

Connections

Driving Change: Trial Courts Connecting to Improve Service

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Child Protection Mediation Program

By Dr. Jane Millar, Ph.D., Executive Director, Northern Community Mediation

In 1998 the federal Court Improvement Program (CIP) recommended that states test whether mediation could be effective in expediting the process of moving alleged child abuse and neglect cases to adjudication. The rationale was that by doing so, the safety, stability, well-being and permanency placement of the child would be achieved sooner rather than later. This conclusion was based upon a collaborative effort among court personnel, child welfare agencies, attorneys, and other stakeholders.

In Michigan, the CIP recommendation was implemented by the State Court Administrative Office with services provided by Community Dispute Resolution Program centers. An implementation study conducted by the Michigan State University School of Social Work in 2004 found that mediation resulted in achieving permanency outcomes over 12 months sooner than cases managed through the traditional court process. Not only does this finding have obvious financial savings for the courts, but it also has significant emotional implications for a child and the family. [Ed. Note: a follow-up study will be completed by December 2018.]

As the service evolved, the issues relating to child abuse and neglect broadened. Although determination of permanency placement remained the ultimate goal, mediation was being used throughout the continuum from the initial referral at the time of the preliminary inquiry / hearing through the permanency planning hearing and potential termination of parental rights. Consequently, while the service was originally known as "permanency planning mediation," the program later became known as the Child Protection Mediation Program to reflect the program's broader spectrum of issues managed through mediation.

In this collaborative problem-solving process, the individuals present at mediation can vary from case to case. Generally speaking, those involved include the prosecuting attorney, Department of Health and Human Services staff, guardian-ad-litem, biological parents, foster parents, representative attorneys, and of course, the mediators. As with all mediations, opening statements are followed by a constructive dialog among the participants in an effort to reach an agreement. The agreements themselves can range from whether or not there is sufficient evidence to sustain the allegations in a petition, to determining if continued out-of-home placement is necessary, development of a permanency plan, or the termination of parental rights.

When an agreement is reached, the court either accepts, modifies, or rejects the agreement. In most cases, the agreement is accepted by the court. In those cases in which there is no agreement, the case is returned to the court, at which point the prosecutor will either schedule the case for trial, defer the petition while the family receives services, or dismiss the case.

The Charlevoix/Emmet Probate County Court has managed child protection cases through mediation since (year). According to retired Probate Judge Frederick Mulhauser, who was an early proponent of the service, "(c)hildren in troubled families have no time to waste. When using mediation the three likely results are: you will either be no worse off than when you started; you will have made progress and moved the ball down the court; or you will have resolved the problem and improved the outcome for kids and parents. In mediation, you have an excellent chance of changing a child's life for the better while risking very little."

Chiefly to provide guidance to additional courts wishing to provide this service, the Michigan Supreme Court recently adopted amendments of MCR 2.410 and 2.411 and new MCR 3.970 concerning child mediation practice. These rules serve as a testimonial to the effectiveness and efficiency of child protection mediation and pave the way for its further development in the years ahead.

Dr. Millar has served as Executive Director of Northern Community Mediation (NCM) since 2003. As one of the 18 Community Dispute Resolution Program centers, NCM serves citizens in Emmet

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