Dispute Resolution Processes for Family Law Matters: An Annotated Bibliography 1987-97

by
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Annotations covers the years from 1987-97. In the interests of brevity, pre 1987 articles are cited but not annotated.

Alternative Dispute Resolution


Stephen J. Brams and Alan D. Taylor, *A Procedure for Divorce Settlements*, 13 Mediation Q. 191 (1996) (detailing a procedure known as adjusted winner index in which the parties assign points based on their preferences to multiple items to be divided and the allocation takes place based on objective criteria).

Robert F. Cochran, Jr., *Must Lawyers Tell Clients About ADR?*, 48 Arbitration J 8 (June 1993) (suggesting that attorneys may open themselves up to malpractice liability for failure to present ADR options to a client).


Ilene Wolcott and Ruth Weston, *Keeping the Peace: Resolving Conflict Between Parents and Adolescents*, 32 Fam. and Conciliation Cts. Rev. 208 (1994) (reporting the findings of a study designed to evaluate mediation/family therapy programs established to prevent adolescent homelessness caused by family conflict).


Arbitration


drawbacks of current system where domestic relations cases may be litigated for years; proposes use of arbitrator to be appointed to put a more expeditious conclusion to these cases).


Stephen W. Schlissel, *A Proposal for Final and Binding Arbitration of Initial Custody Determinations*, 26 Fam. L. Q. 71 (1992) (suggesting that arbitration is a more appropriate means of resolving child custody disputes because it is quicker, less adversarial, less costly and allows parties to choose an appropriate decision maker; the legal validity of binding arbitration for custody disputes is also discussed).


**Mediation**

**Domestic Violence**

David B. Chandler, *Violence, Fear, and Communication: The Variable Impact of Domestic Violence on Mediation*, 7 Mediation Q. 331 (1990) (reporting the finding of a Hawaii divorce mediation study where premediation violence screening and counseling appeared to be successful in differentiating between violence cases that are inappropriate for mediation and those in which the outcome was the same as that in nonviolence cases).

Kathleen O’Connell Corcoran & James C. Melamed, *From Coercion to Empowerment: Spousal Abuse and Mediation*, 7 Mediation Q. 303 (1990) (suggesting that the question of whether mediation should take place where abuse has occurred depends upon the present level of coercion or intimidation in the relationship).


Karla Fischer, Neil Vidmar & Rene Ellis, *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. Rev. 2117 (1993) (arguing that the ideology and practice of mediation are incompatible with a culture of battering).
Andree Gagnon, *Ending Mandatory Divorce Mediation for Battered Women*, 15 Harvard Women’s L.J. 272 (1992) (advocating for an end to mandating mediation for abuse victims because it puts them at further risk, contributes to their further disempowerment and protects the assailants from legal sanctions).


Alison E. Gerencser, *Family Mediation: Screening for Domestic Abuse*, 23 Fla. St. U. L. Rev. 43 (1995) (proposing that screening for domestic violence be required of the lawyer, clerk of court, judge and family mediator, and that adequate training be provided for those professionals in recognizing signs of domestic abuse and that alternatives to mediation be offered when appropriate).


Dennis Marthaler, *Successful Mediation With Abusive Couples*, 3 Mediation Q. (Spring 1989) at 53 (describing a model of mediation used with abusive couples in a court referred program).


Mildred Daley Pagelow, *Effects of Domestic Violence on Children and Their Consequences for Custody and Visitation Agreements*, 7 Mediation Q. 347 (1990) (reviewing the research that documents the harm to
children resulting from exposure to interparental violence and advocating for a focus on children’s rights after divorce).

Jessica Pearson, *Mediating When Domestic Violence Is a Factor: Policies and Practices in Court-Based Divorce Mediation Programs*, 14 Fam. & Conciliation Cts. Rev. 319 (1997) (exploring through interviews with mediators and program administrators, the ways in which court-based programs have responded to concerns about mediating when there may have been domestic violence).

Linda Perry, *Mediation and Wife Abuse: A Review of the Literature*, 11 Mediation Q. 313 (1994) (making the argument that after reviewing the empirical literature, and considering the screening procedures and special techniques used by mediators, that mediation is a viable option for at least some cases involving wife abuse).


Ethical Issues

Carol Bohmer & Marilyn L. Ray, *Notions of Equity and Fairness in the Context of Divorce: The Role of Mediation*, 14 Mediation Q. 37 (1996) (summarizing a study in which parties, mediators and lawyers notions of “fairness” and “equity” were examined).


Nicole Pedone, *Lawyers Duty to Discuss Alternative Dispute Resolution In the Best Interest of Children*, 36 Fam. & Conciliation Cts. Rev. 65 (1998) (advocating that the Code of Professional Responsibility be amended to require all matrimonial lawyers to discuss ADR options with clients).


Mediator Qualifications

Allan Barsky, David Este & Don Collins, *Cultural Competence in Family Mediation*, 13 Mediation Q. 167 (1996) (discussing ways in which mediators can enhance their ability to work with people from different cultures using examples from Vietnamese, and Pakistani-Ismali cultures).


Alison Taylor, *The Four Foundations of Family Mediation: Implications for Training and Certification*, 12 Mediation Q. 77 (1994) (asserting that the field of family mediation has four foundations, that all mediators should build their practice upon: (1) mediation, conflict resolution and negotiation processes, (2) legal and financial knowledge, (3) adult, child and family development and (4) helping professional skills).

Power Imbalances

Margaret F. Brinig, *Does Mediation Systematically Disadvantage Women*, 2 William & Mary J. of Women and the Law 1 (1995) (challenging the assumption that women are unable to mediate with their husbands because they are more risk-averse and more altruistic).


Randel F. Kandel, *Power Plays: A Sociolinguistic Study of Inequality in Child Custody Mediation and a Hearsay Analog Solution*, 36 Ariz. L. Rev. 879 (1994) (reporting a study in which the author focused on “constructed dialogue” to demonstrate that mediation discourse as a hybrid of law and psychology creates a risk of power abuse when the lines between psychological and legal discourse are blurred).


Diane Neumann, *How Mediation Can Effectively Address the Male-Female Power Imbalance in Divorce*, 9 Mediation Q. 227 (1992) (suggesting that the mediation process, the mediator and the effects of the divorce crisis can all be used to effectively address the power imbalance when women in “traditional marriages” use mediation to resolve support and property issues).

Cheryl Regehr, *The Use of Empowerment in Child Custody Mediation: A Feminist Critique*, 11 Mediation Q. 361 (1994) (suggesting that empowering women in mediation does not satisfactorily address the concern that women are exploited by the process because the mediation setting creates only an illusion that the woman now has an equal voice in the relationship; it does not provide the skills or supports she will need to negotiate with her husband outside of the mediation context).

Martha Shaffer, *Divorce Mediation: A Feminist Perspective*, 46 Univ. of Toronto Faculty L. Rev. 1 (1988) (contending that although divorce mediation is a highly appealing idea, its practice will have a negative impact on women because of mediator’s lack of understanding about the impact of gender-related power and a lack of consensus about the role the mediator should play in counteracting power differences).


Process and Strategies


Lynn C. Jacob, *Mediating Postdecree Disputes*, 8 Mediation Q. 171 (1991) (presenting a mediation model for post decree cases that relies heavily on extensive use of individual meetings or caucuses).


Michael Meltsner, *The Jagged Line Between Mediation and Couples Therapy*, 9 Negotiation J 261 (1993) (suggesting that although the primary goals of mediation and therapy are different, the secondary goals of one process are often similar to the primary goal of the other).


Ellen Waldman, *The Role of Legal Norms in Divorce Mediation: An Argument for Inclusion*, 1 Va. J of Social Policy and Law 87 (1993) (advocating for a reassessment of the role of legal norms in divorce mediation after suggesting that there has been a trend towards mediator hostility to the law and that legal concerns are best addressed through independent attorney review).


**Research**

Barbara J. Bautz, *Divorce Mediation: For Better or for Worse?*, Mediation Q. (Winter 1988) at 51 (reporting on a study of California and Kansas divorcing couples which found that those who used mediation were significantly more satisfied with the divorce agreement than couples who used the traditional adversarial process).

Barbara J. Bautz and Rose M. Hill, *Mediating the Breakup: Do Children Win?*, 8 Mediation Q. 199 (1991) (reporting on a study of parents from California, Kansas and New Hampshire concluding that those who used mediation make significantly more joint custody decisions and missed fewer child support payments).


Peter A. Dillion & Robert E. Emery, *Divorce Mediation & Resolution of Child Custody Disputes: Long Term Effects*, 66 American J. of Orthopsychiatry 131 (1996) (reporting on study that found that nine years post-settlement, parents who mediated had more meaningful contact with their children and more communication about them).

Robert E. Emery & Joanne A. Jackson, *The Charlottesville Mediation Project: Mediated and Litigated Child Custody Disputes*, Mediation Q. 3 (Summer 1989) at 3 (reporting on a study that focused on the differences in the effects of resolution adversary settlements on parents, noting particularly gender differences).


Howard H. Irving & Michael Benjamin, *An Evaluation of Process and Outcome in a Private Family Mediation Service*, 10 Mediation Q. 35 (1991) (presenting the results of a descriptive study of clients who were provided mediation services in a private, fee for service agency).

Joan B. Kelly, *A Decade of Divorce Mediation Research: Some Answers and Questions*, 34 Fam. & Conciliation Cts. Rev. 373 (1996) (summarizing research results on outcomes such as settlement rates, cost efficiency, client satisfaction, effects on levels of conflict and cooperation, psychological adjustments and compliance).

Joan B. Kelly, *Mediated and Adversarial Divorce: Respondents’ Perceptions of Their Processes and Outcomes*, Mediation Q. (Summer 1989) at 71 (concluding that mediation participants find the mediation process and the agreements more satisfactory than those using the adversarial approach).

Joan B. Kelly, *Parent Interaction After Divorce: Comparison of Mediated and Adversarial Divorce Processes*, 9 Behavioral Sciences and the Law, 387 (1991) (finding that the majority of differences favoring mediation intervention present through the first year after divorce, but disappearing by the two year follow-up).


Katherine M. Kitzmann and Robert E. Emery, *Procedural Justice and Parents’ Satisfaction in a Field Study of Child Custody Dispute Resolution*, 17 Law and Human Behavior 553 (1993) (reporting on a study that measured the impact of procedural factors (decision control and respect) and distributive factors (feeling of winning what one wanted) on the level of parents satisfaction with the mediation process).


Kenneth Kressel, Frances Buttemen DeFreitas, Samuel G. Forlenza & Cynthia Wilcox, *Research in Contested Custody Mediations: An Illustration of the Case Study Method*, Mediation Q. (Summer 1989) at 55 (reporting on a intensive, exploratory study of twelve cases of custody mediation focusing on obstacles to settlement and effective interventions for overcoming them).


Jessica Pearson, *The Equity of Mediated Divorce Agreements*, 9 Mediation Q. 179 (1991) (reporting on a study designed to measure the impact of mediation in the fairness of financial agreements for women).

Raymond A. Whiting, *Family Disputes, Nonfamily Disputes, and Mediation Success*, 11 Mediation Q. 247 (1994) (presenting research findings that indicate that multiple issues and ongoing relationships within family disputes can improve mediation success).

Leland C. Swenson, *Sex and History: The Effects of Attorney Gender, Prior Mediation and Litigation on Conciliation Court Mediation Outcomes and Parent Attitudes*, 30 Fam. & Conciliation Cts. Rev. 64 (1992) (concluding, among other things that attorney support for mediation is important to its success).


**Role of Attorney**

Carol Bohmer and Marilyn L. Ray, *Regression to the Mean: What Happens When Lawyers are Divorce Mediators*, 11 Mediation Q. 109 (1994) (concluding from a study that when mediators are primarily lawyers, mediation is more like the practice of law).

Penelope Eileen Bryan, *Reclaiming Professionalism: The Lawyer’s Role in Divorce Mediation*, 28 Fam. L. Q. 177 (1994) (arguing that only attorneys can provide adequate protection for clients in mediation).


Christine Leick, *Guidelines for Mediator/Attorney Cooperation*, Mediation Q. (Spring 1989) at 37 (outlining the role of the advising attorney before and during the mediation).


Morris L. Medley and James A. Schellenberg, *Attitudes of Attorneys Towards Mediation*, 12 Mediation Q. 185 (1994) (describing a study of Indiana attorneys regarding civil mediation finding advantages in terms of cost saving, durability of arguments, client satisfaction and “reality testing”, disadvantages reported included the mandatory nature of the process and the poor quality of mediators).

James Melamed, *Attorneys and Mediation, From Threat to Opportunity*, Mediation Q. (Spring 1989) at 13 (discussing the rapid growth of mediation and anticipating attorneys concerns about it).


Mark C. Rutherford, *Lawyers and Divorce Mediation: Designing the Role of “Outside Counsel”*, Mediation Q. 17 (June 1986) at 17 (discussing the role of outside counsel in a mediated divorce in which the mediator is also a lawyer).


*Other Considerations*


Mary A. Duryee, *Mandatory Mediation: Myth and Reality*, 30
Fam. & Conciliation Cts. Rev. 507 (1992) (criticizing Trina Grillo’s article on the dangers of mediation for women by suggesting that it is not supported by available research).

Dane A. Gaschen, Mandatory Custody Mediation: The Debate Over Its Usefulness Continues, 10 Ohio State J on Disp. Resol. 469 (1995) (summarizing custody mediation legislation throughout the United States and reporting the empirical studies that support the use of this type of mediation).


Linda K. Gardner, Custody Mediation in the United States: Empowerment or Social Control, 3 Can. J. Women & L. 134 (1989) (describing two different approaches to mediation, one which emphasizes control as a means of implementing the mediators agenda of joint custody and another which emphasizes empowerment of the parents to arrive at their own decisions).

Susan W. Harrell and Richard E. Doelker, Jr., Mentorship in Family Mediation, 12 Mediation Q. 151 (1994) (describing a mentoring program required for certification as a family mediator in Florida and reporting on a study that found strong support for it among certified family mediators who acted as mentors and the apprentice mediators).


Edward Kruk, Grandparent Visitation Disputes: Multigenerational Approaches to Family Mediation, 12 Mediation Q. 37 (1994) (reporting on research on grand parent-grandchild access difficulties and proposing two multi-generational approach to involve grandparents in the family mediation process).

Douglas H. McIntyre, Gay Parents and Child Custody: A Struggle Under the Legal System, 12 Mediation Q. 135 (1994) (advocating the use of mediation for the resolution of custody disputes between gay partners in order to avoid the biases of the legal system and uphold the dignity of the family).

Sam Margulies and Anya Luchow, Litigation, Mediation and the Psychology of Divorce, 20 J. of Psych. & Law 483 (1992) (advocating the use of mediation as a more appropriate means of meeting the psychological needs of the divorcing family).


Kevin M. Mazza, Divorce Mediation; Perhaps Not the Remedy It Was Once Considered, 14 Fam. Advoc. 40 (1992) (focusing on concerns raised by divorce mediation in the area of costs, and the appropriate role of the attorney).


**Negotiation**

Lewis Becker, *Ethical Considerations in Negotiating Family Law Agreements*, 30 Fam. L.Q. 587 (1996) (examining how the ethical codes which govern the professional conduct of lawyers operate in the context of negotiated family law separation agreements with emphasis on the duty to avoid fraud, the conflict between confidentiality obligations and disclosure rights and obligations, duties concerning children and fairness of agreements).

