closed approximately 16,350 cases and assisted nearly 38,000 Iowans. Twenty-nine percent (29%) of these cases were family law cases including domestic abuse protective orders, custody and dissolution of marriage. Because of limited resources, clients accepted for service may not receive all of the legal services that the clients need or want. Further, many low-income Iowans who are eligible for services are not able to receive any legal assistance due to lack of resources. As a result, many low-income Iowans must navigate the court system without counsel.

Waiver for victims of domestic violence—notice and forms

Most family law clients of Iowa Legal Aid are victims of domestic violence or their children are being abused. Iowa Legal Aid supports the recommendation that there be a waiver option for cases involving domestic violence or where other good cause is shown. In order to improve the likelihood that this option is sought when appropriate, the following are suggestions for implementation:

- Mediation information must include a clear, straightforward way to request a waiver from the mediation requirements. Notice of the waiver should be given to all parties.
- Forms should be made readily available with clear instructions on how to complete them. Some judicial districts currently provide a form for parties to complete if they wish to request a waiver.
- Judges considering requests for a waiver should be familiar with the dynamics of an abusive relationship and how that affects mediation. Training on these issues may be helpful.

Free or low-cost mediator

For those low-income Iowans for whom mediation is an option, it is not likely that they will have the resources to pay for mediation at market rates. Therefore, for a mediation program to be successful, low-income Iowans must be able to access free or low-cost mediation services. The 8th Judicial District provides an application for a pro bono mediator. This type of application should be included in any proposed mediation program and made readily available. Notice of the availability of a free or low-cost mediator should be required as well. Any forms developed for use should be available on the Iowa Supreme Court website as part of the self-represented litigant forms.

Lack of mediators in rural areas

Much of Iowa is rural. Mediators are concentrated in the larger towns and cities and there may be no mediators at all in many areas of the State. If a party must travel to meet with a mediator, this could cause considerable difficulty. Some allowances must be made if mediators are not readily available in some areas of the state and low-income Iowans are without available transportation. This should be good cause to waive mediation or establish some alternative option to conduct mediation through telephonic or other means.

Flexibility in statewide requirements

Uniformity may be desirable with respect to certain matters, such as a provision for waivers, free or low-cost mediation and easy access to forms for self-represented litigants. However, there are a number of different types of mediation that currently exist in different areas of the state, as well as different timing as to when a mediation takes place in the life of a case, or whether attorneys are usually present. Unless there is clear evidence that one approach to mediation is substantially better than another, some flexibility should be allowed for each judicial district to utilize the approach that has worked best for the area or adopt the one that would appear to be better for its district.

Thank you for the opportunity to comment.

Evelyn Ocheltree
Senior Staff Attorney
Iowa Legal Aid
22 North Georgia Avenue, Suite 2
Mason City, IA 50401

Christine Luzzie
Deputy Director
Iowa Legal Aid
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Iowa City, IA 52240

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APR 14 2017

CLERK SUPREME COURT



[EXTERNAL] Proposed Mediation Program

Gary D. McKenrick

to:

rules.comments

04/14/2017 04:03 PM

Cc:

"John A. Nagra"

Hide Details

From: "Gary D. McKenrick" <garymckenricklaw@gmail.com>

To: <rules.comments@iowacourts.gov>

Cc: "John A. Nagra" <jnagra@nahrallaw.com>

1 Attachment



2017.04.14 Mediation Comments.docx

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APR 14 2017

April 14, 2017

VIA EMAIL

CLERK SUPREME COURT

Clerk of the Supreme Court
Judicial Branch Building
1111 East Court Avenue
Des Moines, Iowa 50319

Re: Proposed Mediation Program

To the Iowa Supreme Court:

Thank you for the opportunity to comment on the recommendations concerning mediation presented by the Family Law Task Force. We both are engaged actively in the provision of alternative dispute resolution services. We wholeheartedly agree that mediation has numerous positive impacts. Our belief in the positive effects that result from mediation of disputes is why we practice mediation. However, mediation unquestionably works best when the parties enter into it voluntarily.

At the outset, we submit that a one-size-fits-all approach likely will have negative impacts on the timely resolution of family law matters in some areas of the state. For example, contested evidentiary temporary custody and visitation hearings can be scheduled and heard within approximately one month of the commencement of an action for dissolution of marriage within the Seventh District. Contested hearings on the issues of temporary support can be scheduled and heard even quicker. Interposition of mandatory mediation prior to being able to schedule such a hearing inevitably will delay such hearings to the detriment of the families involved. At a minimum, any mediation requirement in relation to such temporary matters should allow the hearings to be scheduled with the mediation being required prior to the actual hearing, rather than requiring the mediation to be completed before the scheduling of the hearing.

Similarly, some jurisdictions within Iowa require that mediation be undertaken prior to the scheduling of a trial date. Again, our view is that the scheduling of court dates should not be contingent on having undertaken mediation. Rather, involvement in mediation should be a predicate to being able to proceed with a hearing or trial.

We also are concerned regarding imposition of additional costs on the litigants. The proposal to require mediation prior to any temporary hearing and again prior to trial could be cost prohibitive for many families during what already often is a financially challenging period of time.

Some jurisdictions have addressed the cost issue by establishing maximum fees which may be charged in order to be listed on a court-approved roster of mediators. We believe such price fixing violates federal law.

Other jurisdictions have addressed the cost issue by requiring that mediators be approved by the court or be on a court-approved roster with the condition that to gain such approval, the mediator must agree to perform a number of pro bono or reduced fee mediations per calendar year. We object to such mandatory pro bono requirements as a condition to being an approved mediator, unless the Court intends to make mandatory pro bono a condition of licensure for all attorneys regardless of practice area. A further issue in that regard is the question of the Court's authority to regulate non-attorney mediators. Attorneys and non-attorneys who practice mediation should not bear alone the burden of funding a service of broad benefit to the public.

In conclusion, we support the concept of mediation in the context of family law actions. Generally speaking, we believe that some greater consistency in mediation requirements from judicial district to judicial district would be beneficial. However, there must be sufficient flexibility to allow individual districts to manage their dockets effectively and efficiently. Requiring efficiently operating districts to sink to the level of the "lowest common denominator" must be avoided. We also recognize that mandatory mediation in the family law context may be necessary, in spite of the conflict inherent in making what by definition is a voluntary process mandatory.

Very truly yours,

/s/

Gary D. McKenrick

Very truly yours,

/s/

John A. Nagra



[EXTERNAL] Proposed Mediation Program

Dean Law

to:

rules.comments

04/17/2017 01:12 PM

Hide Details

From: "Dean Law" <deanlaw@machlink.com>

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Security:

To ensure privacy, images from remote sites were prevented from downloading. Show Images

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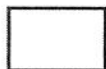
APR 17 2017

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1 Attachment



Comment re proposed mediation program.pdf



Virus-free. www.avast.com

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APR 17 2017

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CLERK SUPREME COURT

April 17, 2017

To Whom It May Concern:

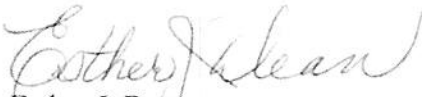
I am a practicing attorney in the 7th Judicial District. I have handled family law cases for twenty-nine years.

I am opposed to a statewide family law mandatory mediation program. I believe mediation adds an unnecessary expense for parties who are already facing financial issues. It also can be inconvenient for many who live in smaller and less populated areas.

In the 7th Judicial District, the judicial settlement conference concept works well. The majority of our family law cases are settled prior to trial.

I urge the task force to leave the system as is – it is not broken. Whether mediation should be implemented is best decided by each individual judicial district.

Very truly yours,



Esther J. Dean
EJD/mjf

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APR 17 2017

CLERK SUPREME COURT



[EXTERNAL] Proposed Mediation Program

David Cox

to:

'rules.comments@iowacourts.gov'

04/17/2017 04:02 PM

Hide Details

From: David Cox <DCox@bkfamilylaw.com>

To: "rules.comments@iowacourts.gov" <rules.comments@iowacourts.gov>

1 Attachment



20170417165917092.pdf

Dear Sir or Madam,

Attached are my comments to the proposed mediation program.

Sincerely,

David Cox
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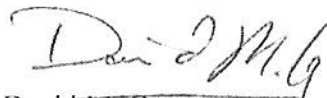
My name is David M. Cox. I am a family law attorney in Iowa City, Iowa. I practice exclusively in family law, and I have limited my practice to family law cases for the past 9 years. I am currently the chair of the ISBA Family & Juvenile Law Section. Many of our members were on the Supreme Court Task Force. We have discussed many of the Task Force's recommendations at our meetings. While I cannot speak for the ISBA and its position on the mediation proposal, our Family & Juvenile Law Section supports mandatory state-wide mediation.

Many of our members are mediators in addition to being litigators. We have guardian ad litem, attorneys for children, and attorneys who represent parents in District Court or Juvenile Court. We believe mediation has been helpful in resolving many cases and that mediation should be a state-wide requirement. Parties are more likely to follow a court order if they were involved in creating it through settlement such as mediation. When mediation is done effectively, it can also decrease the cost of the legal process to get a divorce, determine child custody, modify child support, etc. Many people struggle to afford quality legal representation in family law cases. Anything we can do to reduce the tension of the cases and the cost will be a benefit to the public.

Our section has not been able to agree on what model should be used for any state-wide mediation requirement. Many of members prefer the models used in their individual districts. For example, attorneys in Polk County prefer the 5th Judicial District Model whereas attorneys in Linn County prefer the 6th Judicial District Model. One major difference in models is whether an agreement reached at mediation is binding on the parties or not. My understanding is that in the 5th Judicial District agreements reached at mediation are binding. In the 6th Judicial District they are not binding until approved by the Court. This leads to parties being able to back out of agreements reached at mediation upon further reflection. There is some benefit to both approaches. Another major difference to these two different mediation approaches is whether attorneys are present at mediation or not. In the 5th Judicial District attorneys are present for mediation. In the 6th Judicial District the attorneys and clients choose whether the attorneys are present for mediation.

Even though our section has not been able to agree on which model to support, we want to make it clear that we support mediation and believe it should be a state-wide requirement. How that requirement is implemented we leave up to the Court to determine.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "David M. Cox", written over a horizontal line.

David M. Cox



[EXTERNAL] Proposed Mediation Program

Jenny Schulz

to:

rules.comments@iowacourts.gov

04/17/2017 04:02 PM

Hide Details

From: Jenny Schulz <Jenny@kidsfirstiowa.org>

To: "rules.comments@iowacourts.gov" <rules.comments@iowacourts.gov>

FILED

APR 17 2017

CLERK SUPREME COURT

1 Attachment



Comment on Mandatory Mediation Program Proposal.docx

Hello,

Please find attached comments on the proposed mandatory mediation program.

Thank you,

Jenny Schulz

Jenny Schulz

Kids First Law Center

420 6th Street SE, Suite 160

Cedar Rapids, IA 52401

(319) 365-5437 phone

(319) 739-5426 direct line

(319) 366-3308 fax

www.kidsfirstiowa.org

Comment on Mandatory Mediation Program Proposal

CLERK SUPREME COURT

I fully support a statewide mandatory mediation requirement in family law cases. Studies have shown that couples who negotiate an agreement in mediation are more likely to follow that agreement (compared to a litigated court order) and are less likely to return to court. There is also evidence that mediation helps reduce conflict; reducing conflict is one of the best ways to help children of separated parents. We have seen great success with mediation in the Sixth Judicial District.

My only concern about mandatory mediation prior to a temporary custody hearing is to make sure the mediation does not delay the hearing date if one parent is not cooperative in scheduling mediation. Perhaps it would help to state specifically that one parent's failure to cooperate in scheduling mediation would constitute good cause to have the requirement waived.

Judicial districts should be allowed to develop their own procedures and approach to mediation, with the understanding that judicially-supervised settlement conferences do not fall within the spirit of mediation and should not meet the mediation requirement. Such settlement conferences are very helpful in resolving cases, but are more focused on outcomes rather than process. The magic of mediation is that it facilitates dialogue that is instrumental in reducing conflict.

I do not support binding mediation. Participants should have the opportunity to review agreements and obtain the advice of counsel prior to being bound by their agreements.

FILED

APR 17 2017

CLERK SUPREME COURT



[EXTERNAL] "Proposed Mediation Program"

Annie Tucker

to:

rules.comments

04/17/2017 04:10 PM

Hide Details

From: Annie Tucker <admin@mediateiowa.org>

To: rules.comments@iowacourts.gov

1 Attachment



Proposed Mediation Program comments.docx

Thank you for the opportunity to comment on the proposal re uniform mediation requirements.

I look forward to hearing of your decision.

Annie Tucker

Annie Tucker, Director
Mediation Services of Eastern Iowa
509 Kirkwood Ave.
Iowa City, IA 52240
mediateiowa.org

FILED

APR 17 2017

**Comments on Family Law Task Force Proposal to Develop Statewide
Uniform Mediation Requirements in Family Law Cases**

CLERK SUPREME COURT

**Annie Tucker, Director
Mediation Services of Eastern Iowa, non-profit that is the court-
appointed administrator of the Sixth Judicial District Family
Mediation Program**

I have been the director of the Sixth Judicial District Family Mediation Program since before its implementation in August 1996. This was the first family mediation program in the State of Iowa. Judge William L. Thomas spearheaded the founding and oversight of the program. He and District Court Administrator Carroll Edmondson appointed a committee of judges, court staff, attorneys and mediators to design the program. That Mediation Advisory Committee (MAC) continues to meet regularly to review the program and propose policy changes to the district court judges, who make the final decisions.

I will provide information from over 20 years of successful family mediation through our program here.

I was a member of the Task Force and served on its Alternative Dispute Resolution Subcommittee, which made the recommendation to develop uniform mediation requirements.

I heartily support the Subcommittee's recommendation to develop uniform mediation requirements that would "[e]stablish a statewide mediation program for family law cases with opportunities for mediation and settlement conferences"

I fully support it AND I support it if there are policy provisions adopted to fully support the recommendation in the final paragraph of the recommendation: "This recommendation also includes a mandatory domestic abuse screening."

When ordering mediation in family cases, it is essential to remember that one in every three or four divorce or custody cases involves domestic abuse. Risk of serious harm is greatest in an abusive relationship at the time of separation. This is when mediation is ordered. Mediation is not appropriate in some of these cases. But how does a mediator or an attorney determine when it is safe to bring parties into the same room or building, when it isn't, and whether adapting the process can increase safety and the parties' capacity to use the process?

Professionals need to learn how to screen effectively. Simply asking a party, "Has there been any domestic abuse in your relationship?" is not effective. An abuser will say "No." A survivor/victim may not recognize what is happening as domestic abuse. Further, much abuse that affects the dynamics between parties is not physical – although it could adversely impact a survivor's ability to speak up in mediation.

Effective screening asks specific questions about behaviors that have or haven't occurred, feelings associated with those behaviors or associated with the other party. The ability to identify the dynamics of abuse, screen for appropriateness, and mediate when there are power imbalance are skills that can be learned.

I recommend two sources of policies related to family mediation and domestic abuse.

One is the *Final Report of the Iowa Supreme Court Mediation and Domestic Violence Work Group, December 1999*. The Work Group was chaired by Jennifer Juhler and was comprised of district court judges; attorneys, including a member of the ADR Section and of the Family and of the Juvenile Law Section of the ISBA; mediators; a therapist; the attorney for the Iowa Coalition Against Domestic Violence; and victim advocates: all from throughout the state. I was a member of this work group. The Work Group findings valued the potential of self-determination for the parties and yet stated: "Safety of the parties and the mediator is a primary concern. While absolute safety cannot be assured, the Work Group agreed upon two mechanisms that could be employed to maximize safety: (1) an assessment for capacity of the parties and (2) adapting the mediation process, for example, to minimize contact between the parties. (p. 5) Further, "The work Group agreed that screening for domestic violence and sexual assault is essential." (p.7) Assessment is next: "Once domestic violence or sexual abuse has been identified, the parties must be informed about the mediation process, and educated about the possible problems of mediation when there is a history of domestic or sexual violence. Additionally, the parties must be assessed for the capacity to mediate." (p. 8) The Work Group developed a questionnaire and assessment guidelines. It also made 24 recommendations related to the training re: mediation and domestic abuse for the professionals involved in the family case process, including attorneys, judges, court administration, mediators, and the parties.

This report can be found at <http://www.iowacourts.gov/wfdata/frame9507-1382/File66.pdf>

The second source of policies related to family mediation and domestic abuse are the policies developed by the Mediation Advisory Committee in the Sixth Judicial District, and informed by the Work Group's report.

The Sixth Judicial District has policies and practices that address concerns about domestic abuse. A simple requirement to screen is not adequate for dealing with the complexities and potential risks associated with parties in abusive relationships.

I strongly urge the Supreme Court to consider and implement the following 6JD policies related to mediation and domestic abuse, which were developed by our Mediation Advisory Committee (MAC) comprised of judges, court staff, family law attorneys, and mediators:

1. Lawyers have the primary responsibility to screen their clients for domestic abuse and to file the appropriate request for a waiver with the Court if they believe that mediation is not appropriate.
2. All roster mediators, or their trained employees, are required to have a screening discussion with both parties separately, by telephone or in person, to help the parties and the mediator determine whether mediation is appropriate, based on assessing the parties' perceived sense of safety or capacity. The screening discussions must occur before the parties arrive at the mediator's office for mediation.
3. Roster mediators are required to take the 15 hour CLE (1 hour Ethics) *Introduction to Mediation and Domestic Abuse* course. The trained employee must take the first day of the *Introduction to Mediation and Domestic Abuse* course to become eligible to provide screenings. (Please keep in mind all roster mediators in the 6JD, the bulk of whom are experienced family law attorneys, attend this course. It has not been a deterrent to attracting trained mediators to our roster.)
4. Parties are not allowed to sign a mediated agreement in a mediation session *unless both parties' attorneys are present*. Furthermore, parties are not allowed to sign a separate agreement that the mediated agreement is binding *unless both parties' attorneys are present*. This protects a vulnerable party who might be being intimidated or manipulated during mediation, unbeknownst to the mediator.

5. If a mediator determines that mediation is not appropriate and an application for waiver has been denied or a party requests that the mediator do so, the mediator may write a letter to the court stating the s/he has determined that mediation is inappropriate based on the program guidelines. Judges will accept the letter and provide a waiver.

The Sixth Judicial District has additional policies and practices related to educating the parties about mediation and about domestic abuse:

1. Court order language: The following language is included in the Family Law Case Requirements Orders (with and without minor children):
Mediation may not be appropriate when there has been physical or emotional abuse. If mediation is not appropriate, you can request a waiver or excuse from the Court. Please discuss any concerns about this with your attorney or with your mediator. No Contact Orders can be changed to permit attending mediation, if mediation is appropriate. An application for waiver of mediation can be obtained from the Clerk of Court.
2. Website: [mediateiowa.org](http://www.mediateiowa.org) Mediation Services of Eastern Iowa, the nonprofit that is the court-appointed administrator of the 6JD Family Mediation Program, has a website that addresses and provides information about domestic abuse and emotional abuse. Page titles include: "I'm Afraid or Worried" and "I Don't Think It Will Work". The website is about to be updated for better accessibility for smart phone screens, but the current url is: <http://www.mediateiowa.org/divorce-custody-mediation/learn-about-mediation/im-afraid-or-worried.aspx>
3. Required ½ hour Mediation Education Class: In the Sixth Judicial District, all parties in divorce and custody cases are required to attend a half-hour Mediation Education Class, which is presented as the first half hour of the "Children in the Middle" classes, for parents of minor children, and is also available online for parties in those cases who do not have minor children together. The video includes interviews with 12 parties who went through mediation in local divorce or custody cases, two district court judges, a family mediator (who does not practice in our district), and two domestic violence advocates. It includes information about preparing for mediation and information about when mediation is appropriate and what to do if one has questions about that.

The last (35th) recommendation of *Final Report of the Iowa Supreme Court Mediation and Domestic Violence Work Group, December 1999* recommends such a class:

In areas with court-supported mediation, a 30-minute mandatory mediation class should be included in the "children in the middle" classes. Waivers to this class should be granted to persons who do not wish to mediate.

Reports on the Sixth Judicial District Family Mediation Program: Now I would like to provide information from our program in support of establishing a statewide mediation program for family law cases, with opportunities for mediation and settlement conferences.

Please see our very thorough 2016 Annual Report (for 2015) at our website: mediateiowa.org. As mentioned earlier, the website is about to be updated and the url may change by the time you read this. The link is at the bottom of the home page as of April 17, 2017.

Information in the 2016 Annual Report (on 2015 stats) includes:

- The program has 38 roster mediators, 79% of which are attorneys (30)
 - Parties in all divorce and custody cases, and related contempt cases, were ordered to mediate and parties mediated in 22.5%
 - Parties reached agreement on some or all issues in 71% of the cases mediated.
 - 30% spent 0-1 hour in mediation. 60% spend 1-3 hours in mediation.
 - Attorneys participated in 16% of the mediations.
 - Mediators screened participants for domestic violence in 97% of the cases.
 - Other observations from the 2016 Annual Report (on 2015 stats). #3 and #4 include references to parties and parties perception of being pressured or experience of fear and intimidation.
- 1) (#8): Satisfaction with the mediators remains high: 4.3
 - 2) There is an increase in attorneys preparing their clients for mediation: 75%, up from 61% reported in 2014.
 - 3) We ask two questions to 'get a read' on parties' perceptions of the role mediators are taking: #3 and #4.

#3: "I felt pressured by the mediator to go along with things I did not want": 1.7 (1: is 'Not at all') [Raw data indicates that in response to this question, two parties indicated a 5 "Completely", five parties indicated a 4, five indicated a 3, ten indicated a 2, and 42 parties indicated a 1 "Not at all". 7 parties, or 11%, indicated a 4 or 5. That is worth discussing with mediators at a CLE.]

#4: "The mediator recommended a specific decision": 2.3 [Raw data indicates that in response to this question, 29 parties indicated a 1 "Not at all", twelve parties indicated a 2, seven indicated a 3, eleven indicated a 4, and seven indicated a 5 "Completely". That is 18 parties, or 27%, who indicated a 4 or 5.]

- 4) #6: "I experienced fear or intimidation during the mediation because of the other party." The average response was 2.1. [The raw data/responses were: Five parties indicated 5 – "Completely"; ten parties indicated 4; seven parties indicated 3; seven parties indicated 2; and thirty-six parties indicated 1: "Not at all".] So 15 out of 65, or about a quarter of the responding parties, indicated that they experienced fear or intimidation during the mediation because of the other party at either a 5 "Completely" level or a 4.

This is a concern. This underscores the need for the current 6JD requirements that roster mediators screen parties before mediation and that mediators attend continuing education on domestic abuse and screening. Effective screening can detect a party's fear about being in mediation with the other and concern about being intimidated or being afraid to speak honestly or disagree. If a mediator hears these concerns from a party, it is possible to adapt the process by having additional support people (attorneys, etc.) present, putting the parties in separate rooms, mediate via conference call, or other options. The Court also provides the option of applying for a waiver if mediation is not appropriate. Mediators can inform parties of this procedural option. If a party has an attorney, the mediator can encourage a screened party to reveal what they have said to their attorneys. With the increasing number of unrepresented parties, having a mediator screen for safety and capacity concerns and inform parties of the procedural option of applying for a waiver is essential.

Domestic abuse can affect up to 39% of divorce and custody cases/relationships. This is over one in three cases in any mediator's practice. The time of separation for a couple with domestic violence is the time of greatest risk for serious violence. This is often the time when mediation is ordered in divorce and custody 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 the capacity to use the process. It is essential that mediators be prepared to recognize a family situation involving domestic abuse, know how to speak with the victim, and take appropriate steps in preventing or shaping the mediation process. (*Mediation and Domestic Abuse: A Curriculum in Three Parts*, Kirsten Faisal and Annie Tucker.)

As family mediation continues to spread throughout Iowa, it is essential that roster mediators be required to get training in mediation and domestic abuse and be required to screen both parties for domestic abuse and power imbalances.

Benefits and Costs of Mediation to the Parties, from July 2014

Even when mediation is court ordered, what happens there is voluntary. People only have to stay as long as they want to stay. People can talk about anything they both want to talk about but don't have to talk about something they do not want to talk about. If they reach an agreement, they don't sign it in mediation, they wait, think about it, and talk it over with their attorney and/or family and friends. Once they sign it, it is presented to the court and the judge reads it over and usually adopts it as the court's decision. Mediation is a way to have a say in what will happen in your case.

How successful are people in mediation? In 2013, 30% of the people mediating reached agreement on all issues, which usually means they do not need to have a trial where the judge makes their decisions. 41.5% reached agreement on some of their issues. This means that 71.5% reach agreement on some or all issues in mediation. And, they can still try to work out agreement on the rest by talking together or by their attorneys negotiating an agreement later. Usually only 5% of the cases actually go to trial.

How much does mediation cost? To find out, we need to know how much mediators charge and how long people mediate.

Hourly rates range from \$70 to \$250 an hour, with \$150 an hour being the most common. Usually, each person pays 50% of the cost. (If a party is low income and qualifies for reduced fees, s/he pays \$5 an hour and the other party pays their half of the mediator's hourly fee.)

How long do people usually mediate? 95% only go to one session. In 2013, 36.9% mediated for 0-1 hour. 57.9% mediated for 1-3 hours. That represents 94.8% of the mediating couples.

Given this information, how much does a party pay for mediation?

We can estimate that if their mediator charges \$70 an hour and they mediate 1 hour, each pays \$35. If their mediator charges \$250 an hour and they mediate 1 hour, each pays \$125. If their mediator charges \$150 an hour and they mediate 1 hour, each pays \$75.

But if they stay as long as 3 hours (the high end of how long 60% of the people mediate), each person will pay their mediator \$105 (if \$70 an hour), \$375 (if \$250 an hour) or \$225 (if \$150 an hour).

This does not include administrative fee or travel time, which is charged by some mediators.

This is predictably far less than paying your attorney for their preparation for a trial and the actual time in trial.

Other benefits of mediation: Fewer Modification. We reviewed 150 Linn County cases filed in 1997-98, when the mediation program was new: 50 where the court had made the decision, 50 where people had reached agreement without mediation, and 50 where they had mediated their agreement. We found that the cases that mediated were 7-8 times LESS likely to return to court later for a decision. That seems to indicate that mediation can reduce the likelihood of needing the court now *and* later.

Sixth Judicial District Family Mediation Program

What You Need to Know About Divorce and Mediation:

Ten Years of Successful Mediation Prompts Policy Change

Mediation works.

In mediation, people talk with the assistance of a trained mediator who doesn't take sides. They have the chance to be heard, to ask questions and to make their own decisions. Before mediation, over 95% doubt that they will make any progress. They think "If we were going to be able to talk things out, we would have done that already. Things are worse than ever now."

However, 71% reach agreement on some or all of their issues in their divorce or custody case in this judicial district. And they're surprised! And their attorneys are surprised, because they have heard how difficult the other person is.

Why DOES mediation work? Although people are doubtful, they usually DO want to talk. They have things they want to say. They want to be heard. They want to ask some questions. They really want to be able to make their own decisions, in spite of their anger, frustration, and distrust. Doubt is normal, but it does NOT predict whether mediation will be useful. In mediation, people usually hear new information, feel heard, and increase their understanding of the situation. That can help them reach agreements and begin to move on emotionally and legally.

Ten Years of Family Mediation

In August 1996 the Sixth Judicial District implemented a Family Mediation Program that required people in divorce and custody cases to try mediation before they could get a court decision. In the past 10 years, people have mediated in over 2260 cases.

Comments from people who have mediated

Comments from parties include: "I like making the decisions." "I believe (we) came away feeling better about (our)selves and each other." "I finally felt that I was being 'heard'." "It saved lawyer fees and time in court." "The 2.5 hours with the mediator did more to move things along than the last 2.5 months."

Mediation can save money

The estimated average expense for mediation was \$138 per person for those who reached agreement on all issues, \$162 per person for some issues, and \$90.00 per person for no issues (based on the reported average time spent in mediation and using \$60 an hour, which is at the low end of the fee range) as the average mediator hourly fee *per person*.)

The cost of going to trial can exceed \$5,000 per person. Mediation is certainly worth a try.

People who mediate are less likely to return to court

150 Linn County cases were reviewed to determine whether mediation affected the re-litigation, or modification, rate in custody and visitation disputes. The study found that modifications are lowest in cases that mediated and re-litigation is 7-8 times more likely in cases that don't mediate initially. This means people are making lasting decisions in mediation or have been able to make any new decisions themselves, without going back to court.

Mediation saves courts time and results in greater efficiency

The number of temporary hearings has dropped and trials are shorter because people have made some of their decisions in mediation. This reduces the staff-time needed to process a case, so other cases can be heard sooner.

The earlier the better

A 2001 study by the State Justice Institute, "Timing is Everything," focused on two Virginia mediation programs and the effect of timing on mediation in divorce and custody cases. The study concluded that mediating as soon as possible results in fewer hearings, fewer mediation sessions, and an increased likelihood of the parties spending less time in mediation and making their own agreements. All of this benefits the parties and any children.

Policy changes September 1

Based on the success of family mediation for the last 10 years in the Sixth Judicial District, on the benefits documented in our program and on research, the District Court Judges have decided to expand the use of mediation. In divorce and custody cases filed after September 1, all parties will be required to participate in an initial mediation within 90 days of the case being filed. Parties will be required to exchange financial information 60 days after the case is filed, to give them time to discuss the information with their attorneys before mediation.

Mediation is inappropriate in some situations

If a person is afraid to be in the same room with the other party or doesn't feel able to speak up or disagree with them, mediation may not be appropriate. People should share these concerns with their attorney and their mediator before any mediation is scheduled.

In spite of own doubt

In spite of their own doubt, parties often find themselves able to communicate better and make their own decisions in mediation. Even when they do not reach complete agreements, they are often better able to move on emotionally and legally.

Mediation is here to stay, and everybody wins.

For more information on mediation, call Mediation Services of Eastern Iowa, at 319 248-1940.

Mediation works. Give it a try.

More Statistics

Statistics on Mediation

Sixth Judicial District Family Mediation Program

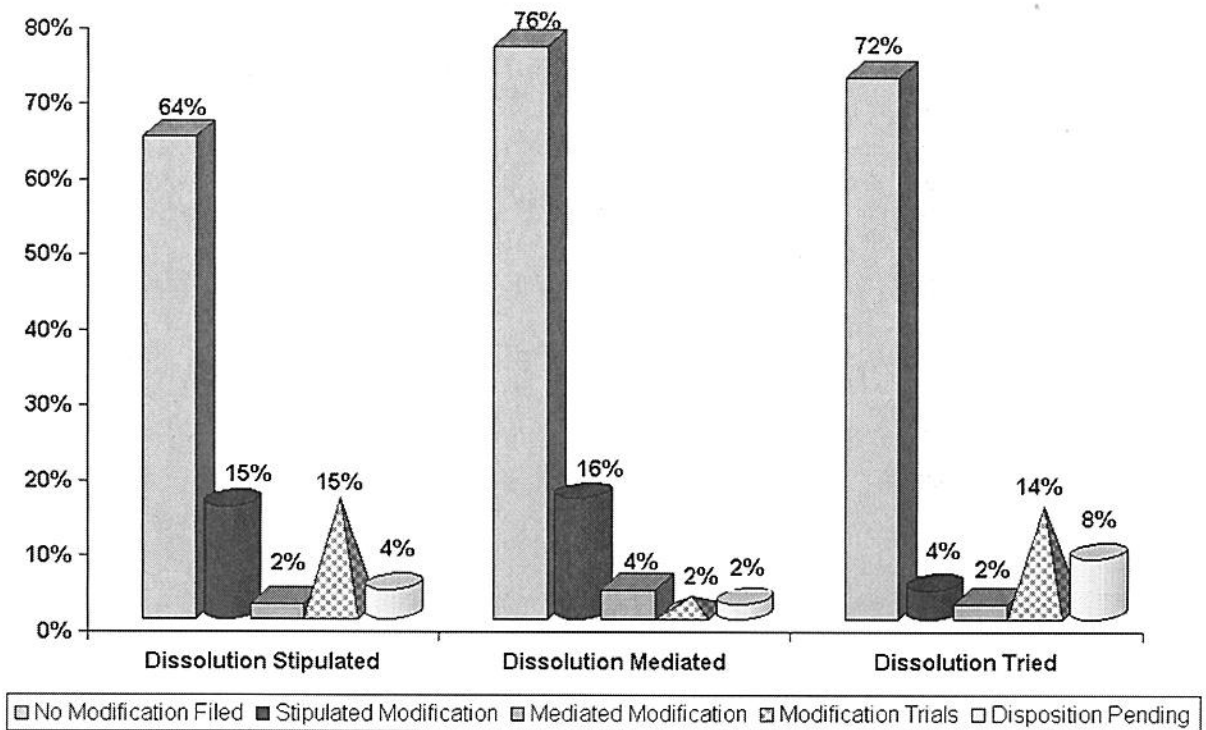
UPDATE - March 2004

Implemented by the District Court Judges in August 1996

- **People resolve 10% of all dissolution cases** per year in mediation in this district, slightly less than the number of contested trials.
- Doubt and skepticism are common among parties before mediation, yet **75% of the parties reach agreement** on some or all issues. Doubt does not predict the outcome or value of mediation for the parties.
- Parties are told that they can terminate mediation at any time. Why do they stay? **They usually stay** because they have something they want to tell the other person or they have questions or they want to have a say in what is decided.

- **The average amount of time (and cost) per mediation has dropped significantly since the program was implemented.** In 2001, parties mediated an average of 2.6 hours to reach agreement on all issues, an average of 2.3 hours to reach agreement on some issues and an average of 1.9 hours to reach no agreement.
- In cases that originally mediated, the **rate of modifications that go to trial is far lower**(2%) than in cases that originally stipulated (16%) or were decided in court (14%).
- Impact of mediation on the courts (according to court staff)
 - **Number of temporary hearings dropped by 60%.** According to local attorneys, the drop is due to attorneys helping their clients working out their differences as well as due to parties mediating agreements.
 - **Shorter trials** . In Linn County, before the program was implemented, 25% of the trials lasted 3-5 days. Currently, only 15% of the trials last longer than 2 days. When parties reach agreement on some or all issues, the court benefits because there are fewer or shorter trials, according to court staff.
 - **This saves over \$25,000, or 25% of one district court judge's time,** a significant savings during a time of budget cuts.
- Voluntary mediation is slightly more likely to result in agreement than court-ordered mediation.
- The program materials encourage parties to consult with their attorneys before and after mediation. Parties do not sign agreements in mediation.
- 86% of the parties said they thought their mediated agreement was fair.
- 83.9% said they were satisfied with their mediator.
- 84.5% said they were able to express themselves in mediation.
- **Parties**
 - "I had a chance to tell him some things I haven't been able to say before this."
 - "We were able to talk about things. "
 - "It made us as parents take responsibility for our child and make decisions based on what really is in his interest. "
- **Attorneys**
 - "People like to control their own destiny, and they like to participate in the process."
 - "Helps to set rules for future discussions between them."
- **Judges**
 - "Mediation gives parents a way to deal with conflict without using their children as a weapon."

Relationship Between Disposition of Modifications and Original Dispositional Method of the Dissolution



Data derived from a random sample of 150 Linn County dissolution cases filed in 1997-98. The sample consisted of 50 dissolution cases in which the parties resolved custody and visitation issues by stipulation without mediation; 50 dissolution cases in which the parties mediated custody and visitation issues; and 50 dissolution cases in which the court tried custody and visitation issues. The method of resolving the modifications was then compared with the method by which the original dissolution was resolved.

Mediation: It's your solution.

Divorce and Custody Mediation: What We Know Now

This article is reprinted with permission from the *Iowa Lawyer*, June 2011.

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 fifteen 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% 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% of the trials lasted 3-5 days. After the first five years, more than 85 % lasted from 1 hour to 2 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 7-8 times less likely to return to the court for further decisions on custody and visitation issues.

Impact on parties: In 2010, parties in 544 family law cases mediated out of the 2133 dissolution and modification cases with children disposed of in the Sixth Judicial District, or approximately 25%. Parties reached agreement on all or some issues in 67.9% of the reporting cases. 30.7% mediated for up to 1 hour. 60.1% mediated for 1-3 hours. 4.3% mediated for 3-5 hours. Attorneys were present in 9.5% of the reporting cases. Party surveys indicated that 84.6% had an attorney and 13.9% were not represented. (1.5% had no answer to the question.)

Cost to parties: Parties can manage the cost of mediation 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', when asked: 'I was satisfied with my mediator', over 90.1% 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% 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 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, offered with the Children in the Middle course, to help them understand how mediation works, how to prepare, and whether it is appropriate in their case. A percentage of the class fees funds the nonprofit that manages the mediation program, Mediation Services of Eastern Iowa (MSEI). 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 6 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 acenet.org.

Continuing Education Requirement re: 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 is the Director of Mediation Services of Eastern Iowa, a nonprofit that oversees the Sixth Judicial District Family Mediation Program and the Johnson County Small Claims Mediation Program. She has been mediating since 1994 and has a Master’s degree in Conflict Resolution from McGregor School at Antioch University. She mediates in divorce and custody cases, workplace, family, small claims, and civil rights cases and is a REDRESS mediator for the US Postal Service.

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[EXTERNAL] Proposed Mediation Program [SPMB-SPMB.FID311394]

Matthew J. Brandes

to:

'Rules.comments@iowacourts.gov'

04/17/2017 04:24 PM

Hide Details

From: "Matthew J. Brandes" <Mbrandes@simmonsperrine.com>

To: "'Rules.comments@iowacourts.gov'" <Rules.comments@iowacourts.gov>

2 Attachments



Ltr to Supreme Court re Proposed Mediation Program 04-17-17.docx Comments in Proposed Mediation Program.docx



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April 18, 2017

The Supreme Court of Iowa
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Des Moines IA 50319

Re: Proposed Mediation Program

May it Please the Court:

I am an attorney practicing in Cedar Rapids, Linn County, Iowa and one of the co-chairs of your Family Law Case Processing Reform Task Force. I have been practicing law since 1981 and have limited my practice to family law since 1994. Over that time, I have witnessed first-hand the changes in Iowa family structure and the development of Iowa family law that have taken place. It has been a great honor and an exciting professional opportunity to work with your task force.

Attached to this letter are my comments concerning the two questions the court has posted for comment with regard to ADR/Mediation. These comments are my own and do not reflect the view of either the task force or my firm. I am writing personally because I think it is important for the court to take the next step and mandate ADR/Mediation on a statewide basis. The Judicial Branch has laid the necessary groundwork for this step. I do not believe it is advisable to mandate a

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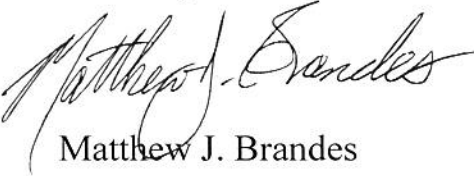
April 18, 2017

Page 2

single program now although I think this would be advantageous at the appropriate time. My thoughts are outlined further in the attached comments.

Thank you for your consideration and your work on behalf of the citizens of Iowa.

Sincerely,

A handwritten signature in cursive script, reading "Matthew J. Brandes".

Matthew J. Brandes

MJB/km

Attachment

Comments on “Proposed Mediation Program”

The Iowa Supreme Court should adopt the recommendation of the Family Law Task Force (FLTF) to implement a uniform requirement for mediation in advance of temporary order hearings and final trials. To protect victims and provide flexibility for the trial courts, it should include the proposed waiver option for cases involving domestic violence or other good cause. This action is needed for the Court to “establish a statewide dispute resolution program for family law cases with opportunities for mediation and settlement conferences., IOWA CODE § 598.7 (2017). The power to create the program was delegated to the court by the Iowa Legislature in 2000, but seventeen (17) years later a statewide program has yet to be fully realized. Until a uniform requirement for mediation in advance of temporary hearings and final trials is mandated, progress in establishing the program statewide will continue to be slow to the detriment of Iowa citizens and the Judicial Branch.

While there are many reasons to explain delay in developing a statewide dispute resolution program for family law cases, primary responsibility must rest with the Bar and the Judiciary. This observation is not intended as criticism. The greatest obstacle to the creation of any new system is human nature. Ordinary

resistance, coupled with the fear of adverse economic consequences to primary stakeholders, is a powerful current for the advocates of change to swim against. Only in the judicial districts where mediation or settlement conferences have been routinely required has their benefit become accepted and services more readily available. All things considered, it is a credit to the profession as much progress as has occurred has taken place at all. Overcoming institutional resistance to change is the principal reason the court should mandate mediation in family law cases statewide at this time. The Supreme Court's work with the judicial districts over the last several years has set the stage for this final step.

The court has also asked for comment on whether judicial districts should be allowed to continue their own forms of mediation or judicial settlement conferences. While there would be advantages to a uniform program, the court should not prescribe a single alternative dispute resolution (ADR) program until goals for the program are better defined. From the standpoint of the Judicial Branch and the Bar, there is a temptation to mandate a program which immediately increases the family law case settlement rate. Such a program will likely rely on more directive forms of ADR at later stages in case processing with binding outcomes, if agreements are reached in the ADR conference. The FLTF's own ADR Work Group Report demonstrates this tendency. Such an approach is likely

to promote higher levels of lawyer representation in the ADR event. A higher settlement rate for family law cases is not the only public need, however.

In addition to reducing judicial caseloads, there are other societal needs a thoughtful statewide dispute resolution program can help address. Chief is the need for public education on the toxic effect of parental conflict on children and the tendency of adversarial litigation to exacerbate conflict in families. Another is for education on conflict management. It is managing interpersonal conflict which gives family law litigants the most difficulty. Given the frequency with which families change and new problems arise, there is a benefit to making such education more readily available to families. Another is for different and more affordable ways for the public to access legal guidance and obtain understandable and enforceable family law settlement agreements. Anecdotal evidence suggests many citizens elect to represent themselves simply to avoid lawyers and the adversarial process. This list is not exhaustive; the public **should** be consulted.

There is no research data to establish evaluative approaches will be better than less directive techniques in addressing the many societal needs a statewide dispute resolution program for family law cases could address. Early transformative/facilitative mediation may be a better method for promoting access to legal information and public education on conflict management. Evaluative, later stage settlement conferences guided by lawyers may increase the settlement

rate, but do little to promote personal learning and changes in participant behavior. Perhaps a combination of these methods would be most useful. At present, there is a continuum of family law ADR in Iowa. The program in the Sixth Judicial District employs a transformative model. A facilitative settlement conference approach predominates in the Fifth District, while an evaluative judicial settlement conference predominates in the Seventh District. All three approaches have strengths and weaknesses. The continuum provides fertile ground for study.

“A sensible starting point for developing a change strategy is to consider what kinds of needs most divorcing couples and families generally experience, and what normative mix of professional services, delivered in what context, might best meet those needs, instead of working backwards by accepting existing service delivery systems, resource constraints, and the limitations and public resentment of the legal profession as givens and then seeking workarounds.” Pauline H. Tesler, *Can this Relationship be Saved? The Legal Profession and Families in Transition*, 55 FAM. CT. REV. 1, 39 (2017). There is increasing evidence multi-disciplinary community centers for private family dispute resolution may better serve the needs of most families. See Andrew Schepard, Marsha Kline Pruett, & Rebecca Love Kourlis, *The Family Law Bar, The Interdisciplinary Resource Center for Separating and Divorcing Parents, and the “Spark to Kindle the White Flame of Progress,”* 55 FAM. CT. REV. 1, 84 (2017). Once the goals for a statewide dispute

resolution program are identified and prioritized, the court can make a more informed decision on program design. There should be no mandate for a single, uniform statewide program until research or data establishes there is a single “best choice.”